

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE COUNTY OF HIDALGO AND
THE CITY OF PEÑITAS, TEXAS**

THIS Agreement is made on this the 12th day of February, 2013, by and between the **CITY OF PEÑITAS, TEXAS**, hereinafter referred to as "City of Peñitas" and the **COUNTY OF HIDALGO, TEXAS**, hereinafter referred to as "County", pursuant to the provisions of the Texas Interlocal Cooperation Act, as follows:

WITNESSETH:

WHEREAS, City of Peñitas is a home rule municipality located in Hidalgo County, Texas; and

WHEREAS, County is a county in the State of Texas;

WHEREAS, City of Peñitas desires to give permission to County to install culverts for various lots within the Upper Valley Estates Subdivision (the "Subdivision") located with City of Peñitas limits and County agrees it is in its best interest of the County to install the culverts for the lots in order to prevent flooding within the County;

WHEREAS, the developers of the Subdivision or owners of lots within the Subdivision had prior to date of this Agreement deposited funds into the County's escrow account to pay for the cost of material, labor and equipment to install the culverts (the "Escrow Account");

WHEREAS, the County agrees to use the funds remaining within the Escrow Account and to pay for all the material and labor costs for installing culverts within certain lots of the Subdivision until such remaining funds are exhausted;

WHEREAS, City of Peñitas 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 local governments to contract with each other to perform governmental functions and services under the terms of the Act.

WHEREAS, City of Peñitas will benefit from the installation of the culverts by the County; and

WHEREAS, Hidalgo County has determined it would be in the best interest of Hidalgo County for Hidalgo County to install the culverts within the Subdivision for drainage improvements for the residents of City of Peñitas and those of the County.

NOW, THEREFORE, City of Peñitas and County, in consideration of the mutual covenants expressed herein, agree as follows:

1. County agrees to install culverts in the Subdivision which is located wholly within the City of Peñitas city limits and to provide the material, labor and equipment necessary for the culvert installation.
2. City of Peñitas grants permission to the County to enter the Subdivision and install the necessary culverts.
3. The parties agree that the cost of materials, labor, and equipment for the culvert installation will not exceed Eleven Thousand Seven Hundred Twenty One dollars and 60 cents (\$11,721.60) which is the total amount remaining in the Escrow Account for which County is responsible.
4. County shall review all specifications and plans for the culvert installation and shall not provide labor or equipment until such plans are approved by the County Planning Department.
5. City of Peñitas and County shall coordinate work schedules in order to provide for minimal disruption to the Subdivision and will use their best efforts to complete the project within one hundred and eighty days (180) days of the date of this Agreement.
6. Following completion of the work described herein, the parties agree City of Peñitas shall be responsible for the maintenance of the culverts in the Subdivision as long as the Subdivision remains within the city limits.
7. Following completion of the work described herein, the parties agree that County will be released of any and all duties imposed by this Agreement.
8. 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.
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 any conflict between and 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 provision of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the times such conflict exists.

10. **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.
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 County and City of Peñitas, 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. **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: City of Peñitas, Texas
 Attention: Mayor Marcos Ochoa
 P.O. Box 204
 Peñitas, Texas 78576

If to County: Hidalgo County, Texas
 Attention: Ramon Garcia, County Judge
 P.O. Box 758
 Edinburg, Texas 78540-0758

With copy to: Joe Flores, Commissioner, Precinct No. 3
 P.O. Box 607
 Mission, Texas 78573

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.

14. **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.
15. **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.
16. **Assignment.** This Agreement shall not be assignable.
17. **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 or paragraph hereof.
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 this Agreement by the City of Peñitas and County have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of City of Peñitas 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 to the paying party as herein provided.
21. **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 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. Govt. Code Ann. §271.903.

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

CITY OF PEÑITAS

Marcos Ochoa
Marcos Ochoa, Mayor

ATTEST:

Ana Cantu
Ana Cantu, City Secretary

HIDALGO COUNTY

Ramon Garcia
Ramon Garcia, Hidalgo County Judge

Approved by Commissioners' Court
on 2/12/13 *rw*

ATTEST:

Arturo Guajardo
Arturo Guajardo, County Clerk

APPROVED AS TO FORM:

ATLAS, HALL & RODRIGUEZ, LLP

BY: Stephen L. Crain
Stephen L. Crain