# DISTRIBUTION MAIN EXTENSION CONSTRUCTION AND REIMBURSEMENT AGREEMENT

STATE OF TEXAS 8 COUNTY OF NUECES

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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 Coyote Real Estate Holdings, 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 September 25, 2013 to develop a tract of land, to wit: approximately 5 acres known as Lot 1 & 2, Block 1 Coyote Acres, located on the north side of State Highway 44, west of Clarkwood South Road (FM 2292), and west of North Padre Island Drive (SH 358), 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 546 linear feet of 8-inch PVC water distribution main line;
- 3. Install one (1) 8-inch gate valves with box;
- 4. Connect to existing waterline:
- 5. Install three (3) 8 1/8 inch bends;
- 6. Install one (1) 8 x 6 D.I. Reducer
- 7. Install one (1) 8 x 6 inch tapping sleeve and tapping gate valve with box;
- 6. Install forty-five (45) linear feet of 8-inch D.I.P and
- 7. Testing
- b. The offsite Distribution Main Extension must begin at the northwest comer of Coyote Acres Lot 1 and extend north 546 feet and connect to existing 6-inch water valve.
- 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. <u>SITE IMPROVEMENTS</u>. 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. <u>PLATTING FEES</u>. Developer/Owner shall pay to the City the required acreage fees and prorata fees as required by the UDC for the area of the Distribution Main Extension.
- 5. <u>DEVELOPER/OWNER TO AWARD CONTRACT FOR IMPROVEMENTS</u>. Developer/Owner shall award a contract and complete the Distribution Main Extension, under the approved plans and specifications, by **December 10, 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. <u>DEFAULT</u>. 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:

Coyote Real Estate Holdings, LLC Attn: Scott L. Wylie 702 E. 49<sup>th</sup> Street Lubbock, Texas 79404

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. <u>THIRD PARTY BENEFICIARY</u>. 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. <u>PERFORMANCE AND PAYMENT BONDS</u>. 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. <u>WARRANTY</u>. 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.

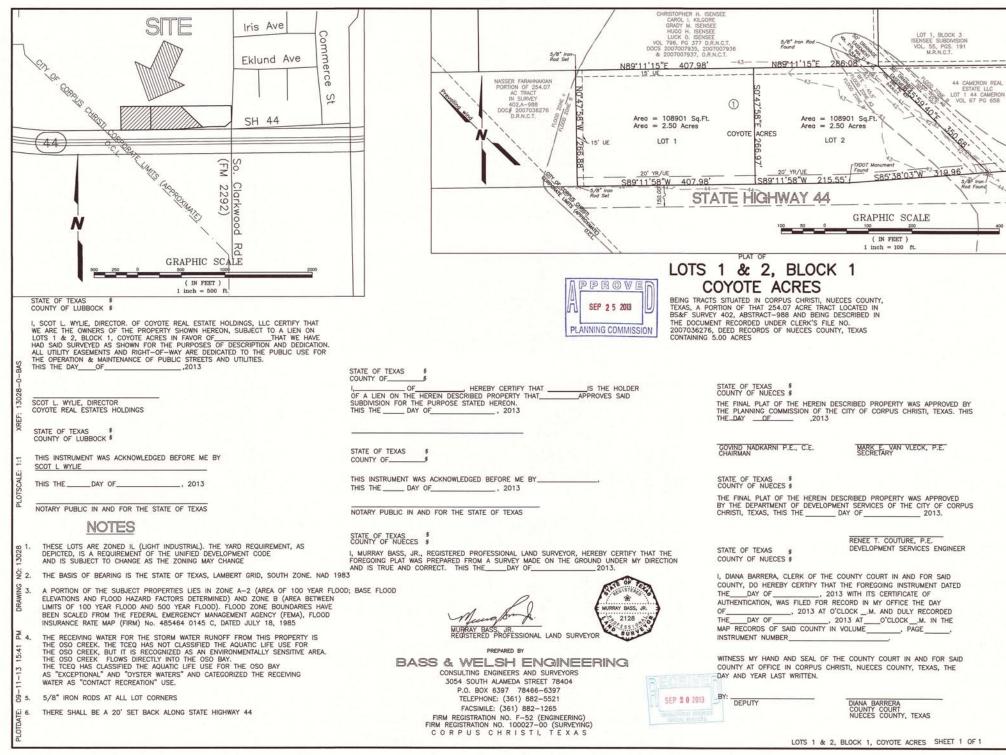
## 15. REIMBURSEMENT.

