

THE STATE OF TEXAS §

COUNTY OF NUECES §

**INTERLOCAL AGREEMENT BETWEEN THE
CORPUS CHRISTI DOWNTOWN MANAGEMENT DISTRICT
AND THE CITY OF CORPUS CHRISTI FOR TIRZ #3
IMPROVEMENTS TO ARTESIAN PARK**

This Interlocal Cooperation Agreement ("Agreement") is made between the Corpus Christi Downtown Management District ("DMD"), created under Chapter 375 of the Texas Local Government Code, and the City of Corpus Christi, Texas ("City") a municipal corporation, and home-rule municipality for improvements to Artesian Park, which is located within the Corpus Christi Tax Increment Reinvestment Zone #3 ("TIRZ #3") boundary.

WHEREAS, on December 16, 2008, the City approved Ordinance 027996 which established the TIRZ #3 in accordance with the Texas Tax Code Chapter 311 in order to promote economic development and stimulate business and commercial activity within the designated reinvestment zone (the "Zone") in downtown Corpus Christi area;

WHEREAS, the board of directors of TIRZ #3 (the "Board") includes members of the City Council in a non-public official capacity, as well as a representative from each of Nueces County and Del Mar College who have committed to contribute to TIRZ #3 through interlocal agreements created in 2009 and amended in 2012 and 2016;

WHEREAS, on August 25, 2015, the City approved a Project and Financing Plan (the "Plan") for TIRZ #3, which was last amended on October 16, 2018;

WHEREAS, the DMD has formally adopted Artesian Park, within the Zone boundary, through a memorandum of understanding with the City;

WHEREAS, the DMD wishes to make improvements to Artesian Park to better serve the needs of the DMD and the citizens of the City; and

WHEREAS, the DMD and City desire to enter into an Agreement laying out each Party's rights and obligations related to improvements to Artesian Park (the "Project");

BE IT AGREED BY THE CORPUS CHRISTI DOWNTOWN MANAGEMENT DISTRICT AND THE CITY OF CORPUS CHRISTI, TEXAS:

SECTION 1. OBLIGATIONS OF CITY AND DMD

For and in consideration of the covenants and agreements of the parties set forth herein, City and DMD agree to participate in the funding of costs, including engineering, construction and maintenance, related to the Project.

A. City Participation

(1) The City will provide TIRZ #3 funding in the amount of \$150,000 in advance for the DMD to use for the Project. The funds will be provided within 30 days following the receipt of an invoice from the DMD for payment. The City shall not require the DMD to begin any work on the Project prior to payment of the funds.

(2) The City's Parks and Recreation Department will promptly review all final renderings and plans for the Project, including the landscaping plan. Approval by the City is required prior to starting work on any part of the Project.

B. DMD Participation

(1) The DMD will provide engineering work, construction, and maintenance of the Project in accordance with the Scope of Work, which is attached hereto as **Exhibit A** and incorporated by reference as if laid out herein in its entirety.

(2) The DMD will maintain the insurance required in accordance with **Exhibit B**, which is attached hereto and incorporated by reference as if laid out herein in its entirety. The DMD shall require that all contractors providing work on the Project also comply with the requirements of **Exhibit B** and provide a certificate of insurance prior to starting any work. The certificate of insurance must name the City as an additional insured. All contracts with contractors must include the indemnification provision found in Section 4 of this Agreement.

(3) The DMD will comply with Texas State law in procuring contractors for the Project. The DMD shall require payment bonds for any contracts over \$50,000 and performance bonds for any contracts over \$100,000. Any required bonds must be in a form approved by the City. Any contracts for construction of public works must comply with Chapter 2258 of the Texas Government Code, or its successor, as amended. The DMD shall comply with Chapter 1001 of the Texas Occupations Code and procure engineering services when required.

(4) The DMD must provide documentation of costs promptly upon completion of the Project, including invoices and proof of payment. If the costs are less than the \$150,000 provided for this Project by the City, the DMD shall return any remaining funds to the City within 30 days after completion of the Project.

(5) The DMD will maintain the improvements installed as part of the Project for the life thereof at no additional cost to the City. The maintenance is included in the costs of the separate interlocal agreement between the DMD and the City, as an agent for TIRZ #3, for services provided to TIRZ #3.

SECTION 2. TERM OF AGREEMENT

This Agreement is for an initial term of one year and will be automatically renewed for subsequent one-year terms for purposes of continued maintenance of the improvements only unless written notice by either party is given 60 days prior to the expiration of the initial term or any extension. This Agreement shall automatically terminate if the DMD is dissolved or if the tax levy is not renewed.

SECTION 3. DEFAULT

Notwithstanding any other term or condition in this Agreement, the City shall have the right to immediately terminate this Agreement if DMD defaults in their maintenance of the improvements. In the event of default or nonrenewal of this Agreement, the City shall have no responsibility for the maintenance or repair of the improvements.

