

Lease with
Nueces County Community Action Agency

THE STATE OF TEXAS §

KNOW ALL BY THESE PRESENTS:

COUNTY OF NUECES §

This agreement is entered into this the ____ day of _____, 2017 between the City of Corpus Christi, a Texas home-rule municipal corporation, ("City"), acting through its duly authorized representative the City Manager, or designee, ("City Manager"), P.O. Box 9277, Corpus Christi, Nueces County, Texas 78469-9277 and the Nueces County Community Action Agency, a Texas non-profit corporation, 101 South Padre Island Drive, Corpus Christi, Nueces County, Texas 78405, ("NCCAA"), acting through its duly authorized representative the Chief Executive Officer ("Chief Executive Officer").

1. Term. This Lease is for ten years beginning on the 61st day after final City Council approval which is _____, 2017, with the option to renew for 10 additional years upon request of the Chief Executive Officer and approval of the City Manager.

2. Property. The City does hereby lease, let, and demise to NCCAA the following properties located in Corpus Christi, Nueces County, Texas:

- A. Real and personal property including two (2) portable buildings located at Lot 1, Block 9, Three Fountains Unit #1 , an addition to the City of Corpus Christi, also known as 1838 Frio Street;
- B. Real and personal property including one (1) portable building located at Lots 20 and 22, Block 2, Booty and Allen, an addition to the City of Corpus Christi, also known as 1311 7th Street;
- C. Personal property consisting of two (2) portable buildings located at 3750 South Port Street (Housing Authority of Corpus Christi La Armada Unit);
- D. Personal property consisting of four (4) portable buildings located at 1402 West Point Road (Housing Authority of Corpus Christi Cliff Maus Unit);
- E. Real property and all Improvements located at Lot 12, Block 23, Meadow Park, an addition to the City of Corpus Christi, also known as 442 Mohawk; and
- F. Real property, described as Lots 20 and 21, Block 4, Gulfway-Airline Park, Unit 1, an addition to the City of Corpus Christi, also known as 5839 Williams Drive;
- G. Real property and all Improvements located at Lots 1 through 12, Block 11, Steele, an addition to the City of Corpus Christi, also known as 2801 Morris Street; and
- H. Real and personal property, described as 26,550 square feet of land on the Southwest corner of Colonia Casa Blanca, Blocks 1 through 4, an addition to the City of Corpus Christi, also known as 120 Nineteenth Street.

Such real and personal property to be referred to as "Property" herein. NCCAA shall maintain the Property and all improvements it places on the Property in good and safe condition during the Lease term. The term "Facilities" shall collectively include the Property and improvements thereon.

3. Improvements. NCCAA may place portable buildings ("Improvements") on the real property identified above in compliance with all federal, state, and local laws. If NCCAA wishes to erect a permanent building or buildings on the real property identified above, the Chief Executive Officer must obtain prior written permission from the City Manager to erect a permanent building, and all plans and specifications must be approved by the City Engineer and must be in compliance with all federal, state, and local laws.

4. Consideration and Purpose. The consideration for this Lease is that NCCAA must use the Property to provide Head Start Programs to eligible citizens of Corpus Christi. Such uses shall at all times be in accordance with all local, state and federal requirements and laws.

5. Maintenance. During the term of this Lease, NCCAA will maintain, at its sole expense, the exterior and interior of the Facilities and any other improvements constructed on the real property leased herein, including without limitation, all fixtures connected therewith, all personal property thereon, exterior walks and driveways, and all lawn, vegetation and landscaping. Maintenance shall be of such quality as to maintain the Facilities in a first-class condition. NCCAA shall obtain, at its own expense, all building permits, all utility services, garbage collection, janitorial services and similar services.

6. NCCAA Responsibilities: NCCAA must:

(a) Pay for installing, maintaining, and use of all its utilities, including, but not limited to, water, sewer, sanitation, electricity, natural gas, and telephone.

(b) Comply with all applicable Federal, State, and local laws, regulations, and ordinances, as amended.

(c) Ensure that no pollutant, effluent, liquid or solid waste material, litter, trash, or garbage is issued from the Property or in the vicinity of the Property. NCCAA must regularly police the vicinity of the Property, for such materials and clean up and remove such materials in order to maintain the cleanliness and attractiveness of the City.

(d) Regularly inspect and maintain firefighting systems and equipment in the highest degree of readiness, and regularly conduct regular training for employees in fire prevention and emergency procedures.

(e) Pay all operating expenses incurred by NCCAA in connection with its business operations.

(f) Pay all ad valorem taxes, which may be assessed against the Property, associated with NCCAA's use of the Property prior to their past due date.

(g) It is specifically agreed that if any permit of any type is required by any federal agency or entity at any time, NCCAA, shall obtain such permit and comply with its terms. If NCCAA is unable to or fails to obtain and comply with any such permit, this Lease terminates 60 days after written notice by City to NCCAA of termination of this Lease under this provision.

(h) If NCCAA is not using the Property, City has the right to use any or all the Property for appropriate public purposes.

(i) Furnish and equip the Property. The City has no obligation to furnish any equipment or furnishings for NCCAA. All personal property furnished by NCCAA or donated by others in behalf of NCCAA will remain the property of NCCAA unless specifically donated.

(j) NCCAA will maintain, at its sole expense, the Property any other improvements on the Property, all fixtures connected therewith, all personal property thereon, exterior walks and driveways, and all lawn, vegetation and landscaping. Maintenance shall be of such quality as to maintain the Property in a first-class condition.

7. Ownership. Upon expiration of this Lease, upon termination hereof for any reason, all Improvements on the Property must be removed by NCCAA within 120 days or become the property of City.

8. Relationship. This Lease establishes a Landlord/Tenant relationship, and none other. In performing this Lease, both City and NCCAA will act in an individual capacity and not as agents, employees, partners, joint venturers, or associates of one another. The employees or agents of either party must not be, nor be construed to be, the employees or agents of the other party for any purpose whatsoever.

9. Cancellation. This Lease may be canceled by either party IF the party canceling has given the other party forty-five (45) days prior written notice of the date of cancellation.

10. Assignment or sublease. NCCAA may assign this Lease with the City Council's prior written consent, which will not be unreasonably withheld. Any attempted assignment without the prior written consent of the City Council renders this Lease void. An assignment of the Lease under the same terms and conditions is not an amendment of the Lease.

Each provision, term, covenant, obligation, and condition required to be performed by NCCAA must be binding upon any assignee, and is partial consideration for City's consent to the assignment. Any failure of assignee to strictly comply with each provision, term, covenant, obligation, and condition herein may render this Lease null and void.

11. Sanitation. NCCAA must store garbage and trash outside the Improvements. All garbage or trash must be stored in dumpster type containers. Such containers must be housed inside a small building, screened or appropriately landscaped area, all at NCCAA expense. The garbage container area must be landscaped and maintained by NCCAA. NCCAA must obtain garbage pickup no less than twice per week. Nothing must be stored outside either the dumpster itself or the dumpster housing.

12. Non-discrimination. NCCAA is responsible for the fair and just treatment of all of its employees. NCCAA warrants that it is and will continue to be an equal opportunity employer and hereby covenants that no employee or customer will be discriminated against because of race, creed, color, or national origin. Violation of this provision is grounds for the City to immediately terminate this Lease.

13. Inspection. City personnel may enter the Property, including the Improvements, at any time, to inspect or enforce this Lease, and for purposes of any fire or police action.

14. Independent Contractor. NCCAA is an independent contractor under the Lease. NCCAA must employ sufficient employees to operate the Head Start Program, which employees

are solely in the employ of NCCAA.

15. Termination. City may terminate this Lease if NCCAA fails to comply with a provision, term, covenant, obligation, or condition of the Lease, and fails or refuses to cure the default, within a reasonable time after receiving written notice of the default.

