

STATE OF TEXAS           §

COUNTY OF HIDALGO       §

**INTERLOCAL COOPERATION AGREEMENT BETWEEN  
THE COUNTY OF HIDALGO AND THE MCALLEN PUBLIC UTILITY**

THIS Agreement is made on this the \_\_\_\_ day of \_\_\_\_\_ 2019, by and between the **CITY OF MCALLEN, TEXAS THROUGH THE MCALLEN PUBLIC UTILITY BOARD**, hereinafter referred to as "**PUB**" and the **COUNTY OF HIDALGO, TEXAS**, hereinafter referred to as "**COUNTY**", pursuant to the provisions of the Texas Interlocal Cooperation Act, as follows:

**WITNESSETH:**

**WHEREAS**, PUB is a statutory entity created under the City of McAllen governed by an elected board of trustees located in the City of McAllen, Texas;

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

**WHEREAS**, The County has planned and programmed roadway widening improvements on Dicker Road, between FM 2061 (Jackson Road) and State Spur 115 (23<sup>rd</sup> St.) (the "Project");

**WHEREAS**, PUB desires for the County to include, as part of a post letting third party change order, the installation of a twelve (12) inch water line along Dicker Road from State Spur 115 (23<sup>rd</sup> St.) eastward to its intersection with South McColl Road (the "Water Line"). As part of the change order process, County will negotiate a construction price with the roadway contractor, after review and approval by PUB. PUB will pay County 100% of all costs associated with the construction and installation of the Water Line. If an amicable cost cannot be negotiated with the contractor PUB has the right to withdraw their request for a change order;

**WHEREAS**, PUB and County are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Tex. Gov't 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;

**WHEREAS**, PUB will benefit from the installation of the Water Line by the County; and

**WHEREAS**, County has determined it would be in the best interest of the County for County to include the Water Line as a third party change order to the construction contract.

**NOW, THEREFORE**, PUB and County, in consideration of the mutual covenants expressed herein, agree as follows:

1. County agrees to negotiate a third party change order, on behalf of and in coordination with PUB, to include the Water Line in the construction contract.
2. PUB grants permission to the County to negotiate a third party change order on behalf of PUB (with concurrence and approval by PUB) and include the Water Line in the construction contract.
3. PUB agrees that they will pay any and all costs to construct the Water Line, including, but not limited to, costs for materials, labor, and equipment in the amount negotiated with the roadway contractor through the third party change order process. PUB agrees to pay this amount to the County within 30 days of the date of change order execution. If the costs to construct the Water Line are less than the negotiated change order amount, the difference will be refunded within 30 days of a written request by the PUB to the County.
4. PUB agrees that if the costs of the construction and installation of the water line, exceed the amount negotiated through the third party change order process, set forth in paragraph three herein, an additional change order must be negotiated as per TxDOT policy. Said additional change order must be negotiated following the same process with concurrence and approval by PUB. Once accepted by PUB, and executed by County and contractor, any additional work (and costs incurred) associated with an additional change order may commence. The PUB agrees to pay the agreed upon amount of any additional change order to the County within 30 days of the date of change order execution. If the PUB does not agree to the additional change order, the County is released of all obligations set forth under this agreement.
5. PUB agrees that if the costs to construct the work associated with an additional change order are less than the negotiated change order amount, the difference will be refunded within 30 days of a written request by the PUB to the County.
6. PUB agrees that the inspection of the construction of the water line will be provided by the PUB in cooperation and coordination with the County's CEI team.
7. County agrees that the County (and it's representatives) will coordinate with the PUB inspectors and will process payments of approved work to the contractor on a monthly basis.
8. Following completion and acceptance by PUB of the construction and installation of the Water Line described herein, the parties agree that PUB shall be responsible for the future maintenance of the Water Line.
6. Following completion and acceptance by PUB of the Water Line described herein, the parties agree that County will be released of any and all duties imposed by this Agreement.

7. The parties shall coordinate work schedules in order to provide minimal disruption to the public and to the operational and fiscal affairs of the parties and will use their best efforts to complete the Project and the Water Line as soon as reasonably possible from the execution of this Agreement.

8. 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.

9. **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 and provision of their 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 them within the legal requirements and only during the times such conflict exists.

10. **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.

11. **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 County and PUB, and not otherwise.

12. **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. THE PARTIES HEREBY CONSENT TO PERSONAL JURISDICTION IN HIDALGO COUNTY, TEXAS.

13. **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 PUB: McAllen Public Utility Board  
Attn.: Marco A. Vega, P.E.  
P. O. Box 220  
1300 Houston Avenue  
McAllen, Texas 78505-0220

IF TO COUNTY: County of Hidalgo, Texas  
Attn.: Richard F. Cortez, County Judge  
P. O. Box 758  
Edinburg, Texas 78540-0758

With copy to: Eduardo "Eddie" Cantu, Commissioner  
Precinct No. 2  
300 W. Hall Acres, 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.

14. **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.

15. **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.

16. **Assignment.** This Agreement shall not be assignable.

17. **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 or paragraph hereof.

18. **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.

19. **Authority to Execute.** The execution and performance of this Agreement by PUB and County have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of PUB and County in accordance with its terms.

20. **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.

**21. 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.

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

**McALLEN PUBLIC UTILITY BOARD**

\_\_\_\_\_  
Albert Cardenas, Chairman

ATTEST:

\_\_\_\_\_  
Marco A. Vega, P.E., General Manager

**COUNTY OF HIDALGO**

\_\_\_\_\_  
Richard F. Cortez, County Judge

ATTEST:

\_\_\_\_\_  
Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FORM:  
ATLAS & HALL, L.L.P.

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

**McALLEN PUBLIC UTILITY BOARD**

By: \_\_\_\_\_  
Kevin D. Pagan, City Attorney

STATE OF TEXAS       §  
                                  §  
COUNTY OF HIDALGO §

**APPROVAL OF  
INTERLOCAL COOPERATION AGREEMENT  
PROJECT**

In accordance with Texas Government Code §791.014, Hidalgo County, Texas, acting by and through the Hidalgo County Commissioners Court, has been advised of a proposed project to install a twelve-inch water line along Dicker Road from SP 115 (23<sup>rd</sup> St.) eastward to its intersection with McColl Road through an Interlocal Cooperation Agreement to be entered into with the City of McAllen through the McAllen Public Utility Board and Hidalgo County.

By vote on INSERT DATE, the Hidalgo County Commissioners Court has approved the Project identified above.

\_\_\_\_\_  
By: Richard F. Cortez, County Judge

ATTEST:

\_\_\_\_\_  
Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FORM:  
ATLAS & HALL, L.L.P.

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