

**LEASE AGREEMENT BETWEEN THE
CITY OF CORPUS CHRISTI
AND THE
CORPUS CHRISTI MODEL RAILROAD CLUB, INC.**

STATE OF TEXAS §

KNOW ALL BY THESE PRESENTS:

COUNTY OF NUECES §

This lease ("**Lease**") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("**City**"), acting through its duly authorized City Manager, or designee ("**City Manager**"), and the Corpus Christi Model Railroad Club, Inc., a non-profit organization ("**Lessee**"), acting through its President, or President's duly authorized agent.

WHEREAS, the City owns the building, facilities, parking lot area, and adjacent grass areas at 821 Louisiana Avenue, Corpus Christi, Nueces County, Texas, ("**Premises**"); and

WHEREAS, the Lessee desires to utilize the Premises to conduct its activities for the benefit of Lessee's members and the public and to offer its members a facility in which to meet and conduct club-related activities only;

NOW, THEREFORE, City and Lessee, in consideration of the mutual promises and covenants herein, agree as follows:

Section 1. Definitions.

- A. City - City of Corpus Christi
- B. City Manager - City Manager of Corpus Christi or his designee
- C. Council - Corpus Christi City Council
- D. Director - Director of Park and Recreation Department or his designee
- E. Lease - This Lease Agreement, including all attached and incorporated Exhibits
- F. Lessee - The Corpus Christi Model Railroad Club, Inc.
- G. Premises - Building, facilities, parking lot area, and adjacent grass areas at 821 Louisiana Avenue, Corpus Christi, Nueces County, Texas, as shown on Exhibit "A" which is attached hereto and incorporated herein by reference
- H. Risk Manager - The City of Corpus Christi Risk Management Department

Section 2. Term. City hereby leases the Premises, subject to all of the terms and conditions of this Lease, to the Lessee. The term of this Lease shall be for a period of three (3) years, beginning on the day after final Council approval, unless sooner terminated as set out herein, and extending thereafter as a month to month tenancy ("**Holdover Period**") upon the same terms and conditions as set out herein; provided, however, that the Holdover Period shall not exceed twelve months in length and the City Manager has the absolute right to terminate such tenancy upon thirty (30) calendar days notice.

Section 3. Consideration. In consideration of City's Lease of the Premises to Lessee, Lessee shall regularly provide the public with an opportunity to view Lessee's model train displays. Lessee shall provide the Director with a schedule specifying the time and dates when the Premises

will be accessible to the public for viewing purposes.

Section 4. Lessee Services and Responsibilities.

A. City Use. If Lessee is not using the Premises, City has the right to use any or all the Premises for City purposes. Lessee shall not be entitled to any compensation, in whatever form, either tangible or intangible, for the City's use of the Premises.

B. Maintenance. Lessee shall maintain the Premises in accordance with the schedule attached hereto and incorporated herein as Exhibit "B". If Lessee is unable to perform maintenance tasks as scheduled, or within a timely manner, the City Manager may terminate this Lease upon fifteen (15) days written notice to Lessee.

C. Utilities. Lessee shall pay for all utilities related to usage of Premises, to include water, wastewater, solid waste, phone and electrical bills, prior to the due date. Failure to pay any utility bill(s) prior to the due date constitutes grounds for termination of this Lease.

D. Voting Accommodations. The Premises may be used as a polling location for a variety of public elections. Any and all requirements, schedules, and demands by the respective agency for use of the Premises in connection with conducting the election must be observed by Lessee without exception, at no cost to said agency conducting the election.

E. Insurance. Lessee must obtain and maintain the minimum insurance requirements set out in Exhibit "C", which is attached hereto and incorporated herein by reference, for the period of the Lease at Lessee's own expense. Lessee shall use an insurance company or companies acceptable to the City's Risk Management Department ("**Risk Manager**") and must furnish the Risk Manager with a Certificate of Insurance evidencing that such insurance is in effect. A copy of all insurance policies will be provided to the Risk Manager upon his/her written request. Lessee cannot begin operation under this Lease until it provides a Certificate(s) of Insurance for all required insurance to the Risk Manager. City provides property insurance coverage on the building; however, Lessee is responsible for insuring Lessee's own personal property which may be located at the Premises.

