

AGREEMENT FOR
NAMING AND USE OF FACILITIES AT WATER’S EDGE PARK AND MCGEE
BEACH

This Agreement for Naming and Use of Facilities at Water’s Edge Park and McGee Beach (“Agreement”) is entered into by and between Texas A&M University-Corpus Christi (“TAMU-CC”), a member of The Texas A&M University System, an agency of the state of Texas, and the City of Corpus Christi, Texas, (“City”), concerning improvements at Water’s Edge Park and McGee Beach.

WHEREAS, City owns, operates, and leases the park and improvements known as the Water’s Edge Park and McGee Beach, Corpus Christi, Texas, for various recreational, civic, cultural, sports, and other events and activities; and

WHEREAS, Fulton*Coastcon General Contractors (“Contractor”) desire to construct and provide improvements at the Water’s Edge Park and at McGee Beach at no additional cost to the City as further detailed on attached and incorporated Exhibit A;

NOW, THEREFORE, in consideration of the terms, conditions and covenants herein contained, the City and TAMU-CC parties hereby agree as follows.

1. Designated Name. In consideration of, and subject to, City’s receipt and acceptance of the final improvements described in attached and incorporated “**Exhibit A**”, the parties agree that the name of the improvements shall be “Islanders Pavilion and Islanders Courts at the Water’s Edge Park and McGee Beach” (the “Name”) for at least ten (10) years after the date that the improvements are accepted.

2. Construction of Improvements. The construction of the improvements as described in Exhibit A (“the Improvements”) is subject to execution and completion of separate construction change order agreement between the City and Fulton*Coastcon General Contractors. Upon acceptance of the improvements by the City, the parties agree that the improvements become City property and are owned entirely by the City. The City acknowledges that TAMU-CC shall have no liability for upkeep or damages to the Improvements, nor injuries which may occur associated with the Improvements, other than with TAMU-CC Athletics or TAMU-CC events.

3. Licenses and Approvals. TAMU-CC represents to City that it has obtained all necessary licenses and approvals for this Agreement. TAMU-CC hereby licenses City to use TAMU-CC’s wordmark “Islanders” and to subcontract others to manufacture products incorporating or bearing the Name subject to City’s compliance with the attached and incorporated Licensing Agreement (“**Exhibit B**”). All such products may be used, consumed, given away, sold or held for sale by City or their agents or sub-licensees. City shall not be obliged to pay or to cause any sub-licensee to pay any royalty or other fee to TAMU-CC with respect to any use of the Name.

4. Signage. City is responsible for all signage at the City Water’s Edge Park and McGee Beach, except as otherwise noted herein. TAMU-CC shall not place any signage at the

City property without prior approval of the City Director of Parks and Recreation. The City shall post the Contractor-donated “Islanders Pavilion” signage at or near the basketball court labeling that structure as the “Islanders Pavilion at the Water’s Edge Park and McGee Beach” and shall post the Contractor-donated “Islanders Courts” signage at or near the volleyball courts designating those courts as the “Islanders Courts at the Water’s Edge Park and McGee Beach”. The Improvements will include a flag pole and lighting for that flag pole. TAMU-CC will provide the City with an Islanders flag as the sole flag to be displayed on that flagpole. TAMU-CC shall be responsible for maintaining the condition of the flag and said signage and replacing the flag and said signage as needed.

5. Use of the City property. The City Director of Parks and Recreation or designee oversees the use and scheduling of the “Islanders Pavilion and Islanders Courts at the Water’s Edge Park and McGee Beach”. The City, upon reasonable notice by TAMU-CC, shall provide priority access for Islanders Athletics and TAMU-CC use of both facilities consistent with the City’s facility use agreements which shall be executed by TAMU-CC and City prior to such requested use. TAMU-CC and Islanders Athletics will contact the City Director of Parks and Recreation or designee to request said access. City Park and Recreation facility rental fees for TAMU-CC use of the Islanders Pavilion and Islanders Courts at the Water’s Edge Park and McGee Beach shall be waived.

6. Notices. Unless otherwise specified herein, any notice required or permitted under this Agreement shall be deemed sufficient if given in writing and personally delivered, sent by overnight express delivery service, or deposited in the United States mail, postage prepaid, by registered or certified mail (return receipt requested) to the party to whom said notice is to be given. Notices delivered in person, or by overnight express delivery service, shall be deemed to be served effective as of the date the notice is delivered. Notices sent by registered or certified mail (return receipt requested) shall be deemed to be served by close of business on the third business day after the date said notice is postmarked to the addressee, postage prepaid.

