

INTERLOCAL AGREEMENT REGARDING WEST HAVEN PARK AGREEMENT
BETWEEN NUECES COUNTY
AND
CITY OF CORPUS CHRISTI

This Interlocal Cooperation Agreement (“Agreement”) is entered into by and between Nueces County, a political subdivision of the State of Texas, herein “County” and the City of Corpus Christi, a home rule municipality found in Nueces County, Texas, herein “City”, under the authority and in accordance with the Interlocal Cooperation Act, as set out in Chapter 791 of the Texas Government Code.

WHEREAS, Texas Government Code, Chapter 791, authorizes local governments of the state to enter into contracts for governmental functions and services to increase their efficiency and effectiveness,

WHEREAS, City owns property located at 1700 Cliff Maus, Corpus Christi, Texas 78416, known as West Haven Park, “Premises” as described and identified on Exhibit A;

WHEREAS, the County desires in conjunction with the City to make improvements to these Premises so as to provide Nueces County residents additional recreational facilities for their use and promote its public purpose of public recreation;

WHEREAS, section 332.021 of the Texas Local Government Code, allows two political subdivisions to jointly, by agreement, construct park or recreational facilities located on property owned by either political subdivision;

WHEREAS, the County and City will derive a mutual benefit from this agreement as City’s Premises will be enhanced with additional park or recreational facilities and County will be able to provide additional recreational facilities to the residents of Nueces County;

WHEREAS, the County, the City and all of their respective residents will be able to use the Premises and related improvements;

NOW THEREFORE, the County and City, in consideration of the mutual promises and covenants herein, agree as follows:

1. Effective Date. This Agreement takes effect on the date of last signature (the “Effective Date”).
2. Contact Person/Agreement Administrator. For this Agreement, the contact person and Agreement administrator for the County is the Director of Community Services/ Inland Parks (“Director”). The contact person and Agreement administrator for the City is the Director of Parks and Recreation.

3. Premises. City agrees to allow County use of the Premises, as described and delineated in Exhibit A, the site map which is attached hereto and incorporated herein to this Agreement by reference, for construction and use of the Improvements.
4. Improvements. Improvements (“Improvements”) to the park will be constructed as follows:
 - a. construction of a splash pad;
 - b. construction of a sidewalk from the main sidewalk to the splash pad site;
 - c. construction of a fence completely surrounding the splash pad.

The final site plan for the Improvements is subject to review and approval of the City Director of Parks & Recreation. Modifications to the Improvements and additional Improvements require notice pursuant to Provision 15 of this agreement and the subsequent written approval of both parties.

Funding for the construction and engineering costs in an amount not to exceed \$375,000 will be provided:

- a. County will provide \$ 200,000;
- b. City shall be responsible for any remaining project costs not to exceed \$175,000.

The County shall be responsible to contract and oversee the construction for the Improvements specified above. The City will be responsible for any permitting fees, or any other applicable fees in relation to this construction, including irrigation and backflow certification filing fees.

5. Construction terms and conditions. In performing any construction at West Haven Park, City and County agree to comply with terms outlined on Exhibit B, as applicable.
6. Maintenance. The City will be responsible for the maintenance of the Premises and all improvements, including those constructed under this agreement, to be provided in same manner and level of maintenance as the level of maintenance prescribed by the City’s Master Plan for parks. The City retains the right to remove any improvements at the Premises deemed to be in unsafe condition by the City’s Director of Parks and Recreation after consulting with the County’s Inland Parks Director.
7. Use of the Premises. City must not deny access to or use of the Premises or areas of the Premises to the general public for unorganized activities. County and City residents will have reasonable access to Premises and may reserve

events at Premises pursuant to City's reservation procedures and fees. This provision shall survive any termination of this agreement.

