

TRINITY BAY CONSERVATION DISTRICT
REIMBURSEMENT AGREEMENT FOR
UTILITY SYSTEM DESIGN AND CONSTRUCTION SERVICES

This Reimbursement Agreement for Utility System Design and Construction Services (the "Agreement") is made this 13th day of February, 2018, between the **Trinity Bay Conservation District**, a water conservation and reclamation district operating under the constitutional laws of the State of Texas and located in Chambers County, Texas (the "District") and **Matthews Family Limited Partnership, a Texas Limited Partnership** (the "Customer").

RECITALS

A. The District is a governmental entity who has an express authority to provide water and wastewater services in a portion of Chambers County, Texas (the "County").

B. Customer owns the property described in Exhibit "A" attached hereto and incorporated herein (the "Property") which is within the District, and Customer has requested water and sanitary sewer service from the District to the Property.

C. The District has engaged consulting engineers duly licensed in the State of Texas and authorized to perform such services in accordance with state law including but not limited to the Texas Occupations Code to design utility facilities.

D. Customer desires to contract with the District for the design, design review and construction of water and sewer improvements to be constructed by the District to serve the Property and proposed commercial and light industrial development thereon (the "Project"). Customer acknowledges that the Project is for water and sanitary sewer improvements.

E. In consideration of providing design services, certain other administrative services and construction services to Customer in reference to the Project, Customer has agreed to reimburse the District for the cost of the design review and design approval for the water and sanitary sewer improvements described herein (the "Design Work") and for the cost of construction of the water and sanitary sewer services improvements (the "Facilities") as necessary for the Project pursuant to the terms and conditions of this Agreement.

F. The District agrees to install a 3 inch sewer line and an 8-inch water line within the TxDOT right of way along Interstate 10 extending from A & W Realty Property and continuing to the West on the South side of Interstate 10 to the western boundary of Customer's property. This is a total of approximately 5,250 feet of 3-inch sewer line and 8-inch water main line. The District shall install an individual sanitary sewer pump station at a location mutually agreed upon by the Customer and the District.

G. After construction and testing, the District agrees to assume ownership and maintenance of the 3 inch sewer line, 8-inch water line and grinder pump station constructed pursuant to this Agreement. Prior to connection to the District's sanitary sewer line, the Customer agrees to provide electricity for the grinder pump station and a grinder pump easement

for the purpose of the construction and installation of the grinder pump station in favor of the District in a mutually acceptable form and location.

H. The District will provide the water and sewer service capacity to the Property with the existing water and sewer system of the District and shall not be required to construct additional capital improvements to serve the Property or any Project to be located thereon as described in this Agreement.

I. Customer acknowledges that the District is not obligated to make any capital improvements to its water and sewer system due to future additions, alternations, modifications, amendments or changes in the Project thereby increasing required water or sewer service to the Property.

NOW, THEREFORE, IN CONSIDERATION of the Recitals set forth which are incorporated in this Agreement as fully set forth below and in further consideration of the mutual agreements, covenants, conditions, payments and performances outlined herein below, District and Customer herein agree as follows:

1. **Design of Utility Facilities.** District will cause its consulting engineers to perform the Design Work for the Project. This will include design of the water and sanitary sewer systems to connect with the current water and sanitary sewer systems of the District in accordance with all local, state or federal laws and regulations relative to such facilities for the Project. The Design Work does not include the application for or the issuance of any permits as may be required to be secured by Customer or future customers for the operation of its proposed businesses on the Property such as Environmental Studies, but shall include permits necessary for the installation of the Facilities to be constructed to serve the Project.

2. **Cost of Design Work and Construction of Facilities.**

(a) District shall be responsible for all costs associated with the Design Work for the Project including but not limited to the payment of any and all professional service charges by the consulting engineers to the District; however, District shall not be responsible for any other cost or expense associated with the Project save and except for the specifically designated services set forth in this Agreement. The cost for the water meter, meter deposit, grinder pump station and sewer discharge line will be at an additional cost and paid for when service is established. These costs are NOT included in the prices shown below.

(b) **Deposit for Design Work.** Customer agrees to provide to District \$2,000 (the "Deposit") to cover the design cost, site visits, survey work and related costs associated with the Design Work. ✓

(c) **Payment for Construction of Facilities.** Upon completion of the Design Work, Customer agrees to pay the District in advance \$46,000 for the construction materials of the Facilities (the "Initial Payment"). The Final Payment shall be \$9,000 for all costs necessary for the installation of the Facilities constructed to serve the Project including all materials, labor, drainage ditch bores and associated costs.