16. Notice and addresses. All notices, demands, requests, or replies provided for or permitted by this Lease must be in writing and may be delivered by any one of the following methods: (1) by personal delivery; (2) by deposit with the United States Postal Service as certified mail, return receipt requested, postage prepaid to the addresses stated below; (3) by prepaid telegram, or (4) by deposit with an overnight express delivery service at:

If to the City:

City of Corpus Christi
P.O. Box 9277
Corpus Christi, TX 78469-9277
Attn: City Manager

If to NCCAA:

Nueces County Community Action Agency
101 South Padre Island Drive
Corpus Christi, TX 78405
Attn: Chief Executive Officer

Notice deposited with the United States Postal Service in the manner described above is deemed effective on the third day after deposit. Notice by telegram or overnight express delivery service is deemed effective one business day after transmission to the telegraph company or overnight express carrier.

17. Modifications. No changes or modifications to the Lease may be made, nor any provision waived, unless in writing signed by a person duly authorized to sign agreements on behalf of each party.

18. Waiver. Any waiver by the Parties of a breach of any covenants, terms, obligations, or events of default will not be construed to be a waiver of any subsequent breach, nor may the failure to require full compliance with the Lease be construed as changing the terms of the Lease or estopping the Parties from enforcing the terms of the Lease.

19. Insurance. NCCAA must provide insurance in the amounts and types of coverages required by the City's Director of Risk Management, or his designee, ("Risk Manager"), a copy of which is attached and incorporated as "**Exhibit A**". NCCAA's insurance company(ies) must provide the Risk Manager certificate(s) of insurance 30 days prior to the annual anniversary date of the Effective Date of the Lease, which shows the level and type of insurance. NCCAA insurance company(ies) must provide the City Manager and Risk Manager 30 days' notice, by certified mail, prior to cancellation, non-renewal or material change in the insurance policy(ies).

The Risk Manager will annually assess the level and types of insurance required by the Lease. The Risk Manager can increase or decrease the level or types of insurance by giving NCCAA notice no less than 60 days prior to the annual anniversary date of the Effective Date of the Lease. NCCAA has 30 days to procure the changed insurance and provide written proof of insurance to the City Manager and the Risk Manager.

NCCAA cannot begin operation under this Lease until it provides a certificate(s) of insurance for all required insurance to the Director.

20. Indemnity. NCCAA must indemnify and hold City, its officers, agents and employees ("Indemnitees") harmless of, from, and against all claims, demands, actions, damages, losses, costs, liabilities, expenses, and judgments recovered from or asserted against Indemnitees on account of injury or damage to person or property to the extent any such damage or injury may be incident to, arise out of, or be caused, either proximately or remotely, wholly or in part, by an act or omission, negligence, or misconduct on the part of the Indemnitees and on the part of NCCAA or any of its agents, servants, employees, contractors, patrons, guests, licensees, or invitees entering upon the Property pursuant to this Lease with the expressed or implied invitation or permission of NCCAA, or when any such injury or damage is the result, proximate or remote, of the violation by Indemnitees, NCCAA, or any of its agents, servants, employees, contractors, patrons, guests, licensees, or invitees of any law, ordinance, or governmental order of any kind, or when any such injury or damage may in any other way arise from or out of the Improvements located on the Property herein or out of the use or occupancy of the Improvements to the Property or the Property itself by Indemnitees, NCCAA, its agents, servants, employees, contractors, patrons, guests, licensees, or invitees.

These terms of indemnification is effective whether such injury or damage may result from the sole negligence, contributory negligence, or concurrent negligence of Indemnitees, but not if such damage or injury results from gross negligence or willful misconduct or Indemnitees.

NCCAA covenants and agrees that if City is made a party to any litigation against NCCAA or in any litigation commenced by any party, other than NCCAA relating to this Lease, NCCAA shall defend City upon receipt of reasonable notice regarding commencement of such litigation.

21. Disclosure of Interests. In compliance with Section 2-349 of the City's Code of Ordinances, the Recipient shall complete the City's Disclosure of Interests form, which is attached to this Agreement as **Exhibit B**, the contents of which, as a completed form, are incorporated in this document by reference as if fully set out in this Agreement.

