

**LEASE AGREEMENT BETWEEN THE  
CITY OF CORPUS CHRISTI  
AND GROW LOCAL SOUTH TEXAS, 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 Grow Local South Texas, Inc. a Texas non-profit corporation ("**Lessee**"), acting through its President, or President's duly authorized agent.

**WHEREAS**, the City owns Tom Graham Park located at Oak Park Avenue near Up River Road,, address of 3914 Up River Road, Corpus Christi, Texas, including any and all improvements thereon, ("**Premises**"); and

**WHEREAS**, the Lessee desires to utilize the Premises to conduct gardening activities for the benefit of Lessee's members and the public;

**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 designee
- C. Council - Corpus Christi City Council
- A. Director - Director of Park and Recreation Department or his designee
- B. Lease - This Lease Agreement, including all attached and incorporated Exhibits
- C. Lessee - Grow Local South Texas, Inc.
- D. Premises - Tom Graham Park located at Oak Park Avenue near Up River Road, address of 3914 Up River Road, Corpus Christi, Nueces County, Texas, as shown on **Exhibit "A"** which is attached hereto and incorporated herein by reference, and including any facilities and irrigation system located thereon.
- 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 five (5) years, beginning on the day after final Council approval, with one option to extend subject to approval of the City Manager for one additional five year term, unless sooner terminated as set out herein.

**Section 3. Consideration.** In consideration of City's Lease of the Premises to Lessee, Lessee shall:

- A. Regularly maintain the Premises in accordance with this Agreement and provide a public gardening program at the Premises; and

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- B. Within 60 days from the effective date of this Agreement, Lessee shall provide the Director with a multi-year master plan for the use of the Premises, subject to review by the Director; and
- C. Provide 25-30 trees annually to be planted in the City Parks system; and
- D. Volunteer to plant trees during annual Arbor Day event.

#### **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 at its sole cost and expense shall maintain the Premises in accordance with the schedule attached hereto and incorporated herein as **Exhibit "B"**. Lessee shall also be responsible to repair and maintain the irrigation system located at the Premises at its sole cost and expense. 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. 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.

**C. Utilities.** Lessee must comply with applicable water conservation standards adopted by City ordinance. City provides City utility services for the Premises.

**D. 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 or designee.

**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 4.
- C. 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 may terminate this Lease upon (10) days written notice to Lessee.

**Section 7. Concessions.** Lessee may operate farm stand concessions at the Premises subject to prior written approval of the Director.

**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 and Inspection.** 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. All alterations must be constructed in accordance with applicable Federal, State and Local laws, regulations and ordinances.

Any officer or authorized employee of the City may enter upon the Premises, at all reasonable times and notice, to determine whether Lessee is providing maintenance in accordance with and as required by above, or for any other purpose incidental to City's retained rights of and in the Premises.

**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.**

***Lessee shall defend, 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 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 or on the part of Lessee or any of its agents, servants, employees, contractors, vendors, patrons, guests, licensees, or invitees ("Indemnitors") entering upon City property, with the expressed or implied invitation or permission of Lessee, or when any injury or damage is the result, proximate or remote, of the violation by Indemnitees or Indemnitors of any law, ordinance, or governmental order of any kind, or when the injury or damage arose out of, or was caused, either proximately or remotely, wholly or in part, by an act or omission, negligence, or misconduct on the part of Indemnitors under this Agreement.**

**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 at any time without cause by giving thirty (30) 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) 880-3464

**IF TO LESSEE:**

Grow Local South Texas  
Attn: President  
711 N. Carancahua Street, Suite 700  
Corpus Christi, Texas 78401

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.

Lessee shall maintain a sign at each entrance to the Premises to limit the liability of landowners who allow property to be used as a community garden. The signs are required to be posted to read as follows:

**"WARNING**

TEXAS LAW (CHAPTER 75, CIVIL PRACTICE AND REMEDIES CODE) LIMITS THE LIABILITY OF THE LANDOWNER, LESSEE, OR OCCUPANT FOR DAMAGES ARISING FROM THE USE OF THIS PROPERTY AS A COMMUNITY GARDEN."

The signs must be posted and maintained in a clearly visible location on or near the Premises.

