

AGREEMENT BETWEEN CITY OF CORPUS CHRISTI AND NUECES COUNTY VICTIMS' MEMORIAL GARDEN FOR DONATION AND ACCEPTANCE OF MEMORIAL GARDEN TO BE PLACED AT COLE PARK

THIS AGREEMENT ("Agreement"), is made this ____ day of _____, 2019, by and between the City of Corpus Christi ("the City"), and Nueces County Victims' Memorial Garden ("Donor"), a Texas nonprofit corporation, for the purpose of establishing a contractual relationship under which Donor will procure and donate, deliver, install, repair and maintain, and the City will accept, a garden in memory of Nueces County crime victims, to be installed on City property at Cole Park, Corpus Christi, Texas, referred to hereinafter as the "Garden". The parties agree as follows:

TERMS

1. Donation of Garden. Donor agrees to install and donate the Garden to the City, and the City agrees to accept the Garden for benefit of the public, according to the terms of this Agreement. The Garden shall be officially named the "Nueces County Victims' Memorial Garden".

2. Specifications of Garden. The Garden shall include the following elements: walking path, granite monuments, benches and flower garden, as shown and represented in the drawings and photos included as **Exhibit 1**, attached to this agreement and herein incorporated. The Donor may include lighting and may make adjustments to the plans with prior written review and approval of the Director of Parks and Recreation. The Donor may install a plaque recognizing the purpose of the Garden. The actual size, design, and wording of the explanatory plaque shall be subject to the final approval of the City Director of Parks and Recreation.

3. Donor's Responsibilities. Donor plans to install and donate the Garden to the City no later than 9 months after the final signature of this Agreement. The Director of Parks and Recreation is authorized to approve extensions to these timelines. Donor shall coordinate all work in advance with the City Director of Parks and Recreation.

Donor shall be solely and exclusively responsible for all costs related to procurement, design, delivery, and installation of the Garden, including but not limited to any additional Garden features such as irrigation, lighting, walkways, or benches.

Donor acknowledges that Donor's ongoing maintenance at the Garden is necessary to keep in good condition. Donor shall be responsible for repairing and maintaining the Garden and all additional Garden features in good condition and repair, at sole cost and expense of Donor. This provision shall survive termination or expiration of this Agreement. Donor has provided a plan for Donor's continued ongoing maintenance of the Garden which plan is attached as **Exhibit 2**.

Donor shall ensure that all work performed on the City property complies with all applicable City, State, and Federal codes, statutes, ordinances and regulations including ADA regulations. Donor shall obtain any required permits prior to initiating work at the Garden.

4. City's Responsibilities. The City shall accept delivery, receipt and ownership for the Garden for benefit of the public at a mutually acceptable time and place. The City Director of Parks and Recreation or Director of Engineering Services or their designees shall inspect the Garden prior to acceptance and notify Donor or Donor's contractor of any deficiencies prior to City acceptance.

5. Ongoing maintenance and repair of the Garden. Donor agrees to continue to be responsible for the ongoing maintenance and repair of the Garden. Donor agrees to maintain the Garden in accordance with **Exhibit 2** and keep the Garden in good repair.

6. Project Site. Donor shall arrange for the installation of the Garden and associated features at the approximately 50' x 50' area located in Cole Park as depicted in the attached **Exhibit 3**. Should Engineering, Parks, or Utility staff determine that this location is not suitable for the installation due to engineering structural analysis or impact to City utility infrastructure, then the Director of Parks and Recreation is authorized to work with Donor to identify another more suitable location within Cole Park for placement of the Garden.

7. Risk of Loss or Damage. Donor shall be solely responsible and assume all risk of loss or damage to the Garden including any additional Garden improvements. City shall have no obligation to repair or replace any damage to the Garden or to any improvements at the Garden. Donor shall notify the City Director of Parks and Recreation of any damage or destruction to the Garden and identify plan for repairs. City may remove any Garden components not properly maintained in safe condition after notice to Donor and reasonable opportunity for Donor to repair.

