

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

INTERLOCAL COOPERATION AGREEMENT AMONG THE CITY OF MISSION, CITY OF MCALLEN, AND HIDALGO COUNTY, TEXAS CONCERNING CERTAIN PHASE III IMPROVEMENTS TO TAYLOR RD. FROM US83 EXPRESSWAY NORTH TO MILE 2 N.

THIS agreement is made on this _____ day of _____, 2017 by and among the CITY OF MISSION, TEXAS, hereinafter referred to as “MISSION”, the CITY OF MCALLEN, TEXAS, hereinafter referred to as “MCALLEN”, 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, both MISSION and MCALLEN are home rule municipalities located in Hidalgo County, Texas;

WHEREAS, both MISSION and MCALLEN are cities created under the laws of Texas;

WHEREAS, the COUNTY is a county in the State of Texas;

WHEREAS, Taylor Road from US 83 Expressway North to Mile 2 N, which traverses within the jurisdictions of MISSION and MCALLEN and is a vital North-South road within the COUNTY that is an interconnecting link to the COUNTY roadway system and is in need of expansion to a four lane roadway facility; (the “Road”);

WHEREAS, The Hidalgo County Metropolitan Planning Organization (HCMPO) approved their out of cycle highway Transportation Improvement Plan (TIP) and Metropolitan Transportation Plan (MTP) Amendments revising the previously approved limits “from US 83 Expressway North to 1300 – ft. North of Dove” into two (2) Projects, Section #1 Taylor Road: from US 83 to Bus 83 and Section #2 Taylor Road: from Bus 83 to Mile 2 N” and authorized Category 7 Federal Funds to be allocated towards construction, ROW and compensable utilities, as well as construction engineering costs of Section #1 and Section #2 of Taylor Road;

WHEREAS, MISSION, MCALLEN, and COUNTY agree with dividing the Taylor Road Project into Two (2) Project Sections and revising the Project limits;

WHEREAS, MISSION, will continue to be the fiduciary agent for these two (2) projects and assume the role of project development lead;

WHEREAS, MISSION desires to complete Phase III of the “Road” project development for Section # 1 and Section #2, which includes Right-of-Way Acquisition / Compensable Utility Services and Construction Management Services including but not limited to Construction Inspection / Construction Materials Testing.

WHEREAS, the estimated total Phase III “Road” project’s development cost will be \$3,559,804.90 for both Section #1 and Section #2.

WHEREAS, COUNTY desires to cooperate by contributing a fixed lump sum amount not to exceed \$799,200 to MISSION toward the development of the Phase III for both Section #1 and Section #2 of the “Road” project;

WHEREAS, MCALLEN desires to cooperate by contributing an estimated amount of \$ 1,380,302.45 to MISSION toward the development of the Phase III for both Section #1 and Section #2 of the “Road” project. The above cost estimate represents the Phase III costs for ROW Acquisition and Construction related services. Any over runs and/or under runs will be shared equally between the Cities of MCALLEN and MISSION;

WHEREAS, MISSION desires to cooperate by contributing an estimated amount of \$ 1,380,302.45 toward the development of the Phase III for both Section #1 and Section #2 of the “Road” project. The above cost estimate represents the Phase III costs for ROW Acquisition and Construction related services. Any over runs and/or under runs will be shared equally between the Cities of MCALLEN and MISSION;

WHEREAS, MISSION, MCALLEN and COUNTY are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Texas Government 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; and

NOW, THEREFORE, MISSION, MCALLEN and COUNTY, in consideration of the mutual covenants expressed hereinafter, agree as follows:

1. MISSION agrees to complete Phase III for both Section #1 and Section #2 of the “Road” project development, which includes Right-of-Way Acquisition / Compensable Utility Services and Construction Management Services including but not limited to Construction Inspection / Construction Materials Testing for this project more particularly described in that portion of Exhibit A attached hereto and made a part hereof for all purposes that relates to said Phase III.
2. The Road at various points passes through the jurisdiction of MISSION and MCALLEN forms a connecting link or integral part of the regional transportation system of the COUNTY roads.
3. The previously approved limits “From US 83 Expressway North to 1300 – FT. North of Dove” is revised into two (2) Projects, Section #1 Taylor Road: From US 83 to Bus 83 and Section #2 Taylor Road: From Bus 83 to Mile 2 N”.
4. The estimated total Phase III “Road” project’s development cost will be \$3,559,804.90 for both Section #1 and Section #2.

