

**INTERLOCAL AGREEMENT FOR GRANTING OF EASEMENT AND  
CONSTRUCTION OF UNDERGROUND PLACEMENT OF A PORTION OF  
I-341 LATERAL CANAL AND OTHER WORK**

This Interlocal Agreement ("Agreement") is entered into by EL PASO COUNTY ("The County") a political subdivision of the State of Texas and the EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. ("EPCWID"), a political subdivision of the State of Texas organized and existing pursuant to Article XVI, Section 59 of the Texas Constitution and being subject to Chapters 49 and 55 of the Texas Water Code and collectively referred to in this Agreement as the "Parties."

**RECITALS**

**Whereas**, the EPCWID and the County are both "local governments" as defined by the Interlocal Cooperation Act, Chapter 791 Texas Government Code;

**Whereas**, the County has made applications to EPCWID to build a public roadway (to be known as the Manuel Aguilera Highway) over portions of EPCWID's real property and in part, such applications were assigned numbers A0506 (**I-341 Irrigation Lateral Canal**), and A0505 (**Tornillo Canal**);

**Whereas**, the County is interested in purchasing or acquiring an easement for use of the surface of portions of these areas, and desires to commence the Construction Work for placing a portion of the I-341 Lateral canal ("I-341") underground in a pipeline, and constructing private maintenance road crossings over the I-341 for use by EPCWID;

**Whereas**, EPCWID will grant easements for limited use by the County and its successors and assigns in the form of the Easement Agreement attached to this Agreement as Exhibit A;

**Whereas**, these irrigation canals and drains are of critical importance to EPCWID and to many owners of irrigable land within EPCWID boundaries;

**Whereas**, this Agreement will allow EPCWID to assist the County in performing governmental functions and services by EPCWID providing cost effective engineering and construction services to the County in relation to placing a portion of the I-341 Canal underground, and constructing said maintenance road crossings at the locations shown in the attached Exhibit B and allow the County to have access to areas immediately adjacent to the I-341 for the said construction purposes;

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**NOW, THEREFORE** in consideration of the mutual terms and conditions hereinafter set forth, the Parties contract and agree as follows:

### **AGREEMENT**

#### **1. ENGINEER'S COST ESTIMATE AND DESIGN DRAWINGS**

EPCWID shall prepare engineering construction drawings and an Engineer's Cost Estimate sealed by an engineer licensed in the State of Texas that show the engineering design required for underground placement of approximately forty (40) feet of EPCWID's I-341 Lateral Canal and the construction of the maintenance road crossing described in the recitals (the "Construction Work"). The estimated cost for preparing for the engineering construction drawings and Engineer's Cost Estimate is \$3,000.00, and shall be included in the total cost identified in Section 3 below. The engineering construction drawings and Engineer's Cost Estimate shall be completed no more than ninety (90) calendar days after the effective date of this Agreement.

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#### **2. TERM**

The term of this Agreement shall commence upon the effective date of this Agreement and shall terminate 1 year thereafter. The Construction Work shall be completed within 1 year from the effective date of this Agreement. Notwithstanding anything else in this Agreement, if this Agreement is not executed by the County on or before January 30, 2009, any offer contained in this Agreement shall be null and void.

#### **3. COST AND PAYMENT FOR ENGINEERING, CONSTRUCTION WORK AND EASEMENT**

Pursuant to this Agreement, EPCWID shall perform the engineering and construction services required to design and construct a portion of the I-341 and the designated road crossing as described in this Agreement. EPCWID's preliminary cost estimate for the engineering and construction work is \$25,000.. Within ten (10) days of the Effective Date, the County shall pay

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EPCWID \$3,000 for preparation of the Engineering Construction Drawings and Engineering Cost Estimate. Such payment is non-refundable. After the Engineer's Cost Estimate is complete, and if approved in writing by the County and EPCWID, the County shall pay EPCWID the amount of total cost incurred by EPCWID or its agents, contractors, or consultants under this Agreement, provided, however, that such amount shall not exceed \$25,000. If after consultation with EPCWID ,the County does not accept the Engineer's Cost Estimate, this Agreement may be terminated by either party. Upon approval and acceptance of the Engineer's Cost Estimate, the County shall deposit with the District a sum equal to 50% of the Engineer's Cost Estimate. EPCWID shall not perform any construction work until EPCWID receives the required deposit. The actual cost for all work performed by EPCWID under this Agreement shall be based on the hourly cost of EPCWID's employees and equipment at the rates shown (Exhibit A), and the actual purchase paid or invoiced price of items (including concrete, pipe, steel, plywood, and all other construction supplies or materials) or services. EPCWID shall provide the County with accurate documentation of all expenses, employee time, equipment use time of the actual cost to perform the Construction Work. EPCWID shall bill as work and construction progress, and the County shall pay EPCWID the amounts shown on each billing within thirty (30) days of receipt. All engineering, geotechnical, and surveying work required by EPCWID to prepare the Construction Work shall be paid for by the County on a reimbursement basis within 30 days after EPCWID submits an invoice to the County for such work. In addition to the cost for the work performed by EPCWID under this Agreement, the County agrees to pay EPWCID an amount equal to \_\_\_\_\_ as consideration for the value of the easement and any damage to EPCWID caused by such easements. **Each** party to this Agreement paying for the performance of government functions or services must make those payments from current revenues available to the paying party.