8. Primary Purpose. City must use and maintain the Premises as a recreational area open to the general public. Any use of the Premises shall be subject to the City's standard procedures and fees.
9. Additions and Alterations.
 - a. County shall not make any additions or alterations to the Premises other than as set out herein without the City's prior written approval.
10. Utilities. City will build out the water and wastewater utilities at Premises at City's cost, estimated to be \$75,000, this cost is in addition to the City's responsibility for any remaining project costs not to exceed \$175,000 as specified in #4 above. City will pay for all utilities used at Premises.
11. Non-Discrimination. Neither party shall discriminate nor permit discrimination against any person or group of persons, as to employment and in the provision of services, activities, and programs, on the grounds of race, religion, national origin, sex, physical or mental disability, or age, or in any manner prohibited by the laws of the United States of the State of Texas. City will provide program access or remove barriers to accessibility under the American with Disabilities Act to allow individuals with disabilities the opportunity to participate and receive the benefits of services, programs and activities that are offered.
12. Compliance with Laws.
 - a. Each party must comply with all Federal, State, and local government laws, rules, regulations, and ordinances, which may be applicable to its operation at the Premises and its performance under this Agreement. City will provide program access or remove barriers to accessibility under the American with Disabilities Act to allow individuals with disabilities the opportunity to participate and receive the benefits of services, programs and activities that are offered.
 - b. All actions brought to enforce compliance with any law or to enforce any provision of this Agreement will be brought in Nueces County where this Agreement was executed and will be performed.

Nothing herein shall be construed as a waiver of either party's governmental and sovereign immunity.

13. No Debts and Fiscal Funding. Neither party shall incur any debts or obligations on the credit of the other party during the term of this Agreement. In the event that payments or expenditures are made, they shall be made from current funds as required by Chapter 791, Texas Government Code.
14. Termination. If there is noncompliance with one or more of the provisions contained herein, written notice shall be provided to the non-compliant party to cure or begin curing the default(s) within ten (10) days of receipt of the notice. If compliance or substantial compliance with each provision identified by the written notice has not been achieved within ten (10) days of receiving said notice, the Agreement will terminate for cause upon written notice of termination and listing one or more areas of continued noncompliance. Either party may terminate this Agreement without cause upon thirty (30) days written notice to the other party. However, during construction of the Improvements under this Agreement, the agreement may only be terminated for cause.
15. Notice. All notices, demands, requests, or replies provided for or permitted, under this Agreement, by either party must be in writing and must be delivered to each of the appropriate individual(s) at the address designated below by one of the following methods: (1) by personal delivery; (2) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid. Notice deposited with the United States Postal Service in the manner described above will be deemed effective two (2) business days after deposit with the United States Postal Service. All such notices/communications must be delivered to all parties at each of the following addresses:
IF TO COUNTY:

County Judge
Nueces County
901 Leopard, Rm 303
Corpus Christi, Texas 78401
(361)888-0444

with copies to:

Director of Community Services/Inland Parks
4540 FM892
Robstown, Texas 78380
(361)387-5445

Commissioner Joe Gonzalez
Nueces County Commissioner Precinct 2
901 Leopard Street, Room 303.07
Corpus Christi, Texas 78401
(361) 888-0296

IF TO CITY:

City of Corpus Christi
Attn: Director of Parks and Recreation
P. O. Box 9277
Corpus Christi, Texas 78469

Any party may change the address to which notice is sent by using a method set out above.

16. Amendments. No alterations, changes, or modifications of the terms of this Agreement or the waiver of any provision will be valid unless made in writing with notice to all individuals designated pursuant to Provision 15 of this agreement and the subsequent written approval of both parties. .
17. Waiver.
 - a. The failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, will not be deemed a waiver by said party of any of its rights hereunder.
 - b. No waiver of any covenant or condition or of the breach of any covenant or condition of this Agreement by either party at any time, express or implied, shall be taken to constitute a waiver of any subsequent breach of the covenant or condition nor shall justify or authorized the nonobservance on any other occasion of the same or any other covenant or condition hereof.
 - c. If any action by a party requires the consent or approval of the other party on one occasion, any consent or approval given on said occasion will not

be deemed a consent or approval of the same or any other action at any other occasion.

