DOWNTOWN DEVELOPMENT REIMBURSEMENT AGREEMENT
DIOCESE OF CORPUS CHRISTI – STREETSCAPE & SAFETY

This Downtown Development Reimbursement Agreement (the "**Agreement**") is entered into by and between the City of Corpus Christi, Texas (the "**City**"), as the agent of the Corpus Christi Tax Increment Reinvestment Zone #3 ("**TIRZ #3**"), and Diocese of Corpus Christi (the "**Developer**").

Recitals

WHEREAS on December 16, 2008, the City Council of the City (the "**City Council**") approved Ordinance 027996, which established the TIRZ #3 in accordance with Texas Tax Code Chapter 311. TIRZ #3 promotes economic development and stimulates business and commercial activity in its downtown Corpus Christi area (the "**Zone**");

WHEREAS on August 25, 2015, the City Council approved a Project and Financing Plan (the "**Plan**") for TIRZ #3;

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 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 the Corpus Christi Downtown Management District ("**DMD**") assists the City with administration of TIRZ #3, recommends projects and recommends a DMD representative to be appointed to the Board through an Interlocal Agreement;

WHEREAS on November 10, 2015, the City Council approved Ordinance 030680, which amended Ordinance 027996 and authorized the Board to approve agreements in this form, to be entered into by the City, as the Board considers necessary or convenient to implement the Plan and achieve its purpose;

WHEREAS the Plan contained certain programs designed to improve conditions and increase commerce within the Zone;

WHEREAS the Developer has proposed a development plan (the "**Development**") for the certain improvements listed on attached **Exhibit A** (each, an "**Improvement**" and, collectively, the "**Improvements**"). The Improvements are planned to be constructed on the property located at 501-505 N. Upper Broadway, with such property being more fully described on attached **Exhibit B** (the "**Property**"). The Property is located within the Zone, and the Improvements fall within one of the programs approved in the Plan;

WHEREAS the Development concept has been refined through cooperation between the Developer, the City and the DMD to meet the desired goals of revitalization within the Zone and serve a public benefit;

WHEREAS any reference to "City" or "City Staff," is entirely in agency capacity for TIRZ #3, and further the City as a home-rule municipal corporation is not a party to this agreement; and

WHEREAS the Developer desires to be reimbursed for certain future costs incurred pursuant to the Development, and TIRZ #3 desires to reimburse the Developer for these costs in accordance with this Agreement;

Agreement

Now therefore, in consideration of the mutual covenants and obligations, the parties agree as follows:

Section 1. Reimbursement Obligations.

The City shall reimburse the Developer from available TIRZ #3 funds in an amount up to the estimated project cost listed next to each Improvement in attached **Exhibit C** (the **"Estimated Project Costs"**), except that (i) the total amount of all such reimbursements for the Development may not, regardless of any increase actual costs, exceed $474,283.00 and (ii) if the Developer actually incurs a cost for the Improvements less than that Improvements' Estimated Project Cost, the City shall reimburse the Developer for only the pro-rata amount of the cost that the Developer actually incurred for the Improvements. In determining the amount of reimbursement under (ii) above, the City will determine the percentage of the Estimated Project Costs that were actually incurred and reduce the reimbursement proportionally. For example, the Estimated Project Costs anticipate that the Developer will expend $100,000, but the Developer's total actual cost is $75,000, the City will only reimburse up to 75% of the not to exceed amount in (i).

Based on qualifications of the Development, the Program reimbursement structure is as follows:

☒ Streetscape and Safety Improvement Program: **Not to exceed $474,283.22**

(1) 50/50 Match of Approved Expenses
(2) Work must be exterior work related to safety and streetscape appearance.
(3) Payment will be made within 60 days following compliance with all requirements in Section 3 below and the submission of an approved Request for Reimbursement.

Section 2. Closing Statement Required.

This Section 2 is only applicable to a Developer who is in the process of purchasing the Property, but has not completed the purchase as of the date this agreement is executed by the Developer. Within 30 days of closing, and prior to beginning any work, the Developer shall provide to the appropriate City Staff a certified closing or settlement statement (such as a HUD-1) for the mortgage or loan used to finance the Development.