8. Installation of Garden. Donor shall review final plans for the Garden with the City Director of Parks and Recreation in advance of work at the Garden. Donor shall require that any contractor hired by Donor to install the Garden presents and reviews any construction plans with the Engineering and Parks and Recreation Departments for their prior approval. Donor must include, in all construction contracts entered into for the installation of the Garden and any additional components described herein, a provision requiring the Donor's contractor, to indemnify, hold harmless, defend and insure City, including its officers, agents, and employees, against the risk of legal liability for death, injury or damage to persons or property, direct or consequential, arising or alleged to arise out of, or in connection with, the performance of any or all of the work, whether the claims and demands made are just or unjust, unless same are caused by the gross negligence or willful act of City, its officers, agents, or employees. Donor shall require Contractor to obtain the insurance described in the attached **Exhibit 4** and applicable permits prior to beginning work on City property. Donor shall require any volunteers working at the Garden to complete and return the attached Volunteer Waiver Form attached **Exhibit 5**.

9. Relocation of Garden. In the event City plans necessitate the relocation of the Garden, the City shall contact the Donor to discuss alternate locations for Donor to relocate the Garden.

10. Relationship of Parties. No agent, employee, representative or subcontractor of Donor shall be deemed to be the employee, agent, representative or subcontractor of the City. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance and unemployment insurance, are available from the City to Donor or its employees, agents, representatives or subcontractors or volunteers. Donor will be solely and entirely responsible for its acts and for the acts of Donor's agents, employees, representatives and subcontractors during the performance of this Agreement. Donor agrees to coordinate any special events at the Garden in advance with the City Director of Parks and Recreation.

11. Indemnification/Hold Harmless. Donor shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement. The provisions of this section shall survive the expiration or termination of this Agreement.

12. Entire Agreement. The written provisions and terms of this Agreement, together with all documents attached hereto, shall supersede all prior verbal statements of any officer or representative of and such statements shall not be effective or construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.

13. Modification. No waiver, alteration or modification of any of provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of City and Donor.

14. Assignment. Any assignment of this Agreement by Donor without the written consent of the City Director of Parks and Recreation shall be void.

15. Written Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed below. For the City: To City of Corpus Christi, Attn: Director of Parks and Recreation, P. O. Box 9277, Corpus Christi, Texas, 78469. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereinafter specified in writing.

16. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options and the same shall be and remain in full force and effect.

17. Effective Date; Resolution of Disputes, Governing Law. This Agreement takes effect on date of last signature. Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall be referred to the City Manager, whose decision shall be final. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

AGREED TO BY THE PARTIES BY SIGNATURES BELOW:

CITY OF CORPUS CHRISTI

By: _____

Name: _____

Title: _____

Date: _____

Nueces County Victims' Memorial Garden

BY: _____

NAME: Fallon Wood

TITLE: Founder_____

DATE: _____

6401 S. Padre Island Dr., Suite #108
Corpus Christi, TX 78412

EXHIBIT 1

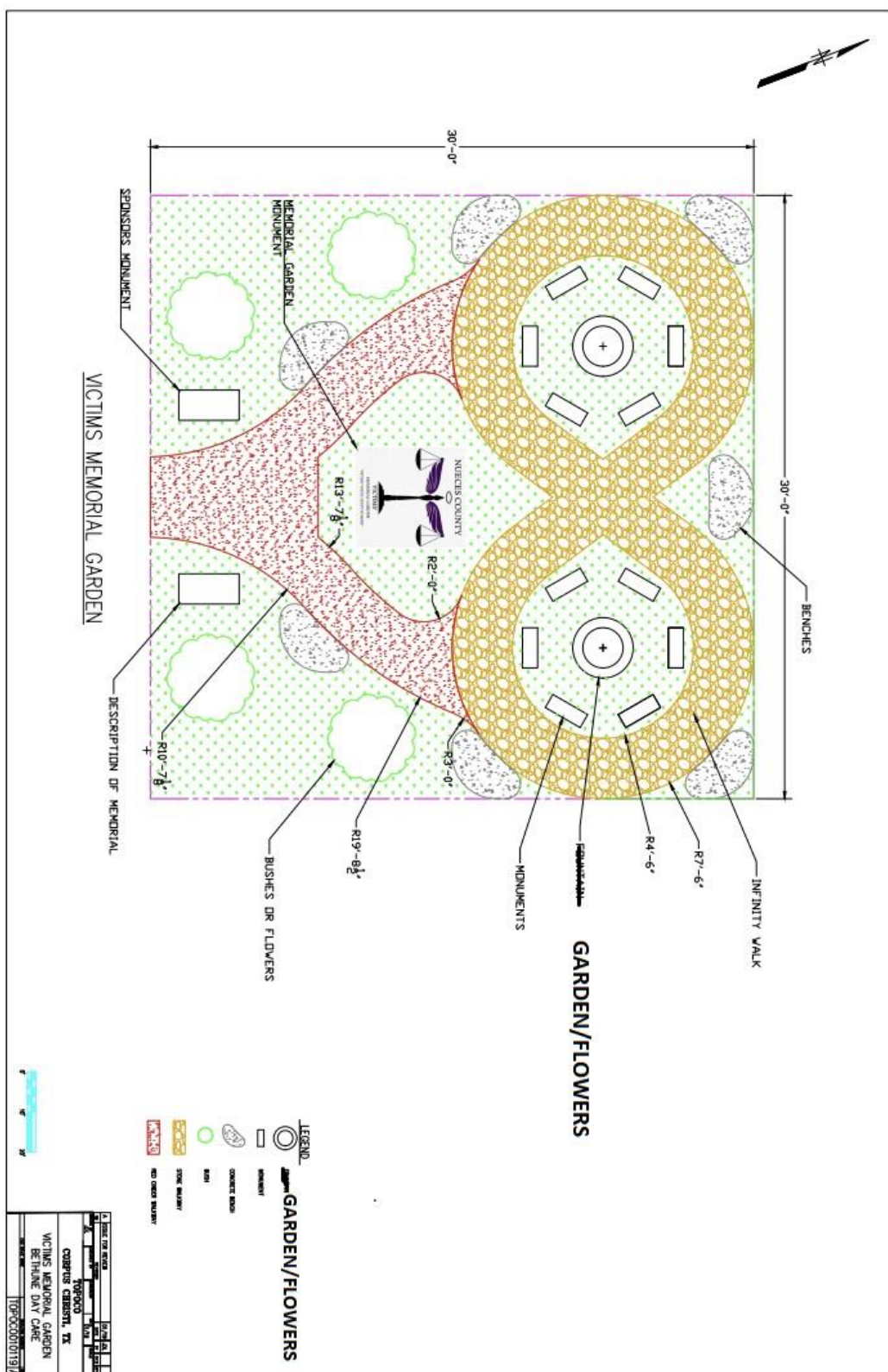


EXHIBIT 2

	Quarterly	Biannually	Seasonally	As needed
Raking of Cinder Trail	X			X
Care of flower beds				X
Monument cleaning		X		X
Bench cleaning		X		X
Changing of flowering plants			X	
Replenishment of Cinder Trail				X

DONOR'S PLAN FOR MAINTENANCE OF THE GARDEN

EXHIBIT 3

Nueces County Victims' Garden Location in Cole Park



341 ft



The City of Corpus Christi uses the most current and complete data available. However, GIS data and product accuracy may vary. GIS data and products may be developed from sources of differing accuracy, accurate only at certain scales, based on modeling or interpretation, incomplete while being created or revised, etc. The City of Corpus Christi reserves the right to correct, update, modify, or replace, GIS products without notification. The City of Corpus Christi cannot assure the accuracy, completeness, reliability, or suitability of this information for any particular purpose. Using GIS data for purposes other than those for which they were created may yield inaccurate or misleading results. The recipient may neither assert any proprietary rights to this information nor represent it to anyone as other than City Government-produced information. The City of Corpus Christi shall not be liable for any activity involving this information with respect to lost profits, lost savings or any other consequential damages.

