

STATE OF TEXAS           §  
                                          §  
COUNTY OF HIDALGO   §

**INTERLOCAL COOPERATION AGREEMENT  
BETWEEN HIDALGO AND  
CAMERON COUNTIES IRRIGATION DISTRICT NO. 9**

THIS Agreement is made on this the \_\_\_\_\_ day of \_\_\_\_\_, 2009 by and between HIDALGO COUNTY, hereinafter referred to as "Hidalgo County" and HIDALGO AND CAMERON COUNTIES IRRIGATION DISTRICT NO. 9 hereinafter referred to as "Irrigation District", pursuant to the provisions of the Texas Interlocal Cooperation Act, as follows:

**WITNESSETH:**

**WHEREAS**, Irrigation District has rights and interests in and to irrigation facilities and irrigation properties adjacent to such irrigation facilities situated in the County of Hidalgo, Texas, some of which are more particularly described in Exhibit "A" (the "Irrigation Facilities" or "Irrigation Facility");

**WHEREAS**, Irrigation District has rights and interests in property consisting of drainage facilities and land immediately adjacent to such drainage facilities (the "Ditches") which are located adjacent to or relatively near its irrigation facilities for the purpose of drainage, the description of which is attached hereto as Exhibit "B";

**WHEREAS**, Hidalgo County, pursuant to its statutory authority, is responsible for proper drainage in Hidalgo County;

**WHEREAS**, the majority of the drainage water that enters into the Ditches originates from Hidalgo County;

**WHEREAS**, Irrigation District and Hidalgo County, desire that Hidalgo County and Irrigation District jointly use, the Ditches, that Hidalgo County maintain and improve all of, the Ditches and that Irrigation District will later convey to Hidalgo County the Ditches for drainage purposes;

**WHEREAS**, Irrigation District desires to grant a non- exclusive easement to Hidalgo County in, over and across the Irrigation Facilities to the extent, it is reasonably necessary to access the Ditches, for the maintenance, operation, expansion or repair of the Ditches (the "Easement");

**WHEREAS**, Hidalgo County desires to, maintain and operate the Ditches in order for the Ditches to adequately serve the drainage needs of Hidalgo County;

**WHEREAS**, Irrigation District will benefit from the improvements to the Ditches and Hidalgo County's maintenance and operation thereof; and

**WHEREAS**, Hidalgo County has determined it would be in the best interest of residents of Hidalgo County for Hidalgo County to expand, repair, maintain and operate the Ditches described above;

**NOW, THEREFORE**, Hidalgo County and Irrigation District, in consideration of the mutual covenants expressed hereinafter, agree as follows:

1. Irrigation District grants Hidalgo County a non-exclusive easement to jointly use the Ditches for the purpose of expansion, repair, maintenance or operation of the Ditches and Irrigation District shall execute the Easement attached hereto as Exhibit C within ten (10) days of the date of this Agreement. Such easement from Irrigation District shall be AS IS, WHERE IS, WITH ALL FAULTS.
2. Within six months of the date of this Agreement, Hidalgo County, will, at the sole expense of Hidalgo County begin to obtain surveys of the Irrigation Facilities and the Ditches in order to secure metes and bounds descriptions of both the Irrigation Facilities and Ditches. Hidalgo County will have a period of five (5) years to complete, such surveys and legal descriptions.
3. Irrigation District, during such five (5) year period described in numbered paragraph 2, upon presentation by Hidalgo County of surveyed metes and bounds descriptions of various phases of the Ditches shall grant, sell, transfer and convey to Hidalgo County the Ditches and shall execute for each such phase of the Ditches so surveyed and described a quitclaim deed to Hidalgo County in substantially the form attached hereto as Exhibit D-1 and a Transfer of Easement in substantially the form attached hereto as Exhibit D-2. Such quitclaim and transfer of easement from Irrigation District shall be AS IS, WHERE IS, WITH ALL FAULTS.
4. Irrigation District shall attempt to locate and find persons with knowledge of each phase of the surveyed metes and bounds description of the Ditches presented by Hidalgo County of Irrigation District's open, notorious and continuous use of the Ditches for an uninterrupted period of at least ten (10) years and shall use its best efforts to cause such persons with knowledge to execute affidavits in substantially the form of the affidavit attached hereto as Exhibit "E" (the "Affidavit") for each of the Ditches. Irrigation District shall use its best efforts to have the Affidavit executed and present same to Hidalgo County within ten (10) days following the date of presentment of the request for Affidavit by Hidalgo County.
5. Irrigation District will execute the document substantially in the form attached hereto as Exhibit "F" conveying an easement to Hidalgo County for access to, construction, maintenance, repair and operation of the Ditches and drainage facilities within ten (10) days following the date of presentment of same by

