



Kemah City Council Special Meeting

04/29/2020

6:00 *p.m.*



SPECIAL MEETING AGENDA

April 29, 2020 6:00 P.M.

CITY OF KEMAH - CITY COUNCIL AND KEMAH PUBLIC FACILITIES CORPORATION

**Council Chambers, Kemah City Hall,
1401 State Hwy 146, Kemah, Texas**

Terri Gale – Mayor

| | | | | |
|----------------------|--------------------|--------------------|--------------------|--------------------|
| Teresa Vazquez-Evans | Wanda Zimmer | Kyle Burks | Robin Collins | Isaac Saldaña |
| Council Position 1 | Council Position 2 | Council Position 3 | Council Position 4 | Council Position 5 |

In accordance with the Texas Open Meetings Act the agenda is posted for public information, at all times, for at least 72 hours preceding the scheduled time of the meeting on the bulletin board located on the front exterior wall of the City Hall Building, except in case of emergency meetings or emergency items posted in accordance with law.

Texas Criminal and Traffic Law Handbook Penal Code Sec. 38.13 Hindering Proceedings by Disorderly Conduct. A person commits an offense if he intentionally hinders an official proceeding by noise or violent or tumultuous behavior or disturbance. Penal Code Section 42.05 Disrupting Meeting or Procession. A person commits an offense if, with intent to prevent or disrupt a lawful meeting, procession, or gathering, he obstructs or interferes with the meeting, procession, or gathering by physical action or verbal utterance.

The City Council reserves the right to meet in closed session on any of the below items should the need arise and if applicable, pursuant to authorization by Title 5, Chapter 551 of the Texas Government Code.

- 1. Pledges**
- 2. Prayer**
- 3. Discussion: Update regarding status of budget cuts and recommendations from the 4/15 city council meeting**
- 4. Consideration and Possible Action: to assess KCDC for repayment of 25 percent of original Shoppes of Kemah 380 Agreement.**
- 5. Consideration and Possible Action: on all other existing 380 Agreements and any other revenue impacting agreements.**
- 6. Consideration and Possible Action: regarding cutting costs in HOT budget, including the Bay Area CVB Membership.**
- 7. Consideration and Possible Action: regarding cutting costs or recommending cutting costs to KCDC board in KCDC budget.**

8. **Consideration and Possible Action: on phased re-opening of businesses, restaurants and bars in the City of Kemah.**
9. **Consideration and Possible Action: on modification of the city's Coronavirus disaster declaration**
10. **Consideration and Possible Action: on the change and future usage of Kemah Visitors Center.**
11. **Consideration and Possible Action: on paying Quarter 1 for City of Kemah BACVB dues.**
12. **Consideration and Possible Action: regarding outsourcing police dispatch services to Galveston County and any necessary changes to police budget.**

EXECUTIVE SESSION

13. The Council will now hold a closed executive meeting pursuant to the provisions of Chapter 551 of the Texas Government Code, Vernon's Texas Codes Annotated in accordance with the authority contained in:

A. Section 551.087, Local Government Code; Deliberations regarding Economic Development Negotiations

- Hotel Conference Center consultant

OPEN SESSION

14. Consideration and Possible Action: on selection of and contracting with a conference center consultant.

15. Adjourn

Online: <https://global.gotomeeting.com/join/754015741>

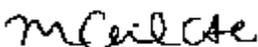
Phone: United States (Toll Free): [1 877 309 2073](tel:18773092073)

United States: [+1 \(571\) 317-3129](tel:+15713173129)

Access Code: [754-015-741](tel:754015741)

CERTIFICATION

This is to certify that a copy of the Notice of the Special City Council meeting for **WEDNESDAY, April 29, 2020**, was posted on the bulletin board at City Hall, 1401 Highway 146, Kemah, Texas, on this the 24th day of February, 2020, prior to 6:00 p.m.



Melissa Chilcote, City Secretary

04/24/2020

Date

I certify this notice was removed by me from the Kemah City Hall bulletin board on the ____ day of _____, 2020.

Kemah City Council Agenda Item

#4 KCDC Repayment of 25% for Shoppes of Kemah 380 Agreement

Mayor generated Agenda Item

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Kemah, a Texas home-rule municipality (“City”), and Kemah Investment Partners, LLC, a Texas limited liability company, and its successors and assigns (“Developer”) acting by and through their respective authorized officers. The City and Developer are referred to individually in this Agreement as a “Party” and together they are referred to as the “Parties.”

ARTICLE I

RECITALS

The City and Developer each acknowledge and agree that the following recitals are true and correct and that the same are incorporated herein and are a material part of this Agreement:

WHEREAS, the City desires to further the public interest and welfare and to induce the investment of private resources in productive business enterprises located in certain areas of the City in order to increase tax revenue for real property and business personal property within the City, and promote or develop new business enterprises; and

WHEREAS, Developer intends to build, lease and operate a new shopping center containing approximately 76,000 square feet of retail stores on a certain tract of land consisting of approximately 11.723 acres in the City of Kemah, Galveston County, Texas (the “Property,” and as further described on Exhibit “A” hereto); and

WHEREAS, Developer will agree to design and construct a two lane roadway that will extend from 518 East to the rear of the proposed buildings that will be dedicated to the City upon completion (the “Road”; Development of the Property and Road are collectively referred to herein as the “Project”); and

WHEREAS, the Project will result in (i) new economic development in the City, (ii) generation of sales tax revenues and (iii) provide new jobs; and

WHEREAS, the Project will have a direct and positive economic benefit to the City; and

WHEREAS, the Developer has advised the City that a contributing factor of inducing the Developer to develop the Property is an agreement by the City to provide an economic development grant to the Developer as set forth herein; and

WHEREAS, the City is authorized by Article 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code to provide a program for economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, City wishes to provide incentives to Developer to assist in the economic development of the City; and

WHEREAS, the City has determined, based on information presented to it by the Developer, that making an economic development incentive grant to the Developer in accordance with this Agreement furthers the City's economic development goals and will: (i) promote the economic development objectives of the City; (ii) benefit the City and the City's inhabitants; and (iii) advance local economic development and stimulate business and commercial activity in the City; and

WHEREAS, City hereby finds that this Agreement embodies an eligible Program (defined below) and clearly promotes economic development in the City and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the City;

NOW, THEREFORE, the Developer and the City make and enter into this Agreement in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both the Developer and the City, and agree as follows:

ARTICLE II

DEFINITIONS

Section 2.01. "**Compliance Certificate**" has the meaning set forth in Section 4.02.

Section 2.02. "**Shopping Center**" means the new shopping center containing approximately 76,000 square feet of retail stores to be built on the Property.

Section 2.03. "**GCAD**" means the Galveston Central Appraisal District.

Section 2.04. "**Non-Exempt Assessed Value**" means the total assessed value, as reasonably established by GCAD, of Personal Property assets that are taxable by a Texas taxing authority for ad valorem taxation purposes.

Section 2.05. "**Operational**" means that at least ninety percent (90%) of the square footage of the Shopping Center is i) leased, ii) open to the public for business, and iii) has received a certificate of occupancy.

Section 2.06. "**Performance Rebate Payment**" means the City's payment to Developer in the amount of three million and no/100 dollars (\$3,000,000.00).

Section 2.07. "**Performance Threshold**" means the sales tax revenues in the amount of three hundred seventy thousand dollars (\$370,000.00).

Section 2.08. “**Program**” means the economic development program for the Project established by the City pursuant to Texas Local Government Code Chapter 380 to promote economic development and stimulate business and commercial activity within the City as represented by the terms of this Agreement.

Section 2.09. “**Project**” has the meaning described in the Recitals to this Agreement.

Section 2.10. “**Property**” has the meaning described in the Recitals to this Agreement.

ARTICLE III

TERM OF AGREEMENT, OPERATION OF THE PROJECT AND PAYMENT CAP

Section 3.01. Guarantee; Term. The City shall be obligated to pay Performance Rebate Payment to Developer after the Shopping Center becomes Operational as provided below. In return, Developer guarantees annual sales tax revenue from the Shopping Center up to the amount of the Performance Threshold, from the time that the Shopping Center becomes Operational until the total sales tax revenues from the Shopping Center equal three million and no/100 dollars (\$3,000,000.00). Once the total sales tax revenues from the Shopping Center equal three million and no/100 dollars (\$3,000,000.00), Developer’s guarantee shall automatically terminate and this Agreement shall automatically terminate (the “Term”) and be of no further force and effect. For any partial years comprising the first and last calendar year in which Developer’s guarantee is in effect, the Performance Threshold shall be prorated based on the actual days of the partial calendar year divided by 365. For any calendar year (or partial year based on proration) that sales tax revenues from the Shopping Center does not equal or exceed the Performance Threshold, Developer shall pay the City the amount of such shortfall, up to the amount of the Performance Threshold, within 45 days after the end of such year.

Section 3.02. Continued Operation of Business. After Project becomes Operational, Developer shall continuously operate, maintain, and manage Project on the Property for the Term of this Agreement. When the Project becomes Operational, Developer shall provide written notice thereof to the City.

Section 3.03. The City shall provide a letter of credit in the amount of the Performance Rebate Payment for the benefit of Developer, which shall terminate upon payment thereof. The letter of credit will be provided and delivered to Developer prior to Developer’s acquisition of the Property, so long as Developer provides redacted copies of fully executed leases representing at least ninety percent (90%) of the Shopping Center to the City.

