

- B. Permittee may not assign this Agreement without the City Manager's prior written consent.
- C. Permittee must submit a detailed description of its planned use of the Property, including drawings showing the specific location where the equipment identified in Paragraph 2 will be installed and specifications for the fireworks that will be used, to the City's Fire Marshall and Wastewater Director.

D. *INDEMNIFICATION.*

(1) *TO THE EXTENT ALLOWED BY TEXAS LAW, PERMITTEE, ITS OFFICERS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONTRACTOR AND LICENSEES (HEREINAFTER CALLED "PERMITTEE" FOR PURPOSES OF THIS SUBPARAGRAPH) SHALL FULLY INDEMNIFY, SAVE, AND HOLD HARMLESS THE CITY OF CORPUS CHRISTI, ITS OFFICERS, EMPLOYEES, AGENTS, LICENSEES, AND INVITEES ("INDEMNITEES") AGAINST ANY AND ALL LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, AND ACTIONS OF ANY NATURE WHATSOEVER ON ACCOUNT OF PERSONAL INJURIES (INCLUDING, WITHOUT LIMITATION ON THE FOREGOING, WORKERS' COMPENSATION AND DEATH CLAIMS), OR PROPERTY LOSS, OR DAMAGE OF ANY KIND WHATSOEVER, WHICH ARISE OUT OF OR ARE IN ANY MANNER CONNECTED WITH, OR ARE CLAIMED TO ARISE OUT OF OR BE IN ANY MANNER CONNECTED WITH THE USE OF THE PROPERTY UNDER THIS AGREEMENT, INCLUDING SAID INJURY, LOSS OR DAMAGE CAUSED BY THE SOLE OR CONTRIBUTORY NEGLIGENCE OF THE INDEMNITEES OR ANY OF THEM. PERMITTEE MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL THOSE CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO INDEMNITEES AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COST AND EXPENSES OF ANY KIND ARISING FROM ANY OF SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, OR ACTIONS.*

(2) *EXCEPT AS OTHERWISE EXPRESSLY LIMITED BY THIS AGREEMENT, IT IS THE INTENT OF THE PARTIES TO THIS AGREEMENT THAT ALL INDEMNITY OBLIGATIONS AND LIABILITIES ASSUMED UNDER THE TERMS OF THIS AGREEMENT BE WITHOUT MONETARY LIMIT AND WITHOUT REGARD TO THE CAUSE OR CAUSES, INCLUDING PREEXISTING CONDITIONS. THE INDEMNITY CONTAINED IN THIS SUBPARAGRAPH D APPLIES, WITHOUT LIMITATIONS, TO ANY VIOLATION OF ANY APPLICABLE ENVIRONMENTAL LAW IN EFFECT DURING THE TERM OF THIS AGREEMENT, INCLUDING ANY EXTENSIONS, AND ANY AND ALL*

MATTERS ARISING OUT OF ANY ACT, OMISSION, EVENT OR CIRCUMSTANCE EXISTING OR OCCURRING DURING THE TERM OF THIS AGREEMENT, INCLUDING ANY EXTENSIONS (INCLUDING WITHOUT LIMITATION THE PRESENCE ON THE PROPERTY OR RELEASE FROM THE PROPERTY OF HAZARDOUS SUBSTANCES OR SOLID WASTE DISPOSED OF OR OTHERWISE RELEASED PRIOR TO THE RELEASE DATE), REGARDLESS OF WHETHER THE ACT, OMISSION, EVENT, OR CIRCUMSTANCE CONSTITUTED A VIOLATION OF ANY APPLICABLE ENVIRONMENTAL LAW OR REGULATION AT THE TIME OF ITS EXISTENCE OR OCCURRENCE.

THE TERMS "HAZARDOUS SUBSTANCE" AND "RELEASE" SHALL HAVE THE MEANINGS SPECIFIED IN COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 ("CERCLA"), AS AMENDED, AND THE TERMS "SOLID WASTE" AND "DISPOSED" SHALL HAVE THE MEANINGS SPECIFIED IN RESOURCE CONSERVATION AND RECOVERY ACT OF 1976 ("RCRA"), AS AMENDED; PROVIDED, IN THE EVENT EITHER CERCLA OR RCRA IS AMENDED SO AS TO BROADEN THE MEANING OF ANY TERM DEFINED BY THOSE ACTS, SUCH BROADER MEANING SHALL APPLY SUBSEQUENT TO THE EFFECTIVE DATE OF SUCH AMENDMENT AND PROVIDED FURTHER, TO THE EXTENT THAT THE LAWS OF THE STATE OF TEXAS ESTABLISH A MEANING FOR "HAZARDOUS SUBSTANCE," "RELEASE," OR "SOLID WASTE," OR "DISPOSAL" WHICH IS BROADER THAN THAT SPECIFIED IN EITHER CERCLA OR RCRA, SUCH BROADER MEANING SHALL APPLY.

