

**CONSTRUCTION AND REIMBURSEMENT AGREEMENT
Tortuga Dunes/Zahn Road/Packery Channel Development Area
Wastewater Lift Station and Force Main Improvements**

THE STATE OF TEXAS

COUNTY OF NUECES

This Construction and Reimbursement Agreement ("Agreement") is entered into between the City of Corpus Christi ("City"), a Texas home-rule municipal corporation, P.O. Box 9277, Corpus Christi, Texas, 78469-9277, and Forestar (USA) Real Estate Group Inc., a Delaware corporation duly authorized to do business in Texas ("Developer"), whose headquarters is located at 6300 Bee Caves Road, Building Two, Suite 500, Austin, Texas 78746.

WHEREAS, Developer in compliance with the City Platting Ordinance, has filed a plat to develop a tract of land of approximately 33.53 acres called The Preserve at Mustang Island, Unit 1, along Zahn Road, as shown in the attached EXHIBIT 1;

WHEREAS, the City's Whitecap WWTP Service Area Master Plan requires the construction of a lift station and dual force mains in order for the Packery Channel Development Area and The Preserve at Mustang Island, Unit 1, and adjacent areas in Whitecap WWTP Service Area 11 to have sanitary sewer service;

WHEREAS, the provision of central wastewater service and additional area infrastructure improvements are necessary to timely advance the joint development goals of the Packery Channel Development Area, as intended by the City and the General Land Office of the State of Texas, and as enumerated in the Padre Island Action Plan;

WHEREAS, the lift station and dual force mains are not in place at this time, but these improvements are included in the City's Wastewater Treatment Plant Master Plan for the Whitecap WWTP Service Area, to provide City wastewater service to Service Areas 11 and 12;

WHEREAS, under the Platting Ordinance, the Developer is responsible for construction of the lift station and dual force mains;

WHEREAS, under the Platting Ordinance, the Developer is eligible for full reimbursement of the Developer's costs incurred for the construction of the lift station and dual force mains on behalf of the City;

WHEREAS, it is essential that the lift station and dual force mains be constructed in connection with The Preserve at Mustang Island, Unit 1, development for service to be provided upon completion of The Preserve at Mustang Island, Unit 1; and

WHEREAS, it is to the best interest of the City and the Developer for the Zahn Road Lift Station and dual force mains be constructed in accordance with the City of Corpus

2009-126

03/31/09

M2009-078

Page 1 of 8

oad LS FM rjr-bcr 03022009 (2).doc

Christi Ordinances as specified in the Wastewater Treatment Plant Master Plan for the Whitecap WWTP Service Area and within the Zahn Road Lift Station and Force Main Design Memorandum;

NOW, THEREFORE, for and in consideration of the mutual covenants in this Agreement, the parties do covenant and agree as follows:

1. REQUIRED CONSTRUCTION

The Developer shall construct the Zahn Road Lift Station and Dual Force Mains under the Design Memorandum as required for the Packery Channel Development Area, the Preserve at Mustang Island and for additional adjacent property in Service Areas 11 and 12, in compliance with the City's Platting Ordinance and under the plans and specifications approved by Development Services Engineer.

2. PLANS AND SPECIFICATIONS

a. The Developer has contracted with a professional engineer, Naismith Engineering, Inc., who were acceptable to the City's Development Services Engineer, which firm has prepared and obtained the January 22, 2008 approval of the City's Development Services Engineer for the Zahn Road Lift Station and Force Main Design Memorandum; which firm has also prepared detailed plans and specifications for the Zahn Road Lift Station and Force Mains, with the following basic design parameters:

(1) LIFT STATION:

- (a) Lift station structure designed for ultimate capacity of 0.6 MGD.
- (b) Pump installation and design will be based on the following phasing with Developer installing Phase 1 as part of this Agreement:
 - (i) Phase 1 initial design Q = 121 GPM.
 - (ii) Phase 2 add force main capacity Q=277 GPM
 - (iii) Phase 3 add Svc. Area 12 flows Q=418 GPM or 0.6GPD.