- (d) Only District to Provide Services. Only the District shall be responsible for securing the services of the engineer to perform the Design Work and for performing the services necessary for the installation of the Facilities. The District may utilize any contractors or subcontractors in the performance of said services, and concurrently, no means for equipment and material shall be allowed to be placed on the Property as to the Project. The District agrees to provide upon request by Customer verification for payment for all material and equipment in the construction of the Facilities. District affirms the Design, Work, and Construction of Facilities shall be \$57,000 (i.e. The Deposit, Initial Payment, and Final Payment), which does not include the water meter, meter deposit and grinder pump station. This will be an additional cost of \$4,400 when service is established.

3. Management of Design Work. The District will provide draft plans for review by Customer to consider Customer's comments and responses on Design Work and direct its consulting engineers accordingly if any suggested amendments, alterations or changes to Design Work are necessary to safely, effectively and efficiently lead to the design and subsequent construction and installation of the Facilities using best industry practices. District is not required to adopt Customer proposed Design Work amendments, modifications or changes, and the final decision on the design plan shall rest solely with the District.

4. Delay Costs. Notwithstanding any agreement for the provision of services including Design Work and construction of the Facilities set forth in this Agreement, District shall not be responsible to Customer for any cost, loans or expense associated with the design, development, construction or operation of the Facilities. Should Customer disagree with any District determinations or otherwise which would cause an interruption of the Design Work and construction of the Facilities, and to the extent reasonably practical, District and Customer shall work to resolve such dispute in a timely manner to avoid delay and any associated costs.

5. Performance of Design Work and Construction of the Facilities. District anticipates requesting its consulting engineers to begin Design Work within 5 days from the execution of this Agreement and to have Design Work substantially complete by 30 days; however, the development of the Design Work and the proposed time schedule set forth in this paragraph are based on the reasonable expectations of the District and are not guarantees of performance.

Further, District anticipates that after receipt of the Design Work, permits, and authorization mobilization for the installation of the facilities shall occur on or before 10 days from the approval of the Design Work and with the construction of the Facilities to be completed within 60 days; however, installation of the Facilities and both time schedules set forth in this paragraph are based on the reasonable expectations of the District and are not guarantees of performance.

6. INDEMNIFICATION AND HOLD HARMLESS. CUSTOMER INDEMNIFIES AND HOLDS HARMLESS THE DISTRICT, ITS OFFICERS, EMPLOYEES AND AGENTS, CONTRACTORS, SUBCONTRACTORS AND/OR CONSULTING ENGINEERS FROM ANY CLAIMS, LIABILITIES, PENALTIES, FINES OR FOR DAMAGES TO ANY GOODS, PROPERTIES, OR EFFECTS OF ANY PERSON WHOMSOEVER, AND FOR PERSONAL INJURIES TO OR DEATH OF ANY PERSON

WHATSOEVER CAUSED BY OR RESULTING FROM ANY NEGLIGENT ACT OR OMISSION OF CUSTOMER, ITS OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES ARISING UNDER OR OUT ANY TRANSACTION PROVIDED FOR OR CONTEMPLATED BY THIS AGREEMENT.

7. **Independent Contractors.** For purposes of this Agreement, District and Customer acknowledge that they, their officers, agents, employees, representatives, assigns and third party consultants are all and as to each other independent contractors, and neither District or Customer, its officers, agents, employees, contractors, subcontractors or consultants shall deem to be an employee of any other party to this Agreement for any reason. District and Customer shall perform their obligations under this Agreement in manners exclusively under their charge and control, and any agreements therein to collaborate as to the Design Work or purely those to expedite the performance of the services under this Agreement. Each party hereto shall perform its obligations under this Agreement according to its own means and methods of work which each party shall exclusively be in charge and control, and any collaboration between the parties relative to Design Work is purely to expedite the performance of the services to be performed by the District hereunder. Neither District nor Customer or its officers, agents, employees, contractors, subcontractors or consultants shall be entitled to any benefit to which the employee of any other party hereto is entitled including without limitation overtime, workers' compensation, retirement, injury leave or other employee benefits not herein enumerated.

8. **Insurance.** District shall cause its consulting engineers to perform the services related to the Design Work in accordance with the same standards that other services are provided by the consulting engineers to the District which includes the requirement for the provision of any insurance as may be required by District from its consulting engineers.

The District shall provide upon request by Customer a copy of its certificate of insurance; however, all work to be performed as to the installation of the Facilities for the Project shall be within publicly dedicated rights-of-way, and unless agreed to by and between District and Customer, District shall not mobilize or utilize the Property of Customer for any of the services contemplated under this Agreement without the prior consent of Customer.

9. **Termination.** Either party has the right to terminate the work to be performed under this Agreement by giving twenty (20) calendar days written notice to the other party. In such event, District shall immediately notify its engineers to terminate the performance of Design Work, and within ten (10) days thereafter give possession of all drawings and specifications, reports or other documents produced or developed for the Design Work for the Project to Customer or its designee. If the Design Work is not completed, engineers are not responsible to provide any seals or certification on any of the Design Work including plans or specifications. Customer agrees to pay District all the reasonable value of services rendered for any portion of the Design Work completed prior to the date of termination. If termination occurs prior to the completion of any tasks in the Design Work for which a payment request has not been received, the charge for such services performed on such tasks shall be the reasonable value of such services based on an amount mutually agreed upon District and Customer as to the portion of the task completed but not paid for prior to termination.

