

**LEASE AGREEMENT BETWEEN THE CITY OF CORPUS CHRISTI AND YOLANDA IBARRA DBA MANGONADAS BY MLB FOR THE BAY FOUNTAIN PARK KIOSK**

**STATE OF TEXAS            §  
   §                    KNOW ALL BY THESE PRESENTS:  
COUNTY OF NUECES       §**

This lease agreement ("**Lease**") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("**City**"), acting through its duly authorized City Manager, or his designee ("**City Manager**"), and Yolanda Ibarra dba Mangonadas by MLB.

**WHEREAS**, the City owns the Bay Fountain Park Kiosk located on North Shoreline Blvd. near the intersection with Resaca Street, Corpus Christi, Nueces County, Texas, together with all Improvements thereon; ("**Premises**");

**WHEREAS**, Lessee has requested the use of the Premises for the purpose of selling fresh fruit, smoothies, and other consumable products;

**WHEREAS**, City desires to allow Lessee to use the Premises for this purpose; and

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

**Section 1. Definitions.**

- (A) **City** means the City of Corpus Christi, Nueces County, Texas, a home rule municipal corporation.
- (B) **City Manager** means the City’s City Manager or the City Manager’s designee.
- (C) **Council** means the City’s City Council.
- (D) **Director** means the City’s Director of Parks and Recreation or the Director of Park and Recreation’s designee.
- (E) **Lease** means this lease document, including all attached and incorporated exhibits.
- (F) **Lessee** means Yolanda Ibarra dba Mangonadas by MLB.
- (G) **Parks** means the City’s Parks and Recreation Department.
- (H) **Premises** means the Bay Fountain Park Kiosk building located on North Shoreline Blvd. near the intersection with Resaca Street, in the City.
- (I) **Risk Manager** means the City’s Risk Manager or designee.

**Section 2. Purpose.** The purpose of this Lease, between City and Lessee, is to enable Lessee to utilize Premises to sell fruit cups, smoothies and other consumable products. Lessee shall not operate the Premises for any other purpose without Director's prior written approval. Alcohol sales are prohibited at the Premises.

**Section 3. Term.** The City leases the Premises, subject to all terms and conditions of this Lease, to the Lessee on a one- year term beginning on July 1, 2021 . This Lease may be extended by up to two additional two-year option terms upon written agreement of the Lessee and the City Manager, unless sooner terminated as set out herein.

**Section 4. Acceptance of Premises Disclaimer:**

**A. LESSEE ACKNOWLEDGES THAT IT IS LEASING THE PREMISES "AS IS" WITH ALL FAULTS AS MAY EXIST ON THE PREMISES, AND THAT NEITHER THE CITY, NOR ANY EMPLOYEE OR AGENT OF THE CITY, HAS MADE ANY REPRESENTATIONS OR WARRANTIES AS TO THE CONDITION OF SUCH PREMISES. LESSEE HEREBY WAIVES ANY AND ALL CAUSES OF ACTION, CLAIMS, DEMANDS, AND DAMAGES BASED ON ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF SUITABILITY FOR A PARTICULAR PURPOSE, ANY AND ALL WARRANTIES OF HABITABILITY, AND ANY OTHER IMPLIED WARRANTIES NOT EXPRESSLY SET FORTH IN THIS LEASE.**

**B. LESSEE ACKNOWLEDGES AND AGREES THAT LESSEE HAS BEEN PROVIDED, TO ITS SATISFACTION, THE OPPORTUNITY TO INSPECT THE PREMISES FOR ANY DEFECTS AS TO THE SUITABILITY OF SUCH PROPERTY FOR THE PURPOSE TO WHICH LESSEE INTENDS TO USE THE PREMISES, AND IS RELYING ON ITS OWN INSPECTION.**

**C. LESSEE ACKNOWLEDGES THAT ANY AND ALL STRUCTURES AND IMPROVEMENTS EXISTING ON THE PREMISES ON THE COMMENCEMENT DATE, IF ANY, ARE ACCEPTED "AS IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY THE CITY WITH RESPECT THERETO. LESSEE ACKNOWLEDGES THAT IT IS NOT RELYING UPON ANY REPRESENTATION, STATEMENT OR OTHER ASSERTION BY THE CITY WITH RESPECT TO ANY EXISTING STRUCTURES OR IMPROVEMENTS, BUT IS RELYING ON ITS EXAMINATION THEREOF.**

**D. THE PROVISIONS OF THIS Section 4 SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.**

**Section 5 Contact Person/Lease Administrator.** For this Lease, the City's contact person and lease administrator is the Director.

