

STATE OF TEXAS §

COUNTY OF HIDALGO §

**INTERLOCAL COOPERATION AGREEMENT BETWEEN HIDALGO COUNTY AND  
HIDALGO COUNTY DRAINAGE DISTRICT NO. 1**

This Agreement is made on this the \_\_\_\_ day of \_\_\_\_\_, 2018, by and between Hidalgo County, hereinafter referred to as “County” and Hidalgo County Drainage District No. 1, hereinafter referred to as “District”, (“County and District sometimes collectively referred to as herein as “Parties”) pursuant to the provisions of the Texas Interlocal Cooperation Act, as follows:

**WITNESSETH:**

**WHEREAS**, District operates certain drainage ditches in the County of Hidalgo;

**WHEREAS**, County desires to construct a linear park on District’s drainage ditch right of way;

**WHEREAS**, County’s linear park once constructed on District right of way will provide opportunities for residents to obtain exercise by walking or running in such linear park.

**WHEREAS**, County and District both recognize that having a linear park along a portion of the District’s Right of Way will provide an important regional park and recreation amenity to the residents of County; and

**WHEREAS**, County and Drainage are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Tex. 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 and District, in consideration of the mutual covenants expressed hereinafter, agree as follows:

1. **DEFINITIONS:**

- a. Agreement: “Agreement” means this Interlocal Agreement between the County and District regarding the joint use of a portion of District’s Right of Way for a linear park.
- b. County: “County” means the County of Hidalgo, Texas.
- c. District: “District” means Hidalgo County Drainage District No. 1.
- d. District Right of Way: “District Right of Way” means that parcel of property owned by District more particularly on Exhibit A attached hereto.
- e. Linear Park: “Linear Park’ means an improved non-motorized trail designed by mutual agreement of the Parties to be used by bicycles, walkers and pedestrians.

2. PURPOSE. The purpose of this Agreement is to reduce to writing the Parties understandings and responsibilities regarding the use of the District ROW for a Linear Park.
3. DURATION WITHDRAWAL. This Agreement shall commence on \_\_\_\_\_, 2018 and run through \_\_\_\_\_, 2028. This shall be referred to as the "Initial Term". At the conclusion of the Initial Term, this Agreement shall automatically be renewed for successive ten (10) year terms. All renewals shall be subject to all terms and conditions set forth herein.

This Agreement may not be terminated during the Initial Term except upon mutual agreement of the Parties. Subsequent to the Initial Term, either party may terminate this Agreement for any reason whatsoever upon a minimum of one (1) years advance notice as provided for in Section No. 7 to the other party.

4. PARTIES RESPONSIBILITIES/ COMMITMENTS:

A. District's Responsibilities/ Commitments.

1. Allow the use of District's Right of Way for a Linear Park for the term of this Agreement. Such use shall be subject to any easements encumbrances, exceptions and reservations of record on any portion of District's Right of Way.
2. Consult with the County with regard to all future uses of District's Right of Way. Provided, the Parties acknowledge and agree that District owns the District's Right of way and its determination as to any use shall be controlling.
3. Jointly with the County submit grant applications and accept awards to design, construction and/or maintenance of the Linear Park wherein the County would be the lead agency jurisdiction provided, such obligation does not commit nor prohibit the District from providing funding and or in-kind services in conjunction with the grant applications or awards.
4. Allow the County to adopt and enforce regulations regarding the use of the Linear Park so long as they are not inconsistent with the District's ownership or use interests.

B. County Responsibilities /Commitments

1. Assume lead agency jurisdiction in conjunction with all grant applications and grant awards for the design, construction and/or maintenance of the Linear

Park. This shall include but not limited to administration of all grants as well as employment of architects, engineers, planners, preparation of bid specifications, award of public works, and other contracts.

Provided, however, this obligation does not prohibit the District from voluntarily assisting the County upon request in meeting these obligations.

2. Assume the sole responsibility and expense for all maintenance and operation of the Linear Park subsequent to its construction, including but not limited to associated landscaping. Upon the commencement date of the Agreement, County shall be responsible for weed control, garbage abatement, and similar light maintenance of District's Right of Way. This responsibility shall continue with regard to District's Right of Way adjacent to the Linear Park once the Linear Park is constructed. The District grants the express permission for such purpose. The Parties recognize the necessity of maintaining not only the Linear Park but the adjoining right of way exclusive of drainage ditch embankments in good condition so it is an asset to the entire community.

C. Parties Joint Responsibilities/Commitments.

1. The Parties acknowledge that District's right of way is presently used by the District for the construction, operation, repair and maintenance of drainage ditch infrastructure and appurtenances thereto owned or controlled by District for the purpose of transmitting storm water. The Parties also acknowledge that the District Right of Way may have other uses during the term of the Agreement. The District's right to use the District Right of Way for drainage ditch infrastructure and appurtenances as they may presently exist or as they may be constructed, operated, repaired or maintained in the future shall be paramount to the use of the District Right of Way for the purposes of the Linear Park under the terms of this Agreement.
2. The Parties agree to coordinate the location of the Linear Park and all aspects thereof such as landscaping to best fit with current and future uses of the District Right of Way. In the event of a disagreement as to the location, District's determination as to location shall control. All improvements in conjunction with the Linear Park must allow for continuous, uninterrupted equipment access by District to the drainage ditch for construction, reconstruction, maintenance repair and cleaning. If the constructed Linear Park needs to be removed or relocated for the District to operate, repair, or maintain the drainage ditch infrastructure and appurtenances as they

presently exist or as they may be expanded or improved in the future the County will be responsible at its sole cost and expense for reconstructing or relocating the Linear Park and District shall not be liable for damage to the Linear Park caused by District or its contractors or other public agency. In the event the District Right of Way is needed for location of drainage ditch infrastructure or appurtenance, the District will not be responsible for the cost of relocating the Linear Park. District commits to working in good faith to attempt to minimize damage to the Linear Park during the District's operation, repair, or maintenance or its drainage ditch infrastructure and appurtenances as they presently exist or as they may be expanded or improved in the future. County shall insure that any grant applications or grant awards acknowledge the obligations of this paragraph.

5. **LIABILITY WITH RESPECT TO HAZARDOUS WASTE.** District makes no representation whatsoever regarding the condition of the District's Right of Way including but not limited to its environmental condition as that term is defined in any applicable federal, state or local ordinance, code, regulation or court order, without limitation. County acknowledges that use of the District's Right of Way for a Linear Park is on an "as-is" condition, with any and all patent and latent conditions.

It is understood and agreed that the County will excavate and perform earth-disturbing activities in conjunction with building the Linear Park. If County encounters any hazardous substance defined in state or federal law or regulations or any substance that is listed as a hazardous substance under federal law, in conjunction with excavating or performing other earth-disturbing activities while building the Linear Park, County shall immediately; (i) secure or isolate such condition, (ii) stop all activity identified in connection with such condition, and (iii) notify District's representative as soon as feasible. County shall be solely responsible for performing evaluation and necessary corrective action only in regard to earth disturbing activities in conjunction with building the Linear Park. District shall be solely responsible for performing evaluation and necessary corrective action only for the area adjoining the Linear Park located within the District Right of Way as required by state or federal law. County shall be responsible for the proper identification (as required by law and applicable federal, state and local regulations) of all chemical, compounds, or hazardous substances County and its subcontractors bring on to the District Right of Way. Such identification must include identification of health hazards, flammability, reactivity, and personal protection requirements. Identification labels and documents must be in the English language.

County shall to the extent allowable by law, indemnify, defend and hold harmless the District from and against any and all claims, causes of action, demands and liability associated with the existence, removal or remediation of any Hazardous Substances that are located on the Linear Park in conjunction with earth-distributing activities by County when building the Linear Park, but only as to the area encompassed by the Linear Park.

District shall to the extent allowed by law indemnify, defend and hold harmless the County from and against any and all claims, causes of action, demands and liability associated with the existence, removal or remediation of any Hazardous Substances that are located on the District Right of Way except in conjunction with earth-disturbing activities by County when building or maintaining the Linear Park which shall be the County's sole responsibility as provided for herein above.

6. LIABILITY OTHER THAN HAZARDOUS WASTE. County to the extent allowed by law shall indemnify, defend and hold harmless District, its officers and employees from all claims, demands, or causes of actions in law or equity arising from County's intentional or negligent acts or breach of its obligations under this Agreement with regard to constructing, operating and maintaining the Linear Park. County's duty to indemnify shall not apply to liability caused by the intentional or negligent acts of District, its officers and employees.

District shall to the extent allowed by law indemnify, defend and hold harmless the County, its officers and employee from all claims, demands or causes of action in law or equity arising from District's intentional or negligent acts or breach of its obligations under the Agreement including, but limited to its responsibilities for the area adjacent to the Linear Park within the District Right of Way. The District's duty to indemnify shall not apply to loss or liability caused by the intentional or negligent acts of County, its officers and employees.

If the comparative negligence of the Parties and their officers and employees is a cause of such damage or injury, the liability, loss cost, or expense shall be shared between the Parties in proportion to their relative degree of negligence and the right of indemnity shall apply to such proportion.

Where an officer or employee of a party is acting under the direction and control of the other party, the party directing and controlling the officer or employee in

the activity and/or omission giving rise to liability shall accept all liability for the other party's officer or employee's negligence.

Each party's duty to indemnify shall survive the termination or expiration of the Agreement.

7. NOTICE. All notices or other communications given hereunder shall be deemed given on (i) the day such notices or other communications are received when sent by personal delivery, against a signed receipt or (ii) the third day following the day on which the same have been mailed by first class delivery, postage prepaid addressed to District or the County at the address set forth below for such party, or at such other address as either Party shall from time to time designate by notice in writing to the other party:

If to Drainage: Hidalgo County Drainage District No. 1  
Attention: Manager  
902 N. Doolittle  
Edinburg, Texas 78540-0758

If to County: County of Hidalgo  
Attention: County Judge  
100 E. Cano, 2<sup>nd</sup> Floor  
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.

8. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same.
9. ASSIGNMENT. No party may assign in whole or part its interest in this Agreement without the written approval of the other party.
10. RELATIONSHIP OF THE PARTIES. The Parties intend that an independent contractor relationship will be created by this Agreement. No agent, employee, servant or representative of the either party shall be deemed to be an employee, agent, servant or representative of the other party for any purpose.

11. **PROPERTY AND EQUIPMENT.** The Parties acknowledge that District owns District's Right of Way. All improvements made under this Agreement in conjunction with the Linear Park shall remain the property of the County until termination of the Agreement. Upon the termination of the Agreement, County shall remove all removable fixtures and all other improvements not renewed within ninety (90) days shall revert to the ownership of the District. The execution of this Agreement shall act as a Bill of Sale for such improvements not reviewed within ninety (90) days following termination of this Agreement.
12. **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.
13. **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.
14. **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 may be modified or amended only by agreement in writing executed by both parties, and not otherwise.
15. **Commitment of Current Revenues Only.** In the event that, during any term hereof, the governing body of either party does not appropriate sufficient funds to meet the obligations of such party under this Agreement, then the other party may terminate this Agreement upon sixty (60) days written notice to the party who failed to appropriate sufficient funds. 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. Section 271.903.

16. **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.
  
17. **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.
  
18. **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns where permitted by this Agreement.
  
19. **Assignment.** This Agreement shall not be assignable.
  
20. **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.
  
21. **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.
  
22. **Authority to Execute.** The execution and performance of this Agreement by the Parties have been duly authorized by all necessary laws, resolutions or governmental action, and this Agreement constitutes the valid and enforceable obligations of District and County in accordance with its terms.
  
23. **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.

24. **Immunities.** Nothing in this Agreement is intended to and County does not hereby waive, release or relinquish any right to assert any of the defenses County enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to County as to any claim or action of any person, entity, or individual against County.

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

**COUNTY OF HIDALGO**

**ATTEST:**

\_\_\_\_\_  
Arturo Guajardo, County Clerk

\_\_\_\_\_  
Ramon Garcia, County Judge

**HIDALGO COUNTY DRAINAGE  
DISTRICT NO. 1**

By: \_\_\_\_\_

**APPROVED AS TO FORM:**

ATLAS HALL & RODRIGUEZ, LLP

By: \_\_\_\_\_  
Stephen L. Crain