

**INTERLOCAL COOPERATION AGREEMENT  
BETWEEN THE CORPUS CHRISTI TAX INCREMENT REINVESTMENT  
ZONE #3 AND THE CORPUS CHRISTI DOWNTOWN MANAGEMENT DISTRICT  
TO ENCOURAGE THE REDEVELOPMENT OF THE CORPUS CHRISTI  
TAX INCREMENT REINVESTMENT ZONE #3**

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, as the agent of the Corpus Christi Tax Increment Reinvestment Zone #3 ("TIRZ #3").

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;

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

WHEREAS, on November 10, 2015, the City 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, any reference to "City" or "City Staff" herein is entirely in an agency capacity for TIRZ #3 and the City as a home-rule municipal corporation is not a party to this Agreement but is acting solely in an agency capacity on behalf of TIRZ #3;

WHEREAS, the DMD and TIRZ #3 desire to enter into an Agreement under the Interlocal Cooperation Act to provide for certain redevelopment services within the Zone (the "Project");

Now, therefore, in consideration of the mutual covenants in this Agreement, TIRZ #3 and the DMD, as authorized by appropriate actions of their governing bodies, agree as follows:

**Article I. DEFINITIONS**

The "Zone" means the reinvestment zone in the downtown Corpus Christi area as designated by Ordinance 027996.

## **Article II. SERVICES**

### **Section 2.01 General Services Requested by Zone.**

DMD shall provide the following services to TIRZ #3 utilizing DMD resources and the funding provided by this Agreement in the Zone and adjacent areas to assist in the redevelopment of Downtown Corpus Christi:

- (a) Management and Operations Services: Create a cleaner, safer, more beautiful and accessible downtown area comprising the Zone.
- (b) Development & Improvement Services: Attract new businesses, development and residences; increase sales activity and street level occupancy and improve existing buildings and urban design.
- (c) Marketing Services: Brand and promote the Zone, increase sales, visitors and investment and improve Zone's image and visibility.
- (d) Public Private Partnership Development Service: recruit financial resources to support this Agreement from private sector property owners, businesses and other public sector partners within the Zone outside the DMD area.

The initial plan of action and budget for providing the above services is attached as Exhibit A.

### **Section 2.02 Annual Service Plan.**

DMD shall provide a TIRZ Service Plan in support of this Agreement, which outlines the services and overall objectives of the DMD to the Board. The Plan must describe the plan of action for the upcoming year, budget and significant initiatives.

- (a) Stakeholder Engagement: Engage stakeholders in planning process October – December 2016 to recruit participation and financial support of the plan.
- (b) Presentation of Plan: Present plan for the fiscal year to the Board by January 31, 2017.
- (c) In renewal contract years DMD, shall provide a draft service plan by August 1, and final plan by October 1.

## **Article III. FINANCIAL REQUIREMENTS**

### **Section 3.01 Subject to Annual Appropriations**

The parties agree and understand that funding under this Agreement is subject to annual appropriations by the Board, and that each fiscal year's funding must be included in the TIRZ #3's budget for that year. Funding is not effective until the TIRZ #3's budget is approved by the Board.

### **Section 3.02 TIRZ #3 Match**

In consideration for the DMD's performance under this Agreement, TIRZ #3 agrees to make payment to DMD in the amount of \$330,000 each year.

- (a) DMD shall be paid in equal monthly installments following the TIRZ #3's receipt

- of the DMD's monthly performance reports provided in Section 4.01 below.
- (b) In renewal years, DMD will present a budget with their service plan which will be approved by the Board.
  - (c) DMD may petition the City of Corpus Christi Parking Advisory Committee for additional funding to support this contract which will have to be approved by City Council.

#### **Section 3.03 Use of Funds**

The DMD shall use funds provided under this Agreement for purposes outlined herein and no other.

#### **Section 3.04 Interest Earned**

Interest earned on funds contributed to the DMD by the City must be clearly identified, credited, and reflected on the books as resulting from the investment of the funds. The interest earned is available for the DMD's use.

#### **Section 3.05 Fiduciary Duty**

The parties agree that receipt of these funds creates a fiduciary duty of the DMD.

#### **Section 3.06 Audit Requirement**

The DMD shall provide an independent audit for expenditures of funds allocated under this agreement for each year based on its fiscal year. The DMD shall provide a copy of the independent audit to the City Manager within one hundred twenty (120) days after the end of the DMD's fiscal year, as an addendum to the Annual Report. The Zone has the right to its own audit of funds provided under this agreement, with appropriate prior notice to the DMD.

#### **Section 3.07 Generally Accepted Accounting Principles**

The accounting records and independent audit must conform to the accounting standards as promulgated by a Certified Public Accountant under Generally Accepted Accounting Principles ("GAAP") and to the requirements of applicable state law, so as to include a statement of support, revenues and expenses, and balance sheets for all funds.

#### **Section 3.09 Financial Records**

The books of account of the funds held by the DMD must be maintained in a form approved by the City's Director of Finance, and must be available for inspection and copying by the Director, or the Director's authorized agents and representatives, during regular business hours of the DMD. Records must be maintained for at least 3 years after the expiration or termination of this Agreement.

### **Article IV. PERFORMANCE REPORTS & MEASUREMENT**

#### **Section 4.01. Performance Reports**

The DMD shall report monthly to the Board on its activities and work accomplished. The Monthly Performance Report is due within fifteen (15) days after the end of each

month and should include:

- (a) A description of each project undertaken by the DMD in month.
- (b) The status of projects.
- (c) The amounts expended on each project.
- (d) The accomplishments of its performance measures for the fiscal year, as specified in Article II of this Agreement.

The DMD shall make any special presentations or prepare specific reports, if requested by the members of the Board, within thirty (30) days of a request.

