

Draft Memorandum of Understanding

Between Hidalgo County and Hidalgo County Drainage District No. 1

Regarding Funding For 2015 and 2016 CDBG-MIT Competitions

**WHEREAS**, chronic flooding has affected the economy and health and safety of the citizens of the State of Texas and the Rio Grande Valley; and

**WHEREAS**, over the last five years, the Rio Grande Valley has suffered significant catastrophic flood events that have resulted in six Major Disaster Declarations (FEMA-4223-DR, FEMA-4245-DR, FEMA-4272-DR, FEMA-4377-DR, FEMA-4454-DR, FEMA-353-EM); and

**WHEREAS**, Hidalgo County and Hidalgo County Drainage District No. 1 are seeking grant funding from the Texas General Land Office's CDBG-MIT 2015 and 2016 Floods State Mitigation Competitions to implement two projects that will mitigate flooding in South Texas and provide community resilience; and

**WHEREAS**, solving flooding requires regional coordination, as floodwater does not follow political boundaries; and

**WHEREAS**, Hidalgo County and Hidalgo County Drainage District No. 1 implemented robust outreach coordination efforts with the public as well as the General Land Office ("GLO") to identify regional needs and solutions for mitigation of flooding; and

**WHEREAS**, the Main Floodwater Channel Expansion Projects - Phases 1 and 2 are an identified priority to mitigate flooding in Hidalgo County; and

**WHEREAS**, Hidalgo County and Hidalgo County Drainage District No. 1's proposed projects will effectively store and redirect stormwater away from thousands of low-to-moderate income ("LMI") housing and towards reservoirs and the Gulf of Mexico, thus providing regional flood control; and

**WHEREAS**, the GLO funding will be issued to Hidalgo County, who will serve as the fiduciary and lead local agency, and Hidalgo County Drainage District No. 1 will be a partner of Hidalgo County in these projects; and

**WHEREAS**, the Main Floodwater Channel Expansion Projects - Phases 1 and 2 will have an immediate and measurable effect in permanently mitigating flooding and safeguarding the health and safety of citizens in the Rio Grande Valley and the State of Texas;

**NOW, THEREFORE, BE IT RESOLVED** that the Commissioners' Court of Hidalgo County and the Board of Hidalgo County Drainage District No. 1 agree to enter into this MOU to undertake the construction of the Main Floodwater Channel Expansion Projects - Phases 1 and 2 with grant

funding from the GLO's 2015 and 2016 CDBG-MIT Competitions in full compliance with all GLO and Housing and Urban Development ("HUD") rules and regulation.

## **1. Objective of the Document**

*(GLO Instructions: Clearly state the objective of the document. State the overall intent of the document including a brief statement of the intent of each party.)*

1.1 The objective of this document is to state the roles and responsibilities of Hidalgo County and the Hidalgo County Drainage District No. 1 regarding funding for the GLO's 2015 and 2016 CDBG-MIT Competitions. The overall objective is to work in partnership to maximize value and to construct a project that will serve to mitigate flooding for generations to come.

## **2. Parties Involved**

*(GLO Instructions: Clearly identify each party involved.)*

2.1 Hidalgo County ("County") and Hidalgo County Drainage District No. 1 ("Drainage District" or "HCDD1") will work in partnership with the General Land Office ("GLO"). All formal notices regarding this MOU shall be submitted as follows:

**If to County:** County of Hidalgo  
Attn: County Commissioner David Fuentes  
1902 Joe Stephens Ave #101  
Weslaco, Texas 78596

**If to HCDD1:** Hidalgo County Drainage District No. 1  
Attn: Raul E. Sesin, P.E., C.F.M.  
902 N Doolittle Rd.  
Edinburg, Texas 78542

**If to GLO:** TBD

2.2 Pursuant to the Action Plan regarding GLO's 2015 and 2016 CDBG-MIT Competitions, Hidalgo County will serve as the lead and fiduciary regarding 2015 and 2016 CDBG-MIT Competitions funding. Drainage District will assist Hidalgo County pursuant to the terms in this MOU.

2.3 Day-to-day activities will be handled by Commissioner David Fuentes on behalf of County. Day-to-day activities will be handled by Mr. Raul E. Sesin, P.E., C.F.M. on behalf of Drainage District. Activities outside day-to-day activities will require approval by Hidalgo County Commissioners' Court and Hidalgo County Drainage District No. 1's Board. All decisions outside of day-to-day activities will be coordinated with GLO's designated representative.

