

STATE OF TEXAS §

COUNTY OF HIDALGO §

**AMENDED AND RESTATED
INTERLOCAL COOPERATION AGREEMENT BETWEEN THE COUNTY OF
HIDALGO, THE CITY OF EDINBURG, TEXAS AND THE EDINBURG
CONSOLIDATED INDEPENDENT SCHOOL DISTRICT**

This Agreement is made on this the day of 6-21, 2011, by and between HIDALGO COUNTY, TEXAS hereinafter referred to as "County," the EDINBURG CONSOLIDATED INDEPENDENT SCHOOL DISTRICT, hereinafter referred to as "ECISD," and the CITY OF EDINBURG, TEXAS hereinafter referred to as "City" pursuant to the provisions of the Texas Interlocal Cooperation Act, as follows:

WITNESSETH:

WHEREAS, Edinburg Consolidated Independent School District through the County of Hidalgo applied for a Safe Routes to School Grant from the Texas Department of Transportation (the "Grant");

WHEREAS, though Minute Order No. 112268 on May 27, 2010 County was granted \$1,134,430.00 through the Safe Routes to School Program (SRTS) Fund for the construction of improvements such as the construction of sidewalks, redesign of crosswalks and installation of bicycle racks in the vicinity of five (5) campuses located within the County belonging to ECISD (Carmen Avila Elementary School, San Carlos Elementary School, J.F. Kennedy Elementary School, Esparza Elementary School, and Betts Elementary School) (the "Project");

WHEREAS, County entered into three Advance Funding Agreements ("AFA") with the Texas Department of Transportation (the "State") for funds to construct the Project;

WHEREAS, County and ECISD originally entered into an Interlocal Agreement on February 1, 2011 (the "Original Agreement") to cooperate in constructing the Project and desire to amend and restate such agreement to amend and restate the terms of the Original Agreement and to add the City as a party;

WHEREAS, City desires to assist with the efforts of County and ECISD in the coordination of the Project;

WHEREAS, the County has determined that it will receive a benefit from the infrastructure improvements and has agreed to assist ECISD and the City;

WHEREAS, ECISD and City have determined that they will receive benefits from the infrastructure improvements and have agreed to assist County;

WHEREAS, ECISD, City, and County have agreed to cooperate in the improvements as further herein described; and

WHEREAS, ECISD, City, and County are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Texas Govt. 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.

NOW, THEREFORE, ECISD and County hereby amend and restate the Original Agreement and ECISD, City and County, in consideration of the mutual covenants expressed hereinafter agree as follows:

1. The County serves as the lead agency for the Project and executed the AFA with the State. ECISD, City, and County will jointly coordinate the Request For Qualifications process and contract award for preliminary engineering and environmental assessment services. The County will provide any required submissions to the State as required by the AFA and the Grant.
2. The County, City and ECISD will participate in the RFQ process for the procurement of engineering services on the Project. All parties agree that such procurement shall be done in accordance with the procurement requirements of 23 C.F.R. § 172, if applicable, and Texas Government Code § 2254, *et seq.* as amended (the "Procurement Laws"). A committee shall be created to coordinate the RFQ and contract award. Such committee shall consist of three individuals selected by ECISD, one individual selected by the County and one individual selected by the City (the "Committee"). The Committee shall present their recommendation of the contract award to the respective governing bodies of County, City and ECISD for approval and the parties will not withhold approval of the contract award to the recommended engineering firm chosen by the Committee unless the selection of such engineering firm was not done in compliance with the Procurement Laws. The County shall have the right to reject such recommendation if approval of such contract award will cause the County to breach its obligations under the AFA.
3. The County in conjunction with the ECISD and the City will coordinate the construction of the Project through the Texas Department of Transportation who will provide all construction services. All parties agree that the terms of the AFA related to construction of the Project, specifically Section 11, "Construction Responsibilities" will govern the construction of the Project and the parties, if applicable, will obtain any approvals required by the State before commencement of any construction work. The County and ECISD may agree by future mutual written agreement to evenly split the cost of any increase in the construction costs of the Project. The County and ECISD shall not be required to agree to any increase in the construction costs of the Project. County and ECISD agree to follow any procedures required by the State under the AFAs before approving any increase in the construction cost of the Project.

