Kemah City Council Meeting

September 24, 2020

7:00p.m.

SPECIAL AGENDA

SEPTMBER 24, 2020 7:00P.M.

CITY OF KEMAH - CITY COUNCIL
AND KEMAH PUBLIC FACILITIES CORPORATION

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

VIRTUAL MEETING

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. **Invitation to Address Council**
(State law prohibits the Mayor and members of the City Council from commenting on any statement or engaging in dialogue without an appropriate agenda item being posted in accordance with the Texas Open Meetings Law. Comments should be directed to the entire Council, not individual members. Engaging in verbal attacks or comments intended to insult, abuse, malign or slander any individual shall be cause for termination of speaking privileges and expulsion from Council Chambers. Your comments are limited to two (2) minutes.)

EXECUTIVE SESSION

3. **The Council held 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:**

   Section 551.087 – Deliberations regarding Economic Development Negotiations

   - Development Agreement for 88 acres

OPEN SESSION

4. **Consideration and Possible Action: to approve and authorize the Mayor to sign the Development Agreement for 88 acres**

5. **Consideration and Possible Action: on renewal of City of Kemah's windstorm insurance plan.**

6. **Consideration and Possible Action: on a resolution authorizing the Mayor and City Administrator to open a separate dedicated account at the city depository bank, Texas First Bank , for the sole purpose of management and disbursement of funds under a Subrecipient Agreement with Galveston Bay Foundation for a work plan for the KEMAH Living Shoreline Habitat Protection and Restoration Project.**

7. **Consideration and Possible Action: to revise the configuration, timing, signage, and any other aspects of the bollards, lighting, parking areas, and other safety-related changes for 6th street and the Lighthouse District**

8. **Consideration and Possible Action: of approval of the advertisement for the potential long term lease agreement for the Visitor Center.**

9. **Consideration and Possible Action: to amend the terms of the interim lease agreement for the visitor center and authorize the mayor to execute.**

10. **Consideration and Possible Action: on approval of a Conflict of Interest Policy**

11. **Consideration and Possible Action: to amend Noise Ordinance**

12. **Adjourn**

ONLINE: https://global.gotomeeting.com/join/315500949
PHONE: United States (Toll Free): 1 877 309 2073
United States: +1 (646) 749-3129
ACCESS CODE: 315-500-949

CERTIFICATION

This is to certify that a copy of the Notice of the Regular City Council meeting for **Thursday, September 24, 2020**, was posted on the bulletin board at City Hall, 1401 Highway 146, Kemah, Texas, on this the 18th day of September, 2020, prior to 7:00 p.m.

MChilcote

_____ _09/18/2020_____

Melissa Chilcote, City Secretary 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 88 Acres Development

Once form is complete and departmental clearances are obtained, this form should be forwarded to the City Secretary as soon as possible prior to the date that the item is expected to be placed on the City Council agenda.

Date requested for Council consideration: 09/24/2020

Prepared by: Mayor Gale

Subject: to approve and authorize the Mayor to sign the Development Agreement for 88 acres

Proceeding: Consideration and Possible Action

Originating Department: Admin

Plan Reference: 17SP- or 17OP-

Texas Ethics Commission Form 1295 required?

If YES, is copy of Form attached? Contract Identification Number on Form:

City Attorney Review: YES

Expenditure Required: Amount Budgeted:

Appropriation Required: Source of Funds:

Finance Approval:

City Administrator Approval: (Walter Gant)

SUMMARY / ORIGINATING CAUSE

The Council may approve the development agreement for the 88 Acres. This will be an executive session item that will be voted on in open session.

IMMINENT CONSEQUENCES / BENEFIT TO COMMUNITY

RECOMMENDATIONS

To approve the 88 Acre Development Agreement

ATTACHMENTS

Kemah City Council Agenda Item

#5 Windstorm Insurance

Once form is complete and departmental clearances are obtained, this form should be forwarded to the City Secretary as soon as possible prior to the date that the item is expected to be placed on the City Council agenda.

Date requested for Council consideration: 09/24/2020

Prepared by: Chandra Jobb

Subject: Renewal of City of Kemah's windstorm insurance plan.

Proceeding: Consideration and Possible Action

Originating Department: Admin

Plan Reference: 17SP- or 17OP-

Texas Ethics Commission Form 1295 required?

If YES, is copy of Form attached? Contract Identification Number on Form:

City Attorney Review:

Expenditure Required: Amount Budgeted:

Appropriation Required: Source of Funds:

Finance Approval:

City Administrator Approval: (Walter Gant)

SUMMARY / ORIGINATING CAUSE

Victor Insurance Managers Inc. has provided the 2020 windstorm renewal proposal for the City of Kemah. Current coverage expires 10/1/2020. Given current market conditions with increasing rates and deductibles, several carriers for the windstorm renewal were approached. It appears that Ventus Risk Management has the best pricing.

1. The good news is that cost remained close to expiring, with a $3,000 increase if they City chooses to go with Ventus Risk Management. Victor Insurance Manager has been seeing about 20% rate increases. Ventus was able to keep it close to the expiring amount of $41,959.06, however, there are some changes to coverage:
    a. Actual Cash Value, ACV (replacement cost-minus depreciation) on buildings for roofs that have not been replaced within the past 20 years **(no limitation on expiring)**
    b. EIFS exclusion applies **(no exclusion on expiring)**
    c. The deductible buy down policy will be fully earned at inception
    Option 1: $44,955.76 (with $5,000 buy down)
    Option 2: $44,431.81 (with $10,000 buy down)
    Option 3: $43,648.51 (with $15,000 buy down)

2. The incumbent carrier, AmRisc, offered terms with an 18% rate increase and a 1% Named Storm deductible instead of $25k on expiring. The quote summary shows the total cost for AmRisc with the $5K deductible buy down policy.

    Option 4: $55,245.76 (with $5,000 buy down)

3. The city currently has a $5,000 deductible buy down. Quotes have also been provided for Ventus with $10k and $15k deductible buy downs.

4. In order to bind, please return the signed & dated Signature Forms, signed & dated Schedule, and confirm there are no vacant buildings by **September 25th, 2020**. **Please note: Due to the current storm in the gulf, there is a hold on binding any new and renewal business. Currently we have 2 scenarios, depending on possible wind damage, if we stay with our current carrier there should be no issue with renewing. If we go with the new carrier and the City has wind damage from the storm, the rates will possibly increase. Victor Insurance is going to check with the carriers Thursday morning to get an update on any changes.

IMMINENT CONSEQUENCES / BENEFIT TO COMMUNITY

RECOMMENDATIONS

ATTACHMENTS

Windstorm Compliance

City of Kemah – Quoted SOV

Quote Summary and Detailed quotes

Signature pages

VICTOR INSURANCE MANAGERS INC.

RE: Engagement Letter and Confirmation to Seek Insurance Proposal(s)

We would like to thank you for your interest in our services to meet your company's insurance needs. We greatly appreciate your business and the opportunity to serve you.

By this Engagement Letter, you are authorizing Victor Insurance to seek proposals for the following lines of coverage from the following insurers:

Line of Coverage	Insurance Company	Intermediary
Windstorm/Hail	Various Companies	CRC Houston

For each line of coverage above, the insurance company and the intermediary (if applicable) have been named above. Intermediaries would be used because of their beneficial access to the desired insurance company.

In authorizing us to approach these markets for your insurance needs, you have further directed Victor Insurance to disclose the following information as part of our negotiating process:

a. Disclose the names of the incumbent insurer and other prospective insurers to prospective insurer(s);

b. Provide a specific price, range of prices or prioritization of terms that you seek in purchasing insurance;

c. Disclose the structure, language and/or pricing of the expiring policy; and

d. Disclose aspects of the quote (including price, structure, and/or policy language) of a prospective insurer to other prospective insurer(s).

Additionally, the Texas Municipal League, of which your organization currently is a part, also may receive from, or share with, Victor certain of the above information.

If there are any other insurance companies you would like us to approach, please provide us with their names. If we do not hear otherwise, we will approach only the insurance companies listed above.

You understand and agree that in connection with performing the work relating to this Engagement Letter, Victor's aggregate liability to you arising out of or relating in any way to the services we will provide you pursuant to this authorization will not exceed one million dollars ($1,000,000). This Engagement Letter will be governed by the laws of the State without regard to choice of law principles, and this paragraph applies to the fullest extent permitted by applicable law and to all causes of action, including breach of contract, breach of warranty, negligence, strict liability, misrepresentation and other torts.

If you wish to discuss any of your commercial insurance coverage(s), please feel free to contact our office at (800) 284-4747.

Thank you very much for the opportunity to be of service.

Sincerely,

Jessica Mendez

Jessica Mendez
Account Executive, Assistant Vice President

VICTOR INSURANCE MANAGERS INC.

Role and Compensation Disclosure

Victor Insurance facilitates the placement of insurance coverage on behalf of our clients. Please note we may provide these insurers additional services which may include underwriting, billing and premium collection.

In accordance with industry custom, we are compensated through commissions that are calculated as a percentage of the insurance premiums charged by insurers. We may also receive additional monetary and nonmonetary compensation from insurers, or from other insurance intermediaries, which may be contingent upon volume, profitability, or other factors. This compensation may include payment from insurers for marketing related expenses or investments in technology. Our compensation may vary depending on the type of insurance purchased and the insurer selected. We will provide you additional information about our compensation and information about alternative quotes, upon your request. You may obtain this information by contacting Victor management by email at Vos.Public@Victorinsurance.com.

In this transaction, Victor is acting as an insurance producer for the insurers. In addition, we may utilize an intermediary, managing general agent or wholesaler to gain access to insurers that we do not have direct access to in the insurance marketplace.

Where permitted by law, Victor may also earn and retain interest income on premiums held by Victor on behalf of insurers during the period between receipt of such payments from clients and the time such payments are remitted to the applicable insurer.

Marsh & McLennan Companies, Inc. and its subsidiaries, which include Victor Insurance, own equity interest in certain insurers and wholesaler brokers. Information regarding such interests is available at http://global.marsh.com/about/transparency.php.

