

STATE OF TEXAS §

COUNTY OF HIDALGO §

INTERLOCAL COOPERATION AGREEMENT BETWEEN THE COUNTY OF HIDALGO AND EDINBURG CONSOLIDATED INDEPENDENT SCHOOL DISTRICT

THIS Agreement is made on this the 24th day of January, 2012, by and between the **EDINBURG CONSOLIDATED INDEPENDENT SCHOOL DISTRICT**, hereinafter referred to as "District" 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 District is a consolidated independent school district located in Hidalgo County, Texas; and

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

WHEREAS, District desires County to engage in a project for the construction of an approximately three thousand six hundred (3,600) feet of protective barrier along the west and north boundary of Avila Elementary School and Harwell Middle School located at 9205 N. Alamo Road and 9201 N. Alamo Road respectively in Hidalgo County, Texas (the "Project");

WHEREAS, District 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, District has requested County assistance and District will benefit from the construction of the Project; and

WHEREAS, Hidalgo County has determined it is feasible for Hidalgo County to undertake the Project.

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

1. County agrees to provide all labor, equipment, and materials necessary for the following:

- a. Provide Fill Material to Project location, including excavation, loading, transportation and unloading.
 - b. Provide Equipment and Labor for the spreading, compaction, shaping, coarse and fine grading for approximately 3,400 linear feet of Earthen Berm as indicated on the Plans and Specifications.
 - c. Provide Field Staking based on plans provided by the ECISD and its Engineer based on control provided by the Engineer.
 - d. Prepare Subgrade and Base Preparation for approximately 330 linear feet of Masonry Wall (collectively, the "County Project").
2. County shall provide District with man power at the current hourly rates for individuals required to complete the Project as shown as Exhibit A attached hereto and incorporated herein at this point for all purposes, equipment at its costs as shown in Exhibit B attached and incorporated herein at this point for all purposes and material at county costs, as shown on Exhibit C attached hereto and incorporated herein at this point for all purposes. Prior to District utilizing County manpower, equipment and materials. District shall request and District will receive the current hourly rates of County individuals, required to complete the School Project the current hourly rates for equipment and County's cost for materials. Hourly rates shall include all benefits and other costs associated with the employment of each personnel, equipment and materials. County shall be solely responsible for determining the current rate of its personnel. Any request for use by District of County individuals shall be subject to the approval by the Commissioner of Precinct No. 4 determining that the County individuals equipment and materials so requested by the District are not required for projects of Precinct No. 4 at the time requested by District.
3. County will provide invoices to District with supporting documentation, including but not limited to receipts and invoices for all labor, equipment and materials used or purchased by Hidalgo County for the Project in accordance with paragraph 4 below.
4. District agrees to pay County for the entire cost of materials, equipment and personnel used by the County for the Project. Prior to County commencing the Project, District shall escrow the amount of County's estimate for the Project with the Hidalgo County Treasurer (the "Escrow"). Should District deposit such Escrow with the County Treasurer, District agrees County may draw from the Escrow the costs of materials, equipment and personnel for such Project within seven (7) business days of receipt by District of an invoice and supporting documentation from County, the entire cost of County materials, equipment and personnel, used for the Project. In the event the cost of materials, equipment and personnel for the Project exceeds the amount of the Escrow (the "Excess") for such project, District agrees to make payments of the Excess to County within

thirty (30) days of receipt of invoices from County for same. In the event the actual cost of the Project is finally determined to be less than the amount of the Escrow, County agrees to remit such difference to District.

5. Upon a change in price for manpower for County personnel, equipment or materials, the County shall notify the District within ten (10) working days during the term of the Project and before beginning any new work on the Project.
6. District and County shall coordinate work schedules in order to provide for minimal disruption to the construction of the Project and will use their best efforts to complete the County Project within _____ () days of the date of this Agreement.
7. Following completion of the work described herein, the parties agree District shall be responsible for the maintenance of the Project.
8. Following completion of the work described herein, the parties agree that County will be released of any and all duties imposed by this Agreement.
9. 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.
10. **Termination.** Either party may terminate this Agreement with or without cause upon thirty (30) days written notice to the other.
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 District, 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 District: Edinburg Consolidated Independent School District
 Attention: Rene Gutierrez, Superintendent of Schools
 411 N. 8th Street
 Edinburg, Texas 78540

With copy to: Edinburg Consolidated Independent School District
 Attention: Mario Salinas, Asst. Superintendent
 411 N. 8th Street
 Edinburg, Texas 78540

If to County: Hidalgo County, Texas
 Attention: Ramon Garcia, County Judge
 P.O. Box 1356
 Edinburg, Texas 78540-0758

With copy to : Joseph Palacios, Commissioner, Precinct No. 4
 1102 N. Doolittle Road
 Edinburg, Texas 78539

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 District and County have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of District 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 current revenues available to the paying party as herein provided.

