

NO. 21-0308

**IN THE
SUPREME COURT OF TEXAS**

The City of Hidalgo

Real Party in Interest.

Original Proceeding from the 139th District Court of
Hidalgo County; Cause No. C-1896-18-C
The Honorable Roberto “Bobby” Flores, Judge Presiding

REAL PARTY’S RESPONSE TO PETITION FOR WRIT OF MANDAMUS

/s/ J. Gabriel Ortiz

J. Gabriel Ortiz

State Bar No. 24085512

gortiz@phippsortiztalafuse.com

Martin J. Phipps

mhipps@phippsortiztalafuse.com

State Bar No. 00791444

PHIPPS ORTIZ TALAFUSE PLLC

102 9th Street

San Antonio, Texas 78215

Telephone: 210-340-9877

*Attorneys for Real Party in Interest
City of Hidalgo*

TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
IDENTITY OF PARTIES AND COUNSEL	4
TABLE OF AUTHORITIES	5
STATEMENT OF THE CASE.....	7
STATEMENT OF THE JURISDICTION.....	8
ISSUES PRESENTED	8
STATEMENT OF FACTS	9
ARGUMENT	13
I. RELATOR’S PETITION FOR WRIT OF MANDAMUS SHOULD BE DENIED BECAUSE JUDGE FLORES DID NOT ABUSE HIS DISCRETION AND THE RISK POOL HAS ADEQUATE APPELLATE REMEDY.....	13
A. Judge Flores did not abuse his discretion because the order vacating the faulty appraisal was not a final judgment.....	15
B. Even if the order vacating a faulty appraisal is characterized as a judgement, Judge Flores did not abuse discretion because he correctly applied the law to the facts of this case.....	16
i. The \$6.5 million discrepancy between the Umpire’s award and the City’s estimate provides a basis for vacating the appraisal...	17
ii. Affidavits of the Hidalgo City Manager and the City’s appraiser provide evidence of bias and mistake of fact.....	18
iii. The Risk Pool violated the Rule 11 Agreement by failing to appoint its original adjuster to conduct the appraisal	21

iv. The Risk Pool’s own damage assessment of the 2012 storms disprove the \$6.5 million discrepancy between the City’s estimate and the Appraisal award.....	22
v. The Risk Pool failed to produce any controverting affidavits or evidence to demonstrate an abuse of discretion.....	23
C. The Thirteenth Court of Appeals correctly denied the extraordinary remedy of mandamus because the Risk Pool has adequate appellate remedy.....	25
CONCLUSION AND PRAYER	27
CERTIFICATE OF SERVICE	28
CERTIFICATE OF COMPLIANCE	28

IDENTITY OF PARTIES AND COUNSEL

Real Party in Interest: City of Hidalgo

**Counsel for
Real Party In Interest:** Mr. Martin J. Phipps
Mr. J. Gabriel Ortiz
Phipps Ortiz Talafuse
PLLC
102 9th Street
San Antonio, TX 78215

Relator: The Texas Municipal League Intergovernmental
Risk Pool

Relator's Counsel: Barry Abrams
Jack W. Higdon
James R. Barnett
BLANK ROME LLP
717 Texas Ave., Suite 1400
Houston, Texas 77002

Respondent: The Honorable Roberto "Bobby" Flores
139th District Court, Hidalgo County, Texas
100 N. Closner
Edinburg, Texas 78539

TABLE OF AUTHORITIES

<u>CASES:</u>	Page(s)
<i>Braden v. Downey</i> , 811 S.W.2d 922 (Tex. 1991).....	25
<i>City of Houston v. Houston Mun. Empls. Pension Sys.</i> , 549 S.W.3d 566 (Tex. 2018).....	26
<i>Floyd Circle Partners, LLC v. Republic Lloyds</i> , No. 05-16- 00224-CV, 2017 WL 3124469 (Tex. App.—Dallas July 24, 2017, pet. denied).....	26
<i>In re Auto Club Indem. Co.</i> , 580 S.W.3d 852 (Tex. App.—Houston 2019, no pet.).....	24
<i>In re Ford Motor Co</i> , 165 S.W.3d 315 (Tex. 2005).....	14
<i>In re H.E.B. Grocery Co.</i> , 492 S.W.3d 300, (Tex. 2018).....	14
<i>In re Malooly</i> , 587 S.W.3d 844 (Tex. App.—El Paso 2019, no pet.).....	14
<i>In re North Cypress Med. Ctr. Oper. Co</i> , 559 S.W.3d 128 (Tex. 2018).....	8, 25
<i>In re Prudential Ins. Co. of Am.</i> , 148 S.W.3d 124 (Tex. 2004).....	14, 25
<i>In re RSR Corp.</i> , 568 S.W.3d 663 (Tex. 2019).....	14
<i>In re Shipman</i> , 540 S.W.3d 562 (Tex. 2018).....	15
<i>Joachim v. Chambers</i> , 815 S.W.2d 234 (Tex.1991)	15

TABLE OF AUTHORITIES (Cont.)

<i>Nat'l Sec. Fire & Cas. Co. v. Hurst</i> , 523 S.W.3d 840 (Tex. App.—Houston [14th Dist.] 2017, pet. denied).....	17
<i>Pa. Fire Ins. Co. v. W.T. Waggoner Estate</i> 439 S.W.2d 593 (Tex. Comm'n App. 1931, no pet.).....	18, 20
<i>State Farm Lloyds v. Johnson</i> , 290 S.W.3d 886 (Tex. 2009).....	24
<i>United Fire & Cas. Co. v. Gossetts, Inc.</i> , No. 07-18-00204- CV, 2019 WL 2572042, (Tex. App.—Amarillo June 21, 2019, no pet).....	26
<i>Walker v. Packer</i> , 827 S.W.2d 833 (Tex. 1992).....	8, 14, 25
<i>Zhu v. First Cmty. Ins. Co</i> , 543 S.W.3d 428 (Tex. App. Houston [14th Dist.] 2018, pet. dism'd).....	26

STATEMENT OF THE CASE

Nature of the Case:

The City of Hidalgo (“Real Party in Interest” or “The City”) is a South Texas city located along the Rio Grande. Texas Municipal League Intergovernmental Risk Pool (“Relator” or “Risk Pool”) is an insurer that provides coverage to the City of Hidalgo. In 2016, a devastating hailstorm caused catastrophic damage the City’s flagship Arena (Payne Arena). After a dispute on the loss claimed, the City invoked its contractual right to appraisal. An improper appraisal resulted in a drastic discrepancy of damages clearly insufficient to compensate the 2016 loss at the Arena. Relying on the evidence presented, the Honorable Judge Roberto “Bobby” Flores vacated the faulty appraisal. The Risk Pool’s Petition for Writ of Mandamus to the Thirteenth Court of Appeals was denied on the basis of adequate appellate remedy. The Risk Pool is unsatisfied with the lower courts conclusions and now seeks the extraordinary relief of mandamus despite failing to show Judge Flores abused his discretion or that there is not adequate appellate remedy.

Trial Court:

Original Proceeding from Cause No. C-1896-18-C In The 139th District Court of Hidalgo County, Texas. The Honorable Judge Roberto “Bobby” Flores Presiding.

Trial-Court Proceeding:

On September 30, 2020, Respondent signed an “Order Denying Texas Municipal League Intergovernmental Risk Pool's Motion For Summary Judgment And Granting City Of Hidalgo's Motion To Vacate Appraisal Award” (the “Order”) that found that the Award “was improper,” granted the “City’s Motion to Vacate Appraisal Award,” and summarily ordered “that the appraisal award set and signed by Umpire Randall Taylor and Appraiser Al Berryhill on July 16, 2020 be vacated.”

Court of Appeals:

Thirteenth District Court of Appeals, Edinburg, Texas.

Appellate Proceeding:

On November 9, 2020, the Risk Pool filed a petition for writ of mandamus requesting that the Thirteenth Court of Appeals direct Respondent to withdraw his Order vacating the Award.

Court of Appeals Disposition:

The Thirteenth Court of Appeals denied the Risk Pool’s petition for writ of mandamus on February 25, 2021, in a memorandum decision authored by Justice Nora Longoria in which Chief Justice Dori Contreras and Justice Jaime Tijerina participated.

STATEMENT OF JURISDICTION

The Supreme Court of Texas has original jurisdiction under TEX. GOV’T CODE ANN. § 22.002.

ISSUES PRESENTED

Mandamus is an “extraordinary” remedy that is “available only in limited circumstances.” *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992). A writ of mandamus will issue to correct a clear abuse of discretion when there is no adequate appellate remedy. *In re North Cypress Med. Ctr. Oper. Co.*, 559 S.W.3d 128, 130 (Tex.2018). The questions presented before the Court are:

1. Whether the Honorable Roberto “Bobby” Flores abused his discretion by vacating an improper appraisal award?
2. If Judge Flores’ decision is characterized as an abuse of discretion, whether the Risk Pool’s appellate remedy is inadequate?

STATEMENT OF FACTS

The State Farm Arena, previously known as the “Dodge Arena” and now the “Payne Arena” is a treasure of the City of Hidalgo (“City” or “Hidalgo”).¹ The 6,800-seat stadium has hosted local sports teams and a number of international superstars since its grand opening in 2003, including Elton John, Selena Gomez, and George Strait. At a taxpayer cost of over \$20,000,000, the arena promised to be a source of entertainment and economic prosperity for decades to come.² In 2016, the arena took a devastating blow that left its future in jeopardy and sowed deep uncertainty in the City of Hidalgo that lingers to this day.

On June 1, 2016, a powerful storm comprised of heavy rain, hail, and winds between 85 and 100 miles per hour hit the arena with enough energy to snap the trees surrounding its exterior and launch a golfcart through its rolling steel door.³ The storm collapsed the arena’s western wall and caused significant structural damage to the exterior of the main entrance. The storm also caused damage to the Building’s roof allowing water to enter and continuously flow throughout the interior of the structure. The water caused extensive damage to the main seating area, arena suites, offices, dressing rooms, restrooms, ticketing area, and mechanical operations center.

¹ See App. 258, City of Hidalgo’s Appellate Brief.

² See App. 258, City of Hidalgo’s Appellate Brief.

³ See App. 431, City of Hidalgo’s Appellate Brief at ¶ 14.

The next day, the City filed a claim with its government self-insurance pool administered by the Texas Municipal League (Risk Pool).⁴ The Risk Pool subsequently assigned an adjuster to adjust the City's Storm claim and prepare an estimate of the City's damages.⁵

On or about June 27, 2016, the Risk Pool sent the City a claim check in the amount of \$283,666.81—the amount the Risk Pool alleged was owed to the City after applying the \$2,500.00 deductible to the claim and withholding excessive depreciation, as well as overhead/profit.⁶ This amount was wholly insufficient to repair and/or replace the covered damages to the Property resulting from the 2016 Storm, as the City's actual covered damage to the Property as a result of the Storm exceeded \$7,329,546.⁷

The City gave the Risk Pool notice that payment was insufficient to compensate its loss.⁸ When talks failed, the City retained counsel.⁹ On May 14, 2018, the City attempted to invoke its contractual right to appraisal.¹⁰ The Risk Pool rejected the City's invocation and refused to participate in the appraisal process.¹¹

⁴ See App. 074, June 27, 2016 Letter from Risk Pool to Hidalgo.

⁵ See App. 074, June 27, 2016 Letter from Risk Pool to Hidalgo.

⁶ See App. 074, June 27, 2016 Letter from Risk Pool to Hidalgo.

⁷ See App. 075-076, December 8, 2017 Letter from Plaintiff's Counsel to Patti Tabor.

⁸ See App. 075-076, December 8, 2017 Letter from Plaintiff's Counsel to Patti Tabor.

⁹ See App. 075-076, December 8, 2017 Letter from Plaintiff's Counsel to Patti Tabor.

¹⁰ See App. 015, City of Hidalgo's Appellate Brief.

¹¹ See App. 015, City of Hidalgo's Appellate Brief.

On August 8, 2018, the City moved to compel appraisal which the trial court granted on February 28, 2019.¹²

The Risk Pool filed a notice of appeal on March 5, 2019, claiming the court's order compelling appraisal served as a denial of its immunity from suit.¹³ On January 9, 2020 the Thirteenth Court of Appeals affirmed the trial court's order compelling appraisal. On January 22, 2020 the Risk Pool filed a motion for rehearing. On March 3, 2020 the Thirteenth Court of Appeals filed an updated opinion clarifying its original decision. On March 27, 2020 the Risk Pool filed a second motion for rehearing which was disposed on April 22, 2020.¹⁴

By July 3, 2020, Parties agreed to the appraisal process and conducted a site inspection of the property.¹⁵ Unfortunately for the City, the four-year delay between the storm and the appraisal would give the Risk Pool ample opportunity to allege that most of damage from the 2016 storm was caused by a 2012 storm.

Seven days after the site inspection, Umpire Randall Taylor ultimately valued the arena's 2016 storm value at a cost of \$648,998.29—over \$6.5 million dollars less than the City's estimate.¹⁶ After factoring in depreciation, prior payment, and deductible, the City received a final check in the amount of \$194,224.85.¹⁷ The total

¹² See App. 017, City of Hidalgo's Appellate Brief.

¹³ See App. 019, City of Hidalgo's Appellate Brief.

¹⁴ See App. 077-079, Thirteenth Court of Appeals April 22, 2020 Memorandum Opinion.

¹⁵ See App. 098, Rule 11 Agreement.

¹⁶ See App. 122, Umpire Taylor's Appraisal.

¹⁷ See App. 127, Risk Pool's Motion for Summary Judgment.

amount issued to the City as a result of the 2016 storm was \$428,826.36.¹⁸ The City was dumbfounded by the discrepancy between the City's estimate and the final award and immediately inquired into the details of the appraisal process.

The City's appraiser, Mark Barber, stated in his sworn (and uncontroverted) affidavit that he witnessed the Risk Pool's appraiser, Alan Berryhill, "attempt to attribute damages to preexisting conditions without evidence."¹⁹ According to Mr. Barber, Mr. Berryhill "loudly and aggressively" argued the "vast majority" of interior and exterior damage to the arena resulted from a 2012 storm.²⁰ While there was a storm in 2012, the damage was comparatively de minimis having been contemporaneously adjusted by the Risk Pool at just \$16,075.66.²¹

Prior to the site inspection Mr. Barber stated he "had serious concerns that the insurance company's appraiser showed unacceptable bias in favor of the insurance company."²² Mr. Barber ultimately concluded that "Mr. Berryhill's factually baseless viewpoints influenced the Umpire such that the Umpire was unable to assess the damage in an unbiased manner."²³ Mr. Barber's fear of misinformation compounded by bias were further stoked by a lengthy ex parte conversation he

¹⁸ See App. 127, Risk Pool's Motion for Summary Judgment.

¹⁹ See App. 252, Barber's Affidavit.

²⁰ See App. 253, Barber's Affidavit.

²¹ See App. 255-256, Lindsay Cunningham 2012 Report. This glaring mistake of fact would later become a key factor in the City's motion to vacate.

²² See App. 253, Barber's Affidavit.

²³ See App. 253, Barber's Affidavit.

witnessed between the Umpire and the Risk Pool’s appraiser immediately after the site inspection.²⁴

After Umpire Taylor issued his estimate, Risk Pool almost immediately cut a check in line with Taylor’s appraisal and moved for summary judgment to secure its illegitimate discount.²⁵ The City responded to the Risk Pool’s motion on September 16, 2020 and concurrently moved to vacate the appraisal on several grounds including mistake of fact and bias.²⁶ On September 30, 2020 the trial court denied the Risk Pool’s motion for summary judgement and granted the City’s motion to vacate the appraisal award.²⁷ The Risk Pool then filed a petition for writ of mandamus to the Appeals Court of the Thirteenth District of Texas. On February 25, 2021, the Thirteenth Appeals Court held that the Risk Pool failed to meet its burden and denied the petition for writ of mandamus.²⁸ This mandamus followed.

ARGUMENT

Relator’s arguments are fatally flawed in three ways: (A) Hidalgo was not required to “plead” its motion to vacate because Judge Flores’s order was not a final

²⁴ See App. 254, Barber’s Affidavit.

²⁵ See App. 123-248, Risk Pool’s Motion for Summary Judgment.

²⁶ See App. 257-244, City of Hidalgo’s Response to Texas Municipal League Intergovernmental Risk Pool’s Motion for Summary Judgment and City of Hidalgo’s Motion to Vacate Appraisal Award.

²⁷ See App. 275, Judge Flores’s September 20, 2020 Order Granting Hidalgo’s Motion to Vacate.

²⁸ *In re Tex. Mun. League Intergovernmental Risk Pool*, 13-20-00486-CV, 2021 WL 743305 (Tex. App.—Corpus Christi Feb. 25, 2021, no pet.).

judgment; (B) Even if the order vacating a faulty appraisal is characterized as a judgement, Judge Flores did not abuse discretion because he correctly applied the law to the facts of this case; and (C) The Thirteenth Court Appeals correctly denied the extraordinary remedy of mandamus because the Risk Pool has adequate appellate remedy.

Standard of Review.

Mandamus is both an extraordinary remedy and a discretionary one. *In re Garza*, 544 S.W.3d 836, 840 (Tex. 2018); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 138 (Tex. 2004). The relator bears the burden of demonstrating its entitlement to mandamus relief. *In re Ford Motor Co.*, 165 S.W.3d 315, 317 (Tex. 2005). This burden includes providing the appellate court with a record that is sufficient to make that showing. *In re Malooly*, 587 S.W.3d 844, 846 (Tex. App.—El Paso 2019, no pet.); *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992). A trial court clearly abuses its discretion if it reaches a decision that is so arbitrary and unreasonable as to amount to a clear and prejudicial error of law or if it clearly fails to analyze the law correctly or apply the law correctly to the facts. *In re H.E.B. Grocery Co.*, 492 S.W.3d 300, 302-303 (Tex. 2018).

An appellate court cannot substitute its judgment for that of the trial court and may not set aside the trial court's findings as arbitrary and unreasonable unless the trial court could reasonably have reached only one decision. *In re RSR Corp.*, 568

S.W.3d 663, 665 (Tex. 2019); *In re Shipman*, 540 S.W.3d 562, 565 (Tex. 2018). Mandamus by the Supreme Court is appropriate when the court of appeals erroneously denied a writ of mandamus. *See e.g., Joachim v. Chambers*, 815 S.W.2d 234, 240-241 (Tex.1991). Risk Pool is seeking the extraordinary and discretionary remedy of Mandamus against Judge Flores while at the same time failing to meet its mandatory burden of producing a record that establishes entitlement to such relief.

A. Judge Flores did not abuse his discretion because the order vacating the faulty appraisal was not a final judgment.

The Risk Pool points to case law interpreting Texas Rule of Civil Procedure 301 to support the assertion that Hidalgo must have amended its petition before the trial court could issue the order vacating the appraisal. Because the order vacating is not a final judgement, the City was not required to amend its petition to obtain the relief described in the order.²⁹

The plain language of Rule 301 states “The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity.”³⁰ Furthermore, “only one final judgement shall be rendered in any cause except where it is otherwise specially provided by law.”³¹

²⁹ See App. 302-303, Risk Pool’s Petition for Writ of Mandamus at 17, 18.

³⁰ TEX. R. CIV. P. 301.

³¹ TEX. R. CIV. P. 301.

Judge Flores's order is not a final judgement. It only serves to vacate a flawed and biased appraisal. The case may continue forward with litigation or either party may invoke appraisal again.³² Thus, because the order is not a "judgment," the City was not required to include a request that the appraisal be set aside within their pleading.

Alternatively, if Judge Flores's order is a "judgment," and Risk Pool's Motion for Summary Judgement is a "pleading" such that Risk Pool properly plead the relief it sought, then so too must the City's response to Relator's Motion for Summary Judgement and Motion to Vacate Appraisal Award be considered a proper pleading which requests the relief sought. Paragraph forty-six (46) of Hidalgo's Motion to Vacate Appraisal Award explicitly asks the trial court to vacate the appraisal award.³³ Judge Flores was entitled to issue his order vacating the faulty appraisal award regardless of what was pled in the City's petition.

B. Even if the order vacating appraisal is characterized as a judgement, Judge Flores did not abuse discretion because he correctly applied the law to the facts of this case.

Courts may set aside an appraisal award that is: 1) made without authority; 2) the result of fraud, accident, or mistake; or, 3) not made in substantial compliance with

³² See App. 257, Judge Flores's Order Granting Hidalgo's Motion to Vacate Appraisal.

³³ See App. 272, City of Hidalgo's Response to Texas Municipal League Intergovernmental RiskPool's Motion for Summary Judgment and City of Hidalgo's Motion to Vacate Appraisal Award.

the terms of the contract. *Nat'l Sec. Fire & Cas. Co. v. Hurst*, 523 S.W.3d 840, 844 (Tex. App.—Houston [14th Dist.] 2017, pet. denied). Judge Flores could have taken any number of facts from the record, individually or in total to justify his decision to vacate the appraisal award.

Relators attack Judge Flores's review of the evidence in three ways: (1) relators assert "there is no evidence that the appraisal award reflects an improper 'discount for causation,'"³⁴ (2) relators argue that there is not legally and factually sufficient evidence that Taylor and Berryhill were biased,³⁵ and (3) there was not a conclusive basis for vacating the appraisal award.³⁶

i. The \$6.5 million discrepancy between the Umpire's award the City estimate provides a basis for vacating the faulty appraisal award.

Relators repeatedly assert that the entire purpose of the appraisal process is to settle differences between estimate values. The City agrees. However, the Coverage Documents explicitly state that the appraisal is to be conducted by "competent and disinterested" appraisers and umpire.³⁷ The term "disinterested" does not simply

³⁴ See App. 307, Risk Pool's Petition for Writ of Mandamus.

³⁵ See App. 308, Risk Pool's Petition for Writ of Mandamus.

³⁶ See App. 308, Risk Pool's Petition for Writ of Mandamus.

³⁷ See App. 157 and 158, Coverage Documents, General Conditions, Section III, Subsection E. "If the Member and the Fund fail to agree as to the amount of loss, each shall, upon the written demand either of the Member or of the Fund made within 60 days after receipt of proof of loss by the Fund, select a **competent and disinterested appraiser**. The appraisers then shall select a **competent and disinterested umpire**. If they should fail for 15 days to agree upon such umpire, then upon request of the Member or of the Fund, such umpire shall be selected by a judge of a court of record in the county and state in which such appraisal is pending. Then, at a reasonable time and place, the appraisers shall appraise the loss, stating separately the value at the time of loss and the amount of loss. If the appraisers fail to agree, they shall submit their differences to the umpire. An award

mean a lack of pecuniary interest but requires the appraiser and umpire to be free from bias or prejudice. *Pa. Fire Ins. Co. v. W.T. Waggoner Estate*, 39 S.W.2d 593, 595 (Tex. Comm’n App. 1931, no pet.). Inadequacy of the award may be considered in determining the bias and prejudice of the appraisers and umpire. *Id.*

After a one-day inspection of the Arena, Umpire Taylor submitted an estimated replacement cost totaling \$648,998.29.³⁸ Relator’s appraiser, Allen Berryhill, estimated the damage to cost \$234,601.51.³⁹ The City’s appraiser, Mark Barber, calculated damage to the Arena in the amount of \$7,414,072.87.⁴⁰

Applying the above cited caselaw to the \$6,765,074.58 difference in appraisal values establishes that Judge Flores had the discretion to find that such a large difference was probative evidence supporting a finding of improper bias and/or mistake of fact in the appraisal process.

ii. Affidavits of the City Manager and the City’s appraiser provides evidence of bias and mistake of fact.

In support of City of Hidalgo’s Response to Texas Municipal League Intergovernmental Risk Pool’s Motion for Summary Judgment and City of Hidalgo’s Motion to Vacate Appraisal Award, Hidalgo attached affidavits prepared

in writing by any two shall determine the amount of loss. The Member and the Fund shall each pay its chosen appraiser and shall bear equally the other expenses of the appraisal and of the umpire.” (emphasis added).

³⁸ See App. 122, Umpire Taylor’s Appraisal.

³⁹ See App. 423, Berryhill’s Appraisal.

⁴⁰ See App. 398, Barber’s Appraisal.

by its appraiser Barber and City Manager Gonzalez, who were both present during the Arena site inspection conducted on July 3, 2020.⁴¹

Barber states that in the days leading up the inspection, he had “serious concerns” about Berryhill’s disinterest stemming from Berryhill’s willingness to attribute damage to conditions without supporting evidence.⁴² Barber testified in his affidavit to the overly animated and aggressive nature Berryhill exhibited asserting his views to Taylor and Barber.⁴³ Through his affidavit, Barber also states Berryhill attempted to attribute damages “of all kinds to the 2012 storm including damages to the building’s interior and exterior”⁴⁴ despite there being “only one document to support 2012 storm damage limited exclusively to the arena’s roof.”⁴⁵ The document supporting damages from various storms throughout 2012 was assessed at just \$16,376.07.

Gonzalez, the City Manager for the City of Hidalgo, was also present at the site inspection on July 3, 2020 and he too executed an affidavit testifying to what happened during the inspection. Like Barber, Gonzalez gave affidavit testimony that he watched Berryhill “point to various components of the Arena and tell the Umpire

⁴¹ See App. 262, City of Hidalgo’s Response to Texas Municipal League Intergovernmental Risk Pool’s Motion for Summary Judgment and City of Hidalgo’s Motion to Vacate Appraisal Award at ¶ 21.

⁴² See App. 253, Barber’s Affidavit at ¶ 7.

⁴³ See App. 253, Barber’s Affidavit at ¶ 7.

⁴⁴ See App. 253, Barber’s Affidavit at ¶ 9.

⁴⁵ See App. 253, Barber’s Affidavit at ¶ 10.

that damage was caused by a storm in 2012.”⁴⁶ Gonzalez’s affidavit goes on to say that he “did not understand why there was any mention of a 2012 storm” because the “City of Hidalgo received no money for damage to the arena that occurred in 2012 and the arena sustained heavy damage from a large storm in 2016.”⁴⁷

Finally, both Barber and Gonzalez testified to their concerns with a lengthy conversation they witnessed between the Umpire and the Risk Pool’s appraiser immediately following the inspection.

Barber says that he saw “the Umpire walk over to their cars which were parked next to each other on the far end of a parking lot” and that “the two then waited outside their vehicles and conversed for an extended period of time.”⁴⁸ Similarly, Gonzalez’s affidavit provides that “shortly after the appraisal was complete and various parties began to disperse, I witnessed the Insurance Appraiser and the Umpire conversing alone in the parking lot away from everyone else.”⁴⁹

The appraisers and umpire are quasi-judicial in capacity and having been selected to act in place of the court must, like a court, be impartial and non-partisan. *Pa. Fire Ins. Co. v. W.T. Waggoner Estate*, 39 S.W.2d at 595. Given the need for impartiality in the appraisal process, these communications occurring: (a) at the far

⁴⁶ See App. 426, Gonzalez’s Affidavit at ¶ 5.

⁴⁷ See App. 426, Gonzalez’s Affidavit at ¶ 6.

⁴⁸ See App. 254, Barber’s Affidavit at ¶ 11.

⁴⁹ See App. 427, Gonzalez’s Affidavit at ¶ 7.

end of a stadium parking lot; (b) immediately after the inspection, (c) in which Berryhill had been aggressively asserting his position; and, (d) outside the presence of Gonzalez or Barber, can only be considered improper. Indeed, the City would argue that similar conduct viewed in a courthouse setting between a judge and one party's counsel would soon be followed by a motion for new trial.

Barber's and Gonzalez's affidavits and the facts contained within lead to the natural and logical conclusion by Judge Flores that the appraisal was conducted improperly.

iii. The Risk Pool violated the Rule 11 Agreement by failing to appoint its original adjuster to conduct the appraisal.

There is also evidence in the record that Risk Pool varied from the appraisal process that the City and Risk Pool agreed to. Relators and the City entered into a Rule 11 Agreement, whereby the parties agreed that instead of finding new appraisers to conduct the appraisal, the parties would instead use "their original inspectors."⁵⁰ Relator's Petition for Writ of Mandamus states "[t]he City and Risk Pool expressly agreed that each could use its original inspector as its appraiser."⁵¹

Finding support in such an agreement would be appropriate if not for the fact that Risk Pool plainly violated the agreement. Indeed, the agreement is faulty on its face because Berryhill was not Risk Pool's "original inspector." Rather, the original

⁵⁰ See App. 98, Rule 11 Agreement.

⁵¹ See App. 294, Risk Pool's Petition for Writ of Mandamus at 9.

inspection was conducted by an individual named John House, who is employed by the Littleton Group – a fact that the record in this case is riddled with references to and which Relator’s have not contested.⁵² This same fact was also pointed out during oral argument in front of Judge Flores.

iv. The Risk Pool’s \$16,376.07 own damage assessment of the 2012 storm disproves the \$6.5 million discrepancy between the City’s estimate and the Appraisal award.

In 2012, multiple hailstorms rolled through the City of Hidalgo causing damage to the roof. The parties do not dispute that in 2012, the City was insured through Risk Pool, a 2012 hailstorm or hailstorms caused damage to the roof, and the damage done was a “covered loss.” In May of 2012, at the City’s request, Risk Pool had an estimate conducted by Cunningham Lindsay to assess the damage done by the 2012 hailstorm.⁵³ On August 14, 2013, Cunningham Lindsay assessed the damage of at least three separate storms in March, April, and October of 2012 and issued a damage report appraising the cost of replacement to be \$16,376.07.⁵⁴ To this date, Relator has not disputed its 2012 valuation.

⁵² See App. 260, City of Hidalgo’s Response to Texas Municipal League Intergovernmental Risk Pool’s Motion for Summary Judgment and City of Hidalgo’s Motion to Vacate Appraisal Award at ¶ 11; App. 075-076, December 8 Letter Sent from Plaintiff’s Counsel to Patti Tabor; App. 432, Plaintiff’s Second Amended Petition at ¶ 18.

⁵³ See App. 255, Cunningham Lindsay’s 2012 Report.

⁵⁴ See App. 255, Cunningham Lindsay’s 2012 Report at 1.

Then, in 2016, Relator's appraiser, Berryhill, repeatedly references damage he attributes to the 2012 storm.⁵⁵ Throughout Berryhill's report, he makes nine (9) different references to damage he claims (incorrectly) occurred in 2012⁵⁶, which resulted in his low estimate of \$234,601.51.⁵⁷

Hidalgo pointed out the inconsistencies between the 2012 estimate and the 2016 estimate in both its Motion to Vacate and during oral argument. Absent fraud, accident, or a mistake of fact, how could roughly \$16,000 of damage in 2012 create a difference of more than \$6.5 million in appraisal values in 2016? Judge Flores could not have abused his discretion by considering the discrepancy in vacating the award.

v. The Risk Pool has not produced any controverting affidavits or evidence to demonstrate an abuse of discretion.

Judge Flores was tasked with applying the law to the facts when issuing his order vacating the appraisal award. While any one of the facts above may have played a part in Judge Flores' decision, it's also important to consider what he did not take into account. The record contains no countervailing evidence in support of the Risk Pool's position.

⁵⁵ See generally, App. 399-425, Berryhill's Appraisal.

⁵⁶ See App. 399, 400, 401, and 419, Berryhill's Appraisal.

⁵⁷ See App. 425, Berryhill's Appraisal at 27.

Relators could have requested affidavits from Berryhill or Umpire Taylor or produced any amount of evidence to support the validity of the appraisal process or counter the factual assertions made by Barber and Gonzales. It did not. Looking at the totality of the record in front of Judge Flores, it was within his discretion to rule in favor of the party that supported its motion with evidence over the party that did not.

Further, it was within Judge Flores’s discretion to find that the investigation of causation in this case was improper. Relator’s argument hinges on *In re Auto Club Indemnity Company* and *State Farm Lloyds v. Johnson* to support the position that investigating causation is proper. *See In re Auto Club Indem Co.*, 580 S.W.3d 852 (Tex. App—Houston 2019, no pet.); *State Farm Lloyds v. Johnson*, 290 S.W. 3d 886 (Tex. 2009).

Yet a plain reading of the standard set in those cases shows that they are inapplicable to this case. Relator cites the following language from *In re Auto* quoting the Court in *Johnson*: “*Johnson* is clear that when different types of damage occur to different items of property, appraisers have authority to consider causation and to separate loss due to a covered event from a property’s pre-existing condition.” (emphasis added).⁵⁸

⁵⁸ See App. 306, Relator’s Petition for Writ of Mandamus at 21.

Relator ignores a key distinction: the investigation conducted in this case accounted for causation for the *same type of damage* to the *same type of property*.

In this case, the 2012 and 2016 damage were both caused by wind and hailstorms, both caused damage to the Arena, and both were covered losses. In short, there was no need to draw a distinction between whether the damage to the Arena was caused in 2012 versus 2016 because they were both covered losses. Because Judge Flores did not abuse his discretion his order must stand.

C. The Thirteenth Court Appeals correctly denied the extraordinary remedy of mandamus because the Risk Pool has adequate appellate remedy

A writ of mandamus will issue to correct a clear abuse of discretion when there is no adequate appellate remedy. *In re North Cypress Med. Ctr. Oper. Co.*, 559 S.W.3d 128, 130 (Tex. 2018). No mandamus case has ever expressly rejected th[e] requirement [of adequate appellate remedy]. *Walker v. Packer*, 827 S.W.2d 833 (Tex. 1992). Without this limitation, appellate courts would “embroil themselves unnecessarily in incidental pre-trial rulings of the trial courts” and mandamus “would soon cease to be an extraordinary writ.” *Braden v. Downey*, 811 S.W.2d 922, 928 (Tex.1991).

The case of *In re Prudential Ins. Co. of America* set the current applicable standard for determining when an appellate remedy is adequate." *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex. 2004) (orig. proceeding).

Determining whether an appellate remedy is adequate involves balancing “practical and prudential” considerations, such as the inevitability of reversal, the impairment of important substantive and procedural rights, the opportunity to give direction and guidance on the law that would otherwise be lost, and the waste of judicial resources on the proceeding. *See City of Houston v. Houston Mun. Empls. Pension Sys.*, 549 S.W.3d 566,580 (Tex. 2018).

As highlighted in the memorandum opinion by Justice Longoria, trial court orders regarding the validity of appraisal awards are routinely reviewed by appeal after final judgment. *See, e.g., Zhu v. First Cmty. Ins. Co.*, 543 S.W.3d 428, 430 (Tex. App. Houston [14th Dist.] 2018, pet. dismiss’d) (refusing to set aside an appraisal award where the insured “failed to assert one of the recognized grounds for setting aside the appraisal award”); *see also United Fire & Cas. Co. v. Gossetts, Inc.*, No. 07-18-00204- CV, 2019 WL 2572042, at *1 (Tex. App.—Amarillo June 21, 2019, no pet.) (mem. op.) (reversing and remanding a judgment based on an appraisal award where the appraisal award resulted from mistake); *Floyd Circle Partners, LLC v. Republic Lloyds*, No. 05-16- 00224-CV, 2017 WL 3124469, at *9 (Tex. App.—Dallas July 24, 2017, pet. denied) (mem. op.) (concluding that the insured failed to present a fact issue regarding whether an appraisal award should be set aside sufficient to avoid summary judgment).

Here, as the Thirteenth Court of Appeals correctly and unanimously held, appellate remedy is adequate because there is no permanent loss of any right, substantial or otherwise. The “practical and prudential” considerations in this case demonstrate that mandamus is inappropriate because even if the Court finds that there was abuse, the relator has an adequate remedy by appeal. Granting relator’s request would be an improper extension of the reach of mandamus. As such, this Court should deny Relator’s Petition for Writ of Mandamus.

CONCLUSION AND PRAYER

For the foregoing reasons, the City of Hidalgo respectfully requests this Court to deny Relator’s Petition for Writ of Mandamus and hold that Judge Flores did not abuse his discretion by vacating an improper appraisal. The City of Hidalgo further requests its court costs and any other relief to which it is justly entitled.

Respectfully submitted,

By: /s/ J. Gabriel Ortiz_____

J. Gabriel Ortiz

gortiz@phippsortiztalafuse.com

State Bar No. 24085512

PHIPPS ORTIZ TALAFUSE

102 9th Street

San Antonio, Texas 78215

***Attorneys for Real Party in Interest,
City of Hidalgo***

CERTIFICATE OF COMPLIANCE

I certify that this document complies with the typeface requirements of Texas Rule of Appellate Procedure 9.4(e) because it has been prepared in a conventional typeface no smaller than 14-point for text and 12-point for footnotes. It was prepared using Microsoft Word. This document also complies with the word-count limitations of Rule 9.4(i)(2) because it contains 4205 words, excluding any parts exempted by Rule 9.4(i)(1).

/s/ J. Gabriel Ortiz

J. Gabriel Ortiz

CERTIFICATE OF SERVICE

As required by Texas Rule of Appellate Procedure 52.10(a), the undersigned certifies that a true and correct copy of the foregoing instrument was forwarded to the parties identified below in accordance with the Texas Rules of Civil Procedure on the 7th day of June 2021.

VIA E-SERVICE

Barry Adams

Jack Higdon

Blank Rome, LLP

717 Texas Avenue, Suite 400

Houston, Texas 77002

babrams@blankrome.com

jhigdon@blankrome.com

/s/ J. Gabriel Ortiz

J. Gabriel Ortiz

NO. 21-0308

**IN THE
SUPREME COURT OF TEXAS**

The City of Hidalgo

Real Party in Interest.

Original Proceeding from the 139th District Court of
Hidalgo County; Cause No. C-1896-18-C
The Honorable Roberto “Bobby” Flores, Judge Presiding

**APPENDIX IN SUPPORT OF REAL PARTY’S RESPONSE TO PETITION
FOR WRIT OF MANDAMUS**

Martin J. Phipps
mphipps@phippsortiztalafuse.com
State Bar No. 00791444
J. Gabriel Ortiz
State Bar No. 24085512
gortiz@phippsortiztalafuse.com
PHIPPS ORTIZ TALAFUSE PLLC
102 9th Street
San Antonio, Texas 78215
Telephone: 210-340-9877

*Attorneys for Real Party in Interest
City of Hidalgo*

Date	Description	Pages
May 28, 2019	City of Hidalgo's Appellate Brief	001-073
June 27, 2016	June 27, 2016 Letter from Risk Pool to Hidalgo	074
December 8, 2017	December 8, 2017 Letter from Plaintiff's Counsel to Patti Tabor	075-076
April 22, 2020	Thirteenth Court of Appeals April 22, 2020 Memorandum Opinion	077-097
June 16, 2020	Rule 11 Agreement	098
June 16, 2020	Umpire Taylor's Appraisal	099-122
August 12, 2020	Risk Pool's Motion for Summary Judgment	123-251
September 15, 2020	Barber's Affidavit	252-254
August 14, 2013	Cunningham & Lindsay 2012 Report	255-256
September 16, 2020	City of Hidalgo's Response to Texas Municipal League Intergovernmental Risk Pool's Motion for Summary Judgment and City of Hidalgo's Motion to Vacate Appraisal Award	257-274
September 30, 2020	Judge Flores's Order Granting Hidalgo's Motion to Vacate Appraisal	275-276
November 9, 2020	Relator's Petition for Writ of Mandamus	277-325
Effective 2014	Coverage Documents	326-371
October 30, 2017	Barber's Appraisal	372-398
April 30, 2018	Berryhill's Appraisal	399-425
September 15, 2020	Gonzalez's Affidavit	426-428
September 26, 2018	Plaintiff's Second Amended Petition	0429-440

DECLARATION OF JUAN GABRIEL ORTIZ

STATE OF TEXAS §
COUNTY OF BEXAR §

My name is Juan Gabriel Ortiz, my date of birth is May 21, 1976 and my address is 102 9th Street, San Antonio Texas 78215. I declare under penalty of perjury that the following statement are within my personal knowledge and are true and correct:

1. My name is Juan Gabriel Ortiz. I am over the age of 18, of sound mind, and competent to make this declaration.
2. I am an attorney for Real Party in Interest, City of Hidalgo.
3. All of document included in this appendix are true and correct copies.

Executed in Bexar County om June 7, 2021.

/s/ J. Gabriel Ortiz
J. Gabriel Ortiz

CERTIFICATE OF SERVICE

As required by Texas Rule of Appellate Procedure 52.10(a), the undersigned certifies that a true and correct copy of the foregoing instrument was forwarded to the parties identified below in accordance with the Texas Rules of Civil Procedure on the 7th day of June 2021.

VIA E-SERVICE

Barry Adams
Jack Higdon
Blank Rome, LLP
717 Texas Avenue, Suite 400
Houston, Texas 77002
babrams@blankrome.com
jhigdon@blankrome.com

/s/ J. Gabriel Ortiz

J. Gabriel Ortiz

CASE NO. 13-19-00096-CV

IN THE THIRTEENTH COURT OF 13th COURT OF APPEALS

CORPUS CHRISTI/EDINBURG, TEXAS

5/28/2019 8:44:20 PM

DORIAN E. RAMIREZ

Clerk

The Texas Municipal League Intergovernmental Risk Pool

Appellant,

v.

City of Hidalgo

Appellee.

Appeal from the 139th Judicial District Court Hidalgo County, Texas

Trial Court No. C-1896-18-C

The Honorable Roberto “Bobby” Flores, Judge Presiding

APPELLEE’S BRIEF

Martin J. Phipps

State Bar No. 00791444

mhipps@phippsdeaconpurnell.com

Blayne Fisher

State Bar No. 24090099

bfisher@phippsdeaconpurnell.com

Vanessa Cantu

State Bar No. 24096630

vcantu@phippsdeaconpurnell.com

PHIPPS DEACON PURNELL, PLLC

102 9th Street

San Antonio, Texas 78215

Telephone: (210) 340-9877

Telecopier: (210) 340-9887

ATTORNEYS FOR APPELLEE

ORAL ARGUMENT REQUESTED

IDENTITIES OF PARTIES AND COUNSEL

A. Appellant:

Texas Municipal League Intergovernmental Risk Pool

B. Counsel for Relators

Barry Adams

State Bar No. 00822700

babrams@blankrome.com

Jack W. Higdon

State Bar No. 24007360

jhigdon@blankrome.com

BLANK ROME LLP

717 Texas Avenue, Suite 1400

Houston, Texas 77002

(713) 228-6601

(713) 228-6605 (Fax)

C. Appellee:

City of Hidalgo

D. Appellee Counsel:

Martin J. Phipps

State Bar No. 00791444

mphipps@phippsdeaconpurnell.com

Blayne Fisher

State Bar No. 24090099

bfisher@phippsdeaconpurnell.com

Vanessa Cantu

State Bar No. 24096630

Phipps Deacon Purnell, PLLC

THE PHIPPS

102 9th Street

San Antonio, Texas 78215

Telephone: (210) 340-9877

Telecopier: (210) 340-9887

TABLE OF CONTENTS

IDENTITIES OF PARTIES AND COUNSEL.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iv
STATEMENT OF JURISDICTION	viii
RECORD ON APPEAL	ix
ISSUES PRESENTED	x
I. Is an appeal of a trial court’s order granting a motion to compel appraisal an improper subject of an interlocutory appeal? Does the appellate court have jurisdiction to hear an interlocutory appeal of an order granting a motion to compel appraisal?	x
II. Is it proper to bring an appeal arguing jurisdictional issues not addressed in a trial court’s order to compel appraisal? And does the appellate court have appellate jurisdiction over such an appeal	x
III. Can the validity of factual and legal arguments raised by an Appellant in an interlocutory appeal not authorized by statute nonetheless be asserted and reviewed on appeal if the Appellant alleges the appeal is pursuant to a statute authorizing an interlocutory appeal regardless of whether the actual order making the basis of the appeal is an authorized interlocutory appeal?	x
IV. Is a separate waiver analysis appropriate when seeking to enforce an adjudication procedure, like appraisal, contained within a contract and agreed to by the parties when the governmental entity waives immunity for the underlying cause of action for breach of contract? Did the trial court correctly grant the motion to compel appraisal because the Local Government Contract Claims Act, Tex. Loc. Gov’t Code § 271.151-160, which waives immunity for local governmental entities from contract suits, provides that contractual adjudication procedures are enforceable against governmental units?	x
BRIEF OF APPELLEE	1
STATEMENT OF FACTS.....	1
STANDARD OF REVIEW.....	13

RESPONSIVE ARGUMENT & AUTHORITIES	15
I. No Appellate Jurisdiction Over the Trial Court’s Interlocutory Order Granting the City’s Motion to Compel Appraisal.....	15
II. The Local Government Contract Claims Act (the “Act”) Waives the Risk Pool’s Immunity for the City’s Claims for Breach of Contract and Section 271.154 Expressly Enforces Contractual Adjudication Procedures Like Appraisal	18
A. Section 572.153 of the Act Expressly Authorizes the Relief the City Seeks	21
1. <i>Appraisal is Not a Claim for Specific Performance</i>	26
B. Section 271.154 Of the Act Expressly Enforces Contractual Adjudication Procedures Like Appraisal.....	30
1. <i>The Act’s Clear Language Allows for Enforcement of Adjudication Procedures</i>	34
III. The Contract and Texas Law Authorize Enforcement of the Appraisal Provision	39
A. Proof of Loss is Not a Condition Precedent to Appraisal	40
1. <i>Conditions Precedent Have No Bearing on Jurisdiction</i>	43
2. <i>The Coverage Document’s Proof of Loss Provision Does Not Require Compliance Within 60 Days of the Date of Loss</i>	45
3. <i>The Risk Pool Waived the Proof of Loss Provision Contained in the Coverage Document</i>	46
4. <i>The Risk Pool Failed to Show it was Prejudiced</i>	50
5. <i>Absent Waiver or Illegality the Appraisal Provision is Enforceable</i>	55
B. Demand for Appraisal was Timely.....	57
C. The City Named a Disinterested Appraiser.....	58
CONCLUSION AND PRAYER	59
CERTIFICATE OF SERVICE	61

CERTIFICATE OF COMPLIANCE	62

TABLE OF AUTHORITIES

Cases

<i>Basse Truck Line, Inc. v. First State Bank</i> , 949 S.W.2d 17 (Tex. App.--San Antonio 1997, writ denied)	41
<i>Ben Bolt-Palito Blanco Consol. Indep. Sch. Dist. v. Texas Political Subdivisions Prop./Cas. Joint Self-Ins. Fund</i> , 212 S.W.3d 320 (Tex. 2006)	21, 24
<i>Bison Bldg. Materials, Ltd. v. Aldridge</i> , 422 S.W. 3d 582 (Tex. 2012)	15
<i>Bland Indep. Sch. Dist. v. Blue</i> , 34 S.W.3d 547 (Tex. 2000)	14
<i>Boone v. Safeco Ins. Co.</i> , No. H- 09-1613, 2010 U.S. Dist. LEXIS 55281 (S.D. Tex. June 7, 2010)	56
<i>City of LaPorte v. Barfield</i> , 898 S.W.2d 288 (Tex. 1995)	36
<i>CMH Homes v. Perez</i> , 340 S.W. 3d 444 (Tex. 2011)	15
<i>Criswell v. European Crossroads Shopping Ctr., Ltd.</i> , 792 S.W.2d 945 (Tex. 1990)	42
<i>Cunningham v. Allstate Vehicle & Prop. Ins. Co.</i> , No. 4:18-CV-4, 2018 WL 2020723 (E.D. Tex. May 1, 2018)	50, 51, 52
<i>Del. Underwriters v. Brock</i> , 109 Tex. 425, 211 S.W. 779 (Tex. 1919)	59
<i>Dike v. Valley Forge Ins. Co.</i> , 797 F. Supp. 2d 777 (S.D. Tex. 2011)	56
<i>Ford v. City State Bank of Palacios</i> , 44 S.W.3d 121 (Tex. App.-Corpus Christi 2001, no pet.)	41
<i>Garcia v. State Farm Lloyd's</i> , 514 S.W.3d 257 (Tex. App.—San Antonio Dec. 14, 2016)	55
<i>Hodge v. Kraft</i> , 490 S.W.3d 510 (Tex. App. 2015)	, 13, 16

<i>Hohenberg Bros. Co. v. George E. Gibbons & Co.</i> , 537 S.W.2d 1 (Tex. 1976).....	41, 42
<i>In re Allstate Vehicle & Prop. Ins. Co.</i> , 542 S.W.3d 815 (Tex. App. 2018).....	55
<i>In re GuideOne Mut. Ins. Co.</i> , No. 09-12-00581-CV, 2013 WL 257371 (Tex. App.—Beaumont Jan. 24, 2013).....	53, 57
<i>In re Pub. Serv. Mut. Ins. Co.</i> , No. 03–13–00003–CV, 2013 WL 692441 (Tex. App.—Austin Feb. 21, 2013, orig. proceeding) (mem. op.).....	52, 56, 57
<i>In re State Farm Lloyds, Inc.</i> , 170 S.W.3d 629 (Tex. App.—El Paso 2005, orig. proceeding).....	53
<i>In re Universal Underwriters of Tex. Ins. Co.</i> , 345 S.W.3d 404 (Tex. 2011). 29, 32, 52, 56, 57	
<i>Int’l Serv. Ins. Co. v. Brodie</i> , 337 S.W.2d 414 (Tex. Civ. App.—Fort Worth 1960, writ ref’d n.r.e)	47, 52
<i>Karl v. Brazos River Auth.</i> , 494 S.W.3d 168 (Tex. App.—Eastland 2015, pet. denied).....	14
<i>Kerrville State Hosp. v. Fernandez</i> , 28 S.W.3d 1 (Tex. 2000).....	36
<i>Landscape Design v. Harold Thomas Excavating</i> , 604 S.W.2d 374 (Tex. Civ. App.-Dallas 1980, writ ref’d n.r.e.)	42
<i>Lopez v. Allstate Vehicle & Prop. Ins. Co.</i> , No. 4:17-CV-00103, 2017 WL 1294453 (E.D. Tex. Apr. 4, 2017)	51
<i>Lundstrum v. United Servs. Auto. Ass’n-CIC</i> , 192 S.W.3d 78 (Tex. App.—Houston [14th Dist.] 2006, pet. denied).....	56
<i>Mission Consol. Indep. Sch. Dist. v. Ero Int’l, LLP</i> , No. 13-17-00489-CV, ____ S.W.3d____, 2019 Tex. App. LEXIS 2014, 2019 WL 1187018 (Tex. Civ. App.—Corpus Christi, no pet. Mar. 14, 2019)	37
<i>N. River Ins. Co. v. Pomerantz</i> , 492 S.W.2d 312 (Tex. Civ. App. 1973), writ refused NRE (July 3, 1973)	49

<i>PAJ, Inc. v. Hanover Inc.</i> , 243 S.W.3d 630 (Tex. 2008).....	51
<i>Polen v. Vehicle</i> , 4:16-CV-00842, 2017 WL 661836 (E.D. Tex. Feb. 17, 2017) ...	51
<i>Presswood v. Allstate Vehicle & Prop. Ins. Co.</i> , 4:16-CV-00958, 2017 WL 7051074 (E.D. Tex. Aug. 11, 2017).....	51
<i>Rusk State Hosp. v. Black</i> , 392 S.W.3d 89 (Tex. 2012).....	14
<i>Sanchez v. Prop. & Cas., Ins. Co. of Hartford</i> , No. H–09–1736, 2010 U.S. Dist. LEXIS 6295 S.D. Tex. Jan. 27, 2010)	55
<i>Sanchez v. Saghian</i> , No., 2009 Tex. App. LEXIS 7944 (Tex. App. -- Houston [1st Dist.] 2009, no pet.).....	16
<i>Sanders v. Aetna Life Ins. Co.</i> , 205 S.W.2d 43 (Tex. 1947).....	47
<i>Santa Rosa Indep. Sch. Dist. V. Rigney Construction & Development, LLC</i> , 13- 12-00627-CV, 2013 WL 2949566 (Tex. App—Corpus Christi June 13, 2013, pet. Denied) (mem. Op.)	44
<i>Scottish Union & Nat’l Ins. Co. v. Clancy</i> , 18 S.W. 439 (Tex. 1892)	47
<i>Solar Applications Eng'g, Inc. v. T.A. Operating Corp.</i> , 327 S.W.3d 104 (Tex. 2010)	41
<i>Stafford v. Southern Vanity Magazine, Inc.</i> , 231 S.W.3d 530 (Tex. App. - Dallas 2007, pet. denied).....	28
<i>State Farm Lloyds v. Johnson</i> , 290 S.W.3d 886 (Tex. 2009).....	55, 56, 57
<i>Tamuno Ifiesimama v. Haile</i> , 522 S.W.3d 675 (Tex. App.—Houston [1st Dist.] 2017, pet. denied).....	29
<i>Tex. Dep’t of Parks & Wildlife v. Miranda</i> , 133 S.W.3d 217 (Tex. 2004)	14
<i>Tex. Mun. League Intergovernmental Risk Pool v. City of Abilene</i> , 551 S.W.3d 337 (Tex. App.—Eastland 2018, pet. dism’d)	16, 17, 29, 31, 32, 33, 34
<i>Tex. Nat. Res. Conservation Comm’n v. IT-Davy</i> , 74 S.W.3d 849 (Tex. 2002).....	19

<i>Undavia v. Avant Med. Grp., P.A.</i> , 468 S.W.3d 629 (Tex. App. 2015).....	13, 16
<i>Wilson v. Allstate Ins. Co.</i> , 416CV00970ALMCAN, 2017 WL 3671861 (E.D. Tex. Mar. 6, 2017)	51
<i>Zachry Const. Corp. v. Port of Houston Auth. Of Harris Cty</i> , 449 S.W.3d 98 (Tex. 2014).....	19, 22, 23, 24, 25, 26, 30, 31, 32, 33

Statutes

TEX. CIV. PRAC. & REM. CODE § 51.014	14
TEX. CIV. PRAC. & REM. CODE § 51.014(a)(8)	8, 14
TEX. GOV'T CODE § 2259.031	2, 17
TEX. GOV'T CODE § 311.034	18
TEX. GOV'T CODE § 791.001	2
TEX. GOV'T CODE § 791.011	18
TEX. LOC. GOV'T CODE § 271.153	9, 19, 21, 22, 23, 24, 25, 26, 29
TEX. LOC. GOV'T CODE § 271.154	19, 24, 26, 30, 32, 38
TEX. LOC. GOV'T CODE § 271.152	18, 19, 21, 30, 34
TEX. LOC. GOV'T. CODE § 271.151.....	9, 18, 22, 23, 26, 34

STATEMENT OF JURISDICTION

Appellate courts do not have jurisdiction over interlocutory appeals in the absence of a statutory provision permitting such an appeal. *Undavia v. Avant Med. Grp., P.A.*, 468 S.W.3d 629, 632 (Tex. App. 2015) (citing *CMH Homes v. Perez*, 340 S.W.3d 444, 447 (Tex. 2011)). Section 51.014 of the Civil Practice and Remedies Code does not permit the interlocutory appeal of an order granting a motion to compel appraisal. *See Hodge v. Kraft*, 490 S.W.3d 510, 516 (Tex. App. 2015) (appellate court has no jurisdiction over interlocutory appeal of order denying motion to compel appraisal). Therefore, this court lacks jurisdiction over this interlocutory appeal.

RECORD ON APPEAL

The Record on appeal relevant to Appellee's brief consists of one-volume Reporter's Record and a one-volume Clerk's Record. The Reporter's Record will be cited by volume and page number as "RR____." The Clerk's Record will be cited by volume and page number as "CR_."

ISSUES PRESENTED

- I. Is an appeal of a trial court's order granting a motion to compel appraisal an improper subject of an interlocutory appeal? Does the appellate court have jurisdiction to hear an interlocutory appeal of an order granting a motion to compel appraisal?
- II. Is it proper to bring an appeal arguing jurisdictional issues not addressed in a trial court's order to compel appraisal? And does the appellate court have appellate jurisdiction over such an appeal?
- III. Can the validity of factual and legal arguments raised by an Appellant in an interlocutory appeal not authorized by statute nonetheless be asserted and reviewed on appeal if the Appellant alleges the appeal is pursuant to a statute authorizing an interlocutory appeal regardless of whether the actual order making the basis of the appeal is an authorized interlocutory appeal?
- IV. Is a separate waiver analysis appropriate when seeking to enforce an adjudication procedure, like appraisal, contained within a contract and agreed to by the parties when the Act waives immunity for the underlying cause of action for breach of contract? Did the trial court correctly grant the motion to compel appraisal because the Local Government Contract Claims Act, Tex. Loc. Gov't Code § 271.151-160, which waives immunity for local governmental entities from contract suits, provides that contractual adjudication procedures are enforceable against governmental units?

BRIEF OF APPELLEE

The City of Hidalgo (the “City”) respectfully submits this brief in response to the appeal of the trial court’s February 26, 2019 Order granting the City’s motion to compel appraisal and stay proceedings pending appraisal, and respectfully asks this Court to affirm the Order compelling appraisal and staying proceedings pending appraisal.

STATEMENT OF FACTS

This a self-insurance claim dispute arising out of the City of Hidalgo’s (“the City”) claim for damages to its real property, the State Farm Arena, located at 2600 N. 10th St., Hidalgo, Texas (the “Property”) sustained as a result of a hail and windstorm that occurred on or about May 31, 2016 (“the Storm”). CR 651. The Property’s roof sustained extensive damage during the Storm. *Id.* Further, among the substantial exterior damages caused by the Storm, the western wall of the Property collapsed, and the east-facing exterior of the main entrance sustained significant structural damage. *Id.* Water intrusion through the roof and exterior walls caused extensive damage throughout the interior of the Property including, but not limited to: the main seating area, the arena suites, offices, dressing rooms, men’s restroom, women’s restroom, ticketing area, and mechanical room. *Id.*

The City is a member of the Risk Pool, an administrative agency created under the provisions of the Texas Interlocal Cooperation Act, Chapter 791, and the Texas

Government Code, Chapter 2259, that allows local governmental entities to jointly self-insure. *See* TEX. GOV'T CODE § 2259.031(a); *see also* TEX. GOV'T CODE §

791.001. Pursuant to its Interlocal Agreement along with the Joint Self-Insurance Fund Property Coverage Document with the Risk Pool (“Coverage Document”)

effective from October 1, 2015 to October 1, 2016, the City pays an annual contribution to the Risk Pool in exchange for self-insurance coverage. CR 820-895.

On June 1, 2016, the City made a claim against the Coverage Document for covered damages to the Property. CR 651. Subsequently, the Risk Pool assigned an individual adjuster to adjust the City’s Storm claim and prepare an estimate of the City’s damages. *Id.* at 652. The Risk Pool failed to perform a thorough investigation of the City’s Hail and Wind Damage Property claim and denied a portion of the City’s Hail and Wind Damage Property claim by engaging in false and/or misleading acts and practices of omission and commission which ultimately resulted in the City being denied those benefits guaranteed to it pursuant to its agreement with the Risk Pool. *Id.* The Risk Pool’s adjustment of the claim wrongfully and negligently denied portions of the claim and undervalued the cost of repair and/or replacement of covered items of damage to the insured Property. *Id.* This resulted in the City receiving insufficient funds from the Risk Pool to cover losses sustained by the City to repair and/or replace the insured Property. *Id.*

As a result, thereof, on or about June 27, 2016, the Risk Pool sent the City a claim check in the amount of \$283,666.81—the amount the Risk Pool alleged was owed to the City after applying the \$2,500.00 deductible to the claim and withholding excessive depreciation, as well as overhead/profit. *Id.* at 652, 897. This amount was wholly insufficient to repair and/or replace the covered damages to the Property resulting from the Storm, as the City’s actual covered damage to the Property as a result of the Storm exceeded *the sum of \$7,329,546*. CR 652, 793-94. The Risk Pool also sent a proof of loss that had already been filled out by the Risk Pool with the information contained in its initial coverage decision—the amount the Risk Pool already paid without necessitating a proof of loss. *Id.*, CR 898. The proof of loss provision contained within the Coverage Document reads as follows:

Proof of Loss: It shall be necessary for the Member to render a signed and sworn proof of loss to the Fund or its appointed representative within 60 days, stating the place, time, and cause of the loss, damage, or expense, the interest of the Member and of all others, the value of the property involved in the loss, and the amount of loss, damage, or expense.

CR 836.

Immediately after payment was issued on June 27, 2016, the Risk Pool was put on notice that the City disagreed with the its initial estimate and findings for covered damages to the Property caused by the Storm. CR 653, 791, 900.

On November 15, 2016, in an email to Mary Alvarez, the City’s Risk Management Director, the Risk Pool informed the City that the file would be left

“open pending review under the Replacement Cost coverage.” *Id.* Further, the Risk Pool was on notice that City was gathering estimates to produce to the Risk Pool so that it could resolve this claim and establish the amount of loss. *Id.*

On December 8, 2017, the Risk Pool was informed by demand letter that that the City had received an estimate for covered damages to the Property caused by the Storm. *Id.* CR 793-94. Based on the results of this estimate, the Risk Pool was put on notice that the City disagreed with the Risk Pool’s initial coverage decision, as the estimate reflected that the damages to the Property covered pursuant to the Agreement far exceeded those listed in the initial estimate prepared by the Risk Pool. *Id.* The City’s actual covered damage to the Property as a result of the Storm exceeded the sum of \$7,329,546.43. *Id.*

On May 14, 2018, the City attempted to invoke its contractual right to appraisal pursuant to Subsection E of the Coverage Document—a provision in the contract that, when invoked, determines the amount of loss owed to the City for its Storm-covered damages. *Id.*, CR 902. The City named Mark Barber, the expert retained by it to prepare an estimate for covered damages, as its designated appraiser. *Id.*, CR 902. Thereafter, the Risk Pool rejected the City’s invocation of appraisal and refused to participate in the appraisal process. CR 359.

On May 23, 2018, the City filed its *Original Petition* in state district court, asserting **one cause of action** against the Risk Pool for breach of contract arising

from the Risk Pool’s improper adjustment of the City’s claim for Storm-covered damages to the Property. CR 15-24. In its *Original Petition*, the City acknowledged that the Risk Pool enjoys government immunity from suit; however, pursuant to TEX. LOC. GOV’T CODE § 271.152, it waived such immunity to suit for the purpose of adjudicating a claim for breach of contract. CR 21-23. Further, in its *Original Petition*, the City again invoked its contractual right to appraisal—a provision within the Coverage Document that determines the amount of loss for damages arising from the Storm. CR 22. Pursuant to TEX. LOC. GOV’T CODE § 271.154, the City named Mark Barber, a qualified estimator who previously prepared an estimate of the Property’s storm-covered damages, as its designated appraiser. *Id.*

On June 25, 2018, the Risk Pool filed its *Original Answer* and *Partial Plea to the Jurisdiction* challenging the court’s subject matter jurisdiction over the City’s claim for attorney’s fees and enforcement of the appraisal provision on the grounds that the Risk Pool’s governmental immunity barred the court’s jurisdiction over these actions. CR 26-54.

On August 6, 2018, the City filed its *First Amended Petition* asserting the same claim for breach of contract and once again, invoked its contractual right to appraisal pursuant to the Coverage Document, naming Don Staples as its appraiser—a competent and disinterested appraiser. CR 149-160. Furthermore, Plaintiff amended the language describing the contract at issue—from “Property Coverage

Document” in the *Original Petition* to “Property Coverage Document, the Declarations of Coverage, and Endorsements” in its *First Amended Petition*.

On August 6, 2018, the City filed its *Response to Defendant’s Partial Plea to the Jurisdiction*, wherein it asked the court to deny the Risk Pool’s *Plea to the Jurisdiction* and retain jurisdiction over all claims asserted in the City’s *First Amended Petition*. CR 161-190.

Having received the Risk Pool’s rejection of the City’s invocation of appraisal, on August 8, 2018, the City moved to compel appraisal of its claim for covered damages to determine the amount of property damage, if any, the City sustained as a result of the Storm. CR 274-287.

The Risk Pool filed its *Objection and Plea to the Jurisdiction in Response to Plaintiff’s Verified Motion to Compel Appraisal and Stay Proceedings Pending Appraisal* on September 19, 2018. CR 376-417. On the same day, the Risk Pool also filed its *Amended Plea to the Jurisdiction* challenging the court’s subject matter jurisdiction over the City’s claim, including the City’s claim for breach of contract, on the grounds that the Risk Pool’s governmental immunity bared the court’s jurisdiction over this action. CR 512-551.

On September 26, 2018, in an effort to clarify what documents are encompassed in the contract at issue, the City filed its *Second Amended Petition* detailing, “the Interlocal Agreement, the Property Coverage Document effective

from October 1, 2015 to October 1, 2016 (“Coverage Document”), the applicable Declarations of Coverage, and Endorsements constitute an enforceable contract as defined by TEX. LOC. GOV’T CODE § 271.151(2) (collectively “Agreement”).” CR 650. The City alleged the same cause of action for breach of contract, and once again, invoked its contractual right to appraisal pursuant to the Coverage Document, naming Don Staples as its appraiser—a competent and disinterested appraiser. CR 648-659.

The City responded to the Risk Pool’s amended plea to the jurisdiction on September 26, 2018, CR 660-709, And filed its *Reply in Support of its Motion to Compel Appraisal and Stay Proceedings Pending Appraisal* the same day. CR 800-818.

After a hearing on the issues, and having “considered *Plaintiff’s Motion to Compel Appraisal and Stay Proceedings Pending Appraisal* [] (filed 8/8/18)...the Response, and the Reply, as well as the pleadings on file” the trial court granted the City’s motion to compel appraisal and signed an *Order Granting Plaintiff’s Motion to Compel Appraisal and Stay Proceedings Pending Appraisal* on February 28, 2018. CR 913. Pursuant to the Order, on March 15, 2019, the City once again named Don Staples as its appraiser—a competent and disinterested appraiser. The Risk Pool again refused to participate in appraisal citing this appeal.

The Risk Pool filed its notice of appeal on March 5, 2019, of the trial court's *Order Granting Plaintiff's Motion to Compel Appraisal and Stay Proceedings Pending Appraisal* claiming the Order is a denial of its immunity from suit. CR 914. This appeal followed.

SUMMARY OF THE ARGUMENT

First, there is no appellate jurisdiction over the trial court's order granting the City's motion to compel appraisal and this appeal should be dismissed for lack of jurisdiction. The Risk Pool's factual arguments regarding the propriety of the trial court's decision to compel appraisal in this matter should be summarily rejected. The Risk Pool has sought interlocutory appeal under TEX. CIV. PRAC. & REM. CODE § 51.014(a)(8), which allows an interlocutory appeal when the court grants or denies a plea to the jurisdiction by a governmental unit. The trial court's Order, for which the Risk Pool seeks this appeal, compels the parties to participate in appraisal—the agreed to contractual adjudication procedure to determine the amount of loss. It is not, as the Risk Pool asserts, an order granting or denying a plea to the jurisdiction of the Risk Pool. As manifested in the plain language of TEX. CIV. PRAC. & REM. CODE § 51.014(a)(8), the Legislature intended to create an interlocutory appeal only when a trial court grants or denies a plea to the jurisdiction by a governmental unit. Because Appellate courts do not have jurisdiction over interlocutory appeals in the absence of a statutory provision permitting such an appeal, this Court lacks jurisdiction over this interlocutory appeal because there is no statutory provision permitting an appeal of a grant or denial of a motion to compel appraisal. The Risk Pool challenges the propriety of the trial court's decision to compel appraisal, and therefore, this Court

lacks jurisdiction to hear the Risk Pool's interlocutory appeal and this Court should dismiss the appeal for lack of jurisdiction.

Second, should the court find it has jurisdiction over this appeal, pursuant to the Local Government Contract Claims Act, TEX. LOC. GOV'T. CODE §§ 271.151, *et seq.*, (the "Act"), the Risk Pool waived its governmental immunity as to the City's claim for breach of contract when it entered into a contract with the City. In the City's *Second Amended Petition*, The City plead, the "Interlocal Agreement, along with the Property Coverage Document effective from October 1, 2015 to October 1, 2016 ("Coverage Document"), the applicable Declarations of Coverage, and Endorsements (collectively "Agreement")" comprise the contract at issue. As the Interlocal Agreement was "properly executed" in 1989 and subsequently re-executed each Fund Year, the Local Government Contract Claims Act (the "Act") waived the Risk Pool's governmental immunity as to the City's claim for breach of contract. The Risk Pool does not contest in this appeal that it waived immunity with regards to the City's breach of contract claim. The City's contract claim is the only claim for damages in this lawsuit and the City has clearly plead facts to establish waiver of the Risk Pool's immunity. The relief the City seeks for its breach of contract cause of action is expressly authorized by TEX. LOC. GOV'T CODE §

271.153. Section 271.153's limitation circumscribes the nature of damages available to the City in a final award, but it does not preclude appraisal as a means of

determining the amount of contractual damages. Therefore, since the relief the City seeks is authorized by Section 271.153, the Act waives the Risk Pool's immunity from suit, and the City has plead facts with evidentiary support that constitute a claim for which immunity is waived.

Third, the Act provides that contractual adjudication procedures such as the appraisal provision are to be enforced against the Risk Pool. The Act waives the Risk Pool's governmental immunity for the City's claim for breach of contract and the enforcement of the appraisal provision. Appraisal is a contractual procedure contained within the Coverage Document to determine the amount of loss. Seeking enforcement of the appraisal provision is not seeking specific performance of the contract as the Risk Pool asserts. No additional determination of the Risk Pool's waiver of immunity is required when assessing the enforcement of appraisal. Appraisal is not a separate claim or cause of action and is not a type of damage or remedy under the contract. Rather, appraisal is a procedure the parties have agreed will determine the amount of loss only. Appraisal is enforceable and favored under the law, and as the limitations on the Risk Pool's waiver of government immunity allow for its enforcement, the trial court maintained jurisdiction over the claim for breach of contract and correctly compelled appraisal.

Fourth, the Risk Pool improperly subsumes factual issues related to the City's motion to compel appraisal into jurisdictional arguments, incorrectly alleging that

the City did not comply with certain contractual provisions. The factual issues alleged by the Risk Pool are related to the motion to compel appraisal and should be summarily rejected as this Court lacks jurisdiction over interlocutory appeals not authorized by statutory provision permitting such an appeal. Additionally, even if the Court determines this appeal is appropriate under Section 51.014(a) of the Texas Civil Practices and Remedies Code, as alleged by the Risk Pool, the Risk Pool's arguments regarding proof of loss and notice provisions are beyond the scope of the jurisdictional waiver allowed by Section 51.014(a) of the Texas Civil Practices and Remedies Code, which provides that an appeal may be taken "from an interlocutory order of a district court, county court at law, or county court that ... grants or denies a plea to the jurisdiction by a governmental unit..." And further, are outside the scope of the Order compelling appraisal from which the Risk Pool brings this appeal. The Risk Pool's argument that the City did not comply with contractual procedures is incorrect, irrelevant, and immaterial as these factual allegations have no bearing on jurisdiction or immunity. On review, this Court is obligated to accept the allegations in the City's pleadings as true.

Fifth, conditions precedent have no effect on jurisdiction. The Risk Pool's argument that the City's failure to satisfy any alleged condition precedent precludes an immunity waiver has been consistently rejected. Furthermore, insofar as the Risk Pool argues that the City's failure to submit a proof of loss precludes the Risk Pool's

waiver of immunity for breach of contract or its contractual right to appraisal, the City argues as follows: (1) the proof of loss provision at issue never defines when the 60-day period for begins to run; (2) the Risk Pool waived the proof of loss requirement contained within the Coverage Document; and (3) the Risk Pool's own conduct in adjusting the City's claim reveals that the Risk Pool was never prejudiced by any purported failure to submit a proof of loss.

STANDARD OF REVIEW

Appellate courts do not have jurisdiction over interlocutory appeals in the absence of a statutory provision permitting such an appeal. *Undavia*, 468 S.W.3d at 632 (citing *CMH Homes v. Perez*, 340 S.W.3d 444, 447 (Tex. 2011)). Section 51.014 of the Civil Practice and Remedies Code does not permit the interlocutory appeal of an order granting a motion to compel appraisal. *See Hodge v. Kraft*, 490 S.W.3d at 516 (appellate court has no jurisdiction over interlocutory appeal of order denying motion to compel appraisal). The Risk Pool's factual arguments regarding the propriety of the trial court's decision to compel appraisal in this matter should be summarily rejected. And the Court should dismiss this appeal for lack of jurisdiction.

While the Risk Pool portrays this appeal as if it were brought from a denial of its plea to the jurisdiction, the appeal is brought only from the trial court's Order compelling appraisal. Therefore, review should not be based on the standard for review to a trial court's ruling on a plea to the jurisdiction.

“A plea to the jurisdiction is a dilatory plea, the purpose of which is to defeat a *cause of action* without regard to whether the claims asserted have merit.” *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 557 (Tex. 2000) (emphasis added). Such a plea challenges the trial court’s subject matter jurisdiction over a pleaded *cause of action*. See *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 225-26 (Tex. 2004). If a governmental unit is immune from a pending claim, the trial court lacks subject matter jurisdiction on that claim. *Rusk State Hosp. v. Black*, 392 S.W.3d 89, 95 (Tex. 2012). “Subject-Matter Jurisdiction is a question of law.” *Karl v. Brazos River Auth.*, 494 S.W.3d 168, 171 (Tex. App.—Eastland 2015, pet. denied). Courts apply a *de novo* standard of review to a trial court’s ruling on a plea to the jurisdiction. *Id.*

If the Court concludes that it has jurisdiction to review the Risk Pool’s jurisdictional arguments, which the City maintains it does not, a *de novo* standard would apply, as the applicability of Section 271.154 is a question of law. When a plea to the jurisdiction challenges the plaintiff’s pleadings, a court must examine the plaintiff’s intent, construe the pleadings liberally in favor of the plaintiff, and accept the allegations in the plaintiff’s pleadings as true to determine whether the plaintiff has alleged sufficient facts to affirmatively demonstrate the trial court’s jurisdiction to hear the case. A plaintiff must allege facts that affirmatively demonstrate the trial court’s jurisdiction.

RESPONSIVE ARGUMENT & AUTHORITIES

I. NO APPELLATE JURISDICTION OVER THE TRIAL COURT'S INTERLOCUTORY ORDER GRANTING THE CITY'S MOTION TO COMPEL APPRAISAL

Jurisdiction is a threshold matter for this Court to determine before considering merits of an appeal. *Bison Bldg. Materials, Ltd. v. Aldridge*, 422 S.W. 3d 582, 585 (Tex. 2012). Texas appellate courts, unless specifically authorized by statute, only have jurisdiction to review final judgments. *Id.*; TEX. CIV. PRAC. & REM. CODE § 51.014. The Texas Supreme Court strictly applies statutes granting interlocutory appeals “because they are a narrow exception to the general rule that interlocutory orders are not immediately appealable.” *CMH Homes v. Perez*, 340 S.W. 3d 444, 447 (Tex. 2011).

The Risk Pool has sought interlocutory appeal under TEX. CIV. PRAC. & REM. CODE § 51.014(a)(8). CR 914. However, Section 51.014(a)(8) of the Texas Civil Practice and Remedies Code does not allow for the interlocutory appeal of an order compelling appraisal. *See* TEX. CIV. PRAC. & REM. CODE § 51.014(a)(8) (allowing an interlocutory appeal when the court grants or denies a plea to the jurisdiction by a governmental unit). As manifested in the plain language of TEX. CIV. PRAC. & REM. CODE § 51.014(a)(8), the Legislature intended to create an interlocutory appeal only when a trial court grants or denies a plea to the jurisdiction by a governmental unit. Although the Risk Pool tries to guise the trial court's order granting appraisal as a

denial of its plea to the jurisdiction by improperly subsuming factual issues related to the City's motion to compel appraisal into jurisdictional questions, it is not. CR 913. Further, the Risk Pool failed to seek permissive appeal with the lower court.

