

**INTERLOCAL COOPERATION AGREEMENT
FOR COMMUNITY SHELTER CONSTRUCTION PROJECT**

This Interlocal Cooperation Agreement ("Agreement") is entered into by and between the City of Corpus Christi, Texas ("City"), a municipal corporation and home-rule city of the State of Texas, acting by and through its governing body, the City Council, and the Del Mar College (College), a political subdivision of the State of Texas, acting by and through its governing body, the Board of Regents.

RECITALS

WHEREAS, College requests that City apply to the Texas Division of Emergency Management ("TDEM") of the Department of Public Safety for a federal grant ("Hazard Mitigation Grant Program") from the Federal Emergency Management Agency ("FEMA") of the United States Department of Homeland Security on behalf of College for a Community Shelter or Safe Room Construction Project ("Project"); and

WHEREAS, City agrees to apply to TDEM for the federal grant ("Hazard Mitigation Grant Program") and distribute grant funds it receives on behalf of College; and

WHEREAS, College agrees to comply with all terms and conditions of the grant including assurances, and in the event College fails to comply with the terms and conditions of the grant, losses or misuses the grant funds, College assures that the funds will be returned, in full, to TDEM and FEMA; and

WHEREAS, College agrees to solely use the grant funds to construct a 20,000 square foot structure on College's property to be primarily used as a community shelter or safe room during inclement weather conditions and emergencies, and College is solely responsible for the costs, construction, maintenance of Project; and

WHEREAS, College and City agree to formulate each Party's responsibilities and rights with respect to Project.

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement, the participating local governments ("Parties"), authorized by appropriate actions of their governing bodies, hereby agree as follows:

SECTION 1. PURPOSE.

The purpose of this Agreement is to formulate the responsibilities and rights of College and City with respect to the application for and administration of a federal grant that is to be solely used by College to construct a structure on College's property primarily for use as a community shelter or safe room during inclement weather conditions and emergencies. City shall have use of the structure as needed during inclement weather conditions and emergencies.

SECTION 2. CITY SCOPE OF SERVICES AND RIGHTS.

- a) City will apply to TDEM for the federal grant ("Hazard Mitigation Grant Program") from FEMA.
- b) City will submit College's reimbursement packages, under the grant terms, to TDEM for grant funds reimbursement on behalf of College.
- c) City will distribute to College grant funds it receives from TDEM on behalf of College.
- d) City will be allowed, upon request, to inspect or audit College's records, documents, accounting books and methods to insure that grant funds are not lost or misused and to insure College complies with all terms and conditions of the grant.

SECTION 3. COLLEGE SCOPE OF SERVICES AND RIGHTS.

- a) College, its contractors and subcontractors shall comply with all terms and conditions of the grant, including assurances, and all applicable codes and ordinances.
- b) College is solely responsible for managing the grant funds it receives.
- c) College shall supervise and construct Project, using grant and College's funds, on College's property for primary use as a community shelters or safe rooms during inclement weather conditions and emergencies under an approved City and College MOU user's agreement. College may contract services under this Agreement. However, College shall remain solely responsible for the performance of its obligations under this Agreement. College shall be responsible for all payments to contractors and subcontractors.
- d) College shall expend funds to construct Project and then request reimbursement under the grant. College shall provide all funds necessary to cover the costs of constructing Project to the extent such costs exceed the amount of approved grant funds. College shall provide funds necessary to cover the costs of operating and maintaining the community shelter or safe room once construction is completed. City is not obligated in any way to fund or construct Project under this Agreement.
- e) College shall return grant funds to TDEM and FEMA if it fails to comply with the terms and conditions of the grant, or if it loses or misuses grant funds. The College is fully responsible for all funds due to TDEM or FEMA for failure to comply with HMGP, TSSI Safer Room Project rules and regulations.
- f) College is responsible for the 25% match including in kind match required under the grant. The City is not responsible for any matching funds.
- g) College shall submit reimbursement packages under the grant terms which include, but not limited to, invoices and canceled checks, to City to request reimbursement of funds from TDEM on behalf of College.

