

**WATER ARTERIAL TRANSMISSION AND GRID MAIN  
CONSTRUCTION AND REIMBURSEMENT AGREEMENT**

STATE OF TEXAS           §

COUNTY OF NUECES       §

This Water Arterial Transmission and Grid Main Reimbursement Agreement ("Agreement") is entered into between the City of Corpus Christi ("City"), a Texas home-rule municipality, P.O. Box 9277, Corpus Christi, Texas, 78469-9277, and Spear Consolidated, Ltd. ("Developer"), 225 S. Carancahua, Corpus Christi, Texas 78401.

**WHEREAS**, the Developer, in compliance with the Unified Development Code ("UDC"), proposes to final plat the Property as shown on the attached final plat known as Lot 1, Block 1 Spear Subdivision ("Development"), as shown in **Exhibit 1 (attached and incorporated)**;

**WHEREAS**, under the UDC and as a condition of such plat of Lot 1, Block 1 Spear Subdivision, Developer is required to construct a public waterline in order to record such plat;

**WHEREAS**, Developer has submitted an application for reimbursement of the costs of extending a 12-inch waterline from the existing 12-inch waterline on Saratoga Boulevard (SH 357) at Ranger Road for a distance of 1,138 linear feet in order to extend water grid main along Saratoga Boulevard (SH 357) and consistent with the Unified Development Code (**Exhibit 2**);

**WHEREAS**, it is in the best interests of the City to have the 12-inch waterline on Saratoga Boulevard (SH 357) at Ranger Road for a distance of 1,138 linear feet installed by Developer in conjunction with the final plat;

**WHEREAS**, Resolution No. 026869 authorized the acceptance of applications to be eligible for reimbursement in the future when funds are fully available in, and are appropriated by City Council, the Arterial Transmission and Grid Main Line Trust Fund as per the UDC, Section 8.5.1.C(1), and

**WHEREAS**, Chapter 212 of the Texas Local Government Code authorizes a municipality to make a contract with a Developer of a subdivision or land in the municipality to construct public improvements related to the subdivision or land;

**NOW, THEREFORE**, in consideration set forth hereinafter and in order to provide a coordinated waterline construction project, the City and Developer agree as follows:

Subject to the terms of this Agreement and the plat of Spear Subdivision Block 1, Lot 1, Developer will construct the 12-inch waterline for and on behalf of the City in accordance with the plans and specifications as are approved by the City Engineer on behalf of the City.

1. REQUIRED CONSTRUCTION

The Developer shall construct the 12-inch waterline improvements, in compliance with the City's UDC and under the plans and specifications approved by the Development Services Engineer.

2. PLANS AND SPECIFICATIONS

a. The Developer shall contract with a professional engineer, acceptable to the City's Development Services Engineer, to prepare plans and specifications for the construction of the 12-inch waterline, as shown in **Exhibit 3**, with the following basic design:

(1) Install 1,138 linear feet of 12-inch PVC pipe.

(2) Install three (3) 12" gate valves and boxes.

(3) Install five (5) fire hydrants.

(4) Install 974 linear feet trench safety.

b. The plans and specifications must comply with City Water Distribution Standards and Standard Specifications.

c. Before the Developer starts construction the plans and specification must be approved by the City's Development Services Engineer.

3. SITE IMPROVEMENTS

Prior to the start of construction of the 12-inch waterline improvements, Developer shall acquire and dedicate to the City the required additional utility easements "Easements", if necessary for the completion of the 12-inch waterline. If any of the property needed for the Easements is owned by a third party and Developer is unable to acquire the Easements through reasonable efforts, then the City will use its powers of eminent domain to acquire the Easements.

4. PLATTING FEES

Developer shall pay to the City of Corpus Christi the required acreage fees and pro-rata fees as required by the UDC for the area of the improvements for the construction of the 12-inch waterline. The required acreage fees Developer is to pay to the City under the UDC for the 12-inch waterline improvements will be credited to Developer provided that an application for credit, including cost-supporting documentation, has been submitted to the Assistant City Manager of Development Services prior to the installation of the 12-inch waterline and is approved.