Hidalgo County. Such easement from Irrigation District shall be AS IS, WHERE IS, WITH ALL FAULTS.

6. Irrigation District further agrees, that on or after the date of this Agreement, it will not transfer or convey any rights to or in any Irrigation Facilities (as specifically limited and defined herein) adjacent to Ditches not previously transferred to Hidalgo County to any party without first offering, in writing, the Irrigation Facility to Hidalgo County at the same cost and under the same terms as in the offer presented to Irrigation District. Hidalgo County shall have thirty (30) days to determine whether Hidalgo County desires to accept or reject such offer. If Hidalgo County does not respond to the offer by Irrigation District in this numbered paragraph 6 within thirty (30) days of receipt, then Irrigation District may transfer such Irrigation Facility offered to Hidalgo County without any claim by Hidalgo County to such Irrigation Facility, provided any such transfer shall be burdened by the access easement in favor of Hidalgo County.
7. The acquisition of additional right of way for the expansion of any of the Ditches will be the sole responsibility and cost of Hidalgo County.
8. Hidalgo County shall allow connections of any agricultural use field drain or agricultural sub soil drain to the Ditches provided that such field drain or agricultural or sub soil drain is draining agricultural lands and no significant part of any such land is used for any non agricultural use. It shall not be necessary for the owner of any such field drain or sub soil drain to file an application with Hidalgo County for such use. As used herein agricultural use would include the homestead and equipment storage facility for the owner of the land. Upon any subdivision of any such agricultural use property, applicable subdivision regulations at the time of such subdivision with respect to the continued availability of the use of such drains or the requirement of new drains for any such subdivisions must be followed.
9. The design for the improvements and expansion of the Ditches will be the sole responsibility and cost of Hidalgo County.
10. Hidalgo County shall provide funds for all necessary supplies, labor and equipment to construct and install the improvements and maintenance and operation of the Ditches conveyed by Irrigation District to Hidalgo County.
11. **Conflict of Applicable Law.** Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance, or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the later shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.



Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

19. **Additional Documents.** The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.
20. **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns where permitted by this Agreement.
21. **Assignment.** This Agreement shall not be assignable provided, however, Hidalgo County may assign this Agreement to Hidalgo County Drainage District No. 1 and/or its successors.
22. **Headings.** The headings and captions contained in this Agreement are solely for convenience and reference and shall not be deemed to affect the meaning or interpretation of any provision of paragraph hereof.
23. **Gender and Number.** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and singular shall include the plural whenever and so often as may be appropriate.
24. **Authority to Execute.** The execution and performance of this Agreement by Hidalgo County and Irrigation District have been duly authorized by all necessary laws, resolutions or governmental action, and this Agreement constitutes the valid and enforceable obligations of Hidalgo County and Irrigation District in accordance with its terms.
25. **Governmental Purpose.** Each party hereto is entering into this Agreement for the purpose of providing governmental services or functions and will pay for such services out of current revenues available to the paying party as herein provided.

**WITNESS THE HANDS OF THE PARTIES** effective as of the day and year first written above.

**HIDALGO COUNTY**

By: \_\_\_\_\_  
J.D. Salinas, III, County Judge

**ATTEST:**

\_\_\_\_\_  
Arturo Guajardo, Jr., County Clerk

**HIDALGO AND CAMERON COUNTIES IRRIGATION  
DISTRICT NO. 9**

By: \_\_\_\_\_  
Bobby Sparks, PRESIDENT

**APPROVED AS TO FORM:**

ATLAS & HALL, L.L.P.