NCCAA agrees to comply with Chapter 176 of the Texas Local Government Code and file Form CIQ with the City Secretary's Office, if required. For more information and to determine if you need to file a Form CIQ, please review the information on the City Secretary's website at <http://www.cctexas.com/government/city-secretary/conflict-disclosure/index>

22. Certificate of Interested Parties. (Exhibit C). NCCAA agrees to comply with Texas Government Code section 2252.908 and complete Form 1295 Certificate of Interested Parties as part of this agreement.

Form 1295 must be electronically filed with the Texas Ethics Commission at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. The form must then be printed, signed, notarized and filed with the City. For more information, please review the Texas Ethics Commission Rules at <https://www.ethics.state.tx.us/legal/ch46.html>.

23. Taxes. NCCAA must pay all taxes and all other licenses and fees required to operate and maintain operations which NCCAA's use of the Property causes to be assessed against the Property and any Fixed Assets or Personal Property appurtenant thereto, prior to the due date.

Further, NCCAA covenants to pay payroll taxes, Medicare truces, FICA taxes, unemployment taxes, and all other related taxes according to Circular E Employer's Tax Guide, publication 15, as it may be amended, prior to their respective due dates. NCCAA must provide proof of payment of these truces within 30 days after City Manager requests proof of payment. Failure to pay or provide proof of payment is grounds to terminate this Lease.

24. Publication. NCCAA must pay the costs of newspaper publication of this Lease and related ordinance as required by the City Charter.

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

The headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision.

26. Entire Agreement. This document and the exhibits attached constitute the entire agreement between the City and NCCAA. All other agreements, unless contained in this Lease are expressly revoked, as it is the intention of the parties to provide for a complete understanding within the provisions of this document, and the exhibits attached hereto, the terms, conditions, promises and covenants relating to NCCAA's operation and the demised premises to be used in the conduct of the enterprise. The unenforceability, invalidity, or illegality of any provision of this agreement shall not render the other provisions unenforceable, invalid, or illegal.

EXECUTED IN DUPLICATE ORIGINALS this ____ day of _____, 2017, by the authorized representatives of the parties.

Nueces County Community Action Agency

Alma A. Barrera, Chief Executive Officer

ATTEST:

City of Corpus Christi, Texas

Rebecca Huerta, City Secretary

Margie C. Rose, City Manager

Legal Form approved _____, 2017; Miles Risley, City Attorney.

By: _____
Yvette Aguilar, Assistant City Attorney

STATE OF TEXAS §
COUNTY OF NUECES §

This instrument was acknowledged before me on the _____ day of _____, 2017, by Margie C. Rose, City Manager of the City of Corpus Christi, a Texas municipal corporation, on behalf of said corporation.

Notary Public State of Texas

STATE OF TEXAS §
COUNTY OF NUECES §

This instrument was acknowledged before me on the _____ day of _____, 2017, by Alma A. Barrera, as Chief Executive Officer of the Nueces County Community Action Agency, a Texas non-profit corporation, on behalf of said corporation.

Notary Public State of Texas

EXHIBIT A

INSURANCE REQUIREMENTS

I. LESSEE’S LIABILITY INSURANCE

- A. Lessee must not use City property under this agreement until all insurance required has been obtained and such insurance has been approved by the City.
- B. Lessee must furnish to the City’s Risk Manager 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 **by endorsement**, and a waiver of subrogation **endorsement** is required on GL. **Endorsements** must be provided with Certificate of Insurance. Project name and/or number must be listed in Description Box of Certificate of Insurance. **Endorsements** must be provided with 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 Lessees 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence
PERSONAL PROPERTY Coverage	Lessee is responsible for insuring personal property kept on City 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. 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.
- B. Lessee shall be required to submit copies of certificate of insurance to City at the address provided below within 10 days of any change of coverages.

City of Corpus Christi
Attn: Risk Manager
P.O. Box 9277
Corpus Christi, TX 78469-9277

- C. **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;
 - 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.
- D. 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.
- E. 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 cease activities hereunder, until Lessee demonstrates compliance with the requirements hereof.
- F. 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 use of City's property covered under this agreement.
- G. 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.
- H. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

2016 Insurance Requirements
Parks and Recreation
Sports League Lease Agreements
11/16/2016 cg Risk Management

EXHIBIT C
ATTACH FORM 1295