

LEASE AGREEMENT

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

This Lease Agreement is made and entered into by and between the City of Corpus Christi, Texas, a municipal corporation ("City") and the Lady Lex Museum on the Bay Association, a nonprofit corporation ("Association"), on the terms and conditions hereinafter set forth.

1. LEASE PREMISES. The City, in consideration of the Association's faithful performance of the covenants described herein, leases to the Association the following described land, hereinafter called the "Leased Land":

That certain portion of the submerged lands of Corpus Christi Bay patented by the State of Texas to the City of Corpus Christi by Patent No. 86, Volume 21-A, dated January 4, 1924, together with a certain portion of Corpus Christi Beach adjacent thereto, all of which is described, on **Exhibit A**, which is attached to and incorporated into this lease for all purposes.

2. TERM. The term of this Lease shall commence at 12:01 a.m., January 16, 2021, and shall continue until midnight, January 15, 2036. If Lease renewal negotiations are in progress at the expiration of the Lease, but with a signed renewal not yet in place, this Lease will be considered to remain in effect during the remainder of the renewal process.

3. REPLACEMENT LEASE. This Lease replaces that prior lease dated January 16, 2006, authorized by Ordinance No.026548 of the City Council of the City.

4. RENTAL. The Association agrees to pay to the City, or its designated agent, rentals in the amount of ONE DOLLAR (\$1.00) per year, then, in advance, on the first day of the Lease. This consideration is given in addition to the other covenants and obligations of the Association provided under this Lease Agreement.

5. PERMITTED USE. The Leased Land shall be used for the berthing of the USS Lexington, its operation by the Association as a museum, construction and maintenance of a pier and small accessory buildings, such as ticket booths, together with any and all related uses authorized for organizations exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The Association shall endeavor to operate the facility as a first-class naval museum and meet all requirements of the U.S. Navy for maintaining the USS Lexington. The Association shall maintain hours of operation open to the public and admission fees similar to comparable attractions.

6. **LIMITATION OF LEASEHOLD.** The City does not warrant its title to the Leased Premises. This Lease and the rights and privileges granted the Association in and to the Leased Premises are subject to all covenants, conditions, restrictions, and exceptions of record or apparent. Nothing contained in this Lease may be construed to imply the conveyance to the Association of rights in the Leased Premises that exceed those owned by City.

7. **CITY USE.** The City retains the right to use or cross the Premises with utility lines and easements. City may exercise these rights without compensation to the Association 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.

8. **COMPLIANCE WITH LAWS.** The Association agrees to comply with all laws, ordinances, orders, rules, regulations, and requirements of Federal, State, and local governments, and of all of their departments, applicable to the Leased Land. This Lease is also subject to applicable provisions of the City Charter.

9. **WETLANDS.** The Leased Land may contain officially designated wetlands, and the Association agrees that said wetland areas will not be altered, damaged, or constructed upon unless the proper permit has been obtained from the appropriate regulating entities. The Association shall be responsible for obtaining all such necessary permits and completing any required mitigation. Any such mitigation project shall be considered a necessary and related construction project for the improvements contemplated to be constructed under this Lease Agreement.

10. **MAINTENANCE.** The Association accepts the Leased Land in its present condition, AS IS and WITH ALL FAULTS. The Association shall throughout the term of this Lease Agreement take good care of the Leased Land, including the mooring, piers, ticket booths, and all other improvements located thereon, keep them free from waste or nuisance of any kind, and shall be responsible for and shall perform, or cause to be performed, maintenance, including custodial maintenance, and repair of the Leased Land and the facilities located thereon.

11. **INSURANCE.**

a. The Association shall secure and maintain at the Association's expense, during the term of this Lease, insurance of the type and with the amount of coverage shown on the attached **Exhibit B**, which is incorporated in this Lease by reference. The Association 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 Exhibit B, constitutes grounds for termination of this Lease.

b. The Association shall provide, during the term of this Lease, copies of all

insurance policies to the Risk Manager upon written request by the City Manager.

- c. The Risk Manager retains the right to annually review the amount and types of insurance maintained by the Association, 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, the Association must receive 30 days written notice prior to the effective date of the requirement to obtain increased coverage.

12. UTILITIES. The Association shall be responsible for obtaining water, sewer, electricity, and gas service connections for use on the Leased Land, and the Association shall pay all utility connection charges related thereto. During the term of this Lease, the Association shall further pay when due all charges and costs for utilities consumed on the Leased Land.

