

# **BUTLER LONGHORN MUSEUM OPERATING AGREEMENT**

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This Operating Agreement (“Agreement”) is made by and between the City of League City, Texas (“City”) and the Butler Longhorn Museum, a Non-Profit Corporation (“BLM”) on the date set forth below.

## **TERMS**

1. **Property:** The City agrees to provide use of the property located at 1220 Coryell, League City, Texas, which is currently known as the site of the Butler Longhorn Museum (“Museum”) and is further described in **Exhibit A**, which is attach and incorporated into this Agreement.
2. **Operating Term:** The initial term of this Agreement shall commence on May 1, 2017 and continue to September 30, 2018. Thereinafter, the Agreement shall automatically renew for three (3) additional twelve (12) month terms, each beginning on October 1 and ending on September 30, with the final term ending on September 30, 2021.
3. **Compensation:**
  - 3.1. **Lump Sum Payment:** For the initial term, the City shall pay BLM a lump sum payment of \$35,000 upon the execution of this Agreement.
  - 3.2. **Base Compensation Amount:** For each additional twelve (12) month term thereafter, the City shall pay BLM a base compensation amount of Seventy-Two Thousand Dollars (\$72,000) divided out in equal quarterly installments.
  - 3.3. **CPI-U Adjustment:** “CPI-U” shall mean the Consumer Price Index Increase for all Urban Consumers, U.S. City Average, All Items, Not Seasonally Adjusted, as published by the U.S. Department of Labor. Beginning on October 1, 2019, the compensation shall be increased annually in an amount equal to the product of the compensation times Seventy-Five Percent (75%) of the CPI-U increase over a preceding twelve (12) month period, calculated by using the preceding March CPI-U and the March CPI-U published twelve (12) months earlier.
4. **Marketing:** The City agrees to develop a comprehensive marketing plan to help increase museum usage and attendance. Methods will include, but not be limited to, notices on City outlets including electronic signage, website, social media sites, etc.
5. **BLM Reports:** BLM shall submit its budget information to the City for the upcoming fiscal year no later than June 1<sup>st</sup> of each fiscal year. BLM shall also provide financial quarterly reporting to

the City during the term of the Lease. The quarterly financial report to the City will include the following information:

- 5.1. BLM's Profit and Loss Statements and Balance Sheet
  - 5.2. Summary of the Use of the Building including numerical reporting of the attendance during Normal Business Hours and at Special Events
  - 5.3. The quarterly financial report after the end of BLM's fiscal year (September 30th) will include a copy of the annual financial report required to be prepared in accordance with Business Organizations Code Section 22.352. This report contains (1) a statement of support, revenue, and expenses; (2) a statement of changes in fund balances; (3) a statement of functional expenses; and (4) a balance sheet for each fund.
  - 5.4. IRS 990 Form and supporting documentation
  - 5.5. Annual audit or in the alternative, an annual financial review for an amount not exceeding \$2,500. If an audit cannot be conducted for less than \$2,500 then the BLM is not required to conduct the audit. The audit/financial review must provide reasonable assurance about whether the financial statements are free of material misstatement, including examination of evidence supporting the amounts and disclosures in the financial statements. Written financial policies and procedures regarding cash receipts/disbursements are to be provided to the City within 90 days of the commencement of the agreement. The City shall have the right to conduct its own audit should it so elect, at its own expense, and the BLM agrees to make all of its financial records available to the City within 120 days after receipt of written request.
6. Use of Property: BLM shall use the property, identified in Exhibit A, to operate the Butler Longhorn Museum for benefit the City of League City, Texas according the requirements shown in **Exhibit B** (Operating Requirements), attached and incorporated into this Agreement. Any other uses of the Museum shall require the approval of the City Manager or his designee.
7. Prohibited Uses: BLM may not use or permit any part of the Museum to be used for: 1) any activity that is a nuisance or is offensive, noisy or dangerous, except for those activities that have been pre-approved by the City Manager or designee in writing or those categories of Events detailed in **Exhibit C**, attached and incorporated into this Agreement; or 2) any activity that violates any applicable law, regulation, ordinance, governmental order or this Agreement. The City reserves the right to prohibit any events listed in Exhibit C that become incompatible with the surrounding neighborhood in the City's sole discretion.

8. Noise Restrictions:

8.1. Definitions

8.1.1. “dB(A)” shall mean the intensity of a sound expressed in decibels read from a calibrated sound level meter utilizing the A-level weighting scale and the slow meter response, as specified by the American National Standards Institute

8.1.2. “Daytime hours” shall mean the hours of 6:30am on one day and 7:00pm on the same day.

8.1.3. “Nighttime hours” shall mean the hours between 7:00pm on one day and 6:30am the following day.

8.1.4. “Property line” shall mean the line along the ground surface, and its vertical extension, which separates the real property owned, leased or occupied by one person from that owned, leased or occupied by another person and the imaginary line which represents the legal limits of property of any person who owns, leases or otherwise occupies an apartment, condominium, hotel or motel room, office or any other type of occupancy.

8.2. Maximum Permissible Sound Levels: BLM shall not conduct, permit or allow any activity or sound source to produce a sound that is discernible beyond the property line of the museum to exceed Sixty-eight (68) dB(A) during daytime hours or Sixty-five (65) dB(A) during nighttime hours.

8.3. Method of Sound Measurement: In the event of a complaint, the measurement of sound shall be made by the League City Police Department, in the presence of a BLM representative, using a Type 1 or Type 2 calibrated sound level meter utilizing the A-weighting scale and the slow meter response as specified by the American National Standards. Noise levels shall be measured in decibels and A-weighted. The unit of measure shall be designated as dB(A).

8.4. Complaint Process: The Chief of Police shall report any violations to the City Manager in writing and include specific data as evidence of the violation.

9. Revenue: All revenue from the operation of the Museum shall be retained by BLM and shall only be used to pay for the operating costs and expenses of the Museum. In order for the City to confirm that the premises and funds are being used by the BLM for the purposes stated in this agreement, the BLM will continue to provide quarterly financial reporting the City.

10. Non-Discrimination: BLM will operate the Museum without discriminating against any person or class of persons and will seek participation by all interested members of the public.

11. Utilities: The City shall pay for all electric, phone, fax and water costs incurred for the operating of the Museum during the term of this Agreement.

12. Janitorial Service: BLM shall provide routine indoor janitorial service to the Museum, including replacement of indoor light bulbs, keeping the floors free from dust and debris and other minor cleaning duties. All indoor Museum areas must continue to meet City Code requirements.

13. Improvements: If BLM desires to make any structural improvements to the Museum, BLM must request and receive the City's written approval prior to the construction or implementation of any proposed improvements. Any structural improvements to the Museum shall remain and become the property of the City. This provision does not apply to BLM exhibits.
14. **INDEMNITY**: **BLM SHALL INDEMNIFY AND HOLD HARMLESS CITY, AND EACH OF ITS REGENTS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND REASONABLE LITIGATION COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF BLM OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF BLM IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT.**
15. Default: BLM's violation of any provisions of this Agreement shall constitute a default. BLM shall have seven (7) days from the receipt of a notice of default to cure the default. If BLM fails to cure the default, the City may immediately terminate this Agreement.
16. Notices: Notices or other correspondence concerning this Agreement shall be in writing and are effective when mailed, hand-delivered, or transmitted by facsimile or electronic transmission as follows:

**To City:**

City of League City  
300 West Walker  
League City, Texas 77573  
[Rebecca.underhill@leaguecity.com](mailto:Rebecca.underhill@leaguecity.com)  
Fax: (281)554-1020  
Attn: Rebecca Underhill, Assistant City Manager

**To BLM:**

Butler Longhorn Museum  
1220 Coryell  
League City, Texas 77573

17. Access by City: The City may enter the Museum at any time for any purpose with reasonable notice to BLM.
18. Condition of Property: BLM has inspected the Museum and accepts the Museum in its present condition "AS IS" unless expressly provided otherwise in this Agreement. City has made no express or implied warranties as to the condition of permitted use of the Museum and surrounding

property. At the time this Agreement ends, BLM will surrender the Museum in the same condition as when received, normal wear and tear excepted. BLM will not cause damage to the Museum and will not cause or allow hazardous materials or environmental containments in the Museum. If BLM leaves any personal property in the Museum after the expiration of the term, the City may, at its sole option: (1) require BLM, at BLM's expense, to remove the personal property within ten (10) calendar days after written notice; or (2) retain such personal property as forfeited property.

19. Records: BLM shall provide a complete copy of its Articles of Incorporation, Bylaws and/or other governing documents with this executed Agreement. The City shall be entitled to inspect and copy BLM's records concerning or related to the operating of the Museum upon a request with reasonable notice.
20. Independent Contractor: This Agreement shall not be construed to create a partnership, joint venture, nor other agency relationship between the parties, who are independent of one another. The relationship of BLM to City is and shall continue to be that of an independent contractor, and no liability or benefits such as workers' compensation, pension rights or liabilities, insurance rights or liabilities, arising out of or related to an employer/employee relationship, shall arise, or accrue to either party or either party's agent, subcontractor or employee, as a result of this Agreement or its performance. No relationship, other than that of independent contractor, shall be implied between the parties or between either party and the other party's agent, employee, or subcontractor, and BLM hereby agrees to hold City harmless from any such claims by it or its associates, and any cost or expense related thereto.
21. Amendment: This Agreement may be changed, amended, modified, extended or assigned only by mutual consent of the parties provided that consent shall be in writing and executed by the parties hereto prior to the time such change shall take effect.
22. Choice of Law/Venue: This Agreement shall be construed according to the laws of the State of Texas and venue shall be in Galveston County, Texas.
23. Non-Assignment: This Agreement may not be assigned without the prior written authorization of the City.
24. No Third-Party Beneficiaries: This Agreement shall not be construed as affording any rights or benefits to anyone other than the City and BLM.
25. Severability: In the event that any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this contract shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the provisions of this contract are declared to be severable. The Parties may mutually agree to

renegotiate the contract to cure such illegality/invalidity or unconstitutionality if such may be reasonably accomplished.

26. Entire Agreement: This contract constitutes the entire contract and supersedes all prior or contemporaneous agreements, whether written or oral, between the parties. Verbal representations not contained herein shall not be binding on the parties unless acknowledged by them in writing.

Executed this \_\_\_\_\_ day of April, 2017.

**BUTLER LONGHORN MUSEUM, a non-profit corporation.**

\_\_\_\_\_  
Annette Conwell, President

**CITY OF LEAGUE CITY, TEXAS**

\_\_\_\_\_  
John Baumgartner, City Manager

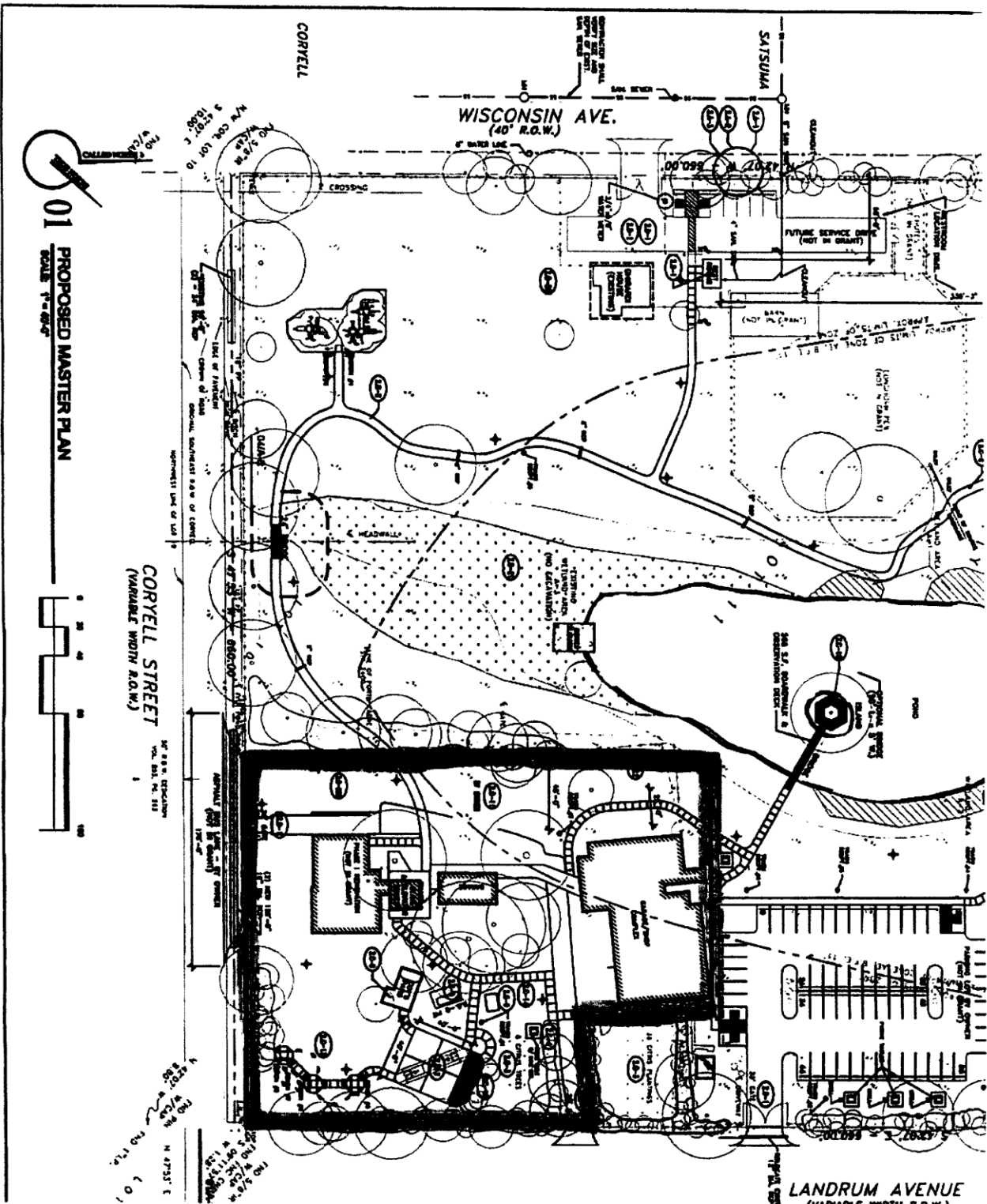
ATTEST:

\_\_\_\_\_  
Diana Stapp, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Nghiem V. Doan, City Attorney

## Exhibit A



## **Exhibit B**

### **OPERATION REQUIREMENTS**

- A. BLM shall provide space for a historical gallery, instructional space, meeting facilities, and gift shop. Secondary functions may include but are not limited to: oversight of outdoor sculpture installations on the grounds, instructional programs for seniors, pre-schoolers, summer camps and other after school programs; and other arts and cultural related activities such as small musical performances, when space is available.
- B. BLM shall be allowed to rent the Museum or a portion thereof for meetings or other events consistent with the uses outlined above to third parties. Such rentals shall be subject to all applicable Operating Requirements contained in the Agreement and specifically to this Exhibit.
- C. BLM shall maintain the following hours of operation: Tuesday through Saturday, 10 am to 4 pm. The Museum will be open for special events such as art exhibits, programs, music events, and historical programs as deemed appropriate.
- D. BLM shall maintain three floors of Museum artifacts and exhibits.
- E. BLM shall have a gift shop and revenue from the shop will be used to pay operating costs.
- F. BLM shall provide educational classes for children and adults.
- G. BLM shall provide the following equipment: cash register, art display walls, DVD player, copier, stereo, coffee pot, folding chairs and tables, office supplies, safe, storage cabinet, office furniture, gift shop display cases, postage.
- H. Whenever alcohol is served on the premises, BLM is subject to all state and federal laws and regulations, including the Texas Alcoholic Beverage Code.
- I. BLM shall provide quarterly financial and attendance reports to the City
- J. BLM shall provide Annual Reports, which will include the totals compiled in the quarterly reports, IRS 990 and copies of insurance coverages.
- K. League City Police Officer(s) will be required at all functions of more than 150 expected attendees and all functions that will be serving alcohol.
- L. The ratio for police officers to guests, where alcoholic beverages are served, will be as follows:
  - 1. Two (2) officers for the first 300 guests.
  - 2. Three (3) officers for 301-450 guests.
  - 3. Four (4) officers for 451-600 guests.



- M. The police officer(s) will remain on duty until the last guest leaves the Museum Facility or grounds. Before departure, the police officer will complete a security check of the area. All police officers will be in uniform while in performance of security duty. Fees are minimum \$30 per hour/per officer. Under no circumstances shall alcohol be allowed to be served to minors. The City Manager reserves the right to require a uniformed police officer at any event if the City feels it is the best interest of the safety of those involved.

## **Exhibit C**

### **APPROVED CATEGORIES OF EVENTS**

- **Jones Wedding (April 22, 2017 at 5pm)**
  - o Outdoor event with music (2 violins), microphone, etc.
- **Garden Party Dinner (April 29, 2017 at 6pm)**
  - o Outdoor Event, amplified music and piano
- **Any Indoor Event**
- **Outdoor Major Event**
  - o Each event must be no more than 3 continuous days in length.
  - o BLM may only have 1 Outdoor Major Event per each fiscal year.
  - o All Activities must end by 7pm.
  - o Amplified music or sound is permitted on Heritage Park grounds.
- **Outdoor Public Family Events**
  - o Each event must be no more than 3 continuous days in length.
  - o No amplified sound or live music will be allowed.
  - o All activities must end by 7pm.
  - o Events involving Food Trucks must be pre-approved by the City Manager.
- **Outdoor Movie Nights**
  - o Each event must be no more than 1 day in length.
  - o Activity must end by 10pm.
  - o BLM may only have a total of 4 outdoor movie nights per each fiscal year
  - o Amplified sound related to the movie will be permitted.