(3) IF ANY SUBSTANCES DISCHARGED BY THE PERMITTEE OR ANY SUBSTANCES THAT RESULT FROM THE COMBUSTION OF SUBSTANCES DISCHARGED BY THE PERMITTEE, WHETHER THE SUBSTANCES ARE DISCHARGED FROM THE PROPERTY OR AREAS ADJACENT TO THE PROPERTY, FALL INTO OR OTHERWISE ENTER ANY OF THE CITY'S WASTEWATER TREATMENT WORKS AND INTERFERE WITH THE TREATMENT PROCESS OR CAUSE THE EFFLUENT PRODUCED BY THE TREATMENT WORKS NOT TO MEET THE STANDARDS FOR EFFLUENT AUTHORIZED UNDER THE CITY'S CURRENT PERMITS FROM THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY OR TEXAS NATURAL RESOURCE CONSERVATION COMMISSION, THE PERMITTEE SHALL FULLY INDEMNIFY, SAVE, AND HOLD HARMLESS THE CITY OF CORPUS CHRISTI, ITS OFFICERS, AND EMPLOYEES AGAINST ANY AND ALL CIVIL AND ADMINISTRATIVE PENALTIES AND CRIMINAL FINES THAT RESULT FROM THE DISCHARGE OF EFFLUENT THAT DOES NOT MEET THE TERMS OF THE CITY'S NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM PERMIT OR TEXAS POLLUTION DISCHARGE ELIMINATION SYSTEM PERMIT AND SHALL BEAR ALL

COSTS INVOLVED WITH BRINGING THE WHITECAP WASTE WATER TREATMENT PLANT BACK INTO COMPLIANCE WITH ITS PERMITS.

- E. Permittee must acquire and maintain commercial general liability insurance pertaining to the use of the Property and the any activities related to the use of the property authorized by this Agreement, in the minimum amounts of insurance shown in Exhibit B, which is the attached to and incorporated into this Agreement. The insurance policies must show the City and Padre Island Yacht Club as a named additional insured. Upon City Managers written request, Permittee shall provide copies of all insurance policies to the City's Risk Manager. Unless the City's Risk Manager is given 30 days advance written notice, the policies shall be renewed (or replaced with comparable replacement policies) and may not be canceled or materially changed.
- F. Permittee's use of the Property may not interfere with the operation of the City's Wastewater Treatment Plant ("Plant"). Any construction or equipment installed by Permittee must be removed by the Permittee and the Property restored to its original condition before this Agreement expires.
- G. If City needs access to the Property, Permittee must pay for removing or relocating any improvements or equipment, to allow access to the Plant or any utility lines for repair, replacement, or maintenance of the utility lines.
- H. Permittee must consult with City Traffic Engineering Office for traffic control plan. Permittee may not close or barricade a public street, or any portion of the public street until the Permittee or his contractor has filed an approved traffic control plan with City's Traffic Engineering Office and paid applicable street closure, Traffic Control, and Traffic Engineering permit fees.
- I. Permittee must pay to maintain or repair the Property being used at all times, regardless of the type of damage that may occur, within 24 hours of notice of damage to Permittee.
- J. Permittee must comply with all applicable Federal, State, and local laws and regulations, as may be amended.
- K. Before digging or doing any excavation on the Property, Permittee must verify depth and location of existing Water, Wastewater, Gas, AEP (C.P.& L.), Southwestern Bell Telephone., Time Warner, and Grande Communications lines, as well as all other telecommunication providers in the area. Prior to the start of any excavation, the Permittee or Permittee's Agent must call the Texas One Call System, at (800) 245-4545, 1-800-DIG-TESS, and Lone Star Notification Center, at (800) 669-8344, for

locations of existing utilities. A City Inspector may request a utility line be uncovered to verify its depth or location.

