

ORDER NO. _____

AN ORDER OF THE COUNTY OF HIDALGO ADOPTING A SUBSIDIARY AGREEMENT UNDER THE TERMS OF THE MASTER INTERLOCAL AGREEMENT BETWEEN THE COUNTY OF HIDALGO AND THE HIDALGO COUNTY DRAINAGE DISTRICT NO. ONE, DATED DECEMBER 10, 2002 AND AMENDED BY THE FIRST AMENDED INTERLOCAL AGREEMENT, DATED AUGUST 25, 2009; DECLARING CERTAIN PERSONAL PROPERTY AS "SURPLUS PROPERTY" AUTHORIZING THE SALE OF CERTAIN PERSONAL PROPERTY FROM THE COUNTY OF HIDALGO TO HIDALGO COUNTY DRAINAGE DISTRICT NO. 1; AND APPROVING OTHER MATTERS INCIDENT THERETO.

ARTICLE I

FINDINGS AND DETERMINATIONS

1.1. Findings and Determinations. It is hereby officially found and determined as follows:

(a) The County of Hidalgo (the "County") and Hidalgo County Drainage District No. One (the "Drainage District") have entered a Master Interlocal Agreement dated December 10, 2002, and entered into by these governmental units to accomplish the aerial photography, mapping and engineering of certain drainage projects for the cooperative benefit of the County and of the District (the "Master Agreement"); and

(b) The Master Agreement was subsequently amended by that FIRST AMENDED MASTER AGREEMENT FOR JOINT PROJECTS AND SHARING COST OF PLANNING, AERIAL PHOTOGRAPHIC MAPPING, ENGINEERING DESIGNS, ENVIRONMENTAL STUDIES; USE OF PLANS, AERIAL PHOTOGRAPHIC MAPS AND ENGINEERING DESIGNS; ACQUISITION OF RIGHTS-OF-WAY TO BE USED FOR STORM AND FLOOD DRAINAGE PROJECTS AND ACQUISITION OF CONSTRUCTION AND MAINTENANCE EQUIPMENT BY POLITICAL SUBDIVISIONS IN HIDALGO COUNTY, dated August 25, 2009 (the "First Amended Interlocal Agreement"), for the purpose of undertaking the joint improvement of the County's storm drainage facilities (the "Project"). It was the express intention of the parties that the First Amended Interlocal Agreement accomplish the purpose of the further design, financing and construction of additional drainage facilities to benefit both the County and the District, as well as other political subdivisions in Hidalgo County;

(c) The District is authorized by the Public Property Finance Act, Local Government Code, Section 271.001, et seq., Vernon's Texas Civil Statutes, as amended (the "Personal Property Finance Act"), to purchase, acquire or use certain equipment and machinery (the "Equipment") and finance its purchase thereof as necessary for the efficient and economic operation of the District.

(d) The County and the District are further authorized under Local Government Code, Section 561.002(a)(the "Joint Project Act"), to enter into joint project agreements in order to accomplish the joint design, construction and management of a drainage system.

(e) The County and the District, may, under the terms of the Interlocal Government Cooperation Act, enter cooperative agreements.

(f) Texas Local Government Code Section 263.152 (a)(1) authorizes the County to sell the County's surplus or salvage property to another County or to a political subdivision, including the District. The competitive bidding requirements imposed by Texas Local Government Code Section 263.152 will not apply in that instance. Surplus property is defined to exclude "salvage" property under Texas Local Government Code Section 263.151 and the County need not hold surplus property for any time period of possession or use before the County deems the property as "surplus" property.

(g) The District desires to acquire from the County certain equipment to be used for the construction and maintenance of a drainage system (the "Equipment") under the authority of laws of the State of Texas, and in particular, the Joint Project Act, under terms considered appropriate and necessary by the County's and the District's respective governing bodies.

(h) The County is relying on authority for the sale and transfer of the Equipment on any express authority granted by State law, including, but not limited to (i) the Interlocal Government Cooperation Act, (ii) the Personal Property Finance Act, (iii) the Joint Project Act, and, the County is, in addition to the foregoing, declaring the Equipment "surplus property" under the provisions of Texas Government Code §263.152 to accomplish the sales-purchase.

(i) Under the Joint Project Act, the agreement between the County and District may contain any provisions considered necessary by the parties. Further, under the agreement, one or both parties may own the project and maintain the project while one or both contributes to the expenses of maintenance.

ARTICLE II

DEFINITIONS AND INTERPRETATIONS

2.1. Definitions. As used herein, the following terms shall have the meanings specified unless the context clearly indicates otherwise:

Acceptance Date. Unless otherwise agreed to by the prior written consent of the Drainage District, the date on which the Acceptance Certificate is executed and delivered by the Drainage District to the County in connection with this Agreement.

Authorized Officer. In the case of the County, the County Judge or some authorized officer of the County, and when used in reference to an act or document of the Drainage District, means the County Judge or some authorized officer of the Drainage District

expressly designated to accomplish the purpose of acceptance of the Equipment upon its transfer.

Certificate of Acceptance. A Certificate of the Drainage District, in substantially the form set forth in Attachment "A" hereto, by which the Drainage District accepts delivery of the Equipment sold by the County at the Purchase Price and authorizes the disbursement of funds for payment of the purchase of said Equipment.

Commissioners Court. The Commissioners Court of the County of Hidalgo, Texas.

