

20120211

STATE OF TEXAS §
 §
COUNTY OF NUECES §

INTERLOCAL AGREEMENT
BETWEEN CITY OF CORPUS CHRISTI AND NUECES COUNTY FOR SPORTS
FIELD IMPROVEMENTS

WHEREAS, in 2008, City of Corpus Christi, Texas (the "City") voters approved Proposition 6 which authorized the issuance of limited ad valorem tax-supported public securities to finance City-wide park and recreational improvements including sports field lighting and other improvements ("Bond Funds");

WHEREAS, Chapter 791 of the Texas Government Code, as amended, authorizes contracts between local governmental entities, such as the City and Nueces County, Texas (the "County") to perform governmental functions and services, including parks and recreation;

WHEREAS, the City desires to partner with the County to make improvements to sports fields on Nueces County property located within the City, specifically on LyondellBasell Park, Equistar Park, and on City/County jointly owned Oxychem Park;

NOW, THEREFORE, THIS AGREEMENT is hereby made and entered into by City and County, upon and for the mutual consideration stated herein:

1. County shall construct sports field improvements described in general on Exhibit A (the "Improvements") at LyondellBasell Park, ("Lyondell Park"), at Equistar Park, and Oxychem Park on or before December 31, 2013.
2. City shall reimburse County up to three hundred thousand dollars (\$300,000.00) of Bond Funds for the construction of the Improvements within thirty (30) days of presentation of invoice by the County, after completion of the Improvements.
3. As consideration for providing this funding, County agrees that any lease or license agreement between the County and third party concerning the use of the sports fields at LyondellBasell Park, Equistar Park and Oxychem Park constructed in whole or part with the Bond Funds provided herein shall be limited to youth, non-profit sports leagues, with membership open to all City residents. In addition, the County must have prior written approval of the City to the proposed agreement to ensure that the City has use of LyondellBassell Park Fields, Equistar Park fields, and Oxychem Park at such times that the fields are not in use by the third party. The agreement between the City, County, and third party shall address responsibility for repair, maintenance, and upkeep of the Improvements.
4. The City's interest in the Improvements represents a license therein, being an interest in real property recognized under Texas law and the parties hereto. The license acquired by the City hereunder shall not expire prior to the final maturity of the public securities from which the Bond Funds are derived. For so long as the license is in effect but no later than December 31, 2030 or the last maturity of the public securities from which the Bond Funds are derived, unless City

provides County with written notice of extended date, the County may not resell, transfer or dispose of the Improvements, except with prior written approval of the City's Parks Director and the City Director of Financial Services.

5. The parties hereto agree that all expenditures under this Agreement shall be paid with current revenues of the paying party.

6. County shall hire a contractor to construct the Improvements. County shall ensure that Contractor complies with all applicable Federal, State and Local laws and regulations, and obtains proper permits. County shall ensure that its contractor obtains the insurance as described on the attached Exhibit B prior to Contractor beginning work. County shall ensure that its contract with its contractor includes an indemnity provision whereby the contractor shall indemnify the City from any and all liability which arises out of Contractor's construction of the Improvements. County's contract with its contractor shall include the following provision:

"[COUNTY CONTRACTOR] SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI, TEXAS AND ITS RESPECTIVE OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS AND CAUSES OF ACTION OF ANY NATURE ON ACCOUNT OF DEATH, PERSONAL INJURIES, PROPERTY LOSS OR DAMAGE OR ANY OTHER KIND OF DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH THE REMOVAL, INSTALLATION, AND USE OF THE EQUIPMENT (IMPROVEMENTS) DESCRIBED IN THIS CONTRACT OR THE PERFORMANCE OF THIS CONTRACT, REGARDLESS OF WHETHER THE INJURIES, DEATH OR DAMAGES ARE CAUSED OR ARE CLAIMED TO BE CAUSED BY THE CONCURRENT OR CONTRIBUTING NEGLIGENCE OF INDEMNITEES, BUT NOT BY THE SOLE NEGLIGENCE OF INDEMNITEES UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR GROUP. [COUNTY CONTRACTOR] MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO INDEMNITEES AND PAY ALL CHARGES OF ATTORNEY AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING FROM ANY OF SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS OR ACTION. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR SOONER TERMINATION OF THIS AGREEMENT."

7. This Agreement takes effect upon date of last signature and shall be in effect until the later of December 31, 2030, the last maturity of the public securities from which the Bond Funds are derived.

8. If the Improvements are not completed by December 31, 2013, then this agreement is null and void, and the City has no payment obligations to the County and County has no obligations to the City. However, the City Manager may approve extensions to the completion deadline.

9. The County assume all risks and liability for the construction, use, operation, and maintenance of the Improvements on the County-owned parks (LyondellBasell Park and Equistar Park).

11. This Agreement has been duly executed and delivered by all parties and constitutes a legal, valid and binding obligation of the parties. Each person executing this Agreement represents and warrants that they have full right and authority to enter into this Agreement.

12. This Agreement may not be amended except in a written instrument specifically referring to this Agreement and signed by the parties hereto.

