Notice is hereby given that the above governmental body will hold a Regular Meeting on Wednesday, November 6th, 2019 at 5:30 P.M. at City Hall, Town Hall Meeting Room, 2nd Floor, Harlingen, Texas.

City of Harlingen meetings are available to all persons regardless of disability. If you require special assistance, please contact the City Secretary’s Office at (956) 216-5001 or write Post Office Box 2207, Harlingen, Texas 78550 at least 48 hours in advance of the meeting.

The Harlingen City Commission reserves the right, pursuant to the Texas Government Code Chapter 551, Subchapter D, to enter into closed executive session on any item posted on the agenda if a matter is raised that is appropriate for closed discussion.

Invocation/Mayor Chris Boswell

Pledge of Allegiance/Welcome

Called Meeting to Order

Citizen Communication / Input

1) Proclamation – November 7th-9th, 14th-16th and 21st-23rd, 2019 as “Harlingen Professional Fire Fighters Local “Fill the Boots Days.” Attachment

2) Presentation by Rodrigo Davila, Public Works Director, regarding the duties and functions of the Public Works Department. (Public Works)

3) Approval of Minutes
   a) Regular Meeting of September 18th, 2019

The following items are of a routine or administrative nature. The Council has been furnished with background material on each item and/or it has been discussed at a previous meeting. All items will be acted upon by one vote, without being discussed separately, unless requested by a Commission member. Items withdrawn from the Consent Agenda for individual consideration in their normal sequence will be heard after the remainder of the Consent Agenda has been acted upon.
4a) Second and final reading to approve an ordinance for a Specific Use Permit (SUP) to allow a storage building greater than 144 sq. ft. in a Single Family Residential (R-1) District for Lot 11 Block 153, Harlingen Original Townsite Subdivision located at 218 W. Lincoln Ave. Applicant: Magdalena & Jesus Peralta. Attachment *(Planning & Zoning)*

b) Second and final reading to approve an ordinance for a Specific Use Permit (SUP) to allow an expansion of an existing Childcare Business by the name of Martha's Playground adjacent to the property located within a Light Industry (L-I) District for Lot 1, Block 1, Safeguard Subdivision and 1.58 acres out of the east 10 acres of Block 4, Highway Subdivision located at 5206-5402 S. Expressway 83. Applicant: Roger Gonzalez. Attachment *(Planning & Zoning)*

c) Second and final reading to approve an ordinance for a Specific Use Permit (SUP) to allow a Bar/Lounge in a General Retail (G-R) District for Lot 4, Block 1, South Point Subdivision located at 640 N. Ed Carey Drive. Applicant: Kamlesh Bhakta dba PPO Development LLC. Attachment *(Planning & Zoning)*

d) Second and final reading to approve an ordinance to rezone from Residential, Single Family ("R-1") District to General Retail (G-R) District for Lot 9 and the west 23.78 ft. of Lot 10, Block 6, Crown Heights Addition located at 918 E. Grimes Avenue. Applicant: Aaron Medina. Attachment *(Planning & Zoning)*

e) Second and final reading to approve an ordinance to regulate and reduce pollution that enters the surface water in the State of Texas and waters of the United States from discharges into the City's municipal separate storm sewer system, by providing for the detection and elimination of illicit connections to the storm sewer system and requiring erosion control and pollution prevention at construction sites and to establish penalties and an effective date. Applicant: City of Harlingen. Attachment *(Planning & Zoning)*

f) Second and final reading to approve an ordinance to permanently close L & L 1/2 Street between Fair Park Boulevard and Adams Avenue for the construction of the Destination Park Project. Attachment *(Engineering)*

g) Consideration and possible action to approve a request from the Temple of the Lord Ministries to close the 2000 Block of West La Paloma Avenue from 1:00 p.m. to 7:00 p.m., Saturday, November 9, 2019 for their Community Fall Festival. Attachment *(Police Dept.)*

h) Consideration and possible action to approve a request from H.E.B. Supermarket to close the following streets beginning Thursday, November 7, 2019 at 8:00 a.m. to allow H.E.B. to stage their food trailers and start processing the food for the event through Friday, November 8, 2019 until their Annual Feast of Sharing Event ends. Attachment *(Police Dept.)*

- Madison Avenue from 2nd to 3rd Street
- 2nd Street from Jefferson to Madison Avenue
5) Consideration and appropriate action, if any, to retain the services of Attorney Rolando Rios and Associates in connection with the 2020 Census and the related redistricting process. Attachment (City Manager)

6) Presentation on the City of Harlingen's Comprehensive Plan Report. Attachment (Special Project Director)

7) Consideration and possible action to approve an ordinance on first reading to rezone from Residential, Single Family (R-1) District to Residential, Multi-Family (M-2) District for Lot 3, Sun Valley Shopping Center Unit No. 2, save and except 30 feet x 58.33 feet, located on the west side of 11th Street north of Washington Avenue. Applicant: John Timms. Attachment (Planning & Zoning) (This item was tabled at the last regular meeting of October 22nd, 2019)

8) Consideration and possible action to amend the Contract with Loaves and Fishes to provide meals for the homeless and needy through their kitchen and food pantry and authorize the Mayor to sign the contract. Attachment (Gabriel Gonzalez, Asst. City Manager)

9) Consideration and possible action to adopt a resolution authorizing the City Manager to execute an Advance Funding Agreement with the Texas Department of Transportation for Sidewalk Improvements under the Statewide Curb Ramp Program. Attachment (City Engineer)

10) Consideration and possible action to accept or deny the donation of five (5) park benches to the City Parks from the Harlingen's Wellness Coalition, a non-profit organization to be installed at the Meg Jorn Trail. Attachment (Parks & Recreation)

11) Consideration and possible action to approve a contract between the City of Harlingen and Cynthia Sparks to provide Infant Swimming Resource's (ISR) Comprehensive Drowning Prevention instruction at Pendleton Park Pool and authorize the City Manager to sign the contract. (Parks & Recreation)

12) Consideration and possible action to enter into a contract with KONE Inc. utilizing the U.S. Communities Program in lieu of bids or RFP's for the replacement of parts and repairs to the staff elevator and passenger elevator at the Harlingen Library and authorize the City Manager to sign the contract. Attachment (Parks & Recreation)

13) Consideration and possible action to approve the renewal of the Service Agreement between the City of Harlingen and Motorola Solutions to continue preventative maintenance and service to radio equipment at the New Hampshire/Lipscomb Tower Site and authorize the City Manager to sign the agreement. Attachment (Fire Dept.)

14) Consideration and possible action to approve a Mutual Aid Agreement between the Harlingen Police Department Special Weapons and Tactic's (SWAT) Unit and the Cameron County Special Weapons and Tactic's (SWAT) Unit and authorize the Mayor, Commissioners, and City Attorney to sign the Mutual Aid Agreement. Attachment (Police Dept.)

15) Consideration and possible action to approve a resolution amending Resolution No. R15-31 to remove Section 3, "Any board member of the Board who fails to attend three (3) consecutive regular meetings automatically forfeit such position." Attachment (Gabriel Gonzalez, Asst. City Manager)
16) Consideration and possible action to approve the rental rates for the Harlingen Convention Center. Attachment (Gabriel Gonzalez, Asst. City Manager)

17) Consideration and possible action to approve a resolution authorizing and implementing an Economic Development Program Agreement with "Heart of Christmas, LLC" pursuant to Chapter 380 of the Texas Local Government Code. Attachment (City Manager)

18) Board Appointments

Discussion and possible action regarding membership on any of the following listed board/entity:

a. Airport Board (1)
b. Animal Shelter Advisory Committee (2)
c. Audit Committee (1 vacancy) (all other terms expire annually in June, 2019)
d. Civil Service Commission (1)
e. Community Development Advisory Board (2)
f. Construction Board of Adjustments (5)
g. Convention & Visitors Bureau (2)
h. Development Corporation of Harlingen, Inc.
i. Downtown Improvement District Board (1)
j. Golf Course Advisory Board
k. Harlingen Community Improvement Board (1)
l. Harlingen Housing Authority Board (2)
m. Harlingen Finance Corporation (4)
n. Keep Harlingen Beautiful Board (5)
o. Library Advisory Board
p. Mayor Wellness Council
q. Museum Advisory Board (3)
r. Parks Advisory Board
s. Planning & Zoning Advisory Board (1)
t. Senior Citizens Advisory Board (2)
u. Tax Increment Finance Board (7)
v. Utility Board of Trustees
w. Veterans Advisory Board
x. Zoning Board of Adjustments (6)
y. Complete Census Committee

Specifically, appointment or discussion and possible action to include appointment bylaws and/or removal of any position subject to appointment or removal by statute, ordinance or bylaws.

19) Executive/Closed Session on the following items:

a) Personnel – deliberation pursuant to Texas Gov't Code, Section, 551.074, to deliberate the appointment, employment, evaluation, reassignment, or duties of the City Auditor. (Mayor)

b) Personnel - deliberation pursuant to Texas Gov't Code, Section 551.074, to deliberate the appointment, employment, evaluation, reassignment, or duties of the City Manager. (Mayor)
c) Attorney consultation pursuant to Section §551.071(1) and (2), Texas Gov't Code to receive legal advice regarding pending litigation under Chapter 19, Texas Civil Practice & Remedies Code between Texas State Technical College and the City of Harlingen, Texas to clear title to ownership of certain real property located along Loop 499 with TSTC (formerly known as TSTI) as purchaser and the City of Harlingen as Seller. **(City Manager)**

d) Attorney consultation pursuant to Section 551.071(2), Texas Gov't Code to secure legal advice and counsel pertaining to the City's rights, duties, privileges, and obligations under the Convention Center Lease & Operation Agreement and the Working Capital Fund contemplated therein, and related legal issues." **(City Manager)**

20) Consideration and possible action as discussed in executive session regarding Item (19-a). **(City Manager)**

21) Consideration and possible action as discussed in executive session regarding Item (19-b). **(City Manager)**

22) Consideration and action authorizing legal counsel to represent the City of Harlingen, Texas in connection with the legal proceeding under Chapter 19, Texas Civil Practice & Remedies Code between Texas State Technical College and the City of Harlingen, Texas to clear title to ownership of certain real property located along Loop 499 and related legal matters. **(City Manager)**

23) Consideration and appropriate action to authorize the City Manager to determine and pay the required payments from the Working Capital Fund to BC Lynd Convention Services as specified in the Convention Center Lease & Operation Agreement.

Adjournment

I, the undersigned authority, do hereby certify that the above notice of meeting is a true and correct copy of said notice posted on the City's bulletin board, City Hall, 118 E. Tyler Avenue, a place convenient and readily accessible to the general public at all times and said notice was posted on Friday, November 1st, 2019 at 5:10 p.m. at least 72 hours preceding the scheduled time of said meeting.

Dated this 1st day of November, 2019

[Signature]
Amanda C. Elizondo, City Secretary
City of Harlingen & Harlingen Firefighters Local 3404
Fill the Boot® Proclamation

WHEREAS, the Harlingen Professional Fire Fighters are the prime example of public service and
sacrifice, displaying the nobility to protect the citizens of our community every day; and

WHEREAS, the Harlingen Professional Fire Fighters members are highly dedicated and trained
individuals who demonstrate American ideals, the ultimate standard of character and
courage in the face of danger; and

WHEREAS, the City of Harlingen & Harlingen Professional Fire Fighters members selflessly
contribute their time and energy fighting for kids and adults with muscular dystrophy, ALS and related life-threatening diseases that severely limit muscle strength and
mobility by Filling the Boot each year for the Muscular Dystrophy Association (MDA); and

WHEREAS, in the past five years, the City of Harlingen & the Harlingen Professional Fire Fighters
has raised more than $165,000 for MDA through the annual Fill the Boot campaign; and

WHEREAS, the City of Harlingen & the Harlingen Professional Fire Fighter's endless service to MDA
has given so much hope for families fighting life-threatening muscle diseases;

NOW THEREFORE, I, Chris Boswell, Mayor of Harlingen, TX, do hereby proclaim November 7-9th,
November 14-16th, Nov 21st-23rd, 2019 as,

HARLINGEN PROFESSIONAL FIRE FIGHTERS LOCAL
“FILL THE BOOTS DAYS”

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of
Harlingen to be affixed this 6th day of November, 2019.

Chris Boswell, Mayor

Attest:

Amanda C. Elizondo, City Secretary
REGULAR MEETING
CITY COMMISSION
HARLINGEN, TEXAS

September 18, 2019

A Meeting of the Harlingen City Commission was held September 18, 2019 at 5:30 p.m., City Hall, Town Hall Meeting Room, 118 E. Tyler Street, Harlingen, Texas. Those in attendance were:

Mayor and Commissioners
Mayor Chris Boswell
Richard Uribe, Commissioner, District 1
Frank Puente, Commissioner, District 2
Victor Leal, Commissioner, District 5

ABSENT
Ruben De La Rosa, Commissioner, District 4
Michael Mezmar, Mayor Pro-Tem, District 3

City Staff
Dan Serna, City Manager
Amanda C. Elizondo, City Secretary
Allison Bastian, Asst. City Attorney

Invocation/City Commissioner Victor Leal

Pledge of Allegiance/Welcome

1) Gavel Open Meeting
Mayor Chris Boswell called the meeting to order and stated the agenda was duly posted according to state law.

2) Citizen Communication / Input

   • Ron Lozano – 2410 Riverside Dr. – Item 10
   • Bill Regan – 2017 Lotus – Item 17

3) Board Recognition
Mayor Boswell presented certificates of recognition to the following newly appointed board members: Diana Esparza to the Parks Advisory Board, Tim Elliott - Golf Course Advisory Board and Paul A. Heinert - Veterans Advisory Board.

Mayor Boswell changed the order of the agenda and proceeded with the following items.

19) Consideration and possible action to approve an amendment to the October 2nd 1996 Humane Society Contract to provide for additional funding for the operation of the City's Animal Shelter and authorize the Mayor to sign the amendment.

Gabriel Gonzalez, Asst. City Manager, stated additional funding was approved at a previous City Commission meeting for the Humane Society of Harlingen and staff was recommending approval of the proposed amendment to reflect the additional allocation. They currently receive $160,000.00
and effective October 1, 2019 the amount will increase to $287,000.00 per year. The contract term is for three (3) years.

Motion was made by Commissioner Uribe and seconded by Commissioner Leal to approve the amendment to the October 2nd, 1996 Humane Society Contract to provide additional funding for the operation of the City's Animal Shelter and authorize the Mayor to sign the amendment. Motion carried unanimously.

Mayor Boswell asked for discussion on this item. There being none, Mayor Boswell thanked the Humane Society Staff for the services that they provided to the community.

17) Consideration and possible action to approve an agreement with Loaves and Fishes to provide meals for the homeless and needy through their kitchen and food pantry and authorize the Mayor to sign the agreement.

Mr. Gonzalez stated the City awarded Loaves and Fishes $50,000 to provide meals to the homeless and needy from their main kitchen located at their shelter. This amount has been budgeted and approved by the City Commission. The following changes were made to the contract due to changes within the federal agencies.

- Funds will be used to provide nutritious meals "in the Dining Hall and bed nights in the shelter".
- These programs will be provided to residents of Harlingen "and those who become homeless within the City of Harlingen."

Bill Reagan, Director of Loaves and Fishes thanked the City of Harlingen for their support when they were getting all the asylum migrants from the federal agencies. This is the reason he was requesting the contract changes. The City would provide funds for food for their Dining Hall and pantry. With the contract changes it would give them more flexibility regarding the funding and carry on their mission. He asked for the City Commission to consider raising the contribution to $75,000 to continue serving the migrants that are still coming in to their shelter. Only this, they served 2,054 migrants from March to June, 2019.

Dan Serna, City Manager recommended approval of the $50,000 and to delay the additional $25,000 until April, 2020 because the additional $25,000 that was being requested was not in the budget for FY 2019-2020. At this time, staff would revisit budget for additional $25,000.

Motion was made by Commissioner Uribe and seconded by Commissioner Fuente to approve an agreement with Loaves and Fishes for $50,000 to provide meals for the homeless and needy through their kitchen and food pantry and revisit the budget to award the additional $25,000 in the future as requested by Bill Reagan. Motion carried unanimously.

18) Consideration and possible action to approve the Convention Center Operating Budget.

Mr. Gonzalez stated that pursuant to the Developer's Agreement, BC Lynd Hospitality is required to provide an operating budget for the Harlingen Convention Center for the period of October 2019 to September 2020. The total revenue after cost of sales is projected to be $735,602. Total expenses including payroll, operations, and management fees are projected at $937,991 with a Net Operating Income of $202,389. Additionally, HVS Convention, Sports, & Entertainment Facilities Consulting Services conducted a review of the budget and found it is within industry variances.
Brandon Bailey, CEO of BC Lynd Hospitality gave a brief update on the construction of the hotel. He stated the hotel is in progress and its completion date is the end of July 2020. For the month of July, they had an approved budget of revenue of under $22,000. The convention center had an ending $82,000 top-line budget. For the month of August, they had under $33,000 with an ending top-line budget of $99,000. Mr. Raney commended Jeff Hamel & HCC Staff for their good work.

Jeff Hamel with the Harlingen Convention Center highlighted the following information.

Fiscal Year 2019-2020 Report on the Convention Center

- Total Rev. Proposed - $955,108
- Cost of sales - $219,506
- Total Payroll Expenses - $483,634
- Total operating expenses - $425,704

Mr. Serna stated staff projected losses in revenue within the first two (2) to three (3) years of the Convention Center, but the figures were a lot better than foreseen. He thanked Mr. Hamel and his staff for their services. The City budgeted working capital funds to cover some of the losses were approved.

Mayor Boswell asked if the negative amount of $202,389 was budgeted as startup cost. This is a conservative budget based on the last two months. It would be good to see revenues higher and expenses lower; however, overall he was pleased with projections.

Motion was made by Commissioner Leal and seconded by Commissioner Uribe to approve the Convention Center Operating Budget. Motion carried unanimously.

Mayor Boswell returned to the regular order of the agenda and proceeded with the following items.

4) Presentation by City Staff regarding the Herb Kelleher Mural.

Ed Meza, Director for the Downtown Improvement District, gave a brief presentation of the Herb Kelleher Mural and stated Mr. Herb was the founder of Southwest Airlines. Mr. Kelleher passed away January 3, 2019. His impact changed the airline industry resulting in tremendous impact on many communities and by adding Harlingen to the original triangle of destinations, Houston, Dallas and San Antonio. The City of Harlingen was the 4th city out of 103 destinations serviced by Southwest Airlines. The concept of the mural is to express the City’s sincere gratitude to Mr. Kelleher. Staff reached out to the Kelleher family to request permission to create a mural to honor and pay tribute to Mr. Kelleher for his contribution not only to City of Harlingen, but other communities. Approval was grant by the Kelleher Family and Southwest Airlines. Staff is proposing the Lozano Park as the site to locate the mural because of its location in the downtown area. Angel Hernandez, Artist was selected by the City to create the mural. The following quote will be included in the mural as one of the many famous quotes by Mr. Kelleher.

“The essential difference in service is not machines or ‘things’, the essential difference is minds, hearts spirits and souls”

5) Approval of Minutes

a) Special Meeting of July 24, 2019
Motion was made by Commissioner Uribe and seconded by Commissioner Leal to approve the minutes of July 24, 2019. Motion carried unanimously.

CONSENT AGENDA

6a) Second and final reading to approve and adopt an ordinance amending the City of Harlingen Code of Ordinances, Chapter 109 (Subdivisions), Article V Standards and Specifications, Section 109-124(F) Sidewalks, to require sidewalks on local streets and perimeter streets. Applicant: City of Harlingen.

b) Consideration and possible action to approve a request from the City’s Parks & Recreation Department to close Jackson Street, Commerce Street, and the following streets, Thursday, October 31, 2019 from 1:00 p.m. to 9:00 p.m. for the City’s 4th Annual Halloween Event.

- Jackson Avenue / 4th Street
- Jackson Avenue / 3rd Street
- Jackson Avenue / 2nd Street
- Jackson Avenue / 1st Street
- Jackson Avenue / “A” Street

c) Consideration and possible action to approve an agreement with Rio Grande Valley Birding Festival for the use of Hotel Motel Funds for promotion of tourism through the Annual Birding Festival and authorize the Mayor to sign the agreement.

d) Consideration and possible action to approve an agreement with Marine Military Academy for the use of Hotel Motel Funds for promotion of tourism by maintaining the Iwo Jima Monument and authorize the Mayor to sign the agreement.

e) Consideration and possible action to approve an agreement with Harlingen Performing Arts Theatre for the use of Hotel Motel Funds for promotion of the arts and authorize the Mayor to sign the agreement.

f) Consideration and possible action to approve a contract with the Boy’s and Girl’s Club of Harlingen for Fiscal Year 2020 in the amount of $90,104.00 for Youth Service Programs and authorize the City Manager to sign the contract.

g) Consideration and possible action to approve a contract with the Boy’s and Girl’s Club of Harlingen for Fiscal Year 2020 in the amount of $115,757.00 for Teen Service Programs and authorize the City Manager to sign the contract.

Motion was made by Commissioner Leal and seconded by Commissioner Uribe to approve the Consent Agenda Items (a thru g). Motion carried unanimously.

7) Presentation of the Development Corporation, Inc. of Harlingen Quarterly Report by Raudel Garza, HEDC Manager & Chief Executive Officer.

Raudel Garza, Manager & Chief Executive Officer of the Harlingen Economic Development Corporation, made a power point presentation on a year-to-date review of the HEDC activities for FY 18-19 through the 3rd quarter of Fiscal Year 2018-2019. He highlighted the financials for the month ending June 30, 2019.

- Fund Balance $2,722,665 (a reserve for debt service)
Reg. CC Mtg.
9-18-19

- Unrestricted Fund Balance $ 7,488,758
- Non-Spendable Amount $ 589,731
- Total Assets $11,311,304
- Liabilities Equal $ 521,165

- Cash Now Accounts, and the TexPool Account earned 2.01% and 2.3812% interest
- Current revenues $ 4,718,641
- Total Current Expenditures 319,060
- Generating Revenues Over Expenditures 4,399,581
- General Capital Assets, net of depreciation, totaled 32,396,333
- Long-term Liabilities 28,545,139
- Net Assets 3,851,194
- Sales Tax $ 383,507

(decrease of $16,878 or 4.40% from the prior year)

The FY18-19 Work Program provides a good framework of the EDC’s accomplishments, compliance of policies and strategies, and information on activities that are considered as “other than” direct economic and industrial development. The fourth quarter of Fiscal Year 2019 challenges includes the need to fill one additional staff position for an accountant/researcher. This position will enhance our capabilities to evaluate different industry targets, provide assistance in economic impact analysis, relieve city staff from some of the accounting workload, and assist in the budgeting process and other functions to allow other personnel to focus on the marketing aspects of economic development. Long-term issues include workforce development, transportation, lack of industrial buildings over 100,000 square feet, lack of large commercial office space, and other issues that need to be addressed at the next strategic planning session.

Mayor Boswell thanked Mr. Garza for his presentation. No action was taken on this item.

8) Consideration and possible action to approve a resolution authorizing the budget and program of work for the Development Corporation of Harlingen, Inc.’s Fiscal Year ending September 30, 2020 as approved by HEDC’s Board of Directors.

Mr. Garza stated on August 27, 2019, the HEDC Board of Directors approved the budget presented by staff and the Program of Work for Fiscal Year ending September 30, 2020. The total revenues projected for next fiscal year is $6,155,630 plus $1,064,904 from cash reserves to balance expenditures of $7,220,534. The program of work includes many of the programs initiated during this year and years past. Conservative spending, selective incentive awards and more over the last few years have led to a healthy fund balance for HEDC, giving us the necessary tools to help recruit larger employees.

Motion was made by Commissioner Leal and seconded by Commissioner Puente to approve a resolution authorizing the budget and program of work for the Development Corporation of Harlingen, Inc.’s Fiscal Year ending September 30, 2020 as approved by HEDC’s Board of Directors. Motion carried unanimously.

9) Consideration and possible action to approve the Banking Contract. (This item was tabled at the last regular meeting of September 4, 2019).

Motion was made by Commissioner Leal and seconded by Commissioner Puente to remove the item from the table.
Elvia Trevino, Finance Director, stated the current banking contract ends on September 30, 2019. This contract was for a three (3) term with two one year extensions. Proposals were received from Frost Bank, Texas Regional Bank, Plains Capital Bank and BBVA Bank. The proposals were reviewed by staff and the following criteria was used to rate the banking proposals: capability to provide services required, service costs, customer service, earnings potential (interest rates) and funds availability, experience and continuity of back and bank officials and creditworthiness of the bank. She recommended awarding the contract to Frost Bank.

Motion was made by Commissioner Leal and seconded by Commissioner Uribe to approve the Banking Contract. Motion carried unanimously.

10) Public hearing to consider an ordinance on first reading for a Specific Use Permit to allow an adult business (smoke shop) in a General Retail ("GR") District located at 216 N. Ed Carey Drive, Suite 6, bearing a legal description of 1.583 acres out of Vector Subdivision Unit 1. Applicant: Eyal Turgeman.

Xavier Cervantes, Planning and Development Director stated Eyal Turgeman, applicant is requesting a Specific Use Permit (SUP) to allow a vape shop under the name of "Cloud 9" out of an existing suite within the Plaza" located at 216 N. Ed Carey Dr. The proposed suite is approximately 1,800 square feet. Hours of operation will be from 10 am to 10 pm, Monday thru Sunday. Five (5) parking spaces are required and are provided in the common parking area. The surrounding properties are zoned General Retail (GR) District in all directions. Surrounding land uses within the plaza consist of Stripes, Nova Medical Clinic, Easy to Go Tacos, Harbor Freight and Charlie Clark Nissan. The land uses to the north, south, and east of the "The Plaza" consist of commercial use. Building Inspections, Health, Fire Prevention, and Police Departments reviewed the application and had no opposition to the request subject to adhering to the Harlingen Code of Ordinances and procedures administered by each department. Mr. Turgeman must obtain the necessary state permits. Notices were mailed to the surrounding property owners residing within 200 ft. of the proposed business and no objections were received. Notice of the public hearing was advertised in the newspaper.

a) Public Hearing

Mayor Boswell announced this was public hearing anyone wishing to speak for or against could do so.

Ron Lozano, resident of 2410 Riverside Drive, stated three (3) or four (4) years ago there were concerns about youths dying due to illegal drugs and the vape shops are doing the same thing.

There being no other comments, Mayor Boswell closed the public hearing.

Allison Bastian, Asst. City Attorney, read the caption of the ordinance.

b) Consideration and possible action to approve an ordinance on first reading for a Specific Use Permit to allow an adult business (smoke shop) in a General Retail ("GR") District at the above mentioned property.

Motion was made by Commissioner Leal and seconded by Commissioner Uribe to table the Item until a full a Commission was present to vote for or against the P&Z recommendations. Motion carried unanimously.
Public hearing to consider an ordinance on first reading to rezone from Residential, Single Family ("R-1") District to Neighborhood Services ("NS") District for 0.891 of an acre out of Block 21, Howard Dixieland Heights Subdivision, located at 1401 Dixieland Road. Applicant: Ricardo Caballero.

Mr. Cervantes stated Ricardo Caballero, applicant, is requesting to rezone the subject property from Residential, Single-family ("R-1") District to Neighborhood Services ("NS") District to allow a fourplex residential complex and office use on the proposed property. There is an existing 1,508 sq. ft. single family residence on the property that the applicant plans to demolish. The triangular shaped property has 246 ft. of frontage on Dixieland Road, 42 ft. of frontage on Bothwell Road, and a depth of 185 ft. at its longest point. Dixieland Road is a four lane 48 ft. back to back curb and gutter paved street. The proposed property is zoned residential, Single Family ("R-1") as part of a City Initiated Rezoning on January 18, 2017. He highlighted the zoning of the surrounding properties and the existing businesses to north, south, east, and west. Neighborhood Services ("NS") District is designed to service the domestic needs of the immediate neighborhood. Some of the uses permitted in this type of district are residential uses (including a fourplex), with the exception of mobile home use, bakery, church, school, professional offices, and a pharmacy. The Future Land Use Plan (FLUP) component of the City of Harlingen Comprehensive Plan shows this area as low density residential. The requested rezoning is not consistent with the Future Land Use Plan. It is consistent with the adjacent Neighborhood Services ("NS") zoning to the south, and the surrounding land use. Notice was given to the property owners residing within 200 ft. of the proposed property and no opposition was received.

a) Public Hearing

Mayor Boswell announced this was public hearing and anyone wishing to speak for or against could do so.

There being no comments, Mayor Boswell closed the public hearing.

Ms. Bastian read the caption of the ordinance.

b) Consideration and possible action to approve an ordinance on first reading to rezone from Residential, Single Family ("R-1") District to Neighborhood Services ("NS") District for the above described property.

Motion was made by Commissioner Leal and seconded by Commissioner Uribe to table the item until a full commission was not present to vote for or against the P&Z recommendations. Motion carried unanimously.

Consideration and possible action to approve the preliminary and final plat of the proposed JMH Phase II Subdivision with conditions and consider and take action to grant a variance request in regards to the fire hydrant requirements, bearing a legal description of 8.84 acres of land out of Block 73, Minnesota-Texas Land and Irrigation Company Subdivision, located on the east side of Louisiana Road, south of Tio Cano Lake Cross Road. Applicant: Dustin Moore of Moore Land Surveying, LLC, c/o James Green.

Mr. Cervantes stated the proposed subdivision consists of six residential lots. It is located outside the City Limits and within the 3.5 mile ETJ, east side of Louisiana Road, south of Tio Cano Lake Cross Road. The proposed development is consistent with the Future Land Use Plan of Low Density Residential. Water will be provided by the North Alamo Water Supply Corporation.
1 Wastewater disposal is provided by septic system. Items on the preliminary and final plat checklist will
2 be addressed prior to the recording of JMH Phase II Subdivision. The developer is requesting a
3 variance from the City of Harlingen Code of Ordinances Section 109-91(c) (11) and 109-125(g) in
4 regards to the fire hydrant requirement. In the variance letter, the applicant has stated that the North
5 Alamo Water Supply Corporation will not allow a fire hydrant on the existing waterline along Louisiana
6 Road because of low water pressure. The owner would need to extend the waterline through the
7 developers’ property approximately 1400 Linear Ft. to the east and connect the waterline along FM
8 506. The Fire Prevention Bureau reviewed the variance request and objected to the request. In
9 accordance with Section 109-27(c) of the Harlingen Code of Ordinance, no variance shall be
10 recommended unless the Planning and Zoning Commission finds:

11 1. There are special circumstances or conditions affecting the land involved such that a strict
12 application of the provisions of this chapter would deprive the applicant of the reasonable
13 use of his land; and
14 2. The variance is necessary for the preservation and enjoyment of a substantial property right
15 of the applicant; and
16 3. The granting of the variance will not be detrimental to the public health, safety, or welfare, or
17 injurious to other property owners in the area; and
18 4. The granting of the variance will not have the effect of preventing the orderly subdivision of
19 other land in the area in accordance with this chapter.

In addition, Section 109-27(d) states “Financial hardship to the subdivider, standing alone, shall not be deemed to constitute undue hardship.” A 4/5ths vote is required from the City Commission to override a recommendation for or against the variance from the P&Z Commission.

Mr. Serna stated due to the new changes in the law, staff has a certain amount of time to
prepare the information for City Commission’s consideration and approval. This item falls in this
category and staff is presenting the preliminary and final plat approval at the same time. He asked Mr.
Cervantes if this item was delayed would it be beyond the 30-day period.

Mr. Cervantes responded yes.

Mr. Serna stated if the commission decided not to vote on this item at this meeting it will
automatically be approved.

Mr. Cervantes stated it could be approved with conditions or denied.

Motion was made by Commissioner Uribe and seconded by Commissioner Leal to approve
the plat, but not the variance. Motion carried unanimously.

13) Consideration and possible action to dedicate an easement and right-of-way to AEP Texas
INC, a Delaware Corporation to provide electrical services to Vestal Park located at 501
Lafayette Avenue and authorize the City Manager to sign any related documents.

Javier Mendez, Parks and Recreation Director stated AEP Texas has requested for the City to
execute an Easement and Right-of-Way (ROW) for the construction and installation of three (3) phase
electrical service to Vestal Park at 501 Lafayette Avenue. The Easement and ROW would allow for
AEP to install an underground cable, transformer, and meter box to provide power to Vestal Park for
the sports field lighting. Staff is coordinating these efforts with the Harlingen Consolidated
Independent School District because the three (3) phase source will be traversing Zavala Elementary.
The School Board will be considering a separate utility easement along their property at their regular
meeting of September 10, 2019.
Motion was made by Commissioner Puente and seconded by Commissioner Uribe to dedicate an easement and right-of-way to AEP Texas INC, a Delaware Corporation to provide electrical services to Vestal Park located at 501 Lafayette Avenue and authorize the City Manager to sign any related documents. Motion carried unanimously.

14) Consideration and possible action to approve a contract with Don Van Ramshorst, Jr. to operate, manage, and supervise the HEB Tennis Center for Fiscal Year 2019-2020 and authorize the City Manager to sign the contract.

Mr. Mendez stated the current contract expires at the end of September 2019. The proposed contract is for a one year term. All terms will remain the same.

Motion was made by Commissioner Puente and seconded by Commissioner Leal to approve a contract with Don Van Ramshorst, Jr. to operate, manage, and supervise the HEB Tennis Center for Fiscal Year 2019-2020 and authorize the City Manager to sign the contract. Motion carried unanimously.

15) Consideration and possible action to execute a renewal Service Agreement with the University of Texas Health Science Center at Houston to implement the “Tu Salud Si Cuenta” program, aimed to promote healthy lifestyles and health changing lifestyles course for city residents and authorize the Mayor to sign the contract.

Mr. Mendez stated since 2013, the City of Harlingen has contracted with the University of Texas Health Science Center at Houston to implement the Tu Salud Si Cuenta Program activities for our residents. The contract obligates the City to hire a Community Health Worker (Promotora) through grant funds to assist with implementation of the program. The City is obligated to provide office space including venues to host exercise classes, Group Lifestyle Balance, and the Happy Kitchen/La Cocina Alegre Classes. The annual contract amount is $60,000 funded through the U.T. Health Science Center at Houston.

Motion made by Commissioner Puente and seconded by Commissioner Leal to renew Service agreement with the University of Texas Health Science Center at Houston to implement the “Tu Salud Si Cuenta” Program, aimed to promote healthy lifestyles and health changing lifestyles courses for city residents and authorize the Mayor to sign the contract. Motion carried unanimously.

16) Reconsideration and possible action to award the loan for the reconstruction of a home for Mr. Ranulfo Ramirez and Elizabeth Ramirez, located at 1126 N. Sunset Drive to the second lowest bidder, Rell Transport, LLC, and rescind the motion to award the first lowest bidder, Border Construction.

Mr. Gonzalez stated on August 7, 2019, the following agenda item was brought before City Commission: “Consideration and possible action to award a loan utilizing Community Development Block Grant Funds to provide for the home reconstruction for Mr. and Mrs. Ramirez at 1126 N. Sunset Drive.” A motion was made to approve the award of the loan to the homeowners along with the award of a contract to the lowest bidder, Border Construction. This contractor, however, has been unable to provide the required documentation and registrations to comply with HUD requirements. His bid came in at $62,000. Staff is recommending rescinding the motion to award the contract to Border Construction and award the contract to the second lowest bidder- Rell Transport, LLC for a bid amount of $68,155.30.
Motion was made by Commissioner Leal and seconded by Commissioner Uribe to award the loan for the reconstruction of a home for Mr. Ranulfo Ramirez and Elizabeth Ramirez, located at 1126 N. Sunset Drive to the second lowest bidder, Rell Transport, LLC. and rescind the motion to award the first lowest bidder, Border Construction. Motion carried unanimously.

**20) Consideration and possible action to authorize the Mayor, on behalf of the City of Harlingen, to accept grant funds ($29,724.60) made available through the Office of the Governor Criminal Justice Division under the Rifle-Resistant Body Armor Grant Program.**

Michael Kester, Chief of Police stated the Harlingen Police Department will be utilizing the Rifle-Resistant Armor Grant Program funds to equip members of the Police Department with Rifle Resistant Body Armor, as per NIJ Standard-0101.06.

Motion was made by Commissioner Uribe and seconded by Commissioner Leal to authorize the Mayor, on behalf of the City of Harlingen, to accept grant funds ($29,724.60) made available through the Office of the Governor Criminal Justice Division under the Rifle-Resistant Body Armor Grant Program. Motion carried unanimously.

**21) Consideration and possible action to authorize the Mayor, on behalf of the City of Harlingen, to accept and expend grant funding ($60,000.00) made available through the Office of the Governor Homeland Security Grants Division under the Local Border Security (Border Star) Program.**

Chief Kester stated the Harlingen Police Department will be utilizing the Local Border Security (Border Star) Program funding for overtime and operating expenses to provide additional manpower in a state-led and unified strategy to respond to the increased presence and threat of organized crime, terrorism, and violent crimes within our borders.

Motion was made by Commissioner Leal and seconded by Commissioner Uribe to authorize the Mayor, on behalf of the City of Harlingen, to accept and expend grant funding ($60,000.00) made available through the Office of the Governor Homeland Security Grants Division under the Local Border Security (Border Star) Program. Motion carried unanimously.

**22) Consideration and possible action to accept or reject bids and award contracts for Hot Mix Asphalt Material under bid Number 2011-21.**

Lily Garcia, Assistant Public Works Director, stated the current contract for the purchase of Hot Mix Asphalt expires September 2019. The current vendor has elected not to extend the contract under the same terms and conditions. Staff solicited bids for hot mix asphalt to be delivered to the City by the vendor and hot mix asphalt to be picked-up by City crews. Staff requested a contract price that will remain in effect for 12 consecutive months with the option to extend the contract for an additional two (2) years in one-year increments subject to approval by the City. Staff is recommending awarding the Hot Mix Asphalt Material Contract to Frontera Materials, Inc. for Hot Mix Asphalt Picked Up by the City @ $61.95 per ton and Hot Mix Asphalt Delivered to the City @ $69.95 per ton.

Motion was made by Commissioner Leal and seconded by Commissioner Uribe to accept the Hot Mix Asphalt Materials under Bid Number 2011-21 and award the contract to Frontera Materials, Inc. Motion carried unanimously.

**23) Consideration and possible action to allow staff to permanently close a portion of the alley between first Street and Second Street for the re-construction of the Harlingen Waterworks System Parking Lot.**
Robert Canterbury, Engineer with Harlingen Waterworks System, stated staff is requesting to permanently close a portion of the alley between First and Second Street for the re-construction of the Harlingen Waterworks System Parking Lot. The existing roadway will be replaced with a concrete sidewalk, paver blocks, and landscaping. The proposed parking lot improvements will result in pedestrian customer safety, reduced storm water runoff, and significant improvements to the landscape and open spaces.

Motion was made by Commissioner Leal and seconded by Commissioner Puente to allow staff to permanently close a portion of the alley between First and Second Street for the re-construction of the Harlingen Waterworks System Parking Lot. Motion carried unanimously.

24) Board Appointments
   None

Adjournment

There being no further business to discuss, Mayor Boswell adjourned the meeting.

City of Harlingen

ATTEST:

Chris Boswell, Mayor

Amanda C. Elizondo, City Secretary
AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF HARLINGEN: TO ISSUE A SPECIFIC USE PERMIT TO MAGDALENA & JESUS PERALTA TO ALLOW A STORAGE BUILDING GREATER THAN 144 SQ. FT. IN A SINGLE FAMILY RESIDENTIAL (R1) DISTRICT FOR LOT 11 BLOCK 153, HARLINGEN ORIGINAL TOWNSITE SUBDIVISION LOCATED AT 218 W. LINCOLN AVE. SUBJECT TO: (1) STORAGE BUILDING BEING USED PRIMARILY FOR THE USE OR STORAGE OF GOODS AND/OR PROVISIONS NOT INCLUDING HAZARDOUS CHEMICALS OR DANGEROUS MATERIALS. (2) THE BUILDING CANNOT BE USED AS A LIVING SPACE; AND (3) COMPLYING WITH THE REQUIREMENTS ADMINISTERED BY PLANNING AND ZONING, BUILDING INSPECTIONS, AND FIRE PREVENTION.

WHEREAS, the Planning and Zoning Commission of the City of Harlingen pursuant to Harlingen's Zoning Ordinance procedure, has recommended a specific use permit for certain described real property in the City of Harlingen; and it is deemed to be in the best interest of the City of Harlingen in accordance with said recommendation of the Planning and Zoning Commission of the City, being the recommendation as hereinafter set forth; and public notice of such proposed specific use permit having been fully made and complied with as required by said Code of Ordinances and applicable laws of the State of Texas; and the City Commission of the City of Harlingen having held public hearings with reference thereto, being duly and thoroughly heard; and after consideration of the evidence presented, said City Commission is of the opinion that it is in the best interest of the City of Harlingen that said Code of Ordinances be amended as indicated, now, therefore,

BE IT ORDAINED BY THE CITY OF HARLINGEN
That the Code of Ordinances of the City of Harlingen (Ordinance 16-8) be and the same is herewith amended by the following described property being issued a specific use permit as indicated:

To Issue a Specific Use Permit to Magdalena & Jesus Peralta to allow a storage building greater than 144 Sq. Ft. in a Single Family Residential (R1) District for Lot 11 Block 153, Harlingen Original Townsite Subdivision located at 218 W. Lincoln Ave. Subject to:
(1) Storage building being used primarily for the use or storage of goods and/or provisions not including hazardous chemicals or dangerous materials. (2) The building cannot be used as a living space; and (3) Complying with the requirements administered by Planning and Zoning, Building Inspections, and Fire Prevention.

The provisions prohibiting the violation of the Zoning Ordinance shall continue in full force and effect and apply to this amendment.

The specific use permit is made contingent upon a site plan, a true and correct copy of which is attached hereto and incorporated herein by reference as EXHIBIT “A”.

The provisions of this ordinance shall become effective from and after the final and lawful passage hereof and publication of the caption hereof as provided for and required in the Code of Ordinances and applicable state statutes.

FINALLY ENACTED this _____ day of ____________, 2019, at a regular meeting of the Elective Commission of the City of Harlingen, Texas at which a quorum was present and which was held in accordance with TEXAS GOVERNMENT CODE, CHAPTER 551.

CITY OF HARLINGEN

Chris Boswell, Mayor
ATTEST:

Amanda C. Elizondo, City Secretary
ORDINANCE NO. 19-____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF HARLINGEN: TO ISSUE A SPECIFIC USE PERMIT ("SUP") TO ROGER GONZALEZ TO ALLOW EXPANSION OF AN EXISTING CHILDCARE BUSINESS BY THE NAME OF MARTHA'S PLAYGROUND TO ADJACENT PROPERTY LOCATED WITHIN A LIGHT INDUSTRY (LI) DISTRICT FOR LOT 1, BLOCK 1, SAFEGUARD SUBDIVISION AND 1.58 ACRES OUT OF THE EAST 10 ACRES OF BLOCK 4, HIGHWAY SUBDIVISION LOCATED AT 5206-5402 S EXPRESSWAY 83, SUBJECT TO: (1) PROVIDING AND MAINTAINING THE REQUIRED PARKING AND CIRCULAR DRIVE AND (2) OBTAINING AND MAINTAINING PROPER STATE PERMITS AND (3) COMPLYING WITH REQUIREMENTS ADMINISTERED BY THE PLANNING, BUILDING INSPECTIONS, ENVIRONMENTAL HEALTH, AND FIRE PREVENTION DEPARTMENTS; PROVIDING FOR PUBLICATION AND ORDAINING OTHER MATTERS RELATED TO THE FOREGOING

WHEREAS, the Planning and Zoning Commission of the City of Harlingen pursuant to Harlingen's Zoning Ordinance procedure, has recommended a specific use permit for certain described real property in the City of Harlingen; and it is deemed to be in the best interest of the City of Harlingen in accordance with said recommendation of the Planning and Zoning Commission of the City, being the recommendation as hereinafter set forth; and public notice of such proposed specific use permit having been fully made and complied with as required by said Code of Ordinances and applicable laws of the State of Texas; and the City Commission of the City of Harlingen having held public hearings with reference thereto, being duly and thoroughly heard; and after consideration of the evidence presented, said City Commission is of the opinion that it is in the best interest of the City of Harlingen that said Code of Ordinances be amended as indicated, now, therefore,
BE IT ORDAINED BY THE CITY OF HARLINGEN

That the Code of Ordinances of the City of Harlingen (Ordinance 16-8) be and the same is herewith amended by the following described property being issued a specific use permit as indicated:

To issue a specific use permit ("SUP") to Roger Gonzalez to allow expansion of an existing Childcare Business by the name of Martha’s Playground to adjacent property located within a Light Industry (LI) District for Lot 1, Block 1, Safeguard Subdivision and 1.58 acres out of the east 10 acres of Block 4, Highway Subdivision located at 5206-5402 S. Expressway 83, subject to: (1) Providing and maintaining the required parking and circular drive (2) Obtaining and maintaining the proper State and City permits and (3) Complying with requirements administered by the Planning, Building Inspections, Environmental Health, and Fire Prevention Departments;

The provisions prohibiting the violation of the Zoning Ordinance shall continue in full force and effect and apply to this amendment.

The specific use permit is made contingent upon a site plan, a true and correct copy of which is attached hereto and incorporated herein by reference as EXHIBIT “A”.

The provisions of this ordinance shall become effective from and after the final and lawful passage hereof and publication of the caption hereof as provided for and required in the Code of Ordinances and applicable state statutes.

FINALLY ENACTED this _____ day of ____________, 2019, at a regular meeting of the Elective Commission of the City of Harlingen, Texas at which a quorum was present and which was held in accordance with TEXAS GOVERNMENT CODE, CHAPTER 551.

CITY OF HARLINGEN
ATTEST:

Amanda C. Elizondo, City Secretary
Site Plan

Building

Parking

Hurricane fence

Entrance

Dimensions:
- Building: 72 ft approx.
- Parking: 90 ft approx.
- Hurricane fence: 90 ft approx.
- Entrance: 72 ft approx.
Meeting Date: 11/6/2019

AGENDA ITEM
EXECUTIVE SUMMARY

Agenda Item:
Consider and take action to adopt an Ordinance on Second and Final Reading for a Specific Use Permit (SUP) to allow a Bar/Lounge in a General Retail (GR) District for Lot 4, Block 1, South Point Subdivision located at 640 N. Ed Carey Drive. Applicant: Kamlesh Bhakta dba PPO Development LLC

Prepared By: Xavier Cervantes, AICP
Title: Planning and Development Director
Signature:

Brief Summary:

Project Timeline
- September 23, 2019 – Application for Specific Use Permit (SUP) submitted to the City. (ATTACHMENT I)
- September 28, 2019 – In accordance with Statute and local law, notice of required public hearings published in the Valley Morning Star and mailed to all property owners within 200 feet of subject tract.
- October 9, 2019 – Public hearing was conducted by the Planning and Zoning Commission (P&Z). The P&Z Commission recommended approval of the Specific Use Permit based on Staff’s recommendation by a 3 to 0 vote.
- October 22, 2019 – Public hearing was conducted by the City Commission. The Commission approved the requested Specific Use Permit via 1st ordinance reading.
- October 23, 2019 – Documentation was provided that the applicant is part of a corporation.
- November 6, 2019 – Consideration of approval of 2nd and final ordinance reading scheduled before the City Commission.