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#### 4. GRANT OF EASEMENT

Upon completion of all work by EPCWID and payment by the County to EPCWID for all cost under this Agreement, EPCWID shall grant to the County a permanent easement upon and across the portions of the identified easement locations as shown on the survey maps attached as Exhibit B. Such maps show portions of the I-341 Irrigation Lateral Canal that total \_\_\_\_\_ in surface area. The form of the easement shall be substantially as provided in the

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Exhibit C herein. As shown in easement Exhibit E, the County, or its assigns or successors, shall have the right to use the easement for vehicular and pedestrian crossings, roads, driveways and similar uses. The County, or its assigns or successors, are not authorized to construct buildings or similar improvements upon the surface of the easement. EPCWID shall reserve all rights granted by the easement including without limitation the right to enter upon the easement area at such times as may be necessary for maintenance, repair, construction, and reconstruction by EPCWID of its facilities or its other improvements. EPCWID will grant the easement contemplated herein in partial consideration of County's power of eminent domain. The County shall not claim or represent that any consideration or payments under this Agreement constitutes a comparable basis for consideration of any other easement or use of EPCWID real property sought by the County or other parties.

**5. OWNERSHIP OF DESIGN DRAWINGS**

Any design drawings, cost estimated, technical material or other information, drawings, digital files prepared by EPCWID or its consultants shall remain the property of EPCWID or its consultants and shall not be used by the County for any purpose other than to review and provide EPCWID with comments regarding such design, drawings, cost estimates, technical material or other information, drawings, or digital files.

**6. CULTURAL VALUES**

Should evidence of historical, archeological, or paleontological sites be discovered in the course of the Construction Work, EPCWID shall immediately suspend work and advise the County. The County acknowledges the existence of an agreement between EPCWID and the State of Texas and/or the State Historical Preservation Officer for the State of Texas and accepts this Agreement subject to all provisions of such agreement.

**7. EFFECT OF ANY DETERMINATION OF INVALIDITY**

If any court of competent jurisdiction or any regulatory agency of the State of Texas enters a finding, order, or judgment that is final that either EPCWID or the County does not have

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the authority to enter into this Agreement or any part of this Agreement, or that this Agreement is in violation of law or any legal obligation of EPCWID, this Agreement shall be void as of the date of entry of any final order or judgment and neither party shall be liable to the other party for any claim, cause of action, loss, damages, cost or other expense arising from or in connection with this Agreement, except that the County shall be liable to pay EPCWID for any services or construction work performed under this Agreement and EPCWID shall be obligated to refund any payment made prior to such finding, order, or judgment.

## 8. NO LIABILITY

EPCWID shall not be liable for any damages caused by its failure or delay in doing the Construction Work, or its delay in supplying the Construction Work under this Agreement. EPCWID makes no warranty as to the quality, workmanship, or utility of the Construction Work that is the subject of this Agreement.

## 9. FORCE MAJEURE

If a Party, through no fault of its own, is rendered unable, wholly or in part, by force majeure to carry out its obligations under this agreement, then the obligations of the Party, so far as they are affected by such force majeure, shall be suspended during the time reasonably necessary to remedy such inability, but for no longer period. "Force majeure" means acts of God, wars, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, hazardous spills, explosions, and unforeseeable failure of machinery, structure or other water conveyance facilities.

## 10. VENUE AND CHOICE OF LAW

Any civil action based upon, concerning or arising from this Agreement shall be filed only in a court of competent jurisdiction in El Paso County, Texas. This Agreement shall be construed in accordance with the laws of Texas.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and this Agreement becomes effective on the date of execution by the latter party to execute.

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EL PASO COUNTY  
STATE OF TEXAS

EL PASO COUNTY WATER  
IMPROVEMENT DISTRICT NO. 1

By: \_\_\_\_\_  
Anthony Cobos  
County Judge

By: \_\_\_\_\_  
Johnny Stubbs  
President of the Board of Directors

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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Directors¶

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