

**DISTRIBUTION MAIN EXTENSION CONSTRUCTION
AND REIMBURSEMENT AGREEMENT**

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This Water Distribution Main Extension Construction and Reimbursement Agreement (“Agreement”) is entered into between the City of Corpus Christi (“City”), a Texas home-rule municipality, and I5T Investments, LLC (“Developer/Owner”), a Texas limited liability company.

WHEREAS, the Developer/Owner, in compliance with the City’s Unified Development Code (“UDC”), has a plat, approved by the Planning Commission on July 18, 2012, to develop a tract of land, to wit: approximately 8.354 acres known as Lot 2, Block 13, Airport Industrial Subdivision, located on the south side of State Highway 44, east of Heinsohn Road, and west of North Padre Island Drive, as shown in the attached **Exhibit 1**, the content of such exhibit being incorporated by reference into this Agreement;

WHEREAS, under the UDC, the Developer/Owner is responsible for construction of the distribution main extension (“Distribution Main Extension”);

WHEREAS, under the UDC, the Developer/Owner is eligible for reimbursement of the Developer/Owner's costs for the construction of the Distribution Main Extension;

WHEREAS, it is to the best interest of the City that the Distribution Main Extension be constructed to its ultimate capacity under the City’s applicable Master Plan;

WHEREAS, Section 8.5.1.C.2. of the UDC authorizes the acceptance of applications to be eligible for reimbursement in the future when funds become fully available in the Distributions Main Trust Fund and are appropriated by the City Council; and

WHEREAS, the Developer/Owner has submitted an application for reimbursement of the costs from the Distribution Main Trust Fund for installing the Distribution Main Extension, as shown in **Exhibit 2**, the content of such exhibit being incorporated by reference into this Agreement.

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

1. REQUIRED CONSTRUCTION. Developer/Owner shall construct the Distribution Main Extension in compliance with the City’s UDC and under the plans and specifications approved by the City’s Development Services Engineer.
2. PLANS AND SPECIFICATIONS.
 - a. Developer/Owner shall contract with a professional engineer, acceptable to the City's Development Services Engineer, to prepare plans and specifications for the Distribution Main Extension, as shown in the attached **Exhibit 3**, the content of such exhibit being incorporated by reference into this Agreement, with the following basic design:

1. Install one (1) 8-inch D.I. Tee;
2. Install 1,481 linear feet of 8-inch PVC water distribution main line;
3. Install ten (10) 8-inch EL, DI bends any angle;
4. Install three (3) 8-inch gate valves with box;
5. Install one (1) 8-inch tapping saddle with an 8-inch tapping gate valve and box;
6. Install one (1) pavement patching; and
7. Install thirty-six (36) 12-inch PVC pipe casings.

b. The Distribution Main Extension must begin at the northwest corner of Russell Farm Block 6 and extend east along the south side of State Highway 44 approximately 1,765 feet to the existing 8-inch waterline at the northwest corner of Gibson Lane and North Padre Island Drive (SH 358).

c. The plans and specifications must comply with the City's Water Distribution Standards Detail Sheets and Standard Specifications.

d. Before the Developer/Owner starts construction, the plans and specifications must be approved by the City's Development Services Engineer.

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

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

5. DEVELOPER/OWNER TO AWARD CONTRACT FOR IMPROVEMENTS. Developer/Owner shall award a contract and complete the Distribution Main Extension, under the approved plans and specifications, by **February 28, 2014**.

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 and 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.

