

**RESOLUTION NO. 2003- 117 R**

**A resolution ratifying the City Manager's execution of an Interlocal Agreement with Victoria County, for the funding of the City of Victoria Utilities to serve the proposed animal shelter, in an amount not to exceed \$246,500.00, with the City and Victoria County each being responsible for half of the costs (\$123,250.00 each); and declaring an effective date.**

The Federal Emergency Management Agency (FEMA) awarded Unmet Needs Grant Contract No. UN-3.2E-09A for Disaster 1257 (hereinafter called the "FEMA Grant") to the County on December 6, 2002 in the amount of \$506,000.00 for the relocation of the Victoria County Animal Shelter from 1301 S. Willow Street, Victoria, Texas to the 8200 Block of Houston Highway, Victoria County, Texas, which requires at least 25% matching funds to be provided locally; and the City will be providing utilities for this location because it is located in the territorial limits of the City.

THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF VICTORIA, TEXAS:

1.

The City Manager's execution of an Interlocal Agreement with Victoria County, for the funding of the City of Victoria Utilities to serve the proposed animal shelter, in an amount not to exceed \$246,500.00, with the City and Victoria County each being responsible for half of the costs (\$123,250.00), which is attached as **Exhibit "A"** and incorporated herein, is ratified.

2.

This resolution shall become effective immediately upon adoption.

PASSED, this the 19<sup>th</sup> day of August, 2003.

AYES: **6**

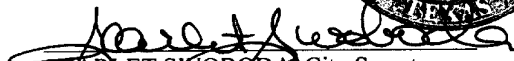
NAYS: **0**

ABSTENTIONS: **0**


APPROVED AND ADOPTED, this the 19<sup>th</sup> day of August, 2003.



ATTEST:

  
SCARLET SWOBODA, City Secretary

Distribution:   Legal Department  
                  Utilities Department

  
GARY MIDDLETON, Mayor of the  
City of Victoria, Texas

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
DAVID ATMAR SMITH, City Attorney

Copies Sent: **AUGUST 20, 2003**

**Interlocal Agreement between the City of Victoria and Victoria County  
for the Funding of Utilities to Serve the Proposed Animal Shelter**

This agreement is entered this 21<sup>st</sup> day of July, 2003, by and between the City of Victoria (the "City"), a Texas municipal corporation, acting through its duly authorized City Manager, and the County of Victoria (the "County"), a body politic, acting through its duly elected County Judge;

WHEREAS, the Texas Interlocal Cooperation Act, Tex. Gov't Code § 791.001 et seq., authorizes and encourages local political subdivisions to enter into agreements for the provision of governmental and administrative functions and services;

WHEREAS, both the City and the County are authorized to provide the animal shelter services and utility construction services described herein;

WHEREAS, in accordance with TEX. GOV'T CODE ANN. § 791.011, this contract:

- (1) has been authorized by the governing bodies of the City and the County,
- (2) provides a governmental function or services that each party to the contract is authorized to perform individually,
- (3) is in an amount that fairly compensates the City and County for the services performed under this contract,
- (4) hereby specifies that each party paying for the performance of governmental functions or services hereunder must make those payments from current revenues available to the paying party.

WHEREAS, the County has complied with Tex. Gov't Code § 791.014, "Approval Requirement for Counties" by approving this document in a document other than this interlocal contract, which describes the type of project to be undertaken, and identifies the project's location; and

WHEREAS, the Federal Emergency Management Agency (FEMA) awarded Unmet Needs Grant Contract No. UN-3.2E-09A for Disaster 1257 (hereinafter called the "FEMA Grant") to the County on December 6, 2002 in the amount of \$506,000 for the relocation of the Victoria County Animal Shelter from 1301 S. Willow Street, Victoria, Texas to the 8200 Block of Houston Highway, Victoria County, Texas, which requires at least 25% matching funds to be provided locally.