(2) DUAL SANITARY SEWER TRUNK FORCE MAINS:

- (a) Install 7,124 feet of 4" PVC and 1,400 feet of 4"HDPE sanitary sewer force main line and appurtenances.
- (b) Install 7,124 feet of 6" PVC and 1,400 feet of 6" HDPE sanitary sewer force main line and appurtenances.
- (c) At the Packery Channel crossing, install four (4) additional pipes in the existing channel crossing sleeve, each 1,400 feet long, three (3) of 8" HDPE, and one (1) of 2" HDPE, and appurtenances.

(d) The force mains described in subparagraphs (a), (b), and (c) of this paragraph will begin at the Zahn Road Lift station and end at an existing wastewater manhole located at a point across South Padre Island Drive (Park Road 22) designated by the City, where they will terminate at an existing manhole. The size of the force mains were dictated by the design as approved by the City of Corpus Christi.

b. The plans and specifications for the lift station and dual force mains are those prepared by Naismith Engineering, Inc., under Job No. 7818, dated and sealed on June 5, 2008.

3. **SITE IMPROVEMENTS.** Prior to construction of the lift station and dual force mains, Developer shall acquire from General Land Office (for the Permanent School fund) the two sewer easements and from a private landowner one sewer easement to permit the dual force mains to be connected across Packery channel to the City of Corpus Christi Whitecap sewage collection system at a manhole located at a point adjacent to South Padre Island Drive (Park Road 22) as identified and directed by City of Corpus Christi. These easements will be granted to the City of Corpus Christi or upon City acceptance of improvements dedicated to the City of Corpus Christi, as instructed by the City.

4. **PLATTING FEES.** Developer shall pay to the City of Corpus Christi the required acreage fees and pro-rata fees as required by the Platting Ordinance, if any.

5. **DEVELOPER AWARD CONTRACT FOR IMPROVEMENTS.** Developer has taken bids for the work under the requirements of the City of Corpus Christi, and shall award a contract and complete the lift station and force mains, under the approved plans and specifications, no later than 270 working days after the date of approval of this Agreement by the City of Corpus Christi (subject to extension for force majeure delays).

6. **TIME IS OF THE ESSENCE.** Time is of the essence in the performance of this agreement.

7. **DEFAULT.**

a. The following events constitute default:

1. Developer fails to award a contract for the construction of the project, under the approved plans and specifications, by the 30th calendar day after the date of approval of this Construction and Reimbursement Agreement by City Council.

2. Developer's contractor does not reasonably pursue construction of the project under the signed bid documents accompanying the approved plans and specifications.

3. Developer's contractor fails to complete construction of the project, according to the approved plans and specifications, on or before 240 work days after receiving notice to proceed (subject to extension for force majeure delays).

b. In the event of default, the City has all its common law remedies in addition to the following:

1. Cancellation of this reimbursement agreement after notice and opportunity to cure as provided herein.
2. Refusal to record plat(s) or issue any certificate of occupancy for any structure to be served by the project.

8. **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 shall be a third party beneficiary of each contract.

9. **PERFORMANCE AND PAYMENT BONDS.** Developer shall require its contractor for the construction of the project, before beginning the work, to execute to 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. The performance and payment bond must name Developer and City as joint obligees.

10. **NOTICE AND CURE.**

a. Any notice or other communication required or permitted to be given under this Agreement must be given to the other Party at the following address:

1. If to the Developer:

Forestar (USA) Real Estate Group Inc.
6300 Bee Caves Road, Building Two, Suite 500
Austin, Texas 78746
Attn: Wayne McDonald, Senior Vice President

With copy to:

Forestar (USA) Real Estate Group Inc.
6300 Bee Caves Road, Building Two, Suite 500
Austin, Texas 78746
Attn: General Counsel

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. Should Developer fail to perform any obligation or duty of this agreement, the City shall give written notice to Developer, at the address stated above, of the need to perform the obligation or duty, and should Developer commence to perform the obligation or duty within 25 days after receipt of such notice, and continue such performance with diligence, then no event of default shall be deemed to have occurred.

c. But if Developer should fail to perform or commence to perform the required obligation or duty within 25 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.

d. In the alternative, in the event of Developer's failure to cure or commence to cure any such breach within 25 days after receipt by Developer of a second notice in writing from City of the need to perform the obligation or duty, the City may terminate this agreement.

e. If City has performed an obligation or duty of Developer, then Developer shall pay to City the cost of such performance within 30 days from the date Developer receives written notice and substantiation of the cost to City of such performance.

f. 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.

g. The provision for notice and cure contained in this agreement do not apply to a default under Section 7(a) of this agreement.

h. The dates for completion of the lift station and dual force mains may be extended for each day that completion is delayed by inability to obtain labor or materials, weather making the work impracticable, acts of God, or other forces beyond the control of Developer (but not financial inability). These causes of delays are called "force majeure".

