

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF MISSION,
TEXAS AND AGUA SPECIAL UTILITY DISTRICT**

This Agreement is made by and between the **CITY OF MISSION, TEXAS**, hereinafter referred to as **City**, and **AGUA SPECIAL UTILITY DISTRICT**, hereinafter referred to as **Agua**, pursuant to the provisions of the Texas Interlocal Cooperation Act.

WITNESSETH:

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

WHEREAS, Agua is an irrigation Agua located in Hidalgo County, Texas; and

WHEREAS, Agua has advised City that it is preparing to do some much-needed maintenance to its reservoir and has requested that City assist it in this endeavor by lending it its Long Reach Excavator Cat 324E 60' Boom for a period of approximately two weeks; and

WHEREAS, in the spirit of cooperation and because of the proximity of Agua and its reservoir to City, City has determined that it is in the public interest of the residents of City to assist Agua in said endeavor.

NOW, THEREFORE, City and Agua, in consideration of the following mutual covenants, agree as follows.

1. City agrees to use its Long Reach Excavator Cat 324E 60' Boom for the sole purpose of assisting Agua in conducting maintenance of its reservoir located at the (**INSERT LOCATION**). Agua shall ensure the return of the equipment to City within three (3) days of completion of the terms of this agreement in the same condition the equipment was in at the time it was delivered by City.

2. Each party (each, the "Indemnifying Party") agrees to indemnify, defend, and hold the other party (each, the "Indemnified Party"), along with the Indemnified Party's affiliates, officers, directors, employees, subsidiaries, parent, agents, and permitted assigns, harmless from and against any and all third-party claims, losses, liabilities, damages, expenses, and costs, including reasonable outside attorneys' fees and court costs, to the extent arising out of the Indemnifying Party's: (1) negligence or willful misconduct; or (2) material breach of any of the terms of this Agreement. The Indemnified Party shall provide the Indemnifying Party with prompt written notice of any claim and give complete control of the defense and settlement to the Indemnifying Party, and shall reasonably cooperate with the Indemnifying Party, its insurance company, and its legal counsel in its defense of such claim(s), at the Indemnifying Party's expense. This indemnity shall not cover any claims in which there is a failure to give the Indemnifying Party prompts notice; to the extent such lack of notice prejudices the defense of the claim. The Indemnifying Party may not settle any potential suit hereunder without the Indemnified Party's prior written approval, not to be unreasonably withheld, conditioned or delayed.

3. The excavator is to be operated by a designated City of Mission employee. Total cost of the rental of the excavator and use of City of Mission employee is \$10,000.00.
4. Either party may terminate this Agreement, with or without cause, by giving three (3) days written notice to the other party.
5. Neither party may assign or delegate any right or duty under this Agreement without prior written approval of the other party.
6. Agua will comply with all laws, federal, state and local, in connection with the operation of the equipment, and shall obey any other regulations of any municipal, county, state or federal authority in regard thereto.
7. This Agreement shall be construed without regard to the identity of the person or persons who drafted the provisions contained herein. Moreover, each and every provision of this Agreement shall be construed as if each party hereto participated equally in the drafting hereof as a result of the foregoing, any rule of construction that the document is to be construed against the drafting parties shall not be applicable to this Agreement.
8. Each party hereto is independent of the other and shall retain control over its employees and agents. Nothing in this agreement shall be deemed to create a partnership, agency, joint venture, employment, or landlord-tenant relationship.
9. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the parties hereto shall be construed and enforced in accordance therewith. The Parties hereto acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed on such a manner that it will, to the maximum extent practicable, be deemed to be validated and enforceable.
10. Agreement inures to the benefit of and obligations only the parties executing it. No term or provision of this Agreement shall benefit or obligate any person or entity not a party to it. The parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release or other consideration under this Agreement.
11. Any alterations, additions, or deletions to the terms of this Agreement will be by amendment hereto in writing and executed by both Parties to this Agreement.
12. The PARTIES agree that no waiver by any party of any breach of any provision herein shall be construed to be a waiver of any succeeding breach of the same provision or the nonperformance of any other obligation contained herein.
13. 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 three (3) 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.

14. This Agreement supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement, and contains all of the covenants and agreements between the parties with respect to such subject matter. Each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not set forth in this Agreement, and that no agreement, statement, or promise not contained in this Agreement shall be valid or binding.

15. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Executed by each party on the day and year shown below.

CITY OF MISSION

Norie Gonzalez Garza, Mayor

Date

ATTEST:

Anna Carrillo, City Secretary

AGUA SPECIAL UTILITY DISTRICT

Jose Luis Ochoa, Jr.
President of the Board

Date

ATTEST:

Gerardo Perez, Secretary