Section 5. City Responsibilities.

A. Capital Improvements. City may, from time to time, and in City's sole discretion, undertake capital improvements to the Premises. Prior to commencing any capital improvements, City shall notify Lessee, in writing, of the dates in which Lessee shall be required to vacate the Premises, should the Director deem this necessary. Lessee agrees that the term of this Lease shall not be prorated for the period in which Lessee is restricted from entering the Premises for the purposes of constructing capital improvements. Lessee acknowledges and understands that City shall have no obligation to provide an alternate location for Lessee during any period that Lessee must vacate the Premises.

B. Contact Person/Lease Administrator. For this Lease, the City's contact person and lease administrator is the Director of Park and Recreation.

Section 6. Default. The following shall constitute events of default:

- A. Failure to perform scheduled maintenance, in accordance with Exhibit "B", and as required in Section 4B of this Lease.
- B. Failure to maintain any insurance required by Section 4E.
- C. Failure to pay utilities before the past due date, as stated in Section 4C.
- D. Failure to keep, perform, and observe all other promises, covenants and conditions contained in this Lease. Lessee shall be notified in writing of any default and shall have ten (10) days to cure the default. If the default is not cured or substantially cured within ten (10) days of receipt of the notice, Director shall terminate this Lease upon (10) days written notice to Lessee.

Section 7. Concessions. Food and drink concessions and retail sales operations are specifically not included in this Lease.

Section 8. Laws. Lessee shall comply with all applicable laws, ordinances, regulations, and rules of the federal, state, county, and City governments which may be applicable to its operation at the Premises and its performance under this Lease. This Lease is also subject to applicable provisions of the City Charter.

Section 9. Alterations. Lessee shall not make any additions nor alterations to improvement at Premises without the Director's prior written consent. Any permanent additions or alterations made by Lessee shall become the property of the City at the expiration of this Lease.

Section 10. Relationship. This Lease establishes a Landlord/Tenant relationship, and none other. In performing this Lease, both City and Lessee 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 shall not be, nor be construed to be, the employees or agents of the other party for any purpose whatsoever.

Section 11. Indemnity. *In consideration of allowing Lessee to use the Premises, Lessee, its officers, members, employees, representatives, and agents (collectively, "Indemnitors") covenant to fully indemnify, save and hold harmless the City, its officers, agents, representatives, and employees ("Indemnitees") from and against any and all liability, loss, damages, claims, demands, suits, and causes of action of any nature on account of death, personal injuries, property loss or damage, or any other kind of injury or damage, including all expenses of litigation, court costs, and attorneys' fees, which arise, or are claimed to arise, out of or in connection with Lessee's use of the Premises and all activities associated therewith pursuant to this Lease, regardless of whether such injuries, death, or damages are caused, or are claimed to be caused by the concurrent or contributing negligence of Indemnitees, but not if caused by the sole negligence of Indemnitees unmixed with the fault of any other person or entity.*

Lessee covenants and agrees that it City is made a party to any litigation against Lessee or in any litigation commenced by any party, other than Lessee relating to this Lease, Lessee shall, upon receipt of reasonable notice regarding commencement of litigation, at its own expense, investigate all claims and demands, attend to their settlement or other disposition, defend City in all actions based thereon, and pay all charges of attorneys and all other costs and expenses of any kind arising from any said liability, damage, loss, demand, claim, or action.

Section 12. Assignment. This Lease may not be, in whole or in part, assigned or transferred directly or indirectly without the prior written consent of the City.

Section 13. Nondiscrimination. Lessee covenants that all its members, guests, and the public shall be treated equally without regard to or because of race, religion, national origin, marital status, sex, age, or disability and in compliance with all federal and state laws prohibiting discrimination in employment.