**Section 21. Surrender.** Upon expiration or cancellation of this Lease, Lessee shall return Premises to City in reasonably good condition, ordinary wear and tear excepted. Any personal property remaining at the Premises upon expiration of the Lease shall become City property and may be disposed as City deems appropriate without necessity of any further action or notice by the City.

**Section 22. Acceptance of Premises Disclaimer:**

A. LESSEE ACKNOWLEDGES THAT IT IS LEASING THE PREMISES "AS IS" WITH ALL FAULTS AS MAY EXIST ON THE PREMISES, AND THAT NEITHER LESSOR, NOR ANY EMPLOYEE OR AGENT OF LESSOR, HAS MADE ANY REPRESENTATIONS OR WARRANTIES AS TO THE CONDITION OF SUCH PREMISES. LESSEE HEREBY WAIVES ANY AND ALL CAUSES OF ACTION, CLAIMS, DEMANDS, AND DAMAGES BASED ON ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF SUITABILITY FOR A PARTICULAR PURPOSE, ANY AND ALL WARRANTIES OF HABITABILITY, AND ANY OTHER IMPLIED WARRANTIES NOT EXPRESSLY SET FORTH IN THIS LEASE.

B. LESSEE ACKNOWLEDGES AND AGREES THAT LESSEE HAS BEEN PROVIDED, TO ITS SATISFACTION, THE OPPORTUNITY TO INSPECT THE PREMISES FOR ANY DEFECTS AS TO THE SUITABILITY OF SUCH PROPERTY FOR THE PURPOSE TO WHICH LESSEE INTENDS TO USE THE PREMISES, AND IS RELYING ON ITS OWN INSPECTION.

C. LESSEE ACKNOWLEDGES THAT ANY AND ALL STRUCTURES AND IMPROVEMENTS EXISTING ON THE PREMISES ON THE COMMENCEMENT DATE, IF ANY, ARE ACCEPTED "AS IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY LESSOR WITH RESPECT THERETO. LESSEE ACKNOWLEDGES THAT IT IS NOT RELYING UPON ANY REPRESENTATION, STATEMENT OR OTHER ASSERTION BY LESSOR WITH RESPECT TO ANY EXISTING STRUCTURES OR IMPROVEMENTS, BUT IS RELYING ON ITS EXAMINATION THEREOF.

D. THE PROVISIONS OF THIS Section 22 SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.

**Section 23. 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 24. 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 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 Lease was entered into and will be performed.

**Section 26. 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 affect 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 27. Disclosure of Interests.** Lessee agrees to comply with City of Corpus Christi Ordinance No. 17112 and complete the *Disclosure of Interests* form as part of this contract. Lessee agrees to comply with Texas Government Code section 2252.908 and complete Form 1295 Certificate of Interested Parties as part of this contract. For more information, please review the information on the Texas Ethics Commission website at <https://www.ethics.state.tx.us>. Lessee 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>.

**Section 28. 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.

EXECUTED IN DUPLICATE, each of which shall be considered an original, on this the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF CORPUS CHRISTI**

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By: \_\_\_\_\_  
Keith Selman, Interim City Manager

Approved as to legal form this 11 day of July 2018.