Summary
- Per the Code of Ordinances, an “adult business” (bar/lounge) use in a “GR” District requires the approval of an SUP by the City Commission.
- The applicant is requesting a Specific Use Permit (SUP) to allow a bar/lounge shop under the name of “Broken Tap” out of an existing 4,172 sq. ft. suite located at 640 N. Ed Carey Dr. (ATTACHMENT II-III)
- Surrounding properties are zoned General Retail (GR) District in all directions. Surrounding land uses within the plaza consist of Creasey’s Bowling Alley, Whataburger, Medcheck Labs, and CSL Plasma. The surrounding uses are commercial in all directions. (ATTACHMENT IV)
- On July 27, 2005, an SUP was originally approved to allow a bar/lounge on the subject property. In July 22, 2008, an SUP was approved for the subject property since the bar/lounge was under new ownership.
- The existing use of a bar/lounge has been in operation since 2005; however, due to the change of business ownership, the new applicant is required to apply for an SUP in order
to be in compliance with the Code of Ordinances.

- The applicant noted that the hours of operation will be Monday - Sunday from 12pm to 2am in order to apply for a Mixed Beverage Late Hours Permit through TABC. According to the applicant, there will be a DJ Thursday – Saturday.

- The applicant will still have to submit a building permit/reoccupancy with the Building Inspections Department in order to receive a Certificate of Occupancy and operate the bar/lounge.

- The establishment must comply with the off street parking requirement. Based on the information provided, 42 parking spaces are required and are provided in the common parking area.

- Harlingen Police Department, Building Inspections, Health Department, and Fire Prevention Bureau reviewed the SUP application and recommend approval of the SUP. (ATTACHMENT V-VII)

- In accordance with the zoning ordinance, the P&Z and City Commission may impose requirements and conditions of approval as are needed to ensure that a use requested by a SUP is compatible and complementary to adjacent properties.

<table>
<thead>
<tr>
<th>Funding (if applicable):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are funds specifically designated in the current budget for the full amount</td>
</tr>
<tr>
<td>for this purpose?</td>
</tr>
<tr>
<td>*If no, specify source of funding and amount requested:</td>
</tr>
</tbody>
</table>

Finance Director’s approval:  

| Yes | No | N/A |

<table>
<thead>
<tr>
<th>Staff Recommendation:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff recommends approval of the request subject to the following:</td>
</tr>
</tbody>
</table>

1. Provision of security officers during peak hours of operation (Thursday – Saturday from 9pm to 2am);
2. Provision of video surveillance with 30 day retention period;
3. Provision of adequate lighting inside and outside the business;
4. Obtain and maintain proper state permits;
5. Compliance Code of Ordinance Chapter 22, Article 3, Sections 22-54 to 22-66 Smoking Regulations; and
6. Compliance with the requirements administered by the Planning & Zoning Commission, Building Inspections Departments, Environmental Health, Fire Prevention, and Police Departments prior to the issuance of Certificate of Occupancy.

City Manager’s approval:  

| Yes | No | N/A |

Comments:
City Attorney’s approval: Yes  No  N/A
10/3/15
**CITY OF HARLINGEN PLANNING AND ZONING DIVISION**  
**MASTER APPLICATION**

**PROPERTY INFORMATION:** *(Please PRINT or TYPE)*

<table>
<thead>
<tr>
<th>Project Address</th>
<th>Nearest Intersection</th>
<th>Existing Zoning Designation</th>
<th>Future Land Use Plan Designation</th>
</tr>
</thead>
<tbody>
<tr>
<td>640 N Ed Carey Dr</td>
<td>Ed Carey / Hale</td>
<td></td>
<td>Commercial</td>
</tr>
</tbody>
</table>

**(Proposed) Subdivision Name**  

<table>
<thead>
<tr>
<th>Name</th>
<th>Lot</th>
<th>Block</th>
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</thead>
<tbody>
<tr>
<td>Brooks Point Subdivision</td>
<td>4</td>
<td>1</td>
</tr>
</tbody>
</table>

**OWNER/APPLICANT INFORMATION:** *(Please PRINT or TYPE)*

<table>
<thead>
<tr>
<th>Applicant/Authorized Agent</th>
<th>Email Address</th>
<th>Mailing Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kamlesh Bhakta</td>
<td><a href="mailto:km.bhakta@aol.com">km.bhakta@aol.com</a></td>
<td>640 Ed Carey Dr</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Property Owner</th>
<th>Email Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kamlesh Bhakta</td>
<td><a href="mailto:km.bhakta@aol.com">km.bhakta@aol.com</a></td>
</tr>
</tbody>
</table>

**Select appropriate process for which approval is sought. Attach completed checklists with this application.**

- [ ] Annexation Request ................... No Fee  
- [ ] Administrative Appeal (ZBA) ........ $125.00
- [ ] Comp. Plan Amendment Request ...... $250.00
- [ ] Re-zoning Request .................... $250.00
- [ ] GDP Request/Renewal.................. $250.00
- [ ] Zoning Variance Request (ZBA) ...... $250.00
- [ ] PDD Request .......................... $250.00
- [ ] License to Encroach.................. $250.00

- [ ] Preliminary Plat ..................... $100.00
- [ ] Final Plat ................................ $50.00
- [ ] Minor Plat .............................. $100.00
- [ ] Re-plat. ................................ $250.00
- [ ] Vacating Plat .......................... $50.00
- [ ] Development Plat ...................... $100.00
- [ ] Subdivision Variance Request ...... $25.00 (each)

**Please provide a basic description of the proposed project:**  
Bar / Pool Hall

---

I hereby certify that I am the owner and/or duly authorized agent of the owner for the purposes of this application. I further certify that I have read and examined this application and know the same to be true and correct. If any of the information provided on this application is incorrect the permit or approval may be revoked.

**Applicant's Signature:**  

**Date:** 9.23.19

**Property Owner(s) Signature:**  

**Date:** 9.23.19

**Accepted by:**

**Date:**
January 11, 2018

Attn: Legalinc Corporate Services Inc.
Legalinc Corporate Services Inc.
5850 Granite Parkway Suite 215
Plano, TX 75024 USA

RE: PPO DEVELOPMENT LLC
File Number: 802903243

It has been our pleasure to file the certificate of formation and issue the enclosed certificate of filing evidencing the existence of the newly created domestic limited liability company (llc).

Unless exempted, the entity formed is subject to state tax laws, including franchise tax laws. Shortly, the Comptroller of Public Accounts will be contacting the entity at its registered office for information that will assist the Comptroller in setting up the franchise tax account for the entity. Information about franchise tax, and contact information for the Comptroller’s office, is available on their web site at [http://window.state.tx.us/taxinfo/franchiselindex.html](http://window.state.tx.us/taxinfo/franchiselindex.html).

The entity formed does not file annual reports with the Secretary of State. Documents will be filed with the Secretary of State if the entity needs to amend one of the provisions in its certificate of formation. It is important for the entity to continuously maintain a registered agent and office in Texas. Failure to maintain an agent or office or file a change to the information in Texas may result in the involuntary termination of the entity.

If we can be of further service at any time, please let us know.

Sincerely,

Corporations Section
Business & Public Filings Division
(512) 463-5555

Enclosure
The undersigned, the Organizer of PPO DEVELOPMENT LLC, who signed and filed its Articles of Organization (or similar organizing document) with the TEXAS Secretary of State (or other appropriate state office), appoints the following individuals to serve as members of the limited liability company:

Name and address of each initial member:

KAMLESH BHAKTA
640 N ED CAREY DRIVE,
HARLINGEN, TX 78550

Additionally, the undersigned does hereby tender his/her resignation as Organizer for the LLC, and from any and all involvement with, control of, or authority over the LLC, real or perceived, effective immediately.

Dated: January 11th, 2018

Nancy Luna, Organizer
Request for a Specific Use Permit (SUP) to allow a Bar/Lounge in a General Retail (GR) District for Lot 4, Block 1, South Point Subdivision located at 640 N. Ed Carey Drive. Applicant: Kamlesh Bhakta
Broken Tap is an existing and fully functioning bar/poolhall. The bar will have a DJ/Music Thursday-Saturday and pool tables. There will be Class B Security/Doormen on site during busy hours as well as numerous security cameras that have a 30-day retention period. Open till 2am every day Monday - Sunday.
ATTACHMENT V

SPECIFIC USE PERMIT ("SUP") ROUTING SLIP

APPLICANT: KAMLESH BHAKTA
PHONE NO.: 956-245-5046
LOCATION: 640 N ED CAREY
PROJECT DESCRIPTION: SUP FOR EXISTING BAR UNDER NEW OWNERSHIP

DEPARTMENT: HARLINGEN POLICE DEPT.

APPROVAL: ☑ YES ☐ NO

COMMENTS:

SIGNATURE ___________________ DATE 10-1-19
### Specific Use Permit ("SUP") Routing Slip

**Applicant:** Kamlesh Bhakta  
**Phone No.:** (956) 245-5946  
**Location:** 640 N. Ed Carey Dr  
**Project Description:** SUP request for existing bar under new ownership  

**Department:** Building Inspections Department  
**Approval:** YES NO  
**Comments:** 1. Require to apply for any and all applicable permits. (Re-occupancy, Building, Electrical, Plumbing, & Mechanical) 2. Must comply with all applicable city ordinances, codes and standards before a final Certificate of Occupancy is issued.

**Signature:** Esmael Ortega Jr.  
**Date:** 9/24/19
**SPECIFIC USE PERMIT ("SUP") ROUTING SLIP**

**APPLICANT:** KAMLESH BHAKTA  
**PHONE NO.:** 956-245-5046  
**LOCATION:** 640 N ED CAREY  
**PROJECT DESCRIPTION:** SUP FOR EXISTING BAR UNDER NEW OWNERSHIP

<table>
<thead>
<tr>
<th>DEPARTMENT</th>
<th>Health Dept.</th>
</tr>
</thead>
<tbody>
<tr>
<td>APPROVAL</td>
<td>[ ] YES [ ] NO</td>
</tr>
<tr>
<td>COMMENTS:</td>
<td>Site plan and Master Application Sheet submitted by Mr. Bhakta does not show any kitchen equipment or area. As a kitchen is not necessary, if liquor is to be served, then a small 3 compartment sink will be required in the bar area with a hand washing sink also.</td>
</tr>
</tbody>
</table>

**SIGNATURE**  
**DATE:** 9-24-19
Specific Use Permit ("SUP") Routing Slip

<table>
<thead>
<tr>
<th>Applicant:</th>
<th>Kamlesh Bhakta</th>
</tr>
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<tbody>
<tr>
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</tr>
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<td>Location:</td>
<td>640 N Ed Carey</td>
</tr>
<tr>
<td>Project Description:</td>
<td>SUP request for existing bar under new ownership</td>
</tr>
<tr>
<td>Department:</td>
<td>Fire Prevention Bureau</td>
</tr>
<tr>
<td>Approval:</td>
<td><em>X</em> YES _ NO</td>
</tr>
<tr>
<td>Comments:</td>
<td>Applicant will have to meet any codes, regulations, ordinances, and standards required for permit.</td>
</tr>
</tbody>
</table>

Fire Marshal Juan Saucedo Jr.

Date: September 24, 2019
ORDINANCE NO. 19-_____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF HARLINGEN: TO ISSUE A SPECIFIC USE PERMIT TO KAMLESH BHAKTA DBA PPO DEVELOPMENT LLC TO ALLOW A BAR/LOUNGE IN A GENERAL RETAIL (GR) DISTRICT FOR LOT 4, BLOCK 1, SOUTH POINT SUBDIVISION LOCATED AT 640 N. ED CAREY DRIVE, SUBJECT TO: (1) PROVISION OF SECURITY OFFICERS DURING PEAK HOURS OF OPERATION (THURSDAY - SATURDAY FROM 9PM TO 2AM); (2) PROVISION OF VIDEO SURVEILLANCE WITH 30 DAY RETENTION PERIOD; (3) PROVISION OF ADEQUATE LIGHTING INSIDE AND OUTSIDE THE BUSINESS; (4) OBTAIN AND MAINTAIN PROPER STATE PERMITS; (5) COMPLIANCE CODE OF ORDINANCE CHAPTER 22, ARTICLE 3, SECTIONS 22-54 TO 22-66 SMOKING REGULATIONS; AND (6) COMPLIANCE WITH THE REQUIREMENTS ADMINISTERED BY THE PLANNING & ZONING COMMISSION, BUILDING INSPECTIONS DEPARTMENTS, ENVIRONMENTAL HEALTH, FIRE PREVENTION, AND POLICE DEPARTMENTS PRIOR TO THE ISSUANCE OF CERTIFICATE OF OCCUPANCY.

WHEREAS, the Planning and Zoning Commission of the City of Harlingen pursuant to Harlingen’s Zoning Ordinance procedure, has recommended a specific use permit for certain described real property in the City of Harlingen; and it is deemed to be in the best interest of the City of Harlingen in accordance with said recommendation of the Planning and Zoning Commission of the City, being the recommendation as hereinafter set forth; and public notice of such proposed specific use permit having been fully made and complied with as required by said Code of Ordinances and applicable laws of the State of Texas; and the City Commission of the City of Harlingen having held public hearings with reference thereto, being duly and thoroughly heard; and after consideration of the evidence presented, said City Commission is of the opinion that it is in the best interest of the City of Harlingen that said Code of Ordinances be amended as indicated, now, therefore,
BE IT ORDAINED BY THE CITY OF HARLINGEN

That the Code of Ordinances of the City of Harlingen (Ordinance 16-8) be and the same is herewith amended by the following described property being issued a specific use permit as indicated:

To Issue a Specific Use Permit to Kamlesh Bhakta dba PPO Development LLC to allow a Bar/Lounge in a General Retail (GR) District for Lot 4, Block 1, South Point Subdivision located at 640 N. Ed Carey Drive. Subject to: (1) Provision of security officers during peak hours of operation (Thursday – Saturday from 9pm to 2am); (2) Provision of video surveillance with 30 day retention period; (3) Provision of adequate lighting inside and outside the business; (4) Obtain and maintain proper state permits; (5) Compliance Code of Ordinance Chapter 22, Article 3, Sections 22-54 to 22-66 Smoking Regulations; and (6) Compliance with the requirements administered by the Planning & Zoning Commission, Building Inspections Departments, Environmental Health, Fire Prevention, and Police Departments prior to the issuance of Certificate of Occupancy.

The provisions prohibiting the violation of the Zoning Ordinance shall continue in full force and effect and apply to this amendment.

The specific use permit is made contingent upon a site plan, a true and correct copy of which is attached hereto and incorporated herein by reference as EXHIBIT “A”.

The provisions of this ordinance shall become effective from and after the final and lawful passage hereof and publication of the caption hereof as provided for and required in the Code of Ordinances and applicable state statutes.

FINALLY ENACTED this ______ day of ____________, 2019, at a regular meeting of the Elective Commission of the City of Harlingen, Texas at which a quorum was present and which was held in accordance with TEXAS GOVERNMENT CODE, CHAPTER 551.
CITY OF HARLINGEN

______________________________
Chris Boswell, Mayor

ATTEST:

______________________________
Amanda C. Elizondo, City Secretary
EXHIBIT “A”
ORDINANCE NO. 19

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF HARLINGEN: REZONING FROM RESIDENTIAL, SINGLE FAMILY (R1) DISTRICT TO GENERAL RETAIL (GR) DISTRICT FOR LOT 9 AND THE WEST 23.78 FT. OF LOT 10, BLOCK 6, CROWN HEIGHTS ADDITION LOCATED AT 918 E. GRIMES AVENUE; PROVIDING FOR PUBLICATION AND ORDAINING OTHER MATTERS RELATED TO THE FOREGOING

WHEREAS, the Planning and Zoning Commission of the City of Harlingen pursuant to Harlingen’s Zoning Ordinance procedure, has recommended a change in the zoning classification for certain described real property in the City of Harlingen; and it is deemed to be in the best interest of the City of Harlingen in accordance with said recommendation of the Planning and Zoning Commission of the City, being the recommendation as hereinafter set forth; and public notice of such proposed rezoning having been fully made and complied with as required by said Zoning Ordinance and applicable laws of the State of Texas; and the City Commission of the City of Harlingen having held public hearings with reference thereto, being duly and thoroughly heard; and after consideration of the evidence presented, said City Commission is of the opinion that it is in the best interest of the City of Harlingen that said Code of Ordinances be amended as indicated, now, therefore,

BE IT ORDAINED BY THE CITY OF HARLINGEN

That the Code of Ordinances of the City of Harlingen (Ordinance 16-8) be and the same is herewith amended by the following described property being changed for permissive zone use as indicated:

Rezoning from Residential, Single Family (R1) District to General Retail (GR) District for Lot 9 and the west 23.78 ft. of Lot 10, Block 6, Crown Heights Addition located at 918 E. Grimes Avenue.

A copy of the Zoning Map constituting a part and parcel of the Code of Ordinances, as filed with the Building Inspection Inspector and for the joint use and information of the Planning and
Zoning Commission shall, upon final enactment hereof, be and the same is herewith amended and revised to reflect that the above described property is zoned for land use purposes as above indicated by the boundaries thereof being outlined in pronounced heavy line markings and such heavy line marking boundary enclosure being indicated within by the appropriate initials for that portion herewith zoned for particular land uses; with the Planning and Development Director being herewith instructed and authorized to document such Zoning Map changes and revisions.

The provisions of this ordinance shall become effective from and after the final and lawful passage hereof and publication of the caption hereof as provided for and required in the Code of Ordinances and applicable state statutes.

FINALLY ENACTED this ______ day of ______________, 2019 at a regular meeting of the Elective Commission of the City of Harlingen, Texas at which a quorum was present and which was held in accordance with TEXAS GOVERNMENT CODE, CHAPTER 551.

CITY OF HARLINGEN

________________________________________
Chris Boswell, Mayor

ATTEST:

________________________________________
Amanda C. Elizondo, City Secretary
Request to rezone from Residential, Single Family (R1) District to General Retail (GR) District for Lot 9 and the west 23.78 ft. of Lot 10, Block 6, Crown Heights Addition located at 918 E. Grimes Avenue. Applicant: Aaron Medina
ORDINANCE

AN ORDINANCE OF THE CITY OF HARLINGEN TO REGULATE AND REDUCE POLLUTION THAT ENTERS THE SURFACE WATER IN THE STATE OF TEXAS AND WATERS OF THE UNITED STATES FROM DISCHARGES INTO THE CITY'S MUNICIPAL SEPARATE STORM SEWER SYSTEM, BY PROVIDING FOR THE DETECTION AND ELIMINATION OF ILICIT CONNECTIONS TO THE STORM SEWER SYSTEM AND REQUIRING EROSION CONTROL AND POLLUTION PREVENTION AT CONSTRUCTION SITES, AND TO ESTABLISH PENALTIES AND AN EFFECTIVE DATE

WHEREAS, the City of Harlingen, a home-rule city of the State of Texas, may adopt and enforce ordinances necessary to protect health, life, property and the general welfare of the City and its residents and visitors; and

WHEREAS, pursuant to the Clean Water Act and Texas Pollution Discharge Elimination System General Permit TXR040000, as it may be amended, the City of Harlingen is required to develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants into the City's streets, gutters, ditches, and storm drains, and to the Surface Water in the State, and the Waters of the United States, to the maximum extent practicable; and,

WHEREAS, the City's stormwater management program must include six minimum control measures: (1) public education and outreach on stormwater impacts; (2) public involvement and participation; (3) illicit discharge detection and elimination; (4) construction site stormwater runoff control; (5) post-construction stormwater management in new development and redevelopment; and (6) pollution prevention and good housekeeping for municipal operations; and,

WHEREAS, implementation of best management practices consistent with the provisions of the City's storm water management program constitutes compliance with the standard of reducing pollutants to the "maximum extent practicable;" and,

WHEREAS, the City of Harlingen and its planning area are located within the watershed of the Arroyo Colorado and all the stormwater run-off from the City of Harlingen and its planning area flows into the Arroyo Colorado; and the Arroyo Colorado flows into the Laguna Madre; and,
WHEREAS, the Texas Commission on Environmental Quality (TCEQ) has determined that the Arroyo Colorado is an impaired water body that does not meet its aquatic life use primarily due to low-dissolved oxygen, but also due to high levels of nutrients and sedimentation and suspended solids; and,

WHEREAS, TCEQ in 2003 estimated that a ninety percent (90%) reduction in nitrogen, phosphorous, biological oxygen demanding substances and sediment will be necessary for the Arroyo Colorado to meet aquatic life water quality standards; and

WHEREAS, other sources of pollution that may contaminate stormwater include erosion of disturbed land at construction sites, the deliberate or inadvertent discharge of material or substances other than stormwater directly or indirectly into storm drains, and stormwater runoff from roof tops, parking lots, and yards and lawns treated with excess fertilizer and pesticides; and,

WHEREAS, natural materials such as leaves and grass clippings are beneficial to gardens and soil as mulch and a soil amenity but constitute pollution when they enter waterways because the decomposition of these materials consumes oxygen in the water that is needed by fish; and,

WHEREAS, improper management of stormwater and control of erosion reduces capacity of the City's drainage infrastructure and causes additional maintenance needs and expenses, and,

WHEREAS, the City of Harlingen recognizes that protecting and improving water quality in the Arroyo Colorado will contribute to an improved quality of life and the general welfare of the residents of Harlingen;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF HARLINGEN, THAT:

SECTION I: The City of Harlingen Code of Ordinances is amended to add Chapter 16, Article III which shall be titled:

POLLUTION PREVENTION IN STORMWATER.

Sec. 16.40 – Intent and Purpose

This Ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) of the City of Harlingen in order to comply with requirements of the Texas Pollutant Discharge Elimination System (TPDES) permit process. The objectives of this ordinance are:

- To regulate pollutants from stormwater discharges into and from the MS4;
- To prohibit illicit connections and discharges to the MS4;
- To control the discharge of spills and prohibit dumping or disposal of materials other than stormwater into the small MS4;
• To enforce compliance with the permittee’s ordinances, permits, contracts, or orders;
• To require installation, implementation, and maintenance of control measures;
• To receive and collect information, such as stormwater plans, inspection reports, and other information deemed necessary to assess compliance with this permit, from operators of construction sites, new or redeveloped land, and industrial and commercial facilities;
• To establish legal authority to implement inspection and enforcement procedures to ensure compliance with this Ordinance;
• To respond to non-compliance with Best Management Practices (BMPs) required by the small MS4 consistent with its ordinances or other regulatory mechanism(s);
• To assess penalties, including monetary, civil, or criminal penalties; and
• To enter into interagency or interlocal agreements or other maintenance agreements, as necessary.

Sec. 16.41 – Definitions

Applicant - Property owner or agent of a property owner who filed an application for a stormwater authorization under a TPDES general permit or an individual TPDES permit.

Authorized Enforcement Agency - Employees or designees of the City Manager of the City of Harlingen or the Texas Commission on Environmental Quality (TCEQ) have authority to enforce this Ordinance and/or the TPDES regulations.

Best Management Practices (BMPs) – Schedules of activities, prohibitions of practices, maintenance procedures, structural controls, local ordinances, and other management practices to prevent or reduce the discharge of pollutants. BMPs also include treatment requirements, operating procedures, and practices to control runoff, spills or leaks, waste disposal, or drainage from raw material storage areas.

Building - Any structure, either temporary or permanent, with walls and a roof, designed to shelter a person, animal, or property, and occupying more than 100 square feet of area.

City or the City – The City of Harlingen, Texas including all departments and Harlingen WaterWorks System (HWWS).


Common Plan of Development or Sale – A construction activity that is completed in separate stages, separate phases, or in combination with other construction activities. A common plan of development or sale is identified by the documentation for the construction project that identifies the scope of the project, and may include plats, blueprints, marketing plans, contracts, building permits, a public notice or hearing, zoning requests, or other similar documentation and activities.

Construction Activity – Soil disturbance, including clearing, grading, excavating, and other construction related activities (e.g., stockpiling of fill material and demolition); and not including
routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (e.g., the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities). Regulated construction activity is defined in terms of small and large construction activity.

**Small Construction Activity** is construction activity that results in land disturbance of equal to or greater than one (1) acre and less than five (5) acres of land. Small construction activity also includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one (1) and less than five (5) acres of land.

**Large Construction Activity** is construction activity that results in land disturbance of equal to or greater than five (5) acres of land. Large construction activity also includes the disturbance of less than five (5) acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than five (5) acres of land.

**Construction Site Operator** – The entity or entities associated with a small or large construction project that meet(s) either of the following two criteria:

(a) The entity or entities that have operational control over construction plans and specifications (including approval of revisions) to the extent necessary to meet the requirements and conditions of the general permit; or

(b) The entity or entities that have day-to-day operational control of those activities at a construction site that are necessary to ensure compliance with a stormwater pollution prevention plan (SWP3) for the site or other permit conditions (for example they are authorized to direct workers at a site to carry out activities required by the SWP3 or comply with other permit conditions).

**Contaminated Water** – Any water that contains levels of introduced pollutants which render it unsuitable for or unable to support a human use, such as being used for drinking water, or pollutants that alter its ability to support the biological life within it. Sources of contamination may include point source water pollution (contamination that enters the water system via one certain, identifiable source such as a pipe or ditch, municipal sewage systems or industrial and construction sites) or non-point sources referring to contamination that is spread over a large area (runoff from agricultural lands that are not piped or channelized or general stormwater runoff).

**Control Measure** – Any BMP or other method used to prevent or reduce the discharge of pollutants to water in the state.

**Conveyance** – Curbs, gutters, man-made channels and ditches, drains, pipes, and other constructed features designed or used for flood control or to otherwise transport stormwater runoff.

**Discharge** – When used without a qualifier, refers to the discharge of stormwater runoff or certain non-stormwater discharges as allowed under the authorization of the general permit.
Final Stabilization – A construction site where any of the following conditions are met:
(a) All soil disturbing activities at the site have been completed and a uniform (for example, evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

(b) For individual lots in a residential construction site by either:

(1) The homebuilder completing final stabilization as specified in condition (a) above; or

(2) The homebuilder establishing temporary stabilization for an individual lot prior to the time of transfer of the ownership of the home to the buyer and after informing the homeowner of the need for, and benefits of, final stabilization.

(c) For construction activities on land used for agricultural purposes (for example pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to a surface water and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization conditions of condition (a) above.

(d) In arid, semi-arid, and drought-stricken areas only, all soil disturbing activities at the site have been completed and both of the following criteria have been met:

(1) Temporary erosion control measures (e.g., degradable rolled erosion control product) are selected, designed, and installed along with an appropriate seed base to provide erosion control for at least three years without active maintenance by the operator, and

(2) The temporary erosion control measures are selected, designed, and installed to achieve 70 percent vegetative coverage within three years.

General Permit – A permit issued to authorize the discharge of waste into or adjacent to water in the state for one or more categories of waste discharge within a geographical area of the state or the entire state as provided by Texas Water Code (TWC) §26.040. For the purposes of this ordinance general permit refers to the Small MS4 General Permit, TPDES General Permit TXR040000.

Ground Water Infiltration - groundwater that enters the MS4 (including storm sewer service connections and foundation drains) through such means as defective pipes, pipe joints, connections, or manholes.
Hazardous Materials - Any item or agent (biological, chemical, physical) that has the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors.

Hazardous Waste - a hazardous waste is a waste with properties that make it dangerous or capable of having a harmful effect on human health or the environment. Hazardous waste is generated from many sources, ranging from industrial manufacturing process wastes to batteries and may come in many forms, including liquids, solids gases, and sludges (www.epa.gov).

Hyperchlorinated Water – Water resulting from hyperchlorination of waterlines or vessels, with a chlorine concentration greater than 10 milligrams per liter (mg/L).

Illicit Connection - any man-made conveyance connecting an illicit discharge directly to the MS4.

Illicit Discharge – any discharge to the MS4 that is not entirely composed of stormwater, except discharges allowed pursuant to state and federal law, including TPDES or NPDES permits allowing stormwater discharge or a separate authorization and discharges resulting from emergency fire fighting activities.

Indicator Pollutant – An easily measured pollutant, that may or may not impact water quality that indicates the presence of other stormwater pollutants.

Industrial Activities – Any of the ten (10) categories of industrial activities included in the definition of “stormwater discharges associated with industrial activity” as defined in 40 Code of Federal Regulations (CFR) §122.26(b)(14)(i)-(ix) and (xi).

Land Disturbance (or Soil Disturbance) – any activity which involves the physical movement or disturbance of earth material by mechanized means. This includes excavating, filling, stockpiling, clearance of vegetation, grading, compaction of soil, creation of borrow pits, or combination thereof. Land disturbance does not include plowing, seeding, planting, cultivating, or harvesting on a farm, including lands that have been lying fallow as part of a conventional rotational cycle. Land disturbance does not include routine maintenance performed to maintain the original line and grade, hydraulic capacity and purpose of a ditch, channel or other similar stormwater conveyance. Land disturbance does not include routine grading of existing dirt roads, asphalt overlays of existing roads, routine clearing of existing right-of-ways or other similar maintenance activities.

Maintenance Agreement - A formal contract between a local government and a property owner to guarantee long-term maintenance of stormwater management practices.

Maintenance Easement – A portion of the maintenance agreement that binds all current and subsequent owners of the land served by the stormwater management facility to allow the City of Harlingen or their agent access to the facility to periodically inspect the facility, verify it is in proper working condition and meets the design standards and other provision established by the
ordinance. For the purposes of this ordinance, maintenance easement is synonymous with drainage easement.

**Maximum Extent Practicable** – The technology-based discharge standard for municipal separate storm sewer systems (MS4s) to reduce pollutants in stormwater discharges that was established by the CWA § 402(p). A discussion of MEP as it applies to small MS4s is found in 40 CFR § 122.34.

**Municipal Separate Storm Sewer System (MS4)** – the conveyance or system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains that are owned or operated by the City of Harlingen, the Cameron County Irrigation Districts, Cameron County or the Texas Department of Transportation and that are designed or used for collecting or conveying stormwater; but which are not a combined sewer (sanitary sewer or stormwater) and are not part of the City’s sanitary sewer collection system.

**MS4 Operator**– for the purpose of this ordinance, the City of Harlingen.

**Non-Stormwater Discharge** - Any discharge to the storm drain system that is not composed entirely of stormwater.

**NPDES** - National Pollution Discharge Elimination System

**Outfall** – A point source at the point where a small MS4 discharges to waters of the U.S. and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels, or other conveyances that connect segments of the same stream or other waters of the U.S. and are used to convey waters of the U.S. For the purpose of this ordinance, sheet flow leaving a linear transportation system without channelization is not considered an outfall. Point sources such as curb cuts; traffic or right-or-way barriers with drainage slots that drain into open culverts, open swales or an adjacent property, or otherwise not actually discharging into waters of the U.S. are not considered an outfall.

**Overflow** – An unauthorized flow of untreated or partially treated wastewater from a collection system or from a treatment unit at a wastewater treatment facility.

**Person** - Any individual, association, organization, partnership, firm, corporation, or other entity recognized by law and acting as either the owner or as the owner’s agent.

**Point Source** – (from 40 CFR § 122.22) any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

**Pollutant** – In accordance with the Texas Water Code, §26.001(13) a pollutant includes the following: dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter
backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any water in the state.

Pollutants of Concern – For the purpose of this ordinance, includes biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids (TSS), turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from an MS4. (Definition from 40 CFR § 122.32(e)(3)).

Premises - Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Release - any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into ground-water, subsurface soils, surface soils into the MS4, the Surface Water of the State, or the Waters of the United States.

Sanitary Sewer Overflow (SSO) - a type of unauthorized discharge of untreated or partially treated wastewater from a collection system or its components (e.g., a manhole, lift station, or cleanout) before reaching a treatment facility. [See also Texas Water Code Paragraph 26.049(e)(4).]

Site Development Permit – a permit issued by the City of Harlingen for the alteration of the ground for the construction or installation of utilities, streets, sidewalks, structures designed to control erosion and run-off and other grading activities that are not a part of a project that requires a building permit.

Stormwater and Stormwater Runoff - rainfall runoff, snow melt runoff, and surface runoff and drainage.

Stormwater Associated with Construction Activity - Stormwater runoff from an area where there is either a large construction or a small construction activity.

Stormwater Management - The use of structural or non-structural control practices/BMPs designed to reduce stormwater pollutant runoff, discharge volumes, peak flow discharge rates, and detrimental changes in stream temperature that affect water quality.

Stormwater Management Facility – A dedicated portion of a parcel or multiple parcels of land used to manage stormwater which ultimately discharges into the City of Harlingen’s MS4.

Stormwater Management Program (SWMP) - A comprehensive program to manage the quality of discharges into and from the City of Harlingen's MS4.

Stormwater Pollution Prevention Plan (SWP3) - A document that describes the Best Management Practices and activities to be implemented by the permit holder to identify sources of pollution or contamination at a site and actions to eliminate or reduce pollutant discharges.
**Stormwater Control Practices** - Structural or nonstructural measures to minimize stormwater runoff to surface water in the state.

**Structural Control (or Practice)** – A pollution prevention practice that requires the construction of a device, or the use of a device, to capture or prevent pollution in stormwater runoff. Structural controls and practices may include but are not limited to: wet ponds, bioretention, infiltration basins, stormwater wetlands, silt fences, earthen dikes, drainage swales, vegetative lined ditches, vegetative filter strips, sediment traps, check dams, subsurface drains, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins.

**Surface Water in the State** - lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico from the mean high water level out 10.36 miles into the Gulf, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all water-courses and bodies of surface water, that are wholly or partially inside or bordering the state or subject to the jurisdiction of the state; except that waters in treatment systems which are authorized by state or federal law or permit, and which are created for the purpose of waste treatment are not considered to be water in the state.

**Total Maximum Daily Load (TMDL)** - The total amount of a substance that a water body can assimilate and still meet the Texas Surface Water Quality Standards.

**TPDES** - Texas Pollution Discharge Elimination System

**Traditional Small MS4** - A small MS4 that can pass ordinances and have the enforcement authority to enforce the stormwater management program. An example of traditional MS4s includes cities.

**Unauthorized Discharge (UD)** - Any direct or indirect non-stormwater discharge to the storm drain system except as exempted in Section 16.44 Prohibition of Illicit Connections of this Ordinance

**Urbanized Area (UA)** - An area of high population density that may include multiple small MS4s as defined and used by the U.S. Census Bureau in the 2000 and the 2010 Decennial Census.

**Waters of the United States** -

a) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

b) all interstate waters, including interstate wetlands;

c) all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds that the use, degradation, or destruction of which would affect or
could affect interstate or foreign commerce including any such waters:

(i) which are or could be used by interstate or foreign travelers for recreational or other purposes;

(ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(iii) which are used or could be used for industrial purposes by industries in interstate commerce;

d) all impoundments of waters otherwise defined as waters of the U.S.;

e) tributaries of waters identified in paragraphs (a) through (d) of this definition;

f) the territorial sea; and

g) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA are not waters of the U.S. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the U.S. (such as disposal area in wetlands) nor resulted from the impoundment of waters of the U.S. Waters of the U.S. do not include prior converted cropland. Notwithstanding the determination of an area’s status as prior converted cropland by any other federal agency, for the purposes of the CWA, the final authority regarding the CWA jurisdiction remains with the EPA.

Wetland - an area that is inundated or saturated by surface or ground-water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Sec. 16.42 – Applicability

Unless exempted, this Ordinance applies to discharges entering the storm drain system within the jurisdictional limits of the authorized enforcement agency.

Sec. 16.43 – Responsibility for Administration

The City of Harlingen shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted or duties imposed upon the City Manager of the City of Harlingen may be delegated in writing by the City Secretary of the City of Harlingen to persons or entities acting in the beneficial interest of the City of Harlingen.
Authorized individual(s) under this Section shall have the authority to enforce this Ordinance in its entirety and shall be designated as a TPDES Stormwater Manager and/or Inspector. Any person subject to an industrial or construction TPDES stormwater discharge permit or authorization shall comply with all provisions of the permit and may be required by the City of Harlingen to have authorization to discharge stormwater into the MS4.

Sec. 16.44 – Prohibition of Illicit Connections and Discharges

A. — Authority to Prohibit

The City of Harlingen has the authority to prohibit illicit discharges and illicit connections in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)a. This Ordinance prohibits unauthorized discharges into the storm drain system. No person shall release discharges into the municipal storm drain containing any pollutants that cause or contribute to a violation of water quality standards, other than stormwater or authorized non-stormwater discharges.

B – Allowable Non-Stormwater Discharges

The following non-stormwater sources may be discharged from the City of Harlingen’s MS4 and are not required to be addressed in the City of Harlingen’s MS4’s Illicit Discharge and Detection or other minimum control measures, unless they are determined by the City of Harlingen or the TCEQ to be significant contributors of pollutants to the small MS4, or they are otherwise prohibited by the City of Harlingen:

1. Water line flushing (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life);
2. Runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater, or surface water sources;
3. Discharges from potable water sources that do not violate Texas Surface Water Quality Standards;
4. Diverted stream flows;
5. Rising ground waters and springs;
6. Uncontaminated ground water infiltration;
7. Uncontaminated pumped ground water;
8. Foundation and footing drains;
9. Air conditioning condensation;
10. Water from crawl space pumps;
11. Individual residential vehicle washing;
12. Flows from wetlands and riparian habitats;
13. Dechlorinated swimming pool discharges that do not violate Texas Surface Water Quality Standards;
14. Street wash water excluding street sweater waste water;
15. Discharges or flows from emergency fire fighting activities (fire fighting activities do not include washing of trucks, run-off water from training activities, test water from fire
suppression systems, and similar activities);
16. Other allowable non-stormwater discharges listed in 40 CFR § 122.26(d)(2)(iv)(B)(1);
17. Non-stormwater discharges that are specifically listed in the TPDES Multi Sector General Permit (MSGP) TXR050000 or the TPDES Construction General Permit (CGP) TXR150000;
18. Discharges that are authorized by a TPDES or NPDES permit or that are not required to be permitted; and
19. Other similar occasional incidental non-stormwater discharges such as spray park water, unless the TCEQ develops permits or regulations addressing these discharges.

C - Prohibited Discharges

(1) No person shall deposit, release, throw, drain, cause or allow to be deposited, released thrown, drained or discharged, or otherwise cause to enter the MS4, or any other drainage device which connects with the MS4, any of the following described materials or substances:

a) Any acidic waste materials (having a pH value lower than 6);
b) Any alkaline waste materials (having a pH value higher than 10.5);
c) Any water or waste containing free-floating, or insoluble oil; gasoline, naphtha, fuel oil, mineral oil or other flammable or explosive liquid, solid or gas;
d) Any noxious, malodorous, poisonous, or reactive substance which, either singularly or by interaction with other substances, or by its accumulation in the MS4 becomes injurious or potentially injurious to human, plant or animal life, or property; or
e) Any domestic wastewater or industrial wastewater.

(2) It shall be a defense to prosecution under this section that such person was authorized to commit any act, under a valid permit from the TCEQ or the US EPA, which would otherwise constitute a violation at the time of commission.

(3) No person shall place or drop or cause or allow to be placed or dropped, brush cuttings, clippings, or rubbish within the MS4 or on any street in the City in such a manner that the same maybe washed by the flow of water into the MS4.

(4) No person shall connect a line conveying sanitary sewage, domestic waste, or industrial effluent to the MS4 or allow such a connection to continue.

(5) No person shall remove or modify any sanitary sewer cleanouts, sanitary sewer manhole covers or other components of a wastewater collection or transmission system in such a manner as to allow wastewater to overflow from the wastewater collection system, resulting in any unauthorized discharge or sanitary sewer overflow.

(6) No person shall discharge or release, or allow or permit the discharge or release of any of the following substances in a manner or location by which such substance may enter the City's MS4:
a) any wash water or wastewater from the washing or cleaning of pavement, including but not limited to parking lots, driveways or carports, that contains soap, detergent, solvent, degreaser, emulsifier, dispersant, or any other cleaning substance other than water;
b) any wash water or wastewater from cleaning of any pavement where a spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all harmful quantities of such released material have been previously removed or pretreated;
c) any wash water from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains any soap, detergent, degreaser, solvent, or any other harmful cleaning substance;
d) gasoline, motor oil, used oil filters, wax, grease, antifreeze or any other motor vehicle fluids;
e) any contaminated water or waste from a commercial car wash facility, from any vehicle washing, cleaning, or maintenance area at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, maintenance facility, or from any washing, cleaning, or maintenance area of any commercial or public service vehicle, including any truck, bus, or piece of heavy equipment, by any business or public entity;
f) any contaminated water or waste from commercial establishments including but not limited to gas stations, service stations, and auto repair shops with areas exposed to weather conditions;
g) material from an oil/water separator or an oil/water interceptor, grit trap or grease trap. Any oil/water separator or interceptor users who are discharging to the MS4 shall notify the city of the existence of such connections to the MS4 within sixty (60) days of the effective date of this ordinance. If such notification is not made during the allocated sixty (60) days, then the detected connections to MS4 of an oil/water separator or interceptor shall be considered an illicit connection and the city reserves the right to terminate such connection immediately, without prior notice;
h) any release from a petroleum underground storage tank (PUST), or any leachate or runoff from soil contaminated by a leaking PUST, or any discharge of pumped, confirmed, or partially treated wastewater from the remediation of any such PUST unless release satisfies all of the following criteria: (a) is in compliance with all municipal, state, and federal laws; (b) no discharge contains any harmful quantity of any pollutant; and (c) the discharge shall not have a pH value lower than 6.0 or higher than 10.5;
i) any public or private underground utility manhole, including but not limited to electric power, gas pipeline, cable companies, telephone companies, the collected water, due to rain, surface runoff, cross connection, or illegal discharge;
j) any effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blowdown from a boiler;
k) any type of wastewater from residential, commercial or industrial sources, any domestic sewage or septic tank waste;
l) any runoff or wash down water from any animal pen, kennel, or fowl or livestock containment area;
m) any swimming pool water or filter backwash from a swimming pool or fountain,
discharge from a water line if it has been disinfected by super-chlorination or other means and the total residual chlorine exists in any harmful quantity or any other chemical has been used in line disinfection.

n) discharges of stormwater mixed with non-stormwater unless the non-stormwater is described in part B of this section or authorized under a separate TPDES or NPDES permit,

o) hazardous materials; or

p) pollutants

(7) No person shall apply used oil or other vehicle fluid to a road or land for dust suppression, weed abatement, or other similar use that introduces used oil contamination into the environment.

(8) No person shall introduce any type of hazardous waste generated in and around a household including, but not limited to batteries, used paints, solvents, used pesticide, and used toiletries into the MS4.

(9) No person shall use, dispose of, discard, store, or transport an insecticide, herbicide, or fertilizer, in a manner inconsistent with the proper usage, storage, transport and disposal set out in the labeling in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), such that a harmful quantity of the pesticide, herbicide, or fertilizer may enter the MS4.

(10) No person shall wash a commercial dumpster, or residual ready mix concrete from concrete mixing trucks, in an area where it discharges into the MS4.

(11) Other discharges as prohibited in the general permit.

**Sec. 16.45 – Response to Releases**

**A - City Response**

The City of Harlingen has the authority to respond to and contain other releases. The local jurisdiction must control the discharge of a spill and prohibit dumping or disposal of material other than stormwater and authorized non-stormwater discharges into the small MS4 in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)b. Any person in violation of this Ordinance may risk having their discharge authorization to the MS4 terminated. The authorized enforcement agency will notify the violator of the proposed termination of its authorization. The violator may petition the City of Harlingen to reconsider and schedule a hearing.
When the person responsible has knowledge of any known or suspected release of materials resulting in or potentially resulting in unauthorized discharges into a storm sewer system or surface water in the state, the person must contain and clean up the release. If hazardous materials are released, the person must immediately notify emergency response agencies. If non-hazardous materials are released, the person must notify the authorized enforcement agency no later than the next business day. Notifications in person or by telephone must be confirmed by written notice addressed and mailed to the City of Harlingen within fifteen (15) days of the incident.

During emergency situations involving unauthorized discharges from illicit connections, the City of Harlingen may suspend a person's MS4 authorization to stop an actual or threatened discharge which may present danger to the MS4 or surface water in the state. If the violator fails to comply, the authorized enforcement agency may take necessary steps to prevent or minimize damage to the MS4 or surface water in the state.

B - Mandatory Reporting and Clean-up of Any Discharge or Release

(1) The person in charge of any facility, vehicle, or other source of any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, disposing, or any other release of any of the following quantities of any of the following substances that may enter the MS4, Surface Water of the State or Waters of the U.S., shall immediately notify by telephone the Harlingen police department concerning the incident:

(a) An amount equal to or in excess of a reportable quantity of any hazardous or extremely hazardous substance, as established under 40 CFR Parts 302 and 355, respectively;

(b) An amount of oil that either (a) violates applicable water quality standards, or (b) causes a film or sheen upon or discoloration of the surface of the water or an adjoining shoreline or causes a sludge or emulsion to be deposited beneath the surface of the water or upon an adjoining shoreline; or

(c) Any harmful quantity of any pollutant.

(2) The immediate notification required shall include the following information:

(a) The identity or chemical name of the substance released, and whether the substance is an extremely hazardous substance;

(b) The exact location of the release, including any known name of the waters involved or threatened and any other environmental media affected;

(c) The time and duration (thus far) of the release;

(d) An estimate of the quantity and concentration (if known) of the substance released;

(e) The source of the release;
(f) Any known or anticipated health risks associated with the release and, where appropriate, advice regarding medical attention that may be necessary for exposed individuals;

(g) Any precautions that should be taken as a result of the release;

(h) Any steps that have been taken to contain and/or clean up the released material and minimize its impacts; and

(i) The names and telephone numbers of the person or persons to be contacted for further information.

(3) Within fifteen (15) days following such reportable release, the responsible person in charge of the facility, vehicle, or other source of the release shall submit, unless waived by the city, a written report containing the information specified above in (2)(a) through (i) as well as the following additional information:

(a) The ultimate duration, concentrations, and quantity of the release;

(b) All actions taken to respond to, contain, and clean up the released substances, and all precautions taken to minimize the impacts;

(c) Any known or anticipated acute or chronic health risks associated with the release;

(d) The identity of any governmental or private sector representatives responding to the release; and

(e) The measures taken or to be taken by the responsible persons to prevent similar future occurrences.

