

STATE OF TEXAS §
 §
COUNTY of HIDALGO §

INTER-LOCAL COOPERATION AGREEMENT BETWEEN THE COUNTY OF HIDALGO AND THE CITY OF MCALLEN, TEXAS CONCERNING CERTAIN IMPROVEMENTS TO SHARY ROAD FROM SH107 TO MILE 9 ROAD.

This Agreement is made on this the 28th day of May, 2024 by and between CITY OF MCALLEN, TEXAS, hereinafter referred to as "CITY", and the COUNTY OF HIDALGO, TEXAS hereinafter referred to as "COUNTY", collectively referred to as the "Parties", acting under the authority granted in and pursuant to the provisions of the Texas Inter-local Cooperation act (the "Act"), Chapter 791, Texas Government Code.

WITNESSETH:

WHEREAS, the CITY is a home rule municipality and a local government as defined by the Act, located in Hidalgo COUNTY, Texas; and

WHEREAS, the COUNTY of the State of Texas, and a local government as defined by the Act; and

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

WHEREAS, the Rio Grande Valley Metropolitan Planning Organization (RGVMPO) has identified Shary Road from SH 107 1.64 miles North to Mile 9 Road as a minor collector and is within the jurisdiction of the COUNTY; and entirely within the extra territorial jurisdiction (ETJ) of CITY;

WHEREAS, The CITY and COUNTY, through Precincts 3 desire to improve Shary Road from SH107 to Mile 9 Road (the "Project"); and

WHEREAS, The CITY and COUNTY desire to widen the existing road from a two lane rural section to a four lane divided urban section with shoulders and continuous left turn lane (the "Project"); and

WHEREAS, The COUNTY and CITY desire to cooperate in making needed transportation improvement to Shary Road From SH107 to Mile 9 Road as outlined in the *Location Map Exhibit "A"* attached hereto; 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 adding capacity for increased safety;

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

WHEREAS, The COUNTY and CITY agree to participate and make contribution for all phases of the project consisting of Schematic, ROW, Environmental (Phase I), ROW Acquisition (Phase II), PS&E, Geotechnical & Utility Coordination (Phase III), Construction Letting & Project Management (Phase IV), Project Construction (Phase V), and Construction Engineering Inspection (Phase VI) for an *estimated* total amount of 8,483,237.00 within the time between September 2022 to December 2028;

WHEREAS, The COUNTY and CITY desire to implement Phase I of the Project consisting of Schematic Design, ROW, environmental, and funding ("Phase I") in the amount of \$990,135.00 to be completed within the time of September of 2022 to May of 2024; and

WHEREAS, The COUNTY will contribute 60% for Phase I- Advanced Project Development as described in *Exhibit "C"* attached hereto; and

WHEREAS, The CITY will contribute a fixed cost of 40% for Phase I Advanced Project Development as described in *Exhibit "C"* attached hereto; and

WHEREAS, The COUNTY and CITY desire to implement Phase II of the Project consisting of Right of Way Acquisition ("Phase II") from SH107 to Mile 9 Road in the estimated amount of \$2,597,170.00 within the time of Dec of 2023 to May of 2024; and

WHEREAS, The COUNTY will contribute 60% of the actual cost of Phase II Right of way Acquisition as described in *Exhibit "C"* attached hereto;

WHEREAS, The CITY will contribute with reimbursement of 40% of the actual cost of Phase II Right of way Acquisition as described in *Exhibit "C"* attached hereto.

WHEREAS, The COUNTY and CITY desire to implement Phase III of the Project consisting of PS&E, Geotechnical & Utility Coordination ("Phase III") in the estimated amount of \$1,005,250.00 within the time of May of 2024 to May of 2025; and

WHEREAS, The COUNTY will contribute 60% of Phase III PS&E, Geotechnical & Utility Coordination, as described in *Exhibit "C"* attached hereto; and

WHEREAS, The CITY will contribute 40% fixed costs of Phase III PS&E, Geotechnical & Utility Coordination, as described in *Exhibit "C"* attached hereto; and

WHEREAS, the COUNTY and CITY desire to implement Phase IV of the Project consisting of Construction Letting & Project Management, ("Phase IV"), in the estimated amount of \$85,917.00 within the time of May of 2025 to May of 2026; and

WHEREAS, The COUNTY will contribute 60% fixed costs of Phase IV Construction Letting & Project Management, as described in *Exhibit "C"* attached hereto; and