10. **Cost Reimbursement.** As the Facilities, as constructed, provide opportunities for adjacent land owners between existing District water lines and the Property of Customer to connect and derive a specific benefit from the Facilities, the District agrees to the following plan of reimbursement to Customer to defray its cost in constructing the Facilities:

- (a) **Reimbursement.** Any reimbursement amount as herein provided shall be paid to the Customer if any water or sewer taps only on their property are made to the water or sewer lines constructed pursuant to this agreement during the period which is one (1) year after the completion and acceptance of the Facilities by the District.
- (b) **Reimbursement Amount.** When a person who has property abutting the Facilities desires a water or sewer service connection, the District will impose a pro-rata charge of the original cost per front foot of land which the person requesting the connection has abutting the Facilities with a maximum reimbursement of 300 linear feet of frontage along, to and adjacent to the Facilities per land owner.
- (c) **Costs Not Subject to Reimbursement.** No reimbursement shall be made to Customer for tap fees or other miscellaneous fees. The only costs that qualify for reimbursement are those costs as shown in paragraph 2 of this Agreement to the maximum amount therein stated.
- (e) **Total to be Reimbursed.** In no event shall Customer be refunded any amount that would represent pro-rata charges to adjacent property owners which would exceed the total cost of the Facilities.
- (f) **No Obligation to Issue Debt.** Customer acknowledges and agrees that the District shall not and has not authorized any bonds, notes or other public securities for the Facilities which shall be paid for solely by the Customer.

11. **Utility Easements/Grinder Pump Easements.** Customer shall be solely responsible to District for securing any easements or rights of way as become necessary for the installation of the Facilities to serve the Project. Customer shall further agree as herein provided to have executed in favor of the District, any utility easements/grinder pump easements in form acceptable to the District for the location of the improvements in the Project on the Property.

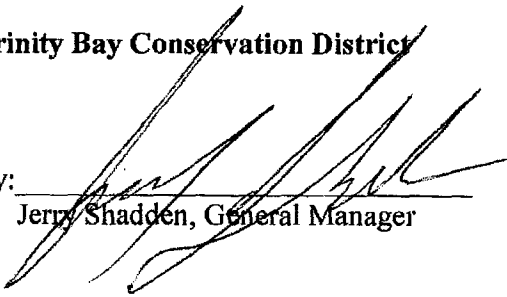
12. **General.**

- (a) **Integrated Agreement; Modification.** This Agreement contains all the agreements of District and Customer and incorporates any prior oral or written agreement and cannot be amended or modified except by written agreement executed by both parties.
- (b) **Notice of Force Majeure Event.** District agrees to give Customer written notice of any act of force majeure including but not limited to fire, explosion, accident, flood, storm, earthquake or other casualty or strike, lockout or act of God affecting the Design Work or the interruption of the ability of District or its consulting engineers to complete the Design Work within the estimated time established in this Agreement.

- (c) Assignment. This Agreement shall not be assigned, sublet or transferred in whole or in part by District except with prior written consent of Customer which shall not be unreasonably withheld. This Agreement may be assigned by Customer in whole or part to Customer's successors in interest in the Property or any portion thereof with the prior written consent of the District.
- (d) Notices. All notices, consents or demands required by this Agreement or any other communication between the parties shall be deemed to have been given when reduced to writing and (i) delivered personally; (ii) deposited in the U.S. Mail, first class, postage prepaid; (iii) sent via an established national overnight delivery service (such as Federal Express, charges prepaid); or (iv) sent via an electronic communication method provided the sender obtains written confirmation or receipt of the communication by the electronic communication equipment, addressed as follows:
- (e) Choice of Law. The validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard to its choice of law rules, and jurisdiction shall be in the court of appropriate jurisdiction in Chambers County, Texas.
- (f) Severability. The unenforceability, invalidity or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

IN WITNESS WHEREOF, District and Customer have executed this Agreement as of the date first written above.

Trinity Bay Conservation District

By: 
Jerry Shadden, General Manager

Matthews Family Limited Partnership

By: 
Owner

Engineering	\$ 2,000.00
Water 5,250 x \$7.00	\$36,750.00
Fire Hydrant	\$ 2,500.00
<u>Sewer 5,250 x \$3.00</u>	<u>\$15,750.00</u>
TOTAL Extension	\$57,000.00

Water Meter	\$ 1,000.00
Meter Deposit	\$ 200.00
<u>Grinder Pump Station</u>	<u>\$ 3,200.00</u>
TOTAL Services	\$ 4,400.00