Until changed by written notice given by one party to the other, the addresses of the parties for purposes herein shall be as follows:

CITY OF CORPUS CHRISTI:
City of Corpus Christi
Attn: Director of Parks and Recreation Department
Post Office Box 9277
Corpus Christi, Texas 78469

TAMU-CC:
Ashley Larrabee, Director of Marketing
Phone: 361-825-3020
Fax: 361-986-0712
E-mail: licensing@tamucc.edu

With a Copy To:
Director of Contracts & Property
6300 Ocean Drive, MS 5731
Corpus Christi, TX 78412
contracts@tamucc.edu

7. Authority. Each of the undersigned by the execution hereof represents that he/she has full power, authority and legal right to enter into this Agreement on behalf of the party for whom he/she is executing this Agreement and to consummate the transactions contemplated hereby.

8. Term and Governing Law. This Agreement begins on date of last signature continues for ten (10) years. This Agreement shall be governed by and construed in conformity with the laws of the State of Texas. This Agreement calls for performance in Nueces County, Texas, wherein jurisdiction and venue for any dispute arising out of or related to this Agreement shall lie exclusively. Each party's respective obligations under this Agreement are to be paid out of current revenues and are subject to appropriations of funds during each party's respective budget process.

9. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law; but if any provision or the application thereof to any party or circumstance is prohibited by or invalid under applicable law, that provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or the application of such provision to other parties or circumstances.

10. Non-Waiver. No delay or omission of any party to exercise rights or powers under this Agreement shall impair any such right or power or shall be construed to be a waiver of any default. No waiver of any default shall be construed, taken, or held to be a waiver of any other default, or waiver or consent to any further or succeeding default of the same nature.

11. Successors and Assigns. This Agreement and all of the terms and provisions hereof shall be binding upon and shall inure to the benefit of each of the parties hereto and their respective legal representatives, heirs, successors, and assigns.

12. Approval by City. TAMU-CC agrees that this Agreement and all provisions thereof shall be subject to City's approval at City's sole discretion. This Agreement shall not be made valid, final and binding unless approved by the City Council as indicated by authorized signature of City's representative below.

13. Entire Agreement. This Agreement contains the entire understanding between the parties and supersedes any prior understandings and written or oral agreements between them respecting this subject matter. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Agreement that are not fully expressed in this Agreement.

EXECUTED by TAMU-CC and City on the days and year noted below, in duplicate copies, each of which shall be deemed an original.

CITY OF CORPUS CHRISTI

BY: _____
Name: _____
Title: _____
Date: _____

TEXAS A&M UNIVERSITY-CORPUS CHRISTI

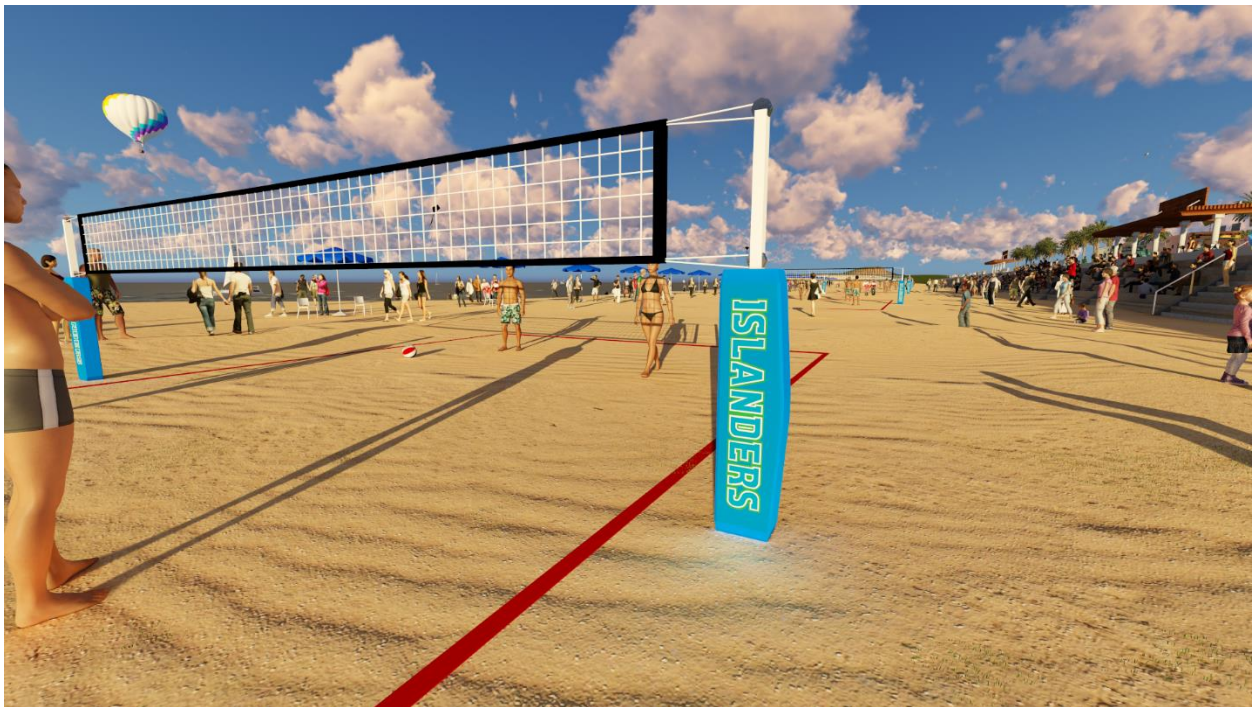
By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