**Section 6. Lease Payments.**

- (A) For and in consideration of the rights and privileges herein granted, Lessee agrees to pay the City, on a monthly basis, rent in the amount of \$913.50 per month for the initial one-year term. The City will evaluate lease payment amounts prior to exercise of an option year and City will adjust the monthly rent to account for market conditions.
- (B) All monthly rent payments are due and payable on or before the 10th day of each month for the term of this Lease. Payment must be made to the order of the City of Corpus Christi and mailed to the City Collections Department, P. O. Box 9277, Corpus Christi, TX 78469, or delivered to City Hall at 1201 Leopard Street, Corpus Christi, TX 78401.

- (C) City will invoice Lessee monthly for water and waste water utility service at regular commercial rates based on submeters installed by the City. City will also invoice Lessee monthly for electricity service based on submeters installed by the City. Lessee will pay the invoice within 10 business days from receipt of invoice.
- (D) Payments made after the due date shall be assessed late payment fee of \$10 per each date the payment has not been made, up to 10 days. Failure to make payment in full within 10 days of due date is considered an event of default and may result in termination of this lease.

**Section 7. Hours of Operation.** Lessee will be open to the public and operate the Premises, during its normal operating hours on a year-round basis. Hours of operation may be adjusted, for scheduled seasonal activities and other special events scheduled by Parks, with the prior written approval of the Director. A schedule of normal operating hours will be provided by Lessee on a quarterly basis.

**Section 8. Parking.**

Lessee's designated parking space will be located north of the kiosk. However, the City reserves the right to temporarily use the parking space as needed for City-permitted special events or official City purposes.

**Section 9. Utilities.**

- (A) It is understood by and between the parties that regular garbage collection service is not available to the Premises and that the provision and payment for this service shall be the responsibility of Lessee. Lessee shall remove trash from Premises daily.
- (B) Lessee shall not deposit, or cause to be deposited, any garbage and debris generated at the Premises into trash receptacle in public spaces along Shoreline Drive. Lessee shall remove trash from Premises daily.
- (C) The Premises is not currently wired for telephone service nor for internet service; however, Lessee may contract separately with a service provider of Lessee's choice for the provision of active telephone and internet service, which service is to be incurred at Lessee's sole expense.
- (D) The Premises is wired for electrical service. Lessee shall be invoiced by the City for electricity services at the Premises.
- (E) Water and wastewater utility services are available at the Premises. Lessee shall be invoiced by the City for water and wastewater services at the Premises.
- (F) Should Lessee require any modification to the provision of the enumerated utilities in this section or require any additional utility service not herein covered during the term of this Lease, Lessee shall submit a request, in writing, to the Director for consideration and possible amendment of this Lease.
- (G) There is no security camera or security service provided by City at the Premises. **Lessee assumes all risk of loss or damage to Lessee's equipment and property at the Premises.**

**Section 10. Abandonment, Interruption of Utilities, Removal of Lessee's Property, and Lockout.** Chapter 93 of the Texas Property Code governs the rights and obligations of the parties with regard to: (a) abandonment of the leased premises; (b) interruption of utilities; (c) removal of Lessee's personal property; and (d) lock out of Lessee.

**Section 11. Maintenance.**

- (A) The City will maintain the exterior of the Premises and adjacent park grounds, including buildings and public parking lots in the vicinity of the Premises, subject to sufficient annual budget appropriations. The City shall be responsible for major repairs to the exterior of the Premises, subject to sufficient annual budget appropriations, unless damage occasioned to the exterior is or was caused by Lessee's negligence. It is further understood and agreed that the City shall maintain the utility lines serving the Premises, subject to sufficient annual budget appropriations.
- (B) Lessee covenants and agrees to maintain the interior of the Premises during the term of this Lease, such maintenance to include, but not be limited to, interior painting (in a neutral color preapproved by the Director) and keeping in good repair the plumbing and light fixtures.
- (C) Lessee shall be responsible for cleaning the Premises and will supply paper goods and chemicals necessary for cleaning.
- (D) During Lessee's normal business hours, City may enter the Premises for any reasonable purpose, including but not limited to, repairs, maintenance, alterations and showing the premises to prospective tenants. City may access the Premises at any time for emergency repairs.
- (E) In the event that the Premises are destroyed or rendered unusable due to a hurricane, natural disaster or other reasons not the fault of Lessee and cannot be promptly repaired, the occupancy by Lessee shall terminate as of such date and the City and Lessee either shall enter into an agreement to occupy other available space of the City for such purposes or this Lease shall terminate.