SECTION 4. INDEMNIFICATION

The DMD, its officers, agents, contractors, and employees ("Indemnitor") shall indemnify and hold the City of Corpus Christi, its officers, agents, employees, and representatives ("Indemnitees") harmless and defend the Indemnitees from and against any and all liability, loss, claims, demands, suits, and causes of action of any nature whatsoever on account of personal injuries (including death and Workers' Compensation claims), property loss or damage, or any other kind of injury, loss, or damage, including all expenses of litigation, court costs, attorney's fees, and expert witness fees which arise or are claimed to arise out of or in connection with this Agreement or the performance of this Agreement, regardless of whether the injuries, death, or damages, are caused or are claimed to be caused by the concurrent or contributory negligence of Indemnitees, but not if by the sole negligence of Indemnitees unmixed with the fault of any other person. Indemnitor must, at its own expense, investigate all claims and demands, attend to the settlement or other disposition of such claims, defend all actions based thereon with counsel satisfactory to the City Attorney, and pay all charges of attorneys and all other costs and expenses of any kind arising from any said liability, damage, loss, claims, demands, suits, or actions. The indemnification obligations of the Indemnitor under this section shall survive the expiration or earlier termination of this Agreement. This indemnity specifically includes any claims brought related to the sale or service of alcoholic beverages.

CITY DOES NOT AGREE TO DEFEND, NOR INDEMNIFY, NOR HOLD HARMLESS, DMD UNDER ANY CIRCUMSTANCES.

SECTION 5. MISCELLANEOUS

(a) Payments. Any payment made by either the City or the DMD for any of the services provided pursuant to this Agreement shall be made out of current revenues available to such parties as required by the Interlocal Cooperation Act. All funding obligations of the DMD and the City under this Agreement are subject to the appropriation of funds by each entity in its annual budget.

(b) Contract Administrator. The City's Contract Administrator for this Project is the Business Liaison in the City Manager's Office.

(c) Notices. Notices under this Agreement shall be addressed to the parties as indicated below, or changed by written notice to such effect, and shall be effected when delivered or when deposited in the U.S. Mail, post pre-paid, certified mail, return receipt requested.

DMD: Executive Director
Corpus Christi Downtown Management District
223 N Chaparral Street, Ste A
Corpus Christi, Texas 78401

CITY: City Manager's Office
Attn: Business Liaison
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

(d) Performance. This Agreement shall be performed in Nueces County, Texas and shall be interpreted according to the laws of the State of Texas.

(e) Severability Clause. If any portion of this Agreement or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall continue to be enforceable in accordance with its terms.

(f) Non-waiver. Failure of any party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on, and to enforce by appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

(g) Assignment. This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns. This Agreement may not be assigned by any party without the written consent of all of the other parties.

(h) Entire Agreement. This Agreement represents the entire agreement between the parties and may not be modified by any oral agreements or understandings. Any amendments must be made in writing and signed by all parties.

(i) Interlocal Cooperation Act. This Agreement is subject to the terms and provisions of the Texas Interlocal Cooperation Act, codified as Chapter 791 of the Texas Government Code. Further, each party represents that this agreement has been duly passed and approved by its governing body, as required by the Act.

(j) No Waiver of Immunity. No party hereto waives or relinquishes any immunity or defense on behalf of itself, its officers, employees and agents as a result of its execution of this Agreement and performance of the covenants contained herein.

IN WITNESS HEREOF, the City and DMD have made and executed this Agreement in multiple copies, each of which is an original.

**CORPUS CHRISTI DOWNTOWN
MANAGEMENT DISTRICT**

CITY OF CORPUS CHRISTI

Alyssa Barrera Mason (Date)
Executive Director

Peter Zanoni (Date)
City Manager

ATTEST:

Rebecca Huerta, City Secretary (Date)

APPROVED AS TO FORM:

Assistant City Attorney (Date)

Exhibit A - Scope of Work

I. General Requirements/Background Information

The DMD shall provide improvements to Artesian Park as outlined in this Scope of Work. The DMD shall ensure that the grounds at each site are safe, secure, and presentable at all times.

II. Scope of Work

Services are required for improvements to the City owned property shown in Attachment A, known as Artesian Park. The DMD will provide all labor, supplies and equipment necessary to perform the work. The DMD shall be responsible for timely performance of the work stated in the scope of work. DMD shall obtain all City required permits through the City Development Services Department prior to beginning work.

A. Electrical and Lighting

B. Concrete Repair and Replacement

C. Structure Repair

D. Landscaping

III. Work Site and Conditions

A. The work shall be performed at Artesian Park.

B. The DMD shall supply the City with a work schedule to indicate the starting and completion dates for work. Changes in such work schedule must be approved by the Contract Administrator.

