

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

**INTERLOCAL COOPERATION AGREEMENT BETWEEN
THE COUNTY OF HIDALGO, TEXAS AND THE LOWER RIO GRANDE VALLEY
DEVELOPMENT COUNCIL
(CONTRACT SERVICES)**

This INTERLOCAL (INTERGOVERNMENTAL) AGREEMENT is by and between the Lower Rio Grande Valley Development Council, the Regional Council of Governments with offices situated at 301 West Railroad Weslaco, TX 78596, Hidalgo County, Texas (“LRGVDC”), and the County of Hidalgo, Texas situated at 100 E. Cano Edinburg, Hidalgo County, TX (“HIDALGO COUNTY”), pursuant to the provisions of the Texas Interlocal Cooperation Act.

WHEREAS, the LRGVDC desires to cooperated with **HIDALGO COUNTY** for contracting services based on the terms and conditions of this Agreement; and

WHEREAS, severe storms and flooding have negatively impacted the Rio Grande Valley Region’s quality of life and physical safety; and

WHEREAS, the Rio Grande Valley Region has experienced five Presidentially Declared severe storm and flooding disaster events in the past six years, threatening life, property, and economic development; and

WHEREAS, LRGVDC has applied, received funding and will be serving as the administrator of a Texas Water Development Board Project for regional flood protection planning (**TWDB Project #40038**) per the terms referenced in Attachment A; and

WHEREAS, HIDALGO COUNTY and others are jointly funding the match requirements for **TWDB Project #40038**; and

WHEREAS, LRGVDC requires the development, processing, and contracting for characterizing drainage pathways, identifying flood control projects, and assessing the feasibility of those projects;

and

WHEREAS, HIDALGO COUNTY procures qualified engineering firms and staff to conduct engineering and drainage projects regularly;

NOW, THEREFORE, for and in consideration of the premises and mutual promises, covenants and agreements hereinafter set forth, and intending to be legally bound, **HIDALGO COUNTY** and **LRGVDC** agree as follows:

I. OBLIGATIONS OF HIDALGO COUNTY

A. Contracting: During the term of this Agreement, **HIDALGO COUNTY** shall procure or enter into engineering service contracts for identifying drainage characterization and feasibility studies for the Rio Grande Valley Region referenced in **Tasks 2.2** and **Task 2.3** of the **TWDB's Project #40038** for the LRGV Regional Flood Protection Planning project (Attachment A). During and after completion of the regional Hydrologic and Hydraulic (H&H) Model for the Lower Rio Grande Valley, the project will require engineering firms to identify flood control projects based upon produced and available regional H&H data. All procurements must be completed in a generally accepted timeframe.

B. Subcontracts: Each Subcontract entered into or procured under this Interlocal Agreement must contain the following:

1. A detailed budget estimate with specific cost details for each task or specific item of work to be performed by the Subcontractor and for each category of reimbursable expenses.
2. A clause stating the following: "Subcontractor agrees and acknowledges that it is subject to all applicable requirements of the master contract between LRGVDC and the Texas Water Development Board. Subcontractor adopts by reference the requirements of Article VII of the TWDB Contract for this Subcontract.
3. A clause stating the following: "It is agreed that all works developed by **LRGVDC, HIDALGO COUNTY,** and any subcontractors using funds provided under this CONTRACT or otherwise rendered in or related to the performance in whole or part of this CONTRACT, including but not limited to reports, drafts of reports, material, data, drawings, studies, analyses, notes, plans, computer programs and codes, or other work products,

whether final or intermediate, are the joint property of TWDB and LRGVDC. LRGVDC hereby conveys co-ownership of such works to TWDB as they are created in whole or part. If present conveyance is ineffective under applicable law, LRGVDC agrees to convey a co-ownership interest of such works to TWDB after creation and to provide written documentation of such conveyance upon request by TWDB. TWDB and LRGVDC each have full and unrestricted rights to use such works with no compensation obligation.

C. Progress Reports: HIDALGO COUNTY shall require subcontractors to submit quarterly progress reports, including results to date to the LRGVDC Project Manager no later than 30 days from the conclusion of the quarter. Each project completed will require a Draft and Final Report, with the structure and format to follow **Exhibit D & Exhibit E** of the TWDB Grant Agreement (**Attachment A**). The draft progress report will be due no later than the Project Completion date of **September 31st, 2024** to allow for review by LRGVDC's project manager to incorporate within LRGVDC's draft report to TWDB. HIDALGO COUNTY will submit any requested additional reporting information, data, graphics, or tables pertaining to this Interlocal Agreement as requested in GIS, Microsoft Word or Portable Document Format (PDF) copy, as appropriate.

