

**AGREEMENT FOR THE LEASE, CONSTRUCTION OF IMPROVEMENTS
AND OPERATION OF BILLISH PARK**

THIS AGREEMENT FOR THE LEASE, CONSTRUCTION OF IMPROVEMENTS AND OPERATION OF BILLISH PARK ("Agreement") is made and entered into by and between the CITY OF CORPUS CHRISTI, TEXAS, a home-rule municipal corporation ("City") and PADRE ISLES PROPERTY OWNERS ASSOCIATION, INC., a Texas nonprofit corporation ("PIPOA").

I. Term

This Agreement shall commence on the effective date described herein and continue in its first phase until improvements are accepted by the City as provided herein and thereafter on a year-to-year basis until terminated as provided herein. In the event that the parties do not reach agreement on the final plans and specifications for the improvements to Billish Park (the "Billish Park Improvements") within four (4) months from date of last signature, this Agreement shall be subject to termination by either party on thirty (30) days' written notice. Upon the completion of the Billish Park Improvements and acceptance by the City, this Agreement shall continue in effect on a year-to-year basis consistent with the City's fiscal year subject to termination by either party by written notice at least three (3) months prior to the commencement of any City fiscal year.

II. Project Scope

- A. The City will provide the PIPOA with the plans and specifications for the Billish Park Improvements developed by the City's consultant, LMA Design, LLC. Billish Park is an approximately 11 acre park located at 15601 Gypsy, Corpus Christi Texas. The PIPOA reserves the right to work with its selected contractors to adjust the plans and specifications as needed to bring the cost of the Billish Park Improvements within the available budget. However, the PIPOA assumes any and all risks related to any adjustment to the plans and specifications developed by the City's consultant. In addition, the PIPOA recognizes that the City's consultant is not responsible to review nor approve any adjustments to the plans and specifications. All plans must be submitted to the City Director of Engineering and Director of Parks and Recreation and allow for at least 30 days for final review and approval, which approval shall not be unreasonably denied.
- B. The Billish Park Improvements must include:
1. Installation of new irrigation; and
 2. Improvement to the turf and landscaping.
- C. The Billish Park Improvements may include:

2017-192

6/20/17

Ord. 031170

Padre Isles Property Owners

1. Excavation and grading of a pond, including placement of spoils throughout Billish Park in accordance with the plans and specifications;
2. Turf establishment on the pond slopes and embankments;
3. Suction pump at the pond for irrigation;
4. Concrete walkways adjacent to the pond; and/or
5. Playground equipment.

- D. Upon completion of the modifications to the plans and specifications for the Billish Park Improvements, the PIPOA shall submit the final terms of the construction contract and plans and specifications to the City Director of Parks and Recreation and the City Director of Engineering Services for review and approval, which approval shall be provided within thirty (30) days and which approval shall not be unreasonably denied.

III. Construction of Improvements

- A. The PIPOA agrees to contract for the construction of the Billish Park Improvements as approved in the manner described above at its sole cost and expense. PIPOA shall ensure that the construction contract contains the insurance bond, and indemnification terms outlined on the attached **Exhibits A and B**. The PIPOA shall confirm with documentation to the City Director of Financial Services that it has sufficient funds to pay for the Billish Park Improvements prior to the commencement of any construction.
- B. Evidence of Contractor's insurance coverages in the amounts specified in **Exhibit A** and City building and construction permits shall be presented to the City Director of Engineering Services and City Director of Parks and Recreation prior to construction.
- C. The PIPOA agrees that all plans developed and all work performed shall be done in full compliance and in accordance with all federal, state and local laws, ordinances, codes and regulations, including but not limited to the Americans with Disabilities Act and the Americans with Disabilities Act Accessibility Guidelines and such work shall be subject to City inspection during the performance thereof and after it is completed. The PIPOA shall ensure that its contractor maintains Billish Park in a clean, safe, and sanitary condition during the construction activities. The PIPOA shall develop a process to address and respond to any neighborhood complaints regarding the construction activities.
- D. The PIPOA shall discharge all obligations to contractors, subcontractors, materialmen, workmen and/or other persons for all work performed and for materials furnished for or on account of PIPOA as such obligations mature. The PIPOA expressly agrees that it will neither give nor grant, nor purport to give or grant any mechanic's or materialmen's lien upon the City's property or upon any Billish Park Improvements thereupon in the process of construction or repair, nor allow any condition to exist or situation to develop whereby any party should be entitled, as a matter of law, to a mechanic's or materialmen's lien against the City's property or Billish Park Improvements thereon, and the PIPOA will discharge any such lien within thirty (30) days after notice of filing thereof.

