

STATE OF TEXAS §

COUNTY OF HIDALGO §

**INTERLOCAL COOPERATION AGREEMENT BETWEEN THE CITY OF MISSION,
THE COUNTY OF HIDLAGO, TEXAS
AND THE HIDALGO COUNTY DRAINAGE DISTRICT NO. 1**

THIS Agreement is made on and entered into effective as of the ____ day of February, 2022, by and between the **COUNTY OF HIDALGO, TEXAS**, hereinafter referred to as (“County”), the City of Mission, hereinafter referred to as (“City”), and the **HIDALGO COUNTY DRAINAGE DISTRICT NO. 1**, hereinafter referred to as (“Drainage District”), collectively referred to as “Parties” and pursuant to the provisions of the Texas Interlocal Cooperation Act (“Act”), Chapter 791, et seq., Texas Government Code, as follows:

WITNESSETH:

WHEREAS, the Drainage District, a special purpose district, is a unit of local government as defined by Chapter 791 of the Texas Government Code, and a political subdivision organized under the laws of the State of Texas, within the boundary of Hidalgo County; and

WHEREAS, the City is a unit of “Local Government” as defined under the Interlocal Cooperation Act, a political subdivision organized under the laws of the State of Texas; and

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

WHEREAS, pursuant to Texas Government Code Section 418.108, Hidalgo County Judge Richard Cortez issued a Declaration of Local Disaster for Public Health Emergency on March 17, 2020, due to the imminent threat arising from the Coronavirus (COVID-19); and

WHEREAS, on March 22, 2020, the Commissioners Court of Hidalgo County issued an Order of Continuance of Declaration of Local Disaster for Public Health Emergency; and

WHEREAS, on or about March 11, 2021, the Federal Government passed the American Rescue Plan Act (“ARPA”), including the Coronavirus State and Local Fiscal Recovery Fund (the “SLFRF”) which provides for direct payments to qualifying units of local governments to respond to the COVID-19 public health emergency and its economic impacts through eligible uses; and

WHEREAS, the County received a direct distribution of the SLFRF to be used for eligible expenditures that were directly related to and incurred as a result of the COVID-19 public health emergency; and

WHEREAS, pursuant to guidance provided by the United States Department of Treasury: (Coronavirus Relief Fund Guidance for State, Territorial, Local and Tribal Governments) (the “Guidance”) issued June 24, 2021, The Interim Final Rule dated May 17, 2021, The Final Rule dated January 6, 2022, and The Coronavirus Local Fiscal Recovery Fund Award Terms and

Conditions, (which are attached hereto and incorporated by reference herein as **Exhibit “A”**), the SLFRF allows a recipient to pool funds with another unit of government, *provided that the funds are used for an eligible use as outlined in section 603 (c)(1) of the Social Security Act, and the Guidance*; and

WHEREAS, the County desires to designate a portion of the funds received to be used for drainage and stormwater system improvements as part of the County’s American Rescue Plan Act Stormwater System Improvement Program in compliance with the terms and criteria of the SLFRF and as more fully described below; and

WHEREAS, the Parties wish to undertake certain improvements along Tierra Dorada (“Improvements”) from Shuerbach Road to the west, and Inspiration Road to the east, as identified in the drainage improvement schematic attached as **Exhibit “B”**; and

WHEREAS, these Improvements will assist with managing stormwater and addressing drainage concerns for the benefit of the residents of the City, County and those serviced by Drainage District; and

WHEREAS, work on the Improvements will include costs for engineering fees, acquisition of parcels in fee and/or by easement, construction costs and materials testing; and

WHEREAS, City wishes to participate in the Improvements by monetarily contributing One-Third (1/3) of the costs; and

WHEREAS, County, through Precinct #3, wishes to participate in the Improvements by a combination of monetary contribution of ARPA funds, and/or in-kind services, to equal One-Third (1/3) of the costs of the Improvements; and

WHEREAS, Drainage District wishes to participate in the Improvements by assisting County with the procurement of engineering, construction services, material testing and monetarily, will make a financial contribution of One-Third (1/3) of the cost of the Improvements; and

WHEREAS, the Parties desire to enter into this agreement for a public purpose and for the benefit of these necessary investments in infrastructure improvements, critical to protecting the health and overall wellbeing of their respective communities;

NOW THEREFORE, the Parties in consideration of the mutual covenants expressed hereinafter, agree as follows:

SECTION I RULES AND REGULATIONS

1.1 The Parties agree to abide by the Guidance provided under the ARPA, Coronavirus State and Local Fiscal Recovery Fund, and as more particularly described in section 603(c) of the Social

Security Act and any further guidance issued by the United States Department of Treasury. See Exhibit "A"

SECTION II DEBARMENT/SUSPENSION CERTIFICATION

2.1 The Parties certify that they are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency and do not appear in the Excluded Parties List System found at <http://sam.gov>.