IMPROVEMENTS TO BE CONSTRUCTED AND NAMED

City, through its agreement with Fulton*Coastcon General Contractors, will receive the following donated improvements to the Water's Edge Park and McGee Beach:

1. Six (6) sand volleyball courts placed on the existing McGee Beach. The scope of work will include nets, pole systems, pole pads, and lines.
2. Three (3) six-foot wide concrete steps to be poured on the existing seawall, including handrails
3. Three (3) showers located at the bottom of each stairway and one (1) shower located at the overlook pier structure at the bottom of the existing handicap ramp.
4. Concrete structural support system and an arched metal building roof system to be placed over the existing multi-purpose slab.
5. University signage as follows (see renderings below):
 - a. Islanders Courts signage,
 - b. Islanders Pavilion signage at multi-purpose slab,
 - c. Thirty-foot flagpole with Islanders flag with lighting for 24-hour display.



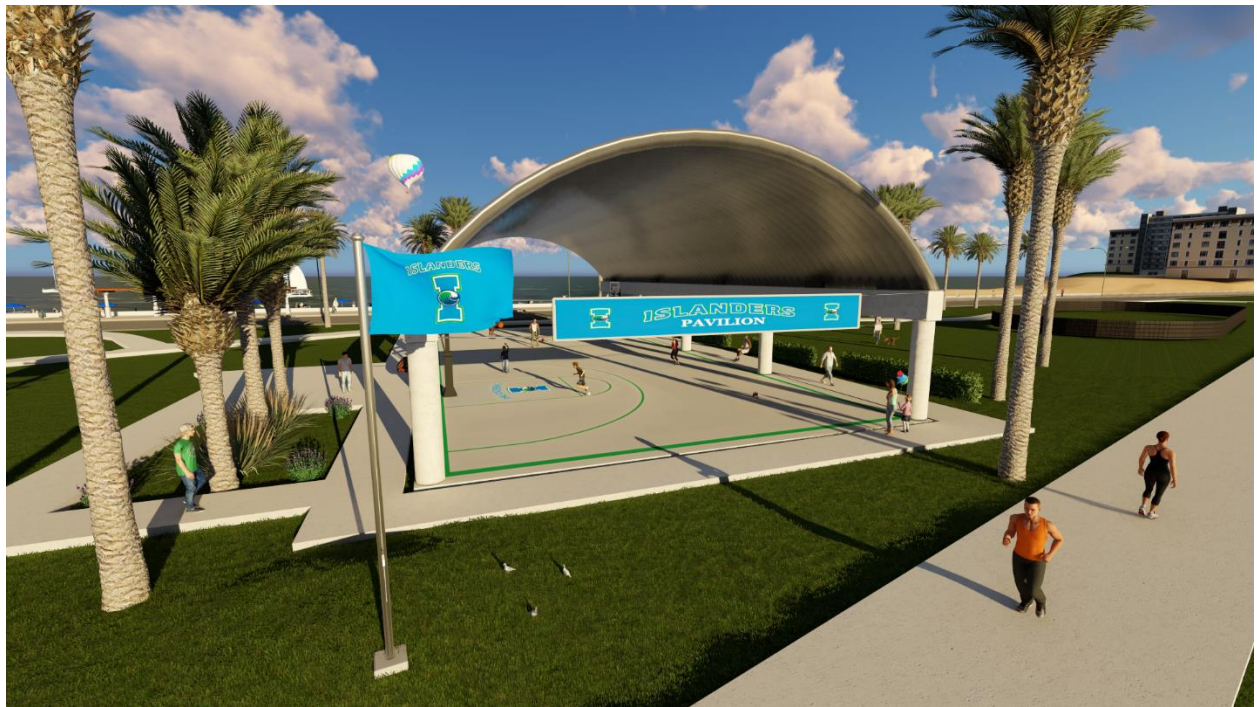




EXHIBIT B

LICENSE AGREEMENT

This License Agreement (“Agreement”) is entered into effective as of the last day of execution by both of the parties hereto, who agree as follows in consideration of the mutual promises contained herein:

1. Parties

1.1 Texas A&M University-Corpus Christi (“TAMU-CC”), a member of The Texas A&M University System, an agency of the state of Texas.

1.2 City of Corpus Christi, a Texas home rule municipality. (“LICENSEE”).

2. Background

2.1 Since at least as early as 1947, TAMU-CC has used the multiple marks in connection with educational services and later as a secondary source designator for a wide range of goods and services. (hereinafter collectively referred to as the “TAMU-CC MARKS”).

2.2 LICENSEE recognizes the goodwill appurtenant to use and/or ownership of the TAMU-CC MARKS and desires to obtain a license to utilize the variations of the TAMU-CC MARKS shown in Attachment A for the Islanders Pavilion and the Islanders Courts located in downtown Corpus Christi, Texas at the Water’s Edge Park and McGee Beach. TAMU-CC is willing to grant such a license under the terms and conditions of this Agreement.

3. Definitions

3.1 MARKS includes names, trademarks and service marks.

3.2 LICENSED MARKS means those names and marks identified in Attachment A.

3.3 LICENSED GOODS AND SERVICES means the goods and services identified in Attachment B along with example uses of the LICENSED MARKS as also shown in Attachment B, all of which may be amended from time-to-time by further agreement of the parties hereto.