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EXHIBIT 4

INSURANCE REQUIREMENTS**I. CONTRACTOR'S LIABILITY INSURANCE**

- A. Contractor must not commence work under this contract 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 one (1) copy of Certificates of Insurance 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 Certificate of Insurance. Project name and/or number must be listed in Description Box of Certificate of Insurance.**

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-day advance written notice of cancellation, non-renewal, material change or termination required on all certificates and policies.	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	\$500,000 Per Occurrence
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$500,000 Combined Single Limit
WORKERS'S COMPENSATION (All States Endorsement if Company is not domiciled in Texas)	Statutory and complies with Part II of this Exhibit.
Employer's Liability	\$500,000/\$500,000/\$500,000

INSTALLATION FLOATER	Coverage shall be in the amount of the appraised value of Artwork. Coverage shall cover transportation of Artwork From point of origin thru installation and acceptance of City of Corpus Christi, Parks and Recreation Director.
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- C. In the event of accidents of any kind related to this contract, 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 statutory amounts according to the Texas Department of Insurance, Division of Workers' Compensation. An All States Endorsement shall be required if Contractor is not domiciled in the State of Texas.
- 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 renewal certificates of insurance throughout the term of this contract and any extensions within 10 days of the policy expiration dates. All notices under this Exhibit 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, and volunteers, as additional insureds by endorsement with regard to operations, completed operations, 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, cancellation, non-renewal, material change or termination 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 cancellation, non-renewal, material change or termination 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 contract.
- 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.

EXHIBIT 5

VOLUNTEER RELEASE OF LIABILITY AND HOLD HARMLESS AGREEMENT

By signing this document, you are waiving any protection under Section 39.14 and Section 39.323 of the City of Corpus Christi Texas Code of Ordinance and any other similar ordinances.

By signing this document, I agree to waive any rights to sue the City of Corpus Christi, its officers, officials, employees, representative, and agents (collectively, the "City"), for any damages or claims arising out of volunteer participation in the Cole Park garden project. I am aware that participating in the volunteer program may involve dangers and risks of serious injury and/or death and/or property damage. I freely accept and fully assume all such danger and risks. In consideration of being allowed to participate in the volunteer program I further agree as follows:

1. To waive any and all claims I may have against the City arising out of volunteer participation;
2. To release the City from any and all liability from any loss, damage, injury or expense that I may suffer or that my next of kin may suffer as a result of my participation in the volunteer programs due to any cause whatsoever, including any negligence of the City or otherwise;
3. To hold harmless and indemnify the City from any and all liability for any property damage or personal injury to any third-party, resulting from my participation in the volunteer program;
4. This release of Liability and Hold Harmless Agreement shall be effective and binding on my heirs, next of kin, executors, administrators, and assigns in the event of participant's death.

I have read and understand this Release of Liability and Hold Harmless Agreement prior to signing it and am aware that by signing this Release of Liability and Hold Harmless Agreement I am waiving certain legal rights which I or my heirs, executors, administrators and assign may have against the City.

If volunteer is under 18 years of age, the Parent or Guardian must sign below along with the volunteer. As the Parent or Guardian of a volunteer I agree to execute this Release of Liability and Hold Harmless Agreement on behalf of volunteer. I acknowledge the risks and dangers associated with the volunteer program and I voluntarily accept and assume liability and the possibility of injury, damage, death, or loss resulting there on behalf of the Volunteer. I waive any and all claims and agree to release, hold harmless, and indemnify the City of Corpus Christi, and its officer, officials, employees, representatives, and agents on behalf of the volunteer.

Volunteer Signature

Date