5. DEVELOPER AWARD CONTRACT FOR IMPROVEMENTS

Developer shall award a contract and complete the improvements to 12-inch waterline, under the approved plans and specifications, by **June 10, 2015**.

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 or 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 fails to engage a professional engineer for the preparation of plans and specifications by the 10th calendar day after the date of approval by City Council.
- b. Developer's professional engineer fails to submit the plans and specifications to the City's Director of Engineering Services by the 40th calendar day after the date of approval by City Council.
- c. Developer fails to award a contract for the construction of the project, according to the approved plans and specifications, by the 70th calendar day after the date of approval by City Council.
- d. Developer's contractor does not reasonably pursue construction of the project under the approved plans and specifications.
- e. Developer's contractor fails to complete construction of the project, under the approved plans and specifications, on or before **June 10, 2015**.
- f. Either the City or Developer otherwise fails to comply with its duties and 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 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 Developer fail to perform any obligation or duty of this Agreement, the City shall give notice to Developer, at the address stated above, of the need to perform the obligation or duty, and should Developer 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 Developer by reducing the reimbursement amount due Developer.
- e. In the event of an uncured default by the Developer, 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.
  - 3. Perform any obligation or duty of the Developer under this agreement and charge the cost of such performance to Developer. Developer shall pay to City the reasonable and necessary cost of the performance within 30 days from the date Developer receives notice of the cost of performance. In the event that Developer 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 has all its remedies at law or 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; epidemic; 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 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:

Spear Consolidated, Ltd.  
225 S. Carancahua  
Corpus Christi, Texas 78401

2. If to the City:

City of Corpus Christi  
1201 Leopard Street (78401)  
P.O. Box 9277  
Corpus Christi, Texas 78469  
ATTN: Assistant City Manager  
Development Services

b. Notice required by the paragraph may be 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 of address for notices by giving notice of the change under the provisions of this section.

12. THIRD-PARTY BENEFICIARY

Developer's contracts with the professional engineer for the preparation of the plans and specifications for the construction of the project, contracts for testing services, and with the contractor for the construction of the project must provide that the City is a third party beneficiary of each contract.

13. PERFORMANCE AND PAYMENT BONDS

Developer shall require its contractor for the construction of the project, before beginning the work, to execute with Developer and the City 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 bond must comply with Texas Government Code, Chapter 2253 and must be in the form and substance as attached to this Agreement.

14. WARRANTY

Developer shall fully warranty the workmanship of and function of the 12-inch waterline improvements and the construction thereof for a period of one year from and after the date of acceptance of the facilities by the City Engineer.

15. REIMBURSEMENT

a. Subject to the appropriation of funds, the City will reimburse the Developer 100% of the reasonable cost of the 12-inch waterline improvements, not to exceed **\$84,536.35**. See attached cost estimate (**Exhibit 4**).

- b. Subject to the appropriation of funds, the City agrees to reimburse the Developer 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 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 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 at a time when there has been a partial completion and partial payment for the improvements, then the City shall only reimburse Developer 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 there is an uncured default by the Developer.

