

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

**AMENDED AND RESTATED INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE CITY OF PENITAS AND COUNTY OF HIDALGO CONCERNING
CERTAIN IMPROVEMENTS TO LIBERTY ROAD FROM US 83 TO FM 2221**

This AMENDED AND RESTATED INTERLOCAL COOPERATION AGREEMENT by and between the **CITY OF PENITAS** (“City”) and the **COUNTY OF HIDALGO** (“County”), is made effective the ____ day of _____ 2013, pursuant to the provisions of the Texas Interlocal Cooperation Act, as follows:

W I T N E S S E T H

WHEREAS; the City is a municipality located in Hidalgo County, Texas;

WHEREAS; the County is a County in the State of Texas;

WHEREAS, on or about July 31, 2012, City and the County entered into an Interlocal Cooperation Agreement (“Interlocal Agreement”) regarding improvements to Tom Gill Road and/or Liberty Road from US 83 to 3 Mile Road;

WHEREAS, Liberty Road from US 83 to FM 2221 Road (“Road”), is in need of expansion to a four lane roadway facility;

WHEREAS, Liberty Road from US 83 to 1000 feet south of Mile 4 is within the expanded city limits of City;

WHEREAS, City and the County desire to amend and restate the Interlocal Agreement as hereinafter provided due to the deletion of improvements to Tom Gill Road and due to the expanded city limits of City and the Interlocal Agreement is superseded by the terms of this Amended and Restated Interlocal Cooperation Agreement.

WHEREAS, the County and the City desire to cooperate toward the completion of the project development activities of the Road within the city limits and ETJ of the City;

WHEREAS, the County and City are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Texas Government Code 790.001 et. Seq. which authorizes local governments to contract with each other to perform governmental functions and services under the terms of the Act;

WHEREAS, the City agrees to support the proposition that the County be the fiduciary agent for all the Preliminary Engineering associated with the Public Involvement, Environmental Assessment, Schematic, Hydrology & Hydraulic Studies, and TxDOT coordination at 100% cost to the County within the city limits and ETJ of the City subject to

close coordination with the City's Engineers;

WHEREAS, upon completion of the approved schematics by the County, the City will complete the surveys, Right Of Way (ROW) Map, and Plans, Specifications, & Estimates (PS&E) for the portions of the Road from US 83 N. to Mile 3;

WHEREAS, the County upon completion of the approval schematics will complete the surveys, Right of Way (ROW) Map, and Plans, Specifications & Estimates (PS&E) for the portion of Liberty Road from Mile 3 to FM 2221.

NOW, THEREFORE, County and City, in consideration of the mutual covenants expressed hereinafter, agree to amend and restate the Interlocal Agreement thereby superceding the Interlocal Agreement in its entirety by the terms of this Amended and Restated Interlocal Cooperation Agreement as follows:

1. The County agrees to undertake the Preliminary Engineering duties, including but not limited to, Public Involvement, Environmental Assessment, Schematic, Hydrology & Hydraulic Studies, and TxDOT coordination within the city limits and ETJ of the City.
2. Upon completion of the approved schematics by the County, the City will complete the surveys, Right of Way (ROW) Map and Plans, Specifications & Estimates (PS&E) for the portion of the Road from Expressway 83 to 3 Mile Road and the County will complete the surveys, Right of Way (ROW) Map and Plans, Specifications & Estimates (PS&E) for the portion of the Road from 3 Mile Rd. to FM 2221.
3. The Road forms a connecting link or integral part of the County road system.
4. 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.
5. The City consents to County providing a share of costs for materials and performing labor within the corporate limits of City.
6. 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 or provisions of the Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.
7. 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.

8. 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 agreement or representative) and 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 the City and County, and not otherwise.
9. This Agreement may be terminated by either party without cause on thirty (30) days notice to the other party.
10. 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.
11. Notice: Except as maybe 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 City: City of Peñitas
Attention: Marcos Ochoa, Mayor
1 Mile South FM 1427
Peñitas, Texas 78576
 - If to County: Hidalgo County, Texas
Attention: Ramon Garcia, Hidalgo County Judge
P. O. Box 758
Edinburg, Texas 78540-0758
 - With copy to: Joe Flores, Commissioner, Precinct No. 3
724 N. Breyfogle
Mission, Texas 78574
12. 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 the 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 as often as may be appropriate.
18. Authority to Execute. The execution and performance of this Agreement by the City 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 City and County in accordance with its terms.
19. Governmental Purpose. Each party hereto is entering into the 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 or 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.

EXECUTED IN DUPLICATE ORIGINALS and effective as of the day and year first written above.

CITY OF PENITAS

By: _____
Marcos Ochoa, Mayor

ATTEST:

Ana M. Valdez, City Secretary

HIDALGO COUNTY

By: _____
Ramon Garcia, County Judge

ATTEST:

Arturo Guajardo, Jr., Hidalgo County Clerk

APPROVED AS TO FORM:

ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain