

THE STATE OF TEXAS §

COUNTY OF HIDALGO §

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE CITY OF SAN JUAN, TEXAS,
AND THE COUNTY OF HIDALGO, TEXAS**

This Interlocal Cooperation Agreement (hereinafter “the Agreement”) is made effective as of this [redacted] day of [redacted], 2019, by and between the CITY OF SAN JUAN, TEXAS (hereinafter referred to as “the City”), and the COUNTY OF HIDALGO, TEXAS (hereinafter referred to as "County"), collectively referred to herein as “the Parties” pursuant to the provisions of the Texas Interlocal Cooperation Act, and agree as follows:

WHEREAS, Texas Government Code Chapter 791 authorizes local governments in Texas to enter into agreements related to governmental functions and services to increase governmental efficiency and effectiveness; and

WHEREAS, the City is a home rule municipality within the boundaries of the County, and a local government as defined in Texas Government Code Section 791.003(4)(A), possesses the authority to enter into this Agreement, and has entered into this Agreement by the action of its governing body in the appropriate manner prescribed by law; and

WHEREAS, the County is a local government as defined in Texas Government Code Section 791.003(4)(A), possesses the authority to enter into this Agreement, and has entered into this Agreement by the action of its governing body in the appropriate manner prescribed by law; and

WHEREAS, the County has undertaken the construction of the Hidalgo County Regional Linear Park (hereinafter “the Park”), an improved non-motorized trail to be used by bicycles, walkers, and pedestrians, which will provide an important park and recreation amenity to the residents of the County by providing opportunities for residents to obtain exercise by walking or running in the Park; and

WHEREAS, the County desires to construct a parking lot on City right-of-way adjacent to the Park that would enhance the health, welfare, and safety of citizens in the County and in the City by increasing the number of locations where the Park may be accessed by the public in a safe and secure manner; and

WHEREAS, the construction of a parking lot to be accessed by members of the public on City right-of-way would require the parking lot to be connected to a public highway, street, or alley by an entrance and an exit built on right-of-way owned by the City; and

WHEREAS, the City maintains the exclusive control over and under the public highways, streets, and alleys within its municipality under Texas Transportation Code Section 311.001; and

WHEREAS, a municipality may approve for the commissioner's court of a county to spend money for the construction of a street or alley that is located within the municipality under Texas Transportation Code, Section 251.012; and

WHEREAS, the City has approved for the County to construct a parking lot, and an entrance and exit to a parking lot providing access to the Park on right-of-way owned by the City with funds, labor, and equipment provided by the County; and

WHEREAS, the County and the City desire to clarify the terms and conditions of the use of City right-of-way by the County for this purpose;

NOW THEREFORE, for and in good and valuable consideration of the mutual covenants expressed hereinafter, agree as follows:

City's Responsibilities/Commitments:

1. Allow the use of City right-of-way shown in Exhibit "A" attached for the construction and maintenance of a parking lot for the term of this Agreement. Such use shall be subject to any easements, encumbrances, exceptions and reservations of record on any portion of City right-of-way being used under this Agreement.
2. Grant express permission to County to access City right-of-way as shown in Exhibit "A" for all purposes connected with the construction, maintenance, and operation of the parking lot.
3. Consult with the County regarding all proposed future uses of City right-of-way.
4. Allow the County to adopt and enforce regulations regarding the use of the parking lot so long as they are not inconsistent with the City's ownership or use interests.

County's Responsibilities/Commitments:

5. Assume the sole responsibility and expense for all construction, maintenance and operation of the parking lot subsequent to its construction, including but not limited to, associated landscaping.
6. Employ architects, engineers, planners, prepare bid specifications, award of public works and other contracts as appropriate for the construction, maintenance, and operation of the parking lot.
7. Upon the commencement date of this Agreement, the County shall be responsible for weed control, garbage abatement, and similar maintenance of the City's

right-of-way being used under this Agreement. This responsibility shall continue with regard to the City's right-of-way once the parking lot is constructed.