- L. Permittee may not begin work without 48 hours prior notice to the AEP (C.P.& L), S.W.B.T., Grande Communications, Time Warner, Water, Gas, Storm Water, and Wastewater Divisions along with the telecommunication providers in the area.
- M. Permittee must properly tamp backfill around existing utilities in accordance with the City of Corpus Christi Standard Specifications, including City Water Distribution System Standards.
- N. If damage occurs to any gas, storm water or wastewater line, as determined by the City's representative, a City Gas, Water, or Wastewater Division crew will be brought in and allowed immediately to make all repairs. All City's costs (labor and materials) associated with the repairs must be paid by the Permittee within 30 days of City Manager's invoice thereof. City's representatives will determine the extent of damage and amount of repairs to the utility line(s).
- O. Prior to utilizing the Premises, Permittee must obtain all required Federal, State and Local permits, including but not limited to the fireworks permit from the Corpus Christi Fire Department.
- P. Permittee must take every precaution not to disturb the soil surrounding any existing water or wastewater line, including all thrust blocks.
- Q. Damage to any City property, or driveways, culverts, head walls and any other structure, public or private, must be repaired by the Permittee at his expense within 30 days after being notified of damage to same.
- R. Permittee may not store or leave any equipment or material in City Property overnight.
- S. Permittee must notify Wastewater Director, or his designee, at least 24 hours prior to starting work.
- T. The Permittee must provide proper safety and security devices to prevent possible injuries or accidents. No open trenches or pits may be left overnight. All trenches must be backfilled promptly, the backfill properly compacted, surface restored, and the work done in a neat and workmanlike manner.
- U. Barrel type barricades, approved by City's Traffic Engineering Office, will be placed adjacent to all open pits at Permittee's expense.

V. Because the Property is in full view of the public, it must be maintained in neat and orderly fashion without visible trash, paper and other unsightly debris.

6. This agreement takes effect on date of last signature.

IN TESTIMONY WHEREOF, the City of Corpus Christi has caused these presents to be executed on this the ____ day of _____, 2013.

ATTEST:

CITY OF CORPUS CHRISTI

Armando Chapa
City Secretary

By: _____
Ronald L. Olson
City Manager

The Permittee, Jerry Watkins, agrees to keep and perform the conditions and be bound by all of the terms imposed by the Use Privilege Agreement.

By: Jerry Watkins
Jerry Watkins
Date: 3-7-2013

The fireworks contractor, Zambelli Fireworks, agrees to keep and perform the conditions and be bound by all of the terms imposed by the Use Privilege Agreement.

By: Zambelli E. Cypriello
Name: Zambelli & Cypriello
Title: Project Manager, Salina
Date: 3-5-2013

Exhibit A
Site Map

EXHIBIT B**INSURANCE REQUIREMENTS****I. PERMITTEE'S LIABILITY INSURANCE**

- A. Permittee must not commence work under this agreement until all insurance required herein has been obtained and such insurance has been approved by the City. Permittee must not allow any subcontractor to commence work until all similar insurance required of the subcontractor has been obtained.
- B. At least thirty (30) days prior to the fireworks event, Permittee must furnish to the City's Risk Manager, two (2) copies of Certificates of Insurance, showing the following minimum coverage by insurance company(s) acceptable to the City's Risk Manager. The City must be named as an additional insured for the General Liability policy and a blanket waiver of subrogation is required on all applicable policies.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
10-Day written notice of cancellation and a 30 — day written notice of non-renewal, material change or termination required on all certificates	Bodily Injury and Property Damage Per occurrence aggregate
Commercial General Liability including: 1. Commercial Form 2. Premises — Operations 3. Underground Hazard 4. Products/ Completed Operations Hazard 5. Contractual Liability 6. Broad Form Property Damage 7. Independent Contractors	\$10,000,000 PER OCCURRENCE
AUTOMOBILE LIABILITY—OWNED, NON-OWNED, OR RENTED	\$1,000,000 COMBINED SINGLE LIMIT
WORKERS' COMPENSATION EMPLOYERS' LIABILITY	WHICH COMPLIES WITH THE TEXAS WORKERS' COMPENSATION ACT AND PARAGRAPH II OF THIS EXHIBIT \$500,000

- C. In the event of accidents of any kind, Permittee must furnish the Risk Manager with copies of all reports of such accidents at the same time that the reports are forwarded to any other interested parties.

II. ADDITIONAL REQUIREMENTS

A. Permittee must obtain workers compensation coverage through a licensed insurance company in accordance with Texas law. The contract for coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. Workers' compensation coverage must be in amounts sufficient to assure that all workers' compensation obligations incurred by Permittee are promptly met.