This Court lacks jurisdiction over the trial court's Order granting the City's Motion to Compel Appraisal. *See Tex. Mun. League Intergovernmental Risk Pool v. City of Abilene*, 551 S.W.3d 337, 342 n. 3 (Tex. App.—Eastland 2018, pet. dismiss'd) (limiting analysis on appeal to whether the trial court erred in denying the Risk Pool's plea to the jurisdiction because the court did not have jurisdiction over an interlocutory order granting or denying a motion to compel appraisal). Appellate courts do not have jurisdiction over interlocutory appeals in the absence of a statutory provision permitting such an appeal. *Undavia v. Avant Med. Grp., P.A.*, 468 S.W.3d 629, 632 (Tex. App. 2015) (citing *CMH Homes v. Perez*, 340 S.W.3d 444, 447 (Tex. 2011)); *Sanchez v. Saghian*, No., 2009 Tex. App. LEXIS 7944 (Tex. App. -- Houston [1st Dist.] 2009, no pet.) ("It is fundamental error for an appellate court to assume jurisdiction over an interlocutory appeal when it is not expressly authorized by statute"). Section 51.014 of the Civil Practice and Remedies Code does not permit the interlocutory appeal of an order granting a motion to compel appraisal. *See Hodge v. Kraft*, 490 S.W.3d 510, 516 (Tex. App. 2015) (court has no jurisdiction over interlocutory appeal of order denying motion to compel appraisal).

While the Risk Pool attempts to frame this appeal as a denial of its assertion of governmental immunity, the trial court has not ruled on the Risk Pool's plea to the jurisdiction, and rather, the trial court's Order, from which this appeal is brought, only acts to grant the City's motion to compel the contracts agreed to adjudication procedure of appraisal—an interlocutory order for which the Legislature has not authorized interlocutory appeal. CR 913.

In a similar case in which the risk pool challenged the trial court's denial of its plea to the jurisdiction regarding a request to compel appraisal, the appellate court noted that it **did not have jurisdiction over an interlocutory order granting or denying a motion to compel appraisal**. *City of Abilene*, 551 S.W.3d at 342. Therefore, the court in *City of Abilene* limited its analysis to whether the trial court erred in denying the risk pool's plea to the jurisdiction, which unlike here, the trial court specifically denied. *See id.*

Whether strictly construed or otherwise, appellate jurisdiction cannot be created except by explicit language in a statute. Therefore, even if the statute was ambiguous with respect to the grant of an interlocutory appeal, which it is not, and even if the lack of such an appeal was inconsistent with the purpose of the statute, which it also is not, appellate jurisdiction cannot be created absent specific language unambiguously creating such an appeal.

Here, the trial court has only ordered the parties to participate in appraisal to determine the amount of loss and has not denied the Risk Pool's plea to the jurisdiction. Therefore, this Court does not have jurisdiction over this appeal regarding the trial court's interlocutory order compelling appraisal. The Court should dismiss this appeal for lack of jurisdiction.

This Court's analysis should conclude here without considering the Risk Pool's factual arguments regarding the propriety of the trial court's decision to compel appraisal given this Court lacks appellate jurisdiction over this appeal. However, even though the City maintains this Court lacks jurisdiction over this interlocutory appeal, the City will address the Risk Pool's arguments for the sake of completeness.

II. THE LOCAL GOVERNMENT CONTRACT CLAIMS ACT (THE "ACT") WAIVES THE RISK POOL'S IMMUNITY FOR THE CITY'S CLAIMS FOR BREACH OF CONTRACT AND SECTION 271.154 EXPRESSLY ENFORCES CONTRACTUAL ADJUDICATION PROCEDURES LIKE APPRAISAL

The Texas Interlocal Cooperation Act and the Texas Government Code expressly allow governmental entities to jointly establish self-insurance risk pools, whereby member entities pool their resources and contract with one another to collectively self-insure against insurable risks and hazards. *See* TEX. GOV'T CODE §2259.031(a) ("A government unit may establish a self-insurance fund to protect the governmental unit and its officers, employees, and agents from any insurable risk or

hazard...”); *see also* TEX. GOV’T CODE § 791.011(a) (“A local government may contract or agree with another local government...to perform governmental functions and services in accordance with this chapter...”). The Risk Pool is one such self-insurance fund.

As a government entity, the Risk Pool enjoys governmental immunity from suit to the extent that immunity has not been abrogated by the Legislature. *See* TEX. GOV’T CODE § 311.034; *see also* *Tex. Nat. Res. Conservation Comm’n v. IT-Davy*, 74 S.W.3d 849, 853 (Tex. 2002). The Act, however, clearly and unambiguously waives the Risk Pool’s immunity as to the City’s claims for breach of contract. *See Zachry Const. Corp. v. Port of Houston Auth. Of Harris Cty*, 449 S.W.3d 98, 106 (Tex. 2014). The Act provides, “[a] local governmental entity that is authorized by statute...to enter into a contract and that enters into a contract subject to this subchapter waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of contract.” TEX. LOC. GOV’T CODE §§ 271.152; 271.151(2). The relevant statutes at issue provide:

“Contract subject to this subchapter means”: a written contract stating the essential terms of the agreement for providing good or services to the local governmental entity that is properly executed on behalf of the local government entity...

TEX. LOC. GOV’T CODE § 271.151(2)(a) (emphasis added).

Waiver of Immunity to Suit for Certain Claims: A local government entity that is authorized by statute or the constitution to enter into a contract and that enters into a contract subject to this subchapter **waives**

sovereign immunity to suit for the purpose of adjudicating a claim for breach of contract, subject to the terms and conditions of this subchapter.

TEX. LOC. GOV'T CODE § 271.152 (emphasis added).

Limitations on Adjudication Awards:

(a) Except as provided by Subsection (c), the total amount of money awarded in an adjudication brought against a local governmental entity **for breach of a contract** subject to this subchapter is limited to the following:

(1) **A balance due and owed by the local government entity under the contract...**

(2) The amount owed for change orders...

(3) **Reasonable and necessary attorney's fees** that are equitable and just; and

(4) Interest as allowed by law...

(b) Damages awarded in an adjudication brought against a local government entity arising under a contract subject to this subchapter may not include:

(1) Consequential damages, except as...allowed under Subsection (a)(1);

(2) Exemplary damages; or

(3) Damages for unabsorbed home office overhead

(c) Actual damages, specific performance, or injunctive relief may be granted in an adjudication brought against a local governmental entity for breach of a contract described by Section 271.151(2)(B).

TEX. LOC. GOV'T CODE § 271.153 (emphasis added).

Contractual Adjudication Procedures Enforceable: Adjudication procedures, including requirements for serving notice or engaging in alternative dispute resolution proceedings before bringing suit or an arbitration proceeding, that are stated in the contract subject to this subchapter or that are established by the local government entity and expressly incorporated into the contract or incorporated by reference are enforceable except to the extent those procedures conflict with the terms of this subchapter.

TEX. LOC. GOV'T CODE § 271.154.

By enacting these laws, “the Legislature intended to loosen the immunity bar so ‘that all local governmental entities that have been given or are given the statutory authority to enter into contracts shall *not* be immune from suits arising from those contracts.’” *Ben Bolt-Palito Blanco Consol. Indep. Sch. Dist. v. Texas Political Subdivisions Prop./Cas. Joint Self-Ins. Fund*, 212 S.W.3d 320, 327 (Tex. 2006) (citing House Comm. On Civil Practices, Bill Analysis, Tex. H.B. 2039, 79th Leg., R.S. (2005)) (emphasis added). “There is no indication that the Legislature intended to exclude self-insurance fund agreements from enforcement.” *Id.* Further, while the mere act of self-insuring does not itself constitute a waiver of immunity, entering into a “written contract stating the essential terms of an agreement for providing goods or insurance services to a local governmental entity clearly does”—as is the case here. *Id.* (citing TEX. LOC. GOV’T CODE § 271.151(2)).

Here, the Risk Pool does not contest in this appeal that it waived immunity with regard to the City’s breach of contract claim. The City’s contract claim is the only claim for damages in this lawsuit and the City has clearly plead facts to establish waiver of the Risk Pool’s immunity. CR 648-659.

A. Section 572.153 of the Act Expressly Authorizes the Relief the City Seeks

The Risk Pool challenges the trial court’s Order compelling appraisal. In doing so, the Risk Pool alleges the “trial court lacked jurisdiction to compel it to comply with a contractual appraisal provision, unless the City first established that the

Legislature has expressly authorized a waiver of its immunity from such relief.” *See* Appellant’s Brief at p. 8. As has already been established the contract between the City and the Risk Pool qualifies as a contract that waives immunity to suit for the purposes of adjudicating a claim for breach of contract pursuant to the Act. TEX. LOC. GOV’T CODE § 271.152. Enforcement of the appraisal provision is not a separate cause of action and does not require a separate waiver analysis. The relief the City seeks for its breach of contract cause of action is expressly authorized by Section 572.153. TEX. LOC. GOV’T CODE § 271.153.

While the Risk Pool argues, “because Section 271.153 does not waive immunity from suit for the remedy the City seeks, the trial court lacked subject matter jurisdiction to consider or grant the relief the City seeks,” its argument misconstrues the Act and the relief sought by the City in its sole cause of action for breach of contract. *See* Appellant’s Brief at p. 14. “The purpose of section 271.153...is to limit the *amount due* by a governmental agency *on a contract* **once liability has been established**, not to foreclose the determination of whether liability exists.”² *Zachry*, 449 S.W.3d at 108-09 (internal citation omitted) (emphasis added). Section 271.153 only sets out limits for the total amount of money awarded in an

² Appraisal is a contractual process that determines the amount of loss due on a contract and does not determine liability.

adjudication brought against a local governmental entity for breach of contract. TEX. LOC. GOV'T CODE § 271.153; *Zachry*, 449 S.W.3d at 108-09.

The two applicable subsections of Section 271.153 provide for permissible and impermissible categories of damages under the Act. Section 271.153(a) provides categories of permissible damages for “the total amount of *money* awarded in an adjudication brought against a local governmental entity for breach of a contract.”

TEX. LOC. GOV'T CODE § 271.153(a) (emphasis added). And Section 271.153(b) provides for the categories of impermissible damages under the Act—like consequential and exemplary damages. TEX. LOC. GOV'T CODE § 271.153(b)(1)-(2). Section 271.153, titled “Limitations on Adjudication Awards,”

Subsection (a)

states “[e]xcept as provide by Subsection (c), the total amount of **money awarded** in an adjudication brought against a local governmental entity for **breach of contract** subject to this subchapter is limited to the following.” TEX. LOC. GOV'T CODE § 271.153(a) (emphasis added). An “adjudication” under the Act is defined in Section 271.151(1)—“‘Adjudication’ of a claim means the bringing of a civil suit and prosecution to final judgment in county or state court and includes the brining of an authorized arbitration proceeding and prosecution to final resolution in accordance with any mandatory procedures established in the contract...” TEX. LOC. GOV'T CODE § 271.151(1). Therefore, Section 271.153 limits the total amount of money that may be awarded in a civil suit against a local governmental entity for

breach of contract that is prosecuted to final judgment in county or state court to: (1) “the balance due and owed by the local governmental entity under the contract...” (2) “reasonable and necessary attorney’s fees that are equitable and just,” and (3) “interest as allowed by law, including interest as calculated under Chapter 2251, Government Code.” *See* TEX. LOC. GOV’T CODE § 271.151, .153(a)(1), (3)-(4). Section 271.153 limits the amount of “money” that may be awarded in an adjudication at final judgment. It does not limit adjudication procedures allowed by 271.154. Appraisal is not “adjudication” of a claim because appraisal is not a prosecution to final judgment, rather, it is a contractual adjudication procedure to determine the amount of loss only.

Further, the City’s breach of contract cause of action is the only claim for damages in this lawsuit, and the City’s claimed damages for breach of contract are those allowed under Section 271.153. *Id.*

The Texas Supreme Court’s decision in *Ben Bolt* established that Section 271.152 of the Act provides a clear and unambiguous waiver of the Risk Pool’s immunity from suit for breach of its insurance contract with the City. *See Ben Bolt*, 212 S.W.3d at 327. However, it wasn’t until the Court’s decision in *Zachry Constr. Corp. v. Port of Hous. Auth. off Harris Cty.* that it examined the interplay between Section 271.152 and the Act’s subsequent provisions—namely Sections 271.153 and 271.154. 449 S.W.3d 98 (Tex. 2014).

The Risk Pool relies heavily on the Court’s holding in *Zachry* for its contention that the trial court’s Order compelling appraisal is a judicially created waiver of immunity beyond the scope of any immunity waiver authorized by the Legislature, and to support its assertion that “Section 271.153 of the Act *limits* the scope of any waiver of immunity under the Act and *forecloses any waiver* of immunity for any relief not enumerated in Section 271.153.” *See* Appellant’s Brief at pp. 12, 14. This, however, misconstrues the holding in *Zachry* and the relief sought by the City.

In *Zachry*, the Court looked at the relationship between Section 271.152 and the other provisions of the Act. The Court clarified that the subsequent provisions of the Act set out the “terms and conditions” of the Act. *Zachry*, 449 S.W.3d at 106. The Court determined that Sections 271.153 and 271.154 “relate to the litigation and adjudication of a claim.” *Id.* at 107-08. Section 271.153 sets out “recovery limits,” while Section 271.154 “provides for enforcement of contractual adjudication procedures.” *Id.* at 107 (citing TEX. LOC. GOV’T CODE §§ 271.153; 271.154).

The City’s claimed damages are those recoverable under Section 271.153. “Subsections (a)(1) and (b) allow recovery of contract damages, including delay damages, but excluding other consequential damages.” *Zachry*, 449 S.W.3d at 113. “While the Legislature clearly intended to limit the recovery of consequential damages on contract claims permitted by the Act, nothing in the Act suggests that

the Legislature intended to create a unique and somehow limited standard for measuring direct damages for breach of contract.” *Id.* at 114.

The City has alleged sufficient facts to affirmatively demonstrate waiver of the Risk Pool’s immunity to suit for breach of contract under the Act. And the City’s breach of contract cause of action is the only claim for damages in this lawsuit.³ Section 271.153’s limitation circumscribes the nature of damages available to the City in a final award, but it does not preclude appraisal as a means of determining the amount of contractual damages. Therefore, since the relief the City seeks is authorized by Section 271.153, the Act waives the Risk Pool’s immunity from suit, and the City has plead facts with evidentiary support that constitute a claim for which immunity is waived. *See Zachry*, 449 S.W.3d at 109.

1. Appraisal is Not a Claim for Specific Performance

While Section 271.153 limits the scope of the Risk Pool’s immunity by defining the amount due to the City on the contract once liability has been established, it does not expressly limit enforcement of the Coverage Document’s appraisal provision—a contractual adjudication provision that establishes the amount owed under the contract. *See TEX. LOC. GOV’T CODE* § 271.153.

³ The City seeks damages owed under the contract. However, even claimed damages not expressly provided for in the contract are still allowed and the Act waives immunity for a contract claim even if those damages are not expressly provided for in the contract. *See Zachry*, 449 S.W.3d at 114.

The Risk Pool, however, asserts that Section 271.153 limits the scope of any waiver of the Risk Pool’s immunity and does not expressly allow for the invocation of the Coverage Document’s appraisal provision. *See* Appellant’s Brief at pp. 13-14. The Risk Pool incorrectly bases its contentions on the argument that compelling the appraisal process constitutes an impermissible attempt to obtain specific performance of the contract, a remedy for which is not expressly allowed by Section 271.153. *Id.* However, appraisal is simply a contractual adjudication provision that determines the amount of loss, not a claim for specific performance under the contract.

The Risk Pool asserts that Section 271.153(c)—which only permits specific performance in a narrow category of public contracts concerning the sale or delivery of reclaimed water—is the only place in the Act where the Legislature waived immunity “from claims for equitable relief and, particularly, specific performance claims.” *See* Appellant’s Brief at p. 16; TEX. LOC. GOV’T CODE § 271.153(c), 271.151(2)(B). But appraisal is a contractual adjudication procedure enforceable under Section 271.154 of the act, and not an independent claim for specific performance of the contract as the Risk Pool asserts. *See* TEX. LOC. GOV’T CODE § 271.154. The City does not seek specific performance of the contract. And further, the City has already shown that the damages it seeks for breach of contract are those allowed by Section 271.153.

The Risk Pool attempts to misleadingly characterize the Appraisal Provision as a separate cause of action for specific performance or injunctive relief, with a separate immunity determination. *See* Appellant's Brief at p. 15-16. However, contrary to the Risk Pool's attempt to characterize the appraisal procedure as the equitable remedy of specific performance, appraisal is simply a way to determine the amount of loss and is not a claim for specific performance of a contract.

The City seeks damages it is owed under the contract. CR 657. Appraisal is a contractual adjudication procedure not a claim for specific performance. Unlike a contractual adjudication procedure, specific performance is a substitute for monetary damages. *Stafford v. Southern Vanity Magazine, Inc.*, 231 S.W.3d 530 (Tex. App. - Dallas 2007, pet. denied). The City does not seek specific performance to substitute monetary damages. Rather, the City seeks only monetary damages in this lawsuit for breach of contract seeking the balance due and owed by the Risk Pool under the contract, and appraisal is merely the agreed upon procedure to determine the amount of the damages in dispute. The City seeks nothing outside of the contractual obligations made under the contract. CR 657.

Further, the City only seeks to enforce the contract as drafted. The City's appraisal demand is not a separate claim or injunctive relief. It is part of the dispute resolution process to determine the amount of contract damages permitted under Section 271.153.

In *City of Abilene*, the City of Abilene invoked its contractual right to appraisal pursuant to a contract similar to the one at issue. *City of Abilene*, 551 S.W.3d 337. The defendant in *City of Abilene* made nearly identical arguments as the Risk Pool makes here. Like the Risk Pool, the defendant in *City of Abilene* based its argument on *Zachry*. The court in *City of Abilene*, held that “the City’s request to invoke the appraisal provision does not constitute a request for the equitable remedy of specific performance.” *Id.* at 344. The court rejected any argument that appraisal may constitute specific performance as the Risk Pool would characterize it. *Id.* (“specific performance is not a separate cause of action but rather a substitute for inadequate monetary damages”). In contrast to claims for specific performance or other means of equitable relief, appraisal, the *City of Abilene* court noted, provides a procedural vehicle to determine the amount of loss. *Id.* (appraisal is a procedural vehicle provided by the insurance contract to determine the amount of loss and is not sought in equity as a substitute for inadequate monetary damages) (citing *Tamuno Ifiesimama v. Haile*, 522 S.W.3d 675, 685 (Tex. App.—Houston [1st Dist.] 2017, pet. denied)); see also *In re Universal Underwriters of Tex. Ins. Co.*, 345 S.W.3d 404, 405 (Tex. 2011) (appraisal clauses establish a procedure for the parties to an insurance contract to resolve disputes concerning the amount of a covered loss and provide a means to resolve disputes about the amount of loss for a covered claim).

The *City of Abilene* decision is reinforced by an examination of both the Act and Coverage Document language read in conjunction with longstanding legal precedent on appraisal. Section 271.152 clearly waives the Risk Pool’s “sovereign immunity to suit for the purpose of adjudicating a claim for breach of contract,” and as stated in *Zachry*, Section 271.153 merely sets out “recovery limits.” *See Zachry*, 449 S.W.3d at 107. Specifically, Section 271.153 merely states that money awarded in an adjudication against a local government entity for breach of contract subject to 271.152 is limited to “the balance due and owed by the local government entity under the contract.” *See* TEX. LOC. GOV’T CODE § 271.153(a)(1). The appraisal process, as laid out in the Coverage Document, is not at odds with either of these statutes. CR 820-895.

Thus, as Section 271.152 clearly waives the Risk Pool’s government immunity for the purposes of adjudicating a claim for breach of contract, and Section 271.153 provides for the damages the City seeks, and does not clearly limit the applicability of appraisal as a means of adjudication, the trial court correctly maintained jurisdiction over the City’s claim for enforcement of the Coverage Document’s adjudication procedure of appraisal.

B. Section 271.154 Of the Act Expressly Enforces Contractual Adjudication Procedures Like Appraisal

Although the Risk Pool has immunity from suit, it is clear that the Act generally waives the Risk Pool’s governmental immunity for the City’s cause of

action for breach of contract. *See* TEX. LOC. GOV'T CODE § 271.152; *Zachry*, 449 S.W.3d at 106 (the Act waives immunity from contract suits for local governmental entities). Further, the plain language of Section 271.152, as qualified by the terms and conditions in Sections 271.153 and 271.154, shows the Act specifically provides that contractual adjudication procedures, like appraisal, are to be enforced. *See* TEX. LOC. GOV'T CODE § 271.154. Appraisal is a contractual adjudication procedure that the parties agreed would determine the amount of damage available in a contract claim under the contract. CR 836-37. As the trial court has jurisdiction over the City's breach of contract claim and the contractual adjudication procedures asserted in the City's pleadings, the Risk Pool's argument that the trial court erred in ordering the Risk Pool to participate in appraisal is without merit.

Here, the City seeks to compel appraisal under the Coverage Document in order to determine the amount of loss the storm caused. CR 656-57, 836-37. Section 271.154 allows alternative dispute resolution procedures like appraisal. The Court of Appeals in *City of Abilene* held that the Act's plain and unambiguous language clearly waives the Risk Pool's immunity for enforcement of appraisal. *See City of Abilene*, 551 S.W.3d at 344. "[A]ppraisal constitutes an alternative dispute resolution procedure because it settles a dispute regarding the amount of damages by means other than litigation." *Id.* at 345 (the appraisal provision constitutes an adjudication procedure under Section 271.154). The *City of Abilene* court cited to

the line of legal precedent that favors enforcement of appraisal provisions in further support of its holding that the Act’s waiver of immunity for breach of contract, read in conjunction with the limitations in Section 271.153, clearly contemplates the lower court’s jurisdiction over enforcement of this provision.⁵ *See id.*

The Risk Pool incorrectly relies on *Zachry* to argue Section 271.153 precludes contract adjudication procedures like appraisal. *See* Appellant’s Brief at p. 14. In *Zachry*, the Court was primarily concerned with the recovery limits set out in Section 271.153, as the Court reinforced the proposition that the Act’s waiver of immunity does not “allow recovery beyond that permitted by Section 271.153.” *Zachry*, 449 S.W.3d at 108. Upon examining the Act in its entirety, the Court in *Zachry* enunciated that Section 271.152, as qualified by these subsequent Sections, still does not preclude other defenses or other *contractual procedures*.” *Id.* (emphasis added). However, the Risk Pool argues that Section 271.153 limits applicability of Appraisal—a *contractual procedure* provided for in the language of the Coverage Document. *See* Appellant’s Brief at p. 14.

The Court in *Zachry* characterized Section 271.154 as a “preservation of procedures” that “provides for enforcement of *contractual adjudication*

⁵ As noted by the Texas Supreme Court, “[a]ppraisal clauses, a common component of insurance contracts, spell out how parties will resolve disputes concerning a property’s value or the amount of a covered loss.” *In re Universal Underwriters*, 345 S.W.3d at 405. They provide a means to resolve disputes about the amount of loss for a covered claim. *Id.* at 406-07.

procedures.” Zachry, 449 S.W.3d at 107-108 (emphasis added). Under its express terms, Section 271.154 provides that adjudication procedures are enforceable under the Act unless they conflict with another provision. TEX. LOC. GOV’T CODE § 271.154. Here, the adjudication procedure of appraisal does not conflict with other provisions of the Act.

The Risk Pool, however, asserts that Section 271.154 does not waive its governmental immunity for an adjudication procedure permitted by the provision. *See Appellant’s Brief* at p. 19. The Risk Pool bases this contention on a statement from *Zachry* that the other sections in the Act constitute limitations on the waiver of immunity contained in Section 271.152. *See id.* at p. 20. Under this interpretation, the Risk Pool contends that Section 271.154 can only be used defensively by a governmental defendant to assert contractual procedural rights. *See City of Abilene*, 551 S.W.3d at 345. However, the Court in *Zachry* held that the “subject to” language in Section 271.152 does not preclude other defenses or other *contractual procedures* asserted by *either party*. *See Zachry*, 449 S.W.3d at 107-108.

In *City of Abilene*, the court held that the decision in *Zachry* did not consider Section 271.154 to be a limitation on the Act’s waiver of immunity. *See City of Abilene*, 551 S.W.3d at 345. Rather, the court found *Zachry’s* characterization of Section 271.154 as a “preservation” statute indicates that contractual enforcement of adjudication procedures, like the appraisal provision contained within the City’s

Coverage Document with the Risk Pool, remain enforceable under the Act. *Id.* at 345-46.

Should the Court accept the Risk Pool's argument regarding the Act's interpretation, then the City would have no way of enforcing its contractual right to appraisal even though it can maintain its breach of contract claim lawsuit. The Risk Pool, however, would be able to enforce this contractual provision at its own will, and the City would have no way of asking for a court's intervention on contractual adjudication measures. This deprives the City of a contractual right, and gives the Risk Pool all of the power under the contract; further, in rejecting the risk pool's plea, the *City of Abilene* court reasoned, "there is nothing in Section 271.154 indicating that it can only be invoked by a governmental defendant." *Id.* at 345-46.

Therefore, the Risk Pool effectively waived government immunity over the City's breach of contract claim and the Act allows for the enforcement of the contractual adjudication procedure—the appraisal provision—contained within the Coverage Document, as Section 271.154 preserves contractual adjudication procedures.

1. The Act's Clear Language Allows for Enforcement of Adjudication Procedures

The Risk Pool attempts to argue that the trial court held that Section 271.154 can itself provide a waiver of immunity, as opposed to a limitation on waiver. *See* Appellant's Brief at p. 20. However, not only did the lower court not make this

ruling—it only compelled the parties to participate in appraisal—the Risk Pool’s argument completely ignores its own cited case law that “Section 271.152, as qualified by this ‘subject to’ phrase also **does not preclude** other defenses [per §271.155] or **other contractual procedures [per §271.154].**” *Id.* (emphasis added).

Appraisal is precisely the type of “other contractual procedures” allowed by the Act. Appraisal is not a separate cause of action, rather, it is a contractual adjudication procedure. So, while the Risk Pool argues that the Act does not specifically waive immunity for appraisal, it is clear the Act waives immunity to the underlying breach of contract cause of action. Since appraisal is not its own cause of action, the Risk Pool’s argument is unavailing as appraisal does not necessitate a waiver analysis separate from the underlying breach of contract. As the Risk Pool’s immunity is waived by Section 271.152 for the City’s underlying breach of contract claim, the contractual adjudication procedure stated and agreed to in the Coverage Document is enforceable as it does not conflict with the terms of the subchapter. *See* TEX. LOC. GOV’T CODE §§ 271.152, .154.

If this Court agrees with the Risk Pool’s interpretation of Section 271.154—that contractual adjudication procedures not explicitly allowed by the “Limitations on Adjudication Awards” of Section 271.153 are not enforceable even if the adjudication procedure agreed to in the contract would determine the amount of loss (the amount of covered damages is the amount due and owed by the local

governmental entity under the contract, which Section 271.153(a)(1) specifically provides for)—then the Legislature allocated its limited resources during a session to write a specific provision that lacks any effect. *See Kerrville State Hosp. v. Fernandez*, 28 S.W.3d 1, 6 (Tex. 2000) (“The rule requiring a waiver of governmental immunity to be clear and unambiguous cannot be applied so rigidly that the almost certain intent of the Legislature is disregarded.”) (internal citation omitted). “We will not read statutory language to be pointless if it is reasonably susceptible to another construction. If a statute leaves no reasonable doubt of its purpose, we will not require perfect clarity, even in determining whether governmental immunity has been waived.” *Id.* (citing *City of LaPorte v. Barfield*, 898 S.W.2d 288, 292 (Tex. 1995) (superseded by statute on other grounds as stated in *Manbeck v. Austin Indep. Sch. Dist.*, 381 S.W.3d 528, 530 (Tex. 2012)).

To be given effect, the only reasonable interpretation of Section 271.154 is that the Legislature intended to allow the enforcement of contractual adjudication procedures, like appraisal. *See Kerrville State Hosp.*, 28 S.W.3d at 6.

Given that Section 271.154 conveys no intent to limit waiver of immunity under the Act, and rather, provides that contract adjudication procedures are enforceable, the Court should reject the Risk Pool’s arguments and enforce the trial court’s Order compelling appraisal.

The Risk Pool additionally relies on *Mission Consol. Indep. Sch. Dist. v. Ero Int'l, LLP*, No. 13-17-00489-CV, ___ S.W.3d ___, 2019 Tex. App. LEXIS 2014, 2019 WL 1187018 (Tex. Civ. App.—Corpus Christi, no pet. Mar. 14, 2019), to support its contention that this Court has rejected the *City of Abilene* analysis. See Appellant's Brief at p. 18. However, *Mission Consol.* is distinguishable from the case at hand. First, in *Mission Consol.*, the trial court denied the defendant's plea to the jurisdiction, which the trial court has not done here and is not at issue in this appeal. See *Mission Consol.*, 2019 WL 1187018, at *1. The contract at issue in *Mission Consol.* allowed the governmental unit to terminate the contract at any time, which it did in fact terminate. *Id.* at *1. Further, *Mission Consol.* dealt with an administrative complaint against the defendant which it denied based on provisions of CJ(LOCAL) requiring that complaints be filed within 90 calendar days from the date the grievant first knew of the decision or action giving rise to the complaint or grievance. *Id.* The defendant denied the complaint alleging that the plaintiff failed to comply with the contractual adjudication procedures contained in the contract. *Id.* ("Board policy CJ(LOCAL) states, 'Complaints that are not filed in accordance with the time lines shall be dismissed...']"). Those adjudication procedures allowed for the dismissal of the complaint if the complaint was not filed in accordance with the time lines. *Id.* Here the appraisal provision, unlike the adjudication procedure in *Mission Consol.*, contains no deadline for invocation and does not call for dismissal

of the breach of contract cause of action if appraisal is not invoked in accordance with the provision. CR 836-37.

In *Mission Consol.*, the only issue on appeal was whether the pleadings affirmatively established that the conditions of section 271.154 had not been met. *Id.* The court in *Mission Consol.*, found that the pleadings affirmatively established that the conditions of section 271.154 had not been met. *Id.* The plaintiff did not timely file its grievance and it did not follow the proper adjudication procedures for appealing its untimely grievance. *Id.* at *5. Therefore, the court concluded that immunity had not been waived because the plaintiff had not shown a “substantial claim that meets the Act’s conditions.” *Id.* This is not the case here as the City has shown that its breach of contract claim meets the Act’s conditions and further it seeks enforcement of a contractual adjudication procedure that does not limit its ability to bring a breach of contract lawsuit, but rather simply establishes the amount of loss. The City notified the Risk Pool of its disagreements with its initial investigation, provided documentation in support of its disagreement, and timely invoked appraisal. CR 22, 157, 656, 793-94, 900. Because Section 271.154 allows for the enforcement of adjudication procedures, it is not, as the Risk Pool argues, itself waiving the Risk Pool’s governmental immunity. Rather, Section 271.154 enforces adjudication procedures, like appraisal, where, as is the case here, the Risk Pool’s immunity is waived under 271.152 and the damages available to the City in a final

award are within the limitations of 271.153. Since the Act waives the Risk Pool's immunity from suit for the City's breach of contract claim and the City has plead facts with evidentiary support that constitute a claim for which immunity is waived, enforcement of the appraisal provision does not act as a waiver of immunity itself, but rather it is simply the enforcement of an adjudication procedure agreed to in the contract.

III. THE CONTRACT AND TEXAS LAW AUTHORIZE ENFORCEMENT OF THE APPRAISAL PROVISION

The Risk Pool asserts that the City cannot invoke the agreed upon appraisal provision in the contract because the "appraisal proceeding the City seeks to compel does not comply with the requirements as 'stated in the contract.'" *See* Appellant's Brief at p. 21. However, Section 271.154 specifically states adjudication procedures "stated in the contract" are enforceable, and the appraisal procedure compelled by the lower court is exactly the appraisal procedure agreed to in the contract—to determine of the amount of loss. *See* TEX. LOC. GOV'T CODE § 271.154; CR 836-37, 913.

The Risk Pool's argument that the City failed to satisfy conditions precedent to having a contractual right to appraisal is equally unpersuasive. *See* Appellant's Brief at p. 22. Specifically, the Risk Pool argues that the City has failed to "satisfy the following conditions precedent to having a contractual appraisal right: (a) the City never rendered a sworn proof of loss,[] (b) its written appraisal demand two

years after its alleged loss was untimely,[] and (c) it did not designate a disinterested appraiser.” *Id.* These arguments once again subsume factual issues related to the City’s request to compel appraisal into jurisdictional questions, incorrectly alleging that the City did not comply with certain contractual provisions, which the Risk Pool claims are conditions precedent. However, these factual allegations have no bearing on jurisdiction or immunity and on review this Court must accept the allegations in the City’s pleadings as true. The City will nonetheless address these factual allegations. The Risk Pool’s arguments fail for the following reasons.

A. Proof of Loss is Not a Condition Precedent to Appraisal

Submission of a proof of loss is not dispositive of the City’s claim for appraisal because: (1) the proof of loss provision at issue never defines when the 60-day period begins to run; (2) the Risk Pool waived the proof of loss requirement contained within the Coverage Document; and (3) the Risk Pool’s own conduct in adjusting the City’s claim reveals that the Risk Pool was never prejudiced by the City’s purported failure to submit a proof of loss.

The Risk Pool’s argument hinges on numerous alleged “conditions precedent” in the contract. However, the language in the contract does not identify any “conditions precedent” to suit or to invoking appraisal.

A condition precedent is defined as a condition either to the formation of the contract or to an obligation or a duty to perform arising under an existing agreement.

Hohenberg Bros. Co. v. George E. Gibbons & Co., 537 S.W.2d 1, 3 (Tex. 1976); *Ford v. City State Bank of Palacios*, 44 S.W.3d 121, 139 (Tex. App.-Corpus Christi 2001, no pet.); *see Basse Truck Line, Inc. v. First State Bank*, 949 S.W.2d 17, 21-22 (Tex. App.--San Antonio 1997, writ denied) (explaining that a condition precedent limits a claim because it requires an aggrieved party to first perform a specified act before commencing an action). The Texas Supreme Court explained in detail the elements necessary for a contract term to be elevated to the level of a condition precedent:

“A condition precedent is an event that must happen or be performed before a right can accrue to enforce an obligation.” *Centex Corp. v. Dalton*, 840 S.W.2d 952, 956 (Tex.1992) (citations omitted); *see also* Restatement (Second) of Contracts § 224 (1981) (“A condition is an event, not certain to occur, which must occur, unless its non-occurrence is excused, **before performance under a contract becomes due.**”); *id.* § 225 (noting the effects of the non-occurrence of a condition). A covenant, as distinguished from a condition precedent, is an agreement to act or refrain from acting in a certain way. *Reinert v. Lawson*, 113 S.W.2d 293, 294 (Tex. Civ. App.-Waco 1938, no writ). Breach of a covenant may give rise to a cause of action for damages, **but does not affect the enforceability of the remaining provisions of the contract unless the breach is a material or total breach.** E.g., *Hernandez v. Gulf Group Lloyds*, 875 S.W.2d 691, 692-94 (Tex. 1994); Restatement (Second) of Contracts §§ 236 cmt. a, 241, 242 cmt. a. Conversely, if an express condition is not satisfied, then the party whose performance is conditioned is excused from any obligation to perform. *See Dalton*, 840 S.W.2d at 956; Restatement (Second) of Contracts § 225.

Solar Applications Eng'g, Inc. v. T.A. Operating Corp., 327 S.W.3d 104, 108 (Tex. 2010) (emphasis added).

The Supreme Court reiterated that one of the hallmarks of conditions precedent is the presence of conditioning language. *See Criswell v. European Crossroads Shopping Ctr., Ltd.*, 792 S.W.2d 945, 948 (Tex. 1990). “In order to make performance specifically conditional, a term such as ‘if’, ‘provided that’, ‘on condition that’, or some similar phrase of conditional language must normally be included.” *Id.* at 948 (citing *Landscape Design v. Harold Thomas Excavating*, 604 S.W.2d 374, 377 (Tex. Civ. App.-Dallas 1980, writ ref’d n.r.e.)). “While there is no requirement that such phrases be utilized, their absence is probative of the parties’ intention that a promise be made, rather than a condition imposed.” *Id.* (citing *Hohenberg Bros. Co.*, 537 S.W.2d at 3).

Here, such conditional language is completely absent from the appraisal provision. CR 571-72.¹⁴ The clear terms and intent of the appraisal provision permit

¹⁴ The Coverage Document contains the following provisions regarding appraisal:

Appraisal: If the Member and the Fund fail to agree as to the amount of loss, each shall, upon the written demand of the Member or of the Fund made within 60 days after receipt of proof of loss by the Fund, select a competent and disinterested appraiser. The appraisers then shall select a competent and disinterested umpire. If they should fail for 15 days to agree upon such umpire, then upon request of the Member or of the Fund, such umpire shall be selected by a judge of a court of record in the county and state in which such appraisal is pending. Then, at a reasonable time and place, the appraisers shall appraise the loss, stating separately the value at the time of loss and the amount of loss. If the appraisers fail to agree, they shall submit their differences to the umpire. An award in writing by any two shall determine the amount of loss. The Member and the Fund shall each pay its chosen appraiser and shall bear equally the other expenses of the appraisal and of the umpire.

CR 671-72.

appraisal in circumstances as are apparent here—where there is a disagreement regarding the amount of loss. Because conditions precedent are disfavored under the law, courts should not find them in the absence of the expressed intent of the parties. *See Criswell*, 792 S.W.2d at 948. None of the Risk Pool’s claimed “conditions precedent” are supported by the terms of the contract. Additionally, these arguments, like the Risk Pool’s other arguments, are not appropriate for appeal.

1. Conditions Precedent Have No Bearing on Jurisdiction

The Risk Pool erroneously contends that the City’s purported failure to submit a sworn proof of loss is “fatal to the trial court’s conclusion that Section 271.154 waived the Risk Pool’s immunity, because the appraisal the court ordered was not the appraisal ‘stated in the contract.’” *See* Appellant’s Brief at p. 22. However, the appraisal process ordered by the court is exactly the appraisal process stated in the contract—to determine the amount of loss. The Risk Pool attempts to argue that because the City failed to satisfy alleged contractual conditions precedent, the appraisal process ordered by the court is not the appraisal process stated in the contract. *Id.* As discuss, the alleged conditions are not conditions precedent in the contract nor conditions precedent to appraisal. Under the Risk Pool’s theory, the City’s alleged failure to comply with any proof of loss requirement is a failure of a condition precedent and precludes *any* waiver of the Risk Pool’s immunity.

The City's satisfaction of the Coverage Document's proof of loss provision has no bearing on the waiver of immunity because compliance with a purported contract conditions has no effect on jurisdiction. This issue has been consistently addressed by a variety of Texas courts, and in *Santa Rosa Indep. Sch. Dist. V. Rigney Construction & Development, LLC*, 13-12-00627-CV, 2013 WL 2949566, at *4 (Tex. App—Corpus Christi June 13, 2013, pet. Denied) (mem. Op.). In *Santa Rosa*, the government entity similarly alleged that the plaintiff's failure to comply with the contractual grievance provision precluded any immunity waiver. *Id.* The defendant government entity argued that "compliance with the contract's adjudication procedures is a prerequisite to invoking the waiver in section 271.152." *Id.* The court rejected this argument:

Santa Rosa argues that there is no waiver of immunity because Rigney did not comply with the terms of the parties' contract. Yet, this would conflict with Section 271.152, which provides that a local governmental entity 'that enters into a contract subject to this subchapter waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of contract.' TEX. LOC. GOV'T CODE ANN. § 271.152. Furthermore, section 271.154 states that the contract's adjudication procedures are "enforceable except to the extent those procedures conflict with the terms of this subchapter." *See id.* § 271.154.

Based on the foregoing, we conclude that compliance with the contract adjudication procedures is not a prerequisite to invoking the waiver in section 271.152.

Id.

Insofar as the Risk Pool argues that the City's failure to satisfy any condition precedent precludes an immunity waiver, this argument has been consistently rejected. Therefore, whether the City complied with the Agreement's proof of loss provision has no bearing on the trial court's jurisdiction.

2. The Coverage Document's Proof of Loss Provision Does Not Require Compliance Within 60 Days of the Date of Loss

The Risk Pool argues for the City to have a contractual appraisal right, a proof of loss must be submitted within 60 days after the *date of loss*, which it claims is a condition precedent to appraisal. *See* Appellant's Brief at p. 22. A proof of loss is not a condition precedent to appraisal or suit. Contrary to the Risk Pool's allegations, the contract does not require a proof of loss 60 days from the "date of loss." *Id.* The Coverage Document does not contain *when* the 60 days begins to run. CR 571, 836.

In actuality, the Coverage Document reads:

Proof of Loss: It shall be necessary for the Member to render a signed and sworn proof of loss to the Fund or its appointed representative, within 60 days, stating the place, time, and cause of the loss, damage, or expense, the interest of the Member and of all others, the value of the property involved in the loss, and the amount of loss, damage, or expense.

CR 571, 836.

Therefore, the plain language shows that the Proof of Loss provision does not require that a proof of loss be submitted within *60 days of the date of loss*. *Id.* In fact, there is no language anywhere that speaks to when this 60 day period begins to run.

The “Notice of Loss” provision does not even require notice of a claim within 60 days of the date of loss. *Id.* Rather, the Notice of Loss provision provides “[a]s **soon as practicable** after any loss or damage occurring under this Agreement is known to the Member or its agent.” CR 571 (emphasis added). Thus, pursuant to the contract, the notice of loss could occur later than 60 days from the date of loss. Since the contract allows the notice of loss to be made more than 60 days after the date of loss, the Risk Pool’s argument that the proof of loss is required within the 60 days of the date of loss is unpersuasive because, in effect, its argument would require a member to submit a proof of loss prior to the member gaining knowledge of the loss and before the notice of the claim.

The Risk Pool has failed to show that any contractual provision is a condition precedent to suit much less appraisal. And further, it blatantly misrepresents the terms of the Coverage Document. As the contract is completely devoid of guidance as to when the “60 day” time period begins to run for the proof of loss, the Risk Pool’s arguments that the City failed to satisfy the proof of loss provision are entirely without merit.

3. The Risk Pool Waived the Proof of Loss Provision Contained in the Coverage Document

The Risk Pool argues that by failing to agree to its pre-filled out proof of loss and satisfy certain alleged conditions precedent, the City cannot invoke appraisal. *See* Appellant’s Brief at p. 22. This argument is also baseless, as Texas courts have

found that “[p]rovisions of an insurance policy requiring proof of loss and appraisal are inserted for the insurer’s benefit and may be waived by it.” *Int’l Serv. Ins. Co. v. Brodie*, 337 S.W.2d 414, 415 (Tex. Civ. App.—Fort Worth 1960, writ ref’d n.r.e).

The City’s pleading states, “all conditions precedent to recovery have been performed, *waived*, or have occurred.” CR 658.

Although the City maintains that a proof of loss is not a condition precedent to appraisal or suit, the Risk Pool nonetheless waived the alleged proof of loss requirement.

The provisions of an insurance policy regarding an insured’s duties after a loss, including submission of a proof of loss, are for the benefit of the insurance company and may be waived by it. *See Sanders v. Aetna Life Ins. Co.*, 205 S.W.2d 43, 44-45 (Tex. 1947). Further, “[i]t is a well-known principle...that the acts relied on as constituting waiver should be such as are reasonably calculated to make the assured believe that a compliance on his part with the stipulations providing the mode of proof of loss, and regulating the appraisalment of the damage done, is not desired, and that it would be of no effect if observed by him.” *Scottish Union & Nat’l Ins. Co. v. Clancy*, 18 S.W. 439, 441 (Tex. 1892). In the case at bar, the Risk Pool only provided the City with a proof of loss that had already been filled out by the Risk Pool with the information contained in its initial assessment of the claim. CR 898. Therefore, compliance with this previously-completed proof of loss would have

virtually no effect on the Risk Pool's adjustment of the City's claim, as the proof of loss contained all information that that the Risk Pool already knew. Consistent with the view in *Scottish Union*, the Risk Pool thereby waived the proof of loss requirement.

Further, the "Payment of Loss" provision states "[a]ll adjusted claims shall be due and payable no later than 60 days after presentation and acceptance of proofs of loss by the Fund." CR 572. However, the Risk Pool made an initial payment on the claim, albeit insufficient, on June 27, 2016, without requiring a proof of loss. CR 652, 897. At the same time of its payment, the Risk Pool sent the City a proof of loss that had already been filled out by the Risk Pool with the same information contained in its initial coverage decision. CR 989. It is clear that the proof of loss was to serve no purpose other than an attempt to get the City to agree with the Risk Pool's determination. By making a claim payment prior to even sending its prefilled-out proof of loss, it is clear the Risk Pool waived the proof of loss provision because the Risk Pool's payment of the claim without requiring the submission of a proof of loss would lead the City to reasonably conclude that the proof of loss was not necessary and had been waived by the Risk Pool.

Additionally, the Risk Pool was provided all information considered in a proof of loss prior to invoking appraisal. The Risk Pool was also put on notice of the disagreement as to the amount of loss by an email dated November 16, 2016. CR

900. And the City sent the Risk Pool a demand letter on December 8, 2017, which described all information that would be contained in a proof of loss. CR 793-94.

As it applies to the case at bar, by signing the proof of loss furnished to it, the City would have accepted that the damages to the properties insured by the Coverage Document only amounted to \$499,010.55, when in actuality the City learned that damages to the Property alone were in excess of \$7,000,000.00. CR 19, 153-54, 653, 793-94. Therefore, because the Risk Pool wanted the City to agree with the findings in its initial adjustment of the claim by swearing to the proof of loss, the Risk Pool effectively represented to the City that it was denying liability for any damages beyond the \$499,010.55 mentioned therein. The furnishing of this proof of loss unequivocally represented to the City that the Risk Pool had no intention of paying the claim because of some reason other than the City's failure to file the required proof of loss.¹⁵

Furthermore, beyond the June 27, 2016 letter, the City never again heard about the purported necessity of a proof of loss until it retained counsel for this claim. CR

¹⁵In examining the relationship between denial of liability and waiver of proof of loss, Texas courts have held that it is of no consequence "whether the insurance company informs the insured that the claim absolutely will not be paid or simply indicates that it is not planning to pay the claim unless some new development arises." *See N. River Ins. Co. v. Pomerantz*, 492 S.W.2d 312, 313 (Tex. Civ. App. 1973), *writ refused NRE* (July 3, 1973). "It is enough that the actions of the insurance company would reasonably lead the insured to believe that the company is not going to pay the claim because of some reason other than failure to file the required proof of loss." *Id.* at 314. Therefore, an unconditional denial of liability within the period allowed for filing a proof of loss is not necessary to constitute a waiver of the purported requirement.

798-799. At no time did the Risk Pool indicate that it necessitated this documentation in an effort to make its claim decision. Furthermore, the City had no way of knowing that the proof of loss submission would affect its rights pursuant to the Coverage Document, as the Risk Pool issued payment without a proof of loss—clear evidence of waiver. As such, and in light of the foregoing, if the Court is inclined to accept the Risk Pool’s claim that the proof of loss is due 60 days after the date of loss, which it is not, the Risk Pool still waived the proof of loss requirement and the City has substantially complied with the requirement.

4. The Risk Pool Failed to Show it was Prejudiced

Because the proof of loss is not a condition precedent and courts disfavor reading it as a condition precedent, the Risk Pool must prove that any noncompliance alleged was a material breach, which the Risk Pool has failed to do.

There is longstanding precedent in Texas that disfavors dismissal of a cause of action for failure to submit a proof of loss. In *Cunningham v. Allstate Vehicle and Property Insurance Company*, the insurance company moved to dismiss for lack of subject matter jurisdiction due to the insured’s failure to satisfy the proof of loss requirement. *Cunningham v. Allstate Vehicle & Prop. Ins. Co.*, No. 4:18-CV-4, 2018 WL 2020723, at *2 (E.D. Tex. May 1, 2018).¹⁶ There, the policy provided that the

¹⁶ While the Risk Pool asserts in this appeal that the proof of loss is a condition precedent to appraisal it did not assert it was a condition precedent to bringing suit.

insured may not file suit earlier than 91 days after the insured submits a signed and sworn proof of loss—something not included in the Coverage Document at issue. The *Cunningham* court noted that a sworn proof of loss used to be a condition precedent and the insured was required to show either, waiver or substantial compliance with the condition precedent. *Id.* However, the court observed that the Texas Supreme Court more recently “adopted a broad notice-prejudice rule.” *Id.* (citing *Polen v. Vehicle*, 4:16-CV-00842, 2017 WL 661836, at *3 (E.D. Tex. Feb. 17, 2017), reconsideration denied sub nom. *Polen v. Allstate Vehicle & Prop. Ins. Co.*, 4:16-CV-00842, 2017 WL 3671370 (E.D. Tex. June 30, 2017) (citing *PAJ, Inc. v. Hanover Inc.*, 243 S.W.3d 630, 635 (Tex. 2008)); accord *Presswood v. Allstate Vehicle & Prop. Ins. Co.*, 4:16-CV-00958, 2017 WL 7051074, at *3 (E.D. Tex. Aug. 11, 2017), report and recommendation adopted, 4:16-CV-00958, 2017 WL 3940525 (E.D. Tex. Sept. 7, 2017) (citations omitted); *Wilson v. Allstate Ins. Co.*, 4:16CV00970ALMCAN, 2017 WL 3671861, at *3 (E.D. Tex. Mar. 6, 2017), report and recommendation adopted, 4:16-CV-970, 2017 WL 1313854 (E.D. Tex. Apr. 10, 2017) (citations omitted); *Lopez v. Allstate Vehicle & Prop. Ins. Co.*, No. 4:17-CV-00103, 2017 WL 1294453, at *3 (E.D. Tex. Apr. 4, 2017) (citations omitted)). Under Texas’s notice-prejudice rule, the insurer must be able to show prejudice caused by the insured’s failure to comply with the contract regardless of whether the terms at issue is a covenant, condition precedent, exclusion or provision.

A showing of prejudice generally requires a showing that one of the recognized purposes has been impaired. *Id.* at *3. The purpose of requiring a sworn proof of loss is to enable the insurer to properly investigate the circumstances of the loss while the occurrence is fresh in the minds of witnesses, to prevent fraud, and to enable it to form an intelligent estimate of its rights and liabilities so that it may adequately prepare to defend any claim that may arise. *Id.* “However, an insurer must offer more than the mere fact that it cannot employ its normal procedures in investigating and evaluating the claim.” *Id.* (internal quotations omitted). The Court has previously noted that a defendant’s only loss was its expectation of a head-start to litigation via a proof of loss and this alone cannot establish prejudice for Risk Pool, and Risk Pool has not provided any other reasons that it was prejudiced. *See id.*

Texas courts have found that “[p]rovisions of an insurance policy requiring proof of loss and appraisal are inserted for the insurer’s benefit and may be waived by it.” *Brodie*, 337 S.W.2d at 415. The vast majority of Texas case law on appraisal involves instances where an insurance carrier attempts to invoke appraisal, not the consumer. *See In re Universal Underwriters*, 345 S.W.3d at 412; *see also In re Pub. Serv. Mut. Ins. Co.*, No. 03–13–00003–CV, 2013 WL 692441, at *7 (Tex. App.—Austin Feb. 21, 2013, orig. proceeding) (mem. op.); *see also In re GuideOne Mut. Ins. Co.*, No. 09-12-00581-CV, 2013 WL 257371, at *3 (Tex. App.—Beaumont Jan. 24, 2013). As

insurance companies almost universally favor the enforceability of appraisal provisions, there are few cases that speak to instances where a consumer is precluded from invoking appraisal based on its failure to submit a proof of loss or satisfy a condition precedent to appraisal.

In *In re State Farm Lloyds, Inc.*, however, a Texas Appellate Court addressed a *consumer's* argument that the insurance carrier had effectively waived its right to appraisal by failing to comply with provisions in the contract necessary for enforcement of appraisal—including submission of a sworn proof of loss. *See In re State Farm Lloyds, Inc.*, 170 S.W.3d 629, 634 (Tex. App.—El Paso 2005, orig. proceeding). The homeowner argued that the insurer had waived its right to an appraisal or was estopped from seeking an appraisal because its conduct was inconsistent with a demand for an appraisal. *See Id.* The court rejected the homeowner's arguments, as the homeowner had the burden to show that "State Farm's alleged failure to comply with these other policy provisions constituted an intentional relinquishment of its right to seek appraisal." *Id.* at 635.

Similarly, in the case at bar, the Risk Pool has offered no evidence that the City's alleged failure to comply with certain policy provisions relinquished its contractual right to appraisal. Therefore, the City's invocation of appraisal is authorized under the Coverage Document and Texas law.

Here, the Risk Pool has failed to offer any evidence that it was prejudiced by the City's alleged failure to submit a proof of loss pursuant to the Coverage Document. As stated, the purpose of the proof of loss is for the Risk Pool to investigate its rights and liabilities to adequately prepare to defend any claim, and even if the City did not submit a proof of loss, the Risk Pool was well aware the City was contesting the amount of loss owed for the claim. Further, despite knowing the purpose of the proof of loss was for the City to inform the Risk Pool of the amount of damages it alleged were caused by the Storm, the Risk Pool provided the City with a proof of loss that had *already been filled out by the Risk Pool* with the information contained in Risk Pool's initial assessment of the claim. CR 898. If the proof of loss was of any material significance to the Risk Pool's adjustment and determination of a final claim's decision, it would not have rendered a proof of loss with information it was already privy to.

So, while the Risk Pool claims that the City failed to comply with conditions precedent, it is clear not only are those provisions not conditions precedent, the Risk Pool waived any right to enforce the provision even if the court determines they are conditions precedent. Therefore, considering that the Risk Pool has not offered any evidence that the City's submission of the proof of loss would have changed its investigation of the claim, and the Risk Pool submitted a redundant proof of loss with information it already had available, there is clear evidence the City's alleged

failure to submit a proof of loss did not prejudice the Risk Pool in any way. As such, the Risk Pool's arguments are without merit, and the lower court's order compelling appraisal must stand.

5. Absent Waiver or Illegality the Appraisal Provision is Enforceable

Appraisal clauses in insurance policies are generally enforceable, absent illegality or waiver. *In re Allstate Vehicle & Prop. Ins. Co.*, 542 S.W.3d 815 (Tex. App. 2018). Where an insurance policy provides for an appraisal process, compliance is excused only if the party resisting the appraisal can show prejudice.

The Risk Pool does not argue the appraisal clause is illegal and specifically disclaims the argument that the City waived its right to invoke appraisal. *See* Appellant's Brief at p. 22.

Appraisal provides a means by which the Risk Pool and the City can arrive at a determination of the amount of loss pursuant to the Coverage Document, and Texas law strongly favors the enforcement of appraisal provisions. Texas courts have held, "[t]here is a strong public policy favoring enforcement of appraisal clauses and every reasonable presumption [will be] indulged to sustain an award." *See Garcia v. State Farm Lloyd's*, 514 S.W.3d 257, 272 (Tex. App.—San Antonio Dec. 14, 2016); *see also Sanchez v. Prop. & Cas., Ins. Co. of Hartford*, No. H-09-1736, 2010 U.S. Dist. LEXIS 6295, at *9 (S.D. Tex. Jan. 27, 2010) (citing *State Farm Lloyds v. Johnson*, 290 S.W.3d 886, 888-89 (Tex. 2009)). As recognized by the Texas Supreme Court,

appraisals provide a less expensive, more efficient alternative to litigation, as an appraisal clause “binds the parties to have the extent or amount of loss determined in a particular way.” *Johnson*, 290 S.W.3d at 895; *see also In re Universal Underwriters*, 345 S.W.3d at 407; *see also Lundstrum v. United Servs. Auto. Ass’n-CIC*, 192 S.W.3d 78, 87 (Tex. App.—Houston [14th Dist.] 2006, pet. denied) (“The effect of an appraisal provision is to estop one party from contesting the issue of damages in a suit on the insurance contract, leaving only the question of liability for the court”).

The purpose of appraisal is to “**decide the ‘amount of loss,’ not to construe the policy or decide whether the insurer should pay.**” *Johnson*, 290 S.W.3d at 890. “Unless the ‘amount of loss’ will never be needed...appraisals should generally go forward without preemptive intervention by the courts.” *Id.* at 895; *see also Dike v. Valley Forge Ins. Co.*, 797 F. Supp. 2d 777 (S.D. Tex. 2011); *In re Public Service Mutual Ins. Co.*, 2013 Tex. App. LEXIS 1757, at *7; *Boone v. Safeco Ins. Co.*, No. H- 09-1613, 2010 U.S. Dist. LEXIS 55281, at *20-21 (S.D. Tex. June 7, 2010). As the Texas Supreme Court held in *Johnson*, “[w]hen an insurer denies coverage, appraisers can still set the amount of loss in case the insurer turns out to be wrong. And when the parties disagree whether there has been any loss at all, nothing prevents the appraisers from finding \$0 if that is how much damage they find.” *Johnson*, 290 S.W.3d at 893 (emphasis added).

“While trial courts have some discretion as to the timing of an appraisal, they have no discretion to ignore a valid appraisal clause entirely.” *Johnson*, 290, S.W.3d at 888. Further, the Party invoking appraisal has a right to mandamus relief to enforce appraisal clauses. *In re Universal Underwriters*, 345 S.W.3d at 412 (“We conditionally grant the writ of mandamus and direct the trial court to grant Universal’s motion to compel appraisal.”); *In re Pub. Serv. Mut. Ins. Co.*, No. 2013 Tex. App. LEXIS 1757, at *7 (“Having concluded that the trial court’s denial of Relators’ motion to compel appraisal was an abuse of its discretion...we conditionally grant the petition for writ of mandamus as to the appraisal.”); *In re GuideOne Mut. Ins. Co.*, 2013 Tex. App. LEXIS 599, at *3 (“Because the appraisal is related to GuideOne’s defense, the trial court abused its discretion in denying its motion to compel.”) (citations omitted).

In the case at bar, the clear terms of the Coverage Document’s appraisal provision permit appraisal in circumstances as are apparent here—where there is a disagreement on the amount of loss. As such, the trial court correctly compelled participation in appraisal.

B. Demand for Appraisal was Timely

The Risk Pool alleges that the City’s demand for appraisal was untimely. *See* Appellant’s Brief at p. 23. The Risk Pool argues the appraisal clause has a 60 day deadline from proof of loss. *Id.* However, the Risk Pool fails to base its argument on

the terms of the contract. The Coverage Document contains no deadline to invoke appraisal. CR 836-837. Therefore, the Risk Pool argument that the appraisal demand was untimely is unsuccessful. As stated and admitted by the Risk Pool, to date the City has not waived its contractual right to appraisal. Furthermore, although the Coverage Document asserts that appraisal may be invoked within 60 days of the Risk Pool's receipt of a proof of loss, the proof of loss provision has no indication of a deadline to submit the proof of loss. CR 836-37. As previously discussed, the Risk Pool's argument that the proof of loss is due 60 days from the date of loss fails because the proof of loss identifies no point at which the 60 days runs from, and a notice of loss is not even required to be made within 60 days from the date of loss. *Id.* Additionally, to date the Risk Pool has never furnished the Risk Pool with a *blank* proof of loss, and further, the Risk Pool made an initial claim payment without requiring a proof of loss and the City has substantially complied with the proof of loss by providing the Risk Pool with the same information through estimates, a demand letter, and petition. Regardless, the submission of a proof of loss is still not dispositive of the City's request for appraisal, and the Coverage Document indicates no deadline to invoke appraisal. Therefore, the City timely invoked appraisal and the Risk Pool has failed to show otherwise.

C. The City Named a Disinterested Appraiser

Lastly, as to the Risk Pool’s contention regarding the City’s purported failure to name a disinterested appraiser, on August 6, 2018, the City filed its *First Amended Petition* and *Second Amended Petition* invoking its contractual right to appraisal pursuant to the Agreement and Coverage Document and named Don Staples as its appraiser—a competent and disinterested appraiser, which the Risk Pool does not contest. CR 656. Additionally, the trial court’s Order compelling appraisal ordered the parties to designate their appraisers, which the City did by letter dated March 19, 2019.

Therefore, in contrast to the authorities cited by the Risk Pool, the City is not insisting on having a disqualified person appraise the Property, and as such, the trial court’s Order compelling appraisal should be upheld. *See Del. Underwriters v. Brock*, 109 Tex. 425, 211 S.W. 779, 780-81 (Tex. 1919). Furthermore, as the initial naming of Mark Barber would not prejudice the Risk Pool in any way, the Risk Pool’s argument that the invocation is thereby disqualified for failure to name a disinterested appraiser in its initial invocation of appraisal is entirely without merit, and amounts to a baseless attempt to escape liability.¹⁷

CONCLUSION AND PRAYER

¹⁷ The City does not concede that Mark Barber was not a competent and disinterested appraiser. In an attempt to work with the Risk Pool, the City named Don Staples as its appraiser to avoid requesting the court for intervention.

The trial court correctly granted the City's motion to compel appraisal, and the trial court has not ruled on the Risk Pool's plea to the jurisdiction. Because a grant or denial of a motion to compel appraisal is not an appealable interlocutory order, this Court lacks jurisdiction over this appeal. Even if this Court finds the Risk Pool's appeal of the trial court's ruling granting the motion to compel appraisal is subject to interlocutory appeal, the Act specifically provides that contractual adjudication procedures are enforceable. The trial court appropriately granted the City's motion to compel appraisal. The Risk Pool has not demonstrated reversible error on the record before this Court. The City prays that this Court will affirm the trial court's Order compelling appraisal, and all other relief to which the City may be justly entitled.

Respectfully submitted,

PHIPPS DEACON PURNELL, PLLC

THE PHIPPS
102 9th Street
San Antonio, Texas 78215
Telephone: (210) 340-9877
Telecopier: (210) 340-9887
Email: mhipps@phippsdeaconpurnell.com
bfisher@phippsdeaconpurnell.com
vcantu@phippsdeaconpurnell.com

BY: /s/ Martin J. Phipps
MARTIN J. PHIPPS
State Bar No. 00791444
BLAYNE FISHER
State Bar No. 24090099

VANESSA CANTU
State Bar No. 24096630

ATTORNEYS FOR APPELLEE

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of May 2019, pursuant to TRAP 9.5, I electronically filed the foregoing with the Clerk of Court using an Electronic Filing Service Provider and have served such filing on the following via the method indicated:

VIA ELECTRONIC FILING:

Barry Adams
Jack W. Higdon
BLANK ROME LLP
717 Texas Avenue, Suite 1400
Houston, Texas 77002
(713) 228-6601
(713) 228-6605 (Fax)
babrams@blankrome.com
jhigdon@blankrome.com

BY: /s/ Martin J. Phipps
MARTIN J. PHIPPS

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this document contains 14,944 words in the portion of the document subject to the word limits of the Texas Rules of Appellate Procedure 9.4(i) as measured by the undersigned counsel's word-processing software.

BY: /s/ Martin J. Phipps
MARTIN J. PHIPPS



Workers' Compensation • Property • Uability

June 27, 2016

Luz Galindo
City of
Hidalgo
704 E Texano Dr
Hidalgo, TX 78557-
4104

RE: Fund Member : Hidalgo
Date of loss : June 01, 2016
TMURP Claim : PR0000000037325
No

Dear Luz Galindo:

Attached please find TMURP's check in the amount of \$283,666.81 (\$286,166.81 less \$2,500.00 deductible), as the Initial Actual Cash Value payment for the above-referenced claim. Please sign and return the enclosed Proof of Loss in the envelope provided.

City of Hidalgo has Real and Personal Property Coverage with the Replacement Cost Option. Under the coverage provisions, an initial Actual Cash Value payment is made until the loss or damaged property is actually repaired or replaced. To file a claim for the recoverable depreciation, the repairs or replacements should be made as soon as reasonably possible after the loss or within two years from the date of occurrence. Please provide a timeline summarizing the anticipated dates that the repairs or replacements are scheduled to begin and the anticipated completion date. Once the repairs are completed and the cost exceeds the Actual Cash Value payment and deductible, the final receipts should be submitted directly to TMURP for review of any supplemental payments due under the Replacement Cost Coverage.

Should you have any questions or concerns, please feel free to contact

me. Sincerely,

Patti Tabor
Senior Claims Specialist
Texas Municipal League Intergovernmental Risk Pool

Encls: Check, Copy of Repair Estimate, Proof of Loss, Return Envelope

Texas Municipal League Intergovernmental Risk Pool

1821 Rutherford Lane, First Floor • Austin, Texas 78754 • (512)491-2300 • (800)537-6655 Texas Only
P.O. Box 149194 • Austin, Texas 78714-9194

0469



PHIPPS ANDERSON DEACON LLP

Martin J. Phipps
mjphipp@phipp-anderson.com
(2 LO) 340-9877

December 8 2017

Patti Tabor PTabor@tmlir.com
Senior Claims Specialist
Texas Municipal League Intergovernmental Risk
Pool 1821 Ruthelford Ln, #100
Austin, Texas 78754

RE: Insured: The City of Hidalgo (State Farm Arena)
Member 9559
FD: Address 2600 N. 10th St., Hidalgo, TX
: Claim No 78557PR 37325
..

Date of Loss: June 1, 2016

Dear Ms. Tabor,

The City of Hidalgo has retained me and my firm as their counsel in connection with the above referenced claim made pursuant to its policy with Texas Municipal League [Intergovernmental Risk Pool ("TMLIRP"). Most recently, you had been communicating with Ricardo Perez, Hidalgo's City Attorney, and Mary Alvarez, the City of Hidalgo's Risk Management Director. Please refer all future communication of any kind to me and my office regarding this claim.

As you know, on June 1, 2016, a brutal hail and windstorm struck Hidalgo, Texas, causing severe damages to homes and businesses in the area including the State Farm Arena located at 2600 N. 10th St., Hidalgo, Texas (the "Arena"). As a result, Luz Galindo, an employee of the City of Hidalgo, submitted a Claim Notice to TMLIRP against its Policy for storm damages sustained to the Arena's roof, exterior and interior. Shortly thereafter, TMLIRP assigned The Littleton Group to inspect the Property for damage arising from the June 1, 2016 storm. On June 12, 2016, the Littleton Group produced a report of its findings on the Arena's covered damages to TMLIRP. The Littleton's Group's report confirmed storm covered damages to various sections of the Arena's roof, exterior, and interior.

After this inspection, The Littleton Group determined the total replacement cost value of the damages to the Property sustained as a result of the June 1 2016 storm to be \$499,010.55. As a result, on June 27, 2016 you sent a letter addressed to Ms. Galindo, along with a check for 283,666.81. Both you and/or TMURP contend that this check constitutes an initial actual cash value payment for the Arena's damages after withholding \$29,675.10 for depreciation, \$41,584.32 for overhead, \$41,584.32 for profit, and the Policy's -mandated \$2,500 deductible.

THE PHIPPS | 1029½ Street | San Antonio, Texas 78215 | P 210.340.9877 | F 210.340.9899
www.phippsandersondeacon.com

0474

Since issuing this payment, Ms. Alvarez and Mr. Perez have been corresponding with various representatives of TMLTRP in regard to this claim. Most recently, in September of 2017, Mr. Perez informed TMLJRP that the City of Hidalgo would be investigating the loss and providing you with an estimate that they feel more accurately assesses the damages to the Arena caused by the above referenced weather event. Since that time, the City of Hidalgo has retained the services of Phipps Anderson Deacon, LLP, who in turn hired Buffalo Springs Property Services

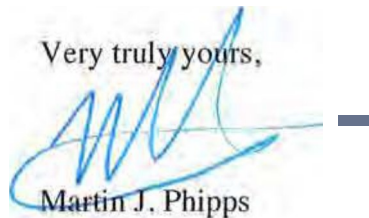
'BSPS') to produce an estimate of the Arena's damages.

Based on this assessment, the City of Hidalgo feels that the covered damages to the Arena far exceeded those listed in the initial estimate prepared by The Littleton Group. Attached to this letter you will find the complete BSPS estimate, **wherein the City of Hidalgo contends that the replacement cost value of the damages to the Arena sustained as a result of the June 1, 2016 storm stands at \$7,417,072.87.** This amount stands in stark contrast to the initial estimate and payment issued by TMLJRP. However, the City of Hidalgo feels that in light of the severity of the June 1, 2016 storm and the extent of the damages to the Arena's roof, exterior, and interior, that this amount is both fair and reasonable.

This letter is being sent to you in good faith and for the purpose of notifying you and/or TMLJRP of your insured's claims. In its current condition, the City of Hidalgo is concerned that the Arena's damages may interrupt business in one of its most lucrative buildings. In an effort to curb any potential loss of revenue, it is the City of Hidalgo's hope that TMLJRP issues this full and final payment as soon as possible.

It is the City's position that it is owed these benefits pursuant to its policy. However should TMLJRP disagree with any of these findings please feel free to contact me or my associate Ryan Delgado, with any potential concern.

I look forward to your prompt reply.

Very truly yours,

Martin J. Phipps

MJP/RD/iw



NUMBER 13-19-00096-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

**TEXAS MUNICIPAL LEAGUE
INTERGOVERNMENTAL RISK POOL,**

Appellant,

v.

CITY OF HIDALGO,

Appellee.

**On appeal from the 139th District Court
of Hidalgo County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Contreras and Justices Hinojosa and Tijerina
Memorandum Opinion by Chief Justice Contreras**

We issued our memorandum opinion and judgment in this matter on January 9, 2020. Appellant Texas Municipal League Intergovernmental Risk Pool (the Risk Pool) has filed a motion for rehearing. Pursuant to our request, appellee the City of Hidalgo (the City) filed a response to the motion. We deny the motion for rehearing but withdraw our

earlier memorandum opinion and judgment and substitute the following memorandum opinion and its accompanying judgment in their place.

The Risk Pool brings this interlocutory appeal of the trial court's order granting a motion filed by the City to compel the parties to participate in a contractual appraisal proceeding. The Risk Pool contends by one issue that the order constituted an implicit and erroneous denial of its plea to the jurisdiction. We affirm.

I. BACKGROUND

The Risk Pool is a governmental self-insurance fund whose members include the City and nearly 2,800 other Texas political subdivisions. See TEX. GOV'T CODE ANN. § 2259.031. The City became a member of the Risk Pool by virtue of a "Liability/Property Interlocal Agreement" (the Agreement) signed in 1989. The Agreement stated in part:

In consideration of the execution of this Agreement by and between the Pool Member and the Fund¹] and of the contributions of the Pool Member, the coverage elected by the Pool Member is afforded according to the terms of the TML Liability Self-Insurance Plan and the TML Property Self-Insurance Plan. The affirmative declaration of contributions and limits of liability in the Declarations of Coverage and Endorsements determines the applicability of the Self-Insurance Plans.

Each Pool Member agrees to adopt and accept the coverages, provisions, terms, conditions, exclusions and limitations as further provided for in the TML Self-Insurance Plans or as specifically modified by the Pool Member's Declarations of Coverage.

This Interlocal Agreement shall be construed to incorporate the TML Liability Self-Insurance Plan and/or the TML Property Self Insurance Plan, Declarations of Coverage, and Endorsements and addenda whether or not physically attached hereto.

The Agreement defines "TML Municipal Property Self-Insurance Plan" as "[t]he property

¹ The "Fund" refers to the Texas Municipal League Joint Self-Insurance Fund, which was later combined with other funds and renamed the Risk Pool. *Who We Are*, TEX. MUN. LEAGUE INTERGOV'TAL RISK POOL, <https://www.tmlrp.org/who-we-are/> (last visited Mar. 10, 2020).

coverage document that sets forth in exact detail the coverages provided as part of the overall plan."

Here, the terms and conditions of the coverage provided by the Risk Pool to the City are set forth in a "Property Coverage Document" (the Coverage Document) dated October 1, 2014. The Coverage Document provides in relevant part:

IV. IN THE CASE OF LOSS

....

D. PROOF OF LOSS

It shall be necessary for the Member to render a signed and sworn proof of loss to the Fund or its appointed representative, within 60 days, stating the place, time, and cause of the loss, damage, or expense, the interest of the Member and of all others, the value of the property involved in the loss, and the amount of loss, damage, or expense.

E. APPRAISAL

If the Member and the Fund fail to agree as to the amount of loss, each shall, upon the written demand either of the Member or of the Fund made within 60 days after receipt of proof of loss by the Fund, select a competent and disinterested appraiser. The appraisers then shall select a competent and disinterested umpire. If they should fail for 15 days to agree upon such umpire, then upon request of the Member or of the Fund, such umpire shall be selected by a judge of a court of record in the county and state in which such appraisal is pending. Then, at a reasonable time and place, the appraisers shall appraise the loss, stating separately the value at the time of loss and the amount of loss. If the appraisers fail to agree, they shall submit their differences to the umpire. An award in writing by any two shall determine the amount of loss. The Member and the Fund shall each pay its chosen appraiser and shall bear equally the other expenses of the appraisal and of the umpire.

F. LOSS PAYABLE

Loss, if any, shall be adjusted with and payable to the Member, whose receipt shall constitute a release in full of all liability under this Agreement with respect to such loss.

(Emphasis added.)

In 2016, a storm damaged State Farm Arena, which is owned by the City and covered by its Risk Pool policy. The City filed a claim with the Risk Pool for roof and structural damage caused by wind, hail, and water. According to the City, the arena sustained over \$7 million in damages, but after adjustment, the Risk Pool paid out only \$283,666.81 in benefits. In May of 2018, the City filed suit against the Risk Pool alleging that it breached the policy by wrongfully and negligently denying part of its claim. In particular, the City alleged that the Risk Pool failed to perform a thorough investigation of the damage as required by the policy. The City's petition contained a section entitled "Equitable Relief: Demand for Appraisal" which stated: "Pursuant to the Coverage Document and Tex. Local Gov't Code § 271.154, [the City] hereby demands Appraisal, and names the following appraiser: Mark Barber" In the alternative, the City requested damages, interest, and attorney's fees.

The Risk Pool answered the suit and filed a partial plea to the jurisdiction, contending that its governmental immunity to suit has not been waived with respect to the City's claims for equitable relief or attorney's fees. On August 6, 2018, the City filed a response to the partial plea to the jurisdiction as well as an amended petition, both contending that the Risk Pool's immunity was waived by Texas Local Government Code § 271.152 with respect to all of the City's claims. The amended petition stated: "Plaintiff names the following appraiser [sic] competent and disinterested appraiser: Don Staples "

Two days later, the City filed a "Motion to Compel Appraisal and Stay Proceedings Pending Appraisal" arguing that "completion of the appraisal process may preclude the need for further litigation" and that "judicial efficiency would be furthered by appraisal and

staying the litigation pending its completion." The City noted in its motion that the Risk Pool had "rejected the City's invocation of appraisal and refused to participate in the appraisal process" prior to the City's initial filing of suit. In response, the Risk Pool filed an "Objection and Plea to the Jurisdiction" arguing that: (1) local government code chapter 271 does not waive immunity to suits seeking equitable relief or specific performance; (2) chapter 271 does not waive immunity as to the City's breach of contract claim because the Coverage Document was not "executed" by the Risk Pool; and (3) even if immunity was waived, the City is not entitled to appraisal because it did not timely provide proof of loss or name a disinterested appraiser as required by the policy. The Risk Pool concurrently filed a separate amended plea to the jurisdiction reiterating the first two arguments. The City filed a response to the amended plea to the jurisdiction, and the Risk Pool filed a reply to the response.

