# WASTEWATER COLLECTION LINE EXTENSION CONSTRUCTION AND REIMBURSEMENT AGREEMENT

STATE OF TEXAS §

COUNTY OF NUECES §

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This Wastewater Collection Line 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 wastewater collection line extension ("Wastewater Extension");

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

**WHEREAS**, it is to the best interest of the City that the Wastewater Extension be constructed to its ultimate capacity under the City's applicable Master Plan;

**WHEREAS**, Section 8.5.2.E.2 of the UDC authorizes the acceptance of applications to be eligible for reimbursement in the future when funds become fully available in the Wastewater Collection Line 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 Wastewater Collection Line Trust Fund for installing the Wastewater 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. <u>REQUIRED CONSTRUCTION</u>. Developer/Owner shall construct the Wastewater Extension in compliance with the City's UDC and under the plans and specifications approved by the City's Development Services Engineer.

#### 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 Wastewater 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 1,196 linear feet of 10-inch PVC pipe;
- 2. Install four (4) 4-foot diameter manholes; and
- 3. Install 1,196 linear feet trench safety
- b. The Wastewater 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 wastewater line 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 Wastewater 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 Wastewater Extension, Developer/Owner shall acquire and dedicate to the City the required additional public utility easements ("Easements"), if any, necessary for the completion of the Wastewater 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 Wastewater Extension.
- 5. <u>DEVELOPER/OWNER TO AWARD CONTRACT FOR IMPROVEMENTS</u>. Developer/Owner shall award a contract and complete the Wastewater 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. <u>PROMPT AND GOOD FAITH ACTIONS</u>. 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 Wastewater 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 Wastewater Extension under the approved plans and specifications.
- e. Developer/Owner's contractor fails to complete construction of the Wastewater 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:

IST 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. <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 Wastewater Extension, contracts for testing services, and contracts with the contractor for the construction of the Wastewater 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 Wastewater Extension and the construction of the Wastewater 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 Wastewater Collection Line Trust Fund and the appropriation of funds, the City will reimburse the Developer/Owner the reasonable actual cost of the Wastewater Extension up to an amount not to exceed \$63,794.00 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 WASTEWATER EXTENSION.

- 17. <u>COVENANT RUNNING WITH THE LAND</u>. 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. <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.

<b>EXECUTED IN TRIPLICATE</b> originals this _	25 to march, 2013.
ATTEST:	CITY OF CORPUS CHRISTI
1 Smalo Con	Waster . Nore
Armando Chapa City Secretary	Wes Pierson Assistant City Manager, designee
	of the City Manager

APPROVED AS TO FORM: Jebruary 252013

Elizabeth Hundley
Assistant City Attorney
for the City Attorney

AL CORNCIL

#### **15T INVESTMENTS, LLC**

By:

Steven W. Tipps

Notary Public's Signature

Manager

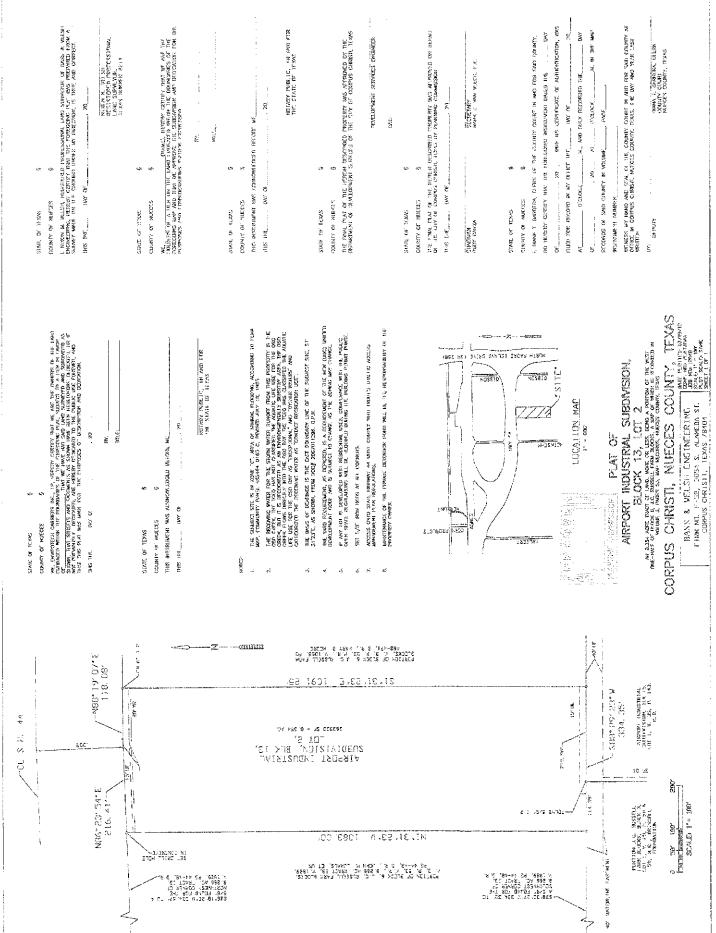
STATE OF TEXAS

COUNTY OF MUERES

This instrument was acknowledged before me on <u>February 15</u>, 2013, by Steven W. Tipps, Manager, I5T Investments, LLC, a Texas limited liability company, on behalf

of said company.

KATRINA MARIE WILLIAMS Notary Public, State of Texas My Commission Expires July 08, 2014



**Exhibit 1** 

### **APPLICATION FOR WASTE WATER REIMBURSEMENT**

We, I5T Investments, LLC, P.O. Box 261037, Corpus Christi, TX 78426, owner and developer of proposed AIRPORT INDUSTRIAL SUBDIVISION, BLOCK 13, LOT 2, hereby request reimbursement of \$63,794.00 for the installation of the waste water collection line in conjunction with said lot, as provided for by City Ordinance No. 17092. \$95,899.56 the construction cost, including 11% Engineering and Surveying, as shown by the cost supporting documents attached herewith.

Ву:		the L	- for		
Title:	President				
Date:	February 4, 2	2013			
THE S	TATE OF TEXAS	§			
COUN	TY OF NUECES	§			
	This instrument was	acknowledged bef	ore me on <u>Febr</u>	uary 4, 2013	, 2013, by
	Steven Tipps		_(Name),	President	(Title), of
15T Inve	estments, LLC, a Texa	as Corporation, on	behalf of the sa	id corporation.	

KATRINA MARIE WILLIAMS
Notary Public, State of Texas
My Commission Expires
July 08, 2014

Notary Public in and for Nueces County, Texas

#### **CERTIFICATION**

The information submitted with this application for reimbursement has been reviewed and determined to be correct. Reimbursement is subject to:

- (a) Sufficiency of funds in the Collection Line Trust Fund, and
- (b) Appropriation and approval by the City Council.

Development Services Engineer

(Date)

EXHIBIT 2 (Page 1 of 2)

## APPLICATION FOR WASTE WATER CREDIT

We, I5T Investments, LLC, P.O. Box 261037, Corpus Christi, TX 78426, owners and developers of proposed AIRPORT INDUSTRIAL SUBDIVISION, BLOCK 13, LOT 2, hereby apply for \$12,758.80 credit towards the waste water acreage fee for the collection line Extension in conjunction with said subdivision as provided for by City Ordinance No. 17092. \$95,899.56 is the construction cost, including 11% Engineering and Surveying, as shown by the cost supporting documents attached herewith.

Ву:	- 5 fr. 7 f			
Title:	PRESIDENT			
Date:				
THE ST	TATE OF TEXAS §			
COUNT	TY OF NUECES §			
This instrument was acknowledged before me on				
151 IIIV	estiments, ELC, a Texas Corporation, on benail of the said corporation.			
	Katana Mu Istiana			
	KATRINA MARIE WILLIAMS Notary Public, State of Texas My Commission Expires  Notary Public in and for the State of Texas			

