

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

**INTERLOCAL COOPERATION AGREEMENT BETWEEN THE
COUNTY OF HIDALGO AND CITY OF PEÑITAS, TEXAS
CONCERNING CERTAIN IMPROVEMENTS TO
MILE 5 ROAD**

This Agreement is made on this the _____ day of _____, 2021, by and between **CITY OF PEÑITAS, TEXAS** hereinafter referred to as “City”, and **COUNTY OF HIDALGO, TEXAS, BY AND THROUGH HIDALGO COUNTY PRECINCT 3**, hereinafter referred to as “County”, pursuant to the provisions of the Texas Interlocal Cooperation Act (the “Act”), Chapter 791 et seq., Texas Government Code, as follows:

WITNESSETH:

WHEREAS, the City is a home rule municipality defined as a “Local Government” under the Act, and a political subdivision organized under the laws of the State of Texas, within the boundary of the located in Hidalgo County, Texas;

WHEREAS, the County is defined as a “Local Government” under the Act, and a political subdivision organized under the laws of the county in the State of Texas;

WHEREAS, City and County, each pursuant to its statutory and constitutional authority, are responsible for maintenance and improvements to certain public roadways within their boundaries;

WHEREAS, City 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 units of local governments to contract with each other to perform governmental functions and services under the terms of the Act; and pursuant to Section 251.012 of the Texas Transportation Code which authorizes counties to improve roadways within the limits of a City with the City’s consent;

WHEREAS, City and County desire to jointly undertake a road improvement project, within the City Limits of the City of Penitas, of Mile 5 Rd. of approximately 2640 linear feet beginning at the intersection of Tom Gill Road west and ending at the intersection of Rancho Brazil Road, in Hidalgo County, Texas (the “Road” or “Project”). *See Exhibit A –Project map*;

WHEREAS, City and County have determined the Project will serve a public purpose and provide a mutual benefit to each other.

WHEREAS, to better serve the health and safety of the residents that utilize Mile 5 Rd and the surrounding areas, it is in the best interest of both County and City to mutually provide for the road improvement.

NOW, THEREFORE, County and City, in consideration of the mutual covenants expressed hereinafter, agree to enter into this agreement as follows:

1. The parties agree to cooperate in making the necessary improvements to the Road as described on **Exhibit A** attached hereto.
2. County agrees to provide all labor and machinery necessary to perform the improvements to the Road.
3. County will, to the extent reasonably possible, follow the County's standard specifications in improvements unless otherwise agreed in writing by both parties.
4. Upon execution of this Agreement, City shall provide materials (crushed caliche) in the amount necessary to accomplish the Project and shall further provide the hauling of the said material necessary to accomplish the Project. *See Exhibit B – Estimate Amount of Material.*
5. County and City will coordinate work schedules in order to provide for minimal disruption to the public and to the operational fiscal affairs of the parties and will complete the Project no later than one-hundred (100) days from the execution of this Agreement.
6. City has authorized County to perform the work herein described pursuant to Tex. Trans. Code §251.012.
7. 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.
8. Upon final completion of the Project work described herein, the parties agree that COUNTY will be released of all duties imposed by this Agreement.
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 a conflict between and provisions 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 provisions or provision of the Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during times such conflict exists.

10. **No Waiver:** No waiver by any party hereto of any breach of any provisions 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 the CITY and COUNTY, 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. **INDEMNIFICATION: TO THE EXTENT ALLOWED UNDER THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, CITY AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND COUNTY, ITS AGENTS, EMPLOYEES AND OFFICERS FROM AND AGAINST ANY CLAIM, LOSS, DAMAGE, LIABILITY AND EXPENSE, INCLUDING REASONABLE ATTORNEY'S FEES, INCURRED OR SUFFERED BY IT, BY REASON OF ANY AND ALL CLAIMS, DEMANDS OR CAUSES OF ACTION ASSERTED OR THAT MAY BE ASSERTED, AGAINST ANY OR ALL OF THE ABOVE NAMED PARTIES, WHETHER ALLEGING INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS, AND WHETHER SEEKING COMPENSATORY OR PUNITIVE DAMAGES, AND INVOLVING, ARISING OUT OF, OR IN ANY MANNER RELATED TO THIS AGREEMENT.**
14. **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 City of

City of Penitas, Texas
Attention: Mayor

P.O. Box 204
Penitas, TX 78576

If to County of Hidalgo: County of Hidalgo
Attention: County Judge
100 E. Cano, 2nd Floor
Edinburg, Texas 78539

With copy to: Hidalgo County Precinct 3
Attention: Commissioner, Precinct 3
724 Breyfogle Rd,
Mission, TX 78574

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.