Section 3.04. “Furthering Kemah Recognition and Pride.” Developer acknowledges that the City is engaging in and administering the Program to further the economic interests of the people of Kemah and that it is important to the City in that regard that Kemah receive recognition for its efforts. In its communications, branding, marketing, and promotions throughout the term of this Agreement regarding the Project, the Developer shall recognize that the Project and its associated business operations are located in Kemah, Texas rather than “in the Galveston area” or similar non-Kemah specific descriptors.

Section 3.05. Local Purchases. Developer shall make commercially reasonable efforts to purchase within the City of Kemah supplies, materials, and equipment related to the Project and its operation so that the tax situs of sales tax revenue from such purchases is in Kemah, Texas. However, the Parties agree that given the rather uniqueness of the Project efforts in this regard may be limited.

Section 3.06. Highway 518 Improvements. In addition to the above agreements and obligations:

- a. In the event the City obtains approvals and permits from the Texas Department of Transportation for a full median cut at the intersection of the to-be-built road and Highway 518, Developer, at Developer's expense, shall remove the existing median and pave the intersection, in accordance with such permit. Developer will not be required to install or pay for the installation of a traffic signal.
- b. After completion of construction, The City may construct or install additional lanes of traffic to the Road, at the City's sole election.
- c. After completion of construction, Developer, at the City's election, will donate to the City the "City Parcel", as shown on the Site Plan and shall transfer ownership of any portions of the Property intended as public right of way to the City via a deed of dedication or similar document.

Section 3.07 Lease Restrictions. In all leases signed by Developer relating to the Project, Developer shall insert a covenant of tenant wherein tenant agrees not to request any incentives from the City under Article 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code.

Section 3.08. Reserve G. In addition to all other obligations of Developer contained herein, prior to the issuance of any certificate of occupancy for the Project, Developer transfer ownership of "Reserve G" (as defined on the approved site plan for the Project and on the proposed subdivision plat) to the City via a special warranty deed.

ARTICLE IV

PERFORMANCE REBATE PAYMENT FROM THE CITY

Process for Payment. At the time the Project is Operational, Developer may request the Performance Rebate Payment by written request submitted to the City. The City shall pay to Developer the Performance Rebate Payment within thirty (30) days after Developer's request. Notwithstanding any provision herein to the contrary, as a condition of the payment of the Performance Rebate Payment, Developer must

ARTICLE V

PERSONAL LIABILITY OF PUBLIC OFFICIALS AND LIMITATIONS ON CITY OBLIGATIONS

Section 5.01. Personal Liability of Public Officials. No employee or elected official of the City shall be personally responsible for any liability arising under this Agreement.

Section 5.02. Limitations on City Obligations. The Performance Rebate Payment made and any other financial obligation of the City hereunder shall be paid solely from lawfully available funds that have been budgeted and appropriated each year during the Term by the City as provided in this Agreement. Under no circumstance shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Performance Rebate Payment unless the City budgets and appropriates funds to make such payments during the City's fiscal year in which such payments are due. If the City fails to appropriate funds to make any Performance Rebate Payment(s), it shall immediately notify Developer of such non-appropriation and Developer may, at its sole option, terminate this Agreement, effective upon written notice to the City.

Section 5.03. No Recourse. Except for the right to terminate as provided in above Section 5.02, Developer shall have no recourse against the City for the City's failure to budget and appropriate funds during any fiscal year to meet the purposes and satisfy its obligations under this Agreement.

Section 5.04. Source of Funds. Performance Rebate Payment shall be made from annual appropriations only from such funds of the City as may be legally appropriated for the implementation of Article III, Section 52-a of the Texas Constitution, Chapter 380 of the Texas Local Government Code or any other economic development or financing programs authorized by Texas law or the home-rule powers of the City.

ARTICLE VI

MISCELLANEOUS

Section 6.01. Rules of Construction. The capitalized terms listed in this Agreement shall have the meanings set forth herein whenever the terms appear in this Agreement, whether in the singular or the plural or in the present or past tense. Other terms used in this Agreement shall have meanings as commonly used in the English language. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. In addition, the following rules of interpretation shall apply:

- a. The masculine shall include the feminine and neuter.
- b. References to "Articles," "Sections," or "Exhibits" shall be to articles, sections, or exhibits of this Agreement.

- c. The Exhibits attached hereto are incorporated in and are intended to be part of this Agreement; provided that in the event of a conflict between the terms of any Exhibit and the terms of this Agreement, the terms of this Agreement shall take precedence.
- d. This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.
- e. Unless expressly provided otherwise in this Agreement, (i) where the Agreement requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the Agreement gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.
- f. Use of the words “include” or “including” or similar words shall be interpreted as “including but not limited to” or “including, without limitation.”
- g. The recitals to this Agreement are incorporated herein.

Section 6.02. Force Majeure. Unless otherwise provided, all obligations of Developer and City shall be subject to events of “force majeure” which shall mean any contingency or cause beyond the reasonable control of a party, as applicable, including, without limitations, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action or inaction (unless caused by negligence or omissions of such party), fires, explosions, floods, strikes, slowdowns or work stoppages, shortage of materials and labor.

Section 6.03. Dispute Resolution and Step Negotiations. (a) The Parties shall attempt in good faith to resolve all disputes arising out of or relating to this Agreement or any of the transactions contemplated hereby promptly by negotiation, as follows. Either Party may give the other Party written notice of any such dispute not resolved in the normal course of business. Executives of both Parties at levels one level above the Project personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty days from the referral of the dispute to such executives, or if no meeting of such executives has taken place within fifteen days after such referral, either Party may initiate mediation as provided hereinafter. If a Party intends to be accompanied at a meeting by an attorney, the other Party shall be given at least three business days’ notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of the federal and state rules of evidence. Each Party will bear its own costs for this dispute resolution phase.

(b) In the event that any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby is not resolved in accordance with the procedures set forth in this Section 8.03, such dispute shall be submitted to non-binding mediation to a person mutually agreed by the Parties. The mediation may take place at a mutually agreed upon location. If the mediation process has not resolved the dispute within thirty days of the submission of the matter to mediation or within such longer period as the Parties may agree to, either Party may exercise all remedies available at law or in equity under this Agreement, including the initiation of court proceedings. Each Party will bear its own costs, and share equally in the costs of mediators, for this dispute resolution phase. If the mediation process has not resolved the dispute within thirty (30) days of the submission of the matter to mediation or within such longer period as the Parties may agree to, either Party may exercise all remedies available at law or in equity under this Agreement, including the initiation of Court Proceedings, subject to the limitations of this Agreement.

(c) Nothing in this Section shall preclude, or be construed to preclude, the resort by either Party to a court of competent jurisdiction solely for the purposes of securing a temporary or preliminary injunction or other relief to preserve the status quo or avoid irreparable harm. The Parties shall continue to perform each of their respective obligations under this Agreement during the pendency of any dispute; provided that this obligation shall not apply after the termination of this Agreement (except with respect to payments of amounts due and owing under this Agreement).

Section 6.04. Jurisdiction and Venue. City and Developer, to the fullest extent permitted by applicable law, irrevocably (i) submit to the exclusive jurisdiction of the district courts located in Galveston County, Texas and any appellate court thereof; (ii) waive any objection which either may have to the laying of venue of any proceedings brought in any such court and (iii) waive any claim that such proceedings have been brought in an inconvenient forum. Nothing in this provision shall prohibit a party from bringing an action to enforce a money judgment in any other jurisdiction where the courts of such jurisdiction have jurisdiction over the other party.

Section 6.05. Accommodation of Financing Parties. To facilitate Developer's obtaining of financing to construct and operate the Project, City shall make reasonable efforts to provide such consents to assignments, certifications, representations, information or other documents as may be reasonably requested by Developer or the Developer's financing parties in connection with the financing of the Project; provided that in responding to any such request, the City shall have no obligation to provide any consent, certification, representation, information or other document, or enter into any agreement, that materially adversely affects or unduly burdens the City. Developer shall reimburse, or shall cause the financing parties to reimburse, the City for the incremental, direct, and documented third party expenses (including, without limitation, the reasonable fees and expenses of outside counsel) incurred by the City in the preparation, negotiation, execution or delivery of any documents requested by Developer or the financing parties, and provided by the City.

Section 6.06. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or

amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Section 6.07. Binding Effect; Successors and Assigns. The terms and conditions of this Agreement are binding upon the successors and assigns of the parties hereto. This Agreement, or the right to receive grant payments, pursuant to this Agreement, may not be assigned, in whole or in part, without the express written consent of the City; not to be unreasonably withheld, conditioned or delayed; provided that Developer may, without the City's consent, assign this Agreement to a wholly-owned subsidiary or affiliate of Developer. However, without the City's consent, Developer may enter into a collateral assignment of this Agreement in connection with any financing of the Project. For purposes of this Agreement, performance by a successor or an affiliate of Developer, or performance by a party with whom Developer or its affiliates contract shall be deemed to be performance by Developer.

Section 6.08. Amendments. No modifications or amendments to this Agreement shall be valid unless in writing and signed by a duly authorized signatory.

Section 6.09. Severability. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

Section 6.10. Notices. All notices required to be given under this Agreement shall be in writing and shall be given by either party or its counsel in person, via an express mail service or via courier or via receipted facsimile transmission (but only if duplicate notice is also given via express mail service or via courier or via certified mail) or certified mail, return receipt requested, to the respective parties at the below addresses (or at such other address as a party may hereafter designate for itself by notice to the other party as required hereby). All notices given pursuant to this paragraph shall be deemed effective, as applicable, on the date such notice may be given in person, next business day following the date on which such communication is transferred via facsimile transmission, or as applicable, deposited with the express mail service, courier, or in the United States mails. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address.

