

STATE OF TEXAS §
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COUNTY OF HIDALGO §

**RIGHT OF WAY CONSENT
AGREEMENT**

This Agreement is entered into effective the ____ day of _____, 2012 by and between **HIDALGO COUNTY IRRIGATION DISTRICT NO. 2**, (the “District”) and the **COUNTY OF HIDALGO** (the “County”) as follows:

WHEREAS, District owns a right of way the legal description of which is more particularly described in Exhibit “A” attached hereto (the “ROW”), and the County desires to make certain drainage improvements within a portion of the ROW; and

WHEREAS, the County desires to obtain the consent from the District to use a portion of the ROW for the purpose of installation, construction, repair and maintenance of a drainage pipeline, and District has no objection to County’s use according to the terms hereof; and

WHEREAS, in consideration of District agreeing to this Agreement County agrees at County’s expense to replace District’s water irrigation pipeline that lies within the boundaries of the ROW with a fifteen (15) inch water irrigation pipeline in accordance with the terms hereof; and

WHEREAS, the parties desire to enter into this Agreement in order to set forth the terms and conditions of their agreement in this respect.

~~_____~~ NOW, THEREFORE, IT IS MUTUALLY AGREED by and between the County and ~~_____~~ District that County may use the ROW described above for the purposes expressed under the terms, conditions and covenants as follows:

1. District hereby consents to the use by the County of the portion of the ROW described on Exhibit “B” attached hereto for the installation, construction, repair

and maintenance of drainage improvements consisting of a drain line subject to District's approval of the plans and specifications of the installation prior to the construction thereof and District's acceptance of the construction following completion thereof.

2. In consideration of the District's agreement to allow the County to utilize the ROW, County shall replace at County's expense District's existing irrigation water pipeline located solely within the boundaries of the ROW with a fifteen (15) inch irrigation water pipeline, subject to District's approval of plans and specifications of the installation and location of the replacement pipeline prior to the installation, thereof, and acceptance of the construction following completion thereof. Upon completion and acceptance by the District of the replacement of such irrigation water pipeline, District shall repair and maintain when necessary as determined by the District at District's expense such replaced irrigation water pipeline, District agrees County shall have no responsibility to repair, replace, reconstruct or maintain such fifteen (15) inch irrigation water pipeline constructed by County. Provided, however, in the event that repairs are required to the pipeline within one (1) year of completion of construction thereof, and such repair is not commenced by the contractor or County within three (3) days after written notice by the District to the County, then District shall be authorized to make such repairs and County shall reimburse District such reasonable expenses incurred by District in making such repairs.
3. County agrees that if its use of the ROW interferes with District's use of the ROW it shall cease such use and/or be responsible for all costs including attorney fees, engineer's fees and construction costs reasonably incurred by the District, and shall alter or modify its facilities in such a manner to remove such interference all at its sole expense.
4. In the event it is necessary for the County to alter, modify, or add to the facilities presently located within the ROW, County agrees to notify District at least sixty (60) days prior to any such activity and furnish necessary plans, specifications, and sketches showing the location and type of construction which shall be subject to District's approval thereof prior to construction, and acceptance of construction following completion thereof. Any such alterations, modifications, or additions shall be at the sole expense of the County and in the event it is necessary to relocate, alter, or modify the District's improvements situated within the ROW, the County shall pay for all reasonable costs necessarily incurred by the District in relocating or altering their improvement to accommodate the new alterations, modifications, or additions to the improvements situated within the ROW, and shall reimburse the District for any expenses reasonably incurred by the District, including attorney fees, engineering fees and reasonable administrative fees.

5. This Agreement shall remain in effect so long as the District maintains use of the ROW for irrigation and related drainage purposes or is terminated by mutual agreement of the parties, whichever event occurs sooner.
6. To the extent allowed by law, District shall not be liable or responsible for, and shall be saved and held harmless by County from and against any and all third party claims and damages of every kind, for injury to or death of any person or persons and for damage to or loss of property, arising out of or attributed, directly or indirectly, to the operations of County under this Agreement. This indemnity shall survive termination or expiration of this Agreement.
7. To the extent allowed by law, County shall not be liable or responsible for, and shall be saved and held harmless by District from and against any and all third party claims and damages of every kind, for injury to or death of any person or persons and for damage to or loss of property, arising out of or attributed, directly or indirectly, to the operations of District under this Agreement. This indemnity shall survive termination or expiration of this Agreement.
8. District shall have full use of its ROW except as limited by this Agreement and shall not be liable or responsible to County for any damages to County's facilities caused by its use unless such use negligently causes damage to the County's facilities.
9. Conflict with 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 this 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 agreement between the parties hereto, reflecting the subject matter 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 District and County, 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 obligations 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 District: Hidalgo County Irrigation District No. 2
 Attention: Manager
 P.O Box 6
 San Juan, Texas 78589

If to County: Hidalgo County
 Attention: County Judge
 1615 S. Clossner, Suite J
 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.

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 heading 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.

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 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.

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.

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

**HIDALGO COUNTY IRRIGATION
DISTRICT NO. 2**

Allen Arnold, Board President

HIDALGO COUNTY

Ramon Garcia, County Judge

ATTEST:

Arturo Guajardo, County Clerk

STATE OF TEXAS §
COUNTY OF HIDALGO §

This instrument was acknowledged before me on this _____ day of _____, 2012, by Allen Arnold, in the capacity therein stated, to certify which witness my hand and seal of office.

Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF HIDALGO §

This instrument was acknowledged before me on this _____ day of _____, 2012, by Ramon Garcia, in the capacity therein stated, to certify which witness my hand and seal of office.

Notary Public, State of Texas