4. Upon final completion of construction of the Project, the County agrees to repair and maintain only those improvements located within the jurisdiction of the County right-of-way. Such repair and maintenance shall be done in accordance with the same standards the County would normally use to repair and/or maintain any improvements of similar nature located within the County right-of-way.
5. All engineering costs and environmental assessment costs shall be paid for by the County and, to the extent applicable, will submit the invoices to the State for reimbursement.
6. The City will cause the engineer chosen for the Project to segregate the invoices for the Project. The parties agree that the Engineer is to provide County with a separate invoice for services rendered for the Project herein described by this agreement only. The City will provide to County any documents related to the Project to County as soon as possible, but no later than three (3) business days, upon written request by the County.
7. County will designate personnel to assist with the coordination of the Project.
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, to the extent those such purchasing laws, regulations, policies, and procedures will not constitute a breach of any obligation under the AFA.
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 any 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(s) of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time 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 Edinburg and County, and not otherwise.

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.

12. **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 ECISD: Edinburg Consolidated Independent School District
 Attention : Dr. Rene Gutierrez, Superintendent of Schools
 411 N. 8th St.
 Edinburg, Texas 78540

If to County: County of Hidalgo
 Attention: Ramon Garcia, Hidalgo County Judge
 1615 S. Closner, Ste. J
 Edinburg, Texas 78539-3523

If to City: City of Edinburg, Texas
 Attn: MAYOR RICHARD H. GARCIA
 415 W. University
 Edinburg, Texas 78540

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.

13. **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.

14. **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.

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

16. **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 of paragraph hereof.

17. **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.

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

19. **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.

20. **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.

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

HIDALGO COUNTY, TEXAS

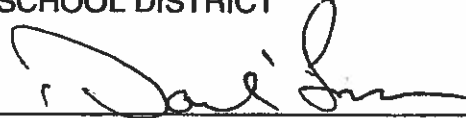


Ramon Garcia, Hidalgo County Judge

ATTEST:

Arturo Guajardo, Jr., County Clerk

EDINBURG CONSOLIDATED INDEPENDENT
SCHOOL DISTRICT

5/31/11


David Torres, President, Board of Trustees

ATTEST:

By: Ciro Trevino
Ciro Trevino, Secretary, Board of Trustees

CITY OF EDINBURG

Richard H. Garcia, Mayor

ATTEST:

By: Myra Ayala-Garza
Myra Ayala-Garza, City Secretary



APPROVED AS TO FORM:

By: Jacques Trevino
Jacques Trevino
ECISD General Counsel

ATLAS & HALL, L.L.P.

By: Stephen L. Crain
Stephen L. Crain

By: [Signature]
_____, City Attorney

Approved by Commissioners' Court

On: 5/31/11

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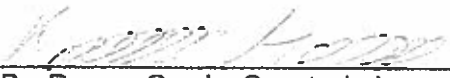
**APPROVAL OF
AMENDED & RESTATED
INTERLOCAL COOPERATION AGREEMENT
PROJECT**

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 for the construction of improvements such as sidewalks, redesign of crosswalks and installation of bicycle racks in the vicinity of five (5) Edinburg Consolidated Independent School District campuses located within Hidalgo County:

Carmen Avila Elementary School
San Carlos Elementary School
J.F. Kennedy Elementary School
Esparza Elementary School
Betts Elementary School

through an Interlocal Cooperation Agreement to be entered into with the Edinburg Consolidated Independent School District, the City of Edinburg, Texas and Hidalgo County.

By vote on May 31, 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
5/31/11 rfb

APPROVED AS TO FORM:

Atlas & Hall, L.L.P.

By: 

Stephen L. Crain