11. WARRANTY. Developer shall have contractor execute a warranty of the workmanship of the lift station and dual force mains for a period of one year from and after the date of acceptance of the facilities by the Development Services Engineer. The warranty must be assigned and transferred to the City upon completion of this project.

12. REIMBURSEMENT

- a. Subject to availability of funds in the Sanitary Sewer Trunk System Trust Fund, and the appropriation of the funds by the City Council, the City will reimburse the Developer 100% of the cost of the lift station and dual force mains, including in the calculation of such cost, but not limited to the following items: The payments to a contractor for the construction and installation of the lift station and dual force mains, costs of permits and inspection fees, costs of design and construction inspection, costs of easements from General Land Office and private parties, and the costs of environmental permitting, but not including the costs of mitigation of impacts. The costs to be reimbursed are those described on "Project Costs - Exhibit B" prepared by Naismith Engineering, Inc., and attached hereto. The City will, contingent on collection of sewer acreage and lot fees, continue to deposit funds into the Sanitary Sewer Trunk System Trust Fund consistently with past practices.
- b. If funds are available and appropriated during the construction of the lift station and dual force mains, the City agrees to reimburse the Developer on a monthly basis and upon invoicing for work performed. Reimbursement of eligible costs will be made by the later of within 15 days from the date of invoice or 15 days from funds becoming available and appropriated.
- c. To be eligible for reimbursement, the work completed to date must comply with the approved plans and specifications, and have been inspected and are acceptable by the City, which inspection and acceptance will not be unreasonably delayed, withheld or conditioned.
- d. If funds are not available or appropriated until after the work has been completed, the City will reimburse the Developer when the funds are available and appropriated in the Sanitary Sewer Trunk System Trust Fund. The order of reimbursement of un-reimbursed developers will be determined according to the dates the sanitary sewer trunk system construction and reimbursement agreements are approved by the City Council. Only two projects, being Bahia Vista Subdivision Unit I and 37 Industrial Park, are currently beneficiaries of dates of reimbursement agreements approved by City Council which are earlier than the lift station and dual force mains which are the subject of this agreement.

13. INDEMNIFICATION. Developer shall indemnify and hold harmless the City, its agents, officers, and employees (Indemnitees") from all suits, actions, or claims and from all liability for any and all injuries or damages sustained by any person, including without limitation workers compensation, personal injury or death, arising from or incident to this lift station and dual force main construction.

14. DISCLOSURE OF OWNERSHIP INTEREST. Developer further agrees, in compliance with the City of Corpus Christi Ordinance No. 17112, to complete, as part of

this Agreement, the Disclosure of Ownership interests form attached hereto as Exhibit "C".

15. AGREEMENT EFFECTIVE. This agreement becomes effective and is binding upon and shall inure to the benefit of the City and Developer, and their respective heirs, successors, and assigns from and after the date of execution.

EXECUTED IN DUPLICATE originals, this 31st day of March, 2009.

ATTEST:

THE CITY OF CORPUS CHRISTI

Armando Chapa

Armando Chapa
City Secretary

By:

Angel R. Escobar
Angel R. Escobar
City Manager

APPROVED AS TO FORM: 23rd day of March, 2009

By:

R. Jay Reining
R. Jay Reining
First Assistant City Attorney

M2009-078 AUTHORIZED
BY COUNCIL 03/31/09

A.C.
SECRETARY job.

THE STATE OF TEXAS

COUNTY OF NUECES

This instrument was acknowledged before me on April 1, 2009, by 'Angel R. Escobar, City Manager, City of Corpus Christi, Texas, a Texas home-rule municipal corporation, on behalf of the corporation.

Holly Houghton
Notary Public, State of Texas



DEVELOPER:

FORESTAR (USA) REAL ESTATE GROUP INC.