3.4 TERRITORY means the United States and its territories.

3.5 EFFECTIVE DATE means the date specified in the first paragraph of this Agreement.

3.6 TERM means the effective period of this Agreement, which shall commence on the EFFECTIVE DATE and which shall continue for ten (10) years unless sooner terminated pursuant to the provisions of this Agreement.

3.7 QUALITY means an acceptable level of quality to TAMU-CC. QUALITY for LICENSED GOODS AND SERVICES is more specifically defined in Paragraph 10.1 hereof.

4. License Grant

4.1 Subject to the terms and conditions of this Agreement, TAMU-CC grants to LICENSEE the right and license to utilize the LICENSED MARKS for the Islanders Pavilion and the Islanders Courts which is described above in Section 2.2 in the TERRITORY on and in connection with the LICENSED GOODS AND SERVICES of QUALITY during the TERM hereof.

4.2 TAMU-CC shall have the right, in its discretion, to enforce rights in the TAMU-CC MARKS (including the LICENSED MARKS) against uses that it believes are likely to cause confusion. In the event that LICENSEE discovers a use that it believes is likely to cause confusion

with the LICENSED MARKS, LICENSEE shall inform TAMU-CC fully and the reasons for such belief.

5. Payments

Use of Licensed Marks by LICENSEE in conjunction with the LICENSED GOODS AND SERVICES shall be royalty-free.

6. Default, Termination

6.1 In the event that LICENSEE fails to comply with the terms of this Agreement, TAMU-CC may serve LICENSEE with a notice of default specifying the nature of the violation and reasonable means for curing such default. If the violation is not cured within thirty (30) days from service of the notice of default, TAMU-CC may then serve a Notice of Termination, and this Agreement shall be automatically terminated upon service of said Notice of Termination. For alleged breaches of QUALITY, the terms of Paragraphs 10.1, 10.2, and 10.3 relating to cure and termination shall apply.

6.2 Either TAMU-CC or LICENSEE may terminate this Agreement at any time (whether with or without cause) after serving upon the other two (2) months' Notice of Intent to Terminate. In such event, this Agreement shall be automatically terminated two (2) months after service of said Notice of Intent to Terminate.

6.3 Unless sooner terminated pursuant to the above provisions, or pursuant to the provisions relating to QUALITY, this Agreement shall remain in effect throughout the TERM described in Paragraph 3.6 above.