- E. The PIPOA shall conduct its operations under this Agreement in an orderly and proper manner, considering the nature of such operation, so as not to unreasonably annoy, disturb or endanger others.
- F. During the term of construction, Billish Park shall be leased to the PIPOA and the PIPOA shall have exclusive possession of the property for the duration of the construction project, which in no event shall exceed one year from the date of commencement except with written approval of the City Manager. However, Billish Park shall remain open to the public except for portions closed due to construction. This Agreement shall constitute the lease of Billish Park for such purposes for the consideration provided herein. The commencement date of construction and the lease of Billish Park shall be deemed to occur upon the issuance of a building permit by the City for the Billish Park Improvements.
- G. The City shall not be liable to PIPOA nor its contractor for any delay damages.

IV. Transfer of Billish Park Improvements to City and Payment

- A. Upon the completion of the Billish Park Improvements, the PIPOA shall execute a special warranty deed conveying such improvements to the City for the purchase price of \$400,000 to be paid by the City (the "City Purchase Price"), which is subject to further reduction as provided below.
- B. The City Purchase Price for the Billish Park Improvements shall be reduced from \$400,000 if the actual costs of construction incurred by the PIPOA (the "Actual Costs of Construction"), including the costs of one or more construction contractors, design consultants, construction managers, materials, bonds, insurance, permit fees and all other out-of-pocket expenses incurred directly for the completion of the Billish Park Improvements, are less than the sum of \$600,000.00. If the Actual Costs of Construction are less than \$600,000, the City Purchase Price to be paid by the City shall be reduced from \$400,000 by 2/3 of the difference between \$600,000 and the Actual Costs of Construction. An example is set out as follows:

Maximum Costs of Construction:	\$600,000.00
Actual Costs of Construction:	<u>\$588,000.00</u>
Savings Accomplished:	\$12,000.00

Savings to City:	2/3 of \$12,000 = \$8,000.00
City Purchase Price:	\$400,000.00 - \$8,000.00 = \$392,000.00

- C. Upon completion of the Billish Park Improvements, the PIPOA shall deliver to the City Director of Engineering Services and City Director of Parks and Recreation a cost report itemizing the expenses incurred including copies of the invoices for each expense. The City shall have thirty (30) days to inspect the Billish Park Improvements and review such costs and present any objections to the same. If the parties cannot resolve all

objections within thirty (30) days after the making of any objection, the City shall proceed to pay the full amount of the Purchase Price not in dispute, and the PIPOA shall deliver the special warranty deed and reserve its rights to seek its remedies at law for the collection of the remainder of the Purchase Price claimed by the PIPOA.

- D. Within sixty (60) days following completion of the Billish Park Improvements, the PIPOA shall deliver the special warranty deed to the Billish Park Improvements in exchange for the payment of the Purchase Price determined in the manner provided above. The City may retain such deed in its records or file such deed of record with the Nueces County Clerk, at the City's option. Upon the delivery of such special warranty deed, the lease provided in Section IV above shall terminate.
- E. All warranties provided to the PIPOA regarding the Billish Park Improvements as part of the construction of same shall be transferred and assigned to the City together with the special warranty deed.
- F. Nothing herein shall obligate the PIPOA to expend more than a total of \$600,000.00, with \$200,000.00 being the maximum net cost to the PIPOA, for the construction of the Billish Park Improvements.

