

AGREEMENT BETWEEN CITY OF CORPUS CHRISTI AND NAS CORPUS CHRISTI AVIATOR MEMORIAL ASSOCIATION FOR DONATION AND ACCEPTANCE OF A REPRODUCTION STATUE

RECITALS

THIS AGREEMENT ("Agreement"), is made this 10/28/2015 day of _____, 2015, by and between the City of Corpus Christi ("the City"), and NAS Corpus Christi Aviator Memorial Association ("Donor"), for the purpose of establishing a contractual relationship under which Donor will procure and donate, deliver and install, and the City will accept, a 7-foot bronze aviator statue including lighting, pedestal, and a walkway, for display on City property at the Ropes Park, Corpus Christi, Texas.

WHEREAS, Donor's agent has provided a letter to the City outlining the Donor's offer to commission the creation of a reproduction cast bronze statute ("the Statue") from Total Statue ("the Artist") with the intention of donating the same to the City as a gift; and

WHEREAS, the City and Donor (collectively "the Parties") desire to formalize their contractual relationship regarding the procurement and transfer of the Statue, and to define their rights, obligations and liabilities therefore;


NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

1. Donation of Statue, lighting, pedestal, and walkway. Donor agrees to procure and donate the Statue to the City, and the City agrees to accept the Statue, according to the terms of this Agreement. In addition, Donor agrees to procure and donate the support pedestal, lighting, and a walkway, for City Manager review of plans and acceptance.

2. Specifications of Statue. The Statue shall be a bronze-case creation by DeeJay Bawden (the "Artist") of Total Statue, as shown and represented in the drawings and photos included as Exhibit 1, attached to this agreement and herein incorporated.

The Statue shall include a plaque identifying the Artist and recognizing the Donor. The actual size, design, and wording of the explanatory plaque shall be subject to the final approval of the City Director of Parks and Recreation, whose approval shall not be unreasonably withheld. Donor shall ensure that the Statue and pedestal are engineered for structural integrity and windstorm certified.

3. Donor's Responsibilities. Donor shall procure and donate the Statue (including lighting, pedestal, and walkway) to the City no later than 24 months after the signing of the contract with Total Statue, but in no event no later than 30 months after the signing of this Agreement by the City of Corpus Christi. The City Director of Parks and Recreation is authorized to approve extensions to these timelines. 

Donor shall provide City Director with original signed letter from the Artist in which the Artist grants to the City an unlimited license to graphically reproduce the Statue for municipal noncommercial purposes in City brochures, catalogs, and use in any City media or other City publications. City shall endeavor to include the Artist name and Statue title in the City publications or reproductions. This provision shall survive termination or expiration of this agreement.

Donor shall be solely and exclusively responsible for contacting, communicating with, and coordinating delivery of the Statue from the Artist to the City.

Donor shall be solely and exclusively responsible for all costs related to procurement, delivery, and installation of the Statue, and the lighting, pedestal, and adjacent walkway components.

Donor shall be responsible for maintaining statue, lighting and walkway. This provision shall survive termination or expiration of this Agreement.

Donor shall ensure that all work performed on the City property complies with all applicable City, State, and Federal codes, statutes, ordinances and regulations.

4. City's Responsibilities. The City shall accept delivery, receipt and ownership for the Statue at a mutually acceptable time and place.

5. Project Site. Donor shall arrange for the delivery and installation of the Statue and associated pedestal, lighting and walkway, at the location in Ropes Park as depicted in the attached Exhibit 2. Should Engineering Services or Utility staff determine that this location is not suitable for the installation due to engineering structural analysis or impact to City utility infrastructure, then the Director of Parks and Recreation is authorized to work with Donor to identify another more suitable location within Ropes Park for placement of the Statue.

6. Risk of Loss or Damage. Donor shall be solely responsible and assume all risk of loss or damage to the Statue until receipt and acceptance thereof by the City. Acceptance by the City shall occur after delivery and successful installation at the project site.