WHEREAS, The CITY will contribute 40% of fixed costs of Phase IV Construction Letting & Project Management, as described in *Exhibit "C"* attached hereto; and

WHEREAS, the COUNTY and CITY desire to implement Phase V of the Project consisting of Project Construction ("Phase V"), in the estimated amount of \$2,604,765.00 within the time of May of 2026 to December of 2027; and

WHEREAS, The COUNTY will contribute 60% of actual costs of Phase V Project Construction as described in *Exhibit "C"* attached hereto; and

WHEREAS, The CITY will contribute 40% reimbursement of actual costs of Phase V Project Construction as described in *Exhibit "C"* attached hereto; and

WHEREAS, the COUNTY and CITY desire to implement Phase VI of the Project consisting of Construction Engineering Inspection ("Phase VI") in the estimated amount of \$1,200,000.00.00 within the time of May of 2027 to December of 2028; and

WHEREAS, The COUNTY will contribute 60% fixed costs of Phase VI Construction Engineering Inspection as described in *Exhibit "C"* attached hereto; and

WHEREAS, The CITY will contribute 40% for fixed costs of Phase VI Construction Engineering Inspection as described in *Exhibit "C"* attached hereto; and

WHEREAS, the CITY agrees to the fixed cost only for engineering, and professional services.

WHEREAS, the COUNTY and CITY agree to share all overruns for construction costs at 60% actual cost share for the COUNTY and 40% actual cost share for the CITY.

WHEREAS, the COUNTY will seek to fund or get reimbursed for construction, right-of-way costs and construction engineering inspection of this Project through the Rio Grande Valley Metropolitan Planning Organization (RGVMPO) and TxDOT with proportionate funding or reimbursement to the CITY; and

WHEREAS, CITY and COUNTY are authorized to enter into this Agreement pursuant to the Inter-local Cooperation Act, Tex. Gov't. Code 791.001 et. seq., which authorizes units of local government to contract with each other to perform governmental functions and services under the terms of the Act; and pursuant to the COUNTY Road and Bridge Act which authorizes counties to improve roadways within the limits of a CITY with the CITY's consent.

NOW, THEREFORE, the COUNTY and CITY, in consideration of the mutual covenants hereinafter, agree as follows:

1. All of the above statements are incorporated herein and fully restated.
2. The COUNTY will act as lead agency to complete Phase I and Phase II and intends to enter into an Advance Funding Agreement with the Texas Department of Transportation as applicable for services which may include (environmental, schematic, right of way map and right of way services, right of way acquisition, adjustments of compensable utilities) and to receive the assistance of the Economically Disadvantaged Counties Program for the Project.
3. Upon commencement of construction of the project, and not sooner, the CITY will be responsible for the relocation of any City owned non-compensable utilities.
4. **City Contribution:** During the Term of this Agreement City shall comply with the ILA Hidalgo Co & City of McAllen (Shary Road Improvements from SH107 to Mile 9 Road)

terms and conditions as stated in *Exhibit "B" Preliminary Project Schedule*:

a. **Phase I Contribution.** The City shall make 40% fixed cost payment to the County during this phase which was fully funded and initiated by the County. The County funded this phase in the amount of \$990,135.00. The City agrees to reimburse the County on or after October 2024.

b. **Phase II Contribution.** The City shall reimburse the County 40% of actual cost during this phase, as funds are spent by the County for Phase II of the Project. The City agrees to provide reimbursement to the County for requests submitted prior to April in October. The County agrees that Phase II shall commence no later than December of 2023 and shall be completed no later than December of 2024.

c. **Phase III Contribution.** The City shall be responsible for 40% fixed costs related to Phase III of the Project. The City agrees to reimburse the County on or after October 2025.

d. **Phase IV Contribution.** The City shall be responsible for 40% fixed costs related to Phase IV of the Project. The City agrees to reimburse the County on or after October 2026.

e. **Phase V Contribution.** The City shall pay the County actual costs a reimbursement for expenses related to Phase V of the Project. The City agrees to provide reimbursement to the County for requests submitted prior to April in October. The County agrees that Phase V shall commence no later than May of 2026 and shall be completed no later than December of 2027.

f. **Phase VI Contribution.** The City shall pay the County 40% Fixed cost as a reimbursement for expenses related to Phase VI of the Project. The City agrees to reimburse the County on or after October 2027. The County agrees that Phase VI shall commence no later than May of 2027 and shall be completed no later than December of 2028.