7. Effect Of Termination

7.1 Upon termination of this Agreement, all rights granted to LICENSEE hereunder shall cease; provided however that LICENSEE shall be entitled to continue to use, royalty-free, its

name, logo, and other uses of the LICENSED MARKS in accordance with this Agreement for a period of 120 days while engaging in good faith efforts to wind up its use of such LICENSED MARKS. LICENSEE will otherwise refrain from further use of the LICENSED MARKS in connection with the offering, or promotion of goods or services. LICENSEE acknowledges that failure to comply with this provision will result in immediate and irreparable harm affording injunctive and any and all other appropriate relief to TAMU-CC.

7.2 Upon termination of this Agreement pursuant to Paragraph 6.1, LICENSEE hereby assigns all of its rights under this Agreement to TAMU-CC for no further consideration or compensation above and beyond the mutual promises contained in this Agreement.

8. Personal License

8.1 The license granted to LICENSEE is personal, and no rights hereunder may be transferred by LICENSEE without the express written approval of TAMU-CC.

9. Goodwill In Licensed Marks

9.1 LICENSEE agrees that the essence of this Agreement is founded on the goodwill associated with the LICENSED MARKS and the value of that goodwill in the minds of the consuming public. LICENSEE agrees that it is critical that such goodwill be protected and enhanced, and, toward this end, LICENSEE shall exercise good faith efforts to not take action during the TERM or thereafter to:

(a) attack the title or any rights of TAMU-CC in or to the LICENSED MARKS;

(b) apply to register or maintain any application or registration of the LICENSED MARKS or any other name or mark confusingly similar thereto in any jurisdiction, domestic or foreign;

(c) misuse the LICENSED MARKS;

(d) bring the LICENSED MARKS into public disrepute;

(e) destroy or diminish the goodwill in the LICENSED MARKS.

9.2 All use by LICENSEE of the LICENSED MARKS during the TERM and in the TERRITORY inures to the benefit of TAMU-CC.

9.3 LICENSEE agrees to cooperate, to the extent reasonable and permitted by law, with TAMU-CC in maintaining the goodwill of TAMU-CC in the LICENSED MARKS.

10. Quality Control

10.1 All goods and services offered by LICENSEE under the LICENSED MARKS shall be QUALITY goods and services. TAMU-CC acknowledges that the level of quality of the goods and services offered by LICENSEE to date represents an acceptable level of QUALITY under this license. LICENSEE agrees that it will, in the future, maintain or exceed its current level of quality for the goods and services offered under the LICENSED MARKS.

10.2 To enable TAMU-CC to confirm that QUALITY is being maintained, LICENSEE agrees to include a person specified by TAMU-CC on its mailing list for printed or electronic marketing materials that bear the LICENSED MARKS and that are representative of the types of materials LICENSEE uses for marketing its goods or services. LICENSEE shall also provide drafts of all printed or electronic marketing materials to the TAMU-CC contact listed in Section 13 at least ten (10) business days prior to printing and/or distribution for approval by TAMU-CC. Should TAMU-CC fail to respond within ten (10) business of receipt of the notice, the printed and/or electronic marketing materials shall be deemed accepted.

10.3 In the event that TAMU-CC believes that LICENSEE has failed to maintain QUALITY, TAMU-CC shall provide written notice to LICENSEE, stating with specificity the

manner in which TAMU-CC believes that LICENSEE has failed to maintain QUALITY and further specifying reasonable steps or means by which LICENSEE may cure the alleged substandard QUALITY. LICENSEE shall have thirty (30) days after receipt of such notice in which to respond to the complaint of TAMU-CC by (1) agreeing to cease the accused activity, (2) complying with the reasonable steps or means for cure, or (3) providing in writing either (a) an explanation of how the accused activity is consistent with the level of quality in existence at the time of entry of this Agreement or (b) a proposal for otherwise modifying the accused activity in a manner consistent with QUALITY. If LICENSEE fails to cure pursuant to the foregoing clauses (1), (2), or (3) or to otherwise respond within thirty (30) days, TAMU-CC may, at its discretion, terminate this License Agreement. If LICENSEE provides a written explanation or proposal pursuant to the foregoing clause (3), TAMU-CC shall have thirty (30) days to respond by (1) accepting the explanation or proposal or (2) answering the explanation or proposal with a written statement of why the explanation or proposal is not acceptable. If TAMU-CC responds by such a written statement, the parties shall have thirty (30) days after receipt by LICENSEE of the written statement of why the explanation or proposal is not acceptable in which to agree upon reasonable means for maintaining QUALITY. If the parties are unable to agree within the thirty (30) days, TAMU-CC may terminate this License Agreement.