13. TAXES OR OTHER IMPOSITIONS.

- a. The Association shall timely pay any and all ad valorem taxes or other impositions, if any, which may be levied, assessed, or otherwise imposed pursuant to its occupancy of the Leased Land and the improvements located thereon during the term of this Lease.
- b. The Association shall promptly remit to the Comptroller for the State of Texas all sales taxes collected from its activities on the Leased Land.

14. INSPECTION. The City, its employees, and designated agents shall have the right to enter upon the Leased Land at all times for the purposes of inspection, for emergency repairs to utility systems, and to otherwise protect its interests as Landlord hereunder. Nothing herein shall be construed to restrict the City in the exercise of any of its police powers.

15. CITY MANAGER'S RIGHT TO ACCESS PREMISES IN EMERGENCY.

- a. The Association shall provide the City Manager access to Premises, and a current list of contact names and phone numbers for use by the City Manager in the event of an emergency.
- b. The City Manager has the right to enter the Premises during the regular hours of normal operation or at any time in an emergency.

16. SIGNS. The Association shall comply with all City codes and regulations when placing any advertising signs on the Leased Land. All such signs shall be kept in a continual state of good repair, and failure to do so may result in removal of said signs from the Leased Land.

17. NO DEBTS. The Association may not incur any debts or obligations on the credit of the City during the term of this Lease, including during any Holdover Period that may occur.

18. LIENS. The Association shall not permit any mechanic's, materialman's, or other liens to be fixed or placed against the Leased Land and agrees to immediately discharge (either by payment or by filing the necessary bond, or otherwise) any such liens which are allegedly fixed or placed against the Leased Land. The Association reserves the right to contest with due diligence the reasonableness of any such charges or impositions against the Leased Land, and the City agrees not to interfere with such contested proceedings or otherwise to declare a default under this Lease due to such proceedings.

19. HAZARDOUS MATERIALS. With respect to any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable Federal, State, or local laws, ordinances, or regulations (including, without limitation, friable asbestos and asbestos deemed hazardous by Federal or State regulations), such substances collectively referred to hereinafter as "Hazardous Materials" and such laws, ordinances, and regulations together with all rules, orders, and permits pursuant thereto collectively referred to hereinafter as "Hazardous Materials Laws," the Association:

- a. represents that the Association will not (i) store, bury, install, transport, treat, or dispose of any Hazardous Materials at, to, or from the Leased Land in violation of any applicable Hazardous Materials Laws, or (ii) cause or allow the release, discharge, emission, leak, spill, or dumping of any Hazardous Materials at or from the facilities on the Leased Land, except for those releases allowed under applicable Hazardous Materials Laws;
- b. covenants to (i) comply with all applicable Hazardous Materials Laws with respect to the manufacture, storage, transmission, presence, discharge, and removal of Hazardous Materials at or from the facilities on the Leased Land, (ii) pay promptly within 30 days of when demand is made the costs of any required removal of any Hazardous Materials from the Leased Land and keep the Leased Land free of any lien imposed pursuant to any Hazardous Materials Laws, (iii) not locate nor allow location of any underground storage tanks on the Leased Land, (iv) not locate any materials containing asbestos of any type or nature on the Leased Land, and (v) notify Landlord promptly in writing of the commencement of any legal or regulatory proceedings relating to Hazardous Materials affecting the Leased Land;
- c. represents that the Association will not cause or allow the release, discharge, emission, leak, spill, or dumping of any Hazardous Materials or oil in harmful quantities at or from the facilities on the Leased Land into the waters of the United States and State of Texas, except for those releases allowed under

applicable laws; and

- d. **agrees to indemnify and to hold harmless the City, its officers, employees, agents, and successors, and assigns from and against any and all claims, demands, causes of action, loss, damage, liabilities, costs, and expenses (including attorney fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, asserted against or incurred by the City at any time, or from time to time, by reason of or arising out of any violation of any Hazardous Materials Laws or the release, discharge, emission, leak, spill, or dumping of any Hazardous Materials or oil in harmful quantities at or from the facilities on the Leased Land into the waters of the United States and State of Texas occurring since the commencement of the Association's occupancy of the Leased Land. The Association's obligations hereunder shall arise upon the discovery of the presence of any Hazardous Materials, whether or not any Federal agency or any State or local environmental agency has taken or threatened any action in connection with the presence of any Hazardous Materials. The foregoing indemnity shall survive the expiration of this Lease. In the event the Association fails, after reasonable notice, to pay any amounts described in this provision, the City may, but shall not be obligated to, cause the Hazardous Materials to be removed from the Leased Land and the cost of such removal shall be payable by the Association; provided, however, that the Association may in good faith contest the reasonableness or necessity of any requirement by any Federal, State, or local environmental agency, and upon the Association's providing reasonable security to assure its performance, the City agrees not to interfere in the Association's proceedings with such agency.**

