

INTERLOCAL COOPERATION AGREEMENT  
BETWEEN THE CITY OF CORPUS CHRISTI AND  
THE SAN PATRICIO MUNIICIPAL WATER DISTRICT  
FOR WATER LINE IMPROVEMENTS

THIS INTERLOCAL COOPERATION AGREEMENT ("Agreement") is made by and between the CITY OF CORPUS CHRISTI, TEXAS ("City"), a municipal corporation and home-rule city of the State of Texas, acting by and through its governing body, the City Council, and the SAN PATRICIO MUNICIPAL WATER DISTRICT, a political subdivision of the State of Texas, duly created by the Legislature of Texas ("District").

WHEREAS, the City owns and operates a regional water supply system that provides potable water to municipal customers, as well as, wholesale customers like the District; and

WHEREAS, by separate agreement, the City will enter into an amended water supply agreement with the District to provide additional quantities of treated water to the District which the District will sell to the Gulf Coast Growth Venture ("GCGV") PET Plant to be built outside Gregory city limits in San Patricio County, Texas; and

WHEREAS, the District will design and build a new 54" to 48" water pipeline which will tie into the City's treated water system located near the O.N. Stevens Water Treatment Plant in Corpus Christi, Texas and terminate at the GCGV plant site west of Gregory; and

WHEREAS, on June 19, 2017, the District entered into an agreement with J. Schwarz & Associates, Inc., a professional engineer located in Corpus Christi, Texas ("Engineer") to provide all engineering services related to the design of a 54" to 48" water pipeline and related facilities running from the City's treated water system to the GCGV plant site west of Gregory (hereinafter the "Project"); and

WHEREAS, in connection with the District's plans to build a new 54" to 48" treated water pipeline, the City has requested the District to design and build a new 24" pvc treated water pipeline to replace an existing 20" cast iron pipeline on Up River Road in Corpus Christi, Texas, the same being more particularly described in the Agreement for Professional Engineering Services attached hereto as Exhibit "A" and as depicted in the aerial maps attached hereto as Exhibit "B;" and

WHEREAS, the District will also decommission an existing 30-inch cast iron waterline owned by the City which will no longer be needed and the District will design and build an 8" pvc water line to loop all of the disconnected water connections from the 30" cast iron line, the same being more particularly described in the Agreement attached hereto as Exhibit "A" and as depicted in the aerial maps attached hereto as Exhibits "B" and "C."

WHEREAS, the District will enter into a Second Agreement for Professional Engineering Services and Construction Administration Services with J. Schwarz & Associates, Inc. (hereinafter the “Second Agreement”) for the 24” Up River Road Waterline Project and the 30” Transmission Waterline Decommission Project, the same being more particularly described in the Agreement attached hereto as Exhibit “A;” and

WHEREAS, all engineering plans, specifications and construction administration services associated with the work described in the Second Agreement will be designed and performed in accordance with American Water Works Association (“AWWA”) specifications and all other applicable State, Federal and Municipal rules, regulations and specifications for water pipeline design and construction; and

WHEREAS, the District shall provide the City with copies of the Engineer’s designs, drawings, plans, specifications and other documents related to the 24” Up River Road Waterline Project and the 30” Transmission Waterline Decommission Project (“City’s Project”) for the City’s review in electronic, digital and printed format as requested by City; and

WHEREAS, the City will reimburse the District for all costs associated with the design and engineering of the City’s Project as further described in Exhibit “A” attached hereto and in accordance with the terms set forth in this Interlocal Agreement; and

WHEREAS, this Agreement is made pursuant to Chapter 791, Texas Government Code; and

WHEREAS, all payments due and owing under this Agreement shall be paid with current revenues available to the City or the District.

NOW, THEREFORE, the City of Corpus Christi, Texas and the San Patricio Municipal Water District hereby agree as follows:

**SECTION I. PROJECT SCOPE.**

- 1.01 The District will design and build a 54” to 48” treated water line to transport additional supplies of treated water from the City’s Treated Water System at a location near the O.N. Stevens Water Treatment Plant to the GCGV Plant Site west of Gregory, Texas (the “Project”).
- 1.02 In connection with the Project, the District will enter into a Second Agreement for Professional Engineering Services with Engineer to design and engineer approximately 16,250 linear feet of 24” PVC treated water pipeline and to remove approximately 12,500 feet of existing 20” cast iron waterline as further described in the Agreement attached hereto as Exhibit “A.”