City of Kemah (Windstorm/Hail Schedule of Locations)
10/01/2020-10/01/2021

ID	Secondary ID	Building Description	Address	Year Built	Stories	Building Value	Business Income	Contents	Other	TIV	Const.	Area
2		Community Center w/Digital Sign	800 Harris Ave	2001	0	$921,176.00		$ 43,656		$ 964,832	2	5,303
7		City Hall/Police w/50kw Generator/Tower/Flag Pole	1401 Hwy 146	1996/ 2018	1	$2,783,456.00		$ 337,795		$ 3,121,251	4	11,252
8		Barn	1900 Anders Ln	1997	1	$94,916.00		$ 82,742		$ 177,658	3	3,200
10		School House Museum/Vistor's Ctr w/Extra	604 Bradford Ave	1930	1	$173,977.00		$ 51,000		$ 224,977	1	1,510
11		CID Building	1401 Hwy 146	2006	1	$46,926.00		$ 35,700		$ 82,626	3	560
12		Restroom	604 Bradford Ave	2006	1	$50,625.00				$ 50,625	1	414
13		Railroad Depot Bldg w/Wood Deck	604 Bradford	1935	1	$26,815.00				$ 26,815	1	348
14	Cien State Park	Playground Equipment & Fence	600 Cien Rd	2010	0	$72,358.00				$ 72,358		
15	Foster Park	Playground Equipment & Fence	145 W 7th St	2010	0	$92,682.00				$ 92,682		
16	Cien State Park	Restrooms	600 Cien Rd	2012	1	$86,829.00		$ 25,500		$ 112,329	4	598
17	Cien State Park	Tennis Court Beatwall & Windscreen	600 Cien Rd	2012	0	$57,844.00				$ 57,844		600
18	Cien State Park	Basketball Pavilion	600 Cien Rd	2010	1	$106,940.00				$ 106,940	3	2,400
20		6th Street Lighhouse	Bay & Kipp Ave	2003	1	$ 25,313				$ 25,313	2	
21		5th Street Gazebo	Bay & Kipp Ave	2010	1	$ 50,625				$ 50,625	2	
		Fine Arts						$ 10,100		$ 10,100		
		Business Income					$ 100,000			$ 100,000		
		Extra Expense					$ 25,000			$ 25,000		
		Outdoor Trees & Shrubs							$ 25,000	$ 25,000		
		Fencing-various locations							$ 25,000	$ 25,000		
		Light Poles & Signs various locations							$ 25,000	$ 25,000		
						$ 4,590,482	**$ 125,000**	**$ 586,493**	**$ 75,000**	**$ 5,376,975**		

City of Kemah (Fine Arts Schedule)
Wind/Hail 10/01/16-10/01/17

ID	Address	City	State	Zip	Description	Fine Art Value
1	1401 Hwy 146	Kemah	TX	775653002	Ruth Burke Collection	$4,575.00
2	1401 Hwy 146	Kemah	TX	775653002	A.R. Gunderson Oils	$1,500.00
3	1401 Hwy 146	Kemah	TX	775653002	Shadow Box Flag-U.S.	$300.00
4	1401 Hwy 146	Kemah	TX	775653002	Shadow Box Flag-U.S.	$300.00
5	1401 Hwy 146	Kemah	TX	775653002	Shadow Box Flag-State (TX)	$300.00
6	1401 Hwy 146	Kemah	TX	775653002	Large Creek Picture	$425.00
8	1401 Hwy 146	Kemah	TX	775653002	2 Lg Aerials of Clear Creek	$1,000.00
9	1401 Hwy 146	Kemah	TX	775653002	2 Small Aerials	$200.00
10	1401 Hwy 146	Kemah	TX	775653002	Sailboat W/Light House	$300.00
11	1401 Hwy 146	Kemah	TX	775653002	Sailboats W/Village	$400.00
12	1401 Hwy 146	Kemah	TX	775653002	3 Aerials	$300.00
13	1401 Hwy 146	Kemah	TX	775653002	Kronke Print of Clear Creek	$500.00
						$10,100.00

VICTOR INSURANCE MANAGERS INC

September 8, 2020

Ms. Brenda Miller-Fergerson
HR Director
City of Kemah
1401 Hwy 146
Kemah, TX 77565

RE: Windstorm Proposal
Renewal Date: 10/1/2020

Dear Brenda:

Enclosed is the city's 2020-2021 windstorm proposal prepared by Victor Insurance Managers Inc., your windstorm insurance agent.

Victor Insurance has prepared this proposal by using your expiring windstorm insurance policy and information received from or shared with Texas Municipal League Intergovernmental Risk Pool (TMLIRP) as part of our relationship with them.

Please refer to the attached proposal quote for specifics regarding limits, deductibles, coinsurance and other additional optional coverages available. For actual terms, conditions, limitations, exclusions and warranties, please refer to the insurance policy specifically.

If you have any questions or find items needing to be amended, please contact me at (713) 787-2412 to discuss.

When you elect to bind coverage, please email the signed Proposal Acceptance Forms and supplemental forms to Jessica.mendez@Victorinsurance.com no later than **September 25, 2020** to maintain continuous coverage.

Sincerely,

Jessica Mendez

Jessica Mendez
Account Executive, Assistant Vice President

cc: Michael Kuykendall, TMLIRP/Austin
Ginger Pastrano, TMLIPRP Austin

Victor Insurance Managers Inc.
Windstorm & Hail Proposal

City of Kemah

October 1, 2020 to October 1, 2021

Option	Carrier	Property Type	Total Limit	Coinsurance	Valuation Basis	Deductible (Per Occurrence)	Premium	Policy/Broker/ Inspection Fee	Surplus Lines Taxes & Fees	Policy Premium	Total Cost
1	Ventus & Besso	Commercial	$5,376,975	0	**Replacement Cost	$5,000 per Occurrence	See detailed quote	See detailed quote	See detailed quote	See detailed quote	**$44,955.76**
2	Ventus & Besso	Commercial	$5,376,975	0	**Replacement Cost	$10,000 per Occurrence	See detailed quote	See detailed quote	See detailed quote	See detailed quote	**$44,431.81**
3	Ventus & Besso	Commercial	$5,376,975	0	**Replacement Cost	$15,000 per Occurrence	See detailed quote	See detailed quote	See detailed quote	See detailed quote	**$43,648.51**
4	AmRisc & Besso (expiring)	Commercial	$5,376,975	0	*Replacement Cost	$5,000 per Occurrence	See detailed quote	See detailed quote	See detailed quote	See detailed quote	**$55,245.76**

NOTES:

**For the Ventus quotes, if any building has a roof that has not been replaced within the past 20 years, Ventus will provide coverage on an Actual Cash Value (ACV) basis. ACV coverage is replacement cost minus depreciation.

**Ventus has a EIFS Exclusion Endorsement

*AmRisc quote - coverage for roofs is provided on a Replacement cost basis.

CRC Group

Aug 28, 2020

Victor Insurance Managers Inc.
3100 Wilcrest Dr.
Ste. 200
Houston, TX 77042

City of Kemah, Ref# 8773899-A
Proposed Effective 10/1/2020 to 10/1/2021

We are pleased to confirm the attached quotation being offered with **Lloyd's of London.** This carrier is **Non-Admitted** in the state of **TX.** Please note that this quotation is based on the coverage, terms and conditions as stated in the attached quotation, which may be different from those requested in your original submission. As you are the representative of the Insured, it is incumbent upon you to review the terms of this quotation carefully with your Insured, and reconcile any differences from the terms requested in the original submission. CRC Insurance Services, Inc. disclaims any responsibility for your failure to reconcile with the Insured any differences between the terms quoted as per the attached and those terms originally requested. The attached quotation may not be bound without a fully executed CRC brokerage agreement.

NOTE: If insured is located outside your resident state, we must receive a copy of your non-resident license prior to binding.
The Insurance Carrier indicated in this quotation reserves the right, at its sole discretion, to amend or withdraw this quotation if it becomes aware of any new, corrected or updated information that is believed to be a material change and consequently would change the original underwriting decision.

Should coverage be elected as quoted per the attached, Premium and Commission are as follows:

Premium:	$32,200.00
Inspection Fee - Company	$250.00
Catastrophe Analysis Fee	$150.00
Policy Fee	$750.00
Broker Fee	$2,400.00 – Fees are 100% Earned
Surplus Lines Tax	$1,733.88
Stamping Office Fee	$53.63
Total:	**$37,537.51**

Option to ELECT Terrorism Coverage:
TRIPRA Status: ***APPLIES***
TRIPRA Additional Premium: $28,392.00
TRIPRA Additional Taxes: $1,419.59
Total Including TRIPRA (if elected) :$67,349.10

Tax Filings are the responsibility of: CRC

Broker Fees & Policy Fees are Fully Earned at Binding

Ventus Risk Management, Inc.
P.O. Box 25004
Columbia, SC 29224

Quotation - Commercial Property Policy

Brokerage Office:	CRC Insurance Services, Inc. 10375 Richmond Ave, Suite 500 Houston, TX 77042	**Company:**	Arch Specialty Insurance Company (64%) A.M. Best Rated: A+ (Superior)
Broker:			United Specialty Insurance Company (20%) A.M. Best Rated: A (Excellent)
Underwriter:	Ventus Risk Management, Inc.		Underwriters at Lloyd's, London (16%) UMR B1776BP202320M002 A.M. Best Rated: A (Excellent) Split as follows: 8% AAL 2012 8% ACS 1856

Date: 08/13/2020
Quote Number: 44624
Policy Period: 10/01/2020 to 10/01/2021 (12:01 AM at insured's mailing address)

Named Insured: City of Kemah
1401 Hwy 146
Kemah, TX 77565

Description: None

We are pleased to offer the following quotation. Please review this quote carefully, as terms and conditions may differ from requested information. This quotation will be honored until the earliest of either i) thirty (30) days from the date of issuance or ii) the proposed effective date for the policy, as shown above. After this date the Underwriter may, at its sole discretion, extend this quotation or offer a revised quotation based on updated information.

You must contact us in writing to bind coverage.

I. Total Insured Values

The Limits of Insurance are based upon the schedule of Insured Values provided by you and on file with the Company.