20. **INDEMNITY. The Association hereby covenants and agrees to at all times indemnify and save harmless the City, its officers, employees, and agents from and against any cost, liability, damages, or expense arising out of any claim by any person or persons whatsoever by reason of the use or misuse of the Leased Land and shall indemnify and save harmless the City from any penalty, damage, or charge incurred or imposed by reason of any violation of law or ordinance by the Association, and shall indemnify and save harmless the City from any cost liability, damages, or expense arising out of the death of or injury of any person or persons or damage to property arising out of the Association's operations on the Leased Land. The Association specifically agrees to indemnify and save harmless the City, its officers, employees, and agents from and against any cost liability, damages, or expense arising out of any claim due to the death or injury of any employee of the Association or through a right of subrogation by an Insurance company.**

21. **ASSOCIATION FINANCES AND INSPECTIONS. During the term of this Lease, the Association shall furnish to the City a copy of its annual audited financial report within**

120 days of the end of each fiscal year of the Association. Additionally, the Association's annual budget, financial reports, and inspection reports are available upon written request by the City Manager.

22. **DEFAULT.** In the event the Association fails to comply with any covenant or condition of this Lease, after 30 days written notice of same, with an opportunity to cure during such period, the Lease shall be considered to be in default.

23. **REMEDIES.** In the event of any default in the performance of this Lease by the Association, the Association may submit to the City, within 20 days of such default, a remediation plan showing the manner in which the Association plans to remedy the default, a detailed budget supporting the plan, the parties involved in remedying such default, and a detailed timeline for the implementation of such plan. Upon any such default, the City shall have the right to:

- a. Approve the remediation plan submitted by the Association and continue to monitor compliance with the plan. In such case, any default by the Association in the remediation plan shall constitute a new default under this Lease.
- b. Require that changes be made in the remediation plan submitted by the Association. In such case, if the Association concurs with such changes, the remediation plan shall proceed as provided above. If the Association does not concur in such changes, the City shall have the right to exercise any of the remedies provided below.
- c. Adopt a remediation plan, in the event one is not submitted by the Association. In such case, if the Association fails to comply with the requirements of such plan, the City shall have the right to exercise any of the remedies provided below.
- d. Require a change in any or all of the members of the board of directors of the Association or the management of the Association, including the appointment by the City of a new board of directors to govern the Association in accordance with its articles of incorporation and bylaws.
- e. Notify the Association of the termination of this Lease and direct the Association to vacate the Leased Land, subject to making any necessary arrangements for the maintenance or relocation of the USS Lexington consistent with the requirements of the United States Navy. In such event, the Association shall proceed with due diligence in completing such relocation, and if the Association fails to diligently complete such relocation, the City may exercise its rights in (d) above.

24. **NONDISCRIMINATION.** The Association shall be responsible for the fair and just treatment of all its employees and patrons. The Association warrants that it is and will

continue to be an equal opportunity employer, and it hereby covenants that no employee or customer shall be discriminated against because of race, creed, color, sex, national origin or disability.

25. DRUG POLICY. The Association must adopt a Drug Free Workplace and Drug Testing Policy.

26. VIOLENCE POLICY. The Association must adopt a No Violence in the Workplace Policy.

27. ASSIGNMENT. The Association may not assign this Lease nor sublease the Leased Land, or any part thereof, without the written consent of the City Council, which consent shall not be unreasonably withheld. Such assignment shall not relieve the Association from its obligations hereunder unless such release is expressly granted by the City in approving such assignment.

28. FORCE MAJEURE. If by reason of force majeure either party hereto shall be rendered wholly or in part unable to carry out its obligations under this Lease, then except as otherwise expressly provided in this Lease, if such party shall give notice and the full particulars of such force majeure in writing to the other party, within a reasonable time after the occurrence of such event or cause, the obligations of said party giving such notice, so far as they are affected by such force majeure, shall be suspended, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure" shall mean acts of God, strikes, industrial disturbances, acts of public enemy, orders of any kind of the government of the United States or the State of Texas, riots, epidemics, hurricanes, fires, floods, civil disturbances, explosions, or other accidents or causes not reasonably within the control of the party claiming such inability.

29. MODIFICATIONS. No changes or modifications to this Lease shall be made, nor any provisions waived, unless in writing, signed by a person authorized to sign agreements on behalf of each party.

30. LEASE RELATIONSHIP. It is specifically agreed and understood by the parties hereto that a landlord-tenant relationship is created under the terms of this Lease. This Lease must be construed conclusively in favor of that relationship. In performing under this Lease, both the City and the Association 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 may not be, nor be construed to be, the employees or agents of the other party for any purpose. Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of partnership or of joint venture between the parties.