If to City: City of Kemah
1401 State Highway 146
Kemah, Texas 77565
Attn: Wendy Ellis, City
Administrator
Phone: 281-334-1611
Fax: 281-334-6583

With a required copy to:

Dick Gregg, Sr.
Gregg and Gregg, P.C.
16055 Space Center Boulevard
Suite 150
Houston, Texas
Phone: (281) 480-1211
Fax: (281) 480-1210

If to Developer: Kemah Investment Partners, LLC
c/o J. Evan Gower
GBT Realty Corp.
9010 Overlook Blvd.
Brentwood, TN 37027
(o) 615-370-0670
egower@gbtrealty.com

With a required copy to:
David W. Richardson
CWRO LLP
2301 S. Capital of Texas Highway
Bldg. J-102
Austin, Texas 78746
Tel: 214-369-2225
FAX: 888-699-7804

Section 6.11. Employment of Undocumented Workers. During the term of this Agreement the Developer agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a (f), the Developer shall repay the amount of the Performance Rebate Payment and any other funds received by the Developer from the City as of the date of such violation within 120 business days after the date the Developer is notified by the City of such violation, plus interest at the rate of six percent compounded annually from the date of violation until paid.

Section 6.12. Non-Collusion. Developer represents and warrants that neither Developer nor anyone on Developer's behalf has given, made, promised or paid, nor offered to give, make,

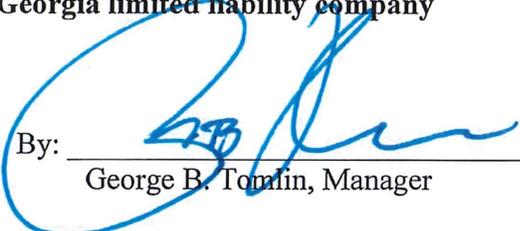
promise or pay any gift, bonus, commission, money or other consideration to any employee, agent, representative or official of the City as an inducement to or in order to obtain the benefits to be provided by the City under this Agreement.

Section 6.13. Time of the Essence. Time is of the essence in the performance of this Agreement. If any deadline contained herein ends on a Saturday, Sunday or a legal holiday recognized by the Texas Supreme Court, such deadline shall automatically be extended to the next day that is not a Saturday, Sunday or legal holiday.

Section 6.14. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall have the force and effect of any original, as of the Effective Date.

Executed and effective as of the 9th day of May, 2017.

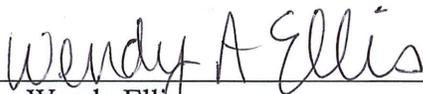
DEVELOPER
KEMAH INVESTMENT PARTNERS, LLC,
a Georgia limited liability company

By: 
George B. Tomlin, Manager

CITY
City of Kemah, Texas
a ~~home rule~~ municipality
CAD

By: 
Carl Joiner,
Mayor

Approved as to Content:

By: 
Wendy Ellis
City Administrator/City Economic Development Director

Approved as to Legal Form:

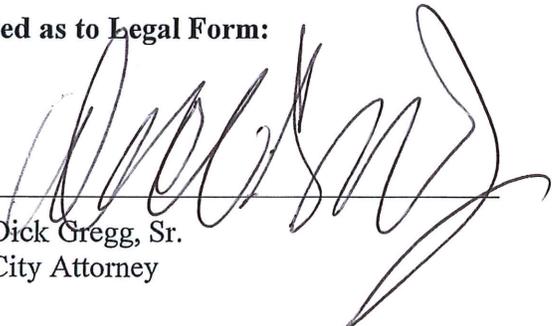
By: 
Dick Gregg, Sr.
City Attorney

EXHIBIT A

PROPERTY

Beginning at point on south right of way line of State F.M. Highway No. 518 and the northeast corner of a Houston Lighting and Power Company 180-foot-wide right of way. Thence along said southern highway right of way north 47 degrees, 46 minutes, 45 seconds east for a distance of 247.44 feet to **THE POINT OF BEGINNING**. Thence north 47 degrees, 46 minutes, 45 seconds east for a distance of 37.00 feet; Thence leaving said right of way line south 42 degrees, 23 minutes, 17 seconds east for a distance of 264.77 feet; Thence north 47 degrees, 46 minutes, 45 seconds east for a distance of 383.34 feet; Thence south 29 degrees, 42 minutes, 07 seconds east for a distance of 273.52 feet; Thence north 60 degrees, 54 minutes, 56 seconds east for a distance of 61.30 feet; Thence south 29 degrees, 05 minutes, 04 seconds east for a distance of 392.59 feet; Thence south 47 degrees, 36 minutes, 33 seconds west for a distance of 245.77 feet; Thence south 42 degrees, 23 minutes, 27 seconds east for a distance of 252.00 feet; Thence south 47 degrees, 36 minutes, 33 seconds west for a distance of 120.27 feet; Thence north 42 degrees, 23 minutes, 17 seconds west for a distance of 360.00 feet; Thence south 47 degrees, 36 minutes, 38 seconds west for a distance of 161.00 feet; Thence north 42 degrees, 23 minutes, 17 seconds west for a distance of 556.83 feet; Thence north 47 degrees, 46 minutes, 45 seconds east for a distance of 197.44 feet; Thence north 42 degrees, 23 minutes, 17 seconds west for a distance of 264.77 feet back to **THE POINT OF BEGINNING** containing roughly 407,012 square feet or 9.3437 acres.

Kemah City Council Agenda Item

#5 All other 380 Agreements and revenue impacting agreements

Mayor generated Agenda Item

Economic Development Agreement
Between City of Kemah, Texas
and The Tomato Group, LLC
to Provide Economic Incentives.

This Economic Development Agreement is made and entered into as of the 20th day of September, 2017, by and between the City of Kemah, Texas - a municipality located in Galveston County, Texas, (the "City") and The Tomato Group, LLC (the "Applicant").

- a. Capitalized terms used in these recitals are defined in Article I below. The City has due authority to adopt programs to promote local economic development and stimulate business and commercial activity (Texas Local Government Code, Chapter 380).
- b. The Applicant has requested that the City provide economic development financial assistance in the form of a rebate of a portion of the City's sales tax in order to make feasible the buildout of a lease and the establishment and operation of a commercial business in the form of a new restaurant in the City (the "Project") at 406 Texas Ave.
- c. The Applicant specifies that its Project will provide employment to 78 persons.
- d. The Applicant **estimates** that its Project will generate a minimum of \$ 3,000,000 in annual, taxable sales.
- e. The City Council finds that the Project will result in an increase in employment, commercial sales activity, and taxable value, which will promote the City's economic development and further stimulate commercial activity in the City.

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I.
DEFINITIONS

Capitalized terms used herein, including the recitals hereto shall have the meanings set forth in the section, unless otherwise defined, or unless the context requires another definition.

"Act" means Texas Local Government Code, Chapter 380.

"City" means the City of Kemah, Texas, a Texas municipal corporation located in Galveston County, Texas.

"Applicant" means The Tomato Group, LLC.

"Project" means the facility to be built-out at 406 Texas Ave.

ARTICLE II.
COOPERATION

The parties agree to take such actions, including the execution and delivery of such documents, instruments, and certifications, as may be necessary or appropriate, from time to time, to carry out the terms, provisions, and intent of this Agreement and to aid and assist each other in carrying out the terms, provisions, and intent described in the Project.

ARTICLE III.
EFFECTIVENESS OF AGREEMENT

This Agreement shall be effective from and after its approval and execution by both Parties.

ARTICLE IV.
PERFORMANCE, PAYMENT, AND REIMBURSEMENT
OF PROJECT COSTS

A. Subject to the terms of this Agreement, the City agrees that it will pay the Applicant a portion of the sales tax revenue received by the City from the sale of taxable items and services (by Applicant or its sub lessees) at the Project for a period of five (5) years from the date that the Applicant opens for business. The City will pay to the Applicant an amount equal to 50% of the City tax on the taxable sales made by Applicant and on which the Applicant collects and actually pays sales tax. Applicant shall promptly apply for its required building permit and any other necessary municipal approvals and shall use its best efforts to create, complete, publish, tender and furnish all applications, plans and specifications and all other data required and reasonably demanded by City as supporting data for issuance of a building permit or any other approval(s) for the project in question by the City. City agrees not to unreasonably withhold approval of the issuance of the permit and/or the approval. Should issues develop over any aspect of this section (Article IV section A) both parties agree to promptly submit same to immediate arbitration under the rules and procedures of the American Arbitration Association with the prevailing party recovering as part of the decision its reasonable costs and attorney's fees. The decision of the Arbitrator shall be final and shall be capable of entry into binding judgment in a court of competent jurisdiction. This contract is subject to Applicant having received a building permit by October 31, 2017 and a certificate of occupancy by the 1 day of January 2018 or this agreement shall terminate. Applicant agrees that its opening date after substantial completion of the Project shall occur by January 1 2018.

B. The City agrees that it will disburse the sales tax rebate payment to the Applicant no later than three (3) weeks after City has received its sales tax payment.