County. The County of Hidalgo, Texas.

Closing. The date of delivery of all executed documents related to an Acceptance Certificate.

Equipment. The property to be acquired by the Drainage District from the County pursuant to an Certificate of Acceptance which shall be described in the form set out in Attachment "A".

Order. This Order and all amendments hereof and supplements hereto.

Purchase Price. The purchase price for Equipment as set out in the Certificate of Acceptance.

Surplus Property. Property of the County as so defined by Texas Government Code §263.152.

Vendor or Vendors. The original vendor or seller of the Equipment.

ARTICLE III

DECLARATION OF A SURPLUS AND APPROVAL OF SALE OF EQUIPMENT; CONDITIONS PRECEDENT

3.1. The County of Hidalgo declares the Equipment "surplus" under the provisions of Texas Government Code §263.152 and approves the sale of the Equipment to the Drainage District. The obligation of the Drainage District to acquire the Equipment and to pay the purchase price shall be subject to the condition that the County declare the Equipment "surplus" property under the provisions of Tex. Loc. Gov. Code §263.152, and to the receipt by the Drainage District of certain documents and the satisfaction of the certain conditions, as follows, all of which shall be satisfactory in form and substance to the Drainage District:

(a) County shall have procured the Equipment in accordance with a competitive procurement procedure as required by state law and shall have completed a Schedule for each Vendor containing all of the information and certifications as set out in Attachment "C-1".

(b) Drainage District shall have accepted the Equipment (or agreed to accept) by delivery to the County of an executed Certificate of Acceptance in the form of Attachment "A", whereupon the item of Equipment shall immediately become property of the Drainage District;

(d) Delivery of certificates of title, if any, and assignment to the Drainage District of all warranties on the Equipment; and

(d) Such other documents, instruments, certifications or other items as may be reasonably required by the Drainage District or by its legal counsel.

3.2. Upon satisfactory tender of all documents and conditions set out in section 3.1, the Drainage District shall release the funds to County and deliver to County the Purchase Price in full for the Equipment..

ARTICLE IV **NO WARRANTIES, EXPRESSED OR IMPLIED**

4.1 Warranties. Except for representations, warranties and service contracts relating to the Equipment made or entered into by the manufacturers or suppliers of the Equipment, all of which are hereby assigned to the Drainage District, the County has made and makes no representation or warranty, express or implied, and assumes no obligation with respect to the title, merchantability, condition, quality or fitness of the Equipment described in Schedule for any particular purpose or the conformity of the Equipment to specifications or purchase order, its design, delivery, installation or operation. All claims or actions on any warranty so assigned to the County shall be made or prosecuted by the Drainage District, at its sole expense. The Equipment is sold "as is".

ARTICLE V

MISCELLANEOUS

5.1. Further Proceedings. The County Judge and other appropriate officials of the Drainage District are hereby authorized and directed to do any and all things necessary and/or convenient to carry out the terms of this Agreement.

5.2. Severability. If any section, paragraph, clause or provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Agreement.

5.3. Open Meeting. It is hereby found, determined and declared that a sufficient written notice of the date, hour, place and subject of the meeting of the Commissioners Court at which this Order was adopted was posted at a place convenient and readily accessible at all times to the general public at the official meeting place of the Commissioners Court for the time required by law preceding this meeting, as required by the Texas Open Meetings Law, Chapter 551, Texas Government Code, as amended, and that this meeting was open to the public as required by law at all times during which this Order and the subject matter thereof were discussed, considered and formally acted upon. The Commissioners Court further ratifies, approves and confirms such written notice and the contents and posting thereof.

5.4 Repealer. All orders and resolutions or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency.

PASSED AND APPROVED ON _____.

HIDALGO COUNTY
COMMISSIONERS COURT

County Judge

ATTEST:

County Clerk

(SEAL)

ATTACHMENT "A"

CERTIFICATE OF ACCEPTANCE

SALE-PURCHASE AGREEMENT (THE "AGREEMENT") BY AND BETWEEN

Hidalgo County Drainage District No. One

and

The County of Hidalgo, Texas

Date _____

1. **ACCEPTANCE:** In accordance with the Agreement, the Drainage District hereby certifies that all of the Equipment described herein (i) has been received by the Drainage District, (ii) has been thoroughly examined and inspected to the complete satisfaction of the Drainage District, and in conformity with the published specifications included in the competitive procurement process undertaken by the County; (iii) has been found by the Drainage District to be in good operating order, repair and condition, (iv) has been found to be of the size, design, quality, type and manufacture specified by County. (v) has been found to be and is wholly suitable for the Drainage District's purposes, (vi) has been assembled or installed consistent with instructions supplied by the Vendor, (vii) has been scheduled under the Drainage District's casualty insurance policy, and (viii) is hereby unconditionally accepted by the Drainage District, in the condition received, for all purposes of this Agreement.

2. **EQUIPMENT** (may incorporate one or more documents)

VENDOR	DESCRIPTION	P.O. #	SERIAL #	PRICE
	2009 CAT 324DL Exca	612370	CAT0324DCJJG01085	\$185,894.00
	Total			
	Total			
	Total			
	Total			

CERTIFICATION

Hidalgo County Drainage District No. 1 hereby certifies that the description of the property set forth above constitutes an accurate account of the Equipment described.

Hidalgo County Drainage District No. 1

By: _____
(Authorized Signature)

Printed Name and Title

Date: _____