23. **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.

**EDINBURG CONSOLIDATED
INDEPENDENT SCHOOL DISTRICT**

Carmen Gonzalez, President, Board
of Trustees

ATTEST:

Ciro Treviño, Secretary, Board of Trustees

HIDALGO COUNTY

Ramon Garcia, County Judge

ATTEST:

Arturo Guajardo, County Clerk

APPROVED AS TO FORM:

By: _____
, ECISD Attorney

APPROVED AS TO FORM:

ATLAS & HALL, L.L.P.

BY: 

Stephen L. Crain

EXHIBIT A

CURRENT HOURLY RATES FOR PRECINCT 4 PERSONNEL

Reimbursement Sheet

Equipment		Year	Make	Model	Description	Vin #	Lic. Plate #	Unit #	Rate
48423		2008	Caterpillar	330DL	Hydraulic Excavator(268hp)	MWP033300	N/A	PD-8	\$55.00
48762		2008	Caterpillar	D8N	Dozer(171hp)	DJA01021	N/A	PD-11	\$54.00
49190		2010	Peterbilt	340	Tandem Dump Truck	2NPRLN9X4AM101471	106-2162	PD-14	\$28.25
49191		2010	Peterbilt	340	Tandem Dump Truck	2NPRLN9X6AM101469	106-2158	PD-15	\$28.25
49192		2010	Peterbilt	340	Tandem Dump Truck	2NPRLN9X64AM101469	106-2161	PD-16	\$28.25
49193		2010	Peterbilt	340	Tandem Dump Truck	2NPRLN9X2AM101470	106-2157	PD-17	\$28.25
30206		1991	INT		Tandem Dump Truck	2HSFEGUR9MCO48387	106-2043	10	\$28.25
47643		2009	Peterbilt	340	Tandem Dump Truck	2NPRLN9X39M772495	102-5294	73	\$28.25
47645		2009	Peterbilt	340	Tandem Dump Truck	2NPRLN9X69M772491	102-5308	74	\$28.25
47646		2009	Peterbilt	340	Tandem Dump Truck	2NPRLN9X59M772496	102-5307	75	\$28.25
37760		2002	Peterbilt	330	Tandem Dump Truck	2NPRLD9X52M577223	106-1966	31L	\$28.25
47973		2002	Peterbilt	330	Tandem Dump Truck	2NPRLD9X32M577222	821-899	30L	\$28.25
49052		2008	Volvo	T450	Scrapper Hauler	17016		PD-12	
49051		2008	Volvo	T450	Scrapper Hauler	17030		PD-13	
48761		2009	Caterpillar	420E	Back Hoe	PRAO0799		PD-9	
48760		2009	Caterpillar	420E	Back Hoe	PRAO0798		PD-10	
Employees									
Name	ID #	Position	Equipment	Salary (Hrly Rate)					
Aguero, Fermin	170968	Heavy Equipment Op.	excavator	\$27.44					
Botello, Sylvestre	174173	Truck Driver III	dump truck	\$19.44					
Clayton, Harley B.	173657	Heavy Equipment Op.	excavator	\$27.48					
Garza, Irineo	181064	Truck Driver III	dump truck	\$19.44					
Govea, Luis Manuel	173681	Heavy Equipment Op.	dozer	\$27.48					
Gracia, Jose Luis	181994	Truck Driver III	dump truck	\$19.44					
Guerra, Mauricio	173975	Truck Driver III	dump truck	\$19.44					
Martinez, Ediberto G	173703	Heavy Equipment Op.	excavator	\$27.48					
Molina, Reynaldo	173983	Truck Driver III	dump truck	\$19.44					
Moore, James M.	170992	Heavy Equipment Op.	dozer	\$20.56					
Moreno, Jose A	174785	Truck Driver III	dump truck	\$19.44					
Navarro, Guadalupe	089737	Truck Driver III	dump truck	\$19.44					
Pineda Gutierrez, Oscar	181072	Truck Driver III	dump truck	\$19.44					
Rodriguez, Israel	160466	Truck Driver III	dump truck	\$19.44					
Trevino, Omar	162028	Truck Driver III	dump truck	\$19.44					
Rodriguez, Israel	160466	Truck Driver III	dump truck	\$19.44					
Trevino, Omar	182028	Truck Driver III	dump truck	\$19.44					
Vasquez, Benito	171018	Heavy Equipment Op.	excavator	\$27.48					
Gonzalez, Juan	170984	Pipe Layer	survey elev.	\$17.03					
Cisneros, Joe	171212	Heavy Equipment Op.	back hoe	\$27.44					
Adelaido, Serna	171247	Heavy Equipment Op.	back hoe	\$27.44					
Rios, Raquel	174815	Truck Driver III	scraper hauler	\$19.44					
Sanchez, Jose	182001	Truck Driver III	scraper hauler	\$19.44					