On September 28, 2018, the trial court rendered an order granting the City's motion to compel appraisal, ordering the Risk Pool to designate its appraiser within seven days, and staying all further proceedings in the trial court until completion of the appraisal. This interlocutory appeal followed.

II. APPELLATE JURISDICTION

The City argues that we lack jurisdiction over the appeal because the trial court never explicitly ruled on the Risk Pool's pleas to the jurisdiction. We address this issue first.

Unless an interlocutory appeal is authorized by statute, our jurisdiction extends only to the review of final judgments. *Bison Bldg. Materials, Ltd. v. Aldridge*, 422 S.W.3d 582, 585 (Tex. 2012). We strictly apply statutes granting interlocutory appeals because they are a narrow exception to the general rule that interlocutory orders are not

immediately appealable. *CMH Homes v. Perez*, 340 S.W.3d 444, 447 (Tex. 2011).

Under the civil practice and remedies code, a party may appeal an interlocutory order that "grants or denies a plea to the jurisdiction by a governmental unit." TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(8).² Here, the trial court granted the City's motion to compel appraisal but did not explicitly rule on the Risk Pool's pleas to the jurisdiction. The City points out that there is no statute allowing the interlocutory appeal of an order compelling appraisal.

The City directs us to a very similar case involving appraisal under the same Coverage Document. See *Tex. Mun. League Intergov'tal Risk Pool v. City of Abilene*, 551 S.W.3d 337 (Tex. App.—Eastland 2018, pet. dismiss'd). There, the City of Abilene filed a wind and hailstorm claim with the Risk Pool and later sued, alleging that the Risk Pool failed to properly investigate and evaluate the damage. *Id.* at 341. As here, the City of Abilene moved to compel appraisal under the policy, and the Risk Pool filed a plea to the jurisdiction. *Id.* The trial court denied the plea to the jurisdiction and granted the motion to compel appraisal, and the Risk Pool appealed. *Id.* Prior to its discussion of the issues in the appeal, the Eastland court of appeals noted that, because there is no statutory authorization for an interlocutory appeal of an order compelling appraisal, its analysis would be limited to whether the trial court erred in denying the plea to the jurisdiction. *Id.* at 342 n.4.

Unlike in the *City of Abilene* case, the trial court here did not explicitly deny the City's plea to the jurisdiction. Nevertheless, as the Risk Pool notes, the Texas Supreme Court has held that a trial court's interlocutory ruling on the merits of a case operates as

² The Risk Pool is a governmental unit. See *Tex. Mun. League Intergov'tal Risk Pool v. City of Abilene*, 551 S.W.3d 337, 340 (Tex. App.—Eastland 2018, pet. dismiss'd).

an implicit denial of a plea to the jurisdiction and is subject to appeal under § 51.014(a)(8). *Thomas v. Long*, 207 S.W.3d 334, 339-40 (Tex. 2006) ("Because a trial court cannot reach the merits of a case without subject matter jurisdiction, a trial court that rules on the merits of an issue without explicitly rejecting an asserted jurisdictional attack has implicitly denied the jurisdictional challenge."). In *Thomas*, the trial court reached the merits by rendering a partial judgment stating that the plaintiff was entitled to be reinstated in his employment, though it did not explicitly rule on the defendant's jurisdictional plea. *Id.* at 337. Similarly, the trial court in this case reached the merits of the City's claims by ordering the parties to participate in appraisal pursuant to the terms of the Coverage Document.³ Therefore, the trial court implicitly denied the Risk Pool's plea to the jurisdiction, and we have jurisdiction over the appeal.⁴ See TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(8).

II. SUBJECT MATTER JURISDICTION

A. Standard of Review

A plea to the jurisdiction is a dilatory plea used to defeat a cause of action without regard to whether the asserted claims have merit. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). The plea challenges the trial court's subject matter jurisdiction. *Id.*; see *Tex. Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999).

The plaintiff has the initial burden to plead facts affirmatively showing that the trial court has jurisdiction. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993). Whether a trial court has subject matter jurisdiction and whether the pleader

³ As noted, an order compelling appraisal was the City's primary requested relief in its petition. The City requested damages only "[i]n the alternative" to the equitable relief claim.

⁴ As in *City of Abilene*, we lack jurisdiction to consider the merits of the order compelling appraisal because there is no statute authorizing an interlocutory appeal of such an order. See *id.* at 342 n.4. Our analysis is limited to the question of whether the trial court had subject matter jurisdiction over the case generally. See *id.*

has alleged facts that affirmatively demonstrate the trial court's subject matter jurisdiction are questions of law that we review de novo. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). We construe the pleadings liberally in favor of the pleader, look to the pleader's intent, and accept as true the factual allegations in the pleadings. See *id.* at 226, 228.

When a plea to the jurisdiction challenges the existence of jurisdictional facts, we consider relevant evidence submitted by the parties when necessary to resolve the jurisdictional issues raised, even when the evidence implicates the merits of the cause of action. *Id.* at 227; *Blue*, 34 S.W.3d at 555. In considering the evidence, we take as true all evidence favorable to the non-movant and indulge every reasonable inference and resolve any doubts in the non-movant's favor. *Miranda*, 133 S.W.3d at 227-28.

B. Applicable Law

1. Sovereign Immunity

The doctrine of sovereign immunity holds that "no state can be sued in her own courts without her consent, and then only in the manner indicated by that consent." *Tooke v. City of Mexia*, 197 S.W.3d 325, 331 (Tex. 2006) (citing *Hosner v. DeYoung*, 1 Tex. 764, 769 (1847)); see *Nevada v. Hall*, 440 U.S. 410, 414 (1979) ("The immunity of a truly independent sovereign from suit in its own courts has been enjoyed as a matter of absolute right for centuries. Only the sovereign's own consent could qualify the absolute character of that immunity.") Thus, unless waived by the legislature, sovereign immunity deprives a Texas court of subject matter jurisdiction over any lawsuit against a Texas governmental unit such as the Risk Pool. *Tex. Parks & Wildlife Dep't v. Sawyer Tr.*, 354 S.W.3d 384, 388 (Tex. 2011).

For the legislature to validly waive sovereign immunity, it must consent to suit by

"clear and unambiguous" statutory language. TEX. GOV'T CODE ANN. § 311.034; *Tooke*, 197 S.W.3d at 332-33. Any ambiguity in a statute must be resolved in favor of retaining immunity. *Tooke*, 197 S.W.3d at 330, 342; see *Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 697 (Tex. 2003).

2. Chapter 271

Chapter 271, subchapter I of the Texas Local Government Code (the Local Government Contract Claims Act, or the Act) clearly and unambiguously waives sovereign immunity for certain contract claims against local governmental entities. See TEX. LOC. GOV'T CODE ANN. § 271.151-.160. In particular, § 271.152 provides that a local governmental entity "that is authorized by statute or the constitution to enter into a contract and that enters into a contract subject to this subchapter waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of the contract, subject to the terms and conditions of this subchapter." *Id.* § 271.152. As relevant here, a "contract subject to this subchapter" is "a written contract stating the essential terms of the agreement for providing goods or services to the local governmental entity that is properly executed on behalf of the local governmental entity." *Id.* § 271.151(2)(A).

In a suit against a local governmental entity under chapter 271, "the total amount of money" the claimant may recover "is limited to the following":

- (1) the balance due and owed by the local governmental entity under the contract as it may have been amended, including any amount owed as compensation for the increased cost to perform the work as a direct result of owner-caused delays or acceleration;
- (2) the amount owed for change orders or additional work the contractor is directed to perform by a local governmental entity in connection with the contract;
- (3) reasonable and necessary attorney's fees that are equitable and just; and

- (4) interest as allowed by law, including interest as calculated under Chapter 2251, Government Code.

Id. § 271.153(a). Damages awarded in such a suit "may not include: (1) consequential damages, except as expressly allowed under [§ 271.153](a)(1); (2) exemplary damages; or (3) damages for unabsorbed home office overhead." *Id.* § 271.153(b).

Section 271.154 states:

Adjudication procedures, including requirements for serving notices or engaging in alternative dispute resolution proceedings before bringing a suit or an arbitration proceeding, that are stated in the contract subject to this subchapter or that are established by the local governmental entity and expressly incorporated into the contract or incorporated by reference are enforceable except to the extent those procedures conflict with the terms of this subchapter.

Id. § 271.154.

3. Zachry and Subsequent Cases

The Texas Supreme Court has held that, in order to invoke the chapter 271 waiver of immunity, the claimant "must plead facts with some evidentiary support that constitute a claim for which immunity is waived." *Zachry Const. Corp. v. Port of Hous. Auth. of Harris Cty.*, 449 S.W.3d 98, 110 (Tex. 2014). Immunity is not waived for claims which seek monetary damages that are impermissible under the statute. *See id.*; *Tooke*, 197 S.W.3d at 346 (finding immunity was not waived where claimants alleged breach of a contract subject to the Act but requested only consequential damages). That is because the waiver of immunity in chapter 271 is "subject to the terms and conditions of this subchapter," see TEX. LOC. GOV'T CODE ANN. § 271.152, and among those terms and conditions are the damages limitations in § 271.153. *See Zachry*, 449 S.W.3d at 109 ("Section 271.153's limitations on recovery are incorporated into Section 271.152 by its last 'subject to' clause and are thereby conditions on the Act's waiver of immunity.").

In *City of Abilene*, the Eastland court of appeals applied *Zachry* to determine whether immunity barred the City of Abilene's request to compel the Risk Pool to participate in a contractual appraisal process pursuant to the same Coverage Document at issue in this case. 551 S.W.3d at 341-46. As here, the Risk Pool cited *Zachry* in arguing that immunity was not waived as to the appraisal request because (1) it amounted to a request for specific performance, and (2) specific performance is not permitted as a remedy under § 271.153. See *id.* The court held that the motion to compel appraisal was not a request for specific performance; rather, it was a "contractual adjudication procedure" which is "enforceable" by any party under § 271.154. *Id.* at 345 (noting that "there is nothing in the language of Section 271.154 indicating that it can only be invoked by a governmental defendant"). The court disagreed with the Risk Pool's argument that, under *Zachry*, § 271.154 acts as a "limitation" on chapter 271's waiver of immunity. See *id.* (noting that the *Zachry* Court characterized § 271.154 as a "preservation of procedures" that "provides for enforcement of contractual adjudication procedures").

In *Mission Consolidated Independent School District v. ERO International, LLP*, 579 S.W.3d 123, 127 (Tex. App.—Corpus Christi–Edinburg 2019, no pet.), we declined to follow *City of Abilene*. In *ERO*, the defendant school district argued that chapter 271 did not waive its immunity to the claimant's breach of contract suit because the claimant did not timely comply with contractual adjudication procedures before filing suit. *Id.* at 126. We agreed that the claimant did not comply with the contract's adjudication procedures; therefore, the claimant did not show "a substantial claim that meets the Act's conditions" and the chapter 271 waiver of immunity did not apply. *Id.* at 127-28. Relying on *Zachry*, we held that § 271.154, regarding the enforceability of contractual adjudication procedures, operates as a "limitation" on the chapter 271 waiver:

We acknowledge that *Zachry*'s specific holding concerned section 271.153; however, we find that the court's reasoning is equally applicable to section 271.154. The court in *Zachry* stated that it was "obvious" that the "terms and conditions" of the Act serve as "limitations on the waiver of immunity." *Zachry*'s analysis and conclusion specifically concerned section 271.153, but it is heavily implied that all of the Act's subchapters serve as limitations on the waiver of immunity. For example, in categorizing the sections of the Act, the court in *Zachry* noted that sections 271.156, 271.157, 271.158, and 271.160 dealt specifically with the "scope of immunity," whereas sections 271.153, 271.154, and 271.155 dealt with the "litigation and adjudication of a claim." Nevertheless, despite only dealing with the "litigation and adjudication of a claim," the court ultimately held that section 271.153 was a "limitation" on the waiver of immunity and that immunity was not waived for claims that failed to meet the conditions of that section. In other words, a plaintiff must plead damages satisfying section 271.153 to invoke the Act's waiver of immunity. The court continued by observing that the Act only waives immunity for contract claims "that meet certain conditions: the existence of a specific type of contract, a demand for certain kinds of damages, a state forum, etc. The waiver does not depend on the outcome, though it does require a showing of a substantial claim that meets the Act's conditions." We find the same analysis applicable to section 271.154: even though section 271.154 is only related to "the litigation and adjudication of a claim," it is one of the Act's "conditions," and as such, serves as a limitation on the waiver of immunity. Accordingly, to show waiver of immunity, a claimant must plead facts showing that the conditions of section 271.154 have been met.

Id. at 127-28 (citations omitted). We observed that a contrary conclusion had been reached by the Eastland court of appeals in *City of Abilene* and by the Dallas court of appeals in *Romulus Group, Inc. v. City of Dallas*, No. 05-16-00088-CV, 2017 WL 1684631, at *6 (Tex. App.—Dallas May 2, 2017, pet. denied) (mem. op.) (holding that "the waiver of immunity is not dependent on compliance with section 271.154"). We explained, though, that both *City of Abilene* and *Romulus* were based on the holdings in *City of Mesquite v. PKG Contracting, Inc.*, 263 S.W.3d 444, 448 (Tex. App.—Dallas 2008, pet. denied), and *Santa Rosa Independent School District v. Rigney Construction & Development, LLC*, No. 13-12-00627-CV, 2013 WL 2949566 (Tex. App.—Corpus Christi–Edinburg June 13, 2013, pet. denied) (mem. op.), both of which were later disapproved

of in *Zachry*. See *ERO*, 579 S.W.3d at 127. We elaborated:

It is true that only section 271.153 was at issue in *Zachry*, not section 271.154. Thus, *Zachry* only directly repudiated *Santa Rosa* and *City of Mesquite* to the extent they concluded that compliance with section 271.153 does not affect waiver of immunity. However, it is important to note that the courts in *Santa Rosa* and *City of Mesquite* used the same analysis that was disapproved of in *Zachry* to conclude that section 271.154 also does not affect waiver of immunity. For this reason, we find *Zachry* controlling on the proper analysis. . . .

. . . *Romulus* implies that sections 271.153, 271.156, and 271.157 are the only conditions on the waiver of immunity under the Act. However, *Zachry* stated, "[t]he Act waives immunity for contract claims that meet certain conditions: the existence of a specific type of contract [referring to section 271.157], a demand for certain kinds of damages [referring to section 271.153], a state forum [referring to section 271.156], etc." By adding "etc.," *Zachry* indicated that sections 271.153, 271.156, and 271.157 are not the only conditions on the waiver of immunity. In fact, *Zachry* specifically rejected interpretations of section 271.152 that would only incorporate some of, but not all, of the other sections in the Act. Just like section 271.153, section 271.154 is incorporated into section 271.152 by its last "subject to" clause; thus, section 271.154 is a "condition[]" on the Act's waiver of immunity."

Id. at 128-29 (citations omitted).

The day after we handed down *ERO*, the Texas Supreme Court specifically held in *Hays Street Bridge Restoration Group v. City of San Antonio* that § 271.152 waives immunity for a claim for specific performance of a chapter 271 contract. 570 S.W.3d 697, 699 (Tex. 2019). That case involved a 2002 agreement executed by the City of San Antonio and a group of residents aiming to restore and preserve the landmark Hays Street Bridge. *Id.* at 700. Ten years later, the group sued, alleging that the city breached the agreement by failing to apply certain funds to the bridge project, and requesting only specific performance as a remedy. *Id.* at 700-01. Citing *Zachry*, the San Antonio court of appeals held that chapter 271 did not waive the city's immunity from a suit for specific performance, and it dismissed the case. *Id.* at 701 (citing *City of San Antonio v. Hays St.*

Bridge Restoration Gp., 551 S.W.3d 755, 762–63 (Tex. App.—San Antonio 2017), *rev'd*, 570 S.W.3d at 706-708).

The Texas Supreme Court reversed, observing that § 271.153 "limits damages, not remedies," and "damages" means "money." *Id.* Though the § 271.152 waiver applies only to claims that request relief permitted by chapter 271—and though § 271.153 permits only certain types of damages—the statute does not purport to restrict the recovery of *non-monetary* forms of relief such as specific performance. *See id.* (holding that to read § 271.153 "as impliedly prohibiting every suit seeking an equitable remedy against a local governmental entity would too greatly restrict the general waiver of immunity" in § 271.152). Thus, the Act waived the city's immunity from suit on the claim for specific performance. *Id.*

C. Analysis

1. Waiver of Immunity for Specific Performance

On appeal, the Risk Pool contends that the trial court "ignored" the framework established in *Zachry* and "created" a waiver of immunity beyond the scope of what was intended by the legislature. It argues that, by granting the City's motion to compel appraisal, the trial court granted the equitable relief of specific performance, and it contends that specific performance is not among the remedies permitted by chapter 271. Therefore, according to the Risk Pool, it retains immunity with respect to the City's motion to compel appraisal.

The Risk Pool acknowledges the ruling in *Hays Street* but contends that case is distinguishable because a different version of the statute applies. Because the contract at issue in *Hays Street* was executed in 2002, the Court in that case applied the original 2005 version of chapter 271. *See id.* at 699 n.2 (citing Act of May 23, 2005, 79th Leg.,

R.S., ch. 604, § 1, sec. 271.151(2), 2005 Tex. Gen. Laws 1548, 1548 (current version at TEX. LOC. GOV'T CODE ANN. § 271.151(2)(A))). In 2013, the Texas Legislature amended § 271.153 to add subsection (c), which states: "Actual damages, specific performance, or injunctive relief may be granted in an adjudication brought against a local governmental entity for breach of a contract described by Section 271.151(2)(B)." Act of May 24, 2013, 83rd Leg., R.S., ch. 1138, § 3, 2013 Tex. Gen. Laws 2756, 2758 (codified at TEX. LOC. GOV'T CODE ANN. § 271.153(c)). Section 271.151(2)(B), enacted in the same law, expands the definition of "contract subject to this subchapter" to include "a written contract, including a right of first refusal, regarding the sale or delivery of not less than 1,000 acre-feet of reclaimed water by a local governmental entity intended for industrial use." *Id.* § 2 (codified at TEX. LOC. GOV'T CODE ANN. § 271.151(2)(B)). We assume but do not decide that these amendments apply here.⁵

It is undisputed that the contract at issue in this case is not of the type described in § 271.151(2)(B). Thus, § 271.153(c) does not serve to explicitly authorize the award of specific performance. But *Hays Street* held that the § 271.152 waiver—which has not been amended—extends to claims for specific performance of a chapter 271 contract.

⁵ It is unclear which version of the statute applies in this case. The 2013 amendments apply only to "a claim that arises under a contract executed on or after the effective date of this Act," i.e., May 24, 2013. Act of May 24, 2013, 83rd Leg., R.S., ch. 1138, § 4(c), 2013 Tex. Gen. Laws 2756, 2758. "A claim that arises under a contract executed before the effective date of this Act is governed by the law in effect on the date the contract was executed, and the former law is continued in effect for that purpose." *Id.* Here, the only contract in the record that was signed on behalf of the City was the original 1989 Agreement. See TEX. LOC. GOV'T CODE ANN. § 271.151(2)(A) (stating that a "contract subject to this subchapter" must be, among other things, "properly executed on behalf of the local governmental entity"); *Hous. Auth. of City of Dallas v. Killingsworth*, 331 S.W.3d 806, 811 (Tex. App.—Dallas 2011, pet. denied) (noting that a contract is "properly executed" when it is "signed in accordance with the requirements for making it correct or valid"). In its response to the Risk Pool's plea to the jurisdiction, filed before *Hays Street* was handed down, the City acknowledged that "it was the intent of the parties that the signature attached [to the 1989 Agreement] would be given a new effect each Fund Year" and, therefore, "a new contract was executed on October 1, 2015." In its appellee's brief, the City neither cites *Hays Street* nor addresses whether the 2013 amendments apply.

See 570 S.W.3d at 708. The question we must answer, therefore, is whether the enactment of §§ 271.151(2)(B) and 271.153(c) abrogates this ruling. The *Hays Street* Court explicitly declined to address this question. See *id.* at 708 n.65 (noting that the City of San Antonio argued "that 2013 amendments to the Act waiving immunity for specific performance of one type of contract indicates that immunity is not waived for any other," but not addressing the argument because the 2013 amendments apply "only prospectively").

The Risk Pool observes that § 271.153(c) is the "only place where the Legislature has chosen to expressly waive governmental immunity from claims for equitable relief and, particularly, specific performance." It argues that, under rules of statutory construction, the enactment of § 271.153(c) "reflects an express legislative decision to waive that government immunity for only a defined and very limited set of claims for equitable relief, and that equitable relief remains unavailable in any other cases, like this one, which do not involve a water reclamation contract specified in Section 271.153(c)." See *ConocoPhillips Co. v. Koopmann*, 547 S.W.3d 858, 876 (Tex. 2018) (discussing the interpretative canon of *expressio unius est exclusio alterius*, i.e., "the express mention of one thing excludes another"). In response, the City argues that its request to compel appraisal was not a demand for specific performance-instead, it is a "contractual adjudication procedure," which is "enforceable" under § 271.154.

Even assuming the order on appeal constitutes an award of specific performance, we nevertheless find that the 2013 amendments to chapter 271 do not abrogate the holding in *Hays Street*. The only section of the Act which waives immunity is § 271.152, and that section has not been amended. *Zachry* held that, because the chapter 271 waiver is "subject to the terms and conditions of the Act," immunity is not waived for claims

which request damages that are impermissible under § 271.153. See *Zachry*, 449 S.W.3d at 109. But the 2013 amendments do not explicitly restrict the availability of equitable relief or specific performance. Had the legislature intended to restrict the availability of equitable relief or specific performance to cases involving water contracts under § 271.152(2)(B), it could have easily done so using the unambiguous, unmistakable language which the statute already employs to limit the availability of money damages. Compare TEX. LOC. GOV'T CODE ANN. § 271.153(a) (stating that "the total amount of money awarded . . . is limited to the following . . .") and *id.* § 271.153(b) ("Damages awarded . . . may not include . . .") with *id.* § 271.153(c) ("Actual damages, specific performance, or injunctive relief may be granted").

Moreover, "the force of any negative implication" based on the *expressio unius* canon "depends on context." *Forest Oil Corp. v. El Rucio Land & Cattle Co.*, 518 S.W.3d 422, 429 (Tex. 2017) (citing *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 381 (2013)). The canon "does not apply unless it is fair to suppose that [the legislature] considered the unnamed possibility and meant to say no to it." *Id.* The intent of the legislature "must be expressed clearly, either explicitly or by necessary implication." *Id.* We cannot conclude that the legislature intended to restrict the availability of equitable relief or specific performance by enacting the 2013 amendments. The amendments do not explicitly do so, and such restriction is not necessarily implied. Instead, as set forth in *Hays Street*, the waiver of immunity in chapter 271 extends to claims for specific performance of a contract subject to the Act.⁶

⁶ We note that, unlike here, the award of specific performance in *Hays Street* was made after a full trial on the merits. See *Hays St. Bridge Restoration Gp. v. City of San Antonio*, 570 S.W.3d 697, 701 (Tex. 2019). The Risk Pool does not argue in its brief that *Hays Street* is distinguishable for this reason. In any event, we note that contractual appraisal provisions in insurance policies are treated like arbitration clauses and may generally be enforced prior to trial as a means to resolve disputes about the amount of loss for a

The Risk Pool emphasizes that, as we held in *ERO*, § 271.154 serves as a "condition[] on the Act's waiver of immunity" and does not create an additional waiver of immunity. See *ERO*, 579 S.W.3d at 129. That is true, and we continue to disavow *City of Abilene*'s implications to the contrary. But our decision here does not assume or rely on the notion that an additional waiver is created under § 271.154; instead, our holding is based on the clear and unambiguous general waiver in § 271.152 combined with the lack of any provision elsewhere in the Act explicitly limiting or restricting the availability of equitable relief or specific performance.

2. Compliance with Contractual Adjudication Procedures

In its motion for rehearing, the Risk Pool argues that the City did not show a "substantial claim that meets the Act's conditions" because it failed to comply with the "contractual adjudication procedures" set forth in the Coverage Document. See *Zachry*, 449 S.W.3d at 109 (holding that the chapter 271 waiver "require[s] a showing of a substantial claim that meets the Act's conditions"); *ERO*, 579 S.W.3d at 128 ("[T]o show waiver of immunity, a claimant must plead facts showing that the conditions of section 271.154 have been met."); see also TEX. LOC. GOV'T CODE ANN. § 271.154 ("Adjudication procedures, including requirements for serving notices or engaging in alternative dispute resolution proceedings before bringing a suit . . . are enforceable except to the extent those procedures conflict with the terms of this subchapter.").⁷ In particular, the Risk Pool

covered claim. See *City of Abilene*, 551 S.W.3d at 344 ("In the context of an insurance contract, appraisal is not sought in equity as a substitute for inadequate monetary damages, but rather it is a procedural vehicle provided by the contract to determine the amount of loss."); *Vanguard Underwriters Ins. Co. v. Smith*, 999 S.W.2d 448, 451 (Tex. App.—Amarillo 1999, no pet.) (holding that insurance policy appraisal clause was "in its essence, one requiring arbitration" and applying caselaw relating to arbitration clauses); see also *In re Universal Underwriters of Tex. Ins. Co.*, 345 S.W.3d 404, 407 (Tex. 2011) (orig. proceeding) (noting that "[a]ppraisals can provide a less expensive, more efficient alternative to litigation" and "should generally go forward without preemptive intervention by the courts").

⁷ In its pleas to the jurisdiction and its appellate briefs, the Risk Pool did not explicitly argue that the

argues that the City did not timely (1) file a sworn proof of loss, (2) demand appraisal, or (3) designate a disinterested appraiser.

In its appellate brief and in response to the motion for rehearing, the City argued in part that the Risk Pool waived its right to enforce the proof-of-loss provision.⁸ We agree. "[P]rovisions of an insurance policy regarding notice and proof of loss are for the benefit of the insurance company and may be waived by it." *Sanders v. Aetna Life Ins. Co.*, 205 S.W.2d 43, 44-45 (Tex. 1947). "[A] denial by [the insurer] of liability under the policy is a waiver of proof of loss enabling the insured to maintain a suit on the policy without furnishing such proof." *Forbau v. Aetna Life Ins. Co.*, 876 S.W.2d 132, 144 n.18 (Tex. 1994) (citing *Sanders*, 205 S.W.2d at 45).

It is a well-known principle . . . that the acts relied on as constituting a waiver should be such as are reasonably calculated to make the assured believe that a compliance on his part with the stipulations providing the mode of proof of loss, and regulating the appraisal of the damage done, is not desired, and that it would be of no effect if observed by him.

Scottish Union & Nat'l Ins. Co. v. Clancey, 18 S.W. 439, 440-41 (Tex. 1892). For purposes of establishing waiver of a proof-of-loss provision,

it is of no consequence whether the insurance company informs the insured that the claim absolutely will not be paid or simply indicates that it is not

chapter 271 waiver is inapplicable because the City failed to comply with contractual adjudication procedures or any other requirements of the Coverage Document. Instead, it argued that the City *did not show its entitlement to appraisal* for those same reasons. But as noted above, our inquiry here is limited to whether the trial court had subject matter jurisdiction over the City's suit in general—it does not encompass the specific question of whether the City is entitled to appraisal. An appellant may not use a motion for rehearing to raise new issues. *FCLT Loans, L.P. v. Estate of Bracher*, 93 S.W.3d 469, 485 (Tex. App.—Houston [14th Dist.] 2002, no pet.); *Phifer v. Nacogdoches Cty. Cent. Appraisal Dist.*, 45 S.W.3d 159, 166 (Tex. App.—Tyler 2000, pet. denied). Nevertheless, because the issues are closely intertwined, we choose to address the argument made in the Risk Pool's motion for rehearing.

⁸ In addition to its waiver argument, the City also contends in its brief that (1) the proof-of-loss provision does not state when the sixty-day compliance period begins, and (2) the Risk Pool failed to show that it was prejudiced by the City's failure to submit proof of loss. See *PAJ, Inc. v. Hanover Ins. Co.*, 243 S.W.3d 630, 636-37 (Tex. 2008) ("[A]n insured's failure to timely notify its insurer of a claim or suit does not defeat coverage if the insurer was not prejudiced by the delay."). The City made all of these arguments in response to the Risk Pool's contention that the City was not entitled to appraisal because it had not complied with the requirements of the Coverage Document.

planning to pay the claim unless some new development arises. It is enough that the actions of the insurance company would reasonably lead the insured to believe that the company is not going to pay the claim because of some reason other than failure to file the required proof of loss.

De Laurentis v. United Servs. Auto. Ass'n, 162 S.W.3d 714, 720 (Tex. App.—Houston [14th Dist.] 2005, pet. denied).

Here, the Coverage Document states in section IV.G that "[a]ll adjusted claims shall be due and payable no later than 60 days after presentation and acceptance of proofs of loss by the Fund or its appointed representative." And the evidence established the Risk Pool paid the City \$283,666.81 in benefits under the Coverage Document on June 27, 2016. Along with the payment, the Risk Pool sent the City a "Sworn Statement in Proof of Loss" form, lacking only the signature of a City representative, stating that the total "amount claimed" is \$283,666.81. The letter accompanying the payment asked the City's representative to "sign and return the enclosed Proof of Loss in the envelope provided."

By paying out benefits before receiving a sworn proof of loss, the Risk Pool indicated to the City that its compliance with the proof-of-loss provision "would be of no effect." See *Clancey*, 18 S.W. at 440-41. Moreover, by paying out a particular sum of benefits and asking the City to sign a pre-completed proof-of-loss form limited to that sum, the Risk Pool indicated to the City that it would not pay any benefits beyond that sum, whether or not any proof of loss was ever submitted. That is, the Risk Pool decided to deny any additional benefits for "some reason other than failure to file the required proof of loss." See *De Laurentis*, 162 S.W.3d at 720.⁹

⁹ The proof-of-loss form stated: "The furnishing of this blank or the preparation of proofs by a representative of the above self-insurance fund is not a waiver of any of its rights." But this does not change the fact that, by providing the pre-completed form, the Risk Pool indicated to the City that it would be futile to submit proof of loss in an amount greater than the benefits which were already paid out.

We conclude that the Risk Pool has waived its ability to enforce the proof-of-loss provision in the Coverage Document. See *Sanders*, 205 S.W.2d at 44-45. Accordingly, for purposes of the waiver of immunity in chapter 271, the proof-of-loss provision is not a "contractual adjudication procedure" with which the City was required to comply. Further, the timelines in the Coverage Document concerning demand for appraisal and naming of appraisers are triggered only when proof of loss is actually submitted. Thus, we cannot conclude that the City failed to comply with the "adjudication procedures" of the Coverage Document by failing to timely demand appraisal or name a disinterested appraiser. For the foregoing reasons, the City has shown a "substantial claim that meets the Act's conditions." See *Zachry*, 449 S.W.3d at 109.

III. CONCLUSION

We conclude that the trial court did not err by denying the Risk Pool's plea to the jurisdiction.¹⁰ We overrule its issue on appeal and affirm the judgment of the trial court.

DORI CONTRERAS
Chief Justice

Delivered and filed the
12th day of March, 2020.

¹⁰ We express no opinion on the merits of whether the City is entitled to appraisal. Rather, as noted, this opinion is limited to whether the trial court had jurisdiction in this case.



West Fire Construction & Restoration, Inc

1114 Avenue C
Katy, Texas 77493
713-682-2494

Client: State Farm Arena
Property: 2600 N 10th Street
Hidalgo, TX 78557

Operator: RANDALL

Estimator: Randall W. Taylor
Business: 1114 Avenue C
Katy, TX 77493

Business: (713) 682-2494

Type of Estimate: Wind Damage
Date Entered: 7/10/2020 Date Assigned:
Date Est. Completed: 10/30/2017 Date Job Completed:

Price List: TXMC8X_JUL20
Labor Efficiency: Restoration/Service/Remodel
Estimate: U-20-STATEFARMARENA

Umpire estimate

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

U-20-STATEFARMARENA

Source - Geomni Property

Contents

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
1. Clean furniture - allowance to clean furniture	1.00 EA		0.00	2,500.00	0.00	500.00	3,000.00
Totals: Contents					0.00	500.00	3,000.00

Main Seating Area

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
2. Clean and deodorize carpet	26,300. SF 00		0.00	0.37	0.00	1,946.20	11,677.20
3. Content Manipulation charge - per hour	40.00 HR		0.00	30.00	0.00	240.00	1,440.00
Totals: Main Seating Area					0.00	2,186.20	13,117.20

Miscellaneous/General Conditions

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
4. Taxes, insurance, permits & fees (Bid Item)	1.00 EA		0.00	2,500.00	0.00	500.00	3,000.00
5. Dumpster load	6.00 EA		641.00	0.00	0.00	769.20	4,615.20
6. General clean - up	160.00 HR		0.00	30.78	0.00	984.96	5,909.76
7. R&R Temporary Roof repairs	1.00 EA		0.00	7,500.00	0.00	1,500.00	9,000.00
8. Commercial Supervision / Project Management - per hour	300.00 HR		0.00	61.95	0.00	3,717.00	22,302.00
9. Telehandler/forklift (per month) - no operator	1.00 MO		0.00	3,063.00	0.00	612.60	3,675.60
10. Equipment Operator - per hour	160.00 HR		0.00	34.48	0.00	1,103.36	6,620.16
Totals: Miscellaneous/General Conditions					0.00	9,187.12	55,122.72

Northwest Entrance

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
11. R&R Batt insulation - 6" - R19 - paper / foil faced	128.00 SF		0.20	0.84	0.00	26.62	159.74

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Northwest Entrance

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
12. R&R 5/8" drywall - hung, taped, ready for texture	128.00 SF		0.30	1.88	0.00	55.80	334.84
13. Texture drywall - machine	410.00 SF		0.00	0.42	0.00	34.44	206.64
14. Seal/prime then paint the surface area (2 coats)	410.00 SF		0.00	0.90	0.00	73.80	442.80
15. Clean floor	410.00 SF		0.00	0.30	0.00	24.60	147.60
16. Mask or cover per square foot	410.00 SF		0.31	0.00	0.00	25.42	152.52
17. R&R Replace light	2.00 EA		13.09	279.97	0.00	117.22	703.34
Totals: Northwest Entrance					0.00	357.90	2,147.48

Backstage rows

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
18. R&R Batt insulation - 6" - R19 - paper / foil faced	288.00 SF		0.20	0.84	0.00	59.90	359.42
19. R&R 5/8" drywall - hung, taped, ready for texture	672.00 SF		0.30	1.88	0.00	293.00	1,757.96
20. Detach & Reset Light fixture	1.00 EA	39.41	0.00	0.00	0.00	7.88	47.29
21. R&R Stud wall - 2" x 4" - 16" oc	351.00 SF		0.16	2.17	0.00	163.58	981.41
22. Texture drywall - machine	980.00 SF		0.00	0.42	0.00	82.32	493.92
23. Seal the surface area w/latex based stain blocker - one coat	672.00 SF		0.00	0.58	0.00	77.96	467.72
24. Paint the surface area - two coats	980.00 SF		0.00	0.90	0.00	176.40	1,058.40
25. R&R Cove base molding - rubber or vinyl, 4" high	96.00 LF		0.21	1.60	0.00	34.76	208.52
26. Mask or cover per square foot	360.00 SF		0.31	0.00	0.00	22.32	133.92
27. Clean floor	360.00 SF		0.00	0.30	0.00	21.60	129.60
28. Content Manipulation charge - per hour	4.00 HR		0.00	30.00	0.00	24.00	144.00
Totals: Backstage rows					0.00	963.72	5,782.16

Staging Area under seats

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
29. Seal/prime then paint the surface area (2 coats)	1,990.00 SF	0.00		0.90	0.00	358.20	2,149.20
30. Clean floor	1,250.00 SF	0.00		0.30	0.00	75.00	450.00

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Staging Area under seats

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
Totals: Staging Area under seats					0.00	433.20	2,599.20

Triangle Room

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
31. Seal/prime then paint the surface area (2 coats)	464.00 SF		0.00	0.90	0.00	83.52	501.12
32. Mask or cover per square foot	308.00 SF		0.31	0.00	0.00	19.10	114.58
Totals: Triangle Room					0.00	102.62	615.70

VIP Room

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
33. Seal floor or ceiling joist system	16.00 SF	0.00		1.16	0.00	3.72	22.28
34. R&R Batt insulation - 6" - R19 - paper / foil faced	16.00 SF	0.20		0.84	0.00	3.32	19.96
35. R&R Suspended ceiling tile - 2' x 2'	16.00 SF	0.15		2.06	0.00	7.08	42.44
36. Content Manipulation charge - per hour	1.00 HR	0.00		30.00	0.00	6.00	36.00
Totals: VIP Room					0.00	20.12	120.68

Control Room

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
37. Seal floor or ceiling joist system	12.00 SF	0.00	0.00	1.16	0.00	2.78	16.70
38. R&R Batt insulation - 6" - R19 - paper / foil faced	12.00 SF	0.20		0.84	0.00	2.50	14.98
39. R&R Suspended ceiling tile - 2' x 2'	12.00 SF	0.15		2.06	0.00	5.30	31.82
40. Content Manipulation charge - per hour	1.00 HR	0.00		30.00	0.00	6.00	36.00
Totals: Control Room					0.00	16.58	99.50

Party Room

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Party Room

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
41. Seal floor or ceiling joist system	240.00 SF		0.00	1.16	0.00	55.68	334.08
42. R&R Batt insulation - 6" - R19 - paper / foil faced	240.00 SF		0.20	0.84	0.00	49.92	299.52
43. R&R Suspended ceiling tile - 2' x 2'	240.00 SF		0.15	2.06	0.00	106.08	636.48
44. Mask or cover per square foot	472.00 SF		0.31	0.00	0.00	29.26	175.58
45. Content Manipulation charge - per hour	4.00 HR		0.00	30.00	0.00	24.00	144.00
Totals: Party Room					0.00	264.94	1,589.66

Suite 20

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
46. Seal floor or ceiling joist system	8.00 SF		0.00	1.16	0.00	1.86	11.14
47. R&R Batt insulation - 6" - R19 - paper / foil faced	8.00 SF		0.20	0.84	0.00	1.66	9.98
48. R&R Suspended ceiling tile - 2' x 2'	8.00 SF		0.15	2.06	0.00	3.54	21.22
49. Mask or cover per square foot	182.00 SF		0.31	0.00	0.00	11.28	67.70
50. Content Manipulation charge - per hour	1.00 HR		0.00	30.00	0.00	6.00	36.00
Totals: Suite 20					0.00	24.34	146.04

Suite 17

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
51. Seal stud wall for odor control	32.00 SF		0.00	0.83	0.00	5.32	31.88
52. R&R 1/2" drywall - hung, taped, ready for texture	32.00 SF		0.30	1.78	0.00	13.32	79.88
53. Texture drywall - machine	432.00 SF		0.00	0.42	0.00	36.28	217.72
54. Seal/prime then paint the surface area (2 coats)	432.00 SF		0.00	0.90	0.00	77.76	466.56
55. Seal floor or ceiling joist system	12.00 SF		0.00	1.16	0.00	2.78	16.70
56. R&R Batt insulation - 6" - R19 - paper / foil faced	12.00 SF		0.20	0.84	0.00	2.50	14.98
57. R&R Suspended ceiling tile - 2' x 2'	12.00 SF		0.15	2.06	0.00	5.30	31.82
58. Mask or cover per square foot	182.00 SF		0.31	0.00	0.00	11.28	67.70

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Suite 17

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
59. Content Manipulation charge - per hour	1.00 HR		0.00	30.00	0.00	6.00	36.00
Totals: Suite 17					0.00	160.54	963.24

Suite 16

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
60. Seal floor or ceiling joist system	24.00 SF		0.00	1.16	0.00	5.56	33.40
61. R&R Batt insulation - 6" - R19 - paper / foil faced	24.00 SF		0.20	0.84	0.00	5.00	29.96
62. R&R Suspended ceiling tile - 2' x 2'	24.00 SF		0.15	2.06	0.00	10.60	63.64
63. Mask or cover per square foot	182.00 SF		0.31	0.00	0.00	11.28	67.70
64. Content Manipulation charge - per hour	1.00 HR		0.00	30.00	0.00	6.00	36.00
Totals: Suite 16					0.00	38.44	230.70

Suite 19

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
65. Seal floor or ceiling joist system	8.00 SF		0.00	1.16	0.00	1.86	11.14
66. R&R Batt insulation - 6" - R19 - paper / foil faced	8.00 SF		0.20	0.84	0.00	1.66	9.98
67. R&R Suspended ceiling tile - 2' x 2'	8.00 SF		0.15	2.06	0.00	3.54	21.22
68. Mask or cover per square foot	182.00 SF		0.31	0.00	0.00	11.28	67.70
69. Content Manipulation charge - per hour	1.00 HR		0.00	30.00	0.00	6.00	36.00
Totals: Suite 19					0.00	24.34	146.04

Suite 21

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
70. Seal floor or ceiling joist system	8.00 SF	0.00		1.16	0.00	1.86	11.14
71. R&R Batt insulation - 6" - R19 - paper / foil faced	8.00 SF	0.20		0.84	0.00	1.66	9.98

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Suite 21

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
72. R&R Suspended ceiling tile - 2' x 2'	8.00 SF		0.15	2.06	0.00	3.54	21.22
73. Mask or cover per square foot	182.00 SF		0.31	0.00	0.00	11.28	67.70
74. Content Manipulation charge - per hour	1.00 HR		0.00	30.00	0.00	6.00	36.00
Totals: Suite 21					0.00	24.34	146.04

Suite 25

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
75. Seal floor or ceiling joist system	24.00 SF		0.00	1.16	0.00	5.56	33.40
76. R&R Batt insulation - 6" - R19 - paper / foil faced	24.00 SF		0.20	0.84	0.00	5.00	29.96
77. R&R Suspended ceiling tile - 2' x 2'	24.00 SF		0.15	2.06	0.00	10.60	63.64
78. Mask or cover per square foot	182.00 SF		0.31	0.00	0.00	11.28	67.70
79. Content Manipulation charge - per hour	1.00 HR		0.00	30.00	0.00	6.00	36.00
Totals: Suite 25					0.00	38.44	230.70

Suite 24

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
80. Seal floor or ceiling joist system	12.00 SF		0.00	1.16	0.00	2.78	16.70
81. R&R Batt insulation - 6" - R19 - paper / foil faced	12.00 SF		0.20	0.84	0.00	2.50	14.98
82. R&R Suspended ceiling tile - 2' x 2'	12.00 SF		0.15	2.06	0.00	5.30	31.82
83. Mask or cover per square foot	182.00 SF		0.31	0.00	0.00	11.28	67.70
84. Content Manipulation charge - per hour	1.00 HR		0.00	30.00	0.00	6.00	36.00
Totals: Suite 24					0.00	27.86	167.20

Media Suite

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Media Suite

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
85. Seal floor or ceiling joist system	24.00 SF		0.00	1.16	0.00	5.56	33.40
86. R&R Batt insulation - 6" - R19 - paper / foil faced	24.00 SF		0.20	0.84	0.00	5.00	29.96
87. R&R Suspended ceiling tile - 2' x 2'	24.00 SF		0.15	2.06	0.00	10.60	63.64
88. R&R 1/2" drywall - hung, taped, ready for texture	64.00 SF		0.30	1.78	0.00	26.62	159.74
89. Texture drywall - machine	811.00 SF		0.00	0.42	0.00	68.12	408.74
90. Seal/prime then paint the surface area (2 coats)	811.00 SF		0.00	0.90	0.00	145.98	875.88
91. Remove Glue down carpet	334.00 SF		0.43	0.00	0.00	28.72	172.34
92. Glue down carpet	384.10 SF		0.00	1.82	0.00	139.82	838.88
15 % waste added for Carpet.							
93. Content Manipulation charge - per hour	2.00 HR		0.00	30.00	0.00	12.00	72.00
Totals: Media Suite					0.00	442.42	2,654.58

Rear 3rd floor seating & offset

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
94. R&R 1/2" drywall - hung, taped, ready for texture	192.00 SF		0.30	1.78	0.00	79.88	479.24
95. Texture drywall - machine	3,486.00 SF		0.00	0.42	0.00	292.82	1,756.94
96. Seal/prime then paint the surface area (2 coats)	3,486.00 SF		0.00	0.90	0.00	627.48	3,764.88
97. Remove Glue down carpet	3,485.00 SF		0.43	0.00	0.00	299.72	1,798.27
98. Glue down carpet	4,007.75 SF		0.00	1.82	0.00	1,458.82	8,752.93
15 % waste added for Carpet.							
99. R&R Cove base molding - rubber or vinyl, 4" high	436.00 LF		0.21	1.60	0.00	157.84	947.00
100. Content Manipulation charge - per hour	6.00 HR		0.00	30.00	0.00	36.00	216.00
Totals: Rear 3rd floor seating & offset					0.00	2,952.56	17,715.26

Mechanical Room

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Mechanical Room

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
101. R&R 1/2" drywall - hung, taped, ready for texture	256.00 SF		0.30	1.78	0.00	106.50	638.98
102. Texture drywall - machine	560.00 SF		0.00	0.42	0.00	47.04	282.24
103. Seal/prime then paint the surface area (2 coats)	560.00 SF		0.00	0.90	0.00	100.80	604.80
104. R&R Cove base molding - rubber or vinyl, 4" high	51.00 LF		0.21	1.60	0.00	18.46	110.77
105. Remove Glue down carpet	158.00 SF		0.43	0.00	0.00	13.58	81.52
106. Glue down carpet	181.70 SF		0.00	1.82	0.00	66.14	396.83
15 % waste added for Carpet.							
Totals: Mechanical Room					0.00	352.52	2,115.14

Bathroom

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
107. Seal floor or ceiling joist system	82.00 SF		0.00	1.16	0.00	19.02	114.14
108. R&R Batt insulation - 6" - R19 - paper / foil faced	68.00 SF		0.20	0.84	0.00	14.14	84.86
109. R&R Suspended ceiling tile - 2' x 2'	68.00 SF		0.15	2.06	0.00	30.06	180.34
110. R&R Cove base molding - rubber or vinyl, 4" high	36.00 LF		0.21	1.60	0.00	13.04	78.20
111. R&R 1/2" drywall - hung, taped, ready for texture	128.00 SF		0.30	1.78	0.00	53.24	319.48
112. Texture drywall - machine	270.00 SF		0.00	0.42	0.00	22.68	136.08
113. Seal/prime then paint the surface area (2 coats)	270.00 SF		0.00	0.90	0.00	48.60	291.60
114. Clean floor	68.00 SF		0.00	0.30	0.00	4.08	24.48
115. Mask or cover per square foot	68.00 SF		0.31	0.00	0.00	4.22	25.30
116. Urinal - Detach & reset	1.00 EA		0.00	246.79	0.00	49.36	296.15
117. Toilet - Detach & reset	1.00 EA		0.00	172.46	0.00	34.50	206.96
118. Sink - double - Detach & reset	1.00 EA		0.00	111.65	0.00	22.34	133.99
119. Bathroom mirror - Detach & reset	6.00 SF		0.00	6.13	0.00	7.36	44.14
120. Toilet paper dispenser - Detach & reset	1.00 EA		0.00	21.24	0.00	4.24	25.48
121. Paper Towell dispenser - Detach & reset	1.00 EA		0.00	21.24	0.00	4.24	25.48
Totals: Bathroom					0.00	331.12	1,986.68



West Fire Construction & Restoration, Inc

1114 Avenue C
Katy, Texas 77493
713-682-2494

Womens Bathroom

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
122. Seal floor or ceiling joist system	74.00 SF		0.00	1.16	0.00	17.16	103.00
123. R&R Batt insulation - 6" - R19 - paper / foil faced	74.00 SF		0.20	0.84	0.00	15.40	92.36
124. R&R Suspended ceiling tile - 2' x 2'	74.00 SF		0.15	2.06	0.00	32.70	196.24
125. R&R 1/2" drywall - hung, taped, ready for texture	128.00 SF		0.30	1.78	0.00	53.24	319.48
126. Texture drywall - machine	276.00 SF		0.00	0.42	0.00	23.18	139.10
127. Seal/prime then paint the surface area (2 coats)	276.00 SF		0.00	0.90	0.00	49.68	298.08
128. R&R Cove base molding - rubber or vinyl, 4" high	36.00 LF		0.21	1.60	0.00	13.04	78.20
129. Clean floor	74.00 SF		0.00	0.30	0.00	4.44	26.64
130. Mask or cover per square foot	74.00 SF		0.31	0.00	0.00	4.58	27.52
131. Urinal - Detach & reset	1.00 EA		0.00	246.79	0.00	49.36	296.15
132. Toilet - Detach & reset	1.00 EA		0.00	172.46	0.00	34.50	206.96
133. Sink - double - Detach & reset	1.00 EA		0.00	111.65	0.00	22.34	133.99
134. Bathroom mirror - Detach & reset	6.00 SF		0.00	6.13	0.00	7.36	44.14
135. Toilet paper dispenser - Detach & reset	1.00 EA		0.00	21.24	0.00	4.24	25.48
136. Paper Towell dispenser - Detach & reset	1.00 EA		0.00	21.24	0.00	4.24	25.48
Totals: Womens Bathroom					0.00	335.46	2,012.82

Mens Bathroom

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
137. Seal floor or ceiling joist system	81.00 SF		0.00	1.16	0.00	18.80	112.76
138. R&R Batt insulation - 6" - R19 - paper / foil faced	81.00 SF		0.20	0.84	0.00	16.84	101.08
139. R&R Suspended ceiling tile - 2' x 2'	81.00 SF		0.15	2.06	0.00	35.82	214.83
140. R&R 1/2" drywall - hung, taped, ready for texture	128.00 SF		0.30	1.78	0.00	53.24	319.48
141. Texture drywall - machine	287.00 SF		0.00	0.42	0.00	24.10	144.64
142. Seal/prime then paint the surface area (2 coats)	287.00 SF		0.00	0.90	0.00	51.66	309.96
143. R&R Cove base molding - rubber or vinyl, 4" high	36.00 LF		0.21	1.60	0.00	13.04	78.20

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Mens Bathroom

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
144. Clean floor	81.00 SF		0.00	0.30	0.00	4.86	29.16
145. Mask or cover per square foot	81.00 SF		0.31	0.00	0.00	5.02	30.13
146. Urinal - Detach & reset	1.00 EA		0.00	246.79	0.00	49.36	296.15
147. Toilet - Detach & reset	1.00 EA		0.00	172.46	0.00	34.50	206.96
148. Sink - double - Detach & reset	1.00 EA		0.00	111.65	0.00	22.34	133.99
149. Bathroom mirror - Detach & reset	6.00 SF		0.00	6.13	0.00	7.36	44.14
150. Toilet paper dispenser - Detach & reset	1.00 EA		0.00	21.24	0.00	4.24	25.48
151. Paper Towell dispenser - Detach & reset	1.00 EA		0.00	21.24	0.00	4.24	25.48
Totals: Mens Bathroom					0.00	345.42	2,072.44

Hallway & Landing offset

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
152. Seal floor or ceiling joist system	176.00 SF		0.00	1.16	0.00	40.84	245.00
153. R&R Batt insulation - 6" - R19 - paper / foil faced	176.00 SF		0.20	0.84	0.00	36.60	219.64
154. R&R Suspended ceiling tile - 2' x 2'	176.00 SF		0.15	2.06	0.00	77.80	466.76
155. Remove Glue down carpet	1,613.00 SF		0.43	0.00	0.00	138.72	832.31
156. Glue down carpet	1,855.00 SF		0.00	1.82	0.00	675.22	4,051.32
0 % waste added for Carpet.							
157. R&R Cove base molding - rubber or vinyl, 4" high	450.00 LF		0.21	1.60	0.00	162.90	977.40
Totals: Hallway & Landing offset					0.00	1,132.08	6,792.43

# 15	Suite	DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
		158. Seal floor or ceiling joist system	198.00 SF		0.00	1.16	0.00	45.94	275.62
		159. R&R Batt insulation - 6" - R19 - paper / foil faced	198.00 SF		0.20	0.84	0.00	41.18	247.10
		160. R&R Suspended ceiling tile - 2' x 2'	198.00 SF		0.15	2.06	0.00	87.52	525.10
		161. R&R 1/2" drywall - hung, taped, ready for texture	32.00 SF		0.30	1.78	0.00	13.32	79.88

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - # 15 Suite

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
162. Texture drywall - machine	452.00 SF		0.00	0.42	0.00	37.96	227.80
163. Seal the surface area w/latex based stain blocker - one coat	32.00 SF		0.00	0.58	0.00	3.72	22.28
164. Paint the surface area - two coats	452.00 SF		0.00	0.90	0.00	81.36	488.16
165. Remove Glue down carpet	198.00 SF		0.43	0.00	0.00	17.02	102.16
166. Glue down carpet	227.70 SF		0.00	1.82	0.00	82.88	497.29
15 % waste added for Carpet.							
167. R&R Cove base molding - rubber or vinyl, 4" high	57.00 LF		0.21	1.60	0.00	20.64	123.81
168. Content Manipulation charge - per hour	2.00 HR		0.00	30.00	0.00	12.00	72.00
Totals: # 15 Suite					0.00	443.54	2,661.20

12 Suite

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
169. Seal floor or ceiling joist system	16.00 SF	0.00		1.16	0.00	3.72	22.28
170. R&R Batt insulation - 6" - R19 - paper / foil faced	16.00 SF	0.20		0.84	0.00	3.32	19.96
171. R&R Suspended ceiling tile - 2' x 2'	16.00 SF	0.15		2.06	0.00	7.08	42.44
172. Remove Glue down carpet	205.00 SF	0.43		0.00	0.00	17.64	105.79
173. Glue down carpet	235.75 SF	0.00		1.82	0.00	85.82	514.89
15 % waste added for Carpet.							
174. R&R Cove base molding - rubber or vinyl, 4" high	97.00 LF	0.21		1.60	0.00	35.12	210.69
175. Content Manipulation charge - per hour	2.00 HR	0.00		30.00	0.00	12.00	72.00
Totals: # 12 Suite					0.00	164.70	988.05

8 Suite

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
176. Seal floor or ceiling joist system	4.00 SF		0.00	1.16	0.00	0.92	5.56
177. R&R Batt insulation - 6" - R19 - paper / foil faced	4.00 SF		0.20	0.84	0.00	0.84	5.00
178. R&R Suspended ceiling tile - 2' x 2'	4.00 SF		0.15	2.06	0.00	1.76	10.60

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - # 8 Suite

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
179. Remove Glue down carpet	167.00 SF		0.43	0.00	0.00	14.36	86.17
180. Glue down carpet	192.05 SF		0.00	1.82	0.00	69.90	419.43
15 % waste added for Carpet.							
181. R&R Cove base molding - rubber or vinyl, 4" high	52.00 LF		0.21	1.60	0.00	18.82	112.94
182. Content Manipulation charge - per hour	2.00 HR		0.00	30.00	0.00	12.00	72.00
Totals: # 8 Suite					0.00	118.60	711.70

6 &**7 Suite**

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
183. Seal floor or ceiling joist system	4.00 SF		0.00	1.16	0.00	0.92	5.56
184. R&R Batt insulation - 6" - R19 - paper / foil faced	4.00 SF		0.20	0.84	0.00	0.84	5.00
185. R&R Suspended ceiling tile - 2' x 2'	4.00 SF		0.15	2.06	0.00	1.76	10.60
186. Remove Glue down carpet	162.00 SF		0.43	0.00	0.00	13.94	83.60
187. Glue down carpet	186.30 SF		0.00	1.82	0.00	67.82	406.89
15 % waste added for Carpet.							
188. R&R Cove base molding - rubber or vinyl, 4" high	51.00 LF		0.21	1.60	0.00	18.46	110.77
189. Content Manipulation charge - per hour	2.00 HR		0.00	30.00	0.00	12.00	72.00
Totals: # 6 & 7 Suite					0.00	115.74	694.42

5 Suite

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
190. Seal floor or ceiling joist system	8.00 SF		0.00	1.16	0.00	1.86	11.14
191. R&R Batt insulation - 6" - R19 - paper / foil faced	8.00 SF		0.20	0.84	0.00	1.66	9.98
192. R&R Suspended ceiling tile - 2' x 2'	8.00 SF		0.15	2.06	0.00	3.54	21.22
193. Remove Glue down carpet	176.00 SF		0.43	0.00	0.00	15.14	90.82
194. Glue down carpet	202.40 SF		0.00	1.82	0.00	73.68	442.05
15 % waste added for Carpet.							

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - # 5 Suite

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
195. R&R Cove base molding - rubber or vinyl, 4" high	53.00 LF		0.21	1.60	0.00	19.18	115.11
196. Content Manipulation charge - per hour	2.00 HR		0.00	30.00	0.00	12.00	72.00
Totals: # 5 Suite					0.00	127.06	762.32

# 1 &	2 Suite						
DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
197. Seal floor or ceiling joist system	32.00 SF		0.00	1.16	0.00	7.42	44.54
198. R&R Batt insulation - 6" - R19 - paper / foil faced	32.00 SF		0.20	0.84	0.00	6.66	39.94
199. R&R Suspended ceiling tile - 2' x 2'	32.00 SF		0.15	2.06	0.00	14.14	84.86
200. Remove Glue down carpet	205.00 SF		0.43	0.00	0.00	17.64	105.79
201. Glue down carpet	235.75 SF		0.00	1.82	0.00	85.82	514.89
15 % waste added for Carpet.							
202. R&R Cove base molding - rubber or vinyl, 4" high	97.00 LF		0.21	1.60	0.00	35.12	210.69
203. Content Manipulation charge - per hour	2.00 HR		0.00	30.00	0.00	12.00	72.00
Totals: # 1 & 2 Suite					0.00	178.80	1,072.71

2nd Entry

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
204. R&R Metal J trim	24.00 LF		0.73	2.70	0.00	16.46	98.78
Totals: 2nd Entry					0.00	16.46	98.78

Main Entrance Interior

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
205. Seal floor or ceiling joist system	222.00 SF		0.00	1.16	0.00	51.50	309.02
206. R&R Batt insulation - 6" - R19 - paper / foil faced	222.00 SF		0.20	0.84	0.00	46.18	277.06



West Fire Construction & Restoration, Inc

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Main Entrance Interior

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
207. R&R Suspended ceiling tile - 2' x 2'	222.00 SF		0.15	2.06	0.00	98.12	588.74
208. R&R 1/2" drywall - hung, taped, ready for texture	96.00 SF		0.30	1.78	0.00	39.94	239.62
209. Texture drywall - machine	1,315.00 SF		0.00	0.42	0.00	110.46	662.76
210. Seal/prime then paint the surface area (2 coats)	1,315.00 SF		0.00	0.90	0.00	236.70	1,420.20
211. Reglaze 3/16" glass - double pane	132.00 SF		0.00	14.27	0.00	376.72	2,260.36
212. Mask or cover per square foot	443.00 SF		0.31	0.00	0.00	27.46	164.79
213. Clean floor	443.00 SF		0.00	0.30	0.00	26.58	159.48
Totals: Main Entrance Interior					0.00	1,013.66	6,082.03

8 Office

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
214. Seal floor or ceiling joist system	12.00 SF	0.00		1.16	0.00	2.78	16.70
215. R&R Batt insulation - 6" - R19 - paper / foil faced	12.00 SF	0.20		0.84	0.00	2.50	14.98
216. R&R Suspended ceiling tile - 2' x 2'	12.00 SF	0.15		2.06	0.00	5.30	31.82
217. Remove Glue down carpet	106.00 SF	0.43		0.00	0.00	9.12	54.70
218. Glue down carpet	121.90 SF	0.00		1.82	0.00	44.38	266.24
15 % waste added for Carpet.							
219. R&R Cove base molding - rubber or vinyl, 4" high	42.00 LF	0.21		1.60	0.00	15.20	91.22
220. Content Manipulation charge - per hour	1.00 HR	0.00		30.00	0.00	6.00	36.00
Totals: # 8 Office					0.00	85.28	511.66

7 Office

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
221. R&R 1/2" drywall - hung, taped, ready for texture	32.00 SF	0.30		1.78	0.00	13.32	79.88
222. Texture drywall - machine	319.00 SF	0.00		0.42	0.00	26.80	160.78
223. Seal/prime then paint the surface area (2 coats)	319.00 SF	0.00		0.90	0.00	57.42	344.52
224. Remove Glue down carpet	96.00 SF	0.43		0.00	0.00	8.26	49.54

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - # 7 Office

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
225. Glue down carpet	110.40 SF		0.00	1.82	0.00	40.18	241.11
15 % waste added for Carpet.							
226. R&R Cove base molding - rubber or vinyl, 4" high	40.00 LF		0.21	1.60	0.00	14.48	86.88
227. Content Manipulation charge - per hour	1.00 HR		0.00	30.00	0.00	6.00	36.00
Totals: # 7 Office					0.00	166.46	998.71

6 Office

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
228. Remove Glue down carpet	149.00 SF	0.43		0.00	0.00	12.82	76.89
229. Glue down carpet	171.35 SF	0.00		1.82	0.00	62.38	374.24
15 % waste added for Carpet.							
230. R&R Cove base molding - rubber or vinyl, 4" high	49.00 LF	0.21		1.60	0.00	17.74	106.43
231. Content Manipulation charge - per hour	1.00 HR	0.00		30.00	0.00	6.00	36.00
Totals: # 6 Office					0.00	98.94	593.56

5 Office

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
232. Seal floor or ceiling joist system	12.00 SF	0.00		1.16	0.00	2.78	16.70
233. R&R Batt insulation - 6" - R19 - paper / foil faced	12.00 SF	0.20		0.84	0.00	2.50	14.98
234. R&R Suspended ceiling tile - 2' x 2'	12.00 SF	0.15		2.06	0.00	5.30	31.82
235. Remove Glue down carpet	178.00 SF	0.43		0.00	0.00	15.30	91.84
236. Glue down carpet	204.70 SF	0.00		1.82	0.00	74.52	447.07
15 % waste added for Carpet.							
237. R&R Cove base molding - rubber or vinyl, 4" high	54.00 LF	0.21		1.60	0.00	19.54	117.28
238. Content Manipulation charge - per hour	1.00 HR	0.00		30.00	0.00	6.00	36.00
Totals: # 5 Office					0.00	125.94	755.69



West Fire Construction & Restoration, Inc

1114 Avenue C
Katy, Texas 77493
713-682-2494

4 Office

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
239. Seal floor or ceiling joist system	12.00 SF	0.00		1.16	0.00	2.78	16.70
240. R&R Batt insulation - 6" - R19 - paper / foil faced	12.00 SF	0.20		0.84	0.00	2.50	14.98
241. R&R Suspended ceiling tile - 2' x 2'	12.00 SF	0.15		2.06	0.00	5.30	31.82
242. Remove Glue down carpet	143.00 SF	0.43		0.00	0.00	12.30	73.79
243. Glue down carpet	164.45 SF	0.00		1.82	0.00	59.86	359.16
15 % waste added for Carpet.							
244. R&R Cove base molding - rubber or vinyl, 4" high	48.00 LF	0.21		1.60	0.00	17.38	104.26
245. Content Manipulation charge - per hour	1.00 HR	0.00		30.00	0.00	6.00	36.00
Totals: # 4 Office					0.00	106.12	636.71

3 Office

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
246. Seal floor or ceiling joist system	12.00 SF	0.00		1.16	0.00	2.78	16.70
247. R&R Batt insulation - 6" - R19 - paper / foil faced	12.00 SF	0.20		0.84	0.00	2.50	14.98
248. R&R Suspended ceiling tile - 2' x 2'	12.00 SF	0.15		2.06	0.00	5.30	31.82
249. R&R 1/2" drywall - hung, taped, ready for texture	32.00 SF	0.30		1.78	0.00	13.32	79.88
250. Texture drywall - machine	405.00 SF	0.00		0.42	0.00	34.02	204.12
251. Seal/prime then paint the surface area (2 coats)	405.00 SF	0.00		0.90	0.00	72.90	437.40
252. Remove Glue down carpet	160.00 SF	0.43		0.00	0.00	13.76	82.56
253. Glue down carpet	184.00 SF	0.00		1.82	0.00	66.98	401.86
15 % waste added for Carpet.							
254. R&R Cove base molding - rubber or vinyl, 4" high	51.00 LF	0.21		1.60	0.00	18.46	110.77
255. Content Manipulation charge - per hour	1.00 HR	0.00		30.00	0.00	6.00	36.00
Totals: # 3 Office					0.00	236.02	1,416.09

2 Office

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - # 2 Office

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
256. Seal floor or ceiling joist system	12.00 SF		0.00	1.16	0.00	2.78	16.70
257. R&R Batt insulation - 6" - R19 - paper / foil faced	12.00 SF		0.20	0.84	0.00	2.50	14.98
258. R&R Suspended ceiling tile - 2' x 2'	12.00 SF		0.15	2.06	0.00	5.30	31.82
259. Remove Glue down carpet	292.00 SF		0.43	0.00	0.00	25.12	150.68
260. Glue down carpet	335.80 SF		0.00	1.82	0.00	122.24	733.40
15 % waste added for Carpet.							
261. R&R Cove base molding - rubber or vinyl, 4" high	73.00 LF		0.21	1.60	0.00	26.42	158.55
262. Content Manipulation charge - per hour	1.00 HR		0.00	30.00	0.00	6.00	36.00
Totals: # 2 Office					0.00	190.36	1,142.13

1 Office

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
263. Seal floor or ceiling joist system	12.00 SF		0.00	1.16	0.00	2.78	16.70
264. R&R Batt insulation - 6" - R19 - paper / foil faced	12.00 SF		0.20	0.84	0.00	2.50	14.98
265. R&R Suspended ceiling tile - 2' x 2'	12.00 SF		0.15	2.06	0.00	5.30	31.82
266. Remove Glue down carpet	180.00 SF		0.43	0.00	0.00	15.48	92.88
267. Glue down carpet	207.00 SF		0.00	1.82	0.00	75.34	452.08
15 % waste added for Carpet.							
268. R&R Cove base molding - rubber or vinyl, 4" high	54.00 LF		0.21	1.60	0.00	19.54	117.28
269. Content Manipulation charge - per hour	1.00 HR		0.00	30.00	0.00	6.00	36.00
Totals: # 1 Office					0.00	126.94	761.74

Side Entrance

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
270. Seal floor or ceiling joist system	172.00 SF		0.00	1.16	0.00	39.90	239.42
271. R&R 5/8" drywall - hung, taped, ready for texture	574.00 SF		0.30	1.88	0.00	250.26	1,501.58
272. Texture drywall - machine	2,478.00 SF		0.00	0.42	0.00	208.16	1,248.92



West Fire Construction & Restoration, Inc

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Side Entrance

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
273. Seal/prime then paint the surface area (2 coats)	2,478.00 SF		0.00	0.90	0.00	446.04	2,676.24
274. R&R Additional cost for high wall or ceiling - over 14' to 20'	574.00 SF		0.13	0.61	0.00	84.94	509.70
275. Light fixture - Detach & reset - Large	3.00 EA		0.00	72.46	0.00	43.48	260.86
276. Floor protection - plastic and tape - 10 mil	573.00 SF		0.00	0.29	0.00	33.24	199.41
277. Clean floor	573.00 SF		0.00	0.30	0.00	34.38	206.28
278. Content Manipulation charge - per hour	4.00 HR		0.00	30.00	0.00	24.00	144.00
Totals: Side Entrance					0.00	1,164.40	6,986.41

Settlement room

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
279. Seal stud wall for odor control	128.00 SF		0.00	0.83	0.00	21.24	127.48
280. Seal floor or ceiling joist system	172.00 SF		0.00	1.16	0.00	39.90	239.42
281. R&R Batt insulation - 6" - R19 - paper / foil faced	172.00 SF		0.20	0.84	0.00	35.78	214.66
282. R&R Suspended ceiling tile - 2' x 2'	172.00 SF		0.15	2.06	0.00	76.02	456.14
283. R&R 1/2" drywall - hung, taped, ready for texture	128.00 SF		0.30	1.78	0.00	53.24	319.48
284. Texture drywall - machine	607.00 SF		0.00	0.42	0.00	50.98	305.92
285. Seal/prime then paint the surface area (2 coats)	607.00 SF		0.00	0.90	0.00	109.26	655.56
286. R&R Cove base molding - rubber or vinyl, 4" high	76.00 LF		0.21	1.60	0.00	27.52	165.08
287. Mask or cover per square foot	345.00 SF		0.31	0.00	0.00	21.40	128.35
288. Clean floor	345.00 SF		0.00	0.30	0.00	20.70	124.20
289. Content Manipulation charge - per hour	4.00 HR		0.00	30.00	0.00	24.00	144.00
Totals: Settlement room					0.00	480.04	2,880.29

3 Entry

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
290. Clean walls	269.00 SF		0.00	0.30	0.00	16.14	96.84

U-20-STATEFARMARENA

7/16/2020

Page: 19

000117

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - # 3 Entry

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
291. Seal/prime then paint the surface area (2 coats) walls	269.00 SF		0.00	0.90	0.00	48.42	290.52
292. Remove Carpet	59.17 SF		0.19	0.00	0.00	2.24	13.48
293. Carpet	68.05 SF		0.00	3.07	0.00	41.78	250.69
15 % waste added for Carpet.							
294. R&R Carpet pad	59.17 SF		0.08	0.54	0.00	7.34	44.02
295. Additional labor cost for Berber or patterned carpets	59.17 SF		0.00	0.15	0.00	1.78	10.66
296. Content Manipulation charge - per hour	2.00 HR		0.00	30.00	0.00	12.00	72.00
Totals: # 3 Entry					0.00	129.70	778.21

3 Dressing Room

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
297. Clean walls	826.00 SF		0.00	0.30	0.00	49.56	297.36
298. Seal/prime then paint the surface area (2 coats) walls	826.00 SF		0.00	0.90	0.00	148.68	892.08
299. Remove Carpet	662.00 SF		0.19	0.00	0.00	25.16	150.94
300. Carpet	761.30 SF		0.00	3.07	0.00	467.44	2,804.63
15 % waste added for Carpet.							
301. R&R Carpet pad	662.00 SF		0.08	0.54	0.00	82.10	492.54
302. Additional labor cost for Berber or patterned carpets	662.00 SF		0.00	0.15	0.00	19.86	119.16
303. Content Manipulation charge - per hour	2.00 HR		0.00	30.00	0.00	12.00	72.00
Totals: # 3 Dressing Room					0.00	804.80	4,828.71

2 Dressing Room

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
304. Clean walls	682.00 SF		0.00	0.30	0.00	40.92	245.52
305. Seal/prime then paint the surface area (2 coats) walls	682.00 SF		0.00	0.90	0.00	122.76	736.56
306. Mask or cover per square foot	451.00 SF		0.31	0.00	0.00	27.96	167.77
307. Content Manipulation charge - per hour	2.00 HR		0.00	30.00	0.00	12.00	72.00



West Fire Construction & Restoration, Inc

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - # 2 Dressing Room

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
Totals: # 2 Dressing Room					0.00	203.64	1,221.85

#1	Dressing Room						
DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
308. Clean walls	1,164.00 SF		0.00	0.30	0.00	69.84	419.04
309. Seal/prime then paint the surface area (2 coats) walls	1,164.00 SF		0.00	0.90	0.00	209.52	1,257.12
310. Mask or cover per square foot	451.00 SF		0.31	0.00	0.00	27.96	167.77
311. Content Manipulation charge - per hour	2.00 HR		0.00	30.00	0.00	12.00	72.00
Totals: #1 Dressing Room					0.00	319.32	1,915.93

Ticket	Area						
DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
312. R&R Storefront - bronze anodized frame - Double pane	167.00 SF		1.30	32.16	0.00	1,117.56	6,705.38
313. R&R Batt insulation - 6" - R19 - paper / foil faced	135.00 SF		0.20	0.84	0.00	28.08	168.48
314. R&R Suspended ceiling tile - 2' x 2'	135.00 SF		0.15	2.06	0.00	59.68	358.03
315. Remove Glue down carpet	270.00 SF		0.43	0.00	0.00	23.22	139.32
316. Glue down carpet	310.50 SF		0.00	1.82	0.00	113.02	678.13
15 % waste added for Carpet.							
317. Content Manipulation charge - per hour	2.00 HR		0.00	30.00	0.00	12.00	72.00
Totals: Ticket Area					0.00	1,353.56	8,121.34

Arena	Roof						
DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
318. R&R Fiberboard - 1"	57,031.00 SF		0.30	0.90	0.00	13,687.44	82,124.64
319. R&R Modified bitumen roof - hot mopped - main roof	570.31 SQ		35.57	286.80	0.00	36,770.16	220,621.00
320. R&R Fiberboard - 1"	14,120.00 SF		0.30	0.90	0.00	3,388.80	20,332.80



West Fire Construction & Restoration, Inc

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Arena Roof

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
321. R&R Modified bitumen roof - hot mopped - flat areas	141.20 SQ	35.57		286.80	0.00	9,103.74	54,622.38
322. R&R Flash parapet wall only - bitumen	1,365.69 LF	1.38		8.60	0.00	2,725.92	16,355.50
323. R&R Cap flashing - large	1,365.69 LF	0.41		21.83	0.00	6,074.58	36,447.52
324. Roof drain cover - Detach & reset	9.00 EA	0.00		27.61	0.00	49.70	298.19
325. R&R Flashing - pipe jack	6.00 EA	4.88		32.37	0.00	44.70	268.20
326. R&R Roof scupper - aluminum	2.00 EA	8.67		147.73	0.00	62.56	375.36
327. R&R Flashing, 20" wide	248.00 LF	0.41		3.36	0.00	187.00	1,121.96
328. R&R Gravity roof ventilator - 18"	5.00 EA	6.24		256.13	0.00	262.38	1,574.23
329. Remove Additional charge for high roof (2 stories or greater)	711.51 SQ	3.67		0.00	0.00	522.24	3,133.48
330. Additional charge for high roof (2 stories or greater)	711.51 SQ	0.00		13.34	0.00	1,898.30	11,389.84
331. Central air - condenser unit - Detach & reset	1.00 EA	0.00		502.43	0.00	100.48	602.91
Totals: Arena Roof					0.00	74,878.00	449,268.01

Exterior

Exterior

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
Repairs to exterior siding are complete.							
332. General Laborer - per hour	80.00 HR		0.00	30.00	0.00	480.00	2,880.00
333. R&R Siding - steel (29 gauge)	1,072.00 SF		0.33	5.90	0.00	1,335.72	8,014.28
334. R&R Metal studding, 3 5/8" wide, 16" OC, 20 gauge	1,092.00 SF		0.26	2.24	0.00	546.00	3,276.00
335. R&R Batt insulation - 6" - R19 - paper faced	1,092.00 SF		0.20	0.84	0.00	227.14	1,362.82
336. R&R Wall/roof panel - ribbed - 24 gauge - 1 1/8" to 1 1/2"	1,092.00 SF		0.35	3.61	0.00	864.86	5,189.18
337. Prime & paint metal siding	93.00 SF		0.00	0.82	0.00	15.26	91.52
338. Electrician - per hour - reset electrical/mech panels	24.00 HR		0.00	80.05	0.00	384.24	2,305.44
339. Siding Installer - per hour - to reset loose panels	40.00 HR		0.00	71.68	0.00	573.44	3,440.64
340. R&R Roll-up door & hardware - 10' x 18' - 22 gauge	1.00 EA		26.55	3,082.00	0.00	621.72	3,730.27
341. Mason - Brick / Stone - per hour - to repair block wall - 2 men for 8 hours each	16.00 HR		0.00	64.91	0.00	207.72	1,246.28



West Fire Construction & Restoration, Inc

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Exterior

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
Total: Exterior					0.00	5,256.10	31,536.43
Total: Source - Geomni Property					0.00	108,166.46	648,998.29
Line Item Totals: U-20-STATEFARMARENA					0.00	108,166.46	648,998.29

Grand Total Areas:

0.00	SF Walls	0.00	SF Ceiling	0.00	SF Walls and Ceiling
0.00	SF Floor	0.00	SY Flooring	0.00	LF Floor Perimeter
0.00	SF Long Wall	0.00	SF Short Wall	0.00	LF Ceil. Perimeter
0.00	Floor Area	0.00	Total Area	0.00	Interior Wall Area
142,497.82	Exterior Wall Area	10,393.01	Exterior Perimeter of Walls		
0.00	Surface Area	0.00	Number of Squares	0.00	Total Perimeter Length
0.00	Total Ridge Length	0.00	Total Hip Length		



West Fire Construction & Restoration, Inc

1114 Avenue C
Katy, Texas 77493
713-682-2494

Summary

Line Item Total	540,831.83
Overhead	54,083.23
Profit	54,083.23
Replacement Cost Value	\$648,998.29
Less Depreciation	(168,606.63)
Actual Cash Value	\$480,391.66
Net Claim	\$480,391.66
Total Recoverable Depreciation	168,606.63
Net Claim if Depreciation is Recovered	\$648,998.29

Randall W. Taylor

CAUSE NO. C-1896-18-C

CITY OF HIDALGO, TEXAS	§	IN THE DISTRICT COURT OF
	§	
vs.	§	HIDALGO COUNTY, TEXAS
	§	
TEXAS MUNICIPAL LEAGUE	§	
INTERGOVERNMENTAL RISK POOL	§	139TH JUDICIAL DISTRICT

**TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL'S
MOTION FOR SUMMARY JUDGMENT**

Defendant, Texas Municipal League Intergovernmental Risk Pool (the "Risk Pool"),
moves for summary judgment on all of Plaintiff City of Hidalgo's (the "City's") claims:

INTRODUCTION

This is a contract dispute about whether the City has a right to additional property self-insurance benefits under the terms of an "Interlocal Agreement" between the City and the members of the Risk Pool, for damage to the City's "State Farm Arena" allegedly sustained in a June 1, 2016 storm. The Risk Pool moves for summary judgment on the City's claims because:

1. The Parties Participated in the Contractual Appraisal Process and the Risk Pool Has Timely Paid the Full Appraisal Award – A contractual appraisal award was rendered on July 16, 2020 (the "Appraisal Award") establishing the amount of the City's Actual Cash Value (ACV) loss in this case, and the Risk Pool paid the full ACV loss within five business days.
2. The Risk Pool's Full, Timely Payment of the Appraisal Award Forecloses the City's Breach Claim - Where, as here, the Risk Pool pays an appraisal award, it has complied with the contract "and it cannot be found to be in breach." *Breshears v. State Farm Lloyds*, 155 S.W.3d 340, 344 (Tex. App.—Corpus Christi 2004, pet. denied). The City is therefore estopped from claiming that the Risk Pool has breached the parties' contract, the Risk Pool is not in breach of contract, the City has no breach of contract damages, and the City's claims are released, all as a matter of law.
3. The City's Failure to Satisfy the Replacement Cost Value (RCV) Deadline Precludes its Recovery of Such Benefits – Although the Appraisal Award alternatively determined the RCV amount of the City's loss, the Risk Pool has no contractual obligation to pay RCV benefits *unless* the City repaired or replaced its damaged property within two years after its June 1, 2016 loss. Because no evidence exists that the City timely made any such repairs in an amount greater than the amount already paid, the Risk Pool is entitled to a no-evidence summary judgment with respect to the City's claim for RCV benefits. *See* TEX. R. CIV. P. 166a(i).

I.
FACTUAL BACKGROUND

A. THE RISK POOL IS A GOVERNMENTAL SELF-INSURANCE POOL.

Texas law authorizes local governments to establish self-insurance funds “to protect the governmental unit and its officers, employees, and agents, from any insurable risk or hazard.” TEX. GOV’T CODE § 2259.031(a). Under the Texas Interlocal Cooperation Act, local governments are empowered to contract with one another through interlocal agreements to pool their resources and collectively self-insure against insurable risks and hazards. *See* TEX. GOV’T CODE §§ 791.001, 791.011(a); Op. Tex. Att’y Gen. No. MW-347 (May 29, 1981). The Risk Pool is one such self-insurance pool, formed pursuant to the Texas Interlocal Cooperation Act.^{1/} The Risk Pool is not an insurance company, nor is it governed by the Texas Insurance Code.^{2/} Instead, the Risk Pool is a governmental unit with retained governmental immunity.^{3/}

B. THE INTERLOCAL AGREEMENT & PROPERTY COVERAGE DOCUMENT: A GOVERNMENTAL SELF-INSURANCE CONTRACT.

The document that establishes the Risk Pool’s liability and property self-insurance program is the Liability/Property Interlocal Agreement (the “Interlocal Agreement”).^{4/} Under the Interlocal Agreement, the “exact detail” of the self-insurance coverage afforded to Risk Pool members from

^{1/} Exhibit A (Declaration of David Reagan (“Reagan Decl.”) at ¶3). The Risk Pool has over 2,800 political subdivisions as its members, including airport authorities, mental health/mental retardation agencies, cities, municipal utility districts, conservation & reclamation districts, navigation districts, councils of government, public utility boards, downtown management & improvement districts, river authorities, drainage districts, tax appraisal districts, fire districts/emergency service districts, transit authorities, flood control districts, water & irrigation districts, hospital districts, 911 districts, housing authorities and library districts. *Id.*

^{2/} *Id.*; *see* TEX. GOV’T CODE § 791.001 *et seq.*; TEX. GOV’T CODE § 2259.037.

^{3/} *See* TEX. GOV’T CODE § 2259.001; TEX. CIV. PRAC. & REM. CODE § 101.001(3)(D). *See Ben Bolt-Palito Blanco Consol. Indep. Sch. Dist. v. Tex. Political Subdivisions Prop./Cas. Joint Self-Ins. Fund*, 212 S.W.3d 320, 326 (Tex. 2006). *See* Plaintiff’s Verified Response to Defendant’s Amended Plea to The Jurisdiction (filed 9/26/18) at ¶3 (admitting that, “[i]n its Original Petition, Plaintiff acknowledged that the Risk Pool enjoys government immunity from suit...”). The Risk Pool asks the Court to take judicial notice of the cited City admissions and exhibits from the City’s prior filings in this court and incorporates those cited admissions/exhibits by reference.

^{4/} *See* Exhibit A (Reagan Decl. at ¶4-5); *see generally* Exhibit A-1 (Interlocal Agreement); *see also* Plaintiff’s Verified Response to Defendant’s Amended Plea to The Jurisdiction (filed 9/26/18) at ¶ 51, Plaintiff’s Exhibit A (Interlocal Agreement), Plaintiff’s Exhibit B (Coverage Document).

time to time is set forth in the “Property Coverage Document,” the “Declarations of Coverage,” and the “Endorsements,” incorporated into the Interlocal Agreement by reference.^{5/}

Subject to various conditions, the Property Coverage Documents provide that when a member experiences a covered loss, that loss may be adjusted and paid on an Actual Cash Value (ACV) basis.^{6/} Under certain circumstances not present here, a loss also may be adjusted and paid based upon a Replacement Cost Value (RCV) basis:^{7/}

“REPLACEMENT COST OPTION . . . The Fund will only pay replacement cost if the repairs or replacements are made as soon as reasonably possible after the loss or damage, but in no event will the Fund pay on a replacement cost basis for property not repaired or replaced within two years of the loss unless an extension is granted during such two year period, in writing, by the Fund.”^{8/}

Where the parties are unable to agree upon the amount of a covered loss, the Property Coverage Document establishes an “Appraisal” procedure that one or both may invoke, to have a disinterested umpire determine the amount of loss:

“APPRAISAL. If the Member and the Fund fail to agree as to the amount of loss, each shall, upon the written demand either of the Member or of the Fund made within 60 days after receipt of proof of loss by the Fund, select a competent and disinterested appraiser. The appraisers then shall select a competent and disinterested umpire . . . Then, at a reasonable time and place, the appraisers shall appraise the loss, stating separately the value at the time of loss and the amount of loss. If the appraisers fail to agree, they shall submit their differences to the umpire. An award in writing by any two shall determine the amount of loss. The Member and the Fund shall each

^{5/} *Id.*; Exhibit A-2 (Property Coverage Documents).

^{6/} Exhibit A-2 (Property Coverage Documents at p. 16, SPECIAL FORM PROPERTY COVERAGE, ¶IV, VALUATION –ACTUAL CASH VALUE). Actual Cash Value (ACV) “means the lesser of: (1) the cost to repair; (2) The cost to replace with like kind and quality less proper deduction for depreciation; or (3) the amount actually expended to replace, if replaced.” *Id.* at p. 1, GENERAL DEFINITIONS, A. ACTUAL CASH VALUE).

^{7/} Exhibit A-2 (Property Coverage Documents at PROPERTY COVERAGE DECLARATIONS (indicating “Replacement Cost” valuation basis). Replacement Cost means “the least of: (1) the cost to repair; (2) the cost to replace new for old with like kind and quality; or (3) the amount actually expended to replace.” *Id.* at p. 2, GENERAL DEFINITIONS, N. REPLACEMENT COST.

^{8/} Exhibit A-2 (Property Coverage Documents at p. 24, REPLACEMENT COST OPTION, ¶IV(I)) (emphasis added).

pay its chosen appraiser and shall bear equally the other expenses of the appraisal and of the umpire.”^{9/}

Payment of the amount of loss determined by an appraisal award rendered pursuant to Subsection E of the Property Coverage Document operates as a contractual “release in full of all liability . . . with respect to such loss.”^{10/}

C. THE CITY’S SELF-INSURANCE CLAIM.

On June 1, 2016, the City reported that it had sustained damage to the State Farm Arena during a June 1, 2016 storm. The Risk Pool assessed the City’s alleged loss and, on June 27, 2016, tendered payment for the City’s ACV loss in the amount of \$283,666.81.^{11/}

D. THE LAWSUIT AND APPRAISAL OF THE CITY’S LOSS.

The City disagreed with the Risk Pool’s assessment of the loss sustained to the Arena and, on May 23, 2018, filed a breach of contract action claiming that its “actual covered damage to the [Arena] as a result of the Storm exceeded the sum of \$7,329,546.”^{12/}

On August 8, 2018, the City filed a Motion to Compel Appraisal asking the Court “to compel appraisal of its claim for covered damages to determine the amount of property damage, if any, Plaintiff sustained as a result of the Storm.”^{13/} According to the City, because “**the Coverage Document states that payment of the appraisal award ‘shall constitute a release in full of all liability under this Agreement,’**” an appraisal conducted pursuant to Subsection E of the Property Coverage Document will “bring this disputed claim to a prompt conclusion . . .”^{14/}

^{9/} Exhibit A-2 (Property Coverage Documents at p. 4-5, GENERAL CONDITIONS, §IV(E), APPRAISAL) (emphasis added).

^{10/} Exhibit A-2 (Property Coverage Documents at p. 5, GENERAL CONDITIONS, §IV(F), LOSS PAYABLE).

^{11/} Exhibit A (Reagan Decl. at ¶6); *see* Plaintiff’s Second Amended Petition (filed 9/26/18) at ¶20 (admitting receipt of the Risk Pool’s \$283,666.81 payment).

^{12/} Plaintiff’s Verified Motion to Compel Appraisal and Stay Proceedings Pending Appraisal (filed 8/8/18) at ¶8; Plaintiff’s Second Amended Petition (filed 9/26/18) at ¶¶20, 24.

^{13/} Plaintiff’s Verified Motion to Compel Appraisal and Stay Proceedings Pending Appraisal (filed 8/8/18) at ¶12.

^{14/} *Id.* at ¶¶13, 16 (emphasis added).

The Court granted the City's Motion to Compel Appraisal on February 26, 2019 and the 13th Court of Appeals affirmed the Court's decision on March 12, 2020.^{15/}

E. THE ENTRY AND PAYMENT OF THE JUNE 2020 APPRAISAL AWARD.

On June 16, 2020, the parties entered into a TEX. R. CIV. P. 11 agreement to "conduct an appraisal per the terms of the Property Coverage Document of the losses alleged in [this] lawsuit."^{16/} The City and the Risk Pool agreed to use Randall Taylor as their umpire and designated Mark Barber and Al Berryhill as their respective party appraisers.^{17/}

The Umpire Taylor and Appraiser Berryhill signed and issued the Appraisal Award on July 16, 2020.^{18/} The Appraisal Award determined the amount of the City's ACV/RCV loss to be \$480,391.66 and \$648,998.29, respectively, *before* taking into account any coverage deductible or prior payments by the Risk Pool:

	REPLACEMENT COST	DEPRECIATION	ACV-AMT OF LOSS
Building	\$648,998.29	\$168,606.63	\$480,391.66
TOTAL AMT LOSS	\$648,998.29	\$168,606.63	\$480,391.66

On July 23, 2020, the Risk Pool tendered a check to the City in the amount of \$194,224.85 in full payment of the ACV Appraisal Award – less the Risk Pool's prior loss payment (\$283,66.81) and applicable deductible under the Property Coverage Document (\$2,500.00).^{19/}

^{15/} Order Granting Plaintiff's Motion to Compel Appraisal (2/26/19) (the "Appraisal Order"); *Tex. Mun. League Intergovernmental Risk Pool v. City of Hidalgo*, No. 13-19-00096-CV, 2020 Tex. App. LEXIS 2093, 2020 WL 1181251 (Tex. App.—Corpus Christi Mar. 12, 2020, no pet.).

^{16/} See Exhibit B-1 (Rule 11 Agreement).

^{17/} See *id.*

^{18/} Exhibit B-2 (Appraisal Award); see also Exhibit B-3 (Umpire Estimate of Loss).

^{19/} See Exhibit B-4 (7/23/20 Letter tendering Appraisal Award payment of \$194,224.85); Exhibit A-2 (Property Coverage Documents, DECLARATIONS OF COVERAGE at p. 1, Deductible); Plaintiff's Second Amended Petition at ¶20 (acknowledging receipt of the Risk Pool's prior loss payment of \$283,66.81).

II. **STANDARD OF REVIEW**

In a traditional motion for summary judgment, the movant has the burden to show that no genuine issues of material fact exist and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a; *Nixon v. Mr. Property Management Co.*, 690 S.W.2d 546, 548-49 (Tex. 1985). Summary judgment for a defendant is proper when the defendant negates any element of plaintiff's claim or conclusively establishes the elements of an affirmative defense. *See Sci. Spectrum, Inc. v. Martinez*, 941 S.W.2d 910, 911 (Tex. 1997).

A no-evidence summary judgment motion must be granted if, after an adequate time for discovery: (1) the moving party asserts that no evidence exists of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial; and (2) the non-movant fails to produce more than a scintilla of summary judgment evidence raising a genuine issue of material fact on those elements. TEX. R. CIV. P. 166a(i); *see King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 750 (Tex. 2003). A party seeking a no-evidence summary judgment must specifically state the element or elements of a claim for which no evidence exists. *Green v. Indus. Specialty Contractors, Inc.*, 1 S.W.3d 126, 130 (Tex. App.—Houston [1st Dist.] 1999, no pet.).

III. **ARGUMENT AND AUTHORITIES**

A. **THE RISK POOL IS ENTITLED TO SUMMARY JUDGMENT BECAUSE ITS TIMELY PAYMENT OF THE FULL APPRAISAL AWARD FORECLOSES THE CITY'S CONTRACT CLAIM.**

The City's breach of contract claim is foreclosed as a matter of law, because the Risk Pool has timely paid the full ACV loss Appraisal Award issued pursuant to Subsection E of the Property Coverage Document. Well-established principles establish why the City is estopped from

proceeding with its claim.^{20/}

Where, as here, a contract appraisal award issues, it is binding and enforceable. *Breshears v. State Farm Lloyds*, 155 S.W.3d 340, 344 (Tex. App.—Corpus Christi 2004, pet. denied) (“Every reasonable presumption will be indulged to sustain an appraisal decision.”). The purpose of such an award is to establish the amount of a covered loss, and ““estop one party from contesting the issue of the value of damages in a suit on the insurance contract.”” *Id.* at 343 (quoting *Allison v. Fire Ins. Exch.*, 98 S.W.3d 227, 253 (Tex. App. —Austin 2002, pet. abated)).

Tender of the full amount awarded pursuant to a contractual appraisal clause “is all that is required to estop the insured from raising a breach of contract claim.” *Nat’l Sec. Fire & Cas. Co. v. Hurst*, 523 S.W.3d 840, 845 (Tex. App.—Houston [14th Dist.] 2017, pet. denied) (citing *Brownlow v. United Servs. Auto. Ass’n*, No. 13-03-758-CV, 2005 Tex. App. LEXIS 1987, at *2 (Tex. App.—Corpus Christi Mar. 17, 2005, pet. denied)); *Zhu v. 1st Cmty. Ins. Co.*, 543 S.W.3d 428, 433-34 (Tex. App.—Houston [14th Dist.] 2018, pet. dismissed)(“tender of the amount owed based on the amount of loss in the appraisal award estops the insured from bringing a breach-of-contract claim against the insurer.”). By paying the full amount of an appraisal award, the insurer “complies with every requirement of the contract, [and] it cannot be found to be in breach.” *Breshears*, 155 S.W.3d at 344; *Brownlow*, 2005 Tex. App. LEXIS 1987, at *6-7.

The City and the Risk Pool – by agreement – participated in the contractual appraisal process set forth in Subsection E of the Property Coverage Document,^{21/} which resulted in the Appraisal Award “setting the amount of the loss” that the City claims in this case.^{22/} The Appraisal

^{20/} See Risk Pool’s Supplemental Answer at p. 2 (pleading affirmative defenses of estoppel, release and payment).

^{21/} Exhibit B-1 (Rule 11 Agreement).

^{22/} Exhibit B-2 (Appraisal Award); see also Exhibit A-2 (Property Coverage Documents at p. 4-5, GENERAL CONDITIONS, §IV(E), APPRAISAL) (stating that an appraisal award “shall determine the amount of loss.”).

Award established both an ACV loss calculation, and an alternative RCV loss calculation (an amount which, for the reasons discussed in the Section III.A.2 below, is not contractually available here).^{23/}

The Risk Pool tendered payment of the full \$480,391.66 ACV loss amount to the City on July 23, 2020:

\$480,391.66	ACV Loss Award ^{24/}
(\$283,666.81)	Prior Loss Payment (6/27/16) ^{25/}
<u>(\$2,500.00)</u>	<u>Deductible</u> ^{26/}
\$194,224.85	Final ACV Payment (7/23/20) ^{27/}

The Risk Pool's full payment of the Appraisal Award within five business days after its issuance was timely as a matter of law. *See, e.g., Hurst*, 523 S.W.3d at 843, 845 (finding no timeliness concern where insurer paid an appraisal award twenty-one business days after issuance); *see Turner v. Peerless Indem. Ins. Co.*, No. 07-17-00279-CV, 2018 Tex. App. LEXIS 4036, *3 (Tex. App.—Amarillo June 5, 2018, no pet.)(unpublished)(payment of an appraisal award within eight business days was timely); *Garcia v. Liberty Ins. Corp.*, No. H-17-1587, 2019 U.S. Dist. LEXIS 40640, at *13 (S.D. Tex. 2019)(payment of appraisal award within ten business days was timely).

By tendering the full Appraisal Award in a timely manner, the Risk Pool has “complied with every requirement of the contract, [and] it cannot be found to be in breach.” *Breshears*, 155

^{23/} *See Garcia v. Liberty Ins. Corp.*, No. H-17-1587, 2019 U.S. Dist. LEXIS 40640, at *14-15 (S.D. Tex. 2019)(where appraisal award provides both ACV and RCV calculations, but the time frame during which repairs are contractually required to be made has expired, payment of ACV amount constitutes full payment of appraisal award and estops breach of contract claim);

^{24/} Exhibit B-2 (Appraisal Award).

²⁵ Exhibit A (Reagan Decl. at ¶6); *see also* Second Amended Petition at ¶20 (admitting receipt of the Risk Pool's earlier loss payment of \$283,666.81).

²⁶ Exhibit B-2 (Property Coverage Documents, DECLARATIONS OF COVERAGE at p. 1, Deductible).

²⁷ Exhibit B-4 (7/23/20 Letter tendering Appraisal Award payment of \$194,224.85).

S.W.3d at 344; *see also Brownlow*, 2005 Tex. App. LEXIS 1987, at *6-7.^{28/} It matters not that the Appraisal Award is greater than the amount that the Risk Pool originally paid the City in June 2016. *See Breshears*, 155 S.W.3d at 343. Thus, the breach and damages elements of the City's breach of contract claim are negated.^{29/}

Furthermore, the Risk Pool's payment of the amount of the Appraisal Award operates as a contractual "release in full of all liability . . . with respect to such loss;"^{30/} and conclusively establishes both payment and release affirmative defenses, per the terms of the parties' contract. In conclusion, summary judgment is required because: (1) the City's claim has been paid per the terms of a contractual appraisal provision; (2_) the City is estopped from pursuing its breach of contract claim against the Risk Pool; (3) the Risk Pool has not breached the contract; (4) the City has no contract damages; (5) and the City's contract claim has been released, all as a matter of law.^{31/}

B. THE CITY'S FAILURE TO COMPLY WITH THE REPLACEMENT COST DEADLINE FORECLOSES ANY RECOVERY OF SUCH BENEFITS.

Although the Appraisal Award included an alternative RCV loss calculation, the Risk Pool has no liability for RCV benefits in this case as a matter of law. *See, e.g., Lundstrom v. United Services Auto. Ass'n-CIC*, 192 S.W.3d 78, 87 (Tex. App.—Houston [14th Dist.] 2006, pet. denied)

^{28/} Under the terms of the Property Coverage Document, the Risk Pool is "release[d] in full of all liability . . . with respect to [the City's] loss." *See Exhibit A-2* (Property Coverage Documents at p. 5, GENERAL CONDITIONS, §IV(F), LOSS PAYABLE) (emphasis added).

^{29/} *See Id.* The essential elements of the City's breach of contract claim are: "(1) the existence of a valid contract; (2) performance or tendered performance by the plaintiff; (3) breach of contract by the defendant; and (4) damages sustained as a result of the breach." *N. & W. Ins. Co. v. Sentinel Inv. Grp., LLC*, 419 S.W.3d 534, 539 (Tex. App.—Houston [1st Dist.] 2013, no pet.). Payment of the appraisal award negates the breach and damages elements. *See id.*

^{30/} *Exhibit A-2* (Property Coverage Documents at p. 5, GENERAL CONDITIONS, §IV(F), LOSS PAYABLE).

^{31/} *See Garcia*, 2019 U.S. Dist. LEXIS 40640, at *11-16 (dismissing breach of contract claim based upon Appraisal Award issued pursuant to substantially similar appraisal provision – in an amount higher than initially paid by the insurer – that was paid within ten business days of the Appraisal Award while breach of contract claim was pending).

(A valid appraisal payment estops a party from contesting damages but still leaves the question of liability for the court).

Under the Property Coverage Document, the Risk Pool has no contractual obligation to pay RCV benefits *unless* the City repaired or replaced its damaged property within two years after its alleged June 1, 2016 loss:

“REPLACEMENT COST OPTION . . . The Fund will only pay replacement cost if the repairs or replacements are made as soon as reasonably possible after the loss or damage, but in no event will the Fund pay on a replacement cost basis for property not repaired or replaced within two years of the loss unless an extension is granted during such two year period, in writing, by the Fund.”^{32/}

The Risk Pool moves for summary judgment pursuant to TEX. R. CIV. P. 166a(i) on the City’s claim for RCV benefits, because the City can produce no competent summary judgment evidence demonstrating either that: (1) the Risk Pool granted the City a written extension of the foregoing two year replacement cost deadline;³³ or (2) the City made property repairs or replacements before the foregoing two year replacement cost deadline whose cost exceeded the amount that the Pool has already paid the City. Absent such a showing, the Risk Pool is entitled to a no-evidence summary judgment on the City’s contractual claim to RCV benefits.

V.

SUMMARY JUDGMENT RECORD

The Risk Pool designates, relies upon and incorporates by reference the summary judgment evidence contained in the Appendix to the Risk Pool’s Motion for Summary Judgment, a copy of which has been filed contemporaneously with this motion.

³² Exhibit A-2 (Property Coverage Documents at p. 24, REPLACEMENT COST OPTION, ¶IV(I)) (emphasis added).

³³ See Exhibit A (Reagan Decl. at ¶7).

**V.
PRAYER**

Accordingly, the Risk Pool respectfully prays that the Court grant the relief requested herein, enter summary judgment in the Risk Pool's favor with respect to all claims asserted by the City, and that the Risk Pool be awarded such other and further relief, at law or in equity, to which it may be justly entitled.

Respectfully submitted,

BLANK ROME LLP

By: /s/ Barry Abrams
Barry Abrams
State Bar No. 00822700
Jack W. Higdon
State Bar No. 24007360
717 Texas Avenue, Suite 1400
Houston, TX 77002
(713) 228-6601
(713) 228-6605 (Fax)
babrams@blankrome.com
jhigdon@blankrome.com

ATTORNEYS FOR DEFENDANT TEXAS MUNICIPAL
LEAGUE INTERGOVERNMENTAL RISK POOL

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2020, a true and correct copy of the foregoing and/or attached instrument was served on all parties of record pursuant to the Texas Rules of Civil Procedure as indicated below:

Via E-filing Service:

Mr. Martin J. Phipps

Mr. Charles E. Hardy Jr.

Mr. Harry A. Church

Mr. Ryan Delgado

PHIPPS DEACON PURNELL, PLLC

102 9th Street

San Antonio, TX 78215

Fax: (210) 340-9887

mhipps@phippsandersondeacon.com

rdelgado@phippsllp.com

mhipps@phippsdeaconpurnell.com

hchurch@phippsdeaconpurnell.com

chardy@phippsdeaconpurnell.com

/s/ Barry Abrams

Barry Abrams

CAUSE NO. C-1896-18-C

CITY OF HIDALGO, TEXAS	§	IN THE DISTRICT COURT OF
vs.	§	HIDALGO COUNTY, TEXAS
TEXAS MUNICIPAL LEAGUE	§	
INTERGOVERNMENTAL RISK POOL	§	139TH JUDICIAL DISTRICT

**APPENDIX IN SUPPORT OF
TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL'S
MOTION FOR SUMMARY JUDGMENT**

Defendant Texas Municipal League Intergovernmental Risk Pool (the “Risk Pool”) files its Appendix containing true and correct copies of the evidentiary record relied upon and incorporated into its Motion for Summary Judgment (the “MSJ”). The Risk Pool’s MSJ Record consists of the following:

Ex. No.	Document	Sponsor
<u>Exhibit A</u>	David Reagan Declaration (“Reagan Decl.”)	-
<u>Exhibit A-1</u>	Interlocal Agreement	<i>Reagan</i>
<u>Exhibit A-2</u>	Property Coverage Documents	<i>Reagan</i>
<u>Exhibit B</u>	Jack Higdon Declaration (“Higdon Decl.”)	-
<u>Exhibit B-1</u>	6/16/2020 Rule 11 Agreement	<i>Higdon Decl.</i>
<u>Exhibit B-2</u>	7/16/2020 Appraisal Award	<i>Higdon Decl.</i>
<u>Exhibit B-3</u>	7/16/2020 Umpire’s Estimate	<i>Higdon Decl.</i>
<u>Exhibit B-4</u>	7/23/2020 Letter Tendering Risk Pool’s Payment of Appraisal Award	<i>Higdon Decl.</i>

Respectfully submitted,

BLANK ROME LLP

By: /s/ Barry Abrams

Barry Abrams
State Bar No. 00822700
Jack W. Higdon
State Bar No. 24007360
717 Texas Avenue, Suite 1400
Houston, TX 77002
(713) 228-6601
(713) 228-6605 (Fax)
babrams@blankrome.com
jhigdon@blankrome.com

ATTORNEYS FOR DEFENDANT TEXAS MUNICIPAL
LEAGUE INTERGOVERNMENTAL RISK POOL

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2020, a true and correct copy of the foregoing and/or attached instrument was served on all parties of record pursuant to the Texas Rules of Civil Procedure as indicated below:

Via E-filing Service:

Mr. Martin J. Phipps
Mr. Charles E. Hardy Jr.
Mr. Harry A. Church
Mr. Ryan Delgado
PHIPPS DEACON PURNELL, PLLC
102 9th Street
San Antonio, TX 78215
Fax: (210) 340-9887
mphipps@phippsandersondeacon.com
rdelgado@phippsllp.com
mphipps@phippsdeaconpurnell.com
hchurch@phippsdeaconpurnell.com
chardy@phippsdeaconpurnell.com

/s/ Barry Abrams
Barry Abrams

Exhibit A

CAUSE NO. C-1896-18-C

CITY OF HIDALGO, TEXAS

vs.

TEXAS MUNICIPAL LEAGUE
INTERGOVERNMENTAL RISK
POOL

§
§
§
§
§

IN THE DISTRICT COURT OF

HIDALGO COUNTY, TEXAS

139TH JUDICIAL DISTRICT

DECLARATION OF DAVID REAGAN

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

My name is David Reagan. My date of birth is February 8, 1953, and my address is 1821 Rutherford Lane, Austin, Texas 78754. I declare under penalty of perjury that the following statements are true and correct

1. My name is David Reagan. I am over the age of 18, of sound mind, capable of making this declaration and have personal knowledge of the facts stated herein, all of which are true and correct.
2. I am the Director of Legal Services for the Texas Municipal League Intergovernmental Risk Pool (the "Risk Pool"). In that capacity, I have gained first-hand knowledge of the facts stated and the documents authenticated by this affidavit, including the Interlocal Agreement which establishes the liability and property self-insurance program, the Property Coverage Document applicable to the City of Hidalgo, Texas (the "City") and other Risk Pool members, the declarations of coverage agreed to by the various Risk Pool members, and the Risk Pool's payments to the City in connection with the claim that is the subject of the above-styled lawsuit. I also have first-hand knowledge of the organization, records, and membership of the Risk Pool, and the manner in which the members contribute self-insurance funds to the Risk Pool.
3. The Texas Legislature has expressly authorized local governmental entities to establish self-insurance risk pools such as the Risk Pool, to administer the self-insurance coverage of the member entities in order "to protect the governmental unit and its officers, employees, and agents, from any insurable risk or hazard." TEX. GOV'T CODE §2259.031(a). And, under the Texas Interlocal Cooperation Act, local governments are empowered to contract with one another through interlocal agreements to pool their resources and collectively self-insure against insurable risks and hazards. TEX. GOV'T CODE at §791.001, 791.011(a); Op. Tex. Att'y Gen. No. MW-347 (May 29, 1981). The Risk Pool is one such self-insurance pool, formed and operating under the Texas Interlocal Cooperation Act, TEX. GOV'T CODE §791, *et seq.*; Chapter 2259 of the Government Code; and TEX. LABOR

- c onE ANN. §504. The Risk Pool is comprised of over 2,800 political subdivisions as its members: including airport authorities, mental health /mental retardation agencies, cities, municipal utility districts, conservation & reclamation districts, navigation districts,

councils of government, public utility boards, downtown management & improvement districts, river authorities, drainage districts, tax appraisal districts, fire districts/emergency service districts, transit authorities, flood control districts, water & irrigation districts, hospital districts, 911 districts, housing authorities and library districts. For this reason, the Risk Pool is not an insurance company, but is a self-insurance program of governmental units and is itself a governmental Unit with retained governmental immunity.

4. The document that establishes the Risk Pool's liability and property self-insurance program is called the Liability/Property Interlocal Agreement (the "Interlocal Agreement"). A true and correct copy of the "Interlocal Agreement" relevant to the City's claims is attached as **Exhibit A-1**.
5. Under the Interlocal Agreement, the "exact detail" of the self-insurance coverage afforded to Risk Pool members from time to time is set forth in the "Property Coverage Document," the "Declarations of Coverage," and the "Endorsements" documents (collectively, the "Property Coverage Documents"), which are expressly incorporated by reference into the Interlocal Agreement. A true and correct copy of the Property Coverage Documents relevant to the City's claims are attached as **Exhibit A-2**.
6. I have reviewed Plaintiffs Second Amended Petition regarding the alleged loss to the State Farm Arena during a June 1, 2016 storm. The Risk Pool previously tendered payment to the City on June 27, 2016 for the City's State Farm Arena property loss, in the amount of \$283,666.81.
7. The Property Coverage Document contains a Replacement Cost provision which states ; **"REPLACEMENT COST OPTION ...** The Fund will only pay replacement cost if the repairs or replacements are made as soon as reasonably possible after the loss or damage, but in no event will the Fund pay on a replacement cost basis for property not repaired or replaced within two years of the loss unless an extension is granted during such two year period, in writing, by the Fund." The Risk Pool did not grant the City an extension of the two year deadline in which to repair or replace the loss claimed as a result of the June 1, 2016 storm.

EXECUTED in Travis County, Texas on August 2020.

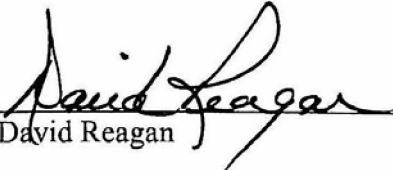

David Reagan

Exhibit A-1

Texas Municipal League Intergovernmental Risk Pool

211 East Seventh Street, Suite 500, Austin, Texas 78701

LIABILITY/PROPERTY INTERLOCAL AGREEMENT

This Contract and Interlocal Agreement is entered into by and between political subdivisions of this state (hereinafter referred to as "Pool Members") to form a joint self-insurance pool to be named the Texas Municipal League Joint Self-Insurance Fund (hereinafter referred to as the "Fund") for the purpose of providing coverages against risks which are inherent in operating a political subdivision.

WITNESSETH:

The undersigned Pool Member, in accordance with the Interlocal Cooperation Act, Article 4413 (32c), T.R.C.S. and the interpretation thereof by the Attorney General of the State of Texas (Opinion #MW-347, May 29, 1981), and in consideration of other political subdivisions executing like agreements, does hereby agree to become one of the Pool Members of this self-insured pool. The conditions of membership agreed upon by and between the parties are as follows:

1. Definitions of terms used in this Interlocal Agreement.

- a. Board. Refers to the Board or Trustees of the Texas Municipal League Joint Self-Insurance Fund.
- b. Fund Year. 12:01 a.m. October 1 through 12:01 a.m. the following October 1.
- c. Manual Rates. The basic rates applicable to each liability classification promulgated by the Insurance Service Office or the Board of Trustees.
- d. TML Municipal Liability Self-Insurance Plan. The liability coverage document that sets forth in exact detail the coverages provided as part of the overall plan.
- e. Adjustments. Refers to any offsets to manual premium that may result from the Pool Member's election of deductibles, loss experience or Fund Modifier which reflects the savings to the Pool Member by entering into this Agreement.
- f. TML Municipal Property Self-Insurance Plan. The property coverage document that sets forth in exact detail the coverages provided as part of the overall plan.
- g. Premium and Contribution. Used interchangeably in some parts of this Interlocal Agreement. Any reference at any time in this Interlocal Agreement to an insurance loan not ordinarily a part of self-insurance shall be deemed for convenience only and is not construed as being contrary to the self-insurance concept except where the context clearly indicates another possible interpretation such as but not limited to the reference to "reinsurance."
- h. Reimbursable Deductible. The amount that was chosen by this Pool Member to be applicable to the first monies paid by the fund to effect judgment or settlement of any claim or suit. The Pool Member, upon notification of the action taken, shall promptly reimburse the Fund for all or such part of the deductible amount as has been paid by the Fund. Further, however, the Fund's obligation to pay damages shall be subject to the Limits of Liability stated in the Declarations of Coverage or Endorsements to this Interlocal Agreement less the stated deductible amount.
- i. Fund Modifier. A percentage figure that is applied to the manual rates by the Fund to reflect the savings to the Pool Member by entering into the Interlocal Agreement.
- j. Agreement Period. The continuous period since the Pool Member first became a member of this Fund excluding, however, any period or periods of time therein that the member did not participate as a member of the Pool.
- k. Declarations of Coverage. The specific indication of the coverages, limits, deductibles, contributions and special provisions elected by each individual Pool Member. The Declarations of Coverages may be modified by Endorsement.

2. The Board of Trustees, acting through its agents and Fund staff, is responsible for the administration of all Fund business on behalf of the Pool Members.

3. In consideration of the execution of this Agreement by and between the Pool Member and the Fund and of the contributions of the Pool Member, the coverage elected by the Pool Member is afforded according to the terms of the TML Liability Self-Insurance Plan and the TML Property Self-Insurance Plan. The affirmative declaration of contributions and limits of liability in the Declarations of Coverage and Endorsements determines the applicability of the Self-Insurance Plans.

Each Pool Member agrees to adopt and accept the coverages, provisions, terms, conditions, exclusions and limitations as further provided for in the TML Self-Insurance Plans or as specifically modified by the Pool Member's Declarations of Coverage. This Interlocal Agreement shall be construed to incorporate the TML Liability Self-Insurance Plan and/or the TML Property Self-Insurance Plan, Declarations of Coverage, and Endorsements and addenda whether or not physically attached hereto.

4. It is understood that by participating in this risk sharing mechanism to cover liability exposures, the Pool Member does not intend to waive any of the immunities that its officers or its employees now possess. The Pool Member recognizes the Texas Tort Claims Act and its limitations to certain governmental functions as well as its monetary limitations and that by executing this Agreement does not agree to expand those limitations.

The Pool Member, upon the execution of this Agreement, shall supply the Fund with a current copy of its charter provisions or ordinance that sets out its requirement as to the number of days in which a third party liability claim must be made against it.

If the Pool Member does not have such an ordinance provision that establishes a set number of days or if it has an ordinance provision which provides for less than sixty (60) days notice and for good cause shown up to six (6) months notice the Pool Member agrees to adopt an ordinance providing for such notice reasonably describing the damage or injury claimed and the time, manner and place of the incident from which it arose. The notice requirement shall not be changed by the Pool Member without first giving the Fund thirty (30) days written notice. Violation of this provision may, at the Fund's discretion, void this Interlocal Agreement.

5. The term of this Agreement and the self-insurance provided to the Pool Member shall be continuous commencing 12:01 a.m. on the date designated in this Agreement until terminated as provided below. Although the self-insurance provided for in this Agreement shall be continuous until terminated, the limit of liability of the Fund under the coverages that the Pool Member elects shall be limited during any Fund Year to the amount stated in the Declarations of Coverage for that Fund Year.

This Agreement may be terminated by either party giving to the other sixty (60) days prior written notice of intent to terminate except the Pool Member may terminate this Agreement and its coverages thereunder without giving the sixty (60) days notice if the reason is because of a change by the Fund in the Pool Member's contribution, coverage, or other change in the limits of liability, terms, conditions, exclusions and limitations provided for in the Texas Municipal League Self-Insurance Plans provided that no termination by the Member shall be effective prior to the date that written notice of termination is actually received in the offices of the Texas Municipal League Joint Self-Insurance Fund and provided that the Pool Member agrees to and shall pay the applicable premium and contribution for those coverages it is terminating until the date the notice of termination is actually received by the Fund.

The Fund shall provide the Pool Member with Declarations of Coverage and any Endorsements that determine the applicability of the Texas Municipal League Self-Insurance Plans annually by December 1. Such Declarations of Coverage shall include, but not be limited to, the coverage period which shall be the applicable Fund Year, limits, deductibles, contributions, special provisions and limitations. Changes made during the Fund Year, whether requested by the Pool Member or required by the Fund, will be handled by Endorsement.

It is the intention of the parties that the Pool Member's coverages under this Agreement shall remain in full force and effect from Fund Year to Fund Year, subject to the limits of liability that the Fund can provide each Fund Year and the terms, conditions, limitations that the Fund may require to protect its solvency and to comply with reinsurance requirements, until notice of termination is given as herein provided. Realizing that the Pool Member needs the earliest possible information concerning the Fund coverages, limits, and exclusions and the Pool Member's contribution that will be required for any new Fund Year, the Fund will endeavor to provide this information as soon as possible before the beginning of each Fund Year. The parties recognize, however, that conditions in the reinsurance industry are such that the Fund may not be able to provide this information to the Pool Member before the beginning of a Fund Year for various reasons including the failure of the Pool Member to timely submit the appropriate exposure summary or delays on the part of reinsurers in getting information to the Fund, and so, to protect the Pool Member from gaps in its coverage and to protect the solvency of the Fund, the parties agree as follows:

If for any reason other than the Pool Member's failure to provide the information requested in the exposure summary, the Fund has not been able to provide the Pool Member with information concerning available coverages or a new Fund Year or advise the Pool Member of the amount of its contribution for the new Fund Year by the beginning of the Fund Year, the Fund shall nevertheless continue the Pool Member's coverages at the same limits of liability (if available) and if not, then at the highest limit of liability available for the new Fund Year) so that the Pool Member shall at all times remain covered as herein provided and the Pool Member's

initial contributions for the new Fund Year shall be determined by a "tentative contribution" as determined by the Board with the Pool Member's actual annual contribution to be credited by the amount paid in accordance with the tentative contribution and adjusted during the Fund Year. In the event the Pool Member does not wish to have its coverages extended or renewed at the end of any Fund Year, the burden shall be upon the Pool Member to give written notice to the Fund as provided hereinabove and the Pool Member agrees to pay as hereinabove stated all contributions or pro rata contributions until the date such written notice is received in the offices of the Fund or the date of termination of this Agreement, whichever is later.

6. Commensurate with the execution of this Agreement and annually thereafter, the Pool Member shall complete the appropriate exposure summary and deliver it or cause it to be delivered to the Fund, or, if so instructed, to a designated contractor, no later than September 1 of each year and new annual contributions shall be calculated using manual rates times exposure, less any adjustments. Intentional or reckless misstatements on the exposure summary shall be grounds for cancellation. In the event that the Pool Member fails or refuses to submit the appropriate exposure summary, the Fund reserves the right to terminate such Pool Member by giving thirty (30) days written notice and to collect any and all contributions that are earned pro rata for the period preceding contract termination.

The Pool Member agrees to pay the annual contribution to the Fund in four (4) equal quarterly installments, in advance, commencing at the beginning of this Agreement with subsequent installments due the first quarter thereafter. Pool Members who elect a deductible in excess of \$25,000 shall comply with the monthly payment schedule outlined to them in advance of assuming such a large deductible. In the event this Agreement is terminated as herein provided, the Fund shall promptly repay to the Pool Member any such unearned annual contribution prorated as of the date of termination and the Pool Member agrees during the term of this Agreement to promptly pay all reimbursable deductibles upon receipt of statement

At the end of each and every Fund Year, the Fund may require the Pool Member to submit the actual data requested on the exposure summary as reflected by the books and records of the Pool Member. The Fund reserves the right to audit the records of any Pool Member and adjust contributions accordingly.

In the event that the Pool Member fails or refuses to make the payments, including accrued interest, as herein provided, the Fund reserves the right to terminate such Pool Member by giving them ten (10) days written notice and to collect any and all amounts that are earned pro rata for the period preceding contract termination. If the amounts owed, including reimbursable deductibles, have to be collected by suit, the Pool Member agrees to pay attorneys' fees and costs incurred in such suit.

7. The Fund shall maintain adequate protection from catastrophic losses to protect its financial integrity. Aggregate protection shall also be maintained. The Member's contributions shall be limited to that amount as calculated under this Agreement.
8. Notwithstanding the provisions of the foregoing paragraph, it is agreed the Board shall have the right to adjust the financial protection outlined above and/or amend coverages as it finds available or deems necessary to maintain the fiscal soundness of the Fund at the beginning of or during any Fund Year.
9. The Fund will make available loss control services to the Pool Members to assist them in following a plan of loss control that may result in reduced losses. The Pool Member agrees that it will cooperate in instituting any and all reasonable loss control recommendations. In the event that the recommendations submitted seem unreasonable, the Pool Member has a right to appeal to the Board of Trustees. The Board shall hear the objections of the Pool Member at its next regularly scheduled meeting and its decisions will be final and binding on all parties. Any Pool Member who does not agree to follow the decision of the Board shall be withdrawn from the Fund immediately.
10. The Pool Member agrees that it will appoint a contact of department head rank, and the Fund shall not be required to contact any other individual except this one person. Any notice to or any agreements with the contact shall be binding upon the Pool Member. The Pool Member reserves the right to change the contact from time to time by giving written notice to the Fund.
11. The Fund agrees to handle all liability and property claims, and provide a defense for any and all liability claims covered under this Agreement after prompt notice has been given. The Pool Member hereby appoints the Fund staff and Contractors as its agents to act in all matters pertaining to processing and handling of claims covered under this Agreement and shall cooperate fully in supplying any information needed or helpful in settlement or defense of such claims. As respects liability claims, the Fund staff and Contractors shall carry on all negotiations with the claimant and his attorney and negotiate within authority previously granted by the Fund. If a personal appearance by the Pool Member or an employee is necessary, the expense of this appearance will not be the responsibility of the Fund. With the advice and consent of the Fund, the Fund staff and the Contractors will retain and supervise legal counsel for the prosecution and defense of any litigation. All decisions on individual cases shall be made by the Fund through the Fund staff and the Contractors, which includes the decision to appeal or not to appeal. However, any Pool Member shall have the right in any case to consult with the Fund on any decision made by the Fund staff or Contractors. The Board shall hear the objections of the Pool

Member at its next regularly scheduled meeting and its decision will be final and binding on all parties. Any suit brought or defended by the Fund shall be brought or defended only in the name of the Pool Member and/or its officers or employees. There shall be supplied periodically to each Pool Member a computer printout involving a statement of claims. As respects the TML Municipal Liability Self-Insurance Plan, the Fund shall have priority in enforcing its subrogation claims against the claims of Pool Member except as to claims of the Texas Municipal League Workers' Compensation Joint Insurance Fund, which shall take preference.

12. The Pool Member acknowledges that it has received a copy of the Bylaws of the Fund and agrees to abide by the Bylaws and any amendments thereto.
13. The Fund agrees that all Fund transactions will be annually audited by a nationally recognized certified public accounting firm.
14. If legally required, the Fund shall cause to be filed the necessary tax forms with the Internal Revenue Service.
15. As the administrators of the Fund, the Board shall primarily and consistently keep foremost in their deliberations and decisions in operating the Fund that each of the participating Pool Members is a "self-insured." At least annually, the Board shall carefully review, study and consider the actual claims or loss experience (including reserves for future claims payments) of each of the Pool Members, the pro rata savings to the Fund resulting from overall loss experience attributed to each Pool Member, and the pro rata portion of the cost of all catastrophic loss protection and aggregate stop loss protection allocated to each Pool Member as well as the pro rata allocation, as determined by the Board of the other and necessary administrative expenses of the Pool, in order to reasonably determine the actual pro rata cost, expense and loss experience of each Pool Member in order to maintain as nearly as possible an equitable and reasonable self-insurance administration of the Fund as applied to each Pool Member.

The Fund shall maintain case reserves and supplemental reserves computed in accordance with standard actuarial principles, taking into account historical and other data, designed to measure claims development and claims incurred but not yet reported, so that funds will be available to meet these claims as they become due. The Fund shall also establish and maintain a reserve for Return of Contributions to further ensure the fiscal integrity of the Fund in the event of a potential adverse loss development. Only current Pool Members may receive return of contribution.

16. The Pool Member may elect to participate in the Fund only to the extent of obtaining administrative services, and, if desired and available, reinsurance. In that event, the Pool Member shall not make contributions as provided in Paragraph 5 nor receive the coverages provided for in the TML Self-Insurance Plan, nor shall the TML Joint Self-Insurance Fund be liable for the payment of claims against the Pool Member. The Fund shall only handle and service claims for the Pool Member and pay same out of funds to be deposited by the Pool Member in a separate account administered by the Fund for the payment of claims and judgments only against that Pool Member as hereinafter provided.

Notwithstanding the provisions of any other section of this Interlocal Agreement, a Pool Member who elects to receive Administrative Services Only as specified in the attached Declarations (hereinafter referred to as the "ASO Pool Member") shall be subject to the following requirements and conditions:

- A. Although the ASO Pool Member will receive coverage documents setting forth the coverages, provisions, terms, conditions, exclusions and limitations provided for in the TML Self-Insurance Plans, these documents are not intended to and shall not create an insured-insurer relationship between the Fund or any of its other Pool Members and the ASO Pool Member, but rather are provided solely for the purposes of: (1) defining the scope of claims the Fund will handle on behalf of the ASO Pool Member, and (2) defining the nature and scope of claims and conditions applicable thereto that will be covered by reinsurance, if available and obtained by the ASO Pool Member, beyond the ASO Pool Member's self-insured retention. The Fund shall not itself be liable for the payment of claims or judgments against the electing ASO Pool Member, nor to provide the electing ASO Pool Member with a defense of any such claims or suits at the expense of the Fund. The Fund will only make payments on behalf of the ASO Pool Member out of the ASO Pool Member's claims account. The ASO Pool Member shall comply with all requirements of any reinsurer including but not limited to furnishing timely claims reports, proposed settlements that would impact the reinsurer as well as progress reports involving litigation. The ASO Pool Member further agrees to hold the Fund harmless from any and all claims (including attorney fees) that may be asserted against the Fund [or the non-payment of any claims due to the failure of the ASO Pool Member to maintain adequate reserves for the payment of claims as well as claims based upon breach of a duty of good faith and fair dealing because of the ASO Pool Member's or their agents' conduct toward the Fund].
- B. In connection with claims within the scope of the coverage documents, the Fund shall provide the following services on behalf of the ASO Pool Member as confirmed specifically in the attached Declarations:
 1. Overall contract and claims administration;

2. Loss control services to the ASO Pool Member to assist it in developing a plan of loss control to attempt to control or reduce the frequency and severity of claims against it;
3. Claims servicing including investigation and recommendation by the Fund's contractors; periodic meetings with the ASO Pool Member's claims official or claims committee attended by representatives of Contractors;
4. Claims administration including coordination and recommendation of defense; reserve recommendations; claims handling and defense recommendations by the Fund claims manager and assistants, as well as review of all files to monitor the ASO Pool Member's self-insurance exposure; participation by Fund staff member(s) in the periodic meetings to review claims with the ASO Pool Member's claims official or claims committee.
5. Storage and retention of claims records; periodic MIS reports detailing claims and loss information and history.

The Fund shall charge the ASO Pool Member its usual and customary charges for the aforesaid services based on actual services provided. Allocated claim expenses, including defense attorney's fees, discovery fees, expert and witness fees and court costs shall be paid by the Fund on behalf of the ASO Pool Member out of the ASO Pool Member's claims account as part of the administrative services provided by the Pool, but shall never be an expense or liability of the Fund but rather is solely that of the ASO Pool Member.

The Fund shall handle all liability and automobile physical damage claims and oversee, coordinate and make recommendations in connection with the defense of any and all liability lawsuits covered under this Agreement after prompt notice has been given. The ASO Pool Member hereby appoints Fund staff and Contractors as its agents to act in all matters pertaining to processing and handling of claims covered under this Agreement and shall cooperate fully in supplying any information needed or helpful in settlement or defense of such claims. As respects liability claims, the Fund staff and Contractors shall carry on all negotiations with the claimant or his attorney, but no settlement shall be made without express prior approval of the ASO Pool Member. All claims will be discussed with the ASO Pool Member's claims official or claims committee on a periodic basis. As information on each claim develops, the Fund staff and Contractors shall make recommendations concerning claim reserves, settlement and whether or not a case should be tried or settled or a judgment should be appealed, but all decisions on individual cases shall be made by the ASO Pool Member. In the event of litigation, the Fund staff and Contractors will retain on behalf of the ASO Pool Member legal counsel approved by the ASO Pool Member to represent it and will supervise the defense of the litigation, including any appeals.

The ASO Pool Member shall establish in its name a "claims account" at a bank designated by the Fund, out of which the Fund, through its agents, shall pay on behalf of the ASO Pool Member qualified claims or losses and allocated claims expense including court costs, fees and expenses of attorneys, independent investigators, experts and witnesses and all other costs, charges or expense properly chargeable to a qualified claim or loss. Funds shall be provided at the inception of the ASO Member's self-insurance program and promptly from time to time under the following formula based on estimates furnished by the Fund of the anticipated or actual level and volume of qualified claims or losses and allocated expenses: The ASO Pool Member shall deposit into the account initially an amount equal to one-fourth (1/4) of the estimated volume of qualified claims or losses and allocated claim expenses during the first twelve (12) months of its self-insurance program and each month thereafter, or sooner if necessary, shall deposit into the account an amount sufficient to restore, maintain or increase the account balance to an amount equal to one-fourth (1/4) of the estimated volume of qualified claims or losses and allocated claim expenses during the next twelve (12) months.

The Fund shall account to the ASO Pool Member monthly for all expenditures from the claims account. If at any time the claims account balance drops to below fifty percent (50%) of the balance currently called for under the above formula, the ASO Pool Member shall promptly deposit additional funds to restore the full balance. During any period of time that the claims account balance is fifty percent (50%) or less of that currently called for under the formula, only allocated claim expenses shall be paid out and the ASO Pool Member shall directly pay qualified claims or losses out of other funds until it deposits into the claims account the amount necessary to restore the account to its full balance. In the event payment of a qualified claim or loss would reduce the claims account balance to less than fifty percent (50%) of that called for under the formula, the ASO Pool Member shall be promptly notified and shall either pay the qualified claim or loss directly out of other funds or deposit into the claims account sufficient funds for its payment.

It is expressly understood that the Fund shall not be required to advance its own funds or those of the Joint Self-Insurance Fund to pay claims or losses or allocated expenses hereunder, or continue to perform any services herunder if the ASO Pool Member fails to provide necessary and adequate funds as herein set forth.

It shall be the sole responsibility of the ASO Pool Member to establish and maintain adequate reserves in addition to the limited funds in the claims account for payment of all claims, including catastrophic claims. The Fund will provide reserve recommendations and estimates of liability exposures, but both parties realize that judges and juries have wide discretion in assessing damage awards and the award in any particular case may be greatly in excess of or greatly less than a recommended reserve.

Either party to this agreement may at any time terminate it upon sixty (60) days written notice for any reason as to either all pending and future claims, or alternatively, only as to future claims. In the event cancellation is with respect to both pending and future claims, the Fund will no longer be obligated to perform the services outlined in this Agreement and shall promptly and in an orderly manner forward to the ASO Pool Member or its designee all pending claim files. In the event termination is only as to future claims, this Agreement shall continue in full force and effect with respect to all pending claims and claims occurring but not reported prior to cancellation until concluded. In either event, the ASO Pool Member shall be entitled, if it so requests and at its own expense, to have the closed claim filed retrieved from storage and delivered to it. In the event the ASO Pool Member does not request closed files in the notice of cancellation, however, they will be retained or destroyed at the Fund's option and the ASO Pool Member shall have no recourse against the Fund for failure to retain them.

L RECEIVED OCT 30 , 1989

TO BE COMPLETED BY MEMBER:

EMPLOYER MEMBERS' FUND CONTACT (See Section 10):

Name of Contact Ramona H. Delgado Title City Secretary

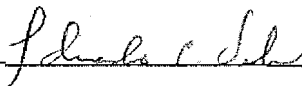
Member Name City of Hidalgo

Mailing Address P.O. Box 187

Street Address (if different from above) Jill E. Esperanza

City Hidalgo Zip 78557 Phone (512) 843-2286

SIGNATURE OF AUTHORIZED CITY OFFICIAL

Mayor 

October 20, 1989

Title _____ Date _____

Member's Federal Tax I.D. Number 7 1 - 1 4 5 6 7 6 1

This Information is MANDATORY

TO BE COMPLETED BY FUND: (OFFICE USE ONLY)

Effective Date of This Agreement 10/01/89

City Name Hidalgo

Contract Number 00440

SIGNATURE OF Authorized FUND OFFICIAL

Fund Secretary

NOV 30 1989

Title • _____

Date _____

Exhibit A-2



PROPERTY

C O V E R A G E D O C U M E N T



P-300
10-1-14
KEEP IN PERMANENT FILES

000148

**Texas Municipal League
JOINT SELF-INSURANCE FUND
Property Coverage Document**

OCTOBER 1, 2014

Texas Municipal League Intergovernmental Risk Pool
1821 Rutherford Lane, First Floor • Austin, Texas 78754
P.O. Box 149194 • Austin, Texas 78714-9194
(512) 491-2300 • (800) 537-6655
www.tmlirp.org

TABLE OF CONTENTS

GENERAL DEFINITIONS	1
GENERAL EXCLUSIONS	3
GENERAL CONDITIONS	4
Limits of Liability	4
Deductible	4
Other Insurance	4
In the Case of Loss	4
Certificates of Coverage	6
Titles of Paragraphs	6
Inspection	6
Contribution Adjustment	6
Errors or Omissions	6
Interpretation	6
SPECIAL FORM PROPERTY COVERAGE	7
Perils Covered	7
Perils Excluded	7
Coverage	9
Valuation - Actual Cash Value	16
Additional Coverages	16
NAMED PERIL COVERAGE OPTION	18
FLOOD COVERAGE OPTION	20
BOILER & MACHINERY COVERAGE OPTION	22
REPLACEMENT COST OPTION	24
MOBILE EQUIPMENT COVERAGE OPTION	25
CRIME COVERAGE OPTION	26
General	26
Public Employee Dishonesty Coverage	28
Theft, Disappearance, and Destruction Coverage	29
Forgery or Alteration Coverage	31
Computer Fraud Coverage	32
ANIMAL MORTALITY/THEFT AND MEDICAL COVERAGE OPTION	34
Animal Mortality and Theft Coverage	34
Loss of Use Coverage	36
Canine Veterinary Fee Coverage	36
Surgical Coverage	37

GENERAL DEFINITIONS

Whenever the following words or phrases appear throughout the **Plan**, they are defined as follows:

A. ACTUAL CASH VALUE means the lesser of:

1. The cost to repair;
2. The cost to replace with like kind and quality less proper deduction for depreciation; or
3. The amount actually expended to replace, if replaced.

B. AGREEMENT means the Interlocal Agreement executed between the **Fund** and the **Member** designating those coverages, limits, and deductibles of the **Plan** adopted by the **Member**.

C. AUTOMOBILE means a land motor vehicle, trailer, or semi-trailer designed for travel on public roads (including any machinery, equipment, tools, or apparatus attached thereto and not intended to be removed or used off of or away from the vehicle), but does not include **mobile equipment**.

D. DECLARATIONS means the document which sets forth information that identifies, by **Member**, the types of coverage to be provided by the **Fund**, the amounts of any deductible, the coverage period, the limits of liability of the **Fund** including any aggregate limit, the **Fund** contribution, and any endorsements to this coverage that may be appended to the **declaration** or referred to in the **declaration**, and such other information matters as determined by the **Fund** operator and/or the **Fund** administrator.

E. EARTHQUAKE means a shaking or trembling of the earth that is volcanic or tectonic in origin.

Earthquake: Each loss by **earthquake** shock or volcanic action shall constitute a single claim hereunder; provided, if more than one such **earthquake** shock or volcanic action shall occur within any period of 72 hours during the term of the **Agreement**, such **earthquake** shock or volcanic action shall be deemed to be a single loss within the meaning thereof. The **Fund** shall not be liable for any loss occurring after the expiration date and time of the **Agreement**.

However, the **Fund** will be liable for any losses occurring for a period of up to 72 hours after the expiration of the **Agreement** provided that the first **earthquake** damage occurs prior to the date and time of the expiration of the **Agreement**.

F. ELECTRONIC DATA PROCESSING EQUIPMENT means an assemblage of electronic machine components capable of accepting instruction and information, processing the information according to the instruction, and producing desired results.

G. FUND means the Texas Municipal League Joint Self-Insurance Fund.

H. FUND MEMBER means the political subdivision within the State of Texas which is a present participant in the **Fund**.

I. FUND YEAR means the period beginning at 12:01 a.m. on the effective date and ending at 12:01 a.m. on the anniversary date set forth in the **declarations**.

J. INSURANCE means the "self-insurance" provided under the **Agreement**.

K. MEMBER means the same as **Fund Member**.

L. MOBILE EQUIPMENT means any of the following types of land vehicles, including any attached machinery or equipment:

1. Bulldozers, farm machinery, forklifts, and other vehicles designed for use principally off public roads;
2. Vehicles maintained for use solely on or next to premises owned by or rented to the **Member** and not licensed for highway use;
3. Vehicles that travel on crawler treads;
4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - a. Power cranes, shovels, loaders, diggers, or drills; or
 - b. Road construction or resurfacing equipment such as graders, scrapers, or rollers;
5. Vehicles not described in 1, 2, 3, or 4 above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - a. Air compressors, pumps, and generators, including spraying, welding, building cleaning, geophysical exploration, lighting, and well servicing equipment; or

- b. Cherry pickers or similar devices used to raise or lower workers;
6. Vehicles not described in 1, 2, 3, or 4 above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not mobile equipment but will be considered automobiles:

- 1. Equipment designed primarily for:
 - a. Snow removal;
 - b. Road maintenance, but not construction or resurfacing;
 - c. Street cleaning;
 - d. Firefighting;
- 2. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- 3. Air compressors, pumps, and generators, including spraying, welding, building cleaning, geophysical exploration, lighting, and well servicing equipment.

M. PLAN means the plan of **insurance** offered its **Members** by the **Fund** and as more specifically designated in the **Agreement**.

N. REPLACEMENT COST shall be the least of the following:

- 1. The cost to repair;
- 2. The cost to replace new for old with likekind and quality; or
- 3. The amount actually expended to replace.

O. TERRITORY means the 50 states of the United States, the District of Columbia, and Canada, including infrequent trips to Mexico that:

- 1. Do not exceed 25 miles from the boundary of the United States of America; and
- 2. Do not exceed ten consecutive days at any one time.

P. TERRORISM means the use of violence and threats to intimidate or coerce for political ends and/or purposes and includes any use of violence or threats for the purpose of putting the public or any section of the public in fear.

Q. VALUABLE PAPERS AND RECORDS means written, printed, or otherwise inscribed documents and records, including but not limited to books, maps, films, drawings, abstracts, deeds, mortgages, micro-inscribed documents, manuscripts, and media, but not including money and/or **securities**.

The term media includes:

- 1. Processing, recording or storage films, tapes, cards, disks, drums, cartridges, or cells used for electronic data processing operations; and
- 2. Data, information, and instructions stored on processing, recording or storage films, tapes, cards, disks, drums, cartridges, or cells used for electronic data processing operations.

The term **securities** shall mean all negotiable and nonnegotiable instruments and/or contracts representing either money or other property, and includes revenue and other stamps in current use, tokens, and tickets, but does not include money.

GENERAL EXCLUSIONS

This **Agreement** does not cover loss or damage caused by or resulting from:

- A. Hostile or warlike action in time of peace or war, including action in hindering, combating, or defending against an actual, impending, or expected attack:
 - 1. By any government or sovereign power (de jure or de facto) or by any authority maintaining or using military, naval, or air forces;
 - 2. By military, naval, or air forces; or
 - 3. By an agent of any such government, power, authority, or forces.
- B. The discharge of any weapon employing atomic fission or fusion.
- C. Rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating, or defending against such occurrence.
- D. Seizure or destruction by order of public authority, except destruction by order of public authority to prevent the spread of fire or explosion.
- E. Risks of contraband or illegal trade.

Notwithstanding the above provisions of paragraphs A, B, C, D, and E, this **Agreement** shall cover loss or damage directly caused by acts committed by an agent of any government, party, or faction engaged in war, hostilities, or warlike operations, provided such agent is acting secretly and not in connection with any operation of armed forces (whether military, naval, or air forces) in the country where the property is situated. Nothing in the foregoing shall be construed to include any loss, damage, or expense caused by or resulting from any of the risks or perils excluded above, excepting only the acts of certain agents expressly covered herein, but in no event shall this coverage include any loss, damage, or expense caused by or resulting from any weapon of war employing atomic fission or radioactive force whether in time of peace or war.

- F. Actual, alleged, or threatened release, discharge, dispersal, seepage, migration, or escape of pollutants at any time, unless caused by a peril covered under the Named Peril Coverage Option. The term "pollutant" as used in this clause is defined as any solid, liquid, gaseous, or thermal irritant or contaminant, including but not limited to vapor, fumes, acids, alkalis, chemicals, and/or waste.

- G. Nuclear reaction, nuclear radiation, or radioactive contamination, all whether controlled or uncontrolled, and whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the peril(s) covered in this **Agreement**; except:
 - 1. If fire ensues, liability is specifically assumed for direct loss by such ensuing fire, but not including any loss due to nuclear reaction, nuclear radiation, or radioactive contamination;
 - 2. The **Fund** shall be liable for loss or damage caused by sudden and accidental radioactive contamination, including resultant radiation damage for each occurrence from material used or stored or from processes conducted on covered premises, provided at the time of loss there is neither a nuclear reaction capable of sustaining nuclear fission in a self-supporting chain reaction nor any new or used nuclear fuel on the covered premises.

GENERAL CONDITIONS

I. LIMITS OF LIABILITY

The **Fund** shall not be liable for more than the amount specified in the **Agreement** for any one loss, disaster, or casualty, nor in any one **Fund Year** for more than the aggregate limits shown for the perils of **flood** or **earthquake**.

II. DEDUCTIBLE

A. For each **Member** all losses, damages, or expenses arising out of any one occurrence shall be adjusted as one loss, and from the amount of such adjusted loss shall be deducted the sum selected by each **Member** as shown in the **Agreement**.

Whether an occurrence involves a loss at one or more locations, the deductible amount shall apply against the total loss(es) incurred by the **Member** from any one occurrence.

B. If two or more deductible amounts in this **Agreement** apply to a single occurrence per **Member**, the total to be deducted shall not exceed the largest deductible applicable.

III. OTHER INSURANCE

A. EXCESS INSURANCE

Excess insurance is insurance over the limit of liability set forth in this **Agreement**. The existence of such excess insurance shall not prejudice the coverage provided under this **Agreement** nor will it reduce any liability hereunder.

B. UNDERLYING INSURANCE

1. Should the **Member** elect to maintain insurance on the actual cash value of a property, under the National Flood Insurance Act, as amended, this **Agreement** shall cover excess of loss over the maximum amount of insurance permitted under the Act.

2. Any other underlying insurance shall be considered "other insurance."

C. OTHER INSURANCE

Except for insurance as described as excess or underlying insurance, this **Agreement** shall not cover to the extent of any other insurance, whether prior or subsequent hereto in date, and whether directly or indirectly

covering the same property against the same perils. The **Fund** shall be liable for loss or damage only to the extent of that amount in excess of the amount recoverable from such other insurance.

IV. IN THE CASE OF LOSS

A. NOTICE OF LOSS

As soon as practicable after any loss or damage occurring under this **Agreement** is known to the **Member** or its agent, the **Member** shall report such loss or damage to the **Fund** or its agent.

B. ASSISTANCE AND COOPERATION OF THE FUND MEMBER

The **Member** shall cooperate with the **Fund** and, upon the **Fund's** request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and conducting suits.

C. PROTECTION FROM FURTHER DAMAGE

In the event property covered herein sustains a loss from or is damaged by a peril covered herein, the **Member** shall take all reasonable steps to protect the property from further damage, and keep a record of such expenses necessary to protect the property, for consideration in the settlement of the claim. Such expenses shall not increase the limits of liability under the **Agreement**. The **Fund** shall not pay for any subsequent loss or damage resulting from a peril not covered herein. If feasible, the **Member** shall set the damaged property aside and in the best possible order for examination.

D. PROOF OF LOSS

It shall be necessary for the **Member** to render a signed and sworn proof of loss to the **Fund** or its appointed representative, within 60 days, stating the place, time, and cause of the loss, damage, or expense, the interest of the **Member** and of all others, the value of the property involved in the loss, and the amount of loss, damage, or expense.

E. APPRAISAL

If the **Member** and the **Fund** fail to agree as

to the amount of loss, each shall, upon the written demand either of the **Member** or of the **Fund** made within 60 days after receipt of proof of loss by the **Fund**, select a competent and disinterested appraiser. The appraisers then shall select a competent and disinterested umpire. If they should fail for 15 days to agree upon such umpire, then upon request of the **Member** or of the **Fund**, such umpire shall be selected by a judge of a court of record in the county and state in which such appraisal is pending. Then, at a reasonable time and place, the appraisers shall appraise the loss, stating separately the value at the time of loss and the amount of loss. If the appraisers fail to agree, they shall submit their differences to the umpire. An award in writing by any two shall determine the amount of loss. The **Member** and the **Fund** shall each pay its chosen appraiser and shall bear equally the other expenses of the appraisal and of the umpire.

F. LOSS PAYABLE

Loss, if any, shall be adjusted with and payable to the **Member**, whose receipt shall constitute a release in full of all liability under this **Agreement** with respect to such loss.

G. PAYMENT OF LOSS

All adjusted claims shall be due and payable no later than 60 days after presentation and acceptance of proofs of loss by the **Fund** or its appointed representative.

H. REINSTATEMENT

With the exception of loss caused by perils which are subject to annual aggregate limits as noted in the **Agreement**, no loss hereunder shall reduce the amount of this **Agreement**.

I. SUIT AGAINST THE FUND

No suit or action on this **Agreement** for the recovery of any claim shall be sustainable in any court of law or equity unless the **Member** shall have fully complied with all the requirements of this **Agreement**. The **Fund** agrees that any action or proceeding against it for recovery of any loss under this **Agreement** shall not be barred if commenced within the time prescribed therefor in the statutes of the State of Texas.

J. SUBROGATION

1. Any release from liability entered into by the **Member** prior to loss hereunder

shall not affect this **Agreement** or the right of the **Member** to recover hereunder. The right of subrogation against the **Member** is waived.

2. In the event of any payment under this **Agreement**, the **Fund** shall be subrogated to the extent of such payment to all the **Member's** rights of recovery therefor. The **Member** shall execute all papers required and shall do anything that may be necessary at the expense of the **Fund** to secure such right. The **Fund** will act in concert with all other interests concerned, i.e., the **Member** and any other entity or individual participating in the payment of any loss as primary or excess insurers, in the exercise of such rights of recovery. If any amount is recovered as a result of such proceedings, the net amount recovered after deducting the costs of recovery shall be divided between the interests concerned in the proportion of their respective interests. If there should be no recovery, the expense of proceedings shall be borne proportionately by the interests instituting the proceedings.

K. SALVAGE AND RECOVERIES

All salvages, recoveries, and payments, excluding proceeds from subrogation and underlying insurance recovered or received subsequent to a loss settlement under this **Agreement**, shall be applied as if recovered or received prior to the said settlement and all necessary adjustments shall be made to the parties involved.

L. MACHINERY

In case of loss or damage by a covered peril to any part of a machine or unit consisting of two or more parts when complete for use, the liability of the **Fund** shall be limited to the value of the part or parts lost or damaged or, at the **Member's** option, to the cost and expense of replacing or duplicating the lost or damaged part or parts or of repairing the machine or unit.

M. PAIR AND SET

Except as provided under "machinery" in the event of loss or damage by a peril covered to any article or articles which are a part of a pair or set, the measure of loss or damage to such article or articles shall be a reasonable and fair proportion of the total value of

P300

the pair or set, giving consideration to the importance of said article or articles, but in no event shall such loss or damage be construed to mean total loss of the pair or set.

V. CERTIFICATES OF COVERAGE

All parties for whom a certificate of coverage or an endorsement indicating coverage has been issued are covered under this **Agreement** to the extent of the coverage shown under the certificate or endorsement.

VI. TITLES OF PARAGRAPHS

The titles of the paragraphs of this form and of amendments and supplemental contracts, if any, now or hereafter attached hereto are inserted solely for convenience of reference and shall not be deemed in any way to limit or affect the provisions to which they relate.

VII. INSPECTION

The **Fund** shall be permitted but not obligated to inspect the **Member's** real and personal property at any reasonable time. An inspection is for the **Fund's** benefit only. Neither the **Fund's** right to make inspections nor the **Fund's** reports on those inspections shall constitute an undertaking on behalf of or for the benefit of the **Member** or others to determine or guarantee that the **Member's** property is safe and not harmful to health.

VIII. CONTRIBUTION ADJUSTMENT

Prior to the beginning of each **Fund Year** the **Member** agrees to furnish the **Fund** with a statement of 100 percent values of buildings, structures, and personal property (including **valuable papers and records**), and accounts receivable and revenues covered hereunder.

The **Member** agrees that if property is acquired or constructed in excess of the amounts described in Section III. C. 1. of the Special Form Property Coverage or if it is deleted in similar amounts, the **Member** will report such acquisition or deletion to the **Fund** and pay the proportionate additional contribution or receive the return contribution due from the date of acquisition or deletion.

IX. ERRORS OR OMISSIONS

Any unintentional error or omission made in making reports by the **Member** shall not void or impair the coverage hereunder, provided the **Member** reports such error or omission as soon as reasonably possible after discovery.

This Errors or Omissions provision shall not apply to the failure of the **Member** to report property listed in Section III. B. 9. of the Special Form Property Coverage section or Section III.A. of the Flood Coverage Option which requires specific reporting prior to a loss and contribution charges in order for coverage to apply.

X. INTERPRETATION

This **Agreement** will be construed according to general rules of contract construction. This **Agreement** is drafted on behalf of all **Members** of the **Fund** and will be construed in a manner which most reasonably and accurately reflects the intent of the **Agreement**.

SPECIAL FORM PROPERTY COVERAGE

I. PERILS COVERED

This **Agreement** covers risk of direct physical loss of or damage to property described herein commencing during the **Fund Year** and within the **territory**, including salvage and all other charges on shipments covered hereunder, except as hereinafter excluded.

II. PERILS EXCLUDED

This **Agreement** does not cover loss or damage caused by or resulting from any of the following:

- A. Any fraudulent or dishonest act or acts committed by the **Member's** officials or employees. "Dishonest or fraudulent acts" as used in this paragraph shall mean only dishonest or fraudulent acts committed by the **Member's** officials or employees with the manifest intent to:
 - 1. Cause the **Member** to sustain such loss; and
 - 2. Obtain financial benefit for the **Member's** official, employee, or for any other person or organization intended by the **Member's** official or employee to receive such benefit.
- B. Faulty, inadequate, or defective design, specifications, materials, or workmanship; however, this exclusion shall not apply to loss or damage from a covered peril that ensues.
- C. Errors in processing or manufacture of the **Member's** product unless loss or damage from a peril covered herein ensues, and then this **Agreement** shall cover only for such ensuing loss or damage.
- D. Ordinary wear and tear, rust, corrosion, smog, decay, deterioration, hidden or latent defect, dampness or dryness of atmosphere, changes in or extremes of temperature (except for loss or damage to automatic fire protection systems, as defined in paragraph I. of the Named Peril Coverage Option, caused by or resulting from freezing), or any quality in property that causes it to damage or destroy itself unless loss or damage by a covered peril ensues, and then this **Agreement** shall cover only for such ensuing loss or damage.
- E. Mold, mildew, and fungus unless caused by a peril covered herein, but if loss or damage from a peril covered herein ensues, this

Agreement shall cover only for such ensuing loss or damage.

- F. Settling, cracking, shrinking, or expansion unless loss or damage from a peril covered herein ensues, and then this **Agreement** shall cover only for such ensuing loss or damage.
- G. Gradual subsidence unless loss or damage from a peril covered herein ensues, and then this **Agreement** shall cover only for such ensuing loss or damage.
- H. Loss of market, business interruption, or extra expense loss due to delay with respect to property in transit.
- I. Electrical injury or disturbance to electrical appliances, devices, or wiring caused by electrical currents artificially generated unless loss or damage from a peril covered herein ensues, and then this **Agreement** shall cover only for such ensuing loss or damage.
- J. Mechanical breakdown unless loss or damage from a peril covered herein ensues and then this **Agreement** shall cover only for such ensuing loss or damage.
- K. Explosion, rupture, or bursting of steam boilers, steam pipes, steam turbines, or steam engines owned or operated by the **Member** unless loss or damage from a peril covered herein ensues, and then this **Agreement** shall cover only for such ensuing loss or damage.
- L. Unexplained or mysterious disappearance or shortage found upon taking inventory.
- M. Damage caused by:
 - 1. Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or accompanying spray from any of the preceding, all whether driven by wind or not;
 - 2. Mudslides or mudflows which are proximately caused by flooding as described in 1. above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, including the **Member's** premises, as when earth is carried by a current of water and deposited along the path of the current; or

3. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding as described in 1. above.

N. Loss of or damage to the interior of any building or structure caused by or resulting from rain, snow, sleet, ice, sand, or dust, whether driven by wind or not unless:

1. The building or structure first sustains damage by a covered cause of loss to its roof or walls through which the rain, snow, sleet, ice, sand, or dust enters; or
2. The loss or damage is caused by or results from thawing of snow, sleet, or ice on the building or structure.

O. Earth movement including:

1. **Earthquake**, including any earth sinking, rising or shifting related to such event, if coverage is rejected or not accepted;
2. Landslide;
3. Mine subsidence, meaning any subsidence of a manmade mine, whether or not mine activity has ceased;
4. Earth sinking (other than sink hole collapse), rising, or shifting, including soil conditions which cause settling, cracking, or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface except for the action of underground water or sewage caused by leakage from underground pipes servicing the structure; or
5. Volcanic eruption, explosion, or effusion if coverage is rejected or not accepted. But if loss or damage by fire, building glass breakage, or volcanic action results, the **Fund** will pay for that resulting loss or damage.

Volcanic action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- a. airborne volcanic blasts or airborne shock waves;

- b. ash, dust, or particle matter; or
- c. lava flow.

All volcanic eruptions that occur within any 168 hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust, or particle matter that does not cause direct physical loss or damage to the described property.

If earth movement, as described in O.1. through 4. above, result in fire or explosion, the **Fund** will pay for that ensuing loss or damage.

P. Damage caused by nesting or infestation, or discharge or release of waste products or secretions by insects, birds, rodents, or other animals.

Q. Collapse, meaning an abrupt falling down or caving in of property, unless such collapse is caused by a covered peril. But if a collapse results in a covered peril, this **Agreement** shall cover the ensuing loss or damage.

This exclusion shall not apply to the following:

1. A collapse caused by faulty, inadequate, or defective design, specifications, materials, or workmanship, unless known to the **Member** prior to the collapse; or
2. A collapse caused by ordinary wear and tear, rust, corrosion, decay, deterioration, or vermin or insect damage that is hidden from view, unless known to the **Member** prior to the collapse.

R. Windstorm or hail for property located within the boundaries of first tier counties as defined in the Texas Windstorm Insurance Association Act, unless the **Fund** provides such coverage through an endorsement to this **Agreement**.

Exclusions B, C, F, G, I, J, L, and N do not apply to property in transit.

Exclusions C, I, and J do not apply to alterations, additions, and property while in the course of construction, erection, installation, or assembly.

Exclusions I, K, M, and N do not apply to **valuable papers and records**.

III. COVERAGE

A. Real and Personal Property Covered

Except as hereinafter excluded, this **Agreement** covers:

1. The interest of the **Member** in:
 - a. all real property owned, used, or intended for use by the **Member** at premises identified in a Property Schedule attached to the **declarations**;
 - b. all personal property owned, used, or intended for use by the **Member**, including the **Member's** interest as tenant in improvements and betterments, provided values are reported at premises identified in a Property Schedule where such property is normally used, kept, or stored. Improvements and betterments are fixtures, alterations, installations, or additions made a part of the building or structure the **Member** occupies but does not own and which the **Member** acquired or made at its expense but cannot legally remove; and
 - c. real and personal property hereinafter constructed, erected, installed, or acquired including while in course of construction, erection, installation, and assembly, subject to the provisions of Section III. C. 1.

However, this does not include rented premises where the **Member** is a tenant unless identified on the schedule of real and personal property. In the event of loss or damage, the **Fund** agrees to accept and consider the **Member** as sole and unconditional owner of improvements and betterments, notwithstanding any contract or lease to the contrary.

2. Buildings, when considered real property covered under this **Agreement**, shall include the following:
 - a. Permanently installed:
 - (1) fixtures;
 - (2) machinery;
 - (3) equipment; and
 - (4) appliances used for refrigerating, ventilating, cooking, dishwashing, or laundering;
 - b. Outdoor fixtures;

- c. Personal property owned by the **Member** that is used to maintain or service the building or structure or its premises, including:

- (1) fire extinguishing equipment;
- (2) outdoor furniture;
- (3) floor coverings; and
- (4) appliances used for refrigerating, ventilating, cooking, dishwashing, or laundering.

3. The interest of the **Member** in the real property, other than rented premises, and personal property of others in the **Member's** care, custody, or control and the **Member's** liability imposed by law or assumed by contract for such property except for **automobiles**.
4. Contractor's interests in property covered to the extent of the **Member's** liability imposed by law or assumed by contract.
5. The interest of the **Member** in **electronic data processing equipment** at all premises where a value is shown on the Property Schedule for contents, but paragraphs I, J, K, and M do not apply.

B. Real and Personal Property Excluded

The following are excluded from coverage under this **Agreement**:

1. Land;
2. The cost of excavations, grading, backfilling, or filling;
3. Foundations of buildings, structures, machinery, or boilers if their foundations are below:
 - a. the lowest basement floor; or
 - b. the surface of the ground, if there is no basement;
4. Money or **securities**;
5. Growing crops, trees, shrubs, grass, or plants, except as provided under Section C. Coverage Extensions;
6. Watercraft (except rowboats and canoes), aircraft, **automobiles**, or **mobile equipment**;
7. Waterborne shipments to or from Hawaii, Puerto Rico, Virgin Islands, or Alaska;

waterborne shipments via the Panama Canal;

8. Export shipments after loading on board an overseas vessel or watercraft or after ocean marine insurance attaches, whichever occurs first, or import shipments prior to discharge from the overseas vessel or watercraft or until the ocean marine insurance terminates, whichever occurs last;
9. Roadways, pavement, sidewalks, curbs, storm sewers, sanitary sewers, underground water and gas mains, any other underground piping, underground wiring, optic cables, electrical transmission and distribution lines including poles and pole-mounted transformers, telephone and communication lines and facilities (unless such optic cables, telephone and communication lines and facilities serve only one covered location), bulkheads, pilings, piers, wharves, docks, fire hydrants, water tanks, water towers, water wells, street lights, traffic lights, traffic signs, bridges, tunnels, overpasses, dams, playground equipment, tennis courts, swimming pools, outdoor scoreboards (unless attached to a reported structure), freestanding lights not attached to or intended for security of a covered building, and freestanding fences at parks and other locations unless reported prior to a loss and a contribution charged. This exclusion shall not apply to fences that are servicing or providing security to a building covered under this **Agreement**;
10. Animals (except for research);
11. Roof coverings that have sustained only cosmetic loss or damage caused by hail, unless such cosmetic loss or damage causes a decrease in the market value of the building to which the roof covering is attached. In the event of a decrease in the market value of such building, this **Agreement** shall cover the lesser of the decrease in market value of such building, the actual cash value of the roof covering, or the replacement cost of the roof covering. Cosmetic loss or damage means only that damage that alters the physical appearance of the roof covering but does not result in damage that allows the penetration of water through the roof covering or does not result in the failure of the roof covering to perform its intended function, to keep out elements over an extended period of time.

C. Coverage Extensions

The limits applicable to the following Coverage Extensions are shown on the **declarations** unless otherwise indicated below. Limits for these Coverage Extensions are in addition to and not included in the Real and Personal Property Limit shown on the **declarations**.

1. Newly Acquired Property

This **Agreement** covers up to \$1,000,000 or the Real and Personal Property Limit set forth in the **declarations**, whichever is less, for newly acquired or constructed property and property in the course of construction, alteration, or repair; provided, however, that the **Member** reports the value of such property to the **Fund** when the values accumulated during the **Fund Year** equal or exceed this additional limit. This **Agreement** does not cover property in the course of construction, alteration, or repair, if the property is under the control of the contractor performing the construction, alteration, or repair, unless the **Member** reports such property to the **Fund** prior to a loss and pays an appropriate contribution. **Mobile equipment** that is acquired during the **Fund Year** shall only be covered up to its **actual cash value** if it is not reported to the **Fund** within 30 days of acquisition. Nothing in this newly acquired property provision shall create coverage for property which is excluded from coverage under this **Agreement**.

2. Valuable Papers and Records

The **Agreement** covers the cost to repair or replace the lost information on lost or damaged **valuable papers and records** for which duplicates do not exist.

3. Accounts Receivable

This **Agreement** covers:

- a. All sums due the **Member** from customers, property owners, and other debtors provided the **Member** is unable to effect collection thereof as the direct result of loss or damage to records of accounts receivable;
- b. Interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such loss or damage;

- c. Collection expense in excess of normal collection cost and made necessary because of such loss or damage;
- d. Other expenses, when reasonably incurred by the **Member** in reestablishing records of accounts receivable following such loss or damage.

When there is proof that a loss of records of accounts receivable has occurred but the **Member** cannot more accurately establish the total amount of accounts receivable outstanding as of the date of such loss, such amount shall be computed as follows:

- a. The monthly average of accounts receivable during the last available 12 months shall be adjusted in accordance with the percentage increase or decrease in the 12 months average of monthly gross revenues which may have occurred in the interim.
- b. The monthly amount of accounts receivable thus established shall be further adjusted in accordance with any demonstrable variance from the average for the particular month in which the loss occurred, due consideration also being given to the normal fluctuations in the amount of accounts receivable within the fiscal month involved.

There shall be deducted from the total amount of accounts receivable, however established, the amount of such accounts evidenced by records not lost or damaged, or otherwise established or collected by the **Member**, and an amount to allow for probable bad debts which would normally have been uncollectible by the **Member**.

4. Loss of Revenue, Extra Expense, and Rental Value

- a. This **Agreement** covers:
 - (1) **Loss of revenue**, subject to the following definitions, conditions, and exclusions:
 - (a) **Loss of revenue** means the actual loss sustained by the **Member** to cover any reduction in revenue, during the period of restoration,

caused by loss, damage, or destruction by any of the perils covered herein during the term of this **Agreement** to covered real and personal property.

- (b) **Revenue** means gross revenue, less charges and expenses which do not necessarily continue.
- (c) The **Fund** shall not be liable for any loss resulting from damage to or destruction of **inventory**, nor for the time required to reproduce said **inventory**. **Inventory** shall mean goods produced or held for sale by the **Member** in the ordinary course of the **Member's** business.

(d) Resumption of Operations

It is a condition of this **Agreement** that if the **Member** could reduce the loss resulting from the interruption of business:

- (i) by a complete or partial resumption of operation of the property covered; or
- (ii) by making use of available stock, merchandise, or other property;

such reduction shall be taken into account in arriving at the amount of loss hereunder.

(e) Experience of the Member

- (i) In determining the amount of loss of revenues, charges, and expenses covered hereunder for the purposes of ascertaining the amount of loss sustained, due consideration shall be given to the experience of the **Member** before the date of damage or destruction and to the probable experience thereafter had no loss occurred.

- (ii) With respect to alterations, additions, and property while in the course of construction, erection, installation, or assembly, due consideration shall be given to the probable experience of the **Member** after completion of the construction, erection, installation, or assembly.

- (2) **Extra expense** incurred resulting from loss or damage by any of the perils covered herein during the term of this **Agreement** to covered real or personal property.

Extra expense means the excess total cost necessarily incurred to continue the operations of the **Member** as nearly as reasonably practicable to normal during the period of recovery of the damaged property over and above the cost that would normally have been incurred to conduct the business during the same period had no loss or damage occurred.

- (3) **Rental value** loss sustained by the **Member** resulting from the necessary untenantability caused by loss, damage, or destruction by any of the perils covered herein during the term of this **Agreement** to covered real or personal property, but not exceeding the reduction in **rental value** less charges and expenses which do not necessarily continue during the period of untenantability.

For the purposes of this **Agreement**, **rental value** is defined as the sum of:

- (a) The total anticipated gross rental income from tenant occupancy of the described property as furnished and equipped by the **Member**;
- (b) The amount of all continuing charges which are the legal obligation of the tenant(s) and which would otherwise

be an obligation of the **Member**; and

- (c) The fair rental value of any portion of said property which is occupied by the **Member**.

In determining the amount of **rental value** covered hereunder for the purpose of ascertaining the amount of loss sustained, due consideration shall be given to the rental experience before the date of damage or destruction and to the probable experience thereafter had no loss occurred.

- b. The following additional provisions apply to **Loss of Revenues**, **Extra Expense**, and **Rental Value** coverages:

(1) **Period of Recovery**

The length of time for which loss may be claimed:

- (a) Shall not exceed such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair, or replace such part of the property as has been destroyed or damaged;
- (b) Such additional length of time to restore the **Member** to the condition that would have existed had no loss occurred, commencing with the later of the following dates:
 - (i) The date on which the liability of the **Fund** for loss or damage would otherwise terminate; or
 - (ii) The date on which repair, replacement, or rebuilding of such part of the property as has been damaged is actually completed, but in no event for more than one year from said completion date;

000165

- (c) With respect to alterations, additions, and property while in the course of construction, erection, installation, or assembly shall be determined as provided in a. above but such determined length of time shall be applied to the experience of the **Member** after it has reached its planned level of operation; and
- (d) Shall commence with the date of such loss or damage and shall not be limited by the date of expiration of this **Agreement**.

(2) Special Exclusions

This section of the **Agreement** does not cover any increase of loss which may be occasioned by the suspension, lapse, or cancellation of any lease, license, contract, or order; nor for interference at **Member's** premises, by strikers or other persons with rebuilding, repairing, or replacing the property damaged or destroyed, or with the resumption or continuation of business, or with the reoccupancy of the premises; nor for any loss occurring to property in transit off premises.

(3) Damage to Non-Owned Property

This **Agreement**, subject to all provisions and without increasing the amount of said **Agreement**, also covers loss resulting from damage to or destruction by the perils covered of:

- (a) Electrical, steam, gas, water, telephone, and other transmission lines and related plants, substations, and equipment which are not owned by the **Member** and are situated on or within one statute mile of the covered premises;
- (b) Dams, reservoirs, or equipment connected therewith which are not owned by the **Member** when water, used

as a raw material or used for power or for other manufacturing purposes, stored behind such dams or reservoirs is released from storage and causes an interruption of business as a result of lack of water supply from such sources. The **Fund's** liability shall not exceed 30 consecutive days after such length of time as would be required with the exercise of due diligence and dispatch to repair or replace the damaged or destroyed dam, reservoir, or equipment.

(4) Interruption by Civil or Military Authority

This **Agreement** is extended to cover loss sustained when access to premises identified in the Property Schedule attached to the **declarations** is prohibited by action of a civil or military authority because of damage to property, other than property at the premises identified in the Property Schedule, that was caused by a covered peril; provided that both of the following apply:

- (a) Access to the area immediately surrounding the damaged property is prohibited by civil or military authority as a result of the damage and the premise identified in the Property Schedule is within the area, but not more than one mile from the damaged property; and
- (b) The action of the civil or military authority is taken in response to a dangerous physical condition resulting from the damage or continuation of the covered peril that caused the damage, or the action is taken to enable the civil or military authority to have unimpeded access to the property.

Coverage for the loss will begin immediately after the first action of that civil or military authority that prohibits access to the

property identified in the Property Schedule, and will apply for a period of no more than four weeks. For the purposes of this provision, the **Member** is not a civil authority.

(5) Ingress/Egress

This **Agreement** is extended to cover the loss sustained during the period of time (not exceeding four weeks) when, as a direct result of a peril covered which causes damage to property other than property at the premise identified in the Property Schedule attached to the **declarations**, ingress to or egress from the **Member's** premises identified in the Property Schedule is thereby prevented.

(6) Expense Related to Reducing Loss

In reference to paragraphs 4.a.(1) and (3) above, this **Agreement** also covers such expenses as are necessarily incurred for the purpose of reducing loss under this **Agreement** (except expense incurred to extinguish fire) and such expenses, in excess of normal, as would necessarily be incurred in replacing any finished stock used by the **Member** to reduce loss under this **Agreement**; but in no event shall the aggregate of such expenses exceed the amount by which the loss otherwise payable under this **Agreement** is thereby reduced.

5. Personal Property of Employees and Officials

This **Agreement** covers personal property of the **Member's** officials, employees, and volunteers while used or intended for use on behalf of the **Member**, provided values are reported. Further, the limit of liability for such personal property of the **Member's** officials, employees, and volunteers shall be as shown on the **declarations** page.

6. Leasehold Interest

This **Agreement** covers:

- a. Pro rata proportion from the date of loss to expiration date of the lease (to be paid without discount) on the **Member's** interest in:

- (1) Improvements and betterments to real property during the unexpired term of the lease which is not covered under any other section of this **Agreement**;
- (2) The amount of advance rental paid by the **Member** and not recoverable under the terms of the lease for the unexpired term of the lease;

when property is rendered wholly or partially untenable by any of the perils covered herein during the term of **Member's Agreement** and the lease is cancelled by the lessor in accordance with the conditions of the lease or by statutory requirements of the state in which the damaged or destroyed property is located; and

b. Member's Interest as Lessee

- (1) This **Agreement** covers the **Member's interest as lessee** when property is rendered wholly or partially untenable by any of the perils covered herein during the term of this **Agreement** and the lease is cancelled by the lessor in accordance with the conditions of the lease or by statutory requirements of the state in which the damaged or destroyed property is located.
- (2) **Member's interest as lessee** as referred to herein shall be paid for the first three months succeeding the date of the loss, and the **net lease interest** shall be paid for the remaining months of the unexpired lease.

c. Definitions:

The following terms, wherever used in this section, shall mean as follows:

- (1) **Member's interest as lessee** is defined as:

000167

(a) The excess of the rental value of similar premises over the actual rental payable by the lessee (including any maintenance or operating charges paid by the lessee) during the unexpired term of the lease;

(b) The rental income which would have been earned by the **Member** from sublease agreements, to the extent not covered under any other section of this **Agreement**, over and above the rental expenses specified in the lease between the **Member** and the lessor.

(2) **Net lease interest** is defined as that sum which, placed at 8% interest compounded annually, will be equivalent to the "**Member's interest as lessee**."

d. The **Fund** shall not be liable for any increase of loss which may be occasioned by the suspension, lapse, or cancellation of any license or by the exercising of an option to cancel the lease.

7. Outdoor Trees and Shrubs

This **Agreement** covers loss, damage, and debris removal expenses to outdoor trees, shrubs, and plants located within 100 feet of a structure listed on the Property Schedule attached to the **declarations** when there is a concurrent covered loss or damage to said structure. The maximum amount that will be paid for any one loss, disaster, or casualty under this extension of coverage for outdoor trees and shrubs shall be as stated in the **declarations**, with the further condition that the maximum amount that will be paid on any one tree, shrub, or plant shall be \$250.

8. Pollutant Clean Up and Removal

The **Fund** will pay expenses to extract pollutants ("pollutants" being defined as set forth in paragraph F of the General Exclusions) from land or water at premises identified in the Property Schedule attached to the **declarations** or covered under Section III.C.1. as newly acquired property, provided the re-

lease, discharge, dispersal, seepage, or migration of the pollutants is caused by or results from a peril covered herein that occurs during the **Agreement** period. The expenses will be paid only if they are reported in writing within 180 days of the date of the release, discharge, dispersal, seepage, or migration of the pollutants.

The maximum amount that will be paid during any one **Fund Year** under this extension of coverage is \$20,000 at each premises covered under this section.

D. Transit

1. This **Agreement** attaches and covers shipments within and between the territorial limits of this **Agreement**, including the coastal waters thereof, by any means of conveyance, from the time the property is moved for purpose of loading and continuously thereafter while awaiting and during loading and unloading and in temporary storage, including temporary storage on any conveyance intended for use for any outbound or used for inbound shipment, including during deviation and delay, until safely delivered into place of final destination.

2. This **Agreement** is extended to cover loss or damage to property:

a. Sold and shipped by the **Member** under terms of F.O.B. point of origin or other terms usually regarded as terminating the shipper's responsibility short of points of delivery;

b. Arising out of any unauthorized person(s) representing themselves to be the proper party(ies) to receive goods for shipment or to accept goods for delivery;

c. Occasioned by the acceptance by the **Member**, by its agents, or by its customers, of fraudulent bills of lading, shipping and delivery orders, or similar documents.

3. a. The **Member** may waive right(s) of recovery against private and contract carriers and accept bills of lading or receipts from carriers, bailees, warehousemen, or processors limiting their liability, but this transit coverage shall not inure to the benefit of any

carrier, bailee, warehouseman, or processor.

- b. With respect to shipments made under F.O.B. or similar terms, the **Fund** agrees to waive its rights of subrogation against consignees at the option of the **Member**.

IV. VALUATION - Actual Cash Value

In the case of loss the basis of adjustment shall be as follows:

- A. Buildings, machinery, equipment, furniture, fixtures, improvements, and betterments: the **actual cash value** of the property covered at the time of loss. In the event of loss or damage to improvements and betterments, the **Fund** agrees to accept and consider the **Member** as the sole and unconditional owner.
- B. Exhibitions, displays, fine arts, and historical structures: the cost to repair or the scheduled value, whichever is less.
- C. Household goods and personal effects: **actual cash value** of the property covered at the time of loss.
- D. **Valuable papers and records:** the cost to repair or replace the property with other of like kind and quality including the cost of gathering or assembling information or, if not so replaced, the cost of the property in blank or unused form.
- E. Property of others: **replacement cost** or the **Member's** legal liability, whichever is less.
- F. Other property not otherwise provided for: at the **actual cash value** of the property at the time and place of loss.
- G. When the full cost of repair or replacement in any one occurrence is the lesser of \$25,000 or 10% of the real and personal property limit of coverage, this **Agreement** is extended to cover the full cost of repair or replacement, without deduction for depreciation. The **Fund** shall not be liable under this paragraph unless and until the damaged property is actually repaired or replaced.

V. ADDITIONAL COVERAGES

A. Fire Department Service Charge

If the fire department is called to save or protect covered property from a peril covered, or because the covered property is destroyed or damaged by a peril covered, the **Fund** shall

pay for the **Member's** liability for fire department service charges:

1. Assumed by contract or agreement prior to loss; or
2. Required by local ordinance.

No deductible applies to this coverage.

B. Debris Removal

This **Agreement** covers the following expenses resulting from damage to property covered hereunder which is caused by or results from a peril covered hereunder:

1. The cost of removal of debris of property covered hereunder; and
2. The cost of removal of debris of property not covered hereunder from the premises of the **Member**.

Coverage for debris removal does not apply to costs to:

1. Extract pollutants ("pollutants" being defined as set forth in paragraph F. of the General Exclusions) from land or water; or
2. Remove, restore, or replace polluted land or water.

C. Demolition and Increased Cost of Construction

In the event of loss or damage under this **Agreement** that invokes the enforcement of any law or ordinance regulating the construction or repair of damaged facilities, the **Fund** shall be liable for:

1. The cost of demolishing the undamaged facility including the cost of clearing the site;
2. The proportion that the value of the undamaged part of the facility bore to the value of the entire facility prior to loss;
3. Increased cost of repair or reconstruction of the damaged and undamaged facility on the same or another site and limited to the minimum requirements of such laws or ordinances regulating the repair or reconstruction of the damaged property on the same site; however, the **Fund** shall not be liable for any increased cost of construction loss unless the damaged facility is actually rebuilt or replaced;

4. Any increase in the loss of revenue, extra expense, and rental value loss arising out of the additional time required to comply with said law or ordinance.

D. Expediting Expense

This **Agreement** covers the reasonable extra cost of temporary repair and of expediting the repair of damaged property covered hereunder, including overtime and express freight or other rapid means of transportation.

E. Consequential Loss

This **Agreement** covers consequential loss to the property described caused by change of temperature or humidity or by interruption of power, heat, air conditioning, or refrigeration as a result of damage to property covered hereunder or property of others within one statute mile of the covered premises.

F. Terrorism

This **Agreement** covers loss or damage caused by or resulting from acts of **terrorism** limited to the lesser of \$10,000,000 or the Real and Personal Property Limit of Coverage shown on the **declarations** applicable to any one occurrence.

NAMED PERIL COVERAGE OPTION

With respect to property on which the **Agreement Declarations** specifies "Named Peril," the Special Form Coverages Sections I and II are deleted and replaced by the following:

PERILS COVERED

This **Agreement** covers physical loss of or damage to property described herein commencing during the **Fund Year** and within the **territory**, including salvage and all other charges on shipments covered hereunder as a result of the following perils:

A. Fire

B. Lightning

C. Windstorm or Hail

1. The **Fund** will not be liable for loss caused directly or indirectly by frost or cold weather or ice (other than hail), snow, or sleet, whether driven by wind or not.
2. The **Fund** will not be liable for loss to the interior of the buildings or the property covered therein caused by rain, snow, sand, or dust, whether driven by wind or not, unless the buildings covered shall first sustain an actual damage to roof or walls by the direct action of wind or hail, and then shall be liable for loss to the interior of the buildings or the property covered therein as may be caused by rain, snow, sand, or dust entering the buildings through openings in the roof or walls caused by direct action of wind or hail.
3. This **Agreement** excludes loss or damage caused by or resulting from windstorm or hail for property located within the boundaries of first tier counties as defined in the Texas Windstorm Insurance Association Act, unless the **Fund** provides such coverage through an endorsement to this **Agreement**.

D. Explosion

Loss by explosion shall include direct loss resulting from the explosion of accumulated gases or unconsumed fuel within the firebox (or combustion chamber) of any fired vessel or within the flues or passages which conduct the gases of combustion therefrom. The **Fund** will not be liable for loss by ex-

plosion of steam boilers, steam pipes, steam turbines, or steam engines, if owned by, leased by, or operated under the control of the **Member**. The following are not explosions within the intent or meaning of these provisions:

1. Shock waves caused by aircraft, generally known as "sonic boom;"
2. Electric arcing;
3. Rupture or bursting of rotating or moving parts of machinery caused by centrifugal force or mechanical breakdown;
4. Water hammer;
5. Rupture or bursting of water pipes;
6. Rupture or bursting due to expansion or swelling of the contents of any building or structure, caused by or resulting from water; or
7. Rupture, bursting, or operation of pressure relief devices.

E. Sudden and Accidental Damage from Smoke, other than smoke from agricultural smudging or industrial operations.

F. Vehicles or Aircraft

Loss by aircraft shall include direct loss by falling aircraft or objects falling therefrom, but the **Fund** shall not be liable for loss by any vehicle or aircraft (except falling aircraft) owned or operated by the **Member**.

G. Riot, Riot Attending a Strike, or Civil Commotion

Loss by riot, riot attending a strike, or civil commotion shall include direct loss by acts of striking employees of the owner or occupants of the buildings while occupied by said striking employees and shall also include under this peril direct loss from pillage and looting occurring during and at the immediate place of a riot, riot attending a strike, or civil commotion. The **Fund** shall not be liable with respect to this peril for loss resulting from damage to or destruction of the property because of change in temperature or humidity or interruption of operations, whether or not such loss is covered by this **Agreement** as to other perils.

H. Vandalism or Malicious Mischief

Loss by vandalism or malicious mischief shall mean only the willful and malicious damage to or destruction of the property covered, including direct structural damage to the buildings covered hereunder resulting from burglary; provided, however, such damage resulting from burglary shall not include, nor shall the **Fund** be liable for, the value or replacement of any property, real or personal, including fixtures and/or contents of the covered buildings which are wrongfully and unlawfully removed from the premises. The **Fund** shall not be liable, with respect to these perils, for any loss:

1. To glass (other than building blocks constituting a part of the building);
2. By explosion, rupture, or bursting of steam boilers, steam pipes, steam turbines, steam engines, or rotating parts of machines or machinery owned, operated, or controlled by the **Member**;
3. Caused by or resulting from power, heating, or cooling failure unless such failure results from physical damage to power, heating, or cooling equipment situated on premises where the property covered is located.

I. Sprinkler Leakage

Direct loss by the leaking or discharge of water or other substance from within any automatic fire protection system including the cost of repairs and replacement of the automatic fire protection system when the damage sustained is caused directly by:

1. Breakage of any of its parts resulting in leakage; or
2. Direct loss caused by collapse or fall of a tank forming a part of such system.

Automatic fire protection system means sprinklers, discharge nozzles and ducts, pipes, valves, fittings, tanks (including component parts and supports thereof), pumps, and private fire projection mains, all connected with and constituting a part of an automatic fire protection system; and non-automatic fire protective systems, hydrants, standpipes, or outlets supplied from an automatic fire protection system.

- J. If a limit and deductible are stated in the **declarations** for the perils of **flood** and **earthquake**, the following perils are covered:

1. **Flood**, as provided under the Flood Coverage Option; and
2. **Earthquake**.

FLOOD COVERAGE OPTION

If a limit is shown on the **declarations** for flood:

- I. Exclusion M. of the Special Form Property Coverage portion of this Property Coverage Document is deleted with respect to all locations listed on the Property Schedule attached to the **declarations**. Coverage is extended to cover risk of direct physical loss of or damage to covered property, as described under III.A. of Special Form Property Coverage, by those causes listed under exclusion M., hereinafter referred to collectively as "flood."
- II. If any flood occurs within a period of the continued rising or overflow of any surface waters or if any flood results from any tidal wave or series of tidal waves caused by one disturbance, such flood shall be deemed to be a single occurrence within the meaning of the **Agreement**. However, the **Fund** will be liable for any losses occurring for a period of up to 72 hours after the expiration of the **Agreement** provided that the first flood damage occurred prior to the date and time that such coverage expired.

III. LIMITATIONS, EXCLUSIONS, AND RELATED PROVISIONS

- A. Coverage under this option does not apply to tidal flooding to the following property, unless reported prior to a loss and a flood contribution charged:
 1. Bulkheads, pilings, piers, wharves, docks;
 2. Retaining walls that are not part of a building;
 3. Structures located on or over a body of water, and any property in or on such structures; or
 4. Any property that is determined to be in Flood Zone "V" at the time of loss.

The **Fund** shall not be liable for more than the value shown for such property on the Real and Personal Property Schedule. Such coverage is excess of the amount of coverage available under a National Flood Insurance Program policy, whether or not such policy is in effect at the time of loss.

- B. With respect to property located on a barrier island in the Gulf of Mexico, regardless of applicable flood plain zones or within the boundaries of counties directly adjacent to the Gulf of Mexico and within the 100-year flood plain "A" zones at the time of loss, the following additional conditions and sublimits apply:

1. For buildings and/or contents of buildings with **actual cash value** in excess of the maximum amounts of coverage available through the National Flood Insurance Program, whether or not such policy is in effect at the time of loss, coverage shall be excess of such maximum amounts.
2. For buildings and/or contents of buildings covered under a National Flood Insurance Program policy, the **Fund** will reimburse the **Member** the difference between the **actual cash value** and **replacement cost** value of the loss, provided the **Member** elected the Replacement Cost Option as indicated on the **declarations**.

The above provision does not apply to:

- a. Property that is not eligible for coverage through the National Flood Insurance Program;
- b. Coverage Extensions for **Loss of Revenue, Extra Expense, Valuable Papers and Records**, Accounts Receivable, or Outdoor Trees and Shrubs; or
- c. Fine Arts.
- C. All conditions and sublimits under B. above apply to property located within the boundaries of Harris, Orange, and Jackson counties, but only as respects loss or damage caused by tidal waters.
- D. In reference to paragraphs A. through C. above, the **Fund** shall not be liable for more than \$2,500,000 for loss or damage in a single occurrence and within the 12-month coverage period beginning with the effective date shown on the **declarations**.
- E. In respect to flood caused by rising water, reasonable steps to protect the property from damage prior to the arrival of rising water are a reimbursable expense to the extent that such costs are in addition to regular ongoing operating costs. Examples of such costs include overtime to move and/or disassemble property, acquisition and placement of sand-bags and other protection, and moving equipment and property to higher ground to the extent that such costs exceed usual operating costs and excluding any employee time

except overtime. Such costs to be reimbursed are limited to \$25,000.

IV. DEDUCTIBLE

Loss under this coverage is subject to the flood deductible shown on the **declarations** which shall be deducted from the sum of all loss or damage arising out of any one occurrence. The deductible shall be reduced by amounts recoverable from a National Flood Insurance Program policy and any deductible under that policy.

BOILER & MACHINERY COVERAGE OPTION

With respect to property on which the **Agreement Declarations** specifies "Boiler & Machinery" coverage:

- I. A. Coverage is extended to cover direct damage to property covered under this Property Coverage Document caused by an **accident** to an **object**.
- B. In regards to Boiler & Machinery coverage, the following paragraphs from Perils Excluded of the Special Form Property Coverage portion of this Property Coverage Document are deleted with respect to all **objects** found at locations listed on the Real and Personal Property Schedule attached to the **declarations**:
 - I. Electrical injury or disturbance to electrical appliances, devices, or wiring caused by electrical currents artificially generated unless loss or damage from a peril covered herein ensues, and then this **Agreement** shall cover only for such ensuing loss or damage.
 - J. Mechanical breakdown unless loss or damage from a peril covered herein ensues and then this **Agreement** shall cover only for such ensuing loss or damage.
 - K. Explosion, rupture, or bursting of steam boilers, steam pipes, steam turbines, or steam engines owned or operated by the **Member** unless loss or damage from a peril covered herein ensues, and then this **Agreement** shall cover only for such ensuing loss or damage.
- C. Upon the discovery of a dangerous condition with respect to any **object**, any representative of the **Fund** may immediately suspend this addendum with respect to an **accident** to said **object** by written notice mailed to the **Member's** designee named in the **declarations**. Coverage so suspended may be reinstated by the **Fund** but only by an endorsement issued to form a part of this **Agreement**.

II. ADDITIONAL DEFINITIONS

When used in this Boiler & Machinery coverage:

- A. **Accident** means a sudden and accidental breakdown of an **object** or a part thereof which manifests itself at the time of its occurrence by physical damage to the **object** that necessitates repair or replacement of the **object** or part thereof.

1. **Accident** does not include any of the following:
 - a. Wear and tear, depletion, corrosion, erosion, or deterioration;
 - b. The leaking of any joint, connection, fitting, valve, seal, or packing;
 - c. The breakdown of any structure or foundation which supports, encloses, or covers an **object**; or
 - d. The normal or intended functioning of any safety or protective device.

B. Object

1. **Object** means any boiler, any fired or unfired pressure vessel, refrigeration or air conditioning system, any piping and its accessory equipment, any mechanical or electrical machine or apparatus used for the generation, transmission, or utilization of mechanical or electrical power, including compressors, pumps, engines, turbines, motors, generators, gears, sets of gears, fans, blowers; including couplers, clutches, wheels, or bearings on a shaft that constitute a part of an **object**; transformers, or electrical distribution equipment.
2. **Object** does not mean any of the following:
 - a. Stove, oven, kiln, furnace, motor vehicle or **mobile equipment**, elevator, escalator, or conveyor;
 - b. Any structure or foundation which supports, encloses, or covers an **object**;
 - c. Computer or data processing equipment unless used solely to operate or control an **object** as defined in this coverage;
 - d. Water, sewer, or gas piping, or sprinkler systems;
 - e. Equipment used for communication, lighting, advertising, display, research, diagnostic, therapeutic, sur-

gical, dental, or pathological purposes; or

- f. Mechanical or electrical machine or apparatus used for the generation of electrical power for sale to the public.

REPLACEMENT COST OPTION

With respect to property on which the **Agreement Declarations** specifies "Replacement Cost," the "Valuation - Actual Cash Value" Section IV of the Special Form Property Coverage is deleted and replaced by the following:

IV. REPLACEMENT VALUE

In case of loss, the basis of adjustment shall be as follows:

- A. On buildings, machinery, equipment, furniture, fixtures, improvements, and betterments: **replacement cost**. In the event of loss or damage to improvements and betterments, the **Fund** agrees to accept and consider the **Member** as the sole and unconditional owner. Notwithstanding the above, **actual cash value** only shall apply to the following buildings and structures:
 - 1. Buildings or portions thereof which, as a result of decay, deterioration, or dilapidation, are reasonably likely to fully or partially collapse, or which cannot be expected to withstand reasonably anticipated storms; or
 - 2. Buildings that have become deteriorated through accident, lack of repair, or natural causes, or by damage through exposure to the elements or damage through fire, to the extent that the building is no longer reasonably protected from the weather or from future damage that may be caused by a covered peril.
- B. Exhibitions, displays, fine arts, and historical structures: the cost to repair or the scheduled value, whichever is less.
- C. Household goods and personal effects: **replacement cost**.
- D. **Valuable papers and records**: the cost to repair or replace the property with other of like kind and quality, including the cost of gathering and/or assembling information or, if not so replaced, the cost of the property in blank or unused form.
- E. On property of others: **replacement cost** or the **Member's** legal liability, whichever is less.
- F. Other property not otherwise provided for: **replacement cost**.

- G. **Mobile Equipment**: **replacement cost**, but not exceeding the last value reported for the item replaced.
- H. The **Member** may make a claim for loss or damage covered by this coverage on an **actual cash value** basis instead of on a **replacement cost** basis. In the event the **Member** elects to have loss or damage settled on an **actual cash value** basis, the **Member** may still make a claim for the additional coverage this optional coverage provides if the **Member** notifies the **Fund** of its intent to do so within 180 days after the loss or damage.
- I. The **Fund** will pay on an **actual cash value** basis for any loss or damage until the loss or damaged property is actually repaired or replaced. The **Fund** will only pay **replacement cost** if the repairs or replacements are made as soon as reasonably possible after the loss or damage, but in no event will the **Fund** pay on a **replacement cost** basis for property not repaired or replaced within two years of the date of loss unless an extension is granted during such two year period, in writing, by the **Fund**.

MOBILE EQUIPMENT COVERAGE OPTION

With respect to **mobile equipment** on which the **Agreement Declarations** specify **mobile equipment** coverage, Paragraph 6 of Section III.B. of the "Special Form Property Coverage" is amended to read as follows:

6. Watercraft (except rowboats and canoes), aircraft, **automobiles**; but this exclusion shall not apply to **mobile equipment, com- mandeered mobile equipment, or com- mandeered boats.**

The following definitions shall apply to this Mobile Equipment Coverage Option:

- a. **Commandeered mobile equipment** means **mobile equipment** or a boat that the **Member** seizes, confiscates, or takes arbitrarily by force into the **Member's** temporary care, custody, or control while using it as part of an **emergency situation. Commandeered mobile equipment** or boat does not include **mobile equipment** or a boat owned or available to an employee or volunteer of the **Member** from whom the **Member** has tacit approval to use the **mobile equipment** or boat.
- b. **Emergency situation** means an unexpected situation demanding immediate official action.

Exclusions M, O, and R of Part II of the "Special Form Property Coverage" do not apply to **mobile equipment.**

CRIME COVERAGE OPTION

With respect to property on which the **Agreement Declarations** specifies "Public Employee Dishonesty Coverage," "Theft, Disappearance, and Destruction Coverage," "Forgery or Alteration Coverage," or "Computer Fraud Coverage":

I. GENERAL

In addition to the General Definitions, General Exclusions, and General Conditions contained in this Property Coverage Document, the following General Definitions, General Exclusions, and General Conditions apply to: (i) the Public Employee Dishonesty Coverage; (ii) the Theft, Disappearance, and Destruction Coverage; (iii) the Forgery or Alteration Coverage; and (iv) Computer Fraud Coverage.

A. GENERAL DEFINITIONS

1. **EMPLOYEE** means:

a. Any person:

- (1) While in the **Member's** service (and for 30 days after termination of service); and
- (2) Whom the **Member** has the right to direct and control while performing services for the **Member**.

b. But **employee** does not mean any:

- (1) Agent, broker, factor, commission merchant, consignee, independent contractor, or representative of the same general character;
- (2) Elected officials, except while performing acts coming within the scope of the usual duties of their office; or
- (3) Appointed officials, except while performing acts coming within the scope of the usual duties of an **employee**.

2. **MONEY** means:

- a. Currency, coins, and bank notes in current use and having a face value; and

- b. Travelers checks, register checks, and money orders held for sale to the public.

3. **PROPERTY OTHER THAN MONEY AND SECURITIES** means any tangible property other than **money** and **securities** that has intrinsic value.

4. **SECURITIES** means negotiable and nonnegotiable instruments or contracts representing either **money** or other property and includes:

- a. Tokens, tickets, revenue, and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
- b. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by the **Member**;

but does not include **money**.

B. GENERAL EXCLUSIONS

The **Fund** will not pay for loss as specified below:

1. **Indirect Loss:** Loss that is an indirect result of any act or occurrence covered by this coverage including, but not limited to, loss resulting from:

- a. The **Member's** inability to realize income that the **Member** would have realized had there been no loss of, or loss from damage to, covered property;
- b. Payment of damages of any type for which the **Member** is legally liable. But, the **Fund** will pay compensatory damages arising directly from a loss covered under this coverage; or
- c. Payment of costs, fees, or other expenses the **Member** incurs in establishing either the existence or the amount of loss under this coverage.

2. **Legal Expenses:** Expenses related to any legal action.

C. GENERAL CONDITIONS

1. Loss Sustained During Prior Insurance

- a. If the **Member**, or any predecessor in interest, sustained loss during the period of any prior insurance that the **Member** or the predecessor in interest could have recovered under that insurance except that the time within which to discover loss had expired, the **Fund** will pay for it under this coverage provided:

- (1) This coverage became effective at the time of cancellation or termination of the prior insurance; and

- (2) The loss would have been covered by this coverage had it been in effect when the acts or events causing the loss were committed or occurred.

- b. The coverage under this Condition is part of, not in addition to, the limits of liability applying to this coverage and is limited to the lesser of the amount recoverable under:

- (1) This coverage as of its effective date; or

- (2) The prior insurance had it remained in effect.

2. Loss Covered Under This Coverage and Prior Coverage Issued by the Fund: If any loss is covered:

- a. Partly by this coverage; and
- b. Partly by any prior canceled or terminated coverage that the **Fund** had issued to the **Member** or any predecessor in interest;

the most the **Fund** will pay is the larger of the amount recoverable under this coverage or the prior coverage.

3. Non-Cumulation of Limit of Liability: Regardless of the number of years this coverage remains in force or the number of contributions paid, no limit of liability cumulates from year to year or period to period.

4. Ownership of Property; Interests Covered: The property covered under this coverage is limited to property:

- a. That the **Member** owns or holds; or
- b. For which the **Member** is legally liable.

However, this coverage is for the **Member's** benefit only. It provides no rights or benefits to any other person or organization.

5. Records: The **Member** must keep record of all covered property so the **Fund** can verify the amount of any loss.

6. Valuation - Settlement

- a. Subject to the applicable limit of liability provision, the **Fund** will pay for:

- (1) Loss of **money** but only up to and including its face value. The **Fund** may, at its option, pay for loss of **money** issued by any country other than the United States of America:

- (a) At face value in the **money** issued by that country; or

- (b) In the United States of America dollar equivalent determined by the rate of exchange on the day the loss was discovered.

- (2) Loss of **securities** but only up to and including their value at the close of business on the day the loss was discovered. The **Fund** may, at its option:

- (a) Pay the value of such **securities** or replace them in kind, in which event the **Member** must assign to the **Fund** all of the **Member's** rights, title, and interest in and to those **securities**;

- (b) Pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the **securities**. However, the **Fund** will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty

not exceeding the lesser of the:

(i) Value of the **securities** at the close of business on the day the loss was discovered; or

(ii) Limit of liability.

(3) Loss of, or loss from damage to, **property other than money and securities** or loss from damage to the premises for not more than the:

(a) Actual cash value of the property on the day the loss was discovered;

(b) Cost of repairing the property or premises; or

(c) Cost of replacing the property with property of like kind and quality.

The **Fund** may, at its option, pay the **actual cash value** of the property, repair it, or replace it.

b. The **Fund** may, at its option, pay for loss of, or loss from damage to, property other than **money**:

(1) In the **money** of the country in which the loss occurred; or

(2) In the United States of America dollar equivalent of the **money** of the country in which the loss occurred determined by the rate of exchange on the day the loss was discovered.

c. Any property that the **Fund** pays for or replaces becomes the **Fund's** property.

7. **Discovery Period for Loss:** The **Fund** will pay only for covered loss discovered no later than one year from the end of the coverage period.

8. **Assignment:** Assignment of interest under the **Agreement** shall not bind the **Fund** until its consent is endorsed there-on.

9. **Territory:** This **Agreement** covers only acts committed or events occurring within the United States of America, U.S.

Virgin Islands, Puerto Rico, Canal Zones, or Canada.

10. **Reporting Period for Loss:** As soon as practical, but no later than 120 days from the day the loss was discovered.

II. PUBLIC EMPLOYEE DISHONESTY COVERAGE

A. COVERAGE

The **Fund** will pay for loss of, and loss from damage to, covered property resulting directly from the Covered Cause of Loss.

1. **Covered Property: Money, securities, and property other than money and securities.**

2. **Covered Causes of Loss: Employee dishonesty.**

3. Coverage Extension

Employees Temporarily Outside Coverage Territory: The **Fund** will pay for loss caused by any **employee** while temporarily outside the territory specified in the General Conditions for a period not more than 90 days.

B. LIMIT OF LIABILITY

If a per **occurrence** limit is shown in the **declarations**, the **Fund** will not be liable for more than the indicated limit for loss in any one **occurrence**. If a per **employee** limit is shown, the **Fund** will not be liable for more than the indicated limit for loss resulting from an act or series of acts by any one **employee**.

C. ADDITIONAL EXCLUSIONS, CONDITIONS, AND DEFINITIONS

In addition to the General Definitions, General Exclusions, and General Conditions contained in this Property Coverage Document and the Crime Coverage Option, Public Employee Dishonesty Coverage is subject to the following:

1. **Additional Exclusions:** The **Fund** will not pay for loss or damages as specified below:

a. **Employee Canceled Under Prior Insurance:** Loss caused by any **employee** for whom similar prior insurance has been canceled and not reinstated since the last such cancellation.

000181

- b. Inventory Shortages: Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:
 - (1) An inventory computation; or
 - (2) A profit and loss computation.
- c. Bonded Employee: Loss caused by any **employee** within the amount such **employee** is required by law to be individually bonded or for which the **employee** is bonded.
- d. Damages: Damages for which the **Member** is legally liable as a result of:
 - (1) The deprivation or violation of the civil rights of any person by an **employee**; or
 - (2) The tortious conduct of any **employee**, except conversion of property of other parties held by the **Member** in any capacity.
- e. Depository Failure: Loss resulting from the failure of any entity acting as a depository for the **Member's** property or property for which the **Member** is responsible.

2. Additional Conditions:

- a. Cancellation As To Any Employee: This coverage is canceled as to any **employee**:
 - (1) Immediately upon discovery by the **Member** or any official or **employee** authorized to manage, govern, or control the **Member's** **employees** of any act on the part of an **employee** whether before or after becoming employed by the **Member** which would constitute a loss covered under the terms of this Public Employee Dishonesty Coverage; or
 - (2) On the date specified in a notice mailed to the **Member**. That date will be at least 30 days after the date of mailing.

The mailing of notice to the **Member** at the last mailing address known to the **Fund** will be sufficient

b.

proof of notice. Delivery of notice is the same as mailing.

- b. Sole Benefit: This coverage is for the **Member's** sole benefit. No legal proceeding of any kind to recover on account of loss under this coverage may be brought by anyone other than the **Member**.

3. Additional Definitions:

- a. **Employee Dishonesty** in Paragraph A.2. of Section II of this Crime Coverage Option means any dishonest act committed by an **employee**, whether identified or not, acting alone or in collusion with other persons, with the manifest intent to:
 - (1) Cause the **Member** to sustain loss; and also
 - (2) Obtain financial benefit (other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions, or other employee benefit earned in the normal course of employment unless unlawfully taken to the deprivation of the **Member**) for:

(a) The **employee**; or

(b) Any person or organization intended by the **employee** to receive that benefit.

- b. **Occurrence** means all loss caused by, or involving, one or more **employees**, whether the result of a single act or series of acts.

III. THEFT, DISAPPEARANCE, AND DESTRUCTION COVERAGE

A. COVERAGE

The **Fund** will pay for loss of covered property resulting directly from the covered causes of loss.

1. Inside the Premises:

- a. Covered Property: **Money** and **securities** inside the **premises** or a **banking premises**.

Covered Causes of Loss:

(1) **Theft**;

(2) Disappearance; and

(3) Destruction.

c. Covered Extensions:

(1) Containers of Covered Property: The **Fund** will pay for loss of, and loss from damage to, a locked safe, vault, cash register, cash box, or cash drawer located in the **premises** resulting directly from an actual or attempted **theft** of or unlawful entry into those containers; and

(2) **Premises** Damage: The **Fund** will pay for loss from damage to the **premises** or its exterior resulting directly from an actual or attempted **theft** of covered property if the **Member** is the owner of the **premises** or is liable for damage to it.

2. **Outside the Premises:**

a. Covered Property: **Money** and **securities** outside the **premises** in the care and custody of a **messenger**.

b. Covered Causes of Loss:

(1) **Theft;**

(2) Disappearance; and

(3) Destruction.

c. Coverage Extension:

Conveyance of Property By Armored Motor Vehicle Company: The **Fund** will pay for loss of covered property resulting directly from the covered causes of loss while outside the **premises** in the care and custody of an armored motor vehicle company.

But the **Fund** will pay only for the amount of loss that the **Member** cannot recover:

(1) Under the **Member's** contract with the armored motor vehicle company; and

(2) From any insurance or indemnity carried by, or for the benefit of customers of, the armored motor vehicle company.

B. LIMIT OF LIABILITY

The most the **Fund** will pay for loss in any one occurrence is \$5,000, unless otherwise shown in the **declarations**.

C. ADDITIONAL EXCLUSIONS, CONDITIONS, AND DEFINITIONS

In addition to the General Definitions, General Exclusions, and General Conditions contained in this Property Coverage Document and the Crime Coverage Option, this Theft, Disappearance, and Destruction Coverage is subject to the following:

1. **Additional Exclusions:** The **Fund** will not pay for loss as specified below:

a. Accounting or Arithmetical Errors or Omissions: Loss resulting from accounting or arithmetical errors or omissions.

b. Acts of Employees, Elected or Appointed Officials, or Representatives: Loss resulting from any dishonest or criminal act committed by any of the **Member's employees**, elected or appointed officials, or authorized representatives:

(1) Acting alone or in collusion with other persons; or

(2) While performing services for the **Member** or otherwise.

c. Exchanges or Purchases: Loss resulting from the giving or surrendering of property in any exchange or purchase.

d. Fire: Loss from damage to the **premises** resulting from fire, however caused.

e. Money Operated Devices: Loss of property contained in any **money** operated device unless the amount of **money** deposited in it is recorded by a continuous recording instrument in the device.

f. Transfer or Surrender of Property:

(1) Loss of property after it has been transferred or surrendered to a person or place outside the **premises** or **banking premises**:

(a) On the basis of unauthorized instructions; or

(b) As a result of a threat to do bodily harm to any person or damage to any property.

(2) This Exclusion does not apply under Paragraph A.2. of Section III of this Crime Coverage Option to loss of covered property while outside the **premises** or **banking premises** in the care and custody of a **messenger** if the **Member**:

(a) Had no knowledge of any threat at the time the conveyance began; or

(b) Had knowledge of a threat at the time the conveyance began, but the loss was not related to the threat.

g. Vandalism: Loss from damage to the **premises** or its exterior or to containers of covered property by vandalism or malicious mischief.

h. Voluntary Parting of Title to or Possession of Property: Loss resulting from the **Member's**, or anyone acting on the **Member's** express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any property.

2. Additional Condition:

Duties in the Event of Loss: If the **Member** has reason to believe that any loss of, or loss from damage to, covered property involves a violation of law, the **Member** must notify the police.

3. Additional Definitions:

a. **Banking Premises** means the interior of that portion of any building occupied by a banking institution or similar safe depository.

b. **Messenger** means the **Member**, any of the **Member's** officials, or any **employee** while having care and custody of the property outside the **premises**.

c. **Occurrence** means an:

(1) Act or series of related acts involving one or more persons; or

(2) Act or event, or a series of related acts or events not involving any person.

d. **Premises** means the interior of that portion of any building the **Member** occupies in conducting the **Member's** business.

e. **Theft** means any act of stealing.

IV. FORGERY OR ALTERATION COVERAGE

A. COVERAGE

The **Fund** will pay for loss involving **covered instruments** resulting directly from the **covered causes of loss**.

1. **Covered Instruments**: Checks, drafts, promissory notes, or similar written promises, orders, or directions to pay a sum certain in **money** that are:

a. Made or drawn by or drawn upon the **Member**;

b. Made or drawn by one acting as the **Member's** agent;

or that are purported to have been so made or drawn.

2. **Covered Causes of Loss**: Forgery or alteration of, on, or in any **covered instrument**.

3. **Coverage Extension**:

Legal Expenses: If the **Member** is sued for refusing to pay any **covered instrument** on the basis that it has been forged or altered, and the **Member** has the **Fund's** written consent to defend against the suit, the **Fund** will pay for any reasonable legal expenses that the **Member** incurs and pays in that defense. The amount the **Fund** will pay under this extension is in addition to the limit of liability applicable to this coverage.

B. ADDITIONAL EXCLUSIONS, CONDITIONS, AND DEFINITIONS:

In addition to the General Definitions, General Exclusions, and General Conditions contained in this Property Coverage Document and the Crime Coverage Option, this For-

gery or Alteration Coverage is also subject to the following:

1. **Additional Exclusion:**

Acts of Employees, Elected, or Appointed Officials: The **Fund** will not pay for loss resulting from any dishonest or criminal act committed by any of the **Member's employees**, directors, or trustees:

- a. Acting alone or in collusion with other persons; or
- b. While performing services for the **Member** or otherwise.

2. **Additional Conditions:**

- a. Facsimile Signatures: The **Fund** will treat mechanically reproduced facsimile signatures the same as handwritten signatures.
- b. General Amendments: As respects this Forgery or Alteration Coverage, the words "covered property" or "property covered" in the General Conditions of the Crime Coverage Option mean **covered instruments**.
- c. Proof of Loss: The **Member** must include with the **Member's** proof of loss any instrument involved in that loss, or, if that is not possible, an affidavit setting forth the amount and cause of loss.
- d. Territory: The **Fund** will cover loss the **Member** sustains anywhere in the world.

3. **Additional Definition:**

Occurrence means all loss caused by any person or in which that person is involved, whether the loss involves one or more instruments.

V. COMPUTER FRAUD COVERAGE

A. COVERAGE

The **Fund** will pay for the loss of and loss from damage to **money** and **securities** and **property other than money and securities** resulting directly from **computer fraud**.

B. LIMIT

The most the **Fund** will pay for loss in any one **occurrence** is the applicable limit shown in the **Agreement Declarations**.

C. DEDUCTIBLE

The **Fund** will not pay for loss in any one **occurrence** unless the amount of loss exceeds the deductible amount shown on the **Agreement Declarations**. The **Fund** will then pay the amount of loss in excess of the deductible amount, up to the limit. In the event more than one deductible amount could apply to the loss, only the highest deductible amount may be applied.

D. ADDITIONAL EXCLUSIONS, CONDITIONS, AND DEFINITIONS:

1. **Additional Exclusions**: The **Fund** will not pay for loss as specified below:

- a. Acts of Employees, Directors, Trustees, or Representatives: Loss resulting from any dishonest or criminal act committed by any of the **Member's employees**, directors, trustees, or authorized representatives:

- (1) Acting alone or in collusion with other persons; or
- (2) While performing services for the **Member** or otherwise.

- b. Inventory Shortages: Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

- (1) An inventory computation; or
- (2) A profit and loss computation.

2. **Additional Conditions**

- a. Duties in the Event of Loss: If the **Member** has reason to believe that any loss of, or loss from damage to, covered property involves a violation of law, the **Member** must notify the police.

- b. Special Limit of Insurance for Specified Property: The **Fund** will only pay up to \$5,000 for any one **occurrence** of loss of, and loss from damage to, manuscripts, drawings, or records of any kind or the cost of

reconstructing them or reproducing any information contained in them.

3. Additional Definitions

- a. **Banking Premises** means the interior of that portion of any building occupied by a banking institution or similar safe depository.
- b. **Computer Fraud** means **theft** of property following and directly related to the use of any computer to fraudulently cause a transfer of the property from inside the **premises** or **banking premises** to a person (other than a **messenger**) outside those **premises** or to a place outside those **premises**.
- c. **Messenger** means the **Member**, the **Member's** officials, or any **employee** while having care and custody of the property outside the **premises**.
- d. **Occurrence** means an:
 - (1) Act or series of related acts involving one or more persons; or
 - (2) Act or event, or a series of related acts or events not involving any person.
- e. **Premises** means the interior of that portion of any building the **Member** occupies in conducting the **Member's** business.
- f. **Theft** means any act of stealing.

ANIMAL MORTALITY/THEFT AND MEDICAL COVERAGE OPTION

I. ANIMAL MORTALITY AND THEFT COVER- AGE

A. COVERAGE

With respect to property on which the **Agreement Declarations** specifies "Animal Mortality and Theft Coverage," this **Agreement** is extended to cover the interest of the **Member** in the animal(s) described in the schedule for loss caused by the following:

1. **Mortality**, meaning death which results directly or indirectly from:
 - a. Accident;
 - b. Illness; or
 - c. Disease.
2. Theft, including death resulting from such theft, subject to the following conditions:
 - a. The animal has a number that is registered with a recognized registry which is either tattooed on the animal or in a functional microchip inserted under the skin of the animal and such is stated on the application for this coverage.
 - b. If a theft occurs, the **Fund's** liability begins:
 - (1) 90 days from the date the **Member** notifies the **Fund** of the theft; and
 - (2) Provided the animal is not recovered in that time.
 - c. The **Member** must not:
 - (1) Pay or promise to pay a ransom; or
 - (2) Give any third party assurance of its intent to pay.
 - d. The **Fund** has the right to the return of any payment made if:
 - (1) The animal has been recovered after the theft; and

- (2) The **Fund** has paid a claim prior to the recovery.

- e. Coverage on a pregnant animal does not include any fetus within the animal.

B. PAYMENT OF LOSS

If a covered loss occurs, the **Fund** will pay to the **Member** the value shown in the schedule for the animal at the time of loss. Unless otherwise stated, all claim payments will be made to the **Member**.

C. EXCLUSIONS

1. For the purpose of this coverage only, Exclusion 11., under Paragraph B. of Section III of the Special Form Property Coverage, shall not apply with respect to the animal or animals described in the schedule.
2. The **Fund** will not cover any loss resulting directly or indirectly from:
 - a. Surgical operations, administration of drugs, medication, or inoculation, unless:
 - (1) Required only in an attempt to prevent death or "**humane destruction**" - defined as the destruction of an animal to prevent excessive continued suffering due to an incurable injury or terminal disease; and
 - (2) Performed and certified by a licensed veterinarian;
 - b. Mysterious disappearance or escape;
 - c. Intentional destruction. However, this Exclusion shall not apply if:
 - (1) The **Fund** agrees to the destruction of the animal; or
 - (2) The animal suffers an injury or contracts an excessively painful illness. A qualified Veterinary Surgeon must certify that the animal's suffering is:

- (a) Incurable; and
- (b) So excessive that immediate destruction is necessary for humane reasons;
- d. Destruction as a result of governmental order, due to exposure to or contraction of any communicable disease;
- e. Voluntary parting with the title or possession of the animal because of:
 - (1) Fraud,
 - (2) Trick, or
 - (3) False pretense;
- f. Death of an animal boarded outside the United States and then returned to the United States within the six months preceding its death.

D. CONDITIONS

1. Insurability Requirement

Unless otherwise endorsed, the **Fund** will not be liable for any claim on an animal that:

- a. Suffered from an illness and/or injury, prior to the inception of this coverage and not disclosed on the application form while owned by the **Member** and incurred in the 12 months preceding the date the animal becomes covered;
- b. The **Member** is not the sole owner of;
- c. Has been retired from active duty; or
- d. Has reached the age of ten years, except for horses that are 20 years or younger.

2. Thirty-Day Extension

If coverage is terminated, the coverage provided by the **Fund** will be extended to cover death which occurs:

- a. Within 30 days after the date of termination; and

- b. As a result of an accident, illness, or disease that:

- (1) Occurred during the period coverage was in force; and
- (2) The **Member** reported to the **Fund** before coverage expired.

3. Member's Duties

- a. The **Member** shall dispose of the remains of any animal at the **Member's** expense.
- b. In case of injury or illness to an animal, the **Member** must:
 - (1) Immediately notify the **Fund**;
 - (2) Employ a licensed veterinarian, at the **Member's** expense, to treat the animal; and
 - (3) Secure proper care and, if required, allow the animal to be removed for treatment, at the **Member's** expense.
- c. If the animal dies or is stolen, the **Member** must:
 - (1) Immediately notify the **Fund**, and in the case of theft, also the police, local animal control, and humane society.
 - (2) Give to the **Fund**, within 60 days, a copy of:
 - (a) The registration certificate;
 - (b) The postmortem examination report in the event of death; and
 - (c) A signed and sworn proof of loss.

4. Termination of Ownership

Coverage will cease on any animal in which the **Member** has, temporarily or permanently, given up all or part of its ownership rights;

- a. By sale;
- b. By lease (unless noted in the Schedule); or
- c. For any reason.

5. Assignment of Benefits

The proceeds of this coverage may not be assigned.

by both parties; and who will act as arbitrator. The decision made by the independent Veterinary Surgeon will be binding on both parties.

II. LOSS OF USE COVERAGE

A. COVERAGE

If the **Agreement Declarations** specifies "Loss of Use Coverage," the **Fund** will pay 60% of the value of a covered animal at the time of injury or 60% of the coverage amount specified in the Schedule, whichever is less, if the animal:

1. Is injured by external, accidental, and violent means during the period this additional coverage is in effect;
2. Becomes totally and permanently unfit for its current use as a result of such injury; and
3. Does not require destruction for humane reasons.

B. CONDITIONS

1. The **Member** must give the **Fund** immediate notice of any accident resulting in an injury which may give rise to a claim.
2. Within 14 days of such accident, the **Member** must provide a full veterinary report by a qualified Veterinary Surgeon, which will include:
 - a. A description of the injury suffered;
 - b. The treatment rendered; and
 - c. The opinion of the Veterinary Surgeon as to the animal's fitness for its current use.
3. The **Fund** reserves the right to appoint a Veterinary Surgeon to examine the animal.
4. If a claim is made and paid, coverage on the animal for which the claim is paid:
 - a. Will terminate; and
 - b. No return contribution will be paid.
5. Any disagreement between the **Member's** and the **Fund's** Veterinary Surgeons over the incapacity of the covered animal will be referred to an independent Veterinary Surgeon mutually agreed to

6. The provisions of this coverage:

- a. Apply only to claims for indemnity for loss of use; and
 - b. Do not extend to or vary covered claims for indemnity against all risks of mortality.
7. It is understood that upon expiration of coverage all liability ceases. However, coverage is extended to loss of use first occurring within 90 days after expiration, resulting from injury which occurs prior to expiration.

All other applicable terms and conditions under Animal Mortality and Theft Coverage also apply to this coverage.

III. CANINE VETERINARY FEE COVERAGE

A. COVERAGE

If the **Agreement Declarations** specifies "Canine Veterinary Fee Coverage," the **Fund** will pay reasonable and customary veterinary fees that result from **injury** to a covered animal. Veterinary fees include:

1. **Veterinary Medical Treatment**, including but not limited to: prescription medication, diagnostic radiology, surgery, and laboratory tests necessitated by **injury** to a covered animal.
2. **Hospitalization** of a covered animal necessitated by **injury**.
3. Euthanasia of a covered animal by a **veterinarian** when the **veterinarian** and the **Member** agree that such action is appropriate for humane reasons.

B. LIMIT AND DEDUCTIBLE

Coverage is subject to the limit and deductible shown on the **Agreement Declarations**.

C. DEFINITIONS

1. **Injury** means bodily **injury** caused by an accident, sustained by a covered animal, not attributable to illness.

2. **Veterinary Medical Treatments** are services performed by a duly licensed graduate doctor of veterinary medicine.
3. **Hospitalization** means confinement of the covered animal at the **veterinarian's** premises or at a veterinary hospital while receiving necessary treatment for an **injury** covered hereunder.
4. **Veterinarian** means a duly licensed graduate doctor of veterinary medicine.
5. **Medication** means prescription drugs which are available only from a **veterinarian** or licensed pharmacy.

D. EXCLUSIONS

This coverage does not apply to loss caused by, happening through, or in consequence of:

1. **Injury** existing before the effective date of this coverage;
2. **Injury** resulting from racing or commercial guarding;
3. Malicious, intentional, or willful **injury** by the owner or caretaker of the covered animal;
4. Any veterinary fees except for those services performed by or under the supervision of a duly licensed graduate doctor of veterinary medicine;
5. Autopsy, disposal, or burial of a covered animal; or
6. Any **injury** caused by or attributed to malnutrition, abuse, mistreatment, neglect, or other inhumane actions by the owner or caretaker of the covered animal.

E. NOTICE OF LOSS

For the purpose of this coverage only, the **Member** must file proof of a claim which is:

1. An accident/injury report telling how the **injury** occurred;
2. A report signed by the treating **veterinarian** describing the **injury** and treatment provided;
3. Copies of all service bills for which a claim is made (must be itemized and dated); and

4. Filed within 60 days after treatment.

All other applicable terms and conditions under Animal Mortality and Theft Coverage also apply to this coverage.

IV. SURGICAL COVERAGE

A. COVERAGE

If the **Agreement Declarations** specifies "Surgical Coverage," the **Fund** agrees to reimburse the **Member** for:

1. Reasonable and customary fees for surgical procedures performed on a covered animal as specified in the Schedule; and
2. Reasonable and customary after-care while the animal is kept on the premises where the surgery is performed.

B. LIMIT AND DEDUCTIBLE

1. The combined limit of liability for covered surgery and after-care per animal, per 12 month period is the amount shown under limits on the **Agreement Declarations**.
2. After-care is limited to:
 - a. 50% of the cost of surgery; and
 - b. No more than 15 days from the time of surgery.
3. The deductible shown on the **Agreement Declarations** shall be applied to each separate claim.

C. CONDITIONS

For the purpose of this coverage only, the **Member** must file a proof of claim within 60 days after surgery, including:

1. A report signed by the treating **veterinarian** describing the surgery performed and describing the animal's condition; and
2. Copies of all service bills for which the claim is made.

D. EXCLUSIONS

Coverage does not apply to:

1. Any surgery unless performed by a licensed **veterinarian** in a school of veterinary medicine or surgical clinic;

2. Conditions existing, diagnosed, or treated prior to the effective date of this coverage;
3. Any examination, medical treatment, or medication unless it is given in conjunction with the covered surgical procedure being claimed;
4. Operations not performed under a general anesthesia;
5. Any elective or voluntary surgical procedure;
6. Death benefits; or
7. Postmortem surgical operations.

All other applicable terms and conditions under Animal Mortality and Theft Coverage also apply to this coverage, with the exception of Animal Mortality and Theft Coverage exclusion C.2.



Texas Municipal League Intergovernmental Risk
Pool 1821 Rutherford Lane • Austin, TX 78754
P.O. Box 149194 • Austin, TX 78714-
9194 (512) 491-2300 • (800) 537-6655
www.tmlirp.org

PROPERTY DECLARATIONS OF COVERAGE
2015-2016 Fund Year

Member: Hidalgo

Member ID: 9559



**Coverages
Elected:**

Real and Personal
 PropertyBoiler and
☒ Machinery Mobile
☒ Equipment
☒

☐ Crime
☐ Animal Mortality

***Real and Personal
Property***

Effective Date: 10/01/15

Anniversary Date: 10/01/16

Limit: \$70,514,919
 Coverage Special Form
 Basis: Replacement
 Valuation Cost
 Basis: \$1,000,000
 Limit: Transit

Deductible: \$2,500
 Flood and
 Earthquake \$25,000
 Deductible:

Coverage Extensions: As Scheduled
 Fine Arts: Not
 Flood and Included
 Earthquake: Included

Annual \$95,183
 Contribution:Pro \$95,183
 Rata Due:

Anniversary Date: 10/01/16

***Boiler and
Machinery***

Effective Date: 10/01/15

Per Accident \$100,000
 Limit:Valuation Replacement
 Basis: Cost

Deductible: \$2,500
 Annual Include
 Contribution:Pro d
 Rata Due: Include
 d

Mobile Equipment

Effective Date: 10/01/15

Anniversary Date: 10/01/16

Limit: \$1,078,47
 Reporting 0
 Basis: Schedule
 d

Deductible \$2,500
 :

Valuation Replacement Cost
 Basis:

Annual \$3,874
 Contribution:Pro \$3,874
 Rata Due:

Total All Elected Property Coverages:

Annual Contribution:

\$99,057

Pro Rata Due:

\$99,057

Coverage is continuous until cancelled. Annual contributions are subject to adjustment each year on the anniversary date based on updated exposure information and changes in rating.

PO Box 149194 ♦ Austin, Texas 78714-9194
(512) 491-2300 ♦ (800) 537-6655

CP9559-2015-1
11/11/2015

P301
Rev. 04/25/11

Schedule of Applicable Documents

Member: Hidalgo

Member ID: 9559

Coverage Period: 10/01/2015 to 10/01/2016 Shown As of 11/11/2015



ID	Document Name	Revision Date
P300	Property Coverage Document	10/01/14
P301	Property Declarations of Coverage	04/25/11
X150	Schedule of Applicable Documents	06/01/08
P200	Real and Personal Property Schedule	04/26/10
P202	Mobile Equipment Schedule	06/01/08
P215	Coverage Extensions Schedule	07/14/08
E104	Manuscript Endorsement	10/01/09
EP300	Loss Payable Clause - Real & Personal Property	05/20/02
EP301	Loss Payable Clause - Mobile Equipment	05/20/02
EP371	Transfer of Interest	11/11/11

Real and Personal Property Schedule

Member: Hidalgo

Member ID: 9559

Coverage Period: 10/01/2015 to 10/01/2016 Shown As of 10/01/2015



The contribution and limit calculated for your Real and Personal Property Coverages are based on the following schedule. The values shown are the estimated Replacement Cost or Actual Cash Value (RC or ACV) unless otherwise noted and endorsed. Any changes or corrections may require adjustment to the contribution. Improvements and betterments to locations you lease from others are included with the contents value. Your elected Coverage Extension limits are shown on a separate schedule.

