

STATE OF TEXAS

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**BETWEEN:
NORTH ALAMO WATER SUPPLY
CORPORATION AND THE
COUNTY OF HIDALGO, TEXAS**

COUNTY OF HIDALGO

WATERLINE ACCESS AGREEMENT

WHEREAS, North Alamo Water Supply Corporation, a Texas non-profit water supply corporation, (hereinafter referred to as "*NAWSC*") has a water distribution system designed for potable water distribution to rural communities, such system not designed with the primary intent to provide water for fire protection purposes; and

WHEREAS, the County of Hidalgo, a governmental entity of the State of Texas, (hereinafter referred to as "*County*"), may provide fire protection services to its citizens, some of which are located within the area of the Certificate of Convenience and Necessity granted to NAWSC; and

WHEREAS, Section 67.0105 of the Texas Water Code authorizes water supply corporations to contract with governmental entities to supply water to fire hydrants for use in fire suppression, and further provides that the act of supplying such water-by-water supply corporations such as NAWSC, is an essential governmental function. It also provides that the contract for supplying such water must be to the mutual benefit to the contracting parties; and

WHEREAS, pursuant to Section 67.0105, a corporation that provides a governmental entity with a water supply or fire hydrant equipment to carry out the governmental functions as described herein may be liable for damages resulting therefrom only to the extent that the governmental entity would be liable if the governmental entity were performing the governmental function directly; and

WHEREAS, developers are developing subdivisions in the unincorporated areas of the County and the County requires fire protection services for the subdivision as part of the subdivision process; and

WHEREAS, NAWSC and County are mindful of the benefits that can be received by the citizens of the County and the members of NAWSC by the availability of water for use in controlling fires, and thereby, the protection of life and property; and

THEREFORE, in exchange for the recitals herein made, the consideration exchanged, and the goodwill generated, NAWSC and County agree as follows:

1. This Waterline Access Agreement ("*Agreement*") pertains only to those unincorporated areas of the County of Hidalgo, Texas, which also are within the boundaries of the Certificate of Convenience and Necessity granted to NAWSC in HIDALGO County, as determined by mutual agreement of the parties.

No other parts of NAWSC lines shall be affected by this Agreement unless specifically set forth in writing by the parties and adopted by official acts of their respective governing bodies.

2. The County shall have access to NAWSC lines that are no less than six inches (6") in diameter for the purpose of operating and maintaining a fire hydrant/filling station system ("**Fire Hydrants**") in accordance with industry standards and all state and local codes. Such Fire Hydrants shall be used solely for the governmental purpose of fire-fighting filling stations. No other use of water shall be made under this Agreement. County will determine if the pressure and volume available on such lines are suitable and sufficient for the intended purpose. NAWSC will furnish to County's designated engineer such waterline modeling information as it may have to the extent such information affects the lines and hydrants related to this Agreement. Such information does not constitute any representation or warranty of any condition and is subject to all limitations, disclaimers, etc. found in this Agreement.
3. Except as otherwise provided in this paragraph, all Fire Hydrants on NAWSC waterlines shall be used for the governmental purpose of fire-fighting **filling stations**. Filling stations shall be painted black with a white bonnet (cap) so as to be designated that they may be available for that limited use in a fire emergency and shall be operated by County such that a positive pressure of no less than 30 p.s.i. is maintained in NAWSC's water line at the point of connection between the water line and the Fire Hydrant. Should County perform annual testing of each hydrant subject to this Agreement so as to determine the color coding attributable to each hydrant under a fire hydrant coding scheme, County may paint the tested hydrants the appropriate color under that color coding scheme for a period of one (1) year following the test, after which a new test must be done, or the Fire Hydrant painted black with a white bonnet (cap) until the appropriate test is done. Should a tested and color-coded hydrant's condition change after being tested and its condition be such that a different color code is appropriate, County will immediately repaint the hydrant accordingly. Should a year expire without a hydrant being re-tested, County will immediately paint it black with a white bonnet (cap) and if County fails to so test and paint County's fire hydrants, NAWSC may (but is not required to) do so at County's expense, such expense to be paid by County to NAWSC upon written request, and in compliance with the Texas Prompt Payment Act. By allowing a Fire Hydrant subject to this Agreement to be painted any color other than black with a white bonnet (cap), NAWSC is not representing or warranting that the Fire Hydrant is available and suitable for use in a fire emergency.
4. The County shall require that Fire Hydrants will be installed by Developer in accordance with Exhibit "A" and to the extent permitted by law owned and maintained by County as set forth herein. If concrete is used for additional stability, the hydrant weep holes should not be covered.
5. All water used from NAWSC system will be reported monthly to NAWSC by