By:

[NAME]

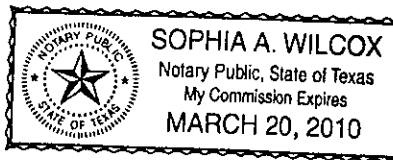
[TITLE]

THE STATE OF TEXAS

COUNTY OF NUECES

This instrument was acknowledged before me on March 19th, 2009, by Wayne McDonald, Senior Vice President of Forestar (USA) Real Estate Group Inc., a Delaware corporation on behalf of the corporation

Sophia A. Wilcox
Notary Public, State of Texas



Project Costs - Exhibit B



Title: Zahn Road Lift Station & Force Main

NEI #: 7818

Date Award: September 2, 2008

Original Contract Amount: \$2,457,890.25

Total Change Order Amount: \$0.00

Adjusted Contract Amount: \$2,457,890.25

Date Contract Commenced:

Original Contract Days: 240 Working Days

Change in Contract Days: 0 Working Days

Adjusted Contract Days: 240 Working Days

NEI Engineer: Craig B. Thompson, P.E.

NEI Contact: Thomas Tiffin

Date:

Inspected By:

Owner: The Preserve at Mustang Island, L.L.C.

Contact: Barrett Allison

Address: 1300 S. Mopac Expressway

Austin, Texas 78746

Phone: (512) 422 - 2209

Contractor: Big State Excavation

Contact: Gary Meurer

Address: PO Box 260297

Corpus Christi, Texas 78410

Phone: (361) 537 - 5013

A. AMOUNT OF ORIGINAL CONTRACT ITEMS COMPLETED TO DATE:

Lift Station

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	QUANTITY COMPLETE	CONTRACT UNIT PRICE	TOTAL COST
1	Stabilized Construction Entrance & Exit	1	EA	1	\$2,000.00	\$2,000.00
2	Reinforced Filter Fabric Fence	333	LF	333	\$2.00	\$666.00
3	Hay Bales	1	LS	1	\$1,000.00	\$1,000.00
4	Site Clearing and Stripping	0.32	AC	0.32	\$3,000.00	\$960.00
5	Site Grading	1	LS	1	\$3,000.00	\$3,000.00
6	Lift Station and Appurtenances	1	LS	1	\$580,000.00	\$580,000.00
7	Dewatering / Well Pointing for Lift Station and Appurtenances Installation	1	LS	1	\$50,000.00	\$50,000.00
8	Odor Control	1	LS	1	\$140,000.00	\$140,000.00
9	8" Gravity Sanitary Sewer	110	LF	110	\$140.00	\$15,400.00
10	8" End Plug	2	EA	2	\$100.00	\$200.00
11	12" Gravity Sanitary Sewer	70	LF	70	\$160.00	\$11,200.00
12	Sanitary Sewer Fiberglass Manhole 5' Diameter @ 19' - 21' Depth	1	EA	1	\$20,000.00	\$20,000.00
13	Tie to Public Sanitary Sewer Manhole Stub Out	1	LS	1	\$2,500.00	\$2,500.00
14	Dewatering / Well Pointing for Sanitary Sewer Gravity Line Installation	1	LS	1	\$1,000.00	\$1,000.00
15	Trench Safety	200	LF	200	\$15.00	\$3,000.00
16	PVC Pressure Pipe - 4"	130	LF	130	\$20.00	\$2,600.00
17	Dual Water Service Connection	1	EA	1	\$2,500.00	\$2,500.00
18	Connection to Existing 8" Water Pipe	1	LS	1	\$2,500.00	\$2,500.00
19	Crushed Limestone on Landscape Fabric - 6"	1	LS	1	\$10,000.00	\$10,000.00
20	Reinforced Concrete Pavement - 5"	208	SY	208	\$130.00	\$27,040.00
21	HMAC Pavement Repair for Street Improvements	7	SY	7	\$275.00	\$1,925.00
22	Cantilever Gate with Card Reader	1	LS	1	\$32,000.00	\$32,000.00
23	Concrete Masonry Wall with Footing	197	LF	197	\$500.00	\$98,500.00
24	SCADA RTU Panel for Two Pump Lift Station w/ Flow by Rabalais Instrument & Electrical Constructors	1	LS	1	\$35,000.00	\$35,000.00