Section 14. Attorney's Fees. If any action or proceeding is brought to take possession of the Premises, or to enforce compliance with the Lease, or for failure to observe any of the covenants of the Lease, Lessee must pay the City such sum as a court of competent jurisdiction may adjudge reasonable as attorney's fees in said action or proceeding or in the event of an appeal as allowed by an appellate court if a judgment is rendered in favor of the City.

Section 15. Termination. Either City or Lessee may terminate this Lease without cause by giving forty-five (45) days written notice to the non-terminating party by any method set out in Section 16.

Section 16. Notice. All notices, demands, requests, or replies provided for or permitted, under this Lease, by either party must be in writing and must be delivered by one of the following methods: (1) by personal delivery; (2) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid; (3) by prepaid telegram; or, (4) by deposit with an overnight express delivery service, for which service has been prepaid. Notice deposited with the United States Postal Service in the manner described above will be deemed effective two (2) business days after deposit with the United States Postal Service. Notice by telegram or overnight express delivery service will be deemed effective one (1) business day after transmission to the telegraph company or overnight express carrier. All such communications must only be made to the following:

IF TO CITY:

City of Corpus Christi
Attn: Director, Park and Recreation
P. O. Box 9277
Corpus Christi, Texas 78469-9277
(361) 826-3464

IF TO LESSEE:

Corpus Christi Model Railroad Club, Inc.
Attn: President
P. O. Box 6471
Corpus Christi, Texas 78466-6471

Either party may change the address to which notice is sent by using a method set out above.

Lessee will notify City of an address change within thirty (30) days after the address is changed.

Section 17. Waiver. Any waiver by the parties of a breach of any covenants, terms, obligations, or events of default shall not be construed to be a waiver of any subsequent breach, nor shall the failure to require full compliance with this Lease be construed as changing the terms of this Lease or estopping the parties from enforcing the terms of this Lease.

Section 18. Modifications. No changes or modifications to this Lease may be made, nor any provision waived, unless in writing and signed by a person authorized to sign agreements on behalf of each party.

Section 19. Inspection. Any officer or authorized employee of City may enter upon Premises, at all reasonable times and without notice, to determine whether Lessee is providing the maintenance required by Section 4B to the items in Exhibit "A" and in accordance with the schedule set out in Exhibit "B", or for any other purpose incidental to City's retained rights of Premises.

Section 20. Signs. Lessee shall not place, paint, post, or otherwise affix any signs at, on, or about the Premises, or any part thereof, without the Director's prior written approval. City may require Lessee to remove, paint, or repair any signs allowed. If Lessee does not remove, paint, or repair the signs within ten (10) days of demand thereof in writing, the City may remove, paint, or repair the signs and bill Lessee for the cost. Lessee shall pay said billed costs within thirty (30) days of receipt of invoice from City. If payment is not timely made, City may terminate this Lease upon ten (10) days written notice to Lessee. Alternatively, City may terminate this Lease upon ten (10) days written notice to Lessee.

Section 21. Publication Costs. Lessee shall pay for the cost of publishing the Lease description and related ordinance, as required by the City Charter, in the legal section of the local newspaper.

Section 22. Captions. The captions employed in this Lease are for convenience only and do not in any way limit or amplify the terms or provisions hereof.

Section 23. 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 Lease was entered into and will be performed.

Section 24. Entirety Clause. This Lease and the incorporated and attached exhibits constitute the entire agreement between the City and Lessee for the use granted. All other agreements, promises, and representations, unless contained in this Lease, are expressly revoked, except for the promulgation of future maintenance rules as contemplated in Exhibit "B", Section 3, 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 Lessee's operations and the Premises to be used in the operations. The unenforceability, invalidity, or illegality of any provision of this Lease does not render the other provisions unenforceable, invalid, or illegal.