County. This report will state the estimated amount of water used, the date of use, the location of use and any problems encountered with the Fire Hydrant. The form for such reporting will be provided by the County.

5. There may be an annual charge by NAWSC for the quantity of water used for fire protection. Such charge will be established annually by the Board of Directors based upon the industrial and institutional rate per 1000 gallons consumed as listed in the then-current NAWSC Tariff. However, in no case will water be used for any domestic use, equipment wash-downs or construction purposes, or any other purpose other than the actual use of controlling fires and maintaining the Fire Hydrants.
6. NAWSC is a rural system that does not patrol all locations daily. Accordingly, it is aware of the potential for the abuse of Fire Hydrants resulting from the opportunistic taking of water for uses other than fire protection. Should this become problematic, NAWSC reserves the right to require County to install security devices on all Fire Hydrants at the cost of County. Sufficient special wrenches, or keys, for access will be provided to NAWSC by County at no cost to NAWSC. Should County fail to install the required security devices, NAWSC may install such devices as it deems appropriate at a cost to the County.
7. Fire Hydrant maintenance, inspection and flushing will be done by County personnel, or those under contract with County, for which County will retain responsibility. All Fire Hydrant maintenance, inspection, and flushing will be done at County's expense. NAWSC may require that such maintenance, inspection, and/or flushing be conducted at any time, and after notice of such request is given to County, such maintenance, inspection, and flushing, will be conducted as soon as reasonably possible. A schedule will be set up by County to perform maintenance, inspection, and testing according to acceptable local, state, and federal fire protection standards no less frequently than every twelve (12) months. Such schedule shall be provided to NAWSC in writing no later than thirty (30) days prior to any date shown on the schedule. County will maintain the Fire Hydrants in such a manner that they may also be used as a temporary water sales point and as a flush valve by NAWSC. NAWSC may use the Fire Hydrants as temporary water sales points and as flush valves in order to assure the sanitary conditions of the potable water.
8. If County fails to maintain the Fire Hydrants in such a manner, NAWSC may (but is not required to) do so at County's expense, such expense to be paid by County to NAWSC upon written request, in compliance with the Texas Prompt Payment Act. NAWSC may inspect Fire Hydrants on an annual basis for a reasonable fee to be set by NAWSC (initially \$200.00 per Fire Hydrant), which may be increased based on future costs increases to provide this service. Where applicable, and upon notice, County shall have personnel present as necessary to assist in the inspection. Any Fire Hydrants inspected by NAWSC, shall preclude the annual inspection by County, under the terms of this Agreement, for a period of twelve (12) months, from the date of the inspection by NAWSC. In order to

assure the integrity of its system and to maintain the sanitary conditions of the potable water, NAWSC personnel will be present at the times of Fire Hydrant maintenance, inspection, flushing, and no such activity will occur without such presence.

9. All installation and replacement of Fire Hydrants and appurtenances will be performed by County. All expenses involved in the installation and replacement of Fire Hydrants and appurtenances will be borne by County.