Building(s)	$ 4,665,482
Tenant Improvements and Betterments	0
Business Personal Property	586,493
Business Interruption	125,000
Total Insured Values	**$ 5,376,975**

Named Insured: City of Kemah **Quote Number:** 44624

II. Summary of Premiums and Ventus Fees

Commercial Property	$ 32,200.00
Equipment Breakdown	Excluded
Terrorism	Excluded
Inspection Fees	250.00
Ventus Modeling Fees	150.00
Total	**$ 32,600.00**

The premium shown above does not include surplus lines tax, surplus lines stamping fees or state assessments.

The policy is subject to a minimum premium as per the attached Minimum Premium Endorsement. Inspection fees and policy fees are fully earned at policy inception.

III. Coverage Specifics

Coverage Terms:	Building and Personal Property Coverage Form	
	Cause of Loss	Wind and Hail Only
	BI Monthly Limitation	1/12
	Property Enhancement Endorsement	Included
	Equipment Breakdown	Not Included
	Terrorism	Excluded
	Cat Wind Deductible Basis	Per Unit of Insurance
	Cat Wind Deductible	All Wind Perils
	Flood	Excluded
	Earthquake	No Coverage

See Schedule of Locations, Coverages and Limits of Insurance

See Schedule of Deductibles By Location and Coverage

V. Schedule of Protective Safeguards and Policy Conditions

The following Protective Safeguards and Policy Conditions apply:

Category	Code	Description	Applicable Buildings
Building	R14	Flat roofs have been resurfaced or replaced within the past 15 years and all roof drains are kept clear of debris and maintained in operating condition.	All
Building	R15	Pitched shingled roofs have been re-shingled or replaced within the past 20 years.	All
Custom	X1	If any building has a roof that has not been replaced within the past 20 years then coverage will be provided on ACV basis.	All

VI. Applicable Forms

The following ISO and Ventus forms will be used for this policy.

Form #	Form Description
VTS009 0118	SCHEDULE OF SUBSCRIBING CARRIERS
VTCW06 0717	FOLLOW LEADER CLAUSE
VTCW07 0220	SEVERAL LIABILITY CLAUSE
VT0120 0116	DEFINITION OF OCCURRENCE

Named Insured: City of Kemah **Quote Number:** 44624

Form #	Form Description
VT0200 0419	OCCURRENCE LIMIT OF INSURANCE ENDORSEMENT
VT0180 0819	WINDSTORM OR HAIL DEDUCTIBLE
CP0010 0607	BUILDING AND PERSONAL PROPERTY COVERAGE FORM
VT0190 0318	CAUSES OF LOSS - WINDSTORM OR HAIL
VT0214 0919	COMMERCIAL PROPERTY CONDITIONS
VT0119 0116	COMMON POLICY CONDITIONS
VT0122 1219	PROPERTY ENHANCEMENT ENDORSEMENT
VT0142 0116	TOTAL LOSS ENDORSEMENT
VT0111 0116	ADDITIONAL PROPERTY NOT COVERED
VT0109 0716	ADDITIONAL COVERED PROPERTY
VT0170 0420	PROTECTIVE SAFEGUARDS AND POLICY CONDITIONS
VT0129 1119	MINIMUM PREMIUM ENDORSEMENT
CP0030 0607	BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM
VT0195 0819	ORDINANCE OR LAW ENDORSEMENT
VT0135 0116	PRIOR LOSS EXCLUSION ENDORSEMENT
VT0110 0116	ADDITIONAL POLICY EXCLUSIONS ENDORSEMENT
VT0113 0116	ASBESTOS AND TOXIC MATERIALS EXCLUSION
VT0121 0218	EIFS OR DRYVIT EXCLUSION ENDORSEMENT
VT0125 0116	FUNGUS, WET ROT, DRY ROT, VIRUS AND BACTRIA EXCLUSION ENDORSEMENT
VT0143 0116	TOXIC DRYWALL EXCLUSION
VT0108 0419	ABSOLUTE POLLUTION EXCLUSION
VT0206 0618	EXCLUSION OF MALICIOUS USE OF NUCLEAR, BIOLOGICAL OR CHEMICAL WEAPONS
CP0140 0706	EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA
CPP003 0706	EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA ADVISORY NOTICE TO POLICYHOLDERS
IL0935 0702	EXCLUSION OF CERTAIN COMPUTER-RELATED LOSSES
VTCW01 0617	NOTICE TO POLICYHOLDERS - FRAUD NOTICE
VTCW02 1015	NOTICE TO POLICYHOLDERS - PRIVACY POLICY
VTTX01 0520	TX COMPLAINT NOTICE
VTPN001 0717	CLAIMS REPORTING FORM
00ML000300 0412	NOTICE TO POLICYHOLDERS - SERVICE OF SUIT
LMA5020	SERVICE OF SUIT CLAUSE
LMA5021	APPLICABLE LAW
VTPN004 0218	NOTICE TO POLICYHOLDERS - SERVICE OF PROCESS
LMA3100	SANCTION LIMITATION AND EXCLUSION CLAUSE
00EXP012500 0606	TOTAL TERRORISM EXCLUSION

VII. Draft Policy

A draft policy has been prepared containing all applicable policy forms at the time of generation of this quote. It can be downloaded here:

Link: **https://storage.ventusrisk.com/mZ3DCpZ8tk7ubi9RVTis2L**
PIN: **324P3H**

Note that this document is only a draft. Terms are subject to change between now and policy issuance.

SCHEDULE OF LOCATIONS, COVERAGES AND LIMITS OF INSURANCE

Location Number	Building Number	Building Address	Occupancy	Construction Type	Coverage	Limits of Insurance	Claim Valuation	Coinsurance
1	1	800 Harris Ave Kemah, TX 77565	General Leisure	JM	Building Contents	921,176 43,656	RC RC	Agreed Value Agreed Value
2	1	1401 Hwy 146 Kemah, TX 77565	General Public Entity	MNC	Building Additional Properties Contents BI (other than Rental Value) and EE	2,783,456 75,000 347,895 125,000	RC RC RC	Agreed Value Agreed Value Agreed Value
3	1	1900 Anders Ln Kemah, TX 77565	Warehousing	NC	Building Contents	94,916 82,742	RC RC	Agreed Value Agreed Value
4	1	604 Bradford Ave Kemah, TX 77565	Museums	F	Building Contents	173,977 51,000	RC RC	Agreed Value Agreed Value
5	1	1401 Hwy 146 Kemah, TX 77565	General Public Entity	NC	Building Contents	46,926 35,700	RC RC	Agreed Value Agreed Value
6	1	604 Bradford Ave Kemah, TX 77565	General Leisure	F	Building	50,625	RC	Agreed Value
7	1	604 Bradford Kemah, TX 77565	General Public Entity	F	Building	26,815	RC	Agreed Value
8	1	145 W 7th St Kemah, TX 77565	General Leisure	M	Building	92,682	RC	Agreed Value
9	1	600 Cien Rd Kemah, TX 77565	General Leisure	MNC	Building Additional Properties Contents	86,829 130,202 25,500	RC RC RC	Agreed Value Agreed Value Agreed Value
10	1	600 Cien Rd Kemah, TX 77565	General Leisure	NC	Building	106,940	RC	Agreed Value
11	1	Bay and Kipp Ave Kemah, TX 77565	General Public Entity	JM	Building Additional Properties	25,313 50,625	RC RC	Agreed Value Agreed Value

Construction Codes

F: Frame or Brick Veneer, M: Metal, JM: Joisted Masonry, NC: Non-Combustible, MNC: Masonry Non-Combustible, MFR: Modified Fire Resistive, FR: Fire Resistive, MX: Mixed

Claim Valuation Codes

ACV: Actual Cash Value, FRC: Functional Replacement Cost, RC: Replacement Cost, SP: Selling Price

City of Kemah

Quote Number: 44624

SCHEDULE OF DEDUCTIBLES BY LOCATION AND COVERAGE

Location Number	Building Number	Building Address	Coverage	Deductibles		
				Windstorm or Hail	Florida Sinkhole	All Other Causes of Loss
1	1	800 Harris Ave Kemah, TX 77565	Building Contents	All Wind: 1% Per Unit of Insurance Subject to min $25,000 Per Occurrence	n/a	n/a
			None	n/a	n/a	n/a
2	1	1401 Hwy 146 Kemah, TX 77565	Building Additional Properties Contents BI (other than Rental Value) and EE	All Wind: 1% Per Unit of Insurance Subject to min $25,000 Per Occurrence	n/a	n/a
			Business Income	72 hours	n/a	n/a
3	1	1900 Anders Ln Kemah, TX 77565	Building Contents	All Wind: 1% Per Unit of Insurance Subject to min $25,000 Per Occurrence	n/a	n/a
			None	n/a	n/a	n/a
4	1	604 Bradford Ave Kemah, TX 77565	Building Contents	All Wind: 1% Per Unit of Insurance Subject to min $25,000 Per Occurrence	n/a	n/a
			None	n/a	n/a	n/a
5	1	1401 Hwy 146 Kemah, TX 77565	Building Contents	All Wind: 1% Per Unit of Insurance Subject to min $25,000 Per Occurrence	n/a	n/a
			None	n/a	n/a	n/a
6	1	604 Bradford Ave Kemah, TX 77565	Building	All Wind: 1% Per Unit of Insurance Subject to min $25,000 Per Occurrence	n/a	n/a
			None	n/a	n/a	n/a
7	1	604 Bradford Kemah, TX 77565	Building	All Wind: 1% Per Unit of Insurance Subject to min $25,000 Per Occurrence	n/a	n/a
			None	n/a	n/a	n/a
8	1	145 W 7th St Kemah, TX 77565	Building	All Wind: 1% Per Unit of Insurance Subject to min $25,000 Per Occurrence	n/a	n/a
			None	n/a	n/a	n/a