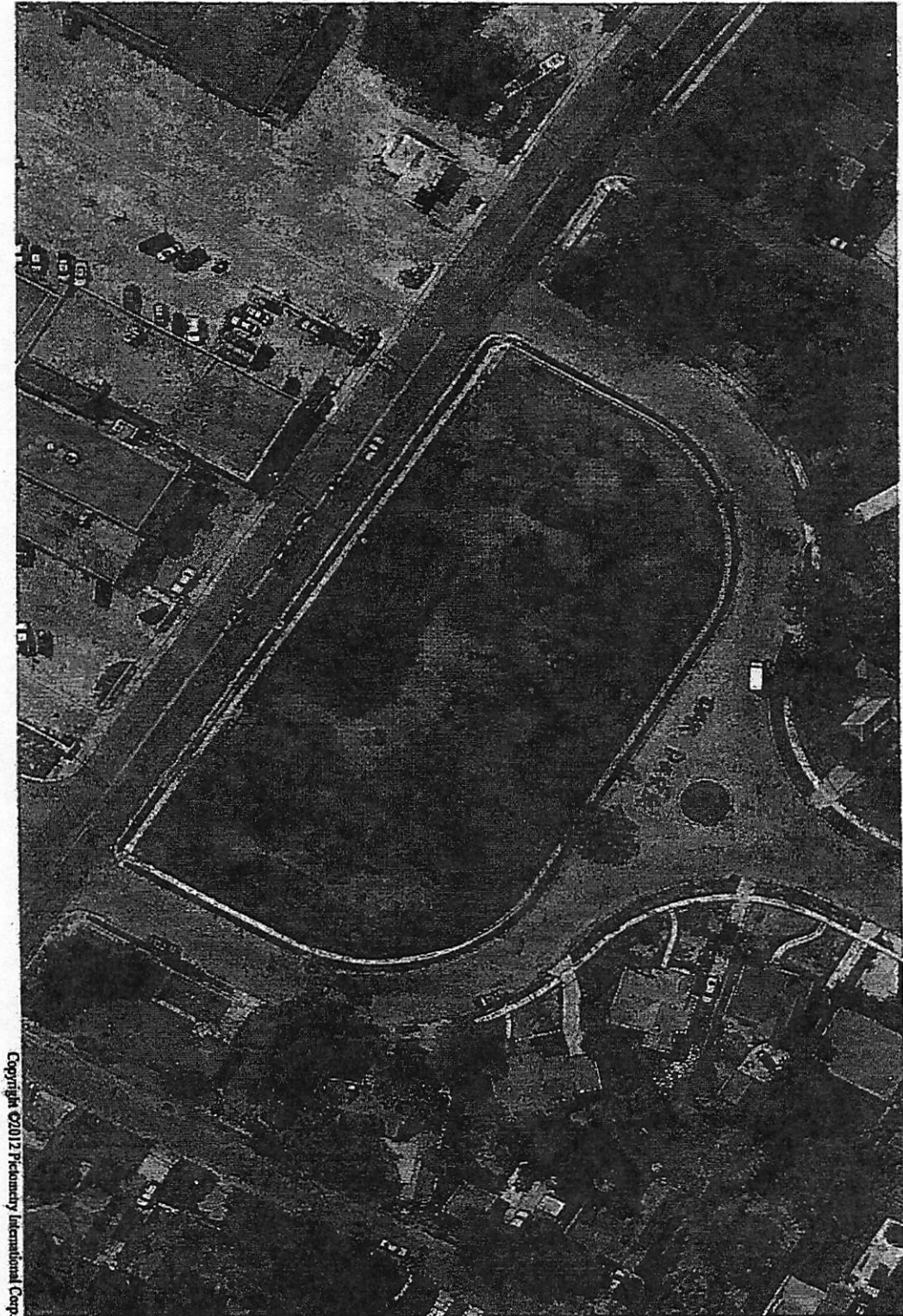
By: Lisa Aguilar  
Lisa Aguilar, Assistant City Attorney  
For the City Attorney

**GROW LOCAL SOUTH TEXAS, INC.**

By: Kyle Hoelscher  
Name: Kyle Hoelscher  
Title: President  
Date: 07/06/2018

EXHIBIT A

Scale: 1 inch = 80.3 feet



Copyright ©2012 Picometry International Corp.



EXHIBIT "B"

MAINTENANCE SCHEDULE

- [illegible]

Remove all litter	Every visit
Trim plants and trees to remove dead vegetation or for accessibility	As needed
Apply herbicide, pesticide and fertilizer	As needed
Monitor irrigation system (repair as needed)	Every visit
Inspect play and park elements	Every visit

**EXHIBIT****INSURANCE REQUIREMENTS****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 subLessee to commence work until all similar insurance required of any subLessee has been obtained.
- B. Lessee must furnish to the City's Risk Manager and Director of Parks and Recreation Department, 2 copies 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 and Auto Liability policies, and a waiver of subrogation is required on all applicable policies. Endorsements must be provided with COI. Project name and or number must be listed in Description Box of COI.**

<b>TYPE OF INSURANCE</b>	<b>MINIMUM INSURANCE COVERAGE</b>
<b>30-written day notice of cancellation, required on all certificates or by applicable policy endorsements</b>	<b>Bodily Injury and Property Damage</b> 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	\$1500,000 Per Occurrence

- 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 for 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 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. Lessee shall be required to 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 Manager  
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:
- 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;
  - 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 contractor'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.