### **3. Time Period**

*(GLO Instructions: Specify the time period of the agreement with start and end dates.)*

3.3 The terms of this MOU shall start upon approval by the Commissioners' Court of Hidalgo County and the Board of Hidalgo County Drainage District No. 1. The MOU shall be in effect for a period of five (5) years or until the Project is completed pursuant to Section 6 of this MOU. Should additional time be needed to complete the obligation of this MOU, the Commissioners' Court of Hidalgo County and the Board of Hidalgo County Drainage District No. 1 can extend this MOU for terms of five (5) additional years, as needed to complete the projects.

### **4. Roles and Responsibilities**

*(GLO Instructions: roles and responsibilities will be subject to the specific circumstances of the application/project. -Clearly identify the specific duties and responsibilities of each party. Include each entity's sole responsibilities, as well as responsibilities shared by all parties, as appropriate. -Clearly specify which party is financially responsible for which items, when payments are due (as appropriate), and any other detail that will help to avoid confusion or disputes.)*

4.1 Pursuant to the Action Plan regarding GLO's 2015 and 2016 CDBG-MIT Competitions, Hidalgo County will serve as the lead and fiduciary regarding 2015 and 2016 CDBG-MIT Competitions. Hidalgo County submitted the grant applications to the GLO.

4.2 Hidalgo County will provide staff and resources to manage the grant and oversee all aspects of the projects. Hidalgo County will fund these tasks with its resources. At the beginning of each fiscal year, Hidalgo County will be sure to allocate specific funding from its budget for the management of funds for GLO's 2015 and 2016 CDBG-MIT Competitions.

4.3 Drainage District has already acquired property rights for the land to be utilized for the Main Floodwater Channel Expansion Projects - Phases 1 and 2. Drainage District will provide the land at no cost to Hidalgo County and GLO for the Main Floodwater Channel Expansion Projects - Phases 1 and 2.

4.4 Drainage District will provide Design, Environmental, Construction Management, and Technical Assistance for the Main Floodwater Channel Expansion Projects - Phases 1 and 2. Drainage District, through its in-house engineering department, is in the process of completing the design for the Main Floodwater Channel Expansion Projects - Phases 1 and 2. Drainage District will provide Design, Environmental, Construction Management, and Technical Assistance for the Main Floodwater Channel Expansion Projects - Phases 1 and 2 at no cost to Hidalgo County and GLO for the Main Floodwater Channel Expansion Projects - Phases 1 and 2.

4.5 During the construction of the projects, Hidalgo County will be the owner of the project.

4.6 Upon completion of the Main Floodwater Channel Expansion Projects - Phases 1 and 2, in compliance with Section 6 of this MOU, ownership of the project will be transferred to Drainage District.

4.6 Drainage District estimates that the annual maintenance cost for Main Floodwater Channel Expansion Project - Phase 1 will be \$54,848.58. Drainage District estimates that the annual maintenance cost for Main Floodwater Channel Expansion Project - Phase 2 will be \$73,131.44. Drainage District agrees to allocate funding from its annual maintenance and operation budget in perpetuity for the management of the Main Floodwater Channel Expansion Projects - Phases 1 and 2.

4.7 Should there be any cost overruns needed to complete Main Floodwater Channel Expansion Projects - Phases 1 and 2, the County and the Drainage District will fund the difference needed to complete these projects. The County and the Drainage District reserve the right to use in-house staff and resources for the completion of the Main Floodwater Channel Expansion Projects - Phases 1 and 2.

## **5. Dispute Resolution**

*(GLO Instructions: Confidentiality clauses, as appropriate. -Indemnity clauses, as appropriate. - Dispute resolution and settlement clauses should be included in case a breach, invalidation, or termination of the document occurs. Ensure prompt resolution and identify the manner in which the dispute shall be settled. -Clearly identify termination options.)*

5.1 GLO shall form a part of all negotiations and be given time to participate and advise Hidalgo County and Drainage District regarding the best way to proceed.

5.2 Given that all parties are governmental entities that are subject to the Texas Public Information Act, there shall not be any confidentiality clauses in this MOU.

5.3 Hidalgo County and Drainage District release each other and the GLO of any liability caused by the implementation of this MOU and the Main Floodwater Channel Expansion Projects - Phases 1 and 2.

5.4 Should a dispute arise between Hidalgo County and Drainage District, the parties, along with a representative from GLO, hereby agree to cooperate in good faith to resolve the dispute. Should this be unsuccessful, Hidalgo County, the Drainage District, and a representative from GLO shall attend mandatory mediation. Should that be unsuccessful, either Hidalgo County or the Drainage District can agree to abandon their responsibilities under this MOU with a 30-Day Written Notice. In case Hidalgo County or the Drainage District exercise this option: (1) Hidalgo County will become the sole owner of the project; (2) Hidalgo County agrees to undertake all responsibilities of the Drainage District needed to complete the projects and to maintain and operate the projects in perpetuity; and (3) Drainage District agrees to allow Hidalgo County to

own the projects as well as to give the county the ability to perform maintenance and operation activities on the projects.

