

**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.**

**EASEMENT AND ACCESS AGREEMENT**

Date: \_\_\_\_\_, 20\_\_\_\_

First Party: Hidalgo County Irrigation District No. One

First Party's Mailing Address: Hidalgo County Irrigation District No. One  
P. O. Box 870  
Edinburg, Hidalgo County, Texas 78540

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: That certain real property located in Hidalgo County, Texas and being more particularly described on Exhibit A which is attached hereto and made a part hereof for all purposes.

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: Good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties.

Reservations from Conveyance of First Party's Property:

For First Party and First Party's successors and assigns forever, a reservation of all oil, gas, and other minerals in and under and that may be produced from the First Party's Property. If the mineral estate is subject to existing production or an existing lease, this reservation includes the production, the lease and all benefits from it.

## 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.

The easements, rights, and appurtenances hereby granted by First Party are referred to herein as the "Easements." First Party's Property is 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." The conveyance of this Easement is made by First Party excluding any warranty of title, express or implied. All warranties that might arise by common law as well as the warranties in Section 5.023 of the Texas Property Code (or its successor) are excluded.

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 the Easement Purpose.
3. *Use and Location of Easements.* Second Party will be entitled to exercise direct access to and between the First Party's Property without interference except as set forth in this Agreement and to use any portion of First Party's Property in exercising the Easements. Second Party may make improvements to First Party's Property, 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 of 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 Property 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 benefitted 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.

17. *Acceptance by Second Party Without Warranty.* Second Party, by its acceptance hereof, accepts the Property in its physical condition as of the date hereof, AS IS, WHERE IS AND WITH ALL FAULTS, and acknowledges that it has no recourse whatsoever against First Party in the event of discovery of any defects of any kind, latent or patent. Second Party acknowledges and agrees that First Party has not made and does not make any representation, warranty or covenant of any kind or character whatsoever, whether expressed or implied, with respect to the physical condition, use or usefulness of the First Party's Property or any portion thereof, and (1) FIRST PARTY HEREBY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF CONDITION, MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WITH RESPECT TO THE VALUE, PROFITABILITY OR MARKETABILITY OF THE PROPERTY, AND (2) FIRST PARTY HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY WITH REGARD TO COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS, OR REQUIREMENTS INCLUDING, BUT NOT LIMITED TO, THOSE PERTAINING TO THE HANDLING, GENERATING, TREATING, STORING OR DISPOSING OF ANY HAZARDOUS WASTE OR SUBSTANCE.

Hidalgo County Irrigation District No. One

By:   
Robert L. Bell, Jr., President

ACCEPTANCE:

Grantee hereby accepts the foregoing conveyance subject to the reservations therein set forth, and agrees to be bound by the terms and conditions thereof.

FIRST PARTY:

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 February 22, 2012 by Robert L. Bell, Jr., President of HIDALGO COUNTY IRRIGATION DISTRICT NO. ONE, in the capacity ~~therein stated~~.



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

(ACKNOWLEDGMENT)

STATE OF TEXAS §

COUNTY OF HIDALGO §

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_  
by \_\_\_\_\_, \_\_\_\_\_ of HIDALGO COUNTY, in the  
capacity therein stated.

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

**AFTER RECORDING RETURN TO:**

Stephen L. Crain  
Atlas & Hall, L.L.P.  
P. O. Box 3725  
McAllen, Texas 78502-3725

## EXHIBIT A

### METES AND BOUNDS

HIDALGO COUNTY PRECINCT No. 4  
PROJECT: SAN CARLOS DRAINAGE IMPROVEMENTS  
DITCH: SCHUNIOR DRAIN  
PARCEL No.: 1

A 4.78 ACRE TRACT OF LAND OUT OF LOT 13, SECTION 249, TEXAS-MEXICAN RAILWAY COMPANY'S SURVEY, HIDALGO COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 1, PAGE 21, AMENDED PLAT OF FALCON'S CREST GARDENS SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 46, PAGE 92, MAP RECORDS, HIDALGO COUNTY, TEXAS, AND ACCORDING TO DEED RECORDED IN VOLUME 182, PAGE 642, AND SPECIAL WARRANTY DEED RECORDED UNDER COUNTY CLERK'S DOCUMENT NUMBER 1219724, OFFICIAL RECORDS, HIDALGO COUNTY, TEXAS. REFERENCE TO WHICH IS HERE MADE FOR ALL PURPOSES AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS.