11. Marking

LICENSEE shall be required to designate the LICENSED GOODS AND SERVICES to indicate the rights of TAMU-CC in the LICENSED MARKS. TAMU-CC shall notify LICENSEE in writing of any such requirement and provide LICENSEE a copy of the applicable registration.

12. No Liability

12.1 LICENSEE agrees that it is wholly responsible for all goods and services offered by it, including all LICENSED SERVICES, and that TAMU-CC shall have no liability for any items or services offered by LICENSEE, including any LICENSED GOODS AND SERVICES.

13. Notices

Any notice required or permitted under this Agreement must be in writing and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. TAMU-CC and LICENSEE can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

TAMU-CC: Ashley Larrabee, Director of Marketing
Phone: 361-825-3020
Fax: 361-986-0712
E-mail: licensing@tamucc.edu

With a Copy to: Director of Contracts & Property
6300 Ocean Drive, MS 5731
Corpus Christi, TX 78412
contracts@tamucc.edu

LICENSEE: City of Corpus Christi
Attn: Director of Parks & Recreation
1201 Leopard Street
Corpus Christi, Texas 78401
Phone: (361) 826-3640

14. Status Of Parties

This Agreement is not intended to create, and shall not be interpreted or construed as creating, any relationship beyond what is currently provided for in the affiliation agreement, and related documents referenced in that agreement, between TAMU-CC and LICENSEE, and any representation to the contrary shall not be binding upon either party.

15. Binding Effect

15.1 This Agreement shall be binding upon and inure to the benefit of TAMU-CC and LICENSEE and their respective successors, assigns, executors, heirs, and personal representatives.

16. Governing Law and Venue

The substantive laws of the State of Texas (and not its conflicts of law principles), USA, govern all matters arising out of or relating to this Agreement and all of the transactions it contemplates. Pursuant to Section 85.18 (b), *Texas Education Code*, venue for a state court suit filed against The Texas A&M University System, any component of The Texas A&M University System, or any officer or employee of The Texas A&M University System is in the county in which the primary office of the chief executive officer of the system or component, as applicable, is located. At execution of this Agreement, such county is Nueces County, Texas. Venue for any suit brought against The Texas A&M University System in federal court must be in the Houston Division of the Southern District of Texas.

17. Miscellaneous

17.1 The provisions of this Agreement are severable, and if any provision shall be held illegal, invalid, or unenforceable, such holding shall not affect the legality, validity, or

enforceability of any other provision. Any such illegal, invalid, or unenforceable provision shall be deemed stricken herefrom as if it had never been contained herein, but all other provisions shall continue in full force and effect.

17.2 This Agreement may not be amended, modified, or rescinded except by a written Agreement executed by TAMU-CC and LICENSEE. This Agreement contains the entire agreement between the parties concerning the subject matter hereof, and supersedes any and all prior agreements, arrangements or understandings between the parties.

17.3 LICENSEE acknowledges that TAMU-CC is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement.

17.4 The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TAMU-CC and LICENSEE to attempt to resolve any claim for breach of contract made by LICENSEE that cannot be resolved in the ordinary course of business. LICENSEE shall submit written notice of a claim of breach of contract under this Chapter to Director of Contracts & Property of TAMU-CC, who shall examine LICENSEE's claim and any counterclaim and negotiate with LICENSEE in an effort to resolve the claim.

EXECUTED by TAMUCC and LICENSEE on the days and year noted below, in duplicate copies, each of which shall be deemed an original.

TEXAS A&M UNIVERSITY – CORPUS
CHRISTI

CITY OF CORPUS CHRISTI

By: _____

Name: _____

Date: _____

By: _____

Name: _____

Date: _____

ATTACHMENT A **LICENSED MARKS**

Refer to the Texas A&M University-Corpus Christi Design Guide for approved usage of included name and logos: <http://designguide.tamucc.edu/>. For example, requirements are provided for use of name and logos in brochures, other print materials, and other uses.

WORD MARKS:

1. Texas A&M University-Corpus Christi
2. Texas A&M-Corpus Christi
3. Texas A&M-Corpus Christi Islanders
4. Islanders

DESIGN MARKS:



ATTACHMENT B
LICENSED GOODS AND SERVICES

Naming of the Pavilion and Courts at the City of Corpus Christi Waters Edge Park and McGee Beach with the Licensed Marks. Incorporation of Licensed Marks in approved printed and electronic marketing materials.