

**INTERLOCAL AGREEMENT BETWEEN
POLK COUNTY, TEXAS AND POLK COUNTY FRESH WATER DISTRICT
FOR ROAD MAINTENANCE SERVICES**

This Interlocal Agreement ("Agreement") is made by and between Precinct Two (2) of Polk County, Texas, a political subdivision of the State of Texas ("the County"), acting by and through its duly elected Commissioners Court, and Polk County Fresh Water District, Texas, a special district created by the Legislature and political subdivision of the State of Texas, acting by and through its duly authorized representative ("the District").

W I T N E S S E T H:

WHEREAS, the County and the District are authorized to enter into this Agreement pursuant to the provisions of the Interlocal Cooperation Act, Texas Government Code Section 791.00 et seq; and

WHEREAS, the County and the District find it mutually beneficial and in the public interest for the County to assist with road maintenance services on certain District-owned property more specifically described herein below; and

WHEREAS, performing road maintenance services on the District-owned property, described as property owned by the District and/or leased or under easement to the District, is both reasonable and necessary to keep both District-owned and County-owned property and other real and personal property, in a safe and useful condition;

WHEREAS, the County has the necessary equipment and personnel and is willing to do said work in consideration of the mutual covenants and agreements herein contained; and

WHEREAS, certain County-owned property will be directly benefited from the road maintenance services that will be performed by the County on District-owned property;

NOW, THEREFORE, the County and the District agree as follows:

I. OBLIGATIONS OF THE COUNTY

- A. The County is responsible for providing road maintenance services on the District-owned property described hereinabove, which may include, helping to spread road materials, including rock, gravel and the like. All Polk County Fresh Water District permits are waived for this project, if any should be necessary at all.
- B. The County will provide the personnel, equipment, tools and the like necessary to assist in the road maintenance contemplated by subsection (I)(A) above.
- C. The County shall, to the extent authorized under the Constitution and laws of the State of Texas, hold the District harmless from liability resulting from the negligent acts or omissions of the County, its officers, agents and employees pertaining to the activities to be carried out pursuant to the obligations of this Agreement; provided, however, the County shall not hold the District harmless from any claims, demands, or causes of action arising in favor of any person or entity, growing out of or incident to, or resulting directly or indirectly from negligence (whether sole, joint, concurring or otherwise) of the District, its officers, agents, representatives, or employees, or any person or entity not subject to the County's

supervision or control.

II. OBLIGATIONS OF THE DISTRICT

- A. The District agrees to allow the County's equipment and personnel access to the District-owned property described herein for the purpose of carrying out the road maintenance services contemplated by this agreement.
- B. The District hereby agrees to provide all materials necessary to enable the County's equipment and personnel to carry out the road maintenance services contemplated by this agreement. Such material may include rock, gravel and other materials suitable for maintaining the District-owned property on which the parties may agree.
- C. In addition to the purchase of materials, the District agrees to reimburse the County for the actual cost of said road maintenance services in an amount to be determined by Polk County Precinct 2 and mutually agreed upon by both parties prior to the commencement of any such services.
- D. The District agrees to hold the County, its employees, agents, assigns, successors in interest and representatives of any kind harmless for any alleged incident of personal injury or property damage resulting from action taken by the County in reasonable furtherance of this agreement.
- F. The District shall, to the extent authorized under the constitution and laws of the State of Texas, hold the County, their officers, agents and employees harmless from any liability, loss or damage they may suffer as a result of claims, demands, costs or judgments against them arising out of the activities to be carried out pursuant to the obligations of this Agreement, including but not limited to the use by the District of the results obtained from the activities performed by the County under this Agreement; provided, however, the District shall not hold the County harmless from any claims, demands, or causes of action arising in favor of any person or entity, growing out of, or incident to, or resulting directly or indirectly from the negligence (whether sole, joint, concurring or otherwise) of the County, its officers, agents, representatives, or employees, or any person or entity not subject to the District's supervision or control.