- 1.03 The District will also contract with Engineer to decommission approximately 32,000 linear feet of existing 30-inch cast iron waterline in the City and prepare plans and specifications for approximately 5,650 linear feet of new 8" pvc waterline to loop the dead-end water connections as further described in the Agreement attached hereto as Exhibit "A."

## **SECTION 2. OBLIGATIONS OF THE DISTRICT AND THE CITY.**

- 2.01 The District shall enter into a Professional Engineering Services Agreement with J. Schwarz & Associates, Inc. ("Engineer") to perform all design and engineering services related to the 24" Up River Road Waterline Project and the 30" Transmission Waterline Decommission Project as further described in the Agreement attached hereto as Exhibit "A" (the "Second Agreement").
- 2.02 The District shall provide the City with an executed copy of the Second Agreement with Engineer and the City agrees to provide all information in its possession which is reasonably needed by Engineer to design, engineer and administer the City's Project for the City.
- 2.03 The District will provide the City with originals or copies of all plans, designs, specifications and all other documents prepared by Engineer for the City's Project. The City will have a reasonable amount of time to review and comment on Engineer's plans, designs, specifications and other documents related to the City's Project **prior to** the District advertising the project for competitive sealed proposal or bid.
- 2.04 The District will direct Engineer to meet with City representatives to discuss the City's Project or requested changes to the plans and specifications for the City's Project as deemed necessary by City representatives. These meetings will not accrue additional charges from Engineer unless they involve additional work or special engineering services which are not covered by the Second Agreement between the District and the Engineer.
- 2.05 The District shall ensure that all engineering plans and specifications associated with the treated water lines for the City's Project are designed in accordance with American Water Works Association ("AWWA") specifications and all other applicable State, Federal and Municipal rules, regulations and specifications for water pipeline design and construction
- 2.06 The District shall require Engineer to carry a minimum of \$1,000,000.00 professional liability insurance for this Project with a reputable Insurance Carrier licensed to write professional liability insurance policies in the State of Texas. This policy shall include a waiver of subrogation endorsement in favor of the District and the City. The District shall also require the Engineer to provide copies of current Automobile

Liability coverage and Workers Compensation coverage as may be required by the State of Texas for this Project. The District shall provide copies of Engineer's Certificate of Insurance and policy endorsements for this Project to the City upon execution of this Agreement.

- 2.07 The City will reimburse the District for all fees charged by Engineer related to the Engineer's design, plans and specifications of the City's Project as further described in the Agreement attached hereto as Exhibit "A." The District will invoice the City for Engineer's fees on the City's Project and the City will pay said invoice within sixty (60) days of receipt. Should the City dispute any costs or charges from District associated with the Engineer's work on the City's Project, the District and City shall work to resolve said questions or disputes as quickly as possible.
- 2.08 Upon Engineer's completion of the work on the City's Project and upon final payment from City to the District for the design and engineering work on the City's Project, the District shall transfer a copy of all final plans, designs, specifications or other documents prepared by Engineer for the City's Project to the City's designated representative by means designated by the City.

### **SECTION 3. TERM OF AGREEMENT**

- 3.01 This Agreement shall become effective upon the date last signed by the parties hereto and shall remain in full force and effect until the Engineer's work is completed, the District transfers copies of the Engineer's plans, designs, specifications and other related documents for the City's Project to the City of Corpus Christi and final payment for the work set out in the Agreement attached hereto as Exhibit "A" has been made. However, Section 5 of this Agreement shall survive termination of this Agreement.