- 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 \$12,920.00 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. <u>COVENANT RUNNING WITH THE LAND</u>. This Agreement is a covenant running with the land, to wit: approximately 5 acres known as Lots 1 & 2, Block 1, Coyote Acres, 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. <u>ASSIGNMENT OF AGREEMENT</u>. 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. <u>DISCLOSURE OF INTEREST</u>. 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. <u>EFFECTIVE DATE</u>. 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. <u>AUTHORITY</u>. 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 ONE ORIGINAL this	_ day of, 20
ATTEST:	CITY OF CORPUS CHRISTI
Armando Chapa City Secretary	Wes Pierson Assistant City Manager, designee
	of the City Manager

APPROVED AS TO FORM: Other 3  Julian Grant Assistant City Attorney for the City Attorney	19th 2013
	By: Scott L. Wylie Manager
STATE OF TEXAS §  COUNTY OF Lubbock §	
This instrument was acknowledged before rescott L. Wylie, Manager, Coyote Real Estate Holding on behalf of said company.  JASON W. FISHER Notary Public, State of Texas My Commission Expires April 29, 2014	me on October 31 , 2013, by ngs, LLC., a Texas limited liability company, Notary Public's Signature



# **APPLICATION FOR WATER LINE REIMBURSEMENT**

We, Coyote Real Estate Holdings, LLC, 702 East 40<sup>th</sup> Street, Lubbock, Texas 79404, owners and developers of proposed LOTS 1 AND 2, BLOCK 1, COYOTE ACRES, hereby request

reimbursement of \$12,920.00 for the installation of the water Distribution mains in conjunction with said lot, as provided for by City Ordinance No. 17092. \$ 18,645.00 is the construction cost, including 11% Engineering and Surveying, in excess of the acreage fee, as shown by the cost supporting documents attached herewith. By: Scot Wylie DIRECTOR Title: JASON W. FISHER Notary Public, State of Texas My Commission Expires THE STATE OF TEXAS April 29, 2014 COUNTY OF LUBBOCK This instrument was acknowledged before me on Scot 6. Wyliz (Name), Coyote Real Estate Holdings, LLC, a Texas Limited Liability Company, on behalf of the said company. Notary Public in and for the State of Texas **CERTIFICATION** The information submitted with this application for reimbursement has been reviewed and determined to be correct. Reimbursement is subject to: (a) Efficiency of funds in the Distribution Main Trust Fund, and (b) Appropriation and approval by the City Council.

EXHIBIT 2
Page 1 of 2

Development Services Engineer

(Date)

# **APPLICATION FOR WATER LINE CREDIT**

We, Coyote Real Estate Holdings, LLC, 702 East 40<sup>th</sup> Street, Lubbock, Texas 79404, owners and developers of proposed LOTS 1 AND 2, BLOCK 1, COYOTE ACRES, hereby apply for \$7,195.00 credit towards the water acreage fee for the installation of the water Distribution mains as provided for by City Ordinance No. 17092. \$25,840.00 is the construction cost, including 11% Engineering and Surveying, as shown by the cost supporting documents attached herewith.

Ву:	Scot Wylie His		
Title:	DIRECTOR		
Date:	10-22-2013		
THE ST	TATE OF TEXAS §		JASON W. FISHER Notary Public, State of Texas My Commission Expires April 29, 2014
	TY OF LUBBOCK §		
This ins	strument was acknowledged before me on		, 2013, by (Title), of
Coyote	Real Estate Holdings, LLC, a Texas Limite		alf of the said company.
		//	11