8. DEFAULT. The following events shall constitute default:

- a. Developer/Owner fails to engage a professional engineer for the preparation of plans and specifications by the 10th calendar day after the date of approval of this Agreement by the City Council.
- b. Developer/Owner's professional engineer fails to submit the plans and specifications to the City's Director of Engineering Services and to the Development Services Engineer by the 60th calendar day after the date of approval of this Agreement by the City Council.
- c. Developer/Owner fails to award a contract for the construction of the Distribution Main Extension, according to the approved plans and specifications, by the 90th calendar day after the date of approval of this Agreement by the City Council.
- d. Developer/Owner's contractor does not reasonably pursue construction of the Distribution Main Extension under the approved plans and specifications.
- e. Developer/Owner's contractor fails to complete construction of the Distribution Main Extension, under the approved plans and specifications, on or before February 28, 2014.
- f. Either the City or the Developer/Owner otherwise fails to comply with its duties or 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 sufficient 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 the Developer/Owner fail to perform any obligation or duty of this Agreement, the City shall give notice to the Developer/Owner, at the address stated in section 11, of the need to perform the obligation or duty and, should the Developer/Owner fail to perform the required obligation or duty within 15 days of receipt of the notice, the City may perform the obligation or duty, charging the cost of such performance to the Developer/Owner by reducing the reimbursement amount due to the Developer/Owner.
- e. In the event of an uncured default by the Developer/Owner, 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; and/or

3. Perform any obligation or duty of the Developer/Owner under this Agreement and charge the cost of such performance to the Developer/Owner. The Developer/Owner shall pay to the City the reasonable and necessary cost of the performance within 30 days from the date the Developer/Owner receives notice of the cost of performance. In the event the Developer/Owner pays the City under the preceding sentence and is not otherwise in default under this Agreement, then the Agreement shall be considered in effect and no longer in default.

f. In the event of an uncured default by the City after the appropriate notice and Cure Period, the Developer/Owner has all its remedies at law or in 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; epidemics; landslides; lightning; 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 claiming force majeure shall give written notice of the full particulars of the force majeure to the other party within ten (10) business days after the occurrence or waive the right to claim it as a justifiable reason for delay. The obligations of the party giving the required notice, to the extent affected 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/Owner:

I5T Investments, LLC
Attn: Steven W. Tipps
13513 Camino De Plata Ct. 78418
P. O. Box 261037
Corpus Christi, Texas 78406

2. If to the City:

City of Corpus Christi
Attn: Director, Development Services Department
2406 Leopard Street 78401
P. O. Box 9277
Corpus Christi, Texas 78469-9277

with a copy to:

City of Corpus Christi
Attn: Assistant City Manager, Business Support Services
1201 Leopard Street 78401
P. O. Box 9277
Corpus Christi, Texas 78469-9277

b. Notice must be made 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 the address for notices by giving notice of the change under the provisions of this section.

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

13. PERFORMANCE AND PAYMENT BONDS. Developer/Owner shall, before beginning the work that is the subject of this Agreement, execute a performance bond if the contract is in excess of \$100,000 and a payment bond if the contract is in excess of \$25,000. The performance and payment bonds must comply with Texas Government Code, Chapter 2253.

14. WARRANTY. Developer/Owner shall fully warranty the workmanship of and function of the Distribution Main Extension and the construction of the Distribution Main Extension for a period of one year from and after the date of acceptance of the facilities by the City's Director of Engineering Services and Development Services Engineer.

15. REIMBURSEMENT.

a. Subject to the conditions for reimbursement from the Distribution Main Trust Fund and the appropriation of funds, the City will reimburse the Developer/Owner the reasonable actual cost of the Distribution Main Extension up to an amount not to exceed **\$26,290.60** as shown in the attached **Exhibit 4**, the contents of such exhibit being incorporated by reference into this Agreement.

b. The City agrees to reimburse the Developer/Owner 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/Owner 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. 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 as a result of an uncured default by the Developer/Owner and at a time when there has been a partial completion and/or partial payment for the improvements, then the City shall only reimburse the

Developer/Owner 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 the uncured default occurred.

16. **INDEMNIFICATION.** DEVELOPER/OWNER SHALL FULLY INDEMNIFY, SAVE, AND HOLD HARMLESS THE CITY OF CORPUS CHRISTI, ITS OFFICERS, OFFICIALS, EMPLOYEES, AND AGENTS ("INDEMNITEES") FROM AND AGAINST ALL SUITS, CLAIMS, DEMANDS, ACTIONS, LOSSES, COSTS, EXPENSES, LIABILITY, DAMAGES AND JUDGMENTS RECOVERED FROM OR ASSERTED AGAINST CITY FOR ANY AND ALL PROPERTY DAMAGE OR INJURIES SUSTAINED BY ANY PERSON, INCLUDING WITHOUT LIMITATION, WORKERS' COMPENSATION, PERSONAL INJURY OR DEATH, ARISING FROM OR INCIDENT TO, BE CAUSED BY, OR BE IN ANY WAY CONNECTED WITH, EITHER PROXIMATELY OR REMOTELY, WHOLLY OR IN PART, THE CONSTRUCTION OF THE DISTRIBUTION MAIN EXTENSION.

