

STATE OF TEXAS §

COUNTY OF HIDALGO §

**AMENDED AND RESTATED INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE COUNTY OF HIDALGO, THE EDINBURG CONSOLIDATED
INDEPENDENT SCHOOL DISTRICT, THE CITY OF McALLEN AND HIDALGO
COUNTY DRAINAGE DISTRICT NO. 1**

This Agreement is made on this day of _____, 2014, by and among Hidalgo County, Texas hereinafter referred to as "County", the Edinburg Consolidated Independent School District, hereinafter referred to as "ECISD", the City of McAllen hereinafter referred to as "McAllen" and the Hidalgo County Drainage District No. 1 hereinafter referred to as "Drainage District" pursuant to the provisions of the Texas Interlocal Cooperation Act, as follows:

WITNESSETH

WHEREAS, ECISD, County, McAllen and Drainage District executed that certain Interlocal Cooperation Agreement dated March 5, 2013 concerning road and drainage improvements to the eastside of the existing Hidalgo County Irrigation District canal crossings, Mile 17½ road and terminating at Ware Road (the "Original Interlocal");

WHEREAS, the parties desire to amend and restate the Original Interlocal:

Now therefore, ECISD, County, McAllen and Drainage District, in consideration of the mutual covenants expressed hereinafter, agree to amend and restate the Original Interlocal thereby superseding the Original Interlocal in its entirety by the terms of this Amended and Restated Interlocal Cooperation Agreement as follows:

WHEREAS, ECISD, County, McAllen and Drainage District have agreed to extend and construct approximately thirty four hundred sixty three feet (3463') of road and drainage improvements commencing at the Eastside of the existing Hidalgo County Irrigation District canal crossing on Mile 17½ Road and terminating at Ware Road (the "Project");

WHEREAS, "County" will construct the 3263 linear foot of the Project and coordinate with Drainage District, McAllen and ECISD for project progress and shared cost;

WHEREAS, ECISD will design 200 linear feet of road crossing the Irrigation District No. 1 irrigation canal within the ECISD Portion, (as hereinafter defined) and Drainage District will construct through its contractor such 200 linear feet of road.

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

WHEREAS, "ECISD" and McAllen have determined that they will receive benefits from the infrastructure improvements and have agreed to assist the County and Drainage District in such infrastructure improvements;

WHEREAS, ECISD, County, Drainage District and McAllen 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, County, ECISD, Drainage District and McAllen hereby, in consideration of the mutual covenants expressed hereinafter agree to as follows:

1. The County shall serve as the lead agency for the Project.
2. Subject to McAllen approval, County shall design the western most twenty six hundred sixty three feet (2663') of road and drainage improvements within the City of McAllen and prepare any necessary plans, specifications to McAllen design standards. Provided however the 2663 linear feet road portion of the Project shall consist of a twenty-eight feet in width of caliche base and twenty four feet in width of asphalt. County shall also prepare any right of way maps for completion of the 2663 feet of road and drainage improvements. Plans and Specifications shall be submitted to McAllen for approval 30 days before advertising for bids.
3. McAllen agrees to contribute to County for the use of the equipment and personnel for the construction of the Project as described the sum of Four Hundred Ninety One Thousand and Five Hundred Seventy Eight and no/100ths Dollars (\$491,578.00). Any amount of actual cost for McAllen portion of the Project in excess of \$491,578.00 shall not be the responsibility of McAllen. McAllen shall provide inspectors for construction materials testing and such other inspectors as McAllen may desire at McAllen's sole cost and expense to ensure that construction meets McAllen standards. McAllen does further consent to County performing such road and drainage improvements within the jurisdiction of McAllen.
4. ECISD shall retain at ECISD's sole cost and expenses a competent engineering firm to design the road and drainage improvements and canal siphon construction from the eastern municipal line of the City of McAllen to the east side of the existing Hidalgo County Irrigation District No. 1 canal crossing Mile 17½ Road being approximately eight hundred feet (800') of the road for the ECISD portion of the Project (the "ECISD Portion"). ECISD further agrees to reimburse Drainage District at Drainage District's cost for all expenses incurred by Drainage District in the preparation of bids and all expenses incurred by Drainage District from the successful bidder to construct the canal siphon and 800' feet of road construction including the 200 feet road crossing the Hidalgo County Irrigation District # 1 canal right of