31. CITY AUTHORITY. Except as specifically provided herein, the Association shall not have any authority to bind the City to any contract, indebtedness, or obligation in any

manner without the express written consent of the City. The City reserves the sole and exclusive right to exercise its police powers and other governmental authority concerning any matters related to this Lease.

32. NOTICES. Any notices or other communications relating to this Lease shall be made in writing and may be given by (a) depositing same in the United States mail; postage prepaid, certified mail, with return receipt requested, addressed as set forth in this section, or (b) delivering the same to the party to be notified. Notice given in accordance with (a) hereof shall be effective upon deposit in the United States mail.

The notice addresses of the parties hereto shall, until changed in the manner of giving notices as provided herein, be as follows:

CITY: City of Corpus Christi
Attention: City Manager
1201 Leopard Street, 5th Floor
Corpus Christi, Texas 78401

ASSOCIATION: Lady Lex Museum on the Bay Association
Attention: Executive Director
P.O. Box 23076
Corpus Christi, Texas 78403
Physical address: 2914 N. Shoreline Drive

33. ALTERATIONS. The Association may make alterations to the permanent Improvements located on the land areas comprising the Leased Premises with the consent of the City Manager or the City, or the City Manager's designee.

34. NOT FOR BENEFIT OF THIRD PARTIES. This Lease is only for the benefit of the City and the Association, and no third party has any rights or claims under this Lease or against the City.

35. PUBLICATION COSTS. The Association shall pay for the cost of publishing the Lease description and related ordinance, as required by the City's Charter, in the legal section of the local newspaper.

36. INTERPRETATION AND VENUE. This Lease will be interpreted according to the Texas laws which govern the interpretation of contracts. Venue lies in Nueces County, Texas, where this Lease was entered into and will be performed.

37. SURVIVAL OF TERMS. Termination or expiration of this Lease for any reason does not release either party from any liabilities or obligations under this Lease that (a) the parties have expressly agreed survive any termination or expiration; (b) remain to be performed; or (c) by their nature would be intended to be applicable following any

termination or expiration of this Lease.

38. CAPTIONS. The captions utilized in this Lease are for convenience only and do not in any way limit or amplify the terms or provisions of this Lease.

39. SEVERABILITY.

- a. If, for any reason, any section, paragraph, subdivision, clause, provision, phrase, or word of this Lease or the application of this Lease 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 the term or provision to persons or circumstances other than those as to which it is held illegal, invalid, or unenforceable will not be affected by the law or judgment, for it is the definite intent of the parties to this Lease that every section, paragraph, subdivision, clause, provision, phrase, or word of this Lease be given full force and effect for this 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 by the law, and in lieu of any illegal, invalid, or unenforceable clause or provision, a clause or provision, as similar in terms to the illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable will be added to this Lease automatically.

40. ENTIRETY CLAUSE. This Lease and the attachments and exhibits incorporated into this Lease constitute the entire agreement between the City and the Association for the purpose granted. All other agreements, promises, representations, and understandings, oral or otherwise, with reference to the subject matter of this Lease, 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 the Association's operations and the Premises to be used in the operations.

41. BINDING LEASE. It is further mutually understood and agreed that the covenants and agreements contained in the Lease, to be performed by the respective parties, are binding on the parties and their respective successors and assigns.

42. ACKNOWLEDGEMENT. Each party expressly agrees that it has independently read and understood this Lease. By the Association's execution of this Lease, the Association acknowledges and understands that this Lease is not binding on the City until properly authorized by the City Council and executed by the City Manager or designee.

LADY LEX MUSEUM ON THE BAY ASSOCIATION

Steve Banta
Executive Director

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This instrument was acknowledged before me on _____, 2021,
by Steve Banta, Executive Director, Lady Lex Museum on the Bay Association, a Texas
domestic nonprofit corporation, on behalf of the corporation.

