

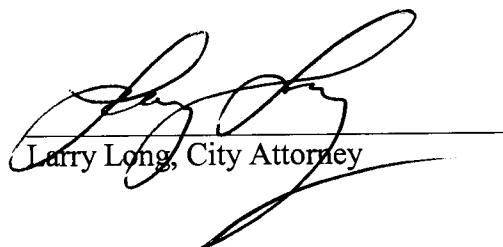
MEMORANDUM

CITY OF ODESSA Legal Department

DATE: January 27, 2005
TO: Norma Aguilar, City Secretary
FROM: Larry Long, City Attorney
RE: Interlocal Laboratory Services Agreement with Reeves County Water Improvement District No. 1 (C-3-576)

Attached please find a fully executed original of the above-referenced document for the City files.

Thank you.



Larry Long, City Attorney

LL/gg

attachment(s)

Term
ag
day

CONTRACT EXECUTION FORM

Department: Utilities
Name of Other Party: Reeves County Water Improvement District
Purpose of Contract: Interlocal Laboratory Services Agreement
Contract Manager: _____

ACTION

Initial/Date

- | | |
|----------------------------|--|
| <u>DM</u> <u>1/18/05</u> | Director - Attached are two copies of General Contract executed by other party or at least three copies of Construction Contract. |
| <u>NA</u> _____ | Director - City Council approval obtained on _____, if City Council approval is required. |
| <u>NA</u> _____ | Director of Finance - Funds are appropriated, and City Council approval is not required. |
| <u>NA</u> _____ | Director - Attached is a copy of any insurance certificate required to be submitted at the time of execution, receipt for any required fees and other documentation required to show required compliance prior to City approval. |
| <u>DM</u> <u>1/18/05</u> | Director - Attached is the Contract Action Form. |
| <u>LM</u> <u>1/12/05</u> | Legal - Contract is in legal form and ready for execution by City Manager/Department Director. |

Procedure

- (1) Director determines need of the city, availability of funds, scheduling requirements, description of services, consideration and other terms and conditions.
- (2) Director submits information to City Attorney for preparation or review of contract.
- (3) Director obtains City Council approval, if required.
- (4) If City Council approval is not required, Director of Finance determines that funds have been appropriated.
- (5) Director provides required insurance certificate, if any, and a xerox copy of any required payment or other documentation to show required compliance.
- (6) Director submits required copies of two contracts (or at least three for Construction Contracts) executed by other party to City Attorney with Contract Execution Form, Contract Action Form and copy of any required insurance certificate and proof of payment. City Attorney will approve as to form and submit to City Manager/Department Director for execution by City.
- (7) City Manager will execute and return to City Attorney. City Attorney will obtain attestation from City Secretary and file one original with Contract Manager and the Contract Action Form and return all other documents to Director.
- (8) The Contract Managers will keep a tickler file to insure that all requirements of the Contract assigned to the Contract Managers are performed and that the Contract is renewed if necessary prior to termination.
- (9) This policy only applies to contracts as defined.

CONTRACT ACTION FORM

Contract Number Assigned by Contract Manager: _____

Contract Manager:

Date: January 18, 2005

The attached contract is delivered and the following information is provided to assist in performing the necessary action steps required subsequent to execution. The referenced requirements refer to the requirements imposed on the other party by the Contract. In each item, the required dates should be shown.

1. Description of contract: *Interlocal Laboratory Services Agreement*
2. Expiration date of contract: ~~NA~~ *Automatic one year renewal*
3. Insurance certificate requirements: *NA*
4. Fee requirements: *NA*
5. Report requirements: *NA*
6. Other requirements requiring assistance: *NA*
7. Provide timely notice to the Director on the following items:
renew negotiations: *NA*
consider renewal or termination: *NA*
compliance: *NA*

Debbie McReynolds
Director

Approved as to form:

[Signature]
~~Joel V. Roberts, City Attorney~~
Larry Long, City Attorney

INTERLOCAL LABORATORY SERVICES AGREEMENT

This agreement is made and entered into by and between ^{REEVES} ~~Reeve~~ County Water Improvement District No. 1, P. O. Box 185, Balmorhea, Texas 79718, hereinafter referred to as "Customer", a governmental entity, and the City of Odessa, a governmental entity, hereinafter referred to as "Odessa".