- d. Any waiver or indulgence of default of any provision of this Agreement shall not be considered an estoppel against the non-defaulting party. It is expressly understood that, if at any time default in any of its conditions or covenants hereunder has occurred, the failure to promptly avail itself of said rights and remedies which the non-defaulting party may have will not be considered a waiver on the part of the non-defaulting party, but the non-defaulting party may at any time avail itself of said rights or remedies or elect to terminate this Agreement on account of said default.
18. Force Majeure. No party to this Agreement will be liable for failures or delays in performance due to any cause beyond their control including, without limitation, any failures or delays in performance caused by strikes, lock outs, fires, act of God or the public enemy, common carrier, severe inclement weather, riots or interference by civil or military authorities. The rights and obligations of the parties will be temporarily suspended during this period to the extent performance is reasonably affected.
 19. Assignment. This Agreement may not be assigned, or transferred directly or indirectly.
 20. Captions. The captions in this Agreement are for convenience only, are not a part of this Agreement, and do not in any way limit or amplify the terms and provisions of this Agreement.
 21. Severability.
 - a. If, for any reason, any section , paragraph, subdivision, clause, provision, phrase, or word of this Agreement or the application hereof 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 said term or provision to persons or circumstances other than those as to which it is held illegal, invalid, or unenforceable, will not be affected thereby, for it is the definite intent of the parties to this Agreement that every section, paragraph, subdivision, clause, provision, phrase, or word hereof be given full force and effect for its purpose.
 - b. 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 thereby, and in lieu of each such illegal, invalid, or unenforceable clause or provision, a clause or provision, as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be

legal, valid, and enforceable, will be added to this Agreement automatically.

22. Entirety Clause. This Agreement and the attached and incorporated exhibits constitute the entire agreement between the parties.

EXECUTED IN DUPLICATE, each of which shall be considered an original, and effective on this the _____ day of _____, 2021.

NUECES COUNTY:

ATTEST:

Barbara Canales
County Judge

Kara Sands
County Clerk

CITY OF CORPUS CHRISTI

ATTEST:

Name: _____
Title: _____

Name: _____
Title: _____

EXHIBIT "A"