SECTION III TERMS AND CONDITIONS AND PROPOSED PLAN

3.1 **Improvements.** The Parties agree to cooperate with one another in undertaking the Improvements along the area described in Exhibit "B". The Drainage District has prepared a preliminary cost estimate for the Improvements attached as Exhibit "C" which the Parties know is subject to change based on market prices. The Parties wish to obtain substantial completion of the Improvements approximately two (2) years from the execution of this Agreement.

- A. City agrees to issue payment to the Drainage District for One-Third (1/3) of the preliminary estimated construction costs within **thirty (30) days of the execution of this Agreement**. In the event actual costs are more than the preliminary estimate provided in the attached Exhibit "C", the Drainage District shall issue an invoice to City and City agrees to pay the Drainage District within 30 days of receipt of an invoice. Should the actual costs of the improvements be less than the amount stated on Exhibit "C", the Drainage District shall issue a check to City for the difference within 30 days of final completion of the Improvements.
- B. The Parties agree to follow all applicable procurement requirements in acquiring engineering services (plans and design), parcel acquisition services, a construction contractor.
- C. Drainage District agrees to assist with the procurement and oversight of the Improvement Plan and shall contribute One-Third (1/3) of the cost of the Improvements.
- D. Hidalgo County agrees to provide monetary and/or in-kind services equal to One-Third (1/3) of the costs of the Improvements. Equipment costs will be calculated at the FEMA approved rates. Hidalgo County agrees to issue payment to the Drainage District within thirty (30) days of receipt of an invoice. Drainage District shall invoice Hidalgo County periodically through the performance of the improvements.

3.2 **License.** City hereby grants to the Drainage District and Hidalgo County a nonexclusive license to perform the Improvements (the "License") along the City of Mission streets and easements where the Improvements are to be performed. The License is conveyed AS IS, WHERE IS, WITH ALL FAULTS.

**SECTION IV
RECORDS AND REPORTS**

4.1 The Parties agree to establish and maintain all necessary records and reports that may be required as outlined by the SLFRF. The Parties understand that they are responsible for maintaining all records and reports pertaining to SLFRF activity within their district in a manner acceptable to the U.S. Department of Treasury.

4.2 Per the ARPA Guidance, all government recipients are required to keep records sufficient to demonstrate that the amount of Fund payments to the government has been used in accordance with section 603(c) of the Social Security Act.

4.3 Pursuant to ARPA, any sub-recipient of federal funds, must retain records (electronic and otherwise), and any supporting documentation for a minimum of five (5) years after all funds have been expended or returned to Treasury, whichever is later, as outlined in paragraph 4.c. of the Award Terms and Conditions.

4.4 County may require the Parties to retain documents for a longer period of time or to transfer certain records to County or federal custody when it is determined that the records possess a long term retention value.

**SECTION V
MONITORING VISITS**

5.1 The Parties shall make available to The United States Treasury Department, the Special Inspector General of the U.S. Department of Treasury, the Comptroller General of the United States, County, County Auditor, and any of their duly authorized representatives, unobstructed and full access to and the right to examine all books, accounts, records, reports, files, and other papers, things or property, electronic or otherwise, belonging to or in use by the Parties pertaining to this Agreement as it pertains to the use of federal funds for the Improvements project.

**SECTION VI
AUDIT REQUIREMENTS**

6.1 The Parties agree to comply with the applicable requirements and standards as set forth in 2 CFR 200 Subpart F §§200.500 – 200.521 which are incorporated by reference herein.

**SECTION VII
SUSPENSION AND TERMINATION**

7.1 The Parties understand that this Agreement may be suspended or terminated for failure to comply with the provisions of the Agreement or the prescribed terms and conditions as provided in the attached Exhibits.

7.2 If the Parties fail to fulfill in a timely and proper manner their obligations under this Agreement, or violate any of the agreements or stipulations of this Agreement, then the County shall provide the Parties with written notification of such non-performance. The Parties will be given ten (10) business days to cure any non-performance. Failure to cure such non-performance will constitute a breach of this Agreement and may be the basis for immediate termination of the Agreement. **Should a breach by the Parties of this Agreement relate to a violation of federal law or regulation that results in The United States Department of Treasury, General Accounting Office or other applicable overseeing Federal agency demanding reimbursement from the County or the City or Drainage District or their successors, the County will terminate Agreement and seek reimbursement of all funds.** The Parties shall not be relieved of the liability to the County for damages sustained by the County by virtue of any breach of this Agreement by the Parties. County may take any and all appropriate action including injunctive relief against the Parties to prevent the continued failure of the Parties to comply with the SLFRF requirements and/or failure to reimburse the County for funds disallowed by the U.S. Department of Treasury. The failure of the County to exercise any right shall in no way constitute a waiver by the County to otherwise demand payment or seek any other relief in law or in equity to which it may be justly entitled.

7.3 In addition to the termination provisions stated above, either party may terminate this Agreement with or without cause upon thirty (30) days written notice to each other. Termination of the Agreement does not exempt the Parties obligation to reimburse County for any incurred expenses disallowed by the U.S. Department of Treasury or any other overseeing federal agency.