16. INDEMNIFICATION

**DEVELOPER, COVENANTS TO FULLY INDEMNIFY, SAVE AND HOLD HARMLESS THE CITY OF CORPUS CHRISTI, ITS OFFICERS, EMPLOYEES, AND AGENTS, ("INDEMNITEES") AGAINST ANY AND ALL LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS SUITS AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER ASSERTED AGAINST OR RECOVERED FROM CITY ON ACCOUNT OF INJURY OR DAMAGE TO PERSON INCLUDING, WITHOUT LIMITATION ON THE FOREGOING, WORKERS COMPENSATION AND DEATH CLAIMS, OR PROPERTY LOSS OR DAMAGE OF ANY OTHER KIND WHATSOEVER, TO THE EXTENT ANY INJURY, DAMAGE, OR LOSS MAY BE INCIDENT TO, ARISE OUT OF, BE CAUSED BY, OR BE IN ANY WAY CONNECTED WITH, EITHER PROXIMATELY OR REMOTELY, WHOLLY OR IN PART, THE DEVELOPER'S FAILURE TO COMPLY WITH ITS OBLIGATIONS UNDER THIS AGREEMENT OR TO PROVIDE CITY WATER SERVICE TO THE DEVELOPMENT, INCLUDING INJURY, LOSS, OR DAMAGE WHICH ARISE OUT OF OR ARE IN ANY MANNER CONNECTED WITH, OR ARE CLAIMED TO ARISE OUT OF OR BE IN ANY MANNER CONNECTED WITH THE CONSTRUCTION, INSTALLATION, EXISTENCE, OPERATION, USE, MAINTENANCE, REPAIR, RESTORATION, OR REMOVAL OF THE PUBLIC IMPROVEMENTS ASSOCIATED WITH THE DEVELOPMENT DESCRIBED ABOVE, INCLUDING THE INJURY, LOSS OR DAMAGE CAUSED BY THE SOLE OR CONTRIBUTORY NEGLIGENCE OF THE INDEMNITEES OR ANY OF THEM, REGARDLESS OF WHETHER THE INJURY, DAMAGE, LOSS, VIOLATION, EXERCISE OF RIGHTS, ACT, OR OMISSION IS CAUSED OR IS CLAIMED TO BE CAUSED BY THE CONTRIBUTING OR CONCURRENT NEGLIGENCE OF INDEMNITEES, OR ANY OF THEM, BUT NOT IF CAUSED BY THE SOLE NEGLIGENCE OF INDEMNITEES, OR ANY OF THEM, UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY, AND INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEYS FEES,**

**WHICH ARISE, OR ARE CLAIMED TO ARISE, OUT OF OR IN CONNECTION WITH THE ASSERTED OR RECOVERED INCIDENT.**

**THIS INDEMNITY SPECIFICALLY INCLUDES ALL CLAIMS, DAMAGES, AND LIABILITIES OF WHATEVER NATURE, FORESEEN OR UNFORESEEN, UNDER ANY HAZARDOUS SUBSTANCE LAWS, INCLUDING BUT NOT LIMITED TO THE FOLLOWING:**

**(A) ALL FEES INCURRED IN DEFENDING ANY ACTION OR PROCEEDING BROUGHT BY A PUBLIC OR PRIVATE ENTITY AND ARISING FROM THE PRESENCE, CONTAINMENT, USE, MANUFACTURE, HANDLING, CREATING, STORAGE, TREATMENT, DISCHARGE, RELEASE OR BURIAL ON THE PROPERTY OR THE TRANSPORTATION TO OR FROM THE PROPERTY OF ANY HAZARDOUS SUBSTANCE. THE FEES FOR WHICH THE DEVELOPER SHALL BE RESPONSIBLE UNDER THIS SUBPARAGRAPH SHALL INCLUDE BUT SHALL NOT BE LIMITED TO THE FEES CHARGED BY (I) ATTORNEYS, (II) ENVIRONMENTAL CONSULTANTS, (III) ENGINEERS, (IV) SURVEYORS, AND (V) EXPERT WITNESSES.**

**(B) ANY COSTS INCURRED ATTRIBUTABLE TO (I) THE BREACH OF ANY WARRANTY OR REPRESENTATION MADE BY DEVELOPER/OWNER IN THIS AGREEMENT, OR (II) ANY CLEANUP, DETOXIFICATION, REMEDIATION, OR OTHER TYPE OF RESPONSE ACTION TAKEN WITH RESPECT TO ANY HAZARDOUS SUBSTANCE ON OR UNDER THE PROPERTY REGARDLESS OF WHETHER OR NOT THAT ACTION WAS MANDATED BY THE FEDERAL, STATE OR LOCAL GOVERNMENT.**

**THIS INDEMNITY SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THE AGREEMENT.**

**17. ASSIGNMENT OF AGREEMENT**

This Agreement may be assigned by Developer to another with the written consent of the City's City Manager.