SCHEDULE OF DEDUCTIBLES BY LOCATION AND COVERAGE

Location Number	Building Number	Building Address	Coverage	Deductibles		
				Windstorm or Hail	Florida Sinkhole	All Other Causes of Loss
9	1	600 Cien Rd Kemah, TX 77565	Building Additional Properties Contents	All Wind: 1% Per Unit of Insurance Subject to min $25,000 Per Occurrence	n/a	n/a
			None	n/a	n/a	n/a
10	1	600 Cien Rd Kemah, TX 77565	Building	All Wind: 1% Per Unit of Insurance Subject to min $25,000 Per Occurrence	n/a	n/a
			None	n/a	n/a	n/a
11	1	Bay and Kipp Ave Kemah, TX 77565	Building Additional Properties	All Wind: 1% Per Unit of Insurance Subject to min $25,000 Per Occurrence	n/a	n/a
			None	n/a	n/a	n/a

Quote Number: 44624

ORDINANCE OR LAW LIMIT SCHEDULE

Location Number	Building Number	Building Address	Coverage A Undamaged Portion	Coverage B Demolition Costs	Coverage C Increased Cost of Construction	Coverage B & C Blanket	Coverage D Increased Period of Restoration
All	All	All	Included	$0	$0	10%	Excluded

Named Insured: City of Kemah **Quote Number:** 44624

Ventus Property Enhancement Endorsement – Schedule of Limits

Coverage	Limit
Building and BPP Coverages	
Accounts Receivable	$ 100,000
Debris Removal	
% of Loss	25 %
Maximum	$ 1,000,000
Additional Limit	$ 50,000
Emergency Removal Expense	$ 5,000
Fine Arts	$ 25,000
Fire Department Service Charges	$ 25,000
Fraud and Deceit	$ 5,000
Fungus, Wet Rot, Dry Rot and Bacteria	
Per Occurrence	$ 25,000
Aggregate	$ 100,000
Limited Pollution Coverage (Annual Aggregate)	$ 25,000
Outdoor Property	
Per Item Limit For Plants, Trees, and Shrubs	$ 500
Aggregate Limit	$ 25,000
Preservation of Property (Days)	180 Days
Professional Fees for Claim Preparation (Annual Aggregate)	$ 50,000
Recharging of Fire Extinguishing Equipment	$ 50,000
Reward Reimbursement	$ 10,000
Service Interruption Direct Damage	
Direct Damage	$ 50,000
Sewer, Drain or Sump Backup or Overflow	$ 25,000
Transit	$ 25,000
Valuable Papers & Records	$ 100,000
Time Element Coverages	
Interruption by Civil or Military Authority	
Distance Limitation (miles)	1 Miles
Weeks	4 Weeks
Maximum	$ 50,000
Ingress or Egress	
Distance Limitation (miles)	1 Miles
Weeks	4 Weeks
Maximum	$ 50,000
Service Interruption Time Element	$ 50,000

CRC Group

QUOTATION CONFIRMATION

DATE: Sep 02, 2020
AGENCY: Victor Insurance Managers Inc. 8785639
QUOTATION EXP. DATE: 10/1/2020

We are pleased to confirm the following quotation that has been received from the carrier shown below. Please note that this quotation is based on the coverage, terms and conditions listed below, which may be different from those requested in your original submission. As you are the representative of the Insured, it is incumbent upon you to review the terms of this quotation carefully with your Insured, and reconcile any differences from the terms requested in the original submission. CRC Insurance Services, Inc. disclaims any responsibility for your failure to reconcile with the Insured any differences between the terms quoted below and those terms originally requested. THIS COVERAGE MAY NOT BE BOUND WITHOUT A FULLY EXECUTED BROKERAGE AGREEMENT.

The terms of the quotation are as follows:

Insured Name:	City of Kemah 1401 Hwy 146, Kemah, TX 77565
Carrier:	Lloyd's of London
Term:	10/1/2020 to 10/1/2021
TIV:	$5,376,975
Covered Locations:	As Per Schedule of Values with the Carrier
Interest Covered:	[X] Buildings [X] Contents [X] Business Income
Perils Covered:	Wind / Hail
Limit of Liability:	Difference between 1% of TIV (subject to $25,000 Per Occurrence Minimum) and $5,000 Per Occurrence, subject to maximum of $48,769 Each and Every Occurrence
In Excess Of/ Deductible:	$5,000 Per Occurrence
Forms:	Wording: Deductible Buy Back – Stevens 19 - LSW1900 amended. Biological and Chemical Materials Exclusion A.1. Pre-Existing Damage Exclusion A.3. Radioactive Contamination Exclusion A.4. Terrorism Exclusion A.5. War, Confiscation Exclusion A.6. Sanctions Exclusion B.1. 60 days, 10 days for non payment Cancellation Clause – Condition 2. Fraudulent Claim - Condition 5. U.S. Terrorism Risk Insurance Act of 2002 as amended Not Purchased Clause – LMA 5390 Cyber and Data Exclusion LMA5401 Communicable Disease Endorsement – LMA5393 Minimum Earned Premium LSW757- amended to 100% Data Protection Short Form Information Notice LMA9151 amended Texas Surplus Lines Clause LMA 9079 Texas Complaints Notice LMA 9080D
Terms & Conditions:	No Flat Cancellation

Thirty (30) Days Notice of Cancellation, except ten (10) days for non payment of premium
Non-payment of premium or non-compliance with underwriting requirements considered
Insured's request to cancel

Law and Jurisdiction:
This insurance shall be governed by the laws of the State of Texas and subject to the jurisdiction of a court of competent jurisdiction within the United States of America, as determined in accordance with the provisions of the Service of Suit, Condition 9 of this insurance.
Nominee for Service of Suit:
Lloyd's: Lloyd's America, Inc, Attention: Legal Department, 280 Park Avenue, East Tower, 25th Floor, New York, New York 10017

Notification of Claims to:
Amy White (Besso Limited)
8-11 Crescent, London, Ec3N2LY
amy.White@besso.co.uk

UNDERWRITERS' REPRESENTATIVE:
CRC Insurance Services, Inc.,
10375 Richmond Avenue, Suite 500, Houston, Texas 77042,
United States of America

Special Conditions:
***If a Named Storm is in existence, binding or increase in coverage is not allowed without approval of the underwriter**
***100% Minimum Earned Premium**

Warrant:
1% per unit of Insurance as stated in the Schedule of Values (subject to a minimum of $25,000 per occurrence.)
Loss record as seen

CRC is responsible for filing all required Surplus Lines Taxes, Filings and Fees.

Premium:	**$6,340.00**
Policy Fee	**$250.00**
Broker Fee	**$475.00 – Premium and Fees are 100% Earned**
Surplus Lines Tax:	**$342.65**
Stamping Office Fee:	**$10.60**
Total:	**$7,418.25**

Broker Fees & Policy Fees are Fully Earned at Binding

CRC Group

QUOTATION CONFIRMATION

DATE: Aug 28, 2020
AGENCY: Victor Insurance Managers Inc. 8471116
QUOTATION EXP. DATE: 10/1/2020

We are pleased to confirm the following quotation that has been received from the carrier shown below. Please note that this quotation is based on the coverage, terms and conditions listed below, which may be different from those requested in your original submission. As you are the representative of the Insured, it is incumbent upon you to review the terms of this quotation carefully with your Insured, and reconcile any differences from the terms requested in the original submission. CRC Insurance Services, Inc. disclaims any responsibility for your failure to reconcile with the Insured any differences between the terms quoted below and those terms originally requested. THIS COVERAGE MAY NOT BE BOUND WITHOUT A FULLY EXECUTED BROKERAGE AGREEMENT.

The terms of the quotation are as follows:

Insured Name: City of Kemah
1401 Hwy 146, Kemah, TX 77565

Term: 10/1/2020 to 10/1/2021

AmRisc Carriers:
Lloyd's of London- AM Best A XV
Indian Harbor Insurance Company - AM Best A XV
QBE Specialty Insurance Co - AM Best A XV
Steadfast Insurance Company - AM Best A+ XV
General Security Indemnity Company of Arizona – AM Best A XV
United Specialty Insurance Company – AM Best A VIII
Lexington Insurance Company (LEX) A XV / A+
Safety Specialty Insurance Company (SSI) A+ XV
HDI Global Specialty SE (HAN) A XV/A+
Old Republic Union Insurance Company (ORU) A+ XV / A+

TIV: $5,376,975

Covered Locations: As Per Schedule of Values with the Carrier

Interest Covered:
[X] Buildings
[X] Contents
[X] Other
[X] Business Income

Perils Covered: Wind & Hail Only

Limit of Liability: $5,376,975 Per Occurrence - Coverage is Scheduled / Not Blanket

Sublimits:

$100,000	Accounts Receivable
30 Days	Maximum $100,000, whichever is less - Civil or Military Authority
60 Days	Maximum $100,000, whichever is less - Contingent Time Element
$50,000	Contractors Equipment; unscheduled: owned, leased, rented or borrowed; $10,000 Any one item
$100,000	Course of Construction
$10,000	Course of Construction Soft Costs
25% of loss	or $5,000,000, whichever is less - Debris Removal
$50,000	Electronic Data & Media
$25,000	Errors or Omissions
90 Days	Extended Period of Indemnity
$25,000	Extra Expense/Expediting Expense
$50,000	Fine Arts

$25,000	Fire Brigade Charges
$15,000	Fungus, Molds, Mildew, Spores, Yeast (Annual Aggregate)
30 Days	Maximum $50,000 - Ingress/Egress
$25,000	Leasehold Interest
$25,000	Limited Pollution Coverage (Annual Aggregate)
$25,000	Lock Replacement
$25,000	Miscellaneous Unnamed Locations
$1,000,000	Newly Acquired Property (60 Days)
Included	in Building Limit - Ordinance or Law - Coverage A
10% Per Bldg	subject to a Max of $1,000,000 Per Occurrence - Ordinance or Law - Coverage B &C Combined
Included	in Time Element - Ordinance or Law - Coverage D
Included	in Building Limit – Ordinance or Law Coverage E
30 Days	Ordinary Payroll
$25,000	Plants, Lawns, Trees or Shrubs (Defined Cause of Loss), limited to $1,000 Any One plant, lawn, tree or shrub
$10,000	Professional Fees (Annual Aggregate)
$10,000	Reclaiming, Restoring or Repairing Land Improvement
$10,000	Reward Reimbursement
$10,000	Royalties
$50,000	Service Interruption (72 Hour Qualifying Period)
$10,000	Spoilage
$25,000	Transit
$25,000	Underground Pipes, Flues & Drains
$100,000	Valuable Papers and Records

Sublimits apply Per Occurrence, unless noted otherwise. Sublimits are part of, not in addition to, the Limit of Liability shown above.