13. **APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and venue of any legal action filed by either the City or County shall be in Nueces County, Texas.

14. **SEVERABILITY.** In the event that one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability of the Agreement shall be construed as if such invalid, illegal or unenforceable provision has never been contained herein, but shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

15. **NOTIFICATION.** Any and all notices which may be required under the terms of the Agreement shall be delivered by registered or certified United States mail or by a recognized commercial carrier or delivery service as follows:

NUECES COUNTY:
Nueces County Judge
901 Leopard, Room 303
Corpus Christi, Texas 78401

CITY OF CORPUS CHRISTI
Director of Parks and Recreation
1201 Leopard Street
Corpus Christi, Texas 78401

COPY

CITY OF CORPUS CHRISTI
Director of Financial Services
1201 Leopard Street
Corpus Christi, Texas 78401

Executed in duplicate originals, this the 10th day of October, 2012 by Nueces County by its duly authorized officer:

Nueces County

By: *Samuel L. Neal, Jr.*
Samuel L. Neal, Jr.
County Judge



Attest:
By: *Diana J. Barrera*
Diana Barrera
Nueces County Clerk

Approved as to form: *Oct. 12*, 2012

BY: *Laura Garza Jimenez*
Laura Garza Jimenez, Nueces County Attorney
For Nueces county

Executed in duplicate originals, this the _____ day of _____, 2012 by City of Corpus Christi by its duly authorized City Manager:

By: _____
Ronald L. Olson
City Manager

Attest:

By: _____
Armando Chapa
City Secretary

Approved as to form: _____, 2012

By: _____
Lisa Aguilar, Assistant City Attorney
For the City Attorney

EXHIBIT "A"

**PRELIMINARY ESTIMATE OF PROBABLE CONSTRUCTION COST
LYONDELLBASELL NUECES COUNTY SPORTS COMPLEX IMPROVEMENTS**

Item	Description	Qty	Unit	Unit Price	Total Price
A.	FOOTBALL FIELD	1	LS	\$ 42,400.00	\$ 42,400.00
B.	SOCCER FIELD (ALLOWANCE FOR PURCHASING SOCCER EQUIPMENT)	1	LS	\$ 30,000.00	\$ 30,000.00
C.	PARKING AREA 1 (ONLY 6" OF FLEXIBLE BASE)	1	LS	\$ 35,100.00	\$ 35,100.00
D.	PORTABLE RESTROOMS/SEPTIC SYSTEMS	1	LS	\$ 88,000.00	\$ 88,000.00
E.	SIDEWALK IMPROVEMENTS	1	LS	\$ 6,462.50	\$ 6,462.50
F.	ELECTRICAL IMPROVEMENTS	1	LS	\$ 38,500.00	\$ 38,500.00
G.	WATER IMPROVEMENTS	1	LS	\$ 22,900.00	\$ 22,900.00
CONSTRUCTION SUB TOTAL (2012 Dollars)					\$ 466,400.00
ENGINEERING SERVICES					\$ 26,300.00
SURVEYING					\$ 2,600.00
BIDDING					\$ 2,800.00
CONSTRUCTION					\$ 7,900.00
ENGINEERING SUB TOTAL					\$ 39,400.00
PROJECT TOTAL (2012 Dollars)					\$ 502,800.00

NOTES:

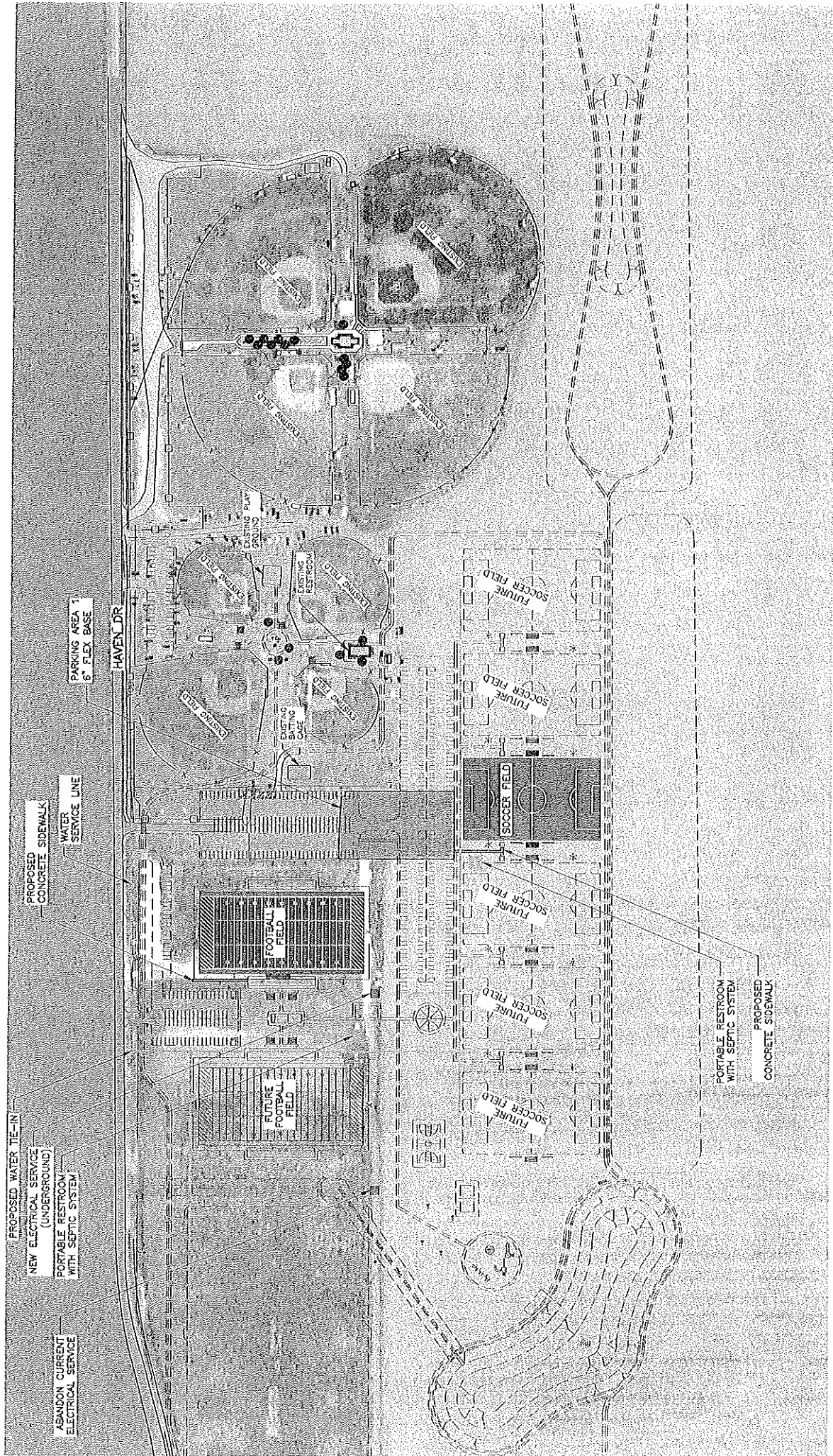
1. This preliminary estimate of probable cost is in 2012 dollars and should be escalated to the midpoint of construction if delayed.

THIS DOCUMENT IS FOR INTERIM REVIEW AND IS NOT INTENDED FOR CONSTRUCTION, BIDDING, PERMIT OR OTHER UNAUTHORIZED PURPOSES. THESE DOCUMENTS/PLANS WERE AUTHORIZED TO BE RELEASED.

BY: JUAN A. PIMENTEL, P.E.

LICENSE NO: 25847

DATE: 6/8/2012



LyondellBasell Nueces County Sports Complex Exhibit A

Scale: NTS



EXHIBIT B

INSURANCE REQUIREMENTSI. CONTRACTOR'S LIABILITY INSURANCE

- A. Contractor must not commence work under this agreement until all insurance required herein has been obtained and such insurance has been approved by the City. The Contractor must not allow any subcontractor to commence work until all similar insurance required of the subcontractor has been so obtained.
- B. Contractor must furnish to the City's Risk Manager, two (2) copies of Certificates of Insurance, showing the following minimum coverage by insurance company(s) acceptable to the City's Risk Manager. The City and must be named as additional insureds for the General liability policy. A blanket waiver of subrogation in favor of the City is required on all applicable policies.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-Day Notice of Cancellation is required on all certificates or by policy endorsement.	Bodily Injury and Property Damage Per occurrence - aggregate
Commercial General Liability including: 1. Commercial Broad Form 2. Premises -- Operations 3. Explosion and Collapse Hazard 4. Underground Hazard 5. Products/ Completed Operations Hazard 6. Contractual Liability 7. Independent Contractors	\$1,000,000 COMBINED SINGLE LIMIT
AUTOMOBILE LIABILITY 1. Owned vehicles 2. Hired & Non-owned vehicles	\$1,000,000 COMBINED SINGLE LIMIT
WORKERS' COMPENSATION	WHICH COMPLIES WITH THE TEXAS WORKERS' COMPENSATION ACT AND PARAGRAPH II OF THIS EXHIBIT
EMPLOYERS' LIABILITY	\$500,000/ \$500,000/ \$500,000

- C. In the event of accidents of any kind, the Contractor must furnish the Risk Manager with copies of all reports of any accidents within ten (10) days of any accident.

II. ADDITIONAL REQUIREMENTS

- A. Contractor must obtain workers' compensation coverage through a licensed insurance company in accordance with Texas law. The contract for coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The coverage provided must be in amounts sufficient to assure that all workers' compensation obligations incurred will be promptly met.
- B. Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, 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. 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). Contractor 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. 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 Management
P.O. Box 9277
Corpus Christi, TX 78469-9277
(361) 826-4555- Fax #

- 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:**
- 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, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is 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 to 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 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.