

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

**INTERLOCAL COOPERATION AGREEMENT BETWEEN THE
COUNTY OF HIDALGO AND CITY OF MERCEDES, TEXAS
CONCERNING CERTAIN IMPROVEMENTS TO
MILE 1 EAST ROAD FROM BUSINESS 83 TO MILE 8 NORTH ROAD
(UPDATE PHASE I AND COMPLETE PHASE II)**

THIS agreement is made on this the _____ day of _____ 2021 by and between the CITY OF MERCEDES, TEXAS, hereinafter referred to as the "CITY" and the COUNTY OF HIDALGO, Texas 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 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 Hidalgo County, Texas; and

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

WHEREAS, the City and County desire to cooperate in making needed transportation improvements to Mile 1 East Road from Business 83 to Mile 8 North Road as outlined in **Exhibit A** (the "Project"); and

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

WHEREAS, the City and County desire to jointly undertake road reconstruction and improvements for the Project of Mile 1 East Road from Business 83 to Mile 8 North Road; and

WHEREAS, the County finds the Project of Mile 1 East Road from Business 83 to Mile 8 North Road is a major public thoroughfare that serves as a connecting link of the County road system and such improvements and reconstruction are in the public interest of the City and County; and

WHEREAS, the City and County agree it is essential to develop this very important corridor, which is in much need of improvements, specifically in need of improved drainage and reconstruction for increased safety; and

WHEREAS, the City and County are authorized to enter into this Agreement pursuant to the Act, which authorizes local governments to contract with each other and with agencies of the state, 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; and

WHEREAS, the City has completed Phase I of project development activities as described below in 2015 which requires updates.

WHEREAS, the County will be the fiduciary agent for this project and assume the role of project development lead; and

WHEREAS, the City and County desires to proceed and update Phase I, as well as complete Phase II (ONLY) of the project development activities that will be required to be completed for the subject project as outlined below;

- Update Phase I: Update environmental document with TxDOT, public involvement with stakeholders and schematic design for both the roadway and outfall(s), develop hydrologic report for the roadway and the outfalls, recover and re-establish the existing centerline and right-of-way with design surveys and complete subsurface utility engineering for the updated schematic
- Phase II: Complete Right-of-Way Map for roadway and outfalls with Parcel Sketches and Field Notes.
- Phase III: PS&E, ROW acquisition including compensable utility acquisition and Construction Management oversight.

WHEREAS, the City and County will cooperatively seek additional construction and right of way ("ROW") funds for this Project through the Rio Grande Valley Metropolitan Planning Organization (RGVMPO) and TxDOT; and

WHEREAS, the City desires to cooperate by agreeing that the remainder of funds in the grant identified in the City of Mercedes Resolution #2011-07 dated 7-5-2011 (**Exhibit B**) (the "Grant") be utilized for the project costs associated with the ROW land costs, and compensable utility costs.

WHEREAS, the City agrees that County will assume the role of project sponsor to develop the Phase I update, as well as complete Phase II (ONLY) of the project, as described above.

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

1. The County shall update Phase I and complete Phase II of the project development, as described above more particularly described in that portion of **Exhibit A** attached hereto and incorporated by reference for all purposes that relates to said Phase I update, and Phase II.
2. County agrees to provide all labor, materials 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. The total cost of updating Phase I and completing Phase II is Six Hundred Eighteen Thousand Nine Hundred Thirty-Six and Fifty-Eight one hundredths Dollars (\$618,936.58) (See attached **Exhibit C - Estimate**), which County will contribute Three Hundred Nine Thousand Four Hundred Sixty-Eight and Twenty-Nine one hundredths Dollars (\$309,468.29).
5. City desires to cooperate by contributing a lump sum amount of Three Hundred Nine Thousand Four Hundred Sixty-Eight and Twenty-Nine one hundredths Dollars \$309,468.29 to the County towards updating Phase I and completing Phase II of the project development activities upon execution of this agreement.
6. 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 180 days from the execution of this Agreement.
7. This Agreement replaces and supersedes any and all prior agreements between County and City with respect to the Road and/or Project.
8. City has authorized County to perform the work herein described pursuant to Tex. Trans. Code §251.012.
9. County finds no proceeds of bonds issued or taxes levied pursuant to article III, Section 52(b) or (c) of the Texas Constitution shall be used for the Project.
10. References to Phase III is for information only,
11. 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.
12. **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.
13. **Termination.** Either party may terminate this Agreement with or without cause upon thirty (30) days written notice to other.
14. **Liability Insurance.** Each entity will carry sufficient liability insurance at the statutorily required limits, pursuant to the Texas Tort Claims Act.
15. **Indemnification.** To the extent permitted under the Constitution and laws of the State of Texas, the 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.

16. **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.
17. **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 any 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 provisions of the Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.
18. **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.
19. **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 agreement or representative) and 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.
20. **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.
21. **Notice:** Except as maybe 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: City of Mercedes
 Attention: Hon. Oscar Montoya, Mayor
 400 S. Ohio Ave.
 Mercedes, Texas 78570

If to County: Hidalgo County, Texas
Attention: Hon. Richard F. Cortez, County Judge
100 E Cano St., Second Floor
Edinburg, Texas 78539

With copy to: Hon. David Fuentes, Commissioner Pct. #1
1902 Joe Stephens
Weslaco, Texas 78596

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.

22. **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.
23. **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.
24. **Assignment:** This Agreement shall not be assignable.
25. **Headings.** The headings and captions contained in this Agreement are solely for the convenience reference and shall not be deemed to affect the meaning or interpretation of any provision of paragraph hereof.
26. **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 as often as may be appropriate.
27. **Non-Discrimination.** The 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 County and City policy, including without limitation race, color, national origin, religion, sex, age, veteran status, disability or any other category protected under law.
28. **Governmental Purpose.** Each party hereto is entering into the 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.
29. **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 efforts 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).

30. **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.
31. **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.
32. **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.
33. **Authority to Execute.** The execution and performance of this Agreement by the City and County have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of the City and County in accordance with its terms.
34. The approval of this Interlocal Cooperation Agreement in accordance with Texas Government Code §791.014 is evidenced by the attached herein.

[SIGNATURE PAGE TO FOLLOW]

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

COUNTY OF HIDALGO

BY: _____
Richard F. Cortez, County Judge

ATTEST:

Arturo Guajardo, Jr., County Clerk

CITY OF MERCEDES

BY: _____
Hon. Oscar Montoya, Mayor

ATTEST:

City Secretary

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

APPROVED AS TO FORM:

Office of the Criminal District Attorney
Ricardo Rodriguez, Jr.

BY: _____
Robert Viña, III, Assistant District 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 regarding certain road improvements to Mile 1 East Road from Business 83 to Mile 8 North Road, a section which is in part within the city limits of Mercedes and in part within County jurisdiction through an Interlocal Cooperation Agreement to be entered into with the City of Mercedes, Texas, and Hidalgo County.

By vote on _____ 2021, 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:

Office of the Criminal District Attorney
Ricardo Rodriguez, Jr.

BY: _____
Robert Viña, III, Assistant District Attorney