15. **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.
16. **Successors:** This Agreement shall be binding upon and to the benefit of the parties hereto and their respective successors and assigns where permitted by this Agreement.
17. **Assignments:** This Assignment shall not be assignable.
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 the Agreement by CITY and COUNTY have been duly authorized by all necessary laws, resolutions and corporate action, and this Agreement constitutes the valid and enforceable obligations of CITY 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 for the paying party, as herein provided.

21. **Commitment of Current Revenues Only:** In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of County under this Agreement, County may terminate this Agreement upon ninety (90) days written notice to Company. County agrees, however, to use reasonable 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 County. *Agreements for the acquisition, including lease of real or personal property under Tex. Loc. Govt. Code §271.903:* In the event that, during any term hereof, the Commissioner's Court does not appropriate sufficient funds to meet the obligations of County under this Agreement, County may terminate this Agreement upon ninety (90) days written notice to Company, County agrees, however, to use a best effort attempt to obtain and appropriate funds for payment of the Agreement. The parties intend this provision, if applicable, to be a continuing right to terminate this at the expiration of each budget period of County in accordance with Tex. Loc. Govt. Code §271.903 (Vernon Supp. 1996).
22. **Term:** The effective date of this agreement shall be the date first written above. The term of the Agreement shall be for the time period referenced above.
23. **Termination:** Either Party may terminate this Agreement with or without cause upon thirty (30) days written notice to each other.
24. **Liability Insurance:** Each entity will carry sufficient liability insurance at the statutorily required limits, pursuant to the Texas Tort Claims Act.
25. **Immunities:** It is expressly understood and agreed that, in the execution of this agreement, neither the City nor County waive, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercising of governmental powers and functions.
26. **Non-Discrimination:** City and County, including subcontractors, assignees and successors in interest, ensures that no person shall on the grounds of race, religion, color, national origin, sex, age, or disability, or any other protected class under law, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation in any federally or non-federally funded program or activity when providing any services described herein under this contract/agreement. See Title VI of the Civil Rights Act of 1964, as amended.
27. **Required Contract Provision for Contracts Subject to Federal Award (if applicable):** 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. Additionally, County contracts under Federal award which are subject to assistance from the Federal Emergency Management Agency (FEMA) are also required to contain additional contract clauses. The applicable required contract clauses were provided as part of the initial procurement packet and are incorporated herein and made part of this agreement for all purposes.

28. **Governing Provisions:** Parties shall comply with all applicable laws and regulations. A non-exclusive list of regulations commonly applicable to Federal and State grants and equipment can be found in the new 2 CFR 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements.
29. **Legal Construction/Severability:** In case any one or more of the provisions contained in this Agreement will for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision thereof, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
30. **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 any paragraph hereof.
31. **Prior Agreements:** This Agreement supersedes and terminates all previous Interlocal Agreement(s) between the parties hereto concerning the subject matter hereof, except for any Interlocal Agreement dated prior to this Agreement to the extent work is being performed under said Agreement at the time of executing this Agreement. Once ongoing work under any such previous Interlocal Agreement(s) is completed and payment is remitted such previous Interlocal agreement shall terminate at such time.

[SIGNATURE PAGE TO FOLLOW]

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

COUNTY OF HIDALGO, TEXAS

BY: _____
Richard F. Cortez, Hidalgo County Judge

ATTEST:

By: _____
Arturo Guajardo, Jr.
Hidalgo County Clerk

CITY OF PENITAS

BY: _____
_____, Mayor

ATTEST:

BY: _____
_____, City Secretary

Approved by the Hidalgo County Commissioner's Court on _____.

APPROVED AS TO FORM:

Hidalgo County Criminal District Attorney's Office
Ricardo Rodriguez, Jr.

By: _____
Amanda D. Austin, Assistant District Attorney