By: \_\_\_\_\_  
Stephen L. Crain

## **EXHIBIT A: DRAINAGE DITCH AREA LOCATION**

All drainage and irrigation facilities, including but not limited to drainage and irrigation ditches, pipelines, culverts, pumps and gates, which are located in the following described areas in Hidalgo County, Texas:

**Area A:** An area described as FM 1925 for the northern boundary of Area A, State Highway 107 for the southern boundary of Area A, FM 493 for the western boundary of Area A, and the USIBWC North Floodway Levee for the eastern boundary of Area A. Total distance of all Area A drainage ditch: 14.42 miles; and

**Area B:** An area described as State Highway 107 for the northern boundary of Area B, Mile 15 ½ N. for the southern boundary of Area B, Mile 6 W. for the western boundary of Area B, and the USIBWC North Floodway Levee for the eastern boundary of Area B. Total distance of all Area B drainage ditch: 7.63 miles; and

**Area C:** An area described as Mile 16 N. for the northern boundary of Area C, Mile 14 N. for the southern boundary of Area C, FM 493 for the western boundary of Area C, and Mile 1 W. for the eastern boundary of Area C. Total distance of all Area C drainage ditch: 9.73 miles; and

**Area D:** An area described as Mile 16 N. for the northern boundary of Area D, Mile 12 ½ N. for the southern boundary of Area D, Mile 4 W. for the western boundary of Area D, and Mile 1 W. for the eastern boundary of Area D. Total distance of all Area D drainage ditch: 6.04 miles; and

**Area E:** An area described as Mile 13 N. for the northern boundary of Area E, Mile 10 N. for the southern boundary of Area E, FM 493 for the western boundary of Area E, and FM 491 for the eastern boundary of Area E. Total distance of all Area E drainage ditch: 13.02 miles; and

**Area F:** An area described as Mile 15 ½ N. for the northern boundary of Area F, Mile 12 ½ N. for the southern boundary of Area F, FM 493 for the western boundary of Area F, and FM 88 for the eastern boundary of Area F. Total distance of all Area F drainage ditch: 7.59 miles; and

**Area G:** An area described as FM 1925 for the northern boundary of Area G, Mile 15 N. for the southern boundary of Area G, FM 1015 for the western boundary of Area G, and Mile 1 W. for the eastern boundary of Area G. Total distance of all Area G drainage ditch: 5.75 miles; and

**Area H:** An area described as Mile 13 N. for the northern boundary of Area H, Mile 11 N. for the southern boundary of Area H, FM 493 for the western boundary of Area H, and Mile 4 W. for the eastern boundary of Area H. Total distance of all Area H drainage ditch: 3.59 miles; and

**Area I:** An area described as Mile 12 N. for the northern boundary of Area I, Mile 9 N. for the southern boundary of Area I, Mile 4 ½ W. for the western boundary of Area I, and FM 1015 for the eastern boundary of Area I. Total distance of all Area I drainage ditch: 3.67 miles; and

**Area J:** An area described as Mile 8 N. for the northern boundary of Area J, US Highway 83 for the southern boundary of Area J, Mile 3 ½ W. for the western boundary of Area J, and the USIBWC North Floodway Levee for the eastern boundary of Area J. Total distance of all Area J drainage ditch: 3.50 miles; and

**Area K:** An area described as Mile 8 N. for the northern boundary of Area K, Mile 6 W. for the southern boundary of Area K, Mile 1 ½ E. for the western boundary of Area K, and Mile 3 E./Cameron County border for the eastern boundary of Area K. Total distance of all Area K drainage ditch: 4.74 miles; and

**Area L:** An area described as Mile 10 N. for the northern boundary of Area L, Mile 8 N. for the southern boundary of Area L, FM 1015 for the western boundary of Area L, and the USIBWC North Floodway Levee for the eastern boundary of Area L. Total distance of all Area L drainage ditch: 3.66 miles; and