**Section 12. Furniture, Fixtures, and Equipment.**

- (A) It is understood that Lessee will be responsible for furnishing and equipping the Premises and that the City has no obligation to furnish any equipment or furnishings for Lessee.
- (B) All capital improvements to the Premises, such as installation of plumbing fixtures remain the property of the City.
- (C) The City shall maintain the public restrooms associated with the Premises.

**Section 13. City Use and Special Events.**

- (A) City retains the right to use or cross the Premises with utility lines and easements. City may exercise these rights without compensation to Lessee for damages to the Premises from installing, maintaining, repairing, or removing the utility lines and easements. City

must use reasonable judgment in locating the utility lines and easements to minimize damage to the Premises.

- (B) Lessee acknowledges that the Bay Fountain Park premises are used for special events which may occasionally interfere with Lessee's access to the Leased Premises and parking space availability. Lessee shall not be entitled to any compensation, in whatever form, either tangible or intangible, for such non-Lessee use.

**Section 14. Laws Affecting Operation of Premises and Performance.**

- (A) Lessee shall ensure that its use of the Premises is in accordance with all applicable Federal, State, and local laws, ordinances, rules and regulations.
- (B) Lessee shall bear the expense and responsibility of meeting all requirements for acquiring all applicable licenses and permits. Lessee shall also bear the expense of meeting and complying with all health regulations and Certificate of Occupancy requirements.
- (C) Furthermore, Lessee shall comply with any other Federal, State and local laws, ordinances, rules and regulations applicable to Lessee's performance under this Lease. This Lease is also subject to applicable provisions of the City Charter.
- (D) City Manager or designee has right to examine and audit at any time during regular business hours the accounts and other records of the Lessee.
- (E) Lessee agrees to provide annual or other reports upon request of City Director of Parks & Recreation or designee regarding operations of the Lessee.

**Section 15. Inspection.** Any officer or authorized employee of the City may enter upon the Premises, at all reasonable times and without notice, to determine whether Lessee is providing maintenance in accordance with and as required by above, or for any other purpose incidental to City's retained rights of and in the Premises.

**Section 16. Capital Improvements.** City may, from time to time, and in City's sole discretion, undertake capital improvements to the Premises. Prior to commencing any capital improvements, City shall notify Lessee, in writing, of the dates in which Lessee shall be required to vacate the Premises, should the Director deem this necessary. Lessee agrees that the term of this Lease shall not be prorated for the period in which Lessee is restricted from entering the Premises for the purposes of constructing capital improvements. Lessee acknowledges and understands that City shall have no obligation to provide an alternate location for Lessee during any period that Lessee must vacate the Premises.

**Section 17. Relationship of Parties.** This Lease establishes a landlord/tenant relationship, and none other, and this Lease must be construed conclusively in favor of that relationship. In performing this Lease, both City and Lessee will act in an individual capacity and not as agents, representatives, employees, employers, partners, joint venturers, or associates of one another. The employees or agents of either party shall not be, nor be construed to be, the employees or agents of the other party for any purpose whatsoever.

**Section 18. Insurance.**

- (A) Lessee shall secure and maintain at Lessee's expense, during the term of this Lease, insurance of the type and with the amount of coverage shown on the **Attachment**, which is incorporated in this Lease by reference. Lessee shall use an insurance company or companies acceptable to the Risk Manager. Failure to maintain the insurance during the term of this Lease, at the limits and requirements shown on **Attachment** constitutes grounds for termination of this Lease.
- (B) The Certificate of Insurance must be sent to the Risk Manager prior to occupancy of and operations at the Premises. The Certificate of Insurance must provide that the City will have thirty (30) days advance written notice of cancellation, intent to not renew, material change, or termination of any coverage required in this Lease.
- (C) Lessee shall provide, during the term of this Lease, copies of all insurance policies to the Risk Manager upon written request by the City Manager.
- (D) The Risk Manager shall retain the right to annually review the amount and types of insurance maintained by Lessee, to require increased coverage limits, if necessary in the interest of public health, safety, or welfare, and to decrease coverage, if so warranted. In the event of any necessary increase, Lessee shall receive thirty (30) days written notice prior to the effective date of the requirement to obtain increased coverage.
- (E) Alcohol sales are prohibited at the Premises.
- (F) Lessee shall, prior to any addition or alteration to, in, on, or about the Premises, obtain prior clearance, in writing, from the Risk Manager that the proposed addition or alteration will not necessitate a change or modification in the existing insurance coverage maintained by Lessee. This clearance is in addition to the prior consent required by Section 20(a), as contained herein.
- (G) The City carries the property and flood insurance on the building. Lessee is responsible for insuring their own contents.