17. **COVENANT RUNNING WITH THE LAND.** This Agreement is a covenant running with the land, to wit: approximately 8.354 acres known as Lot 2, Block 13, Airport Industrial Subdivision, a subdivision in Corpus Christi, 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/Owner's successors or assigns.

18. **ASSIGNMENT OF AGREEMENT.** This Agreement or any rights under this Agreement may not be assigned by the Developer/Owner to another without the written approval and consent of the City's City Manager.

19. **DISCLOSURE OF INTEREST.** Developer/Owner agrees, in compliance with the City Ordinance No. 17110, to complete, as part of this Agreement, the Disclosure of Interest form attached to this Agreement as **Exhibit 5**.

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

21. **AUTHORITY.** The person signing this Agreement on behalf of each of the parties represents, warrants, and guarantees that they have authority to act on behalf of the party and make this Agreement binding and enforceable by their signature.

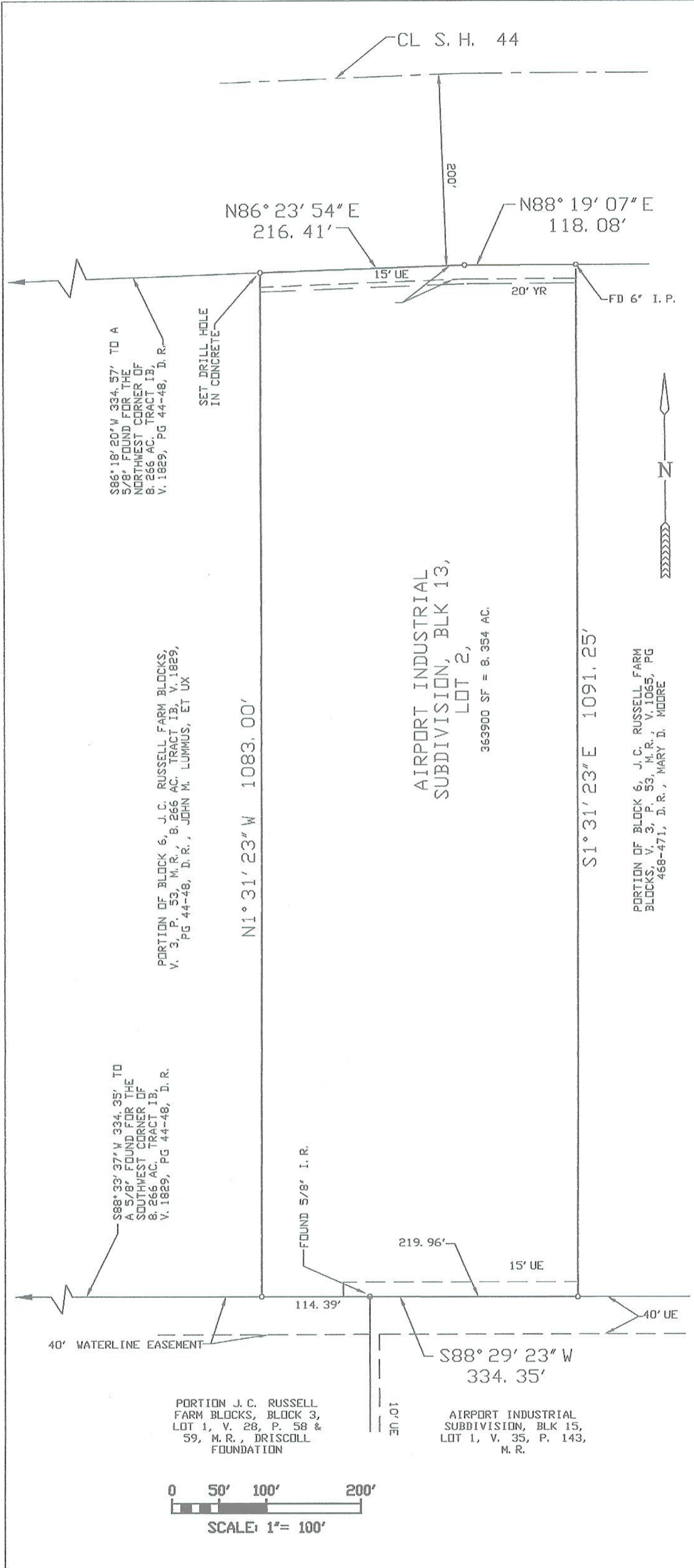
EXECUTED IN TRIPLICATE originals this _____ day of _____, 20____.