(4) The person in charge of any facility that experiences an unauthorized discharge (UD) or sanitary sewer overflow (SSO) is responsible for reporting unauthorized discharges from the collection system in accordance with Title 30, Texas Administrative Code (30 TAC), Section 327.32. In addition, notify the public may be required under certain criteria. All such discharges must be reported to the TCEQ regardless of volume, as federal and state regulations do not have a specified minimum reporting volume. Notification to TCEQ shall include the date, location, volume, and contents of the UD or SSO to the TCEQ Region 15 office, 956-425-6010, as soon as possible but no later than 24 hours after becoming aware of the event.

(5) The notifications required by subsections (2) and (3) shall not relieve the responsible person of any expense, loss, damage, or other liability which may be incurred as a result of the release, including any liability for damage to the City, to natural resources, or to any other person or property; nor shall such notification relieve the responsible person of any fine, penalty, or other liability which may be imposed pursuant to city ordinance, or state or federal law.
(6) Any person responsible for any release as described in this subsection shall comply with all state, federal, and local law requiring reporting, cleanup, containment, and any other appropriate remedial action in response to the release.

(7) Any person responsible for a release described in this subsection shall reimburse the city for any cost incurred by the city in responding to the release.

C. – Abatement of Illicit Conditions and Assessment and Collection of Expenses

The City may abate illicit discharges in the same manner and according to the same procedures provided for by Chapter 48, Article IV of the City Code of Ordinances and assess and collect any expenses incurred in the manner and procedure provided by TYPDES Phase II MS4 Permit.

Sec. 16.46 – Permit Procedures and Requirements

A. – Authority to Require Compliance

The City of Harlingen can enforce compliance with the permittee’s ordinances, permits, contracts, or orders in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)c.

B. – Permit Required

Unless specifically excluded by this Ordinance, the land owner or operator seeking a permit for land disturbance activity shall submit to the local jurisdiction a permit application on a form provided for that purpose. The permit application must be accompanied by the following: a stormwater management plan (as referenced in Section IX “Requirements for Stormwater Management Plan Approval” in this Ordinance); a stormwater maintenance agreement and a non-refundable permit review fee. Note that TPDES Construction General Permit TXR150000 requires regulated construction activities (those disturbing one acre or more) to provide a signed and certified construction site notice to the operator of any MS4 receiving the construction site stormwater discharge prior to commencement of land disturbing activities. See TXR150000 Part II Sections E. 1.(f), 2.(c), and 3.(d) and (f).

C. – Application Review Fee

The land development application fee shall be based on the amount of land to be disturbed, and the fee structure shall be established by the City of Harlingen as listed in Chapter 18 of the Code of Ordinances.

D. – Application Procedure

• Applications for land disturbance activity permits must be filed with the City of Harlingen Environmental Department on any regular business day.
- Permit applications shall include the following: two hard copies and one digital copy of the stormwater management plan, two hard copies and one digital copy of the maintenance agreement, and any required review fees.
- Within Thirty (30) business days of receipt of a complete permit application, the City of Harlingen shall inform the applicant whether the application, stormwater management plan, and maintenance agreement are approved or disapproved.
- If the permit application, final stormwater management plan, and maintenance agreement are approved by the City of Harlingen, all appropriate land disturbance activity permits may be issued.

Sec. 16.47 – Maintenance and Repair of Stormwater Facilities

A – Authority to Require Installation, Implementation, and Maintenance

The City of Harlingen has the authority to require installation, implementation, and maintenance of control measures in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)d.

B – Maintenance Easement

Prior to the issuance of any permit that has a stormwater management facility the applicant of the site must implement a maintenance easement agreement that binds all subsequent owners of land served by the stormwater management facility. The agreement allows the City of Harlingen or their contractor/agent access to the facility to periodically inspect if the facility is maintained in proper working condition and meets design standards and other provisions established by this Ordinance. The easement agreement shall be recorded by plat or separate instrument through the official records for Cameron County.

C – Maintenance Covenants

The applicant of an industrial site, commercial site, or residential site with a Home Owners Association must develop a maintenance covenant articulating a schedule of maintenance activities and plans for periodic inspections to assess the proper functioning of the stormwater management facility. The maintenance covenant shall be approved by the City of Harlingen prior to final plan approval. Maintenance covenants shall not be required for any site covered under the Multi-Sector General Permit TXR 050000.
D – Requirements for Annual Self-Inspections

All stormwater management facilities must undergo, at minimum, an annual self-inspection to document maintenance and repair needs and to verify compliance with the requirements of this Ordinance. Maintenance and repair may include: removal of silt, litter, and other debris from all catch basins, inlets and drainage pipes; cutting grass and vegetation removal; and replacement of landscape vegetation. Maintenance needs must be addressed in a timely manner as determined by the City of Harlingen. The local jurisdiction may implement more stringent inspection and maintenance requirements.

E – Requirements for Annual Self-Inspections

If the stormwater management facility becomes a danger to public safety or public health, the City of Harlingen shall notify the party responsible for maintenance of the stormwater management facility in writing. Upon receipt of that notice, the responsible person shall have 30 days to meet maintenance and repair requirements. If the owner of the facility fails to comply with the requirements of the maintenance covenant, the City of Harlingen, after reasonable notice, may perform all necessary work to bring the facility into compliance.

Sec. 16.48 – Requirements for Stormwater Management Plan Approval

The City of Harlingen has the authority to receive and collect information (i.e. stormwater pollution prevention plans, inspection reports, etc.) from any person (i.e. operators of regulated construction sites, new or redeveloped land, and industrial and commercial facilities) in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2).e to assess compliance with this permit.

A. – General provisions

The intent of this section is to implement and enforce a program to reduce pollutants in stormwater runoff from construction activities. To that end, all construction site operators, at a minimum, must:

1. As a pre-condition to receiving a building permit for a small construction site, prepare and submit a stormwater pollution prevention plan (SWP3);

2. For projects that do not require a building permit, but will require excavation, fill or grading or more than one acre of land, such as the construction or installation of utilities, new drainage ways, streets, or sidewalks, apply for a site development permit and prepare and submit a SWP3;

3. Except, no SWP3 is required to perform emergency work needed to protect life or property;

4. For construction sites that will disturb less than one acre of land, the following provisions
apply:

a) No SWP3 need be prepared or submitted.
b) Construction site operators are responsible for retaining all soil and sediment on-site and off of adjacent properties and the public right-of-way. This includes dust control and control of vehicle tracking of dirt off-site.
c) Soil and sediment that leaves the construction site must be cleaned-up daily.
d) Proper provision for solid waste, construction debris and sanitary waste must be made and maintained.

5. The operator of a construction site, required to have a TPDES permit to discharge stormwater shall submit a copy of the Notice of Intent (NOI) to the City at the same time the operator submits the original NOI to the TCEQ. The copy of the NOI may be delivered to the City either in person or by mailing it to: Planning and Development Director, City of Harlingen, 502 East Tyler Avenue, Harlingen, TX 78550.

B. - Stormwater Pollution Prevention Plan (SWP3)

1. Prior to commencing any construction activity and prior to receiving a building or site development permit from the City, construction site operators that are required by the NPDES or the TPDES to obtain a permit to discharge stormwater must:

   a) develop and submit for review and approval a SWP3 that covers the entire site;
   b) post a signed copy of the notice at the construction site where it can be readily viewed;
   c) ensure the project specifications allow or provide that adequate BMPs will be developed and modified as necessary to meet the requirements of the SWP3; and
   d) ensure all contractors and sub-contractors are aware of the requirements of the SWP3, that on-site personnel are responsible for the day-to-day implementation of and adherence to the SWP3, and who to contact concerning SWP3 compliance.

2. The SWP3 must:

   a) be completed and initially implemented prior to commencing activities that result in land disturbance;
   b) provide for compliance with the terms and conditions of this ordinance and the NPDES and TPDES for stormwater;
   c) be available at the construction site or readily available at the time of an on-site inspection to TCEQ, the EPA, or City personnel;
   d) be amended whenever there is a change in design, construction, operation, or maintenance that may have a significant effect on the discharge of pollutants or that was not been previously addressed in the SWP3; or because inspections by the site operator, TCEQ, EPA or City indicate the SWP3 is ineffective in eliminating or minimizing pollutants in discharges.
   e) identify the person or persons responsible for the implementation of the plan.
C. - Issuance of a Building Permit or Site Development Permit

Before authorizing the issuance of a building permit or a site development permit, the City will review the proposed site plan and SWP3, as well as construction documents, for compliance with this ordinance and the NPDES and TPDES for stormwater;

D. - City Inspection of Construction Sites

City building inspection, code compliance and public works staff and the city engineer are hereby authorized to inspect construction sites for the purpose of ensuring compliance and enforcement of control measures contained in the SWP3s and this ordinance.

E. - Contents of the Stormwater Pollution Prevention Plan

The Stormwater Pollution Prevention Plan (SWP3) required pursuant to this ordinance, the Clean Water Act, NPDES, and TPDES must include the following information.

1. The SWPS must include a project description which includes the following: (a) the nature of the construction activity, potential pollutants and sources; (b) the intended schedule or sequence of major activities that will disturb soils;

   (c) the number of acres of the entire construction site property and the total number of acres of the site where construction activities will occur, including off-site material storage areas, overburden and stockpiles of dirt, and borrow areas;

   (d) the soil type and the quality of any existing discharge from the site;

   (e) a map showing the general location of the site (e.g. a portion of a city or county map);

   (f) a detailed site map indicating the following:

      i. drainage patterns and approximate slopes anticipated after major grading activities;
      ii. areas where soil disturbance will occur;
      iii. areas which will not be disturbed;
      iv. locations of all major structural controls either planned or in place;
      v. locations where stabilization practices are expected to be used;
      vi. locations of off-site material, waste, borrow or equipment storage areas;
      vii. surface waters (including wetlands) either adjacent or in close proximity; and
      viii. locations where stormwater discharges from the site directly to a surface water body.

   (g) the location and description of asphalt plants and concrete plants (if any)
providing support to the construction site and that are also authorized under the General Permit TXR 150000, as it may be amended, and

(h) the name of receiving waters at or near the site that will be disturbed or that will receive discharges from disturbed areas of the project.

(2) The following records must be either attached to or referenced in the SWP3 and made readily available upon request to the City of Harlingen, TCEQ or the EPA:

a) the dates when major grading activities occur;
b) the dates when construction activities temporarily or permanently cease on a portion of the site; and,
c) the dates when stabilization measures are initiated.

(3) The SWP3s must identify and describe the best management practices (BMPs) that will be used, the general timing or sequence for implementation of such BMPs, and the party responsible for implementation. At a minimum, the description must include erosion and sediment controls designed to retain sediment on-site to the maximum extent practicable with due consideration for local topography and rainfall.

a) Control measures must be selected, installed, and maintained according to the manufacturer's or designer's specifications.
b) Sediment must be removed from sediment traps and sedimentation ponds no later than the time that design capacity has been reduced by 50%.
c) If sediment escapes the site, accumulations must be removed at a frequency to minimize further negative effects and, whenever feasible, prior to the next rain event.
d) Controls must be specified that limit offsite transport of litter, construction debris and construction materials.

(4) The SWP3 must describe interim and permanent stabilization practices and a schedule of when the stabilization practices will be implemented. Site plans should ensure that existing vegetation is preserved where it is possible.

a) Stabilization practices may include but are not limited to: establishment of temporary vegetation, establishment of permanent vegetation, mulching, geotextiles, sod stabilization, vegetative buffer strips, and protection of existing trees and vegetation.
b) Stabilization measures must be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, and except as provided in (i) and (ii) below, must be initiated no more than fourteen (14) days after the construction activity in that portion of the site has temporarily or permanently ceased.

i. Where the initiation of stabilization measures is precluded by seasonably arid conditions, drought, excessive rainfall, or other weather or climatic conditions, stabilization measures must be initiated as soon as practicable.
ii. Where construction activity on a portion of the site is temporarily ceased but earth disturbing activities will be resumed within twenty-one (21) days, temporary stabilization measures do not have to be initiated on that portion of site.

(5) The SWP3 must include a description of any structural controls that will be used to divert flows away from exposed soils, to limit the contact of runoff with disturbed areas, or to lessen the off-site transport of eroded soils.

a) Sediment basins are required, where feasible, for common drainage locations that serve an area with ten or more acres that are disturbed at any one time. Sediment basins may be either temporary or permanent, but must be designed to store either the calculated volume of runoff from a 2-year, 24-hour storm, or designed to provide 3,600 cubic feet of storage per acre drained. When calculating the volume of runoff from a 2-year, 24-hour storm event, it is not required to include the flows from offsite areas and flow from onsite areas that are either undisturbed or have already undergone formal stabilization, if these flows are diverted around both the disturbed areas of the site and the sediment basin. In determining whether installing a sediment basin is feasible, the permittee may consider factors such as site soils, slope, available area on-site, and public safety. Where sediment basins are not feasible, equivalent control measures, which may include a series of smaller sediment basins, must be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries and for those side slope boundaries as dictated by individual site conditions of the construction area.

(b) Sediment traps and sediment basins may be used to control solids in stormwater runoff for drainage locations serving less than ten (10) acres. At a minimum, silt fences, hay bales, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the construction. Alternatively, a sediment basin providing storage for a calculated volume of runoff from these areas for a 2-year, 24-hour storm or 3,600 cubic feet of storage per acre drained may be provided.

(6) Other Controls

(a) The SWP3 must describe how off-site vehicle tracking of sediment and the generation of dust will be minimized.

(b) The SWP3 must include a description of construction and waste materials expected to be stored on-site and a description of controls to reduce pollutants from these materials.

(c) The SWP3 must include a description of pollutant sources from areas other than construction (including stormwater discharges from dedicated asphalt plants and dedicated concrete plants), and a description of controls and measures that will be implemented at those sites to minimize pollutant discharges.

(d) The SWP3 must commit to ongoing maintenance to keep all erosion and sediment control and other protective measures identified in the SWP3 in effective operating condition.
Site Inspections

(a) The construction site operator shall provide for regular inspections by persons familiar with the SWP3 of the disturbed areas that have not been formally stabilized, areas used for storage of materials that are exposed to precipitation, all structural control measures, and locations where vehicles enter or exit the site for evidence of effectiveness and necessary maintenance. Inspections must occur at least once every fourteen (14) calendar days and within twenty-four (24) hours of the end of a storm event of 0.5 inches or greater.

(b) As an alternative, the SWP3 may require that inspections will occur at least once every seven calendar days; in which case additional inspections are not required following each qualifying storm event. If this alternative schedule is developed, the inspection must occur on a specifically defined day, regardless of whether or not there has been a rainfall event since the previous inspection.

(c) The construction site operator must inspect all accessible discharge locations to determine if erosion control measures are effective in preventing visually noticeable changes to receiving waters, including persistent cloudy appearance in water color and noticeable accumulation of sediments. Where discharge locations are inaccessible, nearby downstream locations must be inspected to the extent that such inspections are practicable. The frequency for these inspections must be established in the SWP3 with consideration for local rainfall and soil, but must occur at least once during the construction activity if a discharge occurs.

(d) The SWP3 must be modified based on the results of inspections, as necessary, to better control pollutants in runoff. Revisions to the SWP3 must be completed within seven calendar days following the inspection. If existing BMPs are modified or if additional BMPs are necessary, an implementation schedule must be described in an amendment to the SWP3 and wherever possible those changes implemented before the next storm event. If implementation before the next anticipated storm event is impracticable, these changes must be implemented as soon as practicable.

(e) A report summarizing the scope of the inspection, names and qualifications of personnel making the inspection, the dates of the inspection, and major observations relating to the implementation of the SWP3 must be made and retained as part of the SWP3. Major observations should include:

i. locations of discharges of sediment or other pollutants from the site;
ii. locations of BMPs that need to be maintained;
iii. locations of BMPs that failed to operate as designed or proved inadequate for a particular location;
iv. locations where additional BMPs are needed; and
v. identification and location of the BMPs that are working effectively.
(f) Actions taken as a result of inspections must be described within, and retained as an amendment to the SWP3. Reports must identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report must contain a certification that the facility or site is in compliance with the SWP3 and this permit.

(8) The SWP3 must identify and ensure the implementation of pollution prevention measures for all eligible non-stormwater components of the discharge. This ordinance prohibits, and all SWP3s will be presumed to prohibit:

(a) The discharge from a construction site of any water or other liquid having a pH value lower than 6.0 or higher than 10.5;
(b) The discharge of any type of industrial waste from construction sites;
(c) The deposit of any garbage, rubbish, or yard waste other than at a facility licensed to receive such debris;
(d) The discharge of paint or paint brush cleaning water or solvents, thinners or turpentine or any combination thereof;
(e) Unused construction materials or used construction materials or debris remaining on the site after construction is completed. All on-site debris shall be properly disposed of in the landfill within thirty (30) days from the occupancy of the structures; and
(f) The washing of any type of trucks, including, but not limited to, ready mix trucks or material supply trucks on or around the construction site.

F - Effective Date of Coverage

Operators of construction activities eligible for coverage under TXR150000, as it may be amended, are authorized to discharge storm water associated with construction activity upon issuance by the City of the building permit or site development permit.

G - Retention of Records

The construction site operator must retain a copy of the SWP3 and all reports and actions required by this ordinance and state and federal law, including NPDES, TPDES and General Permit No.150000, for a minimum period of three years from the date that final stabilization has been achieved on all portions of the site.

Sec. 16.48 – Authority to Enter and Inspect

The City of Harlingen has the authority to enter and inspect private property including facilities, equipment, practices, or operations related to stormwater discharges to the small MS4 in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)f.
• The City of Harlingen may enter and inspect facilities, equipment, practices and operations subject to regulation under this Ordinance as often as necessary to determine compliance with this Ordinance. If a discharger's security measures require proper identification and clearance before entry into the premises, the discharger shall make necessary arrangements to allow access to representatives of the authorized enforcement agency.

• Facility operators shall allow the City of Harlingen access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records.

• The City of Harlingen shall have the right to monitor and/or sample the facility's stormwater discharge.

• The City of Harlingen may require the discharger to install and maintain necessary sampling and monitoring equipment.

• The operator must remove temporary or permanent obstruction(s) at the written or oral request of the City of Harlingen to allow safe and easy access to the facility for inspection and/or sampling purposes. The costs of clearing access will be borne by the operator and the obstructions may not be replaced.

• Unreasonable delays in allowing the City of Harlingen access to a permitted facility is a violation of a TPDES stormwater discharge permit and of this Ordinance. A person commits an offense if the authorized enforcement agency is denied reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Ordinance.

Sec. 16.49 Best Management Practices (BMPs) to Reduce Stormwater Pollutants

The City of Harlingen has the authority to respond to non-compliance with BMPs required by the small MS4 in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)g. The City of Harlingen shall adopt measures to identify BMPs for any activity, operation, or facility which may facilitate pollution of stormwater, the storm drain system, or surface water in the state. The owner or operator of a commercial or industrial establishment shall implement, at their own expense, appropriate pollution control measures through the use of structural and non-structural BMPs to prevent and reduce discharge of pollutants into the municipal storm drain system or watercourses. The BMPs must be identified in the Stormwater Pollution Prevention Plan (SWP3) to satisfy requirements of the TPDES permit.

Sec. 16.50 Enforcement and Penalties

The City of Harlingen has the authority to assess penalties, including monetary, civil, or criminal penalties in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)h.
If the City of Harlingen finds a person in violation with this Ordinance, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require:

- Monitoring, analysis, and reporting
- Elimination of illicit connections or discharges
- Termination of existing discharges or practices and/or operations in violation of this Ordinance
- Abatement and/or remediation of stormwater pollution or contamination hazards
- Payment of fines to cover administrative and remediation costs
- Implementation of pollution control measures or treatment BMPs

If the property must be remediated, the notice must establish a deadline to restore the site. The notice must further advise that, if the violator fails to remediate the site by the deadline, a designated governmental agency or contractor will restore the site at the expense of the violator.

A - Penalty for Violation

(1) Any person, firm, corporation or business entity that violates any provision of this chapter shall be guilty of a misdemeanor and, upon conviction, fined as provided in Section 1-7 of the City of Harlingen Code of Ordinances. Each day that the violation continues shall constitute a separate offense. A culpable mental state is not required to prove an offense under this chapter.

(2) The penal provisions imposed by this chapter shall not preclude the City from filing a suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state and federal law. The city may, at its discretion, report alleged noncompliance to the EPA, TCEQ, US Fish and Wildlife Service, Texas Parks and Wildlife, the US Army Corps of Engineers, or any other state or federal agency.

B - Violations

(1) It is a violation of this chapter to engage in construction activity without complying with this Chapter.

(2) It is a violation of this Chapter to discharge any substance, other than stormwater or the discharges listed in §15.01.004B, to the City's MS4 in violation of any provision in this Chapter.

(3) The operator of a facility or site with a TPDES permit to discharge stormwater associated with industrial or construction activity commits an offense if the person denies city staff reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this chapter. Unreasonable delays in allowing the city access to a permitted facility or site is a violation of this ordinance.
(4) A person commits an offense if the person operates a facility or site that is discharging stormwater associated with industrial or construction activity without having submitted a copy of the notice of intent to do so to the City.

(5) A facility shall be operated in strict compliance with the requirements of its TPDES permit to discharge stormwater associated with industrial or construction activity. A person commits an offense if the person operates a facility or construction activity in violation of a requirement of the facility's TPDES permit to discharge stormwater.

(6) The City may require any operator of a facility to modify the facility's or the site's SWP3 if in the best professional judgment of the City staff, the SWP3 does not comply with the requirements of the facility's or the site's TPDES permit to discharge stormwater.

C - Notices of Violations and Stop Work Orders

(1) Notice of the deficiencies in a facility's or a site's SWP3 will be made in writing, and the City will give the facility or construction site operator a reasonable amount of time, not to exceed thirty (30) days, to make the necessary changes in the SWP3.

(2) Noncompliance flag and stop work orders. If the city staff determines that activities are being carried out in violation of this chapter, a notification of noncompliance shall be issued. In addition to the notification, if the violation continues beyond five days, a "noncompliance flag" will be posted at the site. Finally, if the violation continues after three days after the "noncompliance flag" is posted, the city may stop all work until corrective measures have been completed. The site shall be posted with a "stop work order." No other permits may be issued or inspections conducted by the city until corrections have been made to the satisfaction of the city. To move or interfere with a "noncompliance flag" or a stop work order shall constitute a violation of this article.

(3) Any person alleged to be in violation of the provisions of this chapter shall be required to correct the problem upon written notification from the city. Such written notification may require that certain conditions be adhered to in the correction of the problem. These may include, but are not limited to the following:

   a. Use of specific pollution prevention measures and techniques;
   b. Use of pretreatment procedures;
   c. Modification of existing SWP3;
   d. Completion of work within a specified time period; and
   e. Submission of SWP3.

(4) Appeals. Any person denied permission to discharge to MS4 shall have the right to appeal such to the board of adjustment or other board established by the city within forty-five (45) days of the date of such denial.
D – Appeal of Notice of Violation

Any person receiving a Notice of Violation may appeal the determination to the City of Harlingen. The Notice of Appeal must be received within 15 days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or designee shall take place within 60 days from the date of receipt of the Notice of Appeal. The decision of the City of Harlingen or their designee shall be final.

E – Enforcement Measures after Appeal

If the violation remains uncorrected after 10 pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, then representatives of the authorized enforcement agency shall enter the regulated property to take the necessary actions to abate the violation and/or restore the property. It shall be unlawful for any person to refuse the City of Harlingen to enter upon the premises for the purposes set forth above.

F – Cost of Abatement of the Violation

Within 15 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 15 days. If the amount due is not paid within a timely manner as determined by the decision of the local jurisdiction or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the City of Harlingen by reason of such violation.

G – Injunctive Relief

It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this Ordinance, the City of Harlingen may petition for a preliminary or permanent injunction restraining the person entity from activities prompting further violations or compel the person to perform abatement or remediation of the violation(s).

H – Compensatory Action

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the City of Harlingen may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, drainage cleanup, etc.

I – Criminal Prosecution

Any person that violated or continues to violate this Ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of not more than ($500.00) dollars per violation.
Sec. 16.51 Maintenance Agreements

The City of Harlingen has the authority to enter into interagency or interlocal agreements or other maintenance agreements, as necessary in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)i. This agreement will include maintenance easements to access and inspect stormwater control practices, and perform routine maintenance to ensure proper stormwater control. A legally binding covenant will identify the responsible parties to maintain stormwater control practices.

Sec. 16.52 Ultimate Responsibility

The standards set forth herein and promulgated pursuant to this Ordinance are minimum standards; therefore, this Ordinance does not intend nor imply that compliance by any person will ensure prevention of contamination, pollution, and unauthorized discharge of pollutants.

Sec. 16.53 Severability

If any provision of this article or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this article and the application of such provision to other persons and circumstances shall nevertheless be valid, and the city commission hereby declares that this chapter would have been enacted without such invalid provision.

Sec. 16.54 Separability

The provisions and sections of this Ordinance shall be deemed to be independent, and the invalidity of any portion of this Ordinance shall not affect the validity of the remainder.

SECTION II: That the City Secretary of the City of Harlingen, Texas is hereby authorized and directed to cause a true copy of the caption of this ordinance to be published in a newspaper having general circulations in the City of Harlingen, Cameron County, Texas.

The provisions of this ordinance shall become effective from and after the final and lawful passage hereof and publication of the caption hereof as provided for and required in the Code of Ordinances and applicable state statutes.
FINALLY ENACTED this ___ day of ____________, 2019, at a regular meeting of the Elective Commission of the City of Harlingen, Texas at which a quorum was present and which was held in accordance with TEXAS GOVERNMENT CODE, CHAPTER 551.

CITY OF HARLINGEN

__________________________
Chris Boswell, Mayor

__________________________
Amanda C. Elizondo, City Secretary
CONSTRUCTION SITE NOTICE  
TCEQ Stormwater Program  
TPDES GENERAL PERMIT TXR040000

This information is posted in compliance with TCEQ TPDES General Permit #TXR040000 for discharges of stormwater runoff from construction sites into small municipal separate storm sewer system. Additional information regarding the TCEQ storm water permit program may be found at: www.tceq.state.tx.us

<table>
<thead>
<tr>
<th>Permit Number:</th>
<th>TXR04</th>
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</thead>
<tbody>
<tr>
<td>Contact Name and Phone Number:</td>
<td></td>
</tr>
<tr>
<td>Project Description:</td>
<td>(Including start date and end date or date that disturbed soils will be finally stabilized)</td>
</tr>
<tr>
<td>Location of Stormwater Pollution Prevention Plan (SWP3):</td>
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</table>

I, (Printed Name), certify under penalty of law that I have read and understand the eligibility requirements for claiming authorization under Part II of TPDES General Permit TXR040000. A stormwater pollution prevention plan has been developed and will be implemented according to permit requirements. I am aware there are significant penalties for providing false information or for conducting unauthorized discharges, including the possibility of fine and imprisonment for knowing violations.

Signature ___________________________  Date ________________
ORDINANCE NO. 19—_____

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF HARLINGEN, TEXAS AUTHORIZING THE CLOSURE OF L STREET AND L ½ STREET BETWEEN FAIR PARK BOULEVARD AND ADAMS AVENUE; PROVIDING FOR PUBLICATION AND ORDAINING OTHER MATTERS RELATED TO THE FOREGOING.

WHEREAS, the City Commission believes and so finds that it would serve the best interest of the City of Harlingen to close a portion of the right-of-way, known as L Street, (retaining all utility easements) and release right to use same as a public street.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF HARLINGEN:

SECTION I: Under and by virtue of the powers vested in it by the Constitution and Laws of the State of Texas, the City of Harlingen, Texas, a home rule city, hereby vacates and closes certain right-of-way for the portion of L Street more fully described as follows:

THE SECTION OF L STREET AND L ½ STREET BETWEEN FAIR PARK BOULEVARD AND ADAMS AVENUE

SECTION II: The City of Harlingen hereby specifically retains utility easements and right-of-way along, across, over and through a part of the above described property and the right to the construction, reconstruction, maintenance and operation of all utilities and right-of-way.

SECTION III: This Ordinance shall be in full force and effect from and after its final passage, approval and publication as by the Charter of the City of Harlingen and the laws of the State of Texas provided.

SECTION VI: That the City Secretary of the City of Harlingen, Texas is hereby authorized and directed to cause a true and correct copy of the caption of this Ordinance to be published in a newspaper having general circulation in the City of Harlingen, Cameron County, Texas.
FINALLY ENACTED THIS _____day of ______________, 2019 at a regular
meeting of the Elective Commission of the City of Harlingen, Texas at which a quorum was
present and which was held in accordance with TEXAS GOVERNMENT CODE CHAPTER
551

CITY OF HARLINGEN

ATTEST:

Chris Boswell, Mayor

Amanda C. Elizondo, City Secretary
AGENDA ITEM
EXECUTIVE SUMMARY

Meeting Date: November 6, 2019

Agenda Item:
Consider and take action to approve a request from the Temple of the Lord Ministries to close the 2000 block of West La Paloma Avenue from 1:00 p.m. to 7:00 p.m. on Saturday, November 9, 2019 for their “Community Fall Festival.”

Prepared By (Print Name): Michael Kester
Title: Chief of Police
Signature:

Brief Summary:
Joey Medrano, Jr., Pastor for the Temple of the Lord Ministries is requesting the closure of the 2000 block of West La Paloma Avenue from 1:00 p.m. to 7:00 p.m. on Saturday, November 9, 2019 for their Community Fall Festival. The street closure will help to ensure the safety of the 250-300 visitors expected to attend this event.

The Asst. Fire Chief has reviewed this request and provided his approval.

Funding (if applicable):
Are funds specifically designated in the current budget for the full amount [ ] Yes [ ] No*
*If no, specify source of funding and amount requested: N/A

Finance Director’s approval:
[ ] Yes [ ] No [ ] N/A

Staff Recommendation:
Staff recommends approval.

For Street Closures ONLY, Fire Chief’s approval: [ ] Yes [ ] No [ ] N/A

City Manager’s approval:
[ ] Yes [ ] No [ ] N/A

Comments:

City Attorney’s approval:
[ ] Yes [ ] No [ ] N/A

form revised 01/26/09
TO: Chief of Police

FROM: SGT. M. Brooks #3466

RE: Temple of the Lord Ministries Street Closure request

REQUESTOR: Joey Medrano (956)536-0824
EVENT NAME: Community Fall Festival
DATE: November 9, 2019
LOCATION: 3202 N.77 Sunshine Strip Harlingen, TX. 78550

DESCRIPTION: The Community Festival for the Temple of the Lord is scheduled for November 9, 2019 from 1:00pm -7:00pm. Pastor Joey Medrano is requesting the 2000 block of W. La Paloma be closed for the festival and public safety. Mr. Medrano is expecting 250 and 300 people to attend the festival. There are no businesses or residence directly affected by this street closure.

I made contact with the event coordinator, Joey Medrano and confirmed dates and times. He was also advised his responsibility of setting up and tearing down barricades.

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<thead>
<tr>
<th>OFFICER / EMPLOYEE</th>
<th>SIGNATURE</th>
<th>DATE</th>
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<tbody>
<tr>
<td>SERGEANT / SUPERVISOR</td>
<td>M. Brooks</td>
<td>10/21/2019</td>
</tr>
<tr>
<td>COMMANDER / MANAGER</td>
<td>John #3538</td>
<td>10/21/2019</td>
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<tr>
<td>DEPUTY CHIEF</td>
<td>John #3538</td>
<td>10/21/2019</td>
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<tr>
<td>ASSISTANT CHIEF</td>
<td>M. Brooks</td>
<td>10/21/2019</td>
</tr>
<tr>
<td>CHIEF OF POLICE</td>
<td></td>
<td>10-21-19</td>
</tr>
</tbody>
</table>
Sgt. Brooks,

Hello, I am Pastor Joey Medrano Jr., from Temple of the Lord Ministries and we are located at:

3202 N 77 Sunshine Strip
Harlingen, TX 78550

I am emailing you to see if we could ask for permission from the City Of Harlingen for a street closure on November 9, 2019 from the hours of 1 pm to 7 pm, as we are planning to have our Community Fall Festival this year again. The street closure will help with the safety of the community that will be attending. We are expected to have 250 to 300 people attending.

Attached is google map screen shot of the area we are requesting to close off. The red lines indicate the area in front of our church property were we would like to close off.

Let me know if there’s anything else we need to do or send to you.

Thank you and God Bless,
Joey Medrano Jr - Pastor
956-536-0824
Sgt. Brooks,

Hello, I am Pastor Joey Medrano Jr., from Temple of the Lord Ministries and we are located at:

3202 N 77 Sunshine Strip
Harlingen, TX 78550

I am emailing you to see if we could ask for permission from the City Of Harlingen for a street closure on November 9, 2019 from the hours of 1 pm to 7 pm, as we are planning to have our Community Fall Festival this year again. The street closure will help with the safety of the community that will be attending. We are expected to have 250 to 300 people attending.

Attached is google map screen shot of the area we are requesting to close off. The church is on the 3200 N Block of N 77 Sunshine Strip and 2000 W Block of La Paloma Ave.

The red lines indicate the area in front of our church property were we would like to close off.

Let me know if there's anything else we need to do or send to you.

Thank you and God Bless,
Joey Medrano Jr - Pastor
956-536-0824
HFD has no issues with this closure

Thanks,
E. Alvarez

Sent from my iPhone

On Oct 22, 2019, at 8:40 AM, Pena, Frances <francespena2@harlingenpolice.com> wrote:

Good Morning Asst. Fire Chief Alvarez:

I would ask if you could please review the attached street closure request and provide your recommendation at your earliest convenience so that I can include as an agenda item at the next City Commission meeting.

Thank you for your assistance in this matter!

Frances Peña, Executive Admin. Assistant
Office of the Chief of Police Michael Kester
HARLINGEN POLICE DEPT.
1018 Fair Park Blvd., Harlingen, TX 78550
(956) 216-5403 office / (956) 216-5407 fax
email: francespena2@harlingenpolice.com

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<STREET CLOSURE REQUEST - TEMPLE OF THE LORD MINISTRIES.pdf>
AGENDA ITEM
EXECUTIVE SUMMARY

Meeting Date: November 6, 2019

**Agenda Item:**
Consider and take action to approve a request from H.E.B. Supermarket to close the streets noted below beginning on Thursday, November 7, 2019 at 8:00 a.m. so that H.E.B. can stage their food trailers and start processing the food for the event through Friday, November 8, 2019 until their Annual Feast of Sharing event ends.

<table>
<thead>
<tr>
<th>Prepared By (Print Name):</th>
<th>Michael Kester</th>
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</thead>
<tbody>
<tr>
<td>Title:</td>
<td>Chief of Police</td>
</tr>
<tr>
<td>Signature:</td>
<td>[Signature]</td>
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</table>

**Brief Summary:**
Ida Houseworth, Feast of Sharing Coordinator with H.E.B. Supermarket is requesting to close the streets noted below beginning Thursday, November 7, 2019 at 8:00 a.m. through Friday, November 8, 2019 until their Annual Feast of Sharing event ends:

- Madison Avenue from 2<sup>nd</sup> Street to 3<sup>rd</sup> Street
- 2<sup>nd</sup> Street from Jefferson Avenue to Madison Avenue

The Feast of Sharing unites the community to share Thanksgiving festivities. The street closures will ensure safety of the attendees.

The Harlingen Asst. Fire Chief has reviewed the request and provided approval.

**Funding (if applicable):**
Are funds specifically designated in the current budget for the full amount [ ] Yes [ ] No*

*If no, specify source of funding and amount requested: N/A

Finance Director’s approval: [ ] Yes [ ] No [ ] N/A

**Staff Recommendation:**
Staff recommends approval of the street closure.

For Street Closures ONLY, Fire Chief’s approval: [X] Yes [ ] No [ ] N/A

City Manager’s approval: [ ] Yes [ ] No [ ] N/A

**Comments:**

City Attorney’s approval: [ ] Yes [ ] No [ ] N/A
TO: Chief of Police
FROM: District Representative
RE: Street Closure Request

REQUESTOR: Ida Houseworth, HEB Feast of Sharing Coordinator, 956-689-6556
EVENT NAME: HEB Feast of Sharing
DATES AND TIMES: November 7th - 8th, 2019
LOCATION: Harlingen community center, 201 E Madison Ave, Harlingen, TX 78550

DESCRIPTION: HEB Supermarket and the City of Harlingen are requesting a street closure of the 200 block of E. Madison and E. Jefferson from 2nd and 3rd St. They are requesting the streets to be closed on Thursday November 7, 2019 at 8:00 AM through November 8, 2019 until event ends.

The Feast of Sharing brings the entire community together to share Thanksgiving and festivities. The closure will help ensure the safety of the community attending the event. I am recommending for the street closure to be granted and barricades be provided by the Street Department on the days specified by the request. A copy of the request and map will be turned in with the request.

1) Madison Ave from 2nd st to 3rd St.
2) 2nd St from Jefferson Ave to Madison Ave.

COMMENTS/NOTES: The streets will be closed for the safety of the public in attendance.

RECOMMENDATION: Approve

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<td>COMMANDER / MANAGER</td>
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<td>ASSISTANT CHIEF</td>
<td>10/24/19</td>
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<tr>
<td>CHIEF OF POLICE</td>
<td>10/24/19</td>
</tr>
</tbody>
</table>
From: "Houseworth,Idolina" <s429ad@heb.com>
Date: October 24, 2019 at 11:18:11 AM CDT
To: "M.brooks@harlingenpolice.com" <M.brooks@harlingenpolice.com>
Cc: "Cruz,Elizabeth" <cruz.elizabeth@heb.com>, "Esparza,Erma" <s009ud@heb.com>,
"Gonzalez, Gabriel" <ggonzalez@myharlingen.us>
Subject: Harlingen Feast of Sharing Street Closure

Good Morning,

As per our conversation:

On behalf of H-E-B Grocery Company and H-E-B Feast of Sharing Committee, we are requesting street closure for the front street and streets surrounding the Harlingen Community Center-- Madison Avenue and side streets North 2nd and North 3rd street by late evening November 7 or early morning November 8th as illustrated by pic below. We have always had Madison Avenue and North 2nd closed. This is the first year we are requesting North 3rd street closure due to the safety of the Community which lines up for the event. Please email or call me if you have any questions or concerns.


Thank you,
Ida Houseworth
s429ad@heb.com
Cell phone 956-778-5199
Good Morning Amanda:

Below is the approval from the Fire Dept. Please print out and add to our documents for the street closure for the Feast of Sharing.

Thank you and have an awesome weekend!

Frances Peña, Executive Admin. Assistant
Office of the Chief of Police Michael Kester
HARLINGEN POLICE DEPT.
1018 Fair Park Blvd., Harlingen, TX 78550
(956) 216-5403 office / (956) 216-5407 fax
email: francespena2@harlingenpolice.com

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From: Alvarez, Eduardo
Sent: Thursday, October 24, 2019 5:53 PM
To: Pena, Frances
Subject: Re: STREET CLOSURE REQUEST - FEAST OF SHARING

HFD has no issues with this closure.

Thanks,
E. Alvarez.

Sent from my iPhone

On Oct 24, 2019, at 3:22 PM, Pena, Frances <francespena2@harlingenpolice.com> wrote:

Good Afternoon Asst. Fire Chief Alvarez:

I am so sorry to ask that you please review this street closure request ASAP and provide your recommendation immediately so that we can include as an agenda item at the next City Commission meeting. The deadline to submit to the City Secretary is tomorrow and we just received this request today.

Again, I apologize for the short notice but it was not within our control.

I appreciate your assistance in this matter!
Frances Peña, Executive Admin. Assistant
Office of the Chief of Police Michael Kester
HARLINGEN POLICE DEPT.,
1018 Fair Park Blvd., Harlingen, TX 78550
(956) 216-5403 office / (956) 216-5407 fax
email: francespena2@harlingenpolice.com

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<STREET CLOSURE REQUEST - FEAST OF SHARING.pdf>
### AGENDA ITEM

**EXECUTIVE SUMMARY**

**Meeting Date:** NOVEMBER 6, 2019

**Agenda Item:**

Consideration and possible action, if any, to retain the services of Attorney Rolando Rios and Associates in connection with the 2020 Census and the related redistricting process.

<table>
<thead>
<tr>
<th>Prepared By (Print Name):</th>
<th>Dan Serna</th>
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<tbody>
<tr>
<td>Title:</td>
<td>City Manager</td>
</tr>
<tr>
<td>Signature:</td>
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**Brief Summary:**

In anticipation of the 2020 Census, the City of Harlingen seeks to hire the firm of Rolando Rios and Associates, PLLC, to provide redistricting plans using 2020 Census Data, and upon approval of the plan by the City, review the plan for compliance with Sec. 2 of the Federal Voting Rights Act and submit the plan to the Secretary of State of the State of Texas.

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<th>Funding (if applicable):</th>
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<tbody>
<tr>
<td>Are funds specifically designated in the current budget for the full amount</td>
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<td>*If no, specify source of funding and amount requested:</td>
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Finance Director’s approval:  Yes  No  N/A

**Staff Recommendation:**

Staff recommends approval.

**City Manager’s approval:**  Yes  No  N/A

**Comments:**

City Attorney’s approval:  Yes  No  N/A
REDISTRICTING LEGAL SERVICES RETAINER AGREEMENT

This agreement is to confirm the terms of the negotiations between Rolando L. Rios & Associates, PLLC (the Firm) and the City of Harlingen (the Jurisdiction) for the purpose of providing redistricting services.

1. SERVICES

1. Minimize the Undercount: Coordinate with the Census Bureau to minimize the undercount. Every person in the county needs to be counted so that we minimize potential loss of federal and state funds. This process will start in 2019.

2. Early Estimate of Population Disparity: Analysis of the existing single member districts to determine potential changes using census and voter registration updates. This process will take place in 2020.

3. Redistricting Plans: Prepare plans using the latest census data for the Jurisdiction’s consideration and selection. This process will occur when the census data is released. This process will take place 2020-21.

4. Federal and State Process: Plan to comply with Sec. 2 of the Federal Rights Act and submit plan to State of Texas, Secretary of State. This process will take place in 2020-21.

The Firm agrees to provide redistricting plans for the approval of the Jurisdiction using the 2020 United States Census Data. Upon approval of a redistricting plan by the Jurisdiction, the Firm agrees to review the plan for compliance with Sec. 2 of the Federal Voting Rights Act and submit plan to State of Texas, Secretary of State.

2. FEE STRUCTURE

With a population of approximately 65,467 (latest estimate) the Jurisdiction agrees to pay $30,000.00 as total fee for redistricting services plus costs not to exceed $5,000.00. Said project is to use the latest census data available. The fee will be paid as follows:

a.) $10,000.00 retainer within 30 days of execution of this agreement;
b.) $10,000.00 upon preparation of analysis indicating which election districts will be affected by the redistricting;
c.) $10,000.00 upon approval of the redistricting plan by the City of Harlingen and review for compliance with state and federal law.
d.) Should the jurisdiction decide to have more than one public hearing, the fee will be $2,000 per hearing plus costs.
e.) Cost and expenses will be billed as incurred.

3. SCOPE OF ATTORNEY-CLIENT RELATIONSHIP: This Retainer Agreement establishes a limited attorney-client relationship only between the Firm and the Jurisdiction. The relationship exists only as to the services described above. The Retainer Agreement does not impose any
duty upon the Firm to provide advice or work to the Jurisdiction regarding legal matters absent a request for such advice or work from the Jurisdiction regarding legal matters. If a lawsuit or other adversarial matter is brought against the Jurisdiction and/or any elected official or employee of the Jurisdiction, the Firm may require the execution of one or more separate Letters of Engagement prior to undertaking an attorney-client relationship in the matter. Fees for any engagement for services described in paragraph 3 will be also fixed at $195 per hour for attorney time and $75 per hour for paralegal fees.

Executed this __________ day of August, 2018.

ROLANDO L. RIOS & Associates, PLLC

by:

Rolando L. Rios
Title: Owner

City of Harlingen

by: ________________________________
**EXECUTIVE SUMMARY**

**Meeting Date:** November 6, 2019  
**Agenda Item:** Presentation on the City of Harlingen’s Comprehensive Plan Report.

**Prepared By:** J. Joel Garza Jr, CPM  
**Title:** Special Projects Director  
**Signature:**

### Brief Summary:

**Summary**

The City of Harlingen’s Comprehensive Plan was completed on April 2016. With the plan, a set of priorities were identified by the City Commission for staff to work on. Over the last three (3) years, various city departments have begun or completed work related to the priority projects.

This presentation will highlight the work completed or in progress in each of the comprehensive plan priorities.

### Funding (if applicable):

Are funds specifically designated in the current budget for the full amount?  
Yes [ ]  No [X]  
*If no, specify source of funding and amount requested:

Finance Director’s approval:  
Yes [ ]  No [ ]  N/A [ ]

### Staff Recommendation:

City Manager’s approval:  
Yes [X]  No [ ]  N/A [ ]

### Comments:

City Attorney’s approval:  
Yes [ ]  No [ ]  N/A [ ]
AGENDA ITEM
EXECUTIVE SUMMARY

Meeting Date: November 6, 2019

Agenda Item:
Consider and take action to adopt an Ordinance on First Reading to rezone from Residential, Single Family (“R-1”) District to Residential, Multi-Family (“M-2”) District for Lot 3, Sun Valley Shopping Center Unit No. 2, save and except 30 feet x 58.33 feet, located on the west side of 11th Street north of Washington Avenue. Applicant: John Timms

Prepared By: Xavier Cervantes, AICP
Title: Planning and Development Director

Signature: 

Brief Summary:

Project Timeline

- September 18, 2019 – Application for rezoning submitted to the City (ATTACHMENT I and II).
- September 29, 2019 – In accordance with Statute and local law, notice of required public hearings published in the Valley Morning Star and mailed to all property owners within 200 feet of subject tract.
- October 9, 2019- Public hearing was conducted by the Planning and Zoning Commission (P&Z). The P&Z Commission recommended approval of the rezoning request by a 3 to 0 vote.
- October 22, 2019 – Public hearing and consideration of requested rezoning via 1st ordinance reading scheduled before the City Commission. The City Commission tabled action on the item.
- November 6, 2019 – Consideration of requested rezoning via 1st ordinance reading scheduled before the City Commission.
- November 20, 2019 – Pending approval of 1st ordinance reading, consideration of approval of 2nd ordinance reading scheduled before the City Commission.

Summary

- The applicant is requesting to rezone the subject property from Residential, Single Family (“R-1”) District to Residential, Multi-Family (“M-2”) District to allow for a multi-family development on the subject property (ATTACHMENT III).

- The subject property is currently vacant. It has 100 feet of frontage along 11th Street, 70 feet of frontage on 9th street, and a depth of 698 feet at it longest point. Eleventh Street is a two lane 37 feet wide with curb and gutter paved street (ATTACHMENT IV-VII).