ID	Address or Site Secondary ID	Year Built	Occupancy Department	Bldg Value Valuation Basis	Contents Value Valuation Basis
4	117 N 2nd St	1962	Police Academy	165,050	5,000
			Police	RC	RC
5	2nd St & Gardenia	1968	150k gal Elevated Water Tank	768,150	0
			Utility	RC	
6	211 E Esperanza Ave	1979	Fire Station/Police Dept/Commu	1,199,330	100,000
			Fire	RC	RC
7	501 Texano Dr	1972	Lift Station Building	64,380	0
			Utility	RC	
8	Bridge Blvd	1972	Lift Station/Pumps/Motors/Misc	91,751	0
			Utility	RC	
10	E Esperanza Ave	1984	Lift Station	76,887	0
			Utility	RC	
11	Produce Rd & 10th St	1987	Lift Station	76,887	0
			Utility	RC	
12	J&E & Flores St	1987	Lift Station	76,887	0
			Utility	RC	
14	704 E Texano Dr	1995	New City Hall w/(6)Flag Pole/(27	1,574,230	500,000
			Administration	RC	RC
15	523 E Esperanza Ave	1978	Pavilion Bldg	682,139	5,000
			Parks	RC	RC
18	Hi Lowe Rd	0	Sewer Plant	820,125	0
			Utility	RC	
19	501 E Texano Dr	1985	300k gal Ground Water Tank	370,389	0
			Utility	RC	
20	523D E Esperanza Ave	1978	Swimming Pool Bath House	147,212	2,000
			Parks	RC	RC
22	415 N 3rd St	1962	Water Plant	458,245	0
			Utility	RC	
23	112 N 2nd St	1998	Youth Center	707,460	24,000
			Youth Services	RC	RC
24	702 E Texano Dr	1996	County Health Clinic	576,445	0
			Administration	RC	
25	710 E Texano Dr	1998	Public Library	1,264,325	250,000
			Library	RC	RC
26	International Blvd	1995	Lift Station #3	205,031	0
			Utility	RC	
27	International Blvd	1992	Lift Station #8	51,258	0
			Utility	RC	

Real and Personal Property Schedule

Member: Hidalgo

Member ID: 9559

Coverage Period: 10/01/2015 to 10/01/2016 Shown As of 10/01/2015



ID	Address or Site Secondary ID	Year Built	Occupancy Department	Bldg Value Valuation Basis	Contents Value Valuation Basis
28	International Blvd	1992	Lift Station #9	102,516	0
			Utility	RC	
29	International Blvd	1997	Lift Station #10	76,887	0
			Utility	RC	
30	5th St & Texano Dr	1985	Water Well #3	255,879	0
			Utility	RC	
31	McColl Rd & Ebano St	1994	500k gal Elevated Water Tank	1,582,021	0
			Utility	RC	
32	McColl Rd & Ebano St	1997	300k gal Ground Water Tank	370,389	0
			Utility	RC	
35	704 E Texano Dr	1992	Killer Bee Statue	25,629	0
			Administration	RC	
36	902 S 2nd St	1998	Pump House	1,230,188	300,000
			Water/Sewer	RC	RC
43	100 N McColl Rd Valle Alto Park	1998	Restroom w/Concession	69,403	0
			Parks	RC	
45	100 N McColl Rd Valle Alto Park	1998	Field Lights/Backstop/Dugout	101,490	0
			Parks	RC	
46	100 N McColl Rd Valle Alto Park	1998	Volleyball Courts (3)	11,789	0
			Parks	RC	
47	100 N McColl Rd Valle Alto Park	1998	Basketball/Tennis Courts (2)	26,654	0
			Parks	RC	
48	100 N McColl Rd Valle Alto Park	1998	Tables/BBQ Grills (10)	5,649	0
			Parks	RC	
49	100 N McColl Rd Valle Alto Park	1998	Playground Equipment	13,327	0
			Parks	RC	
50	100 N McColl Rd Valle Alto Park	1998	Shuffleboard Courts (2)	8,004	0
			Parks	RC	
51	100 N McColl Rd Valle Alto Park	1998	Horseshoe Pits (2)	5,331	0
			Parks	RC	
52	100 N McColl Rd Valle Alto Park	1998	Bleachers (12)	11,170	0
			Parks	RC	
53	100 N McColl Rd Valle Alto Park	1998	Scoreboard	9,483	0
			Parks	RC	
54	100 N McColl Rd Valle Alto Park	1998	Fencing	34,268	0
			Parks	RC	
55	100 N McColl Rd Valle Alto Park	1998	Signs	5,427	0
			Parks	RC	
56	100 N McColl Rd Valle Alto Park	1998	Lighting	37,144	0
			Parks	RC	
57	523 E Esperanza Ave	1978	Restroom	74,119	0
			Parks	RC	

Real and Personal Property Schedule

Member: Hidalgo

Member ID: 9559

Coverage Period: 10/01/2015 to 10/01/2016 Shown As of 10/01/2015



ID	Address or Site Secondary ID	Year Built	Occupancy Department	Bldg Value Valuation Basis	Contents Value Valuation Basis
58	523 E Esperanza Ave	1978	Restroom	74,119	0
			Parks	RC	
61	415 N 3rd St	1972	300k gal Ground Water Tank	370,389	0
			Utility	RC	
62	211 E Esperanza	0	Record Vault	17,650	0
			Police	RC	
64	100 N McColl Rd	2001	Concession w/Pavilion	234,351	5,000
	Valle Alto Park		Parks	RC	RC
65	211 McColl Rd	2002	Police Substation	22,758	2,500
			Police	RC	RC
66	110 Flora Ave	2002	Municipal Court Building	310,315	25,000
			Court	RC	RC
67	122 N 2nd St	2002	Playground Equipment	20,422	0
	McAllen Park		Parks	RC	
68	100 N McColl Rd	2002	Playground Equipment	32,146	0
	Valle Alto Park		Parks	RC	
69	E of Hidalgo on 281	2002	Fence	7,719	0
			Parks	RC	
70	613 Judy Ave	2001	Pate House	266,746	4,000
			Parks	RC	RC
71	Bridge Blvd	1972	Toll Bridge	6,834,409	0
			Administration	RC	
72	2600 N 10th St	2003	Dodge Arena	22,256,347	7,000,000
	Dodge Arena		Arena	RC	RC
73	100 N McColl Rd	2002	Bleacher Canopy	3,793	0
	Valle Alto Park		Parks	RC	
74	100 N McColl Rd	2002	Bleacher Canopy	3,793	0
	Valle Alto Park		Parks	RC	
75	100 N McColl Rd	2002	Bleacher Canopy	3,793	0
	Valle Alto Park		Parks	RC	
76	100 N McColl Rd	2002	Bleacher Canopy	3,793	0
	Valle Alto Park		Parks	RC	
77	2600 N 10th St	0	Generator - 300kw Diesel	132,245	0
	Dodge Arena		Arena	RC	
78	2600 N 10th St	0	Flag Pole	2,563	0
	Dodge Arena		Arena	RC	
79	2600 N 10th St	0	Flag Pole	2,563	0
	Dodge Arena		Arena	RC	
80	2600 N 10th St	0	Flag Pole	2,563	0
	Dodge Arena		Arena	RC	
81	2600 N 10th St	0	Flag Pole	2,563	0
	Dodge Arena		Arena	RC	

Real and Personal Property Schedule

Member: Hidalgo

Member ID: 9559

Coverage Period: 10/01/2015 to 10/01/2016 Shown As of 10/01/2015



ID	Address or Site Secondary ID	Year Built	Occupancy Department	Bldg Value Valuation Basis	Contents Value Valuation Basis
82	2600 N 10th St Dodge Arena	0	Flag Pole Arena	2,563 RC	0
83	2600 N 10th St Dodge Arena	0	Flag Pole Arena	2,563 RC	0
84	2600 N 10th St Dodge Arena	0	11 Acres Parking Arena	297,295 RC	0
85	S McColl Rd	2004	Waste Water Treatment Plant Utility	3,202,793 RC	0
86	701 S 1st St	0	Rodriguez General Store Parks	73,811 RC	0
87	701 S 1st St	0	Storage Bldg Parks	18,453 RC	0
88	2600 N 10th St Dodge Arena	2008	Dodge Arena Warehouse Arena	208,722 RC	100,000 RC
89	300 S 22nd	2007	City Shop Street	631,496 RC	50,000 RC
90	108 E Gardenia Ave	1964	House Unknown	105,899 RC	0
91	106 E Gardenia Ave	1964	House Unknown	99,338 RC	0
92	200 E Gardenia Ave	1964	House Unknown	83,755 RC	0
93	100 E Gardenia Ave	1943	House Unknown	65,507 RC	0
94	211 McColl Rd		Antenna Police	25,629 RC	0
95	977 Bridge St	2011	RGV Border Security, Technolog Police	1,899,615 RC	250,000 RC
96	101 E Flora Ave	1886	Courthouse Building Parks	273,717 RC	2,000 RC
97	101 E Flora Ave	1886	Jailhouse Parks	171,099 RC	1,500 RC
98	102 E Flora Ave	1889	Post Office Parks	118,303 RC	500 RC
99	613 Judy Ave	1972	La Herradura	310,007 RC	0
100	104 E Gardenia Ave	1964	House	78,219 RC	0
101	100 E Gardenia Ave	1968	House	27,884 RC	0
102	100 blk of Gardenia Ave	1972	Storage Building	5,946 RC	0

Real and Personal Property Schedule

Member: Hidalgo

Member ID: 9559

Coverage Period: 10/01/2015 to 10/01/2016 Shown As of 10/01/2015



ID	Address or Site Secondary ID	Year Built	Occupancy Department	Bldg Value Valuation Basis	Contents Value Valuation Basis
103	415 N 3rd St	1972	Pump House	19,273	0
			Water	RC	
104	2300 E Highline Rd	2014	Wastewater Treatment Plant Ex	10,125,000	0
			Public Works	RC	
105	Unknown	2014	Cummins Generator, 125kW	3,544	0
	Serial #003833		Water	RC	
Coverage: Real & Personal Property		Total Items:	85	61,888,419	8,626,500

Mobile Equipment Schedule

Member: Hidalgo

Member ID: 9559

Coverage Period: 10/01/2015 to 10/01/2016 Shown As of 10/01/2015



The contribution calculated for Mobile Equipment is based on the following schedule. Any changes or corrections may require adjustment to the contribution.

Your selected loss valuation basis (Replacement Cost or Actual Cash Value) is indicated on the Declarations of Coverage. The most the Fund will pay for loss to mobile equipment is the value scheduled below.

ID	Year	Make/Type	Description Department	Serial Number Secondary ID	Leased Y/N	Value
1	1994	Ford	Tractor, Mdl 3930	3545	N	14,885
		Tractor	Parks	002101		
2	1980	International	Sickle Display @ Pump House	510J	N	2,500
		Tractor	Parks	002106		
5	1996	John Deere	Model JD30D	6567	N	10,000
		Backhoe	Water	002134		
9	1998	Ford	Model 7600 / 002143	C593163	N	3,780
		Tractor	Sewer	002143		
10	1980	Unknown	Man-Seamon Trencher	6772136	N	7,000
		Trencher	Street	002105		
11	2000	John Deere	Model 5210-w/Cutter	5320385	Y	18,338
		Tractor/Mower	Parks	002111		
12	2000	John Deere	Model 310E	4440	Y	40,000
		Backhoe/Loader	Water	002211		
14	1988	Unknown	w/Trailer	A24635D888	N	1,100
		Boat	Fire	000381		
16	2003	Briggs-Straton	Generator	G9971084	N	15,000
		Generator	Arena			
17	2004	John Deere	Model JD310G	942974	N	66,833
		Backhoe/Loader	Street	002330		
18	2004	John Deere	Model 5205	620107	N	19,385
		Tractor	Street	002377		
19	2004	John Deere	Model JD MX6	17447	N	2,442
		Rotary Cutter	Street	002376		
21	2007	Suzuki	Model LTA400FK7	KX77112422	N	4,800
		All Terrain Vehicle	Police	003460		
22	2007	Suzuki	Model LTA400FK7	K677112398	N	4,800
		All Terrain Vehicle	Police	003461		
23	2007	Suzuki	Model LTA400FK7	K877115660	N	4,800
		All Terrain Vehicle	Police	003459		

Mobile Equipment Schedule

Member: Hidalgo

Member ID: 9559

Coverage Period: 10/01/2015 to 10/01/2016 Shown As of 10/01/2015



ID	Year	Make/Type	Description Department	Serial Number Secondary ID	Leased Y/N	Value
24	2008	Suzuki	Model LTA400FK8	K787100676	N	5,200
		All Terrain Vehicle	Police	003462		
25	2006	Unknown	Hearthland Travel Trailer	2213	N	18,500
		Trailer	Parks	003317		
26	2006	Unknown	GS Travel Trailer	6356	N	18,500
		Trailer	Parks	003318		
27	2006	Unknown	Coachman Spirit of America	2562	N	21,464
		Trailer	Parks	003319		
28	2005	Morgan	Fleetwood Travel Trailer	421	N	14,800
		Trailer	Parks	003320		
29	1998	Unknown	Springdale Travel Trailer	8838	N	21,995
		Trailer	Parks	003423		
30	1998	Unknown	Springdale Travel Trailer	9215	N	21,995
		Trailer	Parks	003426		
31	1998	Unknown	Springdale Travel Trailer	9232	N	21,995
		Trailer	Parks	003425		
32	1998	Unknown	Springdale Travel Trailer	9222	N	21,995
		Trailer	Parks	003424		
34	2008	Caterpillar	Model V150	2379	N	4,000
		Fork Lift	Parks	003439		
35	2008	Gradall	Model G3WD	2230	N	18,584
		Excavator	Sewer	003231		
36	2008	John Deere	Model 7130	6428	N	82,739
		Tractor/Mower	Sewer	003414		
37	2008	Unknown	Horse Drawn Trolley		N	1,800
		Trolley	Parks	003374		
38	2008	Stihl	Sweeper @Arena	5785	N	4,500
		Sweeper	Arena	002898		
39	2008	Taylor Dunn	Golf Cart	959	N	1,800
		Golf Cart	Water/Sewer	003236		
40	2010	Skywatch	Mobile Tower	ICX6809051	N	102,294
		Mobile Tower	Police	003666		
41	1985	Unknown	Model X3WT	G1W50010	N	1,500
		Tug	Parks	002428		
42	1992	Unknown	Model GHTKJ40	7594	N	800
		Tug	Parks	003750		

Mobile Equipment Schedule

Member: Hidalgo

Member ID: 9559

Coverage Period: 10/01/2015 to 10/01/2016 Shown As of 10/01/2015



ID	Year	Make/Type	Description Department	Serial Number Secondary ID	Leased Y/N	Value
43	2009	Unknown	Traffic Signal Digital Board	A9BS333572228654	N	18,380
		Arrow/Message Board	Street	003235		
44	2009	Unknown	Traffic Signal Digital Board	A9BS333X72228827	N	18,380
		Arrow/Message Board	Street			
45	2014	Unknown	Horse Drawn Trolley Carriage	Unknown	N	4,500
		Trolley	Activity Center	004431		
46	2014	Unknown	Model tp-3a4-dc	89439	N	1,375
		Light Tower	Administration	003829		
47	2014	Unknown	Model tp-3a4-dc	89255	N	1,375
		Light Tower	Administration	003830		
48	2014	Unknown	Model tp-3a4-dc	89403	N	1,375
		Light Tower	Administration	003831		
49	2014	Unknown	Model tp-3a4-dc	89242	N	1,375
		Light Tower	Administration	003832		
50	2014	Unknown	Model htab40	10187	N	3,500
		Tug	Administration	004553		
51	2014	Unknown	Model ig-40pt-9r	9994	N	4,500
		Tug	Street	004535		
52	2014	Homemade	Train Car #1	Unknown	N	10,000
		Train	Administration			
53	2014	Homemade	Train Car #2	Unknown	N	10,000
		Train	Administration			
54	2014	Homemade	Train Car #3	Unknown	N	10,000
		Train	Administration			
55	2014	Homemade	Train Car #4	Unknown	N	10,000
		Train	Administration			
56	2014	Homemade	Train Car #5	Unknown	N	10,000
		Train	Administration			
57	2014	Homemade	Train Car #6	Unknown	N	10,000
		Train	Administration			
58	2014	Homemade	Train Car #7	Unknown	N	10,000
		Train	Administration			
59	2014	Homemade	Train Car #8	Unknown	N	10,000
		Train	Administration			
60	2014	Homemade	Train Car #9	Unknown	N	10,000
		Train	Administration			

Mobile Equipment Schedule

Member: Hidalgo

Member ID: 9559

Coverage Period: 10/01/2015 to 10/01/2016 Shown As of 10/01/2015



ID	Year	Make/Type	Description Department	Serial Number Secondary ID	Leased Y/N	Value
61	2014	Homemade	Horse Drawn Car #10	Unknown	N	13,000
		Trolley	Administration			
62	2014	Homemade	Horse Drawn Car #11	Unknown	N	13,000
		Trolley	Administration			
63	2011	Unknown	Sea Ark Boat Trailer	BCB10128	N	16,977
		Trailer	Fire	003922		
64	2012	Unknown	Well Storage Trailer	G23C2023927	N	4,400
		Trailer	Fire	004407		
65	2014	Ditch Witch	Model SK-350	P70000906	N	18,594
		Trencher	Water	003519		
66	2014	Caterpillar	Grader	7GB00688	N	4,400
		Grader	Water	003835		
67	2014	International Harvester	Forklift	333601	N	4,225
		Fork Lift	Water	003836		
68	2014	Hyster	Model D71	61G1407	N	2,100
		Bulldozer	Water	003837		
69	2014	Unknown	Air Compressor on Trailer	146452	N	2,000
		Air Compressor	Water	003685		
70	2014	Case	Scoop Loader	9156967	N	4,500
		Loader	Water	003834		
71	2014	John Deere	Model JD 1250	001467	N	4,000
		Tractor	Sewer	004068		
72	2014	Unknown	Sewer Cleaning Machine spt 500	3133	N	19,775
		Sewer Cleaner	Sewer			
73	2014	John Deere	Model JD4110	X017674	N	2,000
		Tractor	Sewer			
74	2006	Unknown	Model LT12	902780	N	7,815
		Light Tower	Police	002695		
75	2014	Unknown	Light Tower	8902795	N	7,815
		Light Tower	Police	002696		
76	2014	Skywatch	Model 15hdkbc-2860f	6811001	N	108,376
		Sky Watch Tower	Police	003910		
77	2014	Unknown	Light Tower	50902809	N	7,815
		Light Tower	Police	002697		
78	2014	Unknown	Model RL 4000	B1003595	N	7,042
		Light Tower	Police	003911		

Mobile Equipment Schedule

Member: Hidalgo

Member ID: 9559

Coverage Period: 10/01/2015 to 10/01/2016 Shown As of 10/01/2015



ID	Year	Make/Type	Description Department	Serial Number Secondary ID	Leased Y/N	Value
79	2014	Unknown	Model RL 4000	B1003589	N	7,042
		Light Tower	Police	003912		
80	2014	Unknown	Model RL 4000	B1003592	N	7,042
		Light Tower	Police	003913		
81	2014	Unknown	Model RL 4000	B1003591	N	7,042
		Light Tower	Police	003914		
82	2014	Unknown	Model RL 4000	B1003590	N	7,042
		Light Tower	Police	003915		
83	2014	Unknown	Model RL 4000	B1003593	N	7,042
		Light Tower	Police	003916		
84	2014	Unknown	Model RL 4000	B1003594	N	7,042
		Light Tower	Police	003917		
85	2008	Unknown	4-Wheeler / Bayou	B569959	N	1,000
		All Terrain Vehicle	Sports Complex	004766		
86	2012	Unknown	Outlander 4 Wheeler	J000055	N	12,000
		All Terrain Vehicle	Police	004768		
87	2006	Unknown	Low Speed Vehicle	F042109	N	2,500
		Golf Cart	Sports Complex	004759		
88	2015	Landpride	Shredder	776365	N	1,700
		Shredder	Street	004674		
89	2015		Fork Lift	KL01481	N	4,000
		Fork Lift	Street	004984		
90	2015	Rhino	Shredder	17239788	N	2,300
		Shredder	Street	004956		
91	2015	Taylor Dunn	Tug	157478	N	600
		Tug	Parks & Recreation	003541		
92	2015	Army Plus	Army Heavy Cargo Trailer	NW0530	N	1,000
		Trailer	Fire	004969		
93	2006		Utility Trailer		N	4,000
		Trailer	Police			
94	2015		Trailer	21808	N	10,000
		Trailer	Police	004716		
95	2015	Yale	Fork Lift	950535	N	2,800
		Fork Lift				
96	2015	Cyclone	Shredder	246752	N	1,600
		Shredder				

Coverage: Mobile Equipment	Total Items:	87	1,078,470

Coverage Extensions Schedule

Member: Hidalgo

Member ID: 9559

Coverage Period: 10/01/2015 to 10/01/2016 Shown As of 10/01/2015



Elected Coverage Extension limits are shown below. Any changes or corrections may require adjustment to the contribution. Note: Limits for Newly Acquired Property and Pollutant Cleanup and Removal may not be increased above the limits indicated below.

Coverage Extension	Limit
Valuable Papers and Records & EDP Media	\$25,000
Accounts Receivable	\$50,000
Loss of Revenue, Extra Expense and Rental Value	\$5,760,000
Personal Property of Employees and Officials	\$5,000
Leasehold Interest	\$5,000
Outdoor Trees and Shrubs (\$250 per item)	\$10,000
Newly Acquired Property	\$1 Million or the Real & Personal Property Limit, whichever is less
Pollutant Cleanup and Removal	\$20,000 each premises

MANUSCRIPT ENDORSEMENT

This endorsement forms a part of the **Declarations** to which attached, effective on the inception date of the coverage unless otherwise stated herein, and modifies such coverage as is afforded by the provisions of the coverage shown below:

REAL & PERSONAL PROPERTY COVERAGE

Entity Name :
HidalgoEntity ID
9559
Effective Date : 10/1/15

Coverage for direct physical damage to the McAllen-Hidalgo-Reynosa International Toll Bridge is limited to damage occurring on the United States side of the bridge.

Notwithstanding the above limitation, coverage for **Loss of Revenue** and **Extra Expense**, as set forth in part 4 of Section III.C. of the Special Form Property Coverage Document, extends to loss, damage or destruction by a covered peril occurring on either the United States or the Mexico side of the bridge.

It is further agreed that any claim payment for the direct damage, **Loss of Revenue** or **Extra Expense** as provided by this endorsement will be payable to the Bridge Governing Board unless the cities that have an interest in the bridge jointly provide other direction.

TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL

E104
05/20/02

LOSS PAYABLE CLAUSE - REAL & PERSONAL PROPERTY

This endorsement forms a part of the **Declarations** to which attached, effective on the inception date of the coverage unless otherwise stated herein, and modifies such coverage as is afforded by the provisions of the coverage shown below:

REAL AND PERSONAL PROPERTY COVERAGE

Member	Hidalgo
Member ID	9559
Effective Date	10/01/2015

Loss on the items shown below shall be payable to:

Canon Financial Services, Inc. c/o Insurance Center
15325 SE 30th Pl., Suite 100
Bellevue, WA 98007

as mortgagee, loss payee or lienholder as their interest may appear at the time of loss.

Designation of Property		
Location	Description	Building & Contents Scheduled Value
704 E Texano Dr Hidalgo, TX 78557-4104	Canon IR5000 Copiers, Value: \$19,974	\$2,074,230

This endorsement forms a part of the **Declarations** to which attached, effective on the inception date of the coverage unless otherwise stated herein, and modifies such coverage as is afforded by the provisions of the coverage shown below:

REAL AND PERSONAL PROPERTY COVERAGE

Member	Hidalgo
Member ID	9559
Effective Date	10/01/2015

Loss on the items shown below shall be payable to:

Mobile Mini, Inc
7420 S Kyrene Rd
Tempe, AZ

as mortgagee, loss payee or lienholder as their interest may appear at the time of loss.

Designation of Property

Location	Description	Building & Contents Scheduled Value
211 E Esperanza Hidalgo, TX 78557-0000	10' x 6' x 23' Record Vault	\$17,650

05/20/02

LOSS PAYABLE CLAUSE: REAL & PERSONAL PROPERTY

This endorsement forms a part of the **Declarations** to which attached, effective on the inception date of the coverage unless otherwise stated herein, and modifies such coverage as is afforded by the provisions of the coverage shown below:

REAL AND PERSONAL PROPERTY COVERAGE

Member	Hidalgo
Member ID	9559
Effective Date	10/01/2015

Loss on the items shown below shall be payable to:

Texas State Bank - McAllen
3900 N 10th St
McAllen, TX

as mortgagee, loss payee or lienholder as their interest may appear at the time of loss.

Designation of Property

Location	Description	Building & Contents Scheduled Value
2600 N 10th St Hidalgo, TX 78557-0000	Rio Grande Valley Events Center	\$29,256,347

EP300
05/20/02

LOSS PAYMENT CLAUSE - REAL & PERSONAL PROPERTY

This endorsement forms a part of the **Declarations** to which attached, effective on the inception date of the coverage unless otherwise stated herein, and modifies such coverage as is afforded by the provisions of the coverage shown below:

REAL AND PERSONAL PROPERTY COVERAGE

Member	Hidalgo
Member ID	9559
Effective Date	10/01/2015

loss on the items shown below shall be payable to:

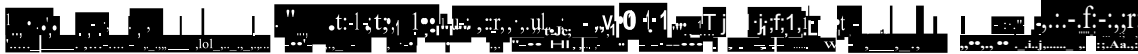
US Bank, Office Equipment Finance Services
1310 Madrid St., Ste 101
Marshall, MN 56258

as mortgagee, loss payee **or** lienholder as their interest may appear at the time of loss.

Designation of Property

Location	Description	Building & Contents Scheduled Value
710 E Texano Dr Hidalgo, TX 78557 -0000	Computer Equipment	\$1,514,325

EP300
05/20/02



This endorsement forms a part of the **Declarations** to which attached, effective on the inception date of the coverage unless otherwise stated herein, and modifies such coverage as is afforded by the provisions of the coverage shown below:

MOBILE EQUIPMENT COVERAGE

Member	Hidalgo
Member ID	9559
Effective Date	10/01/2015

It is understood and agreed that loss or damage to the **mobile equipment** described in **this** endorsement shall be paid as interest may appear to the person or organization named below:

Mrs. Allarea Black
4374 Texas Hwy 154 South
Sulphur Springs, TX 75482-7585

The most we will pay for any loss to the described equipment is the lesser of:

1. the value indicated below, or;
2. the **replacement cost or actual cash value** of the equipment, based on the valuation method selected by the member, minus the applicable deductible.

Designation or Description of Equipment

Year	Make/Model	Serial Number	Value
2004	John Deere	942974	\$66,833
2004	John Deere	620107	\$19,385
2004	John Deere	17447	\$2,442

TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL

EP301
05/20/02

000213

LOSS PAYABLE CLAUSE- MOBILE EQUIPMENT

This endorsement forms a part of the **Declarations** to which attached, effective on the inception date of the coverage unless otherwise stated herein, and modifies such coverage as is afforded by the provisions of the coverage shown below:

SPECIAL FORM PROPERTY COVERAGE

Entity Name : Hidalgo
Entity ID 9559
Effective Date : 10/1/15

It is understood and agreed that loss or damage to the **mobile equipment** described in this endorsement shall be paid as interest may appear to the person or organization named below.

Loss Payee Name : Home Depot / Store 0506 McAllen
Address : 409 N Jackson
City, State/ZIP : Pharr, TX 78577

The most we will pay for any loss to the described equipment is the lesser of:

1. the value indicated below, or;
2. the **replacement cost** or **actual cash value** of the equipment, based on the valuation method selected by the member, minus the applicable deductible.

Designation or Description of Equipment

Rented, leased or borrowed equipment

LOSS PAYABLE CLAUSE- MOBILE

This endorsement forms a part of the **Declarations** to which attached, effective on the inception date of the coverage unless otherwise stated herein, and modifies such coverage as is afforded by the provisions of the coverage shown below:

SPECIAL FORM PROPERTY COVERAGE

Entity Name : Hidalgo
Entity ID 9559
Effective Date : 10/1/15

It is understood and agreed that loss or damage to the **mobile equipment** described in this endorsement shall be paid as interest may appear to the person or organization named below.

Loss Payee Name :Tejas Equipment Rentals
Address :1212 N. 23rd St.
City, State/ZIP :McAllen, Texas 78501-7498

The most we will pay for any loss to the described equipment is the lesser of:

1. the value indicated below, or;
2. the **replacement cost** or **actual cash value** of the equipment, based on the valuation method selected by the member, minus the applicable deductible.

Designation or Description of Equipment

Rented or Leased equipment

This endorsement forms a part of the **Declarations** to which attached, effective on the inception date of the coverage unless otherwise stated herein, and modifies such coverage as is afforded by the provisions of the coverage shown below:

REAL AND PERSONAL PROPERTY COVERAGE

Member	Hidalgo
Member ID	9559
Effective Date	10/01/2015

The following conditions apply with respect to all loss or damage to covered property caused by a named storm as designated by the National Weather Service:

1. The Interlocal Agreement establishes the obligation of the **Fund** to pay to the **Member** whose property has been damaged the appropriate **actual cash value or replacement cost** of damaged property. The **Member** shall not transfer any interest in such losses or payments for such losses to any third party, including hedge funds, attorneys, banks, adjusters, or contractors. Such prohibition does not limit the **Member's** use of the loss payable to support contracts awarded to restore damaged property.
2. Any action by the **Member** which grants or attempts to grant to any third party an interest in or control over any claim or loss payable resulting from covered damage to real or personal property will cause the immediate suspension of any additional payment for such otherwise covered damages. Such payments shall not be reinitiated until evidence is provided to the **Fund** that such transfer or attempt to transfer an interest in or control over such loss to a third party has been terminated.

Exhibit B

CITY OF HIDALGO, TEXAS

vs.

TEXAS MUNICIPAL LEAGUE
INTERGOVERNMENTAL RISK POOL

§
§
§
§
§
§

IN THE DISTRICT COURT OF

HIDALGO COUNTY, TEXAS

139TH JUDICIAL DISTRICT

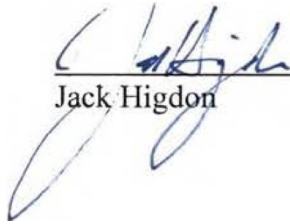
DECLARATION OF JACK HIGDON

STATE OF TEXAS §
COUNTY OF HARRIS §

My name is Jack Higdon. My date of birth is June 12, 1973 , and my address is 717 Texas Avenue, Suite 1400, Houston, TX 77002. I declare under penalty of perjury that the following statements are true and correct:

1. "My name is Jack Higdon. I am of sound mind, capable of making this declaration and have personal knowledge of the facts stated herein, all of which are true and correct.
2. I am counsel for Texas Municipal League Intergovernmental Risk Pool (the "Risk Pool") in the above-styled action. In that capacity, I have gained first-hand knowledge of the facts stated herein, including my firm's communications with Plaintiff City of Hidalgo's (the "City") counsel and the parties' appraisal of the City's loss in this action.
3. On June 16, 2020 , counsel for the City and Risk Pool entered into a TEX. R. CIV. P. 11 agreement to "conduct an appraisal per the terms of the Property Coverage Document of the losses alleged in [this] lawsuit" (the "Rule 11 Agreement"). Attached as **Exhibit B-1** is a true and correct copy of the Rule 11 Agreement.
4. On July 16, 2020, the agreed upon appraisal umpire and one of the party appraisers signed and issued an Appraisal Award to the Parties. And, that same day, the Umpire issued a corresponding estimate of the City's loss. Attached hereto as **Exhibits B-2 and B-3**, respectively, are true and correct copies of Appraisal Award and Umpire Estimate.
5. On July 23, 2020, the Risk Pool tendered a check to the City in the amount of \$194,224.85 in full payment of the ACV loss calculation in the Appraisal Award. Attached hereto as **Exhibit B-4** is a true and correct copy of the July 23, 2020 letter to the City tendering the Risk Pool's payment."

Executed in Harris County, Texas on August 11, 2020.



Jack Higdon

Exhibit B-1

BLANKROME

717 Texas Avenue | Suite 1400 | Houston, TX 77002
blankrome.com

Jock W. Higdon, Partner
Phone: (713) 632-8621
Fax: (713) 228-6605
Email: jhigdon@blankrome.com

June 16, 2020

By Email

Mr. Martin J. Phipps
Mr. Charles E. Hardy Jr.
Phipps Deacon Purnell, PLLC
102 9th Street, San Antonio, Texas 78215

Re: Cause No. C-1896-18-C; *City of Hidalgo v. Texas Municipal League Intergovernmental Risk Pool*; In the 139th Judicial District Court of Hidalgo County, Texas - Rule 11 Agreement

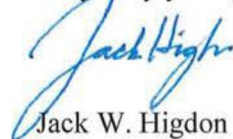
Messrs. Phipps and Hardy:

I understand from our email exchanges that Plaintiff the City of Hidalgo, Texas (the "City") and Defendant Texas Municipal League Intergovernmental Risk Pool ("Pool") (collectively, the "Parties") agree that they will conduct an appraisal per the terms of the Property Coverage Document of the losses alleged in the referenced lawsuit (the "Appraisal") and they further agree that:

1. the Parties may use their original inspectors as their party-appointed appraisers in the Appraisal (Mark Barber - City & Al Berryhill - Pool) (the "Appraisers");
2. the Parties select Randall Taylor of West Fire Restoration, 3737 Brinkman, Houston, Texas 77018 as the Appraisal umpire (the "Umpire");
3. the Parties will direct the Appraisers and Umpire to complete Appraisal and issue the appraisal award within 30 days of the date the City returns this signed Rule 11 agreement to the Pool.

Subject to these additional agreements, the provision of the Property Coverage Document regarding the appraisal process remains in effect (e.g. allocating appraisal expenses, award preparation, etc.). Please confirm the foregoing agreements of the Parties by returning a copy of this Rule 11 with your signature. Thanks in advance.

Very truly yours,



Jack W. Higdon
Counsel for the Risk Pool

AGREED:



Counsel for City

000220

Blank Rome LLP | blankrome.com

Exhibit B-2

Insured: State Farm Arena
2600 N. 10th Street
Hidalgo, Texas 78557

Carrier Appraiser: **AI Barryhill**

Insured's Appraiser: Mark Barber

Umpire: Randall Taylor

Claim Number: PR-37325

Date of loss: 6/1/2016

APPRAISAL AWARD

We, the undersigned, pursuant to our appointment, DO HEREBY CERTIFY that we have truly and conscientiously performed the duties assigned to us, agreeably to the foregoing stipulations, and have appraised and determined and do hereby award as the actual cash value and the amount of loss thereto by wind, the following sums, to wit:

	REPLACEMENT COST	DEPRECIATION	ACV-AMT OF LOSS
Building	\$648,998.29	\$168,606.63	\$480,391.66
TOTAL AMT LOSS	\$648,998.29	\$168,606.63	\$480,391.66

Award based upon the attached estimate which is an integral part of the appraisal award document

Originally signed by AI Barryhill
ON, cn AJ n Barryhill, o =Cron Pointe Construction, Inc., ou.
email: barryhill@a-cs,110U11M OITI, c- US

Date: 2010.07.16 11:59:00 -05'00'

Appraiser: AI Barryhill

7/16/20
Date Signed

App&1}

Umpire: Randall Taylor

Date Signed
07/16/2020
Date Signed

This award is made without consideration of any deductibles or prior payments. Such deductibles and prior payments will be subtracted from any payments due and owing as a result of the entry of this award. This award is made subject to all the terms, conditions, and exclusions of the policy which may be the subject of this appraisal.

000222

Exhibit B3



West Fire Construction & Restoration, Inc

1114 Avenue C
Katy, Texas 77493
713-682-2494

Client: State Farm Arena
Property: 2600 N 10th Street
Hidalgo, TX 78557

Operator: RANDALL

Estimator: Randall W. Taylor
Business: 1114 Avenue C
Katy, TX 77493

Business: (713) 682-2494

Type of Estimate: Wind Damage
Date Entered: 7/10/2020 Date Assigned:
Date Est. Completed: 10/30/2017 Date Job Completed:

Price List: TXMC8X_JUL20
Labor Efficiency: Restoration/Service/Remodel
Estimate: U-20-STATEFARMARENA

Umpire estimate

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

U-20-STATEFARMARENA

Source - Geomni Property

Contents

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
1. Clean furniture - allowance to clean furniture	1.00 EA		0.00	2,500.00	0.00	500.00	3,000.00
Totals: Contents					0.00	500.00	3,000.00

Main Seating Area

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
2. Clean and deodorize carpet	26,300. SF 00		0.00	0.37	0.00	1,946.20	11,677.20
3. Content Manipulation charge - per hour	40.00 HR		0.00	30.00	0.00	240.00	1,440.00
Totals: Main Seating Area					0.00	2,186.20	13,117.20

Miscellaneous/General Conditions

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
4. Taxes, insurance, permits & fees (Bid Item)	1.00 EA		0.00	2,500.00	0.00	500.00	3,000.00
5. Dumpster load	6.00 EA		641.00	0.00	0.00	769.20	4,615.20
6. General clean - up	160.00 HR		0.00	30.78	0.00	984.96	5,909.76
7. R&R Temporary Roof repairs	1.00 EA		0.00	7,500.00	0.00	1,500.00	9,000.00
8. Commercial Supervision / Project Management - per hour	300.00 HR		0.00	61.95	0.00	3,717.00	22,302.00
9. Telehandler/forklift (per month) - no operator	1.00 MO		0.00	3,063.00	0.00	612.60	3,675.60
10. Equipment Operator - per hour	160.00 HR		0.00	34.48	0.00	1,103.36	6,620.16
Totals: Miscellaneous/General Conditions					0.00	9,187.12	55,122.72

Northwest Entrance

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
11. R&R Batt insulation - 6" - R19 - paper / foil faced	128.00 SF		0.20	0.84	0.00	26.62	159.74

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Northwest Entrance

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
12. R&R 5/8" drywall - hung, taped, ready for texture	128.00 SF		0.30	1.88	0.00	55.80	334.84
13. Texture drywall - machine	410.00 SF		0.00	0.42	0.00	34.44	206.64
14. Seal/prime then paint the surface area (2 coats)	410.00 SF		0.00	0.90	0.00	73.80	442.80
15. Clean floor	410.00 SF		0.00	0.30	0.00	24.60	147.60
16. Mask or cover per square foot	410.00 SF		0.31	0.00	0.00	25.42	152.52
17. R&R Replace light	2.00 EA		13.09	279.97	0.00	117.22	703.34
Totals: Northwest Entrance					0.00	357.90	2,147.48

Backstage rows

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
18. R&R Batt insulation - 6" - R19 - paper / foil faced	288.00 SF		0.20	0.84	0.00	59.90	359.42
19. R&R 5/8" drywall - hung, taped, ready for texture	672.00 SF		0.30	1.88	0.00	293.00	1,757.96
20. Detach & Reset Light fixture	1.00 EA	39.41	0.00	0.00	0.00	7.88	47.29
21. R&R Stud wall - 2" x 4" - 16" oc	351.00 SF		0.16	2.17	0.00	163.58	981.41
22. Texture drywall - machine	980.00 SF		0.00	0.42	0.00	82.32	493.92
23. Seal the surface area w/latex based stain blocker - one coat	672.00 SF		0.00	0.58	0.00	77.96	467.72
24. Paint the surface area - two coats	980.00 SF		0.00	0.90	0.00	176.40	1,058.40
25. R&R Cove base molding - rubber or vinyl, 4" high	96.00 LF		0.21	1.60	0.00	34.76	208.52
26. Mask or cover per square foot	360.00 SF		0.31	0.00	0.00	22.32	133.92
27. Clean floor	360.00 SF		0.00	0.30	0.00	21.60	129.60
28. Content Manipulation charge - per hour	4.00 HR		0.00	30.00	0.00	24.00	144.00
Totals: Backstage rows					0.00	963.72	5,782.16

Staging Area under seats

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
29. Seal/prime then paint the surface area (2 coats)	1,990.00 SF	0.00		0.90	0.00	358.20	2,149.20
30. Clean floor	1,250.00 SF	0.00		0.30	0.00	75.00	450.00

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Staging Area under seats

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
Totals: Staging Area under seats					0.00	433.20	2,599.20

Triangle Room

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
31. Seal/prime then paint the surface area (2 coats)	464.00 SF		0.00	0.90	0.00	83.52	501.12
32. Mask or cover per square foot	308.00 SF		0.31	0.00	0.00	19.10	114.58
Totals: Triangle Room					0.00	102.62	615.70

VIP Room

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
33. Seal floor or ceiling joist system	16.00 SF	0.00		1.16	0.00	3.72	22.28
34. R&R Batt insulation - 6" - R19 - paper / foil faced	16.00 SF	0.20		0.84	0.00	3.32	19.96
35. R&R Suspended ceiling tile - 2' x 2'	16.00 SF	0.15		2.06	0.00	7.08	42.44
36. Content Manipulation charge - per hour	1.00 HR	0.00		30.00	0.00	6.00	36.00
Totals: VIP Room					0.00	20.12	120.68

Control Room

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
37. Seal floor or ceiling joist system	12.00 SF		0.00	1.16	0.00	2.78	16.70
38. R&R Batt insulation - 6" - R19 - paper / foil faced	12.00 SF		0.20	0.84	0.00	2.50	14.98
39. R&R Suspended ceiling tile - 2' x 2'	12.00 SF		0.15	2.06	0.00	5.30	31.82
40. Content Manipulation charge - per hour	1.00 HR		0.00	30.00	0.00	6.00	36.00
Totals: Control Room					0.00	16.58	99.50

Party Room

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Party Room

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
41. Seal floor or ceiling joist system	240.00 SF		0.00	1.16	0.00	55.68	334.08
42. R&R Batt insulation - 6" - R19 - paper / foil faced	240.00 SF		0.20	0.84	0.00	49.92	299.52
43. R&R Suspended ceiling tile - 2' x 2'	240.00 SF		0.15	2.06	0.00	106.08	636.48
44. Mask or cover per square foot	472.00 SF		0.31	0.00	0.00	29.26	175.58
45. Content Manipulation charge - per hour	4.00 HR		0.00	30.00	0.00	24.00	144.00
Totals: Party Room					0.00	264.94	1,589.66

Suite 20

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
46. Seal floor or ceiling joist system	8.00 SF		0.00	1.16	0.00	1.86	11.14
47. R&R Batt insulation - 6" - R19 - paper / foil faced	8.00 SF		0.20	0.84	0.00	1.66	9.98
48. R&R Suspended ceiling tile - 2' x 2'	8.00 SF		0.15	2.06	0.00	3.54	21.22
49. Mask or cover per square foot	182.00 SF		0.31	0.00	0.00	11.28	67.70
50. Content Manipulation charge - per hour	1.00 HR		0.00	30.00	0.00	6.00	36.00
Totals: Suite 20					0.00	24.34	146.04

Suite 17

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
51. Seal stud wall for odor control	32.00 SF		0.00	0.83	0.00	5.32	31.88
52. R&R 1/2" drywall - hung, taped, ready for texture	32.00 SF		0.30	1.78	0.00	13.32	79.88
53. Texture drywall - machine	432.00 SF		0.00	0.42	0.00	36.28	217.72
54. Seal/prime then paint the surface area (2 coats)	432.00 SF		0.00	0.90	0.00	77.76	466.56
55. Seal floor or ceiling joist system	12.00 SF		0.00	1.16	0.00	2.78	16.70
56. R&R Batt insulation - 6" - R19 - paper / foil faced	12.00 SF		0.20	0.84	0.00	2.50	14.98
57. R&R Suspended ceiling tile - 2' x 2'	12.00 SF		0.15	2.06	0.00	5.30	31.82
58. Mask or cover per square foot	182.00 SF		0.31	0.00	0.00	11.28	67.70

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Suite 17

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
59. Content Manipulation charge - per hour	1.00 HR		0.00	30.00	0.00	6.00	36.00
Totals: Suite 17					0.00	160.54	963.24

Suite 16

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
60. Seal floor or ceiling joist system	24.00 SF		0.00	1.16	0.00	5.56	33.40
61. R&R Batt insulation - 6" - R19 - paper / foil faced	24.00 SF		0.20	0.84	0.00	5.00	29.96
62. R&R Suspended ceiling tile - 2' x 2'	24.00 SF		0.15	2.06	0.00	10.60	63.64
63. Mask or cover per square foot	182.00 SF		0.31	0.00	0.00	11.28	67.70
64. Content Manipulation charge - per hour	1.00 HR		0.00	30.00	0.00	6.00	36.00
Totals: Suite 16					0.00	38.44	230.70

Suite 19

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
65. Seal floor or ceiling joist system	8.00 SF		0.00	1.16	0.00	1.86	11.14
66. R&R Batt insulation - 6" - R19 - paper / foil faced	8.00 SF		0.20	0.84	0.00	1.66	9.98
67. R&R Suspended ceiling tile - 2' x 2'	8.00 SF		0.15	2.06	0.00	3.54	21.22
68. Mask or cover per square foot	182.00 SF		0.31	0.00	0.00	11.28	67.70
69. Content Manipulation charge - per hour	1.00 HR		0.00	30.00	0.00	6.00	36.00
Totals: Suite 19					0.00	24.34	146.04

Suite 21

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
70. Seal floor or ceiling joist system	8.00 SF	0.00		1.16	0.00	1.86	11.14
71. R&R Batt insulation - 6" - R19 - paper / foil faced	8.00 SF	0.20		0.84	0.00	1.66	9.98

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Suite 21

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
72. R&R Suspended ceiling tile - 2' x 2'	8.00 SF		0.15	2.06	0.00	3.54	21.22
73. Mask or cover per square foot	182.00 SF		0.31	0.00	0.00	11.28	67.70
74. Content Manipulation charge - per hour	1.00 HR		0.00	30.00	0.00	6.00	36.00
Totals: Suite 21					0.00	24.34	146.04

Suite 25

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
75. Seal floor or ceiling joist system	24.00 SF		0.00	1.16	0.00	5.56	33.40
76. R&R Batt insulation - 6" - R19 - paper / foil faced	24.00 SF		0.20	0.84	0.00	5.00	29.96
77. R&R Suspended ceiling tile - 2' x 2'	24.00 SF		0.15	2.06	0.00	10.60	63.64
78. Mask or cover per square foot	182.00 SF		0.31	0.00	0.00	11.28	67.70
79. Content Manipulation charge - per hour	1.00 HR		0.00	30.00	0.00	6.00	36.00
Totals: Suite 25					0.00	38.44	230.70

Suite 24

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
80. Seal floor or ceiling joist system	12.00 SF		0.00	1.16	0.00	2.78	16.70
81. R&R Batt insulation - 6" - R19 - paper / foil faced	12.00 SF		0.20	0.84	0.00	2.50	14.98
82. R&R Suspended ceiling tile - 2' x 2'	12.00 SF		0.15	2.06	0.00	5.30	31.82
83. Mask or cover per square foot	182.00 SF		0.31	0.00	0.00	11.28	67.70
84. Content Manipulation charge - per hour	1.00 HR		0.00	30.00	0.00	6.00	36.00
Totals: Suite 24					0.00	27.86	167.20

Media Suite

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Media Suite

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
85. Seal floor or ceiling joist system	24.00 SF		0.00	1.16	0.00	5.56	33.40
86. R&R Batt insulation - 6" - R19 - paper / foil faced	24.00 SF		0.20	0.84	0.00	5.00	29.96
87. R&R Suspended ceiling tile - 2' x 2'	24.00 SF		0.15	2.06	0.00	10.60	63.64
88. R&R 1/2" drywall - hung, taped, ready for texture	64.00 SF		0.30	1.78	0.00	26.62	159.74
89. Texture drywall - machine	811.00 SF		0.00	0.42	0.00	68.12	408.74
90. Seal/prime then paint the surface area (2 coats)	811.00 SF		0.00	0.90	0.00	145.98	875.88
91. Remove Glue down carpet	334.00 SF		0.43	0.00	0.00	28.72	172.34
92. Glue down carpet	384.10 SF		0.00	1.82	0.00	139.82	838.88
15 % waste added for Carpet.							
93. Content Manipulation charge - per hour	2.00 HR		0.00	30.00	0.00	12.00	72.00
Totals: Media Suite					0.00	442.42	2,654.58

Rear 3rd floor seating & offset

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
94. R&R 1/2" drywall - hung, taped, ready for texture	192.00 SF		0.30	1.78	0.00	79.88	479.24
95. Texture drywall - machine	3,486.00 SF		0.00	0.42	0.00	292.82	1,756.94
96. Seal/prime then paint the surface area (2 coats)	3,486.00 SF		0.00	0.90	0.00	627.48	3,764.88
97. Remove Glue down carpet	3,485.00 SF		0.43	0.00	0.00	299.72	1,798.27
98. Glue down carpet	4,007.75 SF		0.00	1.82	0.00	1,458.82	8,752.93
15 % waste added for Carpet.							
99. R&R Cove base molding - rubber or vinyl, 4" high	436.00 LF		0.21	1.60	0.00	157.84	947.00
100. Content Manipulation charge - per hour	6.00 HR		0.00	30.00	0.00	36.00	216.00
Totals: Rear 3rd floor seating & offset					0.00	2,952.56	17,715.26

Mechanical Room

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Mechanical Room

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
101. R&R 1/2" drywall - hung, taped, ready for texture	256.00 SF		0.30	1.78	0.00	106.50	638.98
102. Texture drywall - machine	560.00 SF		0.00	0.42	0.00	47.04	282.24
103. Seal/prime then paint the surface area (2 coats)	560.00 SF		0.00	0.90	0.00	100.80	604.80
104. R&R Cove base molding - rubber or vinyl, 4" high	51.00 LF		0.21	1.60	0.00	18.46	110.77
105. Remove Glue down carpet	158.00 SF		0.43	0.00	0.00	13.58	81.52
106. Glue down carpet	181.70 SF		0.00	1.82	0.00	66.14	396.83
15 % waste added for Carpet.							
Totals: Mechanical Room					0.00	352.52	2,115.14

Bathroom

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
107. Seal floor or ceiling joist system	82.00 SF		0.00	1.16	0.00	19.02	114.14
108. R&R Batt insulation - 6" - R19 - paper / foil faced	68.00 SF		0.20	0.84	0.00	14.14	84.86
109. R&R Suspended ceiling tile - 2' x 2'	68.00 SF		0.15	2.06	0.00	30.06	180.34
110. R&R Cove base molding - rubber or vinyl, 4" high	36.00 LF		0.21	1.60	0.00	13.04	78.20
111. R&R 1/2" drywall - hung, taped, ready for texture	128.00 SF		0.30	1.78	0.00	53.24	319.48
112. Texture drywall - machine	270.00 SF		0.00	0.42	0.00	22.68	136.08
113. Seal/prime then paint the surface area (2 coats)	270.00 SF		0.00	0.90	0.00	48.60	291.60
114. Clean floor	68.00 SF		0.00	0.30	0.00	4.08	24.48
115. Mask or cover per square foot	68.00 SF		0.31	0.00	0.00	4.22	25.30
116. Urinal - Detach & reset	1.00 EA		0.00	246.79	0.00	49.36	296.15
117. Toilet - Detach & reset	1.00 EA		0.00	172.46	0.00	34.50	206.96
118. Sink - double - Detach & reset	1.00 EA		0.00	111.65	0.00	22.34	133.99
119. Bathroom mirror - Detach & reset	6.00 SF		0.00	6.13	0.00	7.36	44.14
120. Toilet paper dispenser - Detach & reset	1.00 EA		0.00	21.24	0.00	4.24	25.48
121. Paper Towell dispenser - Detach & reset	1.00 EA		0.00	21.24	0.00	4.24	25.48
Totals: Bathroom					0.00	331.12	1,986.68



West Fire Construction & Restoration, Inc

1114 Avenue C
Katy, Texas 77493
713-682-2494

Womens Bathroom

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
122. Seal floor or ceiling joist system	74.00 SF		0.00	1.16	0.00	17.16	103.00
123. R&R Batt insulation - 6" - R19 - paper / foil faced	74.00 SF		0.20	0.84	0.00	15.40	92.36
124. R&R Suspended ceiling tile - 2' x 2'	74.00 SF		0.15	2.06	0.00	32.70	196.24
125. R&R 1/2" drywall - hung, taped, ready for texture	128.00 SF		0.30	1.78	0.00	53.24	319.48
126. Texture drywall - machine	276.00 SF		0.00	0.42	0.00	23.18	139.10
127. Seal/prime then paint the surface area (2 coats)	276.00 SF		0.00	0.90	0.00	49.68	298.08
128. R&R Cove base molding - rubber or vinyl, 4" high	36.00 LF		0.21	1.60	0.00	13.04	78.20
129. Clean floor	74.00 SF		0.00	0.30	0.00	4.44	26.64
130. Mask or cover per square foot	74.00 SF		0.31	0.00	0.00	4.58	27.52
131. Urinal - Detach & reset	1.00 EA		0.00	246.79	0.00	49.36	296.15
132. Toilet - Detach & reset	1.00 EA		0.00	172.46	0.00	34.50	206.96
133. Sink - double - Detach & reset	1.00 EA		0.00	111.65	0.00	22.34	133.99
134. Bathroom mirror - Detach & reset	6.00 SF		0.00	6.13	0.00	7.36	44.14
135. Toilet paper dispenser - Detach & reset	1.00 EA		0.00	21.24	0.00	4.24	25.48
136. Paper Towell dispenser - Detach & reset	1.00 EA		0.00	21.24	0.00	4.24	25.48
Totals: Womens Bathroom					0.00	335.46	2,012.82

Mens Bathroom

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
137. Seal floor or ceiling joist system	81.00 SF		0.00	1.16	0.00	18.80	112.76
138. R&R Batt insulation - 6" - R19 - paper / foil faced	81.00 SF		0.20	0.84	0.00	16.84	101.08
139. R&R Suspended ceiling tile - 2' x 2'	81.00 SF		0.15	2.06	0.00	35.82	214.83
140. R&R 1/2" drywall - hung, taped, ready for texture	128.00 SF		0.30	1.78	0.00	53.24	319.48
141. Texture drywall - machine	287.00 SF		0.00	0.42	0.00	24.10	144.64
142. Seal/prime then paint the surface area (2 coats)	287.00 SF		0.00	0.90	0.00	51.66	309.96
143. R&R Cove base molding - rubber or vinyl, 4" high	36.00 LF		0.21	1.60	0.00	13.04	78.20

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Mens Bathroom

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
144. Clean floor	81.00 SF		0.00	0.30	0.00	4.86	29.16
145. Mask or cover per square foot	81.00 SF		0.31	0.00	0.00	5.02	30.13
146. Urinal - Detach & reset	1.00 EA		0.00	246.79	0.00	49.36	296.15
147. Toilet - Detach & reset	1.00 EA		0.00	172.46	0.00	34.50	206.96
148. Sink - double - Detach & reset	1.00 EA		0.00	111.65	0.00	22.34	133.99
149. Bathroom mirror - Detach & reset	6.00 SF		0.00	6.13	0.00	7.36	44.14
150. Toilet paper dispenser - Detach & reset	1.00 EA		0.00	21.24	0.00	4.24	25.48
151. Paper Towell dispenser - Detach & reset	1.00 EA		0.00	21.24	0.00	4.24	25.48
Totals: Mens Bathroom					0.00	345.42	2,072.44

Hallway & Landing offset

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
152. Seal floor or ceiling joist system	176.00 SF		0.00	1.16	0.00	40.84	245.00
153. R&R Batt insulation - 6" - R19 - paper / foil faced	176.00 SF		0.20	0.84	0.00	36.60	219.64
154. R&R Suspended ceiling tile - 2' x 2'	176.00 SF		0.15	2.06	0.00	77.80	466.76
155. Remove Glue down carpet	1,613.00 SF		0.43	0.00	0.00	138.72	832.31
156. Glue down carpet	1,855.00 SF		0.00	1.82	0.00	675.22	4,051.32
0 % waste added for Carpet.							
157. R&R Cove base molding - rubber or vinyl, 4" high	450.00 LF		0.21	1.60	0.00	162.90	977.40
Totals: Hallway & Landing offset					0.00	1,132.08	6,792.43

# 15	Suite	DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
		158. Seal floor or ceiling joist system	198.00 SF		0.00	1.16	0.00	45.94	275.62
		159. R&R Batt insulation - 6" - R19 - paper / foil faced	198.00 SF		0.20	0.84	0.00	41.18	247.10
		160. R&R Suspended ceiling tile - 2' x 2'	198.00 SF		0.15	2.06	0.00	87.52	525.10
		161. R&R 1/2" drywall - hung, taped, ready for texture	32.00 SF		0.30	1.78	0.00	13.32	79.88



West Fire Construction & Restoration, Inc

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - # 15 Suite

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
162. Texture drywall - machine	452.00 SF		0.00	0.42	0.00	37.96	227.80
163. Seal the surface area w/latex based stain blocker - one coat	32.00 SF		0.00	0.58	0.00	3.72	22.28
164. Paint the surface area - two coats	452.00 SF		0.00	0.90	0.00	81.36	488.16
165. Remove Glue down carpet	198.00 SF		0.43	0.00	0.00	17.02	102.16
166. Glue down carpet	227.70 SF		0.00	1.82	0.00	82.88	497.29
15 % waste added for Carpet.							
167. R&R Cove base molding - rubber or vinyl, 4" high	57.00 LF		0.21	1.60	0.00	20.64	123.81
168. Content Manipulation charge - per hour	2.00 HR		0.00	30.00	0.00	12.00	72.00
Totals: # 15 Suite					0.00	443.54	2,661.20

12 Suite

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
169. Seal floor or ceiling joist system	16.00 SF	0.00		1.16	0.00	3.72	22.28
170. R&R Batt insulation - 6" - R19 - paper / foil faced	16.00 SF	0.20		0.84	0.00	3.32	19.96
171. R&R Suspended ceiling tile - 2' x 2'	16.00 SF	0.15		2.06	0.00	7.08	42.44
172. Remove Glue down carpet	205.00 SF	0.43		0.00	0.00	17.64	105.79
173. Glue down carpet	235.75 SF	0.00		1.82	0.00	85.82	514.89
15 % waste added for Carpet.							
174. R&R Cove base molding - rubber or vinyl, 4" high	97.00 LF	0.21		1.60	0.00	35.12	210.69
175. Content Manipulation charge - per hour	2.00 HR	0.00		30.00	0.00	12.00	72.00
Totals: # 12 Suite					0.00	164.70	988.05

8 Suite

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
176. Seal floor or ceiling joist system	4.00 SF		0.00	1.16	0.00	0.92	5.56
177. R&R Batt insulation - 6" - R19 - paper / foil faced	4.00 SF		0.20	0.84	0.00	0.84	5.00
178. R&R Suspended ceiling tile - 2' x 2'	4.00 SF		0.15	2.06	0.00	1.76	10.60



West Fire Construction & Restoration, Inc

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - # 8 Suite

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
179. Remove Glue down carpet	167.00 SF		0.43	0.00	0.00	14.36	86.17
180. Glue down carpet	192.05 SF		0.00	1.82	0.00	69.90	419.43
15 % waste added for Carpet.							
181. R&R Cove base molding - rubber or vinyl, 4" high	52.00 LF		0.21	1.60	0.00	18.82	112.94
182. Content Manipulation charge - per hour	2.00 HR		0.00	30.00	0.00	12.00	72.00
Totals: # 8 Suite					0.00	118.60	711.70

6 &

7 Suite

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
183. Seal floor or ceiling joist system	4.00 SF		0.00	1.16	0.00	0.92	5.56
184. R&R Batt insulation - 6" - R19 - paper / foil faced	4.00 SF		0.20	0.84	0.00	0.84	5.00
185. R&R Suspended ceiling tile - 2' x 2'	4.00 SF		0.15	2.06	0.00	1.76	10.60
186. Remove Glue down carpet	162.00 SF		0.43	0.00	0.00	13.94	83.60
187. Glue down carpet	186.30 SF		0.00	1.82	0.00	67.82	406.89
15 % waste added for Carpet.							
188. R&R Cove base molding - rubber or vinyl, 4" high	51.00 LF		0.21	1.60	0.00	18.46	110.77
189. Content Manipulation charge - per hour	2.00 HR		0.00	30.00	0.00	12.00	72.00
Totals: # 6 & 7 Suite					0.00	115.74	694.42

5 Suite

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
190. Seal floor or ceiling joist system	8.00 SF		0.00	1.16	0.00	1.86	11.14
191. R&R Batt insulation - 6" - R19 - paper / foil faced	8.00 SF		0.20	0.84	0.00	1.66	9.98
192. R&R Suspended ceiling tile - 2' x 2'	8.00 SF		0.15	2.06	0.00	3.54	21.22
193. Remove Glue down carpet	176.00 SF		0.43	0.00	0.00	15.14	90.82
194. Glue down carpet	202.40 SF		0.00	1.82	0.00	73.68	442.05
15 % waste added for Carpet.							

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - # 5 Suite

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
195. R&R Cove base molding - rubber or vinyl, 4" high	53.00 LF		0.21	1.60	0.00	19.18	115.11
196. Content Manipulation charge - per hour	2.00 HR		0.00	30.00	0.00	12.00	72.00
Totals: # 5 Suite					0.00	127.06	762.32

# 1 &	2 Suite						
DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
197. Seal floor or ceiling joist system	32.00 SF		0.00	1.16	0.00	7.42	44.54
198. R&R Batt insulation - 6" - R19 - paper / foil faced	32.00 SF		0.20	0.84	0.00	6.66	39.94
199. R&R Suspended ceiling tile - 2' x 2'	32.00 SF		0.15	2.06	0.00	14.14	84.86
200. Remove Glue down carpet	205.00 SF		0.43	0.00	0.00	17.64	105.79
201. Glue down carpet	235.75 SF		0.00	1.82	0.00	85.82	514.89
15 % waste added for Carpet.							
202. R&R Cove base molding - rubber or vinyl, 4" high	97.00 LF		0.21	1.60	0.00	35.12	210.69
203. Content Manipulation charge - per hour	2.00 HR		0.00	30.00	0.00	12.00	72.00
Totals: # 1 & 2 Suite					0.00	178.80	1,072.71

2nd Entry

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
204. R&R Metal J trim	24.00 LF		0.73	2.70	0.00	16.46	98.78
Totals: 2nd Entry					0.00	16.46	98.78

Main Entrance Interior

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
205. Seal floor or ceiling joist system	222.00 SF		0.00	1.16	0.00	51.50	309.02
206. R&R Batt insulation - 6" - R19 - paper / foil faced	222.00 SF		0.20	0.84	0.00	46.18	277.06

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Main Entrance Interior

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
207. R&R Suspended ceiling tile - 2' x 2'	222.00 SF		0.15	2.06	0.00	98.12	588.74
208. R&R 1/2" drywall - hung, taped, ready for texture	96.00 SF		0.30	1.78	0.00	39.94	239.62
209. Texture drywall - machine	1,315.00 SF		0.00	0.42	0.00	110.46	662.76
210. Seal/prime then paint the surface area (2 coats)	1,315.00 SF		0.00	0.90	0.00	236.70	1,420.20
211. Reglaze 3/16" glass - double pane	132.00 SF		0.00	14.27	0.00	376.72	2,260.36
212. Mask or cover per square foot	443.00 SF		0.31	0.00	0.00	27.46	164.79
213. Clean floor	443.00 SF		0.00	0.30	0.00	26.58	159.48
Totals: Main Entrance Interior					0.00	1,013.66	6,082.03

8 Office

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
214. Seal floor or ceiling joist system	12.00 SF	0.00		1.16	0.00	2.78	16.70
215. R&R Batt insulation - 6" - R19 - paper / foil faced	12.00 SF	0.20		0.84	0.00	2.50	14.98
216. R&R Suspended ceiling tile - 2' x 2'	12.00 SF	0.15		2.06	0.00	5.30	31.82
217. Remove Glue down carpet	106.00 SF	0.43		0.00	0.00	9.12	54.70
218. Glue down carpet	121.90 SF	0.00		1.82	0.00	44.38	266.24
15 % waste added for Carpet.							
219. R&R Cove base molding - rubber or vinyl, 4" high	42.00 LF	0.21		1.60	0.00	15.20	91.22
220. Content Manipulation charge - per hour	1.00 HR	0.00		30.00	0.00	6.00	36.00
Totals: # 8 Office					0.00	85.28	511.66

7 Office

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
221. R&R 1/2" drywall - hung, taped, ready for texture	32.00 SF	0.30		1.78	0.00	13.32	79.88
222. Texture drywall - machine	319.00 SF	0.00		0.42	0.00	26.80	160.78
223. Seal/prime then paint the surface area (2 coats)	319.00 SF	0.00		0.90	0.00	57.42	344.52
224. Remove Glue down carpet	96.00 SF	0.43		0.00	0.00	8.26	49.54

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - # 7 Office

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
225. Glue down carpet	110.40 SF		0.00	1.82	0.00	40.18	241.11
15 % waste added for Carpet.							
226. R&R Cove base molding - rubber or vinyl, 4" high	40.00 LF		0.21	1.60	0.00	14.48	86.88
227. Content Manipulation charge - per hour	1.00 HR		0.00	30.00	0.00	6.00	36.00
Totals: # 7 Office					0.00	166.46	998.71

6 Office

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
228. Remove Glue down carpet	149.00 SF	0.43		0.00	0.00	12.82	76.89
229. Glue down carpet	171.35 SF	0.00		1.82	0.00	62.38	374.24
15 % waste added for Carpet.							
230. R&R Cove base molding - rubber or vinyl, 4" high	49.00 LF	0.21		1.60	0.00	17.74	106.43
231. Content Manipulation charge - per hour	1.00 HR	0.00		30.00	0.00	6.00	36.00
Totals: # 6 Office					0.00	98.94	593.56

5 Office

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
232. Seal floor or ceiling joist system	12.00 SF	0.00		1.16	0.00	2.78	16.70
233. R&R Batt insulation - 6" - R19 - paper / foil faced	12.00 SF	0.20		0.84	0.00	2.50	14.98
234. R&R Suspended ceiling tile - 2' x 2'	12.00 SF	0.15		2.06	0.00	5.30	31.82
235. Remove Glue down carpet	178.00 SF	0.43		0.00	0.00	15.30	91.84
236. Glue down carpet	204.70 SF	0.00		1.82	0.00	74.52	447.07
15 % waste added for Carpet.							
237. R&R Cove base molding - rubber or vinyl, 4" high	54.00 LF	0.21		1.60	0.00	19.54	117.28
238. Content Manipulation charge - per hour	1.00 HR	0.00		30.00	0.00	6.00	36.00
Totals: # 5 Office					0.00	125.94	755.69



West Fire Construction & Restoration, Inc

1114 Avenue C
Katy, Texas 77493
713-682-2494

4 Office

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
239. Seal floor or ceiling joist system	12.00 SF	0.00		1.16	0.00	2.78	16.70
240. R&R Batt insulation - 6" - R19 - paper / foil faced	12.00 SF	0.20		0.84	0.00	2.50	14.98
241. R&R Suspended ceiling tile - 2' x 2'	12.00 SF	0.15		2.06	0.00	5.30	31.82
242. Remove Glue down carpet	143.00 SF	0.43		0.00	0.00	12.30	73.79
243. Glue down carpet	164.45 SF	0.00		1.82	0.00	59.86	359.16
15 % waste added for Carpet.							
244. R&R Cove base molding - rubber or vinyl, 4" high	48.00 LF	0.21		1.60	0.00	17.38	104.26
245. Content Manipulation charge - per hour	1.00 HR	0.00		30.00	0.00	6.00	36.00
Totals: # 4 Office					0.00	106.12	636.71

3 Office

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
246. Seal floor or ceiling joist system	12.00 SF	0.00		1.16	0.00	2.78	16.70
247. R&R Batt insulation - 6" - R19 - paper / foil faced	12.00 SF	0.20		0.84	0.00	2.50	14.98
248. R&R Suspended ceiling tile - 2' x 2'	12.00 SF	0.15		2.06	0.00	5.30	31.82
249. R&R 1/2" drywall - hung, taped, ready for texture	32.00 SF	0.30		1.78	0.00	13.32	79.88
250. Texture drywall - machine	405.00 SF	0.00		0.42	0.00	34.02	204.12
251. Seal/prime then paint the surface area (2 coats)	405.00 SF	0.00		0.90	0.00	72.90	437.40
252. Remove Glue down carpet	160.00 SF	0.43		0.00	0.00	13.76	82.56
253. Glue down carpet	184.00 SF	0.00		1.82	0.00	66.98	401.86
15 % waste added for Carpet.							
254. R&R Cove base molding - rubber or vinyl, 4" high	51.00 LF	0.21		1.60	0.00	18.46	110.77
255. Content Manipulation charge - per hour	1.00 HR	0.00		30.00	0.00	6.00	36.00
Totals: # 3 Office					0.00	236.02	1,416.09

2 Office

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - # 2 Office

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
256. Seal floor or ceiling joist system	12.00 SF		0.00	1.16	0.00	2.78	16.70
257. R&R Batt insulation - 6" - R19 - paper / foil faced	12.00 SF		0.20	0.84	0.00	2.50	14.98
258. R&R Suspended ceiling tile - 2' x 2'	12.00 SF		0.15	2.06	0.00	5.30	31.82
259. Remove Glue down carpet	292.00 SF		0.43	0.00	0.00	25.12	150.68
260. Glue down carpet	335.80 SF		0.00	1.82	0.00	122.24	733.40
15 % waste added for Carpet.							
261. R&R Cove base molding - rubber or vinyl, 4" high	73.00 LF		0.21	1.60	0.00	26.42	158.55
262. Content Manipulation charge - per hour	1.00 HR		0.00	30.00	0.00	6.00	36.00
Totals: # 2 Office					0.00	190.36	1,142.13

1 Office

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
263. Seal floor or ceiling joist system	12.00 SF		0.00	1.16	0.00	2.78	16.70
264. R&R Batt insulation - 6" - R19 - paper / foil faced	12.00 SF		0.20	0.84	0.00	2.50	14.98
265. R&R Suspended ceiling tile - 2' x 2'	12.00 SF		0.15	2.06	0.00	5.30	31.82
266. Remove Glue down carpet	180.00 SF		0.43	0.00	0.00	15.48	92.88
267. Glue down carpet	207.00 SF		0.00	1.82	0.00	75.34	452.08
15 % waste added for Carpet.							
268. R&R Cove base molding - rubber or vinyl, 4" high	54.00 LF		0.21	1.60	0.00	19.54	117.28
269. Content Manipulation charge - per hour	1.00 HR		0.00	30.00	0.00	6.00	36.00
Totals: # 1 Office					0.00	126.94	761.74

Side Entrance

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
270. Seal floor or ceiling joist system	172.00 SF		0.00	1.16	0.00	39.90	239.42
271. R&R 5/8" drywall - hung, taped, ready for texture	574.00 SF		0.30	1.88	0.00	250.26	1,501.58
272. Texture drywall - machine	2,478.00 SF		0.00	0.42	0.00	208.16	1,248.92

U-20-STATEFARMARENA

7/16/2020

Page: 18

000241

**West Fire Construction & Restoration, Inc**

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Side Entrance

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
273. Seal/prime then paint the surface area (2 coats)	2,478.00 SF		0.00	0.90	0.00	446.04	2,676.24
274. R&R Additional cost for high wall or ceiling - over 14' to 20'	574.00 SF		0.13	0.61	0.00	84.94	509.70
275. Light fixture - Detach & reset - Large	3.00 EA		0.00	72.46	0.00	43.48	260.86
276. Floor protection - plastic and tape - 10 mil	573.00 SF		0.00	0.29	0.00	33.24	199.41
277. Clean floor	573.00 SF		0.00	0.30	0.00	34.38	206.28
278. Content Manipulation charge - per hour	4.00 HR		0.00	30.00	0.00	24.00	144.00
Totals: Side Entrance					0.00	1,164.40	6,986.41

Settlement room

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
279. Seal stud wall for odor control	128.00 SF		0.00	0.83	0.00	21.24	127.48
280. Seal floor or ceiling joist system	172.00 SF		0.00	1.16	0.00	39.90	239.42
281. R&R Batt insulation - 6" - R19 - paper / foil faced	172.00 SF		0.20	0.84	0.00	35.78	214.66
282. R&R Suspended ceiling tile - 2' x 2'	172.00 SF		0.15	2.06	0.00	76.02	456.14
283. R&R 1/2" drywall - hung, taped, ready for texture	128.00 SF		0.30	1.78	0.00	53.24	319.48
284. Texture drywall - machine	607.00 SF		0.00	0.42	0.00	50.98	305.92
285. Seal/prime then paint the surface area (2 coats)	607.00 SF		0.00	0.90	0.00	109.26	655.56
286. R&R Cove base molding - rubber or vinyl, 4" high	76.00 LF		0.21	1.60	0.00	27.52	165.08
287. Mask or cover per square foot	345.00 SF		0.31	0.00	0.00	21.40	128.35
288. Clean floor	345.00 SF		0.00	0.30	0.00	20.70	124.20
289. Content Manipulation charge - per hour	4.00 HR		0.00	30.00	0.00	24.00	144.00
Totals: Settlement room					0.00	480.04	2,880.29

3 Entry

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
290. Clean walls	269.00 SF		0.00	0.30	0.00	16.14	96.84

U-20-STATEFARMARENA

7/16/2020

Page: 19

000242



West Fire Construction & Restoration, Inc

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - # 3 Entry

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
291. Seal/prime then paint the surface area (2 coats) walls	269.00 SF		0.00	0.90	0.00	48.42	290.52
292. Remove Carpet	59.17 SF		0.19	0.00	0.00	2.24	13.48
293. Carpet	68.05 SF		0.00	3.07	0.00	41.78	250.69
15 % waste added for Carpet.							
294. R&R Carpet pad	59.17 SF		0.08	0.54	0.00	7.34	44.02
295. Additional labor cost for Berber or patterned carpets	59.17 SF		0.00	0.15	0.00	1.78	10.66
296. Content Manipulation charge - per hour	2.00 HR		0.00	30.00	0.00	12.00	72.00
Totals: # 3 Entry					0.00	129.70	778.21

3 Dressing Room

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
297. Clean walls	826.00 SF		0.00	0.30	0.00	49.56	297.36
298. Seal/prime then paint the surface area (2 coats) walls	826.00 SF		0.00	0.90	0.00	148.68	892.08
299. Remove Carpet	662.00 SF		0.19	0.00	0.00	25.16	150.94
300. Carpet	761.30 SF		0.00	3.07	0.00	467.44	2,804.63
15 % waste added for Carpet.							
301. R&R Carpet pad	662.00 SF		0.08	0.54	0.00	82.10	492.54
302. Additional labor cost for Berber or patterned carpets	662.00 SF		0.00	0.15	0.00	19.86	119.16
303. Content Manipulation charge - per hour	2.00 HR		0.00	30.00	0.00	12.00	72.00
Totals: # 3 Dressing Room					0.00	804.80	4,828.71

2 Dressing Room

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
304. Clean walls	682.00 SF		0.00	0.30	0.00	40.92	245.52
305. Seal/prime then paint the surface area (2 coats) walls	682.00 SF		0.00	0.90	0.00	122.76	736.56
306. Mask or cover per square foot	451.00 SF		0.31	0.00	0.00	27.96	167.77
307. Content Manipulation charge - per hour	2.00 HR		0.00	30.00	0.00	12.00	72.00



West Fire Construction & Restoration, Inc

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - # 2 Dressing Room

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
Totals: # 2 Dressing Room					0.00	203.64	1,221.85

#1	Dressing Room						
DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
308. Clean walls	1,164.00 SF		0.00	0.30	0.00	69.84	419.04
309. Seal/prime then paint the surface area (2 coats) walls	1,164.00 SF		0.00	0.90	0.00	209.52	1,257.12
310. Mask or cover per square foot	451.00 SF		0.31	0.00	0.00	27.96	167.77
311. Content Manipulation charge - per hour	2.00 HR		0.00	30.00	0.00	12.00	72.00
Totals: #1 Dressing Room					0.00	319.32	1,915.93

Ticket	Area						
DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
312. R&R Storefront - bronze anodized frame - Double pane	167.00 SF		1.30	32.16	0.00	1,117.56	6,705.38
313. R&R Batt insulation - 6" - R19 - paper / foil faced	135.00 SF		0.20	0.84	0.00	28.08	168.48
314. R&R Suspended ceiling tile - 2' x 2'	135.00 SF		0.15	2.06	0.00	59.68	358.03
315. Remove Glue down carpet	270.00 SF		0.43	0.00	0.00	23.22	139.32
316. Glue down carpet	310.50 SF		0.00	1.82	0.00	113.02	678.13
15 % waste added for Carpet.							
317. Content Manipulation charge - per hour	2.00 HR		0.00	30.00	0.00	12.00	72.00
Totals: Ticket Area					0.00	1,353.56	8,121.34

Arena	Roof						
DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
318. R&R Fiberboard - 1"	57,031.00 SF		0.30	0.90	0.00	13,687.44	82,124.64
319. R&R Modified bitumen roof - hot mopped - main roof	570.31 SQ		35.57	286.80	0.00	36,770.16	220,621.00
320. R&R Fiberboard - 1"	14,120.00 SF		0.30	0.90	0.00	3,388.80	20,332.80



West Fire Construction & Restoration, Inc

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Arena Roof

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
321. R&R Modified bitumen roof - hot mopped - flat areas	141.20 SQ	35.57		286.80	0.00	9,103.74	54,622.38
322. R&R Flash parapet wall only - bitumen	1,365.69 LF	1.38		8.60	0.00	2,725.92	16,355.50
323. R&R Cap flashing - large	1,365.69 LF	0.41		21.83	0.00	6,074.58	36,447.52
324. Roof drain cover - Detach & reset	9.00 EA	0.00		27.61	0.00	49.70	298.19
325. R&R Flashing - pipe jack	6.00 EA	4.88		32.37	0.00	44.70	268.20
326. R&R Roof scupper - aluminum	2.00 EA	8.67		147.73	0.00	62.56	375.36
327. R&R Flashing, 20" wide	248.00 LF	0.41		3.36	0.00	187.00	1,121.96
328. R&R Gravity roof ventilator - 18"	5.00 EA	6.24		256.13	0.00	262.38	1,574.23
329. Remove Additional charge for high roof (2 stories or greater)	711.51 SQ	3.67		0.00	0.00	522.24	3,133.48
330. Additional charge for high roof (2 stories or greater)	711.51 SQ	0.00		13.34	0.00	1,898.30	11,389.84
331. Central air - condenser unit - Detach & reset	1.00 EA	0.00		502.43	0.00	100.48	602.91
Totals: Arena Roof					0.00	74,878.00	449,268.01

Exterior

Exterior

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
Repairs to exterior siding are complete.							
332. General Laborer - per hour	80.00 HR		0.00	30.00	0.00	480.00	2,880.00
333. R&R Siding - steel (29 gauge)	1,072.00 SF		0.33	5.90	0.00	1,335.72	8,014.28
334. R&R Metal studding, 3 5/8" wide, 16" OC, 20 gauge	1,092.00 SF		0.26	2.24	0.00	546.00	3,276.00
335. R&R Batt insulation - 6" - R19 - paper faced	1,092.00 SF		0.20	0.84	0.00	227.14	1,362.82
336. R&R Wall/roof panel - ribbed - 24 gauge - 1 1/8" to 1 1/2"	1,092.00 SF		0.35	3.61	0.00	864.86	5,189.18
337. Prime & paint metal siding	93.00 SF		0.00	0.82	0.00	15.26	91.52
338. Electrician - per hour - reset electrical/mech panels	24.00 HR		0.00	80.05	0.00	384.24	2,305.44
339. Siding Installer - per hour - to reset loose panels	40.00 HR		0.00	71.68	0.00	573.44	3,440.64
340. R&R Roll-up door & hardware - 10' x 18' - 22 gauge	1.00 EA		26.55	3,082.00	0.00	621.72	3,730.27
341. Mason - Brick / Stone - per hour - to repair block wall - 2 men for 8 hours each	16.00 HR		0.00	64.91	0.00	207.72	1,246.28



West Fire Construction & Restoration, Inc

1114 Avenue C
Katy, Texas 77493
713-682-2494

CONTINUED - Exterior

DESCRIPTION	QTY	RESET	REMOVE	REPLACE	TAX	O&P	TOTAL
Total: Exterior					0.00	5,256.10	31,536.43
Total: Source - Geomni Property					0.00	108,166.46	648,998.29
Line Item Totals: U-20-STATEFARMARENA					0.00	108,166.46	648,998.29

Grand Total Areas:

0.00	SF Walls	0.00	SF Ceiling	0.00	SF Walls and Ceiling
0.00	SF Floor	0.00	SY Flooring	0.00	LF Floor Perimeter
0.00	SF Long Wall	0.00	SF Short Wall	0.00	LF Ceil. Perimeter
0.00	Floor Area	0.00	Total Area	0.00	Interior Wall Area
142,497.82	Exterior Wall Area	10,393.01	Exterior Perimeter of Walls		
0.00	Surface Area	0.00	Number of Squares	0.00	Total Perimeter Length
0.00	Total Ridge Length	0.00	Total Hip Length		



West Fire Construction & Restoration, Inc

1114 Avenue C
Katy, Texas 77493
713-682-2494

Summary

Line Item Total	540,831.83
Overhead	54,083.23
Profit	54,083.23
Replacement Cost Value	\$648,998.29
Less Depreciation	(168,606.63)
Actual Cash Value	\$480,391.66
Net Claim	\$480,391.66
Total Recoverable Depreciation	168,606.63
Net Claim if Depreciation is Recovered	\$648,998.29

Randall W. Taylor

Exhibit B4

BLANKROME

717 Texas Avenue | Suite 1400 | Houston, TX 77002
blankrome.com

Jack W. Higdon, Partner
Phone: (713) 632-8621
Fax: (713) 228-6605
Email: jhigdon@blankrome.com

July 23, 2020

***By Email &
Fed Ex Tracking No. 395084361928***

Mr. Martin J. Phipps
Mr. Chase Hardy
PHIPPS DEACON PURNELL, PLLC
102 9th Street, San Antonio, Texas 78215

Re: Cause No. C-1896-18-C; *City of Hidalgo v. Texas Municipal League Intergovernmental Risk Pool*; In the 139th Judicial District of Hidalgo County, Texas
--
TMLIRP Claim No. PR37325

Messrs. Phipps and Hardy:

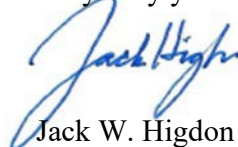
The Texas Municipal League Intergovernmental Risk Pool (the "Pool"), has received and accepts the Appraisal Award signed by Randall Taylor (Umpire) and Al Berryhill (Appraiser) on July 16, 2020 in the appraisal of the losses alleged in the referenced lawsuit, per the terms of the Property Coverage Document and the parties' Rule 11 Agreement dated June 16, 2020 (the "Award"). A copy of the Award is enclosed for ease of reference.

On behalf of the Pool, this letter tenders payment of the \$480,391.66 ACV Loss Award to your client, the City of Hidalgo, Texas (the "City"), less prior payments and the applicable deductible, as follows:

\$ 480,391.66	ACV Loss Award
(283,666.81)	Prior Loss Payment
<u>(2,500.00)</u>	Deductible
<u><u>\$ 194,224.85</u></u>	Total Payment

Enclosed with this letter is Pool Check No. 09029251 in the amount of \$194,224.85, made payable to the City and the loss payee indicated in the Property Coverage Documents.

Very truly yours,



Jack W. Higdon

Encl.

- Award
- Pool Check No. 09029251

Insured: State Farm Arena
2600 N. 10th Street
Hidalgo, Texas 78557

Carrier Appraiser: **AI Barryhill**

Insured's Appraiser: Mark Barber

Umpire: Randall Taylor

Claim Number: PR-37325

Date of loss: 6/1/2016

APPRAISAL AWARD

We, the undersigned, pursuant to our appointment, DO HEREBY CERTIFY that we have truly and conscientiously performed the duties assigned to us, agreeably to the foregoing stipulations, and have appraised and determined and do hereby award as the actual cash value and the amount of loss thereto by wind, the following sums, to wit:

	REPLACEMENT COST	DEPRECIATION	ACV-AMT OF LOSS
Building	\$648,998.29	\$168,606.63	\$480,391.66
TOTAL AMT LOSS	\$648,998.29	\$168,606.63	\$480,391.66

Award based upon the attached estimate which is an integral part of the appraisal award document

Originally signed by AI Barryhill
ON, cn AJ n Barryhill, o =Cron Pointe Construction, Inc. ou.
email: barryhill@a-cs,110U11M OITI, c- US

Date: 2010.07.16 11:59:00 -05'00'

Appraiser: AI Barryhill

7/16/20
Date Signed

App&1}

Umpire: Randall Taylor

Date Signed

07/16/2020

Date Signed

This award is made without consideration of any deductibles or prior payments. Such deductibles and prior payments will be subtracted from any payments due and owing as a result of the entry of this award. This award is made subject to all the terms, conditions, and exclusions of the policy which may be the subject of this appraisal.

000250

rit1

Texas Municipal League
Intergovernmental Risk Pool
Joint Self Insurance Fund
1821 Rutherford Lane
Austin, TX 78754
(512) 491-2300

Frost Bank
Partially
Redacted

01111

Number

07/22/20 09029251

PR00000000037125

Amount

\$****194,224.85

PIJ ONE Hundred NINETY FOUR Thousand TWO Hundred TWENTY FOUR
Dollars and EIGHTY FIVE Cents

To City of Hidalgo
Texas

State Bank - McAL.

L. H. Villanueva

704 a Ramon Ayala

Dr

Hidalgo, TX 78557

COPY

James L. Ray

Vaid,,,800.V-

-TUMHASACOLOMD.-GAOUNO-

AFFIDAVIT OF MARK BARBER

STATE OF TEXAS
BEXAR COUNTY

§
§

Before me, the undersigned notary, on this day personally appeared Mark Barber, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

1. My name is Mark Barber. I am over 18 years of age, of sound mind, and capable of making this affidavit.
2. The facts stated in this affidavit are within my personal knowledge and are true and correct.
3. I was hired in this case by the City of Hidalgo to serve as an unbiased appraiser of damage sustained by the Payne Arena located at 2600 North 10th Street, Hidalgo, Texas 78557 (formerly known as the State Farm Arena).
4. I have extensive experience in property damage valuation. I began my career as an adjuster for various insurance companies starting in December of 1988. Over a 28-year span I performed damage valuations for thousands of commercial and residential properties. During this time I worked for three different insurance companies--Kemper, Nationwide, and Trident Argo Group. In 2016 I left the insurance industry to conduct private commercial and residential damage valuations.
5. I prepared a valuation of damage sustained by the State Farm Arena as a result of a severe storm on or about May 31, 2016. I reviewed storm reports, building data, security footage, and conducted a site inspection in preparing my valuation. I inspected the building with building management personnel who knew the condition of the building before and after

the storm and had first-hand knowledge of what had actually taken place from the storm referenced above.

6. I attended a site inspection of the arena on July 3, 2020 pursuant to the court-ordered appraisal proceeding. I served as the appraiser for the City of Hidalgo, Al Berryhill served as the appraiser for the insurance company, and Randall Taylor served as the Umpire.

7. Prior to the site inspection I had serious concerns that the insurance company's appraiser showed unacceptable bias in favor of the insurance company. In our prior conversations, Mr. Berryhill exhibited a focus on what was not covered rather than what was covered. I also witnessed Mr. Berryhill attempt to attribute damages to preexisting conditions without evidence. I witnessed Mr. Berryhill present these views in an animated and aggressive manor to both me and the Umpire. Mr. Berryhill's final damage valuation was \$234,601.51. My final damage valuation was \$7,329,546.94.

8. I believe Mr. Berryhill's factually baseless viewpoints influenced the Umpire such that the Umpire was unable to assess the damage in an unbiased manner.

9. During the site inspection I witnessed Mr. Berryhill loudly and aggressively dispute the vast majority of damage sustained by the arena by stating the damage resulted from a 2012 storm. Mr. Berryhill attempted to attribute damage of all kinds to the 2012 storm including areas on the building's interior and exterior.

10. I attempted to rebut Mr. Berryhill's claims given the lack of evidence to support damage from a 2012 storm. Indeed, there was only one document to support 2012 storm damage limited exclusively to the arena's roof. The City of Hidalgo never received payment on the claim and the relatively small \$16,075.66 damage valuation cannot explain the large disparity in the Umpire's final award.

11. Immediately after the site inspection I witnessed the Umpire and Mr. Berryhill walk over to their cars which were parked next to each other on the far end of a parking lot. The two then waited outside of their vehicles and conversed for an extended period of time. While I didn't hear what they were talking about I found it strange that the two were communicating by themselves for so long.

12. The Umpire ultimately determined the appraisal award to be \$648,998.20. When adjusted for depreciation the award totaled \$480,391.66. I know a prior payment was also taken out of this total.

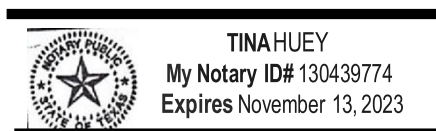
13. I was shocked by the low appraisal award and the disparities in the two damage estimates. I was especially surprised that the Umpire's ultimate appraisal award failed to account for:

- Costs to repair the entirety of the roof.
- Costs associated with resetting and attaching equipment mounted to the roof during its repair.
- Costs associated with water and wind damage to the arena's metal panels.
- The costs associated with damage that had been self-repaired or temporarily fixed.
- Costs associated with repair of the arena's electronic equipment and scoreboard, especially given that the wind damage to the roof was above some of the arena's electronic equipment and statements of building's management personnel affirmed that this equipment worked prior to the storm but had problems after the storm.



Mark Barber

Sworn to and subscribed before me on September 15, 2020



Notary Public in and for the State of Texas

Cunningham International
Insurance, Inc.

Cunningham Lindsey
P.O. Box 2775
South Padre Island, TX 78597
T: (956) 772-9968
F: (956) 761-6545

Re-open Report#:

TML INTERGOVERNMENTAL RISK POOL
1821 RUTHERFORD LN JSTFLOOR
AUSTIN, TX 78754

Attn: **Pat Tabor**

Date	August 14, 2013
Insured	City of Hidalgo
Policy No.	TML 110 01 8916,
Policy Period	10/01/2011 - 10/01/2012
Claim No.	TML 12001 8916 8
Our File No.	561 7591 06491
Loss Loc.	State Fann Arena
Claimant	City of Hidalgo
Agency	
Agency Loc.	
Type of Loss	WIND AND/OR HAIL
Date of Loss	03/29/2012

REINSPECTIONS

ENCLOSURES

1. Estimate
2. Photos
3. Hail Watch Report

ASSIGNMENT

Your assignment to re-open was made because the City of Hidalgo had been approached offering a free hail damage inspection of the State Fann Arena.

ADJUSTMENT

STATE FARM ARENA ROOF

Ruben Rivera asked for an adjuster to re-inspect the roof of the State Fann Arena because a roofer told him there was hail damage. Brian McSteen, Managing Member of McAllen Roofing Company contacted us for an appointment and furnished the previously forwarded Engineering Report, Eagle view and a Storm Swath. (www.McAllenValleyRoofing.com). They did not prepare an estimate but recommend replacing the roof.

Our inspection of the roof found hail damage to some parapet walls and lower levels at both ends of the building. We did not find hail damage to the main roof. Our photos indicate the extent of the damage. We suggest paying for a partial roof replacement of \$16,376.07. The roofing company prefers to replace the entire roof at a cost of about \$120,000 or to install an elastomeric coating costing about \$200,000 lasting for 10 years.

TML IRPODO DD 1

DATE OF LOSS

The Hail Watch Repon lists hail at the St2te Fann Arena on 3/29/12, 4/20/12, 5/J 0/12 & 10 / 18 / 12. The la rgest hail occun-
ed on 4/20/ 12. The roofer supplied the report and we did not have any way ro document its veracity. It would explain why
the original adjusters did not mention any hail damage because their inspection was on 4/02/12.

RECOMMENDATIO RS

1. Payment recommended based on our estimate of \$16,376.07.
2. If the City remains unconvinced, we suggest the local engineering firm RIMKUS to detennine the extent of the damage and feasibility of replacing the enlire roof.
3. We await your further handling ins trnctions.

Prepared by

Gene Brewer, CPCU, GRP
Adjuster

CAUSE NO. C-1896-18-C

CITY OF HIDALGO	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
	§	
VS.	§	139th JUDICIAL DISTRICT
	§	
TEXAS MUNICIPAL LEAGUE	§	
INTERGOVERNMENTAL RISK POOL	§	
<i>Defendant.</i>	§	HIDALGO COUNTY, TEXAS

**CITY OF HIDALGO’S RESPONSE TO TEXAS MUNICIPAL LEAGUE
INTERGOVERNMENTAL RISK POOL’S MOTION FOR SUMMARY
JUDGMENT AND CITY OF HIDALGO’S MOTION TO VACATE APPRAISAL
AWARD**

TO THE HONORABLE JUDGE BOBBY FLORES:

Plaintiff, City of Hidalgo (“Hidalgo”) files its response in opposition to the Motion for Summary Judgment filed by Texas Municipal League Intergovernmental Risk Pool (“Risk Pool” or “Defendant”), and files its Motion to Vacate Appraisal Award, and in support thereof, shows the following:

A. SUMMARY – WHY ARE WE HERE?

1. Risk Pool’s Motion for Summary Judgment is based on two grounds: 1) Risk Pool asserts that payment of the appraisal award absolves Risk Pool of all breach of contract liability; and 2) that Hidalgo’s failure to comply with the replacement cost deadline forecloses any recovery of replacement cost benefits.¹

2. This case stems from damage that occurred in 2016. From the moment Hidalgo filed suit, Defendant has done everything in its power to prolong justice. Defendant unnecessarily dragged the case up on appeal arguing that appraisal was improper. When the court of appeals ruled against them, Defendant requested a rehearing solely for the purpose of delaying litigation.

¹ Exhibit A – Risk Pool’s Motion for Summary Judgement, pg. 1.

After years of waiting, the parties finally agreed to submit to an appraisal process. However, Defendant's cat-and-mouse style of litigation continues to stifle any opportunity that the City of Hidalgo may have at achieving justice in this case. Now, when the dust from the appraisal finally settles and the unvarnished truth pokes its head out, even before any discovery has been conducted, Defendant files a motion for summary judgment.

3. Risk Pool's assertions are legally incorrect and their Motion for Summary Judgment should be denied for six reasons: 1) Appraisers and umpire exceeded the scope of their appraisal by considering causation as opposed to damages alone; 2) Alternatively, appraiser's discount for causation does not explain the wide discrepancy in each appraisal valuation; 3) Circumstances surrounding Umpire Randall Taylor's ("Taylor") estimate create a genuine issue of material fact regarding the disinterestedness and impartiality of the appraisal process; 4) There has not been adequate time to conduct discovery concerning Taylor's impartiality; 5) Risk Pool's legal support regarding estoppel is inapplicable; and 6) Risk Pool prevented Hidalgo from performing under the replacement cost provision.

4. Defendant respectfully requests that the Court deny Risk Pool's motion for summary judgment and grant Hidalgo's motion to vacate the appraisal award.

B. FACTUAL BACKGROUND

5. Recent discoveries in this case create serious doubts as to the sincerity, impartiality, and unbiasedness of the underlying appraisal process.

1. Risk Pool and Hidalgo have an insurer-insured relationship.

6. Hidalgo owns the State Farm Arena, aka Dodge Arena, aka Payne Arena, a commercial property located at 2600 N. 10th St., Hidalgo, Texas (hereinafter referred to as "the Arena"). The Arena, built in 2003 at a cost of about \$20,000,000.00, features a 6,800-seat arena. Defendant, Risk Pool, is an administrative agency created under the provisions of the Interlocal Cooperation

Act, Chapter 791, Texas Government Code, and Chapter 2259, Texas Government Code, that allows local governmental entities to jointly self-insure. The risk pool administers the self-insurance program created jointly by the member governmental entities.

7. The insurer-insured relationship between the City of Hidalgo and Risk Pool is governed by the Property Coverage Document, the Declarations of Coverage, and Endorsements (“Coverage Document”)—an enforceable contract as defined under TEX. LOC. GOV’T CODE § 271.151(2). The Coverage Document constituted an enforceable contract from October 1, 2015 – October 1, 2016.²

2. Hidalgo files a claim with Risk Pool for extensive damage to the Arena caused by severe wind and hailstorm.

8. On or about May/June of 2016, an intense wind and hailstorm rolled through Hidalgo County, Texas, where the City of Hidalgo and the Arena sit (“the Storm”). Severe hail and winds caused extensive damage to both the interior and exterior of the Arena.



9. Hidalgo immediately filed a claim (Claim No. PR 37325) with Risk Pool for the damages to the Arena caused by the Storm. Plaintiff submitted this claim against its Coverage Document to recover the cost of repairs for, roof damage, structural damage, interior damage, water damage, and windstorm and hail damage to the Arena.

² See Exhibit B, Property Coverage Document, the Declarations of Coverage, and Endorsements (“Coverage Document”)

10. Hidalgo requested that Risk Pool cover the cost of repairs to the Arena pursuant to the Coverage Document, including, but not limited to: repair and/or replacement of the roof and repair of the interior and exterior damages to the Arena.

11. Risk Pool, through its adjuster, Littleton, failed to perform a thorough investigation of Plaintiff's Hail and Wind Damage Property claim and severely undervalued Plaintiff's Hail and Wind Damage Property claim by engaging in false and/or misleading acts and practices of omission and commission which ultimately resulted in Hidalgo being denied the benefits guaranteed to it pursuant to its Coverage Document with the Risk Pool.

12. Risk Pool undervalued the claim, creating the need for Patti Tabor ("Tabor"), a Risk Pool Senior Claims Specialist, to take over. Tabor sent Hidalgo a claim check in the amount of \$283,666.81—the amount the Risk Pool determined was owed to Hidalgo after applying the \$2,500.00 deductible to the claim and withholding depreciation, as well as overhead/profit.

3. Hidalgo and Risk Pool dispute the extent of the damage and resort to appraisal clause.

13. Once the proper notices were sent back and forth between the parties and Risk Pool was made aware that Hidalgo disputed the value of the claim, the parties turned to the appraisal clause within the Coverage Documents.

14. Under the appraisal clause³, when Risk Pool and Hidalgo disagree on the amount of loss, either party may invoke the appraisal clause. Upon invoking the appraisal clause, each party

³ See Exhibit B – Coverage Documents, General Conditions, Section III, Subsection E. "If the Member and the Fund fail to agree as to the amount of loss, each shall, upon the written demand either of the Member or of the Fund made within 60 days after receipt of proof of loss by the Fund, select a competent and disinterested appraiser. The appraisers then shall select a competent and disinterested umpire. If they should fail for 15 days to agree upon such umpire, then upon request of the Member or of the Fund, such umpire shall be selected by a judge of a court of record in the county and state in which such appraisal is pending. Then, at a reasonable time and place, the appraisers shall appraise the loss, stating separately the value at the time of loss and the amount of loss. If the appraisers fail to agree, they shall submit their differences to the umpire. An award in writing by any two shall determine the amount of loss. The Member and the Fund shall each pay its chosen appraiser and shall bear equally the other expenses of the appraisal and of the umpire."

is to select a competent and disinterested appraiser to conduct an independent inspection and valuation of the claim. If the appraisers are unable to come to a consensus on the amount of loss, the appraisers are to select a competent and disinterested umpire to help resolve the matter. The disinterestedness of Risk Pool's appraiser and the Umpire will be discussed further.

15. Hidalgo selected expert Mark Barber to serve as Hidalgo's appraiser and Risk Pool selected Al Berryhill ("Berryhill") as their appraiser. After conducting independent inspections, Barber calculated damages to the Arena to be \$7,417,072.87.⁴ Berryhill estimated the cost of repairs to be \$234,601.51.⁵ When Barber and Berryhill were unable to reach a consensus regarding the amount of loss, the two selected Randall Taylor to serve as umpire.

4. Umpire Taylor shows signs of interest or bias.

16. Barber thought that choosing Taylor as an umpire would give rise to an impartial and disinterested evaluation of the Arena's damages. However, upon walking the Arena grounds with Berryhill, Taylor, and the City Manager of Hidalgo, Julian Gonzalez ("Gonzalez")⁶, Barber, as well as Gonzalez, began to see red flags indicating that Taylor was giving more weight and consideration to Berryhill's words than Taylor was giving Barber's words.⁷ Even after the walkthrough was complete, Berryhill and Taylor conducted an ex parte communication outside of anyone else's presence.⁸

17. After taking less than one day to inspect the Arena, Umpire Taylor submitted an estimated replacement cost in the amount of \$648,998.29, which was more than \$6.5 million dollars lower than Barber's valuation of more than \$7 million. After factoring in depreciation, prior

⁴ Exhibit E – Barber's Appraisal, pg. 25.

⁵ Exhibit D – Berryhill's Appraisal, pg. 27.

⁶ Julian Gonzalez is the City Manager for the City of Hidalgo and held the necessary keys for accessing the Arena.

⁷ Exhibit G – Barber's Affidavit ¶ 9. The Court should also be aware that Barber had "serious concerns" regarding Berryhill's ability to serve as an unbiased and disinterested appraiser.

⁸ Exhibit G – Barber's Affidavit ¶ 11.

payment, and deductible, Risk Pool issued a check for \$194,224.85 ⁹ Umpire Taylor issued his estimate on July 10th, 2020.

18. Eager to quiet the City of Hidalgo, Risk Pool acted quickly on Umpire Taylor's appraisal. After taking out depreciation costs and insurance funds previously paid to Hidalgo, Risk Pool wrote Hidalgo a check for \$194,224.85 on July 22nd, 2020.¹⁰

5. Risk Pool files motion for summary judgment.

19. It is the check that Risk Pool issued on July 22nd, 2020 that forms the basis of Risk Pool's motion for summary judgment. Risk Pool filed its motion for summary judgment on August 12, 2020. Defendant is of the opinion that writing a check, no matter the value of the check or how inequitable, unfair, or wrong the underlying process, satisfies all contractual obligations.

C. HIDALGO'S SUMMARY JUDGMENT EVIDENCE

20. In general, the same standards and principles of evidence that are applicable in the trial on the merits are equally applicable in a summary judgment proceeding. When evidence is required to support a summary judgment motion, it must be provided by affidavit or by sworn or authenticated copies of other documentary evidence.¹¹ Proper summary judgment evidence consists of affidavits, admissions, stipulations of the parties, authenticated or certified public records, deposition transcripts, and interrogatory answers.¹²

21. To support the facts in this response, Hidalgo offers the following summary judgment evidence attached to this response and incorporates the evidence into this response by reference. Hidalgo intends to rely on the following documents as summary judgment evidence, in addition to the evidence on record filed by Risk Pool:

⁹ Exhibit J – Umpire Taylor's Appraisal, pg. 24.

¹⁰ Exhibit I – Defendant's Appraisal Award.

¹¹ *Guinn v. Bosque Cty.*, 58 S.W.3d 194, 199, (Tex. App.—Waco 2001, pet. denied).

¹² *Bakali v. Bakali*, 830 S.W.2d 251, 256 (Tex. App.—Dallas 1992, no pet.)

EXHIBIT NO.	TITLE OF DOCUMENT
Exhibit A	Defendant's Motion for Summary Judgment
Exhibit B	Coverage Documents
Exhibit C	Barber's June 29 th , 2020 Email
Exhibit D	Berryhill's Appraisal
Exhibit E	Barber's Appraisal
Exhibit F	Cunningham Lindsey 2012 Report
Exhibit G	Barber's Affidavit
Exhibit H	Gonzalez's Affidavit
Exhibit I	Defendant's Appraisal Award
Exhibit J	Umpire Taylor's Appraisal
Exhibit K	2017 Coverage Documents

D. STANDARD OF REVIEW

1. No-evidence Motion for Summary Judgment

22. After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.¹³ Under the Texas Rules of Civil Procedure, a no-evidence motion for summary judgment should only be considered after adequate time for discovery. Tex. R. Civ. P. 166a(i). The length of time constituting "adequate time for discovery" depends on the nature of the claims,

¹³TEX. R. CIV. P. 166a(i).

evidence needed to controvert the no-evidence motion for summary judgment, length of time the case has been on file, and any deadlines set by the court.¹⁴

2. Traditional Motion for Summary Judgment

23. Pursuant to Texas Rules of Civil Procedure, summary judgment is appropriate when the evidence shows no genuine issue as to any material fact.¹⁵ To prevail, Defendant must establish that it is entitled to judgment as a matter of law.¹⁶ The burden is on Defendant to establish its right to summary judgment by conclusively proving every element of its cause of action and/or defense as a matter of law.¹⁷ It is error for summary judgment to be granted when a movant has failed to meet this burden.¹⁸ The Court must take Plaintiff's evidence as true, indulge every reasonable inference in favor of Plaintiff, and resolve all doubts in favor of Plaintiff.¹⁹

E. ARGUMENTS AND AUTHORITIES

1. Appraiser Berryhill and Umpire Taylor exceeded the scope of their appraisal by investigating causation, rather than simply damages.

24. When an appraisal clause in an insurance policy is triggered by disagreements in “actual cash value,” “amount of loss,” or “cost of repair or replacement,” appraisers are authorized to determine the amount of the loss only, not what caused or did not cause the loss. *Wells v. Am. States Preferred Ins. Co.*, 919 S.W.2d 679, 684 (Tex. App.—Dallas 1996, writ denied).

25. Here, the appraisal clause within the Coverage Document states, “If the Member and the Fund fail to agree as to the amount of the loss, each shall, upon written demand...select a competent and disinterested appraiser. The appraisers then shall select a competent and

¹⁴ *Carter v. McFayden*, 93 S.W.3d 307, 311 (Tex. App.—Houston [14th Dist.] 2002, pet. denied).

¹⁵ TEX. R. CIV. P. 166a(c).

¹⁶ See TEX. R. CIV. P. 166(a)(c); *Southwestern Elec. Power Co. v. Grant*, 73 S.W.3d 211, 215 (Tex. 2002).

¹⁷ See *Elliot-Williams Co. v. Diaz*, 9 S.W.3d 801, 803 (Tex. 1999).

¹⁸ *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678 (Tex. 1979).

¹⁹ See *Grant*, 73 S.W.3d at 215.

disinterested umpire.” (Emphasis Added). This gave Barber, Berryhill, and Umpire Taylor the authority to determine solely the amount of loss to the Arena, not what did or did not cause the amount of loss.

26. Hidalgo’s selected appraiser, Barber, recognized the limit on the scope of his investigation and emailed Berryhill and Taylor accordingly, saying “Please note as an appraisal panel, we are inspecting this loss to appraise damages. We are not adjusting this claim going years back. Appraisal is simply that.”²⁰

27. Nonetheless, Defendant’s chosen appraiser, Berryhill, lowered his estimated valuation based on wind and hail damage that he incorrectly asserts was caused in 2012.²¹ Not only did Berryhill lower his estimate based on causation, he repeatedly advocated to Umpire Taylor that the appraisal needed to be lowered based on an incorrect assumption the damage caused in 2016 was caused in 2012.²² Hidalgo had no knowledge of a 2012 claim and both Berryhill and Risk Pool’s counsel refused to provide any evidence of 2012 damage until after the appraisal was complete.²³

28. Accordingly, the scope of Berryhill’s and Umpire Taylor’s estimates and evaluations exceeded the scope of their duties by wrongfully taking causation into consideration and the appraisal award should be set aside.

2. Alternatively, appraiser’s discount for causation does not explain the wide discrepancy in each appraiser’s valuations.

²⁰ Exhibit C – Barber’s June 29th Email.

²¹ Exhibit D – Berryhill’s appraisal.

²² Exhibit G – Barber’s affidavit, ¶ 9. (“During the site inspection I witnesses Mr. Berryhill loudly and aggressively dispute the vast majority of damage sustained by the arena by stating that the damage resulted from a 2012 storm. Mr. Berryhill attempted to attribute damage of all kinds to the 2012 storm including areas on the building’s interior and exterior.”)

²³ When Hidalgo first learned that Berryhill was attempting to attribute 2016 damage to an alleged 2012 storm, it requested written information related to the storm in question. After pushback from all sides, one document was produced revealing a single unpaid claim in the amount of approximately \$16,000. See Exhibit F – Cunningham Lindsey’s 2012 Report.

29. Without waiving the foregoing argument, if the Court finds that Berryhill and Umpire Taylor did not exceed the scope of their authority by considering causation, there still remains significant discrepancies in appraisal estimates that cannot be reasonably explained by taking the 2012 damage into account.

30. In 2012, wind and hailstorms damaged the roof of the Arena. Accordingly, Hidalgo had an adjuster review the damage and provide an estimated replacement cost. Cunningham Lindsey, Inc. inspected the Arena's roof and estimated replacement cost of \$16,376.07.²⁴ Thus, even taking the damage from 2012 into consideration, Taylor's estimate should be lessened by a reasonably similar amount. Instead, the difference between Barber's estimate and Taylor's estimate is nearly \$6.5 million. Berryhill and Taylor attribute far too much damage to the 2012 storm, a fact that was not lost on Barber and Gonzalez. This raises further concerns regarding the fairness, impartiality, and unbiasedness of the underlying appraisal process. Hidalgo would reemphasize that the appraisal award be vacated.

3. Circumstances surrounding Umpire Taylor's estimate create a genuine issue of material fact regarding the disinterestedness and impartiality of Umpire Taylor and the appraisal process.

31. The appraisers and umpire are quasi-judicial in capacity and having been selected to act instead of the court and in place of the court, must, like a court, be impartial and nonpartisan. *Pa. Fire Ins. Co. v. W.T. Waggoner Estate*, 39 S.W.2d 593, 595 (Tex. Comm'n App. 1931, no pet.). The term "disinterested" does not mean simply the lack of pecuniary interest but requires that the appraiser and umpire not be biased or prejudiced. *Id.* Inadequacy of the award may also be considered in determining the bias and prejudice of the appraisers and umpire. *Id.* The issue being properly raised, the question as to the competency or disinterestedness of an appraiser or

²⁴ Exhibit F – Cunningham Lindsey 2012 report.

umpire is primarily for the jury. *Fisch v. Transcont. Ins. Co.*, 365 S.W.2d 186, 190 (Tex. Civ. App.—Houston 1962, writ ref'd). An award not made in substantial compliance with the terms of the policy will not be sustained. *Id.*

32. Applying the case law to this case, Barber and Berryhill were selected to serve as disinterested appraisers. When they disagreed on the cost of repairs to the Arena, Taylor was selected to serve as an unbiased and disinterested umpire. Taylor, in particular, had a duty to listen to both appraisers with an unbiased and disinterested ear to assist in finding the proper appraisal valuation.

33. Instead, Taylor's ear, whether by his own choosing or not, was filled with only one side of the story. Berryhill's aggressive tactics throughout the walkthrough and constant reference to 2012 damages tainted the impartiality of the appraisal process.²⁵ Taylor and Berryhill appeared to discuss the underlying facts of the investigation separate and apart from Barber and Gonzalez.²⁶

34. Not surprisingly, Taylor's final appraisal differed from Berryhill's estimate by roughly \$400,000 but differed from Barber's calculation by more than \$6.5 million.²⁷ In properly considering such a large disparity in appraisal valuations, there is a genuine issue of material fact concerning the level of Taylor's disinterestedness, impartiality, and unbiasedness.

35. The quasi-judicial nature of the appraisal process requires both sides be afforded a fair and equal opportunity to be heard. The underlying facts, many of which are still undiscovered, indicate that the underlying appraisal process applied in this case was anything but quasi-judicial in nature.

4. There has not been adequate time to conduct discovery concerning Taylor's impartiality.

²⁵ Exhibit G – Barber's Affidavit ¶ 10.

²⁶ *Id.* at ¶ 11.

²⁷ See Exhibit J – Umpire Taylor's Appraisal; Exhibit E – Barber's Appraisal; and Exhibit F – Beryhill's Appraisal.

36. Under the Texas Rules of Civil Procedure, a no-evidence motion for summary judgment should only be considered after adequate time for discovery. Tex. R. Civ. P. 166a(i). Adequate time for discovery, for purposes of the rule permitting no-evidence summary judgment motion to be filed only “after adequate time for discovery,” depends on the nature of the claims, evidence needed to controvert the no-evidence motion for summary judgment, length of time the case has been on file, and any deadlines set by the court. *Carter v. McFayden*, 93 S.W.3d 307, 311 (Tex. App.—Houston [14th Dist.] 2002, pet. denied).

37. Barber, Berryhill, and Taylor walked the Arena grounds on July 3, 2020. One week later, on July 10th, 2020, Taylor released his appraisal estimate of \$648,998.29. Less than two weeks after that, on July 22, 2020, Risk Pool issued a check to Hidalgo, and less than a month later, Risk Pool filed its no-evidence motion for summary judgment. Throughout the life of this entire case, discovery proceedings were abated in leu of the appraisal process, leaving Hidalgo without any opportunity to conduct meaningful discovery into the process that resulted in such a wide discrepancy between Umpire Taylor’s estimation and Barber’s professional evaluation.

38. Even before having an opportunity to conduct discovery, affidavits from Barber and Gonzalez raise concerns about bias and partiality. Barber’s affidavit states that “During the site inspection I witnesses Mr. Berryhill loudly and aggressively dispute the vast majority of damage sustained by the arena by stating that the damage resulted from a 2012 storm. Mr. Berryhill attempted to attribute damage of all kinds to the 2012 storm including areas on the building’s interior and exterior.” Gonzalez’s affidavit also makes reference to seemingly ex parte communications between Berryhill and Taylor, in which Berryhill had the opportunity to assert his stance without out any rebuttal or input from Barber.²⁸

²⁸ See Exhibit H – Gonzalez’s Affidavit ¶ 7.

39. Coupling the affidavit testimony from Barber and Gonzalez with the properly considered disparity in appraisal values creates enough concern and doubt about Taylor's bias to overcome defendant's no-evidence motion for summary judgment and vacate the current appraisal award, or in the alternative, to allow Hidalgo adequate time to conduct discovery into the matter.

5. Risk Pool's case legal support regarding estoppel is inapplicable.

40. Risk Pool relies on *Breshears v. State Farm Lloyds* to support its argument that the appraisal award estops Hidalgo from asserting a breach of contract claim.²⁹ However, there are several important facts that distinguish that case from the case between Hidalgo and Risk Pool. First, in *Breshears*, the plaintiff agreed with the umpire's evaluation. In essence, plaintiff Breshears supported his breach of contract claim against State Farm Lloyds with the umpire's evaluation. *Breshears v. State Farm Lloyds*, 155 S.W.3d 340, 344 (Tex. App.—Corpus Christi 2004, pet. denied).³⁰ In the case at bar, Hidalgo fundamentally disagrees with Umpire Taylor's valuation as well as the potential bias of those involved in reaching the valuation. Second, the Corpus Christi Court of Appeals predicates its decision on Breshears's lack of evidence to show fraud, mistake, or accident. *Id.* Here, Hidalgo holds evidence through documentation and affidavit testimony that places the sincerity and validity of this specific appraisal process directly in issue. Finally, in *Breshears*, the insurance policy at issue explicitly states that the "umpire will set the amount of the loss" and that amount "*shall be binding on you and us.*" The paragraph addressing appraisal in Subsection E of the Coverage Documents is void of any language indicating that the appraisal is binding.

²⁹ See Exhibit A – Risk Pool's Motion for Summary Judgment, Pg.7.

³⁰ "The Breshears appear to argue that [language in *In Re Allstate County Mut. Ins. Co.*] indicates that if an appraisal award is different from the amount initially offered by the insurance company, a breach of contract has necessarily occurred. We disagree..." *Breshears*, 155 S.W.3d at 344.

40. Defendants point to *National Security Fire & Casualty Company v. Hurst* to support their argument that tendering a check on July 22nd, 2020 “is all that is required to estop the insured from raising a breach of contract claim.”³¹ However, again, the court in *Hurst* predicates its holding on the rule that “an otherwise binding appraisal award may be set aside when (1) the award was made without authorization; (2) it was the result of fraud, accident, or mistake; or (3) it failed to comply with the requirements of the insurance policy.” *Nat’l. Sec. Fire & Cas. Co. v. Hurst*, 523 S.W.3d 840, 844 (Tex. App.—Houston [14th Dist.] 2017, pet. denied). The Houston Court of Appeals based its holding on the trial court having found that there was no genuine issue of material fact to support setting aside the appraisal for one of the three aforementioned reasons. *Id.* at 846. In this case, there is a genuine issue of material fact (or alternatively, reason to allow discovery so as to know whether or not there is a genuine issue of material fact) to support the setting aside of Umpire Taylor’s appraisal.

41. Third, Defendants look for support from *Brownlow v. United Serv. Auto. Ass’n.*, again, to support the argument that payment of the umpire’s appraisal estops Hidalgo from asserting its breach of contract claim.³² However, like the Court in *Breshears*, the Court in *Brownlow* rejected the plaintiff’s argument that an appraisal award different from the amount initially offered or paid by the insurance company results in breach of contract as a matter of law. *Brownlow v. United Serv. Auto. Ass’n.*, No. 13-030758-CV, 2005 WL 608252, at* 2 (Tex. App.—Corpus Christi, March 17, 2005, pet. denied.) (mem. op.). Here, Hidalgo is not asserting the variance between Risk Pool’s appraisal and Umpire Taylor’s appraisal is proof that Risk Pool breached as a matter of law. Rather, Hidalgo is contesting the disinterestedness, impartiality, and unbiasedness of Umpire Taylor, as well as Berryhill, and subsequently of the appraisal process itself. Also, as in *Breshear*,

³¹ See Exhibit A – Risk Pool’s Motion for Summary Judgment, Pg.7.

³² See Exhibit A – Risk Pool’s Motion for Summary Judgment, Pg.7.

the court in *Brownlow* relied on language in the parties' insurance policy that said the result of the appraisal would be binding on the parties³³ – language that is absent in the appraisal section of the Coverage Documents.³⁴

6. Hidalgo is excused from performing under the replacement cost provision because Defendant prevented Hidalgo from performing.

42. When one party prevents another from timely performing its contractual obligations, the failure to timely perform is excused.³⁵ For example, in the construction context, a contractor's failure to comply with a contract's time provisions could prevent contractor's recovery of the full amount due to it; but, if performance was prevented by the project's owner, then contractor's failure to timely perform is excusable.³⁶

43. In this case, Defendant is asserting that Hidalgo cannot recover the replacement cost value because it failed to repair or replace the damaged property within two years of the storm.³⁷ However, any lack of performance on Hidalgo's part was the direct result of Risk Pool's failure to timely pay adequate funds. Defendant prevented Hidalgo from performing – prevented Hidalgo from actually "repairing or replacing the property," which is a condition precedent to seeking replacement cost – by issuing a check in an amount far short of what was needed to actually repair. In 2016, Risk Pool issued a check for in the amount of roughly \$200,000³⁸; an amount that Hidalgo has contested since day one as inadequate to cover any significant portion of repairs on the Arena. Yet Defendants expected Hidalgo to make the repairs within two years in order to recover the full amount of funds owed to Hidalgo – funds that Hidalgo needed in order to make the repairs.

³³ See *Brownlow* at*2.

³⁴ See Exhibit B – Coverage Documents, General Conditions Section III Subsection E.

³⁵ *SP Terrace, L.P. v. Meritage Homes of Texas, LLC*, 334 S.W.3d 275, 285 (Tex. App.—Houston [14th Dist.] 2010, no pet.).

³⁶ *Anderson Dev. Corp. v. Coastal States Crude Gathering Co.*, 543 S.W.2d 402, 406 (Tex. Civ. App.—Houston [14th Dist.] 1976, writ ref'd).

³⁷ See Exhibit A – Risk Pool's Motion for Summary Judgment, Pg.10.

³⁸ Exhibit I – Defendant's Appraisal Award.

44. After Defendant issued the check for roughly \$200,000, Hidalgo contested the amount, Defendant held its ground, litigation ensued, appraisals ensued, and amidst all of the battling, Risk Pool expected Hidalgo to use funds that it did not have to make repairs to the Arena within a window of two years in order for Hidalgo to receive the replacement cost value. Such expectations are untenable, unreasonable, and unjust.

45. Granting Risk Pool's motion for summary judgment regarding the compliance with the replacement cost provisions would only further encourage insurance carriers to drag their feet throughout this process just long enough to run out the clock on demands for replacement costs.

F. CONCLUSION & PRAYER

46. For the foregoing reasons, City of Hidalgo requests that this Court deny Risk Pool's motion for summary judgment and grant Hidalgo's motion to vacate the appraisal award.

Respectfully submitted,

PHIPPS MAYES, PLLC

THE PHIPPS
102 9th Street
San Antonio, Texas 78215
Telephone: (210) 340-9877
Telecopier: (210) 340-9899
Email: mhipps@phippsmayes.com
Email: gortiz@phippsmayes.com
Email: chardy@phippsmayes.com

BY: Martin J. Phipps
MARTIN J. PHIPPS
State Bar No. 00791444
J. GABRIEL ORTIZ
State Bar No. 24085512
CHARLES E. HARDY, JR.
State Bar No. 24107661

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing has been forwarded to the following counsel of record in compliance with the Texas Rules of Civil Procedure on this 16th day of September, 2020.

VIA E-SERVICE

Barry Adams
Jack Higdon
BLANK ROME, LLP
717 Texas Avenue, Suite 400
Houston, Texas 77002
babrams@blankrome.com
jhigdon@blankrome.com

/s/ Martin J. Phipps

MARTIN J. PHIPPS

CAUSE NO. C-1896-18-C

CITY OF HIDALGO <i>Plaintiff,</i> VS. TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL <i>Defendant.</i>	§ § § § § § §	IN THE DISTRICT COURT 139TH JUDICIAL DISTRICT HIDALGO COUNTY, TEXAS

**APPENDIX IN SUPPORT OF CITY OF HIDALGO'S MOTION FOR SUMMARY
JUDGMENT RESPONSE AND MOTION TO VACATE**

Exhibit No.	Document
Exhibit A	Defendant's Motion for Summary Judgment
Exhibit B	Coverage Documents
Exhibit C	Barber's June 29 th , 2020 Email
Exhibit D	Berryhill's Appraisal
Exhibit E	Barber's Appraisal
Exhibit F	Cunningham Lindsey 2012 Report
Exhibit G	Barber's Affidavit
Exhibit H	Gonzalez's Affidavit
Exhibit I	Defendant's Appraisal Award
Exhibit J	Umpire Taylor's Appraisal

CAUSE NO. C-1896-18-C

CITY OF HIDALGO
Plaintiff,

VS.

**TEXAS MUNICIPAL LEAGUE
INTERGOVERNMENTAL RISK POOL**
Defendant.

§
§
§
§
§
§
§

IN THE DISTRICT COURT

139TH JUDICIAL DISTRICT

HIDALGO COUNTY, TEXAS

**ORDER DENYING TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK
POOL'S MOTION FOR SUMMARY JUDGMENT AND GRANTING CITY OF
HIDALGO'S MOTION TO VACATE APPRAISAL AWARD**

1. On this date, the Court considered *Texas Municipal League Intergovernmental Risk Pool's Motion for Summary Judgment* (filed 08/12/2020), as well as *City of Hidalgo's Response to Texas Municipal League Intergovernmental Risk Pool's Motion for Summary Judgment and Motion to Vacate Appraisal Award* (filed 09/16/2020).

2. After considering the Defendant's motion, City of Hidalgo's response, summary judgment evidence, and pleadings on file, *Texas Municipal League Intergovernmental Risk Pool's Motion for Summary Judgment* is **DENIED**.

3. After considering the Motion, attachments, and pleadings on file, the *City of Hidalgo's Motion to Vacate Appraisal Award*, the Court finds that the appraisal award set by Umpire Taylor and Appraiser Berryhill was improper. Thus, *City of Hidalgo's Motion to Vacate Appraisal Award* is **GRANTED**.

4. The Court **ORDERS** that the appraisal award set and signed by Umpire Randall Taylor and Appraiser Al Berryhill on July 16, 2020 be vacated.

SIGNED this 30th day of September, 2020.

(:}'o PO, (-&..L"- = =
NORABLE ROBRTO "BOBBY" FLORES

cc: Martin Phipps, Email: mphipps@phippsmays.com
J. Gabriel Ortiz, Email: gortiz@phippsmayes.com
Charles E. Hardy, Jr., Email: chardy@phippsmayes.com
Barry Abrams, Email: babram@blankrome.com
Jack W. Higdon, Email: jhigdon@blankrome.com

In the Thirteenth Court of Appeals

TN RE THE TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL,

R ator

Original Proceeding from the 139th Judicial District Court of
Hidalgo County, Texas; Cause No. C-1896-18-C
The Honorable Roberto "Bobby" Flores, Judge Presiding

RELATOR'S PETITION FOR WRIT OF MANDAMUS

Barry Abrams
State Bar No. 00822700
babrams@blankrome.com
Jack W. Higdon
State Bar No. 24007360
jhigdon@blankrome.com
BLANK ROME LLP
717 Texas Avenue, Suite 1400
Houston, TX 77002-2727
(713) 228-6601
(713) 228-6605 (Fax)

**ATTORNEYS FOR RELATOR,
THE TEXAS MUNICIPAL
LEAGUE
INTERGOVERNMENTAL RISK POOL**

ORAL ARGUMENT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

Relator: The Texas Municipal League Intergovernmental
Risk Pool

Relator's Counsel: Barry Abrams
Jack W. Higdon
BLANK ROME LLP
717 Texas Ave., Suite 1400
Houston, Texas 77002

Respondent: The Honorable Roberto "Bobby" Flores
139th District Court, Hidalgo County, Texas
100 N. Closner
Edinburg, Texas 78539

Real Party in Interest: City of Hidalgo

**Counsel for
Real Party In Interest:** Mr. Martin J. Phipps
Mr. J. Gabriel Ortiz
Mr. Charles E. Hardy, Jr.
Phipps Mayes, PLLC
102 9th Street
San Antonio, TX 78215

TABLE OF CONTENTS

IDENTITY OF PARTIES AND COUNSEL	ii
TABLE OF CONTENTS.	iii
TABLE OF AUTHORITIES.....	v
I. STATEMENT OF THE CASE	1
II. STATEMENT OF JURISDICTION	3
III. ISSUES PRESENTED	3
IV. STATEMENT OF FACTS.....	4
A. The Risk Pool Is A Governmental Self-Insurance Pool.....	4
B. The Interlocal Agreement & Property Coverage Document: A Governmental Self-Insurance Contract.....	5
C. The City's Self-Insurance Claim.....	6
D. The Lawsuit And Appraisal Of The City's Loss	6
E. The Entry And Payment Of The June 2020 Appraisal Award.....	8
F. The Risk Pool's Motion For Summary Judgment.....	10
G. The City's Response & Motion To Vacate The Appraisal Award.....	11
V. SUMMARY OF THE ARGUMENT.....	13
VI. ARGUMENT	14
A. Standard of Review	14
B. Respondent Clearly Abused its Discretion by Granting The "City's Motion To Vacate Appraisal Award."	14
1. Respondent Abused its Discretion by Vacating the Appraisal Award, Because The City Did Not Plead Any Ground to Vacate the Award.	16
a. The Award was presumptively valid and binding.	16

b.	Payment of the Award estopped the City.	16
c.	The City had the dual burden to plead and prove its avoidance defense. It did not do so.....	17
d.	The Risk Pool was denied fair notice of the relief the City sought.	17
2.	Respondent Abused its Discretion by Vacating the Appraisal Award Because the Appraisal Panel Did Not Exceed the Scope of its Authority by "Investigating Causation."	18
3.	Respondent Abused its Discretion by Vacating the Appraisal Award Because No Evidence Exists That the Award Contained an Improper "Discount for Causation."	22
4.	Respondent Abused its Discretion by Vacating the Appraisal Award Because the Claim of Bias by Umpire Taylor and Appraiser Berryhill is Legally and Factually Unsupportable. ..	23
5.	Respondent Abused its Discretion by Vacating the Appraisal Award Because the Award is Binding and Must be Given an Estoppel Effect.....	27
6.	Respondent Abused its Discretion by Vacating the Appraisal Award Because the City Did Not Conclusively Prove a Basis to Vacate the Appraisal Award and Did Not Comply With Texas Procedural Law	31
a.	The City did not conclusively prove a basis to vacate the Appraisal Award.....	31
b.	The City did not comply with Texas procedural law.	32
C.	The Risk Pool Has No Adequate Appellate Remedy.....	34
VII.	PRAYER	35

TABLE OF AUTHORITIES

Cases

<i>B n Bo t-Pa ito B an o Conso . Tnd p. S h. ist. v. T x. Po iti a Subdivisions Prop./Cas. Joint S f-Tns. Fund, 212 S.W.3d 320 (Tex. 2006)</i>	<i>4</i>
<i>Bind r v. Jo , 193 S.W.3d 29 (Tex. App.-Houston [1st Dist.] 2006, no pet.).....</i>	<i>17</i>
<i>Br sh ars v. Stat Farm L oyds, 155 S.W.3d 340 (Tex. App.--Corpus Christi 2004, pet. denied).....</i>	<i>16, 22, 26, 28, 30, 32</i>
<i>Brown ow v. Unit d S rvs. Auto. Ass'n, No. 13-03-758-CV, 2005 Tex. App. LEXIS 1987, 2005 WL 608252 (Tex. App.--Corpus Christi Mar. 17, 2005, pet. denied)</i>	<i>17, 30</i>
<i>Cantu v. S. Tns. Co., 03-14-00533-CV, 2015 Tex. App. LEXIS 8847, 2015 WL 5096858 (Tex. App.--Austin Aug. 25, 2015, no pet.)</i>	<i>11, 16, 17</i>
<i>Cunningham v. Parkda Bank, 660 S.W.2d 810 (Tex. 1983)</i>	<i>17</i>
<i>augh rty v. Ja obs, 187 S.W.3d 607 (Tex. App.--Houston [14th Dist.] 2006, no pet.).....</i>	<i>22</i>
<i>. Und rwrit rs v. Bro k, 109 Tex. 425, 211 S.W. 779 (Tex. 1919)</i>	<i>9, 23, 27</i>
<i>Fis h v. Trans on. Tns. Co., 356 S.W.2d 186 (Tex. Civ. App.--Houston [1st Dist.] 1962, writ ref'd n.r.e.).....</i>	<i>12, 25, 26, 31</i>
<i>F oyd Cir Partn rs, LLC v. R pub i L oyds, No. 05-16-00224-CV, 2017 Tex. App. LEXIS 6906, 2017 WL 3124469 (Tex. App.--Dallas July 24, 2017, pet. denied)</i>	<i>23</i>

<i>Franco v. Savoni Mut. Fire Ins.,</i> 154 S.W.3d 777 (Tex. App.--Houston [14th Dist.] 2004, no pet.).....	15, 23, 29, 34
<i>Gaddy v. Harris County Juvenile Bd.,</i> Cause No. 01-88-00663-CV, 1989 Tex. App. LEXIS 319 (Tex. App.--Houston [1st Dist.] Feb. 23, 1989, no writ)	32
<i>Garcia v. Stat Farm Lloyds,</i> 514 S.W.3d 257 (Tex. App.--San Antonio 2016, pet denied)	27, 29
<i>Hennessey v. Vanguard Ins. Co.,</i> 895 S.W.2d 794 (Tex. App.--Amarillo 1995)	26
<i>Tenners Auto Club Term. Co.,</i> 580 S.W.3d 852 (Tex. App.--Houston [14th Dist.] 2019, no pet.).....	3, 15, 20, 32, 34
<i>Tenners Christus Santa Rosa Health Sys.,</i> 492 S.W.3d 276 (Tex. 2016)	14
<i>Tenners Longoria,</i> 470 S.W.3d 616 (Tex. App.--Houston [14th Dist.] 2015, orig. proceeding)	14
<i>Tenners Odysey Health Care, Tenners,</i> 310 S.W.3d 419 (Tex. 2010) (orig. proceeding) (<i>per curiam</i>).....	14
<i>Tenners Universal Underwriters of Texas Ins. Co.,</i> 345 S.W.3d 404 (Tex. 2011)	27
<i>Johnson v. Stat Farm Lloyds,</i> 204 S.W.3d 897 (Tex. App.--Dallas 2006), <i>aff'd</i> , 290 S.W.3d 886 (Tex. 2009)	32
<i>Lundstrom v. United Services Auto Ass'n-CTC,</i> 192 S.W.3d 78 (Tex. App.--Houston [14th Dist.] 2006, pet. denied)	15, 27
<i>Massachusetts Bonding & Ins. Co. v. Orkin Extermin. Co.,</i> 416 S.W.2d 396 (Tex. 1967)	24

<i>Nat'l S. Fir & Cas. Co. v. Hurst</i> , 523 S.W.3d 840 (Tex. App.--Houston [14th Dist.] 2017, pet. denied)	17, 30
<i>Nixon v. Mr. Prop'rty Manag'm't</i> , 690 S.W.2d 546 (Tex. 1985)	11, 33
<i>Ortiz v. Stat Farm L oyd's</i> , 589 S.W.3d 127 (Tex. 2019)	29
<i>Radiant Fin., Tn v. Bagby</i> , No. 05-16-00268-CV, 2017 Tex. App. LEXIS 6346 (Tex. App.-- Dallas July 10, 2017, pet denied)	22
<i>Rocha v. Marks Transp., Tn..</i> , 512 S.W.3d 529 (Tex. App.--Houston [1st Dist.] 2016, no pet.)	14
<i>Royal Typewriter Co. v. Vista</i> , 572 S.W.2d 377 (Tex. Civ. App.--Houston [14th Dist.] 1978, writ ref'd n.r.e.).....	17, 18
<i>Security Comm Group, Tn v. Brodie</i> , No. 14-09-00295-CV, 2010 Tex.App.LEXIS 10190, 2010 WL 5514333 (Tex. App.--Houston [14th Dist.] Dec. 28, 2010, pet denied).....	17
<i>Stat Farm L oyd's v. Johnson</i> , 290 S.W.3d 886 (Tex. 2009)	20, 21, 22, 27, 29, 32
<i>Tx. Farm Bureau Cas. Tns. Co. v. Samp'y</i> , No. 07-13-00151-CV, 2015 Tex. App. LEXIS 5280, 2015 WL 3463028 (Tex. App.--Amarillo May 26, 2015, pet. denied)	9, 24
<i>Texas Mun. Lagu Tnt'gov'rment Risk Pool v. City of Hidalgo</i> , No. 13-19-00096-CV, 2020 Tex. App. LEXIS 2093, 2020 WL 1181251 (Tex. App.--Corpus Christi-Edinburgh Mar. 12, 2020, no pet.).....	2, 8

<i>TMM Tnv, Ltd. v. Ohio Cas. Tns. Co.</i> , 730 F.3d 466 (5th Cir. 2013)	21
<i>W s v. Am. Stat s Pr f rr d Tns. Co.</i> , 919 S.W.2d 679 (Tex. App.--Dallas 1996, writ denied)	20

Statutes

TEX. CIV. PRAC. & REM. CODE § 101.001(3)(D)	5
TEX. GOV'T CODE §22.221	3
TEX. GOV'T CODE §791.001	4
TEX. GOV'T CODE §791.011(a)	4
TEX. GOV'T CODE § 2259.001	4
TEX. GOV'T CODE § 2259.031(a).....	4
TEX. GOV'T CODE § 2259.037	4
TEX. R. CIV. P. 11	2, 9
TEX. R. CIV. P. 71	32, 33
TEX. R. CIV. P. 166a.....	32, 33
TEX. R. CIV. P. 301	18

Other Authorities

Op. Tex. Att'y Gen. No. MW-347 (May 29, 1981)	4

PARTY ABBREVIATIONS AND RECORD REFERENCES

PARTY ABBREVIATIONS

"Relator" or "Risk Pool" refers to defendant The Texas Municipal League Intergovernmental Risk Pool.

"Plaintiff" or "City" refers to plaintiff City of Hidalgo.

RECORD REFERENCES

References to the record in Relator's Appendix in Support of Petition for Writ of Mandamus are abbreviated "App. [pg.#]."

I.
STATEMENT OF THE CASE

Nature of the Case: This is a contract case. The Texas Municipal League Intergovernmental Risk Pool ("Relator" or "Risk Pool") is a government entity in which the City of Hidalgo ("Plaintiff" or City") is a member. The Risk Pool provides self-insurance benefits to the City and its other government members pursuant to an "Interlocal Agreement" and the terms of a "Property Coverage Document" that is incorporated into the Interlocal Agreement by reference. The City seeks to recover millions of dollars of additional self-insurance benefits for damage to the City's "State Farm Arena" (the "Arena"), allegedly sustained in a June 1, 2016 storm.^{1/}

Course of Proceedings: On June 1, 2016, the City reported that it had sustained damage to the State Farm Arena during a June 1, 2016 storm (the "Loss"). The Risk Pool assessed the City's alleged Loss and, on June 27, 2016, tendered payment for the City's ACV Loss in the amount of \$283,666.81.^{2/}

The City disagreed with the Risk Pool's assessment of the Loss and, on May 23, 2018, filed a breach of contract action claiming that its "actual covered damage to the [Arena] as a result of the Storm exceeded the sum of \$7,329,546."^{3/}

On August 8, 2018, the City filed a Motion to Compel Appraisal requesting that the Court "compel appraisal of its claim for covered damages to determine the amount of property damage, if any, Plaintiff sustained as a result of the Storm."^{4/}

The trial court granted the City's Motion to Compel Appraisal on February 26, 2019.^{5/} The Risk Pool took an interlocutory appeal.

^{1/} App. 202-206; 488-490.

^{2/} App.218, 485, 1196.

^{3/} App.871, 485-486, 1192, 1196.

^{4/} App.869-872.

^{5/} App.336.

This Court affirmed the trial court order.^{6/}

On remand, the parties entered into a TEX. R. CIV. P. 11 agreement to "conduct an appraisal per the terms of the Property Coverage Document of the losses alleged in [this] lawsuit."^{7/} The City and the Risk Pool agreed that Randall Taylor would serve as the umpire and designated Mark Barber and Al Berryhill as their respective party appraisers.^{8/}

On July 16, 2020, Umpire Taylor and Appraiser Berryhill signed and issued an appraisal award (the "Award").^{9/} The Award determined the amount of the City's ACV/RCV loss to be \$480,391.66 and \$648,998.29, respectively, before taking into account prior payments and a deductible.^{10/} On July 23, 2020, the Risk Pool tendered a check to the City in full payment of the Award.^{11/}

After paying the Award, the Risk Pool filed a traditional summary judgment motion on August 12, 2020.^{12/} Seven days before the hearing on that motion, the City filed "City Of Hidalgo's Response To Texas Municipal League Intergovernmental Risk Pool's Motion For Summary Judgment And City Of Hidalgo's Motion To Vacate Appraisal Award."^{13/}

**Respondent's
Action:**

Respondent signed an "Order Denying Texas Municipal League Intergovernmental Risk Pool's Motion For Summary Judgment And Granting City Of Hidalgo's Motion To Vacate Appraisal Award" (the "Order") on September 20, 2020, that declared the Award "improper," granted the "City's Motion to Vacate Appraisal Award," and summarily ordered "that the appraisal

^{6/} *S Texas Mun. League Intergovernmental Risk Pool v. City of Hidalgo*, No. 13-19-00096-CV, 2020 Tex. App. LEXIS 2093, 2020 WL 1181251 (Tex. App.--Corpus Christi-Edinburgh Mar. 12, 2020, no pet.).

^{7/} App. 297, 299, 335.

^{8/} *S id.*

^{9/} App. 297, 301, 303-326.

^{10/} *Td.*

^{11/} App.170-173, 218, 273, 297, 328-330, 485.

^{12/} App.199-200.

^{13/} App.21.

award set and signed by Umpire Randall Taylor and Appraiser Al Berryhill on July 16, 2020 be vacated." ^{14/}

Respondent: The Honorable Roberto "Bobby" Flores, Presiding Judge, 139th District Court, Hidalgo County, Texas.

Relief Sought: The Risk Pool respectfully requests that this Court issue a writ of mandamus requiring Respondent to withdraw or set aside the September 30, 2020 Order granting City's "Motion to Vacate Appraisal Award."

II. **STATEMENT OF JURISDICTION**

This Court has jurisdiction to issue a writ of mandamus pursuant to TEX.

GOV'T CODE §
22.221.

III. **ISSUES PRESENTED**

No adequate appellate remedy exists when a trial court improperly vacates an appraisal award, *Tn r Auto C ub Tnd m. Co.*, 580 S.W.3d 852, 855 (Tex. App.-Houston [14th Dist.] 2019, no pet.).

Did Respondent clearly abuse its discretion by vacating the Appraisal Award because:

1. The City did not plead any ground to vacate the Appraisal Award.
2. The Appraisal Panel Did Not Exceed the Scope of its Authority by "Investigating Causation."
3. No Evidence Exists That the Appraisal Award Contained an Improper "Discount for Causation."
4. The Claim of Bias by Umpire Taylor and Appraiser Berryhill is Legally and Factually Unsupportable.

^{14/} App.1-2.

5. The Appraisal Award is Binding and Must be Given an Estoppel Effect.
6. The City Did Not Conclusively Prove a Basis to Vacate the Appraisal Award and Did Not Comply With Texas Procedural Law.

IV. **STATEMENT OF FACTS**

A. THE RISK POOL IS A GOVERNMENTAL SELF-INSURANCE POOL.

Texas law authorizes local governments to establish self-insurance funds "to protect the governmental unit and its officers, employees, and agents, from any insurable risk or hazard." TEX. GOV'T CODE § 2259.031(a). Under the Texas Interlocal Cooperation Act, local governments are empowered to contract with one another through interlocal agreements to pool their resources and collectively self-insure against insurable risks and hazards. *S* TEX. GOV'T CODE §§ 791.001, 791.011(a); Op. Tex. Att'y Gen. No. MW-347 (May 29, 1981). The Risk Pool is one such self-insurance pool, formed pursuant to the Texas Interlocal Cooperation Act.^{15/} The Risk Pool is not an insurance company, nor is it governed by the Texas Insurance Code.^{16/} Instead, the Risk Pool is a governmental unit with retained governmental immunity.^{17/}

^{15/} App.217-218.

^{16/} App.217-218; *s* TEX. GOV'T CODE § 791.001 *t s q.*; TEX. GOV'T CODE § 2259.037.

^{17/} *Td.*; *s a so* TEX. GOV'T CODE § 2259.001; TEX. CIV. PRAC. & REM. CODE § 101.001(3)(D). *S B n Bo t-Pa ito B an o Conso . Tnd p. S h. ist. v. Tx. Po iti a Subdivisions Prop./Cas. Joint S f-Tns. Fund*, 212 S.W.3d 320, 326 (Tex. 2006). App.346.

B. THE INTERLOCAL AGREEMENT & PROPERTY COVERAGE DOCUMENT: A GOVERNMENTAL SELF-INSURANCE CONTRACT.

The document that establishes the Risk Pool's liability and property self-insurance program is the Liability/Property Interlocal Agreement (the "Interlocal Agreement").^{18/} Under the Interlocal Agreement, the "exact detail" of the self-insurance coverage afforded to Risk Pool members from time to time is set forth in the "Property Coverage Document," the "Declarations of Coverage," and the "Endorsements," incorporated into the Interlocal Agreement by reference.^{19/}

Subject to various conditions, the Property Coverage Documents provide that when a member experiences a covered loss, that loss may be adjusted and paid on an Actual Cash Value (ACV) basis.^{20/} Under certain circumstances not present here, a loss also may be adjusted and paid based upon a Replacement Cost Value (RCV) basis.^{21/}

The Property Coverage Document establishes an "Appraisal" procedure in which a disinterested umpire and one of the two appraisers determine the amount of loss:

^{18/} App.217-218, 220-225, 367, 392-467.

^{19/} *Td.*; App.55-100; 217-218, 227- 296 367, 392-467.

^{20/} App.233, 248 (Actual Cash Value (ACV) "means the lesser of: (1) the cost to repair; (2) The cost to replace with like kind and quality less proper deduction for depreciation; or (3) the amount actually expended to replace, if replaced.").

^{21/} App.234, 256, 273 (Replacement Cost means "the least of: (1) the cost to repair; (2) the cost to replace new for old with like kind and quality; or (3) the amount actually expended to replace.").

"E. APPRAISAL If the Member and the Fund fail to agree as to the amount of loss, each shall, upon the written demand either of the Member or of the Fund made within 60 days after receipt of proof of loss by the Fund, select a competent and disinterested appraiser. The appraisers then shall select a competent and disinterested umpire . . . Then, at a reasonable time and place, the appraisers shall appraise the loss, stating separately the value at the time of loss and the amount of loss. **If the appraisers fail to agree, they shall submit their differences to the umpire. An award in writing by any two shall determine the amount of loss.** The Member and the Fund shall each pay its chosen appraiser and shall bear equally the other expenses of the appraisal and of the umpire." ^{22/}

The Property Coverage Document provides that payment of the Loss results in a release in full of all liability:

"F. LOSS PAYABLE Loss, if any, shall be adjusted with and payable to the Member, whose **receipt shall constitute a release in full of all liability under this Agreement** with respect to such loss." ^{23/}

C. THE CITY'S SELF-INSURANCE CLAIM.

On June 1, 2016, the City reported that it had sustained damage to the State Farm Arena during a June 1, 2016 storm. The Risk Pool assessed the City's alleged Loss and, on June 27, 2016, tendered a \$283,666.81 payment for the City's ACV Loss.^{24/}

D. THE LAWSUIT AND APPRAISAL OF THE CITY'S LOSS.

The City disagreed with the Risk Pool's assessment of the Loss and, on May

^{22/} App.236-237 (emphasis added).

^{23/} App.237 (emphasis added).

^{24/} App.218, 485, 1196.

23, 2018, filed a breach of contract action claiming that its "actual covered damage to the [Arena] as a result of the Storm exceeded the sum of \$7,329,546."^{25/}

On August 8, 2018, the City filed a Motion to Compel Appraisal, requesting that the trial court "compel appraisal of its claim for covered damages to determine the amount of property damage, if any, Plaintiff sustained as a result of the Storm."^{26/} According to the City, because **"the Coverage Document states that payment of the appraisal award 'shall constitute a release in full of all liability under this Agreement,'"** an appraisal conducted pursuant to Subsection E of the Property Coverage Document would "bring this disputed claim to a prompt conclusion" ^{27/}

The trial court granted the City's Motion to Compel Appraisal on February 26, 2019.^{28/} On appeal, the City extolled the presumptive enforceability of appraisal awards:

Appraisal provides a means by which the Risk Pool and the City can arrive at a determination of the amount of loss pursuant to the Coverage Document, and Texas law strongly favors the enforcement of appraisal provisions. **Texas courts have held, "[t]here is a strong public policy favoring enforcement of appraisal clauses and every reasonable presumption [will be] indulged to sustain an award."** [] As recognized by the Texas Supreme Court, appraisals provide a less expensive, more efficient alternative to litigation, as an appraisal clause "binds the parties to have the extent or amount of loss determined in a particular way." [] As the Texas Supreme Court held in *Johnson*, "[w]hen an insurer denies coverage, appraisers can still set the amount

^{25/} App.871, 485-486, 1192, 1196.

^{26/} App.869-872.

^{27/} App.872, 874 (emphasis added).

^{28/} App.336-337.

of loss in case the insurer turns out to be wrong. And when the parties disagree whether there has been any loss at all, **nothing prevents the appraisers from finding \$0 if that is how much damage they find.**"^{29/}

This Court affirmed the trial court order compelling an appraisal ^{30/}

E. THE ENTRY AND PAYMENT OF THE JUNE 2020 APPRAISAL AWARD.

On June 16, 2020, the parties entered into a TEX. R. CIV. P. 11 agreement to "conduct an appraisal per the terms of the Property Coverage Document of the losses alleged in [this] lawsuit."^{31/} The City and the Risk Pool selected Randall Taylor as the umpire and designated Mark Barber and Al Berryhill as their respective party appraisers.^{32/}

It is undisputed that Appraiser Barber and Appraiser Berryhill were both involved in preparing pre-suit estimates of the City's 2016 Arena storm losses.^{33/} Therefore, absent the parties' agreement, neither might have been considered to be

^{29/} *S. No. 13-19-00096-CV, Texas Mun. L. & Gov. Risk Pool v. City of Hidalgo*, In the 13th Court of Appeals, Texas (Appellee's Brief at pp. 55-56 (filed 5/28/19) (citations omitted)(emphasis added)). The Court may judicial notice of its files.

^{30/} *S. Texas Mun. L. & Gov. Risk Pool v. City of Hidalgo*, No. 13-19-00096- CV, 2020 Tex. App. LEXIS 2093, 2020 WL 1181251 (Tex. App.--Corpus Christi-Edinburgh Mar. 12, 2020, no pet.).

^{31/} App. 297, 299, 335.

^{32/} *S. id.*

^{33/} App. 613, 721-722, 724-726. App. 346 (Admitting that "Plaintiff named Mark Barber, a qualified estimator who previously prepared an estimate of the Property's storm-covered damages, as its designated"); App. 486 (same).

a "disinterested" appraiser.^{34/}

Here, however, both the City and the Risk Pool concluded that appraisal would be more expedient and economical if they could use their former adjusters as appraisers and they agreed to do so.^{35/} The City and Risk Pool expressly agreed that each could use its original inspector as its appraiser (Appraiser Barber for the City and Appraiser Berryhill for the Risk Pool) and the City and the Risk Pool also both agreed to appoint Randall Taylor as the appraisal umpire:^{36/}

I understand from our email exchanges that Plaintiff the City of Hidalgo, Texas (the "City") and Defendant Texas Municipal League Intergovernmental Risk Pool ("Pool") (collectively, the "Parties") agree that they will conduct an appraisal per the terms of the Property Coverage Document of the losses alleged in the referenced lawsuit (the "Appraisal") and they further agree that:

1. the Parties may use their original inspectors as their party-appointed appraisers in the Appraisal (Mark Barber - City & Al Berryhill – Pool) (the "Appraisers");
2. the Parties select Randall Taylor of West Fire Restoration, 3737 Brinkman, Houston, Texas 77018 as the Appraisal umpire (the "Umpire");

Id. from App. 335 (Rule 11) (emphasis added).

On July 16, 2020, Umpire Taylor and Appraiser Berryhill signed and issued the "Award".^{37/} The Award determined the amount of the City's ACV/RCV loss to

^{34/} *S. Und rwrit rs v. Bro k*, 109 Tex. 425, 211 S.W. 779, 780-81 (Tex. 1919); *s a so T x. Farm Bur au Cas. Tns. Co. v. Samp y*, No. 07-13-00151-CV, 2015 Tex. App. LEXIS 5280, at *12, 2015 WL 3463028 (Tex. App.--Amarillo May 26, 2015, pet. denied).

^{35/}

^{36/} App. 297, 299, 335.

^{37/} App. 297, 301, 303-326.

be \$480,391.66 and \$648,998.29, respectively, *b for* taking into account prior payments by the Risk Pool and a deductible: ^{38/}

	REPLACEMENT COST	DEPRECIATION	ACV-AMT OF LOSS
Building	\$648,998.29	\$168,606.63	\$480,391.66
TOTAL AMT LOSS	\$648,998.29	\$168,606.63	\$480,391.66

Tmag from App. 301 (Award)

On July 23, 2020, the Risk Pool tendered a \$194,224.85 check to the City in full payment of the ACV Award - less the Risk Pool's prior Loss payment (\$283,66.81) and applicable deductible (\$2,500.00).^{39/}

F. THE RISK POOL'S MOTION FOR SUMMARY JUDGMENT.

After paying the Award, the Risk Pool filed a traditional summary judgment motion on August 12, 2020, asserting the following grounds: (1) the Risk Pool has paid the City's claim in full per the terms of the contractual appraisal provision; (2) the City is estopped from pursuing its breach of contract claim against the Risk Pool; (1) the Risk Pool has not breached the contract; (4) the City has no contract damages; and (5) the City has released its contract claim, all as a matter of law.^{40/} The court

^{38/} *Td.*

^{39/} App.170-173, 218, 273, 297, 328-330, 485.

^{40/} App.202-330. The Risk Pool's summary judgement motion also contained one no-evidence ground: "Although the Appraisal Award alternatively determined the RCV amount of the City's loss, the Risk Pool has no contractual obligation to pay RCV benefits *un ss* the City repaired or replaced its damaged property within two years after its June 1, 2016 loss. Because no evidence exists that the City timely made any such repairs in an amount greater than the amount already paid, the Risk Pool is entitled to a no-evidence summary judgment with respect

heard the Risk Pool's motion for summary judgment on September 23, 2020.^{41/} Seven days before that hearing, the City responded to the Pool's motion and asserted a cross-motion to vacate the Award.

G. THE CITY'S RESPONSE & MOTION TO VACATE THE APPRAISAL AWARD.

The City's September 16, 2020 response not only argued that the court should deny the Risk Pool's motion, it also contended that the court should vacate the Award.^{42/} The City's dual arguments implicated different burdens of proof, different procedural obligations, and properly only could have resulted in different relief.

First, the City purported to **respond** to the Risk Pool's summary judgment motion.^{43/} Because the existence and payment of the Award were undisputed, the only way the City could avoid summary judgment was to raise a material disputed fact issue on a recognized ground to set aside an appraisal award. *S. Cantu v. S. Tns. Co.*, 03-14-00533-CV, 2015 WL 5096858, at *4 (Tex. App.--Austin Aug. 25, 2015, no pet.). In the summary judgment context, the City was entitled to the familiar presumptions and the lowered burdens of proof that favor a non-movant. *Nixon v. Mr. Prop rty Manag m nt*, 690 S.W.2d 546, 548 (Tex. 1985). If the City raised a triable issue of fact regarding the enforceability of the Award, then the Risk

to the City's claim for RCV benefits." App.202, 210-211. Because the trial court's ruling on this ground is not relevant to the order vacating the Appraisal Award, it is not addressed here.

^{41/} App.199-200.

^{42/} App.21-198.