ATTEST:

CITY OF CORPUS CHRISTI

Armando Chapa
City Secretary

Wes Pierson
Assistant City Manager, designee
of the City Manager

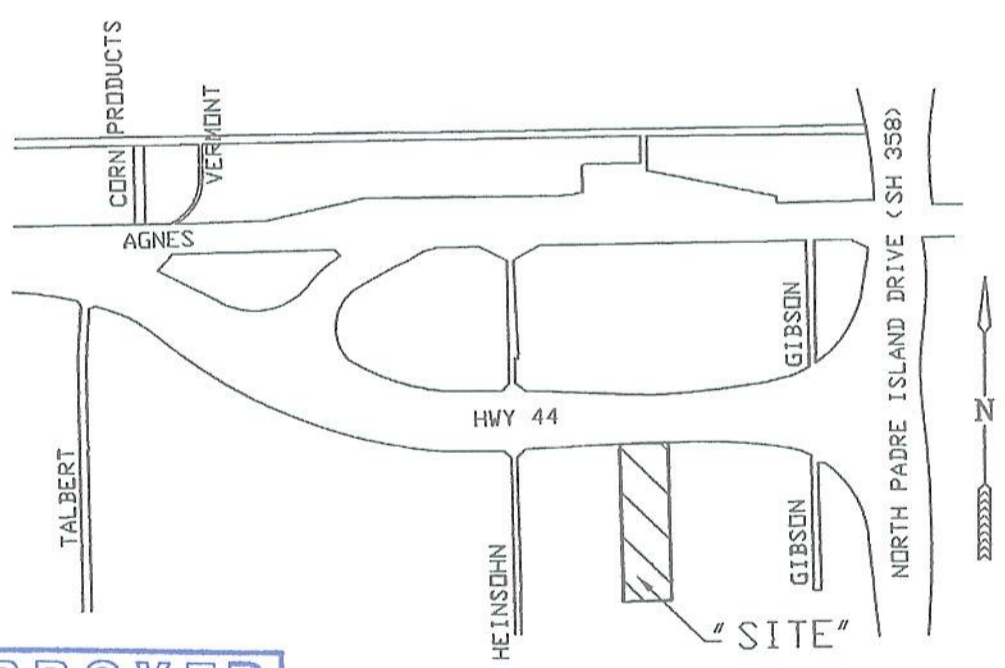


STATE OF TEXAS §
 COUNTY OF NUECES §
 WE, ENVIROTECH CARRIERS INC., LP. HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE LAND EMBRACED WITHIN THE BOUNDARIES OF THE FOREGOING PLAT, SUBJECT TO A LIEN IN FAVOR OF _____ THAT WE HAVE HAD SAID LAND SURVEYED AND SUBDIVIDED AS SHOWN, THAT STREETS AND EASEMENTS AS SHOWN HAVE BEEN HERETOFORE DEDICATED, OR IF NOT PREVIOUSLY DEDICATED, ARE HEREBY DEDICATED TO THE PUBLIC USE FOREVER, AND THAT THIS PLAT WAS MADE FOR THE PURPOSES OF DESCRIPTION AND DEDICATION.
 THIS THE _____ DAY OF _____, 20____.
 BY: _____
 TITLE: _____

STATE OF TEXAS §
 COUNTY OF NUECES §
 THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME _____
 THIS THE _____ DAY OF _____, 20____.