RECITALS

WHEREAS, Chapter 791 of the Government Code of the State of Texas, authorizes interlocal contracts between two governmental entities; and

WHEREAS, the parties to the interlocal agreement are independently authorized to perform the functions or services contemplated by the agreement; and

WHEREAS, the agreement is approved by the governing bodies of each participating entity; and

WHEREAS, the agreement states the purpose, terms, rights, and duties of the contracting parties; and

WHEREAS, the consideration is an amount that fairly compensates the performing party for the services performed; and

WHEREAS, the payment of all consideration shall be made from available current revenues; and

WHEREAS, Customer collects and/or receives water samples requiring chemical and bacteriological analysis; and

WHEREAS, Odessa agrees to provide, subject to the terms and conditions contained herein, the facilities and personnel necessary to provide laboratory services in connection with conducting the total and fecal coliform analyses and other analyses mutually agreed upon by both parties.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual premises, covenants, obligations and benefits in this Agreement, including the above recitals, Customer and Odessa agree as follows:

I. SERVICES

- 1.1 When requested by Customer, Odessa shall conduct analyses on water samples as specified in 40 CFR Part 141 and wastewater samples as specified in 40 CFR Part 146.
- 1.2 When requested by Customer, Odessa can conduct other analyses if it deems that the equipment, personnel, and procedures required to perform the analyses are available to Odessa.

II. CONSIDERATION

- 2.1 In consideration for the analysis of samples conducted by Odessa, Customer shall pay Odessa for each analysis at a cost mutually agreeable to both parties. This rate shall be amended from time-to-time by mutual agreement of the parties. Failure to mutually agree to the rates shall be cause to terminate this contract.

III. INVOICES

- 3.1 On or before the twentieth (20th) day of each month, Odessa shall send Customer an itemized invoice for the amount due for the services performed in the previous month. Customer shall pay such invoice within thirty (30) days of receipt.

IV. TERM

- 4.1 The term of this Agreement shall be for one (1) year commencing upon the date of execution by all parties; provided, however, this Agreement shall be automatically renewed for successive one-year terms unless written notice of non-renewal is given by either party to the other at least ninety (90) days prior to the expiration of the initial term or any renewal term thereof.

V.
NOTICES

5.1 All notices for which the parties may be required, or may desire, to serve on the other shall be in writing and shall be served by personal delivery, or by facsimile with confirming copy sent by mail, or by depositing the same with the U.S. Postal Service, certified mail, postage prepaid, return receipt required, and addressed as set forth below. Such address shall be effective for all notices to the respective parties until written notice of a change of address is given pursuant to the provisions hereof.

<u>If to Odessa:</u>	<u>If to Customer:</u>
Director of Utilities	Lee Renz, Board Vice President
City of Odessa	Reeves County Water Improvement District No. 1
411 W. 8th Street	P. O. Box 185
Odessa, Texas 79761	Balmorhea, Texas 79718
Phone:(432) 335-4625	Phone: (432) 375-2654
Fax: (432) 335-4698	Fax: (432) 375-0338
Attn: Debbie McReynolds	

Notice given in any other manner shall be effective only if and when received by the party to be notified. Each party shall have the right, from time-to-time and at any time, to change their respective address, by giving at least fifteen (15) days written notice to the other party.

VI.
RECEIPT OF SAMPLES AND DELIVERY OF SERVICES

- 6.1 Prior to Odessa's acceptance of any sample, the risk of loss or of damage to such sample will remain with Customer. In no event will Odessa have any responsibility or liability for the action or inaction of any carrier shipping or delivering any sample to or from Odessa's premises.
- 6.2 If Odessa receives a sample for analysis that is (a) of insufficient volume, (b) in an unsuitable sampling container, (c) improperly sampled or preserved, or (d) improperly labeled, Odessa will declare the sample invalid and notify Customer.