C. The Applicant agrees that its Project will provide employment to 78 persons.

D. Payments made to the Applicant shall be calculated (1) on the basis of the Applicant's records of sales taxes that it has paid to the State of Texas, and (2) the administrative decisions of the State as to the amount of sales taxes the City will receive from the State. The City's maximum payment in any month will be limited to the amount actually received by the City from the State, and that is attributable to a 2% tax rate imposed on taxable sales made within the Project. The Applicant shall provide to the City's Director of Finance a copy of the

monthly report of sales tax revenue the Applicant certifies to the State. In addition, the Applicant authorizes the City to obtain from the State the State's information regarding taxable sales and tax collections within the Project. The City's obligation to pay the Applicant is restricted solely to the sales tax collected by the Applicant on sales within the Project and paid to the State. The City shall have no obligation to pay any money to the Applicant from any other source. Applicant shall locate his cash registers in the leased premises and designate Kemah Texas as the point of sale for all sales from this location and shall maintain said point of sale status throughout the term of the agreement and shall require any sublessee of Applicant to so register the point of sale.

ARTICLE V. AUTHORITY OF PARTIES

A. The City hereby represents and warrants to Applicant that the City has full constitutional and lawful right, power, and authority, under currently applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary City proceedings, findings, and actions. Accordingly, this Agreement constitutes the legal, valid, and binding obligation of the City, is enforceable in accordance with its terms and provisions and does not require the consent of any other governmental entity.

B. The Applicant hereby represents and warrants to the City that Applicant has full lawful right, power, and authority to execute and deliver and perform the terms and obligations of this Agreement and all of the foregoing have been or will be duly and validly authorized and approved by all necessary actions of Applicant. Concurrently with Applicant's execution of this Agreement, Applicant has delivered to the City copies of the resolutions or other corporate actions authorizing the execution of this Agreement and evidencing the authority of the persons signing this Agreement on behalf of the Applicant to do so. Accordingly, this Agreement constitutes the legal, valid, and binding obligation of Applicant, and is enforceable in accordance with its terms and provisions.

C. Whenever under the provisions of this Agreement, any reasonable request, approval, notice, or consent of the City or Applicant is required, the City or Applicant is required to agree or to take some action at the request of the other, such request, approval, notice, or consent shall be given for the City, unless otherwise provided herein, by the City Administrator or his/her designee and for Applicant by any officer of Applicant so authorized (and, in any event, the officers executing this Agreement are so authorized).

ARTICLE VI. DEFAULT

A. A party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such party fails to materially perform, observe, or comply with any of its covenants, agreements, or obligations hereunder or breaches or violates any of its representations contained in this Agreement.

B. Before any failure of any party to perform its obligations under this Agreement

shall be deemed a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within thirty (30) days of the receipt of such notice, subject, however, to the terms and provisions of Section VI. C.

C. Notwithstanding anything in this Agreement which is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed hereunder by any Party is delayed as a result of circumstances, which are beyond the reasonable control of such Party (which circumstances may include, without limitation, pending or threatened litigation, acts of God, war, acts of civil disobedience, fire, or other casualty, the time for such performance shall be extended by the amount of time of such delay. The Party claiming delay of performance as a result of any of the foregoing "force majeure" events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of the occurrence of a force majeure event causing such delay, the claiming Party shall not be entitled to avail itself of the provisions for the extension of performance contained in this Section.

ARTICLE VII. GENERAL PROVISIONS

A. Time of the essence

Time is of the essence of this Agreement. The parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

B. Personal liability of public officials

To the extent permitted by State law, no public official or employee shall be personally responsible for any liability arising under or growing out of this Agreement.

C. Liability of the Applicant, its successors and assignees

Any obligation or liability of the Applicant whatsoever that may arise at anytime under this Agreement or any obligation or liability which may be incurred by the Applicant pursuant to any other instrument, transaction, or undertaking contemplated hereby shall be satisfied, if at all, out of the assets of the Applicant only. No obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the property of any of partners, officers, employees, shareholders, or agents of the Applicant, regardless of whether such obligation or liability is in the nature of contract, tort, or otherwise.

D. Notices

Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed, or sent by rapid transmission confirmed by mailing written confirmation at

substantially the same time as such rapid transmission or personally delivered to an officer of the receiving party at the following addresses:

If to the City: 1401 SH 146, Kemah, TX 77565

With copies to:

If to the Applicant: PO Box 1188, Kemah, TX 77565

Each party may change its address or contact information by written notice in accordance with this Section. Notice shall be deemed effective upon the first verifiable delivery attempt.

E. Amendments and waivers

Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is approved by the City Council and the Applicant. No course of dealing on the part of the City or the Applicant nor any failure or delay by the City or the Applicant with respect to exercising any right, power, or privilege pursuant to this Agreement shall operate as a waiver thereof, except as otherwise provided in this Section.

F. Invalidity

In the event that any of the provisions contained in this Agreement shall be held unenforceable in any respect, such unenforceability shall not affect any other provisions of this Agreement and to that end, all provisions, agreements, or portions of this Agreement are declared to be severable.

G. Successors and assigns

No party of this Agreement shall have the right to assign its rights under this Agreement or any interest herein, without the prior written consent of the other party.

H. Applicable Law

This Agreement is a contract made under and shall be construed in accordance with and governed by the laws of the United States of America and the State of Texas.

I. Term of Agreement

The term of this Agreement shall commence on the date first above written and shall continue for five (5) years from the date that the Applicant opens for business.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF KEMAH, TEXAS, a Texas municipality

By: Carl G. Joiner
Carl Joiner, Mayor

ATTEST:

Michelle
City Secretary

THE TOMATO GROUP, LLC

By: Barry Jewell
Barry Jewell President
Printed Name and Title

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (the "Agreement") is between the City of Kemah, Texas ("City"), a municipal corporation and City and Kahuna Marketing Group, Inc., d/b/a Kahuna Joe's ("Concessionaire").

RECITALS

WHEREAS, the City supports and encourages business development in order to stimulate tax revenues and increase the quality of life of its citizens.

WHEREAS, Concessionaire proposes to lease certain real property located at 604 Bradford, within the City limits of the City of Kemah, Galveston County, Texas the ("Development Property" a/k/a "Premises"). To wit: the western half of Blocks 5 and 6, Town of Kemah, SAVE AND EXCEPT the footprint of the Kemah Visitors Center located at 604 Bradford, Kemah, Texas 77565, owned by the City within the City limits. Concessionaire currently owns and operates a retail snow-cone stand in League City, with a substantial following. It is called Kahuna Joe's. Concessionaire shall open a similar business at this Kemah location and City believes that the new outlet shall thrive in this location. Increased customer traffic should increase overall tourist traffic to the Visitors Information Center of the City also at 604 Bradford Street.

WHEREAS, Concessionaire has requested assistance and cooperation from the City in the economic development of the Development Property. The City has agreed to provide this enhanced market location and build out in order to induce Concessionaire to undertake the Project.

WHEREAS, the City and Concessionaire desire to set forth these inducements in a valid, binding and enforceable agreement to set forth the framework for the relationship between the City and Concessionaire with regard to the Project.

WHEREAS, the City has determined that the economic base of the City, as well as the prosperity and welfare of its citizens and the citizens of Galveston County will be advanced by the Project. The City finds that providing the build out for the Project is lawful and in furtherance of the City's economic development objectives pursuant to economic development legislation applicable to cities and Chapter 2267 et seq of the Texas Government Code (Public and Private Facilities Infrastructure).

WHEREAS, upon the execution of this Agreement by both parties, the commitments contained in this Agreement will become legally binding obligations of the City and the Concessionaire.

NOW, THEREFORE, it is agreed by the City and Concessionaire in consideration of the mutual covenants and provisions and subject to the terms and conditions hereinafter set forth, as follows:

Section 1. Build-Out Improvements:

1.1 The structure is a historic early train depot. Any build out, repairs or improvements to the premises shall be pre-approved in writing by City and constructed by City contractors at City cost. The buildout will result in a move-in ready building for Concessionaire's business minus the fixtures Concessionaire must provide. Any tables, benches, or other decorative equipment placed on the grassy area off the deck shall be easily removable at the end of this Agreement. Any fixtures added at build out or by Concessionaire shall become the property of City upon termination of this Agreement, with the exception to the following itemized fixture list which is provided by Concessionaire, however the City may choose to provide the Hand Sink, 3 Compartment Sink, and Mop Sink as they will be permanently affixed to the plumbing of the building and the City may want to keep these fixtures with the building after termination of this Agreement:

- 1) Hand Sink
- 2) 3 Compartment Sink
- 3) Mop Sink
- 4) Blenders
- 5) Shave Ice Machines
- 6) Refrigeration (freezers, coolers, refrigerators and margarita machines)
- 7) Ipads, Printers and Cash Drawers
- 8) Signage
- 9) Rolling Shelves and Prep Tables (not permanently installed)
- 10) Audio Equipment
- 11) Themed Decorations

1.2 City and Concessionaire shall collaborate on and pre-approve in writing, mutually acceptable upgrades (design, materials, plans and specifications) to the City's Premises (exterior or interior of the Train depot structure and/or enhancements to the exterior grounds) that shall be constructed in a good and workmanlike manner in accordance with same and substantially accomplished prior to occupancy. City shall have no responsibility for any Concessionaire improvements beyond this initial collaborative build out and Concessionaire shall make no unilateral changes to the Premises (including exterior grounds) without the prior written approval of City, which shall not be unreasonably withheld.