BEGINNING AT A 1/2" IRON ROD 24" IN LENGTH WITH PLASTIC CAP STAMPED RPLS 4856 SET AT THE INTERSECTION OF THE EAST RIGHT OF WAY OF ALAMO ROAD (F.M. 907) AND THE NORTH RIGHT OF WAY LINE OF RICHARDSON BLVD. (F.M. 2128) FOR THE MOST SOUTHERLY SOUTHWEST CORNER OF THIS TRACT, SAID ROD BEARS S 81°13'30" E, 35.00 FEET, AND N 08°49' E, 50.00 FEET FROM THE SOUTHWEST CORNER OF LOT 13.

THENCE; N 36°12'15" W, ALONG THE EAST RIGHT OF WAY LINE OF ALAMO ROAD (F.M. 907), A DISTANCE OF 35.34 FEET TO A 1/2" IRON ROD 24" IN LENGTH WITH PLASTIC CAP STAMPED RPLS 4856 SET FOR AN EXTERIOR CORNER OF THIS TRACT.

THENCE; N 08°49' E, ALONG THE EAST RIGHT OF WAY LINE OF ALAMO ROAD (F.M. 907), A DISTANCE OF 30.00 FEET TO A 1/2" IRON ROD 24" IN LENGTH WITH PLASTIC CAP STAMPED RPLS 4856 SET FOR AN EXTERIOR CORNER OF THIS TRACT.

THENCE; S 81°13'30" E, A DISTANCE OF 10.00 FEET TO A 1/2" IRON ROD 24" IN LENGTH WITH PLASTIC CAP STAMPED RPLS 4856 SET FOR AN INTERIOR CORNER OF THIS TRACT.

THENCE; N 08°49' E, ALONG THE EAST RIGHT OF WAY LINE OF ALAMO ROAD (F.M. 907), A DISTANCE OF 105.00 FEET TO A 1/2" IRON ROD FOUND FOR THE SOUTHWEST CORNER OF LOT 1, AMENDED PLAT OF FALCON'S CREST GARDENS SUBDIVISION (RECORDED IN VOLUME 46, PAGE 92, MAP RECORDS, HIDALGO COUNTY, TEXAS) AND THE NORTHWEST CORNER OF THIS TRACT.

THENCE; S 81°13'30" E, ALONG THE SOUTH LINE OF LOTS 1 THRU 9, AMENDED PLAT OF FALCON'S CREST GARDENS SUBDIVISION, A DISTANCE OF 1,300.00 FEET TO A 1/2" IRON ROD FOUND ON THE EAST LINE OF LOT 13 FOR THE SOUTHEAST CORNER OF LOT 9 AND THE NORTHEAST CORNER OF THIS TRACT.

THENCE; S 08°49' W, ALONG THE EAST LINE OF LOT 13, A DISTANCE OF 160.00 FEET TO A 1/2" IRON ROD 24" IN LENGTH WITH PLASTIC CAP STAMPED

RPLS 4856 SET ON THE NORTH RIGHT OF WAY LINE OF RICHARDSON BLVD. (F.M. 2128) FOR THE SOUTHEAST CORNER OF THIS TRACT.


THENCE; N 81°13'30" W, ALONG THE NORTH RIGHT OF WAY LINE OF RICHARDSON BLVD. (F.M. 2128), A DISTANCE OF 1,285.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 4.78 ACRES OF LAND MORE OR LESS.

BEARINGS ARE IN ACCORDANCE WITH AMENDED PLAT OF FALCON'S CREST GARDENS SUBDIVISION, RECORDED IN VOLUME 46, PAGE 92, MAP RECORDS, HIDALGO COUNTY, TEXAS.

THE PROPERTY DESCRIBED IN THIS METES AND BOUNDS MAY BE SUBJECT TO THE SUBDIVISION REGULATIONS OF THE COUNTY OF HIDALGO AND/OR ORDINANCES OR GOVERNMENTAL REGULATIONS OF THE CITY IN WHICH THE PROPERTY MAY BE LOCATED OR HOLDING EXTRA TERRITORIAL JURISDICTION.

I, ALFONSO QUINTANILLA, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, DO HEREBY CERTIFY THE ABOVE METES AND BOUNDS TO BE TRUE AND CORRECT, AND TO BE THE REPRESENTATION AND RESULT OF AN ACTUAL SURVEY DONE ON THE GROUND UNDER MY DIRECTION.

DATE PREPARED: August 20, 2010

  
ALFONSO QUINTANILLA  
REGISTERED PROFESSIONAL  
LAND SURVEYOR No. 4856