Section 25. Severability. If, for any reason, any section, paragraph, subdivision, clause, provision, phrase, or word of this Lease is held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it does not effect any other section, paragraph, subdivision, clause, provision, phrase, or word of this Lease, for it is the definite intent of this Lease that every section, paragraph, subdivision, clause, provision, phrase, or word hereof be given full force and effect for its purpose.

Section 26. Surrender. Upon expiration or cancellation of this Lease, Lessee shall return Premises to City in reasonably good condition, ordinary wear and tear excepted.

EXECUTED IN DUPLICATE, each of which shall be considered an original, on this the _____ day of _____, 2012.

ATTEST:

CITY OF CORPUS CHRISTI

By: _____
Armando Chapa, City Secretary

By: _____
Ronald L. Olson, City Manager, or
his designee

Approved as to legal form this 3 day of May, 2012.

By: Lisa Aguilar

Lisa Aguilar, Assistant City Attorney
For the City Attorney

CORPUS CHRISTI MODEL RAILROAD CLUB, INC.

By: Jerry A. Hubert, Jr.
Name: JERRY A. HUBERT, JR.
Title: President
Date: 5/1/2012

EXHIBIT "A"

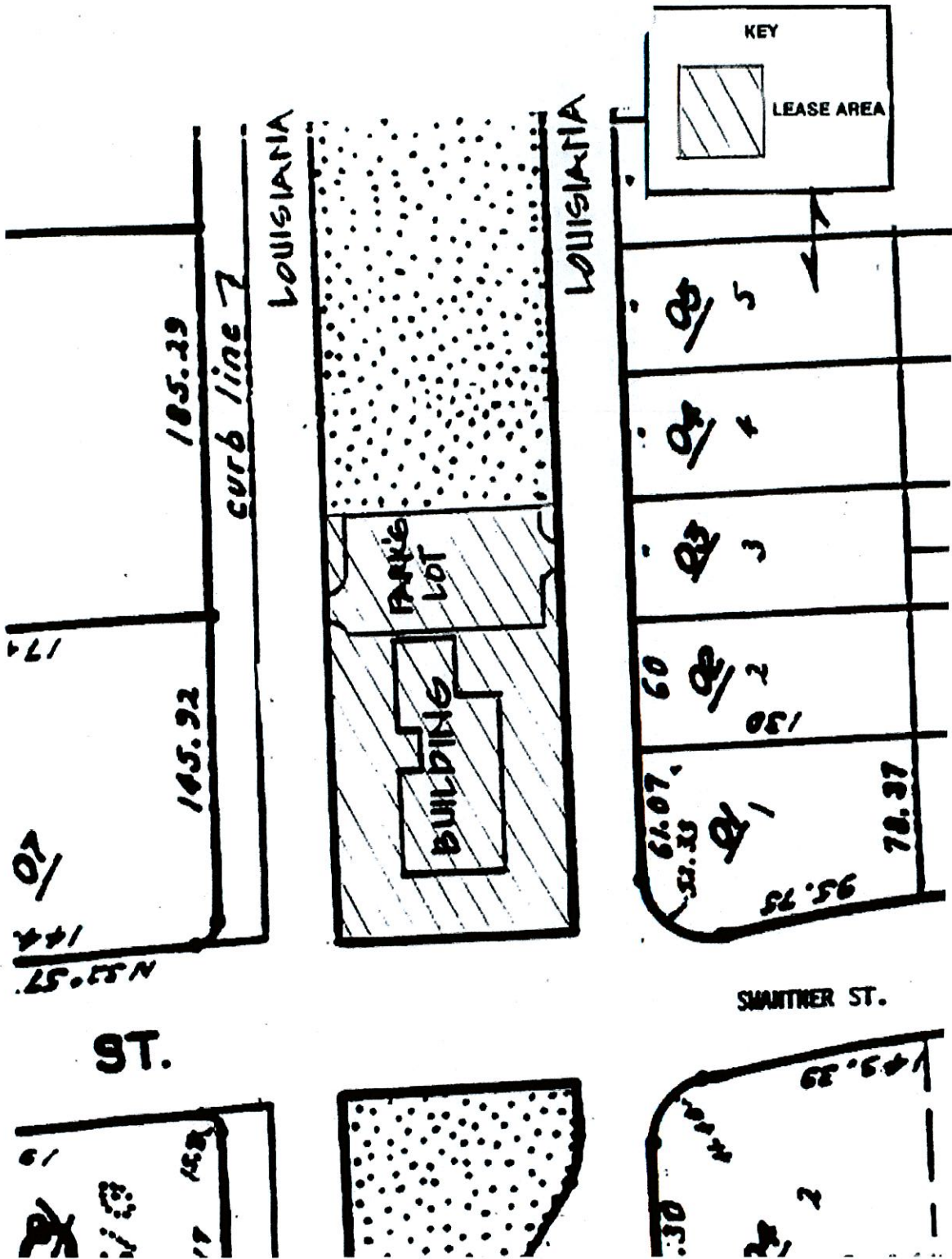


EXHIBIT "B"**CORPUS CHRISTI MODEL RAILROAD CLUB, INC.****MAINTENANCE SCHEDULE AND RULES – 821 LOUISIANA AVENUE**

Section 1. Lessee shall maintain the Premises at all times during the term of this Lease in a clean and sanitary condition and, at the expiration of Lease, shall return said Premises to City in reasonably good condition, ordinary wear and tear and acts of God, excepted; and fire and flood damage or destruction, where Lessee is without fault, excepted.

Section 2. Lessee shall conform to the following rules set out by the Director for the maintenance of said Premises for the term of this Lease:

- (a) Maintenance shall include litter pickup, mowing of grass areas on Premises, as shown in Exhibit "A", and keeping building and parking lot areas in a good state of repair.
- (b) Litter on the Premises shall be picked up at least three (3) times weekly during the term of this Lease.
- (c) No grass on the grounds shall exceed 6" in height.
- (d) If Director provides written notice to Lessee of necessary maintenance, Lessee shall have ten (10) days to complete said maintenance. If said maintenance is not completed, Director may undertake said maintenance and bill Lessee for the cost. Lessee shall pay said billed costs within thirty (30) days of receipt of invoice from City. If payment is not timely made, City may terminate this Lease upon ten (10) days written notice to Lessee. Alternatively, City may terminate this Lease upon ten (10) days written notice.