- The surrounding properties are zoned Residential, Single Family (“R-1”) District to the north and west, Residential, Multi-Family (“M-2”) District and General Retail (“GR”) District to the south, General Retail (“GR”) District to the east and Residential, Multi-Family (“M-2”) District to the west (ATTACHMENT III). The surrounding land uses consists of single family homes to the north, single family and multi-family uses to the
south, the Sun Valley Commercial Plaza to the east, and single family homes and the Liberty Gardens Park to the west (ATTACHMENT VIII).

- The Future Land Use Plan (FLUP) component of the City of Harlingen One Vision One Harlingen Comprehensive Plan shows this area as low density residential (ATTACHMENT IX). Although the requested rezoning is not consistent with the Future Land Use Plan, it is consistent with the adjacent Residential, Multi-Family ("M-2") zoning to the south and east of the subject property. It is also consistent with the multi-family uses to the south of the subject property.

- There was considerable opposition to the rezoning request during the Planning and Zoning Commission public hearing. Surrounding property owners expressed concern on the impact the multifamily development would have on the drainage in the area, since the subject area tends to flood during a heavy rainfall. They also expressed concern on the impact the multi-family development would have on the existing sewer system, since it tends to overflow and has a foul odor. There was also concern on how property values may be negatively impacted with a multi-family development in the area, and the possible rise in crime rate in the area.

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CITY OF HARLINGEN PLANNING AND ZONING DIVISION
MASTER APPLICATION

PROPERTY INFORMATION: (Please PRINT or TYPE)
Project Address 80780 N. Nearest Intersection 11TH St & E. WASHINGTON
(Proposed) Subdivision Name SIV VALLEY SHOPPING CENTER - Lot 3 Block
Existing Zoning Designation SFH Future Land Use Plan Designation MULTIFAMILY

OWNER/APPLICANT INFORMATION: (Please PRINT or TYPE)
Applicant/Authorized Agent John Timms Phone 956-882-2728 FAX
Email Address (for project correspondence only): jtimms@poli.com
Mailing Address PO Box 131 City San Benito State TX Zip 78586
Property Owner Harlingen Town Centre Phone 210-762-6999 FAX
Email Address (for project correspondence only): reuben@cbcre.com
Mailing Address 4624 MACKO Dr City San Antonio State TX Zip 78218

Select appropriate process for which approval is sought. Attach completed checklists with this application.

- [ ] Annexation Request. ........................................ No Fee
- [ ] Administrative Appeal (ZBA). . $125.00
- [ ] Comp. Plan Amendment Request. $250.00
- [ ] Re-zoning Request. ........................................ $250.00
- [ ] SUP Request/Renewal ..................................... $250.00
- [ ] Zoning Variance Request (ZBA) ........................................ $250.00
- [ ] PDD Request. ........................................ $250.00
- [ ] License to Encroach ...................................... $250.00
- [ ] Preliminary Plat. ........................................ $100.00
- [ ] Final Plat. ........................................ $50.00
- [ ] Minor Plat. ........................................ $100.00
- [ ] Re-plat. ........................................ $250.00
- [ ] Vacating Plat. ........................................ $50.00
- [ ] Development Plat. .................................... $100.00
- [ ] Subdivision Variance Request ........................................ $25.00 (each)

Please provide a basic description of the proposed project: 20 each 1 bed room 2 story

Apartments

I hereby certify that I am the owner and/or duly authorized agent of the owner for the purposes of this application. I further certify that I have read and examined this application and know the same to be true and correct. If any of the information provided on this application is incorrect, the permit or approval may be revoked.

Applicant's Signature: John Timms Date: 9-10-2019

Property Owner(s) Signature:

Accepted by: Date:
Attachment I cont.

RE-ZONING REQUEST
SUBMITTAL CHECKLIST

Please submit the following items along with the completed master application and appropriate fees. The project cannot be scheduled for consideration unless all items are marked complete. Cautions come from the Zoning Ordinance.

Complete
A metes and bounds description or survey plat of the tract(s) in which the re-zoning is requested.

City and School Tax Certificates ✓

A written statement describing the proposed use(s) of the subject property (can be provided on Master Application).

Any other information (elevation drawings, pictures, etc.) in support of the subject request.

- I understand that I am requesting an amendment to the City’s Zoning Ordinance and it will not be scheduled for Planning and Zoning Commission review unless all items on this list are completed.

- I understand that in accordance with State law and the Zoning Ordinance, no later than ten (10) days prior to consideration by the Planning and Zoning Commission:
  - A notice will be published in the Valley Morning Star describing the request and the date, time, and location of the public hearing;
  - Notices will be mailed to all property owners within 200 feet of the tract describing the request and the date, time, and location of the public hearing.

- I understand that while all requirements for the submission of a re-zoning request may be complete, the City Commission is the sole authority for the consideration and approval or denial of the request.

Owner: Harlingen Town Center LLC Date 6/22/19

Owner Address: ____________________________

Phone/Fax: ________________________________

Signature: ________________________________
HARLINGEN TOWN CENTER, LLC

September 17, 2019

City of Harlingen
Planning & Zoning Department

Re: _____ N. 11th Street, Harlingen, Texas
Lot 3, Sun Valley Shopping Center Subdivision, Unit 2
Appointment of Agent

To Whom It May Concern:

Harlingen Town Center, LLC owns the subject property located at _____ N. 11th Street in the City of Harlingen, Texas, under Cameron CAD ID#80780, more fully described on the attached Deed. The land is currently under contract to sell to John Timms.

By this letter, Harlingen Town Center, LLC grants authority to John Timms to act as its agent with respect to changing the zoning of the subject property to allow for residential apartments.

If you have any questions, please don’t hesitate to contact me at 210-424-8013 or FlintBourgeois@htrc.com.

Sincerely,

[Signature]

Flint Bourgeois
General Counsel
Harlingen Town Center, LLC

Encl. Warranty Deed
Cameron CAD
Request of John Timms to rezone from Residential, Single Family (“R-1”) District to Residential, Multi-Family (“M-2”) District for Lot 3, Sun Valley Shopping Center Subdivision Unit No. 2, save and except 30 feet x 58.33 feet, located on the west side of 11th Street north of Washington Avenue.

This map has been produced by the City of Harlingen for the sole purpose of locating jurisdictional boundaries and is not intended for any other. The map data is compiled from various sources including orthophoto imagery, engineer plans and plats, survey field notes, and other sources. This map is intended for graphic representation only. No warranty is made by the City regarding its accuracy or completeness. Before relying on any information on the map, check with the Planning Department. Date of map 6.21.19.
VIEW FROM THE NORTH ON 11TH STREET
Attachment VII

VIEW FROM THE SOUTH ON 11 STREET
A comprehensive plan shall not constitute zoning regulations or establish zoning district boundaries.

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Request of John Timms to rezone from Residential, Single Family ("R-1") District to Residential, Multi-Family ("M-2") District for Lot 3, Sun Valley Shopping Center Subdivision Unit No. 2, save and except 30 feet x 58.33 feet, located on the west side of 11th Street north of Washington Avenue.

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ORDINANCE NO. 19

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF HARLINGEN:
REZONING FROM RESIDENTIAL, SINGLE FAMILY ("R-1") DISTRICT TO RESIDENTIAL, MULTI-FAMILY ("M-2") DISTRICT FOR LOT 2, SUN VALLEY SHOPPING CENTER SUBDIVISION UNIT NO. 2, SAVE AND EXCEPT 30 FEET X 58.33 FEET, LOCATED ON THE WEST SIDE OF 11TH STREET NORTH OF WASHINGTON AVENUE;
PROVIDING FOR PUBLICATION AND ORDAINING OTHER MATTERS RELATED TO THE FOREGOING

WHEREAS, the Planning and Zoning Commission of the City of Harlingen pursuant to Harlingen’s Zoning Ordinance procedure, has recommended a change in the zoning classification for certain described real property in the City of Harlingen; and it is deemed to be in the best interest of the City of Harlingen in accordance with said recommendation of the Planning and Zoning Commission of the City, being the recommendation as hereinafter set forth; and public notice of such proposed rezoning having been fully made and complied with as required by said Zoning Ordinance and applicable laws of the State of Texas; and the City Commission of the City of Harlingen having held public hearings with reference thereto, being duly and thoroughly heard; and after consideration of the evidence presented, said City Commission is of the opinion that it is in the best interest of the City of Harlingen that said Code of Ordinances be amended as indicated, now, therefore,

BE IT ORDAINED BY THE CITY OF HARLINGEN

That the Code of Ordinances of the City of Harlingen (Ordinance 16-8) be and the same is herewith amended by the following described property being changed for permissive zone use as indicated:

Rezoning from Residential, Single Family ("R-1") District to Residential, Multi-Family ("M-2") District for Lot 2, Sun Valley Shopping Center Unit No. 2, save and except 30 feet x 58.33 feet,
located on the west side of 11th Street north of Washington Avenue.

A copy of the Zoning Map constituting a part and parcel of the Code of Ordinances, as filed with the Building Inspection Inspector and for the joint use and information of the Planning and Zoning Commission shall, upon final enactment hereof, be and the same is herewith amended and revised to reflect that the above described property is zoned for land use purposes as above indicated by the boundaries thereof being outlined in pronounced heavy line markings and such heavy line marking boundary enclosure being indicated within by the appropriate initials for that portion herewith zoned for particular land uses; with the Planning and Development Director being herewith instructed and authorized to document such Zoning Map changes and revisions.

The provisions of this ordinance shall become effective from and after the final and lawful passage hereof and publication of the caption hereof as provided for and required in the Code of Ordinances and applicable state statutes.

FINALLY ENACTED this _____ day of ____________, 2019 at a regular meeting of the Elective Commission of the City of Harlingen, Texas at which a quorum was present and which was held in accordance with TEXAS GOVERNMENT CODE, CHAPTER 551.

CITY OF HARLINGEN

Chris Boswell, Mayor

ATTEST:

Amanda C. Elizondo, City Secretary
Request of John Timms to rezone from Residential, Single Family ("R-1") District to Residential, Multi-Family ("M-2") District for Lot 3, Sun Valley Shopping Center Subdivision Unit No. 2, save and except 30 feet x 58.33 feet, located on the west side of 11th Street north of Washington Avenue.

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The provisions of this ordinance shall become effective from and after the final and lawful passage hereof and publication of the caption hereof as provided for and required in the Code of Ordinances and applicable state statutes.

FINALLY ENACTED this ______ day of ________, 2019 at a regular meeting of the Elective Commission of the City of Harlingen, Texas at which a quorum was present and which was held in accordance with TEXAS GOVERNMENT CODE, CHAPTER 551.

CITY OF HARLINGEN

Chris Boswell, Mayor

ATTEST:

Amanda C. Elizondo, City Secretary
AGENDA ITEM
EXECUTIVE SUMMARY

Meeting Date: November 6, 2019

Agenda Item:
Consider and take action to amend the Agreement with Loaves and Fishes to provide meals for the homeless and needy through their kitchen and food pantry.

Prepared By (Print Name): Gabriel Gonzalez
Title: Assistant City Manager
Signature: 

Brief Summary:
The City awarded Loaves and Fishes $50,000 to provide meals to the homeless and needy. This Agreement was approved at the September 18, 2019 City Commission meeting. The funds will be used to provide nutritious meals in the dining hall and bed nights in the shelter to residents of Harlingen and those who become homeless within the City. The proposed amendment would increase their allocation by $25,000 for a total of $75,000. A budget amendment will be made to cover these added expenses. Staff recommends approval.

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Staff Recommendation:
Staff recommends approval.

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Comments:

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form revised 04/29/09
This Amendment to the Agreement made and entered into on this the 6th day of November, 2019, by and between the City of Harlingen, a political subdivision of the State of Texas, hereinafter referred to as "CITY", and the Loaves & Fishes of the Rio Grande Valley, Inc., hereinafter referred to as "L&F" will increase funding to L&F by an additional $25,000 for a total of $75,000.

WITNESSETH

WHEREAS, L&F desires to carry out eligible activities as described in the attached Exhibit A "Statement of Work", of this Agreement.

WHEREAS, the CITY proposes to contract with L&F in order that the eligible activities described in Exhibit A can be carried out for the benefit of residents in the CITY's jurisdiction.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the mutual covenants and agreements herein set forth and other good and valuable consideration, the CITY and the L&F do mutually agree as follows:

SECTION I
Rules and Regulations

L&F agrees to cooperate with the CITY in respect to the implementation of Homeless Prevention activities to be carried out by L&F.

SECTION II
Statement of Work

L&F agrees to perform services as outlined in Exhibit A "Statement of Work" for and in consideration of payment in the amount of Seventy Five Thousand Dollars ($75,000.00), and as delineated in Exhibit B-1 "Grant Budget" and B-2 "Payment Schedule".

L&F agrees to notify CITY, in writing, of any changes in its Statement of Work, Project Budget and Payment Schedule. L&F shall obtain approval, in writing, from CITY prior to commencing work on any changes made to the Statement of Work, Project Budget and Payment Schedule.

CITY shall not be liable for costs incurred or performances rendered by L&F before commencement of this Agreement or after termination of this Agreement.
L&F agrees to follow the schedule outlined in Exhibit C “Project Time Table” of this Agreement, and shall notify CITY, in writing, of any changes, delays or departures from the schedule. If L&F demonstrates that delays or departure from the schedule is due to circumstances beyond its control, CITY and L&F may amend such Project Time Table.

SECTION III
Records and Reports

L&F agrees to establish and maintain records and reports as outlined in Exhibit D “Records and Reports” and agrees to make those records and reports available to the CITY.

SECTION IV
Monitoring Visits

L&F agrees that CITY may conduct on-site monitoring visits to assure compliance with applicable local requirements and that performance goals are being achieved. After each monitoring visit, CITY shall provide L&F with a written report of any monitor’s findings. If the monitoring reports note deficiencies in L&F’s performance under the terms of this Agreement, the monitoring report shall include requirements for the timely correction of such deficiencies by L&F. Failure by L&F to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, as provided in Section IX of this Agreement. In addition, L&F shall give the CITY, and any of their duly authorized representatives, unobstructed and full access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by L&F pertaining to this Agreement.

SECTION V
Payment Requests

L&F agrees to follow administrative directions from the CITY regarding documenting and processing payment requests as defined in Exhibit E “Requests for Payments” of this Agreement.

L&F shall submit final reimbursement request to CITY within fifteen (15) days of the Agreement end date.

L&F agrees to comply with the RECORDS & REPORTS as outlined in Exhibit D.

L&F and CITY agree that all unused funds will be returned to CITY at the end or termination of this agreement for either reallocation or to be reprogrammed by CITY.
SECTION VI
Religious Activities

L&F and CITY both agree that none of the funds expended or activities undertaken under this Agreement shall be used in support of any sectarian or religious activity, nor shall any building or structure funded under this Agreement be used for sectarian or religious activities.

SECTION VII
Uniform Administrative Requirements

Entities, except entities that are governmental entities, shall comply with the requirements and standards of OMB Circular No. A–122, “Cost Principles for Non-profit Organizations”, or OMB Circular No. A–21, “Cost Principles for Educational Institutions”, as applicable, and OMB Circular A–133, “Audits of Institutions of Higher Education and Other Nonprofit Institutions” (as set forth in 24 CFR part 45). Audits shall be conducted annually. Such L&Fs shall also comply with the provisions of the Uniform Administrative requirements of OMB Circular A–110 (implemented at 24 CFR part 84, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations”).

SECTION VIII
Audit Requirements

L&F agrees to comply with the applicable requirements and standards as set forth in OMB Circular A–133, Audits of States, Local Governments and Non-Profit organizations.

L&F agrees to furnish CITY a Financial Management letter covering the period of this Agreement that includes detailed receipts and disbursement of payments to L&F hereunder. However, if L&F obtains an audit as per OMB Circular A-133, L&F shall submit said audit to CITY. Further, L&F agrees to cooperate with CITY relating to any inquiries regarding the audit. L&F acknowledges that a Financial Audit shall be provided to CITY at the expense of the L&F. Audit shall be available to CITY staff.

SECTION IX
Suspension and Termination

L&F understands that this Agreement may be suspended or terminated, if L&F materially fails to comply with the provisions of this Agreement or the provisions so listed in Exhibits A through E.
If L&F fails to fulfill in a timely and proper manner its obligations under this Agreement, or L&F violates any of the Agreements or stipulations of this Agreement, then the CITY shall provide L&F written notification of such non-performance. Such non-performance may be the basis for immediate termination of this Agreement. Should any breach of contract (Agreement) relate to a violation of federal law or regulation that results from L&F or its successor, the CITY will terminate Agreement and seek reimbursement of all funds from L&F. L&F shall not be relieved of the liability to the CITY for damages sustained by the CITY by virtue of any breach of this contract (Agreement) by L&F and CITY may withhold any payments to L&F for violations of federal regulations. Should the CITY become aware of any activity by L&F, which would jeopardize public accountability of funds, then the CITY may take appropriate action including injunctive relief against L&F to prevent the transaction as aforesaid. The failure of the CITY to exercise any right shall in no way constitute a waiver by the CITY to otherwise demand payment or seek any other relief in law or in equity to which it may be justly entitled.

It is expressly agreed that this Agreement may not be amended except in writing upon the joint action of both the CITY and Loaves & Fishes of the Rio Grande Valley.

SECTION X
Assets

L&F shall not purchase any asset with funding provided under this agreement unless so permitted by the CITY and such procurement shall be done in the form and manner so prescribed by the CITY.

SECTION XI
Indemnity Clause

L&F agrees to hold CITY harmless from, and indemnify CITY from and defend CITY against any and all claims brought against CITY by employees or officers of L&F or brought by any third person arising in any manner directly or indirectly from L&F programs, activities or events conducted pursuant to this Agreement.

L&F shall acquire, maintain and furnish to CITY a Certificate of Insurance as proof that it has secured and paid for policies of public liability and automobile insurance to cover all operations and services under the contract agreement with limits of not less than $300,000.00 per occurrence, $300,000.00 aggregate, covering all risks incident to or in connection with the execution, performance, attempted performance or non-performance of this Agreement. Policies must be endorsed to Waive Subrogation Rights, name the City as an "Additional Insured" and the cancellation provisions extended to thirty (30) days in writing. This requirement shall be to meet L&F'S duty of indemnification under this paragraph.
SECTION XII
Procurement

L&F agrees to follow the rules of the CITY on the procurement of services, supplies or non-real property in relation to CITY-funded projects. The legal standards that will apply include the Procurement Standards of the City of Harlingen. In such case as L&F has developed procurement standards governing its operation, such standards shall be reviewed by CITY to ensure compliance with the standards implemented by CITY.

SECTION XIII
Conflict of Interest

L&F covenants that neither members of its organization or staff members who exercise influence on the decision-making process presently have or will have any interest, direct or indirect, with any person, corporation, company or association that is hired to carry out any of the activities so listed in Exhibit A.

L&F agrees that no person who is an elected official, officer, director, employee, consultant, or agent of the L&F’s organization or the CITY’s organization shall gain any interest in any corporation, company, or association that is hired to carry out any of the activities so listed in Exhibit A during their tenure.

L&F is responsible for repayment of funds associated with any conflict of interest that may occur either knowingly or unknowingly.

No CITY employee, elected official, consultant and/or agent shall solicit nor accept gratuities, favors, or anything of monetary value from any person, corporation, company, or association that has been hired or expects to be hired to perform any of the activities so described on Exhibit A.

SECTION XIV
Legal Action and Venue

L&F agrees to notify the CITY when a problem arises that may lead to legal action or claim against the L&F. The L&F agrees to furnish to the CITY any information with respect to such action or claim. The L&F agrees not to take any action with respect to any legal action or claim sought against the L&F without the advice and consent of the CITY.

Venue and jurisdiction of any suit, right or cause of action arising under or in connection with this Agreement shall lie exclusively in Cameron County, Texas.
SECTION XV
Miscellaneous Provisions

Conflict with Applicable Law. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

No Waiver. No waiver by CITY of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

Entire Agreement. This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by CITY and L&F, and not otherwise.

Texas Law to Apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Cameron County, Texas. The parties hereby consent to personal jurisdiction in Cameron County, Texas.

Notice. Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by electronic mail, or (iii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or (iv) sent by facsimile or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to CITY:

City of Harlingen
Finance Department
118 E. Tyler
Harlingen, Texas 78550
Email rrodriguez@myharlingen.us
Phone # (956) 216-5050
Fax # (956) 216-5058

If to L&F:

Loaves & Fishes of the Rio Grande
Valley, Inc.
514 South E Street
Harlingen, Texas 78550
billreagan@lfrgv.org
Phone # (956) 423-1014
Fax # (956) 423-3051
Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

Additional Documents. The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

Successors. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

Assignment. This Agreement shall not be assignable by L&F. CITY may assign this Agreement without the consent of L&F.

Headings. The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

Gender and Number. All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

Authority to Execute. The execution and performance of this Agreement by CITY and L&F have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of CITY and L&F in accordance with its terms.
SECTION XVI
Effective Date

The effective date of this agreement shall be the 1st day of October, 2019, which follows the approved budget by the City Commission, and shall terminate on the 30th day of September, 2020.

Approved and signed this 6th day of November, 2019.

William Reagan, Executive Director

L&F Firm Name: Loaves & Fishes of the Rio Grande Valley, Inc.
Address: 514 South E Street
City/State/Zip: Harlingen, Texas 78550
Fed. I.D. # or Soc. Sec. #: 74-2589451
DUNS # 80-1182981

STATE OF TEXAS

COUNTY OF CAMERON

William Reagan, Executive Director, personally appeared before me and declared that he/she signed this agreement in the capacity designated, if any, and further states that, he/she has read the above agreement, and the statements therein contained are true.

Subscribed and sworn to before me this _____ day of November, 2019.

Notary - Signature

CITY OF HARLINGEN

Witness: Chris Boswell, Mayor
1) Mission and Goals:

The goal of Loaves & Fishes of the Rio Grande Valley is to improve the community we live in by restoring broken lives. We do this by providing a wide range of unduplicated support and services to individuals who desire to become self-supporting members of the community. Loaves & Fishes feeds the hungry, provides shelter to those that have lost their home, train those who seek to improve their opportunities for employment. They place into jobs those individuals that desire to rejoin the community as productive members. They give aid and comfort to those experiencing a life altering event that takes away their ability to afford the necessities that make a house a home. Homeless prevention services provided by Loaves & Fishes gives assistance to Harlingen residents by providing rental and utility assistance, medical prescription assistance and other assistance on a case by case basis.

2) Homeless Prevention Services:

A. Food Services provided by Loaves and Fishes Food Pantry

Funds will be used to provide nutritious meals in the Dining Hall and bed nights in the shelter. These programs will be provided to residents of Harlingen and those who have become homeless within the City of Harlingen.
<table>
<thead>
<tr>
<th>Line Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Food Pantry</td>
<td>$75,000.00</td>
</tr>
<tr>
<td>Total General Fund Allocation</td>
<td>$75,000.00</td>
</tr>
</tbody>
</table>
EXHIBIT B-2
PAYMENT SCHEDULE

First initial payment of $4,166.60 to commence on October 2019 thereafter payments of $6,439.39 and end on September 2020.
EXHIBIT C
PROJECT TIME TABLE

It is anticipated that the following families will be served each month in the specified categories:

Meals provided________________
EXHIBIT D
RECORDS & REPORTS

1. When requesting payment, attach an invoice with the following documents:
   ➢ Copies of program applications, timesheets, verbal quotations, invoices, and other supporting documentation (such as sales receipts and 941 IRS quarterly reports)
   ➢ Copies of cancelled checks or bank statements

2. A Monthly Activity Report must be submitted to the Finance Department accompanying each request for payment. Each activity report must have the following items:
   ➢ What funds were used for, the type of services provided
   ➢ Number of Persons Assisted
   ➢ Specific Income Levels of persons or households with the categories of extremely low, low, moderate and non low income.

3. All records pertaining to each fiscal year of funds must be retained for a period of 4-years

4. L&F must maintain proper financial records.
EXHIBIT E
REQUESTS FOR PAYMENT

1) L&F shall submit monthly reimbursement requests for payment. L&F shall submit copies of cancelled checks and other supporting documentation along with each monthly reimbursement request. As per Section IV of this Agreement, CITY may conduct on-site monitoring visits to assure compliance with applicable state, local and federal requirements and that performance goals are being achieved.

2) L&F shall submit monthly reimbursement requests and reports along with supporting documentation no later than the third (3rd) Wednesday of every month. Reimbursement checks generally will be mailed out within seven working days. Monthly Requests received after the due date will not be processed until the following week and reimbursement checks will not be available until two weeks after the day of receipt.
**AGENDA ITEM**

**EXECUTIVE SUMMARY**

Meeting Date: **November 6, 2019**

**Agenda Item:**
Consider and take action to adopt a resolution authorizing the City Manager to execute an Advance Funding Agreement with the Texas Department of Transportation for Sidewalk Improvements under the Statewide Curb Ramp Program.

**Prepared By (Print Name):** Andy Vigstol, P.E.
**Title:** City Engineer

| Signature: |  |

**Brief Summary:**

On September 17, 2017 we received notification from TxDOT that our sidewalk improvement project request under TxDOT's 2017 TASA Program and were being approved for funding however the funding would come through TxDOT's Statewide Curb Ramp and Pedestrian Improvement Program. Since that date, TxDOT has moved forward with preparing the engineering design and construction documents. These documents are approximately 90% complete and TxDOT is getting prepared to begin the bid solicitation process within the next 60-90 days. The attached Resolution authorizes the City Manager to execute the Advance Funding Agreement with TxDOT which commits the City of Harlingen to a fixed funding amount of $85,551 towards the three (3) sidewalk improvement projects. The projects are as follows:

Tyler Ave and Harrison Ave – from Dixieland Road to F Street – 3.5 miles
Business 77 – From Washington Ave to Loop 499 and Ed Carey – 2.73 miles
IH-69E – from Whalen Road to FM 2994 – 4.1 miles

Estimated project cost is $4,461,629.80

A draft form of the proposed AFA and location maps are attached.

**Funding (if applicable):**

Are funds specifically designated in the current budget for the full amount **X No***

*If no, specify source of funding and amount requested:

Finance Director’s approval: **N/A**

**Staff Recommendation:**

Staff recommends approval of the resolution as presented.

City Manager’s approval: **N/A**

**Comments:**

City Attorney’s approval:

*Form revised 01/26/09*
STATE OF TEXAS    §
COUNTY OF TRAVIS  §

ADVANCE FUNDING AGREEMENT FOR VOLUNTARY LOCAL GOVERNMENT CONTRIBUTIONS TO TRANSPORTATION IMPROVEMENT PROJECTS WITH NO REQUIRED MATCH ON-SYSTEM

THIS AGREEMENT is made by and between the State of Texas, acting by and through the Texas Department of Transportation called the “State”, and the City of Harlingen, acting by and through its duly authorized officials, called the “Local Government”. The State and Local Government shall be collectively referred to as “the parties” hereinafter.

WITNESSETH

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

WHEREAS, Texas Transportation Code, Chapters 201 and 221, authorize the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System; and

WHEREAS, Texas Government Code, Chapter 791, and Texas Transportation Code, §201.209 and Chapter 221, authorize the State to contract with municipalities and political subdivisions; and

WHEREAS, the Texas Transportation Commission passed Minute Order Number 115291 authorizing the State to undertake and complete a highway improvement funded through the Statewide Curb Ramp Program generally described as construction of concrete sidewalks, ramps, curbs, signage and striping at various locations within the City of Harlingen, Texas (Project).

WHEREAS, the Local Government has requested that the State allow the Local Government to participate in said improvement by contributing a fixed amount of funds towards the Project; and

WHEREAS, the governing body of the Local Government has approved entering into this Agreement by resolution or ordinance dated ______________, which is attached to and made a part of this Agreement as Attachment B, Resolution or Ordinance, and

WHEREAS, the State has determined that such participation is in the best interest of the citizens of the state;
NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as set forth in this Agreement, it is agreed as follows:

AGREEMENT

1. Period of the Agreement
This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in full force and effect until all funds contributed by the Local Government have been expended on the Project described in this Agreement or unless terminated as provided below.

2. Project Funding
At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its financial share as stated in Attachment A, Payment Provision and Work Responsibilities (Attachment A) which is attached to and made a part of this contract. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation" or may use the State's Automated Clearing House (ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT's Finance Division. The funds shall be deposited and managed by the State and may only be applied by the State to the Project.

3. Right of Access
If the Local Government is the owner of any part of the Project site, the Local Government shall permit the State or its authorized representative access to the site to perform any activities required to execute the work.

4. Adjustments Outside the Project Scope
The Local Government will provide for all necessary right of way and utility adjustments needed for performance of the work on sites owned or controlled by the Local Government.

5. Responsibilities of the Parties
The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

6. Document and Information Exchange
The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the local government creates
the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

7. **Interest**
   The State will not pay interest on funds provided by the Local Government. Funds provided by the Local Government will be deposited into, and retained in, the State Treasury.

8. **Inspection and Conduct of Work**
   Unless otherwise specifically stated in Attachment A, the State will supervise and inspect all work performed hereunder and provide such engineering inspection and testing services as may be required to ensure that the Project is accomplished in accordance with the approved plans and specifications. All correspondence and instructions to the contractor performing the work will be the sole responsibility of the State.

   The State and the Local Government agree that the State may, in its sole discretion, modify the Project, including scope and project limits. Such modification will not impact the Local Government's contribution to the Project.

9. **Insurance**
   If this Agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

10. **Project Maintenance**
    The Local Government shall be responsible for maintenance of locally owned roads and locally owned facilities after completion of the work. The State shall be responsible for maintenance of the State highway system after completion of the work if the work was on the State highway system, unless otherwise provided for in Attachment A or existing maintenance agreements with the Local Government.

11. **Termination**
    A. This agreement may be terminated in the following manner:
    1. By mutual written agreement and consent of both parties;
    2. By either party upon the failure of the other party to fulfill the obligations set forth in this agreement; or
    3. By the State if it determines that the performance of the Project is not in the best interest of the State.
B. If the agreement is terminated in accordance with the above provisions, the State will return any remaining Local Government funds after all expenses are paid in accordance with the provisions of Attachment A.

12. Notices
All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

<table>
<thead>
<tr>
<th>Local Government:</th>
<th>State:</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Harlingen</td>
<td>Texas Department of Transportation</td>
</tr>
<tr>
<td>ATTN: Mayor</td>
<td>ATTN: Director of Contract Services</td>
</tr>
<tr>
<td>PO Box 2207</td>
<td>125 E. 11th Street</td>
</tr>
<tr>
<td>Harlingen, Texas 78550</td>
<td>Austin, TX 78701</td>
</tr>
</tbody>
</table>

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided in this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

13. Sole Agreement
In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the Local Government and the State, the latest agreement shall take precedence over the other agreements in matters related to the Project.

14. Successors and Assigns
The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement.

15. Amendments
By mutual written consent of the parties, this agreement may be amended in writing prior to its expiration.

16. State Auditor
Pursuant to Texas Government Code § 2262.154, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds.
entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

Signatory Warranty
Each signatory warrants that the signatory has necessary authority to execute this Agreement on behalf of the entity represented.

THIS AGREEMENT IS EXECUTED by the State and the Local Government.

THE STATE OF TEXAS

__________________________
Signature

__________________________
Typed or Printed Name

Kenneth Stewart

Director of Contract Services

__________________________
Date

THE LOCAL GOVERNMENT

__________________________
Signature

__________________________
Typed or Printed Name

__________________________
Typed or Printed Title

__________________________
Date
ATTACHMENT A
PAYMENT PROVISION AND WORK RESPONSIBILITIES

The Local Government will contribute the following fixed amounts for the Local Government's participation in the Project:

<table>
<thead>
<tr>
<th>CSJ</th>
<th>Hwy</th>
<th>Limits</th>
<th>Fixed Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1425-03-068</td>
<td>SS 206</td>
<td>On Harrison &amp; Tyler Avenue &amp; From Dixieland Road to &quot;F&quot; Street</td>
<td>$39,002</td>
</tr>
<tr>
<td>0327-08-100</td>
<td>Business 77</td>
<td>On Business 77, from Washington Avenue to Loop 499</td>
<td>$18,166</td>
</tr>
<tr>
<td>0039-07-256</td>
<td>IH-69E</td>
<td>Whalen Road to FM 2994</td>
<td>$28,383</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Total Fixed contribution:</td>
<td>$85,551</td>
</tr>
</tbody>
</table>

Construction of concrete sidewalks, ramps, curbs, signage and striping at the above named locations within the City of Harlingen, Texas. The State will perform the work for the Project. Any changes, additions, or deletions to the Project will be at the State's sole discretion.

The Project may include any combination of Federal and State funds in addition to Local Government funds. After the Local Government funds are expended, Federal and State funds will be used to complete the Project. The total amount of Local Government participation shall not exceed the fixed amount stated above.
ATTACHMENT B
Resolution of Local Government
RESOLUTION NO 19R-__

A RESOLUTION OF THE CITY OF HARLINGEN, TEXAS
AUTHORIZING THE EXECUTION OF AN ADVANCE
FUNDING AGREEMENT (AFA) WITH THE TEXAS
DEPARTMENT OF TRANSPORTATION FOR
VOLUNTARY LOCAL GOVERNMENT CONTRIBUTIONS
TO TRANSPORTATION IMPROVEMENT PROJECTS
WITH NO REQUIRED MATCH ON-SYSTEM

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

WHEREAS, Texas Transportation Code, Chapters 201 and 221, authorize the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System; and

WHEREAS, Texas Government Code, Chapter 791, and Texas Transportation Code, §201.209 and Chapter 221, authorize the State to contract with municipalities and political subdivisions; and

WHEREAS, the Texas Transportation Commission passed Minute Order Number 115291 authorizing the State to undertake and complete a highway improvement funded through the Statewide Curb Ramp Program generally described as construction of concrete sidewalks, ramps, curbs, signage and striping at various locations within the City of Harlingen, Texas (Project); and

WHEREAS, the Local Government has requested that the State allow the Local Government to participate in said improvement by contributing a fixed amount of funds towards the Project; and

WHEREAS, the State has determined that such participation is in the best interest of the citizens of the state;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF HARLINGEN:

SECTION I: That the City adopts resolution 19R-____ approving the Advance Funding Agreement with the Texas Department of Transportation for the Statewide Curb Ramp Program by contributing a fixed amount of funds towards the project.

SECTION II: That the City Manager is hereby authorized to act on behalf of the City in all matters relating to this project and to execute all necessary documents including the AFA agreement for the Harlingen Sidewalks Project.

CONSIDERED AND ADOPTED THIS 6th day of November, 2019 at a Regular Meeting of the Elective Commission of the City of Harlingen, Texas at which a quorum was present and which was held in accordance with GOVERNMENT CODE CHAPTER 551, as amended.
CITY OF HARLINGEN

---------------------------------  
Chris Boswell, Mayor

ATTEST:

---------------------------------  
Amanda C. Elizondo, City Secretary
PHASE 1
LENGTH = 3.5 MILES
PHASE 2
LENGTH = 5.82 MILES

LOCATION MAP
HARRISON - TYLER-
COMMERCE SIDEWALK
LENGTH = 2.73 MILES
LOOP 499 TO TREASURE HILLS BLVD
SIDEWALK

LOCATION MAP BUSINESS 77
PROPOSED SIDEWALK
EXISTING SIDEWALK

LOOP 499
Treasure Hills Blvd
**EXECUTIVE SUMMARY**

**Meeting Date:** November 6, 2019

**Agenda Item:**
Consider and take action to accept or deny the donation of 5 park benches to the City Parks from the Harlingen’s Wellness Coalition, a non-profit organization to be installed on the Meg Jorn Trail.

**Prepared By:** Javier Mendez  
**Title:** Director of Parks and Recreation  
**Signature:**

**Brief Summary:**
Harlingen Wellness Coalition, a non-profit organization has offered to the City the donation of 5 park benches with the condition of them being installed on the Meg Jorn Trail. In an effort to move in the direction of the goals set forth by the Mayors Wellness Council, the Harlingen’s Wellness Coalition voted to donate the 5 benches to the city to promote health and wellness in our parks and trails.

If the donation is accepted, park staff will install the equipment along the trail in the preapproved locations. The estimated value of the five benches is approximately $5,000.

**Funding (if applicable):**
Are funds specifically designated in the current budget for the full amount?  

*If no, specify source of funding and amount requested:*

Finance Director’s approval:  

**Staff Recommendation:**
Staff recommends the City Commission approve the acceptance of the five benches and to approve the installation on the Meg Jorn Trail.

City Manager’s approval:  

**Comments:**

City Attorney’s approval:  

*form revised 04/29/09*
Write a description for your map.
**AGENDA ITEM**
**EXECUTIVE SUMMARY**

Meeting Date: **November 6, 2019**

**Agenda Item:**
Consider and take action to approve contract with Cynthia Sparks to provide Infant Swimming Resource’s (ISR) Comprehensive Drowning Prevention instruction at Pendleton Park Pool.

**Prepared By:** Javier Mendez  
**Title:** Director of Parks and Recreation  
**Signature:** [Signature]

**Summary**
Mrs. Cynthia Sparks has requested from the City to use Pendleton Pool to conduct Infant Swimming Resource (ISR) Comprehensive Drowning Prevention instruction. ISR instruction is for infants 6 to 12 months and children from 12 months to 6 years. The instructor will be allowed to use the Pendleton Pool on Mondays through Fridays from 10:30 a.m. to 1:00 p.m. The term of the contract will be for four months starting January 1st and ending April 30th of 2020 with a monthly payment of $200 and will carry the required insurance coverage for the term of the agreement.

The Parks and Recreation Advisory Board on September 17, 2019 recommended approving the agreement with the terms being presented.

**Staff Recommendation:**
Staff and Parks and Recreation Advisory Board recommend approval of the contract with Cynthia Sparks provide Infant Swimming Resource instruction at Pendleton Park Pool.

**City Manager’s approval:**  
[ ] Yes  
[ ] No  
[ ] N/A

**City Attorney’s approval:**  
[ ] Yes  
[ ] No  
[ ] N/A
CONTRACTUAL AGREEMENT

This contract, made this 6th day of November 2019 by and between CITY OF HARLINGEN, a Municipal Corporation situated in Cameron County, Texas, and acting herein by and through its duly authorized City Manager, hereinafter designated as “CITY”, having its principal Administrative offices at 118 E. Tyler Street, Harlingen, Texas 78550, and Cynthia Sparks, hereinafter referred to as “CONTRACTOR”, an individual(s) residing at 28521 Bass Blvd, Harlingen, Texas 78552.

NOW, THEREFORE, for and in consideration of the services and mutual promises of the parties and the mutual benefits they will gain by their performance thereof, all in accordance with the provisions hereinafter set forth, CITY and CONTRACTOR, agree as follows:

I. PROVISIONS OF SERVICES

Cynthia Sparks will serve as CONTRACTOR for Infant Swimming Resource’s (ISR) Comprehensive Drowning Prevention instruction for infants 6 to 12 months and children from 12 months to 6 years. ISR instruction will be conducted at the City owned pool known as Pendleton Park Pool. CONTRACTOR shall be responsible for providing supplies, materials or equipment needed to instruct ISR. CONTRACTOR will be allowed to use the Pendleton Pool on Mondays through Fridays from 10:30 a.m. to 1:00 p.m. CITY shall be responsible for the arrangement and maintenance of the activity area in accordance with specifications given by the CONTRACTOR at the time of scheduling. Any relevant building specification changes must be arranged at least ten days prior to activity date.

II. TERM OF AGREEMENT

The term of this agreement shall be for 4 months beginning on the 1st day of January 2020 and ending on the 30th day of April 2020.

III. COMPENSATION

Consideration to be paid to the CITY for the use of the Pendleton Park Pool is Two Hundred Dollars per month and shall be due the 1st day of each month and payable to the CITY at the office of the Parks and Recreation of said CITY at 502 E. Tyler, Harlingen Texas.

IV. PROFESSIONAL LIABILITY

In connection with the services provided under this Agreement, CONTRACTOR will indemnify and hold CITY, the Harlingen Parks and Recreation, its officials, officers, deputies, agents and employees, harmless for any and all claims, lawsuits, legal expenses and other costs related to the performance or non-performance of this Agreement.

V. INSURANCE

In order to insure CONTRACTOR’S obligation pursuant to this paragraph, CONTRACTOR shall obtain and maintain during the term hereof a Commercial General Liability Insurance policy covering all operations...
and services under this Contract with limits for damages claimed by any person or organization for care, loss of services or death resulting at any time from the bodily injury and property damage combined in the amount of not less than ONE MILLION DOLLARS ($1,000,000.00) Per Occurrence and TWO MILLION DOLLARS ($2,000,000.00) Aggregate. Commercial General Liability insurance shall be written to include, on an occurrence basis, bodily injury and property damage losses resulting from (1) conditions of the premises, (2) business operations, (3) product liability, (4) completed operations and (5) operations of independent contractors. CONTRACTOR shall procure and maintain Worker’s Compensation insurance and shall include Employer’s Liability Insurance of at least FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) for each accident, FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) for Disease-Policy Limit, and FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) for Disease-Each Employee. The insurer shall waive all rights of subrogation against CITY, its officials, employees, and volunteers for losses arising from the activities under this contract. Each insurance policy required shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits without thirty (30) days prior written notice first having been provided to CITY. Insurance is to be placed with insurers with a Best Rating of less than A. The insurance company must be duly authorized to do business in the State of Texas. A certificate of insurance reflecting the above required insurance coverage and limits of liability must be provided to the CITY prior to the annual renewal date of policy. The certificate should include the endorsement naming CITY, as an additional insured. Certificate of Insurance shall be forwarded to: RISK MANAGER, CITY OF HARLINGEN, 118 E. TYLER, P. O. BOX 2207, HARLINGEN, TEXAS 78551. In the event CONTRACTOR permits such insurance to expire or lapse during the term of this contract, CITY shall have the right to terminate this agreement by giving thirty (30) days written notification thereof by registered certified mail to CONTRACTOR.

VI.

ENTIRE AGREEMENT

This instrument contains the entire agreement between the parties. Any oral representations or modifications concerning this agreement will be of no force effect unless a subsequent modification in writing is signed to by the parties. This Agreement may be amended, provided that no amendment, modification or alteration of the terms of this Agreement will be binding unless the same is in writing and duly executed by the parties hereto.

VII.

BREACH OF OBLIGATION

This Agreement is entire as to all of the performances to be rendered under it. Breach of any obligations to be performed by either party will constitute a breach of the entire Agreement and will give the other affected party the right to terminate this Agreement.

VIII.

TERMINATION

Either party, by giving ten (10) days written notice to the other party, may terminate this contract at anytime and for no reason.

IX.

ASSIGNMENT

This Agreement shall not be assignable or sub-concessioned at all in whole or in part by CONTRACTOR without the consent and approval of CITY, set forth in writing and signed by both parties. Any assignee or sub-concessionaire will be bound by the terms of this contractual agreement and amendment, if any.
X.
NOTICES

Any notice or writing required or permitted to be given under the terms of this Agreement will be regarded as delivered when a copy of the same has been delivered to the party entitled to receive it by Certified Mail, Return Receipt Requested, or by personal delivery at the address given below or such other address as a party may designate by written notice to the other party.

TO CONTRACTOR: Cynthia Sparks  
28521 Bass Blvd  
Harlingen, Texas 78552

TO CITY: Dan Serna, City Manager  
City of Harlingen  
118 E. Tyler  
Harlingen, TX 78550

XI.
RELATIONSHIP OF PARTIES

CONTRACTOR is acting as an independent contractor and is wholly responsible for the duties as identified in Paragraph I, Provision of Services. No joint venture, partnership, or agency exists between CITY and CONTRACTOR, nor will one be implied by the terms of this Agreement.

XII.
INVALIDITY OF PARTICULAR PROVISIONS

If any section, paragraph, sentence, or phrase hereof is held to be illegal or unenforceable by a court of competent jurisdiction, such illegality or unenforceability shall not affect the remainder of this agreement.

XIII.
LAW GOVERNING VENUE

This Agreement shall not be assignable without the express written consent of CITY. This Agreement will be governed by and construed in accordance with the laws of the State of Texas, and, the obligations and undertakings of each of the parties to this Agreement will be performable in Cameron County, Texas. The parties agree that Cameron County, Texas shall be the proper place for any litigation between the parties hereto and that Texas law shall govern the interpretation of the provisions hereof.

WITNESS OUR HANDS THIS _____ DAY OF __________, 2019

CITY OF HARLINGEN
BY: ________________________________
Dan Serna, City Manager

ATTEST:
BY: ________________________________
Amanda C. Elizondo, City Secretary

CONTRACTOR
BY: ________________________________

Cynthia Sparks
Proposal:

Partnership between ISR Self-Rescue™ Swimming Program and The City of Harlingen
Cynthia Sparks, Infant Swimming Resource Certified Instructor

Submitted by:

Cynthia Sparks
c.sparks@infantswim.com
214.673.8826
www.infantswimrgv.com
www.infantswim.com

August 21, 2019

The purpose of this proposal is to combine the mission, organizational and facility assets of The City of Harlingen with Infant Swimming Resource’s comprehensive drowning prevention program for infants and young children. The Internationally recognized ISR Self-Rescue™ Swimming program will provide The City of Harlingen tremendous benefit by serving the community demand and attracting new clients into The City of Harlingen programming.

The problem - child drowning
Today, as it happens every day in this country, an average of 11 infants and young children under age 4 will drown in the United States. Another 39 fell into a body of water and will suffer permanent neurological injury. Drowning is the leading cause of death for infants and young children under the age of four years and these are needless tragedies.
The solution
These same infants and toddlers can be taught to perform survival skills independently in the water.
Infant Swimming Resource offers a proven program for teaching these skills. As a certified Infant Swimming Resource Instructor, I would like to propose that The City of Harlingen become a partner site of this program to make it available to area residents.

The ISR Program

Technique
All lessons are private, one-on-one customized lessons to meet the needs of each child. Because consistency and repetition are necessary components of learning for infants and young children, ISR students attend lessons 5 times per week for approximately 10 minutes per day. Though the lesson length may seem short, consider that most toddlers do not spend more than 10 minutes focused on any one activity. Research shows that this 10-minute “window” of learning provides the safest, most effective lesson possible for infants and young children.

Survival Float
Infants 6 six to 12 months are taught to rotate from a face down position in the water to a back float to rest and breathe until help arrives. The survival float class is 5 lessons per week for approximately 6 weeks.

Swim – Float – Swim
Children from 12 months to 6 years of age are taught to swim, rotate onto their backs to float, rest, and breathe, and then to flip back over to continue swimming to safety. These skills require 5 lessons per week for approximately 6 weeks to learn.

During the final week of lessons, each student performs their skills fully clothed, so they will experience in a controlled setting what it would feel like if they ever fell into a body of water fully clothed and to know they can still perform their skills.

Each child is gently introduced to the water and gradually introduced to the survival swim technique. Every child learns a rotation to attain and maintain a back float – a technique that is crucial for saving lives. ISR trained children learn to respect the water and to enjoy swimming with confidence.