(a) The City shall maintain the confidentiality of this information to the fullest extent possible under the law. The City and TIRZ #3 are governmental entities subject to the Texas Public Information Act (the "Act"). In the event that the City or TIRZ #3 determines that this information is responsive to a valid request under the Act, the City shall timely request an opinion from the Office of the Attorney General of Texas (the "Attorney General") and argue that the information is confidential and not subject to release under the Act. The City shall timely notify the Developer of any such request and provide the Developer with the opportunity to make arguments to the Attorney General regarding the confidentiality of the information.

(b) In the event the loan is less than what had been stated in the application, and as a result the equity requirement shown in the closing statement is lower than the Cap listed in Section 1 of this Agreement, the Cap shall be automatically reduced so that the total amount of TIRZ #3 Reimbursement does not exceed the equity provided by the Developer.

Section 3. Conditions for Reimbursement.

The City shall reimburse Developer in accordance with Section 1 only if the following conditions are fulfilled:

(a) The Developer constructs all of the Improvements on the Property on or before , **December 30, 2028** (the "**Completion Date**") in accordance with **Exhibit A** and the City's building codes and policies. Any extensions of this deadline must be requested by Developer in writing and approved by the Board except that the City Manager, or designee, may administratively approve an extension this deadline for no more than six months.

(b) Developer obtains all required building permits from the City and commences construction of the Improvements within six (6) months of the date this Agreement is signed by the City. Any extensions of this deadline must be requested by Developer in writing and approved by the Board except that the City Manager, or designee, may administratively approve an extension this deadline for no more than six months.

(c) The completed Improvements must include all elements (including but not limited to: all design, structural, architectural, lighting, landscaping, etc.) which are shown or referenced in the Development Plan attached hereto as Exhibit A. Any amendments to the Development Plan must be submitted in writing and be approved by all parties to this Agreement.

(d) The City's Development Services Department issues a C of O for the Improvements within 30 days after the Completion Date.

(e) Within 60 days of the issuance of C of O, the Developer submits a Request for Reimbursement for actual Project Costs, in the form contained in **Exhibit D**, including:

  (i.) C of O;

  (ii.) specific improvements completed under the Project and the amount of money that Developer paid for completion of such work and that Developer claims as actual Project Costs;

  (iii.) supporting documents demonstrating that such amounts were actually paid by Developer, including but not limited to invoices, receipts and final lien waivers signed by the general contractor;

(f) Appropriate City Staff has inspected the Improvements and certifies that the Improvements are complete, acceptable, and comport to the terms of this Agreement.

(g) Request for Reimbursement form is reviewed and approved by the appropriate City staff.

(h) If the Developer fails to pay the required taxes on the property or files an appeal to the Nueces County Appraisal District or any state or federal court of the assessed value of Property for ad valorem tax purposes, the City and TIRZ #3 shall be under no obligation to make any payments under this agreement until such time as the appeal is resolved and all taxes are paid in full. Any late fees, fines, or interest assessed as a result of the failure to pay taxes or the appeal process shall not be reimbursed to the Developer under this Agreement. Reimbursement is limited to the actual amount of property tax paid on the Improvements.

Section 4. Sales Tax Sourcing.

The Developer shall, except where not reasonably possible to do so without significant added expense, substantial inconvenience, or sacrifice in operating efficiency in the normal course of business, utilize, or cause its contractors to utilize, Separated Building Materials and Labor Contracts for all taxable building

material contracts related to the Development in the amount of $100,000 or more, to site payment of the sales tax on building materials for the Development to the Property.

Section 5. Audit

Developer will also make available for inspection by designated City Staff all financial and business records of Developer that relate to the Project, in order to assist City Staff in verifying the Developer's compliance with the terms and conditions of this Agreement. City staff or agents of the City are authorized to contact Developer's contractors, employees, and agents to review any records related to the Project. TIRZ #3 shall have the right to have these records audited.

Section 6. Maintenance of Property and Improvements.

Developer must maintain the property for the entirety of the Agreement in accordance with the City's Property Maintenance requirements. Citations from the Code Enforcement for property maintenance issues will initiate termination provision (Section 7).

If the Developer constructs the Improvements, the Developer shall maintain the Improvements, premises, and adjacent public right of way in good condition and so as to not contribute to blight in the Zone. The Developer's obligation to maintain the Improvements and public right of way adjacent to the Property, includes without limitation, maintaining the landscaping, sidewalks, aesthetics, and general cleanliness of the premises.