#### **Section 4.02 Annual Report**

The DMD shall be deemed to have met its performance requirements for the fiscal year upon accomplishment of the objectives outlined in Section 2.01 of this Agreement. The DMD will prepare an Annual Report summarizing the accomplishments of the year.

### **VI. MISCELLANEOUS**

#### **Section 5.01. Implementation.**

The City Manager and Executive Director for the DMD are authorized and directed to take all steps necessary or convenient to implement this Agreement.

#### **Section 5.02. Warranty.**

This Agreement has been officially authorized by the governing body of the TIRZ #3 and the DMD, and 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 this Agreement.

#### **Section 6.03 Expending Funds.**

Any payment made by the DMD or the TIRZ #3 for any of the costs or expenses that either incurs under this Agreement must be made out of current revenues available to the paying party as required by the Interlocal Cooperation Act.

Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the TIRZ #3 are at any time insufficient or not forthcoming through failure of any entity to appropriate funds or otherwise, then TIRZ #3 shall have the right to terminate this Agreement without penalty by giving prior written notice documenting the lack of funding, in which instance unless otherwise agreed to by the parties, this Agreement shall terminate and become null and void on the last day of the fiscal period for which appropriations were received. TIRZ #3 agrees that it will make its best efforts to obtain sufficient funds including, but not limited to, requesting in its budget for each fiscal period during the term hereof sufficient funds to meet its obligations hereunder in full.

#### **Section 5.04 Term of Agreement.**

The effective date of this Agreement ("Effective Date") is October 1, 2016, after the last approval by one of the Parties, for a term of one year, automatically renewing annually, unless either party cancels its participation by giving written notice to the other parties at

least sixty days before the end of each annual term. The continuation and renewal of this agreement is contingent upon the continued existence of the DMD.

**Section 5.05 Severability.**

If any portion of this Agreement, or its application to any person or circumstance, is ever held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Agreement is not affected and continues to be enforceable under its terms.

**Section 5.06 Nondiscrimination.**

DMD and any subcontractors shall not discriminate against any employee or independent contractor to be utilized in the performance of this Agreement, with respect to hire, tenure, terms, conditions, or privileges of employment, because of race, religion, color, sex, age, handicap, disability, national origin, ancestry, disabled veteran status or Vietnam-era veteran status. Breach of this section shall constitute a material breach of this Agreement.

**Section 5.07 Waiver.**

TIRZ #3's delay or inaction in pursuing remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of TIRZ #3's rights or remedies contained herein or available by law.

**Section 5.08 Immunity Not Waived.**

Nothing in this Agreement is intended, nor may it be deemed, to waive any governmental, official, or other immunity or defense of any of the Parties or their officers, employees, representatives, and agents as a result of the execution of this Agreement and the performance of the covenants contained in this Agreement.

**Section 5.09 Conflicts of Interest.**

DMD certifies and warrants to TIRZ #3 that neither it nor any of its agents, representatives or employees who will participate in the performance of any services required by this Agreement has or will have any conflict of interest, direct or indirect, with TIRZ #3, in violation of Texas law or the City's Ethics Ordinance. In compliance with Section 2-349 of the City's Code of Ordinances, the DMD shall complete the City's Disclosure of Interests form, which is attached to this Agreement as Exhibit B, the contents of which, as a completed form, are incorporated in this document by reference as if fully set out in this Agreement.

**Section 5.10 Confidentiality.**

DMD understands that the information provided to it by TIRZ #3 during the performance of its services is confidential and may not be disclosed to a person not designated by TIRZ #3. Any work product given to or generated by DMD under this Agreement shall not be made available to any individual or organization by DMD without the prior written approval of TIRZ #3 except for appropriate agencies of the United States.

**Section 5.11 Competitive Procurement.**

In regards to expenditures made in furtherance of this Agreement, DMD shall utilize a competitive bidding process as required by state law when making expenditures in excess of \$50,000 for any single contract or for expenditures in excess of \$50,000 in the aggregate for any contract. DMD shall not avoid the application of competitive bidding by purposely dividing a single purchase into smaller components so that each component purchase is less than \$50,000 or make component, sequential or incremental purchases to avoid the competitive bidding requirements.

**Section 5.12 Notices.**

Any notice, correspondence or payment made pursuant to this Agreement shall be sent by first-class US mail, addressed to:

To the TIRZ #3:

TIRZ #3  
c/o City Manager  
City of Corpus Christi  
P. O. Box 9277  
Corpus Christi, Texas 78469-9277

To the DMD:

Terry Sweeney  
Executive Director  
Corpus Christi Downtown Management District  
223 N. Chaparral, Suite A  
Corpus Christi, Texas 78401

**Section 5.13 Amendments or Counterparts.**

This Agreement may not be amended except by written Agreement approved by the governing bodies of the Parties. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original all of which shall constitute but one and the same instrument.

**Section 5.14 Modifications.**

No officer or employee of any of the Parties may waive or otherwise modify the terms in this Agreement, without the express action of the governing body of the Party.

**Section 5.15 Captions.**

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

**Section 5.16 Governing Law and Venue.**

This Agreement is governed by the laws of the State of Texas. Venue for an action arising under this Agreement is in Nueces County, Texas.

EXECUTED to be effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**CORPUS CHRISTI DOWNTOWN MANAGEMENT DISTRICT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF CORPUS CHRISTI, TEXAS**

**ATTEST:**

**CITY OF CORPUS CHRISTI**

\_\_\_\_\_  
Rebecca Huerta,  
City Secretary

\_\_\_\_\_  
Margie C. Rose  
City Manager

Approved as to Legal Form  
\_\_\_\_\_, 2016

\_\_\_\_\_  
Assistant City Attorney

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