5.5 Under no circumstance shall Hidalgo County be liable to the Drainage District or vice-versa.

5.6 This MOU does not grant any waivers of immunity.

## 6. Closeout of Project

*(GLO Instructions: Clearly identify final closing activities and completion of the agreement, as appropriate.)*

6.1 Upon Completion of Projects, and submittal of all closeout paperwork to GLO and HUD, should any be needed, the Drainage District will take ownership of the projects.

6.2 Should any legal instruments be needed to transfer ownership of the project to the Drainage District, Hidalgo County hereby agrees to prepare and execute such documents.

6.3 Hidalgo County and the Drainage District will work cooperatively with GLO to perform all closeout projects.

6.4 Hidalgo County and the Drainage District agree to keep GLO updated of any developments regarding the project and to provide periodic reports regarding the mitigation activities accomplished through the implementation of Main Floodwater Channel Expansion Projects - Phases 1 and 2.

## 7. Miscellaneous Provisions

7.1 **Conflict with Applicable Law.** Nothing in this MOU 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 MOU 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 MOU shall be modified only to the extent necessary to bring this MOU within any such legal requirements and only during the times such conflict exists.

7.2 **No Waiver.** No waiver by any party hereto of any breach of any provision of this MOU shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

7.3 **Entire Agreement.** This MOU 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 MOU not specifically set forth herein. This MOU may be modified or amended only by agreement in writing executed by Drainage District and Hidalgo County, only after approval of the IBWC, and not otherwise.

7.4 **Texas Law to Apply.** This MOU 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.

7.5 **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 MOU.

7.6 **Successors.** This MOU 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 MOU.

7.7 **Assignment.** This MOU shall not be assignable.

7.8 **Headings.** The headings and captions contained in this MOU are solely for convenience reference and shall not be deemed to affect the meaning or interpretation of any provision of paragraph hereof.

7.9 **Gender and Number.** All pronouns used in this MOU 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.

7.10 **Authority to Execute.** The execution and performance of this MOU by Drainage District and Hidalgo County have been duly authorized by all necessary laws, resolutions or governing body action of the parties and this MOU constitutes the valid and enforceable obligations of Drainage District and Hidalgo County in accordance with its terms only after approval of the IBWC.

7.11 **Non-Discrimination.** This MOU 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 Drainage District policy, including without limitation race, color, national origin, religion, sex, age, veteran status, or disability.

7.12 **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 contract should it be subject to Federal award.

7.13 **Governmental Purpose.** Each party hereto is entering into this MOU 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.

7.14 **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 MOU, then any party may terminate this MOU 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 MOU. The parties intend this provision to be a continuing right to terminate this MOU 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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Richard Cortez, County Judge  
Hidalgo County, Texas

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Richard Cortez, Chairman of Board  
Hidalgo County Drainage District No. 1

## GLO Instructions re: MOU

*Applications that involve multiple entities or jurisdictions must clearly identify all parties and the roles and responsibilities of each party, to include financial involvement and/or liability. Applicants may provide a conditional or draft Memorandum of Understanding, Interlocal Agreement, or other binding vehicle identifying those roles and responsibilities. Applications involving multiple entities or jurisdictions that proceed to award will require a fully executed document signed by all parties. Execution of the document may occur after the application is deemed fully eligible. The contents of any given Memorandum of Understanding, Interlocal Agreement, or other binding vehicle designed to clarify roles and responsibilities will be subject to the specific circumstances of the application/project. Each document should be prepared and written in a manner that best covers the liabilities of all parties involved. The document is ultimately the responsibility of the agreeing parties. The GLO encourages each local entity to consult local legal counsel regarding contractual matters. Some best practices to consider when preparing and writing such a document are: -Clearly state the objective of the document. State the overall intent of the document including a brief statement of the intent of each party. -Clearly identify each party involved. -Specify the time period of the agreement with start and end dates. -Clearly identify the specific duties and responsibilities of each party. Include each entity's sole responsibilities, as well as responsibilities shared by all parties, as appropriate. -Clearly specify which party is financially responsible for which items, when payments are due (as appropriate), and any other detail that will help to avoid confusion or disputes. -Confidentiality clauses, as appropriate. -Indemnity clauses, as appropriate. -Dispute resolution and settlement clauses should be included in case a breach, invalidation, or termination of the document occurs. Ensure prompt resolution and identify the manner in which the dispute shall be settled. -Clearly identify termination options. -Clearly identify final closing activities and completion of the agreement, as appropriate. These are a basic outline of topics and/or issues that should be considered. Other topics and/or issues may also need to be included to fully address the particular project*