

STATE OF TEXAS §

COUNTY OF HIDALGO §

**INTERLOCAL COOPERATION AGREEMENT BETWEEN
THE COUNTY OF HIDALGO AND THE McALLEN PUBLIC UTILITY**

THIS Agreement is made on this the 19th day of April, 2011, by and between the **CITY OF McALLEN, TEXAS THROUGH THE McALLEN PUBLIC UTILITY BOARD**, hereinafter referred to as "PUB" and the **COUNTY OF HIDALGO, TEXAS**, hereinafter referred to as "County", pursuant to the provisions of the Texas Interlocal Cooperation Act, as follows:

WITNESSETH:

WHEREAS, PUB is a statutory entity created under the City of McAllen governed by an elected board of trustees located in the City of McAllen, Texas;

WHEREAS, County is a county in the State of Texas;

WHEREAS, County has entered into an agreement with the Texas Department of Transportation to construct road improvements on McColl Road located in the City of McAllen, Texas from Dicker Road northward through the Mission Inlet Floodway to its intersection with Orangewood Avenue (the "Project");

WHEREAS, PUB desires for the County to include, as part of its request for bids to construct the Project, the installation of a sixteen (16) inch water line along McColl Road from Dicker Road northward through the Mission Inlet Floodway to its intersection with Orangewood Avenue (the "Water Line") as an additive alternative for the Project and will pay 100% of all costs associated with the construction and installation of the Water Line;

WHEREAS, PUB and County are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Tex. Gov't Code 791.001 et. seq., which authorizes local governments to contract with each other to perform governmental functions and services under the terms of the Act;

WHEREAS, PUB will benefit from the installation of the Water Line by the County; and

WHEREAS, County has determined it would be in the best interest of the County for County to include the Water Line as an additive alternative in its request for bids for the Project.

NOW, THEREFORE, PUB and County, in consideration of the mutual covenants expressed herein, agree as follows:

1. County agrees to include the Water Line as an additive alternative in its request for bids to construct the Project.



2. PUB grants permission to the County to include the Water Line as an additive alternative in its request for bids to construct the Project.
3. PUB agrees that they will pay any and all costs to construct the Water Line, including, but not limited to, costs for materials, labor, and equipment in the amount of one million sixty-six thousand one hundred seventy-one dollars and 70/cents (\$1,066,171.70) (the "Estimate") which is the total amount estimated by County's Engineer for the cost of the construction and installation of the Water Line. PUB agrees to pay this amount to the County on or before May 2, 2011. If the costs to construct the Water Line are less than the Estimate the difference will be refunded within 30 days of a written request by the PUB to the County.
4. PUB agrees that if the costs of the construction and installation of the water line, or the actual bid for the construction and installation of the Water Line exceeds the amount set forth in paragraph three herein, the PUB will either pay any excess amount within thirty (30) days upon receiving an invoice or billing statement from the County for such excess amount or terminate this agreement and County will refund the Estimate to the PUB once the County receives such refund amount from the Texas Department of Transportation and neither County or PUB will have any further obligations to each other under this Agreement.
5. Following completion and acceptance by the McAllen Public Utility Board of the construction and installation of the Water Line described herein, the parties agree by the McAllen Public Utility Board shall be responsible for the future maintenance of the Water Line.
6. Following completion and acceptance by the McAllen Public Utility Board of the Water Line described herein, the parties agree that County will be released of any and all duties imposed by this Agreement.
7. The parties shall coordinate work schedules in order to provide minimal disruption to the public and to the operational and fiscal affairs of the parties and will use their best efforts to complete the Project and the Water Line as soon as reasonably possible from the execution of this Agreement.
8. Each party agrees to conform to its own applicable purchasing laws, regulations, policies, and procedures with respect to the portion of the work under this Agreement performed by each party.
9. **Conflict of Applicable Law.** Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between and provision of their Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provision of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the times such conflict exists.
10. **No Waiver.** No waiver by any party hereto of any breach of any provision of the Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or

any other provision hereof.

11. **Entire Agreement.** This Agreement contains the entire contract between the parties hereto and each party acknowledges that neither has made (either directly or through any agent or representative) any representation or agreement in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by County and PUB, and not otherwise.

12. **TEXAS LAW TO APPLY.** THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATION OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN HIDALGO COUNTY, TEXAS. THE PARTIES HEREBY CONSENT TO PERSONAL JURISDICTION IN HIDALGO COUNTY, TEXAS.

13. **Notice.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communication required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

IF TO PUB: McAllen Public Utility Board
 Attn.: Roy Rodriguez and Mike Perez
 P. O. Box 220
 1300 Houston Avenue
 McAllen, Texas 78505-0220

IF TO COUNTY: County of Hidalgo, Texas
 Attn.: Ramon Garcia, County Judge
 P. O. Box 758
 Edinburg, Texas 78540-0758

With copy to: Hector "Tito" Palacios, Commissioner
 Precinct No. 2
 301 E. State St. Pharr, Texas 78577

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

14. **Additional Documents.** The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

15. **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

16. **Assignment.** This Agreement shall not be assignable.

17. **Headings.** The headings and captions contained in this Agreement are solely for convenience reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

18. **Gender and Number.** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and singular shall include the plural whenever and so often as may be appropriate.

19. **Authority to Execute.** The execution and performance of this Agreement by PUB and County have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of PUB and County in accordance with its terms.

20. **Governmental Purpose.** Each party hereto is entering into this Agreement for the purpose of providing for governmental services or functions and will pay for such services out of current revenues available to the paying party as herein provided.

21. **Commitment of Current Revenues Only.** In the event that during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this Agreement, then any party may terminate this Agreement upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each party hereto pursuant to the provisions of Tex. Loc. Govt. Code Ann. '271.903.

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WITNESS THE HANDS OF THE PARTIES effective as of the day year first written above.

McALLEN PUBLIC UTILITY BOARD


Tony Aguirre, Chairman

ATTEST:


Roy Rodriguez, P.E., Utility Manager


CITY OF McALLEN, TEXAS


Richard F. Cortez, Mayor

ATTEST:


Mike R. Perez, City Manager

COUNTY OF HIDALGO


Ramon Garcia, County Judge

ATTEST:


Arturo Guajadro, Jr. County Clerk

APPROVED BY
COMMISSIONERS' COURT
ON: 4/19/11

APPROVED AS TO FORM:

ATLAS & HALL, L.L.P.

By: 
Stephen L. Crain

McALLEN PUBLIC UTILITY BOARD

By: 
Kevin D. Pagan, City Attorney

STATE OF TEXAS §
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**APPROVAL OF
INTERLOCAL COOPERATION AGREEMENT
PROJECT**

In accordance with Texas Government Code §791.014, Hidalgo County, Texas, acting by and through the Hidalgo County Commissioners Court, has been advised of a proposed project to install a sixteen inch water line along McColl Road from Dicker Road northward through the Mission Inlet Floodway to its intersection with Orangewood Avenue through an Interlocal Cooperation Agreement to be entered into with the City of McAllen through the McAllen Public Utility Board and Hidalgo County.

By vote on 4-19-11 2011, the Hidalgo County Commissioners Court has approved the Project identified above.


By: Ramon Garcia, County Judge

ATTEST:


Arturo Guajardo, Jr. County Clerk

**APPROVED BY
COMMISSIONERS' COURT**
ON: 4/19/11

APPROVED AS TO FORM:

Atlas & Hall, L.L.P.

By: 
Stephen L. Crain