

**INTER LOCAL AGREEMENT FOR GRANTING OF EASEMENT AND THE  
CONSTRUCTION OF UNDERGROUND PLACEMENT OF A PORTION OF  
THE ISLAND DRAINAGE CANAL, I-341 IRRIGATION 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. 1 ("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**, each party to this Agreement paying for the performance of services will make those payments from current revenues available to the paying party;

**Whereas**, the County has made applications to EPCWID to build a roadway (to be known as the Manny Aguilera Highway) over portions of EPCWID's real property and in part, such applications were assigned numbers A0504 (Tornillo Irrigation Canal), A0505 (Fabens Waste Channel), A0506 (I-341 Irrigation Lateral Canal), and A0937 and A0938 (Island Drainage 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 Island Drainage Canal underground in a pipeline, placing a portion of the I-341 Irrigation Lateral Canal underground in a pipeline, and constructing road crossings over the I-341 Canal and the Tornillo Irrigation Canal ;

**Whereas**, EPCWID shall grant easements for the limited use of the surface portions of these easement locations based on the form of easement attached to this Agreement as Exhibit A;

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

**Whereas**, this Inter Local Agreement will allow EPCWID to assist the County by providing cost effective engineering and construction services to the County in relation to placing a portion of the I-341 Canal underground, and constructing road crossings at designated locations and allow the County to access areas immediately adjacent to the I-341 and Tornillo Canals for the designated construction purposes;

**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 placement of approximately one hundred (100) feet underground of EPCWID's I-341 Lateral Canal, approximately one thousand (1,000) feet underground of EPCWID's Island Drainage Canal, and one or more maintenance crossing at locations to be determined by EPCWID (the "Construction Work"). The estimated cost for preparing for the engineering construction drawings and engineer's cost estimate is \$65,000.00, and shall be included in the total cost identified in Section 3 below. The estimated time to complete the engineering construction drawings and engineer's cost estimate is no more than 90 calendar days after execution of this Agreement by both parties.

### **2. TERM**

Subject to applicable law, the term of this Agreement shall commence upon the date of execution hereof by both parties and shall terminate 1 year thereafter. The estimated time to complete the Construction Work for the Island Drainage Canal and I-341 Irrigation Canal is 6 months from the date of execution of this Agreement by both parties ("Agreement Execution Date"). The remaining Construction Work shall be complete within 1 year from the Agreement Execution Date. This Agreement was approved by EPCWID Board of Directors on November 11, 2009 and shall be executed by the County prior to March 31, 2010. If the County fails to approve and execute this Agreement by March 31, 2010, the offer of this Agreement by EPCWID is rescinded and this Agreement is terminated. All Easements granted pursuant to this Agreement shall be permanent.

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

Pursuant to this Agreement, EPCWID agrees to perform the engineering and construction services required to design and Construction Work. The preliminary cost estimate for the engineering and construction work is approximately \$600,000. At the time this Agreement is executed by the County, the County shall pay the District \$65,000 for work related to the preparation of the engineering construction drawings and engineering cost estimate. After the Engineer's Cost Estimate is complete, and if approved in writing by the County and EPCWID, the County shall pay EPCWID an amount not to exceed the total cost shown in the Engineer's Cost Estimate for the work to be performed by EPCWID or its agents, contractors, or consultants under this Agreement. 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 not exceed the approved estimated cost without the County's written approval and the actual cost shall be based on, at EPCWID option, either:

- 1) the hourly cost of EPCWID's employees and equipment at the rates shown in Exhibit B, and the actual purchase or invoiced price of items (including concrete, pipe, steel, plywood, and all other construction supplies or materials) or services; or
- 2) the lowest bid price of a responsible Bidder (Contractor) if the Construction Work is awarded to the Bidder.

EPCWID shall provide the County with accurate and timely documentation of all expenses, employee time, equipment use time of the actual cost to perform the Construction Work, if such work is performed by EPCWID or all expense paid by EPCWID to a Contractor for performance of Construction Work. EPCWID shall bill as work and construction progresses, and the County shall pay each billing within thirty (30) days of receipt by the County of such billing. All engineering, geotechnical, and surveying work required by EPCWID to prepare or perform 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 EPCWID \$10,000 for each of the four easements as consideration for the value of the easements and any damage to EPCWID caused by such easements. The County shall not claim or represent that any consideration or payments for easements under this Agreement

constitutes an offer or basis for consideration of any other easement or use of EPCWID real property sought by the County or other parties.

