

**GRID MAIN EXTENSION CONSTRUCTION  
AND REIMBURSEMENT AGREEMENT**

THE STATE OF TEXAS   §  
                                      §  
COUNTY OF NUECES   §

This Grid Main Extension Construction and Reimbursement Agreement ("Agreement") is entered into between the City of Corpus Christi ("City"), a Texas home-rule municipality, P.O. Box 9277, Corpus Christi, Texas, 78469-9277, and Commercial Metals Company, 6565 N. MacArthur Blvd., Irving Texas, 75039 ("Developer").

**WHEREAS**, Developer in compliance with the City's Unified Development Code, hereinafter called UDC, has filed a plat, approved by the Planning Commission on December 7, 2011, to develop a tract of land of approximately 35.11 acres called CMC Subdivision Lot 4A located on Bronco Road, East of Clarkwood Road and North of State Highway 44 (Agnes Street), as shown in **Exhibit 1**, attached;

**WHEREAS**, under the UDC, the Developer is responsible for construction of Grid Main Extension (as defined below);

**WHEREAS**, under the UDC, the Developer is eligible for reimbursement of Developer's costs for the construction of Grid Main Extension;

**WHEREAS**, it is to the best interest of the City that Grid Main Extension, be constructed to its ultimate capacity under the Master Plan;

**WHEREAS**, Resolution No. 026869 authorized the acceptance of applications to be eligible for reimbursement in the future when funds are fully available in, and are appropriated by the City Council, from the Grid and Arterial Transmission Mains Funds as per the UDC, Section 8.5.1.C; and

**WHEREAS**, Developer has submitted an application for reimbursement of the costs of installing the Grid Main Extension, see **Exhibit 2**, attached;

**NOW, THEREFORE**, for and in consideration of the mutual covenants in this Agreement, the parties do covenant and agree as follows:

1. **REQUIRED CONSTRUCTION.** The Developer shall construct, or cause to be constructed, the Grid Main Extension, in compliance with the City's UDC and under the plans and specifications approved by the Development Services Engineer pursuant to Section 2 below.

2. **PLANS AND SPECIFICATIONS.**

a. The Developer shall contract with a professional engineer, acceptable to the City's Development Services Engineer, to prepare plans and specifications for the Grid Main Extension, as shown in **Exhibit 3**, with the following basic design:

1. Install 1 (one) 8" x 8" tapping sleeve and valve.
2. Install 3,600 linear feet of 8" C-900.
3. Install 1 (one) bore under railroad spur.
4. Install 7,300 linear feet of 12" C-900.
5. Install 6 (six) fire hydrant assemblies.
6. Install 1 (one) connection to existing 12" line.
7. Bore under oil lines in 2 (two) locations.

b. The Grid Main Extension must begin at an existing dead-end water line along Manning Road then go east through private property via new dedicated public utility easement to Bronco Road right-of-way. Then turn north along Bronco Road and connect to an existing 12 inch dead-end line along Sedwick and Rhew Road.

c. The plans and specifications must comply with City Water Detail Sheets and Standard Specifications.

d. Before the Developer starts construction the plans and specification must be approved by the City's Development Services Engineer, which approval may not be unreasonably conditioned, delayed or withheld.

3. SITE IMPROVEMENTS. Prior to the start of construction of the Grid Main Extension, Developer shall acquire and dedicate to the City the required additional utility easements ("Easements"), if necessary for the completion of the Grid Main Extension. If any of the property needed for the Easement is owned by a third party and Developer is unable to acquire the Easement through reasonable efforts, then the City will use its powers of eminent domain to acquire the Easement.

4. PLATTING FEES. Developer shall pay the City the required acreage fees and pro-rata fees as required by the UDC for the area of the Grid Main Extension.

5. DEVELOPER AWARD CONTRACT FOR IMPROVMENTS. Developer shall use commercially reasonable efforts to award a contract and complete the Grid Main Extension, under the approved plans and specifications, by November 30, 2013.

6. TIME IS OF THE ESSENCE. Time is of the essence in the performance of this contract.

7. PROMPT AND GOOD FAITH ACTIONS. The parties shall act promptly and in good faith in performing their duties or obligations under this Agreement. If this Agreement calls for review or inspections by the City, then the City's reviews or inspections must be

completed thoroughly and promptly within 10 business days after the City receives written notice that a review or inspection is required.

8. DEFAULT. The following events shall constitute default:

- a. Developer fails to engage a professional engineer for the preparation of plans and **specifications by the 10<sup>th</sup> calendar day after the date of approval by City Council.**
- b. ~~Developer's professional engineer fails to submit the plans and specifications to the City's Director of Engineering Services by the 60<sup>th</sup> calendar day after the date of approval by City Council.~~
- c. Developer fails to award a contract for the construction of the project, according to the approved plans and specifications, by the 90<sup>th</sup> calendar day after the date of approval by City Council.
- d. Developer's contractor does not reasonably pursue construction of the project under the approved plans and specifications.
- e. Developer's contractor fails to complete construction of the project, under the approved plans and specifications, on or before November 30, 2013.
- f. Either the City or Developer otherwise fails to comply with its duties and obligations under this Agreement.