Notary Public in and for the State of Texas

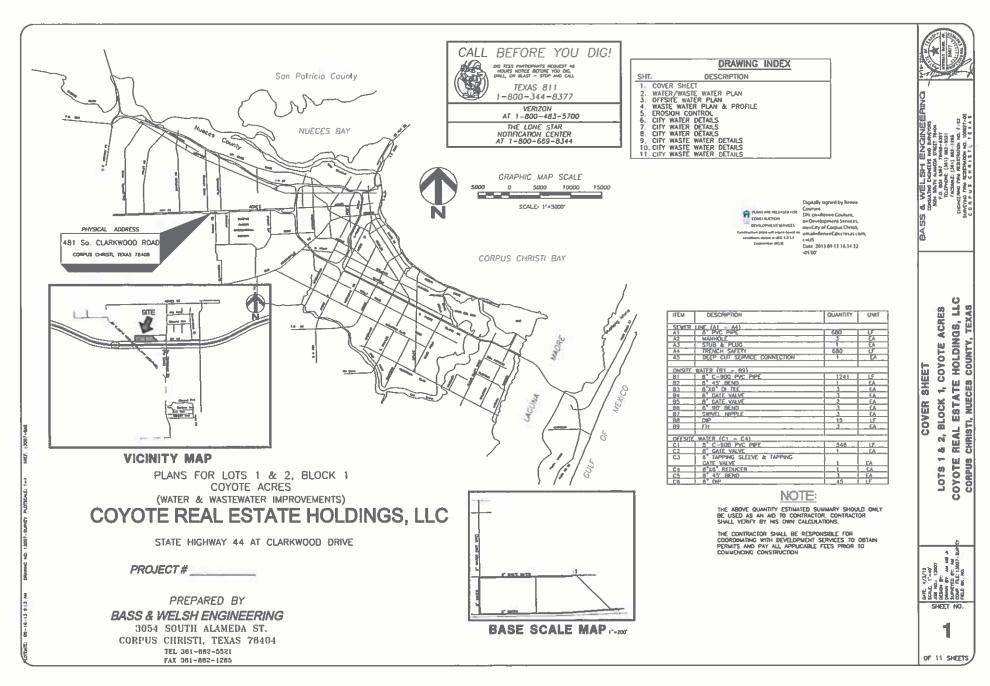


Exhibit 3 Page 1 of 11

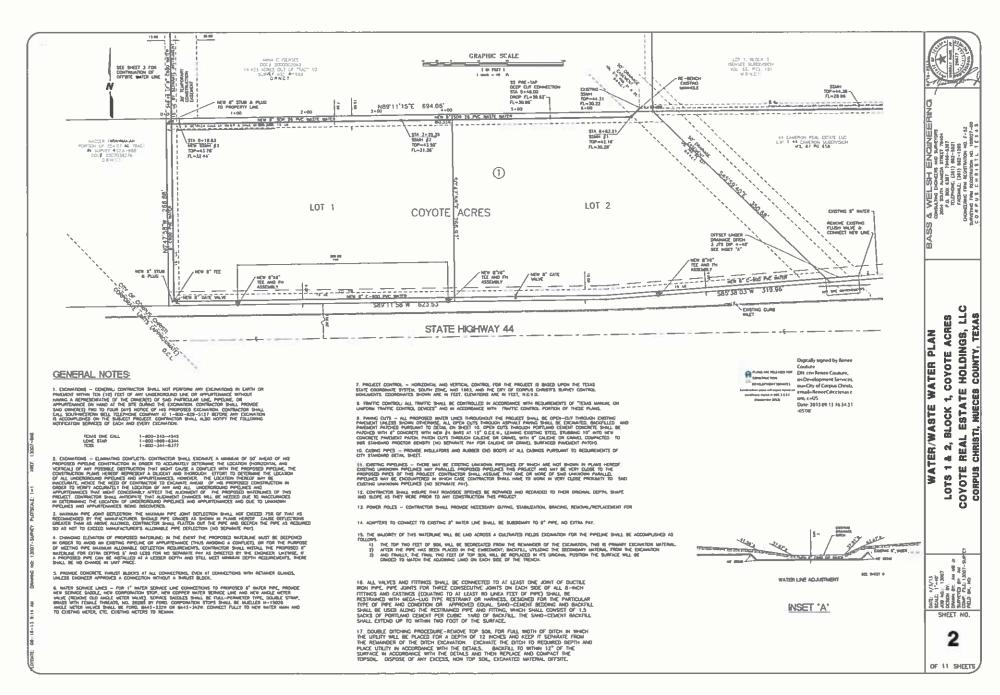


Exhibit 3 Page 2 of 11

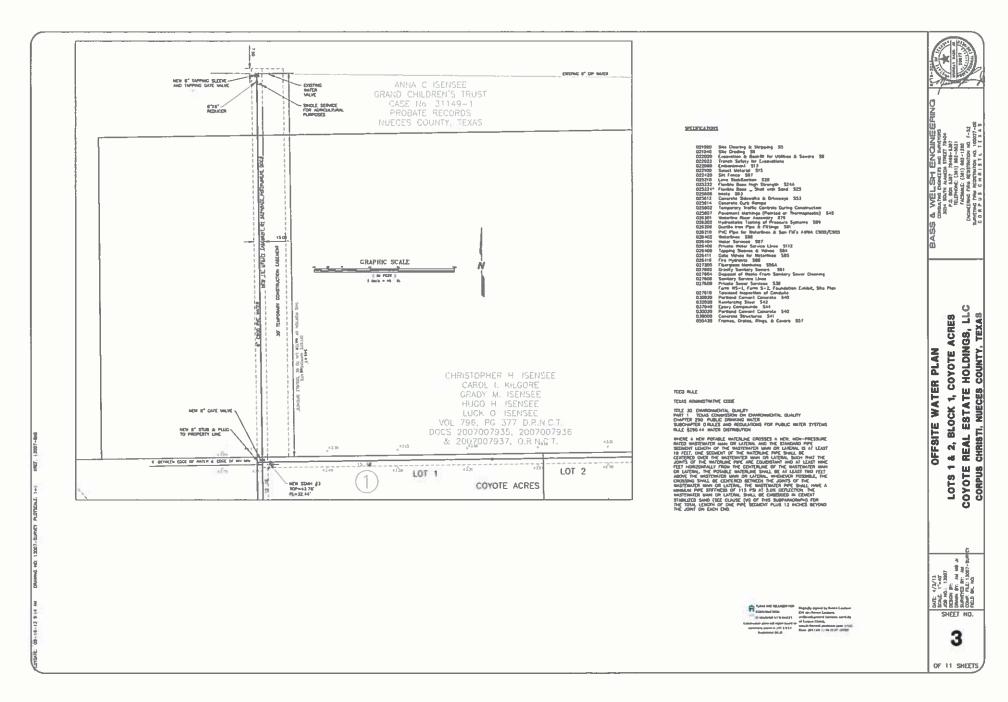
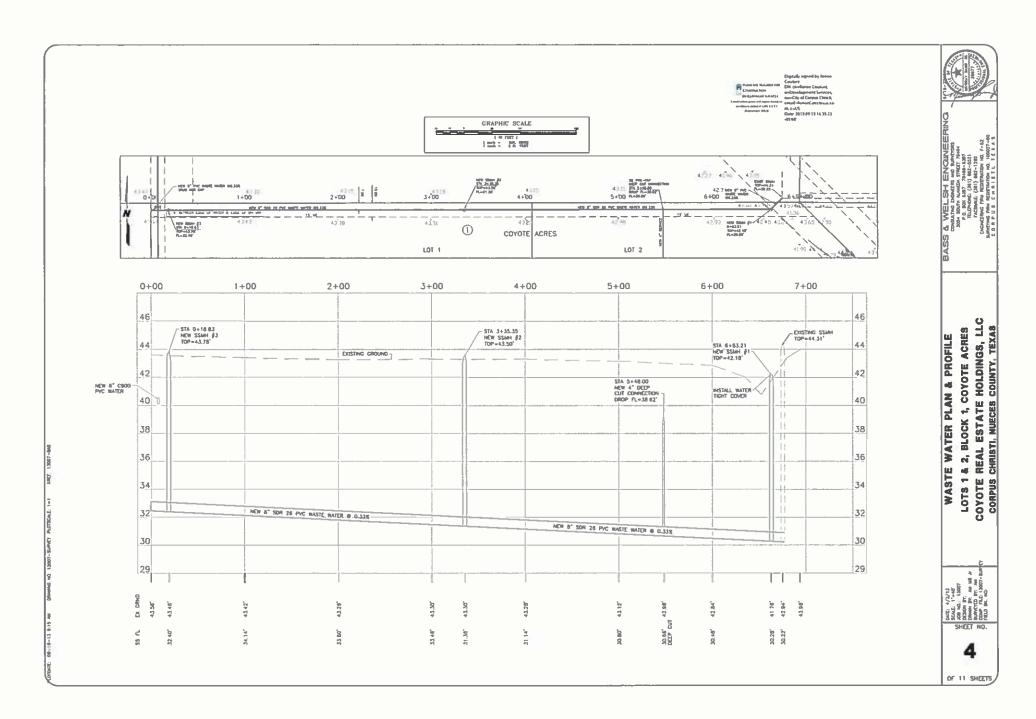