Developer must maintain any cameras installed as part of this Agreement for at least five years or the life thereof. Developer will allow DMD staff or the Corpus Christi Police Department ("CCPD") to view video recorded by the cameras in the event that the cameras may include video showing the events leading up to property damage that the DMD is repairing or other crimes that CCPD is investigating.

Developer must maintain any landscaping installed as part of this Agreement for at least five years and ensure that landscaping and shade levels remain of similar quality throughout that time period. Failure to comply with this provision is an Event of Default.

Section 7. Termination.

Sections 8 and 11 of this Agreement will survive beyond the expiration or earlier termination of this Agreement. If the Developer has not fully complied with Section 3 Conditions for Reimbursement by the Completion Date, this Agreement shall terminate immediately, unless mutually agreed to in writing in accordance with Section 18. This Agreement will also terminate automatically upon expiration or earlier termination of the TIRZ #3.

Three citations from the City's Code Enforcement Division for property maintenance violations and/or one Code Enforcement citation that results in the City abating the property will initiate a review process by the TIRZ #3 Board, at which time the Board may elect to terminate the Agreement.

Section 8. Warranties.

Developer warrants and represents to City the following:

(a) Developer, if a corporation or partnership, is duly organized, validly existing, and in good standing under the laws of the State of Texas, and further has all corporate power and authority to carry on its business as presently conducted in Corpus Christi, Texas.

(b) Developer has the authority to enter into and perform, and will perform, the terms of this Agreement.
(c) Developer has timely filed and will timely file all local, State, and Federal tax reports and returns required by law to be filed, and has timely paid and will timely pay all assessments, fees, and other governmental charges, including applicable ad valorem taxes, during the term of this Agreement.
(d) If an audit determines that the request for funds was defective under the law or the terms of this agreement, Developer agrees to reimburse the City for the sums of money not authorized by law or this Agreement within 30 days of written notice from the City requesting reimbursement.
(e) The parties executing this Agreement on behalf of Developer are duly authorized to execute this Agreement on behalf of Developer.
(f) Developer does not and agrees that it will not knowingly employ an undocumented worker. If, after receiving payments under this Agreement, Developer is convicted of a violation under 8 U.S.C. Section 1324a(f), Developer shall repay the payments at the rate and according to the terms as specified by City Ordinance, as amended, not later than the 120th day after the date Developer has been notified of the violation.

Section 9. Force Majeure.

If the City or Developer are prevented, wholly or in part, from fulfilling its obligations under this Agreement by reason of any act of God, unavoidable accident, acts of enemies, fires, floods, governmental restraint or regulation, other causes of force majeure, or by reason of circumstances beyond its control, then the obligations of the City or Developer are temporarily suspended during continuation of the force majeure. If either party's obligation is affected by any of the causes of force majeure, the party affected shall promptly notify the other party in writing, giving full particulars of the force majeure as soon as possible after the occurrence of the cause or causes relied upon.

Section 10. Assignment.

Developer may not assign all or any part of its rights, privileges, or duties under this Agreement without the prior written approval of the Board. Any attempted assignment without such approval is void, and constitutes a breach of this Agreement. Assignment can only be requested for multi-year reimbursements, after completion of obligations by Developer.

Section 11. Indemnity.

Developer covenants to fully indemnify, save, and hold harmless the TIRZ #3, the City, their respective officers, employees, and agents ("Indemnitees") against all liability, damage, loss, claims, demands, and actions of any kind on account of personal injuries (including, without limiting the foregoing, workers' compensation and death claims), or property loss or damage of any kind, which arise out of or are in any manner connected with, or are claimed to arise out of or be in any manner connected with Developer activities conducted under or incidental to this Agreement, including any injury, loss or damage caused by the sole or contributory negligence of any or all of the Indemnitees. Developer must, at its own expense, investigate all those claims and demands, attend to their settlement or other disposition, defend all actions based on those claims and demands with counsel satisfactory to Indemnitees, and pay all charges of attorneys and all other cost and expenses of any kind arising from the liability, damage, loss, claims, demands, or actions.

Section 12. Events of Default.