**18. COVENANT RUNNING WITH THE LAND**

This Agreement is a covenant running with the land, Spear Subdivision Block 1, Lot 1, a subdivision in 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's successors or assigns.

**19. DISCLOSURE OF OWNERSHIP INTERESTS**

Developer further agrees, in compliance with the City Ordinance No. 17110, to complete, as part of this Agreement, the Disclosure of Ownership interests form attached hereto as **Exhibit 5**.

20. AUTHORITY

All signatories signing this Agreement warrant and guarantee that they have the authority to act on behalf of the entity represented and make this Agreement binding and enforceable by their signature.

21. EFFECTIVE DATE

This Agreement shall be executed in one original, which shall be considered one instrument. \*This Agreement becomes effective and is binding upon, and inures to the benefit of the City and Developer from and after the date that all original copies have been executed by all signatories.

EXECUTED IN ONE original, \*this 3<sup>rd</sup> day of May, 2014.

**SIGNATURES FOUND ON PAGES 8, 9 and 10.**

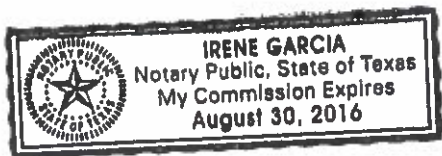
**Developer**  
Spear Consolidated, Ltd.  
225 S. Carancahua  
Corpus Christi, Texas 78401

By: Harry Morgan Spear, Jr.  
Harry Morgan Spear, Jr., Manager  
Spear GP, L.L.C.  
General Partner, Spear Consolidated, Ltd.

THE STATE OF TEXAS    §  
  §  
COUNTY OF NUECES    §

This instrument was signed by Harry Morgan Spear, Jr., Manager, for Spear GP, L.L.C., and acknowledged before me on the 3 day of MAY, 2014.

Irene Garcia  
Notary Public, State of Texas





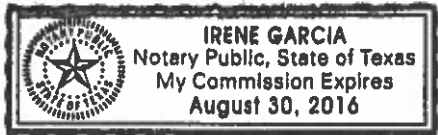
**Developer**  
Spear Consolidated, Ltd.  
225 S. Carancahua  
Corpus Christi, Texas 78401

By: Martha G. Spear  
Martha G. Spear, Manager  
Spear GP, L.L.C.  
General Partner, Spear Consolidated, Ltd.

THE STATE OF TEXAS   §  
  §  
COUNTY OF NUECES   §

This instrument was signed by Martha G. Spear, Manager, for Spear GP, L.L.C., and acknowledged before me on the 3rd day of MAY, 2014.

Irene Garcia  
Notary Public, State of Texas



**CITY OF CORPUS CHRISTI:**

**ATTEST:**

By: \_\_\_\_\_  
Rebecca Huerta  
City Secretary

By: \_\_\_\_\_  
Ronald L. Olson  
City Manager

THE STATE OF TEXAS §  
  §  
COUNTY OF NUECES §

This instrument was signed by Rebecca Huerta, City Secretary, for the City of Corpus Christi, Texas, and acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public, State Of Texas

THE STATE OF TEXAS §  
  §  
COUNTY OF NUECES §

This instrument was signed by Ronald Olson, City Manager, for the City of Corpus Christi, Texas, and acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public, State Of Texas

APPROVED AS TO FORM: This 1st day of May, 2014.

  
\_\_\_\_\_  
Julian Grant, Senior Assistant City Attorney  
For the City Attorney