EXHIBIT B
EQUIPMENT RATES

Equipment	Hourly Rate
Dragline	\$ 125.00
Backhoe	\$ 28.75
Dozer	\$ 54.00
Excavator	\$ 55.00
Motor Grader	\$ 66.00
Dump Truck	\$ 28.25
Roller	\$ 37.50
Loader	\$ 28.75

EXHIBIT C

**FILL MATERIAL WILL BE PROVIDED AT NO COST PURSUANT TO
COMMISSIONERS COURT ACTION TAKEN FEBRUARY 23, 2010
(See attached)**

B. Pct. 4

1. **Requesting approval of Work Authorization #4 (\$12,850.00) from Millennium Engineers Group, Inc. for professional construction material testing for: "Sunflower Road, Sandy Ridge Road & Trenton Road" projects located within Pct. No. 4, in connection with Contract No. C-08-472-03-24.**

On motion of Commissioner Flores, seconded by Commissioner Handy, the Court made a UNANIMOUS vote of approval.

2. **Pursuant to Texas Local Government Code, Chapter 263.152 (a)(3), requesting Commissioners Court to ...'order the property otherwise disposed...' inasmuch as CC undertook to sell said property under 263.152(a)(1)...'sealed competitive bids' and was unable to do so because no bids were received for the top soil and fill dirt from both sites that are part of Precinct 4 "San Carlos Drainage Improvement Project and identified as Dickerson Pond located at the corner of Dillon Rd & Tex-Mex Rd. and Fike Pond located at the SE corner of Mile 17 and Holmes Rd.**

On motion of Commissioner Flores, seconded by Commissioner Handy, the Court made a UNANIMOUS vote of approval.

C. Colonia Access Program Pct. 1

1. **Acceptance and approval of Change Order No. 1 with contractor Total Commitment, LLC for High Point Subdivision, Pct. No. 1 reflecting an increase in the amount of \$14,604.50 existing level-up was no longer adequate for roadway improvements and Pct. 1 is requesting valley gutter thus resulting in modified quantities of items and addition of items as submitted through project engineer TEDSI Infrastructure Group-C-CAP-09-382-12-15.**

On motion of Commissioner Flores, seconded by Commissioner Handy, the Court made a UNANIMOUS vote of approval.

D. Colonia Access Program Pct. 3

1. **Approval of Application for Payment No. 3 (Final) in the amount of \$47,248.65 from Total Commitment, LLC contracted vendor for Basham Subdivision No. 18 as submitted by Javier Hinojosa Engineering project engineer. (C-CAP-09-286-08-25)**

On motion of Commissioner Flores, seconded by Commissioner Handy, the Court made a UNANIMOUS vote of approval.

2. **Acceptance and approval of Change Order No. 1 with contractor Total Commitment, LLC for Basham Subdivision No. 18, Pct. No. 3 reflecting a decrease in the amount of \$1,475.50 for deletion of asphalt concrete as submitted through project engineer Javier Hinojosa Engineering-C-CAP-09-286-08-25.**

On motion of Commissioner Flores, seconded by Commissioner Handy, the Court made a UNANIMOUS vote of approval.

E. Adult Probation:

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

**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 desires County to engage in a project for the construction of an approximately three thousand six hundred (3,600) feet of protective barrier along the west and north boundary of Avila Elementary School and Harwell Middle School located at 9205 N. Alamo Road and 9201 N. Alamo Road respectively in Hidalgo County, Texas (the "Project"); through an Interlocal Cooperation Agreement to be entered into with the Edinburg Consolidated Independent School District and Hidalgo County.

By vote on _____ 2012, 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, L.L.P.

By: 

Stephen L. Crain