Exhibit 3 Page 3 of 11



Page 4 of 11

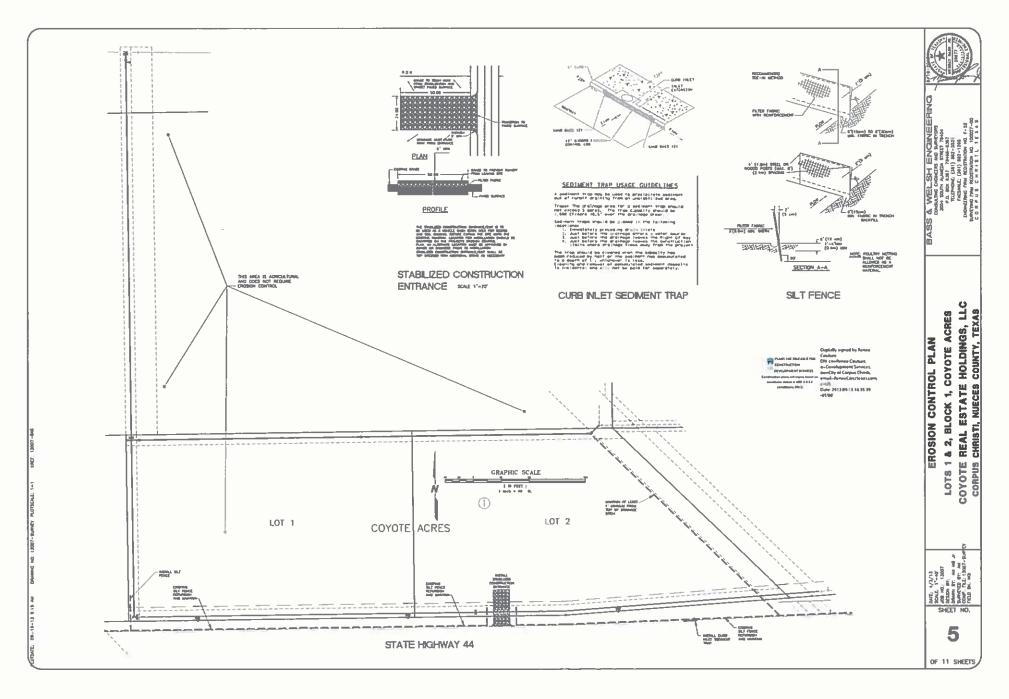


Exhibit 3 Page 5 of 11

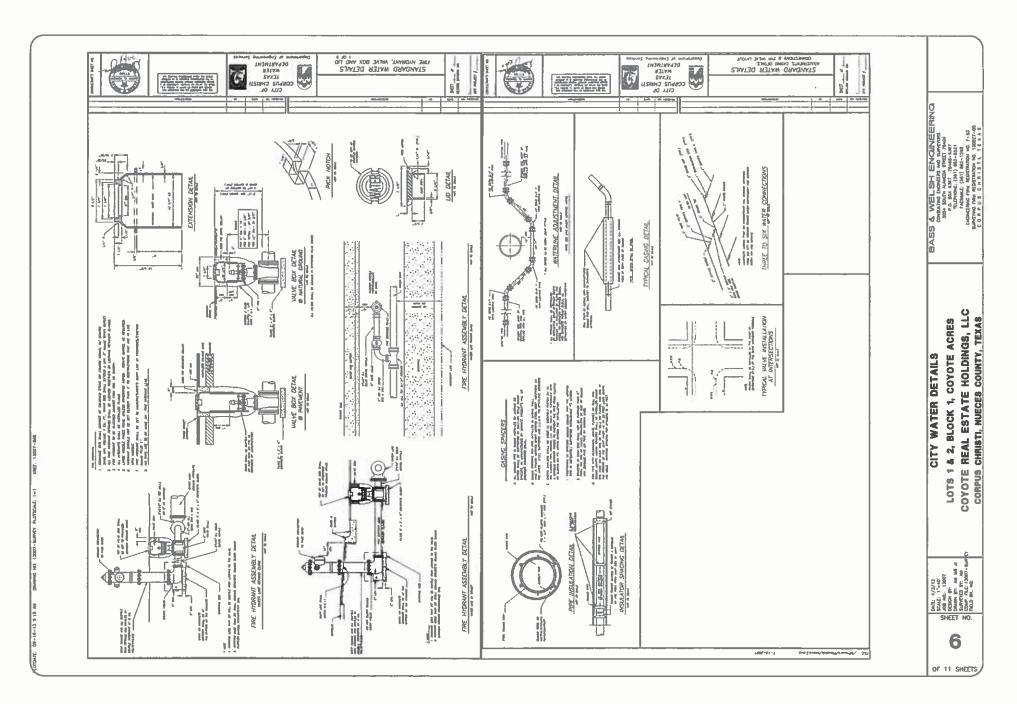
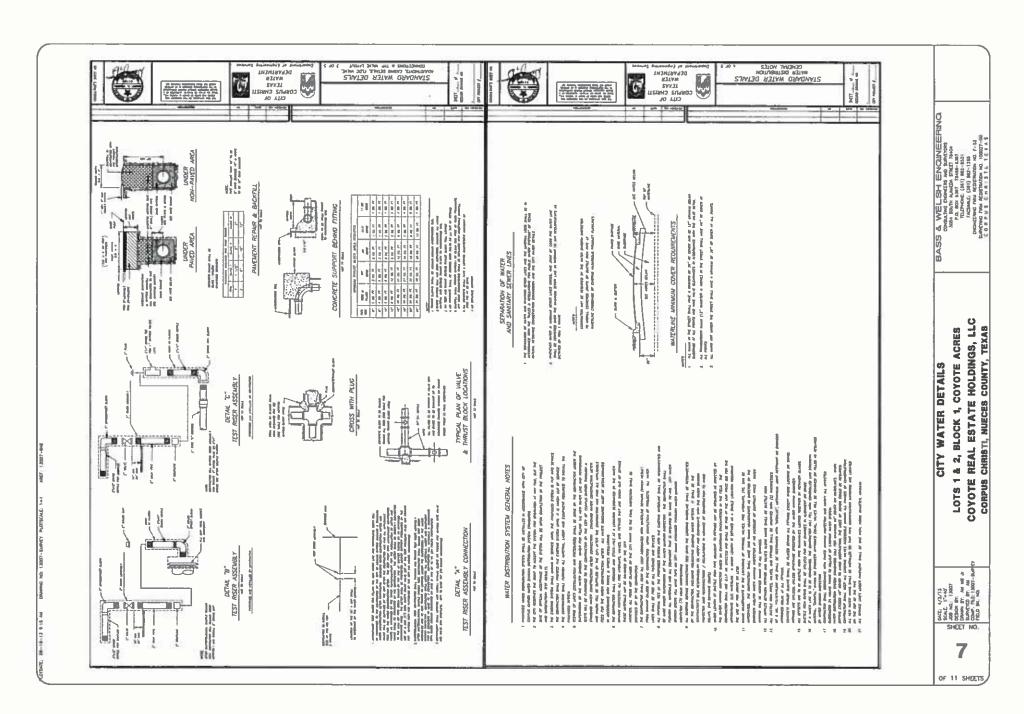