### **SECTION 4. DEFAULT**

- 4.01 If either party determines that the other party is in default under this Agreement, the party claiming default by the other party shall give written notice to the other party, which states the nature of the default. The notice must be delivered to the defaulting party in accordance with the Notice provisions contained herein. The defaulting party shall have thirty (30) days to cure the default, or if such default cannot be reasonably cured within said thirty (30) day period, the defaulting party shall use reasonable efforts to cure the default as soon as possible.
- 4.02 If the defaulting party does not cure the default and reimburse the party not in default for any and all costs incurred as a result of the default within thirty (30) days, or if the default cannot be reasonably cured within a thirty (30) day period, and the defaulting party does not use reasonable efforts to cure the default and reimburse the party not in default for any and all costs incurred as a result of the default, the party claiming default may terminate this Agreement and seek any remedy available at law or in

equity, including an action in mandamus or for specific performance.

## SECTION 5. INDEMNIFICATION

- 5.01 **District agrees to indemnify and hold harmless the City of Corpus Christi and its officials, officers, agents and employees (“Indemnitee”) from and against any and all claims, damages, losses or expenses, including but not limited to Attorney’s fees, court costs, or dispute resolution costs, arising out of or resulting from District’s obligations under this Agreement or District’s performance of the work, violations of the law, or bodily injury, death, or destruction of tangible property caused by the negligent acts or omissions or intentional acts or omissions of the District or Engineers, Contractors, Subcontractors or Consultants working for the District or under the control of the District. Provided, however, nothing herein shall be construed to require District to indemnify Indemnitee against a claim, loss, damage or expense caused by the sole negligence or fault of Indemnitee.**
- 5.02 **District shall defend Indemnitee with legal counsel satisfactory to the City Attorney, from and against any and all claims, damages, liabilities or costs, including reasonable attorney fees and court costs, if the claim is not based solely on the negligence or intentional act wrongful act of Indemnitee. If a claim is based wholly or partly on the negligence of, fault of or breach of contract by Indemnitee, the Consultant shall reimburse the City’s reasonable attorney’s fees in proportion to the Consultant’s liability.**

## SECTION 6. MISCELLANEOUS.

- 6.01 Amendment. This Interlocal Agreement may be amended only by written instrument duly executed by authorized representatives of each party.
- 6.02 Notices. Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

San Patricio Municipal Water District  
Attn: General Manager  
P.O. Box 940  
Ingleside, Texas 78362

City of Corpus Christi  
Attn: City Manager  
P.O. Box 9277  
Corpus Christi, Texas 78469

- 6.03 Severability. Any provision or part of this Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon District and City, who agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
  
- 6.04 Non-Waiver. Failure of any party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on, and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.
  
- 6.05 Governing Law and Venue. This Agreement shall be performed in Nueces County, Texas, and shall be interpreted according to the laws of the State of Texas.
  
- 6.06 Assignment. This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns. This Agreement may not be assigned by any party without the written consent of all of the other parties.

IN WITNESS HEREOF, the City and the District have made and executed this Agreement as of the date shown below in multiple copies, each of which is an original.

SAN PATRICIO MUNICIPAL  
WATER DISTRICT

CITY OF CORPUS CHRISTI

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Rebecca Huerta, City Secretary (Date)

APPROVED AS TO FORM:

APPROVED AS TO LEGAL FORM:

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(Date)

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Assistant City Attorney

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES  
24" UP RIVER ROAD WATERLINE PROJECT  
30" TRANSMISSION WATERLINE DECOMMISSION PROJECT  
JSA PROJECT # 2018033  
SAN PATRICIO MUNICIPAL WATER DISTRICT**

**San Patricio Municipal Water District** hereinafter called "**OWNER**" and **J. Schwarz & Associates, Inc. (F-8138)**, hereinafter called "**ENGINEER**", whether one or more, have this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, entered into this agreement ("Agreement") and agree as follows:

**1.0 BASIC AGREEMENT**

1.1 Project Description: ENGINEER hereby agrees to perform all engineering services as specifically noted herein for the proper design and construction administration for the completion of the "24" Up River Road Waterline Project and 30" Transmission Waterline Decommission Project" (the "Project"). The 24" Up River Road Waterline Project consists of the installation of approximately 16,250 linear feet of 24" PVC waterline. The new 24" waterline will replace an existing 20" cast iron waterline that currently runs along Up River Road. The waterline route will begin at intersection of Sharpsburg Road and Up River Road, continue east along Up River Road until it crosses Interstate 37 at Sessions Road. The waterline will continue east on the south side of Interstate 37 to the intersection of McKinzie Road and Up River Road, where it will be connected to an existing 24" waterline. The project will include the removal of approximately 12,500 linear feet of existing 20" cast iron waterline. The proposed waterline will loop the new 54" and 48" waterline to San Patricio Municipal Water District to the existing City of Corpus Christi 24" Waterline located on McKinzie. Existing connections to approximately 15 different City of Corpus Christi distribution system waterlines will be required. The project will also require the reinstallation of affected fire hydrants and miscellaneous service connections.

