

20120210

COUNTY ROAD 52 WATER LINE EXTENSION
INTERLOCAL AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF NUECES §

KNOW ALL MEN BY THESE PRESENTS:

**IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN MADE
THE PARTIES AGREE AS FOLLOWS:**

Section 1. Parties. This agreement is made and entered into by and between Nueces County, Texas, hereinafter referred to as "County," the City of Corpus Christi, Texas, hereinafter referred to as "City," and the Nueces County Water Control and Improvement District No. 3, hereinafter referred to as "District."

Section 2. Authority. This Agreement is made under the authority of Section 791.011 (a) Government Code.

Section 3. Current Revenues. Each governing body, in performing governmental function or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party.

Section 4. Findings. Each governing body finds that the performance of this Agreement is in the best interests of all parties, that the undertaking will benefit the public, and that the division of responsibilities and costs fairly compensates the performing party for the services or functions of this Agreement. The provision of certain water line facilities and fire hydrants as set out herein will allow Emergency Services District #1, or any other governmental entity with fire prevention authority to aid City and County residents with fire prevention

Section 5. Services to be Provided.

(a) Fire protection in the portion of Nueces County not located within the city limits of the City is provided at this time by the Nueces County Emergency Services District No. 1. City, in conjunction with County, in the portion of Nueces County not located within the city limits of the City; desire to assist in the District's improvement of certain water line facilities adjacent to a public roadway located partially in the city limits of the City, as well as in the County. That portion located in the County is also located within the City's extra territorial jurisdiction. The City will provide financial assistance as described in Section 6 for the District to provide and install fire hydrants along a water line to be installed by the District to enable fire protection for the owners and occupants of lands lying contiguous to County Road 52 located within the City. The County will provide financial assistance as described in Section 6 for the District to provide and install fire hydrants along a water line to be installed by the District to enable fire protection for the owners and occupants of lands lying contiguous to County Road 52 and located within the County but outside the city limits of the City.

(b) The District has been formed pursuant to the Article III, Section 52 of the Texas Constitution and has as one of its responsibilities the reclamation and irrigation of its arid, semiarid and other lands which need irrigation as well as to supply a fresh supply of potable water to the owners and occupants of lands lying contiguous to County Road 52 in Nueces County, Texas. The District does not have the facilities to provide a fresh supply of potable water to all of the owners or occupants of lands lying contiguous to County Road 52 at this time, but will install such facilities and lines as are necessary to connect the existing

line of the District on County Road 69 in Nueces County, Texas to the existing line of the District on County Road 52, in Nueces County, Texas.

(c) The City and County are in the process of completing the rebuilding of County Road 52 in Nueces County, Texas. As a part of this process the District provided to the City an easement along, over and across the irrigation canal owned and maintained by the District contiguous to County Road 52 to be utilized by the City to construct, improve and maintain County Road 52.

(d) The City will provide the District an easement along, over and across the right-of-way of County Road 52 to be utilized by the District to provide a fresh supply of potable water to the owners of lands in the District contiguous to said County Road 52.

(e) The District is solely responsible for providing the project plans, specifications, cost estimates and contract documents as well as advertising to solicit bids for the construction of the work contemplated by this Agreement. The District is solely responsible for contract administration during the construction and installation of the water line, with necessary fittings, including fire hydrants, and subsurface appurtenances incidental thereto, for the transportation of water for municipal and domestic purposes.

(f) The District is not responsible for the construction or maintaining of any portion of County Road 52 in Nueces County, Texas. The District will maintain the improvements, including any fire hydrants, to be installed pursuant to this Agreement.

(g) The parties intend that the City and County will convey to the District, and the District will accept, all of their respective interest to and in any of the improvements constructed or installed under this Agreement. Unless the City annexes the subject area beforehand, within one year of the date this Agreement becomes effective, the County shall

convey to District, and the District shall accept, all of the County's right, title and interest to and in any improvements furnished, constructed or installed under this Agreement, including but not limited to any right, title or interest to and in the fire hydrants and appurtenances.

Unless the City annexes the subject area beforehand, within one year of the date this Agreement becomes effective, the City shall convey to District, and the District shall accept, all of the City's right, title and interest to and in any improvements furnished, constructed or installed under this Agreement, including but not limited to any right, title or interest to and in the fire hydrants and appurtenances.

(h) The District will ensure that the contract documents require the contractor to name the City of Corpus Christi and Nueces County as additional insureds on any policy of insurance provided by the contractor pursuant to the contract documents. The District will further ensure that contract documents require the contractor to indemnify and hold harmless the City of Corpus Christi and Nueces County of any claims, injuries, damages or loss of any kind arising out of or in connection with any work performed by the contractor.

Section 6. Funding. The District agrees to be responsible for one-third (1/3rd), the City agrees to be responsible for one-sixth (1/6th) and the County agrees to be responsible for one-sixth (1/6th), except that in no event shall the City nor County pay an amount exceeding twenty-five thousand dollars (\$25,000) each, of the costs associated with the construction and installation of the water line, with necessary fittings, including fire hydrants, and subsurface appurtenances incidental thereto, including, but not limited to engineering services to design and prepare construction plans, advertising, printing and miscellaneous expenses necessary for the construction and installation of the improvements to be installed pursuant to this Agreement ("Project Funds"). The District shall be solely responsible for the balance of one-

third (1/3rd) of the funding for the costs associated with the construction and installation of the water line, with necessary fittings, including fire hydrants, and subsurface appurtenances incidental thereto. The District intends that the said one-third (1/3rd) of the funding for the costs are to be paid by Donald J. Havelka of Robstown, Nueces County, Texas pursuant to a separate agreement entered into by and between the District and Don J. Havelka. The City and County will pay their pro-rata share of the costs of the project, not to exceed an amount of twenty-five thousand dollars (\$25,000) each, within thirty (30) days from receipt of the District's detailed invoice for the funding provided for herein. The City and County shall have the right to review and audit the District's documents concerning the project expenses upon request.