Exhibit 3 Page 6 of 11



Page 7 of 11

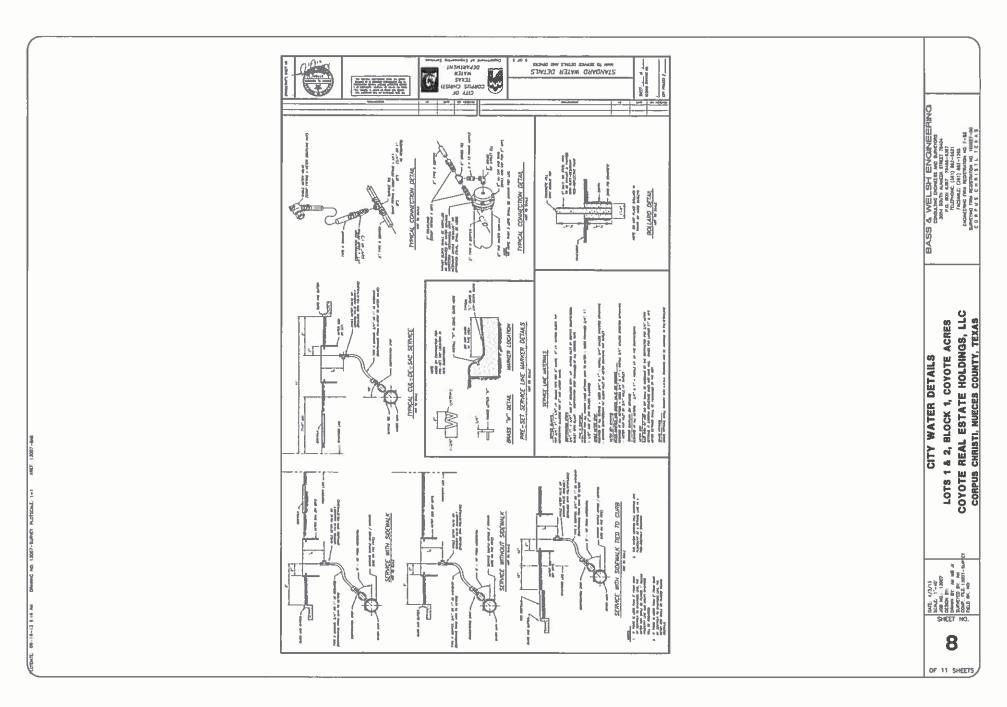
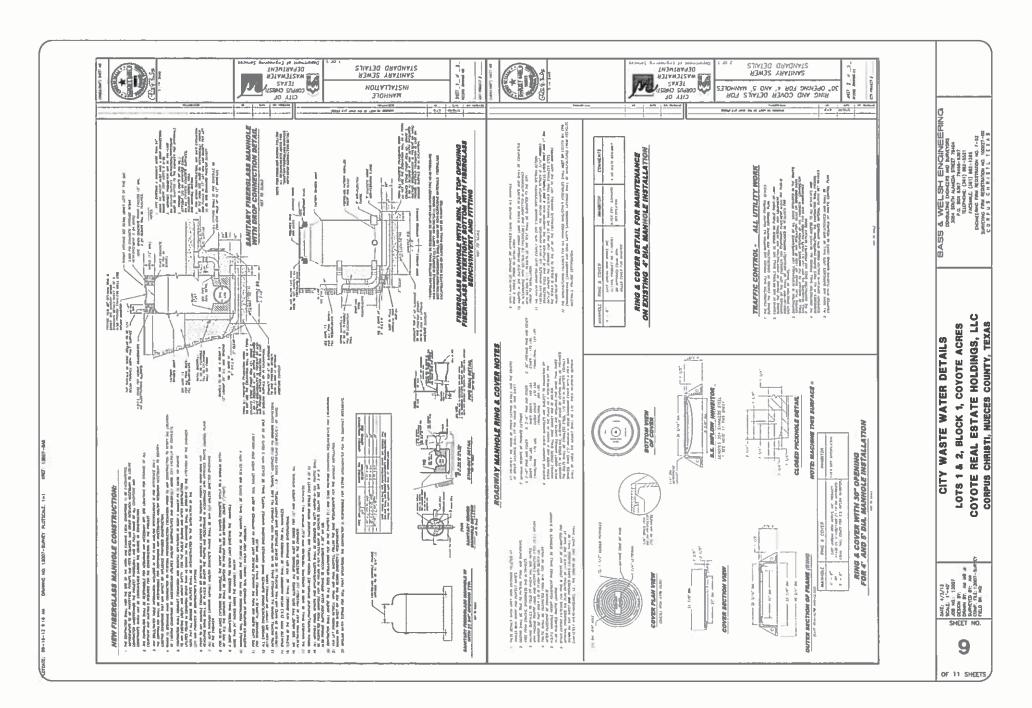