B. Certificate of Insurance:

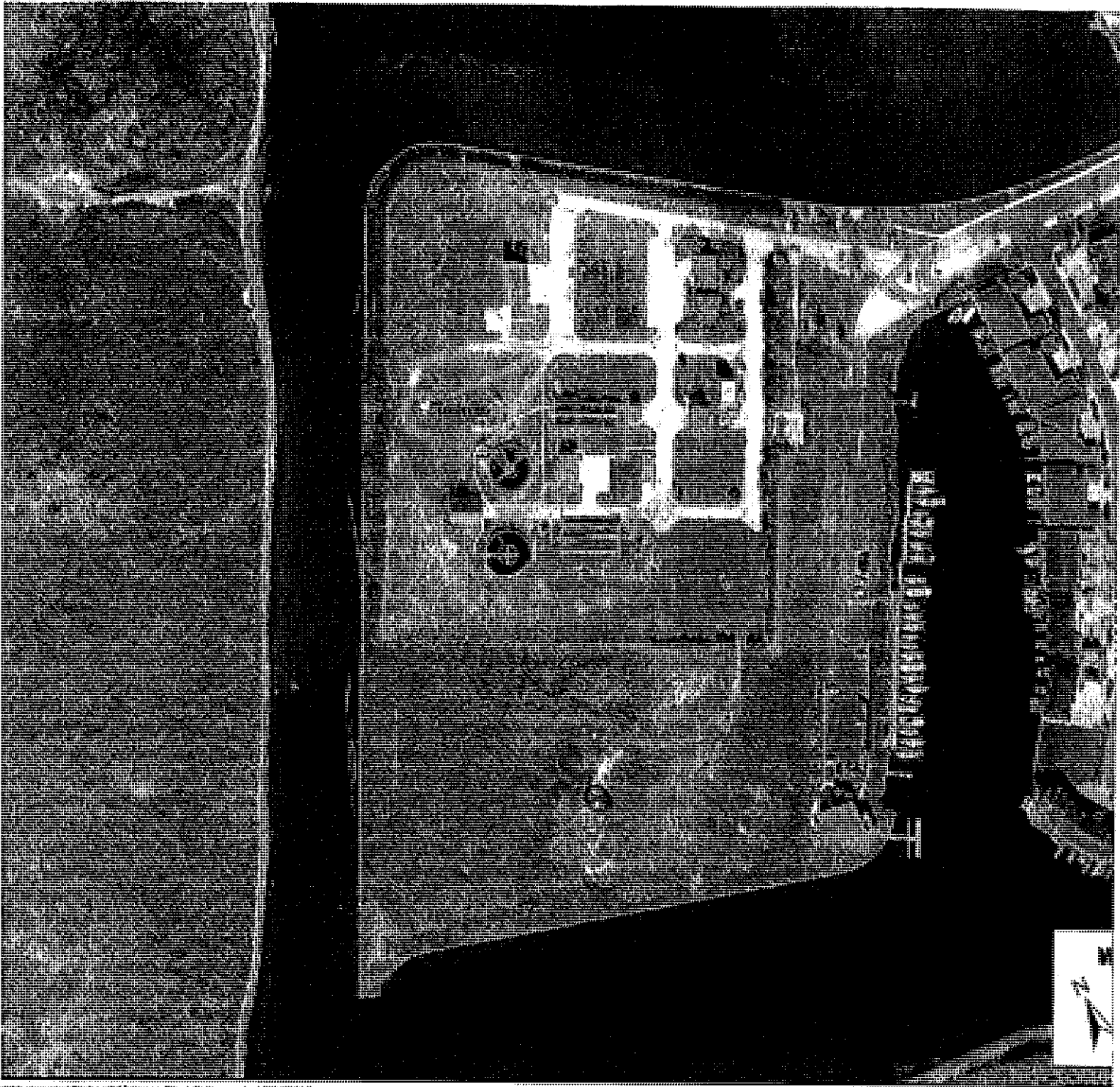
The **City of Corpus Christi** and Padre Island Yacht Club must be named as an additional insured on the General liability coverage and a blanket waiver of subrogation is required on all applicable policies.

If your insurance company uses the standard ACORD form, the **cancellation clause** (bottom right) **must be amended** by adding the wording "changed or" between "be" and "canceled", and deleting the words "endeavor to", and deleting the wording after "left".

The **name of the project** must be listed under 'Description of Operations'.

At a minimum, a **30-day written notice** of material change, non-renewal or termination and a **10 - day written notice** of cancellation is required.

C. If the Certificate of Insurance on its face does not show the existence of the coverage required by items 1.B(1)-(7), an authorized representative of the insurance company must include a letter specifically stating whether items 1.B.(1)-(7) are included or excluded.



\\Westwater\Richer\Projects\Plant_Orto.mxd 10/29/2012

27° 36' 04.72" N
97° 15' 03.22" W