#### **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 permanent easements upon and across the portions of the identified easement locations as shown on the survey maps attached as Exhibit C. Such maps show portions of the Island Drainage Canal, Fabens Waste Channel, I-341 Irrigation Lateral Canal, and the Tornillo Irrigation Canal that approximate 4.235 acres in size. The form of the easement shall be substantially as provided in Exhibit A attached hereto except that each easement will be separately approved and granted after: (1) completion of the construction referable to each such easement and (2) the receipt of payment by EPCWID from the County of: (a) the cost of construction cost of the individual easement and (b) \$10,000 being the agreed value of the easement. Such easement shall be a permanent easement. Pursuant to such easements, the County, or its assigns or successors, shall have the right to use the surface for vehicular and pedestrian crossings, roads, driveways and similar uses. The County, or its assigns or successors, shall not be authorized to construct buildings or similar improvements upon the surface of the easement. Notwithstanding the grant of the easements, EPCWID shall have the right to enter upon the easement at such times as may be necessary for maintenance, repair, construction, and reconstruction of the EPCWID facilities or other improvements.

#### **5. OWNERSHIP OF DESIGN DRAWINGS**

Any design drawings, cost estimates, 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 for the County to review and provide EPCWID 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 the District 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 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 prior to such finding, order, or judgment.

**8. NO LIABILITY**

EPCWID shall not be liable for any damages caused by its failure to do the Construction Work, or its delay in supplying the Construction Work under this Agreement. EPCWID makes no warranty as to the quality 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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**Assistant County Attorney**

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**Deputy Director for Engineering**

## **EXHIBIT A**

### **EASEMENT AGREEMENT BETWEEN THE EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1 AND THE COUNTY OF EL PASO RELATING TO THE INTERLOCAL FOR THE I-341 IRRIGATION LATERAL CANAL AND THE ISLAND DRAINAGE CANAL**

**WHEREAS**, EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1 is a political subdivision of the State of Texas organized and existing pursuant to Article XVI, Section 59, of the Constitution of the State of Texas, hereinafter referred to as the "District" and the COUNTY OF EL PASO, TEXAS is a political subdivision of the State of Texas created pursuant to Article IX Section 1 of the Constitution of the State of Texas, hereinafter referred to as the "County"; and

**WHEREAS**, the United States of America conveyed to the District by a deed without warranty dated 19th day of January, 1996, recorded in Book 3002, at Page 1029 of the Deed Records of El Paso County, Texas, certain irrigation canals, laterals, and drains, together with other property, collectively hereinafter referred to as the "District's Properties" or "District Property"; and

**WHEREAS**, the District requires that easements for public crossings of the District's Properties be granted only to entities with the power of eminent domain; and

**WHEREAS**, the County is an entity with the power of eminent domain; and

**WHEREAS**, the District requires that the County to maintain any structures or facilities constructed pursuant to any such easement; and

**WHEREAS**, the District and the County previously entered into that certain INTERLOCAL AGREEMENT FOR GRANTING OF EASEMENTS AND CONSTRUCTION OF UNDERGROUND PLACEMENT OF A PORTION OF THE ISLAND DRAINAGE CANAL, I-341 IRRIGATION LATERAL CANAL, AND OTHER WORK and have complied with all conditions precedent therein for granting these easements.