Section 2. Infrastructure - Maintenance and Improvements:

Concessionaire shall pay for and maintain the exterior of the railroad depot, the exterior decking, walkways and railings, in a manner that meets or exceeds current maintenance thereon and thereto in any manner City deems appropriate. City shall provide and pay for grass cutting and lawn maintenance. City shall provide trash hauling and pickup (for the building and its surrounding area and grounds) in whatever manner is currently available to commercial users from the City's trash hauling provider. City and Concessionaire shall also remain mindful of the historical significance of the Premises and Concessionaire shall refrain from any decorations, alterations, fixtures or modifications that have not been approved in writing by City before

installation. Whatever equipment Concessionaire places, uses and/or utilizes on site shall be removable by City and maintained in a good and workmanlike condition by Concessionaire. Fixtures installed by Concessionaire shall remain with the Premises at the termination of this Agreement unless removal is authorized by City in writing. Concessionaire shall make frequent routine inspections of the cables and connections of equipment in order to promptly avoid or cure any standing or puddling spillage or seepage on site.

Section 3. Rent:

3.1 Concessionaire shall pay to City a monthly rental of \$1,000.00 or 10% of gross receipts for sales on site, whichever is greater, payable in arrears on the 10th day of the following month, commencing on the 1st day of March, 2017. Provided however, commencement date shall be extended to the 1st day of the month following the final approval date of the Galveston County Health Department if there are delays in that final approval. City currently pays and shall continue to pay during the term of this Agreement certain utility costs for the building. City will measure or meter the utility usage separately from the visitor center and Concessionaire will only be obligated to pay for the utilities that Concessionaire uses for Kahuna Joe's Kemah. Concessionaire shall promptly reimburse City for said utility costs as incurred and as presented by City for payment. Those utilities are gas, electric, water and sewer. The Concessionaire and the City shall each be responsible for obtaining and paying for any telephone service and internet or cable devices. Concessionaire shall be open and shall operate at least from March 1 to October 31 of each year but may operate additional months if deemed seasonally appropriate to Concessionaire.

3.2 Gross sales shall be reported to City monthly by the 10th day of the month following the close of each month. Such report shall be certified by Concessionaire to be true and correct. Concessionaire operates an additional location in League City, Texas, which is exempt from this Agreement. Concessionaire shall furnish to City access to all books and records of gross sales for Kahuna Joe's Kemah, Texas only, and City may audit said books if, as and when it deems it appropriate to do so.

3.3 In the event that any rent payment required to be paid by Concessionaire hereunder is not paid in full by the start of the tenth (10th) day of each month, Concessionaire hereby acknowledges that late payment by Concessionaire to City of rent and other sums due hereunder will cause City to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of rent or any other sum due from Concessionaire shall not be received by City or City's designee at the time specified, then Concessionaire shall pay to City a late charge equal to ten (10%) per cent of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the cost City will incur by reason of late payment by Concessionaire. Acceptance of such late charge by City shall in no event constitute a waiver of Concessionaire's default with respect to such overdue amount, nor prevent City from exercising any of the other rights and remedies granted hereunder.

Section 4. Parking:

Concessionaire and City shall jointly use the available parking spaces.

Section 5. Term:

Concessionaire shall have the right to occupy the Premises and operate its business commencing on the date of execution of this Agreement and ending on February 28, 2022, and shall have the option to renew for another five years if mutually agreeable as to the renewal terms and conditions. Should Concessionaire breach any term of this agreement and fail to cure that breach after reasonable written notice from City or should Concessionaire cease operations, this agreement shall immediately terminate sooner than the full term.

Community Sustainability: Concessionaire, in good faith, will make every effort to thrive at said Kemah location in effort to boost traffic flow to the Visitor Tourist Center as well as the promotion of the public interest, however, Concessionaire does express concerns of community sustainability as well as new city construction projects which may affect business patronage and cause hardship in fulfilling the terms of this agreement. Therefore, if after the first full year of operations, the annual gross sales do not exceed a minimum of \$50,000.00 per fiscal year consecutively then Concessionaire may terminate this Agreement by offering a ninety (90) day advance notice termination.

Section 6. Use:

6.1 City recognizes that certain existing businesses in the City currently sell ice cream and fudge so sale of those items by Concessionaire shall be restricted. Concessionaire shall only use the premises as a retail snow cone site and related items other than fudge or ice cream which may not be sold. Provided, however, while no ice cream may be sold separately as part of the use, there shall be no restriction or prohibition of ice cream so long as it is sold as an ingredient in a snow cone item in the same cone or receptacle. Concessionaire may if, as and when properly licensed, also sell alcoholic beverages. Should market conditions change this subsection may be revised or eliminated by mutual written agreement.

6.2 Compliance with Law. Concessionaire shall, at Concessionaire's expense, promptly comply with all applicable statutes, ordinances, rules, regulations, orders and requirements in effect during the term or any part of the term hereof regulating the use by Concessionaire of the Premises. Concessionaire shall not use or permit the use of the Premises in any manner that will tend to create waste, or a nuisance.

6.3 Conditions of Premises. Concessionaire hereby accepts the Premises in its condition existing as of the date of the possession hereunder, subject to all applicable municipal, county and state laws, ordinances and regulations covering and regulating the use of the Premises, and accepts this Agreement subject thereto. Concessionaire acknowledges that City has not made any representation or warranty as to the suitability of the Premises for the conduct of Concessionaire's business.

6.4 City's Rule and Regulations. Concessionaire shall faithfully observe and comply with the rules and regulations that City shall from time to time promulgate for the use of the Building. City reserves the right from time to time to make all reasonable modifications to said rules and regulations. The additions and modifications to those rules and shall be binding upon Concessionaire upon delivery of a copy of them to Concessionaire.

Section 7. General Provisions:

7.1 City's Interests. "City" owns the fee title to the land and all structures including the train depot and decking herein described as the "The Premises" at 604 Bradford, Kemah, Texas. The obligations contained in this Agreement to be performed by City shall, subject as aforesaid, be binding on City's successors and assigns if any.

7.2 Severability. The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

7.3 Interest on Past-Due Obligations. Except as expressly herein provided, any amount due to City not paid when due shall bear interest at ten (10%) per cent per annum from the date due until paid. Payment of such interest shall not excuse or cure any default by Concessionaire under this Agreement.

7.4 Incorporation of Prior Agreements; Amendments. This Agreement contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement of understanding pertaining to any such matter shall be effective. This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.

7.5 Waivers. No waiver by City of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Concessionaire of the same or any other provision. City's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of City's consent to or approval of any subsequent act by Concessionaire. The acceptance of rent hereunder by City shall not be a waiver of any preceding breach by Concessionaire of any provision hereof, other than the failure of Concessionaire to pay the particular rent so accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such rent. For instance, if City waives a late payment it is not required to waive all late payments.

7.6 Holding Over. If Concessionaire remains in possession of the Premises or any part thereof after the expiration of any term hereof with the express written consent of City, such occupancy shall be tenancy from month to month at a rental in the amount of the last monthly rental plus all other charges payable hereunder, and upon the terms hereof applicable to month-to-month tenancy. Concessionaire agrees to pay one hundred twenty (120%) per cent of the Rent as a holdover.

7.7 Recording. Concessionaire shall not record this Agreement. Any such recordation shall be a breach under this Agreement. Leases are not typically recorded and when recorded create an item in the public record that requires a release.

7.8 Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive, but shall wherever possible, be cumulative with all other remedies at law or in equity.

7.9 Covenants and Conditions. Each provision of this Agreement performable by Concessionaire shall be deemed both a covenant and a condition.

7.10 Binding Effect; Choice of Law. Subject to any provisions hereof restricting assignment or subletting by Concessionaire and subject to the provisions, this Agreement shall bind the parties, their personal representatives, successors and assigns. This Agreement shall be governed by the laws of the state where the Premises are located.

7.11 Attorney's Fee. If either party named herein brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to his reasonable attorney's fees to be paid by the losing party by court.

7.12 Arbitration. All claims and disputes arising under or relating to this Agreement are to be settled by binding arbitration in the State of Texas, County of Galveston or another location mutually agreeable to the parties. Judgment on the award rendered by the arbitrator(s) shall be submitted for confirmation and entry of judgment in a court of competent jurisdiction.

7.13 City's Access. City, City's agents and public utility company's employees shall have the right to enter the Premises at reasonable times for the purpose of inspecting the same, meter reading, operating control switches of common area facilities, showing the same to prospective lenders, and making such alterations, repairs, improvements or additions to the Premises or the building of which they are a part as City may deem necessary or desirable.

Section 8. Assignment and Subletting:

No Re-Assignment of Concessionaire. Concessionaire shall not assign this Agreement without the written consent of City. Any assignment without City's written consent shall be void and shall be considered a breach of this Agreement.

Section 9. Defaults; Remedies; Notice and Cure:

9.1 Defaults. The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by Concessionaire:

(a) The failure by Concessionaire to make any payment of rent or any other payment required to be made by Concessionaire hereunder, as and when due, where such failure shall continue for a period of ten (10) days after written notice thereof from City to Concessionaire.

(b) The failure by Concessionaire to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by Concessionaire, other than described in Paragraph (a) above, where such failure shall continue for a period of thirty (30) days after written notice thereof from City to Concessionaire; provided, however, that if the nature of Concessionaire's default is such that more than thirty (30) days are reasonably required for its cure, then Concessionaire shall not be deemed to be in default if Concessionaire commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(c) (i) The making by Concessionaire of any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by or against Concessionaire of a petition to have Concessionaire adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Concessionaire, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Concessionaire's assets located at the Premises or of Concessionaire's interest in this Agreement, where possession is not restored to Concessionaire within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Concessionaire's assets located at the Premises or of Concessionaire's interest in this Agreement, where such seizure is not discharged within thirty (30) days.