Parent Participation
Parents are on the pool deck to encourage their young swimmers. Parents may be invited into the pool for a lesson so that they may learn to interact with their
children in the water to reinforce the skills learned during lessons.

Constant adult supervision is the first layer of protection. However, supervision can break down. That is why parents are educated through The ISR Parent Resource Guide, required reading for all ISR parents. This guide covers topics such as family aquatic safety, facets of drowning prevention, attitudes and emotions, physiology, and safety before, during and after the lessons.

**Safety Before, During, and After the lesson**
Safety is first and foremost with ISR. All registrations with ISR include a complete medical history, which is reviewed by pediatric medical personnel on staff with the ISR National Office before any student is cleared to swim. BUDS statistics are compiled by the parent and reviewed by the instructor each day before lessons begin. This information includes Bowel, Urine, Diet, and Sleep habits for every student.

During the lesson, the student is monitored in regards to many safety protocols; including breath control, temperature fatigue (vasoconstriction monitoring), submersion time (students are taught to respond to a 3 – 4 second breath control), maximum of 10-minute lessons per day, pace of the lesson, etc.

After the lesson, each student is required to rest on their left side on their towel with the parent monitoring them.

**Swim Wear:**
ISR requires 2 layers of protection for children that are not toilet trained. This will reduce the risk of contamination in the facility pool. Infants will be required to wear 2 snug fitting reusable cloth swim diapers during each lesson.

**Public Education**
Nearly, all drowning deaths could be prevented with more adequate adult supervision. Adequate supervision requires public education. Public education is a vital measure in improving the odds in drowning prevention. On a National Level, Infant Swimming Resource is dedicated to education and drowning prevention. The national website provides information about drowning prevention and the program. ISR provides information through our personal website and social media sites. Additionally, ISR conducts water safety education presentations throughout the year.

**Operation Plan**
All requests for information about ISR, scheduling of lessons, enrollment, and registration will be referred directly to the ISR instructor thereby reducing/eliminating any burden on The City of Harlingen staff. All ISR registrations
are handled on-line directly through the ISR National Office and are HIPPA compliant.

Due to the nature of these one-on-one private sessions, only a small space in the shallow end of the pool is required. ISR has used either a lap lane, 8x8 or 10x10 pool space. The presence of ISR lessons in the pool area will not interfere with the availability of the pool for other classes, lessons or guests. Additionally, ISR instructors and students will need access to a restroom to be used as a changing location.

I am seeking The City of Harlingen Pendleton pool to become my host from September 23- November 15, 2019 from 9-11 am. ISR is willing to consider other similar schedules, if the above schedule is not acceptable to The City of Harlingen

Operating Expense
There are no additional costs to The City Of Harlingen to offer this life saving program. ISR Instructors are responsible for their own annual recertification expenses, administration and liability insurance.

Pool Rental Fee
ISR of Harlingen requests to rent a shallow portion of the pool. The weekly tuition is currently $85 per student per week. ISR of Harlingen is happy to pay $200 a month to The City of Harlingen.

Pool fees can be paid monthly. ISR will provide pertinent information of students in attendance.

This does not include any additional revenue that is generated from ISR clientele that is previewing your facility, possible revenue can include: new memberships, swim passes, play date meet ups, birthday party rentals or meeting space rentals.

Liability Insurance
All ISR instructors are required to purchase and maintain individual liability insurance policies. This policy insures the instructor at each individual teaching site. Our liability insurance is 2 million per incident and 4 million aggregate.

Qualifications
Since 1966, ISR has safely delivered over 8 million lessons to teach self-rescue™ swimming skills to more than 160,000 babies and young children. To date, ISR has 803 documented cases of children using ISR techniques to save
themselves from drowning.

All Certified ISR instructors must complete initial training under the supervision of either a Master Instructor or a Senior Master Instructor. Training includes academic work in child psychology, behavioral science of operant conditioning, sensorimotor learning, anatomy and physiology. In water training includes working with all ages from 6 months to 6 years, one-on-one under the supervision of the MI or SMI for a minimum of 5 weeks. CPR and First Aid certification is required to be kept current. Every instructor is evaluated and recertified annually in a similar way to emergency personnel. ISR instructors are provided with assistance and guidance in the areas of safety and teaching effectiveness. As new medical and psychological findings arise, each instructor is apprised of the new research and how that affects their teaching. No other swimming program in the country provides such a comprehensive certification program. Additionally, each instructor devotes a significant amount of time, dedication, and financial investment to become an ISR instructor.

The City of Harlingen

The ISR program has been featured in many newspapers, on Dateline, 20/20, Fox News and The NBC Today Show. As a partner facility, The City of Harlingen will gain recognition as a city devoted to giving back to the community by promoting the health and safety of young children.

ISR will market the program and will showcase The City of Harlingen Center throughout the Rio Grande Valley.

ISR lessons offered within your facility will demonstrate your commitment to providing your members and the community a nationally recognized self-rescue™ swimming program. Your current members will be impressed by your commitment to water safety. In addition, the program will create awareness of drowning prevention for local residents, thereby promoting water safety for the community at large. By partnering with ISR together we will provide a professional and superior self-rescue™ swimming program for infants and young children in Harlingen.

Members often ask what benefits they are getting from their monthly dues. ISR lessons conveniently offered within your facility will be a bonus for many families. ISR will provide a great service to your current and potential members.

The ISR program will boost visitor traffic into the Pendleton pool, and ISR clients will be able to preview your state of the art facility many times throughout the training period. We recommend that parents continue swimming with their children after they have completed their initial training. Your facility will be a
convenient location to continue swimming, as they will be familiar with your site. In addition ISR clients will also tell others about the quality facility, services and amenities offered by your organization.

The ISR program attracts clients whom are family oriented and exercise minded. The ISR program is a feeder program to The City of Harlingen Pendleton pool existing programming.

Consideration
ISR would like to thank you for your consideration of this partnership. I am very flexible and will consider suggestions to better accommodate The City of Harlingen Pendleton pool while maintaining the integrity of the program. I look forward to the opportunity to discuss the program in further detail with you.
**CERTIFICATE OF LIABILITY INSURANCE**

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

**PRODUCER**
Sports & Fitness Insurance Corporation
Post Office Box 1967
Madison, MS 39130

**INSURED**
Cynthia Sparks
28521 Bass Blvd
Harlingen, TX 78552

**COVERAGE**

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**DED RETENTION $**

**WORKERS COMPENSATION**

- PER STATUTE
- OTHER
- E.L. EACH ACCIDENT
- E.L. DISEASE - EA EMPLOYEE
- E.L. DISEASE - POLICY LIMIT

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES**

Certificate holder is additional insured

**CERTIFICATE HOLDER**
City of Harlingen
118 E Tyler Ave
Owner/Manager/Lessor of Premises
Harlingen, TX 78550

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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**AGENDA ITEM**  
**EXECUTIVE SUMMARY**

**Meeting Date:** November 6, 2019

**Agenda Item:**
Consider and take action to authorize staff to contract KONE Inc. utilizing the U.S. Communities Program in lieu of bids or RFP’s for the replacement parts and repairs to the staff elevator and passenger elevator at the Harlingen Library.

**Prepared By (Print Name):** Javier Mendez  
**Title:** Parks & Recreation Director  
**Signature:**

**Brief Summary:**
Public Buildings has been working with KONE Inc. to obtain pricing for the repairs, parts and new equipment for the two elevators at the Harlingen Library. Kone Inc. has been servicing our elevators for several years and it was brought to our attention that the elevators at the library were going to need a major overhaul and needed to be brought up to current standards and code. Within the last 30-45 days, the library has been experiencing issues with both elevators getting stuck in between floors. Staff is recommending to contract KONE Inc. to repair and install new equipment for the passenger and staff elevator at the Harlingen Library and to use U.S. Communities Program instead of requesting bids or RFP’s. The proposal we have received from KONE Inc. is $168,200 for equipment, parts and labor. Funding to repair the elevators included and approved in the FY 2020 budget.

**Funding (if applicable):**
Are funds specifically designated in the current budget for the full amount [ ] Yes [ ] No* for this purpose?

Finance Director’s approval: [ ] Yes [ ] No [ ] N/A

**Staff Recommendation:**
Staff recommends using KONE Inc. to repair the elevators at the Library under the U.S. Communities Program.

City Manager’s approval: [ ] Yes [ ] No [ ] N/A

**Comments:**

City Attorney’s approval: [ ] Yes [ ] No [ ] N/A
KONE People Flow - Solution for You

- Eco-efficient
- Reliable
- Attractive
We are pleased to enclose, for your review and consideration. KONE’s proposal to modernize your equipment located at the following address for the amount of $168,200.00 (excluding tax):

Harlingen Public Library
410 North 76
Harlingen, Texas 78550

In addition to a quality modernization project, we would be excited to discuss KONE 24/7 Connected Services with you and the continuing benefits KONE could bring to your business. KONE is leading the industry with KONE 24/7 Connected Services using the latest intelligent elevator technology allowing us to predict issues and take action before a shutdown occurs. Predictive maintenance allows fewer shutdowns, less call-outs, and improved up-time of equipment - all contributing to a better user experience! Please know that we are available to assist you in coordinating the work by others as further described in our “Bid Attachment B”.

Should you have any questions or require additional information, please feel free to contact me directly.

We look forward to hearing from you and working together on this project.

Yours sincerely,

James Franklin
Modernization Sales
KONE Inc.
Exhibit 4

KONE Inc. Proposal to Supply Elevator, Escalator, Moving Walkway Maintenance, Repair, Modernization and Related, Products, Services and Solutions under the U.S. Communities Program utilizing the Terms and Conditions of the City of Kansas City Master Contract (Reference GENRL-EV2516 dated December 1st, 2018)

The parties hereby agree to be bound to the Terms and Conditions of the City of Kansas City Master Contract (Reference GENRL-EV2516 dated December 1st, 2018) ("Contract"), together with those terms and conditions contained in this Exhibit 4 (collectively, "Service Agreement"). In the event of conflict between terms and conditions contained in the Contract and this Exhibit 4, the terms in this Exhibit 4 shall supersede and prevail.

Total Sales Price (excluding tax)

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<th>Material</th>
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<tr>
<td>Labor</td>
<td>$105,712.00</td>
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Solution Specification

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<tr>
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<td><strong>Address</strong></td>
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<td><strong>Rated speed</strong></td>
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<tr>
<td><strong>Travel height</strong></td>
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<td><strong>Number of floors</strong></td>
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</table>

**Offered Components**

- **Door Panels**: New car door panel(s) shall be provided where applicable. New door(s) shall be UL fire rated 1 1/2 hour.

- **ReNova Door Operator**: A closed loop permanent magnet PWM high-performance door operator shall be provided to open and close the car and hoistway doors simultaneously. Door movement shall be cushioned at both limits of travel. An electric contact shall be provided on the car at each car entrance to prevent the operation of the elevator unless the car door is closed. The door operator shall be arranged so that, in case of interruption or failure of electric power, the doors can be readily opened by hand from within the car, in accordance with applicable code.

  Emergency devices and keys for opening doors from the landing shall be provided as required by the local code. Doors shall open automatically when the car has arrived at or is leveling at the respective landings. Door shall close after a predetermined time interval or immediately upon pressing of a car button. A door open button shall be provided in the car. Momentary pressing of this button shall reopen the doors and reset the time interval. Door hangers and tracks shall be provided for each car door. Tracks shall be contoured to match the hanger sheaves. The hangers shall be designed for power operation with provisions for vertical and lateral adjustment. Hanger sheaves shall have polyurethane tires and pre-lubricated sealed-for-life bearings.

- **Curtain of Light**: The elevator car shall be equipped with an electronic protective device extending the full height of the car. When activated, this sensor shall prevent the doors from closing or cause them to stop and reopen if they are in the process of closing. The doors shall remain open as long as the flow of traffic continues and shall close shortly after the last person passes through the door opening.

- **KCM831 Hydraulic Controller**: KONE KCM831 is a modular modernization solution for elevator control and electrical systems, based on the latest in control technology. This replaces outdated technology such as relays and older electronic systems, improving the levels of performance, reliability, safety and energy efficiency of your elevator. The modular structure of KONE KCM831 is designed to correctly
interface with many types of existing elevator components, thus ensuring a swift, trouble-free installation for the building users.

A new microprocessor-based control system shall be provided to perform the functions of safe elevator motion, included shall be all of the hardware required to connect, transfer and interrupt power, and to protect the motor against overloading. Each controller cabinet containing memory equipment shall be properly shielded from line pollution. The microcomputer system shall be designed to accept reprogramming with minimum system down time. All high voltage (110V or above) contact points inside the controller cabinet shall be protected from accidental contact in a situation where the controller doors are open. The microprocessor-based control system shall utilize on-board diagnostics for servicing, trouble-shooting, and adjusting without requiring the use of an outside service tool.

New field pipe and or accessories shall be provided as required.

A hydraulic power unit, especially designed and manufactured for this service, will be furnished. The motor and pump will be submersed under the oil inside the tank in order to provide for sound isolation. A muffler, designed to reduce pulsation and noise which may be present in the flow of hydraulic oil, will be provided in the oil line at the top of the pump.

Control valves, including safety check valve, up direction valve with high pressure relief including up leveling and soft stop features, lowering valve including down leveling and manual leveling feature, will be mounted in a compact unit assembly. A valve, designed to shut off the flow of oil between the cylinder and the Power Unit, will be provided in the oil line in the machine room. Automatic two-way leveling will be provided to automatically stop and maintain the car approximately level with the landing, regardless of change in load.

An up traveling car will automatically descend to the lower terminal landing if the hydraulic system does not have a sufficient reservoir of oil. Power operated car and hoistway doors will automatically open at the lowest terminal landing permitting passenger egress. The doors will then automatically close and all control buttons, except the Door Open Button in the car operating panel, will be made ineffective.

New KONE car & hall signalization shall be provided.
### Technical Equipment Data / Passenger Elevator

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<th>Passenger Elevator / 20019657</th>
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<tr>
<td>Address</td>
<td>410 North 76, Harlingen, TX 78550</td>
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</tbody>
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| Rated load | 2100 lbs |
| Rated speed | 120 fpm |
| Travel height | Approximately 15 ft 0 in |
| Number of floors | 2 |

### Offered Components

**Door Panels**
New car door panel(s) shall be provided where applicable. New door(s) shall be UL fire rated 1 1/2 hour.

**ReNova Door Operator**
A closed loop permanent magnet PWM high-performance door operator shall be provided to open and close the car and hoistway doors simultaneously. Door movement shall be cushioned at both limits of travel. An electric contact shall be provided on the car at each car entrance to prevent the operation of the elevator unless the car door is closed. The door operator shall be arranged so that, in case of interruption or failure of electric power, the doors can be readily opened by hand from within the car, in accordance with applicable code.

Emergency devices and keys for opening doors from the landing shall be provided as required by the local code. Doors shall open automatically when the car has arrived at or is leveling at the respective landings. Door shall close after a predetermined time interval or immediately upon pressing of a car button. A door open button shall be provided in the car. Momentary pressing of this button shall reopen the doors and reset the time interval. Door hangers and tracks shall be provided for each car door. Tracks shall be contoured to match the hanger sheaves. The hangers shall be designed for power operation with provisions for vertical and lateral adjustment. Hanger sheaves shall have polyurethane tires and pre-lubricated sealed-for-life bearings.

**Curtain of Light**
The elevator car shall be equipped with an electronic protective device extending the full height of the car. When activated, this sensor shall prevent the doors from closing or cause them to stop and reopen if they are in the process of closing. The doors shall remain open as long as the flow of traffic continues and shall close shortly after the last person passes through the door opening.

**KCM831 Hydraulic Controller**
KONE KCM831 is a modular modernization solution for elevator control and electrical systems, based on the latest in control technology. This replaces outdated technology such as relays and older electronic systems, improving the levels of performance, reliability, safety and energy efficiency of your elevator. The modular structure of KONE KCM831 is designed to correctly interface with many types of existing elevator components, thus ensuring a swift, trouble-free installation for the building users.
A new microprocessor-based control system shall be provided to perform the functions of safe elevator motion. Included shall be all of the hardware required to connect, transfer and interrupt power, and to protect the motor against overloading. Each controller cabinet containing memory equipment shall be properly shielded from line pollution. The microcomputer system shall be designed to accept reprogramming with minimum system down time. All high voltage (110V or above) contact points inside the controller cabinet shall be protected from accidental contact in a situation where the controller doors are open. The microprocessor-based control system shall utilize on-board diagnostics for servicing, troubleshooting, and adjusting without requiring the use of an outside service tool.

New field pipe and or accessories shall be provided as required.

A hydraulic power unit, especially designed and manufactured for this service, will be furnished. The motor and pump will be submersed under the oil inside the tank in order to provide for sound isolation. A muffler, designed to reduce pulsation and noise which may be present in the flow of hydraulic oil, will be provided in the oil line at the top of the pump.

Control valves, including safety check valve, up direction valve with high pressure relief including up leveling and soft stop features, lowering valve including down leveling and manual leveling feature, will be mounted in a compact unit assembly. A valve, designed to shut off the flow of oil between the cylinder and the Power Unit, will be provided in the oil line in the machine room. Automatic two-way leveling will be provided to automatically stop and maintain the car approximately level with the landing, regardless of change in load.

An up traveling car will automatically descend to the lower terminal landing if the hydraulic system does not have a sufficient reservoir of oil. Power operated car and hoistway doors will automatically open at the lowest terminal landing permitting passenger egress. The doors will then automatically close and all control buttons, except the Door Open Button in the car operating panel, will be made ineffective.

New KONE car & hall signalization shall be provided.

Mechanical Layout Engineering - Machine Room Only
Project notes
Sales price is based on 2020 labor cost. Should the project schedule be delayed beyond 2020, KONE reserves the right to submit a change order for the labor cost adjustment.

Handover date
Mutually agreeable project schedule will be determined at time of proposal acceptance. Current delivery lead time is 12 weeks from order receipt, deposit and approval of drawings.

Downtime period
4 weeks per unit

Price Overview
Proposal pricing is based on the scope of work as defined herein. Any additional work required will be performed only upon purchaser’s approval of a mutually agreeable change proposal. Any other deficiencies revealed in the progress of the work will be promptly reported to the purchaser with recommendations and cost for corrective action.

Total Sales Price (excluding tax) $168,200.00

Pricing Conditions
This offer is valid for 90 days.

Maintenance
Service during the warranty period shall be provided in accordance with the existing maintenance agreement.

Component Overview

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<td>Curtain of Light</td>
<td>KCM831</td>
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<td>Field Pipe &amp; Accessories</td>
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<td>Power unit</td>
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ReVive 500/600
Sales price $84,100.00

Component Overview

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Tender Approval

Receiver:
KONE Inc.
James Franklin
12017 Starcrest
San Antonio, TX 78247
james.franklin@kone.com

Submitted by:

[Signature]

James Franklin
Modernization Sales

October 14, 2019

We accept the offer constituted by this proposal (total sales price of $168,200.00, excluding tax) and agree to the conditions contained therein.

Approved by KONE Corporate Officer

Signature: __________________________
Printed Name: _____________________
Title: _____________________________
Date: _____________________________

Approved by Purchaser

Signature, __________________________
Printed Name: _____________________
Title: _____________________________
Company Name: ___________________
Date: _____________________________
**Clarifications**

- Contract terms between KONE Inc. and Purchaser shall be based on our Proposal and Attachments. (See Attachment “A” and “B”)

- All new elevator equipment provided shall meet applicable ASME A17.1 code requirements. Any provisions of codes applicable to out-of-scope items shall be the Purchaser’s responsibility. Cost of any future code changes adopted prior to permitting and completion are excluded.

- The existing cab and entrance dimensions, which may not meet current ADA or stretcher access rules, will be retained as is.

- Our proposal includes inspections and testing as required by the AHJ. However, any re-testing required due to other trades’ failures to complete their work or tests in a timely manner will be billed at our regular billing rates.

- No costs for preventive maintenance services are included in this capital improvement pricing.

- The ASME code limits changes to the empty car weight + capacity of each elevator to 5% of the originally installed value. If past or proposed changes result in a change to the weight or system pressure (for hydraulic) greater than 5% above the original design values, the cost of any engineering and of any required modifications to the elevator system or structure shall be extra to this proposal scope and pricing. If this situation is discovered during the engineering process, KONE will notify purchaser and recommend an alternate design or other changes.

- In order to provide best pricing, proposal excludes any extra demolitions and remobilizations. If we must demobilize from the jobsite for any reason outside our control, we shall be compensated at our regular billing rates.

- Proposal pricing is based on the scope of work as defined herein. Any additional work required will be performed only upon Purchaser’s approval of a mutually agreeable change proposal. Any other deficiencies revealed in the progress of the work will be promptly reported to purchaser with recommendations and cost for corrective action.

- Asbestos: Notwithstanding anything contained to the contrary within this bid or contract, KONE’s work shall not include any abatement or disturbance of asbestos containing material (ACM) or presumed asbestos containing materials (PACM). Any work in a regulated area as defined by Section 1910 or 1926 of the Federal OSHA regulations is excluded from KONE’s scope of work without an applicable change order to reflect the additional costs and time. In accordance with OSHA requirements, the Customer shall inform KONE and its employees who will perform work activities in areas which contain ACM and/or PACM of the presence and location of ACM and/or PACM in such areas which may be contacted during work before entering the area. Other than as expressly disclosed in writing, Customer warrants that KONE’s work area at all times meets applicable OSHA permissible exposure limits (PELs). KONE shall have the right to discontinue its work in any location where suspected ACM or PACM is encountered or disturbed. Any asbestos removal or abatement, or delays caused by such, required in order for KONE to perform its work shall be the Customer’s sole responsibility and expense. After any removal or abatement, customer shall provide documentation that the asbestos has been abated from the KONE work area and air clearance reports shall be made available upon request prior to the start of KONE’s work.

- Purchaser shall provide any security, escort or other building service support personnel required during demolition, installation, testing, and inspections.

- For hydraulic elevators, we can assume no responsibility for unusual conditions such as hole cave in and complete hydraulic cylinder assembly embedded in concrete. The excavation of the hole to accommodate the new hydraulic cylinder assembly is based on encountering soil free of rocks, boulders, building construction members, sand, water, quicksand, underground caves and/or any other obstructions or unusual conditions. Should such obstructions or unusual conditions be encountered, additional time above or beyond the working days estimated to complete this project may be required. We will proceed with this portion of the project on a time and material basis, based on our normal billing rates.
1. APPLICATION OF THESE TERMS

The parties agree to be bound by the terms and conditions contained in the Bid Letter, this Bid Attachment A and Bid Attachment B, including the documents incorporated herein by reference (collectively, the “Proposal”).

2. SPECIAL PURCHASING REQUIREMENTS

This Proposal is made without regard to compliance with any special sourcing and/or manufacturing requirements including, but not limited to, Buy America, Buy American, U.S. Steel, FAR clauses, minority / disadvantaged supplier requirements or similar federal and/or state procurement laws. Should such requirements be applicable to this Project, KONE reserves the right to modify and/or withdraw its Proposal.

3. PROPOSAL CONDITIONS

The Proposal shall be open for acceptance within the period stated in the Bid Letter or, when no period is stated, for a period of 30 days from the date of the Bid Letter. Prior to commencing manufacture of the equipment described in the Bid Letter (“Equipment”), KONE must have (i) a fully executed contract; (ii) a schedule acceptable to KONE identifying the Equipment installation start date, or alternatively, KONE’s letter specifying the ship date (“Ship Date Letter”) signed by Customer, which, as applicable, is incorporated by reference herein; (iii) the first payment in Section 4 herein; and (iv) fully approved KONE layouts.

4. PAYMENT TERMS

Payment of the total Price is due within 30 days from invoice date, based on benchmarks as follows:

- 30% of the Price for engineering, site management, and overhead, billable and due upon execution of this Proposal or receipt of the subcontract;
- 50% of the Price for material and shipping, billable and due upon delivery of material to the job site or KONE Distribution Center;
- 20% of the Price for Equipment installation, billable and due at the billing cycle following the start of installation.

KONE reserves the right to delay, suspend, or stop the work, including manufacturing, delivery, installation and/or Equipment turnover, for non-payment, without liability to KONE or being held in default. Simple interest at 1.5% per month shall be charged on amounts not paid when due. Payments to KONE are not contingent on any third party payments to Customer. Customer shall reimburse KONE for all costs of collection, including courts costs and reasonable attorneys’ fees.

Prior to turnover, KONE must be paid in full, less 10% maximum retention, the Price including all change orders. Retention shall be due and payable within 30 days of execution of the Uniform Final Acceptance or Equipment turnover, whichever occurs first.

If certified payroll reporting is required, KONE will submit the requested reporting in the format of the U.S. Department of Labor form WH 347 & WH 348. The Price does not include Textura or any other special billing requirements, which can be added via change order at a rate of 0.3% of the Price.
5. INSTALLATION

Customer shall be responsible for procurement and cost of all permits, except permits related to installation of the Equipment. Where KONE's scope of work or other responsibilities include the obligation to utilize materials and/or finishes resembling or identical to those pre-existing in the building, KONE shall use reasonable efforts to procure such materials and Customer acknowledges and accepts that the materials and/or finishes reasonably available may not be in all respects identical to those pre-existing in the building. This Proposal is conditioned upon KONE using its standard installation method. The installation of the Equipment shall start after Customer has completed all work set forth in Bid Attachment B and any other documents describing site requirements ("Site Requirements"), all of which are incorporated by reference herein. Within two (2) weeks prior to the scheduled delivery date for KONE's materials, KONE shall conduct a standard visual site survey to verify that the Site Requirements are complete and notify Customer if there are outstanding deficiencies preventing KONE from beginning installation. KONE's site survey may include, but is not limited to, inspection of site access, working and safety conditions on site, wear and tear of any existing structures or surfaces, and planning of any dismantling or removal of existing equipment, components and materials, where applicable. KONE shall not be deemed to have surveyed any hidden structures, latent defects, subsurface conditions, or other non-visible matters, including but not limited to searching for hazardous substances and/or materials, which shall be subject to Section 16. If KONE's site survey reveals any deficiencies, KONE shall be entitled to delay the start of installation and Customer shall be responsible for all additional costs incurred by KONE, including without limitation, costs associated with: labor reallocation, re-directing materials to and storage in a KONE Distribution Center, additional labor for double handling of materials, and additional trucking, freight and insurance. Once the Site Requirements are completed, the start of installation shall be subject to the availability of labor and the delivery of material, if applicable.

KONE's work shall be performed during regular union working hours of regular working days, Monday to Friday, statutory holidays excluded. If overtime is mutually agreed upon and performed, the additional costs for such work shall be added to the Price at KONE's standard overtime rates. If the installation cannot be performed in an uninterrupted manner for any reason beyond KONE's control, Customer shall store the Equipment at Customer's cost and compensate KONE for any costs caused by such delay including, but not limited to, double handling of Equipment and demobilization.

KONE shall not be required to perform overtime or any Customer directed change to its work ("Extra Work") without an executed change order. No action by KONE, including but not limited to, performing Extra Work without an executed change order, shall be a waiver of KONE's right to seek payment for Extra Work performed. KONE shall be entitled to an extension of time and an equitable adjustment in the Price, including but not limited to, any increased costs of labor, including overtime, resulting from any change of schedule, re-direction of KONE personnel to another work area, acceleration, or out of sequence work.

KONE shall take reasonable methods to protect its work-in-place while KONE is actively on site and until execution of a KONE Uniform Final Acceptance, which is incorporated by reference herein. Should damage occur to KONE property, material or work-in-place by fire, water, theft or vandalism, Customer shall compensate KONE for said damages. Additionally, the Customer is solely responsible for ensuring that the equipment maintenance contractor, if not KONE, does not disturb, delay or interfere with KONE's work. KONE shall abide by Customer's safety policies and procedures to the extent such policies and procedures are not in conflict with KONE's Safety Policy. Testing and/or security features of Equipment must be completed before Equipment turnover. KONE is not responsible for damages, either to Equipment or the building, or for any personal injury or death, arising out of or resulting from any code required safety tests performed on Equipment or hoistway access granted by Customer to other trades.
6. TEMPORARY USE

Temporary use of certain types of Equipment may be permitted, provided the use period allows adequate time for Equipment restoration for final turnover and Customer executes KONE’s Temporary Use Agreement. Temporary use shall be invoiced separately and subject to payment terms in Section 4 herein. At the end of temporary use, Customer shall return the Equipment to KONE in “like new” condition.

7. HAZARDOUS MATERIALS

Notwithstanding anything contained to the contrary within this Subcontract, KONE’s work shall not include any abatement or disturbance of asbestos containing material (ACM), presumed asbestos containing materials (PACM), or other hazardous materials (i.e. lead, PCBs) (collectively “HazMat”). Any work in the affected area where reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from the HazMat is excluded from KONE’s scope of work without an applicable change order to reflect the additional costs and time. In accordance with OSHA requirements, the Customer shall inform KONE and its employees who will perform work activities in areas which contain HazMat of the presence and location of HazMat in such areas which may be contacted during work before entering the area. Other than as expressly disclosed in writing, Customer warrants that KONE’s work area at all times meets applicable OSHA permissible exposure limits (PELs). KONE shall have the right to discontinue its work in any location where suspected HazMat is encountered or disturbed. Any HazMat removal or abatement, or delays caused by such, required in order for KONE to perform its work shall be the Customer’s sole responsibility and expense. After any removal or abatement, Customer shall provide documentation that the HazMat has been abated from the KONE work area and air clearance reports shall be made available upon request prior to the start of KONE’s work.

8. TITLE AND RISK TO EQUIPMENT

Title to and ownership of all Equipment intended for incorporation in KONE’s work, whether installed or stored on or off site, shall remain with KONE until final payment is made and, in the case of suspension or termination for non-payment, the parties agree that KONE may relace possession and remove any or all of KONE’s works, Equipment or apparatus without material damage to the property and irrespective of the manner in which the same is attached or affixed. Risk of loss in KONE’s work and Equipment passes to Customer upon delivery to the site or off-site storage.

Any tools, devices, or other equipment that KONE uses to perform its work or monitor the Equipment remains the sole property of KONE. If this Proposal terminates or expires for any reason, Customer will give KONE access to the premises to remove such tools, devices or equipment at KONE’s expense.

9. TURNOVER

Prior to turnover, KONE must receive a final punchlist. Upon turnover, KONE requires a signed Uniform Final Acceptance. KONE shall provide its standard electronic O&M manuals with CD-ROMs in electronic format, if applicable, upon execution of the Uniform Final Acceptance. Standard KONE samples shall be provided upon request. No mock-ups or video training are included in the Price.

10. DELAY

KONE shall not be liable for any loss, damage, claim, or delay due to any cause beyond KONE’s
control, including, but not limited to, acts of government (including a change in law), strikes, lockouts, work interruption or other labor disturbance, delays caused by others, fire, explosion, theft, floods, inclement weather, riot, civil commotion, war, malicious mischief, or acts of God. In the event of such delays,

KONE shall be entitled to an extension in time equal to the length of such delay and an equitable adjustment in the Price. Customer shall compensate KONE for labor and material cost escalations resulting from Project delays not caused by KONE, which extend completion of KONE’s work beyond the end of the current calendar year. Customer is on notice that IUEC labor rates increase annually.

11. LIMITED WARRANTY

For one (1) year after the acceptance date set forth in the signed Uniform Final Acceptance, date of Equipment turnover, or date of Customer’s use of Equipment (unless such use is pursuant to the Temporary Use Agreement), whichever occurs first, KONE warrants Equipment against defect in workmanship and material. The warranty excludes remedy for damage or defect caused by abuse, misuse, vandalism, neglect; repairs, alteration or modifications not executed by KONE; improper or insufficient maintenance, improper operation, characteristics of the building such as electrical power or security features, natural or other catastrophe such as flood, fire, explosion, storm, or normal wear and tear and normal usage. The warranty excludes training or instruction in the proper operation or maintenance of Equipment. Specific noise ratings and energy efficiencies cannot be guaranteed due to different building characteristics and ambient noise levels. Customer’s remedy is limited to repair or replacement of a defective part, in KONE’s sole discretion, and excludes labor. KONE DISCLAIMS ANY OTHER WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

12. IDEMNIFICATION

KONE shall only indemnify and hold Customer harmless for claims, damages, losses or expenses, but excluding loss of use (“Claims”) due to bodily injury, including death, or tangible property damage (other than the Project or KONE’s work itself) to the extent caused by KONE’s negligent acts or omissions. KONE shall not indemnify Customer for any other Claims. Customer agrees to indemnify and hold KONE harmless from any Claim for bodily injury, including death, or tangible property damage in connection with the use or operation of the Equipment. Each party shall defend itself in the event of a Claim.

13. INTELLECTUAL PROPERTY

KONE shall retain title and ownership of all intellectual property rights relating (directly or indirectly) to the Equipment provided by KONE, including but not limited to software or firmware (whether in the form of source code, object code or other), drawings, technical documentation, or other technical information delivered under the Proposal. KONE grants Customer a non-exclusive and non-transferable license and right to use the software and firmware in connection with the use and maintenance of the Equipment. Customer shall not use any drawings, technical documentation or other technical information supplied by or on behalf of KONE for any purposes other than those directly related to the Proposal or to the use and maintenance of the Equipment. Customer shall not in any form copy, modify or reverse engineer the software, or give access to the software for such use to any third party without KONE’s prior written consent. KONE shall not provide any information such as KONE’s internal manuals, manufacturing drawings, source codes, or other proprietary and confidential information, all of which are excluded from the Proposal.
14. INSURANCE

In lieu of any Customer insurance requirements, KONE shall provide its standard certificate of insurance, which shall be deemed to satisfy all insurance requirements for this Project. KONE shall not provide loss runs, insurance rate information, copies of its insurance policies or any other information which KONE considers confidential. KONE shall not provide coverage for professional (E&O) liability, pollution liability, data privacy/security, or no-fault medical payments. If the Project is covered by a Wrap Up Insurance Program, KONE agrees to participate provided there is no cost to KONE, no reduction in the Price, and subject to KONE’s review of the proposed program. The insurance requirements contained in the wrap up insurance program’s manual shall govern as the only insurance requirements for this Project. In the event that the wrap up insurance program is terminated before completion of KONE’s Work, KONE will provide its standard insurance certificates which shall satisfy the insurance requirements for this Project. This shall apply to the project specific Wrap Up Insurance Program’s Manual and any applicable enrollment documents. If KONE’s primary limits are sufficient to satisfy insurance coverage requirements, excess/umbrella liability will not be required or if excess/umbrella is required, KONE’s excess coverage does not follow form although typically provides broader coverage than KONE’s primary policies. The excess coverage is not AM Best Rated nor licensed to do business within the jurisdiction although the carrier has strong Standard & Poor’s and Moody’s financial ratings that may be evidenced upon request.

15. LIMITATION OF LIABILITY

In no event shall either party be liable to the other party for any consequential, special, punitive, exemplary, liquidated, incidental, or indirect damages (including, but not limited to, loss of profits or revenue, loss of goodwill, loss of use, increase in financing costs) (collectively, “Consequential Damages”) that arise out of or relate to this Proposal even if such party has been advised of the possibility of such Consequential Damages. The limitation set forth in this section shall apply whether the claim is based on contract, tort or other theory.

16. CONCEALED OR UNKNOWN CONDITIONS

If during the course of its work, KONE encounters conditions at the site that are subsurface, differing materially from what is represented in the contract documents, or otherwise concealed physical conditions, KONE shall be entitled to an extension of time and additional costs for the performance of its work, which shall not be subject to any payment conditions or contingencies.

17. TECHNICAL SURVEY

KONE’s Price and obligations under this Proposal are subject to a technical survey to be performed on Customer’s existing units within 90-days of the effective contract start date. If a safety hazard or code violation is identified during KONE’s technical survey, Customer shall immediately remove the unit from service until repairs are performed. KONE is not obligated to perform tests, correct outstanding violations or deficiencies that were not addressed by the prior service provider and/or the owner, or make related necessary repairs or component replacements on the unit. If additional work is necessary, KONE shall provide a separate proposal or recommendation for such work. Customer agrees to indemnify, defend, and hold KONE harmless for any claims arising out of Customer’s failure to comply with KONE’s recommendations and proposal, and any obligation on the part of KONE to indemnify or defend Customer with regard to such claim shall be null and void. If Customer does not immediately approve KONE’s proposal or recommendation, KONE reserves the right to terminate this Proposal/contract without penalty.

18. TERMINATION
If a party materially breaches this Proposal, the other party shall provide written notice of the breach and a reasonable time to cure the breach, but in no event less than 30 days. If the breaching party fails to cure the breach within the specified time period, the non-breaching party may terminate the Proposal upon 15 days written notice to the other party. If KONE notifies Customer of a material breach pursuant to this paragraph, KONE may temporarily suspend its work without liability.

19. GOVERNING LAW AND DISPUTE RESOLUTION

The parties agree that this Proposal shall be governed by the laws of the state where the Project is located, and venue for disputes shall be located in that state. KONE does not agree to participate in arbitration proceedings.

20. PRICE ADJUSTMENT

KONE shall be entitled to an equitable adjustment in the Price, including but not limited to, any increased costs of materials, resulting from any change in law (by legislation, executive order, treaty or other similar means), or a change in law that imposes tariffs on raw materials or finished goods.

21. MISCELLANEOUS

This Proposal, including the documents incorporated herein by reference, constitutes the entire agreement of the parties and supersedes all prior negotiations, understandings, and representations whether written or oral in relation to the subject matter hereof. Where a conflict or ambiguity exists between this Proposal and any other contract document (including but not limited to, Customer's drawings and specifications), the terms and conditions of this Proposal shall control. This Proposal may be amended only in writing by the duly authorized representative of both parties. This Proposal may be executed in one or more counterparts. Each counterpart shall be considered an original and all of the counterparts shall constitute a single agreement binding all the parties as if all had signed a single document. For purposes of executing this Proposal, a document signed by electronic means is to be treated as an original document. The failure of either party to insist upon performance or strict performance of any of the terms or conditions of this Proposal shall not be deemed a waiver of any rights or remedies that such party may have or a waiver of any subsequent breach or default under this Proposal. Neither party may assign or transfer the benefit or burden of this Proposal without prior written consent of the other party.
Bid Attachment “B” / Site Requirements & Work by Other Trades

The work described below is a summary of work to be performed by others ("Work by Other Trades") that may be required in conjunction with the elevator modernization performed by KONE (the "Work"). Purchaser shall provide any and all building electrical, structural and mechanical system upgrades required for code compliance, life safety, and proper equipment installation and operation. The Authorities Having Jurisdiction (AHJ) may require additional remedial or preparatory work. All required remedial or preparatory work shall be performed by properly licensed trade contractors in compliance with applicable codes and based on a schedule of performance that allows for uninterrupted progress of the Work. Under no circumstances shall KONE be responsible for any cost associated with the performance of remedial work by others.

Purchaser shall provide the following unless specifically included in KONE’s Work:

**Electrical**

- A properly rated three phase fused disconnect switch, externally operable and lockable in the open position, located as required by code. Accommodate any increases in motor size or feeder loads.
- A dedicated 110 VAC fused disconnect switch, externally operable and lockable in the open position adjacent to the machine room door for cab lighting and ventilation, located as required by code
- Shunt-trip disconnect if fire sprinklers are present in machine room or hoistway.
- GFI 120 VAC convenience outlets in machine room and pit.
- Separate outlet in the pit area if a sump pump is installed.
- Telephone line service brought to the elevator machine room for emergency communication device.
- Any required RF shielding of TV or radio transmitters, antennae and/or wave-guides.
- Conduit with pull boxes from each elevator bank to any remote fire control or communication panels specified
- If required by building code, standby/emergency power, sufficiently sized to provide power of permanent characteristics to each elevator’s disconnect, simultaneously, upon loss of regular power, including feeders, transfer switches and auxiliary contact signal outputs to elevator controllers.

**Machine Room**

- A code-compliant machine room. Provide or maintain fire rating as required by building code.
- Fire-rated door for access into the machine room. Door shall be self-closing and self-locking, operable from inside the room without the use of a key.
- Independent ventilation or an air conditioning system for the elevator machine room, to assure temperature is maintained between 65 degrees and 95 degrees Fahrenheit.
- Fire extinguisher inside machine room.
- Minimum clear machine room height of 7'-0".
- Suitable lighting that provides a minimum of 19 ft at floor.
- Removal of any non-elevator related equipment and materials from within the machine room and proper disposal of oil and other hazardous or non-hazardous substances and materials.

**Hoistway**

- A code-compliant hoistway, constructed in accordance with KONE’s requirements and specifications. Provide or maintain fire rating as required by building code.
- Patching of all holes in hoistway walls with fire rated material.
- Beveling all ledges within hoistway measuring over 4".
- Removal of any non-elevator related equipment and materials from within the hoistway and proper disposal of oil and other hazardous or non-hazardous substances and materials.
- A guarded light fixture and light switch in pit. Switch must be located 42" above the lowest landing floor level.
- A means of displacing water located in the pit and containing and disposing of oil, chemicals, and other substances in compliance with environmental laws and regulations (KONE assumes no responsibility for discharge of oil, chemicals, and other substances into storm water systems, sanitary
sewer systems, retention ponds, etc.).
- Elevator hoistway ventilation to the outside atmosphere as required by building code

**Fire Service**
- Fire alarm smoke detectors with wiring and relays in the machine room terminating at elevator controller.
- Fire alarm initiating devices must be located in front of each elevator entrance as well as in the machine room and at the top of the hoistway.
- Where sprinklers exist in the machine room and/or hoistway, a fire alarm initiating device within 12” of each sprinkler head.

**Access Integration/Security**
- Our proposal includes KONE logic and provisions for the specified Touchscreen(s), Keypad Destination Operating Panel(s), Monitoring System(s) and Multi-Media Equipment.
- Card Readers and/or any additional required hardware & software for proper functionality of access control/security system(s) shall be furnished and installed by others.
- Any required software to ensure proper communication between KONE control system(s) and building system(s) shall be the responsibility of others.
- A designated 115V 15A circuit is required at each of the remote monitoring stations.
- KONE recommends a minimum 100 Mbit/s Ethernet for each of the following application(s): Integrated Touchscreen/Keypad Destination Operating Panels, Monitoring System, Multi-Media Equipment, and Card Readers.

**Counterweighting**
- Pricing is based upon the existing car to counterweight weight ratio being consistent with elevator industry standards. This is defined as the counterweight weight being equal to the empty car weight plus 40%. The actual assemblies will be weighed during the modernization process. If modifications are required to correct the existing weight balance, these modifications will be provided at additional cost.

**RK1 Fuses and Circuit Breakers**
- Fuses are to be current limiting class RK1 or equivalent. Circuit breakers are to have current limiting characteristics equivalent to RK1 fuses. Provisions of these fuses are the responsibility of others, not KONE.

**General**
- Access to the building to perform the Work and for deliveries with dry, protected storage adjacent to the hoistway
- Cutting of existing walls, floors and finishes, together with all repairs made necessary by such cutting or changes, e.g. cutting of lobby walls for flush hall fixtures and removal of encroaching lobby features such as wall-mounted ashtrays. Removal, replacement, and/or repair of any mirrors, millwork, plaster, stone or other special hall finishes.
- All work of other trades must be complete and ready at time of first elevator inspection, or elevator will not be released for operation by the AHJ. If the AHJ does allow temporary operation under a Temporary Operating Inspection (TOI), any associated costs shall be Purchaser’s responsibility.
- Our tender is based on suitable site conditions, material and tooling storage space, and bathroom access being available on site.
- Safe working environment must be provided and supported by provision for adequate entrance protection, means of hoisting, hoistway dividing screens, and protection of floors walls and doors etc.
- Emergency evacuation procedures to be clearly defined where required. Subject to site survey and actions agreed.
- Any portion of the Work that is subject to the permissions of local authorities beyond the elevator permits must be identified to KONE. Responsibility for permits to be agreed. Permits and appropriate signage indicating any changes to pedestrian access routes for building users must be in place prior
to start of the Work.

• Elevator installation methods requires the integrity of the existing Safety Gear and Overspeed protection devices, and are therefore subject to verification of suitability prior to commencement of the work. Any remedial work required or alternative solution is not included in this tender.
THIS CONTRACT is between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation ("City"), and KONE, INC. ("Contractor"). City and Contractor agree as follows:

PART I
SPECIAL TERMS AND CONDITIONS

Sec. 1. Work To Be Performed. The Specification/Scope of Work and any addenda are attached hereto and incorporated into this Contract.

Sec. 2. Term of Contract and Additional Periods

A. Initial Term. The initial term of this Contract shall begin on December 1, 2018 and shall end on November 30, 2024 for a six (6) year term. The Manager of Procurement Services is authorized to enter into an amendment of this Contract with CONTRACTOR to extend the term of this Contract and time of performance for this Contract.

B. Renewal Terms. At any time prior to the expiration of the initial term or any subsequent term, the CITY, in its sole discretion, may renew this Contract for up to five (5) additional one (1) year terms.

C. Transition Term. Notwithstanding the expiration of the initial term or any subsequent term or all options to renew, CONTRACTOR and CITY shall continue performance under this Contract until the CITY has a new contract in place with either CONTRACTOR or another provider or until the CITY terminates the Contract.

D. The products and services which are subject to this Contract may be covered by a separate maintenance agreement (see Exhibit 4). The term of the maintenance agreement shall be governed by that document and may extend beyond the expiration date of this Contract.

Sec. 3. Purchase Orders

A. City shall order all services to be provided by Contractor under this Contract by means of a Purchase Order issued by the City’s Manager of Procurement Services for which funds have been certified and encumbered by the City’s Director of Finance.
B. Contractor shall not provide any services in excess of the dollar amount contained in any Purchase Order and Contractor shall not be entitled to any payment in excess of the dollar amount of the Purchase Orders from City.

Sec. 4. Compensation.

A. The maximum amount that City shall pay Contractor under this Contract is set forth in the Contract – Contractor’s proposal shall provide all work at the prices contained in Contractor’s Proposal that is incorporated herein by reference.

B. Contractor will bill the City, in a form acceptable to the City, on the following basis:

C. It shall be a condition precedent to payment of any invoice from Contractor that Contractor is in compliance with, and not in breach or default of, all terms, covenants and conditions of this Contract. If damages are sustained by City as a result of breach or default by Contractor, City may withhold payment(s) to Contractor for the purpose of set off until such time as the exact amount of damages due City from Contractor may be determined.

D. It shall be a condition precedent to payment of any invoice from Contractor that Contractor is in compliance with, and not in breach or default of, all terms, covenants and conditions of this Contract. If damages are sustained by City as a result of breach or default by Contractor, City may withhold payment(s) to Contractor for the purpose of set off until such time as the exact amount of damages due City from Contractor may be determined.

E. No request for payment will be processed unless the request is in proper form, correctly computed, and is approved as payable under the terms of this Contract.