Section 7. Change Orders. Change orders will be reviewed by the District, County and City with the District giving final approval as a part of contract administration. All changes will be funded with Project Funds.

Section 8. Term. The original term of this Agreement shall be one year. It is agreed by the parties that this Agreement shall automatically renew for additional one year periods for so long as the City and/or County shall own and maintain County Road 52 and the District shall own and maintain the improvements being installed pursuant to this agreement. Notwithstanding anything to the contrary contained herein, this Agreement as it applies to the County will expire at such time as the County sells, grants, conveys, assigns and dedicates to the District all of the County's right, title and interest in and to the lines, fire hydrants and necessary appurtenances provided by the County pursuant to this Agreement. Notwithstanding anything to the contrary contained herein, this Agreement as it applies to the City will expire at such time as the City sells, grants, conveys, assigns and dedicates to the

District all of the City's right, title and interest, *if any*, in and to the lines, fire hydrants and necessary appurtenances installed under this Agreement or on the effective date of an ordinance passed by the Corpus Christi City Council for the City to annex the subject area.

Section 9. Permits. The District is solely responsible for obtaining and maintaining any permits necessary or required to construct and install the water line, with necessary fittings, including fire hydrants, and subsurface appurtenances incidental thereto, for the transportation of water for municipal and domestic purposes.

Section 10. City and/or County Control. All services provided under this Agreement by the City and/or County shall be at the sole direction and supervision of the City and/or County.

Section 11. District Control. All services provided under this Agreement by the District shall be at the sole direction and supervision of the District.

Section 12. Notice. Notice shall be delivered to the following address for the party notified:

CITY OF CORPUS CHRISTI
City Manager of City of Corpus Christi
1201 Leopard Street

Corpus Christi, Texas 78401

NUECES COUNTY
County Judge
901 Leopard, Room 303

Corpus Christi, Texas 78401

**NUECES COUNTY WATER CONTROL
& IMPROVEMENT DISTRICT NO. 3**
District Manager
501 East Main Street
Robstown, Texas 78380

Section 13. Default. In the event of a default in any of the terms herein by the City, the County, or the District, the non defaulting party shall give a 10 day written notice advising the defaulting party of the default (“default notice”), by certified mail, return receipt

requested. The defaulting party shall have 10 days from the date of the default notice to cure the event of default or this Agreement shall terminate. In the event the Agreement terminates the parties shall have no further obligation to the other party by reason of this Agreement.

Section 14. Dispute Resolution. The parties hereto mutually contract and agree that each, every, any and all claims, disputes and/or controversies, now existing or hereafter arising, whether known or unknown, must first be attempted to be resolved as follows: (a) by attempting settlement by mediation, under the Mediation Rules and utilizing a neutral mediator. Each party shall pay its own costs of mediation.

Section 15. Risk & Liability. The District assumes all financial risks and liability under this Agreement and hereby releases the City and County from the same. The District shall be solely liable for any financial loss for the design and construction of the improvements. The City and County assume no financial risks or liability under this Agreement. District shall be solely liable for constructing the improvements in compliance with all State, Federal and Local Laws and in full compliance with the terms of this Agreement. Under no circumstances may any communication, approval or denial of the City or County be interpreted by the District to constitute a waiver of this term so as to cause the City or the County to assume any financial risks or liability under this Agreement. This term survives termination of this Agreement.

Section 16. Other Liability. Notwithstanding the foregoing the City, County and District agree that each party shall each be responsible for its own negligent acts or omissions or other tortious conduct in the course of performance of this Agreement, without waiving any sovereign governmental immunity available to either the City, the County or the District under Texas law and without waiving any available defenses under Texas law. Nothing in this

paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities. This term survives termination of this Agreement.

Section 17. No Intent to Agree to Provide Services. In no event may this Agreement or any terms in this Agreement be construed as a promise by the City to provide fire, water, emergency, or any other utility services to the owners and occupants of lands lying contiguous to County Road 52 in Nueces County, Texas, or to any person or group of people in the extra territorial jurisdiction of the City, within Nueces County, or beyond.

Section 18. No Intent to Benefit Third Parties. Nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 19. No Waiver. The waiver of any provision in this Agreement will not be deemed to be a waiver of any other provision of this Agreement. No waiver of any provision of this Agreement will be deemed to constitute a continuing waiver unless expressly provided in writing.

Section 20. Miscellaneous.

- (a) This Agreement expresses the entire agreement between the parties.
- (b) Any modification, amendment, or addition to this Agreement shall not be binding upon the parties unless reduced to writing and signed by the persons authorized to make such agreements on behalf of the respective party.

The Effective Date of this Agreement is the _____ day of October 2012.

ATTEST:

CITY OF CORPUS CHRISTI

Armando Chapa, City Secretary

By _____
Ronald Olson, City Manager

Approved as to Legal form: 10-23-12

Veronica Ocañas

Veronica Ocañas
Assistant City Attorney
For City Attorney

ATTEST:

NUECES COUNTY

Diana J. Barren

County Clerk, Nueces County

By *Samuel Loyd Neal, Jr.*

Samuel Loyd Neal, Jr. County Judge



ATTEST:

**NUECES COUNTY WATER CONTROL
AND IMPROVEMENT DISTRICT NO. 3**

Glenna Klitt

District Secretary

By *Philip Richard*

Philip Richard, District Manager