10. COUNTY HEREBY ACKNOWLEDGES AND AGREES THAT NAWSC, BY ALLOWING ACCESS TO ITS SYSTEM, ASSUMES A DUTY TO NOT INJURE A PERSON EMPLOYED BY OR OTHERWISE AUTHORIZED BY COUNTY TO USE, ACCESS, OR IN ANY WAY BENEFIT FROM THE FIRE HYDRANTS, THE WATER THEREIN OR ANY APPURTENANCES THERETO (THE "USER") BY WILLFUL OR WANTON CONDUCT OR BY GROSS NEGLIGENCE, AND THAT NAWSC ASSUMES NO OTHER DUTY OR STANDARD OF CARE. TO THE EXTENT APPLICABLE AND PERMITTED BY LAW COUNTY UNDERSTANDS THAT THE STANDARD OF CARE ASSUMED UNDER THIS AGREEMENT DOES NOT REQUIRE NAWSC TO WARN THE USER OF AN UNSAFE CONDITION OR TO MAKE AN UNSAFE CONDITION SAFE SHOULD NAWSC BECOME AWARE, EITHER ACTUALLY OR CONSTRUCTIVELY, OF A CONDITION WHICH RESULTS IN AN UNREASONABLE RISK TO THE USER. FURTHER, COUNTY UNDERSTANDS THAT NAWSC MAY CHANGE THE CONDITION OF ITS SYSTEM IN A MANNER THAT MIGHT RENDER THE SYSTEM UNSAFE FOR A USER WITHOUT INCURRING LIABILITY FOR SUBSEQUENT INJURY TO USER BY THE NEW DANGER.

11. COUNTY AGREES TO USE THE WATER AND SYSTEM AT ITS OWN RISK AND AS IT IS FOUND. NAWSC, WITHOUT ACCEPTING ANY DUTY, GRATUITOUSLY WILL ENDEAVOR TO NOTIFY COUNTY OF ANY CONDITION THAT MIGHT RENDER THE SYSTEM UNSAFE FOR USE BY COUNTY SHOULD ITS MANAGER BECOME CONSCIOUSLY AWARE OF SUCH A CONDITION. NAWSC HEREBY SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY, OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, OR CONCERNING (A) THE NATURE AND CONDITION OF THE SYSTEM INCLUDING, WITHOUT LIMITATION, THE PIPELINES, HYDRANTS, FLUSH VALVES, APPURTENANCES, WATER AND REAL PROPERTY, THE SUITABILITY THEREOF FOR ANY AND ALL ACTIVITIES AND USES WHICH COUNTY MAY ELECT TO CONDUCT OR THE EXISTENCE OF ANY HAZARD OR CONDITION; (B) THE NATURE AND EXTENT OF ANY RIGHT-OF- WAY, LEASE, POSSESSION, LICENSE, RESERVATION, CONDITION OR OTHERWISE; AND (C) THE COMPLIANCE OF THE SYSTEM OR ITS OPERATION WITH ANY LAWS, ORDINANCES OR REGULATIONS OF ANY

GOVERNMENTAL ENTITY OR BODY.

12. COUNTY ACKNOWLEDGES BY USE OF THE SYSTEM THAT IT HAS AND WILL INSPECT THE SYSTEM AND COUNTY WILL RELY SOLELY ON ITS OWN INVESTIGATION OF THE SYSTEM AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY OR ON BEHALF OF NAWSC. COUNTY FURTHER ACKNOWLEDGES THAT THE INFORMATION PROVIDED AND TO BE PROVIDED WITH RESPECT TO THE SYSTEM WAS OBTAINED WITHOUT CONSIDERATION BEING GIVEN AND NAWSC (1) HAS NOT MADE ANY INVESTIGATION OR VERIFICATION OF SUCH INFORMATION; (2) DOES NOT MAKE ANY REPRESENTATION AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. ACCESS TO THE SYSTEM IS ALLOWED ON AN "AS IS", "WHERE IS", AND "WITH ALL FAULTS" BASIS, AND COUNTY EXPRESSLY ACKNOWLEDGES THAT, IN CONSIDERATION OF THIS ACCESS, NAWSC MAKES NO WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION OR FITNESS FOR PARTICULAR PURPOSE WITH RESPECT TO THE SYSTEM OR ANY PORTION THEREOF.

