

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

**AMENDED AND RESTATED INTERLOCAL COOPERATION AGREEMENT
BETWEEN HIDALGO COUNTY IRRIGATION DISTRICT NO. ONE AND HIDALGO
COUNTY DRAINAGE DISTRICT NO. 1**

THIS AMENDED AND RESTATED INTERLOCAL COOPERATION AGREEMENT BETWEEN HIDALGO COUNTY IRRIGATION DISTRICT NO. ONE AND HIDALGO COUNTY DRAINAGE DISTRICT NO. 1 (this “**Agreement**”) is made effective as of the _____ day of September, 2015 by and between Hidalgo County Irrigation District No. One hereinafter referred to as “**Irrigation**” and Hidalgo County Drainage District No. 1 hereinafter referred to as “**Drainage**”, pursuant to the provisions of the Texas Interlocal Cooperation Act. This Agreement supersedes, restates and amends the prior agreement between Irrigation and Drainage dated as of April 3, 2014, with respect to the subject matter hereof, as follows:

WITNESSTH:

WHEREAS, Irrigation has rights and interest in and to certain irrigation facilities and irrigation properties consisting of among other facilities a pump house and surrounding facilities located on the banks of the Rio Grande River located near Penitas, Texas in the County of Hidalgo, Texas (the “**Pump House**”);

WHEREAS, the United States International Boundary and Water Commission (“**IBWC**”) has certain levees in and along the northern banks of the Rio Grande River for protection from rising flood waters;

WHEREAS, the southern wall of the Pump House is part of the levee system for that area;

WHEREAS, the IBWC levee system in and around the Pump House (including the southern wall of the Pump House) are lower than the current height required by the Federal Emergency Management Agency (“**FEMA**”);

WHEREAS, the IBWC has agreed to design and raise the height of the levees in and around the Pump House, but not the Pump House or the area immediately surrounding the Pump House;

WHEREAS, Drainage is responsible for the gathering, diverting and control of storm water in Hidalgo County and concern has arisen that these deficiencies in the IBWC levee system expose portions of Hidalgo County to potential flooding especially as hurricane season is approaching;

WHEREAS, pursuant to 44 C.F.R Section 65.10, FEMA will only recognize in its flood hazard and risk mapping effort those levee systems that meet and continue to meet minimum design, operation and maintenance standards;

WHEREAS, the levees in and around the Pump House must be raised in elevation by approximately five and one-half feet (5.5') and, because the Pump House must be used as a part of the levee system, the southern wall of the Pump House must be raised in elevation to the same elevation of the surrounding levees, and possibly the Pump House must be reinforced (the "**Pump House Work**") to meet the standards of FEMA; and

WHEREAS, Drainage has determined it would be in the best interest of residents of Hidalgo County for Drainage to raise those certain levees not raised by the IBWC, such levees adjacent to the Pump House and to conduct the Pump House Work.

NOW, THEREFORE, Irrigation and Drainage, in consideration of the mutual covenants expressed hereinafter, agree as follows:

1. Irrigation will engage the services of Lloyd Engineering, Inc., an engineering firm familiar with the design of IBWC levee systems (the "**Evaluation Engineer**"), to evaluate the structural integrity of the Pump House, including the southern wall of such facility, whether the Pump House is structurally sound to serve as part of the IBWC levee system and whether the Pump House can be updated and/or enhanced so that it will be in compliance with FEMA's current, levee height requirement.
2. Irrigation shall pay the first One Hundred Twenty-Eight Thousand Five Hundred and No/100ths Dollars (\$128,500.00) of the cost for the Evaluation Engineer's services. All costs and expenses for the Evaluation Engineer's services to evaluate the integrity of the Pump House in excess of One Hundred Twenty-Eight Thousand Five Hundred and No/100ths Dollars (\$128,500.00) shall be paid by Drainage. On receipt of the Evaluation Engineer's evaluation, Irrigation will provide a copy of the Engineer's evaluation report to Drainage.
3. In the event that the Evaluation Engineer's report provides that the Pump House Work will make the Pump House structurally sound and in compliance with FEMA's current, levee height requirement, then: (a) Irrigation shall procure the services of the Evaluation Engineer to prepare the design and construction plans for the Pump House Work; and (b) Irrigation shall procure the services of contractor(s) to perform the Pump House Work. Such contractor(s) must be experienced in such work. The agreement between the Evaluation Engineer and Irrigation, and the contractor(s) selected to perform the Pump House Work and the construction contract between the contractor(s) and Irrigation are all subject to the approval of Drainage. Drainage shall have the right to review the contractor(s)' responses to the procurement selection but shall have no participation or input into the selection process. Irrigation shall notify Drainage at least ten (10) working days before Irrigation notifies the contractor(s) of their

selection. In the event Drainage does not agree with the contractor(s) selected by Irrigation, Drainage shall notify Irrigation prior to the expiration of the ten (10) working day period referenced in the prior sentence. In such event, this Agreement shall terminate effective on the date of such notice of District's disagreement with Irrigation's selection of the contractor(s). Drainage agrees not to unreasonably delay Irrigation's procurement of the contractor(s) selected by Irrigation for the performance of the Pump House Work. Irrigation agrees that all engineers, contractors, sub-contractors and suppliers shall be paid timely in accordance with their respective contracts and, to the extent allowed by law, Irrigation hereby indemnifies Drainage from any damages caused by the failure to timely pay.

4. The Pump House Work is subject to the consent and approval of the IBWC.
5. Should Irrigation and Drainage each determine to proceed with design and construction plans for the Pump House Work and IBWC has granted its consent for construction to proceed, Irrigation shall pay the first One Hundred Seventy-One Thousand Five Hundred and No/100ths dollars (\$171,500.00) of the cost of the Pump House Work. All cost and expenses of the Pump House Work in excess of Irrigation's One Hundred Seventy-One Thousand Five Hundred and No/100ths dollars (\$171,500.00), including all supplies, labor and equipment, shall be paid by Drainage. The parties agree that any change order that increases the cost of such construction must be approved by both Irrigation and District. In the event that the IBWC reimburses Irrigation and/or Drainage for any cost of the Evaluation Engineer's services and/or Pump House Work, then Irrigation and Drainage shall share such reimbursement proportionately to the amount paid by Irrigation and Drainage respectively towards the cost of the Evaluation Engineer's services and Pump House Work.
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 this 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 later shall prevail, but in such event the affected provision or provisions 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.
7. **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.
8. **Entire Agreement.** This Agreement contains the entire agreement 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

13. **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns where permitted by this Agreement.
14. **Headings.** The headings and captions contained in this Agreement are solely for convenience and reference and shall not be deemed to affect the meaning or interpretation of any provision of paragraph hereof.
15. **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.
16. **Authority to Execute.** The execution and performance of this Agreement by Hidalgo County Irrigation District No. One and Hidalgo County Drainage District No. 1 have been duly authorized by all necessary laws, resolutions or governmental action, and this Agreement constitutes the valid and enforceable obligations of Irrigation and District in accordance with its terms.
17. **Governmental Purpose.** Each party hereto is entering into this Agreement for the purpose of providing governmental services or functions and will pay for such services out of current revenues available to the paying party as herein provided.

[Signature Page Follows]

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

IRRIGATION:

HIDALGO COUNTY IRRIGATION DISTRICT
NO. ONE

By: _____
Robert L. Bell, Jr., President

DRAINAGE:

HIDALGO COUNTY DRAINAGE DISTRICT
NO. 1

By: _____
Ramon Garcia, Chairperson, Board of
Directors

APPROVED AS TO FORM:

ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain