

City of Kingsville, Texas

AGENDA CITY COMMISSION

**MONDAY, JULY 11, 2016
REGULAR MEETING**

**HONORABLE ROBERT H. ALCORN COMMISSION CHAMBERS
CITY HALL/200 EAST KLEBERG AVENUE
6:00 P.M.**

I. Preliminary Proceedings.

OPEN MEETING

INVOCATION / PLEDGE OF ALLEGIANCE – (Mayor Fugate)

MINUTES OF PREVIOUS MEETING(S)

Regular Meeting – June 13, 2016

APPROVED BY:



Jesus A. Garza
City Manager

II. Public Hearing - (Required by Law).¹

1. NONE.

III. Reports from Commission & Staff.²

"At this time, the City Commission and Staff will report/update on all committee assignments which may include, but is not limited to the following: Planning & Zoning Commission, Zoning Board of Adjustments, Historical Board, Housing Authority Board, Library Board, Health Board, Tourism, Chamber of Commerce, Coastal Bend Council of Governments, Conner Museum, Keep Kingsville Beautiful, and Texas Municipal League. Staff reports include the following: Building & Development, Code Enforcement, Proposed Development Report; Accounting & Finance – Financial & Investment Information, Investment Report, Quarterly Budget Report, Monthly Financial Reports; Police & Fire Department – Grant Update, Police & Fire Reports; Street Updates; Public Works- Building Maintenance, Construction Updates; Park Services - grant(s) update, miscellaneous park projects, Administration –Workshop Schedule, Interlocal Agreements, Public Information, Hotel Occupancy Report, Quiet Zone, Proclamations, Health Plan Update, Tax Increment Zone Presentation, Main Street Downtown, Chapter 59 project, Financial Advisor, Water And Wastewater Rate Study Presentation. No formal action can be taken on these items at this time."

IV. Public Comment on Agenda Items.³

1. Comments on all agenda and non-agenda items.

V.

Consent Agenda

Notice to the Public

The following items are of a routine or administrative nature. The Commission has been furnished with background and support material on each item, and/or it has been discussed at a previous meeting. All items will be acted upon by one vote without being discussed separately unless requested by a Commission Member in which event the item or items will immediately be withdrawn for individual consideration in its normal sequence after the items not requiring separate discussion have been acted upon. The remaining items will be adopted by one vote.

CONSENT MOTIONS, RESOLUTIONS, ORDINANCES AND ORDINANCES FROM PREVIOUS MEETINGS:

(At this point the Commission will vote on all motions, resolutions and ordinances not removed for individual consideration)

1. Motion to approve final passage of an ordinance amending the FY15-16 Budget to accept and expend donations for the Parks Department for summer programs. (Finance Director).
2. Motion to approve final passage of an ordinance amending the Fiscal Year 2015-2016 Budget to accept and expend donation from the Kingsville Area Educators Federal credit Union for police officer medical kits. (Finance Director).
3. Motion to approve final passage of an ordinance amending the Fiscal Year 2015-2016 Budget to include Homeland Security Grant Project #3146701 for the Police Department. (Finance Director).
4. Motion to approve final passage of an ordinance amending the Fiscal Year 2015-2016 Budget for the purchase of generator equipment and storm debris collection expenses. (Finance Director).

REGULAR AGENDA

CONSIDERATION OF MOTIONS, RESOLUTIONS, AND ORDINANCES:

VI. Items for consideration by Commissioners.⁴

5. Consider a resolution authorizing the City Manager to enter into an Agreement between the City of Kingsville and Naismith Engineering for Professional Services for design and construction of partial "Sector 4" of the City Landfill. (City Engineer/Public Works Director).
6. Consider a resolution authorizing the City Manager to enter into an Agreement between the City of Kingsville and Naismith Engineering for Phase II of the Landfill Permit Amendment for the City Landfill. (City Engineer/Public Works Director).
7. Consider a resolution authorizing participation in Operation Border Star with the Homeland Security Grants Division of the Governor's Office for local border security to interdict criminal activity with no anticipated cash match; authorizing the Chief of Police to act on the City's behalf with such program. (Chief of Police).
8. Consider a resolution authorizing participation in Operation Stonegarden with the Homeland Security Grants Division of the Governor's Office for local border security to interdict criminal activity with no anticipated cash match; authorizing the Chief of Police to act on the City's behalf with such program. (Chief of Police).

9. Consider introduction of an ordinance amending the Fiscal Year 2015-2016 Budget to accept a 2017 Operation Border Star Grant for the Kingsville Police Department. (Director of Finance).

10. Consider introduction of an ordinance amending the Fiscal Year 2015-2016 Budget to accept a 2015 Operation Stonegarden Grant for the Kingsville Police Department. (Director of Finance).

11. Consider authorizing the acquisition and installation of audio visual equipment at the new City Hall AVES Audio Visual Systems, Inc. via BuyBoard Contract, as per staff recommendation. (Director of Purchasing & Technology).

12. Consider introduction of an ordinance amending the Fiscal Year 2015-2016 Budget for CO2013 to include a drainage master plan. (Director of Finance).

VII. Adjournment.

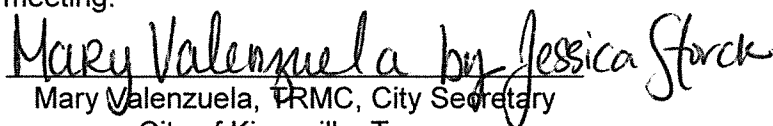
1. No person's comments shall exceed 5 minutes. Cannot be extended by Commission.
2. No person's comments shall exceed 5 minutes without permission of majority of Commission.
3. Comments are limited to 3 minutes per person. May be extended or permitted at other times in the meeting only with 5 affirmative Commission votes. The speaker must identify himself by name and address.
4. Items being considered by the Commission for action except citizens comments to the Mayor and Commission, no comment at this point without 5 affirmative votes of the Commission.

NOTICE

This City of Kingsville and Commission Chambers are wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at 361/595-8002 or FAX 361/595-8024 or E-Mail mvalenzuela@cityofkingsville.com for further information. Braille Is Not Available. The City Commission reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by the Texas Government Code, Section 551-071 (Consultation with Attorney), 551-072 (Deliberations about Real Property), 551-073 Deliberations about Gifts and Donations), 551-074 (Personnel Matters), 551.076 (Deliberations about Security Devices), 551-086 (Certain Public Power Utilities: Competitive Matters), and 551-087 (Economic Development).

I, the undersigned authority do hereby certify that the Notice of Meeting was posted on the bulletin board in the City Hall, 200 East Kleberg, of the City of Kingsville, Texas, a place convenient and readily accessible to the general public at all times and said Notice was posted on the following date and time:

July 7, 2016 at 2:00 P.M. and remained so posted continuously for at least 72 hours proceeding the schedule time of said meeting.


Mary Valenzuela, TRMC, City Secretary
City of Kingsville, Texas

This public notice was removed from the official posting board at the Kingsville City Hall on the following date and time: _____

By: _____
City Secretary's Office
City of Kingsville, Texas

MINUTES OF PREVIOUS MEETING(S)

JUNE 13, 2016

A REGULAR MEETING OF THE CITY OF KINGSVILLE CITY COMMISSION WAS HELD ON MONDAY, JUNE 13, 2016 IN THE HONORABLE ROBERT H. ALCORN COMMISSION CHAMBERS 200 EAST KLEBERG AVENUE AT 6:00 P.M.

CITY COMMISSION PRESENT:

Edna Lopez, Mayor Pro-tem
Arturo Pecos, Commissioner
Al Garcia, Commissioner

CITY COMMISSION ABSENT:

Sam Fugate, Mayor
Noel Pena, Commissioner

CITY STAFF PRESENT:

Jesús Garza, City Manager
Mary Valenzuela, City Secretary
Courtney Alvarez, City Attorney
Tom Ginter, Director of Planning & Development Services
Emilio Garcia, Health Director
Bill Donnell, Assistant Public Works Director
Carol Rogers, Risk Managers
Diana Gonzales, Human Resources Director
David Mason, Purchasing/IT Director
Johnny Campos, Police Officer
Leo Alarcon, Tourism Director
Cynthia Martin, Downtown Manager
Susan Ivy, Parks Manager
David Solis, Risk Manager
Deborah Balli, Finance Director
Charlie Sosa, Street Supervisor

I. Preliminary Proceedings.

OPEN MEETING

Mayor Pro-tem Lopez called the meeting to order in the Robert H. Alcorn Commission Chamber at 6:00 p.m. and announced quorum with three Commission members present. Mayor Fugate and Commissioner Pena being absent.

INVOCATION / PLEDGE OF ALLEGIANCE – (Mayor Fugate)

The invocation was delivered by Mrs. Courtney Alvarez, City Attorney, followed by the Pledge of Allegiance and the Texas Pledge.

MINUTES OF PREVIOUS MEETING(S)

Regular Meeting – May 31, 2016

Special Meeting – June 6, 2016

Motion made by Commissioner Pecos to approve the minutes for May 31, 2016 and June 6, 2016 as presented, seconded by Commissioner Garcia. The motion was passed and approved by the following vote: Pecos, Garcia, Lopez voting "FOR".

II. Public Hearing - (Required by Law).¹

1. Public Hearing on an ordinance granting a special use permit to place a mobile home at Corral, Block 2, Lot 18 on a .2525 acre tract known as 1100 E. Corral,

amending the comprehensive plan to account for any deviations from the existing comprehensive plan. (Planning & Development Services Director).

Mayor Pro-tem Lopez announced and opened this public hearing at 6:02 P.M.

Mr. Tom Ginter, Planning & Development Services Director, reported that as of this afternoon he has received a call from the requestor stating that he wished to drop his request for a special use permit.

Mayor Pro-tem Lopez announced that this is a public hearing and if anyone would like to speak on behalf of this item may do so at this time with a five minute time limit. Additional time cannot be extended by City Commission.

Mayor Pro-tem Lopez closed this public hearing at 6:03 P.M.

2. Public Hearing on an ordinance granting a special use permit to place a mobile home at Corral, Block 23, Lot 1, 2 (Corral Storage) known as 1220 E. Corral, amending the comprehensive plan to account for any deviations from the existing comprehensive plan. (Planning & Development Services Director).

Mayor Pro-tem Lopez announced and opened this public hearing at 6:04 P.M.

Mr. Ginter reported that Mr. Fabrizio Martello is requesting a special use permit for 1220 E. Corral. There has been a storage business at this property for some time. There was a mobile home on the property prior to the ordinance concerning mobile homes so it was grandfathered in at that time. Mr. Martello has stated that for a period of time thought the mobile home was not being lived in for some time so consequently the use is no longer grandfathered. Mr. Martello wants to have somebody live in the mobile home because when someone wasn't living on the property vandalism increased and since someone has been living in it the vandalism has stopped. The Planning & Zoning Commission approved the special use permit by a 5-2 vote and recommends approval.

Mr. Fabrizio Martello, 614 W. Richard, commented that for eleven years he had a tenant residing in the mobile home until he passed away. During the time the tenant was living in the mobile home, there was no vandalism on the property. Since the property is vacant, vandalism has increased. He stated that he is also trying to assist a family by having them stay in the mobile home and in return the family maintains the upkeep of the property. Martello further commented that he is looking into placing some landscaping to improve the look of the property.

Mayor Pro-tem Lopez announced that this is a public hearing and if anyone would like to speak on behalf of this item may do so at this time with a five minute time limit. Additional time cannot be extended by City Commission.

Mayor Pro-tem Lopez closed this public hearing at 6:07 P.M.

3. Public Hearing for Preliminary and Final Plats for North 62 acres of Lot 25, Block 20, Kleberg Town and Improvement Company Subdivision (in ETJ) known as Escondido Ranch. (Planning & Development Services Director).

Mayor Pro-tem Lopez announced and opened this public hearing at 6:08 P.M.

Mr. Ginter reported that S&S Kingsville Construction have submitted a housing development in the Extra Territorial Jurisdiction (ETJ). Due to an agreement with Kleberg County in 2005, the City Commission has the authority to approve the plats as presented. Some time back the plats were presented to Kleberg County for approval which were approved. At some point it came to their attention that while outside of the city limits, it is in the City's ETJ which does provide for a process to review by the City. Work was stopped and the review process was started. Commissioner Roy Cantu, Charlie Cardenas and Mr. Ginter reviewed the plats and had two comments which since then S&S Kingsville Construction have submitted revised plats. City staff reviewed the

revisions and approve the resubmitted plans. The Planning & Zoning Commission reviewed the preliminary and final plats on June 1st and approved them by a vote of 7-0 vote and recommend approval.

Mayor Pro-tem Lopez announced that this is a public hearing and if anyone would like to speak on behalf of this item may do so at this time with a five minute time limit. Additional time cannot be extended by City Commission.

Mayor Pro-tem Lopez closed this public hearing at 6:10 P.M.

III. Reports from Commission & Staff.²

"At this time, the City Commission and Staff will report/update on all committee assignments which may include, but is not limited to the following: Planning & Zoning Commission, Zoning Board of Adjustments, Historical Board, Housing Authority Board, Library Board, Health Board, Tourism, Chamber of Commerce, Coastal Bend Council of Governments, Conner Museum, Keep Kingsville Beautiful, and Texas Municipal League. Staff reports include the following: Building & Development , Code Enforcement, Proposed Development Report; Accounting & Finance – Financial & Investment Information, Investment Report, Quarterly Budget Report, Monthly Financial Reports; Police & Fire Department – Grant Update, Police & Fire Reports; Street Updates; Public Works- Building Maintenance, Construction Updates; Park Services - grant(s) update, miscellaneous park projects, Administration –Workshop Schedule, Interlocal Agreements, Public Information, Hotel Occupancy Report, Quiet Zone, Proclamations, Health Plan Update, Tax Increment Zone Presentation, Main Street Downtown, Chapter 59 project, Financial Advisor, Water And Wastewater Rate Study Presentation. No formal action can be taken on these items at this time."

Mr. Jesús Garza, City Manager reported that this meeting would have been the meeting where the City Commission would have received the Performance Measure Report for the month of May as well as recognize the May Employee of the Month. This will be done at the last meeting in June. Garza further updated the City Commission on the cleanup efforts that have taken place after the storm. The city had a successful debris collection on Saturday, June 11th. There were 23 tons of debris and 36 tons of brush that were collected on Saturday. Garza thanked all the volunteers that assisted in this event. He further commented that the Governor has submitted a letter to the President requesting that twelve out of thirty-one counties that the Governor had requested to be a federal disaster county, Kleberg County was not included on that list. The evaluation continues with the State. Staff has meetings scheduled for next week to continue assessing the damage as there is still a possibility that Kleberg County could be added to request.

Mr. David Solis, Risk Manager reported that the three structures that were damaged by the storm are the Care Building, J.K. Northway Coliseum, and Recreation Center. Recovery services has begun on the three buildings by a recovery company from Grand Prairie, TX. Tiles from the Care Building were tested and came back positive for asbestos. With all three structures the city could see damages to exceed over one million dollars. The city has a \$25,000 deductible per occurrence. If FEMA grants the declaration, we could see public assistance and the city will be able to recoup the \$25,000.

Commissioner Garcia asked if there were any electrical connections on the floor level at the Care Building. Garcia further asked if there is an exclusion in the windstorm policy for asbestos.

Mr. Solis responded that he is not sure if there were any electrical connections but will check on it. He further stated that there is exclusions in the windstorm policy.

Mr. Garza commented that before the park is opened to the public, it is important that these areas are secured.

Mrs. Courtney Alvarez, City Attorney announced that the next City Commission meeting is scheduled for Monday, June 27th. Agenda items for this meeting are due Friday, June 14th.

Commissioner Pecos commented that the twelve counties that were submitted to the President have been approved. Pecos further asked when staff will be moving into the new City Hall building.

Mr. Garza commented that staff is finalizing a few details this week in order to get the Certificate of Occupancy. Staff is already beginning to move some of their items. Staff was also waiting the Foundation to have their event prior to moving some items into their offices. The move to the new City Hall should take about a month.

Commissioner Lopez asked if there would be a custodian on staff for the new city hall.

Mr. Garza responded that as part of the budget, the Commission approved two part-time positions specifically for the new city hall. One will focus on the exterior of the building and the other will be custodial for the interior of the building.

Commissioner Garcia announced that he will not be available to attend the next City Commission meeting scheduled for June 27th.

IV. Public Comment on Agenda Items.³

1. Comments on all agenda and non-agenda items.

Mr. Luke Womack, 218 Billy Evans, commented on the response that city staff took after the storm was outstanding.

V.

Consent Agenda

Notice to the Public

The following items are of a routine or administrative nature. The Commission has been furnished with background and support material on each item, and/or it has been discussed at a previous meeting. All items will be acted upon by one vote without being discussed separately unless requested by a Commission Member in which event the item or items will immediately be withdrawn for individual consideration in its normal sequence after the items not requiring separate discussion have been acted upon. The remaining items will be adopted by one vote.

CONSENT MOTIONS, RESOLUTIONS, ORDINANCES AND ORDINANCES FROM PREVIOUS MEETINGS:

(At this point the Commission will vote on all motions, resolutions and ordinances not removed for individual consideration)

Motion made by Commissioner Pecos to approve the consent agenda as presented, seconded by Commissioner Garcia. The motion was approved by the following vote: Pecos, Garcia, Lopez voting "FOR".

1. Motion to approve final passage of an ordinance amending the Fiscal Year 2015-2016 budget to include transfers for the creation of a disaster response recovery fund for city expenses. (Finance Director).

REGULAR AGENDA

CONSIDERATION OF MOTIONS, RESOLUTIONS, AND ORDINANCES:

VI. Items for consideration by Commissioners.⁴

2. Consider acceptance of a donation from the Kingsville Chamber of Commerce for landscaping at the New City Hall Complex. (Finance Director).

Mrs. Deborah Balli, Finance Director reported that the city has received this donation in the amount of \$730. This donation was from money collected at the Mayor's State of the City Event.

Motion made by Commissioner Garcia to approve this donation, seconded by Commissioner Pecos. The motion was passed by the following vote: Garcia, Pecos, Lopez voting: "FOR".

3. Consider introduction of an ordinance amending the Fiscal Year 2015-2016 budget to accept and expend donations from the Kingsville Chamber of Commerce. (Finance Director).

Introduction item.

4. Consider accepting the Comprehensive Annual Financial Report of the City of Kingsville for Fiscal Year 2014-2015. (Finance Director).

Mr. Luke Womack of John Womack & CO., P.C. gave the City Commission a report on the City of Kingsville's Comprehensive Annual Financial Report for Fiscal Year 2015. Womack reported that the City had a different kind of year in that the City decided to spend a lot of the reserved monies. This expenditure was for the restoring of a historical building into a new city hall. Mr. Womack at this time went over the report with the City Commission. In the general fund last year there were \$13,434,000.00 in assets and being a governmental fund it is almost cash basis. Cash was \$5.4 million, pooled cash was \$2 million which is a full cash amount and to which many different funds participate in. Taxes receivable is \$1.2 million, accounts receivable of various kinds is \$1.2 million with restricted cash at \$3,041,000.00 for about \$13,646,000 versus last years \$13,434,000, which is hardly any change. In liabilities last year in accounts payable was \$730,000 with this year at \$1,284,000.00, primarily due to capital projects the City has going on at the new City Hall. The deferred income is \$1,047,044, this is not something the city is going to pay, this is not a liability, and this is an offset to the tax revenues. Whenever there are tax revenues you do not recognize it until it is actually collected. The fund balance for the year was \$10,519,157, which was slightly higher the year before but the landfill went from \$4.4 million to \$2.4 million which came down about \$2 million which due primarily to the new city hall. In the Police Forfeiture Fund last year had \$6.3 million total assets which was primarily cash this year at \$4,780,000.00 and last year their liabilities were \$2,793,000; this year the liability jumped up to \$3.3 million due to cases pending that have not been awarded. The ending fund balance of monies that have been approved and are available \$1,439,000.00 versus \$890,000 from the year before. Debt service fund is functioning the way it's supposed too basically because it is taxes we do have some non-tax debt to be funded because of projects it was used for guarantee which pays it

through there and reimbursed by other assessments. This fund balance last year was \$588,000 and this year its \$579,000, which is staying even. Revenue for the year was up \$17,319,000 and last year it was \$16,157,000 of which revenue was up \$1.2 million. The increases and expenditure tend to offset that, \$5,762,000 is general governmental administration which is up \$1.7 million which is primarily where the flowing of the money for the restoration process. The total expenditures were \$19,895,184 and this resulted on an overall revenue in excess of revenue expenditures of \$2,576,000, which is basically \$2.6 million of what was spent then brought in. Last year's loss was at \$1.8 million as other construction items were on going during that time period. The net change in fund balance was \$1,000,000.00 with the fund balance last year at \$11,526,000.00; take out \$1,007,000.00 which will bring it down to \$10,519,000.00. Womack stated that the fund balance is still very strong and have minimum fund balances allowances which the city is in excess of those balances. In the Police Department, they brought in \$549,759 which were the revenues that were recognizable during the period in excess of expenditures. Debt service fund brought in \$1,385,000.00 with expenditures at \$1,747,000.00 and that's operating at loss of \$361,000.00 but do have a fund that has service fees attached to it and transfers in to \$352,000.00 to cover that loss. Womack commented that the general fund was untouched last year but could have gone up \$1,000,000.00 if we hadn't started the project. In the Utility Fund, water sales dropped close to \$1 million dollars last year. Cash is still strong, there is \$5,000,000.00 in cash and cash equivalence and had \$939,000.00 in pooled equity. Total assets is at \$12,986,000.000, the assets of the city are at \$47,011,510.00 which is the cost of every asset that the city has acquired and have not liquated in excess of \$5,000.00, so up to date we have sent \$47,000,000.00 in various types of assets. Depreciation is at \$30,130 resulting in a net of \$16,881,000.00. The total liabilities \$3.1 million which is very similar to the prior year. Obligations of a long term debt of \$15,834,000.00 which is the amount of expenditures that is owed. The total fund balance is at \$11,027,000.00 with unrestricted at \$4.9 million. In Utility Fund, water was at \$5,237,000.00 last year and this year it's at \$4.5 million. Wastewater was down about \$200,000.00 which usually follows water so when water goes down which also affects wastewater. Operating expenses was \$6.4 million last year and \$6.4 million this year, so this was kept overall intact. The operating income loss is at \$501,000.00 with last it year it was with the positive of \$764,000.00. Total fund balance is at \$11,027,271.00 with \$4.9 million being unrestricted. Womack further commented that the reconciliation of assets and liability accounts has improved immensely. Certain expenditures of the Tourism Funds should be supported by surveys that indicate the events held actually were increasing tourism and the local hotel industry. The City also did not reach the 15% of hotel/motel tax expenditures to be expended on advertising according to state law, and spent more than the 15% cap for hotel/motel tax expenditures related to promoting arts and culture. Womack further commented as for bidding, there was a finding that the City did not perform proper bidding procedures for services from a vendor which totaled more than \$50,000.00. Staff has begun implementing new procedures to track this individually so that this won't happen again. Womack stated that when issues were addressed to staff, staff immediately addressed the issues. He further thanked staff for all their hard work.

5. Consider introduction of an ordinance granting a special use permit to place a mobile home at Corral, Block 2, Lot 18 on a .2525 acre tract known as 1100 E. Corral, amending the comprehensive plan to account for any deviations from the existing comprehensive plan. (Planning & Development Services Director).

No action taken.

6. Consider introduction of an ordinance granting a special use permit to place a mobile home at Corral, Block 23, Lot 1,2 (Corral Storage) known as 1220 E. Corral, amending the comprehensive plan to account for any deviations from the existing comprehensive plan. (Planning & Development Services Director).

Introduction item.

7. Consider Preliminary Plat for North 62 acres of Lot 25, Block 20, Kleberg Town and Improvement Company Subdivision (in ETJ) known as Escondido Ranch. (Planning & Development Services Director).

Motion made by Commissioner Pecos to approve this item, seconded by Commissioner Garcia. The motion was passed and approved by the following vote: Pecos, Garcia, Lopez voting "FOR".

8. Consider Final Plat for North 62 acres of Lot 25, Block 20, Kleberg Town and Improvement Company Subdivision (in ETJ) known as Escondido Ranch. (Planning & Development Services Director).

Motion made by Commissioner Pecos to approve this item, seconded by Commissioner Garcia. The motion was passed and approved by the following vote: Garcia, Pecos, Lopez voting "FOR".

9. Consider authorizing purchase of an H.D. Industries Pro Patcher Asphalt Pothole Patcher on a 2017 Cab and Chassis from Freightliner for \$147,283.70 via BuyBoard as per staff recommendation. (Purchasing & Technology Director).

Mr. David Mason, Purchasing & Technology Director reported that this item authorized the purchase of a new HD Industries Pro Patcher Pothole Patcher on 2017 Freightliner M2106 Cab and Chassis. In order to continue progress on the City's street plan, specifically pothole repair, an additional patching machine is needed. This purchase will expend a total of \$147,283.70 from 033-5-3050-71200 of which \$160,000.00 is available from CO 2016.

Motion made by Commissioner Garcia to authorize the purchase of an H.D. Industries Pro Patcher Asphalt Pothole Patcher on a 2017 Cab and Chassis from Freightliner for \$147,283.70, seconded by Commission Pecos. The motion was passed and approved by the following vote: Garcia, Pecos, Lopez voting "FOR".

10. Consider authorizing repairs to roof at Parks Department Equipment Barn to Parsons Commercial Roofing, Inc. via TIPS Purchasing Cooperative, as per staff recommendation. (Purchasing Director).

Mr. Mason stated that his item authorizes the installation of a new rood at the Equipment Barn at Dick Kleberg Park. The replacement roof will be done with 7/16" (1/2" performance class) Oriented Strand Board (OSB) decking with 30 lb. felt and 30 year dimensional shingles. Installation will be \$20,518.00 from 033-5-4503-71300, Equipment Barn Improvements of which \$25,000 is available.

11. Consider final passage of an ordinance amending Chapter XV, Article 5, Historical Districts and Landmarks, Sections 15-5-17 through 15-5-33, providing for a revised application and permit approval process. (Planning & Development Services Director).

Mr. Ginter, stated that as per concerns from staff, staff is proposing that the following language be deleted from Section 15-5-20 which states "or appropriated resident of the municipality entity".

Motion made by Commissioner Pecos to approve this ordinance, seconded by Commissioner Garcia. The motion was passed and approved by the following vote: Pecos, Garcia, Lopez voting "FOR".

VI. Adjournment.

There being no further business to come before the City Commission, the meeting was adjourned at 6:57 P.M.

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, TRMC, City Secretary

PUBLIC HEARING(S)

CONSENT AGENDA

AGENDA ITEM #1

**City of Kingsville
Parks & Recreation**

TO: Mayor and City Commissioners

CC: Jesus A. Garza, City Manager

FROM: Susan Ivy, Parks Manager

DATE: June 3, 2016

SUBJECT: Receipt of Donations to Parks & Recreation

Summary: The Parks & Recreation Department requests your approval to receipt and record donations received for assistance with summer programming from various donors.

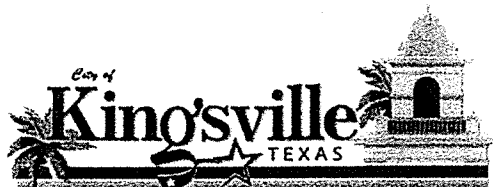
Background: In order to provide quality programming during out of school summer months to kids in Kingsville the Parks & Recreation Department continually seeks opportunities to partner with local businesses, non-profits and grant opportunities to assist with funding of our programming. We have received various contributions for assistance with our Summer Programming which is detailed below. Just a note regarding Outdoor Movie contributions – Kingsville Publishing Company will also be donating ads for each of our Outdoor Movie Events.

Financial Impact: These donations will increase our programming funding by \$4,380.00.

\$990.00 Brookshire Foundation Swim Team
\$990.00 Brookshire Foundation Summer Track Team
\$750.00 Fit 24 gym Cinema Summer Sponsor
\$300.00 The Tanning Bar Cinema Summer Sponsor
\$250.00 Fugate Law Firm – STEM Camp
\$200.00 Cherry Tree – Swim Team
\$200.00 Scholtzkys Deli – Swim Team
\$200.00 ML Cook Inc. – Swim Team
\$50.00 Swimmin' Stuff – Swim Team
\$200.00 Quail Country Realty – Swim Team
\$250.00 Agri Life Extension 4H - Cinema Summer Sponsor

\$4380.00 Total Donations

Recommendation: I respectfully request that the City Commission authorize the receipt of these donations to be used in the manner for which they were donated and approve the budget amendment that supports their recording.



ORDINANCE NO. 2016- _____

AN ORDINANCE AMENDING THE FISCAL YEAR 2015-2016 BUDGET TO ACCEPT AND EXPEND DONATIONS FOR THE PARKS DEPARTMENT FOR SUMMER PROGRAMS.

WHEREAS, it was unforeseen when the budget was adopted that there would be a need for funding for these expenditures this fiscal year.

I.

BE IT ORDAINED by the City Commission of the City of Kingsville that the Fiscal Year 2015-2016 budget be amended as follows:

CITY OF KINGSVILLE
DEPARTMENT EXPENSES
BUDGET AMENDMENT

Dept. No.	Department Name:	Account Name:	Account Number:	Budget Increase	Budget Decrease
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Fund 001 General Fund

Revenues

4-4503 Parks	Park Donations	58003	\$4,380	
			<u>\$4,380</u>	

Expenses

5-4503 Parks	Recreational Programs	31499	\$4,380	
			<u>\$4,380</u>	

[To amend the City of Kingsville FY 15-16 General Fund Budget to accept and expend Parks donations received from various donors to assist with summer programming as per the attached memo from the Parks Manager.]

II.

THAT all Ordinances or parts of Ordinances in conflict with this Ordinance are repealed to the extent of such conflict only.

III.

THAT if for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this ordinance, for it is the definite intent of this City Commission

that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

IV.

THAT this Ordinance shall not be codified but shall become effective on and after adoption and publication as required by law.

INTRODUCED on this the 27th day of June, 2016.

PASSED AND APPROVED on this the 11th day of July, 2016.

EFFECTIVE DATE: _____

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

Courtney Alvarez, City Attorney

AGENDA ITEM #2

**City of Kingsville
Police Department**

TO: Mayor and City Commissioners
CC: Jesus A. Garza, City Manager
FROM: Ricardo Torres, Chief of Police
DATE: June 11, 2016
SUBJECT: Request for Budget Amendment

Summary:

The police department is requesting a budget amendment in the amount of \$5,008.00 to be used to purchase medical kits.

Background:

As you may recall two KPD officers were able to save the life of one of our citizen's, recently, by providing immediate medical care at a major accident scene. KPD is partnering with TAMUK PD to provide Self Aid Buddy Aid training to our police officers. Officers will have the training and equipment to be able to assist not only our citizens, other officers but also themselves should circumstances dictate that immediate care is needed.

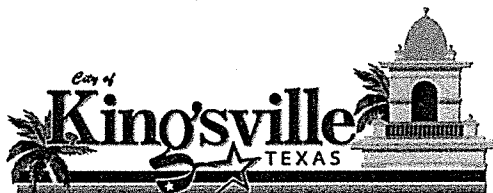
Financial Impact:

The equipment consists of 50 OFFICER MEDICAL KITS W/COMBAT GAUZA LE & SOFTT WIDE tourniquets. This will outfit every authorized police officer position of the department. The total cost for this project is \$5,557.50. We are requesting \$5,008.00 to be used to cover the cost of the medical kits.

Total Expenditures would be \$5,557.50

Recommendation:

We request that the budget amendment be approved to cover the cost of the medical kits.





Quote

Quote # 765
Quote Date 5/16/2016

Customer
KINGSVILLE POLICE DEPARTMENT

Ship To

P.O. No.	PO DATE	Rep	Terms	Ship Via	Lead Time
—	5/16/2016	LK	NET 30 DAYS	PPA	2-3 WEEKS
Item	Description	Ordered	UOM	Price Per	Total Price
OMK-03	OFFICER MEDICAL KIT w/ COMBAT GAUZE LE & SOFTT WIDE	50	EA	111.15	5,557.50

Prepared By: Courtney
Memo: ***SHIPPING NOT INCLUDED ON QUOTE***

Sub-Total	5,557.50
Shipping	0.00
Taxes	0.00
Total	5,557.50

5310 Elm Street.Houston, Texas 77081

Tel: 713-723-6000 - Fax 713-723-6221

email:orders@ps-med.com

ORDINANCE NO. 2016-_____

AN ORDINANCE AMENDING THE FISCAL YEAR 2015-2016 BUDGET TO ACCEPT AND EXPEND DONATION FROM THE KINGSVILLE AREA EDUCATORS FEDERAL CREDIT UNION FOR POLICE OFFICER MEDICAL KITS.

WHEREAS, it was unforeseen when the budget was adopted that there would be a need for funding for these expenditures this fiscal year.

I.

BE IT ORDAINED by the City Commission of the City of Kingsville that the Fiscal Year 2015-2016 budget be amended as follows:

**CITY OF KINGSVILLE
DEPARTMENT EXPENSES
BUDGET AMENDMENT**

Dept. No.	Department Name:	Account Name:	Account Number:	Budget Increase	Budget Decrease
Fund 001 General Fund					
<u>Revenues</u>					
4-0000		Donations	72030	<u>\$500</u>	
<u>Expenses</u>					
5-2105		Medical Supplies	22400	<u>\$500</u>	

[To amend the City of Kingsville FY 15-16 General Fund Budget to accept and expend a donation from the Kingsville Area Educators Federal Credit Union to assist in the purchase of Officer Medical Kits as per the attached memo from the Chief of Police.]

II.

THAT all Ordinances or parts of Ordinances in conflict with this Ordinance are repealed to the extent of such conflict only.

III.

THAT if for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this ordinance, for it is the definite intent of this City Commission

that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

IV.

THAT this Ordinance shall not be codified but shall become effective on and after adoption and publication as required by law.

INTRODUCED on this the 27th day of June, 2016.

PASSED AND APPROVED on this the 11th day of July, 2016.

EFFECTIVE DATE: _____

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

Courtney Alvarez, City Attorney

AGENDA ITEM #3

**City of Kingsville
Police Department**

TO: Mayor and City Commissioners

CC: Jesus A. Garza, City Manager

FROM: Ricardo Torres, Chief of Police

DATE: June 10, 2016

SUBJECT: Budget Amendment

Summary:

The police department is requesting a resolution for application and acceptance of Homeland Security Grant Project #3146701

Background:

Continued smuggling along the border and up thru U.S. Hwy 77, a HIDTA corridor, have had connections to known terrorist groups and other special interest groups. With the purchase of 9 complete sets of night vision goggles, officers in the field will greatly enhance their ability to see in low light conditions since the officers do not know the intentions of those individuals they are pursuing in the dark. The ability to see in low light conditions will allow the officers to see the smugglers and or suspects before they are seen. The ability to see under low light conditions greatly enhances officer safety as well as greatly assist in the apprehension of those criminals.

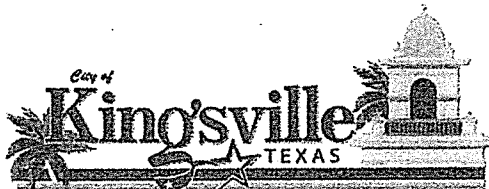
Financial Impact:

The equipment consists of 9-WTNVC-TNV/PVS-14 w/L3 OMNI VIII 9-Norotos MILSPEC USGI MICH Helmet Mounting Assembly. The Coastal Bend Council of Governments has approved the amount of \$27,000.00 in grant funds for the project with no matching funds by the City of Kingsville.

Total Grant Fund Expenditures would be \$27,000.00.

Recommendation:

We request approval of the resolution as presented.



ORDINANCE NO. 2016-_____

AN ORDINANCE AMENDING THE FISCAL YEAR 2015-2016 BUDGET TO INCLUDE HOMELAND SECURITY GRANT PROJECT #3146701 FOR POLICE DEPARTMENT.

WHEREAS, it was unforeseen when the budget was adopted that there would be a need for funding for these expenditures this fiscal year.

I.

BE IT ORDAINED by the City Commission of the City of Kingsville that the Fiscal Year 2015-2016 budget be amended as follows:

**CITY OF KINGSVILLE
DEPARTMENT EXPENSES
BUDGET AMENDMENT**

Dept. No.	Department Name:	Account Name:	Account Number:	Budget Increase	Budget Decrease
<hr/>					
Fund 080-Homeland Security Grant					
<u>Revenue</u>					
4-0000		State Grants	72010	<u>\$27,000</u>	
<u>Expenses</u>					
5-2100		Minor Equipment	21700	<u>\$27,000</u>	

[To amend the City of Kingsville FY 15-16 General Fund Budget to purchase night vision goggles for the Kingsville Police Department with Homeland Security Grant Project #3146701 as per the attached memo from the Chief of Police.]

II.

THAT all Ordinances or parts of Ordinances in conflict with this Ordinance are repealed to the extent of such conflict only.

III.

THAT if for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this ordinance, for it is the definite intent of this City Commission that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

IV.

THAT this Ordinance shall not be codified but shall become effective on and after adoption and publication as required by law.

INTRODUCED on this the 27th day of June, 2016.

PASSED AND APPROVED on this the 11th day of July, 2016.

EFFECTIVE DATE: _____

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

Courtney Alvarez, City Attorney

AGENDA ITEM #4

**City of Kingsville
Finance Department**

TO: Mayor and City Commissioners
CC: Jesus A. Garza, City Manager
FROM: Deborah Balli, Director of Finance
DATE: June 16, 2016
SUBJECT: Disaster Response Recovery Budget Amendment

Summary:

This item authorizes a budget amendment for the purchase of equipment to be used in an emergency power outage and costs associated with storm debris collection from the recently created Disaster Response Recovery Fund.

Background:

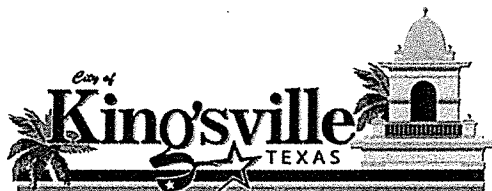
The City established a Disaster Response Recovery Fund that will hold yearly contributions in the event of disaster situations. After evaluating the needs after a recent storm, it was discovered that electrical transfer switches are needed at Public Works and the Landfill to ensure the facilities can function during emergency power outages and funds are needed to cover the expenses of storm debris collection.

Financial Impact:

This budget amendment will appropriate \$15,300 in equipment purchases and professional services-for clean-up events from the newly created Disaster Response Recovery Fund.

Recommendation:

Staff is recommending the FY 15-16 budget be amended to include the \$15,300 in expenditures in the Disaster Response Recovery Fund.



ORDINANCE NO. 2016- _____

AN ORDINANCE AMENDING THE FISCAL YEAR 2015-2016 BUDGET FOR THE PURCHASE OF GENERATOR EQUIPMENT AND STORM DEBRIS COLLECTION EXPENSES.

WHEREAS, it was unforeseen when the budget was adopted that there would be a need for funding for these expenditures this fiscal year.

I.

BE IT ORDAINED by the City Commission of the City of Kingsville that the Fiscal Year 2015-2016 budget be amended as follows:

**CITY OF KINGSVILLE
DEPARTMENT EXPENSES
BUDGET AMENDMENT**

Dept. No.	Department Name:	Account Name:	Account Number:	Budget Increase	Budget Decrease
-----------	------------------	---------------	-----------------	-----------------	-----------------

Fund 099-Disaster Response Recovery Fund

Equity

2	Restricted-Disaster Response	61002			<u>\$15,300</u>
---	------------------------------	-------	--	--	-----------------

Expenses

5-1603	Prof Svcs-Events & Clean Ups	31439	\$5,000	
5-1703	Minor Equipment	21700	\$3,000	
5-3020	Machinery/Equipment	71200	<u>\$7,300</u>	
			<u>\$15,300</u>	

[To amend the City of Kingsville FY 15-16 Disaster Response Recovery Fund Budget to purchase generator equipment and cover the costs of storm debris collection as per the attached memo from the Director of Finance.]

II.

THAT all Ordinances or parts of Ordinances in conflict with this Ordinance are repealed to the extent of such conflict only.

III.

THAT if for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause,

phrase, word or provision of this ordinance, for it is the definite intent of this City Commission that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

IV.

THAT this Ordinance shall not be codified but shall become effective on and after adoption and publication as required by law.

INTRODUCED on this the 27th day of June, 2016.

PASSED AND APPROVED on this the ___ day of _____, 2016.

EFFECTIVE DATE: _____

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

Courtney Alvarez, City Attorney

REGULAR AGENDA

AGENDA ITEM #5

**City of Kingsville
Engineering/Public Works**

TO: Mayor and City Commissioners

CC: Jesus A. Garza, City Manager

FROM: Charlie Cardenas, P.E., City Engineer/Director of Public Works

DATE: July 1, 2016

SUBJECT: Resolution to enter in agreement with Naismith Engineering for the design and construction of "sector 4" of the City of Kingsville Municipal Landfill.

Summary:

This item authorizes the approval of a resolution to enter into an agreement with Naismith Engineering for the design and construction of sector 4 of the City of Kingsville Municipal Landfill.

Background:

In late 2015, it was determined that the life expectancy of the current permitted operating cell had approximately 2 years of capacity. Currently, the City of Kingsville is working with Naismith Engineering to amend the 1999 permit to expand the physical limits and operating parameters of the landfill. Opening 7.3 acres of sector 4 would expand our capacity for approximately 10 to 15 years under current permitted conditions. However, as the City of Kingsville is amending the current permit, sector 4 would be encompassed with the new permitted operations.

Financial Impact:

The financial impact is \$1,811,900.00 where a budget amendment was passed in May 2016.

Recommendation:

Staff recommends entering into an agreement with Naismith Engineering for the design and construction of sector 4 of the City of Kingsville Municipal Landfill.



RESOLUTION #2016-_____

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT BETWEEN THE CITY OF KINGSVILLE, TEXAS AND NAISMITH ENGINEERING FOR PROFESSIONAL SERVICES FOR DESIGN AND CONSTRUCTION OF PARTIAL "SECTOR 4" OF THE CITY LANDFILL; REPEALING ALL CONFLICTING RESOLUTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Kingsville previously went out for Requests for Qualification for all technical engineering services associated with the Landfill (RFQ #11-26) and Naismith Engineering scored highest on the assessments by staff, and the City Commission authorized staff to begin negotiating a contract with them for such services on May 9, 2011 and approved a master engineering services agreement for the landfill with them on August 22, 2011 via Resolution #2011-52;

WHEREAS, the City has need of design and construction of part of "sector 4" of the City's Municipal Landfill and desires for Naismith Engineering to perform this work under via a subcontract of the master contract already in place;

BE IT RESOLVED by the City Commission of the City of Kingsville, Texas:

I.

THAT the City Manager is authorized and directed as an act of the City of Kingsville, Texas to enter into an Agreement Between Naismith Engineering and the City of Kingsville, Texas for Professional Services for design, bidding and construction phase services for partial Sector 4 at the City of Kingsville Landfill in accordance with Exhibit A hereto attached and made a part hereof.

II.

THAT all resolutions or parts of resolutions in conflict with this resolution are repealed to the extent of such conflict only.

III.

THAT this Resolution shall be and become effective on and after adoption.

PASSED AND APPROVED by a majority vote of the City Commission on the 11th day of July, 2016.

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

Courtney Alvarez, City Attorney

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Laws and Regulations.

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

EJCDC 

ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC User's Guide to the Owner-Engineer Agreement, EJCDC E-001, 2009 Edition.

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ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of June 17 , 2016 ("Effective Date") between

City of Kingsville ("Owner") and

Naismith Engineering, Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Design of Partial Sector 4 at the City of Kingsville Municipal Solid Waste Landfill ("Project").

Engineer's services under this Agreement are generally identified as follows:

Design, bidding and construction phase services as outlined in Exhibit A.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs,

instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
 - D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and

in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.

- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and regulations.
 - 2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a

contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.

- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, Paragraph A1.05.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between

the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.

- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies and as loss payees on any property insurance policies carried by Owner which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle

damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 *Suspension and Termination*

A. *Suspension:*

- 1. By Owner: Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
- 2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

- 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. By Engineer:

- 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
- 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
- 3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law*

- A. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.

6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 - 3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.

- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.
- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not

limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

- D. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.11 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
 5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
 6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
 7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
 8. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.

9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.
11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
14. *Engineer* – The individual or entity named as such in this Agreement.
15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
18. *PCBs* – Polychlorinated biphenyls.
19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
24. *Resident Project Representative* – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
25. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
26. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
27. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
28. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
29. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
30. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
31. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
32. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants,

together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

33. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- ~~D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.~~
- ~~E. Exhibit E, Notice of Acceptability of Work.~~
- ~~F. Exhibit F, Construction Cost Limit.~~
- G. Exhibit G, Insurance.
- ~~H. Exhibit H, Dispute Resolution.~~
- I. Exhibit I, Limitations of Liability.
- ~~J. Exhibit J, Special Provisions.~~
- ~~K. Exhibit K, Amendment to Owner Engineer Agreement.~~

8.02 *Total Agreement:*

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives:*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications:*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:
City of Kingsville

Engineer:
Naismith Engineering, Inc.

By: Jesus A. Garza

By: Grant A. Jackson, P.E. 

Title: City Manager

Title: Vice President

Date

Date

Signed: _____

Signed: 06/21/2010

Engineer License or Firm's Certificate No. F-355
State of: Texas

Address for giving notices:

Address for giving notices:

200 East Kleberg Avenue

4501 Gollihar Road

Kingsville, Texas 78363

Corpus Christi, Texas 78411

Designated Representative (Paragraph 8.03.A):

Pete Pina

Title: Landfill Supervisor

Phone Number: 361-595-0092

Facsimile Number: 361-595-1763

E-Mail Address: ppina@cityofkingsville.com

Designated Representative (Paragraph 8.03.A):

Jon M. Reinhard, P.E.

Title: Project Engineer

Phone Number: 361-814-9900

Facsimile Number: 361-814-4401

E-Mail Address: jreinhard@naismith-engineering.com

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – Basic Services

A1.01 Engineering Design and Assistance with Bidding

A. Engineer shall perform the following:

1. Topographic Survey. Perform a topographic survey of the proposed construction area to obtain information on existing conditions necessary for design, including estimation of excavation and/or fill volumes.
2. Schematic Design. Prepare a schematic design package and meet with the Owner to review the package. The schematic design will be based upon the specific liner configuration as depicted in the landfill permit consisting of the following components (from bottom to top): dewatering system/underdrain, prepared subgrade, geosynthetics clay liner (GCL), 60 mil HDPE geomembrane, drainage geocomposite/leachate collection system, and protective cover. The schematic design package will include:
 - a. A plan view layout of the proposed construction.
 - b. A technical memo outlining construction work items for the bid package, approximate quantity and cost estimates, and a description of additional requirements (e.g. TCEQ mandated construction inspection/quality assurance testing, regulatory submittals, required infrastructure extensions, changes in financial assurance, required additional monitoring, etc.).
 - c. A proposed schedule.
3. 50% Construction Documents Package. Based on the comments received from the Owner on the schematic design, NEI will prepare a draft package of construction documents representing approximately 50% complete and will meet with the Owner to review the package. The package will include:
 - a. Construction drawings, including plans, sections, and details, for work elements identified in the schematic design.
 - b. Construction specifications for work elements identified in the schematic design.

- c. Contract documents, including instructions to bidders, agreements, bonds, general conditions and special conditions.
4. Electrical Design. Engineer will employ a sub-consultant for the electrical engineering design for those features of the project that require electrical power, including the leachate management and temporary dewatering systems.
5. 100% Construction Documents Package. Based on the comments received from the Owner on the 50% Construction Documents Package, Engineer will prepare a final package of construction documents and will meet with the Owner to review the package. The package will include:
 - a. Construction drawings.
 - b. Construction specifications.
 - c. Contract documents.
 - d. An opinion of probable construction cost.
6. Documents Issued for Construction. Following the approval of the 100% Construction Documents Package, Engineer will prepare an electronic copy in Adobe Acrobat .pdf format and ten (10) hard copies of the drawings, specifications, and contract documents for distribution to the Owner, regulatory agencies, and potential bidders. Engineer will also utilize the CivCastUSA website to reach potential bidders and for distribution of bidding documents. Engineer will then arrange for a final bid date and advertising schedule with the Owner, determine the criteria for award, and coordinate the advertisement of the documents in the Kingsville Record, with the cost of the newspaper publication to be borne by the Owner.
7. Assistance with Bidding. Following the advertising of the package, Engineer will serve as the first point of contact for potential bidders. This will include responding to technical questions, and requests for clarification and requests for additional information. Engineer will also conduct a pre-bid meeting. If warranted, Engineer will issue written addenda, with Owner concurrence, for any additional information that needs to be conveyed to potential bidders. Engineer will also attend the bid opening.
8. Evaluation of Proposals and Recommendation for Award. Engineer will review bids received, based on the previously established criteria for award, including a review of each bid to ensure it contained the minimum information to be considered responsive, prepare a summary/tabulation of the bids, and rank the bids in accordance with the previously established evaluation/award criteria. Engineer will then prepare a written evaluation and recommendation for award, if appropriate. Following the development of the final recommendation, Engineer will make a presentation to the City Council regarding the recommendation.

- B. Engineer's services under the Engineering Design and Assistance with Bidding Phase will be considered complete on the date when the recommendation for award and any other deliverables have been delivered to Owner.

A1.02 Construction Administration and Quality Assurance

A. Engineer shall perform the following:

1. Construction Surveying. Engineer will provide the necessary surveys to document construction required by TCEQ regulations and the facility's permit. These will include surveys of the individual liner components – subgrade, geomembrane, and protective cover layer. To accommodate construction sequencing, the survey of each component will include up to two (2) mobilizations.
2. Construction QA Services (GCLER, GLER, BER). Engineer will hire a sub-consultant, Modern Technology/Modern Environment (MTME), to provide construction Quality Assurance (QA) services and prepare documentation for TCEQ submittal. MTME staff will be on site to observe and document construction, as well as coordinate testing and sampling of construction materials. As the professional of record, MTME will prepare the Geosynthetic Clay Liner Evaluation Report (GCLER), and the Geomembrane Liner Evaluation Report (GLER) for submittal to TCEQ. MTME will employ a qualified materials testing firm to provide the soil materials testing required by the current Soil and Liner Quality Control Plan.
3. Construction Administration. Engineer will make visits to the site at least once per week, and at all other times necessary, to observe the construction for general conformance with the contract documents and to coordinate the Construction QA Services. Engineer will also review shop drawing submittals, review and respond to the contractor's requests for information (RFI), prepare monthly pay estimates, and review and make recommendations on change order requests. Engineer will perform a final inspection at the completion of the project and prepare a set of Record Drawings based upon field observations and redline drawings provided by the contractor. Construction administration services are estimated based upon a projected 120 day construction period.

- B. Engineer's services under the Construction Administration and Quality Assurance Phase will be considered complete on the date when the Record Drawings and any other deliverables have been delivered to Owner.

PART 2 – ADDITIONAL SERVICES (NOT USED)

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 - 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 - 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the

scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.

- E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 - 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
- J. Place and pay for advertisement for Bids in appropriate publications.
- K. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- L. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

- N. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.
- ~~P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.~~
- Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- R. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- S. Perform or provide the following additional services:

This is **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 17, 2016.

Payments to Engineer for Services and Reimbursable Expenses
Basic Services – Standard Hourly Rates

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation For Basic Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultants’ charges, if any.
2. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
3. The total compensation for services under Paragraph C2.01 is estimated to be \$ 287,594.00 based on the following estimated distribution of compensation:
 - a. Engineering Design and Assistance with Bidding \$ 91,365.00
 - b. Construction Administration and Quality Assurance \$ 196,229.00
4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C.2 below.
5. The total estimated compensation for Engineer’s services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer’s Consultants’ charges.
6. The amounts billed for Engineer’s services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer’s employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer’s Consultants’ charges.
7. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of June 1st) to reflect equitable changes in the compensation payable to Engineer.

C2.02 *Compensation For Reimbursable Expenses*

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.10.

C2.03 *Other Provisions Concerning Payment*

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.10.
- B. Factors. The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. *Estimated Compensation Amounts:*
 - 1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 - 2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.

- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **Appendix 1 to EXHIBIT C**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 17, 2016.

Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

Fax	\$ _____/page
8"x11" Copies/Impressions	_____/page
Blue Print Copies	_____/sq. ft.
Reproducible Copies (Mylar)	_____/sq. ft.
Reproducible Copies (Paper)	_____/sq. ft.
Mileage (auto)	<u>0.65</u> /mile
Field Truck Daily Charge	<u>17.50</u> /day
Mileage (Field Truck)	<u>0.65</u> /mile
Field Survey Equipment	<u>55.00</u> /day
Confined Space Equipment	_____/day plus expenses
Resident Project Representative Equipment	_____/month
Specialized Software	_____/hour
CAD Charge	<u>20.00</u> /hour
CAE Terminal Charge	_____/hour
Video Equipment Charge	_____/day, \$ _____/week, or \$ _____/month
Electrical Meters Charge	_____/week, or \$ _____/month
Flow Meter Charge	_____/week, or \$ _____/month
Rain Gauge	_____/week, or \$ _____/month
Sampler Charge	_____/week, or \$ _____/month
Dissolved Oxygen Tester Charge	_____/week
Fluorometer	_____/week
Laboratory Pilot Testing Charge	_____/week, or \$ _____/month
Soil Gas Kit	_____/day
Submersible Pump	<u>10.00</u> /day
Water Level Meter	<u>10.00</u> /day, or \$ _____/month
Soil Sampling	_____/sample
Groundwater Sampling	_____/sample
Health and Safety Level D	_____/day
Health and Safety Level C	_____/day
Electronic Media Charge	_____/hour
Long Distance Phone Calls	at cost
Mobile Phone	_____/day
Meals and Lodging	at cost

This is **Appendix 2** to **EXHIBIT C**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 17, 2016.

Standard Hourly Rates Schedule

A. Standard Hourly Rates:

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

B. Schedule:

Hourly rates for services performed on or after the date of the Agreement are:

Billing Class VIII	\$ <u>175.00</u> /hour
Billing Class VII	<u>150.00</u> /hour
Billing Class VI	<u>130.00</u> /hour
Billing Class V	<u>115.00</u> /hour
Billing Class IV	<u>100.00</u> /hour
Billing Class III	<u>90.00</u> /hour
Billing Class II	<u>80.00</u> /hour
Billing Class I	<u>60.00</u> /hour
Support Staff	<u>45.00</u> /hour

This is **EXHIBIT G**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 17, 2016.

Insurance

Paragraph 6.04 of the Agreement is supplemented to include the following agreement of the parties.

G6.04 Insurance

A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:

1. By Engineer:

a. Workers' Compensation:

Statutory

b. Employer's Liability --

1) Each Accident:

\$ 1,000,000

2) Disease, Policy Limit:

\$ 1,000,000

3) Disease, Each Employee:

\$ 1,000,000

c. General Liability --

1) Each Occurrence (Bodily Injury and Property Damage):

\$ 2,000,000

2) General Aggregate:

\$ 4,000,000

d. Excess or Umbrella Liability --

1) Each Occurrence:

\$ 3,000,000

2) General Aggregate:

\$ 3,000,000

e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):

Each Accident

\$ 1,000,000

f. Professional Liability --

1) Each Claim Made

\$ 1,000,000

2) Annual Aggregate

\$ 2,000,000

g. Other (specify):

\$ _____

2. By Owner:

a. Workers' Compensation:

Statutory

b. Employer's Liability --

1) Each Accident

\$ 1,000,000

2) Disease, Policy Limit

\$ _____

3) Disease, Each Employee

\$ _____

c. General Liability --

1) General Aggregate:

\$ _____

2) Each Occurrence (Bodily Injury and Property Damage):

\$ 1,000,000

d. Excess Umbrella Liability --

1) Each Occurrence:

\$ _____

2) General Aggregate:

\$ _____

e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):

Each Accident:

\$ 1,000,000

f. Other (specify):

\$ _____

B. *Additional Insureds:*

1. The following persons or entities are to be listed on Owner's general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in Paragraph 6.04.B:

- a. Naismith Engineering, Inc.
Engineer
 - b. Modern Technology/Modern Environment
Engineer's Consultant
 - c. Bath Engineering Corp.
Engineer's Consultant
2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability and property policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.04.A.

This is **EXHIBIT I**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 17, 2016.

Limitations of Liability

Paragraph 6.10 of the Agreement is supplemented to include the following agreement of the parties:

A. Limitation of Engineer's Liability

1. *Engineer's Liability Limited to Amount of Engineer's Compensation:* To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total compensation received by Engineer under this Agreement.

AGENDA ITEM #6

**City of Kingsville
Engineering/Public Works**

TO: Mayor and City Commissioners

CC: Jesus A. Garza, City Manager

FROM: Charlie Cardenas, P.E., City Engineer/Director of Public Works

DATE: July 1, 2016

SUBJECT: Resolution to enter in agreement with Naismith Engineering to continue the next phase in the City of Kingsville Municipal Landfill Permit amendment process with the Texas Commission of Environmental Quality (TCEQ).

Summary:

This item authorizes the approval of a resolution to enter into an agreement with Naismith Engineering to continue the next phase in the City of Kingsville Municipal Landfill Permit amendment process with the TCEQ.

Background:

In May 2011 The City of Kingsville entered into agreement with Naismith Engineering to begin a process to amend the TCEQ operating permit. The permit process is to be conducted in phases. The city of Kingsville is at phase II of the process which is submittal, review and approval (phase III is implementation).

Financial Impact:

The financial impact is \$295,000.00 where a budget amendment was passed in May 2016.

Recommendation:

Staff recommends entering into an agreement with Naismith Engineering to continue the next phase in the City of Kingsville Municipal Landfill Permit amendment process with the Texas Commission of Environmental Quality (TCEQ).



RESOLUTION #2016-_____

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT BETWEEN THE CITY OF KINGSVILLE, TEXAS AND NAISMITH ENGINEERING FOR PROFESSIONAL SERVICES FOR PHASE II OF THE LANDFILL PERMIT AMENDMENT FOR THE CITY LANDFILL; REPEALING ALL CONFLICTING RESOLUTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Kingsville previously went out for Requests for Qualification for all technical engineering services associated with the Landfill (RFQ #11-26) and Naismith Engineering scored highest on the assessments by staff, and the City Commission authorized staff to begin negotiating a contract with them for such services on May 9, 2011 and approved a master engineering services agreement for the landfill with them on August 22, 2011 via Resolution #2011-52;

WHEREAS, the City has need of engineering services for Phase II of the Landfill Permit Amendment at the City's Municipal Landfill and desires for Naismith Engineering to perform this work under via a subcontract of the master contract already in place;

BE IT RESOLVED by the City Commission of the City of Kingsville, Texas:

I.

THAT the City Manager is authorized and directed as an act of the City of Kingsville, Texas to enter into an Agreement Between Naismith Engineering and the City of Kingsville, Texas for Professional Services for Phase II of the Landfill Permit Amendment at the City of Kingsville Landfill in accordance with Exhibit A hereto attached and made a part hereof.

II.

THAT all resolutions or parts of resolutions in conflict with this resolution are repealed to the extent of such conflict only.

III.

THAT this Resolution shall be and become effective on and after adoption.

PASSED AND APPROVED by a majority vote of the City Commission on the 11th day of July, 2016.

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

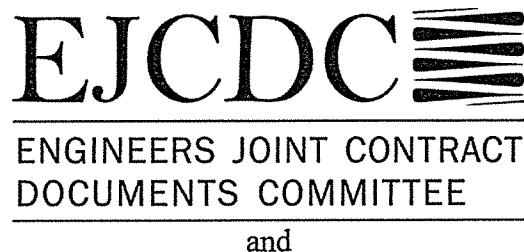
Courtney Alvarez, City Attorney

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Laws and Regulations.

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE



Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC User's Guide to the Owner-Engineer Agreement, EJCDC E-001, 2009 Edition.

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**ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE**

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of June 15 , 2016 ("Effective Date") between

City of Kingsville ("Owner") and

Naismith Engineering, Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Landfill Permit Amendment-Phase II ("Project").

Engineer's services under this Agreement are generally identified as follows:

Preparation and submittal of the permit amendment application documents for a vertical and horizontal expansion of the existing permitted facility (MSW-235B) as required under current rules and regulations.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.

- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:

1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and regulations.
 - 2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. Provided to Engineer in writing. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint

Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.

- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, Paragraph A1.05.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.

- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.

- B. Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies and as loss payees on any property insurance policies carried by Owner which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 *Suspension and Termination*

- A. *Suspension:*
 - 1. By Owner: Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
 - 2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.
- B. *Termination:* The obligation to provide further services under this Agreement may be terminated:
 - 1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

- a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. Payments Upon Termination:

- 1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
- 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly

attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law*

- A. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.

6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 - 3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

- A. ***Indemnification by Engineer:*** To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**

- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.
- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.11 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

- E. *Accrual of Claims*: To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
 5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
 6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
 7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

8. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.
11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
14. *Engineer* – The individual or entity named as such in this Agreement.
15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
18. *PCBs* – Polychlorinated biphenyls.
19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
24. *Resident Project Representative* – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
25. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
26. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
27. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
28. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
29. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
30. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
31. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

32. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.
33. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- ~~D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.~~
- ~~E. Exhibit E, Notice of Acceptability of Work.~~
- ~~F. Exhibit F, Construction Cost Limit.~~
- G. Exhibit G, Insurance.
- ~~H. Exhibit H, Dispute Resolution.~~
- I. Exhibit I, Limitations of Liability.
- ~~J. Exhibit J, Special Provisions.~~
- ~~K. Exhibit K, Amendment to Owner Engineer Agreement.~~

8.02 *Total Agreement:*

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives:*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications:*

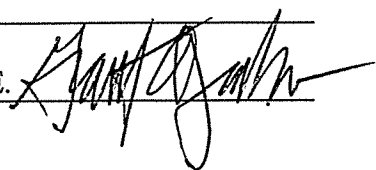
- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:
City of Kingsville

Engineer:
Naismith Engineering, Inc.

By: Jesus A. Garza

By: Grant A. Jackson, P.E. 

Title: City Manager

Title: Vice-President

Date

Date June 15, 2016

Signed:

Signed:

Engineer License or Firm's Certificate No. F-355
State of: Texas

Address for giving notices:

Address for giving notices:

200 E. Kleberg Ave.

4501 Gollihar Rd

Kingsville, Texas 78363

Corpus Chrisit, Texas 78411

Designated Representative (Paragraph 8.03.A):

Pete Pina

Title: Landfill Supervisor

Phone Number: 361-595-0092

Facsimile
Number: 361-595-1763

E-Mail Address: PPina@cityofkingsville.com

Designated Representative (Paragraph 8.03.A):

Scot E. Collins, P.G.

Title: Project Manager

Phone Number: 361-814-9900

Facsimile
Number: 361-814-4401

E-Mail Address: scollins@naismith-engineering.com

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – Permit Amendment Process - Phase II

A1.01 *Preparation of a Landfill Permit Amendment Application*

A. Engineer shall:

1. Prepare and revise Part I of the permit amendment documents: Text, Core Data Form, Part I Application, Update Adjacent landowners Map and General Location Map.
2. Prepare and revise Part II of the permit amendment documents; Text, Waste Acceptance Plan (WAP), Facility Layout Map, General Topographic map, Aerial Photographs, and Land Use Map.
3. Prepare and revise Part III of the permit amendment documents; Text, Surface Water Drainage, Drainage Analysis, Flood Control and Analysis, Liner Quality Control Plan, Geology Report, Groundwater Sampling and Analysis Plan, Landfill Gas Management Plan, Closure Plan, Post-Closure Plan, and Closure and Post Closure Cost Estimates. Conduct a geotechnical investigation as specified by the approved soil boring plan to accommodate an increased depth of excavation for future disposal areas. Perform a settlement analysis to incorporate the closed former MSW-235 area into the permitted waste placement area.
4. Prepare and revise Part IV of the permit amendment documents; Site Operating Plan.
5. Travel and attend up to three (3) meetings with City/Landfill staff.
6. Prepare an electronic copy of the permit amendment for posting to the City website (City to load and maintain website).
7. Provide the following copies of the permit amendment application:
 - TCEQ Waste Permits section-original and two (2) copies,
 - TCEQ Regional Office-one (1) copy,
 - City of Kingsville-two (2) copies,
 - Public Display-one (1) copy.

Given the tasks outlined above, we estimate the cost to be:

Phase II- Preparation of the Landfill Permit Amendment Application-\$295,000.00

- B. Engineer's services under the Preparation of the Landfill Permit Amendment Application phase will be considered complete on the date the Permit Amendment Application and any other associated deliverables have been delivered to Owner.

PART 2 – ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner's Written Authorization

- A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A1.01.A.4.
 5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 6. Providing renderings or models for Owner's use.
 7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining

process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.

8. Furnishing services of Consultants for other than Basic Services.
9. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
10. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
13. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.
14. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
15. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor.
16. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
17. Preparation of operation and maintenance manuals.
18. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
19. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
20. Assistance in connection with the adjusting of Project equipment and systems.
21. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.

22. Assistance to Owner in developing procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related record-keeping.
23. Overtime work requiring higher than regular rates.
25. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 Additional Services Not Requiring Owner's Written Authorization

- A. Engineer shall advise Owner in advance that Engineer is will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.
 1. Services in connection with work change directives and change orders to reflect changes requested by Owner.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
 5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
 6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.
 7. Services during the Construction Phase rendered after the original date for completion of the Work referred to in A1.05.B.
 8. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.

9. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites.

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 - 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 - 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the

scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.

- E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 - 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
- J. Place and pay for advertisement for Bids in appropriate publications.
- K. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- L. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

- N. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.
- P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- R. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- S. Perform or provide the following additional services:

This is **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2016.

Payments to Engineer for Services and Reimbursable Expenses
Basic Services – Standard Hourly Rates

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation for Permit Amendment Process - Phase II – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultants’ charges, if any.
2. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
3. The total compensation for services under Paragraph C2.01 is estimated to be \$ 295,000.00 based on the following estimated distribution of compensation:
 - Landfill Permit Amendment \$ 219,070.00
 - Geotechnical/Settlement Analysis \$ 75,930.00
4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C.2 below.
5. The total estimated compensation for Engineer’s services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer’s Consultants’ charges.
6. The amounts billed for Engineer’s services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer’s employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer’s Consultants’ charges.

7. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of June 1st) to reflect equitable changes in the compensation payable to Engineer.

C2.02 Compensation for Reimbursable Expenses

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.10.

C2.03 Other Provisions Concerning Payment

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.10.
- B. Factors. The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C. Estimated Compensation Amounts:

1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

Additional Services – Standard Hourly Rates

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Additional Services, if any, as follows:

1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.

B. *Compensation For Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of 1.10.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of June 1st) to reflect equitable changes in the compensation payable to Engineer.

C. *Other Provisions Concerning Payment For Additional Services:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.10.
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **Appendix 1 to EXHIBIT C**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2016.

Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

Fax	\$_____/page
8"x11" Copies/Impressions	_____/page
Blue Print Copies	_____/sq. ft.
Reproducible Copies (Mylar)	_____/sq. ft.
Reproducible Copies (Paper)	_____/sq. ft.
Mileage (auto)	<u>0.65</u> /mile
Field Truck Daily Charge	<u>17.50</u> /day
Mileage (Field Truck)	<u>0.65</u> /mile
Field Survey Equipment	<u>55.00</u> /day
Confined Space Equipment	_____/day plus expenses
Resident Project Representative Equipment	_____/month
Specialized Software	_____/hour
CAD Charge	<u>20.00</u> /hour
CAE Terminal Charge	_____/hour
Video Equipment Charge	_____/day, \$_____/week, or \$_____/month
Electrical Meters Charge	_____/week, or \$_____/month
Flow Meter Charge	_____/week, or \$_____/month
Rain Gauge	_____/week, or \$_____/month
Sampler Charge	_____/week, or \$_____/month
Dissolved Oxygen Tester Charge	_____/week
Fluorometer	_____/week
Laboratory Pilot Testing Charge	_____/week, or \$_____/month
Soil Gas Kit	_____/day
Submersible Pump	<u>10.00</u> /day
Water Level Meter	<u>10.00</u> /day, or \$_____/month
Soil Sampling	_____/sample
Groundwater Sampling	_____/sample
Health and Safety Level D	_____/day
Health and Safety Level C	_____/day
Electronic Media Charge	_____/hour
Long Distance Phone Calls	at cost
Mobile Phone	_____/day
Meals and Lodging	at cost

This is **Appendix 2 to EXHIBIT C**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2016.

Standard Hourly Rates Schedule

A. Standard Hourly Rates:

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

B. Schedule:

Hourly rates for services performed on or after the date of the Agreement are:

Billing Class VIII	\$ <u>175.00</u> /hour
Billing Class VII	<u>150.00</u> /hour
Billing Class VI	<u>130.00</u> /hour
Billing Class V	<u>115.00</u> /hour
Billing Class IV	<u>100.00</u> /hour
Billing Class III	<u>90.00</u> /hour
Billing Class II	<u>80.00</u> /hour
Billing Class I	<u>60.00</u> /hour
Support Staff	<u>45.00</u> /hour

This is **EXHIBIT G**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2016.

Insurance

Paragraph 6.04 of the Agreement is supplemented to include the following agreement of the parties.

G6.04 Insurance

A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:

1. By Engineer:

- Workers' Compensation: Statutory
- Employer's Liability --
 - 1) Each Accident: \$ 1,000,000
 - 2) Disease, Policy Limit: \$ 1,000,000
 - 3) Disease, Each Employee: \$ 1,000,000
- General Liability --
 - 1) Each Occurrence (Bodily Injury and Property Damage): \$ 2,000,000
 - 2) General Aggregate: \$ 4,000,000
- Excess or Umbrella Liability --
 - 1) Each Occurrence: \$ 3,000,000
 - 2) General Aggregate: \$ 3,000,000
- Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):
 - Each Accident \$ 1,000,000
- Professional Liability --
 - 1) Each Claim Made \$ 1,000,000
 - 2) Annual Aggregate \$ 2,000,000
- Other (specify): \$ _____

2. By Owner:

- Workers' Compensation: Statutory
- Employer's Liability --
 - 1) Each Accident \$ 1,000,000
 - 2) Disease, Policy Limit \$ _____
 - 3) Disease, Each Employee \$ _____
- General Liability --
 - 1) General Aggregate: \$ _____
 - 2) Each Occurrence (Bodily Injury and Property Damage): \$ 1,000,000
- Excess Umbrella Liability --
 - 1) Each Occurrence: \$ _____
 - 2) General Aggregate: \$ _____
- Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):
 - Each Accident: \$ 1,000,000
- Other (specify): \$ _____

B. *Additional Insureds:*

1. The following persons or entities are to be listed on Owner's general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in Paragraph 6.04.B:

- a. Naismith Engineering, Inc.
Engineer
 - b. Tolunay-Wong Engineers, Inc.
Engineer's Consultant
 - c. _____
Engineer's Consultant
2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability and property policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.04.A.

This is **EXHIBIT I**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 15, 2016.

Limitations of Liability

Paragraph 6.10 of the Agreement is supplemented to include the following agreement of the parties:

A. Limitation of Engineer's Liability

1. *Engineer's Liability Limited to Amount of Engineer's Compensation:* To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total compensation received by Engineer under this Agreement.

AGENDA ITEM #7

**City of Kingsville
Police Department**

TO: Mayor and City Commissioners

CC: Jesus A. Garza, City Manager

FROM: Ricardo Torres, Chief of Police

DATE: June 24, 2016

SUBJECT: 2017 Operation Border Star Grant Application

Summary:

The Homeland Security Grants Division (HGSD) of the Governor's Office is soliciting grant applications for projects that support Operation Border Star during the 2017 grant cycle. The Kingsville Police Department has been invited to participate in this project.

Background:

The purpose of the program is to sustain interagency law enforcement operations and enhance local law enforcement patrols in an effort to deter and facilitate directed actions to interdict criminal activity. Program participants shall assist in the execution of coordinated border security. We see this grant as an opportunity to address local issues such as disrupting and deterring operations where drugs are being sold, decrease use of specific areas for crime as targeted in directed action missions, and disrupt and deter the operation of criminal organizations in our city and the surrounding areas.

Financial Impact:

The grant for "Operation Border Star" is a reimbursement type but does not require any cash match. We have been conditionally approved \$85,000.00 in funds to cover personnel costs, fuel and maintenance.

Recommendation:

We would request a resolution naming the Chief of Police as the Authorized Official, as per CJD, supporting our application and acceptance of funds. Please place this on the next available agenda. Thank you for your assistance regarding this matter.



RESOLUTION NO. 2016-_____

A RESOLUTION AUTHORIZING PARTICIPATION IN OPERATION BORDER STAR WITH THE HOMELAND SECURITY GRANTS DIVISION OF THE GOVERNOR'S OFFICE FOR LOCAL BORDER SECURITY TO INTERDICT CRIMINAL ACTIVITY WITH NO ANTICIPATED CASH MATCH; AUTHORIZING THE CHIEF OF POLICE TO ACT ON THE CITY'S BEHALF WITH SUCH PROGRAM; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Homeland Security Grants Division of the Governor's Office has invited the City of Kingsville Police Department to participate in a grant for Local Border Security in an effort to deter and facilitate directed actions to interdict criminal activity; and

WHEREAS, the City of Kingsville has previously been allowed to apply for reimbursement of overtime for law enforcement personnel and dispatchers, and other allowed costs associated with this project that will assist with the deterrence of illegal activity in our area;

WHEREAS, the City Commission of the City of Kingsville finds it in the best interest of the citizens of Kingsville, that the Kingsville Police Department participate in an application to the Office of the Governor's Homeland Security Grant Division for Operation Border Star for grant monies for reimbursement for personnel costs, fuel and maintenance for law enforcement purposes for FY2016-2017; and

WHEREAS, the City agrees to provide the applicable matching funds for the said project, if any, as required by the Office of the Governor for the Operation Border Star Grant Program grant application; and

WHEREAS, the City agrees that in the event of loss or misuse of the Office of the Governor grant funds, the City of Kingsville City Commission assures that the funds received through the grant will be returned to the Office of the Governor in full;

WHEREAS, the City Commission of the City of Kingsville designates the Kingsville Chief of Police as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the applicant agency.

NOW THEREFORE, BE IT RESOLVED by the City Commission of the City of Kingsville, Texas:

I.

THAT the City Commission of the City of Kingsville approves the submission of the grant application for the Operation Border Star Grant Program for reimbursement for personnel costs, fuel and maintenance for law enforcement purposes to the Office of the Governor.

II.

THAT this Resolution shall be and become effective on or after adoption.

PASSED AND APPROVED by a majority vote of the City Commission the 11th day of July, 2016.

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM

Courtney Alvarez, City Attorney

AGENDA ITEM #8

**City of Kingsville
Police Department**

TO: Mayor and City Commissioners

CC: Jesus A. Garza, City Manager

FROM: Ricardo Torres, Chief of Police

DATE: July 5, 2016

SUBJECT: 2015 Operation Stonegarden Acceptance and Budget Amendment

Summary:

The Kingsville Police Department has been invited to participate in the 2015 OPSG and has been approved for participation during this grant cycle.

Background:

The OPSG Program supports enhanced cooperation and coordination among Customs and Border Protection (CBP), United States Border Patrol (USBP), and Federal, state, local, tribal, and territorial law enforcement agencies. The OPSG Program provides funding to support joint efforts to secure the United States' borders along routes of ingress from international borders to include travel corridors in states bordering Mexico and Canada, as well as states and territories with international water borders. The program is also risk-driven, capability based strategic plans that outline high-priority needs relating to terrorism preparedness. For these plans to be effective, government officials and elected leaders, working with the whole community, must consider how to sustain current capability levels, while also addressing potential gaps.

Financial Impact:

The grant for "Operation Stonegarden" is a reimbursement type but does not require any cash match. We have been conditionally approved \$122,533.28 in funds to cover personnel costs, fuel and radio equipment.

Recommendation:

We would request a resolution for acceptance of funds and also a budget amendment to begin using these funds as soon as practical. Please place this on the next available agenda. Thank you for your assistance regarding this matter.



**The Department of Homeland Security (DHS)
Notice of Funding Opportunity (NOFO)
Fiscal Year 2016 Homeland Security Grant Program (HSGP)**

NOTE: Eligible recipients who plan to apply for this funding opportunity but who have not obtained a Data Universal Numbering System (DUNS) number and/or are not currently registered in the System for Award Management (SAM), should take immediate action to obtain a DUNS Number, if applicable, and then to register immediately in SAM. It may take 4 weeks or more after the submission of a SAM registration before the registration becomes active in SAM, then an additional 24 hours for [Grants.gov](http://www.grants.gov) to recognize the information. Information on obtaining a DUNS number and registering in SAM is available from [Grants.gov](http://www.grants.gov) at: <http://www.grants.gov/web/grants/register.html>. Detailed information regarding DUNS and SAM is also provided in Section D of this NOFO, subsection, Content and Form of Application Submission.

A. Program Description

Issued By

U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), Grant Programs Directorate (GPD)

Catalog of Federal Domestic Assistance (CFDA) Number
97.067

CFDA Title
Homeland Security Grant Program (HSGP)

Notice of Funding Opportunity Title
Fiscal Year 2016 Homeland Security Grant Program

- State Homeland Security Program (SHSP)
- Urban Area Security Initiative (UASI)
- Operation Stonegarden (OPSG)

NOFO Number
DHS-16-GPD-067-00-01

Authorizing Authority for Program
Section 2002 of the *Homeland Security Act of 2002*, as amended (Pub. L. No. 107-296)
(6 U.S.C. § 603)

Appropriation Authority for Program
Department of Homeland Security Appropriations Act, 2016 (Pub. L. No. 114-113)

Program Type
New

Program Overview, Objectives, and Priorities

Overview

The purpose of the Fiscal Year (FY) 2016 HSGP is to support state and local efforts to prevent terrorism and other catastrophic events and to prepare the Nation for the threats and hazards that pose the greatest risk to the security of the United States. The FY 2016 HSGP provides funding to implement investments that build, sustain, and deliver the 32 core capabilities essential to achieving the National Preparedness Goal (the Goal) of a secure and resilient Nation. The building, sustainment, and delivery of these core capabilities are not exclusive to any single level of government, organization, or community, but rather, require the combined effort of the whole community, inclusive of children, individuals with disabilities and others with access and functional needs, diverse communities, and people with limited English proficiency. The FY 2016 HSGP supports the core capabilities across the five mission areas of Prevention, Protection, Mitigation, Response, and Recovery based on allowable costs. The HSGP supports the Quadrennial Homeland Security Review Mission to Strengthen National Preparedness and Resilience.

HSGP is comprised of three grant programs:

- State Homeland Security Program (SHSP)
- Urban Area Security Initiative (UASI)
- Operation Stonegarden (OPSG)

Together, these grant programs fund a range of activities, including planning, organization, equipment purchase, training, exercises, and management and administration across all core capabilities and mission areas.

Objectives

- **State Homeland Security Program (SHSP):** The SHSP assists state, tribal, territorial, and local preparedness activities that address high-priority preparedness gaps across all core capabilities where a nexus to terrorism exists. All supported investments are based on capability targets and gaps identified during the Threat and Hazard Identification and Risk Assessment (THIRA) process, and assessed in the State Preparedness Report (SPR).
- **Urban Area Security Initiative (UASI):** The UASI Program assists high-threat, high-density Urban Areas in efforts to build, sustain, and deliver the capabilities necessary to prevent, protect against, mitigate, respond to, and recover from acts of terrorism.
- **Operation Stonegarden (OPSG):** The OPSG Program supports enhanced cooperation and coordination among Customs and Border Protection (CBP), United States Border Patrol (USBP), and Federal, state, local, tribal, and territorial law enforcement agencies. The OPSG Program provides funding to support joint efforts to secure the United States' borders along routes of ingress from international borders to include travel corridors in states bordering Mexico and Canada, as well as states and territories with international water borders.

All three programs are based on risk-driven, capabilities-based strategic plans that outline high-priority needs relating to terrorism preparedness. For these plans to be effective,

government officials and elected leaders, working with the whole community, must consider how to sustain current capability levels, while also addressing potential gaps.

Priorities

The National Preparedness System is the instrument the Nation employs to build, sustain, and deliver core capabilities in order to achieve the Goal of a secure and resilient Nation. Complex and far-reaching threats and hazards require a collaborative and whole community approach to national preparedness that engages individuals, families, communities, private and nonprofit sectors, faith-based organizations, and all levels of government. The guidance, programs, processes, and systems that support each component of the National Preparedness System allows for the integration of preparedness efforts that build, sustain, and deliver core capabilities and achieve the desired outcomes identified in the Goal. As that Nation works towards achieving the Goal it is important to continue to protect the civil rights of individuals.

DHS/FEMA annually publishes the National Preparedness Report (NPR) to report National progress in building, sustaining, and delivering the core capabilities outlined in the Goal. This analysis provides a National perspective on critical preparedness trends for whole community partners to use to inform program priorities, allocate resources, and communicate with stakeholders about issues of shared concern. Additional information about the NPR can be found at the DHS/FEMA's website under <http://www.fema.gov/national-preparedness-report>.

In developing applications for the FY 2016 HSGP, recipients are encouraged to consider national areas for improvement identified in the 2015 NPR, which include the following core capabilities:

- Cybersecurity;
- Infrastructure Systems;
- Access Control and Identity Verification;
- Economic Recovery;
- Housing; and
- Long-term Vulnerability Reduction.

In addition, the Department of Homeland Security requires recipients to prioritize investments that address capability targets and gaps identified through the annual THIRA and SPR process. These assessments set capability targets and measure current ability to meet those targets.

Minimum funding amounts are not prescribed by the Department for these priorities; however, recipients must support state, local, regional, and national efforts in achieving the desired outcomes of these priorities.

Appendix B-Program Priorities addresses additional areas where funding can be applied to strengthen preparedness efforts.

B. Federal Award Information

Award Amounts, Important Dates, and Extensions

Available Funding for the HSGP NOFO: \$1,037,000,000

HSGP Programs	FY 2016 Allocation
State Homeland Security Program	\$402,000,000
Urban Area Security Initiative	\$580,000,000
Operation Stonegarden	\$55,000,000
Total	\$1,037,000,000

For details on program-specific funding amounts, refer to [Appendix A – FY 2016 Program Allocations](#).

Period of Performance: Thirty-six (36) months

Extensions to the period of performance (PoP) are allowed. For additional information on PoP extensions, refer to [Section H – Additional Information](#) of this NOFO.

Projected Period of Performance Start Date: September 1, 2016

Projected Period of Performance End Date: August 31, 2019

Funding Instrument: Grant

C. Eligibility Information

Eligible Applicants

State Governments (State Administrative Agency)

Eligibility Criteria

All 56 States and territories, which includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, are eligible to apply for SHSP funds. For those states that are eligible for UASI and OPSG funding, the State Administrative Agency (SAA) is the only entity eligible to submit applications to DHS/FEMA on behalf of UASI and OPSG applicants.

Eligible sub-recipients under the FY 2016 OPSG Program are local units of government at the county level and federally-recognized tribal governments in states bordering Canada, states bordering Mexico, and states and territories with international water borders. All applicants must have active ongoing USBP operations coordinated through a CBP sector office to be eligible for OPSG funding.

Eligible high-risk Urban Areas for the FY 2016 UASI Program have been determined through an analysis of relative risk of terrorism faced by the 100 most populous metropolitan statistical areas (MSAs) in the United States. Sub-awards will be made by the SAA to the designated Urban Areas identified in Appendix A - FY 2016 Program Allocations.

Other Eligibility Criteria

National Incident Management System (NIMS) Implementation

Prior to allocation of any Federal preparedness awards in FY 2016, recipients must ensure and maintain adoption and implementation of NIMS. Emergency management and incident response activities require carefully managed resources (personnel, teams, facilities, equipment and/or supplies) to meet incident needs. Utilization of the standardized resource management concepts such as typing, credentialing, and inventorying promote a strong national mutual aid capability needed to support delivery of core capabilities. Additional information on resource management and NIMS resource typing definitions and job titles/position qualifications is on DHS/FEMA's website under <http://www.fema.gov/resource-management-mutual-aid>.

DHS/FEMA developed the NIMS Guideline for Credentialing of Personnel to describe national credentialing standards and to provide written guidance regarding the use of those standards. This guideline describes credentialing and typing processes, and identifies tools which Federal Emergency Response Officials (FEROs) and emergency managers at all levels of government may use both routinely and to facilitate multijurisdictional coordinated responses.

Although state, local, tribal, territorial, and private sector partners—including nongovernmental organizations—are not required to credential their personnel in accordance with these guidelines; DHS/FEMA strongly encourages them to do so in order to leverage the federal investment in the Federal Information Processing Standards (FIPS) 201 infrastructure and to facilitate interoperability for personnel deployed outside their home jurisdiction. Additional information can be found at <http://www.fema.gov/nims-doctrine-supporting-guides-tools>.

Emergency Management Assistance Compact (EMAC) Membership

In support of the Goal, recipients must belong to, be located in, or act as a temporary member of EMAC, except for American Samoa and the Commonwealth of the Northern Mariana Islands, which are not required to belong to EMAC at this time. All assets supported in part or entirely with FY 2016 HSGP funding must be readily deployable to support emergency or disaster operations per existing EMAC agreements. In addition, funding may be used for the sustainment of core capabilities that, while they may not be physically deployable, support national response capabilities such as Geographic/Geospatial Information Systems (GIS), interoperable communications systems, capabilities as defined under the mitigation mission area of the Goal, and fusion centers.

Consolidation of Law Enforcement Terrorism Prevention Activities (LETPA)

Per section 2006 of the *Homeland Security Act of 2002*, as amended (6 U.S.C. § 607), DHS/FEMA is required to ensure that at least 25 percent (25%) of grant funding appropriated for grants awarded under HSGP's authorizing statute are used for law enforcement terrorism prevention activities. DHS/FEMA meets this requirement, in part, by requiring all SHSP and UASI recipients to ensure that at least 25 percent (25%) of the combined HSGP funds allocated under SHSP and UASI are dedicated towards law enforcement terrorism prevention activities, as defined in 6 U.S.C. § 607. The LETPA allocation can be from SHSP, UASI or both. This requirement does not include award funds from OPSG. Please refer to Appendix A – FY 2016 Program Allocations for LETPA minimum allocations for SHSP and UASI by jurisdiction. The 25 percent (25%) LETPA allocation is in addition to the 80 percent (80%) pass through requirement to local units of government and Tribes, referenced below.

