

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

INTERLOCAL COOPERATION PARK LEASE AGREEMENT BETWEEN COUNTY OF HIDALGO, TEXAS AND DELTA LAKE IRRIGATION DISTRICT

THIS AGREEMENT is made on this the _____ day of _____, 2019 by and between DELTA LAKE IRRIGATION DISTRICT (“District”) and the COUNTY OF HIDALGO, TEXAS (“County”) pursuant to the provisions of the Texas Interlocal Cooperation Act (“Act”).

W I T N E S S E T H:

WHEREAS, The District is a “local government” as defined by the Act, within the boundaries of Hidalgo County; and

WHEREAS, County is a “local government” as defined by the Act, and a political subdivision of the State of Texas; and

WHEREAS, The District and County desire to enter into this mutual Agreement for the public purpose of permitting the County to use the Leased Premises (as hereinafter defined) owned by the District for purposes of a public park; and

WHEREAS, County desires to operate the park as herein described.

WHEREAS, County and the District believe that the constituents of each will benefit from the terms of this Agreement; and

WHEREAS, an interlocal agreement may be entered into by any local government which includes a political subdivision, and which is defined in Section 791.003(4) of the Local Government Code;

NOW, THEREFORE, in mutual consideration of the foregoing and the further consideration of the following, the parties hereto agree as follows:

Premises Leased, Purposes. District leases to County and County leases from District, for the term below set forth, the described two tracts situated adjacent to District’s Delta Lake in Hidalgo County, Texas, as described as Exhibit “A” attached hereto and incorporated herein at this point for all purposes, for the purpose of installing, maintaining and operating thereon a public park for the use of the general public; reserving, however, unto District, its agents and licensees free access and the unlimited right of ingress and egress on and over the Leased Premises. County’s installation, maintenance and operation of the park shall be in accordance with County policy and procedures and applicable law.

Payment: District and County agree that in an effort to be good stewards of public funds and for the benefit of the citizens of Hidalgo County, there shall be no payment due under this Agreement. District and County agree that consideration for the mutual covenants expressed herein shall be the County's responsibility for the installation, maintenance and operation of the park described herein.

Term. The term of this Lease shall begin when County has executed this Lease and furnished District no later than 30 days afterwards with an insurance policy, issued by a company rated "A" by Best, Insuring District with the minimum coverage of \$1,000,000.00, against liability for deaths, injuries and property damage occurring on the park premises, or occurring in Delta Lake to persons entering the lake from the park premises and District general manager finds the policy acceptable. The term shall end twenty-five (25) years from the date hereof, unless sooner terminated under the further terms hereof.

Rights Reserved by District. It is understood that the primary function of Delta Lake is for reservoir purposes. District retains the right of control of said lake for such purposes, and this control shall be exercised by the reasonable judgment of the Board of Directors of District with consideration to the County's use of the Leased Premises.

Fishing Permitted. County may permit fishing in the lake from piers constructed by County into the lake adjoining the Leased Premises. County is hereby expressly granted an easement to construct and maintain not more than three (3) piers of any length extending from the leased premises into the lake, and County may stock or cause the lake to be stocked with fish.

Covenants by County. County covenants and agrees that it will during the term of this Lease, at its sole expense and on its sole responsibility:

Provide policing for the park, the areas adjacent to the park, and the public highways leading to and from the park in such manner as is reasonably calculated to prevent the public who use the park from entering the lake in boats or to swim, vandalism, littering, engage in sexual acts, dangerous traffic conditions and other misconduct of the kind generally associated with crowded places and thoroughfares;

Except as provided herein, keep the park closed to the public at all times when there is not a certified police officer on fulltime duty in the park; Keep the levee where it adjoins the Leased Premises reasonably clean and not take any act contemplated to cause erosion or deterioration;

County may open such entries or exits to the Leased Premises as County determines are necessary for the safety and welfare of visitors to the Leased Premises; and

County may collect funds from each vehicle entering the Leased Premises.

Boating From Leased Premises. County shall prohibit visitors in the Leased Premises from launching any boats or water craft from the Leased Premises.

Sewage Treatment and Disposal; Effect of Failure. Sewage produced at the park shall be so treated as to meet State Health Department standards for treatment of domestic sewage, the effluent of which is to be placed in a public watercourse. If the sewage effluent from County's facilities shall ever become noxious or noisome or if it shall ever fall, for any amount of time however brief, below the standards prescribed by the State Health Department, then County's facilities shall be immediately and summarily shut down and closed and access thereto denied to the public until the sewage treatment facilities are restored to good working order and the effluent produced thereby again meets State Health Department standards and is no longer noxious or noisome. But if the sewage effluent falls below State Department standards and District notifies County to close its facilities to the public until such time as the condition is completely corrected, and County fails immediately to close said park and exclude the public therefrom; then and in such event this Lease may be terminated by District without further notice or delay, and County's rights hereunder shall then immediately cease. The notice contemplated by the preceding sentence is any written notice by the District Manager or by any director of the District or by authority of any of them to the County Judge, or to the County Commissioner for the precinct in which the park lies. "Immediately" means forthwith, without any delay whatever, and on the same day.

