

AGREEMENT BETWEEN CITY OF CORPUS CHRISTI AND  
CITY OF CC SSN-705 SUBMARINE MEMORIAL, INC.  
FOR PLACEMENT AND MAINTENANCE OF THE  
"USS CITY OF CORPUS CHRISTI" SUBMARINE SAIL  
AT SHERRILL VETERANS MEMORIAL PARK

THIS AGREEMENT FOR PLACEMENT AND MAINTENANCE OF THE "USS CITY OF CORPUS CHRISTI" SUBMARINE SAIL AT SHERRILL VETERANS MEMORIAL PARK ("Agreement"), is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Corpus Christi ("the City"), and City of CC SSN-705 Submarine Memorial, Inc. ("Donor"), under which Donor will procure, deliver, and install, and the City will allow placement of the "USS City of Corpus Christi" submarine sail, (the "Sail") for display on City property at the Sherrill Veterans Memorial Park, Corpus Christi, Texas.

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

TERMS

**1. License to Place Submarine Sail.** Donor agrees to work with the United States Navy ("Navy") and obtain the right to display and maintain the Sail from the submarine USS City of Corpus Christi as a memorial and tribute to the submariners who served her. In addition, Donor agrees to install and maintain the Sail at a mutually agreed-upon location within the Sherrill Memorial Veterans Park. City hereby licenses to Donor the right to place the Sail in such agreed-upon location. This license is effective from the time that Donor obtains the right from the Navy to place the Sail at the location until terminated in accordance with this Agreement.

**2. Specifications of Sail.** The Sail is as shown and represented in the photos included as Exhibit 1, attached to this agreement and herein incorporated. Donor will provide to City signed and sealed plans for the location of the Sail and any decorative landscaping. The Sail may not be placed in the agreed-upon location until the City approves the plans. City may also inspect the Sail and accompanying features once it is placed in the Park and require re-work of any work that does not comply with the agreed-upon plans and specifications. Donor shall ensure that any accompanying pedestal is engineered for structural integrity and windstorm certified. While the current intent is for Donor to contract for the installation of the Sail in accordance with City requirements, the parties may, in an executed amendment or other written agreement, agree to a different arrangement, including allowing the City to procure a contractor to install the Sail with funds provided by Donor.

**3. Donor's Plaque.** The Sail shall include a plaque 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.

**4. Donor's Timeline for Completion.** Donor shall procure the Sail no later than 24 months after the signing of this Agreement by the City of Corpus Christi and shall install the Sail at a time agreed to by the parties with the understanding that Donor must diligently work toward the completion of plans and the installation of the Sail once the Sail is in Donor's possession. The Director of Parks and Recreation is authorized to approve extensions to these timelines.

**5. Donor's Responsibilities.**

- a. Donor shall be solely and exclusively responsible contacting, communicating with, and coordinating delivery of the Sail. Donor shall be solely and exclusively responsible for all costs related to procurement, delivery, installation and maintenance of the Sail. Donor shall ensure that any construction materials used on City property matches or is closely similar to the materials currently used at the site.
- b. Donor shall be responsible for maintaining all components related to the Sail including but not limited to the Sail, Donor's plaque and walkway. If Donor fails to adequately maintain the Sail and all components related thereto, the City may, upon 30-days' written notice and opportunity to cure, terminate this Agreement.
- c. Donor shall maintain a dedicated fund exclusively for the purpose of maintaining the Sail and the components related thereto. Such fund shall be kept in a separate bank account, unmixed with any other funds of Donor. The City shall have the right, upon reasonable notice and at the City's expense, to audit records of the fund for purposes of determining if adequate funds are available for this maintenance obligation.
- d. Donor shall provide a preliminary maintenance schedule for the approval of the City's Director of Parks and Recreation within 90 days after the receipt of the Sail from the Navy. Prior to installation of the Sail, Donor will provide a final, detailed maintenance schedule to the City's Director of Parks and Recreation for approval. Once such maintenance schedule is reviewed and approved, Donor must comply with all requirements of the maintenance schedule. In maintaining the Sail, Donor must use paint and materials that are appropriate for the environment and resistant to graffiti or other vandalism. The maintenance schedule may be amended from time to time with the written approval of both Parties. Any changes that include an impact to the City's budget may require City Council approval.