Deductible: 1% Per occurrence, Per Location, Subject to a minimum $25,000 Per Occurrence - Named storm Wind/Hail

$25,000 Per Occurrence - All Other Wind/Hail

Valuation: Replacement Cost as respects Property Damage
Actual Loss Sustained as respects Time Element

Coinsurance: Nil as respects Physical Damage
1/12th Monthly Limitation as respects Time Element

Forms: Compass
AR TRIA EXCL 02 15
Standard forms/endts, avail upon req.

Terms & Conditions:
-No Flat Cancellations
-90 Day Notice of Cancellation, except 10 days for nonpayment of premium or material misstatement;
-Thirty-Five Percent (35%) Minimum Earned Premium, Subject to the AmRisc Earned Premium Provision;
-Fees are fully earned and nonrefundable;
-Nonpayment of premium(s) is considered insured's request to cancel - Requested cancellations are subject to short-rate calculations and severe penalties;
-Any additional and/or return premium(s) under $500 shall be waived by the underwriter;
-Limits are specific per the Schedule of Values on file with the Company, NOT blanket;
-This insurance is subject to the terms, conditions, limitations of the policy(ies) in current use by the Insurance Company and the endorsement(s) required by the Underwriter.

<u>Specific Terms & Conditions:</u>
1) Percent deductibles are per occurrence, per Location.
2) Coverage explicitly excludes all Flood including but not limited to Flood during windstorm events.
3) Limits are as per Schedule by Building, NOT blanket.
4) Coverage excludes all damage directly or indirectly caused by any Named Storm in existence upon receipt of written request to bind.
5) Terrorism (T3), if offered, is as per Schedule per Occurrence to the lesser of TIV or

$100,000,000. T3 and EBD, if offered, premium is included in the total premium.

Warranties:

None

CRC is responsible for filing all required Surplus Lines Taxes, Filings and Fees.

Premium:	**$40,000.00**	
Broker Fee	**$3,000.00**	
Policy Fee	**$750.00**	
Inspection Fee	**$1,800.00**	**– Fees are 100% Earned**
Surplus Lines Tax:	**$2,209.18**	
Stamping Office Fee:	**$68.33**	
Total:	**$47,827.51**	

Option to ELECT Terrorism Coverage:

TRIPRA Premium:	**$2,000.00**
Broker Fee	**$150.00**
Additional Taxes:	**$107.50**
Total including TRIPRA:	**$50,085.01**

Broker Fees & Policy Fees are Fully Earned at Binding

PROPOSAL ACCEPTANCE FORM

This form must be signed and returned to Victor Insurance Managers Inc. no later than **September 25, 2020**

Please Return To:

Victor Insurance Managers Inc.
3100 Wilcrest Drive, Ste 200
Houston, TX 77042
Phone: (800) 284-4747
Jessica.Mendez@Victorinsurance.com

PREMIUM PAYMENT

Windstorm & Hail Coverages Accepted

Carrier	Deductible Option	Total Limit	Total Cost
_____	_____	**$5,376,975**	**$**_____

By accepting this proposal, you acknowledge and understand a minimum policy premiums may apply, you have met all eligibility requirements regarding flood coverage at certain locations and you have reviewed the windstorm location's schedule and are in agreement with the locations and limits used in this proposal .

I, the undersigned, as an authorized representative of:

City of Kemah

do hereby accept on behalf of the above named political

subdivision the portions of the proposal as indicated above.

Signature of Authorized

Official:_____

Title:_____

Date:_____

TMLIRP OFFICE USE ONLY

Contribution:_____ Verified by:_____ Contract #:_____

☐ New Member ☐ Member Re-awarding ☐ Member Adding Coverage

Named Insured: City of Kemah **Quote Number:** 44624

TERRORISM COVERAGE NOTICE

The Terrorism Risk Insurance Act of 2002 as amended and extended by the Terrorism Risk Insurance Act Reauthorization Act of 2015 (collectively referred to as the "Act") established a Act within the Department of the Treasury, under which the federal government shares, with the insurance industry, the risk of loss from future terrorist attacks. An act of terrorism is defined as any act certified by the Secretary of the Treasury, in consultation with the Secretary of Homeland Security and the Attorney General of the United States, to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel or the premises of a United States Mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

In accordance with the Act, we are required to offer you coverage for losses resulting from an act of terrorism **that is certified under the federal Act** as an act of terrorism. The policy's other provisions will still apply to such an act. **This offer does not include coverage for incidents of nuclear, biological, chemical, or radiological terrorism which will be excluded from your policy**. Your decision is needed on this question: do you choose to pay the premium for terrorism coverage stated in this offer of coverage, or do you reject the offer of coverage and not pay the premium? You may accept or reject this offer.

If your policy provides commercial property coverage, in certain states, statutes or regulations may require coverage for fire following an act of terrorism. In those states, if terrorism results in fire, we will pay for the loss or damage caused by that fire, subject to all applicable policy provisions including the Limit of Insurance on the affected property. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under Business Income and/or Extra Expense coverage forms or endorsements that apply to those coverage forms, or to Legal Liability coverage forms or Leasehold Interest coverage forms.

DISCLOSURE OF FEDERAL PARTICIPATION IN PAYMENT OF TERRORISM LOSSES

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal Act. **The federal share equals 81% in 2019 and 80% in 2020, of that portion of the amount of such insured losses that exceeds the applicable insurer deductible during each Calendar Year**.

DISCLOSURE OF CAP ON ANNUAL LIABILITY

If the aggregate insured terrorism losses of all insurers exceed $100 billion during any **Calendar Year** provided in the Act, the Secretary of the Treasury shall not make any payments for any portion of the amount of such losses that exceed $100 billion, and if we have met our insurer deductible, we shall not be liable for the payment of any portion of such losses that exceeds $100 billion.

Named Insured: City of Kemah **Quote Number:** 44624

ACCEPTANCE OR REJECTION OF TERRORISM INSURANCE COVERAGE

Please check one of the following:

_____ I hereby elect to purchase terrorism coverage for a prospective premium (excluding taxes and assessments) of $28,392.

_____ I hereby decline to purchase terrorism coverage for certified acts of terrorism. I understand that I will have no coverage for losses resulting from certified acts of terrorism.

City of Kemah

_____
Name - Please Print

_____
Signature

_____
Date

Property Application and Statement of Values

AmRisc WHOLESALE

Unless notified otherwise, completion of this form replaces the application, statement of values, hard copy loss runs and formally executed loss letters. This form contains the information submitted to date. The form must be completed, signed and returned for underwriter's review and acceptance within 30 days of inception. Any inaccurate information identified on the returned form is automatically deemed noted and agreed by underwriters upon receipt, so please return as soon as possible.

Named Insured: City of Kemah **Account ID:** 780505

Mailing Address: 1401 Highway 146, Kemah, TX 77565

Loc/Bldg No.	Address	City	State	Zip	Building Area (Sq. ft)	% Automatic Sprinklers	Original Year Built	ISO Const. (1 to 6)	No. Of Buildings	Initial each Section
	As per schedule on file with AmRisc									
Totals:					21,838	18%			19	

If you have any questions regarding the type of construction or other information, discuss with your agent prior to signing this application.

Valuation:	RCV	RCV	RCV	ALS
Coins:	N/A	N/A	N/A	1/12th monthly

Loc/Bldg No.	Building	Contents/BPP	Other	BI	Loc TIV
	As per schedule on file with AmRisc				
Totals:	$3,973,525	$525,293	$753,157	$125,000	$5,376,975

These values often form the basis of the policy's limit of liability. Please review carefully.

List ALL losses caused by requested perils for the prior 5 years that did or may exceed the specified threshold. Please add any losses if not listed. Incomplete loss history is considered material and may void coverage.

Threshold: **$5,000**

DOL	Description / COL	Incurred	Status (O/C)	DOL	Description / COL	Incurred	Status (O/C)
08/27/2017	Harvey	$6,335	C				

Has any policy or coverage been declined, cancelled or non-renewed during the prior 3 years (not applicable in MO.)	No	Has any applicant been convicted of arson in the past 10 years?	No
Is the applicant a S-Chapter Corporation, partnership or any other type of sole proprietor organization?	No	Any bankruptcies or tax credit liens against applicant in prior 5 years?	No
Does the applicant have any reason that they would not be aware of all losses for the prior 5 years?	No	Has net income been negative for 2 of the past 3 years? If so, please attach financials or tax returns for 3 years.	No
For apartments, are there any HUD managed or Section 8 developments?	No	If habitational, is there any aluminum distribution wiring?	No

Explain any Yes answers. If necessary, add additional pages, which are hereby made part of the application.

List any Discrepancies. Discrepancies received by underwriters prior to a loss shall be deemed noted and agreed by underwriters. However, additional premium may be charged as of the date the information is received by underwriters.

Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree. The Insured further acknowledges the fraud statement above and understands the Policy will contain a Fraud Notice by state. Severe cancellation penalties apply to CAT exposed property - Form is available upon request. Carriers' participation may change prior to binding or throughout the coverage period.

To the best knowledge of the applicant and the producer, the above information is true and complete. Initial each Section.

Applicant Printed Name Title Producer Printed Name

Applicant Signature Date Producer Signature Date

DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE

INSURED: **City of Kemah** **Account ID: 780505**

LIMITS: **As per the attached Authorization or Indication**

You are hereby notified that under the Terrorism Risk Insurance Act of 2002, as amended ("TRIA"), that you now have a right to purchase insurance coverage for losses arising out of acts of terrorism, as defined in Section 102(1) of the Act, as amended: The term “act of terrorism” means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States-to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel or the premises of a United States mission; and to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

Any coverage you purchase for 'acts of terrorism' shall expire at 12:00 midnight December 31, 2020, the date on which the TRIA Program is scheduled to terminate unless the TRIA Program is reauthorized or the expiry date of the policy whichever occurs first, and shall not cover any losses or events which arise after the earlier of these dates.