8. The responsibilities and commitments of the County do not prohibit the City from voluntarily assisting the County upon request.

Joint Responsibilities/Commitments:

9. The Parties acknowledge and agree that the City owns the right-of-way and its determination as to its use shall be controlling. The parties also acknowledge that the City's right-of-way may have other uses during the term of the Agreement, including in the maintenance of the City right-of-way immediately adjacent to the parking lot, and of public streets adjacent or near the parking lot. The City's right to the use the right-of-way shall be superior to the County's use of the right-of-way as a parking lot.

10. The Parties agree to work together in determining the location of the parking lot, including the placement of an entrance and exit, and all aspects thereof, including landscaping, so that the placement of the parking lot may best suit both the County and the City's current and future uses of the City's right-of-way under this agreement. In the event of a disagreement as to the placement of the parking lot, the City's suggested placement shall control.

11. Should the need arise for the parking lot to be reconstructed or relocated; the Parties agree that the County will do so at its own cost and expense. The City shall not be liable for any expenses incurred by the County related to any such reconstruction or relocation. The Parties agree to work in good faith in order to minimize any necessity for relocation or reconstruction of the parking lot.

12. The Parties agree that the City shall not be liable for damage caused to the parking lot by the County contractors.

13. LIABILITY RELATED TO HAZARDOUS SUBSTANCES & WASTE. City makes no representations whatsoever regarding the condition of the City's right-of-way. County acknowledges that its use of the City's right-of-way 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 the construction of the parking lot. If County encounters any hazardous substances as defined in state or federal law or regulations or any other hazardous substances in conjunction with excavating or performing other earth-disturbing activities while building the parking lot, County shall immediately: (i) secure or isolate the condition, (ii) stop all activity identified in connection with such conditions, and (iii) notify City representatives as soon as feasible. County shall be solely responsible for performing an evaluation and necessary corrective action only in regard to earth-disturbing activities in conjunction with building the parking lot. City shall be solely responsible for performing evaluation and necessary corrective action only for the area

adjoining the parking lot located within City right-of-way. 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 City 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 permitted by law, indemnify, defend, and hold harmless City 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 parking lot in conjunction with earth-disturbing activities by County when building the parking lot, but only as to the area encompassed by the parking lot.

City shall, to the extent permitted 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 City right-of-way except in conjunction with earth-disturbing activities by County when building or maintaining the parking lot, which shall be the sole responsibility of the County, as discussed above.

14. LIABILITY OTHER THAN HAZARDOUS SUBSTANCES & WASTE. County, to the extent permitted by law shall indemnify, defend, and hold harmless City, its officers, and employees from all claims, demands, or causes of action in law or equity arising from County's intentional or negligent acts or breaches of its obligations under this Agreement with regard to constructing, operating, and maintaining the parking lot. County's duty to indemnify shall not apply to liability caused by the intentional or negligent acts of City, its officers, or employees.

City shall, to the extent permitted by law, indemnify, defend, and hold harmless the County, its officers, and employees from all claims, demands, or causes of action in law or equity arising from City's intentional or negligent acts or breaches of its obligations under this Agreement, including, but not limited to its responsibilities for the area adjacent to the parking lot within the City's right-of-way. The City's duty to indemnify shall not apply to loss or liability caused by the intentional or negligent acts of the County, its officers, or employees.

If the comparative negligence of the Parties, their officers, or 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.

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

15. DURATION OF AGREEMENT. This Agreement shall continue until [REDACTED], 201[REDACTED]; or until amended, replaced, or terminated. Either party may terminate this

Agreement by providing **six (6) months** advance written notice to the other party at the address provided for notice under this Agreement.

16. RENEWAL. This Agreement shall be renewed **annually** and approved through Hidalgo County Commissioners Court.

17. 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.