**Area M:** An area described as Mile 10 N. /USIBWC North Floodway Levee for the northern boundary of Area M, Business US Highway 83 for the southern boundary of Area M, FM 491 for the western boundary of Area M, and Mile 1 E. for the eastern boundary of Area M. Total distance of all Area M drainage ditch: 4.16 miles; and

**Area N:** An area described as W. 14<sup>th</sup> St. for the northern boundary of Area N, Arroyo Colorado for the southern boundary of Area N, USIBWC North Floodway Levee for the western boundary of Area N, and S. Georgia Ave. for the eastern boundary of Area N. Total distance of all Area N drainage ditch: 0.83 miles; and

## **EXHIBIT "B"**

All drainage facilities and land immediately adjacent land thereto, other than Irrigation Facilities, (as described on Exhibit A) whether held by fee or easement, by Hidalgo County Irrigation District No. Nine.

## **EXHIBIT "C"**

**EXHIBIT "C"**

STATE OF TEXAS           §

COUNTY OF HIDALGO   §     **EASEMENT**

That Hidalgo and Cameron Counties Irrigation District No. 9 for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to them in hand paid by Hidalgo County, the receipt of which is hereby acknowledged and confessed, has Granted, Bargained and Conveyed and by these presents does Grant, Bargain and Convey unto the said Hidalgo County, its successors or assigns, the non-exclusive right for the free and uninterrupted use, liberty and privilege of passage in, along, upon and across that certain tracts of land situated in Hidalgo County, Texas, described as follows, to wit:

Those drainage facilities and land immediately adjacent to such drainage facilities which are located adjacent to relatively near Hidalgo and Cameron Counties Irrigation District No. 9's irrigation facilities in Hidalgo County Irrigation District No. Nine such tract of land being more particularly described on Exhibit A and attached hereto for all purposes.

See Exhibit A incorporated herein at this point for all purposes.

FOR THE PURPOSE OF CONSTRUCTING, RECONSTRUCTING, EXCAVATING, DIGGING, MAINTAINING AND OPERATING A DRAINAGE DITCH, SPOIL BANK, LEVEES, ROADWAY AND STRUCTURES NECESSARY FOR THE DISPOSAL OF ACCUMULATIVE AND EXCESSIVE RAINFALL AND/OR FLOOD WATER, TOGETHER WITH FREE INGRESS AND EGRESS AT ALL REASONABLE TIMES TO AND FROM SAID PROPERTY DESCRIBED ABOVE, FOR THE PURPOSE OF DOING AND PERFORMING, OR HAVING PERFORMED, ANY AND ALL ACTS AND FUNCTIONS AND ACTS NECESSARY AND INCIDENT TO THE CONSTRUCTING, RECONSTRUCTING, EXCAVATING, DIGGING, MAINTAINING AND OPERATING OF A DRAINAGE DITCH, SPOIL BANK, LEVEES, ROADWAYS AND STRUCTURES IN, ALONG, OVER AND ACROSS THE PROPERTY DESCRIBED ABOVE.

GRANTOR SHALL HAVE FULL USE AND CONTROL OF THE SPOIL BANK DIRT SUCH USE AND CONTRACT SHALL NOT INCLUDE THE BERM AREAS TO BE ESTABLISHED BY HIDALGO CUNTY.

TO HAVE AND TO HOLD, ALL AND SINGULAR, THE EASEMENT PRIVILEGE AFORESTATED, UNTO HIDALGO COUNTY, ITS SUCCESSORS OR ASSIGNS; THIS EASEMENT BEING CONDITIONED, HOWEVER, THAT THE TITLE IN AND TO ALL OIL, GAS AND OTHER MINERALS IN AND UNDER SAID LAND SHALL BE AND REMAIN VESTED IN THE PRESENT OWNERS, THEIR HEIRS OR ASSIGNS, WITHOUT, HOWEVER, ANY RIGHT WHATEVER REMAINING TO HIDALGO AND CAMERON COUNTIES IRRIGATION DISTRICT NO. 9 OF INGRESS AND EGRESS TO OR FROM THE SURFACE OF SAID LAND FOR THE PURPOSE OF EXPLORING, DRILLING, DEVELOPING OR MINING OF THE SAME.