C. Work Hours: The DMD will confine all operations to daylight hours, sunrise to sunset, Monday through Friday, unless one of the days is a City designated holiday. Saturday and Sunday work will require approval from the Contract Administrator or Park Superintendent to ensure there is no interference with activities, rentals or special events.

D. Non-Work Hours: The DMD may not store any equipment or tools on any site. The DMD shall at all times, keep all sites under this agreement, free from accumulations of waste materials or rubbish caused by employees or contractors at work, and DMD shall remove all equipment, supplies, and materials belonging to DMD from and about the work area and all tools, leaving the premises clean.

IV. Equipment

A. The DMD's equipment must be equipped with safety devices which conform to manufacturer's standards and all applicable OSHA regulations to prevent damage to property. The DMD shall provide all equipment and supplies, adequate in kind, quantity and quality, for professionally performing these services in a manner that is satisfactory to the Contract Administrator.

B. Should the DMD's equipment require service while at any location, the DMD must notify the contract Administrator or designee. The DMD shall not permit any oil, grease, or lubricants to spill onto or to contaminate the soil. The DMD shall be responsible for any clean up and disposal of contaminated soil in accordance with all applicable City, State and Federal Regulations.

V. DMD Quality Control and Superintendence

The DMD shall establish and maintain a complete Quality Control Program that is acceptable to the Contract Administrator to assure that the requirements of the Contract are provided as specified. The DMD will also provide supervision of the work to insure it complies with the contract requirements.

VI. Safety Requirements

A. Public Safety and Convenience: The safety of the public and the convenience of traffic shall be regarded as prime importance. All portions of streets shall be kept open to traffic. The DMD shall follow all traffic regulations in accordance with the Texas Manual on Uniform Traffic Control Devices (<http://www.txdot.gov/government/enforcement/signage/tmutcd.html>). The DMD shall coordinate all Work with the Contract Administrator and shall place warning signs in accordance with the current version of the Texas Manual on Uniform Traffic Control Devices. The DMD shall provide all signs, sign stands, safety flags, and all other safety materials or devices as well as safety vests to protect the workers and to ensure safe passage for pedestrian and vehicular traffic at all times. The DMD will be responsible for the maintenance or replacement of these items as necessary. If at any time work is in progress, the traffic control devices do not accomplish the intended purpose due to weather or other conditions affecting the safe handling of traffic, the DMD shall immediately make necessary changes thereto to correct the unsatisfactory conditions. These provisions for directing traffic will not be paid for directly but shall be included in the contract pricing.

VII. Security and Protection of Property

A. Security Requirements:

1. The DMD shall maintain and abide by the security measures at all locations including locking gates when leaving the sites.

B. Protection of Property:

1. The DMD shall make necessary provision to protect structures and property from any and all damage arising out of, relating to, or resulting from this work.

2. The DMD shall be responsible for the replacement of any plantings that may be damaged due to improper performance of designated maintenance activities. In such case, the Contract Administrator or designee shall specify when replacement is to be made.

Damages that are not repaired or compensated by the DMD will be repaired or compensated by the City at the DMD's expense.

VIII. Notification and Inspections

- A. Each Monday morning prior to 8:00 a.m., the DMD shall call or email the assigned Contract Administrator indicating the locations and work being performed that week. No work shall be done without proper, prior notification.
- B. When work is completed, the assigned City Inspector shall inspect the site and advise the DMD of any discrepancies. The DMD shall take whatever action necessary to correct the discrepancies within one working day.
- C. The DMD shall submit copies of invoices only after payment has been made.
- D. The City shall have the right at all times to examine the supplies, materials and equipment used by the DMD, its contractors, subcontractors, agents, and employees.
- E. Work Crew Supervision: The DMD shall provide qualified supervision of each crew at all times while working under this Contract. Each supervisor shall be authorized by the DMD to accept and act upon all directives issued by the City and Contract Administrator. Failure of the supervisor to act on said directives shall be sufficient cause to give notice that the DMD is in default of the contract, unless such directives would create potential personal injury or safety hazards.
- F. The DMD shall promptly (same day) notify the Contract Administrator of any broken or damaged irrigation systems and poor or inadequate irrigation patterns, holes, cave-ins, or depressions in turf grass, mulched areas, broken signs, watering schedules defects or hazards that impact quality of turf and/or landscaping.

ATTACHMENT A

MAP(S)/LOCATION(S)/SCHEMATIC(S)/ETC.