**Section 19. Indemnity.** *In consideration of allowing Lessee to use the Premises, Lessee ("Indemnitor") covenants to fully indemnify, save and hold harmless the City, its officers, agents, representatives, and employees (collectively, "Indemnitees") from and against any and all liability, loss, damages, claims, demands, suits, and causes of action of any nature whatsoever asserted against or recovered from City on account of injury or damage to person including, without limitation on the foregoing, premises defects, workers' compensation and death claims, or property loss or damage of any other kind whatsoever, to the extent any injury, damage, or loss may be incident to, arise out of, be caused by, or be in any way connected with, either proximately or remotely, wholly or in part: (1) Lessee's performance pursuant to this Lease; (2) Lessee's use of the Premises and any and all activities associated therewith pursuant to this Lease; (3) the violation by Lessee, its officers, employees, agents, or representatives or by Indemnitees or any of them, of any law, rule, regulation, ordinance, or government order of any kind pertaining, directly or indirectly, to this Lease; (4) the exercise of rights under this Lease; or (5) an act or omission on the part of Lessee, its officers, employees, agents, or representatives or of Indemnitees, or any of them, pertaining to this Lease, regardless of whether the injury, damage, loss, violation, exercise of rights, act or omission is caused or is claimed to be caused by the contributing or concurrent negligence of Indemnitees, or any of them, but not if caused by the sole negligence of Indemnitees, or any of them, unmixed with the fault*

*of any other person or entity and including all expenses of litigation, court costs, and attorneys' fees, which arise, or are claimed to arise, out of or in connection with the asserted or recovered incident.*

*Lessee covenants and agrees that, if City is made a party to any litigation against Lessee or in any litigation commenced by any party, other than Lessee relating to this Lease, Lessee shall, upon receipt of reasonable notice regarding commencement of litigation, at its own expense, investigate all claims and demands, attend to their settlement or other disposition, defend City in all actions based thereon with legal counsel satisfactory to City, and pay all charges of attorneys and all other costs and expenses of any kind whatsoever arising from any said liability, injury, damage, loss, demand, claim or action.*

#### **Section 20. Alterations.**

- (A) Lessee shall not make any alterations, additions, or improvements to, in, on, or about said Premises, without the prior written consent of the City Director of Parks and Recreation. Lessee must also obtain clearance from the Risk Manager as required above. Lessee has requested and Director approves Lessee's installation of a new three compartmental sink at the Premises, with Lessee responsible for purchase and installation of the sink. All alterations approved by the Director must be made in compliance with applicable City codes, regulations and ordinances. Lessee is responsible to obtain all permits required for any approved alterations in advance of beginning any work at the Premises.
- (B) The following are specifically prohibited: Lessee shall not nail into the walls of the Premises; Lessee shall not remove any equipment, fixtures or hardware from the Premises.
- (C) All approved alterations, improvements, and additions made by the Lessee upon said Premises, although at his own expense, shall, if not removed by Lessee at any termination or cancellation hereof, become the property of the City in fee simple without any other action or process of law. Lessee agrees to be contractually and financially responsible for repairing any and all damage caused by such removal. If items are installed in such a manner as to become fixtures, such fixtures shall not be removed by Lessee upon termination and shall become the property of the City.

#### **Section 21. Signs.**

- (A) Lessee shall not exhibit, inscribe, paint, erect, or affix any signs, advertisements, notices, or other lettering ("**Signs**") at, on, or about the Premises, or any part thereof, without the Director's prior written approval.
- (B) City may require Lessee to remove, repaint, or repair any Signs allowed. If Lessee does not remove, repaint, or repair the Signs within ten (10) days of Director's written demand, City may do or cause the work to be done, and Lessee will pay City's costs within thirty (30) days of receipt of Director's invoice. If payment is not timely made, the City may terminate this Lease upon ten (10) days written notice to Lessee. Alternatively, City may elect to terminate this Lease after ten (10) days written notice to Lessee.

**Section 22. Sublease and Assignment.** Lessee understands and agrees that Lessee shall not sublease the Premises or any part thereof without obtaining the prior written consent of the City

Manager. Lessee shall not, in whole or in part, assign or transfer directly or indirectly this Lease unless prior written approval has been obtained from the City Manager.