7. Installation of Statue. Donor shall insure that its contractor hired by Donor to install the Statue presents and reviews the construction plans with the Engineering and Parks and Recreation Departments for their prior approval. Donor must include, in all construction contracts entered into for the installation of the Statue and any additional components described herein, a provision requiring the Donor's contractor, to indemnify, hold harmless, defend and insure City, including its officers, agents, and employees, against the risk of legal liability for death, injury or damage to persons or property, direct or consequential, arising or alleged to arise out of, or in connection with, the performance of any or all of the work, whether the claims and demands made are just or unjust, unless same are caused by the gross negligence or willful act of City, its officers, agents, or employees.

Donor shall require Contractor to obtain the insurance described in the attached Exhibit 3 and applicable permits prior to beginning work on City property.

8. Relationship of Parties. No agent, employee, representative or subcontractor of Donor shall be deemed to be the employee, agent, representative or subcontractor of the City. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance and unemployment insurance, are available from the City to Donor or its employees, agents, representatives or subcontractors. Donor will be solely and entirely responsible for its acts and for the acts of Donor's agents, employees, representatives and subcontractors during the performance of this Agreement.

9. Expiration; Termination. This Agreement shall expire automatically upon the City's receipt and acceptance of the Statue. Once the commission contract is signed with the artist, neither the City nor the Donor can terminate this agreement.

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

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

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

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

14. Written Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed below. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereinafter specified in writing.

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

16. Resolution of Disputes, Governing Law. Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall be referred to the City Manager, whose decision shall be final. In the event of litigation arising out of this Agreement, the prevailing party shall be reimbursed for its reasonable attorney fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year above written.

CITY OF CORPUS CHRISTI

By: _____
Ronald L. Olson, City Manager

CITY CONTACT
City Manager
1201 Leopard St
Corpus Christi, Texas 78401

Approved as to legal form:
By: Lisa Aguilar
Lisa Aguilar, Assistant City Attorney
for the City Attorney

NAS Corpus Christi Aviator Memorial Association

By: [Signature]
Title: CO-FOUNDER

DONOR MAILING ADDRESS:

6830 Wall Street
Corpus Christi, Texas 78414

Artist Contact Address:

DeeJay Bawden
Total Statue
900 N. Main
Provo, Utah 84663

Exhibit 1

NAS CORPUS CHRISTI AVIATOR MEMORIAL ASSOCIATION



*Rough design
sketch
#3*

7' Aviator

*J. B. Bantam
©'13*

Aviator Memorial Proposal

Prepared for: City of Corpus Christi, Parks & Recreation Department
Prepared by: LCDR Chris Keech Co-Founder NAS Corpus Christi AMA
March 16, 2015
Proposal number: 001

EXECUTIVE SUMMARY

Background

NAS Corpus Christi Aviator Memorial Association (NASCC AMA) is a Corpus Christi-based non-profit organization founded with the goal of honoring those aviators who have paid the ultimate price in service to our Country.

Goals

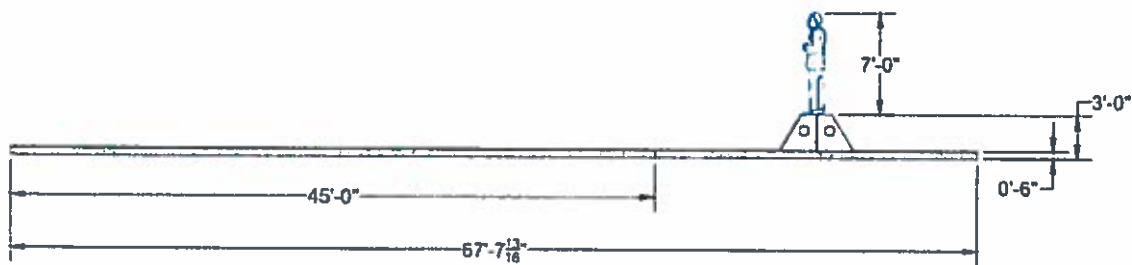
Our plan is two-fold, the first of which is to build a memorial in Corpus Christi in honor of our fallen brethren. The memorial will be a 7-foot bronze aviator statue on a 2-foot pedestal surrounded by a brick walkway leading up to it. This is a reproduction statue made by Total Statue out of Provo, Utah. We will be using the design of our sister memorial association in Lemoore, California. After completion of the memorial, any remaining funds will be put into a scholarship fund for the children of our fallen brothers and sisters.