9.2 Failure by the Concessionaire to timely pay any sums when due hereunder will constitute a default by the Concessionaire under this Agreement. Upon the occurrence of such default by the Concessionaire, City may take whatever legal proceedings appear necessary or desirable at law or in equity to cancel this Agreement and collect the amounts owed to it under this Agreement, or to enforce any obligation, covenant, or agreement of the Concessionaire under this Agreement. No remedy herein conferred upon or reserved to City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy will be cumulative and will be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

9.3 Remedies in Default. In the event of any such default or breach by Concessionaire, City may at any time thereafter, with or without notice or demand and without limited City in the exercise of any right or remedy which City may have by reason of such default or breach:

(a) Terminate Concessionaire's right to possession of the Premises by any lawful means, in which case this Agreement shall terminate and Concessionaire shall immediately surrender possession of the Premises to City. In such event City shall be entitled to recover from Concessionaire all damages incurred by City by reason of Concessionaire's default including, but not limited to, the cost of recovering possession of the Premises; expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorney's fees, and any real estate commission actually paid; the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Concessionaire proves could be reasonably avoided; and that portion of the leasing commission paid by City applicable to the unexpired term of this Agreement. Unpaid installments of rent or other sums shall bear interest from the date due at the rate of ten (10%) percent annum. In the

event Concessionaire shall have abandoned the Premises, City shall have the option of (I) retaking possession of the Premises and recovering from Concessionaire the amount specified in this Article 15.2(a), or (ii) proceeding under Article 15.2(b).

(b) Maintain Concessionaire's right to possession, in which case this Agreement shall continue effective whether or not Concessionaire shall have abandoned the Premises. In such event, City shall be entitled to enforce all of City's rights and remedies under this Agreement, including the right to recover the rent as it becomes due hereunder.

(c) Pursue any other remedy now or hereafter available to City under the laws or judicial decisions of the state in which the Premises are located.

(d) Upon any such default by Concessionaire, City or City's agent may change the door lock of the Premises. In such event, City or its agent will place a written notice on Concessionaire's front door stating the name and the address or telephone number of the individual or company from which the new key may be obtained. The new key will be provided only during the Concessionaire's regular business hours and only if Concessionaire pays the delinquent rent.

9.4 Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms and conditions, by any party, or any successor of such party, the party (or successor) will, upon written notice from the other party, proceed immediately to cure or remedy the default or breach with due diligence, and, in any event, within sixty (60) days after receipt of such notice. If such action is not taken or not diligently pursued within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy the default or breach.

Section 10. Insurance:

10.1 Liability Insurance. Concessionaire shall, at Concessionaire's expense, obtain and keep in force during the term of this Agreement a policy of comprehensive public liability insurance insuring City and Concessionaire against any liability arising out of the possession, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be in an amount of not less than \$750,000.00 for injury to or death of one person in any one accident or occurrence and in an amount of not less than \$1,000,000.00 for injury to or death of more than one person in any one accident or occurrence. Such insurance shall further insure City and Concessionaire against liability for property damage of at least \$100,000.00. The limits of said insurance shall not, however, limit the liability of Concessionaire hereunder. If Concessionaire shall fail to procure and maintain said insurance City may, but shall not be required to procure and maintain the same, but at the expense of Concessionaire.

10.2 Property Insurance. City shall obtain, pay and keep in force during the term of this Agreement a policy or policies of insurance covering loss or damage to the entire Visitor Information Center building including the Premises, in the amount of the full replacement value thereof, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, and special extended perils (all risk).

10.3 Insurance Cancellation. No use by Concessionaire shall be made or permitted to be made of the Premises nor acts done which will cause the cancellation of any

insurance policy held by the City covering said Premises or any building of which the Premises may be a part, and if Concessionaire's use of the Premises causes an increase in said insurance rates Concessionaire shall pay any such increase.

10.4 Force Majeure. If either party hereto is prevented in the performance of any act required hereunder by reason of act of God, fire, flood, hurricane or other natural disaster or other reason of like nature not the fault of the party in performing under this Agreement, then performance of such act shall be excused.

10.5 HOLD HARMLESS. CONCESSIONAIRE SHALL INDEMNIFY, DEFEND AND HOLD CITY HARMLESS FROM ANY AND ALL CLAIMS ARISING FROM CONCESSIONAIRE'S USE OF THE PREMISES OR FROM THE CONDUCT OF ITS BUSINESS OR FROM ANY ACTIVITY, WORK OR THINGS WHICH MAY BE PERMITTED OR SUFFERED BY CONCESSIONAIRE IN, ON, OR ABOUT THE PREMISES AND SHALL FURTHER INDEMNIFY, DEFEND AND HOLD CITY HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS ARISING FROM ANY BREACH OR DEFAULT IN THE PERFORMANCE OF ANY OBLIGATION ON CONCESSIONAIRE'S PART TO BE PERFORMED UNDER THE PROVISION OF THIS AGREEMENT OR ARISING FROM ANY NEGLIGENCE OF CONCESSIONAIRE OR ANY OF ITS AGENTS, CONTRACTORS, EMPLOYEES OR INVITEES AND FROM ANY AND ALL COSTS, ATTORNEYS' FEES, EXPENSES AND LIABILITIES INCURRED IN THE DEFENSE OF ANY SUCH CLAIM OR ANY ACTION OR PROCEEDING BROUGHT THEREON. CONCESSIONAIRE HEREBY ASSUMES ALL RISK OF DAMAGE TO PROPERTY OR INJURY TO PERSONS IN OR ABOUT THE PREMISES FROM ANY CAUSE AND CONCESSIONAIRE HEREBY WAIVES ALL CLAIMS IN RESPECT THEREOF AGAINST CITY, EXCEPTING WHERE SAID DAMAGE ARISES OUT OF NEGLIGENCE OF CITY.

10.6 Exemption of City from Liability. Concessionaire hereby agrees that City shall not be liable for injury to Concessionaire's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Concessionaire, Concessionaire's employees, invitees, customers, or any other person in or about the Premises; nor, unless through its negligence, shall City be liable for injury to the persons of Concessionaire.

Section 11. Taxes:

11.1 City as a municipal corporation is exempt from all real property taxes applicable to the Premises.

11.2 Personal Property Taxes and Sales Taxes.

(a) Concessionaire shall pay prior to delinquency all taxes, penalty and interest assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Concessionaire contained in the Premises or elsewhere. Concessionaire

shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of City.

(b) If any of Concessionaire's said personal property shall be assessed with City's real property, Concessionaire shall pay City the taxes attributable to Concessionaire within ten (10) days after receipt of a written statement setting forth the taxes applicable to Concessionaire's property.

11.3 Concessionaire shall report its sales tax point of sale to be Kemah, Texas, in its reports of sales tax. Concessionaire shall promptly report and pay to the Comptroller of Texas when due all sales tax collected.

Section 12. Delays.

No party will be deemed in breach or default of its obligations on the development and construction of the improvements on the Development Property if the delay is due to cause beyond the control and without the fault or negligence of the party who has the obligation. Upon receiving a written request from Concessionaire, the time for performance may be extended upon approval of the City of such time as it determines would be appropriate under the circumstances. The City agrees not to unreasonably deny, withhold, condition or delay its consent to extend the time.

Section 13. No Waiver.

Except as otherwise set forth in this Agreement, any delay by a party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights will not, as long as the breach or default of another party continues, operate as a waiver of such rights or deprive it or limit such rights in any way. No actual waiver made by a party with respect to any specific default will be considered or treated as a waiver of the rights of that party except to the extent specifically waived in writing.

Section 14. Breach.

If Concessionaire fails to comply with all the aforementioned provisions, it will constitute breach of this Agreement and, as the City's sole remedy; any remaining payments of the incentive will not be paid.

Section 15. Compliance with Laws.

Plans and specifications for the construction of any buildings will comply with all applicable federal, state and local laws and regulations, including applicable zoning laws and guidelines, including design review guidelines, to the extent applicable.

Section 16. Financial Commitment.

Concessionaire represents that it has sufficient equity capital and commitment for financial assistance which may be necessary to accomplish the development of the Project.

Section 17. Enforceability.

It is intended and agreed that these agreements and covenants will be binding for the benefit of the community and the City and enforceable by either the City or the Concessionaire against the other party, and their successors and assigns.

Section 18. Binding Effect.

This Agreement and all terms, provisions and obligations set forth in this Agreement will be binding upon and will inure to the benefit of the Concessionaire and its permitted successors and assigns as provided in this Agreement, and will be binding upon and will inure to the benefit of the City and its successors and assigns.

Section 19. Concessionaire's Obligations Upon Termination.

Final maintenance work shall include, but not limited to, the following: (i) all holes on walls shall be patched or repaired; (ii) floor areas shall be cleaned; (iii) all door hardware shall be in good working condition; (iv) ceiling shall be in good condition; (v) all trash shall be removed from the property; (vi) all interior and exterior door keys shall be returned to City; (vii) all lighting fixture shall be in good working condition; (viii) other requirements may be required by City upon City's inspections. If any of the aforesaid conditions are not met before the termination date, Concessionaire shall continue to pay Rent in the amount according to Section 3.1 and other provisions under this Agreement whichever may apply.