- 6.3 Odessa will use analytical methodologies which are in substantial conformity with the U.S. Environmental Protection Agency (EPA) and Texas Commission on Environmental Quality (TCEQ).
- 6.4 Upon timely delivery of samples, Odessa will use its best efforts to comply with storage, processing and analytical holding time limits as set forth in applicable EPA or state guidelines or as otherwise requested by Customer. If for any reason Odessa cannot comply with the holding or processing times, Customer will be notified so that Customer can determine if the sample should be delivered to an alternate laboratory.
- 6.5 To ensure correct receipt and handling of the sample, Customer agrees to complete a Chain of Custody Form provided by Odessa for all samples delivered to the Odessa Laboratory.
- 6.6 Customer agrees to have the responsibility and expense for transporting all samples to Odessa's testing facility and to transport all new sampling containers back to Customer.
- 6.7 Odessa shall not bare any responsibility for any communication of results to third parties unless Odessa expressly agrees.
- 6.8 Odessa shall have up to twenty (20) working days to report results of the analyses to Customer unless a shorter period is requested by Customer and agreed to by Odessa.
- 6.9 Odessa shall maintain the right to designate the day(s) of the week and the time(s) of the day it will receive samples.

VII.
WARRANTIES AND REPRESENTATIONS

- 7.0 Odessa shall notify Customer if it receives an Open Records Request concerning records arising out of this Agreement. To the extent permissible by law, Customer will be responsible for responding to the Open Records Request. If the records are being maintained by Odessa, Odessa will provide the records to Customer.
- 7.1 Odessa represents only that it will use its best efforts to provide the services set forth in Article 1, pursuant to the standards set forth in Article 6. This representation is the sole

and exclusive representation given by Odessa in connection with such services and Odessa makes no other representation or warranty of any kind, expressed or implied. No representative of Odessa is authorized to give, to make, or to modify any representation or warranty.

- 7.2 Odessa is not an insurer of services; and the liability of Odessa, its officials, officers, and employees, for claims arising out of this contract, whether based in contract, tort, or otherwise, shall be limited by the provisions contained herein. This contract shall not be construed to create any third party liability or to waive any governmental or individual immunity. Odessa specifically disclaims, and the above described coverage shall not include, any liability for special, indirect, incidental, or consequential damages. Customer waives all rights of subrogation except to the extent of the coverage provided by this section.
- 7.3 Odessa shall not have any responsibility or liability to Customer for any failure or delay in performance by Odessa which results, directly or indirectly, in whole or in part, from any cause or circumstance beyond the reasonable control of Odessa. Such causes and circumstances shall include, but not be limited to, acts of God, acts of Customer, acts or orders of any government authority, strikes or labor disputes, natural disasters, accidents, wars, civil disturbances, difficulties or delays in transportation, mail or delivery services, inability to obtain from Odessa's usual sources sufficient services or supplies, or any other cause beyond Odessa's reasonable control.
- 7.4 All results provided by Odessa are strictly for the use of Customer, and Odessa is in no way responsible for the use of such results by third parties. All results should be considered in their entirety, and Odessa shall not be responsible for the separation, detachment, or other use of any portion of the results.
- 7.5 Customer represents to the best of its ability that the samples submitted to Odessa's Laboratory will not contain substances that would cause the samples to be classified as hazardous waste.

VIII.
GENERAL PROVISIONS

- 8.1 Venue. The obligations of the parties to this Contract are performable in Ector County, Texas and if legal action is necessary to enforce same, exclusive venue shall lie in Ector County, Texas.
- 8.2 Legal Construction. In case any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.
- 8.3 Assignment. Except as otherwise set forth herein, this contract cannot be assigned without the prior written consent of the other party.
- 8.4 Counterparts. This contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- 8.5 Captions. The captions to the various clauses of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.
- 8.6 Non-Discriminatory Policy. Parties agree that as to all of the programs and activities conducted on the subject premises, they will not discriminate against any person on the basis of race, color, national origin, sex or by reason of being handicapped.
- 8.7 Entire Agreement. This Contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between Customer and Odessa, except as herein provided.
- 8.8 Force Majeure. Neither Odessa nor Customer shall be required to perform any term, condition or covenant in this agreement so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, civil riots, floods and any

other cause not reasonably within the control of such party except as herein provided, and which by the exercise of due diligence Odessa or Customer is unable, wholly or in part, to prevent or overcome.