WITNESS our hands this the \_\_\_\_ day of \_\_\_\_\_, 2009.

HIDALGO AND CAMERON COUNTIES IRRIGATION  
DISTRICT NO. 9

BY: \_\_\_\_\_  
Bobby Sparks, PRESIDENT

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF HIDALGO §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office, this the \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public State of Texas

**TRANSFER OF EASEMENTS**

Date: \_\_\_\_\_, 2009

Holder of Easements: Hidalgo and Cameron Counties Irrigation District No. 9

Holder's Mailing Address: Board of Directors  
301 E. 2nd  
Mercedes, Texas 78570

Transferee: Hidalgo County

Transferee's Mailing Address: Hidalgo County Judge's  
Office  
Administration Building  
P. O. Box 1356  
Edinburg, Texas 78539

Easements: All unrecorded and recorded easements in and to drainage ditches and facilities held or claimed by Holder of Easements as shown by map attached hereto as Exhibit A.

Consideration: Ten Dollars (\$10.00) and other good and valuable consideration including but not limited to Transferee's agreement to maintain the easements for drainage associated or related purposes.

Holder of Easements sells, transfers, conveys and quit claims to Transferee, all of Holder's of Easements right, title and interests in the Easements effective as of the Date stated above.

HIDALGO AND CAMERON COUNTIES IRRIGATION  
DISTRICT NO. 9

By: \_\_\_\_\_  
Bobby Sparks, President

ACCEPTED:

HIDALGO COUNTY

By: \_\_\_\_\_  
Juan De Dios ("J.D.") Salinas, III, Chairman Board of  
Directors

STATE OF TEXAS                   §  
                                             §  
COUNTY OF HIDALGO           §

This instrument was acknowledged before me on \_\_\_\_ day of \_\_\_\_\_, 2009 by of HIDALGO AND CAMERON COUNTIES IRRIGATION DISTRICT NO. 9, in the capacity stated therein.

\_\_\_\_\_  
Notary Public, State of Texas

AFTER RECORDING RETURN TO:  
Hidalgo County Judge's Office  
Administration Building  
P. O. Box 1356  
Edinburg, Texas 78539

**EXHIBIT D-1**

## QUITCLAIM

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

Date: \_\_\_\_\_, 2009

Grantor: Hidalgo and Cameron Counties Irrigation District No. Nine

Grantor's Mailing Address: 301 E. 2nd  
Mercedes, Hidalgo County, Texas 78570

Grantee: Hidalgo County

Grantee's Mailing Address: 100 E. Cano, 2<sup>nd</sup> Floor  
Edinburg, Hidalgo County, Texas 78539

Consideration: Ten Dollars (\$10.00) and other good and valuable consideration

Property (including any improvements): See Exhibit A attached hereto and incorporated herein at this point for all purposes.

For the Consideration, Grantor quitclaims to Grantee all of Grantor's right, title, and interest in and to the Property, AS IS to have and to hold it to Grantee and Grantee's, successors, and assigns forever. Neither Grantor nor Grantor's, successors, or assigns will have, claim, or demand any right or title to the Property or any part of it.

When the context requires, singular nouns and pronouns include the plural.

Hidalgo and Cameron Counties Irrigation  
District No. 9

By: \_\_\_\_\_

Its: \_\_\_\_\_

(ACKNOWLEDGMENT)

STATE OF TEXAS §

COUNTY OF HIDALGO §

This instrument was acknowledged before me on \_\_\_\_\_, 2009  
by \_\_\_\_\_, of HIDALGO AND CAMERON COUNTIES IRRIGATION  
DISTRICT NO. 9, in the capacity therein stated.