Notary Public, State of Texas

CITY OF CORPUS CHRISTI

Jeff H. Edmonds, P.E.
Director of Engineering Services
for City Manager

Ord _____ Authorized
by Council on _____

City Secretary

Approved as to Legal Form
_____, 2021

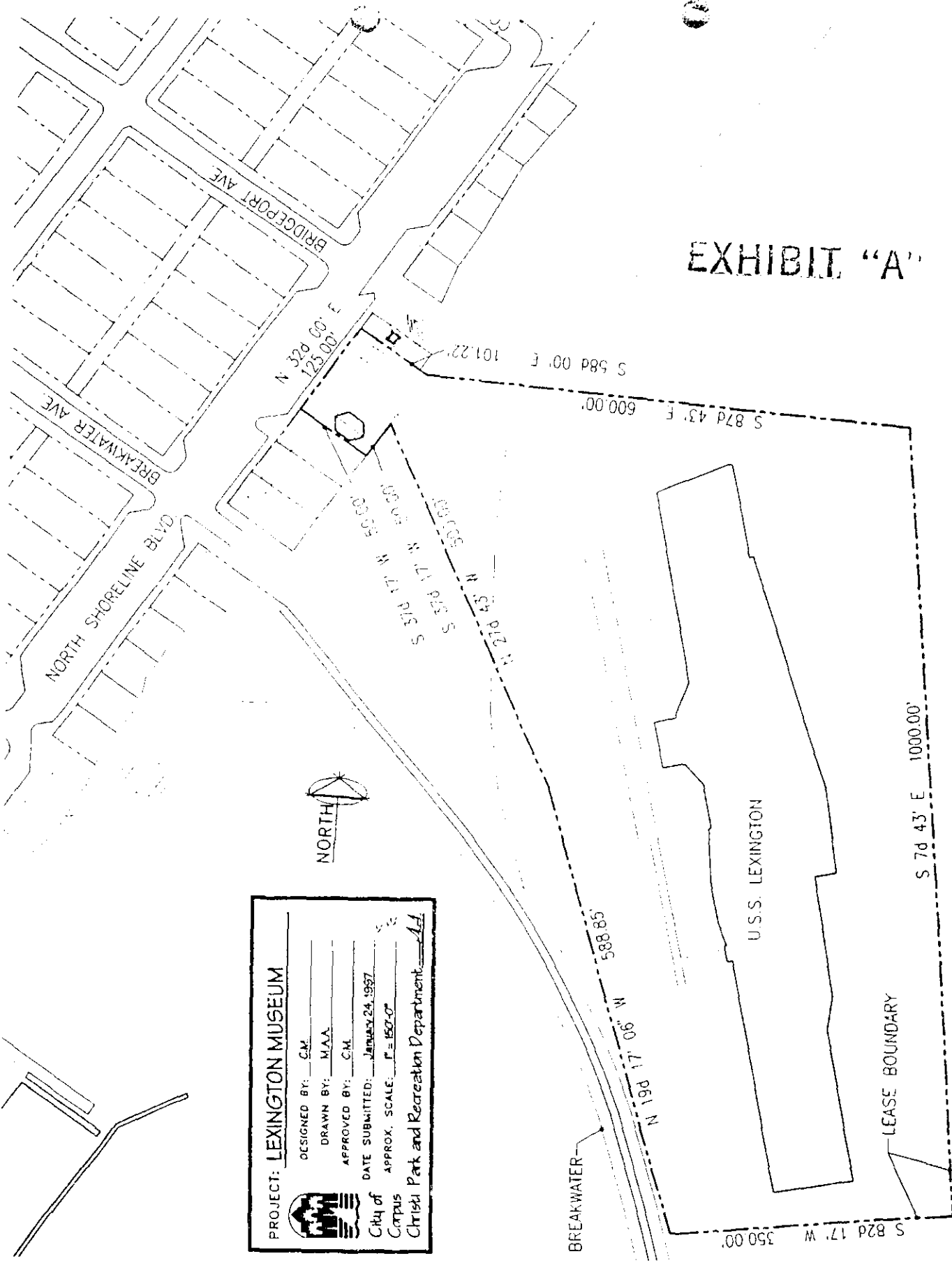
Assistant City Attorney for
City Attorney

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This instrument was acknowledged before me on _____, 2021,
by Jeff H. Edmonds, P.E., Director of Engineering Services, City of Corpus Christi, a
Texas home rule municipal corporation, on behalf of the corporation.

Notary Public, State of Texas

EXHIBIT "A"



PROJECT: **LEXINGTON MUSEUM**

DESIGNED BY: C.M.
DRAWN BY: M.A.A.
APPROVED BY: C.M.
DATE SUBMITTED: January 24, 1997
APPROX. SCALE: 1" = 150'-0"


 City of
Corpus Christi
Christi Park and Recreation Department *Ad.*

EXHIBIT B

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
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	\$1,000,000 Combined Single Limit
WORKERS' COMPENSATION	Statutory
EMPLOYER'S LIABILITY	\$500,000 /\$500,000 /\$500,000
LIQUOR LIABILITY When liquor is being sold or served.	\$1,000,000 Per Occurrence
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 - Legal

Lease Agreement – The Lexington Museum

11/04/2020 Risk Management – Legal Dept.