Solution

We are currently researching sites both on and off base and are interested in a possible location within Sherrill Park. If approved, the memorial would be funded by the Aviator Memorial Association and placed on City-owned land. Our donors would be able to place their personalized memorial bricks in the brick walkway to show how they were a part of making this memorial a reality.

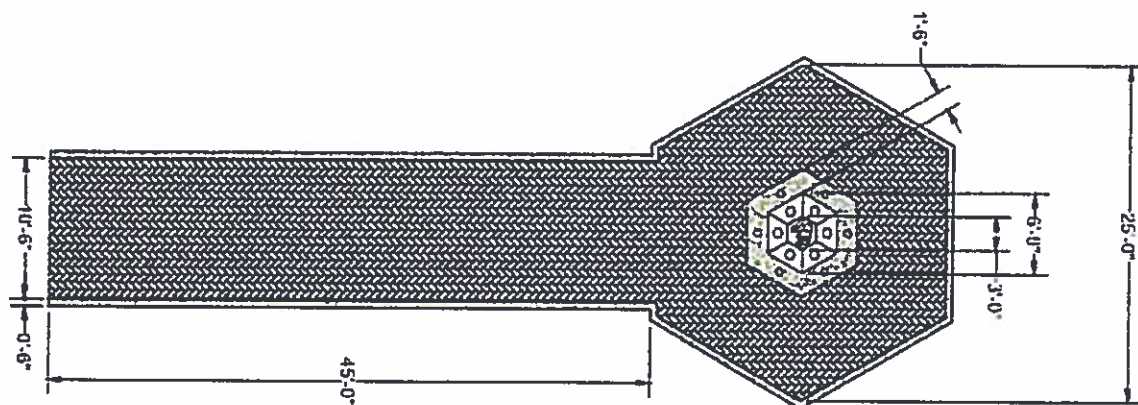
The Memorial

The following is our vision for the Memorial. All measurements are tentative in nature and can be changed to accommodate the space available, statue weight, etc.



Side view of the Memorial.