way in the ECISD Portion and from the west 200 foot of the road crossing the Hidalgo County Irrigation District 1 and continuing west along Mile 17½ Road six hundred feet to the eastern municipal limits of the City of McAllen on Mile 17½ Road. ECISD agrees to make such payments to Drainage District within thirty (30) days of receipt of invoice(s) from Drainage District. Such reimbursement by ECISD to Drainage District for such equipment, personnel and materials and the canal siphon construction is estimated to be approximately Four Hundred Sixty Four Thousand Three Hundred Forty Five and no/100ths Dollars (\$464,345.00). Regardless of such estimate, ECISD agrees to reimburse the actual costs of Drainage District as shown by invoice(s) of Drainage District to ECISD for all construction by Drainage District or by Drainage District's contractor(s) described in this numbered paragraph 4. Drainage District shall construct the two hundred foot road, described in this numbered paragraph 4, the drainage improvements, as described in this numbered paragraph 4 and the canal siphon within the ECISD Portion.

5. INTENTIONALLY DELETED.
6. Drainage District shall provide at Drainage District's sole cost and expense all sixty inch drainage storm sewer pipe for the Project.
7. Upon final completion of construction of the Project, McAllen, County and Drainage District agree to repair and maintain only those improvements located within the respective jurisdiction of the County, McAllen and Drainage District. Such repair and maintenance shall be done in accordance with the same standards McAllen, County and Drainage District would normally use to repair and/or maintain any improvements of similar nature located within their respective jurisdiction.
8. **Conflict with Applicable Law.** Nothing in this Agreement shall be construed to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any (applicable law,) 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 this Agreement. The Agreement shall be modified only to the extent necessary to conform the agreement to the applicable law bring them within the legal requirements and only during the time such conflicts exists.
9. **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.

10. **Entire Agreement.** This Agreement contains the entire contract among the parties hereto, and each party acknowledges that no other party has made (either directly or through any agent or representative) any representation or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by all parties hereto, and not otherwise.
11. **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.
12. **Notice.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications 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
Attn: Dr. Rene Gutierrez, Superintendent of Schools
411 N. 8th St.
Edinburg, Texas 78540

If to County: County of Hidalgo
Attention: County Judge
P.O. Box 758
Edinburg TX 78540-0758

If to McAllen: City of McAllen
Attn: Mayor Jim Darling
1300 Houston Street/ P. O. Box 220
McAllen, Texas 78505

If to Drainage
District: Hidalgo County Drainage District No. 1
Attn: Godfrey Garza
900 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.

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 convenient 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 each of the parties have been duly authorized by all necessary laws, resolutions, ordinances or government body action, and this Agreement constitutes the valid and enforceable obligations of the parties hereto 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.
21. **Severability.** Should any phrase, clause, sentence or section of this Agreement be judicially declared to be invalid, unenforceable or void, such decision will not have the effect of invalidating or voiding the remainder of this Agreement, and such part of this Agreement will be deemed to have been stricken herefrom and the remainder of this Agreement will have the same force and effect as if such part or parts had never been included herein.

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

HIDALGO COUNTY, TEXAS

By: _____
Ramon Garcia, County Judge

ATTEST:

Arturo Guajardo, Jr. County Clerk

EDINBURG CONSOLIDATED INDEPENDENT
SCHOOL DISTRICT

Juan "Sonny" Palacios, President, Board of
Trustees

ATTEST:

Jaime R. Solis, Secretary, Board of Trustees

CITY OF McALLEN, TEXAS

By: _____
Jim Darling, Mayor

ATTEST:

City Secretary

HIDALGO COUNTY DRAINAGE DISTRICT
NO. 1

By: _____
Ramon Garcia, Chair, Board of Directors

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**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 to desire to assist, Edinburg Consolidated Independent School District, (“ECISD”), the City of McAllen (“McAllen”) and Hidalgo County Drainage District No.1 (“Drainage District”) with respect to certain road and drainage improvements to 17½ Road, Hidalgo County has determined that it will receive a benefit from the infrastructure improvements and has agreed to assist ECISD, McAllen and Drainage District through an Interlocal Cooperation Agreement to be entered into with ECISD and the Drainage District, and Hidalgo County.

By vote on _____ 2014, 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 & RODRIGUEZ, LLP

By: _____
Stephen L. Crain