5. Pursuant to Tex. Trans. Code 251.012, the CITY authorizes the COUNTY to perform the work and services described herein within its corporate city limits and its Extra Territorial Jurisdiction (ETJ).

6. 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.

7. **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.

8. **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.

9. **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.

10. **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. |

11. ~~EG11~~**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, (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 heretofore specified by written notice delivered in accordance herewith:

If to CITY: CITY of McAllen
Attn: Roel "Roy, Rodriguez,
P.E. City Manager 1300
Houston Avenue
McAllen, Texas 78501

With copy to: CITY of McAllen
Attn: Isaac J. Tawil, City Attorney
1300 Houston Avenue
McAllen, Texas 78501

If to COUNTY: Hidalgo COUNTY
Attn: Richard Cortez, COUNTY Judge
100 E. Cano, Second Floor
Edinburg, Texas 78539

With copy to: Commissioner, Precinct Number 3
Attn: Everardo Villarreal
724 North Breyfogle
Mission, Texas 78574

With copy to: Commissioner, Precinct Number 4
Attn: Ellie Torres
1051 N. Doolittle
Edinburg, Texas 78541

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 of, if mailed, at such time as it is deposited in the United States mail.

12. **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.
13. **Successors.** This Agreement shall be binding upon and ensure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.
14. **Assignment.** This Agreement shall not be assignable.
15. **Headings.** The heading 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 paragraph hereof.
16. **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.

17. **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.
18. **Government 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.
19. **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 Agreement, then any party may terminate this Agreement upon thirty (30) days written notice to the other party. Each of the parties hereto 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 each party hereto pursuant to the provisions of Tex. Loc. Govt. Code Ann. §271.903.
20. **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. Upon termination of this Agreement, neither party shall have any liability to the other except for actual Project costs incurred prior to receipt of notice of termination. Neither Party will be liable to the other for any indirect, incidental, special, or consequential punitive or multiple damages, including without limitation any damages resulting from loss of use, loss of business, loss of revenue, loss of profits, or loss of data, arising in connection with this Agreement even if the Party has been advised of the possibility of such damages.
21. **Termination.** Either party may terminate this Agreement with or without cause upon thirty (30) days written notice to the other.
22. **Liability Insurance.** Each entity will carry sufficient liability insurance at the statutorily required limits, pursuant to the Texas Tort Claims Act. The Parties may self-fund against general liability risk and any requirement to procure or maintain liability insurance is waived^[EG2].
23. **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.
24. **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.
25. **Governing Provisions.** Parties shall comply with all applicable laws and ILA Hidalgo Co & City of McAllen (Shary Road Improvements from SH107 to Mile 9 Road)

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.

26. **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.


27. **Prior Agreements.** This Agreement supersedes and terminates all previous Interlocal Agreement(s) between the parties hereto concerning the subject matter hereof, except for any Inter-local 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 Inter-local Agreement(s) is completed and payment is remitted, such previous Inter-local agreement shall terminate at such time.

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

CITY OF MCALLEN, TEXAS

By:  _____
Javier Villalobos, Mayor

ATTEST:

By:  _____
Perla Lara, CITY Secretary

APPROVED TO FORM:

CITY Attorney

 _____
Isaac Tawil, CITY Attorney

Approved by McAllen CITY Council

On: _____

HIDALGO COUNTY

By: _____
Richard Cortez, COUNTY Judge

ATTEST:

By: _____
Arturo Guajardo, Jr., COUNTY Clerk

APPROVED AS TO FORM:

Hidalgo COUNTY Criminal District Attorney's Office
Toribio "Terry" Palacios

By: _____
Assistant District Attorney

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APPROVAL OF INTER-LOCAL 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 desires COUNTY to engage in a project for the road improvements of Shary Road from SH 107 to Mile 9 Road, a section which is within the McAllen CITY Extra Territorial Jurisdiction (ETJ) and in part within Hidalgo COUNTY, Texas; through the Inter-local Cooperation Agreement to be entered into with the CITY of McAllen, Texas, and Hidalgo COUNTY.

By vote on _____ 2023, the Hidalgo COUNTY Commissioners Court has approved the Project identified above.

Richard Cortez, COUNTY Judge

ATTEST:

Arturo Guajardo, Jr., COUNTY Clerk

APPROVED AS TO FORM:

Hidalgo COUNTY District Attorney's Office
Toribio "Terry" Palacios

By: _____
Assistant District Attorney