9. NOTICE AND CURE.

- a. In the event of a default by either party under this Agreement, the non-defaulting party shall deliver notice of the default, in writing, to the defaulting party stating, in detail the nature of the default and the requirements to cure such default.
- b. After delivery of the default notice, the defaulting party has 15 business days from the delivery of the default notice ("Cure Period") to cure the default.
- c. In the event the default is not cured by the defaulting party within the Cure Period, then the non-defaulting party may pursue its remedies in this section.
- d. Should Developer fail to perform any obligation or duty of this agreement, the City shall give written notice to Developer, at the address stated above, of the need to perform the obligation or duty, and should Developer fail to perform the obligation or duty within 15 days of receipt of the notice, the City may (after providing written notice to Developer of City's election to perform such obligation or duty) perform the obligation or duty, charging the cost of such performance to Developer by reducing the reimbursement amount due to Developer.

e. In the event of an uncured default by the Developer, after the appropriate notice and cure period, the City has all its common law remedies and the City may:

1. Terminate this Agreement after the required notice and opportunity to cure the default.
2. Refuse to record a related plat or issue any certificate of occupancy for any structure to be served by the project.
3. Perform any obligation or duty of the Developer under this Agreement and charge the cost of such performance to Developer. Developer shall pay to the City the reasonable and necessary cost of the performance within 30 days from the date Developer receives notice of the cost of performance. In the event that Developer pays the City under the preceding sentence, and it is not otherwise in default under this Agreement, then the Agreement shall be considered in effect and no longer in default, until such time as the Grid Main Extension has been completed or the requirements of the UDC have otherwise been satisfied.

f. In the event of an uncured default by the City after the appropriate notice and cure period, the Developer has all its remedies at law or equity for such default.

#### 10. FORCE MAJEURE.

a. The term "force majeure" as employed in this Agreement means and refers to acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies; insurrections; riots; epidemic; landslides; lighting; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; arrests; civil disturbances; explosions; or other causes not reasonably within the control of the party claiming the inability.

b. If, by reason of force majeure, either party is rendered wholly or partially unable to carry out its obligations under this Agreement, then the party shall give written notice of the full particulars of the force majeure to the other party within twenty (20) business days after the occurrence or waive the rights to claim it as a justifiable reason for delay. The obligations of the party giving the required notice, to the extent effected by the force majeure, are suspended during the continuance of the inability claimed, but for no longer period and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.

#### 11. NOTICES.

a. Any notice or other communication required or permitted to be given under this Agreement must be given to the other Party in writing at the following address:

1. If to the Developer:

Commercial Metals Company  
Attn: Paul Kirkpatrick  
6565 N. MacArthur Blvd.  
Irving, Texas 75039

2. If to the City:

City of Corpus Christi  
Attn: Assistant City Manager, Development Services  
1201 Leopard Street (78401)  
P.O. Box 9277  
Corpus Christi, Texas 78469

- b. Notice required by this paragraph may be by United States Postal Service, First Class Mail, Certified, Return Receipt Requested, postage prepaid; by a commercial delivery service that provides proof of delivery, delivery prepaid; or by personal delivery.
- c. Either party may change of address for notices by giving notice of the change under the provisions of this section.

12. THIRD-PARTY BENEFICIARY. Developer's contracts with the professional engineer for the preparation of the plans and specifications for the construction of the project, contracts for testing services, and with the contractor for the construction of the project must provide that the City is a third party beneficiary of each contract.

13. PERFORMANCE AND PAYMENT BONDS. Developer shall require its contractor for the contractor for the construction of the project, before beginning the work, to execute with Developer and the City a performance bond if the contract is in excess of \$100,000 and a payment if the contract is in excess of \$25,000. The performance and payment bond must comply with Texas Government Code, Chapter 2253.

14. WARRANTY. Developer shall fully warranty the workmanship of and function of the Grid Main Extension and the construction of the Grid Main Extension for a period of one year from and after the date of acceptance of the facilities by the City Engineer.

15. REIMBURSEMENT.

a. Subject to the internal appropriation of funds, the City will reimburse the Developer 100% of the reasonable cost of the Grid Main Extension, not to exceed \$415,070.00 See attached cost estimate (**Exhibit 4**).

b. The City agrees to reimburse the Developer on a monthly basis upon invoicing for work performed. The reimbursement will be made no later than 30 days from the date of

the invoice. Developer shall submit all required performance bonds and proof of required insurance under the provisions of this Agreement.

c. To be eligible for reimbursement, the work must be completed in a good and workmanlike manner, and must have been inspected and accepted by the City, which inspection and acceptance shall not be unreasonably conditioned, delayed or held. The City agrees to conduct periodic inspections and approve the progress of the work at key points during construction.

d. In the event that this Agreement is terminated by the City at a time when there has been a partial completion and partial payment for the improvements, then the City shall only reimburse Developer for its costs that were legitimately incurred towards the completion of the improvements that have been inspected and accepted by the City up to the time that there is an uncured default by Developer.