- h) College shall maintain accurate and adequate records to establish compliance with this Agreement and the terms and conditions of the federal grant.
- i) College shall grant access to City, as well as applicable state and federal agencies, to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of this Agreement for the purposes of inspecting, auditing and/or copying such books and records. College shall provide copies and printouts requested by City, TDEM and FEMA without charge. College's records, whether paper or electronic, shall be made available during regular office hours.
- j) College shall have the exclusive right to use the facilities for school purposes at all times that the facilities are not being used for emergency shelter.

SECTION 4. FUNDS AND PAYMENT.

Each Party which performs services under this Agreement shall do so with funds available from its current revenues.

SECTION 5. NO THIRD PARTIES BENEFIT.

This Agreement, and all activities under this Agreement, is solely for the benefit of Parties and not for the benefit of any third party, except for TDEM and FEMA.

SECTION 6. INTERLOCAL COOPERATION ACT.

The Parties agree that activities contemplated by this Agreement are "governmental functions and services" and that Parties are "local governments" as that term is defined in the Interlocal Cooperation Act. This Agreement is made under chapter 791 of the Texas Government Code.

SECTION 7. IMMUNITY NOT WAIVED.

Nothing in this Agreement, including the execution and performance of the covenants contained in this Agreement, is intended to or may constitute a waiver or limitation of any governmental, official, or other immunity, defense, or other protection afforded under state and federal law to either Party or its officers, employees, representatives, and agents.

SECTION 8. LIABILITY.

In no event shall City, TDEM, FEMA, its employees, officers, representatives, or agents be liable to College or any person at any time for any special, incidental, or consequential damages, arising from breach of warranty, breach of contract, negligence, strict liability in tort, or any other legal theory, even if City, TDEM, or FEMA has been advised of the possibility of such damages.

SECTION 10. INSURANCE.

The College, at its sole cost and expense, shall obtain and maintain insurance as described in attached Exhibit A, including commercial general liability insurance and professional liability insurance coverage in amount described in Exhibit A. The College, at its discretion, may choose to self-insure and a letter of self-insurance is required to be filed with City. College shall ensure that its contractor(s) maintain the types and amounts of insurance listed on Exhibit A (except that College's contractor is not required to maintain professional liability coverage.)

SECTION 11. TERM OF AGREEMENT.

This Agreement shall begin on the final date of execution by all Parties and shall continue until the grant term expires or for a term of two (2) years, whichever comes first.

The following terms shall survive termination or expiration of this Agreement without limitation and remain in full force and effect:

- a) The structure built using the federal grant ("Hazard Mitigation Grant Program") funds shall be used primarily as a community shelter or safe room during inclement weather and emergencies;
- b) College shall provide funds to cover the costs of operating and maintaining the community shelter or safe room;
- c) The liability and indemnity sections;
- d) City, state and federal agencies access and ability to inspect and audit the record keeping, reporting, and accounting of grant funds;

SECTION 12. AMENDMENTS TO AGREEMENT.

Unless otherwise provided herein, this Agreement may only be amended by written instrument duly executed on behalf of each party. The City authorizes the City Manager and the College authorizes the Superintendent to execute subsequent amendments, limited to non-substantive modifications that do not require the appropriation of funds, without further approval from the governing body.

SECTION 13. NOTICES.

All notices required or permitted hereunder shall be in writing and shall be deemed properly delivered when actually received or, if earlier, on the seventh (7th) day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested), addressed to the respective other Party at the address prescribed below, or at such other address as the receiving Party may have theretofore prescribed by notice to the sending Party:

City:

City of Corpus Christi
Attn: City Manager
Post Office Box 9277
Corpus Christi, Texas 78469-9277

College:

Del Mar College
Attn: President
101 Baldwin Boulevard
Corpus Christi, TX 78404

SECTION 14. ENTIRE AGREEMENT.