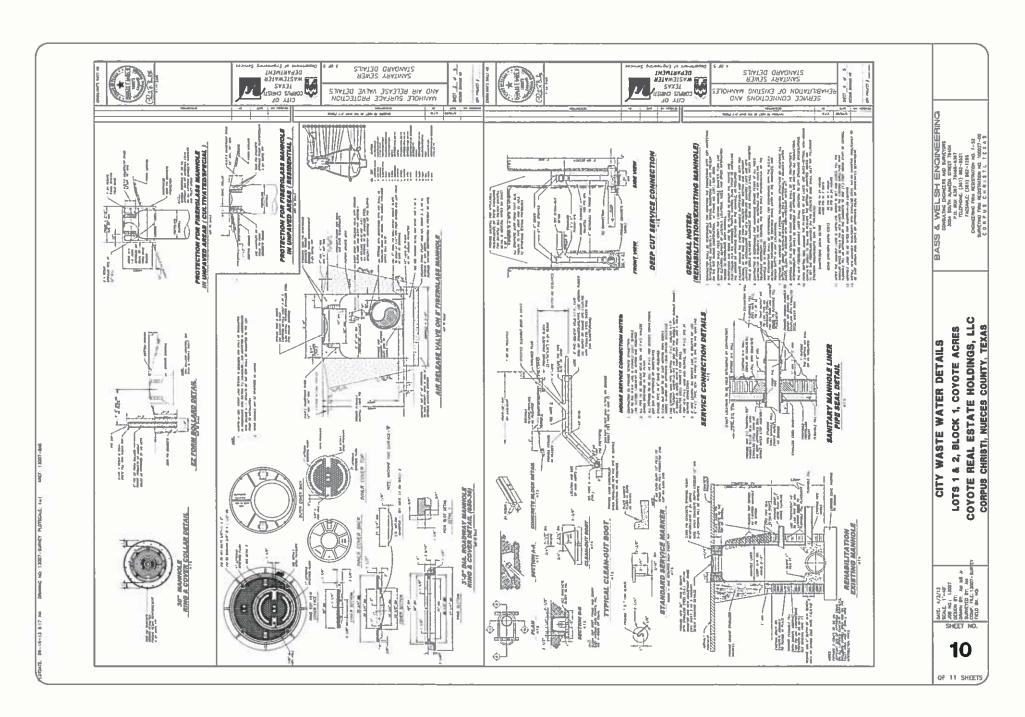
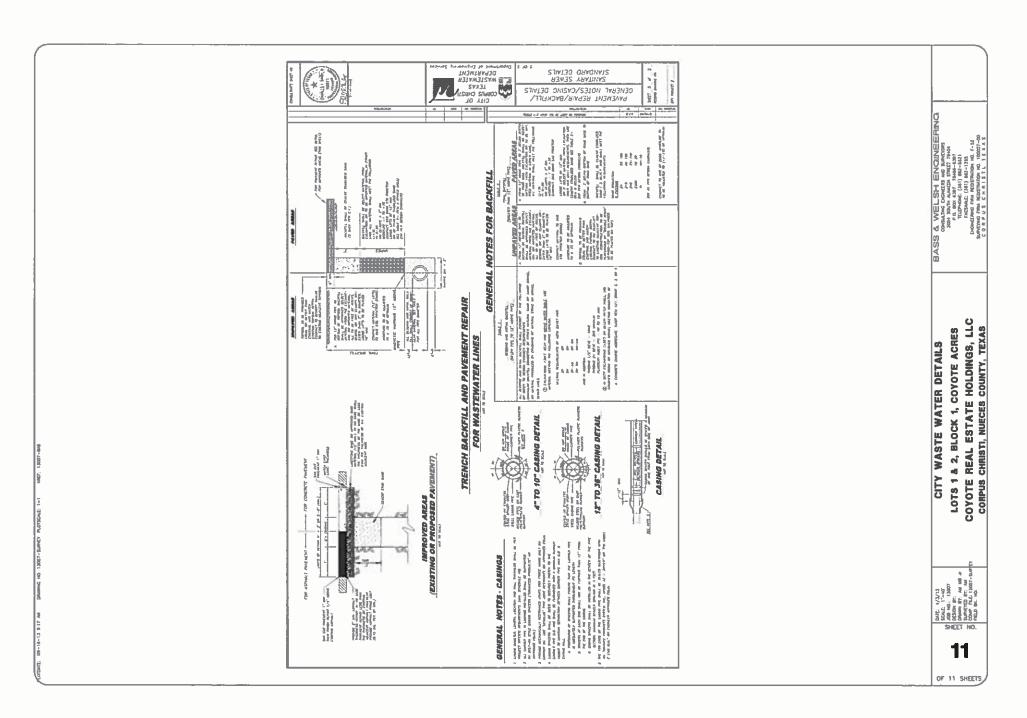