YOU SHOULD KNOW THAT COVERAGE PROVIDED BY THIS POLICY FOR LOSSES CAUSED BY CERTIFIED ACTS OF TERRORISM IS PARTIALLY REIMBURSED BY THE UNITED STATES UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THIS FORMULA, THE UNITED STATES PAYS 85% THROUGH 2015; 84% BEGINNING ON JANUARY 1, 2016; 83% BEGINNING ON JANUARY 1, 2017; 82% BEGINNING ON JANUARY 1, 2018; 81% BEGINNING ON JANUARY 1, 2019 AND 80% BEGINNING ON JANUARY 1, 2020; OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURER(S) PROVIDING THE COVERAGE. YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A $100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS' LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS $100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED $100 BILLION, YOUR COVERAGE MAY BE REDUCED.

THE PREMIUM CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.

	I hereby elect to purchase coverage for acts of terrorism for a prospective premium of $2,000
	I hereby elect to have coverage for acts of terrorism excluded from my policy. I understand that I will have no coverage for losses arising from acts of terrorism.

Policyholder/Applicant's Signature

Print Name

Date

This notice applies to the following carriers and their respective participation quoted herein:

Certain Underwriters at Lloyds

Indian Harbor Insurance Company

QBE Specialty Insurance Co.

Steadfast Insurance Company

General Security Indemnity Company of Arizona

United Specialty Insurance Company

Lexington Insurance Company

Safety Specialty Insurance Company

HDI Global Specialty SE

Old Republic Union Insurance Company

Flood Notice

AR FN 03 18

If the policy issued by AmRisc excludes Flood, the following shall apply:

Flood Exclusion Acknowledgement

I understand the policy issued by AmRisc does NOT provide coverage for loss or damage caused by or resulting from Flood, including any Flood and/or storm surge associated with windstorm events.

I understand that Flood insurance can be purchased elsewhere from a private flood insurer or the National Flood Insurance Program.

It is strongly recommended that Insureds in “Special Flood Hazard Areas” or areas subject to Flood, including Flood and/or storm surge from windstorm events, obtain Flood coverage.

I also understand that execution of this form does NOT relieve me of any obligation that I may have to my mortgagees or lenders to purchase Flood insurance.

If the policy issued by AmRisc includes Flood, the following shall apply:

Flood Coverage

I understand the policy issued by AmRisc does provide coverage for loss or damage caused by or resulting from Flood, including any Flood and/or storm surge associated with windstorm events.

I understand that loss or damage caused by or resulting from Flood, including any Flood and/or storm surge associated with windstorm events, will be subject to the Flood sublimit stated elsewhere in the policy

I understand that if I do not sign this form that my application for coverage may be denied or that my policy issued by AmRisc may be cancelled or non-renewed. I have read and I understand the information above.

Named Insured: City of Kemah

Account No.: 780505

Policyholder/Applicant's Signature

Print Name

Date

Kemah City Council Agenda Item

#6 Resolution for TFB to open acct for Galveston Bay Foundation

Once form is complete and departmental clearances are obtained, this form should be forwarded to the City Secretary as soon as possible prior to the date that the item is expected to be placed on the City Council agenda.

Date requested for Council consideration: 09/24/2020

Prepared by: Melissa Chilcote

Subject: on a resolution authorizing the Mayor and City Administrator to open a separate dedicated account at the city depository bank, Texas First Bank , for the sole purpose of management and disbursement of funds under a Subrecipient Agreement with Galveston Bay Foundation for a work plan for the KEMAH Living Shoreline Habitat Protection and Restoration Project.Proceeding: Consideration and Possible Action

Originating Department: Admin

Plan Reference: 17SP- or 17OP-

Texas Ethics Commission Form 1295 required?

If YES, is copy of Form attached? Contract Identification Number on Form:

City Attorney Review: *YES*

Expenditure Required: Amount Budgeted:

Appropriation Required: Source of Funds:

Finance Approval:

City Administrator Approval: (Walter Gant)

SUMMARY / ORIGINATING CAUSE

The Council agreed to make available $100,000.00 (one hundred thousand dollars and no cents) in pass-through funds from the Texas Commission on Environmental Quality for use by the Galveston Bay Foundation on a reimbursable basis. Galveston Bay Foundation agrees to expend funds in conformity with the budget.

IMMINENT CONSEQUENCES / BENEFIT TO COMMUNITY

RECOMMENDATIONS

To open a bank account to be the pass through of $100,000 for Galveston Bay Foundation.

ATTACHMENTS

Resolution 2020-XX Texas First Bank Account - will be emailed and sent out tomorrow.
Galveston Bay Foundation Agreement

SUBRECIPIENT AGREEMENT

BETWEEN CITY OF KEMAH

AND

GALVESTON BAY FOUNDATION

Contract Name: KEM-GBF-01

This constitutes the agreement between the City of Kemah, the recipient, and the Galveston Bay Foundation, the subrecipient, regarding the responsibilities of each in their roles as recipient and subrecipient under the Texas Commission on Environmental Quality Contract Number 582-20-10172 for the Kemah Living Shoreline Habitat Protection and Restoration Project.

1. Contract Documents: Contract documents shall consist of this agreement and two (2) attachments, which are incorporated by reference into this subrecipient agreement.

- Attachment I – Galveston Bay Foundation's Work Plan ("Grant Activity Description") for the Kemah Living Shoreline Habitat Protection and Restoration Project
- Attachment II – Contractual agreement between the Texas Commission on Environmental Quality and the City of Kemah

2. Services: The Galveston Bay Foundation agrees to perform the tasks outlined in Attachment I of this subrecipient agreement.

3. Contract Amount: The City of Kemah agrees to make available $100,000.00 (one hundred thousand dollars and no cents) in pass-through funds from the Texas Commission on Environmental Quality for use by the Galveston Bay Foundation on a reimbursable basis. Galveston Bay Foundation agrees to expend funds in conformity with the budget contained in Attachment II.

4. Payment: The Galveston Bay Foundation shall submit invoices documenting all expenses toward this agreement to the City of Kemah in conformity with the billing schedule established in Attachment I. The City of Kemah shall forward invoices to the Texas Commission on Environmental Quality, and within fifteen (15) days of approval and payment by the Texas Commission on Environmental Quality, shall issue payment for the same amount to the Galveston Bay Foundation. Total payment to the Galveston Bay Foundation over the contract period shall not exceed the amount identified in item 3, Contract Amount.

5. Escrow Account: The Galveston Bay Foundation shall immediately deposit $100,000 into a non-interest-bearing escrow account created by the City of Kemah to support cash flow. The money shall be drawn down by the City of Kemah after execution of this contract. Kemah shall repay the full amount, minus $3,000 in administrative overhead, to the escrow account within ten days after it has been fully reimbursed by the Texas Commission on Environmental Quality, pursuant to the terms of the contractual agreement between the Texas Commission on Environmental Quality and the City of Kemah in Attachment II. Kemah shall then pay Galveston Bay Foundation or allow it to withdraw the remaining $97,000 from the escrow account.

6. Reports and Deliverables: The Galveston Bay Foundation shall submit reports and deliverables documenting progress toward project tasks at least two (2) business days in

advance of deadlines established in the reporting schedule in Attachment I. The City of Kemah shall review and forward reports and deliverables to the Texas Commission on Environmental Quality in compliance with the reporting schedule in Attachment I.

7. Contract Period: Work will begin upon the date of the notice to proceed provided by the Texas Commission on Environmental Quality and will continue until the contract end date of August 31, 2021. This contract end date may be extended with approval of a no-cost extension of time granted by the Texas Commission on Environmental Quality.

8. Alterations: Any alterations in the scope of the work performed shall be submitted by the Galveston Bay Foundation in writing to the City of Kemah and must be approved in advance in writing by the City of Kemah.

9. Communications: All communications between the recipient and subrecipient under the agreement must be addressed to the following entities:

For the City of Kemah:

Nick Haby
Director of Community Service
1401 State Highway 146
Kemah, TX 77565
(281) 334-1611
nhaby@kemah-tx.com

For the Galveston Bay Foundation:

Philip Smith
Director of Habitat Restoration
1100 Hercules Ave, Ste 200
Houston, TX 77058
(281) 332-3381 ext. 210
psmith@galvbay.org

10. Project Implementation: The Galveston Bay Foundation will ensure that implementation of the project meets all state environmental laws and federal consistency requirements contained in Attachment II.

11. Financial Records: The Galveston Bay Foundation agrees to maintain accurate records of all costs incurred in the performance of this work and agrees to allow the City of Kemah and their duly authorized representatives reasonable access to their records to verify the validity of expenses reimbursed under this agreement. The Galveston Bay Foundation agrees to maintain their financial records, supporting documents and other records pertaining to this agreement for a period of three (3) years from the termination date of this agreement.

APPROVED BY:

CITY OF KEMAH

By: _____

Printed Name: TERRY GALE

Title: MAYOR

Date: 10-25-2019

GALVESTON BAY FOUNDATION

By: _____

Printed Name: Bob Stokes

Title: President

Date: 10-23-2019

Kemah City Council Agenda Item

#7 Safety measures in the Lighthouse District

Once form is complete and departmental clearances are obtained, this form should be forwarded to the City Secretary as soon as possible prior to the date that the item is expected to be placed on the City Council agenda.

Date requested for Council consideration: 09/24/2020

Prepared by: Melissa Chilcote

Subject: revise the configuration, timing, signage, and any other aspects of the bollards, lighting, parking areas, and other safety-related changes for 6th street and the Lighthouse District

Proceeding: Consideration and Possible Action

Originating Department: Admin

Plan Reference: 17SP- or 17OP-

Texas Ethics Commission Form 1295 required?

If YES, is copy of Form attached? Contract Identification Number on Form:

City Attorney Review:

Expenditure Required: Amount Budgeted:

Appropriation Required: Source of Funds:

Finance Approval:

City Administrator Approval: (Walter Gant)

SUMMARY / ORIGINATING CAUSE

At the Council Meeting on September 17th, the Council agreed to put more precautions in place in the Lighthouse District for safety measues.