The 30" Transmission Waterline Decommission Waterline Project consists of the decommissioning of approximately 32,000 linear feet of existing 30" cast iron waterline beginning on the east side of IH 37 directly east of the Cunningham Plant and continuing south and east along IH 37 and Leopard Road to the intersection of Leopard Road and Rand Morgan Road. The decommissioning of this waterline will create dead end waterlines along the route that will need to be looped as part of the project. In order to eliminate the dead ends, approximately 5,650 linear feet of 8" PVC waterline will be installed. The decommissioning of the 30" waterline



will require approximately 29 separate disconnections where the line will be cut and capped in order to create a positive disconnection from the distribution system. The basic professional service components of the project scope are outlined in the attached Exhibit A – Project Scope.

1.2 Items Excluded from Scope of Services: Items that are not specifically mentioned and detailed in Exhibit A – Project Scope are not included in this contract. In the event that the scope changes, ENGINEER will work with OWNER to establish a new not to exceed limit based upon the level of completion performed as of the time of scope change with consideration of the prior work completed to date. Examples of such exclusions which may be required by OWNER in connection with this Project but are not included in this contract are:

- Resident inspection during construction of the Project;
- Construction phase geotechnical testing;
- Construction phase environmental testing;
- Construction phase corrosion engineering testing
- As Built ground survey of project

1.3 ENGINEER shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by OWNER, or if required because of changes in the Project, ENGINEER shall furnish services in addition to those set forth above. OWNER shall pay ENGINEER for its services as set forth in Paragraph 5.0 Compensation.

1.4 ENGINEER shall complete its services within a reasonable time or within the following specific time period: 6 months from issuance of Notice to Proceed from OWNER.

## **2.0 PROJECT TEAM**

2.1 A “Subcontractor” or “Subconsultant” is a person or entity who has a direct contract with ENGINEER to perform certain services for the Project. The term “Subcontractor” or “Subconsultant” does not include a separate contractor or subcontractors of any constructor. Each Subcontract related to part of the services performed by such Subcontractor or Subconsultant for the ENGINEER shall require that such services be performed in accordance with the requirements of this Agreement and require such Subcontractor or Subconsultant to carry and maintain insurance acceptable to OWNER and ENGINEER.

2.2 Professional Services: ENGINEER shall provide all services outlined in this Agreement in accordance with the terms of this Agreement and applicable law, as necessary to insure the Project is completed timely and efficiently consistent within the Project requirements, including, but not limited to, working in close interaction and interfacing with OWNER and its designated employees, and working closely with others, including other consultants or contractors retained by OWNER.

### **3.0 PROJECT SCHEDULE**

3.1 ENGINEER shall furnish the documents and personally render or provide the services required by this Agreement in such sequence and at such times as may be necessary to insure the prompt and continuous design and construction of the Project. The term of the Agreement shall be from the date of execution to the date of final completion of all Project construction items and their acceptance by OWNER.