- e. Donor shall provide a maintenance bond, in a form approved by the City Attorney, in an amount sufficient to cover six months of routine maintenance on the Sail, as determined by the approved maintenance schedule. Such maintenance bond must be provided prior to the installation of the Sail and renewed annually with the amount updated based on inflation and the approved maintenance schedule.

**6. Compliance with laws.** Donor shall ensure that all work performed on the City property complies with all applicable City, State, and Federal codes, statutes, ordinances, and regulations. Donor shall be responsible to obtain all required permits prior to performing any work at the Project Site.

**7. Termination.** Either Party may terminate this Agreement at any time upon 90-days' written notice. Donor will, within 90 days following the end of any notice or cure period and at its own expense, remove the Sail and all components related thereto and restore the City's property to approximately the same condition as it was in prior to the installation of the Sail and its related components.

**8. Project Site.** Donor shall arrange for the delivery and installation of the Sail and any accompanying pedestal at the location in Sherrill Park as depicted in the attached Exhibit 2 (the "Project Site"). Should City Parks and Recreation, Engineering, or Corpus Christi Water staff determine that this location is not suitable for the installation due to engineering structural analysis or impact to City utility infrastructure, or other reason, then the Director of Parks and Recreation is authorized to work with Donor to identify another more suitable location for placement of the Sail.

**9. City's Responsibilities.** The City shall accept delivery, receipt and conservatorship for the sail from the Donor at a mutually acceptable time and place.

**10. Risk of Loss or Damage.** Donor shall be solely responsible and assume all risk of loss or damage to the Sail, including any loss due to a natural or man-made disaster, and shall maintain adequate property insurance on the Sail. In the event that the Sail is damaged or destroyed, Donor must repair or remove the Sail as soon as practicable after notice from the City of the requirement for repair or removal if repair is not practical. In no event will the time allowed for the repair or removal of the Sail exceed one year without written authorization of the City's Director of Parks and Recreation.

**11. Installation of Sail.** Donor shall insure that its engineer and its contractor hired by Donor to design and install the Sail and associated components presents and reviews the engineering plans and 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 Sail 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.

Further, Donor must include, in all construction contracts entered into for the installation of the Sail and any additional components described herein, a requirement that the contractor(s) comply with the bonding requirements in Chapter 2253 of the Texas Government Code, including the requirement to provide a payment bond for all agreements in excess of \$50,000 and a performance bond for all agreements in excess of \$100,000.

Donor must allow the City's Engineering Department to inspect the Sail and the construction and installation work throughout the installation process and upon completion of the installation and construction. Donor must make repairs and alterations as required by the City's Engineering Department until the final construction and installation is completed and the work approved by the City's Engineering Department.

**12. Insurance and Waivers.** Donor shall require all of its contractors to obtain the insurance described in the attached Exhibit 3 and applicable permits prior to beginning work on City property. Donor shall include in all contracts related to the Sail a requirement that the contractor require all subcontractors to obtain the insurance described in the attached Exhibit 3 and applicable permits prior to beginning work on City property. Further, Donor acknowledges that the City is not responsible for any damage to the Sail and will not provide property insurance coverage for the Sail. Donor understands that the City will not provide insurance coverage for the Sail. Donor will require all volunteers or employees to sign a liability waiver in a form approved by the City Attorney prior to beginning any work on City property. Donor will limit any work done by employees or volunteers to routine maintenance, such as cleaning and painting, and will not make any capital improvements or repairs except through a qualified contractor who has provided the required insurance described in the attached Exhibit 3.

**13. Relationship of Parties.** No agent, employee, representative or contractor of Donor shall be deemed to be the employee, agent, representative or contractor 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 contractors. City is not responsible for the acts of Donor's agents, employees, representatives, contractors, or volunteers.