The following events constitute a default of this Agreement:

(a) Failure of Developer to timely, fully, and completely comply with any one or more of the requirements, obligations, duties, terms, conditions, or warranties of this Agreement.
(b) TIRZ #3, the Board or City Staff determines that any representation or warranty on behalf of Developer contained in this Agreement or in any financial statement, certificate, report, or opinion submitted to the TIRZ #3 in connection with this Agreement was incorrect or misleading in any material respect when made.
(c) Developer makes an assignment for the benefit of creditors.
(d) Developer files a petition in bankruptcy, or is adjudicated insolvent or bankrupt.

Section 13. Notice of Default.

Should the City determine that Developer is in default according to the terms of this Agreement, the City shall notify Developer in writing of the event of default and provide 60 days from the date of the notice ("Cure Period") for Developer to cure the event of default.

Section 14. Results of Uncured Default.

After exhausting good faith attempts to address any default during the cure Period, and taking into account any extenuating circumstances that might have occurred through no fault of Developer, as determined by the City, the following actions must be taken for any default that remains uncured after the Cure Period.

(a) Developer shall immediately repay all funds paid from TIRZ #3 funds under this Agreement.
(b) Developer shall pay reasonable attorney fees and costs of court.
(c) The City and TIRZ #3 shall have no further obligations to Developer under this Agreement.
(d) Neither the City nor the TIRZ #3 may be held liable for any consequential damages.
(e) The City may pursue all remedies available under law.

Section 15. No Waiver.

(a) No waiver of any covenant or condition, or the breach of any covenant or condition of this Agreement, constitutes a waiver of any subsequent breach of the covenant or condition of the Agreement.
(b) No waiver of any covenant or condition, or the breach of any covenant or condition of this Agreement, justifies or authorizes the nonobservance on any other occasion of the covenant or condition or any other covenant or condition of this Agreement.
(c) Any waiver or indulgence of Developer's default may not be considered an estoppel against the City or TIRZ #3.
(d) It is expressly understood that if at any time Developer is in default in any of its conditions or covenants of this Agreement, the failure on the part of the City to promptly avail itself of the rights and remedies that the City may have, will not be considered a waiver on the part of the City, but City may at any time avail itself of the rights or remedies or elect to terminate this Agreement on account of the default.

Section 16. Available Funds.

Developer specifically agrees that City and the TIRZ #3 shall only be liable to Developer for the actual

amount of the money due Developer under this Agreement from TIRZ #3 funds, and shall not be liable to Developer for any actual or consequential damages, direct or indirect, interest, attorney fees, or cost of court for any act of default by City or the TIRZ #3 under the terms of this Agreement. Payment by City is strictly limited to the total amount of increment funds for TIRZ #3. City shall use its best efforts to anticipate economic conditions and to budget accordingly. However, it is further understood and agreed that, should the actual tax increment funds be less than the total amount paid to all contracting parties at the time, then in that event, all contracting parties shall receive only their pro rata share of the available increment funds for that year, as compared to each contracting parties' grant amount for that year, and City and the TIRZ #3 shall not be liable to for any deficiency at that time or at any time in the future. In this event, City will provide all supporting documentation, as requested. Reimbursements paid to Developer shall require a written request from Developer accompanied by all necessary supporting documentation, as outlined in Section 3.

Section 17. Notices.

Any required written notices shall be sent by certified mail, postage prepaid, addressed as follows:

Developer:

Diocese of Corpus Christi
Attn: Michael Mantz
Diocesan Property Manager
555 N. Carancahua, Ste. 750
Corpus Christi, Texas 78401

City of Corpus Christi
Attn.: City Manager's Office
Tax Increment Reinvestment Zone #3
P.O. Box 9277
Corpus Christi, Texas 78469-9277

Notice is effective upon deposit in the United States mail in the manner provided above.

Section 18. Amendments or Modifications.

No amendments or modifications to this Agreement may be made, nor any provision waived, unless in writing signed by a person duly authorized to sign agreements on behalf of each party.

Section 19. Captions.

The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the terms and provisions of this Agreement.

Section 20. Severability.