18. PROPERTY AND EQUIPMENT. The Parties acknowledge that the City owns the City's right-of-way. All improvements made under this Agreement in conjunction with the Park shall remain 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 removed within ninety (90) days shall revert to the ownership of the City. The execution of this Agreement shall act as a Bill of Sale for such improvements not removed within ninety (90) days following termination of the Agreement.

19. 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(s) of this Agreement shall be modified only to the extent necessary to bring them within legal requirements and only during the time such conflict exists.

20. 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.

21. IMMUNITIES. Nothing in this Agreement is intended to and County nor City hereby waive, release or relinquish any right to assert any of the defenses County or City enjoys by virtue of the state or federal constitution, laws or regulations, and any sovereign, official or qualified immunity available to County or City as to any claim or action of any person entity, or individual as against the County or City.

22. 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 City and County, and not otherwise.

23. 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.

24. 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 County: County of Hidalgo
Attention: Richard F. Cortez, Hidalgo County Judge
100 E. Cano, 2nd Floor
Edinburg, Texas 78539

If to City: City of San Juan, Texas
Attn: Mario Garza, Mayor
709 S Nebraska Ave
San Juan, TX 78589

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.

25. 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.

26. 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.

27. ASSIGNMENT. This Agreement shall not be assignable.

28. 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.

29. 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.

30. NON-DISCRIMINATION. This Agreement and all related activities shall be conducted in a manner that does not discriminate against any person on a basis prohibited by applicable law or County and City policy, including without limitation race, color, national origin, religion, sex, age, veteran status, or disability.

31. AUTHORITY TO EXECUTE. The execution and performance of this Agreement by City and County have been duly authorized by all necessary laws, resolutions, and corporate actions. This Agreement constitutes the valid and enforceable obligations of the City and the County in accordance with its terms.

32. 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.

33. APPENDIX II TO CFR 200-CONTRACT PROVISIONS. Pursuant to 2 CFR 200.326, a non-Federal entity's contracts must contain the applicable provisions described in Appendix II to 2 CFR 200-Contract Provisions for non-Federal Entity Contracts under Federal Awards. Therefore, if applicable, the provisions of Appendix II to 2 CFR 200 are attached and incorporated by reference into this County contract should it be subject to Federal award.

34. COMMITMENT OF CURRENT REVENUES. 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.

[SIGNATURE PAGE TO FOLLOW]

WITNESS THE HANDS OF THE PARTIES this ____ day of _____, 2019.

HIDALGO COUNTY, TEXAS

Richard F. Cortez, Hidalgo County Judge

ATTEST:

Arturo Guajardo, Jr., County Clerk

CITY OF SAN JUAN, TEXAS

Mario Garza, Mayor

ATTEST:

Diana Cavazos, Secretary, City of San Juan, Texas

APPROVED AS TO FORM:

Hidalgo County District Attorney's Office
Ricardo Rodriguez, Jr.

By: _____
Victor M. Garza, Assistant District Attorney

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**APPROVAL OF
INTERLOCAL COOPERATION AGREEMENT
PROJECT**

In accordance with Texas Government Code § 791.014, the County of Hidalgo, Texas, acting by and through the Hidalgo County Commissioners Court, has been advised of a proposed project to construct a parking lot on right-of-way owned by the City of San Juan, Texas, more particularly described in Exhibit "A" attached hereto, including drainage and other appurtenances, for the benefit of, and use in conjunction with, the County's Regional Linear Park located within the boundaries of the City of San Juan; through an Interlocal Cooperation Agreement to be entered into between the County of Hidalgo, Texas and the City of San Juan, Texas.

By vote on this _____ day of _____, 2019, the Hidalgo County Commissioners Court has approved the proposed project identified above.

By: _____
Richard F. Cortez, Hidalgo County Judge

ATTEST:

Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FORM:

Hidalgo County District Attorney's Office
Ricardo Rodriguez, Jr.

By: _____
Victor M. Garza, Assistant District Attorney