5. The COUNTY desires to cooperate by contributing a fixed lump sum amount not to exceed \$799,200 to MISSION at time of execution of this Agreement toward the development of the Phase III for both Section #1 and Section #2 of the projects, more particularly described in that portion of Exhibit A attached hereto and made a part hereof for all purposes that relates to said Phase III.
6. MCALLEN desires to cooperate by contributing an estimated amount of \$ 1,380,302.45, (in 2 payments) toward the development of the Phase III for both Section #1 and Section #2 of the "Road" project. The first payment will be due upon the execution of this agreement in the amount of \$690,151.00. The second payment will be due in October 2017 in the amount of \$690,151.45. The above cost estimate represents the Phase III costs for ROW Acquisition and Construction related services more particularly described in that portion of Exhibit A attached hereto and made a part hereof for all purposes that relates to said Phase III. Any over-runs and/or under-runs will be shared equally between the actual costs that may be above or beyond the estimated amounts in this Agreement.
7. MISSION desires to cooperate by contributing an estimated amount of \$ 1,380,302.45 toward the development of the Phase III for both Section #1 and Section #2 of the "Road" project. The above cost estimate represents the Phase III costs for ROW Acquisition and Construction related services more particularly described in that portion of Exhibit A attached hereto and made a part hereof for all purposes that relates to said Phase III. Any over-runs and/or under-runs will be shared equally between the actual costs that may be above or beyond the estimated amounts in this Agreement.
8. 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.
9. **Land Acquisition:** Mission and McAllen agree that all costs, including but not limited to, right of way costs, damages to the remainder (if any), appraisal fees, witness fees, trial expenses, court costs, appeal costs, and all other costs related to acquisition of necessary property interests, are agreed project costs. Mission and McAllen further agree to the following land acquisition process:
 - a. Mission will assume the responsibility of determining the right-of-way, easements or other property interests necessary for the completion of this project, and shall obtain said property interests by purchaser or condemnation. McAllen agrees, acknowledges and grants Mission the authority necessary to condemn or otherwise acquire said property interests that are within McAllen City Limits.
 - b. The value of all necessary property interests shall be determined based upon the appraised value of a State-certified real estate appraiser and a State-certified review appraiser selected by Mission.

- c. Mission will be responsible for the relocation or adjustment of any public or private utilities. Any such relocation or adjustment will be in compliance with Mission Standard Utility Adjustment Agreement.
 - d. Condemnation proceedings shall be commenced as to those necessary property interests of which acquisition by purchase was not successful. Mission will administer all condemnation proceedings through Mission legal counsel.
 - e. Upon completion of acquisition of all necessary property interests, Mission shall re-convey to McAllen any easements or Right-of-Ways acquired within McAllen city limits. Completion of acquisition occurs when Mission has obtained all final, non-appealable judgments and conveyance documents for the necessary property interests, and a Notice to Proceed with construction has been issued.
10. **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 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.
11. **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.
12. **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 Mission, McAllen and County, and not otherwise.
13. **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.

14. **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 Mission: City of Mission
Attention: Norberto "Beto" Salinas, Mayor
1201 E. 8th St.
Mission, Texas 78572

If to McAllen: City of McAllen
Attention: Jim Darling, Mayor
1300 Houston Avenue
McAllen, Texas 78501

If to County: Hidalgo County, Texas
Attn: Honorable Ramon Garcia, Hidalgo County Judge
P. O. Box 758
Edinburg, Texas 78540-0758

Copies to: Eduardo "Eddie" Cantu, Commissioner, Precinct No. 2
300 W Hallacres Ste G
Pharr, Texas 78577

Joe M. Flores, Commissioner, Precinct No. 3
724 North Breyfogle
Mission, Texas 78574

15. 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 the convenience reference and shall not be deemed to affect the meaning or interpretation of any provision of 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 as often as may be appropriate.
21. **Authority to Execute:** The execution and performance of this Agreement by the Mission, McAllen 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 Cities and County in accordance with its terms.
22. **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.
23. **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.
24. Following completion of construction of the Road each party hereto shall maintain the road within their respective jurisdictions where applicable.

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

CITY OF MISSION

By: _____
Norberto "Beto" Salinas, Mayor

ATTEST:

City Secretary

CITY OF MCALLEN

By: _____
Jim Darling, Mayor

ATTEST:

City Secretary

COUNTY OF HIDALGO

By: _____
Ramon Garcia, County Judge

ATTEST:

County Clerk

APPROVED AS TO FORM:

By: _____
Abiel Flores
Mission City Attorney

APPROVED AS TO FORM:

By: _____
Kevin D. Pagan
McAllen City Attorney

APPROVED AS TO FORM:
Atlas, Hall & Rodriguez, L.L.P.

By: _____
Stephen L. Crain

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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 regarding certain Phase III Road Improvements to Taylor Rd. from US83 Expressway to Mile 2 North (the “Road”), a section which is in part within the city limits of said cities and in part within County jurisdiction through an Interlocal Cooperation Agreement to be entered into with the City of Mission, City of McAllen, Texas, and Hidalgo County.

By vote on _____ 2017, 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, L.L.P.

By: _____
Stephen L. Crain