**NOW, THEREFORE**, in consideration of the terms and conditions set forth herein and the payment to the District simultaneously with the execution and delivery of this easement to the County of the sum of Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, receipt of which is acknowledged, and to avoid condemnation, the District hereby grants to the County permanent easements from the effective date of these easements in the (1) District's Tornillo Irrigation Canal, (2) Fabens Waste Channel, (3) Island Drainage Canal, and (4) I-341 Irrigation Lateral Canal, hereinafter referred to as the "Crossings", described more particularly in the field notes and survey plats attached hereto as Exhibits A through D, respectively and by reference incorporated herein, on the following terms and conditions:

1. The sole purpose of these easements shall be for (i) constructing, reconstructing, installing, maintaining, inspecting, repairing, operating, replacing, or removing, a public street across District Property, and within the Crossing (ii) erecting, constructing, installing, replacing, repairing, operating, using, inspecting, reconstructing, modifying, removing, and maintaining any and all public utilities, as defined in Section 11.004 of the Texas Utility Code, in Section 101.003 (7), and in Section 13.002 of the Texas Water Code, subject to the limitations of these easements and, if the utility provider is in compliance with applicable city, state and federal rules, regulations, ordinances, and statutes, the County and each utility provider may use the surface of the District Property contiguous and within seventy-five (75) feet of the limits Crossing, as may be reasonably necessary, in connection with the construction, reconstruction, installation, maintenance, repair, removal, or replacement of the Crossing. Such use of the District's Property is subject to the County or utility providers restoring the District Property to the condition such property was in prior to the County or the utility providers use of such property.

2. The construction drawings and specifications for said Crossings shall be in accordance with the applicable city, state, and federal rules, regulations, and County specifications, including but not limited to the El Paso County Subdivision Regulations, the policies adopted by the District, the District's Design Standards, and in accordance with drawings and specifications approved in writing by the County and the District prior to construction of the Crossings. A copy of the drawings and specifications for the Crossings, as approved by the District is included in Exhibits A through D attached hereto.

3. These easements do not include a right in favor of any utility service, including without limitation any gas, electric, or telecommunications utility service, except to the extent any such utility service is wholly contained within a Crossing. The County and its employees, agents, contractors, or subcontractors may use such portions of the easements as may be reasonably necessary in connection with the construction, reconstruction, installation, maintenance, repair, removal, or replacement of the Crossings, subject to the limitations of this easement agreement and the perpetual maintenance and repair by the County, or its contractor, or by any utility provider.

4. The District reserves the right of full use and enjoyment of the property encumbered by these easements, subject only to the use by the public of the crossing and to utility services expressly permitted by these easements. The District, its employees, agents, contractors, and invitees shall at all times have access from the District's Properties to and through the easements, including without limitation ditch realignment, grading, dredging, raising, or lowering the invert grades, and neither the County nor any utility provider shall prohibit or interfere with ingress to or egress by the District from the District Properties because of construction or for any other reason.

5. These easements are supplementary to the rights and privileges of the County with

respect to the construction of crossings of the Franklin Canal as provided in the Ordinance of November 9, 1939, recorded in Minute Book Z-2, and by or pursuant to the Quit-Claim Deed from the City of El Paso to the United States of America, dated November 9, 1939, with respect to the Franklin Canal, from the headgates as constructed in 1914 to the city limits as they existed at the date of the Quit-Claim Deed, and to the rights and privileges of the County pursuant to any existing valid license agreement between the United States of America and the City of El Paso.

6. The County shall maintain all bridge, crossing, street, road, or walkway structures and shall cause all utility providers to maintain all utilities constructed or installed pursuant to these easements and shall immediately clean and unplug any obstruction that may develop under the Crossings so that the movement of irrigation water through the District Property shall never be obstructed. The District shall allow those parties identified by written notice to the District by the County, including without limitations County employees, agents, contractors, or subcontractors and any other party designated in writing by the County as authorized to access to the bridge and its abutments for construction and maintenance of the Bridge provided that the area of access shall not extend to a greater distance than seventy-five (75) feet from the portion of District Property described in Exhibits A; and further provided that no one shall have the right under these easements to interfere with the District's use of the Crossings for transporting water or with the District's right to maintain said canal as may be reasonably necessary to cause the canal to be usable by the District for transportation of water at all times.

7. The District makes no representation or warranty of any nature regarding its interest in the properties subject to this easements, which shall be subject in all respects to any agreement, deed, easement, or other legal instrument which may affect, define, or prohibit the granting of these easements. The District is not aware of any legal document or instrument which prohibits the granting of these easements, but if there is any such document or legal instrument which prohibits or does not permit the granting of an easement, then this easement shall be deemed null and void as it applies to such easement from its inception to the extent prohibited or not permitted.