### **4.0 SUCCESSORS, ASSIGNS AND BENEFICIARIES**

4.1 OWNER and ENGINEER are hereby bound and the successors, executors, administrators, and legal representatives of OWNER and ENGINEER (and to the extent permitted by Paragraph 4.2 the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

4.2 Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

4.3 Unless expressly provided otherwise including, as expressly set forth in Paragraph 2.1 hereof, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or ENGINEER to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

**5.0 COMPENSATION**

5.1 OWNER will pay to ENGINEER based on the attached rate schedule as follows:

1.0	Design Services:	
	Basic Services -	\$ 194,600.00
	Special Services -	\$ 24,000.00
2.0	Project Bid and Award:	
	Basic Services -	\$ 11,200.00
3.0	Construction Administration:	
	Basic Services -	\$ 28,000.00

Based on the fee schedule above, ENGINEER'S compensation for the Project, including those furnished by its Subconsultants or Subcontractors will not exceed a limit of \$ 233,800.00 (basic services) and \$ 24,000.00 (special services). Basic and special services provided by Subconsultants and Subcontractors shall be billed at a cost plus 8% basis. Exhibit B outlines the proposed resource allocation schedule for the Project. ENGINEER'S Standard Hourly Rate sheet, and subcontractor proposals are attached for reference.

- 5.2 Change in Scope of Project: The Compensation may be equitably adjusted if the originally contemplated Scope as outlined in Exhibit A – Project Scope is significantly modified.
- 5.3 Adjustments to Compensation require a written amendment to this Agreement executed by OWNER and ENGINEER and may require Board approval.
- 5.4 Additional services which are outside the Scope of the Project contained in the Agreement may not be performed by ENGINEER without prior written authorization from OWNER.
- 5.5 Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.

**6.0 PAYMENT PROCEDURES**

6.1 ENGINEER shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to OWNER on a monthly basis. Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER'S invoice, then the amounts due ENGINEER will be increased at the rate of 1.0% per

month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. Payments will be credited first to interest and then to principal.

## 7.0 CONTRACT TERMINATION

7.1 The obligation to continue performance under this Agreement may be terminated:

7.1.1 For cause,

7.1.1.1 By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay ENGINEER for its services as set forth herein and in compliance with this Agreement is a substantial failure to perform and upon proper notice, a basis for termination.

7.1.1.2 By ENGINEER:

7.1.1.2.1 Upon seven days written notice if OWNER demands that ENGINEER furnish or perform services contrary to ENGINEER'S responsibilities as a licensed professional; or

7.1.1.2.2 Upon seven days written notice if ENGINEER's services for the Project are delayed for more than 90 days for reasons beyond ENGINEER'S control.

7.1.1.3 Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 7.1.1 if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

7.1.2 For convenience, by OWNER effective upon ENGINEER'S receipt of written notice from OWNER.

7.2 The terminating party under Paragraph 7.1 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ENGINEER to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

- 7.3 In the event of any termination under Paragraph 7.1, ENGINEER will be entitled to invoice OWNER and to receive full payment for all undisputed services performed or furnished in accordance with this Agreement and all reasonable and reimbursable expenses incurred through the effective date of termination.

## **8.0 INSURANCE**

- 8.1 ENGINEER, and each Subconsultant or Subcontractor providing services or materials associated with this Agreement shall maintain the following insurance coverages throughout the Project's duration:

8.1.1 Comprehensive General Liability insurance policy on Insurance Service Office (ISO)-CGL Form No. CG 00 01 11 85 or 88 in an amount of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate for bodily injury, personal injury and property damage. OWNER shall be listed as additional insured and OWNER shall be provided thirty (30) days' notice of cancellation or material change in any insurance coverage;

8.1.2 Automobile Liability Insurance coverage, Insurance Services Office (ISO) code 1 (any auto) in the amount of \$1,000,000 combined single limit per accident for bodily injury and property damage. OWNER shall be provided a waiver of subrogation;

8.1.3 Worker's Compensation Insurance for ENGINEER'S employees and employees and agents of ENGINEER'S agents and Subcontractors, as required by the Labor Code State and Employers Liability Insurance in the amount of, at least, \$1,000,000 per accident, for bodily injury and disease. OWNER to be provided a waiver of subrogation;

8.1.4 A policy of errors and omissions insurance in a minimum amount of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate, to cover any negligent acts or omissions committed by ENGINEER, its employees and/or agents or ENGINEER's Subcontractors and agents and their employees and/or agents in the performance of this Agreement.

- 8.2 All insurance coverage shall be written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A-(VII) and must be acceptable to OWNER and OWNER shall be provided thirty (30) days' notice of cancellation or material change in any insurance coverage.

