

STATE OF TEXAS §
 §
HIDALGO COUNTY §

INTERLOCAL AGREEMENT AND LICENSE

This Interlocal Agreement and License (this “Agreement”) is entered into effective the _____ day of _____, 2019, by and between Hidalgo County Drainage District No. 1 (“DRAINAGE DISTRICT”), the City of McAllen, Texas (the “CITY”) and the **County of Hidalgo**, Texas (“HIDALGO COUNTY”) pursuant to the provisions of the Texas Interlocal Cooperation Act, as follows:

WHEREAS, the CITY, HIDALGO COUNTY and the DRAINAGE DISTRICT wish to undertake certain drainage improvements (“Improvements”) as identified in the plans attached in Exhibit A (“Plans”).

Whereas the Improvements will take place along Russell Road (Mile 17 ½) and 23rd Street (Depot Road) as identified in Exhibit B; and

WHEREAS, the DRAINAGE DISTRICT is wishes to participate in the Improvements by undertaking responsibility for design and construction (including construction oversight) of the installation of drainage pipe to carry water from along Russel Road, north along 23rd Street to a ditch maintained by the DRAINAGE DISTRICT; and

WHEREAS, HIDALGO COUNTY will participate in the Improvements by providing labor for traffic control during construction and necessary labor and equipment for paving of road crossings as set forth in the Plans; and

WHEREAS, the CITY will participate in the Improvements by contributing funding for all material in an amount set forth in Exhibit C, which shall be paid to DRAINAGE DISTRICT prior to commencement of the Improvements; and

WHEREAS, the CITY and HIDALGO COUNTY wish to grant a license under the existing roadway to DRAINAGE DISTRICT to perform the Improvements identified on the Plans; and

NOW, THEREFORE, IT IS MUTUALLY AGREED by and between DRAINAGE DISTRICT, the CITY and the HIDALGO COUNTY as follows:

1. DRAINAGE DISTRICT shall provide all engineering, construction and construction management services either in kind or by third party contractor(s) for the construction of the Improvements as identified in Exhibit A.
2. DRAINAGE DISTRICT shall commence the Improvements upon payment by the CITY to the DRAINAGE DISTRICT in the amount set forth in Exhibit C and DRAINAGE DISTRICT shall complete said Improvements on or before One Hundred and Twenty Days (120) days following the CITY’S payment.

3. HIDALGO COUNTY shall provide all necessary traffic control and paving equipment for the Improvements.

4. HIDALGO COUNTY and the CITY hereby grant to DRAINAGE DISTRICT a permanent, non-exclusive license to use their respective easement rights (i) to construct the Improvements and (ii) thereafter maintain the Improvements. The License is conveyed AS IS, WHERE IS, WITH ALL FAULTS.

5. Conflict with 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 provision of this Agreement shall be modified only to the extent necessary to bring this Agreement within any such legal requirements and only during the times such conflict exists.

6. 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.

7. Entire Agreement. This Agreement contains the entire agreement between the parties hereto, reflecting the subject matter 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 Parties, and not otherwise.

8. 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.

9. 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 DRAINAGE DISTRICT: Hidalgo County Drainage District No. 1
Attn: General Manager
902 N. Dolittle
Edinburg, Texas 78540-0758

If to CITY: City of McAllen
Attn: _____

If to HIDALGO COUNTY: Hidalgo County
Attn: Hidalgo County Judge
100 E. Cano
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.

10. 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.

11. Successors. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective administrators, legal representatives, successors and assigns where permitted by this Agreement.

12. Assignment. This Agreement shall not be assignable.

13. 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.

14. 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.

15. Authority to Execute. The execution and performance of this Agreement by the parties have been duly authorized by all necessary laws, resolutions or governing body action of the parties and this Agreement constitutes the valid and enforceable obligations of the DRAINAGE DISTRICT, THE CITY and the HIDALGO COUNTY in accordance with its terms.

16. 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.

17. 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 hereto pursuant to the provisions of Tex. Loc. Govt. Code Ann. §271.903.

18. 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 by County, Drainage District and City policy, including without limitation race, color, national origin, religion, sex, age, veteran status, or disability.

19. 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 incorporated by reference into this agreement should it be subject to Federal award.

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

APPROVED AS TO FORM AND SUBSTANCE:

CITY OF MCALLEN

By: _____

HIDALGO COUNTY, TEXAS

By: _____
Richard Cortez, County Judge

HIDALGO COUNTY DRAINAGE DISTRICT NO. 1

By: _____
Richard Cortez, Chairman
Board of Directors

APPROVED AS TO FORM:
Office of Criminal District Attorney, Ricardo Rodriguez, Jr.

By: _____
Assistant District Attorney
Legal Counsel for
Hidalgo County

JONES, GALLIGAN, KEY & LOZANO, LLP

By: _____
Legal Counsel for
Hidalgo County Drainage Dist. No.1

DRAFT