**Section 23. Termination of Lease.**

- (A) The following constitute Events of Default under this Lease:
- (i) default in the payment of rent or other payments hereunder;
  - (ii) failure to perform maintenance as required by this Lease;
  - (iii) abandonment of the Premises;
  - (iv) failure to maintain any insurance coverages required herein;
  - (v) failure to timely pay City's invoice for the removal, repainting, or repair of any Signs at the Premises; and
  - (vi) failure to keep, perform, and observe any other promises, covenants and conditions contained in this Lease; and
  - (vii) delinquency in utility payments.
- (B) Upon the occurrence of any Event of Default, the City may, at its option, in addition to any other remedy or right given hereunder or by law, give notice to Lessee and an opportunity to cure and that this Lease terminates upon the date specified in the notice unless such default is cured, which date will be no earlier than thirty (30) days after the giving of such notice.
- (C) The City may terminate this Lease, with or without cause, at any time upon 90 days' written notice to Lessee.

**Section 24. No debts.** Lessee shall not incur any debts or obligations on the credit of the City during the term of this Lease.

**Section 25. Notice.**

- (A) All notices, demands, requests or replies provided for or permitted under this Lease by either party must be in writing and must be delivered by one of the following methods: (i) by personal delivery; or (ii) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid.
- (B) 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.
- (C) All these communications must only be made to the following:

**IF TO CITY:**

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

**IF TO LESSEE:**

Yolanda Ibarra dba Mangonadas by MLB  
4001 Brownwood Circle  
Corpus Christi, Texas 78410



- (D) Either party may change the address to which notice is sent by using a method set out above. Lessee shall notify the City of an address change within ten (10) days after the address is changed.

**Section 26 Nondiscrimination.** Lessee covenants and agrees that it shall not discriminate nor permit discrimination against any person or group of persons, with regard to employment and the provision of services at, on, or in the Premises, on the grounds of race, religion, national origin, marital status, sex, age, disability, or in any manner prohibited by the laws of the United States or the State of Texas. The City hereby reserves the right to take such action as the United States may direct to enforce this covenant.

**Section 27. Modifications.** No changes or modifications to this Lease may be made, nor any provisions waived, unless the change or modification is made in writing and signed by persons authorized to sign agreements on behalf of each party.

**Section 28. 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, shall not be deemed a waiver by said party of any of its rights hereunder. No waiver of any covenant or condition or of the breach of any covenant or condition of this Lease 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 authorize the nonobservance on any other occasion of the same or any other covenant or condition hereof. If any action by the Lessee requires the consent or approval of the City on one occasion, any consent or approval given on said occasion shall not be deemed a consent or approval of the same or any other action at any other occasion.
- (B) Any waiver or indulgence of Lessee's default of any provision of this Lease shall not be considered an estoppel against the City. It is expressly understood that, if at any time Lessee is in default in any of its conditions or covenants hereunder, the failure on the part of the City to promptly avail itself of said rights and remedies which the City may have shall not be considered a waiver on the part of the City, but City may at any time avail itself of said rights or remedies or elect to terminate this Lease on account of said default. Any waiver by the parties of a breach of any covenants, terms, obligations, or events of default shall not be construed to be a waiver of any subsequent breach, nor shall the failure to require full compliance with this Lease be construed as changing the terms of this Lease or estopping the parties from enforcing the terms of this Lease.

**Section 29. Force Majeure.** No party to this Lease shall be liable for delays or failures in performance due to any cause beyond their control including, without limitation, any delays or failures in performance caused by strikes, lock outs, fires, acts of God or the public enemy, common carrier, severe inclement weather, riots or interference by civil or military authorities. These delays or failures to perform shall extend the period of performance until these exigencies have been removed. The Lessee shall inform the City in writing of proof of such force majeure within three (3) business days or otherwise waive this right as a defense.

**Section 30. Surrender.** Lessee acknowledges and understands that the lease of the Premises to Lessee is expressly conditioned on the understanding that the Premises must be surrendered, upon the expiration, termination, or cancellation of this Lease, in as good a condition as received, reasonable use and wear, acts of God, fire and flood damage or destruction where Lessee is

without fault, excepted. Any reasonable costs incurred for repairs or corrections for which Lessee is responsible under this Lease are payable by Lessee to City as additional rental on the next rental payment date, or within 30 days written demand.