III. TERM, TERMINATION

- A. This Agreement shall be effective after the date of execution by all parties, and shall expire immediately after the completion the road maintenance services contemplated by this agreement. This agreement is non-renewable and non-assignable.
- B. If either party hereto desires to terminate this Agreement prior to the completion of the road maintenance services, the party desiring termination shall request such termination in writing, sent by certified mail, return receipt requested to the other party. The party receiving the request for termination shall have fourteen (14) days from receipt to remove any personnel or equipment from the property or care, custody or control of the other party, and this agreement shall terminate at the end of said fourteen (14) day period.
- C. Nothing in this agreement shall constitute an acceptance by the County to, nor burden the County with the responsibility to, maintain any District-owned property that is directly or

indirectly affected by the road maintenance services performed under the terms of this agreement. The County is granted access to the District-owned property strictly for performing the road maintenance services contemplated hereunder, and the presence of County equipment, personnel or property on District-owned real property shall in no way be construed as an acceptance by the County of a continued responsibility to improve and maintain the District-owned property outside the terms of this agreement.

IV. MISCELLANEOUS

- A. Severability. If any section, subsection, sentence, clause, or phrase of this Agreement is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of the Agreement shall not be affected thereby. It is the intent of the parties signing this Agreement that no portion of it, or provision or regulations contained in it shall become inoperative or fail by reason of unconstitutionality or invalidity of any other section, subsection, sentence, clause, phrase, provision, or regulation of this Agreement.
- B. Law and Venue. This Agreement shall be governed by the laws of the State of Texas. The obligations under this Agreement are performable in Polk County, Texas. It is expressly understood that any lawsuit or litigation arising out of or relating to this contract will take place in Polk County, Texas.
- C. Alteration, Amendment, or Modification. This Agreement may not be altered, amended, or modified except in writing, approved by the County Judge of Polk County and the duly authorized representative of the District.
- D. Notice. The address of District for all purposes shall be:

Sue Norris
Polk County Fresh Water District
P.O. Box 2250
Onalaska, Texas 77360

The address for the County for all notices hereunder shall be:

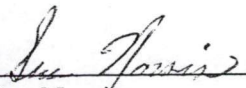
Commissioner Ronnie Vincent
Precinct 2, Polk County
P.O. Box 1388
Onalaska, Texas 77360

- E. Independent Relationship. Both parties hereto, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.
- F. No Waiver of Immunities. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to the parties hereto, their past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. Neither party waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

- G. Compliance with Laws. The parties hereto shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations.
- H. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto, and supersedes all their oral and written negotiations, agreements, and understandings of every kind. The parties hereto understand, agree, and declare that no promise, warranty, statement, or representation of any kind whatsoever, which is not expressly stated in this Agreement, has been made by any party hereto or its officer, employees, or other agents to induce execution of this Agreement.
- I. Disclaimer of Warranty. The County hereby expressly disclaims any warranty of suitability, fitness for a particular purpose or any other warranty, whether express or implied, related to the quality and suitability of its performance, personnel, equipments, results, or the like.

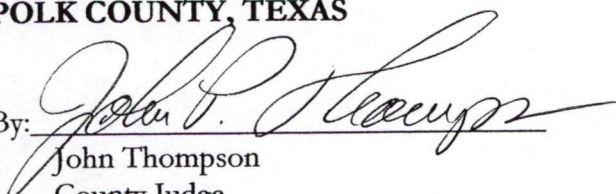
WHEREFORE, premises considered, in this Interlocal Agreement is executed to be effective the date of the last party to sign.

POLK COUNTY FRESH WATER DISTRICT

By: 
Sue Norris
District Manager

Date: 1-25-2010

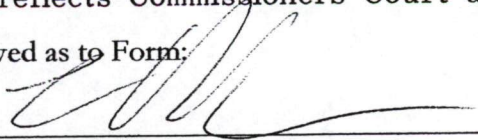
POLK COUNTY, TEXAS

By: 
John Thompson
County Judge

Date: 12/22/2009

(reflects Commissioners Court approval)

Approved as to Form:

By: 
William Lee Hon,
Polk County Criminal District Attorney