II. OBLIGATIONS OF LRGVDC

- A. Contract Oversight:** LRGVDC agrees to oversee and monitor the terms of the contracts developed by HIDALGO COUNTY as contracted and throughout the life of the contract. LRGVDC, HIDALGO COUNTY, and TWDB will review subcontracts developed, and LRGVDC and TWDB will provide comments on any subcontracts developed by HIDALGO COUNTY to ensure compliance and accuracy on the basis of the prime agreement: **TWDB Grant Agreement #40038** (Attachment A)
- B. Meetings:** LRGVDC will host quarterly meetings with HIDALGO COUNTY and/or the contractors procured to ensure accurate record keeping and deadline compliance.

III. TIME OF BILLING AND PAYMENT

A. TWDB Project #40038 total cost being **\$8,870,000** with **Tasks 2.2** and **2.3** (drainage characterization and project assessments) budgeted for **\$2,970,000**, of which **\$1,485,000** will be allocated for any contracts that HIDALGO COUNTY enters into for the drainage projects, as identified during **TWDB Project #40038, Tasks 1.2 and 2.1**

B. Hidalgo County Drainage District #1 shall commit **\$443,500**, for the project, upon approval by District's Board of Directors.

C. HIDALGO COUNTY must provide a budget outlining expenses, invoices or other forms of documentation acceptable to the TWDB, and accounting of eligible expenses, in-kind, and/or in fund to **LRGVDC** to provide to TWDB **quarterly**.

D. Any HIDALGO COUNTY contracted subcontractors must use any funds granted by **LRGVDC** through TWDB for eligible expenses. Subcontractors' Requests for Payments will be processed by the LRGVDC finance department. LRGVDC has 30 days from receipt of reimbursement from TWDB to provide payment. Payment of invoice is subject to sufficient reimbursement by the TWDB

IV. TERM OF AGREEMENT AND TERMINATION

A. Term. This Agreement shall be for an initial term, effective on **July 1st, 2021**, and shall continue in full-force and effect through **December 31st, 2024**.

B. Termination. This Agreement may be terminated by either party without cause upon sixty (60) days written notice prior to the end of the original or any renewal term, at which time both parties shall have a minimum of **60 Days** to effectively manage the impact of termination of this contract in order to project, arrange, and manage for contracting engineering firms. If either party shall violate any laws, ordinances or governmental regulations or materially breach any provisions of this Agreement, the non-breaching party may terminate this Agreement by giving written notice of default to the other party and if the defaulting party fails to cure such default within 30 days after receipt of such notice (provided, if such default is of a nature that it cannot be cured within such 30 day period). The non-defaulting party shall not have the right to terminate this Agreement if the defaulting party commences the curing of such default within such 30-day period, and diligently pursues the curing thereof.

C. Appropriations. In the event that, during any term hereof, the governing body of either party does not appropriate sufficient funds to meet the obligations of such party under this Agreement, then either 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. Gov't. Code. Ann. 271.903.

V. INSURANCE

A. **HIDALGO COUNTY Obligations:** HIDALGO COUNTY shall maintain in continuous force and effect throughout the term of this Agreement public liability and property damage insurance in the minimum amount of \$100,000 (with a deductible there under of not more than \$50,000), Professional Liability Insurance. If requested, HIDALGO COUNTY shall furnish LRGVDC with a certificate evidencing such insurance coverage. HIDALGO COUNTY shall notify LRGVDC of the cancellation of or any material change in such insurance coverage.

VI. DEFENSE, HOLD HARMLESS AND INDEMNITY CLAUSE

A. **General Indemnification:** To the extent permitted by law, HIDALGO COUNTY and LRGVDC agree that should an act and/or omission of either party cause or incur, directly or indirectly, damage, loss, destruction, liability or claims against the other party as a result of willful misconduct or negligence, the party who so acted or failed to act shall assume and pay for any and all defense in said matter, hold harmless and indemnify the other party from any and all losses, obligations, liabilities, causes of action, lawsuits, damages or assessments, as a result of said party's acts and/or omissions, including reasonable expenses and legal fees, to the extent caused by the negligent act or omission of such party.

B. **Limitation of Liability:** For the purpose of this Interlocal Agreement, HIDALGO COUNTY will be considered an independent contractor and therefore solely responsible for liability resulting from negligent acts or omissions. HIDALGO COUNTY must obtain all necessary insurance, that, in the judgement of HIDALGO COUNTY and consistent with the standard practices of the industry or HIDALGO COUNTY, is necessary to protect themselves, LRGVDC, TWDB, and employees and officials of TWDB from liability arising out of this Interlocal Agreement.