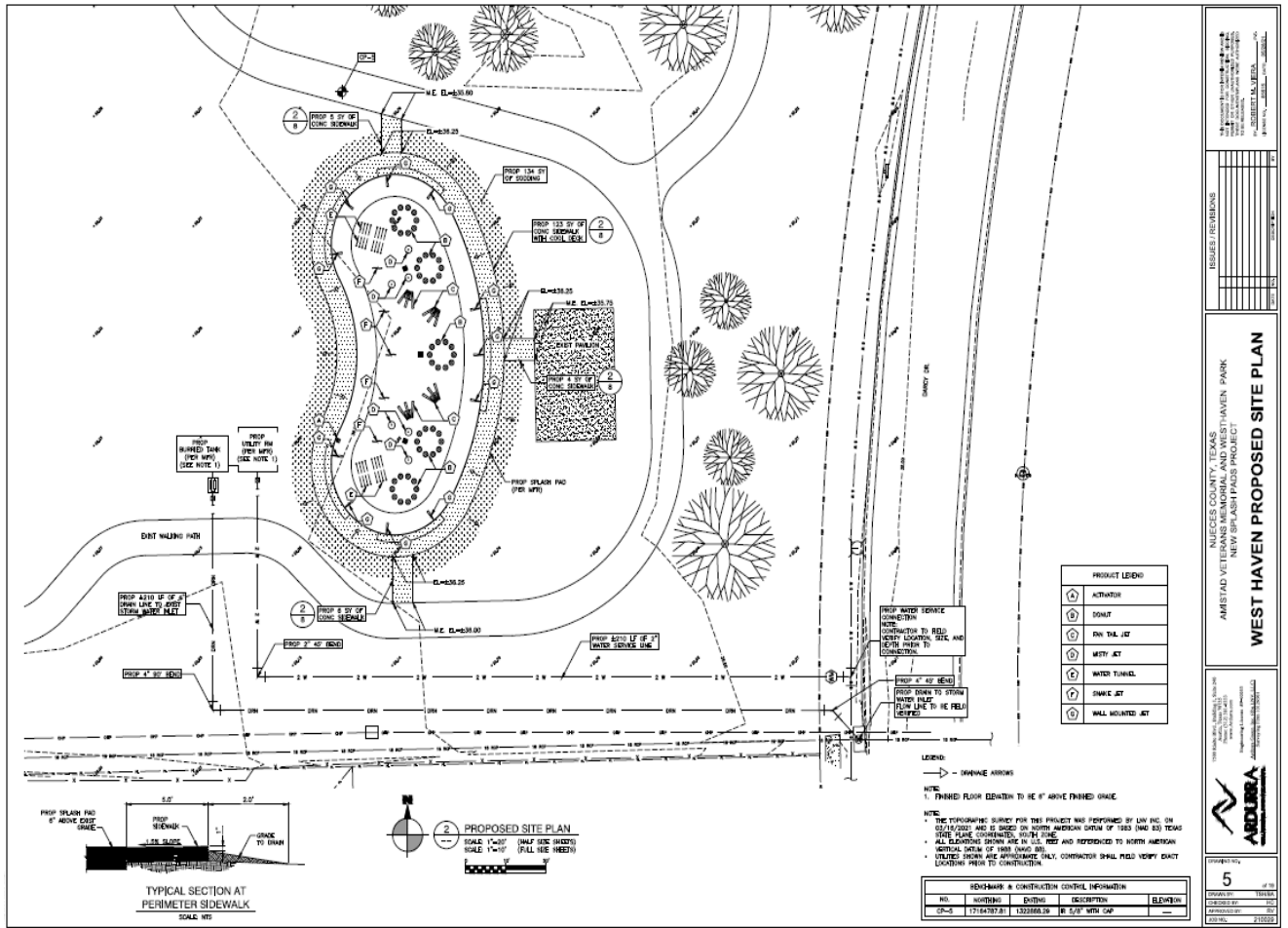


Exhibit B

Terms regarding construction of improvements at West Haven Park

- A. When constructing the Improvements, the plans and specifications shall be prepared by state-licensed architects or engineers. The plans and specifications are subject to the written approval of both the City Manager or designee and the County. Construction shall not begin until both the City Manager or designee and the County has reviewed and approved the construction plans and specifications.
- B. The contractor shall maintain City park property in a sanitary, safe and clean condition during construction activities.
- C. The contractors who are awarded contracts for construction of the 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 County/City 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 County/City as an Obligee.
- D. All construction agreements for the Improvements shall include the following provisions:
 1. Contractor does hereby agree to waive all claims, release, indemnify, defend and hold harmless the City of Corpus Christi and Nueces County and all of its officials, officers, agents and employees, in both their public and private capacities, 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 and Nueces County from any and all such claims and demands.

2. Contractor does hereby agree to waive all claims, release, indemnify, defend and hold harmless the City of Corpus Christi and Nueces County and all of its officials, officers, agents and employees from and against any and all claims, losses, damages, suits, demands or causes of action, and liability of every kind including all expenses of litigation and/or settlement, court costs and attorney fees for injury or death of any person or for loss of, damages to, or loss of use of any property, rising out of or in connection with the performance of this agreement. Such indemnity shall apply whether the claims, losses, damages, suits, demands or causes of action arise in whole or in part from the negligence of the City of Corpus Christi or Nueces County, its officers, officials, agents or employees. It is the express intention of the parties hereto that the indemnity provided for in this paragraph is indemnity by Contractor to indemnify and protect the City of Corpus Christi and Nueces County from the consequences of the City of Corpus Christi's or Nueces County's own negligence, where that negligence is a sole or concurring cause of the injury, death or damage.
 3. In any and all claims against any party indemnified hereunder by any employee of contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for contractor or any subcontractor under workman's compensation or other employee benefit acts.
- E. The contractor shall furnish insurance in such amounts as specified below and include in all construction agreements for the Improvements the following language:
1. Prior to commencement of any activity on City of Corpus Christi's property, contractor shall purchase and maintain during the term of this contract, at its own expense, hereinafter stipulated minimum insurance with companies duly authorized to do business in the State of Texas. Contractor shall not allow any subcontractor to commence work until all similar insurance of the subcontractor has been obtained. All insurance policies provided under this Agreement shall be written on an "occurrence" basis.
Workers' Compensation as required by law.
Employer's Liability Insurance of not less than \$500,000.00 for each accident, \$500,000.00 disease for each employee, \$500,000.00 disease as policy limit.

Commercial General Liability Insurance, including Independent Contractor's Liability, Products/Completed Operations and Contractual Liability, covering, but not limited to the indemnification provisions of this contract, fully insuring Contractor's liability for injury to or death of employees of the City of Corpus Christi, Nueces County and third parties, extended to include personal injury liability coverage, and for damage to property of third parties, with a combined bodily injury and property damage minimum limit of \$1,000,000 per occurrence.