Title: Zahn Road Lift Station & Force Main
NEI #: 7818

Force Main

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	QUANTITY COMPLETE	CONTRACT UNIT PRICE	TOTAL COST
25	Reinforced Filter Fabric Fence	4,605	LF	4,605	\$2.00	\$9,210.00
26	Straw Bale Fence (Force Main)	1	LS	1	\$200.00	\$200.00
27	4" PVC AWWA C900-DR18-150psi Force Main	7,124	LF	7,124	\$18.00	\$128,232.00
28	4" HDPE - 150psi Force Main	1,400	LF	1,400	\$5.00	\$7,000.00
29	4" PVC AWWA C907 Class150 Fittings	13	EA	13	\$400.00	\$5,200.00
30	4" Air Release Valve	3	EA	3	\$4,000.00	\$12,000.00
31	6" PVC AWWA C900-DR18-150psi Force Main	7,124	LF	7,124	\$21.00	\$149,604.00
32	6" HDPE - 150psi Force Main	1,400	LF	1,400	\$9.00	\$12,600.00
33	6" PVC AWWA C907 Class150 Fittings	13	EA	13	\$450.00	\$5,850.00
34	6" Air Release Valve	3	EA	3	\$4,000.00	\$12,000.00
35	Packery Channel Casing Connection	2	EA	2	\$5,000.00	\$10,000.00
36	8" HDPE - 150psi Pipe "A"	1,400	LF	1,400	\$16.00	\$22,400.00
37	8" HDPE - 150psi Pipe "B"	1,400	LF	1,400	\$16.00	\$22,400.00
38	2" HDPE - 150psi Pipe "D"	1,400	LF	1,400	\$2.00	\$2,800.00
39	Packery Channel Bundling	1	LS	1	\$200,000.00	\$200,000.00
40	HMAC Pavement Repair for Street Improvements	69	SY	69	\$100.00	\$6,900.00
41	Driveway Repair for Force Main	66	SY	66	\$140.00	\$9,240.00
42	Force Main Markers	27	EA	27	\$150.00	\$4,050.00
43	Connection to Existing Manhole	1	LS	1	\$2,700.00	\$2,700.00
44	Anti-Flotation Devices	1	LS	1	\$800.00	\$800.00
41	Dewatering / Well Pointing for Force Main Installation	1	LS	1	\$500.00	\$500.00

Easement Acquisition

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	QUANTITY COMPLETE	CONTRACT UNIT PRICE	TOTAL COST
42	Texas General Land Office - Lift Station	1	LS	1	\$105,050.00	\$105,050.00
43	Texas General Land Office - Force Main	1	LS	1	\$125,050.00	\$125,050.00
44	Private Landowner - Force Main	1	LS	1	\$150,000.00	\$150,000.00

Miscellaneous

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	QUANTITY COMPLETE	CONTRACT UNIT PRICE	TOTAL COST
45	AEP Electrical Requirements	1	LS	1	\$50,000.00	\$50,000.00

Professional Services

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	QUANTITY COMPLETE	CONTRACT UNIT PRICE	TOTAL COST
46	Engineering (7.5% of Construction Cost)	1	LS	100%	\$125,000.78	\$125,000.78
47	Topographic Survey (2.0% of Construction Cost)	1	LS	100%	\$33,333.54	\$33,333.54
48	Construction Administration	1	LS	100%	\$16,666.77	\$16,666.77
49	Testing (Geotechnical)	1	LS	100%	\$16,666.77	\$16,666.77
50	Storm Water Pollution Prevention Plan (SWPPP)	1	LS	100%	\$7,500.00	\$7,500.00
51	Traffic Control Plan (TCP)	1	LS	100%	\$5,000.00	\$5,000.00
52	Corps of Engineers Permit	1	EA	1	\$8,000.00	\$8,000.00
53	Beachfront Construction Certificate	1	EA	1	\$4,000.00	\$4,000.00
54	TxDOT - Utility Permit	2	EA	2	\$3,000.00	\$6,000.00
55	Easement Acquisition Administration	1	LS	100%	\$11,403.00	\$11,403.00
55	ROW Surveying, Parcel Descriptions, & Maps	1	LS	100%	\$10,500.00	\$10,500.00
56	Project Contingency	5%		100%	\$117,042.39	\$117,042.39