If for any reason, any section, paragraph, subdivision, clause, provision, phrase or word of this Agreement or the application of this Agreement to any person or circumstance is, to any extent, held illegal, invalid, or unenforceable under present or future law or by a final judgment of a court of competent jurisdiction, then the remainder of this Agreement, or the application of the term or provision to persons or

circumstances other than those as to which it is held illegal, invalid, or unenforceable, will not be affected by the law or judgment, for it is the definite intent of the parties to this Agreement that every section, paragraph, subdivision, clause, provision, phrase, or word of this Agreement be given full force and effect for its purpose.

To the extent that any clause or provision is held illegal, invalid, or unenforceable under present or future law effective during the term of this Agreement, then the remainder of this Agreement is not affected by the law, and in lieu of any illegal, invalid, or unenforceable clause or provision, a clause or provision, as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable, will be added to this Agreement automatically.

Section 21. Venue.

Venue for any legal action related to this Agreement is in Nueces County, Texas.

Section 22. Sole Agreement.

This Agreement constitutes the sole agreement between City and Developer. Any prior agreements, promises, negotiations, or representations, verbal or otherwise, not expressly stated in this Agreement, are of no force and effect.

[Signature Page Follows]

APPROVED AS TO FORM: ____ day of _____, 20__.

_____

Assistant City Attorney

By: _____

Heather Hurlbert, Assistant City Manager

Date: _____

City of Corpus Christi on behalf of Tax Increment Reinvestment Zone #3

Attest:

By: _____

Rebecca Huerta, City Secretary

Developer

Diocese of Corpus Christi

By: _____

Michael Mulvey, Most Reverend Wm., Bishop of Corpus Christi

Date: _____

Exhibit A – Project Description

Exhibit B – Property Description

Exhibit C – Estimated Project Costs

Exhibit D – TIRZ #3 Reimbursement Request Form

Exhibit A – Project Description

Developer is remodeling the exterior of the church. The reimbursement scope of work (Streetscape & Safety) shall include sidewalk repairs, new fencing, pressure washing of the exterior façade, lighting, and security cameras.

Project Concept:

Exhibit B – Property Description

Owner: MULVEY, WM MICHAEL MOST REV DIOCESE OF CORPUS CHRISTI
Property ID: 196751, 196753, 196744
Geographic ID: 0797-0002-0010, 0797-0002-0020, 0797-0001-0050
Legal Description: BLUFF 1, 2, 3 & 12, 13, 14 BK 2, BLUFF S OF MESTINA ST 146.37' ON CARANCAHUA ST, 143' ON UPPER BDWY ST BK 2 EXEMPT, BLUFF BLK 1 LOT 5R
Property Address: 501-505 UPPER BROADWAY, MESTINA ST, 419 N CARANCAHUA ST

Exhibit C – Project Costs

Streetscape and Safety Improvement Program	
Improvement	**Estimated Cost**
Sidewalk Repair	$225,277
Fencing	$494,064
Exterior Cleaning	$132,500
Security Cameras	$25,440
Lighting	$71,285
Total Streetscape Costs	**$948,566**

Total Reimbursement Basis	**$948,566**

*Total Possible Reimbursement Basis identifies the Project Costs that make the Development eligible under the Incentive Guidelines. The Actual Reimbursement is identified in Section 1 of the Agreement.

Exhibit D – Request for Reimbursement Form

Tax Increment Reinvestment Zone #3
Request for Reimbursement

Project Name: _____

Type of Reimbursement: ☐ One Time ☐ Re-Occurring (First Payment)

Requestor:_____ Date Requested:_____

Improvement	Estimated Cost (Per Agreement Exhibit C)	Actual Cost (Per Attached Documentation)	Invoice Reference
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
TOTAL			

Attached is the Following:

1) Executed TIRZ #3 Reimbursement Agreement ☐
2) Certificate of Occupancy ☐
3) Documentation of Expenses ☐
4) Project Photos* ☐

*Security camera footage screenshots must be included if utilizing Streetscape and Safety program.

Signatures for Submittal:

Authorized Developer: _____ Date: _____

Authorized General Contractor: _____ Date: _____

An incomplete Request for Reimbursement will not be processed. Submit a hard copy and combined PDF version to jenny@cctexasdmd.com. Upon receipt of Request, final inspection will be scheduled.

Internal Office Use Only

Signatures for Approval Process

Request Rec'd By DMD: _____ Date: _____

Documentation Complete: _____ Inspection of Project: _____

Reimbursement Amount Requested: _____

Reimbursement Approved by: _____Date: _____