Comprehensive Automobile and Truck Liability Insurance, covering owned, hired and non-owned vehicles, with a combined single limit of \$1,000,000 per occurrence.

Builder's Risk. The contractor shall purchase an All Risk builder's risk policy in the amount of the construction cost for the duration of this project.

2. It is agreed by all parties to this Agreement that the insurance required under this Agreement shall:
 - a. Be written with the City of Corpus Christi and Nueces County as additional insured on applicable policies and that the policy phrase "other insurance" shall not apply to the City of Corpus Christi where the City of Corpus Christi is an additional insured shown on the policy.
 - b. Provide for thirty (30) days written notice of cancellation to the City of Corpus Christi and Nueces County, material change or any other cause.
 - c. Be written through companies duly authorized to transact that class of insurance in the State of Texas.
 - d. Waive subrogation rights for loss or damage so that insurers have no right to recovery or subrogation against the City of Corpus Christi or Nueces County, it being the intention that the required insurance policies shall protect all parties to the Agreement and be primary coverage for all losses covered by the policies.
 - e. Provide a Certificate of Insurance evidencing the required coverages to:

City Manager
City of Corpus Christi
Post Office Box 9277
Corpus Christi, Texas 78469-9277

Risk and Safety Manager
City of Corpus Christi
Post Office Box 9277
Corpus Christi, Texas 78469-9277

County Judge
Nueces County
901 Leopard Street, Room 303
Corpus Christi, Texas 78401

Risk Manager
Nueces County
901 Leopard Street, Room 523
Corpus Christi, Texas 78401

- F. All work to be performed by contractors, including all workmanship and materials, shall be of first-class quality and shall be performed in full compliance and in accordance with all federal, state and local laws, ordinances, codes and regulations, and such work shall be subject to City inspection and County inspection by their respective designees during the performance thereof and after it is completed.
- G. County nor its contractor shall 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 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 Improvements thereon, and County shall discharge any such lien within thirty (30) days after notice of filing thereof.

- H. County shall endeavor to ensure that construction under this Agreement is provided in an orderly and proper manner, considering the nature of such operation, so as not to unreasonably annoy, disturb, or endanger others.

- I. Before any work on City property begins, City of Corpus Christi through its designees City Director of Capital Programs, the City Risk Manager or designee, and the City Manager and Nueces County through its designees Nueces County Judge and Nueces County Risk Manager shall receive proof/evidence of Contractor's insurance coverages and City building and construction permits.

EXHIBIT

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 Agency to commence work until all similar insurance required of any subcontractor Agency has been obtained.

- B. Contractor must furnish to the City’s Risk Manager, Nueces County’s Risk Manager and Contract Administer one (1) copy 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 and County must be listed as additional insureds on the General liability and Auto Liability policies **by endorsement**, 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
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$500,000 Combined Single Limit
WORKERS’ COMPENSATION	Statutory
EMPLOYER’S LIABILITY	\$500,000 /\$500,000 /\$500,000
POLLUTION LIABILITY	\$1,000,000 Per Occurrence

INSTALLATION FLOATER	Value of the Equipment and Materials
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C. In the event of accidents of any kind related to this agreement, Contractor must furnish both the City and County Risk Managers 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 and County at the addresses 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 and County at the following address:

City of Corpus Christi Attn: Risk Manager P.O. Box 9277 Corpus Christi, TX 78469-9277	Nueces County Attn: Timothy Everest, Risk Manager 901 Leopard Street, Room 523 Corpus Christi, Texas 78401
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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 County and their officers, officials, employees, volunteers, and elected representatives as additional insureds 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 County; and

- Provide thirty (30) calendar days advance written notice directly to City and County 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 and County. City and County 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 and County 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 and County shall have the right to order Contractor to remove the exhibit hereunder, and/or withhold any payment(s) if any, 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 and Nueces County 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.

2020 Insurance Requirements

Ins. Req. Exhibit **4-O**

Contracts for General Services – Services Performed Onsite – Pollution – Installation Floater
04/14/2020 Risk Management – Legal Dept.