THEREFORE, for the mutual consideration as stated in this agreement, the parties agree as follows:

**1. City/County Duties.** The City and County each agree to pay for ½ of the cost of the water and sewer lines to be installed by the City at the locations shown in Exhibit "A". The City and County further agree as follows:

a. The City will place the water and sewer lines at the locations shown in Exhibit "A". ½ of the cost of this placement shall be paid by the City. The other ½ of said cost will be paid by the County. This placement will be performed by a contractor hired by the City.

b. Prior to the City's awarding bids for the construction of this project, the County will place funds in trust with the City's Finance Department to provide for ½ of the construction cost. From the funds in trust with the City, the County will pay ½ of the requested contractor draws on the project to place the aforementioned water and sewer lines at the locations shown on Exhibit "A" within 10 days of notification of each of said draws. The City will pay the other ½ of each requested draw at the time it is made.

c. The respective obligations of the City and County will be applied to the required match for the FEMA grant.

d. This project is estimated to cost \$246,500, and the City and County's estimated cost hereof is \$123,250 apiece. If the bids indicated that the actual amount for construction of this project will be higher than the aforementioned estimate, the City will notify the County prior to awarding the bid to determine (1) whether additional funding will be allocated for this project by the County and the City or (2) the scope of the project will be changed.

e. The amount provided by both the City and County are intended to be applied to the matching funds obligations pursuant to the aforementioned FEMA grant.

2. **FEMA Grant not allocated pursuant to other Interlocal Agreement.** The amounts paid or received pursuant to the FEMA grant and this agreement will be considered County expenditures and/or income, not Health Department expenditures and/or income. Consequently, amounts paid or received pursuant to the FEMA grant and this agreement shall not be part of the amounts to be allocated between the City and County pursuant to the Interlocal Agreement between the City of Victoria and Victoria County for the Provision of Fire, Rescue, Health, Animal Control, and Library Services.

3. **Assignment.** No assignment or transfer of this agreement shall be made by either party without prior written approval of the other party hereto.

4. **Venue.** Sole venue for any lawsuit concerning the terms of this agreement or the performance or nonperformance of any of its terms shall be a court of competent jurisdiction in Victoria County, Texas.

5. **Amendment.** No officer, official or agent of either party has the power to amend, modify or alter this Agreement or waive any of its conditions or to bind the City or the County by making a ny promise or representation not contained in this agreement, except as modified by joint agreement of the City of Victoria City Council and the County of Victoria County Commissioners Court.

6. **Legal Action.** Should this agreement be placed by the City or the County with an attorney for collection, specific performance, termination or declaration of rights, then the party prevailing in any suit or arbitration shall be entitled to collect its costs and reasonable and necessary attorney's fees. The term "prevailing party" means that party who substantially received the relief sought whether such relief be of a plaintiff or defendant posture.

7. **Responsibility.** Neither party shall be responsible for damages caused by any failure to furnish or receive the service designated in this Agreement or for any interruption of the service furnished under this Agreement.

8. **Notice.** Unless specified otherwise, any notice required in this agreement shall be sent to the City of Victoria, c/o City Manager, P. O. Box 1758, Victoria, Texas 77902 and to the County of Victoria, County Judge, 101 North Bridge Street - Room 102, Victoria, Texas 77901, by registered or certified mail, or delivered directly to the aforesaid officials by personal delivery.

9. **Interlocal Agreement.** This agreement is an interlocal governmental agreement, does not create any third party benefits to any person or entity other than the signatories hereto, and is solely for the consideration expressed in this agreement or as otherwise agreed by appropriate action of the City Council and County Commissioners= Court.


10. **No Third-Party Beneficiaries.** No existing or potential user of the services provided hereunder shall have any right, title or interest in and to this agreement, nor may any person who is not a party to this agreement require the performance of any duty provided herein or collect damages for the nonperformance thereof.

11. **Captions.** The section and captions contained in this agreement are for convenience of reference only and are not intended to define, extend or limit any provision of this agreement.


12. **Governmental Operations.** All acts to be performed hereunder are found by both parties to be governmental acts for purposes of the Texas Tort Claims Act. No service to be performed hereunder is intended to be proprietary in nature.

Executed, this the 29<sup>th</sup> day of July, 2003.