TO THE EXTENT APPLICABLE AND PERMITTED BY LAW, COUNTY AGREES BY ITS USE OF THE SYSTEM, DIRECTLY OR THROUGH OTHERS, THAT NAWSC SHALL NOT BE RESPONSIBLE OR LIABLE TO THE COUNTY, FOR ANY DEFECT, ERRORS, OMISSIONS, OR ON ACCOUNT OF ANY OTHER CONDITIONS AFFECTING ANY UNINCORPORATED AREA OF THE COUNTY OF HIDALGO, TEXAS. AS COUNTY MAKES USE OF THE SYSTEM "AS-IS", "WHERE-IS", AND "WITH ALL FAULTS." TO THE EXTENT APPLICABLE AND PERMITTED BY LAW, COUNTY, OR ANYONE CLAIMING BY, THROUGH, OR UNDER COUNTY, HEREBY FULLY RELEASES NAWSC, ITS EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, ATTORNEYS, AND AGENTS FROM ANY COST, LOSS, LIABILITY, DAMAGE, EXPENSE, DEMAND, ACTION OR CAUSE OF ACTION ARISING FROM OR RELATED TO ANY DEFECTS, ERRORS, OMISSIONS, OR OTHER CONDITIONS AFFECTING THE SYSTEM.

COUNTY HEREBY AGREES AND ACKNOWLEDGES THAT UNDER THE PROVISIONS OF SECTION 341.03571 (i) OF THE TEXAS HEALTH AND SAFETY CODE, A PUBLIC WATER SYSTEM IS NOT LIABLE FOR A HYDRANT'S INABILITY TO PROVIDE ADEQUATE WATER SUPPLY IN A FIRE EMERGENCY. THE FACT THAT ALL OR THE CAP OF A HYDRANT IS NOT PAINTED BLACK OR CONCEALED IN ANY MANNER DOES NOT CONSTITUTE A GUARANTEE BY NAWSC THAT THE HYDRANT WILL DELIVER A CERTAIN AMOUNT OF WATER FLOW AT ALL TIMES. NOTWITHSTANDING ANY PROVISION OF CHAPTER 101, CIVIL PRACTICE AND REMEDIES CODE, TO THE

CONTRARY, NAWSC IS NOT LIABLE FOR A HYDRANT'S INABILITY TO PROVIDE ADEQUATE WATER SUPPLY IN A FIRE EMERGENCY.

TO THE EXTENT APPLICABLE AND PERMITTED BY LAW, AND WITHOUT EXPANDING COUNTY'S LIABILITY BEYOND THE STATUTORY LIMITS OF THE TEXAS TORT CLAIMS ACT, AND FURTHERMORE, WITHOUT WAIVING COUNTY'S IMMUNITY BEYOND THE SCOPE OF THAT ALLOWED BY THE TEXAS TORT CLAIMS ACT, COUNTY, BY ITS USE OF THE SYSTEM, DIRECTLY OR THROUGH OTHERS, COUNTY HEREBY AGREES TO INDEMNIFY, PROTECT, DEFEND, SAVE AND HOLD HARMLESS NAWSC, ITS EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, ATTORNEYS AND AGENTS FROM AND AGAINST ANY AND ALL DEBTS, DUTIES, OBLIGATIONS, LIABILITIES, SUITS, CLAIMS, DEMANDS, CAUSES OF ACTION, LOSSES, COST AND EXPENSES AND TO PAY ALL EXPERTS' AND ATTORNEYS' FEES AND EXPENSES AND COURT COSTS, ASSERTED AGAINST OR INCURRED BY NAWSC AT ANY TIME AND IN ANY WAY RELATING TO, CONNECTED WITH, OR ARISING OUT OF THE CONDITION OF NAWSC'S SYSTEM AND THE USE OF THE FIRE HYDRANTS OR THE OPERATION, MAINTENANCE AND MANAGEMENT THEREOF, INCLUDING ANY CLAIMS, SUITS, OR CAUSES OF ACTION ARISING FROM ANY NEGLIGENCE, INCLUDING GROSS NEGLIGENCE OF NAWSC AND ITS AGENTS, OFFICERS AND EMPLOYEES AS THEY RELATE TO THE PROVISION OF WATER AND ACCESS TO NAWSC'S SYSTEM UNDER THIS AGREEMENT.