County's Facilities.

County will submit to District prior to constructing any facility the plans therefor, and District shall have the right to reject any structure if its construction or use would be in contravention of this Agreement or adverse to the reasonable interests of the District; and

Except as provided in numbered paragraph 4(e) hereof, all permanent structures constructed by County shall become a part of the realty and will at the expiration of this Lease belong to District.

County's Responsibility for Safety. To the extent allowed by law, the manner of use of the park premises and the lake's surface by users of the park and the safety of the users and their property shall be the sole responsibility of the County.

Cancellation of Lease for Failure to Comply with Covenant or Obligation. Upon County's failure to comply with any of the covenants or fulfill any of the obligations undertaken by it in this Agreement, District may give County written notice of such violation, default or non-compliance. Such notice will suffice if it states the matter complained of, is signed by the manager, president or vice president of the District and is mailed to the County Judge at the address listed in the notice section below. If County does not upon receipt of such notice diligently proceed to cure the default, violation or non-compliance complained of, then District may at its

option declare this Lease null, void and of no further force and effort, and County will thereupon quit the premises forthwith. It is agreed that District's forbearance (however long continued) or failure (however often occurring) to invoke the provisions of this paragraph shall not waive or prejudice its right to do so on the continuation or repetition of the same or any difference violation, default or non-compliance. Provided, that the right to declare a forfeiture specified in the above paragraph relating to sewage disposal is not superseded by this paragraph, but the remedies of this paragraph are in addition to and supplementary of the more summary remedy there stated.

Termination. This Agreement may be terminated for convenience by either party upon ninety (90) days written notice to the other party. The parties intend this provision to be a continuing right to terminate this Agreement.

No Waiver of Immunities/Defenses: Nothing in this Agreement is intended to and the District and County do not hereby waive, release or relinquish any right to assert any of the defenses the District or County may enjoy by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to the District or County as to any claim or action of any person, entity, or individual against the District or County.

Independent Contractors: For the purposes of this Agreement and all activities to be conducted hereunder, the parties shall be, and shall be deemed to be independent contractors and not agents or employees of the other party. Neither party shall have authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other party, and

Notice: All notices or communications to either party by the other will be delivered personally or sent by U.S. registered or certified mail, Return Receipt Requested, postage prepaid, addressed to such party at the following respective addresses for each and will be deemed given on the date so delivered or so deposited in the mail unless otherwise provided herein:

FOR COUNTY OF HIDALGO:

County of Hidalgo
Attention: County Judge
100 East Cano, 2nd Floor
Edinburg, Texas 78539

FOR THE DISTRICT:

Delta Lake Irrigation District
Attention: President
10370 Charles Green Rd.
Edcouch, Texas 78538

Timely Performance: The failure of either party at any time to require performance by the other party of any provision of this Agreement will in no way affect the right to require such performance at any time thereafter nor will the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself. If any provision of this Agreement is held to be invalid, illegal or unenforceable, then such provision will be severed and will not affect the remainder of this Agreement.

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 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.

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.

TEXAS LAW TO APPLY. THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATION OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN HIDALGO COUNTY, TEXAS.

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.

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.

Assignment. This Agreement shall not be assignable.

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 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.

Non-Discrimination: The 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 or District policy, including without limitation to race, color, national origin, religion, sex, age, veteran status, or disability.

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 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.

Governmental Purpose. Each party hereto is entering into this agreement for the purpose of providing for governmental service or functions and will pay for such services out of current revenues available to the paying party as herein provided. No funding will be provided by either party to the other under this Agreement.

Authority to Execute. The execution and performance of this Agreement by the District 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 District and County in accordance with its terms.

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 the District and County, and not otherwise.

IN WITNESS WHEREOF, the undersigned execute this Agreement as of the day and year first above written.

DELTA LAKE IRRIGATION DISTRICT

By:

Chuck McDonald, President

COUNTY OF HIDALGO

By:

Richard F. Cortez, County Judge

ATTEST: _____
Arturo Guajardo Jr., County Clerk

APPROVED AS TO FORM:
Hidalgo County Office of the Criminal District Attorney

By: _____
Robert Viña, III
Assistant District Attorney
Civil Litigation Division