Section 20. Time of the Essence.

Time is of the essence of this Agreement.

Section 21. Notice.

All notices, demands, requests, consents, approvals and other communications required or permitted to be given under this Agreement will be in writing and sent by certified mail, postage prepaid, return receipt requested, addressed to the parties to be notified as follows:

(a) Form of Notice. All notices and other communications between the parties must be in writing.

(b) Method of Notice. Notices must be given by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail, postage prepaid, (iv) fax or (v) electronic mail to the party's address specified in this agreement, or to the address that a party has notified to be that party's address for the purposes of this section.

City: Carl Joiner, Mayor
1401 State Highway 146
Kemah, Texas 77565

Copy to: Dick H. Gregg, Jr., City Attorney
16055 Space Center Blvd., Suite 150
Houston, Texas 77062
Phone: (281) 480-1211
dgreggj@gregg-gregg.com

Concessionaire: Joe Serrano
Kahuna Marketing Group, Inc.
d/b/a Kahuna Joe's
812 East Main Street
League City, Texas 77573

Each party may at any time change the address for notices by notifying the other parties of the change.

IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its name and on its behalf by the Mayor and to be attested to by the City Secretary, and the Concessionaire has caused this Agreement to be executed by its authorized officers, on this 2nd day of November, 2016.

City of Kemah Texas,

By: Carl Joiner
Carl Joiner, Mayor

Attest:

Carolyn Anderson
Carolyn Anderson, City Secretary

Kahuna Marketing Group, Inc.
d/b/a Kahuna Joe's

Joe Serrano
Joe Serrano, President

Kemah City Council Agenda Item

#6 regarding cutting costs in HOT budget, including the Bay Area CVB Membership

Council Member generated Agenda Item

Kemah City Council Agenda Item

#7 regarding cutting costs or recommending cutting costs to KCDC board in KCDC budget.

Council Member generated Agenda Item

Kemah City Council Agenda Item

#8 on phased re-opening of businesses, restaurants and bars in the City of Kemah.

Council Member generated Agenda Item



RECOMMENDED GUIDELINES FOR SOCIETAL RESTORATION

Galveston County continues to seek the safest way to mitigate the impact of the COVID-19 pandemic on our community. As we move through the process of societal restoration, it is imperative that we continue to take personal responsibility for our part in ensuring that everything possible is done to slow the spread of the coronavirus. **When the State of Texas allows businesses to reopen, business owners and the community at large should do their part in reducing the risk of additional COVID-19 outbreaks that would shut them down again.** With that in mind, Galveston County, in coordination with the Local Health Authority, Dr. Phillip Keiser, has developed the following guidelines for businesses and organizations to use as a reference. We encourage each business and organization to use their best judgement and implement their own mitigation strategies and techniques as we move forward together. These guidelines are a minimum set of recommendations that businesses and organizations can use in developing their individual operational plans.

Guiding Principles

Galveston County remains committed to putting the health and safety of its residents, employees, first responders, and health care professionals first. **We strongly encourage citizens to follow the guidelines set by the Center for Disease Control (CDC) to slow the spread of COVID-19.** Everyone should do their part by taking personal responsibility to protect themselves and those around them.

Current CDC recommendations:

1. Avoid having more than 10 people in a group.
2. In locations where other social distancing measures are difficult to maintain, persons over the age of two should wear a face covering or paper mask that covers both their mouth and nose.
3. Wash hands frequently with soap and water or use a hand sanitizer with at least 60% alcohol.
4. Monitor your health and stay home if you or a member of your household is sick.
5. Maintain a social distance of at least 6 feet away from people who do not live in your home.
6. Daily pre-screening of employees for symptoms, close contact with a confirmed COVID-19 case or a body temperature over 99.9°.
7. Throughout the day, frequently clean and disinfect workspaces, common spaces, and high touch areas. (Chairs, tables, handles, light switches, credit card keypads, countertops, phones, bathrooms, kitchens, equipment, and amusement rides.)
8. Daily deep clean the entire premises, including a full scrub down using Environmental Protection Agency (EPA) registered disinfectants.

For additional information go to the CDC website at:

<https://www.cdc.gov/coronavirus/2019-ncov/index.html>

Initial Recommendations

Nursing Homes

Nursing Homes, Long Term Care and Medical Facilities should continue to follow the guidelines and recommendations of the Local Health Authority and the Texas Department of State Health Services. At this time, there is an order in effect preventing outside visitors into these high-risk locations. We encourage that these facilities continue limiting visitations due to the risk to their residents.

Restaurants

Restaurants, including those that derive more than 50% of their income from the sale of food, are encouraged to consider the following recommendations:

1. All dining spaces should be arranged to allow a minimum of 6 feet of distance between dining parties.
2. To control the size of crowds and eliminate a waiting line, reservations for all guests are strongly encouraged, which should include COVID-19 screening questions.
3. Large parties of more than 10 persons are not recommended.
4. Outdoor service should be offered if available, using the same standards as indoor service.
5. To prevent contamination, all buffet style restaurants should have employees serve food directly at customer's tables or packaged for take-out.
6. Each restaurant should provide customers with either hand sanitizer or sanitizing wipes at the entrance and throughout the facility.
7. Table top items such as condiments, menus and table tents should be removed and sanitized between customers.
8. Encourage the development of protocols to reduce the risk of exposure during activities like taking payments and accepting merchandise. Ensure high touch items are sanitized regularly.
9. Consider controlled access to maintain an occupancy level, per square footage, that complies with the CDC guidelines for social distancing.
10. Daily deep cleaning, as well as frequent disinfection of the entire premises throughout the day.
11. Develop a COVID-19 screening questionnaire appropriate for your business, per CDC guidelines.
12. Daily pre-screening of employees for symptoms, close contact with a confirmed COVID-19 case or a body temperature over 99.9°.

Bars

Bars, this includes establishments that derive more than 50% of their income from the sale of liquor, are encouraged to consider the following recommendations:

1. Bars should provide adequate space for all guests or their contained groups to remain 6 feet apart at all times.
2. Consider controlled access to maintain an occupancy level, per square footage, that complies with the CDC guidelines for social distancing.
3. There should be no activities that encourage the defiance of the social distancing guidelines outlined by the CDC.
4. Outdoor service should be offered if available, using the same standards as indoor service.

5. Encourage the development of protocols to reduce the risk of exposure during activities like taking payments and accepting merchandise. Ensure high touch items are sanitized regularly.
6. Each bar should provide customers with hand sanitizer or sanitizing wipes at the entrance and throughout the facility.
7. To prevent contamination, all food typically served on buffets should be served directly to the customers at their tables or packaged for take-out.
8. Table top items such as condiments, menus and table tents should be removed and sanitized between customers.
9. Daily deep cleaning, as well as frequent disinfection of the entire premises throughout the day.
10. Develop a COVID-19 screening questionnaire appropriate for your business, per CDC guidelines.
11. Daily pre-screening of employees for symptoms, close contact with a confirmed COVID-19 case or a body temperature over 99.9°.

Hotels, Bed and Breakfasts, and Short Term Rentals

Hotels, Bed and Breakfasts, and Short Term Rentals are encouraged to consider the following recommendations:

1. All guests should observe social distancing guidelines and remain 6 feet apart in any public areas while on the property.
2. All guest quarters should provide adequate soap and/or hand sanitization products for guests.
3. No gatherings of more than 10 people who do not share a household.
4. If pools are opened, social distancing should be practiced at all times by those who are swimming with persons who are not members of their own household.
5. Consider controlled access to maintain an occupancy level, per square footage, that complies with the CDC guidelines for social distancing.
6. Each establishment should provide customers with either hand sanitizer or sanitizing wipes at all entrances.
7. Equipment such as kiosks, video games, coin operated machines, vending machines and seating areas should be sanitized throughout the day and arranged to promote social distancing.
8. Daily deep cleaning, as well as frequent disinfection of the entire premises throughout the day.
9. Develop a COVID-19 screening questionnaire appropriate for your business, per CDC guidelines.
10. Daily pre-screening of employees for symptoms, close contact with a confirmed COVID-19 case or a body temperature over 99.9°.

Major Attractions

Major Attractions such as amusement parks, water parks, entertainment venues, educational destinations, tourist attractions, large fishing charters, movie theaters and other like attractions that bring large crowds are encouraged to consider the following recommendations:

1. All patrons should observe social distancing guidelines and remain 6 feet apart from persons who are not members of their own household in all public areas of the property.
2. No gatherings of more than 10 people who are not in the same household or group.
3. If pools are opened, social distancing should be practiced at all times by those who are swimming with persons who are not members of their own household.

4. Consider controlled access to maintain an occupancy level, per square footage, that complies with the CDC guidelines for social distancing.
5. Encourage the development of protocols to reduce the risk of exposure during activities like taking payments and accepting merchandise. Ensure high touch items are sanitized regularly.
6. Equipment such as kiosks, video games, coin operated machines, vending machines and seating areas should be sanitized throughout the day and arranged to promote social distancing.
7. Hand sanitizer or sanitizing wipes should be available at the entrance to community spaces and throughout the premises.
8. Daily deep cleaning, as well as frequent disinfection of the entire premises throughout the day.
9. Develop a COVID-19 screening questionnaire appropriate for your business, per CDC guidelines.
10. Daily pre-screening of employees for symptoms, close contact with a confirmed COVID-19 case or a body temperature over 99.9°.