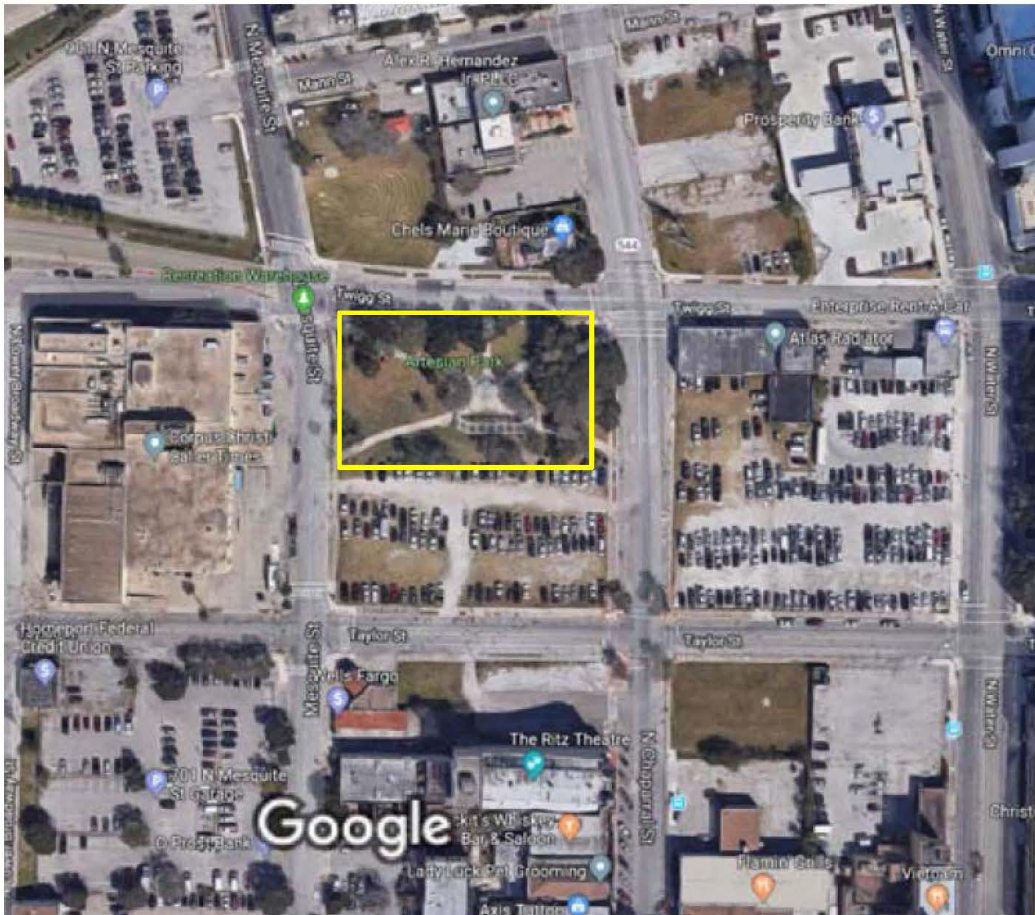


EXHIBIT B

INSURANCE REQUIREMENTS

I. CONTRACTOR’S LIABILITY INSURANCE

- A. Contractor must not commence work under this agreement until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor Agency to commence work until all similar insurance required of any subcontractor Agency has been obtained.
- B. Contractor must furnish to the City’s Risk Manager and Contract Administer one (1) copy of Certificates of Insurance (COI) with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City’s Risk Manager. The City must be listed as an additional insured on the General liability and Auto Liability policies **by endorsement**, and a waiver of subrogation is required on all applicable policies. **Endorsements** must be provided with COI. Project name and or number must be listed in Description Box of COI.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-written day notice of cancellation, required on all certificates or by applicable policy endorsements	Bodily Injury and Property Damage Per occurrence - aggregate
Commercial General Liability Including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$1,000,000 Combined Single Limit
WORKERS’ COMPENSATION	Statutory
EMPLOYER’S LIABILITY	\$500,000 /\$500,000 /\$500,000
POLLUTION LIABILITY	\$1,000,000 Per Occurrence
INSTALLATION FLOATER	Value of the Equipment and Materials

- C. In the event of accidents of any kind related to this agreement, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

II. ADDITIONAL REQUIREMENTS

- A. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in an amount sufficient to assure that all workers' compensation obligations incurred by the Contractor will be promptly met.
- B. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor'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.
- C. Contractor shall be required to submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Manager
P.O. Box 9277
Corpus Christi, TX 78469-9277

- D. Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
- List the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations, completed operation and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy;
 - 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;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - 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.
- E. Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor'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.
- F. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to remove the exhibit hereunder, and/or withhold any payment(s) if any, which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

- G. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this agreement.
- H. It is agreed that Contractor'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 agreement.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

2019 Insurance Requirements

Ins. Req. Exhibit **4-O**

Contracts for General Services – Services Performed Onsite – Pollution – Installation Floater

08/09/2019 Risk Management – Legal Dept.