\_\_\_\_\_  
Notary Public, State of Texas

**EXHIBIT D-2**

**AFFIDAVIT**

DATE: \_\_\_\_\_, 2009

AFFIANT: \_\_\_\_\_

Affiant on oath swears that the following statements are true and are within the personal knowledge of Affiant:

Affiant has personal knowledge that the real property known as \_\_\_\_\_ and as identified in the attached Exhibit "A" has been used as a drainage ditch ("Drainage Ditch") by Hidalgo and Cameron Counties Irrigation District No. 9 for more than ten (10) years and that such Drainage Ditch has been exclusively and continuously used by Hidalgo and Cameron Counties Irrigation District No. 9 for drainage purposes of land adjacent to such Drainage Ditch, including but not limited to farmland.

Affiant has personal knowledge that such Drainage Ditch has been maintained and operated for more than ten (10) years by the Hidalgo and Cameron Counties Irrigation District No. 9 and to the best of his knowledge no individual, adjacent landowner or other entity has ever constructed, operated or maintained the Drainage Ditch for any purpose nor has any individual, adjacent landowner or entity expressed an interest or claimed any interest in such Drainage Ditch, other than Hidalgo and Cameron Counties Irrigation District No. 9.

Affiant has personal knowledge that the adjacent landowners induced the belief that each intended for the Hidalgo and Cameron Counties Irrigation District No. 9 to maintain, repair, operate, possess and own all rights to the Drainage Ditch. Affiant has further personal knowledge that the Hidalgo and Cameron Counties Irrigation District No. 9 has acquired, maintained and operated the Drainage Ditch by open, notorious, continuous, exclusive and adverse use for more than 10 years and that the use of the Drainage Ditch by Hidalgo and Cameron Counties Irrigation District No. 9 has caused the public to rely on the adjacent landowner's actions or inactions to cause the Drainage Ditch to become a public benefit and that the public is better served because of the Drainage Ditch.

SUBSCRIBED AND SWORN TO before me on \_\_\_\_\_ by

\_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas



## EASEMENT AND ACCESS AGREEMENT

**Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.**

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

First Party: Hidalgo and Cameron Counties Irrigation District No. 9

First Party's Mailing Address: Hidalgo County Irrigation District No. 9  
301 E. 2<sup>nd</sup>  
Mercedes, Hidalgo County, Texas 78570

Second Party: Hidalgo County

Second Party's Mailing Address: Hidalgo County  
Attention: County Judge  
100 E. Cano, 2<sup>nd</sup> Floor  
Edinburg, Hidalgo County, Texas 78541

First Party's Property: See Exhibit "A" attached hereto and incorporated herein at this point for all purpose.

Easement Purpose: For providing free and uninterrupted pedestrian and vehicular ingress to, over and across First Party's Property and portions thereof for access to Second Party's drainage ditches and facilities for Second Party to construct, maintain and operate Second Party's drainage ditches and facilities.

Consideration: Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties.

Reservations from Conveyance of First Party's Property: None

Exceptions to Warranty of First Party's Property: None

Grants of Easements:

First Party, for the Consideration grants, sells, and conveys to Second Party and Second Party's successors, and assigns an easement to, over, and across First Party's Property for the Easement Purpose, together with all and singular the rights and appurtenances thereto in any way

belonging, to have and to hold the easement, rights, and appurtenances to Second Party and Second Party's, successors, and assigns forever. First Party binds First Party and First Party's, successors, and assigns to warrant and forever defend the title to the easement, rights, and appurtenances in Second Party and Second Party's, successors, and assigns against every person whomsoever lawfully claiming or to claim the easement, rights, or appurtenances, or any part thereof, to the extent that such claim arises by, through, or under First Party but not otherwise.