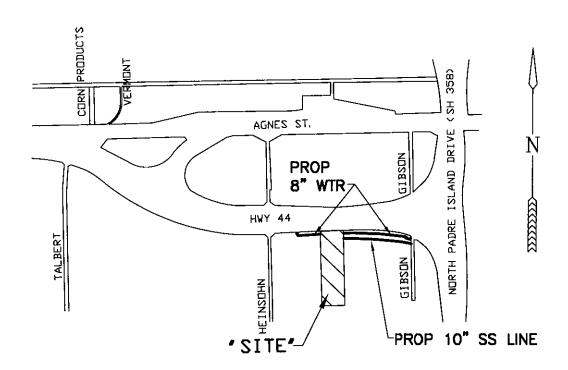


EXHIBIT SHOWING OFFSITE SANITARY SEWER

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 0F 1

# AIRPORT INDUSTRIAL SUBDIVISION BLOCK 13, LOT 2 OFFSITE WASTE WATER REIMBURSEMENT

ITEM NO.		ITEM		QTY.	UNIT	UNIT PRICE	AMOUNT
1	10" PVC PIPE			1196	LF	\$50.00	\$59,800.00
2	4' DIA. MANHOLE			4	EA	\$6,350.00	\$25,400.00
3	TRENCH SAFETY			1,196	LF	\$1.00	\$1,196.00
			SUBTOTAL				\$86,396.00
					Engineering a	and Surveying 11%	\$9,503.56
					SUBTOTAL		\$95,899.56
					Less Fee Valu	e of Property*	-\$12,758.80
	ı				TOTAL		\$83,140.76

<sup>\*</sup>FEE VALUE = 8.35 AC X \$1,528/AC = \$12,758.80

#### MAXIMUM AMOUNT REIMBURSEABLE

ITEM		AMOUNT
50% x FEE VALUE OF PROP x AVERAGE PIPE DIAM.	0.5 x 12,758.80 x 10=	\$63,794.00



#### 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: 15T Investments, LLC	
STREE	T: 5901 State Hwy 44	CITY: Corpus Christi ZIP: 78406
FIRM IS	S: ☐1. Corporation ☐2. Partnership ☐3. Sole Own	er ☐4. Association ☑5. Other Limited Partnership
	DISCLOSURE QU	ESTIONS
If addition	onal space is necessary, please use the reverse side of thi	s page or attach separate sheet.
1.	State the names of each "employee" of the City of Corpu or more of the ownership in the above named "firm".	s Christi having an "ownership interest" constituting 3%
	Name	Job Title and City Department (if known)
	None	None
2.	State the names of each "official" of the City of Corpus of more of the ownership in the above named "firm".	Christi having an "ownership interest" constituting 3% or
	Name	Title
	None	None
3.	State the names of each "board member" of the City of C 3% or more of the ownership in the above named "firm".  Name  None	orpus Christi having an "ownership interest" constituting  Board, Commission, or Committee  None
4.	State the names of each employee or officer of a "consumatter related to the subject of this contract and has ownership in the above named "firm".	
	Name	Consultant
	None	None
	CERTIFICA	TE
disclosi	that all information provided is true and correct as of the cure of any information requested; and that supplementa Christi, Texas as changes occur.	late of this statement, that I have not knowingly withheld I statements will be promptly submitted to the City of
Certifyii	ng Person: Steven Tipps	Title: Member
Signatu	(Type or Print) ure of Certifying Person:	Date: 12/13/2012

Doct 2013013989

Pases 14

04/11/2013 3:06PM

Official Records of NUECES COUNTY

DIANA T. BARRERA

COUNTY CLERK

Fees \$67.00

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of Race, Color, Relision, Sex, Handicap, Familial Status, or National Orisin is invalid and unenforceable under FEDERAL LAW, 3/12/89.

STATE OF TEXAS
COUNTY OF NUECES
I hereby certify that this instrument was FILED
in file number sequence on the date and at the
time stamped herein by me, and was duly RECORDED
in the Official Public Records of
Nueces County, Texas
Diana T. Barrera

Deine J. Barrer

Vmajor Projects Engineer

Development Services Dept.

City of Corpus Christi

2406 Leopard St.

Corpus Christi, TX 78408