#### **16. INDEMNIFICATION.**

**DEVELOPER, ITS OFFICERS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, AND LICENSEES (HEREINAFTER CALLED "DEVELOPER") SHALL FULLY INDEMNIFY, SAVE AND HOLD HARMLESS THE CITY OF CORPUS CHRISTI, ITS OFFICERS, EMPLOYEES, AGENTS, LICENSEES, AND INVITEES ("INDEMNITEES") AGAINST ANY AND ALL LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS AND ACTIONS OF ANY NATURE WHATSOEVER ON ACCOUNT OF PERSONAL INJURIES (INCLUDING, WITHOUT LIMITATION ON THE FOREGOING WORKERS' COMPENSATION AND DEATH CLAIMS), OR PROPERTY LOSS OR DAMAGE OF ANY KIND WHATSOEVER, TO THE EXTENT CAUSED BY DEVELOPER OR WHICH ARE ALLEGED TO HAVE ARISEN OUT OF DEVELOPER'S NEGLIGENT PERFORMANCE UNDER THIS AGREEMENT. DEVELOPER SHALL, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS ALLEGED TO ARISE IN CONNECTION TO THIS AGREEMENT, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION WITH COUNSEL SATISFACTORY.**

**THIS INDEMNITY SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THE AGREEMENT.**

**17. COVENANT RUNNING WITH THE LAND.** This Agreement is a covenant running with the land, CMC Subdivision Lot 4A, a subdivision in Nueces County, Texas, and must be recorded in the Official Public Records of Nueces County, Texas. The duties, rights, and obligations of the Agreement are binding on and inure to the benefit of the Developer's successors or assigns. After completion of the Grid Main Extension pursuant to the terms of this Agreement, Developer will provide an original recordable release of this Agreement to the City. The City shall execute the release and return it to

Developer after the City has reviewed the release and made changes, if any changes are necessary.

18. ASSIGNMENT OF AGREEMENT. This Agreement or any rights under this Agreement may not be assigned by Developer to another without the written approval and consent of the City's City Manager, which consent shall not be unreasonably withheld, conditioned or delayed.

19. DISCLOSURE OF OWNERSHIP INTERESTS. Developer further agrees, in compliance with the City Ordinance No. 17110 to complete, as part of this Agreement, the Disclosure of Ownership interest form attached hereto as **Exhibit 5**.

20. EFFECTIVE DATE. This Agreement becomes effective and is binding upon and inures to the benefit of the City and Developer, and their respective heirs, successors, and assigns from and after the date of execution by all parties.

21. AUTHORITY. Each party hereto represents and warrants to the other that its signatory has the authority to act on behalf of the party and make this Agreement binding and enforceable by their signature.

This AGREEMENT shall be executed in triplicate, all original copies of which shall be considered one instrument. This\* AGREEMENT becomes effective and is binding upon, and inures to the benefit of the CITY and PERMITEE, and their respective heirs, successors and assigns, from and after the date that all original copies have been executed by all signatories.

In witness whereof, this license agreement has been duly authorized, executed, and delivered by the parties as of the respective dates appearing below.

**EXECUTED IN Triplicate originals this\* \_\_\_\_\_ day of \_\_\_\_\_, 2012.**

**Signatures on pages 8 and 9.**

**Acceptance**

The above Agreement is hereby accepted and its terms and conditions agreed this the \_\_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, on behalf of Commercial Metals Company. Commercial Metals Company agrees to keep and perform the conditions proposed by said Agreement and to be bound by all of the terms of same.

By: \_\_\_\_\_

**DEVELOPER:**

**Commercial Metals Company**  
6565 MacArthur Blvd., Suite 800  
Irving, Texas 75039

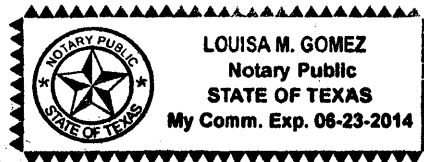
By: Donald P. Schwab

Name: Don Schwab  
Project Manager

THE STATE OF TEXAS   §  
                                     §  
COUNTY OF NUECES   §

This instrument was acknowledged before me on April 9, 2012, by Donald P Schwab, on behalf of Commercial Metals Company.

Louisa Gomez  
Notary Public, State of Texas





**CITY**  
**CITY OF CORPUS CHRISTI**  
1201 Leopard Street  
P.O. Box 9277  
Corpus Christi, Texas 78469  
Telephone: (361) 826-3222

ATTEST:

By: \_\_\_\_\_  
Armando Chapa  
City Secretary

By: \_\_\_\_\_  
Ronald L. Olson  
City Manager

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF NUECES     §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, by  
Armando Chapa, City Secretary, for the City of Corpus Christi, a Texas Municipal Corporation,  
on behalf of the Corporation.

\_\_\_\_\_  
Notary Public, State of Texas

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF NUECES     §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, by  
Ronald L. Olson, City Manager, for the City of Corpus Christi, a Texas Municipal Corporation,  
on behalf of the Corporation.

\_\_\_\_\_  
Notary Public, State of Texas

APPROVED AS TO FORM: This \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Carlos Valdez, City Attorney

By: \_\_\_\_\_  
Lilia K. Castro  
Assistant City Attorney