The National Prevention Framework describes those activities that should be executed upon the discovery of intelligence or information regarding an imminent threat to the homeland, in order to thwart an initial or follow on terrorist attack, and provides guidance to ensure the Nation is prepared to prevent, avoid, or stop a threatened or actual act of terrorism. Activities outlined in the *National Prevention Framework* are eligible for use as LETPA focused funds. In addition, where capabilities are shared with the protection mission area, the *National Protection Framework* activities are also eligible. Other terrorism prevention activities proposed for funding under LETPA must be approved by the FEMA Administrator.

Cost Share or Match

Cost share or match is not required for the FY 2016 HSGP.

D. Application and Submission Information

Key Dates and Times

Date Posted to Grants.gov: February 16, 2016

Application Submission Deadline: April 25, 2016 at 11:59:59 p.m. EDT

All applications **must** be received by the established deadline. The Non-Disaster (ND) Grants System has a date stamp that indicates when an application is submitted. Applicants will receive an electronic message confirming receipt of the full application. In general, DHS/FEMA will not review applications that are not received by the deadline or consider them for funding. DHS/FEMA may, however, extend the application deadline on request for any applicant who can demonstrate that good cause exists to justify extending the deadline. Good cause for an extension may include technical problems outside of the applicant's control that prevent submission of the application by the deadline, or other exigent or emergency circumstances. If there are technical issues, please notify the respective Headquarters (HQ) Program Analyst before the application deadline.

Anticipated Funding Selection Date: June 29, 2016

Anticipated Award Date: No later than September 30, 2016

Other Key Dates (see below for additional information)

The chart below outlines suggested/estimated deadlines for completing the seven steps required for a successful application submission. **These dates are only recommendations and not required as applicants are responsible for planning far enough in advance to complete their application prior to the established deadline.** The requirements outlined in the chart below are outside of DHS/FEMA's purview. Therefore, DHS/FEMA does not guarantee the timeframes for completing those processes. Failure of an applicant to comply with any of the required steps before the deadline for submitting their application may disqualify their application from funding.

Applicants are encouraged to register early. The registration process can take four weeks or more to be completed. Therefore, registration should be done in sufficient time to ensure it does not impact the ability to meet required submission deadlines.

Event	Suggested Deadline For Completion
Obtain DUNS Number	March 18, 2016
Obtain valid EIN	March 18, 2016
Update SAM registration	March 18, 2016
Establish an Authorized Organizational Representative (AOR) in <u>Grants.gov</u>	March 18, 2016
Submit an initial application in <u>Grants.gov</u>	April 15, 2016 *Applicants will receive an electronic message confirming eligibility and approval to submit a full application.
Submit the IJ in the Grants Reporting Tool (GRT)	April 15, 2016
Submit complete application in ND Grants System	April 25, 2016

Address to Request Application Package

Application forms and instructions are available at Grants.gov. To access these materials, go to <http://www.grants.gov>, select "Applicants" then "Apply for Grants." In order to obtain the application package select "Download a Grant Application Package." Enter the CFDA and/or the funding opportunity number located on the cover of this NOFO, select "Download Package," and then follow the prompts to download the application package.

Hard copies of the NOFO are not available.

In addition, the Telephone Device for the Deaf (TDD) and/or Federal Information Relay Service (FIRS) number available for this Notice is: (800) 462-7585.

RESOLUTION NO. 2016-_____

A RESOLUTION AUTHORIZING PARTICIPATION IN OPERATION STONEGARDEN WITH THE HOMELAND SECURITY GRANTS DIVISION OF THE GOVERNOR'S OFFICE FOR LOCAL BORDER SECURITY TO INTERDICT CRIMINAL ACTIVITY WITH NO ANTICIPATED CASH MATCH; AUTHORIZING THE CHIEF OF POLICE TO ACT ON THE CITY'S BEHALF WITH SUCH PROGRAM; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Homeland Security Grants Division of the Governor's Office has invited the City of Kingsville Police Department to participate in a grant for Local Border Security in an effort to deter and facilitate directed actions to interdict criminal activity; and

WHEREAS, the City of Kingsville has previously been allowed to apply for reimbursement of overtime for law enforcement personnel and dispatchers, and other allowed costs associated with this project that will assist with the deterrence of illegal activity in our area;

WHEREAS, the City Commission of the City of Kingsville finds it in the best interest of the citizens of Kingsville, that the Kingsville Police Department participate in an application to the Office of the Governor's Homeland Security Grant Division for Operation Stonegarden for grant monies for reimbursement for personnel costs, fuel and maintenance for law enforcement purposes for FY2016-2017; and

WHEREAS, the City agrees to provide the applicable matching funds for the said project, if any, as required by the Office of the Governor for the Operation Stonegarden Grant Program grant application; and

WHEREAS, the City agrees that in the event of loss or misuse of the Office of the Governor grant funds, the City of Kingsville City Commission assures that the funds received through the grant will be returned to the Office of the Governor in full;

WHEREAS, the City Commission of the City of Kingsville designates the Kingsville Chief of Police as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the applicant agency.

NOW THEREFORE, BE IT RESOLVED by the City Commission of the City of Kingsville, Texas:

I.

THAT the City Commission of the City of Kingsville approves the submission of the grant application for the Operation Stonegarden Grant Program for reimbursement for personnel costs, fuel and maintenance for law enforcement purposes to the Office of the Governor.

II.

THAT this Resolution shall be and become effective on or after adoption.

PASSED AND APPROVED by a majority vote of the City Commission the 11th day of July, 2016.

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM

Courtney Alvarez, City Attorney

AGENDA ITEM #9

**City of Kingsville
Police Department**

TO: Mayor and City Commissioners

CC: Jesus A. Garza, City Manager

FROM: Ricardo Torres, Chief of Police

DATE: June 24, 2016

SUBJECT: 2017 Operation Border Star Grant Application

Summary:

The Homeland Security Grants Division (HGSD) of the Governor's Office is soliciting grant applications for projects that support Operation Border Star during the 2017 grant cycle. The Kingsville Police Department has been invited to participate in this project.

Background:

The purpose of the program is to sustain interagency law enforcement operations and enhance local law enforcement patrols in an effort to deter and facilitate directed actions to interdict criminal activity. Program participants shall assist in the execution of coordinated border security. We see this grant as an opportunity to address local issues such as disrupting and deterring operations where drugs are being sold, decrease use of specific areas for crime as targeted in directed action missions, and disrupt and deter the operation of criminal organizations in our city and the surrounding areas.

Financial Impact:

The grant for "Operation Border Star" is a reimbursement type but does not require any cash match. We have been conditionally approved \$85,000.00 in funds to cover personnel costs, fuel and maintenance.

Recommendation:

We would request a resolution naming the Chief of Police as the Authorized Official, as per CJD, supporting our application and acceptance of funds. Please place this on the next available agenda. Thank you for your assistance regarding this matter.



ORDINANCE NO. 2016-_____

AN ORDINANCE AMENDING THE FISCAL YEAR 2015-2016 BUDGET TO ACCEPT A 2017 OPERATION BORDER STAR GRANT FOR THE KINGSVILLE POLICE DEPARTMENT.

WHEREAS, it was unforeseen when the budget was adopted that there would be a need for funding for these expenditures this fiscal year.

I.

BE IT ORDAINED by the City Commission of the City of Kingsville that the Fiscal Year 2015-2016 budget be amended as follows:

**CITY OF KINGSVILLE
DEPARTMENT EXPENSES
BUDGET AMENDMENT**

Dept. No.	Department Name:	Account Name:	Account Number:	Budget Increase	Budget Decrease
<hr/>					
Fund 017-PD-Grant-Border Star					
<u>Revenues</u>					
4-2100		State Grants	72010	<u>\$85,000</u>	
<u>Expenses</u>					
5-2100		Overtime-PD-Borderstar	11201	<u>\$85,000</u>	

[To amend the City of Kingsville FY 15-16 budget to include the 2017 Operation Border Star grant as per the attached memo from the Chief of Police.]

II.

THAT all Ordinances or parts of Ordinances in conflict with this Ordinance are repealed to the extent of such conflict only.

III.

THAT if for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this ordinance, for it is the definite intent of this City Commission that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

IV.

THAT this Ordinance shall not be codified but shall become effective on and after adoption and publication as required by law.

INTRODUCED on this the 11th day of July, 2016.

PASSED AND APPROVED on this the ____ day of _____, 2016.

EFFECTIVE DATE: _____

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

Courtney Alvarez, City Attorney

AGENDA ITEM #10

**City of Kingsville
Police Department**

TO: Mayor and City Commissioners

CC: Jesus A. Garza, City Manager

FROM: Ricardo Torres, Chief of Police

DATE: July 5, 2016

SUBJECT: 2015 Operation Stonegarden Acceptance and Budget Amendment

Summary:

The Kingsville Police Department has been invited to participate in the 2015 OPSG and has been approved for participation during this grant cycle.

Background:

The OPSG Program supports enhanced cooperation and coordination among Customs and Border Protection (CBP), United States Border Patrol (USBP), and Federal, state, local, tribal, and territorial law enforcement agencies. The OPSG Program provides funding to support joint efforts to secure the United States' borders along routes of ingress from international borders to include travel corridors in states bordering Mexico and Canada, as well as states and territories with international water borders. The program is also risk-driven, capability based strategic plans that outline high-priority needs relating to terrorism preparedness. For these plans to be effective, government officials and elected leaders, working with the whole community, must consider how to sustain current capability levels, while also addressing potential gaps.

Financial Impact:

The grant for "Operation Stonegarden" is a reimbursement type but does not require any cash match. We have been conditionally approved \$122,533.28 in funds to cover personnel costs, fuel and radio equipment.

Recommendation:

We would request a resolution for acceptance of funds and also a budget amendment to begin using these funds as soon as practical. Please place this on the next available agenda. Thank you for your assistance regarding this matter.



ORDINANCE NO. 2016-_____

AN ORDINANCE AMENDING THE FISCAL YEAR 2015-2016 BUDGET TO ACCEPT A 2015 OPERATION STONEGARDEN GRANT FOR THE KINGSVILLE POLICE DEPARTMENT.

WHEREAS, it was unforeseen when the budget was adopted that there would be a need for funding for these expenditures this fiscal year.

I.

BE IT ORDAINED by the City Commission of the City of Kingsville that the Fiscal Year 2015-2016 budget be amended as follows:

CITY OF KINGSVILLE
DEPARTMENT EXPENSES
BUDGET AMENDMENT

Dept. No.	Department Name:	Account Name:	Account Number:	Budget Increase	Budget Decrease
<hr/>					
Fund 016-PD Stonegarden					
<u>Revenues</u>					
4-2100		State Grants-PD	72021	<u>\$122,533.28</u>	
<u>Expenses</u>					
5-2100		Overtime-2015-Stonegarden	11218	<u>\$122,533.28</u>	

[To amend the City of Kingsville FY 15-16 budget to include the 2015 Operation Stonegarden grant as per the attached memo from the Chief of Police.]

II.

THAT all Ordinances or parts of Ordinances in conflict with this Ordinance are repealed to the extent of such conflict only.

III.

THAT if for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this ordinance, for it is the definite intent of this City Commission that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

IV.

THAT this Ordinance shall not be codified but shall become effective on and after adoption and publication as required by law.

INTRODUCED on this the 11th day of July, 2016.

PASSED AND APPROVED on this the ____ day of _____, 2016.

EFFECTIVE DATE: _____

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

Courtney Alvarez, City Attorney

AGENDA ITEM #11

**City of Kingsville
Purchasing/IT Department**

TO: Mayor and City Commissioners
CC: Jesus A. Garza, City Manager
FROM: David Mason, Director
DATE: May 16, 2016
SUBJECT: Audio Visual for New City Hall

Summary:

This item authorizes the installation of audio visual equipment at City Hall, 400 W. King Ave.

Financial Impact:

This expend \$60,640.10 from 033-5-1030-71300.

Recommendation:

It is recommended the City contracts with Audio Visual Technologies Group, 12502 Exchange Dr., Stafford, TX 77477. AVES will provide goods and services under BuyBoard Contract # 482-15. Local government code 271 Subchapter F allows for the use of a cooperative purchasing program, specifically 271.102 (c), states, "A local government that purchases good and service under this subchapter satisfies any state law requiring the local government to seek competitive bids for the purchase of goods and service." Therefore, competitive bidding statutes have been met.





AVES Audio Visual Systems, Inc.
P.O. Box 500
Sugar Land, Texas 77487
Website:

Phone 281 295-1300
Toll Free (800) 365-AVES
Fax (281) 295-1310
www.avesav.com

Email: sales@avesav.com

We quote as follows per your request:

*** * Proposal * ***

6/29/2016

Project Number: 100469

For :

CITY OF KINGSVILLE
AUDIO/VISUAL UPGRADES FOR COMMISS. ROOM

Audio Visual Technologies Grp
12502 Exchange Dr., STE 404
Stafford, TX 77477
281-240-2100 Fx 281-240-2250

This * * Proposal * * is Valid for 30 Days.

* * Proposal * * to:

CITY OF KINGSVILLE
KYLE BENSON
HELP DESK
200 E. KLEBERG
KINGSVILLE, TX 78363
Tel: 361-219-9085

Project Site:

CITY OF KINGSVILLE
KYLE BENSON
200 E. KLEBERG
KINGSVILLE, TX 78363

Tel: 361-219-9085

AUDIO/VIDEO UPGRADE FOR CITY COMMISSIONER'S ROOM

SCOPE:

Before beginning work, AVTG installation technicians will perform an initial site inspection to confirm that necessary conditions and cable paths will accommodate the project described below. Provided site photographs indicate that this room may create undesirable echoes and/or acoustic reflections, therefore an acoustic evaluation shall also be performed to evaluate the need to recommend any acoustic treatment to the room. AVTG will provide a quote for any recommended treatments.

AVTG will install 40 in-ceiling loudspeakers above the audience seating in the new Kingsville council chamber. The loudspeakers will amplify voices of council members seated around a dais. Each council member (sixteen total) will have a desktop-base 18" gooseneck microphone with an on/off toggle button. AVTG will connect an XLR microphone plate beneath each council seat on the dais, and run all microphone cables to the IT closet, where a 12-RU AV rack will be wall-mounted to house equipment. The AV rack shall contain audio DSP units to serve as microphone preamps, mixer, equalization, automatic level adjust, and mix-minus system. The mix-minus outputs will feed in-ceiling loudspeakers above the dais so as to provide a small amount of voice reinforcement to the council members in order to ensure members may hear each other in a clear and natural manner. The rack shall also contain a networked audio recorder with web controls, so that session in the room may be recorded either with local controls or by a remote user. Recording unit features both manual and automatic FTP archiving. AVTG shall connect the recorder to the owner LAN. Owner is responsible for providing a 15-Amp duplex receptacle for power at the rack location and a connection to the network for the audio recording unit.