IMMINENT CONSEQUENCES / BENEFIT TO COMMUNITY

RECOMMENDATIONS

ATTACHMENTS

Kemah City Council Agenda Item

#9 Potential Long Term Lease Advertisement – Visitor Center

Once form is complete and departmental clearances are obtained, this form should be forwarded to the City Secretary as soon as possible prior to the date that the item is expected to be placed on the City Council agenda.

Date requested for Council consideration: 09/24/2020

Prepared by: Walter Gant

Subject: approval of the advertisement for the potential long term lease agreement for the Visitor Center.

Proceeding: Consideration and Possible Action

Originating Department: Admin

Plan Reference: 17SP- or 17OP-

Texas Ethics Commission Form 1295 required?

If YES, is copy of Form attached? Contract Identification Number on Form:

City Attorney Review: YES

Expenditure Required: Amount Budgeted:

Appropriation Required: Source of Funds:

Finance Approval:

City Administrator Approval: (Walter Gant)

SUMMARY / ORIGINATING CAUSE

At the Council Meeting on September 16th, the Council asked Staff and Legal to create a long term lease advertisement and present it at the next Council Meeting for the long term Lease at the Visitor Center.

IMMINENT CONSEQUENCES / BENEFIT TO COMMUNITY

RECOMMENDATIONS

To approve the advertisement for the potential long term lease of Visitor Center

ATTACHMENTS

Potential Long Term Lease Advertisement will be sent out as soon as it is available

Kemah City Council Agenda Item

#9 Interim Lease Agreement – Visitor Center

Once form is complete and departmental clearances are obtained, this form should be forwarded to the City Secretary as soon as possible prior to the date that the item is expected to be placed on the City Council agenda.

Date requested for Council consideration: 09/24/2020

Prepared by: Walter Gant

Subject: amend the terms of the interim lease agreement for the visitor center and authorize the mayor to execute.

Proceeding: Consideration and Possible Action

Originating Department: Admin

Plan Reference: 17SP- or 17OP-

Texas Ethics Commission Form 1295 required?

If YES, is copy of Form attached? Contract Identification Number on Form:

City Attorney Review: YES

Expenditure Required: Amount Budgeted:

Appropriation Required: Source of Funds:

Finance Approval:

City Administrator Approval: (Walter Gant)

SUMMARY / ORIGINATING CAUSE

At the Council Meeting on September 16th, the Council asked Staff to amend the template for the interim lease agreement for the Visitor Center.

IMMINENT CONSEQUENCES / BENEFIT TO COMMUNITY

RECOMMENDATIONS

To approve the interim lease agreement of Visitor Center

ATTACHMENTS

Interim Lease Agreement for Visitor Center

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (the "Agreement") is between the City of Kemah, Texas ("City"), a municipal corporation and Kemah Flowers and Company ("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 lease a designated * (by City Administrator-see below in Section 2, subsection 2.1) one thousand square feet of certain real property located at 604 BradfordAvenue, within the City limits of the City of Kemah, Galveston County, Texas the ("Development Property" a/k/a "Premises"). To wit: said designated 1000 square feet of the western half of Blocks 5 and 6, Town of Kemah, SAVE AND EXCEPT including the historic schoolhouse structure and the Kemah Visitors Center Building both located at 604 Bradford Avenue, Kemah, Texas 77565, owned by the City within the City limits. Concessionaire shall open and operate in the premises leased hereunder and any other retail purpose that City shall have approved in writing prior to commencement of such an expanded business purpose. Furthermore Concessionaire shall manage the use of the existing Visitors Center in a manner that is geared to achieve the following purposes:

1. Deferring to and supporting the continued periodic use, as needed by City. That shall include space historically set aside, reserved and designated within the Visitors Center for the existing operation of the local Visitors Bureau (as distinguished from the entire Visitors Center). City purposes and functions shall take precedence over any other use. Concessionaire shall employ, assign and deploy one knowledgeable administrative employee to assist tourists and manage the goals and purpose of the use of the Visitors Center. That shall include providing seasonal decorations (like, for instance, a Christmas tree or an American flag when applicable to the holiday) that shall commemorate all local holidays and events. That shall also include, as needed, accommodation of meetings of the Kemah Merchants Association or its successor. It shall also include general maintenance of the Premises in a tasteful, good and presentable manner.

2. Managing, supervising and hosting a public space where local vendors may display, at no cost to the vendors, wares, products and exhibits of interest to the citizens of Kemah and visitors to the City for times and durations consistent with the stated goals and priorities for use of this Visitors Center. Provided, however, Concessionaire shall not sublease any portion of any of the Premises (Visitors Center or other Premises) without the express written approval of the sublease by the City in the future. No such permission has yet been granted.

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, 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. 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 2. Rent:

2.1 Concessionaire shall pay to City a monthly rental of $2000 per month, commencing on the 4th day of September, 2020. A 1,000 sqft of the interior area will be designated and occupied with Visitor Center literature and seating. City currently pays and shall continue to pay during the term of this Agreement certain utility costs for the building. 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.

2.2 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 3. Parking:

Concessionaire and City shall jointly use the available parking spaces.

Section 4. 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 December 31, 2020 and shall have the option to renew for four (4) consecutive one (1) year terms. 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. City or Concessionaire may terminate this Agreement by tendering a six (6) month written notice of termination.

Section 5. Use:

5.1 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.

5.2 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.

5.3 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.

5.4 Concessionaire represents to City that it shall conduct criminal background checks on all prospective employees prior to offering employment and shall not offer employment to or continue the employment of anyone convicted of a felony.

Section 6. General Provisions:

6.1 City's Interests. "City" owns the fee title to the land and all structures including the train depot and decking herein at 604 Bradford Avenue, 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.

6.2 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.

6.3 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.

6.4 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.

6.5 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.

6.6 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.

6.7 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.

6.8 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.

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

6.10 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.

6.11 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.

6.12 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.

6.13 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 7. 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 8. Defaults; Remedies; Notice and Cure:

8.1 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.

8.2 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.

8.3 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.

8.4 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 9. Insurance:

9.1 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.

9.2 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).

9.3 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.

9.4 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.

9.5 **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.**

9.6 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 10. Taxes:

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

10.2 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.

10.3 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 11. 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 12. 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 13. 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 14. 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 15. 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 16. Time of the Essence.

Time is of the essence of this Agreement.

Section 17. 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: Terri Gale, 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
dgreggjr@gregg-gregg.com

Concessionaire: _____
_____
_____

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 _____ day of _____, 2020.

City of Kemah Texas,

By:_____
Terri Gale, Mayor

Attest:

_____

Melissa Chilcote, City Secretary

Concessionaire:

_____

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Kemah City Council Agenda Item

#10 Conflict of Interest Policy

Once form is complete and departmental clearances are obtained, this form should be forwarded to the City Secretary as soon as possible prior to the date that the item is expected to be placed on the City Council agenda.

Date requested for Council consideration: 09/24/2020

Prepared by: Walter Gant

Subject: Approve a Conflict of Interest Policy

Proceeding: Consideration and Possible Action

Originating Department: Admin

Plan Reference: 17SP- or 17OP-

Texas Ethics Commission Form 1295 required?

If YES, is copy of Form attached? Contract Identification Number on Form:

City Attorney Review: *YES*

Expenditure Required: Amount Budgeted:

Appropriation Required: Source of Funds:

Finance Approval:

City Administrator Approval: (Walter Gant)

SUMMARY / ORIGINATING CAUSE

At the Council Meeting in June, staff was tasked with creating a Conflict of Interest Policy for the City of Kemah. The policy was revised with infromtion provided by Council.

IMMINENT CONSEQUENCES / BENEFIT TO COMMUNITY

RECOMMENDATIONS

Approve the policy

ATTACHMENTS

City of Kemah Conflict of Interest Policy - draft

City of Kemah
Conflict of Interest Policy

Objective

To avoid any actual or apparent conflict in the discharge of duties which may interfere with efficient City operations, either in off-duty employment and/or in personal work while on duty.

Policy

1. This policy applies to all City employees and City Officials..

2. The purpose of this policy is to make employees and City Officials aware that they are not to take part in off- duty employment that is in conflict with their City work. Also, employees are not to gain access to, or try to obtain off-duty employment while performing their jobs.

3. An employee cannot work in a job outside of his/her City job if that job either (a) is in conflict with his/her City job, or (b) appears to be in conflict with his/her City job, or (c) has a negative effect on his/her City job.

4. Employees must notify their supervisor, or his/her designee, and City Officials must notify the City Attorney, of off-duty employment when that off-duty work is similar to the employee's City work, or if it could be in conflict with the employee's City work. Under these circumstances, notification must take place before any off-duty work is performed.

5. Employees in management positions designated by the City Administrator are prohibited from receiving compensation from "non-City" organizations which receive City funds, for consulting or other services provided to those organizations.

6. Employees not in management positions designated by the City Administrator may have off-duty employment as an hourly-paid employee with a business which contracts with the City except as set forth in paragraph 7 (following) of this policy.

7. Employees not in management positions designated by the City Administrator who are performing off-duty work for a business that contracts with the City may be in violation of this policy and the law upon which it is based if (a) the off-duty work is performed to any significant degree on City-related work, or (b) compensation is not on an hourly basis, (c) compensation for off-duty City-related work is different from other off-duty work performed for that employer. The City Administrator must request an opinion of the City Attorney if any of the conditions (a) through (c) exist.

8. No employee or City Official shall have or acquire a direct or indirect interest in any contract or agreement with the City. An employee or City Official will have a direct or in-direct interest in a contract between the City and any firm if the employee or any member of the employee's immediate household: is an officer or director of the firm or owns or controls more than 5% of the ownership of the firm as a shareholder, member,

partner, sole proprietor, or in any other manner of exercising beneficial ownership of the firm. A firm includes any legal entity, such as, but not limited to, a corporation, partnership, association, or sole proprietorship.

9. If an employee's or City Official's interest in a contract or agreement with the City is based on an immediate family member's involvement as defined in paragraph 8 (above) of this policy, and the totality of the circumstances regarding the employee's and his/her immediate household member's role in the agreement does not result either (1) an actual conflict, or (2) the reasonable appearance of a conflict, the City Administrator can determine that entering into the contract or agreement will not cause a violation of this policy. The City Administrator's decision will be made after consultation with the Human Resources Director. It is the responsibility of the employee's supervisor, or his/her designee, to bring the potential conflict to the attention of the Human Resources Manager or the City Administrator.