Exhibit 3 Page 8 of 11





Page 10 of 11



Page 11 of 11

# BASS WELSH ENGINEERING COST ESTIMATE PUBLIC INFRASTRUCTURE COYOTE ACRES

SANITARY	VER ITEMS QUANTITY UNIT UNIT PRICE		AMOUNT		
1.	8" PVC GRAVITY PIPE	680	LF	68.00	46,240.00
2.	8" STUB-OUT AND PLUG	1	EA	300.00	300.00
3.	FG MANHOLE 4' DIAMETER	3	EA	6,000.00	18,000.00
4.	CONNECT TO EXISTING MANHOLE	1	LS	800.00	800.00
5.	TRENCH SAFETY	680	LF	2.00	1,360.00
6.	TESTING	1	LS	\$1,334.00	1,334.00

#### **TOTAL ONSITE SANITARY SEWER ITEMS**

\$68,034.00

WATER IT	EMS	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1.	ONSITE				
2.	8" C900 PVC PIPE	1241	LF	24.00	29,784.00
3.	8" 1/8 BEND	1	EA	500.00	500.00
4.	8" X 6" D.I. TEE	3	EA	475.00	1,425.00
5.	6" GATE VALVE W/BOX	3	EA	1,000.00	3,000.00
6.	8" GATE VALVE W/BOX	4	EA	1,400.00	5,600.00
7.	6' D.I. 1/4 BEND	3	EA	400.00	1,200.00
8.	SWIVEL NIPPLE	3	EA	400.00	1,200.00
9.	8"D.I.P.	15	LF	50.00	750.00
10.	FIRE HYDRANT	3	EA	2,200.00	6,600.00
11.	8" PLUG w/2" BLOWOFF	1	EA	300.00	300.00
12.	TESTING	1	LS	\$1,007.18	1,007.18
		TOTAL ONSI	ΓΕ	-	51,366.18
13.					
14.	OFFSITE				
15.	8" C900 PVC PIPE	546	LF	24.00	13,104.00
16.	8" GATE VALVE W/BOX	1	EA	1,400.00	1,400.00
17.	CONNECT TO EXISTING WATERLINE	1	LS	800.00	800.00
18.	8" 1/8 BEND	3	EA	500.00	1,500.00
19.	8" X 6" D.I. REDUCER	1	EA	475.00	475.00
20.	8"X6" TAPPING SLEEVE & TAPPING GATE VALVE W/BOX	1	EA	2,950.00	2,950.00
21.	8" D.I.P.	45	LF	50.00	2,250.00
22.	INDIVIDUAL SERVICE CONNECTION	1	EA	800.00	800.00
24.	TESTING	1	LS	\$465.58	465.58