**Section 31. Enforcement Costs.** In the event any legal action or proceeding is undertaken by the City to repossess the Premises, collect the lease payment(s) due hereunder, collect for any damages with regard to this Lease, to the Premises, or to in any way enforce the provisions of this Lease, Lessee agrees to pay all court costs and expenses and the sum as a court of competent jurisdiction may adjudge reasonable as attorneys' fees in said action or proceeding, or in the event of an appeal as allowed by an appellate court, if a judgment is rendered in favor of the City.

**Section 32. Publication Costs.** Lessee shall pay for the cost of publishing the Lease description and related ordinance, if required by the City Charter, in the legal section of the local newspaper.

**Section 33. Interpretation.** This Lease will be interpreted according to the Texas laws that govern the interpretation of contracts. Venue lies in Nueces County, Texas, where this Lease was entered into and will be performed.

**Section 34. Survival of Terms.** Termination or expiration of this Lease for any reason shall not release either party from any liabilities or obligations set forth in this Lease that (a) the parties have expressly agreed shall survive any such termination or expiration, or (b) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

**Section 35. Construction of Ambiguities.** The parties expressly agree that they have each independently read and understood this Lease. Any ambiguities in this Lease shall not be construed against the drafter.

**Section 36. Captions.** The captions utilized in this Lease are for convenience only and do not in any way limit or amplify the terms or provisions hereof.

**Section 37. Termination.** It is Lessee's responsibility to remove its personal property from the Premises prior to termination or expiration of the Lease. Lessee agrees that any of personal property remaining on the Premises after the termination or expiration of the Lease automatically becomes City property without any notice, action, or process of law, for disposition by the City as City deems appropriate in City Manager sole discretion, with no compensation to Lessee. Lessee shall be invoiced for City's costs to remove property from the Premises after termination or expiration of the Lease, and Lessee shall pay said invoice within thirty (30) days of receipt.

**Section 38. Entirety Clause.** This Lease and the incorporated and attached exhibits constitute the entire agreement between the City and Lessee for the purpose granted. All other agreements, promises, representations, and understandings, oral or otherwise, with reference to the subject matter hereof, unless contained in this Lease are expressly revoked, as the parties intend to provide for a complete understanding within the provisions of this Lease and its exhibits of the terms, conditions, promises, and covenants relating to Lessee's operations and the Premises to be used in the operations.

**Section 39. Severability.**

- (A) If, for any reason, any section, paragraph, subdivision, clause, provision, phrase, or word of this Lease 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 Lease, 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 Lease 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 Lease, then the remainder of this Lease 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 Lease automatically.

**ATTEST:**

**CITY OF CORPUS CHRISTI**

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

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

Approved as to form:

By: \_\_\_\_\_  
 Lisa Aguilar  
 Assistant City Attorney

**LESSEE: YOLANDA IBARRA DBA MANGONADAS BY MLB**

By: Yolanda Ibarra

Name: Black Swan

Title: owner

Date: 5-4-2021

## EXHIBIT

### INSURANCE REQUIREMENTS

#### I. LESSEE'S LIABILITY INSURANCE

- A. Lessee must not commence work under this agreement until all insurance required has been obtained and such insurance has been approved by the City. Lessee must not allow any subcontractor Agency to commence work until all similar insurance required of any subcontractor Agency has been obtained.
- B. Lessee must furnish to the City'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 must be listed as an additional insured 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
<b>30-written day notice of cancellation, required on all certificates or by applicable policy endorsements</b>	<b>Bodily Injury and Property Damage</b> 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
WORKERS' COMPENSATION	Statutory
EMPLOYER'S LIABILITY	\$500,000 /\$500,000 /\$500,000
PERSONAL PROPERTY INSURANCE (if applicable)	Lessee, at their own expense, shall be responsible for insuring all owned, leased or rented personal property.

- C. In the event of accidents of any kind related to this agreement, Lessee 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, Lessee 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 Lessee will be promptly met.
- B. Lessee shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Lessee'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. Lessee 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. Lessee 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. Lessee 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, Lessee shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Lessee'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 Lessee'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 Lessee to remove the exhibit hereunder, and/or withhold any payment(s) if any, which become due to Lessee hereunder until Lessee demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Lessee may be held responsible for payments of damages to persons or property resulting from Lessee's or its subcontractor's performance of the work covered under this agreement.
- H. It is agreed that Lessee'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.

2020 Insurance Requirements

Ins. Req. Exhibit

Lessee Services Performed Offsite-Onsite – GL – WC – Personal Property

8/24/2020 Risk Management – Legal Dept.