10. No employee or City Official may be required to perform off-duty work as a condition of employment with the City. No employee or City Official may request or require any other employee to perform off-duty work as a condition of employment with the City.

11. During scheduled work hours, an employee or City Official may perform only those duties of his/her City employment, and may not perform personal or private work for him/herself or anyone else during scheduled work hours.

12. Each supervisor is authorized to adopt a separate administrative policy applying to that unit that is more restrictive than this policy. Employees should seek advice from their supervisor when in doubt about the policy or when a situation arises that may be a conflict of interest.

13. Each supervisor is responsible for assuring that all employees in the department are aware of this policy.

14. When there is work done with parties where conflict of interests exist, relationship with party must be disclosed beforehand and should apply to both City Employees and City Officials.

15. When hiring citizens of Kemah for City of Kemah jobs, the Council should approve the person selected and see all applications for the job, in order to ensure there is no conflict of interest.

16. When a City Official is involved in a Police investigation, the city should take further steps to ensure that we act and receive information only in the capacity of the citizen. City should have internal controls in place where an additional police witness be present for all communications with the City Official and any police staff while investigation is ongoing or even potentially to conduct an independent investigation to confirm no impropriety occurs.

17. If there are any romantic or physical relationships with a City Official and a City Employee, then the City Official shall disclose if they are currently in a physical

relationship with the current city employee. If one does exist, not prohibit but review with a higher level of scrutiny, that City Official's interaction with the department in which the City Employee is employed, the City Official recuse themselves on any votes that would effect that City Employee.

18. Violations of this policy will be considered under the City policy governing employee misconduct, and appropriate action will be taken against the employee, up to and including termination.

Kemah City Council Agenda Item

#11 Noise Ordinance

Once form is complete and departmental clearances are obtained, this form should be forwarded to the City Secretary as soon as possible prior to the date that the item is expected to be placed on the City Council agenda.

Date requested for Council consideration: 09/24/2020

Prepared by: Walter Gant

Subject: To amend Noise Ordinance

Proceeding: Ordinance

Originating Department: Admin

Plan Reference: 17SP- or 17OP-

Texas Ethics Commission Form 1295 required?

If YES, is copy of Form attached? Contract Identification Number on Form:

City Attorney Review: YES

Expenditure Required: Amount Budgeted:

Appropriation Required: Source of Funds:

Finance Approval:

City Administrator Approval: (Walter Gant)

SUMMARY / ORIGINATING CAUSE

Based on recent events, the Council would like to revise the noise ordinance to include vulgar music.

IMMINENT CONSEQUENCES / BENEFIT TO COMMUNITY

RECOMMENDATIONS

To approve the amendment to Noise Ordinance.

ATTACHMENTS

Ordinance XXXX – Noise Ordinance

NOISE ORDINANCE 1060.2

AN ORDINANCE AMENDING THE PENALTY PROVISION OF ORDINANCE 1060.1 FOR THE CITY OF KEMAH, TEXAS IMPOSING ESCALATING MINIMUM FINE AMOUNTS FOR SUBSEQUENT OFFENSES OCCURRING WITHIN ONE YEAR OF A PRIOR CONVICTION FOR ANY VIOLATION OF THE NOISE ORDINANCE, WITH ALL OTHER SECTIONS OF THE NOISE ORDINANCE REMAINING IN FULL FORCE AND EFFECT, AND PROVIDING A PENALTY

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KEMAH, TEXAS THAT:

SECTION 5 OF NOISE ORDINANCE 1060.1 SHALL BE AMENDED TO READ AS FOLLOWS:

ANY PERSON VIOLATING ANY OF THE PROVISIONS OF THIS ORDINANCE SHALL BE DEEMED GUILTY OF A CLASS C MISDEMEANOR, AND UPON CONVICTION THEREOF SHALL BE FINED IN ANY SUM NOT TO EXCEED FIVE HUNDRED DOLLARS ($500.00), PROVIDED HOWEVER, IF IT IS SHOWN AT TRIAL THAT THE PERSON HAS PREVIOUSLY BEEN CONVICTED OF VIOLATING THE NOISE ORDINANCE 1060.1 IN THE PAST YEAR, THEN THE MINIMUM FINE SHALL BE NO LESS THAN THREE HUNDRED DOLLARS ($300.00) AND FURTHER IF IT IS SHOWN AT TRIAL THAT THE PERSON HAS BEEN PREVIOUSLY CONVICTED MORE THAN ONCE FOR VIOLATING THE NOISE ORDINANCE 1060.1 IN THE PAST YEAR, THEN THE MINIMUM FINE SHALL BE NO LESS THAN FOUR HUNDRED FIFTY DOLLARS ($450.00). EACH DAY A VIOLATION UNDER THIS ORDINANCE EXISTS OR CONTINUES SHALL CONSTITUTE A SEPARATE OFFENSE.

This Ordinance shall take effect and be in full force from and after the date of its passage and publication as required by law.

APPROVED at the first reading this day of September, 2020.

_____
TERRI GALE, Mayor

ATTEST:

_____
MELISSA CHILCOTE, City Secretary

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LEGAL OPINION
(ATTORNEY-CLIENT PRIVILEGED DOCUMENT)

September 21, 2020

City of Kemah Mayor and Council

VIA E-MAIL

Dear Mayor and Councilmembers:

Our law office was tasked with strengthening the sound ordinance and two of the methods suggested were to allow shutdown of the establishment for repeat violator and additionally to curb the language coming from the type of music played. Both of these methods are problematic.

First, any shutdown of an establishment for violation of a noise ordinance will result in a lawsuit against the City for a "taking". Both the cost of defense of the lawsuit and any damages to be paid are outside the City's insurance policy. Consequently, the potential for liability is very high because not only would the City be liable for damages, but would have to bear the costs of defense from the City's general fund. We have confirmed this issue about the City's liability with both the lawyers from Texas Municipal League and from Bill Helfand's attorneys who are the insurance defense lawyers routinely assigned to defend the City if insurance applies.

City of McAllen v. Ramirez, 2013 WL 3770912, No. 13–09–00067–CV (Tex.App.—Corpus Christi- Edinburg July 18, 2013). Arnaldo Ramirez, Jr. and others ("plaintiffs") brought suit against the City of McAllen, arguing that the City Council's decision to deny renewal of the conditional use permit (CUP) for the Collage nightclub—due primarily to numerous noise complaints from residents living near the nightclub—was arbitrary and capricious and amounted to a taking in violation of article 1, section 17 of the Texas Constitution. The trial court rendered judgment in favor of the plaintiffs and concluded that the City was liable to plaintiffs for the total amount of $4.5 million plus interest.

On appeal, the City made numerous arguments that the evidence was legally and factually insufficient to support the trial court's findings that there was a compensable taking. Ultimately, the court of appeals affirmed the trial court's decision because the City's denial of the CUP was a regulatory action that unreasonably interfered with the property owner's right to use and enjoy his property under the three factors set forth in Penn Cent. Transp. Co. v. New York City, 438 U.S. 104 (1978). First the court concluded that there was sufficient evidence at trial that the City's denial of the CUP lead to a severe economic impact on the plaintiffs, since the evidence showed that plaintiffs invested significant amounts of money to comply with City noise regulations and continue operating the Collage nightclub. Next, the court also relied upon the opinions in City of San

Antonio v. El Dorado, 195 S.W.3d 238 (Tex.App-San Antonio 2006, pet. denied) and Sheffield Dev. Co. v. City of Glen Heights, 140 S.W.3d 660 (Tex. 2004) to determine that the plaintiffs possessed reasonable investment-backed expectations to operate the Collage nightclub with a conditional use permit. Although the court weighed the third Penn Central factor in favor of the City because the City's zoning ordinance was better characterized as a "public program adjusting the benefits and burdens of economic life to promote the common good" instead of as a "physical invasion by government," the court still determined that the facts were sufficient to constitute a taking under the Penn Central standards. The court affirmed the judgment of the trial court and concluded that the trial court awarded damages properly.

The opinion summarized above was later vacated by the court due to the parties coming together and negotiating a settlement. The City may face a similar takings claim should it effectively shut down the operation of a bar/nightclub for noise concerns.

Section 42.01 of the Texas Penal Code prohibits a person from intentionally or knowingly making unreasonable noise in a public place other than a shooting range , as defined by Section 250.001 of the Texas Local Government Code, or in or near a private residence that he has not right to occupy. For purposes of this section an act is deemed to occur in a public place or near a private residence if it produces its offensive or proscribed consequences in the public place or near a private residence AND a noise is presumed to be unreasonable if the noise exceeds a decibel level of 85 after the person making the noise receives notice from a magistrate or peace officer that the noise is a public nuisance. The offense is a class C misdemeanor. This paragraph is Texas State Law. Of course, a City may have more stringent standards in its ordinance and as you know the decibel level drops below this state level after a certain time. However, in order to pass constitutional muster, it must have a reasonableness standard. Our ordinance has a reasonableness standard incorporated in it.

While we highly suggest not writing the ordinance to shut down a business, we do, however, suggest that you may have escalating minimum fines for subsequent offenses. For instance, you may raise the minimum fine for anyone found to have a subsequent offense within one year of being convicted of violating the sound ordinance. Ordinarily a class C misdemeanor is punishable by a fine from $1.00 to $500.00 for the first offense. We suggest that the language be changed to make the minimum fine amount $300.00 for a second conviction and a minimum fine amount of $400.00 for a third or higher conviction within one year from the date of the first conviction.

Second, any attempt to regulate the contest of music lyrics is ripe with First Amendment constitutional problems. Time, place and manner regulations are allowed, like with a noise ordinance, so long as there is a reasonableness standard, but content restrictions banning vulgar language will not pass constitutional muster. Once more, defense costs and damages are not covered by TMLIRP.

We have drafted the ordinance amending the prior sound ordinance to incorporate these tighter recommended regulations.

Best regards,

Dick H. Gregg, Jr. Dick H. Gregg, III