8. Notwithstanding anything to the contrary herein, the primary use of the properties in which these easements are granted are and shall always remain such use as may be required by the District to transport, deliver, or store water for irrigation and for delivery of water for non-irrigation purposes to any party with whom the District has contracted to deliver water, including without limitation the County of El Paso, Texas, the Lower Valley Water District, the City of El Paso, and the Hudspeth County Conservation and Reclamation District No. 1 and these easements shall never be construed to allow any interference with or impediment to such use by the District.

9. In the event the County should fail to repair, clear, and maintain the Crossings or utility provider should fail to repair and maintain its utility facilities in accordance with an easement, and such interference materially interferes with the District's right to deliver

water under the Crossing, the District will give the County twenty-four (24) hours notice to remedy the interference with water delivery. If the County fails to remedy the interference in such time, the District shall have the right to remedy the interference and recover its reasonable costs from the County.

10. The District acknowledges, subject to the terms and conditions of these easements, that these easements may be dedicated as a public right-of way and may be accepted by the County for maintenance and public use. The County shall not assign these easements without the prior written consent of the District, except in the event that the assignment is to a municipality, the County, the state, or the federal government.

11. Any and all negotiations and prior agreements concerning the subject of these easements are merged herein, and this easement may not be modified or amended hereafter except by a written memorandum executed by the District and the County, acknowledged before a Notary Public, and recorded in the Real Property Records of El Paso County, Texas.

12. Notwithstanding anything to the contrary herein, in the event that the County has not completed any Crossing and public street or road referred to in paragraph 1 hereinabove and accepted the Crossing and public street or road for maintenance by the County within three (3) years after the effective date of the easement applicable to that crossing, then the easement granted herein shall, without entry or suit, immediately revert to and vest in the District and its successors, and this instrument shall be null and void. No act or omission upon the part of the District or its successors or assigns shall be a waiver of the operation or enforcement of this paragraph. Upon completion of the Crossings and written acceptance by the District that the Crossings were constructed as specified in Exhibits A through D, respectively, and by written acceptance of the Crossings and public street or road for maintenance by the County, either the District or the County shall have the right to record an instrument certifying that this right of reverter has terminated.

13. These easements shall become effective on the latter date of execution by the District or the County.

**[Signatures on the following page.]**

**WITNESS THE FOLLOWING SIGNATURES AND SEALS:**

**Attest:**

**El Paso County Water Improvement  
District No. 1**

\_\_\_\_\_  
**Secretary  
Board of Directors**

**By:** \_\_\_\_\_  
**President** **Date**  
**Board of Directors**

**Attest:**

**County of El Paso, Texas**

\_\_\_\_\_  
**Delia Briones  
County Clerk**

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

**Approved as to Form:**

**Approved as to Content:**

\_\_\_\_\_  
**Assistant County Attorney**

\_\_\_\_\_  
**Deputy Director for Engineering**

**ACKNOWLEDGEMENT**

STATE OF TEXAS )  
COUNTY OF EL PASO )

On this the \_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned officer, personally appeared Anthony Cobos, known to me to be the same person whose name is subscribed to the foregoing, who being by me duly sworn did depose and say that he is the County Judge of the COUNTY OF EL PASO, that he is duly designated, empowered, and authorized to execute the foregoing and sign his name thereto, and that he signed his name thereto and acknowledges that he executed the foregoing instrument for and on behalf of the COUNTY OF EL PASO for the purposes and uses therein described.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

(Notary Seal)

**ACKNOWLEDGEMENT**

STATE OF TEXAS )  
COUNTY OF EL PASO )

On this the \_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me to be the same person whose name is subscribed to the foregoing, who being by me duly sworn did depose and say that he is the President of the EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1, that he is duly designated, empowered, and authorized by a resolution adopted by the Board of Directors of the EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1 to execute the foregoing and sign his name thereto, and that he signed his name thereto and acknowledges that he executed the foregoing instrument for and on behalf of the EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1 for the purposes and uses therein described.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

(Notary Seal)