Section 3. The Director may, at any time during the term of this Lease, promulgate such additional and reasonable maintenance rules as may be necessary for the efficient and safe operation of the Premises. Director will notify Lessee, in writing, at least ten (10) days prior to the implementation of any new rule(s) under this Lease.

EXHIBIT "C"**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 to commence work until all similar insurance required of any subcontractor has been obtained.
- B. Lessee must furnish to the City's Risk Manager, 2 copies 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 named as an additional insured on the General liability policy, and a blanket waiver of subrogation is required on all applicable policies.

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	\$500,000 COMBINED SINGLE LIMIT
(When applicable) LIQUOR LIABILITY COVERAGE If liquor being served	\$1,000,000 COMBINED SINGLE LIMIT
Property Coverage	Lessee will be responsible for any and all damage to equipment used regardless if owned, rented, leased or borrowed.
WORKERS' COMPENSATION	Applicable when employs paid employees, WHICH COMPLIES WITH THE TEXAS WORKERS' COMPENSATION ACT AND SECTION II OF THIS EXHIBIT
EMPLOYERS' LIABILITY	\$500,000 /\$500,000 /\$500,000

- C. In the event of accidents of any kind related to this lease 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 when employing 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's financial integrity is of interest to the City; therefore, subject to Lessee's right to maintain reasonable deductibles in such amounts as are approved by the City, 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. The City shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Lessee shall be required to comply with any such requests and shall 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 Management and
Director of Parks and Recreation
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:

- Name the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
 - 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 stop work hereunder, and/or withhold any payment(s) 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.