V. **Maintenance and Operation of Billish Park**

- A. The PIPOA agrees to adopt, maintain, and repair Billish Park, including the Billish Park Improvements upon completion of construction of the Billish Park Improvements, on a year-to-year basis in accordance with terms and conditions described herein and subject to adjustment from time to time based on agreement between the PIPOA and the City Manager or designee.
- B. The PIPOA agrees to maintain the multi-purpose sports field established at Billish Park according to the following standards:
 - Mow every 7 days during faster growing periods from March through October each year and every 14 days during the remainder of each year.
 - Aerate on an annual basis.
 - Fertilize on an annual basis.
 - Irrigate with an automated or manual irrigation system.
 - Apply pest control as needed.
 - Pick up litter and empty receptacles on a weekly basis or more frequently as needed.
 - Maintain all remaining improvements on an as-needed basis.
- C. For the remainder of Billish Park, the maintenance schedule shall be the same except the mowing schedule may be reduced to approximately 21 times per year mowing every 14 days during months of March through October and every 28 days during the remainder of the year.

- D. The City agrees to trim the palm trees at Billish Park at least one time per year.
- E. Each year, the City agrees to provide to the PIPOA \$14,700.00 to defray a portion of the costs of mowing and maintaining the landscaping associated with Billish Park and the Billish Park Improvements, such amount to be paid on or before December 1 (or other mutually acceptable date) during each fiscal year subject to appropriation of funding and the City's annual budget process. The PIPOA shall be responsible for all other costs of mowing and maintenance of Billish Park. The City agrees to provide three months' notice of termination as provided in Section XII below in the event that it elects not to appropriate such funds for the next fiscal year.
- F. If constructed, the PIPOA shall be solely responsible for the maintenance of the pond suction pump and related irrigation system in perpetuity until such system is removed or replaced.
- G. The PIPOA agrees to comply with the City's water conservation program.

VI. Indemnification

The PIPOA does hereby agree to indemnify and hold harmless the City and all of its officers, officials, agents, and employees, in both their public and private capacities, from any and all liability, claims, suits, demands, losses, damages, attorney's fees, including all expenses of litigation or settlement, or causes of action which may arise by out of or in connection with this Agreement, including injury to or death of any person or for loss of, damage to, or loss of use of any property, arising out of or in connection with this Agreement occasioned by error, omission or negligent act of the PIPOA, its officers, agents, employees, invitees or other person for whom it is legally liable with regard to the performance of this Agreement.

VII. Signage

During the period of construction, the PIPOA may erect a sign reflecting the investment of City Bond funds and the investment of the PIPOA's funds for the Billish Park Improvements, which sign shall be subject to approval by the City Director of Parks and Recreation, which approval shall not be unreasonably withheld or delayed. Otherwise, during the term of this Agreement, the PIPOA may not place any signage at Billish Park except with prior written approval from the City Director of Parks and Recreation.

VIII. Utilities

If any utilities are required, needed or desired by the PIPOA during construction of the Billish Park Improvements, the PIPOA shall bear all costs, expenses and fees of extension connections or tapping charges for water and sanitary sewer facilities on the City's property, in accordance with the ordinances of the City, which expenses shall be includable as part of the Actual Costs of Construction provided above. Except for water used for irrigation purposes as provided below, PIPOA must pay for all utilities used by it or for any activity sponsored by PIPOA at Billish Park prior to the due date for payment. PIPOA must adhere to applicable water conservation

standards. In an effort to ensure that Billish Park is maintained in accordance with City standards, the City shall not charge PIPOA for water used by PIPOA to maintain and keep the Billish Park grounds in good condition.

IX. Independent Contractor

The PIPOA covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City. In addition, the PIPOA covenants and agrees that the employees and volunteers of the PIPOA participating in the construction of the Billish Park Improvements, or participating in any other activity arising under or related to this Agreement, are solely employees and volunteers of the PIPOA and they are not employees or volunteers of the City nor are they under the control, supervision, or administration of the City.

X. Assignment

The PIPOA shall not assign this Agreement without the prior written consent of the City.

XI. Entire Agreement

This Agreement embodies the complete agreement of the parties hereto regarding the Billish Park Improvements superseding all oral or written previous and contemporary agreements between the parties relating to matters herein and, except as otherwise provided herein, cannot be modified without written agreement of the parties.