This Agreement, representing the entire agreement between Parties, supersedes any and all prior agreements between Parties, whether written or oral, relating to the subject matter of this Agreement. No officer or employee of either Party may waive or otherwise modify the limitations in this Agreement without the express action of the governing body of the Party or its duly authorized agents.

SECTION 15. SEVERABILITY.

In the event any term, covenant, or condition herein contained shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant, or condition herein contained, provided that such invalidity does not materially prejudice either City or College in their respective rights and obligations contained in the valid terms, covenants, or conditions hereof. To this end, the remaining terms, covenants, and conditions hereof are severable and continue in full force and effect.

SECTION 16. VALIDITY AND ENFORCEABILITY.

If any current or future legal limitations affect the validity or enforceability of any provision of this Agreement, then the legal limitations are made a part of this Agreement and shall operate to amend this Agreement to the minimum extent necessary to bring this Agreement into conformity with the requirements of the limitations. As so modified, this Agreement continues in full force and effect.

SECTION 17. LAWS AND VENUE.

City and College shall comply with all federal, state, county, and local laws, ordinances, rules, and regulations applicable to this Agreement and each Party's respective performance thereunder. This Agreement shall be interpreted according to Texas laws governing the interpretation of contracts. Venue for an action arising under this Agreement shall lie in Nueces County, Texas and be in accordance with the Texas Rules of Civil Procedure.

SECTION 18. CAPTIONS.

Captions to provisions of this Agreement are solely for convenience and shall not be considered in the interpretation of any provision.

SECTION 19. NON-ASSIGNMENT.

College shall not assign or transfer, in whole or in part, directly or indirectly, any of its rights or obligations hereunder without the prior written consent of City, and any attempt of assignment or transfer without such consent shall be void. However, this Agreement is binding upon the parties to this Agreement and their respective heirs, successors, and assigns.

SECTION 20. WARRANTY.

This Agreement has been officially authorized by the governing body of each Party. Each signatory to this Agreement guarantees and warrants that the signatory has full authority to execute this Agreement and to legally bind their respective Party to the Agreement.

CITY OF CORPUS CHRISTI

DEL MAR COLLEGE

Ronald L. Olson (Date)
City Manager

Trey McCampbell (Date)
Chair, Del Mar College
Board of Regents

Mark Escamilla, Ph. D. (Date)
President, Del Mar College

ATTEST:

Armando Chapa (Date)
City Secretary

APPROVED AS TO FORM:

Buck Brice (Date)
Assistant City Attorney
For City Attorney

**EXHIBIT A
INSURANCE REQUIRMENTS**

- A. Public Entity must not commence work under this agreement until all insurance required herein has been obtained and such insurance has been approved by the City.
- B. Public Entity must furnish to the City's Risk Manager, two (2) copies of Certificates of Insurance with applicable policy endorsements, showing the following minimum coverages by insurance company(s) acceptable to the City's Risk Manager.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
COMMERCIAL GENERAL LIABILITY including: 1. Broad Form 2. Products/ Completed Operations 3. Contractual Liability 4. Independent Contractors 5. Personal Injury/ Advertising Injury	\$500,000 Per Occurrence
PROFESSIONAL LIABILITY including: Coverage provided shall cover all employees, officers, directors and agents 1. Errors and Omissions	\$300,000 per claim / \$500,000 aggregate

- C. Public Entity's financial integrity is of interest to the City; therefore, shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Public Entity's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A-VII.
- D. The City shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Public Entity shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. All notices under this Article shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Management
P.O. Box 9277
Corpus Christi, TX 78469-9277
Fax: (361) 826-4555

- E. Public Entity agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:
- i. Name the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City.
 - ii. Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - iii. Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- F. Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Public Entity shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Public Entity's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which the Public Entity may be held responsible for payments of damages to persons or property resulting from Public Entity's or its subcontractors' performance covered under this agreement.
- H. It is agreed that Public Entity's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this contract.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.