Sec. 5. Notices. All notices required by this agreement shall be in writing sent to the following:

City:
General Services Department
Procurement Services Division
Cedric Rowan, Manager of Procurement Services
City Hall, 1st Floor, Room 102W
414 E. 12th Street
Kansas City, MO 64106
Phone:(816)-513-0814 Facsimile: (816)-513-1066
E-mail address: cedric.rowan@kcmo.org

Contractor: Kone, Inc.
Contact: Ashley Brauer, Senior Sales Consultant
Address: 2700 BiState Drive, Suite 100
Kansas City, MO 64108
Phone: (816)-531-2140 (Ext. 10514) Facsimile: (816)-531-5523
E-mail address: ashley.brauer@kone.com

All notices are effective a) when delivered in person, b) upon confirmation of receipt when transmitted by facsimile transmission or by electronic mail, c) upon receipt after dispatch by registered or certified mail, postage prepaid, d) on the next business day if transmitted by overnight
courier (with confirmation of delivery), or e) three business days after the date of mailing, whichever is earlier.

Sec. 6. Merger. This Contract consists of Part I, Special Terms and Conditions and any Attachments and any documents incorporated by reference; and Part II, Standard Terms and Conditions. This Contract, including any Attachments and incorporated documents, constitutes the entire agreement between City and Contractor with respect to this subject matter.

Sec. 7. Conflict Between Contract Parts. In the event of any conflict or ambiguity between the Special Contract Terms and Conditions of Part I and the Standard Terms and Conditions of Part II of this Contract, Part I will be controlling. For any participating public agency, Exhibit 4 will be the controlling document and prevail over Part I and Part II of this Contract.

Sec. 8. Minority and Women’s Business Enterprises. See Exhibit 1: City of Kansas City Special Requirements

Sec. 9. Workforce. If Contractor is required to pay prevailing wages for the work performed pursuant to this Contract, Contractor agrees to comply with all requirements of City’s Construction Employment Program as enacted in City’s Code, Sections 3-501 through 3-525 and as hereinafter amended. Contractor shall meet or exceed the construction employment goals unless the same shall have been waived in the manner provided by law. Contractor’s compliance with this provision is a material part of this Contract.

Contractor shall comply with City’s Workforce Program Reporting System requirements. Contractor shall use City’s Internet web based Workforce Program Reporting System provided by City and protocols included in that software during the term of this Contract. Contractor shall maintain user applications to City’s provided system for all applicable personnel and shall require subcontractors to maintain applications.

Sec. 10. Bonds and Surety. See Exhibit 1: City of Kansas City Special Requirements

Sec. 11. Subcontracting.

A. Contractor shall not employ or retain any Subcontractor, Supplier or other person or organization, whether initially or as a substitute, against whom City has a reasonable objection, including but not limited to debarment by City or another governmental entity or decertification of the Subcontractor from the City’s Minority and Women’s Business Enterprise Program as a result of the Subcontractor’s failure to comply with any of the requirements of the provisions of Chapter 3 of the City’s Code as determined by the Director of the Human Relations Department. Contractor shall insert this provision in any subcontractor agreement associated with this Contract. Contractor shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. Contractor shall submit required information for all Subcontractors on Form 01290.09 - Subcontractors and Major Material Suppliers List, provided in these Contract Documents, prior to Subcontractor beginning Work at the Site.

C. Contractor shall be fully responsible to City for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor’s own acts and omissions.
D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor.

Sec. 12. Prevailing Wage.

A. Prevailing Wage.

1. Contractor shall comply and require its Subcontractors to comply with;
   a. Sections 290.210 to 290.340, RSMo the State of Missouri Prevailing Wage Law (the "Law"); and
   b. 8 CSR 30-3.010 to 8 CSR 30-3.060, the Prevailing Wage Law Rules (the "Rules"); and
   c. the Annual Wage Order (Wage Order) issued by the State of Missouri’s Department of Labor and Industrial Relations; and
   d. any applicable Annual Incremental Wage Increase (Wage Increase) to the Annual Wage Order.

2. The Law, Rules, Wage Order and any Wage Increase are incorporated into and made part hereof this Contract and shall be collectively referred to in this Section as the “Prevailing Wage Requirements.” In the event this Contract is renewed for an additional term, the Wage Order in effect as of the commencement date of the additional term, as amended by any applicable Wage Increase, shall be deemed incorporated herein and shall apply to and remain in effect for the duration of the additional term. The new Wage Order and any applicable Wage Increase shall govern notwithstanding the fact that the Wage Order being replaced might be physically attached to this Contract.

3. Contractor shall pay and require its Subcontractors to pay to all workers performing work under this Contract not less than the prevailing hourly rate of wages for the class or type of work performed by the worker in accordance with the Law, Rules, Wage Order and any applicable Wage Increase. Contractor shall take whatever steps are necessary to insure that the prevailing hourly wage rates are paid and that all workers for Contractor and each of its Subcontractors are paid for the class or type of work performed by the worker in accordance with the Prevailing Wage Requirements.

4. Prior to each of its Subcontractors beginning Work on the Site, Contractor shall require each Subcontractor to complete City’s Form 00490 entitled “Pre-contract Certification” that sets forth the Subcontractor’s prevailing wage and tax compliance history for the two (2) years prior to the bid. Contractor shall retain one (1) year and make the Pre-contract Certifications available to City within five (5) days after written request.

5. Contractor shall keep and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to keep full and accurate records on City’s:
   a. Keep and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to keep full and accurate records on City’s
b. Submit, and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to submit, electronically, in a format prescribed by the City, Certified Payroll Report Information indicating the worker's name, address, social security number, occupation(s), craft(s) of every worker employed in connection with the public work together with the number of hours worked by each worker and the actual wages paid in connection with the Project and other pertinent information as requested by the City; and

c. Submit, and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to submit, electronically, in format prescribed by the City, a Payroll Certification. The Payroll Certification must be signed by the employee or agent who pays or supervises the payment of the workers employed under the Contract for the Contractor and each Subcontractor.

d. The Daily Labor Force Report, documents used to compile information for the Certified Payroll Report, and Payroll Certification are collectively referred to in this Section as the "Records."

6. Contractor shall make all of Contractor's and Subcontractors' Records open to inspection by any authorized representatives of City and the Missouri Department of Labor and Industrial Relations at any reasonable time and as often as they may be necessary and such Records shall not be destroyed or removed from the State of Missouri for a period of one (1) year following the completion of the public work in connection with which the Records are made. Contractor shall have its and its Subcontractors Certified Payroll Reports and Payroll Certifications available at the Contractor's office and shall provide the Records to the City electronically at City's sole discretion. In addition, all Records shall be considered a public record and Contractor shall provide the Records to the City in the format required by the City within three (3) working days of any request by City at the Contractor's cost. City, in its sole discretion, may require Contractor to send any of the Records directly to the person who requested the Record at Contractor's expense.

7. Contractor shall post and keep posted a clearly legible statement of all prevailing hourly wage rates to be paid to all workers employed by Contractor and each of its Subcontractors in the performance of this Contract in a prominent and easily accessible place at the Site of the Work by all workers.

8. If the Contract Price exceeds $250,000.00, Contractor shall and shall require each Subcontractor engaged in any construction of public works to have its name, acceptable abbreviation or recognizable logo and the name of the city and state of the mailing address of the principal office of the company, on each motor vehicle and motorized self-propelled piece of equipment which is used in connection with the Project during the time the Contractor or Subcontractor is engaged on the project. The sign shall be legible from a distance of twenty (20') feet, but the size of the lettering need not be larger than two (2") inches. In cases where equipment is leased
or where affixing a legible sign to the equipment is impractical, the Contractor may place a temporary stationary sign, with the information required pursuant to this section, at the main entrance of the Project in place of affixing the required information on the equipment so long as such sign is not in violation of any state or federal statute, rule or regulation. Motor vehicles which are required to have similar information affixed thereto pursuant to requirements of a regulatory agency of the state or federal government are exempt from the provisions of this subsection.

9. Contractor must correct any errors in Contractor's or any Subcontractors' Records, or Contractor's or any Subcontractors' violations of the Law, Rules, Annual Wage Order and any Wage Increase within fourteen (14) calendar days after notice from City.

10. Contractor shall and shall require its Subcontractors to cooperate with the City and the Department of Labor and Industrial Relations in the enforcement of this Section, the Law, Rules, Annual Wage Order and any Wage Increase. Contractor shall and shall require its Subcontractors to permit City and the Department of Labor and Industrial Relations to interview any and all workers during working hours on the Project at Contractor's sole cost and expense.

11. Contractor shall file with City, upon completion of the Project and prior to final payment therefore, affidavits from Contractor and each of its Subcontractors, stating that each has fully complied with the provisions and requirements of the Missouri Prevailing Wage Law. City shall not make final payment until the affidavits, in proper form and order, from Contractor and each of its Subcontractors, are filed by Contractor.

12. Contractor shall forfeit as a statutory penalty to the City one hundred dollars ($100.00) for each worker employed, for each calendar day, or portion thereof, such worker is paid less than the prevailing hourly rates for any work done under this Contract, by Contractor or by any of Contractor's Subcontractors. If Contractor or any of its Subcontractors have violated any section(s) of 290.210 to 290.340, RSMo, in the course of the execution of the Contract, City shall when making payments to the Contractor becoming due under this Contract, withhold and retain therefrom all sums and amounts due and owing as a result of any violation of sections 290.210 to 290.340, RSMo.

B. Prevailing Wage Damages. Contractor acknowledges and agrees that, based on the experience of City, violations of the Missouri Prevailing Wage Act, whether by Contractor or its Subcontractors, commonly result in additional costs to City. Contractor agrees that additional costs to City for any particular violation are difficult to establish and include but are not limited to: costs of construction delays, additional work for City, additional interest expenses, investigations, and the cost of establishing and maintaining a special division working under the City Manager to monitor prevailing wage compliance.

1. In the event of the failure by Contractor or any of its Subcontractors to pay wages as provided in the Missouri Prevailing Wage Act, City shall be entitled to deduct from the Contract Price, and shall retain as liquidated damages, one hundred dollars ($100.00) per day, per worker who is paid less than the prevailing hourly rate of wages, to approximate the additional costs. The sum shall be deducted, paid or owed
whether or not the Contract Times have expired.

2. City shall give written notice to Contractor setting forth the workers who have been underpaid, the amount of the statutory penalty and the amount of the liquidated damages as provided for in this Subparagraph. Contractor shall have fourteen (14) calendar days to respond, which time may be extended by City upon written request. If Contractor fails to respond within the specified time, the City’s original notice shall be deemed final. If Contractor responds to City’s notice, City will furnish Contractor a final decision in writing within five (5) days of completing any investigation.

C. Excessive Unemployment.

1. Resident Laborers” means laborers who have been residents of the State of Missouri for at least thirty days and who intend to remain Missouri residents, and residents of Nonrestrictive States.

2. “Nonrestrictive States” means states identified by the Missouri Department of Labor and Industrial Relations Division of Labor Standards that have not enacted state laws restricting Missouri laborers from working on public works projects. A list of Nonrestrictive States can be found on the Division web site at http://www.dolir.mo.gov/ls/index.htm.

3. A period of Excessive Unemployment is declared when the Missouri Department of Labor and Industrial Relations Division of Labor Standards provides notice of such declaration. When in effect, notice will be provided on the Division web site at http://www.dolir.mo.gov/ls/index.htm. It is Contractor’s obligation to determine whether a period of Excessive Unemployment is in effect when this Contract is let.

4. Contractor agrees to follow the provisions of Section 290.560 - 290.575 RSMo and agrees that if a period of Excessive Unemployment has been declared at any point during the term of this Contract, it will employ and require all Subcontractors of whatever tier to employ only Resident Laborers for the Work to be performed under this Contract. Provided, however, Contractor may use laborers who are not Resident Laborers when Resident Laborers are not available or are incapable of performing the particular type of work involved if Contractor so certifies in writing to City and City issues a written approval. This provision does not apply to regularly employed nonresident executive, supervisory or technical employees.

Sec. 13. Attachments to Part I. The following documents are Attachments to Part I of this Contract and are attached hereto and incorporated herein by this reference:

Attachment A – RFP EV2516
Attachment B – Proposer Response dated June 8, 2018
Attachment C – Clarification Questions and Answers
Attachment D – Scope of Services revised per Clarification Questions
Attachment E - Facility Repair and Maintenance Contract Part II
   i. Exhibit 1: City of Kansas City Special Requirements
   ii. Exhibit 2: City of Kansas City Pricing Schedule
   iii. Exhibit 3: National Pricing Schedule
   iv. Exhibit 4: Participating Public Agency Service Level Agreement
Attachment F – 00620 Insurance Certificate
THE BELOW FORMS ARE SPECIFIC TO THE CITY OF KANSAS CITY, MO

Attachment G - HRD Forms & Instructions
00440 HRD 5: Construction Contract HRD Instructions
00450 HRD 8: Contractor Utilization Plan/Request for Waiver
00450.01 Letter of Intent to Subcontract
00460 HRD 10: Timetable for MBE/WBE Utilization
00470 HRD 11: Request for Modification or Substitution
00485 HRD Monthly Reporting Forms

Attachment H - Bonds
00610 Performance and Maintenance Bond
00615 Payment Bond

Attachment I - 00830 Wage Rate Requirements
Annual Wage Order #25
  County – Cass, Clay, Jackson, Platte or Ray
  Work Type: State – Heavy
  State – Building
Division of Labor Standards Rules & Regulations
01290.08 Wage Rate Verification Questionnaire
01290.09 Subcontractors and Major Material Suppliers List
01290.11 Daily Labor Force Report
01290.14 Contractor Affidavit for Final Payment
01290.15 Subcontractor Affidavit for Final Payment

Attachment J - 00560 Missouri Project Exemption Certificate
00560.01 Kansas City Missouri Tax Exempt Certificate

Attachment K - 00630 Revenue Clearance Release Authorization

Attachment L - 00515.01 Employee Eligibility Verification Affidavit

Sec. 14. Missouri Sales Tax Exemption. Pursuant to Section 144.062, RSMo, City is a Missouri exempt entity and tangible personal property to be incorporated or consumed in the construction of this Project may be purchased without sales tax. City shall furnish Contractor a Missouri Project Exemption Certificate for Sales Tax at the time of issuance of the Notice to Proceed.

Sec. 15. Emergencies.

(a) Disaster means any large scale event such as an act of terrorism, fire, wind, flood, earthquake or other natural or man-made calamity which results in, or has the potential to result in a significant loss of life or property.

(b) During and after a disaster, CONTRACTOR shall provide special services to the CITY including CONTRACTOR shall open CONTRACTOR's facilities even on nights and weekends as necessary to meet the needs of the City during a disaster.

(c) CONTRACTOR shall not charge CITY any fee for opening facilities during an emergency or for extending CONTRACTOR’s hours of operation during a disaster. CITY shall pay CONTRACTOR the agreed upon contract prices for all purchases.
made by CITY during the disaster and CONTRACTOR shall not charge CITY any additional mark-up, fee or cost for any purchases made by CITY during a disaster.

(d) CONTRACTOR shall quickly mobilize CONTRACTOR’s internal and external resources to assist CITY when a disaster unfolds.

(e) Extended hours and personnel. During disasters, CONTRACTOR’s facilities shall stay open 24 hours if requested by the CITY. CONTRACTOR shall utilize additional CONTRACTOR personnel to take CITY orders if necessary. CONTRACTOR’s Call Center shall accept phone orders 24 hours a day.

(f) CONTRACTOR shall have contingency plans with CONTRACTOR’s suppliers to provide additional supplies and equipment quickly to CITY as needed.

(g) CONTRACTOR shall cooperate with CITY to properly document any and all expenses incurred by CITY with CONTRACTOR and CONTRACTOR shall assist CITY in meeting any and all documentation requirements of the Federal Emergency Management Agency (FEMA).
THIS CONTRACT CONTAINS INDEMNIFICATION PROVISIONS

CONTRACTOR
I hereby certify that I have authority to execute this document on behalf of Contractor

By:

Title: Senior Vice President

Date: 12/4/2018

KANSAS CITY, MISSOURI

By: Cedric Raw

Title: Manager of Procurement Services

Approved as to form:

Assistant City Attorney
PART II
FACILITY REPAIR & MAINTENANCE
CONTRACT
STANDARD TERMS AND CONDITIONS

Sec. 1. General Indemnification.
A. For purposes of this Section 1 only, the following terms shall have the meanings listed:
1. **Claims** means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys’ fees, including attorneys’ fees incurred by the City in the enforcement of this indemnity obligation.
2. **Contractor’s Agents** means Contractor’s officers, employees, subconsultants, subcontractors, successors, assigns, invitees and other agents.
3. **City** means City and its agents, officials, officers and employees.

B. Contractor’s obligations under this Section with respect to indemnification shall be limited to the coverage and limits of General Liability insurance that Contractor is required to procure and maintain under this Contract. Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this Contract in its contract price.

C. Contractor shall defend, indemnify and hold harmless City from and against all claims arising out of or resulting from all negligent acts or omissions in connection with this Contract but only to the extent caused by Contractor or Contractor’s Agents, regardless of whether or not caused in part by any act or omission, including negligence, of City. Contractor is not obligated under this Section to indemnify City for the negligence of City.

D. In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City’s rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

**Sec. 2. Independent Contractor.** Contractor is an independent contractor and is not City’s agent. Contractor has no authority to take any action or execute any documents on behalf of City.

**Sec. 3. Insurance.**
A. Contractor shall procure and maintain in effect throughout the duration of this Contract insurance coverage of the types and amounts specified in this section. In the event that additional insurance, not specified herein, is required during the term of this Contract, Contractor shall supply such insurance at City’s cost. Policies containing a Self-Insured Retention are unacceptable to City unless City approves in writing the Contractor’s Self-Insured Retention.

1. **Commercial General Liability Insurance:** with limits of $1,000,000 per occurrence and $2,000,000 aggregate, written on an “occurrence” basis. The policy shall be written or endorsed to include the following provisions:
   a. Severability of Interests Coverage applying to Additional Insureds
   b. Contractual Liability
   c. Per Project Aggregate Liability Limit
   d. No Contractual Liability Limitation Endorsement
   e. An Owners and Contractors Protective Liability Policy (OCPL).

2. **Workers’ Compensation Insurance:** as required by statute, including Employers Liability with limits of:
   *Workers’ Compensation Statutory Employers Liability* $100,000 accident with limits of:
   - $500,000 disease-policy limit
   - $100,000 disease-each employee

3. **Commercial Automobile Liability Insurance:** with a limit of $1,000,000, covering owned, hired, and non-owned automobiles. Coverage provided shall be on an “any auto” basis and written on an “each accident” basis. This insurance will be written on a Commercial Automobile Liability form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as
to acts done in connection with the Contract, by Contractor.

4. If applicable, Professional Liability Insurance with limits per claim and annual aggregate of $2,000,000.

B. The Commercial General Liability Insurance specified above shall provide that City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as Named Insureds on the OCPL for the services performed under this Contract and maintain products and completed operations coverage for the duration of this Agreement. Contractor shall provide to City at execution of this Contract a certificate of insurance showing all required coverage and additional insureds. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

C. All insurance coverage must be written by companies that have an A.M. Best’s rating of “A-V” or better, and are licensed or authorized by the State of Missouri to do business in Missouri.

D. Contractor’s failure to maintain the required insurance coverage will not relieve Contractor of its contractual obligation to indemnify the City pursuant to Section 1. If the coverage afforded is cancelled or changed or its renewal is refused, Contractor shall give at least thirty (30) days prior written notice to City. In the event of Contractor’s failure to maintain the required insurance in effect, City may order Contractor to immediately stop work, and upon ten (10) days notice and an opportunity to cure, may pursue its remedies for breach of this Contract as provided for herein and by law.

E. In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City’s rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

F. Contractor shall obtain evidence that all Subcontractors have in force general, automobile, and employer’s and workers’ compensation liability insurance in the amounts required by these Contract Documents, and evidence that each is current on its unemployment insurance payments before Subcontractors begin Work at the Site. Contractor shall retain such evidence in its files and make available to City within ten (10) days after written request.

Sec. 4. Governing Law. This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri’s choice of law provisions. The City and Contractor: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum non conveniens as an objection to the location of any litigation.

Sec. 5. Compliance with Laws. Contractor shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this contract.

Sec. 6. Termination for Convenience.

A. City may, at any time upon thirty (30) days notice to Contractor specifying the effective date of termination, terminate this Contract, in whole or in part. If this Contract is terminated by City, City shall be liable only for payment for services rendered before the effective date of termination. Contractor shall prepare an accounting of the services performed and money spent by Contractor up to the effective date of termination and shall return to City any remaining sums within thirty (30) days of such date.

B. If this Contract is terminated prior to Contractor’s completion of services, all work or materials prepared or obtained by Contractor pursuant to this contract shall become City’s property.

C. If this Contract is terminated prior to Contractor’s completion of the services to be performed hereunder, Contractor shall return to City any sums paid in advance by City for services that would otherwise have had to be rendered between the effective date of termination and the original ending date of the Contract. Contractor shall prepare an accounting of the services performed and money spent by Contractor up to the effective date of termination.
and shall return to City any remaining sums within thirty (30) days of such date.

Sec. 7. Resolution of Claims

A. For purposes of this Section 7 only, the following terms shall have the meanings listed:

1. A Claim is a demand or assertion by the Contractor seeking, as a matter of right, the adjustment of Contract price and/or times with respect to the terms of the Contract.

2. City’s Representative--Person or agency designated to act for the Director.

B. The Contractor must give written notice to the City’s Representative within fourteen (14) calendar days after the occurrence of the event giving rise to the Claim or within fourteen (14) calendar days after the first recognition of the conditions giving rise to the Claim. After the fourteen (14) day period for filing claims has expired, the Claim shall be considered waived unless the Director grants an extension based on good cause shown by the Contractor that such additional time is warranted. The responsibility to substantiate Claims shall rest with the Contractor.

C. If the claim cannot be resolved by direct negotiation between the City’s Representative and the Contractor, the parties must submit the Claim to the Director within five (5) days after the parties agree that they cannot resolve the Claim.

D. The submittal of the Claim position statements shall: 1) be in writing; 2) state the issues; 3) and state the respective positions of the parties.

E. The Director shall review the written statements and reply in writing to both parties within ten (10) working days. The Director may extend this period if necessary by notifying the parties.

F. Absent fraud, gross mistake or bad faith, the Director’s decision shall be final and binding on City and Contractor within fourteen (14) calendar days after issuance.

G. All administrative procedures set forth in this contract must first be exhausted before suit is filed.

H. The time frame for the Director’s decision may be tolled if the parties mutually agree to participate in mediation. Mediator selection and the procedures to be employed in the mediation shall be mutually acceptable to both parties. Cost of the mediation, including the mediator’s fees, shall be shared equally among the parties.

I. If the Claim is not resolved during mediation, the Contractor agrees that it will file no suit based on facts or evidentiary materials that were not presented for consideration to the City during the mediation process or of which the Contractor had knowledge and failed to present during the administrative procedures.

Sec. 8. Default and Remedies. If Contractor shall be in default or breach of any provision of this Contract, City may terminate this contract, suspend City’s performance, withhold payment or invoke any other legal or equitable remedy after giving Contractor notice and opportunity to correct such default or breach.

Sec. 9. Waiver. Waiver by City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Contract can be waived except by written consent of City, and forbearance or indulgence by City in any regard whatsoever shall not constitute a waiver of same to be performed by Contractor to which the same may apply and, until complete performance by Contractor of the term, covenant or condition, City shall be entitled to invoke any remedy available to it under this Contract or by law despite any such forbearance or indulgence.

Sec. 10. Modification. Unless stated otherwise in this Contract, no provision of this Contract may be waived, modified or amended except in writing signed by City and Contractor.

Sec. 11. Headings; Construction of Contract. The headings of each section of this Contract are for reference only. Unless the context of this Contract clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.
Sec. 12. Severability of Provisions. Except as specifically provided in this Contract, all of the provisions of this Contract shall be severable. In the event that any provision of this Contract is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Contract shall be valid unless the court finds that the valid provisions of this Contract are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Contract could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

Sec. 13. Records.

A. For purposes of this section:

1. “City” shall mean the City Auditor, the City’s Internal Auditor, the City’s Director of Human Relations, the City Manager, the City department administering this Contract and their delegates and agents.

2. “Record” shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Contract and all Contract amendments and renewals.

B. Contractor shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this Contract and all Contract amendments. City shall have a right to examine or audit all Records and Contractor shall provide access to City of all Records upon ten (10) days written notice from the City.


Sec. 15. Tax Compliance. Contractor shall provide proof of compliance with the City’s tax
ordinances administered by the City’s commissioner of revenue as a precondition to the City making the first payment under this contract or any contract renewal when the total contract amount exceeds $150,000.00.

Sec. 16. Assignability or Subcontracting.

A. Assignability. Contractor shall not assign or transfer any part or all of Contractor’s obligations or interest in this Contract without prior written approval of City. If Contractor assigns or transfers any of its obligations or interests under this Contract without the City’s prior written approval, it shall constitute a material breach of this Contract. This provision shall not prohibit contractor from subcontracting as otherwise provided for herein.

B. Subcontracting. Contractor shall not subcontract any part or all of Contractor’s obligations or interests in this Contract unless the subcontractor has been identified in a format required by City. If Contractor shall subcontract any part of Contractor’s obligations or interests under this Contract without having identified the subcontractor, it shall constitute a material breach of this Contract. The utilization of subcontractors shall not relieve Contractor of any of its responsibilities under the Contract, and Contractor shall remain responsible to City for the negligent acts, errors, omissions or neglect of any subcontractor and of such subcontractor’s officers, agents and employees. City shall have the right to reject, at any point during the term of this Contract, any subcontractor identified by Contractor, and to require that any subcontractor cease working under this Contract. City’s right shall be exercisable in its sole and subjective discretion. City shall not be obligated to pay or be liable for payment of any monies which may be due to any subcontractor. Contractor shall include in any subcontract a requirement that the subcontractor comply with all requirements of this Contract in performing Contractor’s services hereunder.

Sec. 17. Conflicts of Interest. Contractor certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Contract, and that no officer or employee of City, or member of such officer’s or employee’s immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Contractor in this Contract.

Sec. 18. Rules of Construction. The judicial rule of construction requiring or allowing an instrument to be construed to the detriment of or against the interests of the maker thereof shall not apply to this Contract.

Sec. 19. Reports. Contractor shall provide City detailed reports of actual contract usage by category each quarter and annually at no cost.

Sec. 20. Employee Eligibility Verification. If this contract exceeds five thousand dollars ($5,000.00), Contractor shall execute and submit an affidavit, in a form prescribed by the City, affirming that Contractor does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. §1324a(h)(3). Contractor shall attach to the affidavit documentation sufficient to establish Contractor’s enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration and Reform and Control Act of 1986. Contractor may obtain additional information about E-Verify and enroll at www.dhs.gov/xpreyprotl programs/ec_118522 1678150.shtm. For those Contractors enrolled in E-Verify, the first and last pages of the E-Verify Memorandum of Understanding that Contractor will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this section. Contractor shall submit the affidavit and attachments to the City prior to execution of the contract, or at any point during the term of the contract if requested by the City.

Sec. 21. Buy American and Missouri Preference Policies. It is the policy of the City that any manufactured goods or commodities used or supplied in the performance of any City contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible. Pursuant to Section 71.140 RSMo., preference shall be given to materials, products, supplies and all other articles produced, manufactured, made or grown within the State of Missouri.
Sec. 22. Missouri Sales Tax Exemption.
Pursuant to Section 144.062, RSMo, City is a Missouri exempt entity and tangible personal property to be incorporated or consumed in the construction of this Project may be purchased without sales tax. City shall furnish Contractor a Missouri Project Exemption Certificate for Sales Tax at the time of issuance of the Notice to Proceed.

Sec. 23. Escalator Technical Survey.
Contractor is not obligated to perform tests, correct outstanding violations or deficiencies that were not addressed by the prior service provider and/or the owner, or make related necessary repairs or component replacements on the equipment. If additional work is necessary, Contractor will provide a separate proposal or recommendation for such work. Contractor’s price and obligations under this Agreement are subject to a technical survey to be performed within 90-days of the effective date. If a safety hazard or code violation is identified during Contractor’s technical survey, City will immediately remove the unit from service until repairs are performed. City agrees to indemnify, defend, and hold Contractor harmless for any claims arising out of City’s failure to comply with Contractor’s recommendations and proposal. If City does not immediately approve Contractor’s proposal or recommendation, Contractor reserves the right to terminate this Agreement without penalty.

Sec. 24. Hazardous Materials. Notwithstanding anything contained to the contrary within this bid or contract, Contractor’s work shall not include any abatement or disturbance of asbestos containing material (ACM), presumed asbestos containing materials (PACM) or other hazardous materials (i.e. lead, PCBs) (collectively “HazMat”). Contractor shall have the right to discontinue its work in any location where suspected HazMat is encountered or disturbed. Any HazMat removal or abatement, or delays caused by such, required in order for Contractor to perform its work shall be the City’s sole responsibility and expense.

Sec. 25. Consequential Damages. In no event will either party be liable to the other party for indirect, incidental, consequential, special, exemplary, or punitive damages of any kind or nature arising from or related to performance of the Agreement, including without limitation loss of profits, loss or inaccuracy of data, or loss of use damages, even if the party has been advised...
of the possibility of such damages and even if under applicable law such damages would not be considered for indirect, incidental, punitive, special, or consequential damages. Each party hereby waives its rights to such damages to the fullest extent permitted by applicable law.

Sec. 26. Force Majeure. A party is not liable for failure to perform its obligations under the Agreement if such failure results from Acts of God, fire, flood, unusual delay in deliveries, unavoidable casualties, terrorist activities, government sanction, blockage, embargo, labor dispute, strike, or lockout, concealed conditions, shortage or unavailability of materials, supplies, labor, equipment or systems, interruption or failure of electricity or telephone service or any other causes beyond Contractor's control. The non-performing party must promptly notify the other party in writing of the force majeure event and resume performance immediately upon cessation of the event.

Sec. 27. Intellectual Property. All proprietary and intellectual property rights to the equipment, any drawings, technical documentation and software shall remain solely with Contractor.
Attachment D: Scope of Services  City of Kansas City/U.S. Communities Master Agreement #EV2516

Overview

The importance of consistently maintaining the Equipment in a safe, fully operational condition demands that the Supplier have an effective maintenance management program. Such a program includes pre-established and documented maintenance procedures and schedules which will insure reliable performance of elevators under regularly scheduled maintenance. Supplier will use a structured maintenance management program to deliver high quality service tailored to each specific unit’s needs. Equipment type, component life, equipment usage, and building environment will be taken into account by the Supplier in this scheduling system, which will be used to plan maintenance activities in advance. The Supplier will have an established system for fully documenting maintenance procedures performed, service calls received and answered and major repairs scheduled and completed. The Supplier will have an effective system of self-audit mechanism to insure designated tasks are completed as scheduled and will provide an annual written condition report covering each piece of equipment.

1. Any corrections found to be necessary within twenty (20) days of the termination of agreement or any extension thereof shall be the responsibility of the Supplier.

2. In addition to all of the specifications outlined in this Section, any and all items in the manufacture’s literature concerning preventative maintenance and any other pertinent procedures must be performed according to the manufacturer’s specifications and timelines.

3. All work shall be performed during regular working hours of regular working days unless otherwise authorized by the City Representative.

   a) Contractor shall proceed with work when so requested and work continuously and diligently until completed.
   b) Skilled tradesmen with a minimum of three years of field experience shall be provided to perform all work required under this Contract.
   c) Contractor shall maintain direct communication capability with the City’s representative 24 hours a day, seven (7) days a week, during the Contract period.
   d) Emergency Work - Respond to the service location within two (2) hours of receiving notification from the City Representative.
   e) Non-Emergency - Work shall be scheduled within three (3) working days of notification or as otherwise approved by the City’s Representative.
   f) City of Kansas City Aviation Department will receive Overtime Callback coverage on all units that are listed as Contract Type “A”.
   g) Contractor shall perform any and all work requested by City.
   h) Conferences will be held at the request of City or Contractor.
   i) The Scope of Services here will be extended to Participating Public Agencies, unless specifically altered in a properly executed end user service agreement.
4. OSHA Guidelines: The vendor shall be familiar with and operate within the guidelines as set forth by the Occupational Safety and Health Act.

5. For all operations requiring the placement and movement of the Supplier’s equipment, Supplier shall observe and exercise, and compel its employees to observe and exercise, all necessary caution and discretion so as to avoid injury to persons, damage to property of any and all kinds, and annoyance to, or undue interference with, the movement of the public and City personnel. All ladders, scaffolding or other devices used to reach the surface of objects not otherwise accessible, shall be of sound construction, firm and stable, and shall be maintained in good condition. All such equipment shall be moved onto the areas where they are required, placed, shifted where necessary, and removed from the areas in such manner as to provide maximum safety to persons and property and cause the least possible interference with the normal usage of such areas by the public and City personnel.

6. If any maintenance deficiencies are identified during the term of the agreement, KONE will work with Owner/Agency under the terms of the agreement to rectify in a timely manner. Contractor warrants and guarantees to the City that all equipment and materials to be furnished under this agreement are free from all defects in workmanship and materials. Contractor further warrants, guarantees and agrees to remedy all such defects and to replace at Contractor’s expense and at no expense to the City any or all labor, transportation, part or parts of the equipment or materials to be furnished under this agreement which are or become defective due to such defects within twelve (12) months after new equipment accepted by customer, and 90-days from repair work completed by contractor.

7. If Owner/Agency elects to have a third party perform services on equipment covered under the Agreement, purchaser must promptly notify KONE in writing and provide KONE an opportunity at its own cost to inspect the equipment to ensure compliance with KONE and Industry Standards. Should it be determined that re-work, different or additional work is required, such work will be at purchasers cost. Owner/Agency waives all claims against KONE directly related to a third party’s performance of services.

8. Defective Material: The successful Supplier shall agree to accept, for full credit and return shipping charges, the return of any item received which is found to be deficient in quality or defective in packaging so as to render the item unusable for its intended purpose. Merchandise so designated shall be replaced at the full expense of the Supplier within seven (7) calendar days.

9. Standard Work Processes: The Supplier shall have in its possession written procedures of all maintenance tasks to be performed, complete and thorough in description. These written procedures will include the step-by-step tasks necessary to comprehensively complete the procedure. Written procedures will be made available to all Supplier personnel who could reasonably expect to be working on any of the equipment covered under this contract on either a permanent or temporary basis. The purpose of this requirement is to ensure uniformity of the quality of Work performed and to provide documentation toward that goal.

**Maintenance and Modernization Services to be Performed**
1. The work required consists of providing elevator, escalator, wheelchair lift, chair lift, and walkway maintenance, modernization and repair services at various city-owned facilities in Jackson, Clay, Platte and Cass Counties.

2. Services shall include, but are not limited to:

   a) Maintenance work orders for preventative maintenance to repair or replace equipment including inspections, adjustments, testing and replacement of parts, as herein specified, for the safe and smooth operation of the equipment.

   b) Oil and grease work orders to reduce wear and prolong the useful life of moving parts of equipment through proper lubrication on an as-needed basis.

   c) Emergency repairs on short notice may be required in order to restore facilities to full operating condition.

   d) Provide all necessary equipment and supplies.

      i. All parts used in full maintenance shall be manufactured by or approved by the manufacturer of the equipment being serviced and shall be compatible with original equipment. The Contractor shall furnish all products, materials, or parts necessary for the completion of work or required by applicable codes and shall furnish lubricating oils and greases of proper type and weight, rope preservative and wiping cloths. All materials and parts shall be provided in accordance with the requirements herein specified for the maintenance of all elevators and escalators listed. The contractor must own and maintain in stock, at all times for immediate delivery and installation, a sufficient supply of emergency parts for repair of each piece of equipment. Spare parts shall be genuine manufacturers' parts designed for the equipment on which they are to be used. No substitutes shall be permitted. The Contractor shall maintain an up-to-date inventory of all spare parts by part number.

      ii. Contractor shall maintain, in stock, available for immediate usage, an inventory of replacement parts for microprocessor equipment used in the elevator systems.

      iii. Contractor shall have full capabilities to reprogram or change the program of the elevator microprocessor.

      iv. Contractor's service technicians shall carry diagnostic equipment designed to analyze programming and microprocessor functions and malfunctions.

3. Contractor shall provide a list of planned PM service visits if requested by customer/agency. This list will include the equipment and specific maintenance modules that are scheduled to be performed no less than 1 month in advance of the scheduled PM service visit. If additional schedule requirements are required, KONE will work with said agency locally on a mutually agreeable arrangement.

4. Contractor shall prepare an Asset Management Plan (AMP) for each piece of equipment covered by this contract. The AMP shall identify regularly scheduled tasks and recommended repairs and upgrades for each Department's review. The AMP will cover the initial term of the contract, allowing...
each Department to plan and budget for maintenance and upgrades in a proactive manner. The AMP should also include the likely remaining life/usefulness of the equipment.

5. KONE will conduct a survey of customer’s equipment prior to taking on any piece of equipment when awarded a new contract from our competition by a participating public agency. We will also work with the agency in coordinating an Asset Management Plan that identifies existing condition and state of equipment, recent and upcoming code changes, advancements in technology, and improvements that can be made in ride quality for their customers over a 5-year period.

6. In preparation for annual inspections, Contractor will work with each Department to review possible concerns and schedule repairs in advance of inspection.

7. In addition, the following scenarios provide a billable call and will be billed in minute long increments:

   a) Technician answers the trouble call to find the elevator keyed off in some manner by the building (independent service, fire service, etc.).
   b) Technician answers a call outside his normal maintenance to replace a light bulb in the elevator fixtures.
   c) Technician answers a call to find debris in the elevator door sill causing the elevator malfunction.
   d) Technician answers a call to find the elevator doors are timed out due to passengers holding the doors open too long and/or because the elevator infrared edge is dirty.
   e) Special requests for services to be performed on overtime.
   f) Code, insurance or local code authority required changes or additional testing required that happen during the contract period.
   g) Callouts – running on arrival where no technical issues are found (false alarms).

Class “A” Complete Preventative Maintenance

1. Contractor will provide complete maintenance on the following equipment as described herein. Complete maintenance includes providing systematic examinations, cleaning, lubrication, adjustments, and when conditions warrant, repair or replacement of parts.

The work to be performed by the Supplier under the specifications shall consist of furnishing all material, labor, supervision, tools, supplies, and other expenses necessary to provide full service and preventative maintenance services, and repairs of every description, including inspections, adjustments, test and replacement parts as herein specified.

The Supplier shall systematically examine, adjust, lubricate, clean and when conditions warrant, repair or replace the following basic and major components as well as all other mechanical or electrical equipment, including, but not limited to, the following items. Supplier shall include as a part of its response any additional components that it considers a part of preventive maintenance.

1. HYDRAULIC ELEVATORS
Basic components: Controller components: resistors, timers, fuses, overloads, minor contacts, wiring, coils; packing, drive belts, strainers, functional components of car and corridor operating stations, hangers and tracks, door operating devices, door gibs, guide shoes, rollers, traveling cables, signal lamps (replacement during regular visits only), interlocks, door closers, buffers, switches, door protection devices, and alarm bells.

Major components: Exposed piping in the Machine Room and hoistway, motor, PC boards, pump, pump unit, solid state devices, contactors, and valve.

2. TRACTION ELEVATORS

Basic Components: Selector motors; brake: pads, lining, disks or shoes, magnet coils, brushes & commutators; controller components: resistors, timers, fuses, overloads, minor contacts, wiring, coils; functional components of car and corridor operating stations; hangers and tracks, door operating devices, door gibs, guide shoes, rollers, traveling cables, signal lamps (replacement during regular visits only), interlocks, door closers, buffers, overspeed governors, car and counterweight safeties, alarm bells, switches, and door protection devices.

Major components: Hoist motors, hoist ropes, machine, machine & sheave bearings, machine brake, motor generators, PC boards, sheave & sheave assemblies, solid state devices, and contactors.

3. ESCALATORS

Basic components: Step rollers, belts, controller components: resistors, timers, fuses, overloads, minor contacts, wiring, coils; brake: pads, lining, disks or shoes.

Major components: Brake, escalator machine or drive units, handrail, handrail drive chains, main drive chains or belts, PC boards, solid state devices, contactors, sprockets, step chains.

4. WALKWAYS (Class “B” Coverage)

Basic components: Step rollers, belts, controller components: resistors, timers, fuses, overloads, minor contacts, wiring, coils; brake: pads, lining, disks or shoes.

Major components: Brake, escalator machine or drive units, handrail, handrail drive chains, main drive chains or belts, PC boards, solid state devices, contactors, sprockets, step chains.

5. WHEELCHAIR LIFT (Class “B” Coverage)

Periodically inspect, make minor adjustments, lubricate, and make recommendations for repair or replacement of components.

Re-lamping of signal fixtures will occur during regularly scheduled preventive maintenance service visits.

6. CHAIR LIFT (Class “B” Coverage)
Periodically inspect, make minor adjustments, lubricate, and make recommendations for repair or replacement of components.

Re-lamping of signal fixtures will occur during regularly scheduled preventive maintenance service visits.

7. PLATFORM LIFT (Class “B” Coverage)

Periodically inspect, make minor adjustments, lubricate, and make recommendations for repair or replacement of components.

Re-lamping of signal fixtures will occur during regularly scheduled preventive maintenance service visits.

8. DUMBWAITERS (Class “B” Coverage)

Basic components: Controller components: resistors, timers, fuses, overloads, minor contacts, wiring, coils; brake: pads, lining, disks or shoes, magnet coils, brushes & commutators; functional components of car and corridor operating stations; hangers and tracks, door operating devices, door gibs, guide shoes, rollers, traveling cables, signal lamps (replacement during regular visits only), interlocks, door closers, buffers, overspeed governors, car and counterweight safeties, alarm bells, switches, and door protection devices.

Major components: Brake, hoist motor, hoist ropes, machine, machine & sheave bearings, motor generators, PC boards, sheave and sheave assemblies, solid state devices, and contactors.

Class “B” Examination, Oil and Grease Service

1. Refer to previous applicable descriptions of work and materials required.
2. Examine equipment herein described using skilled maintenance mechanics, with a minimum of three years of field experience, under contractor’s supervision.
3. Service shall include labor and all related expenses necessary for providing monthly examinations, oil and grease service of elevators including but not limited to cleaning and oiling machine, motor, signal devices, interlocks and controller, greasing or oiling guides, necessary minor adjustments at time of regular examinations and furnishing necessary lubricating oils and greases, rope preservative, and wiping cloths.
4. All Class “B” work is to be performed during regular working hours of regular working days of the elevator trade.

Modernization

1. Supplier shall offer a complete range of repairs and upgrade solutions ranging from any improvement, modification, renovation or additional equipment or features added or made to existing elevators, escalators, walkway, wheelchair lift, chair lift, platform lift and dumbwaiter equipment to
better the performance, safety, cosmetic appearance or to meet any new code (building or equipment) requirements, local jurisdiction requirements, insurance requirements or to repair any equipment that may need to be modified or replaced due to obsolescence, flood, fire, any damage done to equipment for any reason, part failure, misuse or age. Examples include, but are not limited to, new or updated controllers for all types of equipment, new or updated signal fixtures for all types of equipment, new hydraulic jack, machine or pump unit modifications or replacements, new or modifications to elevator cab interiors, new door edges, new valves, new ropes, new or modified door equipment, new or modified car door operators, new or modified hoistway doors or equipment, ADA upgrades, any code upgrades, and escalator or walkway steps or pallets, complete replacement (except for truss) and handrails.

2. Supplier shall examine the existing equipment, determine condition of any retained components; space conditions, power supply, mainline disconnect, and make any surveys necessary to repair and/or upgrade and modernize equipment.

3. Any retained components are to be examined, cleaned, and adjusted as necessary.

4. Supplier shall provide temporary screens between equipment before work starts and remove at completion of project.

5. City has the first right of refusal to retain any equipment components that are to be removed and modernized with new equipment. All removed components shall remain property of the City, until the City notifies the Supplier, in writing, of removed components that City would like to retain. All remaining equipment not to be retained by the City or reused by the Supplier shall be promptly removed from the building by the Supplier at no cost to the City, and become the property of the Supplier. The Supplier shall make every attempt to recycle removed equipment. The Supplier shall correct any damage to building surfaces and surrounding areas if damaged during the removal of this equipment at no cost to the City.

6. Supplier shall visit the building, examine the existing conditions, power supply, mainline disconnect, and include all work needed to ensure a fully code compliant repair, upgrade or modernization.

Work Sequence

1. Contractor shall coordinate with the building manager of each facility listed prior to performing any work specified in the contract. All work shall be done in sequence and at times which will cause the least amount of interruption of normal activities and will not endanger the normal security of the facility or the safety of personnel.

Emergency Call Back Services

1. The contractor shall maintain the following communication capability with the City for responding to emergency call back service requests:

   a) Provide 24-hours a day, seven days per week, emergency call back service which consists of responding promptly to service requests from the City's authorized representatives made by telephone or other means.
   
   b) Provide emergency service within two (2) hours of service request unless otherwise directed by the City's representative.
2. "Emergency call back" is defined as a request from the City to the contractor, to service a specific piece of equipment, to correct any problem and/or condition, which, in the City's opinion, needs attention immediately or before the contractor's next scheduled preventative maintenance visit.

3. Emergency call back service shall be limited to repairs or adjustments required to restore equipment to safe and reliable service in cases where a shut-down emergency develops between regular examinations.

4. Contractor will, at no additional charge to the City, provide emergency call back service during the regular working hours of the elevator trade on all equipment covered by Class "A" Complete Maintenance.

5. The City will pay for emergency call back services in accordance with the rates set forth in Attachment 1.

6. Any repeat call backs for the same elevator problem will not be paid for by the City.

Records

1. The Supplier will have an established record keeping system. The documentation system will include all reports of elevator service calls placed by the City and track the time and date of each occurrence, the response time and nature of the problem both reported and ultimately discovered and the steps taken to correct the problem. These records will also be kept on an individual unit basis.

2. Supplier will keep archived a maintenance history, used by the technician to record completed work. The maintenance history must indicate the last completion date for each procedure by unit. The history shall be maintained throughout the life of the contract so that procedures completed in years prior to the current year are properly documented.

3. City and any Participating Public Agency can access work order summaries through the KONE Online Portal. In addition, automatic email notifications can be provided upon request.

4. Supplier shall maintain in the elevator, escalator or walkway machine room all maintenance records in accordance with the requirements of ASME A17.1, 2004, Item 8.6.1.4.

5. At any other time, at the City's request, Supplier shall provide the City with additional copies of its standard Customer report of repairs, tests, and service calls for the units, listed per unit.

6. Plans and documents shall be updated with any changes made and shall remain in possession and ownership by the City. Documentation shall include all programming changes and modifications to protect the reliability of the documentation.

   a) The individual manufacturer's "Field Service Manuals" for elevator and escalator installation and maintenance are on site with the controller as required by Code.

   b) Contractor shall provide and keep current an approved chart, posted in the elevator mechanic's room, indicating the status of all servicing and maintenance work performed and shall indicate date work was performed.

7. In addition to phone service requests, Supplier shall provide an online service to allow City direct access to KONE Online from a personal computer. The Supplier shall provide instructions and
training on how to use the system. KONE offers KONE Care Center 24/7, KONE Online, KONE Mobile and Automatic e-mail notification to assist in placing and monitoring service calls to communicate with all customers. After a service call is placed or registered via KONE Online, Service Center Agents can provide the most up to date ETAs. Our KONE Mobile app provides a notification when technicians arrive, complete work and depart your site.

8. At a minimum, the Supplier’s online system will be able to provide the following:

   a) 12 month rolling history of callback data that will show dates, times, reported problem and resolution. Data will be “live” to show status of call (received, dispatched, onsite, done)
   b) Mean Time Between Callback data on a per property and per unit basis
   c) 6 month history of all visits to the property including those for maintenance, callbacks, testing, and repairs.
   d) Local sales representative and superintendent contact information.
   e) Generate e-mails to the City for callback notifications, summary of callbacks (either weekly, monthly, quarterly, or annually.
   f) Indicate if equipment has remote monitoring.
   g) Data shall be able to be downloaded into excel or pdf format,
   h) Prior to contract start, the Supplier shall provide the Internet web address, and instructions and training on how to use the system.

Contractor Responsibilities

1. Prepare binding project specification/cost estimate for each project requested by the City, at no cost to the City.
2. Provide labor and equipment within seven (7) days of notification to proceed, unless an alternate time is authorized by the project manager.
3. Supply all personnel, equipment, supplies, and services to complete the requested project.
4. Exercise best professional judgment in performing the contract services (and shall be liable for any loss incurred by the City resulting from failure to meet standards).
5. Perform this contract in compliance with all applicable present and future federal, state, and local laws and regulations.
6. Contractor shall supervise, inspect and direct the work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the Contract documents.
   o Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction.
   o Contractor shall be solely responsible for scheduling and coordinating the work of subcontractors, suppliers and other persons and organizations performing or furnishing any of the work under a direct or indirect contract with Contractor.
   o Contractor shall be responsible to see that the completed work complies accurately with the Contract documents.
At all times during the progress of the work, Contractor shall assign a competent resident superintendent of the work.

The superintendent will be Contractor’s representative at the Site and shall have authority to act on behalf of Contractor.

All communications given to or received from the superintendent shall be binding on Contractor.

If it is determined to be in the best interest of the work, Contractor shall replace the project manager, resident superintendent or any other employee of the Contractor, Subcontractors, Suppliers or other persons or organizations performing or furnishing any of the work on the project upon written request by the City.

7. All materials shall be of good quality as provided in the Contract documents.

All warranties and guarantees specifically called for by the Contract shall expressly run to the benefit of City.

If required by City, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

All materials shall be stored, applied, and used in accordance with instructions of the applicable supplier, except as otherwise provided in the Contract documents.

Site Inspections

1. The City reserves the right to make site inspections and/or take samples at any time on an unannounced basis for the purpose of verifying the accuracy of services, procedures, and/or documentation applicable to the contract.

2. The Contractor shall call for and schedule all required Inspections for Permitted work as required by Chapter 18 of the KCBRC and corresponding ASME Standards.

Authorization to Work

1. Work Orders

a) Contractor will receive work orders by telephone, electronic mail or facsimile from the City’s Representative to perform maintenance work.

b) If Contractor determines the maintenance work order will exceed $5,000, a written not-to-exceed proposal may be requested, with a proposed number of calendar days required to perform the work. Work on such maintenance Work Orders shall not begin until written authorization is given by the City’s Representative. Proposals shall include but not be limited to the following:

i. Include this Contract Number.

ii. Itemize all anticipated site expenses including all material and labor costs based on the applicable prevailing wage rates.

iii. Include proposed number of Calendar Days required to complete the ordered work.

c) Samples, product information, and manufacturer’s warranty information shall be submitted when requested by the City’s Representative.
d) Contractor's written proposal, if required, will serve as a maximum not-to-exceed cost amount and include the number of estimated work hours and total repair cost.

2. Emergency Work

a) Contractor will receive work Orders by telephone, electronic mail or facsimile from the City's Representative to perform emergency work. The Contractor will be given a Work Order number.

b) If, after being dispatched to perform emergency work, the Contractor determines that repairs totaling $5,000 or more are necessary, that fact shall be reported to the City's Representative. A written proposal may be required at the discretion of the City's Representative before the work is performed.

c) Contractor's written proposal, if required, will serve as a maximum not-to-exceed cost amount and include the number of estimated work hours and total repair cost.

3. Not-To-Exceed Proposals

a) Contractor shall submit a written not-to-exceed proposal as required and when requested by City's Representative.

4. Stop Work Orders

a) The City reserves the right to verbally order that all work cease on a project at any time.

b) The individuals authorized to issue verbal work stop orders are:

- City's representative
- City Risk Manager
- The City will be obligated to pay for supplies used and service performed up to the stop work order.

Job Site Administration

1. The contractor or a duly authorized project manager acting for the contractor shall continually be present at the site of the work while work is in progress for the duration of the project.

2. The Contractor's representative or service tech will contact the designated representative for the facility upon arrival and also before leaving the site. Before leaving the site, a debriefing of the work done, findings of the equipment and any additional work needed will be reported to the City representative. A written summary of these points will, also, be submitted. The Contractor representative will confirm if the equipment is in service or is out of service. If the equipment is left out of service, an explanation of why, what work needs to be done to make it operational again, and anticipated time frame to complete the work will be covered in the debriefing.
3. Contractor will meet with representatives from each Department individually on a quarterly basis, or as requested by the Department, to review status of service, concerns, upcoming repair schedule, recommendations for repairs/upgrades, etc.

Rental Equipment

1. Contractor shall obtain prior approval from the City’s Representative to rent equipment other than that required to be provided. Contractor will not be reimbursed for unauthorized rental equipment.
2. Should the need arise for special equipment, other than that required to be provided in the hourly rate, and special equipment must be rented, the reimbursement shall be at cost with no markup. If Contractor owns such equipment, reimbursement will be made to Contractor for use of the equipment at a rate determined by the average rental rates available in the area.

Use of Site

1. During execution of Work, all areas of all buildings shall remain occupied except those where work is actually being performed.
2. Contractor shall confine Contractor’s equipment, the storage of materials and equipment, and the operations of workers to the site and other areas identified in and permitted by the City.
3. Contractor shall not unreasonably encumber the site and the other areas with equipment or other materials or equipment.
4. Contractor shall cover or otherwise protect equipment which is not feasible for City to remove from areas during work.
5. The Contractor shall provide protective padding, tarpaulins, and other material as necessary to ensure existing floor, wall, and ceiling finishes not included in the work are not damaged.
6. Contractor shall assume full responsibility for any damage to the site or the other areas, or to the owner or occupant thereof, or of any adjacent land or areas, resulting from the performance of the work.
7. During the progress of the work, Contractor shall keep the site and the other areas free from accumulations of waste materials, rubbish and other debris resulting from the work.
8. At the completion of the work, Contractor shall remove all waste materials, rubbish and debris from Site and other areas as well as all tools, appliances, construction equipment and machinery and surplus materials.
9. Contractor shall leave the site clean and ready for utilization or occupancy by City at completion of the work.
10. Contractor shall restore to all property not designated for alteration by the Contract documents to its pre-work condition.

Labor Compensation

1. Hourly rate will be paid to the Contractor for each workman while on the job site only. US Communities participating agencies will not be expected to pay additional travel expenses (i.e. mileage, fuel, vehicle expense, etc.) outside of the standard hourly billing rates provided. For work
not covered under the Agreement, the travel time will be charged based on the hourly billing rate schedule—billed portal to portal for actual travel time per IUEC (International Union of Elevator Contractors).

2. For purpose of billing for labor used for work performed under this Contract, the Labor Compensation shall be the applicable hourly wage on the trade or craft that applies.

3. The hourly labor includes the following items and the City shall not be liable for or bill separately for same.
   - Contractor-owned usual and customary tools, machinery and equipment, including operating expenses, for the types of construction, maintenance and repair specified herein, including but not limited to:
   - Service trucks and all related expenses.
   - Normal expendables
   - General Conditions including Insurance and Bonds
   - Office expenses
   - Profit and other overhead

Invoices

1. Contractor shall invoice the City for each completed Work Order referencing Purchase Order Number.

2. Invoices must include but not be limited to the following information:
   - Work/Task Order Number if applicable.
   - Description of Work performed with exact location(s) including Facility Code Building Location if listed on the chart below.
   - Total hours worked by each trade and applicable hourly wage rate bid.
   - Invoices will include breakout of material expenses and labor.
   - Total of all itemized costs and when applicable, the lump sum not-to-exceed proposed costs.
   - Landfills receipts, if applicable. Reimbursement for landfill fees shall be at the Contractor’s cost plus 10%.

Airport Security Requirements

1. Contractor shall comply with all airport security requirements at those locations.

2. Contractor shall comply with Transportation Security Administration ("TSA") Background Check. Each employee of the Contractor engaged in furnishing the described services shall be subject to a criminal history records check as required by the TSA. The Contractor shall pay a $35.00 fee for each employee for fingerprinting and background processing and a $100.00 security deposit for each badge issued. The security deposit is returned when the badge is surrendered or at the completion of the contract. Additionally, each employee performing services on site shall attend required Security Identification Display Area ("SIDA") training and comply with all applicable security rules and regulations.

3. Restricted Areas/Security. Contractor will be responsible for complying with any and all applicable present and future rules, regulations, restrictions, ordinances, statutes, laws and/or orders of any
Contractor shall fully comply with all applicable provisions of the Transportation Security Administration ("TSA") Regulations, 49 CFR Part 1542 (and Part 1544 if Lessee is an Air Carrier), TSA Security Guidelines for General Aviation Airports, and Aviation Department Policy on Passenger Carrier Flights at Charles B. Wheeler Downtown Airport, or as it may be amended or superseded, City has adopted a Security Plan for the Airport approved by the TSA pursuant to Transportation Security Regulation ("TSR"), Part 1542. Contractor agrees to be bound by and follow the Security Plan. Any access to the Airport granted to Contractor shall not be used, enjoyed or extended to any person, entity or vehicle engaged in any activity or performing any act or furnishing any service for or on behalf of the Contractor that Contractor is not authorized to engage in or perform under this Contract unless expressly authorized in writing by the Director in accordance with TSR, Part 1542. In the event Contractor, its officers, employees or invitees cause or contribute to unauthorized persons or vehicles entering the air operations areas of the Airport, or otherwise violate the Security Plan or any laws, regulations, rules, etc. governing airport security, and in addition to any other remedies available hereunder, Contractor shall be liable to City for an amount equal to any civil penalty imposed on City by the TSA.

The City's preventative maintenance plan calls for a service technician to be assigned full time to the airport project site to perform preventative maintenance on the equipment. The service technician will be responsible for the maintenance, repair and testing of all the elevator and escalator equipment at the project.

Inspections, Tests and Reports

1. Contractor will perform all required tests, including an annual safety test for all elevators and escalators and the five (5) year full load test for the electric elevators, performed in the presence of a City Codes inspector and State inspectors. Contractor will perform a pressure relief test and a yearly leakage test on hydraulic elevators as required by the A.S.M.E. A-17.1 code. Tests shall be performed as required by the American National Standards Institute (ANSI), as referenced herein.

2. Testing of all safety devices and governors shall be completed as required by the American National Standards Institute (ANSI), 2010 edition, Section 17.1 and Section 17.3, as adopted under the code of general ordinances for the City of Kansas City, Missouri, and at regular intervals not exceeding one (1) year. The contractor shall promptly correct any defects that may be found in the testing and examining of safety devices.

3. The specific dates and times of visits shall be scheduled to the mutual satisfaction of the Contractor and the Public Agency's maintenance providers. Unless otherwise requested, all testing should be performed during normal business hours.

4. After tests have been performed, all safety devices shall be checked and adjusted as required to meet manufacturer's recommendations. Equipment shall not be placed in service until all tests, checks and adjustments are complete and equipment is in proper working condition. The Supplier shall not be held responsible for any damage to the building and equipment caused by the test, unless such
damage is a result of negligence. Failure to follow correct procedures to prevent damage and failure to perform pretest examinations shall be considered negligence by the Supplier.

5. Supplier shall perform annual test of Firefighter's Service features on each elevator with such features as outlined in ANSI A17.1 Code, and shall provide monthly tests of this Firefighters service when local code requirements necessitate such testing to be performed by elevator service technicians.

EXCLUSIONS

The following are excluded from the scope of services:

A. GENERAL

1. KONE is not obligated to: removal of water or excessive debris from the pit; make replacements or repairs necessitated by fluctuations in the building power systems, adverse machine room or environmental conditions (including without limitation temperature variations below 50 degrees or above 90 degrees Fahrenheit) or humidity greater than 95% relative humidity, prior water exposure, rust, fire, explosion, acts of God, misuse, vandalism, theft, acts or mandates of government, labor disputes, strikes, lockouts, or tampering with the equipment by any person other than a KONE representative, negligence or acts or omissions of the Purchaser or any third party, or any other cause beyond KONE's control.

2. KONE agrees to maintain the existing performance as designed and installed. KONE is not required under this Agreement to make changes in operation and/or control, subsequent to the date of this Agreement.

3. Notwithstanding anything contained to the contrary within this Agreement, KONE's work shall not include any abatement or disturbance of asbestos containing material (ACM), presumed asbestos containing materials (PACM), or other hazardous materials (i.e. lead, PCBs) (collectively "HazMat"). Any work in the affected area where reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from the HazMat is excluded from KONE's scope of work without an applicable change order to reflect the additional costs and time. In accordance with OSHA requirements, Purchaser shall inform KONE and its employees who will perform work activities in areas which contain HazMat of the presence and location of HazMat in such areas which may be contacted during work before entering the area. Other than as expressly disclosed in writing, Purchaser warrants that KONE's work area at all times meets applicable OSHA permissible exposure limits (PELs). KONE shall have the right to discontinue its work in any location where suspected HazMat is encountered or disturbed. Any HazMat removal or abatement, or delays caused by such, required in order for KONE to perform its work shall be Purchaser's sole responsibility and expense. After any removal or abatement, Purchaser shall provide documentation that the HazMat has been abated from the KONE work area and air clearance reports shall be made available upon request prior to the start of KONE's work.

4. Nothing contained within this agreement shall be construed or interpreted as requiring KONE to assume the status of an owner, operator, generator, transporter, treater or disposal facility as those
terms appear within RCRA or any Federal or State statute or regulation governing the generation, transportation, treatment, storage and disposal of pollutants. Purchaser shall be responsible to execute all waste manifests necessary to transport hazardous materials for disposal.

B. ELEVATOR & Dumbwaiters

1. Refinishing, repairing, replacing, or cleaning of the car enclosure; gates or door panels; door pull straps; hoistway enclosure; rail alignment; hoistway doors; door frames; sills; hoistway gates; flooring; power feeders, switches, and their wiring and fusing; car light diffusers; ceiling assemblies and attachments; smoke or heat sensors; fans; fireman's phone devices; intercoms; phone lines; music systems; media displays; card-readers or other security systems; computer monitoring systems; light tubes and bulbs; pit pumps; emergency power generators; hydraulic cylinder; unexposed piping; or disposal or clean-up of waste oil or contamination caused by leaks in the hydraulic cylinder or unexposed piping. KONE is not obligated to perform or keep records of firefighter's service testing, unless specifically included in this Agreement.

C. ESCALATOR & POWERWALK

1. Refinishing, repairing, replacing or cleaning balustrades, pits, pans; sideplate devices; decks; skirt panels; anti-slide devices; brushes; guards and damage or deterioration to skirt deflector brushes. KONE is not obligated to perform an escalator cleandown, or do any work to bring the equipment in compliance with the escalator step/skirt performance index or loaded gap values required by code. Purchaser will use the escalators for the sole purpose of transporting passengers.

OBsolescence

Component may become obsolete during the term of this Agreement. Obsolete components are not covered under this Agreement. KONE will provide Purchaser with a separate quotation for the price to replace obsolete components. Equipment modifications necessary to accommodate replacement of obsolete components are at the Purchaser's expense.

Components include without limitation any part, component, assembly, product, or firmware or software module. A component is obsolete when it can no longer be economically produced due to the cessation of consistent sources for materials, a loss or termination of a manufacturing process occurs, product reliability analysis shows that it is not economically feasible to continue to produce the component, escalation of component costs beyond acceptable industry expectations drive alternative equipment upgrades, the support of product safety programs or conformance to codes or standards mandates that use of a component be discontinued in its entirety, the OEM designates the component as obsolete, such component has been installed 20 or more years, or any reputable third party parts provider no longer supports or has available in stock in the same form, fit and equivalent operation/function. No exception to the above will be made for a component designated as obsolete because it can be custom made or acquired at any price. KONE will not be required to furnish reconditioned or used components. After the component that replaces the obsolete component is installed, that component is covered under this Agreement unless it becomes obsolete.
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY DECLARATIONS

POLICY NUMBER
MWZY 3119113

POLICY HOLDER SERVICE OFFICE
Old Republic Risk Management, Inc.
445 South Moorland Road, Suite 300
Brookfield, WI 53005
(877) 797-3400

PRODUCER #551
Aon Risk Services Central, Inc.
200 E. Randolph St.
Chicago, IL 60601

RENEWAL OF NUMBER

NAMED INSURED AND MAILING ADDRESS
SAMPLE OWNER
123 ANY STREET
ANY CITY, ST 11111

POLICY PERIOD: FROM 1/1/2018 to 12/31/2018 at 12:01 A.M. Standard Time at your mailing address shown above.

Location of Covered Operations: SAMPLE PROPERTY NAME
ANY STREET
ANY CITY, ST

Designated Contractor: KONE INC.
Mailing Address: ONE KONE COURT, MOLINE, IL 61265

IN RETURN FOR THE PAYMENT OF THE PREMIUM AND SUBJECT TO ALL THE TERMS OF THE POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE

<table>
<thead>
<tr>
<th>Each Occurrence Limit</th>
<th>$1,000,000.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aggregate Limit</td>
<td>$1,000,000.00</td>
</tr>
</tbody>
</table>

DESCRIPTION OF BUSINESS

Form of Business:
- Individual
- Joint Venture
- Partnership
- Limited Liability Company
- Corporation

Business Description: OWNER

CLASSIFICATION AND PREMIUM-SUBJECT TO AUDIT

<table>
<thead>
<tr>
<th>Classification</th>
<th>Code No.</th>
<th>Premium Base</th>
<th>Rate Per 1000 of Cost</th>
<th>Advance Premium</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>$1,000.00</td>
<td>$</td>
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</tr>
</tbody>
</table>

Audit Period (if applicable): State Tax/Other (if applicable): $ 

Total Advance Premium $ 

Premium shown is payable $ at inception

FORMS AND ENDORSEMENTS

Forms and Endorsements applying to this coverage part and made part of this policy at time of issue:
See Attached for List of Forms/Endorsements

Countersigned: 12/2018 By
Authorized Representative
OLD REPUBLIC INSURANCE COMPANY

<table>
<thead>
<tr>
<th>Form Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CG DEC GN 0001 0116</td>
<td>OWNERS AND CONTRACTORS PROTECTIVE LIABILITY DECLARATIONS</td>
</tr>
<tr>
<td>ORRM 2008</td>
<td>Forms Index</td>
</tr>
<tr>
<td>GL 551 030 0118</td>
<td>LIMITATION OF COVERAGE TO SPECIFIED POLICY PERIOD</td>
</tr>
<tr>
<td>CG EN GN 0196 01 12</td>
<td>CHANGES - LIMIT(S) OF INSURANCE/LIABILITY AND SUPPLEMENTARY</td>
</tr>
<tr>
<td>IL 00 03 09 08</td>
<td>CALCULATION OF PREMIUM</td>
</tr>
<tr>
<td>CL 177 12 07</td>
<td>QUICK REFERENCE OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART</td>
</tr>
<tr>
<td>CG 00 09 04 13</td>
<td>OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM</td>
</tr>
<tr>
<td>GL 551 010a 0109</td>
<td>ISSUANCE OF CERTIFICATES OF INSURANCE</td>
</tr>
<tr>
<td>GL 551 009 0109</td>
<td>Blanket Additional Insured</td>
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<tr>
<td>PIL 008 12 03</td>
<td>Economic and Trade Sanctions Condition</td>
</tr>
<tr>
<td>CG 28 04 10 03</td>
<td>Earlier Notice of Cancellation Provided By Us</td>
</tr>
<tr>
<td>CG 28 05 10 01</td>
<td>Personal Injury Liability</td>
</tr>
<tr>
<td>PGL 023 04 13</td>
<td>Lead Exclusion Endorsement</td>
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<tr>
<td>CG 33 03 03 05</td>
<td>Silica or Silica-Related Dust Exclusion</td>
</tr>
<tr>
<td>PGL 004 11 03</td>
<td>Asbestos Exclusion Endorsement</td>
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<tr>
<td>CG 29 51 12 07</td>
<td>Employment-Related Practices Exclusion</td>
</tr>
<tr>
<td>CG 31 31 12 04</td>
<td>Fungi Or Bacteria Exclusion</td>
</tr>
<tr>
<td>IL 00 21 09 08</td>
<td>Nuclear Energy Liability Exclusion Endorsement</td>
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<tr>
<td>CG 21 73 01 15</td>
<td>Exclusion of Certified Acts of Terrorism</td>
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</tbody>
</table>

ORRM 2008
### FORMS INDEX

**FORMS MADE A PART OF THIS POLICY AT TIME OF ISSUANCE:**

<table>
<thead>
<tr>
<th>Form Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>PGL 060 12 04</td>
<td>Total Pollution Exclusion with a Building Heating, Cooling and Dehumidifying Equipment Exception and a Hostile Fire Exception</td>
</tr>
<tr>
<td>CG 28 05 07 05</td>
<td>Illinois Changes - Cancellation And Nonrenewal</td>
</tr>
<tr>
<td>IL 01 47 09 11</td>
<td>Illinois Changes - Civil Union</td>
</tr>
<tr>
<td>IL 01 82 10 13</td>
<td>Illinois Changes - Defense Costs</td>
</tr>
<tr>
<td>Named Insured:</td>
<td>SAMPLE OWNER</td>
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<td>---------------------</td>
<td>--------------------</td>
</tr>
<tr>
<td>Policy Number:</td>
<td>MWZY 3119113</td>
</tr>
<tr>
<td>Policy Period:</td>
<td>1/1/2018 TO 12/31/2018</td>
</tr>
</tbody>
</table>

**SCHEDULE OF NAMED INSUREDS**

SAMPLE ARCHITECT
SAMPLE GENERAL CONTRACTOR
IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITATION OF COVERAGE TO SPECIFIED POLICY PERIOD

This endorsement modifies insurance provided under the following:

OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART

This master policy covers certificates issued for contracts requiring an Owners and Contractors Protection Liability policy with an effective date of January 1, 2018, or after.
OLD REPUBLIC INSURANCE COMPANY

CHANGES - LIMIT(S) OF INSURANCE/LIABILITY AND
SUPPLEMENTARY PAYMENTS/ALLOCATED LOSS
ADJUSTMENT EXPENSES

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

This endorsement modifies all insurance provided under the policy.

In consideration of the premium charged, the following provisions apply to the insurance provided by this policy and supercede any provision(s) to the contrary.

A. Amounts payable under Supplementary Payments, which include but are not limited to allocated loss adjustment expenses will reduce the applicable Coverage(s) Limits of Insurance/Limits of Liability.

B. The Limits of Insurance/Limits of Liability are changed as follows:

Supplementary Payments and/or allocated loss adjustment expenses reduce the applicable Coverage(s) Limits of Insurance/Limits of Liability.

C. If Supplementary Payments and/or allocated loss adjustment expenses are not described in the policy, Supplementary Payments and/or allocated loss adjustment expenses are costs associated with the investigation or settlement of any claim or "suit" against an insured and include but are not limited to defense costs, attorneys' fees, premiums for appeal and bail bonds, prejudgment and post judgment interest, expenses incurred by the insurer, first aid expenses, and/or reasonable travel expenses incurred by the insured at our request when assisting in the investigation or settlement of any claim or "suit".

D. Our right and duty to defend end with the exhaustion of the Limits of Insurance/Limits of Liability whether through payment of Supplementary Payments and/or allocated loss adjustment expenses and/or damages and/or medical expenses.
QUICK REFERENCE
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART

READ YOUR POLICY CAREFULLY
The Owners and Contractors Protective Liability Coverage Part in your policy consists of Declarations, a Coverage Form (CG 00 09) and Endorsements, if applicable. Following is a Quick Reference indexing of the principal provisions contained in each of the components making up the Coverage Part, listed in sequential order, except for the provisions in the Declarations which may not be in the sequence shown.

DECLARATIONS
- Named Insured and Mailing Address
- Policy Period
- Designation of Contractor
- Location of Covered Operations
- Limits of Insurance
- Description of Business
- Forms and Endorsements applying to the Coverage Part at time of issue

COVERAGE FORM
SECTION I—COVERAGES—BODILY INJURY AND PROPERTY DAMAGE LIABILITY
- Insuring Agreement
- Exclusions
- Supplementary Payments

SECTION II—WHO IS AN INSURED

SECTION III—LIMITS OF INSURANCE

SECTION IV—CONDITIONS
- Bankruptcy
- Cancellation
- Changes
- Duties In The Event Of Occurrence, Claim Or Loss
- Examination Of Your Books And Records
- Inspections And Surveys
- Legal Action Against Us
- Other Insurance
- Premiums
- Premium Audit
- Separation Of Insureds
- Transfer Of Rights Of Recovery Against Others To Us
- When We Do Not Renew

SECTION V—DEFINITIONS

ENDORSEMENTS (If Any)
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM – COVERAGE FOR OPERATIONS OF DESIGNATED CONTRACTOR

Various provisions of this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

SECTION I – COVERAGES
BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement
   a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:
      (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
      (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

b. This insurance applies to "bodily injury" and "property damage" only if:
   (1) The "bodily injury" or "property damage" is caused by an "occurrence" and arises out of:
      a) Operations performed for you by the "contractor" at the location specified in the Declarations; or
      b) Your acts or omissions in connection with the general supervision of such operations;
   (2) The "bodily injury" or "property damage" occurs during the policy period; and
   (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an occurrence or claim:

(1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
(2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
(3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

(1) That the insured would have in the absence of the contract or agreement; or
(2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:

(a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and

(b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Work Completed Or Put To Intended Use

"Bodily injury" or "property damage" which occurs after the earlier of the following times:

(1) When all "work" on the project (other than service, maintenance or repairs) to be performed for you by the "contractor" at the site of the covered operations has been completed; or
(2) When that portion of the "contractor's" "work", out of which the injury or damage arises, has been put to its intended use by any person or organization, other than another contractor or subcontractor working directly or indirectly for the "contractor" as part of the same project.

d. Acts Or Omissions By You And Your Employees

"Bodily injury" or "property damage" arising out of, or your "employees", acts or omissions other than general supervision of "work" performed for you by the "contractor".

e. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

f. Employer's Liability

"Bodily injury" to:

(1) An "employee" of the insured arising out of and in the course of:
   (a) Employment by the insured; or
   (b) Performing duties related to the conduct of the insured's business; or
(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".
g. Damage To Property

"Property damage" to:

(1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Property loaned to you;

(3) Personal property in the care, custody or control of the insured;

(4) "Work" performed for you by the "contractor".

h. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

i. Mobile Equipment

"Bodily injury" or "property damage" arising out of the use of "mobile equipment", in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

j. Pollution

(1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible; or

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

(i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
(ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by or on behalf of any insured; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants";

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

3. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

(1) A defect, deficiency, inadequacy or dangerous condition in "work" performed for you by the "contractor"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "work" performed for you by the "contractor".

i. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

However, this exclusion does not apply to liability for damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

SUPPLEMENTARY PAYMENTS

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

a. All expenses we incur.

b. Up to $250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which this insurance applies. We do not have to furnish these bonds.

c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to $250 a day because of time off from work.

e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.

f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
h. Expenses incurred by the insured for first aid administered to others at the time of an accident for "bodily injury" to which this insurance applies.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";

b. This insurance applies to such liability assumed by the insured;

c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";

d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;

e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

f. The indemnitee:

(1) Agrees in writing to:

(a) Cooperate with us in the investigation, settlement or defense of the "suit";

(b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";

(c) Notify any other insurer whose coverage is available to the indemnitee; and

(d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

(a) Obtain records and other information related to the "suit"; and

(b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I - Coverages - Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:

a. An individual, you and your spouse are insureds.

b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to their duties as partners or members of a joint venture.

c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to their duties as members of a limited liability company. Your managers are insureds, but only with respect to their duties as your managers.

d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

2. Each of the following is also an insured:

a. Any person (other than your "employee") or any organization while acting as your real estate manager.
b. Any person or organization having proper
temporary custody of your property if you die,
but only:
   (1) With respect to liability arising out of the
maintenance or use of that property; and
   (2) Until your legal representative has been
appointed.
c. Your legal representative if you die, but only
with respect to duties as such. That
representative will have all your rights and
duties under this Coverage Part.

No person or organization is an insured with respect
to the conduct of any current or past partnership, joint
venture or limited liability company that is not shown
as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE
1. The Limits of Insurance shown in the Declarations
and the rules below fix the most we will pay
regardless of the number of:
   a. Insureds;
   b. Claims made or "suits” brought; or
   c. Persons or organizations making claims or
bringing "suits”.
2. The Aggregate Limit is the most we will pay for the
sum of damages because of all "bodily injury” and
"property damage”.
3. Subject to Paragraph 2. above, the Each
Occurrence Limit is the most we will pay for the
sum of damages because of all "bodily injury” and
"property damage” arising out of any one
"occurrence”.

If you designate more than one project in the
Declarations, the Aggregate Limit shall apply
separately to each project.

The Limits of Insurance of this Coverage Part apply
separately to each consecutive annual period and to
any remaining period of less than 12 months, starting
with the beginning of the policy period shown in the
Declarations, unless the policy period is extended
after issuance for an additional period of less than 12
months. In that case, the additional period will be
deemed part of the last preceding period for purposes
of determining the Limits of Insurance.

SECTION IV – CONDITIONS
1. Bankruptcy

Bankruptcy or insolvency of the insured or of the
insured's estate will not relieve us of our
obligations under this Coverage Part.

2. Cancellation
   a. The first Named Insured shown in the
Declarations may cancel this policy by mailing
or delivering to us advance written notice of
cancellation.
   b. We may cancel this policy by mailing or
delivering to the first Named Insured and the
"contractor” written notice of cancellation at least:
      (1) 10 days before the effective date of
cancellation if we cancel for nonpayment of
premium; or
      (2) 30 days before the effective date of
cancellation if we cancel for any other
reason.
   c. We will mail or deliver our notices to the first
Named Insured's and the "contractor's” last
mailing address known to us.
   d. Notice of cancellation will state the effective
date of cancellation. The policy period will end
on that date.
   e. If this policy is cancelled, we will send the
"contractor” any premium refund due. If we
cancel, the refund will be pro rata. If the first
Named Insured cancels, the refund may be
less than pro rata. The cancellation will be
effective even if we have not made or offered a
refund.
   f. If notice is mailed, proof of mailing will be
sufficient proof of notice.

3. Changes

This policy contains all the agreements between
you, the "contractor” and us concerning the
insurance afforded. The first Named Insured
shown in the Declarations and the "contractor” are
authorized to make changes in the terms of this
policy with our consent. This policy's terms can be
amended or waived only by endorsement issued
by us and made a part of this policy.

4. Duties In The Event Of Occurrence, Claim Or
   Suit
   a. You must see to it that we are notified as soon
as practicable of an "occurrence” which may
result in a claim. To the extent possible, notice
should include:
      (1) How, when and where the "occurrence”
took place;
      (2) The names and addresses of any injured
persons and witnesses; and
5. Examination Of Your Books And Records

We may examine and audit your books and records as follows:

(1) Immediately record the specifics of the claim or "suit" and the date received; and

(2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summons or legal papers received in connection with the claim or "suit";

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

6. Inspections And Surveys

a. We have the right to:

(1) Make inspections and surveys at any time;

(2) Give you reports on the conditions we find; and

(3) Recommend changes.

b. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

(1) Are safe or healthful; or

(2) Comply with laws, regulations, codes or standards.

c. Paragraphs a. and b. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

d. Paragraph b. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

7. Legal Action Against Us

No person or organization has a right under this Coverage Part:

a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

8. Other insurance

The insurance afforded by this Coverage Part is primary insurance and we will not seek contribution from any other insurance available to you unless the other insurance is provided by a contractor other than the designated "contractor" for the same operation and job location designated in the Declarations. Then we will share with that other insurance by the method described below.

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

9. Premiums

The "contractor":

a. Is responsible for the payment of all premiums; and

b. Shall give us at least thirty (30) days written notice of any change in his employment status.
b. Will be the payee for any return premiums we pay.

10. Premium Audit
   a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
   b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the "contractor". The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the "contractor".
   c. The "contractor" must keep records of the information we need for premium computation, and send us copies at such times as we may request.

11. Separation Of Insureds
   Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:
   a. As if each Named Insured were the only Named Insured; and
   b. Separately to each insured against whom claim is made or "suit" is brought.

12. Transfer Of Rights Of Recovery Against Others To Us
   If the insured has rights to recover all or part of any payment we have made under this Coverage Part those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

13. When We Do Not Renew
   If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date. If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS
1. "Auto" means:
   a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
   b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

   However, "auto" does not include "mobile equipment".

   2. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

   3. "Contractor" means the contractor designated in the Declarations.

   4. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

   5. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.

   6. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

   7. "Impaired property" means tangible property, other than work performed for you, that cannot be used or is less useful because:
      a. It incorporates work performed for you that is known or thought to be defective, deficient, inadequate or dangerous; or
      b. You have failed to fulfill the terms of a contract or agreement;

      if such property can be restored to use by the repair, replacement, adjustment or removal of the work performed for you or your fulfilling the terms of the contract or agreement.

   8. "Insured contract" means:
      a. A lease of premises;
      b. A sidetrack agreement;
      c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
      d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality; or
      e. An elevator maintenance agreement.

   9. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker"
10. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
   a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
   b. Vehicles maintained for use solely on or next to premises you own or rent;
   c. Vehicles that travel on crawler treads;
   d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
      (1) Power cranes, shovels, loaders, diggers or drills; or
      (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
   e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
      (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
      (2) Cherry pickers and similar devices used to raise or lower workers;
   f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

(1) Equipment designed primarily for:
   (a) Snow removal;
   (b) Road maintenance, but not construction or resurfacing; or
   (c) Street cleaning;
(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

11. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

12. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

13. "Property damage" means:
   a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
   b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from, computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

14. "Suit" means a civil proceeding, brought in the United States of America (including its territories and possessions), Puerto Rico or Canada, in which damages because of "bodily injury" or "property damage" to which this insurance applies are alleged. "Suit" includes:
   a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
   b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

15. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

16. "Work" includes materials, parts or equipment furnished in connection with the operations.
ECONOMIC AND TRADE SANCTIONS CONDITION

The following condition is added:

Economic And Trade Sanctions Condition

In accordance with the laws and regulations of the United States concerning economic and trade embargoes, this Indemnity, Insurance, Coverage, Coverage Part or Policy is void ab initio (void from its inception) with respect to any term or condition of this Indemnity, Insurance, Coverage, Coverage Part or Policy that violates any laws or regulations of the United States concerning economic and trade embargoes including, but not limited to the following:

1. Any Insured (Assured), or any person or entity claiming the benefits of an Insured, who is or becomes a Specially Designated National or Blocked Person or who is otherwise subject to United States economic or trade sanctions;

2. Any loss, claim or "suit" that is brought in a Sanctioned Country or by a Sanctioned Country Government, where any action in connection with such claim or "suit" is prohibited by United States economic or trade sanctions;

3. Any loss, claim or "suit" that is brought by any Specially Designated National or Blocked Person or any person or entity who is otherwise subject to United States economic or trade sanctions;

4. Property that is located in a Sanctioned Country or that is owned by, rented to or in the care, custody or control of a Sanctioned Country Government, where any activities related to such property are prohibited by United States economic or trade sanctions; or

5. Property that is owned by, rented to or in the care, custody or control of a Specially Designated National or Blocked Person, or any person or entity who is otherwise subject to United States economic or trade sanctions.

As used in this Endorsement, a Specially Designated National or Blocked Person is any person or entity that is on the list of Specially Designated Nationals and Blocked Persons issued by the United States Treasury Department's Office of Foreign Asset Control (O.F.A.C.) as it may be from time to time amended.

As used in this Endorsement, a Sanctioned Country is any country that is the subject of trade or economic embargoes imposed by the laws or regulations of the United States of America.
COMMERCIAL GENERAL LIABILITY
CG 29 51 12 07

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYMENT-RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART

The following exclusion is added to Paragraph 2., Exclusions of Coverages — Bodily Injury And Property Damage Liability (Section 1 — Coverages):

This insurance does not apply to:

"Bodily injury" to:

(1) A person arising out of any:
   (a) Refusal to employ that person;
   (b) Termination of that person’s employment; or
   (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, humiliation, discrimination or malicious prosecution directed at that person; or

(2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

(1) Whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before employment, during employment or after employment of that person;

(2) Whether the insured may be liable as an employer or in any other capacity; and

(3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.
IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ASBESTOS EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART

The following Asbestos Exclusion is added under paragraph 2. Exclusions of SECTION I - COVERAGES, BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

1. Asbestos
   a. This insurance does not apply to "bodily injury" or "property damage" arising out of:
      (1) Inhaling, ingesting or prolonged physical exposure to asbestos or goods or products containing asbestos;
      (2) The use of asbestos in constructing or manufacturing any goods, products or structures;
      (3) The removal of asbestos from any goods, products or structures; or
      (4) The manufacture, transportation, storage or disposal of asbestos or goods or products containing asbestos.
   b. This insurance does not apply to any:
      (1) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, remediate, neutralize, or in any way respond to or assess the extent or the effects of asbestos; or
      (2) Payment for the investigation or defense of any loss, injury or damage or any cost, fine or penalty or for any expense, claim or suit related to any of the above.
IL 10 (12/06) OLD REPUBLIC INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LEAD EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART

The following Exclusion is added to SECTION I - COVERAGES, BODILY INJURY AND PROPERTY DAMAGE LIABILITY, paragraph 2. Exclusions:

Lead

(1) This insurance does not apply to "bodily injury" or "property damage" arising out of:

(a) Inhaling, ingesting or prolonged physical exposure to lead in all forms, including but not limited to solid, liquid vapor or fumes or goods or products containing lead;

(b) The use of lead in the manufacturing any goods or products;

(c) The removal of lead from any goods or products;

(d) The manufacture, transportation, storage or disposal of lead or goods or products containing lead.

This insurance does not apply to any:

(1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, remediate, or in any way respond to, or assess the extent or the effects of lead; or

(2) Payment for the investigation or defense of any loss, injury or damage or any cost, fine or penalty or for any expense, claim or suit related to any of the above.
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SILICA OR SILICA-RELATED DUST EXCLUSION

This endorsement modifies insurance provided under the following:

OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2., Exclusions of Section I - Coverages Bodily Injury And Property Damage Liability:

2. Exclusions

This insurance does not apply to:

SILICA OR SILICA-RELATED DUST

a. "Bodily injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, or ingestion of, "silica" or "silica-related dust".

b. "Property damage" arising, in whole or in part, out of the actual, alleged, threatened or suspected contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust"

c. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any insured or by any other person or entity.

B. The following definitions are added to the Definitions Section:

1. "Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.

2. "Silica-related dust" means a mixture or combination of silica and other dust or particles.
THIS FORM IS NOT APPLICABLE IN: AK, LA, NY, WA

COMMERCIAL GENERAL LIABILITY
CG 31 31 12 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FUNGI OR BACTERIA EXCLUSION

This endorsement modifies insurance provided under the following:

OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2.

Exclusions of Section I - Coverages - Bodily Injury And Property Damage Liability:

2. Exclusions
   This insurance does not apply to:

   Fungi Or Bacteria
   a. "Bodily injury" or "property damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.

   b. Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

   This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

B. The following definition is added to the Definitions Section:

   "Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.
NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
(Broad Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
MEDICAL PROFESSIONAL LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

1. The insurance does not apply:

A. Under any Liability Coverage, to "bodily injury" or "property damage":

(1) With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States or any agency thereof, under any agreement entered into by the United States or any agency thereof, with any person or organization.

B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:

(1) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;

(2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or

(3) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility"; but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "special nuclear material" or "by-product material".
"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

(a) Any "nuclear reactor";

(b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";

(c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTIFIED ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

A. The following exclusion is added:

This insurance does not apply to:

TERRORISM

"Any injury or damage" arising, directly or indirectly, out of a "certified act of terrorism".

B. The following definitions are added:

1. For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Coverage Part to which this endorsement is applicable, and includes but is not limited to "bodily injury", "property damage", "personal and advertising injury", "injury" or "environmental damage" as may be defined in any applicable Coverage Part.

2. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

   a. The act resulted in insured losses in excess of $5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and

   b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

C. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under this Coverage Part.

CG 2173 01 15 © Insurance Services Office, Inc., 2014

MWZ3 1120 13 Named Insureds Reported Per Monthly Bordereau 05/01/2013 - 09/09/2014
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ILLINOIS CHANGES – CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

OWNERS AND CONTRACTORS PROTECTIVE COVERAGE PART

A. Cancellation (Section IV 2.) is replaced by the following:

CANCELLATION

1. The first Named Insured shown in the Declarations may cancel this policy by mailing to us advance written notice of cancellation.

2. We may cancel this policy by mailing you and the "contractor" written notice stating the reason for cancellation. If we cancel:

   a. For nonpayment of premium, we will mail the notice at least 10 days prior to the effective date of cancellation.

   b. For a reason other than nonpayment of premium, we will mail the notice at least:

      (1) 30 days prior to the effective date of cancellation if the policy has been in effect for 60 days or less.

      (2) 60 days prior to the effective date of cancellation if the policy has been in effect for more than 60 days.

3. If this policy has been in effect for more than 60 days, we may cancel only for one or more of the following reasons:

   a. Nonpayment of premium;

   b. The policy was obtained through a material misrepresentation;

   c. Any insured has violated any of the terms and conditions of the policy;

   d. The risk originally accepted has measurably increased;

   e. Certification to the Director of Insurance of the loss of reinsurance by the insurer that provided coverage to us for all or a substantial part of the underlying risk insured; or

   f. A determination by the Director of Insurance that the continuation of the policy could place us in violation of the insurance laws of this State.

4. We will mail our notices to you, the "contractor" and the agent or broker, at the respective addresses last known to us.

5. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.

6. If this policy is cancelled, we will send the "contractor" any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured or the "contractor" cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

7. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. The following is added and supersedes any provision to the contrary:

NONRENEWAL

If we decide not to renew or continue this policy, we will mail you and your agent or broker, and the "contractor", written notice, stating the reason for nonrenewal, at least 60 days before the end of the policy period. If we offer to renew or continue and you do not accept, this policy will terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due shall mean that you have not accepted our offer.

If we fail to mail proper written notice of nonrenewal and you obtain other insurance, this policy will end on the effective date of that insurance.

C. Mailing Of Notices

We will mail cancellation and nonrenewal notices to the last addresses known to us. Proof of mailing will be sufficient proof of notice.
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ILLINOIS CHANGES – CIVIL UNION

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL LIABILITY UMBRELLA COVERAGE PART
FARM COVERAGE PART
FARM UMBRELLA LIABILITY POLICY
LIQUOR LIABILITY COVERAGE PART
MEDICAL PROFESSIONAL LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCT WITHDRAWAL COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

A. The term "spouse" is replaced by the following:

Spouse or party to a civil union recognized under Illinois law.

B. Under the Commercial Auto Coverage Part, the term "family member" is replaced by the following:

"Family member" means a person related to the:
1. Individual Named Insured by blood, adoption, marriage or civil union recognized under Illinois law, who is a resident of such Named Insured's household, including a ward or foster child; or
2. Individual named in the Schedule by blood, adoption, marriage or civil union recognized under Illinois law, who is a resident of the individual's household, including a ward or foster child, if the Drive Other Car Coverage - Broadened Coverage For Named Individual Endorsement is attached.

C. With respect to coverage for the ownership, maintenance, or use of "covered autos" provided under the Commercial Liability Umbrella Coverage Part, the term "family member" is replaced by the following:

"Family member" means a person related to you by blood, adoption, marriage or civil union recognized under Illinois law, who is a resident of your household, including a ward or foster child.
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ILLINOIS CHANGES – DEFENSE COSTS

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL LIABILITY UMBRELLA COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART – LEGAL LIABILITY COVERAGE FORM
COMMERCIAL PROPERTY COVERAGE PART – MORTGAGEHOLDERS ERRORS AND OMISSIONS
COVERAGE FORM
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART
FARM COVERAGE PART
FARM UMBRELLA LIABILITY POLICY
LIQUOR LIABILITY COVERAGE PART
MEDICAL PROFESSIONAL LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCT WITHDRAWAL COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK COVERAGE PART

A. The provisions of Paragraph B. are added to all Insuring Agreements that set forth a duty to defend under:


2. Section II under the Auto Dealers, Business Auto and Motor Carrier Coverage Forms;

3. Section III under the Auto Dealers and Motor Carrier Coverage Forms;

4. Section A. Coverage under the Legal Liability Coverage Form; and

5. Coverage C – Mortgageholder’s Liability under the Mortgageholders Errors And Omissions Coverage Form.

Paragraph B. also applies to any other provision in the policy that sets forth a duty to defend.

B. If we initially defend an insured (“insured”) or pay for an insured’s (“insured’s”) defense but later determine that the claim(s) is (are) not covered under this insurance, we will have the right to reimbursement for the defense costs we have incurred.