Retail Establishments

Retail Establishments are encouraged to consider the following recommendations:

1. Consider using curbside or delivery options whenever possible.
2. All employees should exercise social distancing of at least 6 feet from all other employees at all times.
3. Consider controlled access to maintain an occupancy level, per square footage, that complies with the CDC guidelines for social distancing.
4. Encourage the development of protocols to reduce the risk of exposure during activities like taking payments and accepting merchandise. Ensure high touch items are sanitized regularly.
5. Equipment such as kiosks, video games, coin operated machines, vending machines and seating areas should be sanitized throughout the day and arranged to promote social distancing.
6. Daily deep cleaning, as well as frequent disinfection of the entire premises throughout the day.
7. Develop a COVID-19 screening questionnaire appropriate for your business, per CDC guidelines.
8. Daily pre-screening of employees for symptoms, close contact with a confirmed COVID-19 case or a body temperature over 99.9°.

RV Parks and Marinas

RV Parks and Marinas are encouraged to consider the following recommendations:

1. All residents and guests should observe social distancing guidelines and remain 6 feet apart in any public areas of the property.
2. If pools are opened, social distancing should be practiced at all times by those who are swimming with persons who are not members of their own household.
3. Consider controlled access to maintain an occupancy level, per square footage, that complies with the CDC guidelines for social distancing.
4. Hand sanitizer or sanitizing wipes should be available at the entrance to community spaces at all times.
5. Daily deep cleaning, as well as frequent disinfection of the entire premises throughout the day.
6. Develop a COVID-19 screening questionnaire appropriate for your business, per CDC guidelines.
7. Daily pre-screening of employees for symptoms, close contact with a confirmed COVID-19 case or a body temperature over 99.9°.

Golf Courses

Golf Courses are encouraged to consider the following recommendations:

1. All golfers should maintain social distancing and stay a minimum of 6 feet apart at all times.
2. No golfers should share a cart unless both golfers reside in the same household.
3. Spacing between tee times should allow adequate for social distancing on the course.
4. All carts should be sanitized between users.
5. Encourage the development of protocols to reduce the risk of exposure during activities like taking payments and accepting merchandise. Ensure high touch items are sanitized regularly.
6. Daily deep cleaning, as well as frequent disinfection of the entire premises throughout the day.
7. Develop a COVID-19 screening questionnaire appropriate for your business, per CDC guidelines.
8. Daily pre-screening of employees for symptoms, close contact with a confirmed COVID-19 case or a body temperature over 99.9°.

Commercial Fishing

Commercial Fishing piers that charge for use, are encouraged to consider the following recommendations:

1. No gatherings of more than 10 people who do not share a household.
2. Social distancing should be practiced at all times with a minimum of 6 feet between parties who are not of the same household, including entering and exiting the pier.
3. Daily deep cleaning, as well as frequent disinfection of the entire premises throughout the day.
4. Develop a COVID-19 screening questionnaire appropriate for your business, per CDC guidelines.
5. Daily pre-screening of employees for symptoms, close contact with a confirmed COVID-19 case or a body temperature over 99.9°.

Personal Services

Personal Services such as barbershops, beauty parlors, lash and nail salons, tattoo parlors, tanning salons, massage parlors and any other services that require personal contact are encouraged to consider the following recommendations:

1. In order to maintain social distancing, "walk-ins" should be discouraged. Appointments should be encouraged and spaced to allow the business to maintain a population in line with the CDC social distancing guidelines.
2. Consider controlled access to maintain an occupancy level, per square footage, that complies with the CDC guidelines for social distancing.
3. Encourage the development of protocols to reduce the risk of exposure during activities like taking payments and accepting merchandise. Ensure high touch items are sanitized regularly.
4. Hand sanitizer or sanitizing wipes should be available at the entrance and at each station.
5. All stations should be sanitized between users.
6. Service providers should wash hands and sanitize all equipment between customers.
7. Daily deep cleaning, as well as frequent disinfection of the entire premises throughout the day.
8. Develop a COVID-19 screening questionnaire appropriate for your business, per CDC guidelines.
9. Daily pre-screening of employees for symptoms, close contact with a confirmed COVID-19 case or a body temperature over 99.9°.

Gyms and Fitness Centers

Gyms and Fitness Centers are encouraged to consider the following recommendations:

1. Hand sanitizer or sanitizing wipes should be available at the entrance and throughout common areas at all times.
2. Consider controlled access to maintain an occupancy level, per square footage, that complies with the CDC guidelines for social distancing.
3. Use of saunas and steam rooms should be discouraged unless provisions can be made by the gym for sanitizing those facilities between users and to maintain social distancing when in use.
4. If pools are opened, social distancing should be practiced at all times by those who are swimming with persons who are not members of their own household.
5. Instructor-led group fitness classes should consider scheduling a maximum class size of 10 and maintaining physical distance of 6 feet at all times.
6. All stations and equipment should be sanitized between users.
7. Daily deep cleaning, as well as frequent disinfection of the entire premises throughout the day.
8. Develop a COVID-19 screening questionnaire appropriate for your business, per CDC guidelines.
9. Daily pre-screening of employees for symptoms, close contact with a confirmed COVID-19 case or a body temperature over 99.9°.

Parks and Recreational Areas

Parks and Recreational Areas are encouraged to consider the following recommendations:

1. All persons should observe social distancing and remain 6 feet apart in all public areas.
2. Gatherings of more than 10 people who do not share a household should be discouraged.
3. If pools are opened, social distancing should be practiced at all times by those who are swimming with persons who are not members of their own household.
4. Tennis courts should have protocols in place to sanitize gates and high touch areas regularly.
5. Consider limiting access to playground equipment.
6. Consider closing indoor park facilities including restrooms.
7. Daily deep cleaning, as well as frequent disinfection of the entire premises throughout the day.
8. Develop a COVID-19 screening questionnaire appropriate for your business, per CDC guidelines.
9. Daily pre-screening of employees for symptoms, close contact with a confirmed COVID-19 case or a body temperature over 99.9°.

Professional Services

Professional Services such as financial services, legal offices, real estate, insurance, medical practices, etc..., are encouraged to consider the following recommendations:

1. All persons should exercise social distancing of at least 6 feet from all other persons, at all times.
2. If possible, consider using remote work options or virtual appointments.
3. Consider spacing scheduled appointments to avoid having persons wait in common areas.
4. Daily deep cleaning, as well as frequent disinfection of the entire premises throughout the day.
5. Develop a COVID-19 screening questionnaire appropriate for your business, per CDC guidelines.
6. Daily pre-screening of employees for symptoms, close contact with a confirmed COVID-19 case or a body temperature over 99.9°.

Governmental Agencies

Governmental Agencies are encouraged to consider the following recommendations:

1. All persons should exercise social distancing of at least 6 feet from all other persons, at all times.
2. Consider controlled access to maintain an occupancy level, per square footage, that complies with the CDC guidelines for social distancing.
3. Daily deep cleaning, as well as frequent disinfection of the entire premises throughout the day.
4. Develop a COVID-19 screening questionnaire appropriate for your agency, per CDC guidelines.
5. Daily pre-screening of employees for symptoms, close contact with a confirmed COVID-19 case or a body temperature over 99.9°.

Industry and Manufacturers

Industry and Manufacturers are encouraged to consider the following recommendations:

1. All persons should exercise social distancing of at least 6 feet from all other persons, at all times.
2. Consider controlled access to maintain an occupancy level, per square footage, that complies with the CDC guidelines for social distancing.
3. Daily deep cleaning, as well as frequent disinfection of the entire premises, throughout the day.
4. Develop a COVID-19 screening questionnaire appropriate for your facility, per CDC guidelines.
5. Daily pre-screening of employees for symptoms, close contact with a confirmed COVID-19 case or a body temperature over 99.9°.

Churches, Schools, Organizations or Other Entities

Churches, Schools, Organizations, or Other Entities are encouraged to consider the following recommendations:

1. All persons should exercise social distancing of at least 6 feet from all other persons, at all times.
2. Consider controlled access to maintain an occupancy level, per square footage, that complies with the CDC guidelines for social distancing.
3. Encourage the development of protocols to reduce the risk of exposure by sanitizing high touch items regularly.
4. Daily deep cleaning, as well as frequent disinfection of the entire premises, throughout the day.
5. Develop a COVID-19 screening questionnaire appropriate for your organization.
6. Daily pre-screening of employees for symptoms, close contact with a confirmed COVID-19 case or a body temperature over 99.9°.

Additional Resources Available:

Galveston County Health District

<https://www.gchd.org/about-us/news-and-events/2019-novel-coronavirus-2019-ncov/-fsiteid-1>

Texas Department of State Health Services

<https://www.dshs.state.tx.us/coronavirus/>

Center for Disease Control

<https://www.cdc.gov/coronavirus/2019-ncov/index.html>

Kemah City Council Agenda Item

#9 on modification of the city's Coronavirus disaster declaration

Council Member generated Agenda Item

Kemah City Council Agenda Item

#10 on the change and future usage of Kemah Visitors Center.

Council Member generated Agenda Item

Kemah City Council Agenda Item

#11 on paying Quarter 1 for City of Kemah BACVB dues.

Council Member generated Agenda Item

Kemah City Council Agenda Item

#12 regarding outsourcing police dispatch services to Galveston County and any necessary changes to police budget.

Council Member generated Agenda Item