SECTION VIII LIABILITY FOR DISALLOWED COSTS

8.1 The Parties understand and agree that any sub-recipient under this Agreement shall be liable to County for any costs disallowed pursuant to their own failure to comply with the applicable terms and conditions related to financial and compliance audit(s). The Parties further understand and agree that reimbursement to County of such disallowed costs shall be paid from funds that were not provided or otherwise made available to them pursuant to this Agreement or any other federal award.

SECTION IX INDEMNITY CLAUSE

9.1 THE PARTIES AGREE TO BE RESPONSIBLE EACH FOR THEIR OWN NEGLIGENT ACTS OR OMISSIONS, OR OTHER TORTIOUS CONDUCT IN THE COURSE OF THE PERFORMANCE OF THIS AGREEMENT WITHOUT WAIVING ANY SOVEREIGN IMMUNITY, GOVERNMENTAL IMMUNITY, OR OTHER

DEFENSES AVAILABLE TO THE PARTIES UNDER FEDERAL OR STATE LAW. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, IN OR TO ANY THIRD PERSONS OR ENTITIES.

**SECTION X
CONFLICT OF INTEREST**

10.1 The Parties covenant that none of their elected officials, officers, employees, consultants, or agents who exercise influence on the decision-making process presently has or will have any interest, direct or indirect, with any person, corporation, company or association that is hired to carry out any of the activities covered by the SLFRF. The Parties agree that all elected officials, officers, employees, consultants or agents shall comply fully with the requirements of Texas Local Government Code Chapter 171.

10.2 The Parties agree that no person who is an elected official, officer, employee, consultant, or agent of their respective organizations shall gain any interest in any corporation, company, or association that is hired to carry out any of the activities for which funds from the SLFRF are being used.

10.3 The Parties are responsible for repayment of funds associated with any conflict of interest that may occur either knowingly or unknowingly.

**SECTION XI
MISCELLANEOUS PROVISIONS**

11.1 **Conflict with 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 this 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 this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflicts exists.

11.2 **No Waiver.** No waiver of the Parties of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

11.3 **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 representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by City, County and Drainage District, and not otherwise.

11.4 **Texas Law to Apply.** This Agreement 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.

11.5 **Notice.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by electronic mail, or (iii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or (iv) sent by facsimile to the parties at the addresses set forth below, as may have been theretofore specified by written notice delivered in accordance herewith:

If to County: County of Hidalgo
Attention: County Judge
100 E. Cano, 2nd Floor
Edinburg, TX 78539
(956)318-2600

With copy to: Mr. Sergio Cruz
Hidalgo County Budget Officer
2818 S. Bus. Hwy 281
Edinburg, Texas 78539
(956)292-7025
-And-

Ms. Maria Arcilia Duran, CPA
Hidalgo County Auditor
2808 S. Bus. Hwy 281
Edinburg, Texas 78539
(956)318-2511

If to Drainage District: Hidalgo County Drainage District No. 1
Attn: General Manager
902 N. Doolittle Rd.
Edinburg, Texas 78540
(956)292-7080

If to City Of Mission: _____

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.

11.6 **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.

11.7 **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.

11.8 **Assignment.** This Agreement shall not be assignable by either Party.

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

11.10 **Gender and Number.** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

11.11 **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 City, County and Drainage District policy, including without limitation race, gender, color, national origin, religion, sex, age, veteran status, disability or any other protected status. The Parties shall comply with applicable law, including but not limited to the provisions of Title VI of the Civil Rights Act of 1964.

11.12 **Governmental Purpose.** To the extent applicable, 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.

11.13 **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 2 CFR 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements.

11.14 **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.

11.15 **Immunity.** This Agreement is expressly made subject to the Parties' Sovereign Immunity, Title 5 of the Texas Civil Practice and Remedies Code and/or governmental immunity, and all

applicable federal and state law. The Parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of immunities from suit or from liability that either Party has by operation of law.

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

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

CITY OF MISSION

Salvador Vela, Mayor

**HIDALGO COUNTY DRAINAGE DISTRICT
NO. 1**

Richard F. Cortez, Board Chair

THE COUNTY OF HIDALGO

Richard F. Cortez, County Judge

ATTEST

Arturo Guajardo, Jr., County Clerk

Approved by Hidalgo County Commissioners Court on _____.

APPROVED AS TO FORM FOR COUNTY:
Office of Hidalgo County Criminal District Attorney,
Ricardo Rodriguez, Jr.

By: _____
Josephine Ramirez-Solis, Assistant District Attorney

APPROVED AS TO FORM FOR DRAINAGE DISTRICT:
Jones, Galligan, Key & Lozano, LLP

By: _____
Ivan F. Perez

APPROVED AS TO FORM FOR CITY:

By: _____
City Attorney

TABLE OF EXHIBITS

- EXHIBIT – A** **Coronavirus Relief Fund Guidance for State, Territorial, Local and Tribal Governments) (the “Guidance”) issued June 24, 2021; The Interim Final Rule dated May 17, 2021; The Final Rule dated January 6, 2022; and The Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions– to include any future updated guidance from the United States Treasury**
- EXHIBIT – B** **Schematic Design**
- EXHIBIT – C** **Improvement Plan and Proposed Cost Estimate**