The right to reimbursement for the defense costs under this provision will only apply to defense costs we have incurred after we notify you in writing that there may not be coverage, and that we are reserving our rights to terminate the defense and seek reimbursement for defense costs.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL POLLUTION EXCLUSION WITH A BUILDING HEATING, COOLING AND DEHUMIDIFYING EQUIPMENT EXCEPTION AND A HOSTILE FIRE EXCEPTION

This endorsement modifies insurance provided under the following:

OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART

SECTION I - COVERAGE

BODILY INJURY AND PROPERTY DAMAGE LIABILITY

2. Exclusions - Exclusion j. is replaced by the following:

This insurance does not apply to:

j. Pollution

(1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

This exclusion does not apply to:

(a) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(b) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire" unless that "hostile fire" occurred or originated:

(i) At any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste; or

(ii) At any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION AND DATA-RELATED LIABILITY – WITH LIMITED BODILY INJURY EXCEPTION

This endorsement modifies insurance provided under the following:

OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

Exclusion 2.1. of Section I – Coverages – Bodily Injury and Property Damage Liability is replaced by the following:

2. Exclusions

This insurance does not apply to:

i. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability

Damages arising out of:

(1) Any access to or disclosure of any person’s or organization’s confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or

(2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

However, unless Paragraph (1) above applies, this exclusion does not apply to damages because of “bodily injury”
ISSUANCE OF CERTIFICATES OF INSURANCE

It is hereby agreed and understood that

"The issuance of a certificate under this policy must be completed as soon as practicable and appropriate premium charged upon KONE's knowledge of any contract. Coverage is afforded by this policy for those entities for which KONE contractually agreed to provide an OCPL and have unintentionally failed to disclose the existence of such contract."
It is agreed that the persons insured provisions of the various parts are extended to include any person, organization, entity, trustee, estate or governmental body that is not a vendor, as their interests may appear, to whom or to which the Named Insured has agreed or is obligated by virtue of a contract or by issuance or existence of a permit, to provide insurance such as is afforded by this Policy, but only for the limits of liability and scope of coverage specified in such contract, and then not to exceed the limits of liability of the applicable limits of liability or the scope of coverage of this Policy.
PERSONAL INJURY LIABILITY

This endorsement modifies insurance provided under the following:

OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART

A. The heading for Section I – Coverages – Bodily Injury And Property Damage Liability is revised as follows:

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

B. The following exclusion is added to Paragraph 2. of Section I – Coverages A – Bodily Injury And Property Damage Liability:

2. Exclusions

This insurance does not apply to:

PERSONAL INJURY

"Bodily injury" arising out of "personal injury".

C. The following is added to Section I – Coverages:

COVERAGE B – PERSONAL INJURY LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

b. This insurance applies to "personal injury" caused by an offense arising out of operations performed for you by the "contractor" at the location specified in the Declarations, but only if the offense was committed during the policy period.

2. Exclusions

This insurance does not apply to:

a. "Personal injury":

(1) Caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal injury";

(2) Arising out of a criminal act committed by or at the direction of the insured;

(3) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement;

(4) Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

b. Any loss, cost or expense arising out of any:

(1) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants": or

(2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "pollutants".
D. Paragraphs 2. and 3. of Section III - Limits Of Insurance are replaced by the following:

2. The Aggregate Limit is the most we will pay for the sum of damages because of all "bodily injury", "property damage" and "personal injury".

3. Subject to 2. above, the Each Occurrence Limit is the most we will pay for the sum of damages because of all "bodily injury", "property damage" and "personal injury" arising out of any one "occurrence" and all "personal injury" sustained by any one person or organization.

E. Paragraph 4., of the Duties In The Event Of Occurrence, Claim Or Suit under Section IV - Conditions is replaced by the following:

4. Duties In The Event Of Occurrence, Offense, Claim Or Suit
   a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
      (1) How, when and where the "occurrence" or offense took place;
      (2) The names and addresses of any injured persons and witnesses; and
      (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
   b. If a claim is made or "suit" is brought against any insured, you must:
      (1) Immediately record the specifics of the claim or "suit" and the date received; and
      (2) Notify us as soon as practicable.
   c. You and any other involved insured must:
      (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
      (2) Authorize us to obtain records and other information;
      (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
      (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which the insurance may also apply.
   d. No insured will, except at the insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

F. The definition of "suit" in Section V - Definitions is replaced by the following:

14. "Suit" means a civil proceeding, brought in the United States of America (including its territories and possessions), Puerto Rico or Canada, in which damages because of "bodily injury", "property damage" or "personal injury" to which this insurance applies are alleged. "Suit" includes:
   a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
   b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

G. The following is added to Section V - Definitions:

"Personal injury" means injury, including consequential "bodily injury", arising out of the offenses of false arrest, detention or imprisonment.
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CALCULATION OF PREMIUM

This endorsement modifies insurance provided under the following:

- CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART
- COMMERCIAL AUTOMOBILE COVERAGE PART
- COMMERCIAL GENERAL LIABILITY COVERAGE PART
- COMMERCIAL INLAND MARINE COVERAGE PART
- COMMERCIAL PROPERTY COVERAGE PART
- CRIME AND FIDELITY COVERAGE PART
- EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART
- EQUIPMENT BREAKDOWN COVERAGE PART
- FARM COVERAGE PART
- LIQUOR LIABILITY COVERAGE PART
- MEDICAL PROFESSIONAL LIABILITY COVERAGE PART
- OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
- POLLUTION LIABILITY COVERAGE PART
- PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
- RAILROAD PROTECTIVE LIABILITY COVERAGE PART

The following is added:

The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation, or anniversary of the effective date of this policy, we will compute the premium in accordance with our rates and rules then in effect.
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EARLIER NOTICE OF CANCELLATION
PROVIDED BY US

This endorsement modifies insurance provided under the following:

- OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART

SCHEDULE

Number of Days' Notice 60

(If no entry appears above, information required to complete this Schedule will be shown in the Declarations as applicable to this endorsement.)

For any statutorily permitted reason other than nonpayment of premium, the number of days required for notice of cancellation, as provided in paragraph b. of either the CANCELLATION Condition (Section IV – Conditions) or as amended by an applicable state cancellation endorsement, is increased to the number of days shown in the Schedule above.
AGENDA ITEM
EXECUTIVE SUMMARY

Meeting Date: November 6, 2019

**Agenda Item:**
Consideration and possible action to approve the renewal of the Service Agreement between the City of Harlingen and Motorola Solutions to continue preventative maintenance and service to radio equipment at the New Hampshire/Lipscomb Tower Site.

**Prepared By (Print Name):** Rogelio Rubio
**Title:** Fire Chief

**Brief Summary:**
Three year term agreement in the amount of $66,458.66 (over the course of three years) to continue to provide ongoing maintenance and service for the existing tower site equipment including additional repeaters that have been added over the years due to the interoperability growth within the City of Harlingen.

**Funding (if applicable):**
Are funds specifically designated in the current budget for the full amount [ ] Yes [ ] No*
*If no, specify source of funding and amount requested:

**Finance Director’s approval:**
[ ] Yes [ ] No [ ] N/A

**Staff Recommendation:**
Staff recommends approval of this Service Agreement

**City Manager’s approval:**
[ ] Yes [ ] No [ ] N/A

**City Attorney’s approval:**
[ ] Yes [ ] No [ ] N/A

*form revised 01/26/09*
**Date:** 01/16/2019

**Company Name:** HARLINGEN, CITY OF

**Attn:**

**Billing Address:** P O BOX 2207

**City, State, Zip:** HARLINGEN, TX, 78551

**Customer Contact:** Donna Henderson

**Phone:** (956) 230-8054

---

**Contract Number:** USC000004352

**Contract Modifier:** R16-JAN-19 17:08:10

**Required P.O.:**

**Customer #:** 1000630261

**Bill to Tag #:**

**Contract Start Date:** 01-Oct-2019

**Contract End Date:** 30-Sep-2022

**Anniversary Day:** Sep 30th

**Payment Cycle:** ANNUALLY

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**Subtotal - Recurring Services**

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<th>Subtotal - One-Time Event Services</th>
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**Total**

| Total                            | $1,846.07 | $66,458.66 |

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**THIS SERVICE AMOUNT IS SUBJECT TO STATE AND LOCAL TAXING JURISDICTIONS WHERE APPLICABLE, TO BE VERIFIED BY MOTOROLA**

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**SPECIAL INSTRUCTIONS:**

I received Statements of Work that describe the services provided on this Agreement. Motorola's Service Terms and Conditions, a copy of which is attached to this Service Agreement, is incorporated herein by this reference.

---

**AUTHORIZED CUSTOMER SIGNATURE**

**TITLE**

**DATE**

**CUSTOMER (PRINT NAME)**

**MOTOROLA REPRESENTATIVE (SIGNATURE)**

**TITLE**

**DATE**
SERVICEx AGREEMENT

Contract Number: USC000004352
Contract Modifier: R16-JAN-19 17:08:10

MOTOROLA REPRESENTATIVE (PRINT NAME)                      PHONE

Company Name: HARLINGEN, CITY OF
Contract Number: USC000004352
Contract Modifier: R16-JAN-19 17:08:10
Contract Start Date: 01-Oct-2019
Contract End Date: 30-Sep-2022
Service Terms and Conditions

Motorola Solutions Inc. ("Motorola") and the customer named in this Agreement ("Customer") hereby agree as follows:

Section 1. APPLICABILITY
These Maintenance Service Terms and Conditions apply to service contracts whereby Motorola will provide to Customer either (1) maintenance, support, or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

Section 2. DEFINITIONS AND INTERPRETATION
2.1 "Agreement" means these Maintenance Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Maintenance Service Terms and Conditions take precedence over any cover page, and the cover page takes precedence over any attachments, unless the cover page or attachment states otherwise.

2.2 "Equipment" means the equipment that is specified in the attachments or is subsequently added to this Agreement.

2.3 "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

Section 3. ACCEPTANCE
Customer accepts these Maintenance Service Terms and Conditions and agrees to pay the prices set forth in the Agreement. This Agreement becomes binding only when accepted in writing by Motorola. The term of this Agreement begins on the "Start Date" indicated in this Agreement.

Section 4. SCOPE OF SERVICES
4.1 Motorola will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to the Agreement. At Customer's request, Motorola may also provide additional services at Motorola's then-applicable rates for the services.

4.2 If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be serviced at levels set forth in the manufacturer's product manuals; and routine service procedures that are prescribed by Motorola will be followed.

4.3 If Customer purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed at the applicable rates after the warranty for that additional equipment expires.

4.4 All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay Service fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice.

4.5 Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

4.6 If Equipment cannot, in Motorola's reasonable opinion, be properly or economically serviced for any reason, Motorola may modify the scope of Services related to that Equipment; remove that Equipment from this Agreement; or increase the price to Service that Equipment.

4.7 Customer must promptly notify Motorola of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this.

Section 5. EXCLUDED SERVICES
5.1 Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

5.2 Unless specifically included in this Agreement, service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicable. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the Internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.

Section 6. TIME AND PLACE OF SERVICE
Service will be provided at the location specified in this Agreement. When Motorola performs service at Customer's location, Customer will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m. local time, excluding weekends and holidays. Unless otherwise stated in this Agreement, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, Customer agrees to reimburse Motorola for those charges and expenses.

Section 7. CUSTOMER CONTACT
Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with Motorola.

Section 8. INVOICING AND PAYMENT
8.1 Customer affirms that a purchase order or notice to proceed is not required for the duration of this service contract and will appropriate funds each year through the contract end date. Unless alternative payment terms are stated in this Agreement, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within twenty (20) days of the invoice date.

8.2 Customer will reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity. The Customer will pay all invoices as received from Motorola. At the time of execution of this Agreement, the Customer will provide all necessary reference information to include on invoices for payment in accordance with this Agreement.

8.3 At the end of the first year of the Agreement and each year thereafter, a CPI percentage change calculation shall be performed. Should the annual inflation rate increase greater than 5% during the previous year, Motorola shall have the right to increase all future maintenance prices by the CPI increase amount exceeding 5%. The Midwest Region Consumer Price Index (https://www.bls.gov/regions/mountain-plains/news-release/consumerpriceindex_midwest.htm). All items, not seasonally adjusted shall be used as the measure of CPI for this price adjustment. Measurement will take place once the annual average for the new year has been posted by the Bureau of Labor Statistics.

Section 9. WARRANTY
Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 10. DEFAULT/TERMINATION
10.1 If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty (30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of termination to the defaulting party.

10.2 Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by Customer to Motorola will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Motorola will have no further obligation to provide Services.

10.3 If the Customer terminates this Agreement before the end of the Term, for any reason other than Motorola default, then the Customer will pay to Motorola an early termination fee equal to the discount applied to the last three (3) years of Service payments for the original Term.

Section 11. LIMITATION OF LIABILITY
Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Service provided under this Agreement. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS, INCONVENIENCE, LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR
THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account. This limitation of liability will survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

Section 12. EXCLUSIVE TERMS AND CONDITIONS
12.1 This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.

12.2 Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement will not affect its applicability. In no event will either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless the purchase order, acknowledgement, or other writing specifically refers to this Agreement; clearly indicate the intention of both parties to override and modify this Agreement; and the purchase order, acknowledgement, or other writing is signed by authorized representatives of both parties.

Section 13. PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS
13.1 Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Motorola's request. Customer may not disclose, without Motorola's written permission or as required by law, any confidential information or data to any person, or use confidential information or data for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section survive the expiration or termination of this Agreement.

13.2 Unless otherwise agreed in writing, no commercial or technical information disclosed in any manner or at any time by Customer to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide Customer with access to its confidential and proprietary information, including cost and pricing data.

13.3 This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property, including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

Section 14. FCC LICENSES AND OTHER AUTHORIZATIONS
Customer is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by governmental agencies. Neither Motorola nor any of its employees is an agent or representative of Customer in any governmental matters.

Section 15. COVENANT NOT TO EMPLOY
During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law.

Section 16. MATERIALS, TOOLS AND EQUIPMENT
All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction.

Section 17. GENERAL TERMS
17.1 If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

17.2 This Agreement and the rights and duties of the parties will be interpreted in accordance with the laws of the State in which the Services are performed.

17.3 Failure to exercise any right will not operate as a waiver of that right, power, or privilege.

17.4 Neither party is liable for delays or lack of performance resulting from any cause that are beyond that party's reasonable control, such as strikes, material shortages, or acts of God.
17.5 Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

17.6 Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Motorola separates one or more of its businesses (each a “Separated Business”), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a “Separation Event”), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event.

17.7 This Agreement will renew, for an additional one (1) year term, on every anniversary of the Start Date unless either the Cover Page specifically states a termination date or one Party notifies the other in writing of its intention to discontinue the Agreement not less than thirty (30) days of that anniversary date. At the anniversary date, Motorola may adjust the price of the Services to reflect its current rates.

17.8 If Motorola provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at Motorola’s then effective hourly rates.

17.9 This Agreement may be executed in one or more counterparts, all of which shall be considered part of the Agreement. The parties may execute this Agreement in writing, or by electronic signature, and any such electronic signature shall have the same legal effect as a handwritten signature for the purposes of validity, enforceability and admissibility. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.

Revised June 16, 2018
AGENDA ITEM
EXECUTIVE SUMMARY

Meeting Date: November 6, 2019

Agenda Item:
Consider and take action to allow the Mayor and Commissioners to approve a Mutual Aid Agreement between the Harlingen Police Department Special Weapons and Tactic’s (SWAT) Unit and the Cameron County Special Weapons and Tactic’s (SWAT) Unit.

Prepared By (Print Name): Michael Kester
Title: Chief of Police
Signature:

Brief Summary:
The Mutual Aid Agreement will allow the HPD SWAT and the CCSO SWAT to aid, assist and work together in the event of a major incident or as needed to provide safety for both agencies. The initiating agency maintains operational control of any incident that occurs. No specific funding is needed and the aid can go either way as needed. This is an update to an outdated prior agreement.

Funding (if applicable):
Are funds specifically designated in the current budget for the full amount □ Yes □ No*
*If no, specify source of funding and amount requested:
N/A
Finance Director’s approval: □ Yes □ No □ N/A

Staff Recommendation:
For Street Closures ONLY, Fire Chief’s approval: □ Yes □ No □ N/A
City Manager’s approval: □ Yes □ No □ N/A

Comments:
City Attorney’s approval:

form revised 01/26/09
Mutual Aid Agreement

The County of Cameron and Cameron County Sheriff's Office Special Weapons and Tactics Unit and Crisis Negotiations Unit, the City of Brownsville and the Harlingen Police Department Special Weapons and Tactic Unit and Crisis Negotiations Unit solemnly agree:

SECTION ONE: Purpose

The purpose of this agreement is to provide mutual aid between the following entities: Cameron County and The Cameron County Sheriff’s Office and The City of Harlingen and the Harlingen Police Department (herein referred to as “party” or jointly as “parties”) in meeting any critical emergency or disaster, from any cause, natural or otherwise. This agreement is made pursuant to the Inter Local Cooperation Act, VTCA, Government Code, Chapter 791 and Government Code Chapter 418, commonly known as the Texas Disaster Act of 1975.

This agreement recognizes that in the event of a major critical incidents, such as Hostage Situation, Barricaded Suspect Situations, Sniper Situations, High Risk Warrants, High Risk Apprehensions, Personal Protection, Special Assignments and Act of Terrorism, Supporting Special Events, Jail Riots, Border Violence or any threats against our National Security or other Civil Unrests, the prompt, full and effective utilization of resources of the parties is essential to the safety and welfare of the people of Cameron County.

The Law Enforcement Director of all parties shall appoint a representative to manage their Special Weapons and Tactics unit and Crisis Negotiation Unit. The managing commander shall formulate plans and take all necessary steps for the implementation of this agreement. Such planning shall incorporate the use of resources, including personnel, equipment and supplies necessary to provide mutual aid.

SECTION TWO- Responsibilities

It shall be the duty of each party to formulate a critical incident trainings and plans for application within its respective jurisdiction. There shall be frequent trainings between the representatives of the parties. The Law Enforcement Director of each agency shall establish working procedures and measures as the deem necessary for control and direction of police officers, personnel, and equipment that are acting within the jurisdiction of a requesting agency pursuant to this agreement; provided, however, that until such working procedures and measures are established, the police office, personnel, and equipment of a responding agency shall be subject to the direction and control of the Law Enforcement Director of the requesting agency.
Any party requested to render mutual aid shall take such action as necessary to provide and make available the resources covered by this agreement in accordance with the terms thereof, provided that it is understood that the party rendering aid may withhold reasonable protection for its jurisdiction.

Each party to this agreement, while operating according to the terms of this agreement within the lines of Cameron County and the corporate limits of a party to this agreement, shall retain the same powers, duties, rights, privileges and immunities as it would in performing these duties within its jurisdiction.

Each party shall retain command and control of its Law Enforcement personnel, with the exception that organizational units will come under the operational control of the recipient party.

All requests for mutual aid under this agreement shall be made through the Law Enforcement Director of the requesting agency.

SECTION THREE — Liability

No party to this agreement, nor the officers or employees of the party, while engaged in rendering aid to another party to this agreement, shall be liable for any act or omission in good faith, or on account of the maintenance or use of any supplies or equipment obtained through this agreement.

SECTION FOUR — Supplementary Agreements

Nothing in this agreement shall preclude parties to the agreement from entering into supplementary agreements with another city or county.

SECTION FIVE — Compensation

Each party to this agreement shall compensate its employees or their survivors for injury or death sustained while performing services under this agreement in the same manner as the party provides compensation for injury or death sustained while working within the jurisdiction of that party.

SECTION SIX — Reimbursement

The law enforcement agency requesting the assistance is under no obligation to compensate the other for services rendered. Additionally, the law enforcement agency requesting the assistance will not be responsible for injuries to team members who are members of the other law enforcement agency, nor for the use of and/or damage to team equipment.

SECTION SEVEN — Effective Period

This agreement shall continue in force and remain binding on each party in perpetuity until the governing body of such party takes action to withdraw. Such action shall not be effective until ninety days after the Law Enforcement Director of the withdrawing party has served notice to the Law Enforcement Director of all other parties.
Notice under this provision shall be made using certified mail, delivered to the county or municipal office of the parties to this agreement.

SECTION EIGHT — Severability

This agreement shall be construed to place into effect the purpose stated in Section One. If any provision of this agreement is declared unconstitutional, or the applicability thereof is held invalid, the constitutionality or applicability of the remainder of the agreement shall not be affected.

In the event any party withdraws from the agreement, the agreement shall continue in force among the remaining parties.

SECTION NINE- Applicability

This agreement shall take effect immediately upon its approval by two or more parties. Signed and sealed copies of the agreement shall be retained by each party, and shall be forwarded by Cameron County to the Cameron County Sheriff’s office and other appropriate Local and Federal agencies.

This agreement shall become binding and obligatory upon the party when it has been approved by the governing body of the party and executed by the presiding or chief administrative officer of the party.

Signed, this __________ day of _______ 2019.

__________________________
Omar Lucio, Sheriff
Cameron County, Texas

__________________________
Eddie Treviño, County Judge
Cameron County, Texas

Attest:

__________________________
Sylvia Garza- Perez, County Clerk
Cameron County, Texas
Michael Kester, Chief of Police
Harlingen Police Department

Chris Boswell, Mayor
City of Harlingen, Texas

Attest:

Amanda Elizondo, City Secretary
City of Harlingen, Texas
THIS MUTUAL AID AGREEMENT WAS APPROVED BY THE FOLLOWING:

CITY OF HARLINGEN LEGAL DEPARTMENT

MICHAEL KESTER, CHIEF OF POLICE
HARLINGEN POLICE DEPARTMENT

HARLINGEN CITY COMMISSION:

CHRIS BOSWELL, MAYOR
CITY OF HARLINGEN

RICHARD URIBE, COMMISSIONER, DISTRICT 1
CITY OF HARLINGEN

FRANK PUENTE, COMMISSIONER, DISTRICT 2
CITY OF HARLINGEN

MICHAEL MEZMAR, COMMISSIONER, DISTRICT 3
CITY OF HARLINGEN

RUBEN DE LA ROSA, COMMISSIONER, DISTRICT 4
CITY OF HARLINGEN

VICTOR LEAL, COMMISSIONER, DISTRICT 5
CITY OF HARLINGEN

Attest:

AMANDA ELIZONDO, CITY SECRETARY
CITY OF HARLINGEN
**AGENDA ITEM**

**EXECUTIVE SUMMARY**

**Meeting Date:** NOVEMBER 6, 2019

**Agenda Item:**
Consideration and possible action to approve a resolution amending Resolution No. R15-31 to remove Section 3, "Any board member of the Board who fails to attend three (3) consecutive regular meetings automatically forfeit such position."

**Prepared By (Print Name):** Gabriel Gonzalez  
**Title:** Asst. City Manager  
**Signature:** [Signature]

**Brief Summary:**
DID Board Members are appointed by the percentage of land owned in the DID District. They cannot be replaced because they are needed to keep the DID operating.

**Funding (if applicable):**
Are funds specifically designated in the current budget for the full amount [ ] Yes [ ] No*  
*If no, specify source of funding and amount requested:

**Finance Director’s approval:** [ ] Yes [ ] No [ ] N/A

**Staff Recommendation:**

**City Manager’s approval:** [ ] Yes [ ] No [ ] N/A

**Comments:**

**City Attorney’s approval:** [ ] Yes [ ] No [ ] N/A
RESOLUTION NO. ________

A RESOLUTION AMENDING RESOLUTION NO. R15-31 TO REMOVE SECTION 3, Sentence #5 “ANY BOARD MEMBER OF THE BOARD WHO FAILS TO ATTEND THREE (3) CONSECUTIVE REGULAR MEETINGS AUTOMATICALLY FORFEIT SUCH POSITION.”

WHEREAS, the Harlingen City Commission adopted Resolution No. R15-31 on August 19, 2015 to create the Downtown Improvement District Board; and

WHEREAS, the Harlingen City Commission selected the members and established their term; and

WHEREAS, the Harlingen City Commission has determined that it would be in the best interest of the City to remove Section 3, Sentence #5, pertaining to the removal of any board member who fails to attend three (3) consecutive regular meetings, would automatically forfeit such position.

NOW THEREFORE BE RESOLVED BY THE HARLINGEN CITY COMMISSION THAT: by removing Section 3, Sentence #5 this will allow those board members who own property in the district to continue to serve on the board despite having missed meetings. It is difficult to replace a DID board member because of the limitation of property owners in the district and the percentage needed to continue the DID.

CONSIDERED AND ADOPTED this 6TH day of November, 2019, at a regular meeting of the Elective Commission of the City of Harlingen, Texas, at which a quorum was present and which was held in accordance with the TEXAS GOVERNMENT CODE, CHAPTER 551.

CITY OF HARLINGEN:

__________________________
Chris Boswell, Mayor

ATTEST:

__________________________
Amanda C. Elizondo, City Secretary
AGENDA ITEM
EXECUTIVE SUMMARY

Meeting Date: November 6, 2019

Agenda Item:
Consideration and possible action to approve the rental rates for the Harlingen Convention Center.

Prepared By (Print Name): Gabriel Gonzalez
Title: Assistant City Manager
Signature: [Signature]

Brief Summary:
The Agreement between the City and BC Lynd Convention Services calls for the rental rates to be adopted annually by the City Commission. Attached are the proposed rates. The following changes are being proposed:

<table>
<thead>
<tr>
<th>VENUE</th>
<th>OLD RATE</th>
<th>NEW RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Great Kiskadee Ballroom</td>
<td>$5,500</td>
<td>$6,000</td>
</tr>
<tr>
<td>Great Kiskadee Ballroom D&amp;E</td>
<td>$1,500</td>
<td>$2,500</td>
</tr>
<tr>
<td>Kingfisher</td>
<td>$350</td>
<td>$400</td>
</tr>
<tr>
<td>Oriole</td>
<td>$350</td>
<td>$400</td>
</tr>
<tr>
<td>Dove Suite</td>
<td>-</td>
<td>$200</td>
</tr>
<tr>
<td>Entire Convention Center</td>
<td>-</td>
<td>$8,000</td>
</tr>
</tbody>
</table>

The Great Kiskadee Ballroom is being increased by 9.1%; the Great Kiskadee Ballroom D&E is being increased by 66.7% and the Kingfisher and Oriole rooms are being increased by 14.3% each. The Dove Suite now has a rental fee including the rental of the entire facility. The remaining rates for the break out rooms in the Kingfisher A/B, Oriole A/B and Great Kiskadee A/B/C/F/G/H will remain unchanged.

Either Brandon Raney or Clyde Johnson will be at the meeting to address the proposed rates.

Funding (if applicable):
Are funds specifically designated in the current budget for the full amount for this purpose? [ ] Yes [ ] No*
*If no, specify source of funding and amount requested: N/A

Finance Director’s approval: [ ] Yes [ ] No [ ] N/A

Staff Recommendation:
Approval
For Street Closures ONLY, Fire Chief’s approval: [ ] Yes [ ] No [ ] N/A

City Manager’s approval: [ ] Yes [ ] No [ ] N/A

Comments: [Signature]
<table>
<thead>
<tr>
<th>City Attorney’s approval:</th>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>☑️</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>10/31/19</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
EVENT RATES

Harlingen Convention Center rates, unless otherwise specified, are on a per “rental day” basis.

A “rental day” is defined by the Harlingen Convention Center as beginning at 6:00 am and ending 12:00 a.m. Additional charges of $300.00 per hour or any portion of an hour on events going past 12:00 a.m., will be added to the total with prior approval by the General Manager of the Convention Center.

A “half-day rental” is designated by the Harlingen Convention Center as a four-hour event including move-in/move-out. A half-day rental will be at 50% less the retail Rate. Event times will vary by meal period.

<table>
<thead>
<tr>
<th>ROOM</th>
<th>PRICE</th>
<th>SQUARE FT</th>
<th>SIZE</th>
<th>BANQUET</th>
<th>THEATER</th>
<th>CLASSROOM</th>
<th>CONFERENCE</th>
<th>U-SHAPED</th>
</tr>
</thead>
<tbody>
<tr>
<td>GREAT AMUSEMENT BALLROOM</td>
<td>$6,000.00</td>
<td>17,100</td>
<td>90'X190'X22'</td>
<td>1,120</td>
<td>1,800</td>
<td>936</td>
<td>660</td>
<td>-</td>
</tr>
<tr>
<td>GREAT KISKADEE BALLROOM</td>
<td>$2,500.00</td>
<td>4,680</td>
<td>90'X52'X22'</td>
<td>240</td>
<td>609</td>
<td>208</td>
<td>74</td>
<td>94</td>
</tr>
<tr>
<td>GREAT KISKADEE BALLROOM (per space)</td>
<td>$500.00</td>
<td>1,350</td>
<td>45'X30'X22'</td>
<td>80</td>
<td>192</td>
<td>72</td>
<td>42</td>
<td>39</td>
</tr>
<tr>
<td>KINGFISHER BOARDROOM A/B</td>
<td>$200.00</td>
<td>700</td>
<td>25'X28'X12'</td>
<td>50</td>
<td>70</td>
<td>32</td>
<td>24</td>
<td>26</td>
</tr>
<tr>
<td>KINGFISHER MEETING ROOM</td>
<td>$400.00</td>
<td>1,400</td>
<td>25'X56'X12'</td>
<td>120</td>
<td>140</td>
<td>72</td>
<td>48</td>
<td>54</td>
</tr>
<tr>
<td>CIRCLE BOARDROOM A/B (per space)</td>
<td>$200.00</td>
<td>700</td>
<td>25'X28'X12'</td>
<td>50</td>
<td>70</td>
<td>32</td>
<td>24</td>
<td>26</td>
</tr>
<tr>
<td>CIRCLE MEETING ROOM</td>
<td>$400.00</td>
<td>1,400</td>
<td>25'X56'X12'</td>
<td>120</td>
<td>140</td>
<td>72</td>
<td>48</td>
<td>54</td>
</tr>
<tr>
<td>GREEN JAY PAVILION</td>
<td>$1,500.00</td>
<td>2,460</td>
<td>60'X41'X10'</td>
<td>200</td>
<td>280</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>DOVE SUITE</td>
<td>$200.00</td>
<td>380</td>
<td>20'X19'X10'</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Convention Center (entire facility)</td>
<td>$8,000.00</td>
<td>44,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>
Harlingen Conference Center
2018 Meeting Room Rental Rates

Total Square Feet (Gross) 44,300

Standard Rental Rates would apply to all customers except those qualifying for discounted rates.

Discounted Rental Rates would apply to customers that qualify as non-profit entities, under the IRS code, and to customers that are local governmental units within the City of Harlingen.

Standard and Discounted Rates could be reduced or eliminated at the discretion of the operator if the group meets the Food and Beverage minimums or the Rooms Revenue Minimums.

Event Parking Rate will be assessed where such a charge presents no barrier to booking an event, but could be discounted or waived at the discretion of the operator. Parking charges for hotel guests would be included in the room rate. VAER parking rates will be at the discretion of the operator.

Rate Schedule Adjustments are to be determined each year during the Term in connection with the approval of the annual operating budget for the Convention Center. In the absence of an agreement to adjust the rates, the prior year rates will be adjusted by the Consumer Price Index (Urban) for the prior calendar year.

### Room Dimensions, Capacity and BAR Rates

<table>
<thead>
<tr>
<th>Room</th>
<th>Dimension</th>
<th>Sq. Ft</th>
<th>Rate/Day</th>
<th>Rate/S.F.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ballroom</td>
<td>90' x 180'</td>
<td>16,200</td>
<td>$5,500.00</td>
<td>0.34</td>
</tr>
<tr>
<td>Ballroom D or E</td>
<td>90' x 45'</td>
<td>4,050</td>
<td>$1,500.00</td>
<td>0.37</td>
</tr>
<tr>
<td>Ballroom A, B, C, F, G or H</td>
<td>30' x 45'</td>
<td>1,350</td>
<td>$500.00</td>
<td>0.37</td>
</tr>
<tr>
<td>Meeting Room 1</td>
<td>56' x 25'</td>
<td>1,400</td>
<td>$350.00</td>
<td>0.25</td>
</tr>
<tr>
<td>Meeting Room 1-A</td>
<td>25' x 28'</td>
<td>700</td>
<td>$200.00</td>
<td>0.29</td>
</tr>
<tr>
<td>Meeting Room 1-B</td>
<td>25' x 28'</td>
<td>700</td>
<td>$200.00</td>
<td>0.29</td>
</tr>
<tr>
<td>Meeting Room 2</td>
<td>60' x 30'</td>
<td>1,400</td>
<td>$350.00</td>
<td>0.25</td>
</tr>
<tr>
<td>Meeting Room 2-A</td>
<td>25' x 28'</td>
<td>700</td>
<td>$200.00</td>
<td>0.29</td>
</tr>
<tr>
<td>Meeting Room 2-B</td>
<td>25' x 28'</td>
<td>700</td>
<td>$200.00</td>
<td>0.29</td>
</tr>
<tr>
<td>Pavilion Outdoor Area</td>
<td>5,000</td>
<td>$1,500.00</td>
<td>0.30</td>
<td></td>
</tr>
<tr>
<td>Parking Lot Exhibit</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>0.05</td>
</tr>
</tbody>
</table>

### Discount Rates, F&B Minimums, Rooms Revenue Minimums

<table>
<thead>
<tr>
<th>Room</th>
<th>BAR Rate</th>
<th>HVS Rate</th>
<th>Discount Rate</th>
<th>F&amp;B Min*</th>
<th>Room Rev. Min.**</th>
<th>Rate/S.F.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ballroom</td>
<td>$5,500.00</td>
<td>$5,700.00</td>
<td>$4,500.00</td>
<td>$9,000.00</td>
<td>$109,350</td>
<td>0.34</td>
</tr>
<tr>
<td>Ballroom D or E</td>
<td>$1,500.00</td>
<td>$1,500.00</td>
<td>$1,200.00</td>
<td>$2,000.00</td>
<td>$27,338</td>
<td>0.37</td>
</tr>
<tr>
<td>Ballroom A, B, C, F, G or H</td>
<td>$500.00</td>
<td>$500.00</td>
<td>$400.00</td>
<td>$800.00</td>
<td>$5,113</td>
<td>0.37</td>
</tr>
<tr>
<td>Meeting Room 1</td>
<td>$350.00</td>
<td>$400.00</td>
<td>$300.00</td>
<td>$600.00</td>
<td>$9,450</td>
<td>0.25</td>
</tr>
<tr>
<td>Meeting Room 1-A</td>
<td>$200.00</td>
<td>$200.00</td>
<td>$160.00</td>
<td>$300.00</td>
<td>$4,250</td>
<td>0.29</td>
</tr>
<tr>
<td>Meeting Room 1-B</td>
<td>$200.00</td>
<td>$200.00</td>
<td>$160.00</td>
<td>$300.00</td>
<td>$4,250</td>
<td>0.29</td>
</tr>
<tr>
<td>Meeting Room 2</td>
<td>$350.00</td>
<td>$400.00</td>
<td>$300.00</td>
<td>$600.00</td>
<td>$5,450</td>
<td>0.25</td>
</tr>
<tr>
<td>Meeting Room 2-A</td>
<td>$200.00</td>
<td>$200.00</td>
<td>$160.00</td>
<td>$300.00</td>
<td>$4,250</td>
<td>0.29</td>
</tr>
<tr>
<td>Meeting Room 2-B</td>
<td>$200.00</td>
<td>$200.00</td>
<td>$160.00</td>
<td>$300.00</td>
<td>$4,250</td>
<td>0.29</td>
</tr>
<tr>
<td>Pavilion Outdoor Area</td>
<td>$1,500.00</td>
<td>$1,500.00</td>
<td>$1,200.00</td>
<td>$2,500.00</td>
<td>$9,450</td>
<td>0.30</td>
</tr>
<tr>
<td>Parking Lot</td>
<td>$5.00</td>
<td>$5.00</td>
<td>Rate is $5.00 per car</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: For use of parking lot as exhibit space, rate is 0.05 per square foot.

*Food and Beverage Minimums include charges classified in the Food and Beverage Department according to the Uniform System of Accounts for the Lodging Industry, Eleventh Revised Edition or as may be amended.

**Rooms Revenue minimums include charges classified in the Rooms Department according to the Uniform System of Accounts for the Lodging Industry, Eleventh Revised Edition or as may be amended.
FLOOR PLAN

HARLINGEN CONVENTION CENTER

701 HARLINGEN HEIGHTS DRIVE, HARLINGEN, CAMERON COUNTY, TEXAS
PRELIMINARY DESIGN
AGENDA ITEM
EXECUTIVE SUMMARY

Meeting Date: NOVEMBER 6, 2019

Agenda Item:
Consideration and possible action to approve a resolution authorizing and implementing an Economic Development Program Agreement with “Heart of Christmas, LLC” pursuant to Chapter 380 of the Texas Local Government Code.

Prepared By (Print Name): Dan Serna
Title: City Manager

Signature:

Brief Summary:
Heart of Christmas LLC, a film production company based in Hollywood, California, has chosen Harlingen as the site to film “Gift of an Angel,” the filming of which begins the week of November 11, 2019. Heart of Christmas, LLC has agreed to include the City of Harlingen as the official filming location in all of its publicity material and give the City a closing credit at the end of the film in exchange for a grant of $5,000.00 and the use of certain city facilities and public locations for filming.

Funding (if applicable):
Are funds specifically designated in the current budget for the full amount for this purpose? ☐ Yes ☐ No*
*If no, specify source of funding and amount requested:

Finance Director’s approval:
☐ Yes ☐ No ☐ N/A

Staff Recommendation:

City Manager’s approval:
☐ Yes ☐ No ☐ N/A

Comments:

City Attorney’s approval:
☐ Yes ☐ No ☐ N/A
RESOLUTION NO. R-2019-_____  

A RESOLUTION AUTHORIZING AND IMPLEMENTING AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT WITH “HEART OF CHRISTMAS, LLC” PURSUANT TO CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE

WHEREAS, under Chapter 380 of the Texas Local Government Code, the City has adopted an economic development program to promote local economic development and stimulate business and commercial activity within the City limits;

WHEREAS, Heart of Christmas, LLC, is a film production company desiring to use various City of Harlingen locations and facilities as backdrops and sites for the filming of its movie currently in production, which includes well-known celebrities in its cast, entitled “Gift of an Angel” (sometimes the “Movie”);

WHEREAS, this economic and showcasing opportunity afforded by the Company has an economic value which exceeds the investment proposed in this Agreement, and therefore provides an everlasting public economic benefit to the City; and

WHEREAS, the City therefore desires to offer financial and in-kind incentives to Heart of Christmas, LLC to induce the Company into filming “Gift of an Angel” using various locations in the City of Harlingen so that the City may realize the above-mentioned benefits;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HARLINGEN, TEXAS:

SECTION 1.

A. The City of Harlingen hereby approves the Chapter 380 Program Agreement with Heart of Christmas, LLC, set forth as Exhibit “A;” and

B. The City Manager of the City of Harlingen shall be responsible for administering and coordinating the City’s economic development activities pursuant to this Agreement; and

PASSED AND APPROVED BY THE HARLINGEN CITY COMMISSION OF THE CITY OF HARLINGEN, TEXAS, on this the 6th day of November, 2019.

CITY OF HARLINGEN

________________________________________

CHRIS BOSWELL, Mayor

ATTEST:
CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT (this "Agreement") is entered into to be effective as of the _____ day of __________, 2019 (the "Effective Date"), by and between the City of Harlingen, Texas (sometimes the "City"), a Texas municipal corporation located in Cameron County, Texas, and Heart of Christmas LLC, a film production company (sometimes the "Company"), with principal offices in Hollywood, Los Angeles, California, otherwise known as the "Parties" to this Agreement.

RECITALS

WHEREAS, Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code authorizes a local government to establish and provide for the administration of one or more programs, for making loans and grants and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality;

WHEREAS, under Chapter 380 of the Texas Local Government Code, the City has adopted an economic development program to promote local economic development and stimulate business and commercial activity within the City limits;

WHEREAS, Heart of Christmas, LLC, is a film production company desiring to use various City of Harlingen locations and facilities as backdrops and sites for the filming of its movie currently in production, which includes well-known celebrities in its cast, entitled "Gift of an Angel" (sometimes the "Movie"); and

WHEREAS, when using City resources and locations for film production activities, the film industry provides numerous and diverse economic benefits to the City in that the film production crew and cast will patronize local retail shops, hotels, restaurants, rental agencies, service providers, and other businesses; and

WHEREAS, the use of the City for film production serves to advertise and showcase the City beyond its region and across the nation and world, which helps build the cities' positive image and stimulate attraction and interest in the City;

WHEREAS, this economic and showcasing opportunity afforded by the Company has an economic value which exceeds the investment proposed in this Agreement, and therefore provides an everlasting public economic benefit to the City;

WHEREAS, the City therefore desires to offer financial and in-kind incentives to Heart of Christmas, LLC to induce the Company into filming "Gift of an Angel" using various locations in the City of Harlingen so that the City may realize all the above-mentioned benefits;

Chapter 380 Tex Local Gov't Code Agreement Between
The City of Harlingen, Texas and Heart of Christmas, LLC

-1-
WHEREAS, the Parties recognize that all agreements of the Parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters hereof;

WHEREAS, the Parties agree that all conditions precedent for this Agreement to become a binding agreement have occurred and been complied with, including all requirements pursuant to the Texas Open Meetings Act have been conducted in accordance with Texas law;

WHEREAS, this project will make a unique contribution to development efforts in the City due to its magnitude, significance to the community, and aesthetic quality;

WHEREAS, this project will bring a benefit to the City consistent with the General Statement of Purpose and Policy as defined by the Chapter 380 Economic Development Program as adopted by the City of Harlingen; and

WHEREAS, on the Effective Date, the commitments contained in this Agreement shall become legally binding obligations of the Parties;

NOW, THEREFORE, in consideration of the mutual covenants, benefits and agreements described and contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and further described herein, the City and Company agree as follows:

ARTICLE I
PROJECT SCOPE

SECTION 1.1. Term.

The movie “Gift of an Angel” will be filmed in the City of Harlingen during various dates in November and possibly December 2019, or a minimum of twenty-two (22) days.

ARTICLE II
THE CITY'S OBLIGATIONS

SECTION 2.1. To induce and attract the Company to shoot the movie “Gift of an Angel” at various locations within the City of Harlingen, including downtown, City will provide the Company with (1) a monetary grant in the amount of $5,000.00 (FIVE THOUSAND DOLLARS); and (2) an in-kind contribution of the use of certain City facilities, including the City of Harlingen Municipal Court and downtown City offices, for filming the Movie;

SECTION 2.2. The City shall provide resources and assistance in closing streets and making other public areas accessible to the Company film production crew and cast, with at least 72
hours’ notice to the City Manager or his assigns, and waive any applicable permit or other usage costs which may be associated with the use of such areas. The City shall retain the right to have staff present during any and all filming within City of Harlingen buildings, courts, and offices.

ARTICLE III
THE COMPANY’S OBLIGATIONS

SECTION 3.1. The Company shall film scenes for the Movie at different locations within the City of Harlingen as described above during the months of November and possibly December 2019, or for a minimum of twenty-two (22) days;

SECTION 3.2. For the duration of filming, the Company’s production crew and cast, and other employees or agents shall stay a minimum of twenty-two (22) days at hotels located within the City of Harlingen city limits, and use only dining, retail, and other service establishments which are located within the City of Harlingen during that time period.

SECTION 3.3. The Company agrees to recognize as the filming location the City of Harlingen in marketing efforts and press releases; and shall include, at the end of the Movie, a closing credit recognizing the City of Harlingen, Texas as the filming location.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

SECTION 4.1. Heart of Christmas, LLC, represents and warrants to City, as of the Effective Date, as follows:

SECTION 4.1.1. Organization. Heart of Christmas, LLC, is a corporation, duly organized, validly existing and in good standing under the laws of the State of California, and authorized to do business in the State of Texas.

SECTION 4.1.2. Authority. The execution, delivery and performance of this Agreement by the Company are within powers and duties of the representatives executing this agreement on the Company’s behalf and have been duly authorized by all necessary action of the Company.

SECTION 4.1.3. No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein contemplated, nor compliance with the terms and provisions hereof will contravene the organizational documents of the Company or any provision of law, statute, rule or regulation to which the Company is subject or any judgment,
decree, license, order or permit applicable to the Company, or will conflict or be inconsistent with, or will result in a breach of any of the terms of the covenants, conditions or provisions of, or constitute a delay under, or result in the creation or imposition of a lien upon any of the property or assets of the Company pursuant to the terms of any indenture, mortgage, deed of trust, agreement or other instrument to which the Company is a party or, by which the Company is bound, or to which the Company is subject.

SECTION 4.2. Representation and Warranties of City. City represents and warrants to the Company, as of the Effective Date, as follows:

SECTION 4.2.1. Authority. The execution, delivery and performance by City of this Agreement are within its respective powers and have been duly authorized by all necessary action.

SECTION 4.2.2. No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein contemplated nor compliance with the terms and provisions hereof will contravene the governing documents of City or any provision of law, statute, rule or regulation to which City is subject or any judgment, decree, license, order or permit applicable to City, or will conflict or be inconsistent with, or will result in a breach of any of the terms of the covenants, conditions or provisions of, or constitute a delay under, or result in the creation or imposition of a lien upon any of the property or assets of City pursuant to the terms of any indenture, mortgage, deed of trust, agreement or other instrument to which City is a party or by which City is bound, or to which City is subject.

ARTICLE V
PERSONAL LIABILITY OF PUBLIC OFFICIALS

No employee of City, or any Commissioner or agent of City, shall be personally responsible for any liability arising under or growing out of this Agreement. The expenditures made hereunder shall be paid solely from lawfully available funds that have been appropriated by City. Under no circumstances shall City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

ARTICLE VI
INFORMATION

The Company shall, at such times and in such form as City may require, furnish periodic information concerning the status of the performance of its obligations under this Agreement as may be requested in writing by City.

ARTICLE VII
MISCELLANEOUS
SECTION 7.1. Entire Agreement. This Agreement, including exhibits hereto, contains the entire agreement between the Parties with respect to the transactions contemplated herein.

SECTION 7.2. Amendment. This Agreement may only be amended, altered, or revoked by written instrument signed by all Parties. A section of this Agreement may be revised by addendum that includes only that section, signed by all Parties.

SECTION 7.3. Successors and Assigns. Neither Party shall have the right to assign its rights under this Agreement or any interest therein, without the prior written consent of the other Party.

SECTION 7.4. Waiver. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the Party charged with such waiver or estoppel.

SECTION 7.5. Notices. Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, by messenger, by facsimile, or by reputable overnight carrier, and shall be deemed delivered when received at the addresses of the Parties set forth below, or at such other address furnished in writing to the other Parties thereto:

CITY OF HARLINGEN, TEXAS:

City of Harlingen, Texas
Attn: Dan Serna, City Manager
City Hall
118 E. Tyler
Harlingen, Texas 78550
Fax: (956) 216-5012

FILM:

Heart of Christmas, LLC
Attn: 
Street: 
City, State, ZIP 
Fax: 

SECTION 7.6. Applicable Law. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas, and venue shall lie in State courts located in Cameron County, Texas.

SECTION 7.7. Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceable under the present or future laws, then, and in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
SECTION 7.8. No Joint Venture. Nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

SECTION 7.9. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

EXECUTED to be effective as of the last date executed by either Party.
CITY OF HARLINGEN, TEXAS
118 E. Tyler
Harlingen, Texas 78550

By: ___________________________ DATED: _________________
    Dan Serna, City Manager

ATTEST:

By: ___________________________
    Amanda Elizondo, City Secretary

HEART OF CHRISTMAS, LLC
(Street)
(City, State, ZIP)

By: ___________________________ DATED: _________________
    Mehran Kohansieh

ATTEST:

By: ___________________________

Print Name: ____________________