

STATE OF TEXAS                   §  
  §  
COUNTY OF HIDALGO           §

**INTERLOCAL COOPERATION AGREEMENT  
BETWEEN THE COUNTY OF HIDALGO AND  
THE AGUA SPECIAL UTILITY DISTRICT**

THIS Agreement is made on this the \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the Agua Special Utility District, hereinafter referred to as “SUD” 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**, the SUD is a special utility district in Hidalgo and Starr Counties created under section 59, Article XVI of the Texas Constitution and Chapter 7201 of the Texas Special District Local Laws Code and operating in accordance with Chapters 49 and 65 of the Texas Water Code; and

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

**WHEREAS**, the SUD has entered into a Grant Agreement with the Texas Water Development Board to receive funds from the Economically Distressed Areas Program (EDAP) and the Colonia Wastewater Treatment Assistance Program (CWTAP) in order to construct a first-time wastewater service system in the Western portion of the SUD’s service area (TWDB Project No. 10370); and

**WHEREAS**, construction of the wastewater service system will entail the placement of infrastructure under or through roads in Hidalgo County which are within the EDAP area, requiring the repaving of said roads; and

**WHEREAS**, the repair of damaged roadways is a Construction “Collection System” Activity under the TWDB Project No. 10370 so that grant funds are available to pay for the paving of roads under or through which the wastewater service system infrastructure has been installed; and

**WHEREAS**, the SUD desires to contract with the County pave roads damaged by the sewer service system construction in the EDAP area which are also located in Hidalgo County, which roads are identified in Attachment A hereto which is incorporated herein for all purposes;

**WHEREAS**, the County agrees it is in the best interest of its residents to provide such paving services to the SUD;

**WHEREAS**, the SUD and County are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act. TEX. GOV'T CODE ANN. § 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.

**NOW THEREFORE**, the SUD and County, in consideration of the mutual covenants expressed hereinafter, agree as follows:

1. County agrees to pave all roads in Hidalgo County which are identified in Attachment A which have been damaged by the placement of the SUD's wastewater service system infrastructure ("the Project") by providing all labor and equipment necessary for the paving of the roads;
2. County agrees to provide all necessary materials and supplies for the road paving project, including but not limited to, oil sealer (MS-1) and hot mix overlay, to complete the work. If necessary, the County shall also sweep the roads free of debris prior to applying the overlay, it being acknowledged by the parties hereto that generally sweeping is not necessary upon installation of the caliche base. Notwithstanding the foregoing, the parties hereto acknowledge and agree that McAllen Construction, and not the County, shall be responsible for having the roads that require paving ready for the laying of the oil sealer (MS-1) and hot mix overlay. As used herein, a road shall be considered ready when the road cuts are 98% Proctor or compaction as called for in that separate agreement between McAllen Construction and the SUD and the SUD's engineer has confirmed that the 98% Proctor or compaction is in place and ready for the County's work described herein.
3. County warrants that all work will be performed in a good and workmanlike manner, in accordance with this Interlocal Agreement and all applicable laws.
4. The SUD and County shall coordinate work schedules in order to provide for minimal disruption of traffic and operation of the roads, and the County will complete the project within two hundred and seventy (270) days of the date of this Agreement.
5. The SUD will pay County \$759,953 for all of the paving work required under the terms of this Agreement.
6. Upon completion of the Project, County will submit invoices to the SUD for the work performed, the SUD will have the opportunity to inspect the work within ten (10) business days of receipt of the invoices, and payment will be made within ten (10) business days after grant funds have been received by the SUD from TWDB for payment of the invoices.
7. County understands and agrees that payment for all work performed on the Project is contingent upon the availability of grant funds from the TWDB and that the Agua SUD has no direct responsibility for payment to the County if such funds are not available.

8. Funds will be applied for by the SUD on an as-incurred or advance-of-funds basis (the alternatives provided under the terms of the TWDB EDAP grant), at its discretion.
9. Following completion of the work described herein, the parties agree that County will be released of any and all duties imposed by this Agreement.
10. 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.
11. **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.
12. **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.
13. **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 the SUD, and not otherwise.
14. **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.
15. **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 County: Hidalgo County, Texas  
Attention: County Judge  
P.O. Box 758  
Edinburg, Texas 78540-0758

With copy to: Joe Flores, Commissioner, Precinct No. 3  
P.O. Box 607  
Mission, Texas 78573

If to SUD: Frank Flores  
District Manager  
Agua Special Utility District  
P.O. Box 4379  
Mission, Texas 78573-0075

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.

16. **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.
17. **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.
18. **Assignment.** This Agreement shall not be assignable.
19. **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.
20. **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.
21. **Authority to Execute.** The execution and performance of this Agreement by the SUD and County have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of the SUD and County in accordance with its terms.

22. **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 grant funds available to the paying party as herein provided.

23. **Commitment of Current Revenues Only.** In the event that during any term hereof, it becomes clear that the SUD cannot obtain grant funds to pay the County 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. Gov't. Code Ann. §271.903.

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

AGUA SPECIAL UTILITY DISTRICT

By: \_\_\_\_\_  
Mario Chapa Agua SUD Board President

ATTEST:

\_\_\_\_\_


HIDALGO COUNTY, TEXAS

By: \_\_\_\_\_  
Ramon Garcia County Judge

ATTEST:

\_\_\_\_\_  
Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FORM:  
ATLAS & HALL, LLP

By:  \_\_\_\_\_  
Stephen L. Crain

STATE OF TEXAS       §  
                                  §  
COUNTY OF HIDALGO   §

**APPROVAL OF  
INTERLCOAL 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. County desires to provide all necessary materials and supplies for the road paving project (the "Project") through an Interlocal Cooperation Agreement to be entered into with Hidalgo County and Agua Special Utility District.

By vote on \_\_\_\_\_ 2011, the Hidalgo County Commissioners Court has approved the Project identified above.

By: \_\_\_\_\_  
Ramon Garcia, County Judge

**ATTEST:**

\_\_\_\_\_  
Arturo Guajardo, County Clerk

**APPROVED AS TO FORM:**

ATLAS & HALL, LLP

By:   
\_\_\_\_\_  
Stephen L. Crain