 NOTARY PUBLIC, IN AND FOR THE STATE OF TEXAS

- NOTES:
1. THE SUBJECT SITE IS IN ZONE "C", AREA OF MINIMAL FLOODING, ACCORDING TO FEMA MAP, COMMUNITY PANEL 485464 0165 C, REVISED JULY 18, 1985.
 2. THE RECEIVING WATER FOR THE STORM WATER RUNOFF FROM THIS PROPERTY IS THE OSO CREEK. THE TCEQ HAS NOT CLASSIFIED THE AQUATIC LIFE USE FOR THE OSO CREEK, BUT IT IS RECOGNIZED AS AN ENVIRONMENTALLY SENSITIVE AREA. THE OSO CREEK FLOWS DIRECTLY INTO THE OSO BAY. THE TCEQ HAS CLASSIFIED THE AQUATIC LIFE USE FOR THE OSO BAY AS "EXCEPTIONAL" AND "OYSTER WATERS" AND CATEGORIZED THE RECEIVING WATER AS "CONTACT RECREATION USE".
 3. THE BASIS OF BEARINGS IS THE EAST BOUNDARY LINE OF THE SUBJECT SITE, S1° 31' 23"E, AS SHOWN, FROM DOC# 2007011296, O.P.R.
 4. THE YARD REQUIREMENT, AS DEPICTED, IS A REQUIREMENT OF THE NEW (UDC) UNIFIED DEVELOPMENT CODE AND IS SUBJECT TO CHANGE AS THE ZONING MAY CHANGE.
 5. IF ANY LOT IS DEVELOPED WITH RESIDENTIAL USES, COMPLIANCE WITH THE PUBLIC OPEN SPACE REGULATIONS WILL BE REQUIRED DURING THE BUILDING PERMIT PHASE.
 6. SET 5/8" IRON RODS AT ALL CORNERS.
 7. ACCESS ONTO STATE HIGHWAY 44 MUST COMPLY WITH TXDOT'S TRAFFIC ACCESS MANAGEMENT PLAN REGULATIONS.
 8. MAINTENANCE OF THE PRIVATE DETENTION POND WILL BE THE RESPONSABILITY OF THE PROPERTY OWNER.



**PLAT OF
 AIRPORT INDUSTRIAL SUBDIVISION,
 BLOCK 13, LOT 2**
 AN 8.354 ACRE TRACT OF LAND, MORE OR LESS, BEING A PORTION OF THE WEST ONE-HALF OF BLOCK 6, J.C. RUSSELL FARM BLOCKS, A MAP OF WHICH IS RECORDED IN VOLUME 3, PAGES 53, MAP RECORDS, NUECES COUNTY, TEXAS
CORPUS CHRISTI, NUECES COUNTY, TEXAS

BASS & WELSH ENGINEERING
 FIRM NO. F-52, 3054 S. ALAMEDA ST.
 CORPUS CHRISTI, TEXAS 78404

DATE PLOTTED: 07/19/12
 COMP. NO.: PLAT.DWG
 JOB NO.: 12048
 SCALE: 1" = 100'
 PLOT SCALE: SAME
 SHEET 1 OF 1

STATE OF TEXAS §
 COUNTY OF NUECES §
 I, NIXON M. WELSH, REGISTERED PROFESSIONAL LAND SURVEYOR OF BASS & WELSH ENGINEERING, HEREBY CERTIFY THAT THE FOREGOING PLAT WAS PREPARED FROM A SURVEY MADE ON THE GROUND UNDER MY DIRECTION, IS TRUE AND CORRECT.
 THIS THE _____ DAY OF _____, 20____.

 NIXON M. WELSH
 REGISTERED PROFESSIONAL
 LAND SURVEYOR,
 TEXAS NUMBER 2211

STATE OF TEXAS §
 COUNTY OF NUECES §
 WE, _____ (NAME), HEREBY CERTIFY THAT WE ARE THE HOLDERS OF A LIEN ON THE LAND EMBRACED WITHIN THE BOUNDARIES OF THE FOREGOING MAP AND THAT WE APPROVE THE SUBDIVISION AND DEDICATION FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED.
 BY: _____
 TITLE: _____

STATE OF TEXAS §
 COUNTY OF NUECES §
 THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME _____
 THIS THE _____ DAY OF _____, 20____.