AVTG will wall-mount a pair of cameras pointed at the dais. Controls will be available to a user to switch between camera views fed to a recording unit, described in detail in the next section.

The rack shall also contain a audio/video recorder with web controls, so that a session in the room may be recorded either with local controls or by a remote user.

Owner is responsible for providing a 15-Amp duplex receptacle for power at the rack location and a connection to the network for the audio recording unit.

BUYBOARD CONTRACT#482-15

CONNECTIVITY

1	SYNNEX-FS108PNA	NETGEAR 8 PORT W/4 POE SWITCH	95.00	95.00
16	LIBE-CUSTOM	LIBERTY CUSTOM WALL PLATES	109.00	1,744.00

AUDIO

2	BIA-TesiraFORT+ AVB AI	DSP fixed I/O server with 12 analog input	1,922.00	3,844.00
1	BIA-Tesira TEC-1i	Tesira PoE Ethernet Control in-wall mount	403.00	403.00
1	MOTU-9305	MOTU Five-Port AVB Ethernet Switch	378.00	378.00
2	CRO-CTS600	Two-Channel Power Amplifier - 300 Watts per Channel	639.00	1,278.00
40	JBLPROJ-CT45C/T	JBL CONTROL 45 IN CEILING SPEAKERS	185.00	7,400.00
16	Shure-MX418D/C	CARDIOID-18" DESKTOP GOOSENECK CONDENSER MICROPHONE,	269.00	4,304.00

VIDEO

1	CRESTRO-CP3N	3-SERIES CONTROL SYSTEM«	1,667.00	1,667.00
1	ENG-EAP300	GENIUS Indoor Long Range Wireless-N Access Point	76.00	76.00
2	SCT-RC5-S12-KS	KIT WITH MOUNT AND RACK SHELF	1,663.00	3,326.00
1	EXTRON-60-841-21	TWO INPUT SWITCHER W/ CONTACT CLOSURE	327.00	327.00
2	PTZ-PT20X-SDI-GY	PTZ OPTICS 20X STREAMING BROADCAST CAMERA-GRAY	1,846.00	3,692.00
1	EXTRON-60-1324-11	EXTRON SMP 351 STANDARD VERSION ü 400 GB SSD	4,609.00	4,609.00

EQUIPMENT RACK

1	MID ATLANTIC-DWR-16-17 PD	16 SP. (28ö) DATA WALL RACK WITH PLEXI DOOR, FITS 15# DEEP EQUIP., BLACK FINISH	619.00	619.00
1	MID ATLANTIC-PD-915R-SP	15A RACKMOUNT POWER DISTRIBUTION WITH SERIES SURGE PROTECTION. 9 OUTLETS (8 ON REAR), LED SURGE AND POWER ON STATUS. CORDED MODEL	391.00	391.00
1	MID ATLANTIC-U2	2 SPACE (3 1/2ö) RACKSHELF	44.00	44.00

SYSTEM CABLING

1000	LIBERTY-16-2C-P-BLK	BLACK COMMERCIAL GRADE GENERAL PURPOSE 16 AWG 2 conductor plenum cable	217.00	^M 217.00
2000	LIBERTY-22-1P-CMP-E Z-BLK	BLACK HIGH-PERFORMANCE EZ-STRIP BROADCAST AUDIO 22 AWG 1 pair shielded plenum cable	242.00	^M 484.00
1000	LIBERTY-24-4P-P-L5-E N-BLK	BLACK CATEGORY 5E U/UTP EN SERIES 24 AWG 4 PAIR unshielded cable	257.00	^M 257.00
1	LIBE-24-4P-P-L6ASH-B LK	BLACK CATEGORY 6 EN SERIES - 500 FT REEL	439.00	439.00
6	EXTRON-26-663-06	HDMI HIGH SPEED ULTRA-FLEXIBLE CABLE - 6' (1.8 M)	45.00	270.00
1	AVTG-MISC	MISC. CABLES, CONNECTORS, HARDWARE	313.00	313.00

36,177.00

PROJECT SUBTOTAL:

AVES INSTALLATION SERVICES

23,557.68

AVES INSTALLATION SERVICES SUBTOTAL

Shipping & Handling: \$905.42

Legend: M=1000Ft

SubTotal: \$60,640.10

Signature: _____ Date: _____

Tax:
Project Total: \$60,640.10

AVES A/V System Integration Terms & Conditions

System Implementation

AVES will provide a turnkey system to include equipment, implementation and warranty, as defined on the attached Scope of Work and Project Quote. Our installation includes engineering, coordination and labor for display, video and related equipment to include required plates, connectors and cables.

System Engineering includes:

- Preparation of system functional interconnection diagram.
- Facility and equipment location.

Project Coordination includes:

- Meetings with the client's technical representatives and project coordination team.

Exclusions

The following are not included in our scope of work:

All conduit, high voltage wiring panels, breakers, relays, boxes, receptacles, etc. Any related electrical work, including but not limited to 110VAC, conduit, core drilling, raceway and boxes except those specifically quoted.

Voice/Data cabling, IE analog phone lines, ISDN lines, network ports, etc.

Network connectivity, routing, switching and port configuration necessary to support a/v equipment except as specifically quoted.

AVES is not responsible for damaged or missing "existing data" on computers.

AVES Audio Visual Systems, Inc.

Project: 100469

6/27/2016

Customer Initials: _____

Page 1 of 7

System implementation monitoring.
Project scheduling and oversight of AVES team.
Equipment staging at our shop.
Assure final punch-list items are completed.

Field Labor includes:

Pulling and bundling, termination and labeling of supplied cabling.
Mounting and termination of computer interfaces.
Installation of structural systems for supplied equipment.
Control System Programming.
Adjustment and balancing audio settings.
Assure installed system functions as proposed.
Site cleanup and trash removal.
End-user training.

Inclusions

All equipment, wire and accessories required for a fully functional audio and visual system.

Labor associated with turnkey engineering, installation, programming, testing, and training.

Documentation CD, including as-built system CAD diagrams and Operation & Maintenance manuals.

Coordination and cooperation with the construction team in regards to installing the system.

User training on system operation.

Any additional trips, labor or materials due to failure of other work forces to have the a/v system rough-in work completed as anticipated and previously confirmed, will be added to the project billing as required.

DMX, DSS or other outside signals (provided by others) are not included in this scope of work unless previously agreed to on quotation.

Owner's architect will provide AVES's engineering department with all required/ necessary architectural plans in AutoCad format at no-charge to AVES.

AVES reserves the right to modify our quotation pricing if proposal is not accepted within the stated time period.

AVES may replace equipment vs. the Estimate/Quote should there be incompatibility, discontinuations etc. AVES is not responsible for product discontinuations.

This quotation is based on installation at the specified site(s) set forth in the customer's requirements. If this configuration is to be used at other sites, travel and additional expenses may apply.

Payment Terms:

Subject to credit approval, the Owner shall pay AVES within normal AVES terms, typically 30 days of invoice date. Should payment not be received within this timeframe, AVES reserves the right to charge a Late Fee of 1.5% per month on unpaid balance(s).

Systems Integration work where procurement, installation and completion of the work extend beyond a period of greater than ten days from the date of the order will be subject to progressive billing or invoicing in such case(s), AVES will progressively bill for hardware, equipment, and materials received, stored and/or assigned to the project, along with a percentage of completed labor and services. Progressive billing/invoices are due and payable per AVES normal credit terms of Net 30, unless otherwise stated in this quotation.

Due to the custom nature of A/V system integration, Owner requested changes once the equipment is in hand or in transit, will result in restocking fees. Provided that the manufacturer will accept return, restocking fees will be 30 - 50% of the equipment sales price plus freight in and out for standard equipment, and 100% of the sales price plus freight for all **custom or special order items**. Any packaged software that has been opened **IS NOT** returnable/refundable. Should owner cancel a project in whole or part, prior to completion, the Owner agrees to pay AVES for all costs incurred to date and/or to bring the project to a mutually acceptable close. In addition, the manufacturer must be willing to accept the returned item(s) with a restock fee. These costs are, but are not limited to: design and engineering services, control/dsp programming, project management, technical labor expended, sub-contracting expenses, materials and equipment costs, and any other miscellaneous documented costs.

Concrete saw cutting and/or core drilling.

Fire-wall, ceiling, roof and floor penetration, patching removal or fire-stopping.

Necessary sheet rock replacement and/or repair.

Any and all millwork (moldings, trim, etc.)- All millwork or modifications to project millwork to accommodate the AV equipment is to be provided by others unless otherwise noted in this proposal.

Painting, patching or finishing of architectural surfaces.

Permits.

HVAC and plumbing relocation.

Rough-in, bracing, framing, or finish trim carpentry for installation.

Cutting, structural welding, or reinforcement of structural steel members required for support of assemblies, if required.

Any applicable taxes, permits or bonds related to the project, unless otherwise stated in quotation.

All normal shipping costs not part of original quote will be added as a pass through cost to progress billing.

Site specific training unless otherwise specified.

Unless otherwise specified, the warranty provisions in this contract do not cover Owner Furnished Equipment (OFE). In addition, owner furnished equipment shall not be controlled unless otherwise stated in the inclusions above.

Owner furnished equipment or equipment provided by others that is integrated into the system being supplied by AVES is assumed to be current industry acceptable equipment in good working order. If it is determined that this equipment is faulty or non-compatible upon installation or adversely affects the system, additional project charges may be incurred.

With FCC wideband channel changes effective in early 2009, AVES cannot guarantee effective "wireless" communication devices unless specifically included in quotation.

Standard Warranty

AVES warrants the A/V System furnished to be free from defects in workmanship (i.e., cables, connections, structures) failure for a period of 90 days, unless a one-year extended warranty has been quoted and accepted. This date will be from the date of acceptance or first beneficial use, whichever occurs first. Warranty service for such defects will be handled in a reasonable and timely manner from the time of notification to AVES by the Owner or their agent.

Manufacturer's equipment warranties are of varying lengths (usually 90 days to 1 year). AVES will warranty this equipment for the term established by the manufacturer on a DEPOT BASIS ONLY, unless an AVES 1 year extended warranty is accepted in our quotation.

Warranty does not apply to any product that has been subject to misuse, neglect, accident, power pikes/surge/brown-out, overheating or operational error.

AVES cannot be held liable for product continuations.

Statement of Non-Disclosure

The document (s) and System Design involved with this Quote is /are AVES Intellectual Property, not intended for outside distribution without written approval from AVES's System Engineering Department.

Dissemination of this proprietary document is subject to Consultation/Design Fees of \$2,500.00 minimum per document.

Client cannot recruit AVES's staff for a "side job" and will pay damages up to 30% of technician's annual pay if done.

AGENDA ITEM #12

**City of Kingsville
Engineering/Public Works**

TO: Mayor and City Commissioners

CC: Jesus A. Garza, City Manager

FROM: Charlie Cardenas, P.E., City Engineer/Director of Public Works

DATE: July 6, 2016

SUBJECT: Request for professional services for the creation of a City of Kingsville Drainage Master Plan

Summary:

This item authorizes the approval to seek professional services for the creation of a 2016 City of Kingsville Drainage Master Plan.

Background:

In January 14, 2013, the City of Kingsville approved an ordinance authorizing the issuance of "City of Kingsville, Texas Certificates of Obligations, Series 2013." The Certificate of Obligation (CO) was for the principal amount of \$4,275,000.00 (\$5,230,000.00 with premiums). The description of the CO was *"For the purpose of providing for the payment of contractual obligations to be incurred in connection with the design, planning, acquisition, construction, equipping, expansion, repair, and/or rehabilitation of certain City-owned public property, specifically: (1) city wide drainage improvements; and (2) city wide street improvements and rehabilitation, and the payment of contractual obligations for professional services with such projects (including, but not limited to, financial advisory, legal, architectural, and engineering."* In CO series 2013, the city created two funds: 067 Road and Bridge in the amount of \$975,000.00 (\$37,000.00 remaining balance) and 068 Drainage in the amount of \$4,255,000.00 (\$715,000.00 remaining balance). Since 2012, the City of Kingsville Engineering department had been working on a recommended drainage plan and commission approved asphalt and concrete streets. The engineering department has been operating with a recommended drainage plan and would like to operate on a secure comprehensive drainage master plan. The Master Plan would cover all aspects of municipal drainage including subdivisions, commercial developments, maintenance, etc.

Financial Impact:

The financial impact to hire professional services to create a drainage master plan is \$100,000.00.

Recommendation:

Staff recommends amending the 2015-2016 budget for professional services to create the Drainage Master Plan.



ORDINANCE NO. 2016-_____

AN ORDINANCE AMENDING THE FISCAL YEAR 2015-2016 BUDGET FOR CO2013 TO INCLUDE A DRAINAGE MASTER PLAN.

WHEREAS, it was unforeseen when the budget was adopted that there would be a need for funding for these expenditures this fiscal year.

I.

BE IT ORDAINED by the City Commission of the City of Kingsville that the Fiscal Year 2015-2016 budget be amended as follows:

**CITY OF KINGSVILLE
DEPARTMENT EXPENSES
BUDGET AMENDMENT**

Dept. No.	Department Name:	Account Name:	Account Number:	Budget Increase	Budget Decrease
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Fund 068-CO Series 2013-Drainage

Equity

2	Restricted for Capital Outlay	74002			<u>\$100,000</u>
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Expenses

5-3050	Professional Services	31400	<u>\$100,000</u>		
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[To amend the City of Kingsville FY 15-16 Budget to include funding for a Drainage Master Plan as per the attached memo from the City Engineer/Director of Public Works.]

II.

THAT all Ordinances or parts of Ordinances in conflict with this Ordinance are repealed to the extent of such conflict only.

III.

THAT if for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this ordinance, for it is the definite intent of this City Commission that every section, paragraph, subdivision, clause, phrase, word or provision hereof be given full force and effect for its purpose.

IV.

THAT this Ordinance shall not be codified but shall become effective on and after adoption and publication as required by law.

INTRODUCED on this the 11th day of July, 2016.

PASSED AND APPROVED on this the ___ day of _____, 2016.

EFFECTIVE DATE: _____

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

Courtney Alvarez, City Attorney