8.9 ***Indemnity. To the extent permitted by law, Customer agrees to indemnify and hold harmless Odessa, its officers, agents, contractors, and employees from and against all claims, judgments, damages, costs and expenses attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, including all attorney fees, cost and expenses necessary to defend against such allegations, and arising because of acts of commission or omission by either party, its employees, agents, lessees or contractors while performing the terms of this Agreement. This provision shall not be construed to create any third party liability and both Customer and Odessa preserve all rights of governmental and individual immunity as to any third parties. The parties agree to appropriate the necessary funds from current revenue to discharge any obligation hereunder.***

8.10 ***Indemnity - Worker's Compensation. Both Customer and Odessa agree to be responsible for satisfying any applicable requirements of The Texas Worker's Compensation Act as to their employees.***

8.11 ***Indemnity - Government Regulation. In its performance of this Agreement, Customer and Odessa agree to comply with all applicable Federal, State and local laws including, but not limited to, the provisions of the Equal Employment Opportunity Act and the Fair Labor Standards Act, and will indemnify and hold each other harmless from and against any claims, demands, suits, losses, damages, costs and expenses arising out of any non-compliance, violation or alleged non-compliance violation, while rendering a service under this contract. It is not a violation of this contract to withhold compliance pending an appeal of any governmental regulation in good faith.***

- 8.12 Third Parties. The provisions of this contract shall not be construed to create any rights in any third parties.
- 8.13 Permits and Licenses. The parties agree that they, or their contractors will, maintain in effect during the term of this Agreement any and all Federal, State licenses and/or permit which may be required to perform any agreed services.
- 8.14 Fair Exchange. Both parties find that the services provided by each party are of equal value and the providing of such services constitutes a fair exchange of consideration.
- 8.15 Independent Contractor. Both Odessa and Customer shall be in the relationship of an Independent Contractor, and the relationship shall not be that of a joint venture; and a party's employees and officers and subcontractors shall in no way be considered as employees, officers or subcontractors of the other party.
- 8.16 Joint Preparation. This Agreement is deemed to be drafted and prepared equally and jointly, regardless of which party prepared or submitted the document to the other and shall not be construed against one party or the other as a result of preparation, submittal, or execution.

Executed this the 11 day of January, 2005, upon the expressed authorization by the respective governing bodies of Customer and Odessa.

^W
REEVES "CUSTOMER"
~~REUSE~~ COUNTY WATER IMPROVEMENT
DISTRICT NO. 1

By: Larry Turnbough
Larry Turnbough, Board President

ATTEST:

Ernestina C. Castillo
Ernestina C. Castillo
District Secretary

"ODESSA"
CITY OF ODESSA

By: Richard Morton
Richard Morton, City Manager

ATTEST:

Norma Aguilar
Norma Aguilar, City Secretary

APPROVED AS TO FORM:

Larry Long
Larry Long, City Attorney

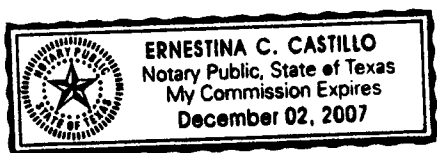
(Customer)

STATE OF TEXAS §

COUNTY OF Reeves §

BEFORE ME, Ernestina C. Castillo (notary's name) on this day personally appeared Larry Turnbough, Board President of Reeves Co. County Water Improvement District No. 1, known to me (or proved to me on the oath of Ernestina C. Castillo or through _____ [description of identity card or other document]) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in the capacity stated, as the act of the corporation, for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this 11 day of January, A.D., 20045



Ernestina C. Castillo
Notary Public in and for the State of Texas

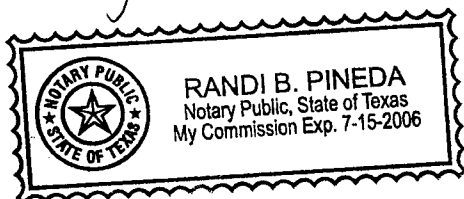
(Odessa)

STATE OF TEXAS §

COUNTY OF ECTOR §

BEFORE ME, the undersigned authority, on this day personally appeared **Richard Morton**, City Manager of the City of Odessa, Texas, a municipal corporation of Ector County, Texas, known to me to be the person and officer whose name is subscribed to the foregoing instrument, an acknowledged to me that the same was the act of the said City of Odessa, a municipal corporation, and that he executed the same as the act of said City of Odessa for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL of office this 25th day of January, A.D., 20045



Randi B. Pineda
Notary Public in and for the State of Texas