13. This Agreement is intended to provide NAWSC with all the protections and limitations from liability allowed by the laws as they exist and will exist, including, but not limited to, Texas Water Code §67.0105, and the common law and all the terms and conditions hereof shall be liberally construed to effectuate this purpose and to sustain the validity of this Agreement. The parties agree that this Agreement shall not be construed in favor of or against either party on the basis that the party did or did not authorize the Agreement. This Agreement constitutes the entire agreement between the parties.
14. This Agreement is effective upon execution by the parties and continues until terminated by either party in writing, such termination to occur only after written notice by the terminating party at least two (2) months prior to the termination date. All parties may terminate in the event of a default if such default is left uncured for 30 days after giving written notice.
15. Each person, signing below, warrants and represents to the parties to this Agreement, that he has been given full authority to execute this Agreement, such that it binds the party for which he signs to fully fulfill the terms of this Agreement.
16. This Agreement is not executed for the benefit of any third party and its terms

shall not be enforceable by or in favor of any person or entity other than the express parties to the Agreement.

17. Any expenses associated with the enforcement of this Agreement, shall be paid to NAWSC upon presentation to County, and in compliance with the Texas Prompt Payment Act.
18. Should any amounts to be paid by any party hereto, remain unpaid after the date the payment is due, such unpaid amount shall accrue interest, in compliance with the Texas Prompt Payment Act.
19. In the event any litigation arises out of this Agreement between the parties hereto, the non-prevailing party shall pay the prevailing party all reasonable and necessary attorney's fees, expert fees, expenses and costs of court expended or incurred in connection with the litigation pursuant to Section 271.153 of the Texas Local Government Code or similar authority effective at the time of the execution of this Agreement.
20. If any part, term, or provision of this Agreement is held by the courts to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or enforceability shall not affect the validity of any other part, term, or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of this Agreement.
21. The Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by all parties.

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By signing and delivering this Agreement to the appropriate official of NAWSC, the County authorizes completion of this Agreement by filling in the Effective Date below.

IN WITNESS WHEREOF, EXECUTED by NAWSC and County, acting under the authority of their respective governing bodies, in multiple originals on the date indicated below.

SIGNED this day of _____, 20____.

ATTEST:

COUNTY OF HIDALGO, TEXAS

By: _____
Arturo Guajardo, Hidalgo County Clerk

By: _____
Richard F. Cortez, County Judge

APPROVED AS TO FORM:

By: _____

Printed Name: _____
Counsel for County of Hidalgo, Texas

STATE OF TEXAS §
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COUNTY OF HIDALGO §

Before me, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Richard F. Cortez, known to me to be the person whose name is subscribed in the foregoing instrument and acknowledged to me that he is County Judge of the County of Hidalgo, Texas, and that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office on _____, 20____.

[Seal]

Notary Public, State of Texas

NORTH ALAMO WATER SUPPLY CORPORATION

420 S. Doolittle Road
Edinburg, Texas 78542
956-383-1618 (phone)
956-383-1372 (fax)

By: _____
Steven P. Sanchez, General Manager

APPROVED AS TO FORM:

By: _____
Richard W. Fryer,
Attorney for North Alamo
Water Supply Corporation

State of Texas §
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Before me, the undersigned notary, on this day personally appeared Steven P. Sanchez, General Manager of North Alamo Water Supply Corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he signed the same for the purposes and consideration expressed therein.

Given under my hand and seal of office on _____, 20____.

[Seal]

Notary Public, State of Texas

EXHIBIT “A”