***14. 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. The provisions of this section shall survive the expiration or termination of this Agreement.**

**15. 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.

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

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

**18. 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.

**19. 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.

**20. Disclosure of Interests.** Donor agrees to comply with City of Corpus Christi Ordinance No. 17112 and complete the *Disclosure of Interests* form as part of this Agreement. Donor agrees to comply with Texas Government Code section 2252.908 and complete Form 1295 Certificate of Interested Parties as part of this Agreement. For more information, please review the information on the Texas Ethics Commission website at <https://www.ethics.state.tx.us>. Donor 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>.

**21. 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: \_\_\_\_\_

Name: Heather Hurlbert

Title: Assistant City Manager

Date: \_\_\_\_\_

Approved as to Legal Form:

By: \_\_\_\_\_

Aimee Alcorn-Reed, Assistant City Attorney  
for the City Attorney

Address:

City of Corpus Christi  
Attn: Director of Parks and Recreation  
1201 Leopard Street  
Corpus Christi, TX 78401

USS City of Corpus Christi SSN-705 Submarine Memorial, Inc.

BY: 

NAME: Glenn MacDonald

TITLE: Director

DATE: 22 NOV 23

DONOR MAILING ADDRESS:

PO Box 60014

Corpus Christi, Texas 78466

## EXHIBIT 1



### Physical Description SSN705

**Length: 26 ft 3 In**

**Height: 17 ft**

**Width: 5ft (excluding fairwater planes)**

**30 ft (including fairwater planes)**

**Weight: approx. 120,000 lbs (60 tons) with fairwater planes installed**



**EXHIBIT 2**

**Insert Master Plan from the City.**



**EXHIBIT 3  
INSURANCE REQUIREMENTS**

**I. DONOR’S LIABILITY INSURANCE**

- A. Donor must not commence work under this contract until all insurance required has been obtained and such insurance has been approved by the City. Donor must not allow any subcontractor, to commence work until all similar insurance required of the subcontractor has been obtained.
- B. Donor must furnish to the City’s Risk Manager and Contract Administrator 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 **by endorsement**, and a waiver of subrogation **endorsement** 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
<b>30-day advance written notice of cancellation, non-renewal, material change or termination required on all certificates and policies.</b>	<b>Bodily Injury and Property Damage</b> Per occurrence - aggregate
COMMERCIAL LIABILITY including: GENERAL 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$500,000 Combined Single Limit
WORKERS’S COMPENSATION (All States Endorsement if Company is not domiciled in Texas)  Employer’s Liability	Statutory and complies with Part II of this Exhibit.  \$500,000/\$500,000/\$500,000

PROFESSIONAL LIABILITY (Errors and Omissions)  (Required for Engineering Services)	\$1,000,000 Per Claim (Defense costs not included in face value of the policy) If claims made policy, retro date must be prior to inception of agreement, have extended reporting period provisions and identify any limitations regarding who is insured.
POLLUTION LIABILITY Including Cleanup and Remediation  (If Applicable)	\$1,000,000 Per Incident Limit
RIGGERS' LIABILITY  (If Applicable)	\$1,000,000 Per Occurrence

- C. In the event of accidents of any kind related to this contract, Donor 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, Donor 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 Donor is not domiciled in the State of Texas.
- B. Donor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Donor'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. Donor 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. **Donor 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, Donor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Donor'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 Donor'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 Donor to stop work hereunder, and/or withhold any payment(s) which become due to Donor hereunder until Donor demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Donor may be held responsible for payments of damages to persons or property resulting from Donor's or its subcontractor's performance of the work covered under this contract.
- H. It is agreed that Donor'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.

12/15/2022 Risk Management – Legal Dept.

**Note:** This Exhibit is subject to change based on the final scope of operations. Upon determining the full scope of operations, Risk Management will perform a final assessment and apply adjustments to insurance coverages and limits where necessary.