 NOTARY PUBLIC, IN AND FOR THE STATE OF TEXAS

STATE OF TEXAS §
 COUNTY OF NUECES §
 THE FINAL PLAT OF THE HEREIN DESCRIBED PROPERTY WAS APPROVED BY THE DEPARTMENT OF DEVELOPMENT SERVICES OF THE CITY OF CORPUS CHRISTI, TEXAS

 DEVELOPMENT SERVICES ENGINEER

 DATE

STATE OF TEXAS §
 COUNTY OF NUECES §
 THE FINAL PLAT OF THE HEREIN DESCRIBED PROPERTY WAS APPROVED ON BEHALF OF THE CITY OF CORPUS CHRISTI, TEXAS BY PLANNING COMMISSION.
 THIS THE _____ DAY OF _____, 20____.

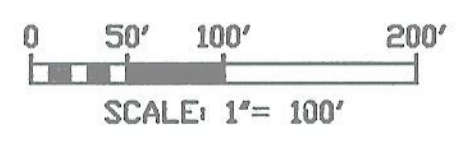
 CHAIRMAN
 RUDY GARZA

 SECRETARY
 MARK E. VAN VLECK, P.E.

STATE OF TEXAS §
 COUNTY OF NUECES §
 I, DIANA T. BARRERA, CLERK OF THE COUNTY COURT IN AND FOR SAID COUNTY, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT DATED THE _____ DAY OF _____, 20____ WITH ITS CERTIFICATE OF AUTHENTICATION, WAS FILED FOR RECORD IN MY OFFICE THE _____ DAY OF _____, 20____ AT _____ O'CLOCK _____ M., AND DULY RECORDED THE _____ DAY OF _____, 20____ AT _____ O'CLOCK _____ M. IN THE MAP RECORDS OF SAID COUNTY IN VOLUME _____, PAGE _____, INSTRUMENT NUMBER _____.

WITNESS MY HAND AND SEAL OF THE COUNTY COURT IN AND FOR SAID COUNTY AT OFFICE IN CORPUS CHRISTI, NUECES COUNTY, TEXAS, THE DAY AND YEAR LAST WRITTEN.
 BY: _____
 DEPUTY