XII. Notices

All notices or communications required under this Agreement or desired to be given by the parties hereto shall be sent in writing, and shall be deemed sufficiently given when same is hand delivered or deposited in the United States mail, sufficient postage prepaid, registered or certified mail, return receipt requested, addressed to the recipient at the address set forth below:

City of Corpus Christi
Director of Parks and Recreation
Post Office Box 9277
Corpus Christi, Texas 78469-9277
361-826-3464

PIPOA
14015 Fortuna Bay Drive
Corpus Christi, TX 78418
361-949-7025

XIII. Non-Waiver

It is further agreed that one (1) or more instances of forbearance by City in the exercise of its rights herein shall in no way constitute a waiver thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of June 20, 2017.

City of Corpus Christi

Padre Isles Property Owners Association, Inc.

Margie C. Rose 6/22/17

Margie C. Rose (Date)
City Manager

Brent Moore 5/5/17

Brent Moore (Date)
President

APPROVED AS TO LEGAL FORM:

Liz Azules May 16, 2017

Assistant City Attorney (Date)

RECOMMENDED:

E. Jay Ellington 5/19/17
E. Jay Ellington (Date)
Director, Parks & Recreation

ATTEST: Rebecca Huerta
REBECCA HUERTA
CITY SECRETARY

010. 031179 AUTHORIZED
BY COUNCIL 6/20/17
SECRETARY [Signature]

EXHIBIT A 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 to commence work until all similar insurance required of any subcontractor has been obtained.
- B. Contractor must furnish to the City's Risk Manager and Director of Parks and Recreation Department, 2 copies 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, 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 \$2,000,000 Aggregate
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

- 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 stop work hereunder, and/or withhold any payment(s) 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.

EXHIBIT B

Terms regarding construction of improvements at Billish Park

The contractors who are awarded contracts for construction of the Billish Park Improvements shall furnish the following bonds by surety companies authorized to do business in Texas:

1. **Payment Bond** - A payment bond in the amount of One Hundred Percent (100%) of the contract for construction of the Improvements shall be furnished for the protection of all persons, firms and corporations who may furnish materials or perform labor. The payment bond shall be made with PIPOA as an Obligee.

2. **Performance Bond** - A performance bond in the amount of One Hundred Percent (100%) of the contract for construction of the Improvements shall be furnished covering the faithful performance of the contract. The performance bond shall be made with PIPOA as an Obligee.

All construction agreements for the Improvements shall include the following provisions in large, bold face font:

THE CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF CORPUS CHRISTI AND ALL OF ITS OFFICIALS, AGENTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY OCCASIONED BY ERROR, OMISSION, OR NEGLIGENT ACT OF CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, INVITEES OR ANY OTHER PERSON, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT, AND CONTRACTOR SHALL AT HIS OR HER OWN COST AND EXPENSE DEFEND AND PROTECT THE CITY OF CORPUS CHRISTI FROM ANY AND ALL SUCH CLAIMS AND DEMANDS.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Padre Isles Property Owners Association, Inc.
Corpus Christi, TX United States

Certificate Number:
2017-209403

Date Filed:
05/17/2017

Date Acknowledged: *h8*
6/23/2017

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Corpus Christi

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

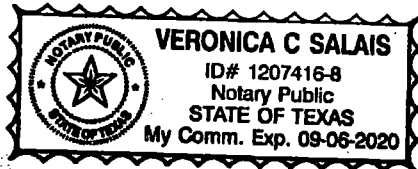
111

Contract for Lease and Construction of Improvements to Billish Park

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Jones, Marvin	Corpus Christi, TX United States	X	
	Tate, Carter	Corpus Christi, TX United States	X	
	Tressa, Nancy	Corpus Christi, TX United States	X	
	Sharlow, John "Jack"	Corpus Christi, TX United States	X	
	Scanlan, Darrell	Corpus Christi, TX United States	X	
	Hess, Leslie	Corpus Christi, TX United States	X	
	Moore, Brent	Corpus Christi, TX United States	X	
	Wood, Boykin & Wolter, PC	Corpus Christi, TX United States		X

5 Check only if there is NO Interested Party. ☐

6 AFFIDAVIT



AFFIX NOTARY STAMP / SEAL ABOVE

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

[Signature]
Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said John D. Bell, this the 18th day of May, 20 17, to certify which, witness my hand and seal of office.

[Signature]
Signature of officer administering oath

Veronica Salais
Printed name of officer administering oath

Notary Public
Title of officer administering oath