VII. INDEPENDENT STATUS

It is agreed and understood that each party hereto is considered an independent contractor. Any and all joint venture or partnership status is hereby expressly denied, and the parties expressly state that

they have not formed; either expressed or implied a joint venture or partnership.

VIII. FORCE MAJEURE

Except for the obligation to pay for services rendered, neither party hereto shall be liable for failure to perform hereunder due to contingencies beyond its control, including, but not limited to, strikes, riots, war, fire, acts of God, weather, compliance with any law, regulation or order, of the United States of America or any other governmental body or instrument thereof, whether now existing or hereafter created.

IX. SUCCESSORS AND ASSIGNS

HIDALGO COUNTY and **LRGVDC** each bind themselves, their partners, successors, executors, administrators, and assigns to the other party of the Agreement in respect to all covenants of this Agreement. Neither **HIDALGO COUNTY** nor **LRGVDC** shall assign, sublet, or transfer interest in this Agreement without written consent of the other.

X. GENERAL AND ADMINISTRATIVE PROVISIONS

- A. **Authority:** Each party represents to the other that this Agreement, the transaction contemplated herein, and the execution and delivery hereof, has been duly authorized by all necessary proceedings and actions.
- B. **Time Limit:** Time is of the essence of this Agreement; and accordingly, all time limits shall be strictly construed and enforced.
- C. **No Waiver:** The failure or delay in the enforcement of the rights detailed therein shall not constitute a waiver of those rights or be considered as a basis for estoppel. The parties may exercise their rights herein despite said delay or failure to enforce said rights.
- D. **Dispute or Contest:** In the event that a dispute occurs or an action in law or equity arises out of the operation, construction or interpretation of this Agreement, the party prevailing shall be entitled to reasonable attorney's fees and cost arising there from.
- E. **Paragraph Headings:** The paragraph headings used herein are descriptive only and shall have no legal force or effect whatsoever.

- F. **Choice of Law and Venue:** This Agreement shall be governed by the laws of the State of Texas and is performable in Hidalgo County, Texas.
- G. **Severability and Survival:** If any provision of this Agreement shall, for any reason, be held violative of any applicable law, and so much of the Agreement is held to be unenforceable, the invalidity of such a specific provision herein shall not be held to invalidate any other provisions herein, which other provisions shall remain in full force and effect, unless removal of the invalid provisions destroys the legitimate purposes of this Agreement, in which event this Agreement shall be terminated. The provisions of paragraphs **I-A, I-C, IV-B, V-A, VI-A, and VI-B** shall specifically survive the expiration or termination of this Agreement and any renewal thereof.
- H. **Notices:** All notices required or permitted herein must be in writing and shall be forwarded by United States Mail, by Registered or Certified Mail, Return Receipt Requested, Postage Prepaid, to the party to whom notice is to be given at the address set forth below or to such address as either party hereto may designate to the other by notice from time to time for this purpose. Notices shall be deemed given upon deposit in a receptacle of the United States Postal Service.

XI. MISCELLANEOUS

- A. **Licenses:** **HIDALGO COUNTY** shall, at **HIDALGO COUNTY's** expense, obtain all licenses and permits necessary for the performance of **HIDALGO COUNTY's** services.
- B. **Acknowledgement:** **HIDALGO COUNTY** agrees and acknowledges that it is subject to all applicable requirements of the master contract between LRGVDC and the Texas Water Development Board (**Attachment A**). **HIDALGO COUNTY** adopts by reference the requirements of Article VII of the TWDB Contract for this Interlocal Agreement.
- C. **Personnel.** **HIDALGO COUNTY** must assign only qualified personnel to perform the services required under this Interlocal Agreement. **HIDALGO COUNTY** is responsible for ensuring that any Subcontractor utilized also assigns only qualified personnel. Qualified personnel are persons who are properly licensed to perform the work and who have sufficient knowledge, skill and ability to perform the tasks and services required herein according to the standards of performance and care for their trade or profession.