CITY OF VICTORIA, TEXAS

  
Denny L. Arnold

COUNTY OF VICTORIA

  
Don Pozzi

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City Manager

(seal)



County Judge

(seal)

*Donald R. Brey*

ATTEST:

*Scarlet Swoboda*  
Scarlet Swoboda, City Secretary

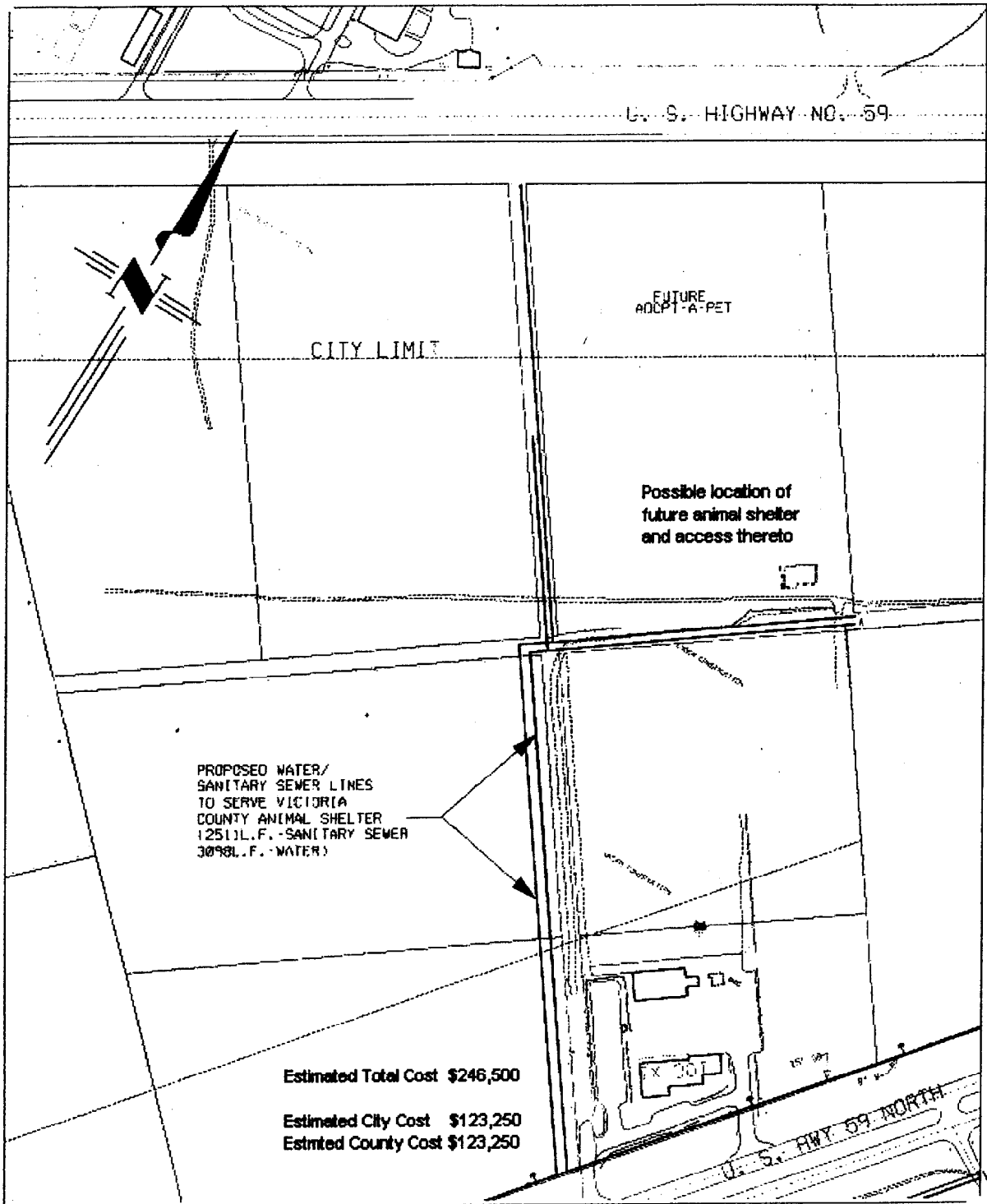
ATTEST:

*Val Huvar*  
Val Huvar, County Clerk



APPROVED AS TO FORM

*David A. Smith*  
David A. Smith, City Attorney



**Exhibit "A"**