TOTAL OFFSITE \$23,279.00

TOTAL WATER \$74,645.18

TOTAL COST \$142,679.18

TOTAL CONSTRUCTION COST 142,679.18
SURVEYING & ENGINEERING 11% 15,694.71
TOTAL COST 158,373.89

110% OF TOTAL COST 174,211.28

# COST ESTIMATE PUBLIC INFRASTRUCTURE REIMBURSEMENT REQUEST COYOTE ACRES

1.	OFFSITE WATER CONSTRUCTION	•			
2.	8" C900 PVC PIPE	546	LF	24.00	13,104.00
3.	8" GATE VALVE W/BOX	1	EA	1,400.00	1,400.00
4.	CONNECT TO EXISTING WATERLINE	1	LS	800.00	800.00
5.	8" 1/8 BEND	3	EA	500.00	1,500.00
6.	8" X 6" D.I. REDUCER	1	EA	475.00	475.00
7.	8"X6" TAPPING SLEEVE & TAPPING GATE VALVE W/BOX	1	EA	2,950.00	2,950.00
8.	8" D.I.P.	45	LF	50.00	2,250.00
9.	INDIVIDUAL SERVICE CONNECTION	1	EA	800.00	800.00
11.	TESTING	1	LS	\$465.58	465.58

TOTAL OFFSITE \$23,279.00

**ACREAGE FEES** 

WATER \$7,195.00 WASTEWATER \$7,855.00

**ESTIMATED REIMBURSEMENT** 

OFFSITE COST \$23,279
SURVEYING & ENGINEERING 11% \$2,561

\$25,840

MAX. REIMBURSEMENT WHEN AC. FEE DOES NOT EXCEED 50% OF COST, IS 50% \$12,920



City of Corpus Christi, Texas Department of Development Services P.O. Box 9277 Corpus Cliristi, Texas 78469-9277 (361) 826-3240 Located at: 2406 Leopard Street (Corner of Leopard St. and Port Ave.)

# **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".

NAME- Coyote Real Estate Holdings, LLC

NAME:	Coyote Real Estate	Holdings, LLC					
STREET:	702 East 40th St.		CITY: Lu	ibbock, TX		ZIP: _	79404
FIRM is:	Corporation	☐ Partnership	Sole Owner	☐ Association	Other_		
		D	ISCLOSURE QU	IESTIONS			
If addition	nal space is neces	sary, please use th	he reverse side o	f this page or attac	:h separate :	sheet.	
const Name	tituting 3% or mo	each "employee' ore of the owners			_		•
const Name	tituting 3% or mo	each "official" ore of the owners			having an	"owne	rship interest"
const Name	tituting 3% or mo	ach "board memi ore of the owners			_		ership interest"
on an more Name	ny matter related of the ownershi	nch employee or o to the subject of p in the above na	this contract a				
withheld of the City of	disclosure of any f Corpus Christi, <b>T</b>	on provided is true information reques exas as changes o	sted; and that su	of the date of this supplemental staten	nents will be	e promp	
	Person: Scot Wy (Print) of Certifying Pers	Vin	129	211:	itle: <u>Director</u>	0.0	-2013

K DEVELOPMENTSVCS: SHARED LAND DEVELOPMENT ORDINANCE ADMINISTRATION APPLICATOR FORMS FORMS AS PER LEGALIZO12 DISCLOSURE OF INTERESTS Page 1 of 2

Exhibits

# DEFINITIONS

- B "Board Member". A member of any board, commission or committee appointed by the City Council of the City of Corpus Christi, Texas.
- Ö "Employee". Any person employed by the City of Corpus Christi, Texas, either on a full or part time basis, but not as an independent contractor.
- Ω "Firm". Any entity operated for economic gain, whether professional, industrial or commercial and whether established to produce or deal with a product or service, including but not limited to, entities operated in the form of sole proprietorship, as self-employed person, partnership, corporation, joint stock company, joint venture, receivership or trust and entities which, for purposes of taxation, are treated as non-profit organizations.
- ٩ "Official". The Mayor, members of the City Council, City Manager, Deputy City Manager, Assistant Managers, Department and Division Heads and Municipal Court Judges of the City of Corpus Christi, Texas. Assistant City
- Φ "Ownership Interest". Legal or equitable interest, whether actually or constructively held, in a firm, including when such interest is held through an agent, trust, estate or holding entity. "Constructively held" refers to holding or control established through voting trusts, proxies or special terms of venture or partnership agreements. "Ownership Interest".
- $\rightarrow$ "Consultant". Any person or firm, such as engineers and architects, hired by the City of Corpus Christi for the purpose of professional consultation and recommendation.