## **9.0 GENERAL CONSIDERATIONS**

- 9.1 The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill

ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Subject to the foregoing standard of care, ENGINEER and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

- 9.2 ENGINEER shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall ENGINEER have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- 9.3 This Agreement shall be governed and construed in accordance with the laws of the State of Texas, excluding any conflict of law or other provision referencing the laws of another jurisdiction. OWNER and ENGINEER each hereby submit to the exclusive jurisdiction of the federal and state courts located in San Patricio County, Texas.
- 9.4 ENGINEER neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between OWNER and such contractor. ENGINEER is not responsible for variations between actual construction bids or costs and ENGINEER'S opinions or estimates regarding construction costs.
- 9.5 Except for the Subcontractor and Subconsultants, described in Paragraph 2.1 herein, ENGINEER shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except ENGINEER'S own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by ENGINEER.
- 9.6 The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee unless the parties agree otherwise.
- 9.7 All documents prepared or furnished by ENGINEER (excluding all survey data), are instruments of service, and ENGINEER retains an ownership and property

interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. OWNER shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of OWNER, subject to receipt by ENGINEER of payment for all services relating to preparation of the documents as set forth in this Agreement and subject to the following limitations: (1) OWNER acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by ENGINEER, or for use or reuse by OWNER or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by ENGINEER; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER'S sole risk and without liability or legal exposure to ENGINEER or to its officers, directors, members, partners, agents, employees, and consultants; (3) OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any reuse, or modification of the documents without written verification, completion, or adaptation by ENGINEER; and (4) such limited license to OWNER shall not create any rights in third parties.

- 9.8 To the fullest extent permitted by law, OWNER and ENGINEER (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that ENGINEER'S total liability to OWNER under this Agreement shall be limited to \$100,000.00 or the total amount of compensation received by ENGINEER, whichever is greater.
- 9.9 The parties acknowledge that ENGINEER'S scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition.

- 9.10 OWNER and ENGINEER agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.
- 9.11 The standard of care for all professional and related services performed or furnished by ENGINEER under this Agreement will be performed with all necessary registrations, licenses, permits, or authorizations, and in a competent manner, in accordance with good engineering practices. This executed Agreement shall act as a representation and warranty to that effect.
- 9.12 ENGINEER shall comply with applicable federal, state and local laws, rules and regulations and with standards mandated by OWNER. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to ENGINEER'S responsibilities and to the scope, schedule, and compensation of or for ENGINEER'S services upon the prior written approval of OWNER.
- 9.13 ENGINEER shall not be requested to sign any documents, no matter by whom requested, that would result in ENGINEER'S having to certify, guarantee, or warrant the existence of conditions whose existence ENGINEER cannot ascertain and, within the scope of ENGINEER'S services hereunder, have not been and could not be ascertained. OWNER agrees not to make resolution of any dispute with the ENGINEER or payment of any amount due to the ENGINEER in any way contingent upon ENGINEER signing any such certification.
- 9.14 At any time, OWNER may request that ENGINEER, at OWNER'S sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those shown in the Agreement.
- 9.15 Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page, and given personally, or by registered or certified mail, postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- 9.16 All express representations, indemnifications or limitations of liability included in this Agreement shall survive its completion or termination for any reason.
- 9.17 Any provision or part of this Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that this Agreement shall be reformed to replace such stricken provision or part thereof