NAS CORPUS CHRISTI AVIATOR MEMORIAL ASSOCIATION

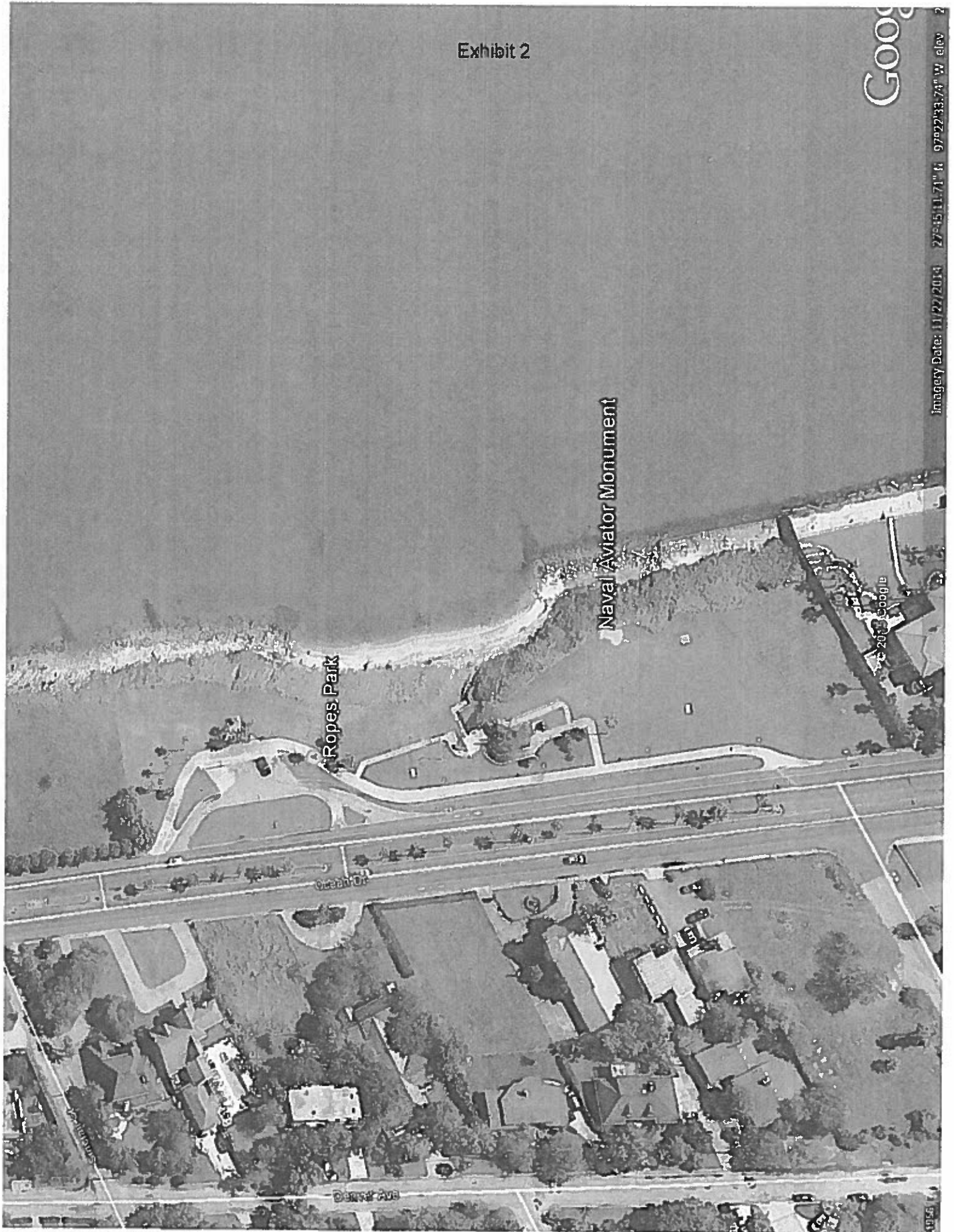


Top view of the Memorial.



Bronze aviator statue courtesy of NAS Lemoore AMA.

Exhibit 2



Google

Imagery Date: 11/22/2014 27°45'11.71" N 97°02'33.74" W elev 2'

Ropes Park

Naval Aviator Monument

Geacht Dr

Denny Ave

© 2015 Google

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EXHIBIT 3

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

- A. Contractor must not commence work under this contract until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor, to commence work until all similar insurance required of any subcontractor has been obtained.
- B. Contractor must furnish to the City's Risk Manager and Director of Parks and Recreation Department one (1) copy of Certificates of Insurance with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. **The City must be listed as an additional insured on the General Liability and Auto Liability policies, and a waiver of subrogation is required on all applicable policies. Endorsements must be provided with Certificate of Insurance. Project name and/or number must be listed in Description Box of Certificate of Insurance.**

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-day advance written notice of cancellation, non-renewal, material change or termination required on all certificates and policies.	Bodily Injury and Property Damage Per occurrence - aggregate
COMMERCIAL GENERAL LIABILITY including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$500,000 Per Occurrence
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$500,000 Combined Single Limit
WORKERS'S COMPENSATION (All States Endorsement if Company is not domiciled in Texas)	Statutory and complies with Part II of this Exhibit.
Employer's Liability	\$500,000/\$500,000/\$500,000
INSTALLATION FLOATER	Coverage shall be in the amount of the appraised value of statue. Coverage shall cover transportation of statue from point of origin thru installation and acceptance of City of Corpus Christi, Parks and Recreation Director.

- C. In the event of accidents of any kind related to this contract, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

II. ADDITIONAL REQUIREMENTS

- A. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in statutory amounts according to the Texas Department of Insurance, Division of Workers' Compensation. An All States Endorsement shall be required if Contractor is not domiciled in the State of Texas.
- B. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
- C. Contractor shall be required to submit renewal certificates of insurance throughout the term of this contract and any extensions within 10 days of the policy expiration dates. All notices under this Exhibit shall be given to City at the following address:

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

- D. **Contractor agrees that, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
- List the City and its officers, officials, employees, and volunteers, as additional insureds by endorsement with regard to operations, completed operations, and activities of or on behalf of the named insured performed under contract with the City, with the exception of the workers' compensation policy;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide thirty (30) calendar days advance written notice directly to City of any, cancellation, non-renewal, material change or termination in coverage and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- E. Within five (5) calendar days of a cancellation, non-renewal, material change or termination of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- F. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this contract.

- H. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this contract.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

2015 Insurance Requirements
Parks and Recreation Department
Aviator Memorial – Statue Agreement
10/21/2015 ds Risk Management