- D. Professional Standards.** **HIDALGO COUNTY** must provide the services and deliverables in accordance with applicable professional standards. **HIDALGO COUNTY** represents and warrants that it is authorized to acquire Subcontractors with the requisite qualifications, experience, personnel and other resources to perform in the manner required by this Interlocal Agreement.
- E. Procurement Laws.** **HIDALGO COUNTY** must engage in competitive procurements for work on the Project. All purchases for goods, services, or commodities made with funds provided under this Interlocal Agreement must comply with State and local procurement and contracting laws.
- F. Party Relationship.** Both **HIDALGO COUNTY** and **LRGVDC**, in the performance of this Interlocal Agreement, act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party will not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.
- G. Proprietary and Confidential Information.** **HIDALGO COUNTY** warrants and represents that any information that is proprietary or confidential and is received by **HIDALGO COUNTY** from **LRGVDC** or any governmental entity will not be disclosed to third parties without the written consent of **LRGVDC** or applicable governmental entity, whose consent will not be unreasonably withheld.
- H. Contract Administration.** **LRGVDC** will designate a project manager for this Interlocal Agreement. The project manager will serve as the point of contact between **LRGVDC** and **HIDALGO COUNTY**. **LRGVDC**'s project manager, along with **TWDB**'s project manager, will supervise **LRGVDC**'s review of **HIDALGO COUNTY**'s technical work, deliverables, draft reports, schedules, financial and budget administration, and similar matters. The project manager does not have any express or implied authority to vary the terms of the Interlocal Agreement, amend the Interlocal Agreement in any way or waive strict performance of the terms or conditions of the Interlocal Agreement.
- I. Nepotism.** **HIDALGO COUNTY** must comply with Texas Government Code Chapter 573 by ensuring that no officer, employee or member of **HIDALGO COUNTY**'s governing body votes or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer

or employee authorized to employ or supervise such person. This prohibition does not prohibit the employment of a person who has been continuously employed for a period of two years prior to the election or appointment of the officer, employee or governing body member related to such person in the prohibited degree.

J. Open Meetings. HIDALGO COUNTY must comply with Texas Government Code Chapter 551, which requires all regular, special or called meetings of governmental bodies to be open to the public, except as otherwise provided by law.

K. Record Keeping and Audits. HIDALGO COUNTY and LRGVDC shall each provide and keep accurate records to each other, as requested within a timely manner. During the Term of this Agreement, HIDALGO COUNTY must submit an annual audit of the general-purpose financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) by a certified public accountant or licensed public accountant. Audits must be submitted to LRGVDC no later than 120 days after the close of HIDALGO COUNTY's fiscal year.

XII. ALTERNATE DISPUTE RESOLUTION/NEUTRAL PARTY

- A.** If any dispute, controversy, or claim between or among the Parties arises under this Agreement or is related in any way to this Agreement or the relationship of the Parties hereunder (a "Dispute"), the Parties shall first attempt in good faith to settle and resolve such Dispute by meeting at a mutually agreeable time and place to discuss the Dispute within seven (7) days following the original written notice of any Dispute by the party making such a claim. The Parties shall seek to resolve the Dispute in writing within fourteen (14) days following the original written notice of any Dispute by the party making such a claim.
- B.** If a mutual resolution and settlement are not obtained at the meeting, the Parties shall participate in good faith in formal mediation, within thirty (30) days following the original written notice of any Dispute, with a mutually agreeable mediator at a mutually agreeable time and place. No settlement reached under this provision shall be binding on the Parties until reduced to a writing signed by a representative of the Parties. Unless the Parties expressly agree otherwise, each party shall bear its own costs and legal and expert fees incurred in the mediation, and evenly share the costs of the mediator. If after proceeding in good faith the parties, with the assistance of a neutral mediator, do not resolve the dispute within forty-five (45) days following the

original written notice of any Dispute, the parties may proceed in accordance with paragraph (C) below.

C. After exhausting the procedures set forth above, either party may initiate litigation to resolve the dispute. The Law of the State of Texas shall control the matter in controversy. Venue is mandatory in Hidalgo County, Texas

IN WITNESS WHEREOF, EXECUTED by **HIDALGO COUNTY** and **LRGVDC** acting under the authority of their respective governing bodies in Duplicate Originals on the date indicated above.

LRGVDC
301 W Railroad
WESLACO, TEXAS 78596
PHONE: (956) 682-3481

HIDALGO COUNTY
Hidalgo County Courthouse
100 North Closner
EDINBURG, TEXAS 78539
PHONE: (956)-318-2600

BY: _____
Manuel Cruz
Executive Director
LRGVDC

BY: _____
Honorable Judge Richard F. Cortez
County Judge
Hidalgo County

Date: _____

Date: _____

ATTEST:

ATTEST:

By: _____

By: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Attorney

By: _____
Victor M. Garza, Assistant District Attorney