The easements, rights, and appurtenances hereby granted by First Party are referred to herein as the "Easements." First Party's Property are sometimes referred to herein collectively as the "Properties." First Party and Second Party are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

Terms and Conditions: The following terms and conditions apply to the Easements granted by this agreement:

1. *Duration of Easement.* The duration of the Easement is perpetual.
2. *Nonexclusiveness of Easements.* The Easements are nonexclusive, and First Party reserves for itself and its successors, and assigns the right to use all or part of the Easements in conjunction with Second Party and the right to convey to others the right to use all or part of the Easements in conjunction with the Second Party, as long as such further conveyance is subject to the terms of this agreement and does not interfere with improvements to the Easements made by Second Party.
3. *Use and Location of Easements.* Second Party will be entitled to exercise direct access to and between the First party's Properties without interference except as set forth in this Agreement and to use any portion of First Party's Properties in exercising the Easements. Second Party may make improvements to First Party's Properties, including but not limited to the right to erect, construct, install, expand, dig and maintain a drainage ditch, spoil bank, levees, roadways and structures necessary for the disposal at accumulative and excessive rainfall and/or floodwater and thereafter use, operate, reconstruct, excavate, dig, inspect, repair, expand, maintain, replace and remove drainage ditches, spoil banks, levees, pipes, gates, roadways and structures necessary for the disposal of accumulative and excessive rainfall and/or floodwater for drainage purposes only to the extent that such improvements will not unreasonably interfere with or restrict the use of First Party of the irrigation system of First Party.
4. *Rights Reserved.* First Party reserves for itself, successors, and assigns the right to continue to use and enjoy the surface of First Party's

Properties for all purposes that do not unreasonably interfere with or interrupt the use or enjoyment of the Easements granted herein to Second Party.

5. *Equitable Rights of Enforcement.* These Easements may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the Parties to or those benefited by this Agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

6. *Attorney's Fees.* If either Party retains an attorney to enforce this Agreement, the Party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

7. *Binding Effect.* This Agreement binds and inures to the benefit of the Parties and their respective heirs, successors, and permitted assigns.

8. *Choice of Law.* This Agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any other jurisdiction. Venue is in the county or counties in which the Properties are located.

9. *Counterparts.* This Agreement may be executed in any number of counterparts with the same effect as if all signatory Parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

10. *Waiver of Default.* It is not a waiver of or consent to default if the nondefaulting Party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Agreement does not preclude pursuit of other remedies in this Agreement or provided by law.

11. *Further Assurances.* Each signatory Party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this Agreement and all transactions contemplated by this Agreement.

12. *Integration.* This Agreement contains the complete Agreement of the Parties and cannot be varied except by written Agreement of the

Parties. The Parties agree that there are no oral Agreements, representations, or warranties that are not expressly set forth in this Agreement.

13. *Legal Construction.* If any provision in this Agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the Parties, the unenforceability will not affect any other provision hereof, and this Agreement will be construed as if the unenforceable provision had never been a part of the Agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this Agreement are for reference only and are not intended to restrict or define the text of any section. This Agreement will not be construed more or less favorably between the Parties by reason of authorship or origin of language.

14. *Notices.* Any notice required or permitted under this Agreement must be in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

15. *Recitals.* Any recitals in this Agreement are represented by the Parties to be accurate, and constitute a part of the substantive Agreement.

16. *Time.* Time is of the essence. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

Hidalgo and Cameron Counties Irrigation  
District No. 9

By: \_\_\_\_\_  
Bobby Sparks,  
Its: President

Hidalgo County

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Arturo Guajardo, Jr., Hidalgo County Clerk

(ACKNOWLEDGMENT)

STATE OF TEXAS       §

COUNTY OF HIDALGO   §

      This instrument was acknowledged before me on \_\_\_\_\_, 2009  
by \_\_\_\_\_, of HIDALGO AND CAMERON COUNTIES  
IRRIGATION DISTRICT NO. 9, in the capacity therein stated.

\_\_\_\_\_  
Notary Public, State of Texas

**EXHIBIT "F"**

## **EXHIBIT A**

### **Easement and Access Agreement**

All rights, title and interests in and to all easements held by Hidalgo and Cameron Counties Irrigation District No. 9 in and to all drainage ditches of Hidalgo and Cameron Counties Irrigation District No. 9 as shown by the map attached hereto