

STATE OF TEXAS §

COUNTY OF HIDALGO §

INTERLOCAL COOPERATION AGREEMENT AMONG THE COUNTY OF HIDALGO, THE CITY OF McALLEN, TEXAS AND HIDALGO COUNTY IRRIGATION DISTRICT NO. 2 CONCERNING RIGHT OF WAY ACQUISITION FROM YUMA AVENUE WEST TO McCOLL RD.

This Agreement is made on this _____ day of _____, 2017 by and among the County of Hidalgo, Texas, hereinafter referred to as “County”, the City of McAllen, Texas, hereinafter referred to as “City” and Hidalgo County Irrigation District No. 2 hereinafter the “District” pursuant to the provision of the Texas Interlocal Cooperation Act, as follows:

WITNESSETH:

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

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

WHEREAS, the District is an irrigation district in the State of Texas;

WHEREAS, the City and County entered into Interlocal Agreement dated December 15, 2015 amended by a First Amendment dated July 19, 2016 to make needed road improvements to E. Yuma Avenue from Jackson Rd. to McColl Rd. (the “Project”);

WHEREAS, County in order to complete the Project requires the agreement from District to construct a syphon in and over District’s irrigation canal (the “Syphon”) for certain right of way located within the corporate limits of City (the “Project”) such right of way more particularly described in Exhibit A attached hereto (the “ROW”);

WHEREAS, City consents to the ROW acquisition from District by County within its corporate limits;

WHEREAS, District agrees to convey District’s ROW to City upon completion and inspection of County’s construction of Syphon;

WHEREAS, County, City and District 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, County, City and District in consideration of the mutual covenants expressed hereinafter, agree as follows:

1. County, City and District agree, at County’s sole cost and expense, to acquire the ROW as specified in previous Interlocal Agreement between County and City and City agrees to accept upon completion of the Project a deed from District for the

part of County's ROW acquisition which crosses over District's irrigation canal upon completion of the Project.

2. District grants County access to the ROW to conduct a Syphon across District's irrigation canal such access being granted to access the real property described on Exhibit A attached hereto.
3. Following completion of the construction of the Syphon, District will, after certification by the County's engineer the Syphon was built in compliance with specifications prepared by such engineer, convey the real property described on Exhibit A attached hereto to City in the form of the deed agreed to by City and District, a copy of such agreed deed attached hereto as Exhibit B.
4. County, shall pay District the sum of Forty Eight Thousand Four Hundred Thirty Two and no 100ths Dollars (\$48,432.00) for access to the real property described on Exhibit A attached hereto which sum is also in consideration for District's conveyance of the ROW described on Exhibit A attached hereto to the City.
5. Pursuant to Tex. Trans. Code 251.012, City authorizes County to perform the work and services described herein with its corporate city limits.
6. To the extent any of the terms of this Agreement conflict with any terms of the existing Interlocal Agreement, as amended, between County and City dated December 15, 2015 and the amendment dated July 19, 2016 the terms of this Agreement shall control.
7. 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.
8. **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.
9. **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.
10. **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 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 Drainage District and County, 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 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 McAllen: City of McAllen
Attention: Honorable Jim Darling, Mayor
1300 Houston Avenue
McAllen, Texas 78501

If to County: Hidalgo County, Texas
Attention: County Judge
100 E. Cano, 2nd Floor
Edinburg, TX 78539

If to District: Hidalgo County Irrigation District No. 2
Attention: Manager
P. O. Box 6
San Juan, Texas 78589

With copy to: Eduardo "Eddie" Cantu, Commissioner Pct. No. 2
300 W. Hall Aces Suite G
Pharr, Texas 78577

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 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 so often as may be appropriate.
18. **Authority to Execute.** The execution and performance of this Agreement by Hidalgo County, City and District have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of County, City and District in accordance with its terms.
19. **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.
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 sixty (60) 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.

ATTEST:

CITY OF McALLEN

By: _____
City Secretary

By: _____
Jim Darling, Mayor

ATTEST:

By: _____
County Clerk

COUNTY OF HIDALGO

By: _____
Ramon Garcia, County Judge

HIDALGO COUNTY IRRIGATION
DISTRICT NO. 2

By: _____
Karl Obst, President, Board of
Directors

APPROVED AS TO FORM:

By: _____
McAllen City Attorney

APPROVED AS TO FORM:

ATLAS, HALL & RODRIGUEZ, L.L.P.