 DIANA T. BARRERA, CLERK
 COUNTY COURT
 NUECES COUNTY, TEXAS



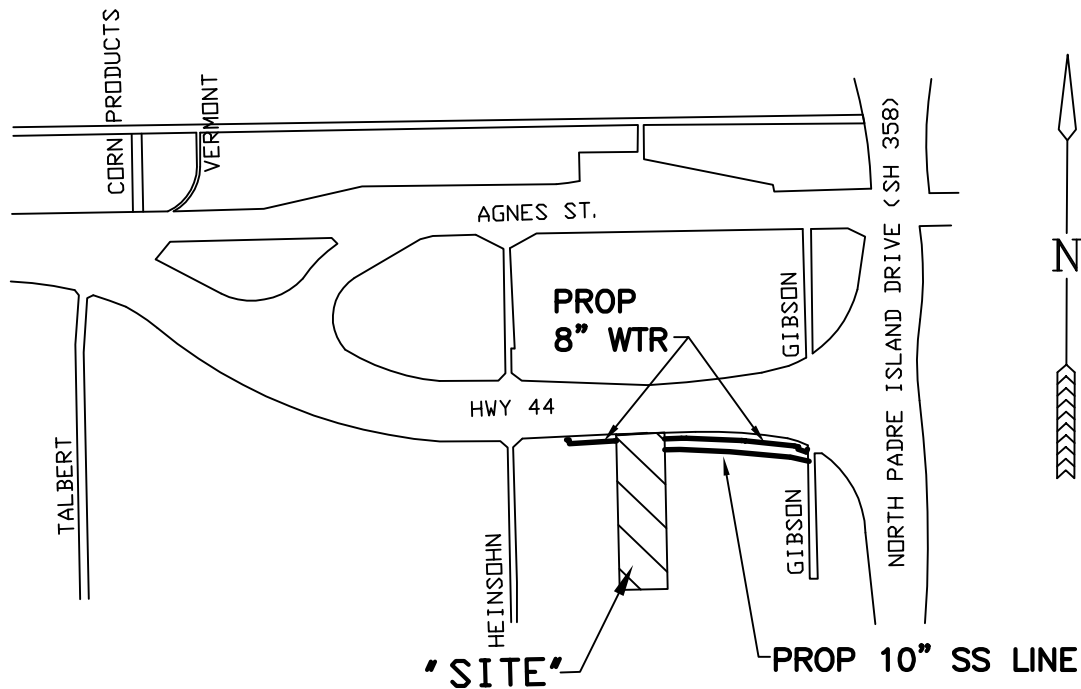


EXHIBIT SHOWING OFFSITE SANITARY SEWER
 AND WATER IMPROVEMENTS, AIRPORT
 INDUSTRIAL SUBDIVISION, BLK 13, LOT 2
 1" = 800'

BASS AND WELSH ENGINEERING
 CORPUS CHRISTI, TX
 SURVEY REG. NO. 100027-00,
 TX ENGINEERING REG. NO. F-52,
 FILE: EXB-1, JOB NO. 12048,
 SCALE: 1" = 60'
 PLOT SCALE: SAME, PLOT DATE:
 10/10/12, SHEET 1 OF 1

**AIRPORT INDUSTRIAL SUBDIVISION
BLOCK 13, LOT 2
OFFSITE WATER REIMBURSEMENT**

ITEM NO.	ITEM	QTY.	UNIT	UNIT PRICE	AMOUNT
1	8" TEE, DI	1	EA	\$500.00	\$500.00
2	8" PVC PIPE	1,481	LF	\$35.60	\$52,723.60
3	8" EL, DI ANY ANGLE	10	EA	\$465.00	\$4,650.00
4	8" GATE VALVE W/BOX	3	EA	\$1,100.00	\$3,300.00
5	8" TAPPING SADDLE W/8" TAPPING GATE VALVE & BOX	1	EA	\$2,150.00	\$2,150.00
6	PAVEMENT PATCHING	1	LS	\$3,500.00	\$3,500.00
7	12" PVC PIPE CASING	36	LF	\$45.00	\$1,620.00
SUBTOTAL					\$68,443.60
Engineering and Surveying 11%					\$7,528.80
SUBTOTAL					\$75,972.40
SINCE ACREAGE FEE IS LESS THAN 50% OF OFFSITE WATER COST, DEVELOPER MUST PAY 50% OF OFFSITE WATER COST = 50% X \$75,972.40					\$37,986.20
Less Acreage Fee					<u>-\$11,695.60</u>
Amount Reimbursable					\$26,290.60



**CITY OF CORPUS CHRISTI
DISCLOSURE OF INTERESTS**

City of Corpus Christi ordinance 17112, as amended, requires all persons or firms seeking to do business with the City to provide the following information. Every question must be answered. If the question is not applicable, answer with "NA".

FIRST NAME: I5T Investments, LLC

STREET: 5901 State Hwy 44 CITY: Corpus Christi ZIP: 78406

FIRM IS: 1. Corporation 2. Partnership 3. Sole Owner 4. Association 5. Other Limited Partnershi

DISCLOSURE QUESTIONS

If additional space is necessary, please use the reverse side of this page or attach separate sheet.

1. State the names of each "employee" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm".

Name	Job Title and City Department (if known)
<u>None</u>	<u>None</u>
_____	_____

2. State the names of each "official" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm".

Name	Title
<u>None</u>	<u>None</u>
_____	_____

3. State the names of each "board member" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm".

Name	Board, Commission, or Committee
<u>None</u>	<u>None</u>
_____	_____

4. State the names of each employee or officer of a "consultant" for the City of Corpus Christi who worked on any matter related to the subject of this contract and has an "ownership interest" constituting 35 or more of the ownership in the above named "firm".

Name	Consultant
<u>None</u>	<u>None</u>
_____	_____

CERTIFICATE

I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested; and that supplemental statements will be promptly submitted to the City of Corpus Christi, Texas as changes occur.

Certifying Person: Steven Tipps
(Type or Print)

Title: Member

Signature of Certifying Person: 

Date: 12/13/2012