with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

- 9.18 Non-enforcement of any provision of this Agreement by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- 9.19 ENGINEER shall be responsible for the technical accuracy of its services, data, and Documents resulting there from, and OWNER shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation, except to the extent that such action is directly attributable to deficiencies in OWNER-furnished information.
- 9.20 ENGINEER may employ Subcontractors and Subconsultants as ENGINEER deems necessary to assist in the performance or funding of such services. ENGINEER shall not be required to employ any Subcontractor and Subconsultant unacceptable to ENGINEER.
- 9.21 Unless indicated otherwise by OWNER at the time of transmittal to ENGINEER, OWNER shall be responsible for, and ENGINEER may rely on, the accuracy and completeness of requirements, programs, instructions, reports, data, and other information furnished by OWNER pursuant to this Agreement. ENGINEER may use such requirements, programs, instructions, reports, data and other information in performing or furnishing services under this Agreement.
- 9.22 It is understood and agreed that if ENGINEER's Basic Services , Special Services, and/or Additional Services under this Agreement do not include Project observation, review of the Contractor's performance, or any other Construction Phase or Post Construction Phase services, and that such services will be provided by OWNER, then ENGINEER has no responsibility for interpretation of the Contract Documents and for construction observation or review and OWNER assumes responsibility for any claims against ENGINEER to the extent they are connected thereto. Notwithstanding the above, ENGINEER shall be responsible for its professional opinions and interpretations provided by ENGINEER during the said Phases upon request by OWNER.
- 9.23 Copies of OWNER-furnished data that may be relied upon by ENGINEER are limited to the printed copies (also known as hard copies) that are delivered to ENGINEER by OWNER. Files in electronic media format of text, data, or graphics, or of other types that are furnished by OWNER to ENGINEER are only for convenience of ENGINEER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. Copies of Documents that may be relied upon by OWNER are limited to the printed copies

(also known as hard copies) that are signed or sealed by ENGINEER. Files in electronic media format of text, data, or graphics, or of other types that are furnished by ENGINEER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

- 9.24 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by OWNER.
- 9.25 If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 9.26 When transferring documents in electronic media format, ENGINEER makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ENGINEER at the completion of this part of the Project.
- 9.27 "Confidential Information" means any information, data, knowledge and know how (in whatever form and however communicated or maintained, whether verbally, electronically or documentary, computer storage or otherwise, including notes that are based on, contain or reflect any Confidential Information) with respect to the Project, including but not limited to financial, engineering, survey, drawings, plans, specifications, environmental assessments and other data in connection with the Project, any non-public OWNER data and any non-public information or materials related to OWNER'S products, current or future product or service plans, business, clients and finances, which is either identified as confidential and proprietary at the time of disclosure or which, under the circumstances, should reasonably be expected to be confidential and proprietary. ENGINEER will, and will cause ENGINEER's Subcontractors and Subconsultants to, hold in confidence all Confidential Information. ENGINEER may not use, and will cause ENGINEER's Subcontractors and Subconsultants to not use, Confidential Information for any purpose other than for the Project. OWNER accepts no obligation of confidence with respect to items acquired or information disclosed, no matter how labeled, to OWNER by ENGINEER or ENGINEER's Subcontractors and Subconsultants. ENGINEER may not, and

shall cause ENGINEER's Subcontractors and Subconsultants to not, place any restrictive notices on any information, no matter the form of its recording, that either ENGINEER or ENGINEER's Subcontractors and Subconsultants provide to OWNER hereunder and OWNER is authorized to remove or disregard any such notices placed on information by either ENGINEER or ENGINEER's Subcontractor and Subconsultants in violation of this provision.

- 9.28 ENGINEER will not, without the prior written consent of OWNER, use and will require Subcontractors and Subconsultants to not use, any name, trade name, or trademark of OWNER or its affiliates or business partners.
- 9.29 ENGINEER will and will cause ENGINEER's Subcontractors and Subconsultants to conduct their activities in an ethical manner and will not engage in any activity that could create a conflict of interest, such as making, receiving, or offering substantial gifts, entertainment, payments, loans or anything else of value to personnel or representatives of OWNER or its affiliates, or their families, for the purpose of influencing those persons to act contrary to OWNER'S and its affiliates' best interests. ENGINEER will provide, and will cause ENGINEER'S Subcontractors and Subconsultants to provide, complete and accurate financial documentation relating to this paragraph to OWNER promptly upon request.

**10. TOTAL AGREEMENT**

10.1 This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

**EXECUTED IN TRIPLICATE**, each of which shall be considered an original, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**SAN PATRICIO MUNICIPAL  
WATER DISTRICT  
OWNER**

**J. SCHWARZ & ASSOCIATES, INC.  
ENGINEER**

PO BOX 940  
Ingleside, Texas 78362

PO Box 60733  
Corpus Christi, Texas 78466

\_\_\_\_\_  
Signature

\_\_\_\_\_  
James Schwarz, P.E.

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date