By: _____
Stephen L. Crain

APPROVED AS TO FORM:

LAW OFFICES OF GLENN JARVIS

By: _____
Glenn Jarvis

County: Hidalgo, Precinct 2
WA#22 Supplemental #2: Yuma Extension

Exhibit: A
FIELD NOTES FOR PARCEL 2

Being a 22,920 square foot or 0.53 of an acre tract of land, out of Lot 6, Block 15 and Lot 1, Block 16, Steele and Pershing Subdivision, as recorded in Volume 8, Page 115, of the Deed Records, Hidalgo County, Texas, and being out of Hidalgo County Irrigation District Canal Lateral "E" Right of Way, referenced as Tract No. 2, described in Volume 120, Page 546, Deed Records Hidalgo County, Texas, and referenced as Tract No. 19, as described in Volume 120, Page 550, of the Deed Records, Hidalgo County, Texas, said 0.53 of an acre tract of land being more particularly described by metes and bounds as follows;

1. Beginning at a ½" iron pin found (N=16,590,625.56, E=1,077,539.98) in the West line of said Lateral "E" Right of Way, for the Southeast corner of La Estancia Subdivision, as recorded in Volume 46, Page 126, of the Map Records, Hidalgo County, Texas, for the Northwest corner of this herein described tract of land;
2. Thence with the proposed 80.00 foot Right of Way line of Yuma Avenue, across and through said Lateral "E" Tract No.2, South 81° 22' 06" East, at a distance of 223.22 feet passing the Northwesterly line of said Lateral "E" Tract No. 19, continuing a total distance of 309.21 feet to a 5/8" iron pin with plastic cap stamped "R.O.W. PROP. COR." set in the Northwesterly line of a called 6.444 acre tract of land as described in Document No. 2695551, of the Official Records, Hidalgo County, Texas, for the Northeast corner of this herein described tract of land;
3. Thence departing the proposed 80.00 foot Right of Way line of Yuma Avenue, and with the Northwesterly line of said 6.444 acre tract of land, South 63°01'53" West, at a distance of 34.36 feet passing the existing North Right of Way line of Yuma Avenue, continuing a total distance of 68.71 feet to the South line of said Lot 6, Block 15, for the North line of said Lot 1, Block 15, and for a corner of this herein described tract of land;
4. Thence with the North line of said Lot 1, Block 16 and the South line of said Lot 6, Block 15, North 81°22'06" West a distance of 85.89 feet to the Southeasterly line of said Lateral "E" Tract No. 2, for an interior corner of this herein described tract of land;
5. Thence departing the South line of said Lot 6, Block 15, across and through said Lot 1, Block 16 with the Southeasterly line of said Lateral "E" Tract No. 2, South 63°01'53" West a distance of 72.71 feet to a 5/8" iron pin with plastic cap stamped "R.O.W. PROP. COR." set in the existing South Right of Way line of Yuma Avenue, for the beginning of a curve concave to the Southwest, and for an exterior corner of this herein described tract of land;



6. Thence with the South proposed 80.00 foot Right of Way line of Yuma Avenue, across and through said Lateral "E" with said curve concave to the Southwest, having a radius of 3080.00 feet, an arc length of 54.43 feet, a delta angle of $01^{\circ}00'45''$, a chord bearing of North $84^{\circ}06'09''$ West and a chord distance of 54.28 feet to a 5/8" iron pin with plastic cap set for the beginning of a curve concave to the Northeast and a corner of this herein described tract of land;
7. Thence continuing with the proposed South 80.00 foot Right of Way line of Yuma Avenue, across and through said Lateral "E" tract No. 2, with said curve concave to the Northeast having a radius of 3180.00 feet, an arc length of 179.77 feet, a delta angle of $03^{\circ}14'20''$, a chord bearing of North $82^{\circ}59'16''$ West and a chord distance of 179.74 feet to a 5/8" iron pin with plastic cap stamped "R.O.W. PROP. COR." set in the Southeasterly line of a called 0.95 of an acre tract of land as described in Document No. 1500418, of the Official Records, Hidalgo County, Texas, for the Southwest corner of this herein described tract of land;
8. Thence departing the South proposed 80.00 foot Right of Way line of Yuma Avenue, with the Southeasterly line of said called 0.95 of an acre tract of land, North $63^{\circ}01'53''$ East, at a distance of 51.54 feet passing the South existing Right of Way line of Yuma Avenue, continuing a total distance of 154.61 feet to the Point of Beginning and being a 22,920 square foot or 0.53 of an acre tract of land.

Bearings based on the Texas Coordinate System, South Zone, NAD83 (NA2011), adjusted to surface using a grid to surface adjustment factor of 1.00004.

A plat survey of even survey date herewith accompanies this description.

I, Kurt Schumacher, a Registered Professional Land Surveyor, hereby certify that the legal description hereon and the accompanying plat represent an actual survey made on the ground under my supervision.

 06/22/2016

Kurt Schumacher
Registered Professional Land Surveyor
Texas Registration No. 6333