^{43/} *Td.*

Pool's summary judgment should be denied and any disputed material fact issue about the enforceability of the Award should be tried to a jury. Here, the City argued that it had "**create[d] a genuine issue of material fact** regarding the disinterestedness and impartiality of Umpire Taylor and the appraisal process," and for that reason, "[t]he issue being properly raised, the question as to the competency or disinterestedness of an appraiser or umpire is **primarily for the jury.**" ^{44/}

Second, the City asserted a **cross-motion** that it labeled a "Motion To Vacate Appraisal Award." ^{45/} In its cross-motion, the City requested that the trial court summarily vacate the Award, without affording the Risk Pool the right to a jury trial on the issue of the Award's enforceability. ^{46/} The City did not discuss or even mention: (1) how the court could grant the City's cross motion when the City had no pleadings on file seeking the relief requested; (2) the City's burden of proof to conclusively prove any such right to relief; or (3) how, over the Risk Pool's objection, ^{47/} the trial court could ignore the procedural rights which Texas law accords the Risk Pool in its role as a non-movant, responding to the City's misnamed cross-motion for summary judgment. ^{48/}

^{44/} App. 30-31 (emphasis added)(citing *Fish v. Trans. Ont. Tns. Co.*, 365 S.W.2d 186, 190 (Tex. Civ. App.--Houston 1962, writ ref'd)).

^{45/} *Id.*

^{46/} *Id.*

^{47/} App.3-20.

^{48/} *See generally* App.21-198.

The trial court denied the Risk Pool's summary judgment motion and then abused its discretion, by granting the City's "Motion to Vacate Appraisal Award," and summarily ordering "that the appraisal award set and signed by Umpire Randall Taylor and Appraiser Al Berryhill on July 16, 2020 be vacated."^{49/}

V.
SUMMARY OF THE ARGUMENT

Texas law accords great deference to the contractual appraisal process and resulting appraisal awards. When an appraisal has occurred, Texas courts are instructed to indulge every reasonable presumption to sustain an appraisal award. The burden to set aside an award rests on the opponent, and only three grounds exist for disregarding the award: (1) when the award was made without authority; (2) when the award was made as a result of fraud, accident, or mistake; or (3) when the award was not in compliance with the requirements of the policy.

Here, Respondent clearly abused its discretion when it vacated the Appraisal Award because:

1. The City did not plead any ground to vacate the Appraisal Award.
2. The Appraisal Panel Did Not Exceed the Scope of its Authority by "Investigating Causation."
3. No Evidence Exists that the Appraisal Award Contained an Improper "Discount for Causation."

^{49/} App.1-2.

4. The Claim of Bias by Umpire Taylor and Appraiser Berryhill is Legally and Factually Unsupportable.
5. The Appraisal Award is Binding and Must be Given an Estoppel Effect.
6. The City Did Not Conclusively Prove a Basis to Vacate the Appraisal Award and Did Not Comply With Texas Procedural Law.

The Risk Pool has no adequate appellate remedy and mandamus relief therefore is warranted.

VI. ARGUMENT

A. STANDARD OF REVIEW.

Mandamus relief is available to correct a clear abuse of discretion when no adequate appellate remedy exists. *Tn r Odyss y H a th ar*, *Tn .*, 310 S.W.3d 419, 422 (Tex. 2010) (orig. proceeding) (*p r uriam*). A trial court clearly abuses its discretion when its action is "so arbitrary and unreasonable as to amount to a clear and prejudicial error of law." *Tn r Christus Santa Rosa H a th Sys.*, 492 S.W.3d 276, 279 (Tex. 2016) (internal citations omitted). While deference is paid to a trial court's factual determinations, its legal determinations are reviewed *d novo*. *Tn r Longoria*, 470 S.W.3d 616, 631 (Tex. App.--Houston [14th Dist.] 2015, orig.proceeding); *Ro ha v. Marks Transp.*, *Tn .*, 512 S.W.3d 529, 535 (Tex. App.-- Houston [1st Dist.] 2016, no pet.).

B. THE RESPONDENT CLEARLY ABUSED ITS DISCRETION BY GRANTING THE "CITY'S MOTION TO VACATE APPRAISAL AWARD."

"Appraisal awards made under the provisions of an insurance contract are

binding and enforceable, and a court will indulge every reasonable presumption to sustain an appraisal award." *Tn r Auto C ub*, 580 S.W.3d at 855 (quoting *Lundstrom v. Unit d S rvs. Auto Ass'n-CTC*, 192 S.W.3d 78, 87 (Tex. App.--Houston [14th Dist.] 2006, pet. denied). **"Because a court indulges every reasonable presumption to sustain an appraisal award, the burden of proof is on the party seeking to avoid the award."** *Td.* (emphasis added). "There are, however, three situations in which the results of an otherwise binding appraisal may be disregarded:

(1) when the award was made without authority; (2) when the award was made as a result of fraud, accident, or mistake; or (3) when the award was not in compliance with the requirements of the policy." *Td.* (citing *Fran o v. Savoni Mut. Fir Tns.*, 154 S.W.3d 777, 786 (Tex. App.--Houston [14th Dist.] 2004, no pet.).

In its "Motion To Vacate Appraisal Award," the City requested that the trial court summarily disregard the Award and deny the Risk Pool its right to a jury trial on the issue of the Award's enforceability. The trial court clearly abused its discretion by vacating the Award, because: (1) the City lacked pleadings seeking that relief; (2) the City did not overcome the presumption in favor of sustaining the Award and did not conclusively prove any recognized ground right to vacate the Award, pre-trial; and (3) the court deprived the Risk Pool of its jury trial right to determine the enforceability of the Award.

1. **Respondent Abused its Discretion by Vacating the Appraisal Award, Because The City Did Not Plead Any Ground to Vacate the Award.**

a. *The Award was presumptively valid and binding.*

Because it was undisputed that Umpire Taylor and Appraiser Berryhill both signed the July 16, 2020 Award, the record before the trial court conclusively established that the Award is presumptively valid and binding. *S. , g., Cantu v. S. Tns. Co.*, 03-14-00533-CV, 2015 Tex. App. LEXIS 8847, 2015 WL 5096858, at *4 (Tex. App.--Austin Aug. 25, 2015, no pet.) ("Southern offered as summary judgment evidence the appraisal award signed by the umpire and one appraiser. Thus, Southern met its summary judgment burden to establish that the appraisal was valid and binding, and the burden shifted to [the insured] to create a fact issue as to one of the three grounds for setting aside an appraisal award."). Where, as here, a contractual appraisal award has been made, it is binding and enforceable. *Br sh ars v. Stat Farm Loyds*, 155 S.W.3d 340, 344 (Tex. App.--Corpus Christi 2004, pet. denied) ("Every reasonable presumption will be indulged to sustain an appraisal decision.").

b. *Payment of the Award stopped the City.*

The purpose of an appraisal award is to establish the amount of a covered loss, and "estop one party from contesting the issue of the value of damages in a suit on the insurance contract." *Td.* at 343. Tender of the full amount awarded pursuant to a contractual appraisal clause "is all that is required to estop the insured

from raising a breach of contract claim." *Nat'l S. Fir & Cas. Co. v. Hurst*, 523 S.W.3d 840, 845 (Tex. App.--Houston [14th Dist.] 2017, pet. denied)(citing *Brown v. Unit d S rvs. Auto. Ass'n*, No. 13-03-758-CV, 2005 Tex. App. LEXIS 1987, at *2 (Tex. App.--Corpus Christi Mar. 17, 2005, pet. denied)).

. *Th City had th dua burd n to p ad and prov its avoidan d f ns . Tt did not do so.*

Because the fact of the Award and its payment were both undisputed, to avoid the dispositive effects of the Award, the City had the dual burden to both plead and prove an avoidance defense to its enforcement.^{50/} Here, the City did not plead any ground to avoid the binding effect of the Award and it cannot rely upon any unpled grounds to avoid the Award.^{51/}

d. *Th Risk Poo was d ni d fair noti of th r i f th City sought.*

Furthermore, a defendant must have fair notice of the relief sought by a plaintiff. *Bind r v. Jo* , 193 S.W.3d 29, 32 (Tex. App.-Houston [1st Dist.] 2006, no pet.). "Thus, a party may not be granted relief in the absence of pleadings to support that relief." *Cunningham v. Parkda Bank*, 660 S.W.2d 810, 813 (Tex.

^{50/} *S Cantu*, 2015 Tex. App. LEXIS 8847 at *4; *Roya Typ writ r Co. v. V sta* , 572 S.W.2d 377, 378-79 (Tex. Civ. App.--Houston [14th Dist.] 1978, writ ref'd n.r.e.).

^{51/} *S id.; s a so S urity omm Group, Tn . v. Bro ai* , No. 14-09-00295-CV, 2010 WL 5514333 , 2010 Tex. App. LEXIS 10190 *37 (Tex. App.--Houston [14th Dist.] Dec. 28, 2010, pet. denied)(mem. op.) (holding that plaintiff could not rely upon an unpled ratification defense, noting that "in order for a plaintiff to rely on an affirmative defense, or 'matter in avoidance,' to defeat a defendant's affirmative defense, the plaintiff must allege it in a petition or supplemental petition.").

1983) (citing TEX. R. CIV. P. 301). The City did not afford the City any such fair notice.

The Risk Pool objected below that nothing in the City's pleadings supported, or afforded the Risk Pool with fair notice of, the relief the City sought for the first time in its Motion to Vacate Appraisal Award - which was a pre-trial request for a summary declaratory judgment invalidating the Award.^{52/} For that reason alone, because the City's live pleadings did not seek to vacate the Award, the trial court clearly abused its discretion by granting the City's Motion. *S id.; s a so Roy a Typ writ r*, 572 S.W.2d at 378-79 ("Rule 94 requires that '(i)n pleading to a preceding pleading, a party shall set forth affirmatively . any . matter constituting an avoidance or affirmative defense.' The rule itself is not limited to 'defendants' but applies to all parties. When a plaintiff desires to rely on an affirmative matter in avoidance of a defense pled in the defendant's answer, he must allege it in a supplemental petition, unless it is already put in issue by the petition. Rule 94 thus imposes on the plaintiff the requirement that he plead any matter in avoidance on which he intends to rely.").

2. Respondent Abused its Discretion by Vacating the Appraisal Award Because The Appraisal Panel Did Not Exceed the Scope of its Appraisal Authority by "Investigating Causation."

The Rule 11 Agreement between the City and the Risk Pool, the parties'

^{52/} App.4, 5, 18-19, 481-492.

pleadings, and the Property Coverage Documents defined the scope of the Appraisal.^{53/} Specifically, the Parties agreed to appraise the City's losses as then alleged in this lawsuit - damage to the Arena sustained from a May 31, 2016 storm.^{54/}

The City conclusively admitted below that the Arena had sustained pre-existing damage in an earlier 2012 storm, and that the City had submitted a previous self-insurance claim to the Risk Pool for that damage.^{55/} Despite those admissions, the City claimed below that the appraisers could not properly consider whether any of the damage that they were charged to appraise pre-dated the May 2016 storm, incorrectly contending that "appraisers are authorized to determine the amount of the loss only, not what caused or did not cause the loss." ^{56/} As the City put it:

- The Risk Pool's appraiser, "Berryhill lowered his estimated valuation based on wind and hail damage that he incorrectly asserts was caused in 2012;"
- "[Berryhill] repeatedly advocated to Umpire Taylor that the appraisal needed to be lowered based on an incorrect assumption the damage caused in 2016 was caused in 2012;" and
- In light of the foregoing "facts," the City argued that "the scope of Berryhill's and Umpire Taylor's estimates and evaluations exceeded the

^{53/} App. 335.

^{54/} App. 335 (agreeing to "conduct an appraisal per the terms of the Property Coverage Document of the losses alleged in the referenced lawsuit"); App.484 (Petition at -, 12-15 (alleging 2016 storm loss to Arena)).

^{55/} App.167-168 (City Manager Affidavit admitting "damage to the arena that occurred in 2012"); App.163-165 (Barber Affidavit testifying that, "there was only one document to support 2012 storm damage limited exclusively to the arena's roof."); App.30 (City's admits that, "[i]n 2012, wind and hailstorms damaged the roof of the Arena.").

^{56/} App.28.

scope of their duties by wrongfully taking causation into consideration and the appraisal award should be set aside"^{57/}

To the extent that Respondent accepted the City's argument, it clearly abused its discretion, because that argument is legally and factually fatally flawed. The Texas Supreme Court has expressly rejected the contention that an appraisal panel cannot properly consider the existence of pre-existing conditions and damage caused by such pre-existing conditions. *Stat Farm L oyds v. Johnson*, 290 S.W.3d 886 (Tex. 2009).

The City based its argument below on a 1996 appellate court opinion that the Texas Supreme Court later rejected. Specifically, the City relied upon *W s v. Am. Stat s Pr frr d Tns. Co.*, 919 S.W.2d 679, 684 (Tex. App.--Dallas 1996, writdenied) for the proposition that appraisers lack authority to consider pre-existing damages and conditions.^{58/} But the *W s* holding was rejected by the Texas Supreme Court in *Stat Farm L oyds v. Johnson*, 290 S.W.3d 886 (Tex. 2009) - a fact recently discussed in *Tn r Auto C ub*, 580 S.W.3d at 857, where an insured sought to set aside an appraisal award of \$0, arguing as the City did here that "appraisers lack authority to determine whether the damages pre-existed the storm or were caused by pre-existing conditions." *Td.* at 855-6. Rejecting the same argument the City made here, the Court of Appeals correctly held that:

^{57/} App.29.

^{58/} App.28.

- "This argument was rejected by the Texas Supreme Court in *Stat Farm L oyds v. Johnson*, 290 S.W.3d 886 (Tex. 2009)." *Td.* at 856
- "*Johnson* is clear that when different types of damage occur to different items of property, appraisers have authority to consider causation and to separate loss due to a covered event from a property's pre-existing condition." *Td.*
- "Federal courts have likewise interpreted *Johnson* as holding that appraisers act within their authority when they distinguish damage caused by pre-existing conditions from damage caused by the storm." *Td.* at 857 (citing *TMM Tnv, Ltd. v. Ohio Cas. Tns. Co.*, 730 F.3d 466 (5th Cir. 2013)).

In short, even if the City had adduced evidence that the appraisers reduced the amount of the Award to some extent to take into account damage caused by or resulting from pre-existing conditions (and there is no such evidence in the record), the consideration of any such pre-existing conditions or damage would not only have been appropriate, it was required under *Stat Farm L oyds v. Johnson*, 290 S.W.3d 886 (Tex. 2009) and its progeny.^{59/} As was true in *Johnson*, the uncontroverted facts here "foreclose setting aside the appraisal award- [because] it was entirely appropriate for the appraisers to consider whether damage was caused by these pre-existing conditions." *TMM Tnv.*, 730 F.3d at 475.

^{59/} *Johnson*, 290 S.W.3d at 892-93 ("Any appraisal necessarily includes some causation element, because setting the 'amount of loss' requires appraisers to decide between damages for which coverage is claimed from damages caused by everything else.").

3. Respondent Abused its Discretion by Vacating the Appraisal Award Because There is No Evidence That the Appraisal Award Reflects an Improper "Discount for Causation."

After first incorrectly claiming that the appraisers had no authority to take into account pre-existing damage/conditions, the City then assumed *argu ndo* that the appraisers had such authority, but asserted, again without any supporting evidence, that because the parties' respective pre-appraisal loss estimates differed from one another, and the Appraisal Award is lower than the amount the City sought, the appraiser and umpire had somehow acted improperly.^{60/}

But the City did not raise an issue of material fact nor conclusively prove any such claim based upon the unauthenticated assertions and allegations of its counsel.^{61/} The City ignored and adduced no evidence to satisfy the standard that

^{60/} App. 29-30. In its Response at -,27, n. 23 (App.29-30), the City makes false and unsubstantiated assertions about the pre-existing 2012 storm damage and the documents that reflect that damage. The City's claim that "Hidalgo had no knowledge of a 2012 claim" is unsupported by any competent summary judgment evidence. The unsworn statements of its counsel are not summary judgment evidence, *ugh rty v. Ja obs*, 187 S.W.3d 607, 619 (Tex. App.--Houston [14th Dist.] 2006, no pet.), and the falsity of those statements is established by the City's own affidavits and admissions. *S* App.167 (City Manager Affidavit admitting "damage to the arena that occurred in 2012" and the filing of a claim in connection therewith). The City's claim that "both Berryhill and Risk Pool's counsel refused to provide any evidence of 2012 damage until after the appraisal was complete" is likewise incorrect and, in any event, unsupported by any competent summary judgment evidence. App.8-9.

^{61/} The unsworn statements of counsel are not competent summary judgment evidence. *ugh rty v. Ja obs*, 187 S.W.3d 607, 619 (Tex. App.--Houston [14th Dist.] 2006, no pet.); *Radiant Fin., Tn . v. Bagby*, No. 05-16-00268-CV, 2017 Tex. App. LEXIS 6346, at *16 (Tex. App.--Dallas July 10, 2017, pet denied) ("Thus, to conclude the nineteen investors would have invested with Radiant instead of Paladin, we would be required to stack assumption upon assumption, which we will not do"). Furthermore, "[e]very reasonable presumption will be indulged to sustain an appraisal decision." *Br sh ars*, 155 S.W.3d at 344.

Texas law imposes on courts who are asked to enforce appraisal awards: Texas courts may only disregard appraisal awards where a party has plead and proved that the award was: (1) **made without authority**; (2) **the result of fraud, accident, or mistake**,^{62/} or (3) not made in **substantial compliance** with the terms of the contract. *Franco*, 154 S.W.3d at 786. Here, because the City adduced no competent evidence that the Award was made without authority, the result of fraud, accident or mistake, or not made in substantial compliance with the terms of the parties' contract, it was an abuse of discretion to vacate the Award. *Id.*

4. Respondent Abused its Discretion by Vacating the Appraisal Award Because the Claim of Bias by Umpire Taylor and Appraiser Berryhill is Legally and Factually Unsupportable.

The appraisal clause provides that a party appraiser must be "competent and disinterested."^{63/} It is undisputed that Appraiser Barber and Appraiser Berryhill were both involved in preparing pre-suit estimates of the City's 2016 Arena storm losses. Absent the parties' agreement, neither therefore might have been considered to be a "disinterested" appraiser. *See Underwriters*, 211 S.W. at 780-81; *see also Tex.*

^{62/} A "court may set aside an award on the ground of mistake only upon a showing that the award does not speak the intention of the appraisers." *Foyd Cir Partners, LLC v. Republic Loyds*, No. 05-16-00224-CV, 2017 WL 3124469, 2017 Tex. App. LEXIS 6906, at *28 (Tex. App.--Dallas July 24, 2017, pet. denied). "'Mistake' in this context has a narrowly defined meaning; an actionable mistake is one that caused an award to operate in a way the appraisers did not intend." *Id.* Because the City submitted no evidence to Respondent that the award did *not* reflect the intent of Umpire Taylor and Appraiser Berryhill, the City did not raise the issue of and failed to prove mistake. *See id.*

^{63/} App.237.

Farm Bureau, 2015 Tex. App. LEXIS 5280, at *12, 2015 WL 3463028. Here, however, the City and Risk Pool both expressly agreed that each could use an original inspector as its appraiser (Appraiser Barber for the City and Appraiser Berryhill for the Risk Pool) and the City and the Risk Pool both agreed to appoint Randall Taylor as the appraisal umpire. ^{64/} Therefore, after-the-fact statements in the City's Motion to Vacate Appraisal Award about its "serious concerns" that Risk Pool's appraiser might show "unacceptable bias" are legally irrelevant. *See, e.g.,* App.25, 164. The City's voluntary pre-appraisal agreement that the Risk Pool could use a pre-appraisal inspector (and the Risk Pool's corresponding agreement that the City could do the same) waived any such objection as a matter of law. *Massachusetts Bonding & Ins. Co. v. Orkin Exterminating Co.*, 416 S.W.2d 396, 401 (Tex. 1967)(waiver is an intentional relinquishment of or conduct inconsistent with a claim to a known right).

The City's purported similar "concerns" about Berryhill's "bias and partiality" because he vigorously disagreed with the City's appraiser's assessment are equally irrelevant.^{65/} Unless the parties disagree about the amount of a compensable loss under the Property Coverage Document, there is no right to an appraisal. ^{66/} And the City's complaint that the Umpire appeared to agree with the Risk Pool's appraiser's

^{64/} App.335.

^{65/} App.32.

^{66/} App.236-237.

views more than with the City's appraiser's views is likewise irrelevant.^{67/} The appraisal umpire's only role is to resolve disagreements between party appraisers.^{68/} The fact that an umpire ultimately may resolve appraiser disagreements by adopting the position of one rather than the other is an integral part of the appraisal process. It is no evidence of any umpire bias or interest.

The City also makes several references to a purportedly " *x part* " conversation that supposedly occurred between Berryhill and Taylor in plain view in the City parking lot immediately after the appraisal inspection. At most, the City's "evidence" establishes that: (i) such an open and obvious conversation apparently was easily observed by the City representatives; (ii) neither City witness made any contemporaneous attempt to participate in or determine the contents of the conversation; and (iii) and neither has any personal knowledge that anything even remotely pertinent to the appraisal was discussed. App. 163-168. After-the-fact complaints about this publicly-seen but unheard conversation are likewise no evidence from which a reasonable person could logically infer that either the appraiser or umpire engaged in any fraudulent conduct sufficient to impugn the viability of the Appraisal Award. This is especially so in light of Texas law holding

^{67/} App.25.

^{68/} *Td.; Fis h v. Trans on. Tns. Co.*, 356 S.W.2d 186, 190 (Tex. Civ. App.--Houston 1962, writ ref'd n.r.e.) ("An umpire may act to settle differences between appraisers respecting the amount of a loss, when such differences become known to him.").

that "[e]very reasonable presumption will be indulged to sustain an appraisal decision." *Brishars*, 155 S.W.3d at 344.

Finally, the City argues that because the Appraisal Award was for an amount that is less than the amount for which the City's appraiser advocated that, without more, creates some issue about the umpire's "disinterestedness, impartiality, and unbiasedness [sic]."^{69/} The City purports to rely upon *Fish v. Transon. Tns. Co.*, 356 S.W.2d 186 (Tex. Civ. App.--Houston 1962, writ ref'd n.r.e.) to support this argument.^{70/} But *Fish* "articulate[d] the rule that a finding of disparity, even gross disparity, between an appraisal award and the cost of repair, *annot support a finding of bias or partiality without additional evidence*." *Hennsly v. Vanguard Tns. Co.*, 895 S.W.2d 794, 798 (Tex. App.--Amarillo 1995)(emphasis added) (discussing the *Fish* opinion). Here no such additional evidence of bias or partiality exists. *S Hennsly*, 895 S.W.2d at 798 (distinguishing *Fish* because "in a summary judgment proceeding such as this," evidence of a gross disparity between the appraisal award and the cost of repair "cannot support a finding of bias or partiality

^{69/} App.31. The Appraisal Award determined that the City's ACV/RCV losses were \$480,391.66 and \$648,998.29, respectively. The amount awarded was: (a) significantly **less** than the \$7,417,072 loss estimate that Barber prepared for the City on a pre-suit basis in late 2017 (the "Barber Estimate" -copy found at App 132-128); and (b) roughly three times **more** than the \$234,601 loss estimate that Berryhill prepared for the Risk Pool on a pre-suit basis in early 2018 (the "Berryhill Estimate" -- copy found at App.103-131). The City also misleadingly refers to these pre-suit estimates prepared in 2018 as "appraisals." They were not appraisals.

^{70/} *Id.*

without additional evidence," and "[w]ithout such a finding, appellants cannot avoid appellees' affirmative defense of estoppel and, therefore, cannot recover on their contract claim as a matter of law.").

Moreover, the City ignores the fact that under more recent appraisal precedent, the amount of appraisers' pre-award loss estimates "no longer matter," once the appraisal process is complete. *S Garcia v. Stat Farm Loyds*, 514 S.W.3d 257, 268-69 (Tex. App.--San Antonio 2016, pet denied) ("We hold that, [] the damage estimates prepared by Garcia's adjuster and by State Farm's adjuster no longer mattered once the appraisal process was complete. . . . The fact that the appraisers' findings differed from the findings of Garcia's and State Farm's adjusters is not evidence-standing alone-that the appraisers acted outside the scope of their authority. Therefore, we conclude Garcia did not carry her burden to raise a fact issue on whether the appraisers exceeded their authority.").

5. Respondent Abused its Discretion by Vacating the Appraisal Award Because the Award is Binding and Must be Given an Estoppel Effect.

The City earlier acknowledged the binding effect of the appraisal clause in this case:

As recognized by the Texas Supreme Court, appraisals provide a less expensive, more efficient alternative to litigation, as **an appraisal clause "binds the parties"** to have the extent or amount of loss determined in a particular way." [*Stat Farm Loyds v. Johnson*, 290 S.W.3d 886, 895 (Tex. 2009)]; *see also Tn r Univ rsa Und rwrit rs of Tx. Tns. Co.*, 345 S.W.3d 404, 407 (Tex. 2011); *see also Lundstrum v. Unit d S rvs.*

Auto. Ass'n-CTC, 192 S.W.3d 78, 87 (Tex. App.--Houston [14th Dist.] 2006, pet. denied) ("The effect of an appraisal provision is to estop one party from contesting the issue of damages in a suit on the insurance contract, leaving only the question of liability for the court").^{71/}

After it received a binding award for less than what it hoped for, the City attempted to do a complete about-face, and argued that it is not bound by the Award, because the appraisal clause in its contract does not have magic language "indicating that the appraisal is binding." App.34.

As support for this incredible argument, the City attempted to rely upon *Br sh ars v. Stat Farm L oyds*, 155 S.W.3d 340 (Tex. App.--Corpus Christi- Edinburg 2004, pet. denied). In *Br sh ars*, the appraisal clause stated that the decision reached by the appraisers and umpire (a) "will set the amount of the loss," and (b) "shall be binding on you and us." *Id.* at 344 (emphasis added). Like the appraisal provision in *Br sh ars*, the appraisal provision in the Property Coverage Document states that "An award in writing by any two shall determine the amount of loss."^{72/} However, unlike the appraisal provision in *Br sh ars*, the appraisal provision here does not contain language stating that an appraisal award "shall be binding," but it does contain language expressly stating that the Risk Pool's payment of a loss amount "shall constitute a release in full of all liability . . . with respect to

^{71/} App.874 (emphasis added).

^{72/} App.237.

such loss."^{73/} According to the City, the omission of the "shall be binding" language in the appraisal provision means that the Appraisal Award is not binding and does estop the City from contesting the Award. App.34-35. This argument is demonstrably incorrect and, to the extent Respondent relied upon it, it clearly abused its discretion.

First, and foremost, the Texas Supreme Court and various Texas courts of appeal have repeatedly held that appraisal awards issued pursuant to appraisal clauses with the same language as the one at issue here are binding and have an estoppel effect. *S*, .g., *Ortiz v. Stat Farm L oyds*, 589 S.W.3d 127, 129-33 (Tex. 2019) (appraisal award issued under appraisal clause stating only that "Written agreement signed by any two of these three shall set the amount of the loss" is binding - no contract language stating that award "shall be binding"); *Stat Farm L oyds v. Johnson*, 290 S.W.3d 886, 887-88 (Tex. 2009) (same); *Gar ia v. Stat Farm L oyds*, 514 S.W.3d 257, 267 (Tex. App.--San Antonio 2016, pet. denied) (same); *Fran o*, 154 S.W.3d at 780-81 (appraisal award issued under appraisal clause stating only that "An award in writing, so itemized, of any two when filed with this Company, shall determine the amount of actual cash value and loss will set the amount of loss" is binding - no contract language stating that award "shall be binding").

^{73/} App.237.

Second, the City's argument that the Appraisal Award is not binding and does not estop the City from contesting the amount of its compensable damages ignores the complete language in the Property Coverage Document, which expressly provides that Risk Pool's payment of a loss amount determined operates as a contractual "release in full of all liability . . . with respect to such loss;"^{74/} and conclusively establishes both the Risk Pool's payment and release affirmative defenses. The City's claim that a paid Award is not binding ignores the express and unambiguous contract language.

Third, the City is estopped by its own judicial admissions that the appraisal clause and any award issued thereunder are binding and must be given an estoppel effect. *S supra*.

Fourth, the various cases the City below (App.34) either (a) do not disclose or discuss the operative language of the appraisal clauses at issue;^{75/} and (b) none hold that the "shall be binding" language is a prerequisite for an appraisal award to be binding.^{76/}

^{74/} App.237.

^{75/} *Brown ow*, 2005 Tex. App. LEXIS 1987, 2005 WL 608252 at *4 n.1 (concludes that "[t]he insurance policy contains a binding appraisal provision," without disclosing the language of that provision).

^{76/} *Br sh ars*, 155 S.W.3d at 343-4; *Nat' S . Fir & Cas. Co. v. Hurst*, 523 S.W.3d 840, 842 n.1 (Tex. App.--Houston [14th Dist.] 2017, pet. denied).

6. **Respondent Abused Its Discretion by Vacating the Appraisal Award Because the City Did Not Conclusively Prove a Basis to Vacate the Appraisal Award and Did Not Comply With Texas Procedural Law.**

a. *The City did not conclusively prove a basis to vacate the Appraisal Award.*

The City claimed below that the "[c]ircumstances surrounding Umpire Taylor's estimate **create a genuine issue of material fact** regarding the disinterestedness and impartiality of Umpire Taylor and the appraisal process." App.30 (emphasis added). And the City argued that, "[t]he issue being properly raised, the question as to the competency or disinterestedness of an appraiser or umpire is **primarily for the jury.**" App. 30-31 (emphasis added - citing *Fisher v. Transmont. Tns. Co.*, 365 S.W.2d 186, 190 (Tex. Civ. App.--Houston 1962, writ ref'd).

Notwithstanding the City's admission that if material issues of fact exist concerning the enforceability of the Award, those issues are "primarily for the jury," Respondent clearly abused its discretion when it granted the City's "Motion to Vacate Appraisal Award" on the scant record before it, summarily ordered "that the appraisal award set and signed by Umpire Randall Taylor and Appraiser Al Berryhill on July 16, 2020 be vacated," and deprived the Risk Pool of its right to a jury trial on any disputed fact issue. App.1-2.

Moreover, Respondent disregarded well-settled Texas law that, "[b]ecause a court indulges every reasonable presumption to sustain an appraisal award, **the burden of proof is on the party seeking to avoid the award.**" *Tn r Auto C ub*, 580 S.W.3d at 855. *Br sh ars*, 155 S.W.3d at 344 ("Every reasonable presumption will be indulged to sustain an appraisal decision."). In so doing, Respondent clearly abused its discretion by not indulging "every reasonable presumption" in favor of sustaining the Award. *S Br sh ars*, 155 S.W.3d at 344.

b. Th City did not omp y with T xas pro dura aw.

In addition to its failure to accord the Appraisal Award a presumption of validity, Respondent also clearly abused its discretion by ignoring the City's failure to comply with the requirements of Texas Rule of Civil Procedure 166a.

The City's "Motion to Vacate Appraisal Award" was in substance a misnamed and procedurally infirm summary judgment motion. *S , .g., Johnson v. Stat Farm L oyds*, 204 S.W.3d 897, 899 n.1 (Tex. App.--Dallas 2006), *aff'd*, 290 S.W.3d886 (Tex. 2009) (construing a "Motion to Compel Appraisal" as a motion for summary judgment, citing TEX. R. CIV. P. 71. and noting that, "we look to the substance of a pleading to determine its nature, not merely the title given to it."). *S a so Gaddy v. Harris County Juv ni Bd.*, Cause No. 01-88-00663-CV, 1989 Tex. App. LEXIS 319, *4-*5 (Tex. App.--Houston [1st Dist.] Feb. 23, 1989, no writ) ("Under the misnomer of pleading rule, we could construe appellees' motion to

dismiss as a motion for summary judgment. TEX. R. CIV. P. 71. Appellees, however, have not complied with the requirements for maintaining a summary judgment. Appellees did not file any sworn affidavits or other summary judgment proof. Without summary judgment proof, appellees could not establish that there was no genuine issue of fact and that they were entitled to judgment as matter of law. Further, TEX. R. CIV. P. 166a requires parties to file a summary judgment motion and give notice to opposing counsel at least 21 days before a hearing.").

Over the Risk Pool's specific objection,^{77/} Respondent ignored the City's failure to comply with the requirements in Rule 166a:

- **The movant must file and serve its motion, sworn affidavits and other competent summary judgment evidence at least 21 days before its summary judgment hearing (TEX. R. CIV. P. 166a(c), (f)).** Here, Respondent granted the City's untimely "Motion to Vacate Appraisal Award" and apparently relied upon "evidence" filed and served only 7 days before the September 2020 hearing.
- **The movant has the burden to adduce competent summary judgment evidence "showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law." (*Nixon v. Mr. Property Management*, 690 S.W.2d 546, 548 (Tex. 1985)).** Here, the City did not adduce any competent summary judgment evidence which conclusively proved the essential elements of the City's avoidance claims.
- **The non-movant is entitled to the presumption that all "evidence favorable to the non-movant will be taken as true," and "[e]very reasonable inference must be indulged in favor of the non-movant and any doubts resolved in its favor." *Nixon*, 690 S.W.2d at 548-49.** Here, the Respondent ignored these procedural presumptions and the additional substantive requirement that "every reasonable presumption will be

^{77/} App.18-19.

indulged to sustain an appraisal award." *Franco*, 154 S.W.3d at 786.

In summary, the City's Motion to Vacate Appraisal Award did not comply with Texas procedural law, violated the Risk Pool's due process rights, and did not satisfy the City's burden to conclusively prove as a matter of law that it had a right to obtain pretrial summary declaratory relief and deny the Risk Pool its right to a jury trial on any disputed fact issue. For these reasons, Respondent clearly abused its discretion when it granted the City's Motion to Vacate Appraisal Award.

C. NO ADEQUATE REMEDY BY APPEAL.

In *Tenn. Auto Club*, the Fourteenth Court of Appeals stated succinctly why a party has no adequate appellate remedy when a trial court has abused its discretion in failing to enforce an appraisal award:

The Texas Supreme Court has held that a trial court's abuse of discretion in failing to enforce an appraisal clause cannot be adequately remedied by appeal. []. The supreme court explained: "*Tenn. Walker v. Parker*, this Court reaffirmed the principle that 'an appeal will not be an adequate remedy where the party's ability to present a viable claim or defense at trial is vitiated or severely compromised by the trial court's discovery error.' A refusal to enforce the appraisal process here will prevent the defendants from obtaining the independent valuations that could counter at least the plaintiffs' breach of contract claim. We conclude that the failure to order the appraisals will vitiate or severely compromise the defendants' defenses to those claims." *Id.* Similarly, our court has recognized that denial of an appraisal vitiates or severely compromises the defendant's ability to defend a breach-of-contract claim and that the relator therefore does not have an adequate remedy by appeal for such denial. [] We see no material difference between a trial court's improper refusal to enforce an appraisal clause and a trial court's improper setting aside an appraisal award—they both may vitiate or severely comprise [sic] the defendant's ability to defend

against the plaintiff's breach of contract claim.

580 S.W.3d at 857 (citations omitted). If this Court does not issue a writ of mandamus to set aside Respondent's order vacating the Appraisal Award, it will vitiate and severely compromise the Risk Pool's ability to defend the City's breach of contract claim. *S id.*

VII. **PRAYER**

Relator Texas Municipal League Intergovernmental Risk Pool respectfully requests that the Court issue a writ of mandamus requiring Respondent to withdraw or vacate the portions of his September 30, 2020 Order granting City's "Motion to Vacate Appraisal Award," and grant Relator such further relief, at law or in equity, to which Relator may be justly and equitably entitled.

Respectfully submitted,

By: /s/ Barry Abrams

Barry Abrams

State Bar No. 00822700

babrams@blankrome.com

Jack W. Higdon

State Bar No. 24007360

jhigdon@blankrome.com

BLANK ROME LLP

717 Texas Avenue, Suite 1400

Houston, TX 77002-2727

(713) 228-6601

(713) 228-6605 (Fax)

ATTORNEYS FOR RELATOR
THE TEXAS MUNICIPAL
LEAGUE INTERGOVERNMENTAL
RISK POOL

CERTIFICATION

I hereby certify in accordance with TEX. R. APP. P. 52.3(j) that I have reviewed the foregoing Petition for Writ of Mandamus and have concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record.

/s/ Barry Abrams
Barry Abrams

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the typeface, type-volume and page limitations of TEX R. APP. P. 9.4(e),(i)(2)(B). This brief consists of 8,223 words contained on 35 pages, excluding the parts of the brief excepted by TEX. R. APP. P. 9.4(i)(1).

/s/ Barry Abrams
Barry Abrams

CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2020, a copy of Relator's Petition for Writ of Mandamus was served on Respondent and counsel for all parties pursuant to the Texas Rules of Appellate Procedure as indicated below:

Via Certified Mail, Return Receipt Requested:

Honorable Roberto "Bobby" Flores
139th District Court
100 N. Closner
Edinburg, Texas 78539

Via E-Service & Certified Mail, Return Receipt Requested:

Mr. Martin J. Phipps
Mr. J. Gabriel Ortiz
Mr. Charles E. Hardy, Jr.
Phipps Mayes, PLLC
102 9th Street
San Antonio, TX 78215
Fax: (210) 340-9899
mhipps@phippsmayes.com
gortiz@phippsmayes.com
chardy@phippsmayes.com

/s/ Barry Abrams
Barry Abrams

No.

In the Thirteenth Court of Appeals

TN RE THE TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL

R ator

Original Proceeding from the 139th Judicial District Court of
Hidalgo County, Texas; Cause No. C-1896-18-C
The Honorable Roberto "Bobby" Flores, Judge Presiding

**APPENDIX IN SUPPORT OF
RELATOR'S PETITION FOR WRIT OF MANDAMUS**

Barry Abrams
State Bar No. 00822700
babrams@blankrome.com

Jack W. Higdon
State Bar No. 24007360
jhigdon@blankrome.com

BLANK ROME LLP
717 Texas Avenue, Suite 1400
Houston, TX 77002-2727
(713) 228-6601
(713) 228-6605 (Fax)

**ATTORNEYS FOR RELATOR
THE TEXAS MUNICIPAL LEAGUE
INTERGOVERNMENTAL RISK POOL**

ORAL ARGUMENT REQUESTED

000323

TABLE OF CONTENTS

The following are documents material to the claim for relief from the underlying proceeding (no testimony was adduced in connection with the matter complained of):

Date	Filing	Pages
9/30/2020	Order Denying Texas Municipal League Intergovernmental Risk Pool's Motion For Summary Judgment And Granting City Of Hidalgo's Motion To Vacate Appraisal Award	1-2
9/22/2020	Texas Municipal League Intergovernmental Risk Pool's Reply In Support of Its Motion for Summary Judgment and Response to the City's Motion to Vacate Appraisal Award	3-20
9/16/2020	City of Hidalgo's Response to Texas Municipal League Intergovernmental Risk Pool's Motion for Summary Judgment and City of Hidalgo's Motion to Vacate Appraisal Award	21-198
8/20/2020	Order Setting Oral Hearing	199-201
8/12/2020	Texas Municipal League Intergovernmental Risk Pool's Motion for Summary Judgment	202-330
8/12/2020	Supplemental Answer of Texas Municipal League Intergovernmental Risk Pool	331-334
6/16/2020	Rule 11 Regarding Agreement to Conduct an Appraisal	335
2/26/2019	Order Granting Plaintiff's Motion to Compel Appraisal and Stay Proceedings Pending Appraisal	336
9/26/2018	Texas Municipal League Intergovernmental Risk Pool's Objection and Motion to Strike the City's Untimely Filed Plaintiff's Second Amended Petition	337-340
9/26/2018	Plaintiff's Verified Response to Defendant's Amended Plea to the Jurisdiction	341-480
9/26/2018	Plaintiff's Second Amended Petition	481-492
9/26/2018	Plaintiff's Verified Reply in Support of Its Motion to Compel Appraisal and Stay Proceedings Pending Appraisal	493-598
9/19/2018	Texas Municipal League Intergovernmental Risk Pool's Objection and Plea to the Jurisdiction in Response to Plaintiff's Verified Motion to Compel Appraisal and Stay Proceedings Pending Appraisal	599-734
9/19/2018	Amended Plea to the Jurisdiction of The Texas Municipal League Intergovernmental Risk Pool's	735-868
8/8/2018	Plaintiff's Verified Motion to Compel Appraisal and Stay Proceedings Pending Appraisal	869-959

8/6/2018	Plaintiff's Verified Response to Defendant's Partial Plea to the Jurisdiction	960-1072
6/25/2018	Partial Plea to the Jurisdiction and, Subject to that Plea, Original Answer of Texas Municipal League Intergovernmental Risk Pool's	1073-1191
5/23/2018	Plaintiff's Original Petition	1192-1201



PROPERTY

C O V E R A G E D O C U M E N T



P-300
10-1-14
KEEP IN PERMANENT FILES

000326

**Texas Municipal League
JOINT SELF-INSURANCE FUND
Property Coverage Document**

OCTOBER 1, 2014

Texas Municipal League Intergovernmental Risk Pool
1821 Rutherford Lane, First Floor • Austin, Texas 78754
P.O. Box 149194 • Austin, Texas 78714-9194
(512) 491-2300 • (800) 537-6655
www.tmlirp.org

TABLE OF CONTENTS

GENERAL DEFINITIONS	1
GENERAL EXCLUSIONS	3
GENERAL CONDITIONS	4
Limits of Liability	4
Deductible	4
Other Insurance	4
In the Case of Loss	4
Certificates of Coverage	6
Titles of Paragraphs	6
Inspection	6
Contribution Adjustment	6
Errors or Omissions	6
Interpretation	6
SPECIAL FORM PROPERTY COVERAGE	7
Perils Covered	7
Perils Excluded	7
Coverage	9
Valuation - Actual Cash Value	16
Additional Coverages	16
NAMED PERIL COVERAGE OPTION	18
FLOOD COVERAGE OPTION	20
BOILER & MACHINERY COVERAGE OPTION	22
REPLACEMENT COST OPTION	24
MOBILE EQUIPMENT COVERAGE OPTION	25
CRIME COVERAGE OPTION	26
General	26
Public Employee Dishonesty Coverage	28
Theft, Disappearance, and Destruction Coverage	29
Forgery or Alteration Coverage	31
Computer Fraud Coverage	32
ANIMAL MORTALITY/THEFT AND MEDICAL COVERAGE OPTION	34
Animal Mortality and Theft Coverage	34
Loss of Use Coverage	36
Canine Veterinary Fee Coverage	36
Surgical Coverage	37

GENERAL DEFINITIONS

Whenever the following words or phrases appear throughout the **Plan**, they are defined as follows:

A. ACTUAL CASH VALUE means the lesser of:

1. The cost to repair;
2. The cost to replace with like kind and quality less proper deduction for depreciation; or
3. The amount actually expended to replace, if replaced.

B. AGREEMENT means the Interlocal Agreement executed between the **Fund** and the **Member** designating those coverages, limits, and deductibles of the **Plan** adopted by the **Member**.

C. AUTOMOBILE means a land motor vehicle, trailer, or semi-trailer designed for travel on public roads (including any machinery, equipment, tools, or apparatus attached thereto and not intended to be removed or used off of or away from the vehicle), but does not include **mobile equipment**.

D. DECLARATIONS means the document which sets forth information that identifies, by **Member**, the types of coverage to be provided by the **Fund**, the amounts of any deductible, the coverage period, the limits of liability of the **Fund** including any aggregate limit, the **Fund** contribution, and any endorsements to this coverage that may be appended to the **declaration** or referred to in the **declaration**, and such other information matters as determined by the **Fund** operator and/or the **Fund** administrator.

E. EARTHQUAKE means a shaking or trembling of the earth that is volcanic or tectonic in origin.

Earthquake: Each loss by **earthquake** shock or volcanic action shall constitute a single claim hereunder; provided, if more than one such **earthquake** shock or volcanic action shall occur within any period of 72 hours during the term of the **Agreement**, such **earthquake** shock or volcanic action shall be deemed to be a single loss within the meaning thereof. The **Fund** shall not be liable for any loss occurring after the expiration date and time of the **Agreement**.

However, the **Fund** will be liable for any losses occurring for a period of up to 72 hours after the expiration of the **Agreement** provided that the first **earthquake** damage occurs prior to the date and time of the expiration of the **Agreement**.

F. ELECTRONIC DATA PROCESSING EQUIPMENT means an assemblage of electronic machine components capable of accepting instruction and information, processing the information according to the instruction, and producing desired results.

G. FUND means the Texas Municipal League Joint Self-Insurance Fund.

H. FUND MEMBER means the political subdivision within the State of Texas which is a present participant in the **Fund**.

I. FUND YEAR means the period beginning at 12:01 a.m. on the effective date and ending at 12:01 a.m. on the anniversary date set forth in the **declarations**.

J. INSURANCE means the "self-insurance" provided under the **Agreement**.

K. MEMBER means the same as **Fund Member**.

L. MOBILE EQUIPMENT means any of the following types of land vehicles, including any attached machinery or equipment:

1. Bulldozers, farm machinery, forklifts, and other vehicles designed for use principally off public roads;
2. Vehicles maintained for use solely on or next to premises owned by or rented to the **Member** and not licensed for highway use;
3. Vehicles that travel on crawler treads;
4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - a. Power cranes, shovels, loaders, diggers, or drills; or
 - b. Road construction or resurfacing equipment such as graders, scrapers, or rollers;
5. Vehicles not described in 1, 2, 3, or 4 above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - a. Air compressors, pumps, and generators, including spraying, welding, building cleaning, geophysical exploration, lighting, and well servicing equipment; or

- b. Cherry pickers or similar devices used to raise or lower workers;
- 6. Vehicles not described in 1, 2, 3, or 4 above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not mobile equipment but will be considered automobiles:

- 1. Equipment designed primarily for:
 - a. Snow removal;
 - b. Road maintenance, but not construction or resurfacing;
 - c. Street cleaning;
 - d. Firefighting;
- 2. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- 3. Air compressors, pumps, and generators, including spraying, welding, building cleaning, geophysical exploration, lighting, and well servicing equipment.

M. PLAN means the plan of **insurance** offered its **Members** by the **Fund** and as more specifically designated in the **Agreement**.

N. REPLACEMENT COST shall be the least of the following:

- 1. The cost to repair;
- 2. The cost to replace new for old with likekind and quality; or
- 3. The amount actually expended to replace.

O. TERRITORY means the 50 states of the United States, the District of Columbia, and Canada, including infrequent trips to Mexico that:

- 1. Do not exceed 25 miles from the boundary of the United States of America; and
- 2. Do not exceed ten consecutive days at any one time.

P. TERRORISM means the use of violence and threats to intimidate or coerce for political ends and/or purposes and includes any use of violence or threats for the purpose of putting the public or any section of the public in fear.

Q. VALUABLE PAPERS AND RECORDS means written, printed, or otherwise inscribed documents and records, including but not limited to books, maps, films, drawings, abstracts, deeds, mortgages, micro-inscribed documents, manuscripts, and media, but not including money and/or **securities**.

The term media includes:

- 1. Processing, recording or storage films, tapes, cards, disks, drums, cartridges, or cells used for electronic data processing operations; and
- 2. Data, information, and instructions stored on processing, recording or storage films, tapes, cards, disks, drums, cartridges, or cells used for electronic data processing operations.

The term **securities** shall mean all negotiable and nonnegotiable instruments and/or contracts representing either money or other property, and includes revenue and other stamps in current use, tokens, and tickets, but does not include money.

GENERAL EXCLUSIONS

This **Agreement** does not cover loss or damage caused by or resulting from:

- A. Hostile or warlike action in time of peace or war, including action in hindering, combating, or defending against an actual, impending, or expected attack:
 - 1. By any government or sovereign power (de jure or de facto) or by any authority maintaining or using military, naval, or air forces;
 - 2. By military, naval, or air forces; or
 - 3. By an agent of any such government, power, authority, or forces.
- B. The discharge of any weapon employing atomic fission or fusion.
- C. Rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating, or defending against such occurrence.
- D. Seizure or destruction by order of public authority, except destruction by order of public authority to prevent the spread of fire or explosion.

E. Risks of contraband or illegal trade.

Notwithstanding the above provisions of paragraphs A, B, C, D, and E, this **Agreement** shall cover loss or damage directly caused by acts committed by an agent of any government, party, or faction engaged in war, hostilities, or warlike operations, provided such agent is acting secretly and not in connection with any operation of armed forces (whether military, naval, or air forces) in the country where the property is situated. Nothing in the foregoing shall be construed to include any loss, damage, or expense caused by or resulting from any of the risks or perils excluded above, excepting only the acts of certain agents expressly covered herein, but in no event shall this coverage include any loss, damage, or expense caused by or resulting from any weapon of war employing atomic fission or radioactive force whether in time of peace or war.

F. Actual, alleged, or threatened release, discharge, dispersal, seepage, migration, or escape of pollutants at any time, unless caused by a peril covered under the Named Peril Coverage Option. The term "pollutant" as used in this clause is defined as any solid, liquid, gaseous, or thermal irritant or contaminant, including but not limited to vapor, fumes, acids, alkalis, chemicals, and/or waste.

G. Nuclear reaction, nuclear radiation, or radioactive contamination, all whether controlled or uncontrolled, and whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the peril(s) covered in this **Agreement**; except:

- 1. If fire ensues, liability is specifically assumed for direct loss by such ensuing fire, but not including any loss due to nuclear reaction, nuclear radiation, or radioactive contamination;
- 2. The **Fund** shall be liable for loss or damage caused by sudden and accidental radioactive contamination, including resultant radiation damage for each occurrence from material used or stored or from processes conducted on covered premises, provided at the time of loss there is neither a nuclear reaction capable of sustaining nuclear fission in a self-supporting chain reaction nor any new or used nuclear fuel on the covered premises.

GENERAL CONDITIONS

I. LIMITS OF LIABILITY

The **Fund** shall not be liable for more than the amount specified in the **Agreement** for any one loss, disaster, or casualty, nor in any one **Fund Year** for more than the aggregate limits shown for the perils of **flood** or **earthquake**.

II. DEDUCTIBLE

A. For each **Member** all losses, damages, or expenses arising out of any one occurrence shall be adjusted as one loss, and from the amount of such adjusted loss shall be deducted the sum selected by each **Member** as shown in the **Agreement**.

Whether an occurrence involves a loss at one or more locations, the deductible amount shall apply against the total loss(es) incurred by the **Member** from any one occurrence.

B. If two or more deductible amounts in this **Agreement** apply to a single occurrence per **Member**, the total to be deducted shall not exceed the largest deductible applicable.

III. OTHER INSURANCE

A. EXCESS INSURANCE

Excess insurance is insurance over the limit of liability set forth in this **Agreement**. The existence of such excess insurance shall not prejudice the coverage provided under this **Agreement** nor will it reduce any liability hereunder.

B. UNDERLYING INSURANCE

1. Should the **Member** elect to maintain insurance on the actual cash value of a property, under the National Flood Insurance Act, as amended, this **Agreement** shall cover excess of loss over the maximum amount of insurance permitted under the Act.

2. Any other underlying insurance shall be considered "other insurance."

C. OTHER INSURANCE

Except for insurance as described as excess or underlying insurance, this **Agreement** shall not cover to the extent of any other insurance, whether prior or subsequent hereto in date, and whether directly or indirectly

covering the same property against the same perils. The **Fund** shall be liable for loss or damage only to the extent of that amount in excess of the amount recoverable from such other insurance.

IV. IN THE CASE OF LOSS

A. NOTICE OF LOSS

As soon as practicable after any loss or damage occurring under this **Agreement** is known to the **Member** or its agent, the **Member** shall report such loss or damage to the **Fund** or its agent.

B. ASSISTANCE AND COOPERATION OF THE FUND MEMBER

The **Member** shall cooperate with the **Fund** and, upon the **Fund's** request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and conducting suits.

C. PROTECTION FROM FURTHER DAMAGE

In the event property covered herein sustains a loss from or is damaged by a peril covered herein, the **Member** shall take all reasonable steps to protect the property from further damage, and keep a record of such expenses necessary to protect the property, for consideration in the settlement of the claim. Such expenses shall not increase the limits of liability under the **Agreement**. The **Fund** shall not pay for any subsequent loss or damage resulting from a peril not covered herein. If feasible, the **Member** shall set the damaged property aside and in the best possible order for examination.

D. PROOF OF LOSS

It shall be necessary for the **Member** to render a signed and sworn proof of loss to the **Fund** or its appointed representative, within 60 days, stating the place, time, and cause of the loss, damage, or expense, the interest of the **Member** and of all others, the value of the property involved in the loss, and the amount of loss, damage, or expense.

E. APPRAISAL

If the **Member** and the **Fund** fail to agree as

to the amount of loss, each shall, upon the written demand either of the **Member** or of the **Fund** made within 60 days after receipt of proof of loss by the **Fund**, select a competent and disinterested appraiser. The appraisers then shall select a competent and disinterested umpire. If they should fail for 15 days to agree upon such umpire, then upon request of the **Member** or of the **Fund**, such umpire shall be selected by a judge of a court of record in the county and state in which such appraisal is pending. Then, at a reasonable time and place, the appraisers shall appraise the loss, stating separately the value at the time of loss and the amount of loss. If the appraisers fail to agree, they shall submit their differences to the umpire. An award in writing by any two shall determine the amount of loss. The **Member** and the **Fund** shall each pay its chosen appraiser and shall bear equally the other expenses of the appraisal and of the umpire.

F. LOSS PAYABLE

Loss, if any, shall be adjusted with and payable to the **Member**, whose receipt shall constitute a release in full of all liability under this **Agreement** with respect to such loss.

G. PAYMENT OF LOSS

All adjusted claims shall be due and payable no later than 60 days after presentation and acceptance of proofs of loss by the **Fund** or its appointed representative.

H. REINSTATEMENT

With the exception of loss caused by perils which are subject to annual aggregate limits as noted in the **Agreement**, no loss hereunder shall reduce the amount of this **Agreement**.

I. SUIT AGAINST THE FUND

No suit or action on this **Agreement** for the recovery of any claim shall be sustainable in any court of law or equity unless the **Member** shall have fully complied with all the requirements of this **Agreement**. The **Fund** agrees that any action or proceeding against it for recovery of any loss under this **Agreement** shall not be barred if commenced within the time prescribed therefor in the statutes of the State of Texas.

J. SUBROGATION

1. Any release from liability entered into by the **Member** prior to loss hereunder

shall not affect this **Agreement** or the right of the **Member** to recover hereunder. The right of subrogation against the **Member** is waived.

2. In the event of any payment under this **Agreement**, the **Fund** shall be subrogated to the extent of such payment to all the **Member's** rights of recovery therefor. The **Member** shall execute all papers required and shall do anything that may be necessary at the expense of the **Fund** to secure such right. The **Fund** will act in concert with all other interests concerned, i.e., the **Member** and any other entity or individual participating in the payment of any loss as primary or excess insurers, in the exercise of such rights of recovery. If any amount is recovered as a result of such proceedings, the net amount recovered after deducting the costs of recovery shall be divided between the interests concerned in the proportion of their respective interests. If there should be no recovery, the expense of proceedings shall be borne proportionately by the interests instituting the proceedings.

K. SALVAGE AND RECOVERIES

All salvages, recoveries, and payments, excluding proceeds from subrogation and underlying insurance recovered or received subsequent to a loss settlement under this **Agreement**, shall be applied as if recovered or received prior to the said settlement and all necessary adjustments shall be made to the parties involved.

L. MACHINERY

In case of loss or damage by a covered peril to any part of a machine or unit consisting of two or more parts when complete for use, the liability of the **Fund** shall be limited to the value of the part or parts lost or damaged or, at the **Member's** option, to the cost and expense of replacing or duplicating the lost or damaged part or parts or of repairing the machine or unit.

M. PAIR AND SET

Except as provided under "machinery" in the event of loss or damage by a peril covered to any article or articles which are a part of a pair or set, the measure of loss or damage to such article or articles shall be a reasonable and fair proportion of the total value of

P300

the pair or set, giving consideration to the importance of said article or articles, but in no event shall such loss or damage be construed to mean total loss of the pair or set.

V. CERTIFICATES OF COVERAGE

All parties for whom a certificate of coverage or an endorsement indicating coverage has been issued are covered under this **Agreement** to the extent of the coverage shown under the certificate or endorsement.

VI. TITLES OF PARAGRAPHS

The titles of the paragraphs of this form and of amendments and supplemental contracts, if any, now or hereafter attached hereto are inserted solely for convenience of reference and shall not be deemed in any way to limit or affect the provisions to which they relate.

VII. INSPECTION

The **Fund** shall be permitted but not obligated to inspect the **Member's** real and personal property at any reasonable time. An inspection is for the **Fund's** benefit only. Neither the **Fund's** right to make inspections nor the **Fund's** reports on those inspections shall constitute an undertaking on behalf of or for the benefit of the **Member** or others to determine or guarantee that the **Member's** property is safe and not harmful to health.

VIII. CONTRIBUTION ADJUSTMENT

Prior to the beginning of each **Fund Year** the **Member** agrees to furnish the **Fund** with a statement of 100 percent values of buildings, structures, and personal property (including **valuable papers and records**), and accounts receivable and revenues covered hereunder.

The **Member** agrees that if property is acquired or constructed in excess of the amounts described in Section III. C. 1. of the Special Form Property Coverage or if it is deleted in similar amounts, the **Member** will report such acquisition or deletion to the **Fund** and pay the proportionate additional contribution or receive the return contribution due from the date of acquisition or deletion.

IX. ERRORS OR OMISSIONS

Any unintentional error or omission made in making reports by the **Member** shall not void or impair the coverage hereunder, provided the **Member** reports such error or omission as soon as reasonably possible after discovery.

This Errors or Omissions provision shall not apply to the failure of the **Member** to report property listed in Section III. B. 9. of the Special Form Property Coverage section or Section III.A. of the Flood Coverage Option which requires specific reporting prior to a loss and contribution charges in order for coverage to apply.

X. INTERPRETATION

This **Agreement** will be construed according to general rules of contract construction. This **Agreement** is drafted on behalf of all **Members** of the **Fund** and will be construed in a manner which most reasonably and accurately reflects the intent of the **Agreement**.

SPECIAL FORM PROPERTY COVERAGE

I. PERILS COVERED

This **Agreement** covers risk of direct physical loss of or damage to property described herein commencing during the **Fund Year** and within the **territory**, including salvage and all other charges on shipments covered hereunder, except as hereinafter excluded.

II. PERILS EXCLUDED

This **Agreement** does not cover loss or damage caused by or resulting from any of the following:

- A. Any fraudulent or dishonest act or acts committed by the **Member's** officials or employees. "Dishonest or fraudulent acts" as used in this paragraph shall mean only dishonest or fraudulent acts committed by the **Member's** officials or employees with the manifest intent to:
 - 1. Cause the **Member** to sustain such loss; and
 - 2. Obtain financial benefit for the **Member's** official, employee, or for any other person or organization intended by the **Member's** official or employee to receive such benefit.
- B. Faulty, inadequate, or defective design, specifications, materials, or workmanship; however, this exclusion shall not apply to loss or damage from a covered peril that ensues.
- C. Errors in processing or manufacture of the **Member's** product unless loss or damage from a peril covered herein ensues, and then this **Agreement** shall cover only for such ensuing loss or damage.
- D. Ordinary wear and tear, rust, corrosion, smog, decay, deterioration, hidden or latent defect, dampness or dryness of atmosphere, changes in or extremes of temperature (except for loss or damage to automatic fire protection systems, as defined in paragraph I. of the Named Peril Coverage Option, caused by or resulting from freezing), or any quality in property that causes it to damage or destroy itself unless loss or damage by a covered peril ensues, and then this **Agreement** shall cover only for such ensuing loss or damage.
- E. Mold, mildew, and fungus unless caused by a peril covered herein, but if loss or damage from a peril covered herein ensues, this

Agreement shall cover only for such ensuing loss or damage.

- F. Settling, cracking, shrinking, or expansion unless loss or damage from a peril covered herein ensues, and then this **Agreement** shall cover only for such ensuing loss or damage.
- G. Gradual subsidence unless loss or damage from a peril covered herein ensues, and then this **Agreement** shall cover only for such ensuing loss or damage.
- H. Loss of market, business interruption, or extra expense loss due to delay with respect to property in transit.
- I. Electrical injury or disturbance to electrical appliances, devices, or wiring caused by electrical currents artificially generated unless loss or damage from a peril covered herein ensues, and then this **Agreement** shall cover only for such ensuing loss or damage.
- J. Mechanical breakdown unless loss or damage from a peril covered herein ensues and then this **Agreement** shall cover only for such ensuing loss or damage.
- K. Explosion, rupture, or bursting of steam boilers, steam pipes, steam turbines, or steam engines owned or operated by the **Member** unless loss or damage from a peril covered herein ensues, and then this **Agreement** shall cover only for such ensuing loss or damage.
- L. Unexplained or mysterious disappearance or shortage found upon taking inventory.
- M. Damage caused by:
 - 1. Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or accompanying spray from any of the preceding, all whether driven by wind or not;
 - 2. Mudslides or mudflows which are proximately caused by flooding as described in 1. above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, including the **Member's** premises, as when earth is carried by a current of water and deposited along the path of the current; or

3. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding as described in 1. above.

N. Loss of or damage to the interior of any building or structure caused by or resulting from rain, snow, sleet, ice, sand, or dust, whether driven by wind or not unless:

1. The building or structure first sustains damage by a covered cause of loss to its roof or walls through which the rain, snow, sleet, ice, sand, or dust enters; or
2. The loss or damage is caused by or results from thawing of snow, sleet, or ice on the building or structure.

O. Earth movement including:

1. **Earthquake**, including any earth sinking, rising or shifting related to such event, if coverage is rejected or not accepted;
2. Landslide;
3. Mine subsidence, meaning any subsidence of a manmade mine, whether or not mine activity has ceased;
4. Earth sinking (other than sink hole collapse), rising, or shifting, including soil conditions which cause settling, cracking, or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface except for the action of underground water or sewage caused by leakage from underground pipes servicing the structure; or
5. Volcanic eruption, explosion, or effusion if coverage is rejected or not accepted. But if loss or damage by fire, building glass breakage, or volcanic action results, the **Fund** will pay for that resulting loss or damage.

Volcanic action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- a. airborne volcanic blasts or airborne shock waves;

b. ash, dust, or particle matter; or

c. lava flow.

All volcanic eruptions that occur within any 168 hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust, or particle matter that does not cause direct physical loss or damage to the described property.

If earth movement, as described in O.1. through 4. above, result in fire or explosion, the **Fund** will pay for that ensuing loss or damage.

P. Damage caused by nesting or infestation, or discharge or release of waste products or secretions by insects, birds, rodents, or other animals.

Q. Collapse, meaning an abrupt falling down or caving in of property, unless such collapse is caused by a covered peril. But if a collapse results in a covered peril, this **Agreement** shall cover the ensuing loss or damage.

This exclusion shall not apply to the following:

1. A collapse caused by faulty, inadequate, or defective design, specifications, materials, or workmanship, unless known to the **Member** prior to the collapse; or
2. A collapse caused by ordinary wear and tear, rust, corrosion, decay, deterioration, or vermin or insect damage that is hidden from view, unless known to the **Member** prior to the collapse.

R. Windstorm or hail for property located within the boundaries of first tier counties as defined in the Texas Windstorm Insurance Association Act, unless the **Fund** provides such coverage through an endorsement to this **Agreement**.

Exclusions B, C, F, G, I, J, L, and N do not apply to property in transit.

Exclusions C, I, and J do not apply to alterations, additions, and property while in the course of construction, erection, installation, or assembly.

Exclusions I, K, M, and N do not apply to **valuable papers and records**.

III. COVERAGE

A. Real and Personal Property Covered

Except as hereinafter excluded, this **Agreement** covers:

1. The interest of the **Member** in:
 - a. all real property owned, used, or intended for use by the **Member** at premises identified in a Property Schedule attached to the **declarations**;
 - b. all personal property owned, used, or intended for use by the **Member**, including the **Member's** interest as tenant in improvements and betterments, provided values are reported at premises identified in a Property Schedule where such property is normally used, kept, or stored. Improvements and betterments are fixtures, alterations, installations, or additions made a part of the building or structure the **Member** occupies but does not own and which the **Member** acquired or made at its expense but cannot legally remove; and
 - c. real and personal property hereinafter constructed, erected, installed, or acquired including while in course of construction, erection, installation, and assembly, subject to the provisions of Section III. C. 1.

However, this does not include rented premises where the **Member** is a tenant unless identified on the schedule of real and personal property. In the event of loss or damage, the **Fund** agrees to accept and consider the **Member** as sole and unconditional owner of improvements and betterments, notwithstanding any contract or lease to the contrary.

2. Buildings, when considered real property covered under this **Agreement**, shall include the following:
 - a. Permanently installed:
 - (1) fixtures;
 - (2) machinery;
 - (3) equipment; and
 - (4) appliances used for refrigerating, ventilating, cooking, dishwashing, or laundering;
 - b. Outdoor fixtures;

- c. Personal property owned by the **Member** that is used to maintain or service the building or structure or its premises, including:

- (1) fire extinguishing equipment;
- (2) outdoor furniture;
- (3) floor coverings; and
- (4) appliances used for refrigerating, ventilating, cooking, dishwashing, or laundering.

3. The interest of the **Member** in the real property, other than rented premises, and personal property of others in the **Member's** care, custody, or control and the **Member's** liability imposed by law or assumed by contract for such property except for **automobiles**.
4. Contractor's interests in property covered to the extent of the **Member's** liability imposed by law or assumed by contract.
5. The interest of the **Member** in **electronic data processing equipment** at all premises where a value is shown on the Property Schedule for contents, but paragraphs I, J, K, and M do not apply.

B. Real and Personal Property Excluded

The following are excluded from coverage under this **Agreement**:

1. Land;
2. The cost of excavations, grading, backfilling, or filling;
3. Foundations of buildings, structures, machinery, or boilers if their foundations are below:
 - a. the lowest basement floor; or
 - b. the surface of the ground, if there is no basement;
4. Money or **securities**;
5. Growing crops, trees, shrubs, grass, or plants, except as provided under Section C. Coverage Extensions;
6. Watercraft (except rowboats and canoes), aircraft, **automobiles**, or **mobile equipment**;
7. Waterborne shipments to or from Hawaii, Puerto Rico, Virgin Islands, or Alaska;

waterborne shipments via the Panama Canal;

8. Export shipments after loading on board an overseas vessel or watercraft or after ocean marine insurance attaches, whichever occurs first, or import shipments prior to discharge from the overseas vessel or watercraft or until the ocean marine insurance terminates, whichever occurs last;
9. Roadways, pavement, sidewalks, curbs, storm sewers, sanitary sewers, underground water and gas mains, any other underground piping, underground wiring, optic cables, electrical transmission and distribution lines including poles and pole-mounted transformers, telephone and communication lines and facilities (unless such optic cables, telephone and communication lines and facilities serve only one covered location), bulkheads, pilings, piers, wharves, docks, fire hydrants, water tanks, water towers, water wells, street lights, traffic lights, traffic signs, bridges, tunnels, overpasses, dams, playground equipment, tennis courts, swimming pools, outdoor scoreboards (unless attached to a reported structure), freestanding lights not attached to or intended for security of a covered building, and freestanding fences at parks and other locations unless reported prior to a loss and a contribution charged. This exclusion shall not apply to fences that are servicing or providing security to a building covered under this **Agreement**;
10. Animals (except for research);
11. Roof coverings that have sustained only cosmetic loss or damage caused by hail, unless such cosmetic loss or damage causes a decrease in the market value of the building to which the roof covering is attached. In the event of a decrease in the market value of such building, this **Agreement** shall cover the lesser of the decrease in market value of such building, the actual cash value of the roof covering, or the replacement cost of the roof covering. Cosmetic loss or damage means only that damage that alters the physical appearance of the roof covering but does not result in damage that allows the penetration of water through the roof covering or does not result in the failure of the roof covering to perform its intended function, to keep out elements over an extended period of time.

C. Coverage Extensions

The limits applicable to the following Coverage Extensions are shown on the **declarations** unless otherwise indicated below. Limits for these Coverage Extensions are in addition to and not included in the Real and Personal Property Limit shown on the **declarations**.

1. Newly Acquired Property

This **Agreement** covers up to \$1,000,000 or the Real and Personal Property Limit set forth in the **declarations**, whichever is less, for newly acquired or constructed property and property in the course of construction, alteration, or repair; provided, however, that the **Member** reports the value of such property to the **Fund** when the values accumulated during the **Fund Year** equal or exceed this additional limit. This **Agreement** does not cover property in the course of construction, alteration, or repair, if the property is under the control of the contractor performing the construction, alteration, or repair, unless the **Member** reports such property to the **Fund** prior to a loss and pays an appropriate contribution. **Mobile equipment** that is acquired during the **Fund Year** shall only be covered up to its **actual cash value** if it is not reported to the **Fund** within 30 days of acquisition. Nothing in this newly acquired property provision shall create coverage for property which is excluded from coverage under this **Agreement**.

2. Valuable Papers and Records

The **Agreement** covers the cost to repair or replace the lost information on lost or damaged **valuable papers and records** for which duplicates do not exist.

3. Accounts Receivable

This **Agreement** covers:

- a. All sums due the **Member** from customers, property owners, and other debtors provided the **Member** is unable to effect collection thereof as the direct result of loss or damage to records of accounts receivable;
- b. Interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such loss or damage;

- c. Collection expense in excess of normal collection cost and made necessary because of such loss or damage;
- d. Other expenses, when reasonably incurred by the **Member** in reestablishing records of accounts receivable following such loss or damage.

When there is proof that a loss of records of accounts receivable has occurred but the **Member** cannot more accurately establish the total amount of accounts receivable outstanding as of the date of such loss, such amount shall be computed as follows:

- a. The monthly average of accounts receivable during the last available 12 months shall be adjusted in accordance with the percentage increase or decrease in the 12 months average of monthly gross revenues which may have occurred in the interim.
- b. The monthly amount of accounts receivable thus established shall be further adjusted in accordance with any demonstrable variance from the average for the particular month in which the loss occurred, due consideration also being given to the normal fluctuations in the amount of accounts receivable within the fiscal month involved.

There shall be deducted from the total amount of accounts receivable, however established, the amount of such accounts evidenced by records not lost or damaged, or otherwise established or collected by the **Member**, and an amount to allow for probable bad debts which would normally have been uncollectible by the **Member**.

4. Loss of Revenue, Extra Expense, and Rental Value

- a. This **Agreement** covers:
 - (1) **Loss of revenue**, subject to the following definitions, conditions, and exclusions:
 - (a) **Loss of revenue** means the actual loss sustained by the **Member** to cover any reduction in revenue, during the period of restoration,

caused by loss, damage, or destruction by any of the perils covered herein during the term of this **Agreement** to covered real and personal property.

- (b) **Revenue** means gross revenue, less charges and expenses which do not necessarily continue.
- (c) The **Fund** shall not be liable for any loss resulting from damage to or destruction of **inventory**, nor for the time required to reproduce said **inventory**. **Inventory** shall mean goods produced or held for sale by the **Member** in the ordinary course of the **Member's** business.

(d) Resumption of Operations

It is a condition of this **Agreement** that if the **Member** could reduce the loss resulting from the interruption of business:

- (i) by a complete or partial resumption of operation of the property covered; or
- (ii) by making use of available stock, merchandise, or other property;

such reduction shall be taken into account in arriving at the amount of loss hereunder.

(e) Experience of the Member

- (i) In determining the amount of loss of revenues, charges, and expenses covered hereunder for the purposes of ascertaining the amount of loss sustained, due consideration shall be given to the experience of the **Member** before the date of damage or destruction and to the probable experience thereafter had no loss occurred.

- (ii) With respect to alterations, additions, and property while in the course of construction, erection, installation, or assembly, due consideration shall be given to the probable experience of the **Member** after completion of the construction, erection, installation, or assembly.

- (2) **Extra expense** incurred resulting from loss or damage by any of the perils covered herein during the term of this **Agreement** to covered real or personal property.

Extra expense means the excess total cost necessarily incurred to continue the operations of the **Member** as nearly as reasonably practicable to normal during the period of recovery of the damaged property over and above the cost that would normally have been incurred to conduct the business during the same period had no loss or damage occurred.

- (3) **Rental value** loss sustained by the **Member** resulting from the necessary untenantability caused by loss, damage, or destruction by any of the perils covered herein during the term of this **Agreement** to covered real or personal property, but not exceeding the reduction in **rental value** less charges and expenses which do not necessarily continue during the period of untenantability.

For the purposes of this **Agreement**, **rental value** is defined as the sum of:

- (a) The total anticipated gross rental income from tenant occupancy of the described property as furnished and equipped by the **Member**;
- (b) The amount of all continuing charges which are the legal obligation of the tenant(s) and which would otherwise

be an obligation of the **Member**; and

- (c) The fair rental value of any portion of said property which is occupied by the **Member**.

In determining the amount of **rental value** covered hereunder for the purpose of ascertaining the amount of loss sustained, due consideration shall be given to the rental experience before the date of damage or destruction and to the probable experience thereafter had no loss occurred.

- b. The following additional provisions apply to **Loss of Revenues**, **Extra Expense**, and **Rental Value** coverages:

(1) **Period of Recovery**

The length of time for which loss may be claimed:

- (a) Shall not exceed such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair, or replace such part of the property as has been destroyed or damaged;
- (b) Such additional length of time to restore the **Member** to the condition that would have existed had no loss occurred, commencing with the later of the following dates:
 - (i) The date on which the liability of the **Fund** for loss or damage would otherwise terminate; or
 - (ii) The date on which repair, replacement, or rebuilding of such part of the property as has been damaged is actually completed, but in no event for more than one year from said completion date;

000343

- (c) With respect to alterations, additions, and property while in the course of construction, erection, installation, or assembly shall be determined as provided in a. above but such determined length of time shall be applied to the experience of the **Member** after it has reached its planned level of operation; and
- (d) Shall commence with the date of such loss or damage and shall not be limited by the date of expiration of this **Agreement**.

(2) Special Exclusions

This section of the **Agreement** does not cover any increase of loss which may be occasioned by the suspension, lapse, or cancellation of any lease, license, contract, or order; nor for interference at **Member's** premises, by strikers or other persons with rebuilding, repairing, or replacing the property damaged or destroyed, or with the resumption or continuation of business, or with the reoccupancy of the premises; nor for any loss occurring to property in transit off premises.

(3) Damage to Non-Owned Property

This **Agreement**, subject to all provisions and without increasing the amount of said **Agreement**, also covers loss resulting from damage to or destruction by the perils covered of:

- (a) Electrical, steam, gas, water, telephone, and other transmission lines and related plants, substations, and equipment which are not owned by the **Member** and are situated on or within one statute mile of the covered premises;
- (b) Dams, reservoirs, or equipment connected therewith which are not owned by the **Member** when water, used

as a raw material or used for power or for other manufacturing purposes, stored behind such dams or reservoirs is released from storage and causes an interruption of business as a result of lack of water supply from such sources. The **Fund's** liability shall not exceed 30 consecutive days after such length of time as would be required with the exercise of due diligence and dispatch to repair or replace the damaged or destroyed dam, reservoir, or equipment.

(4) Interruption by Civil or Military Authority

This **Agreement** is extended to cover loss sustained when access to premises identified in the Property Schedule attached to the **declarations** is prohibited by action of a civil or military authority because of damage to property, other than property at the premises identified in the Property Schedule, that was caused by a covered peril; provided that both of the following apply:

- (a) Access to the area immediately surrounding the damaged property is prohibited by civil or military authority as a result of the damage and the premise identified in the Property Schedule is within the area, but not more than one mile from the damaged property; and
- (b) The action of the civil or military authority is taken in response to a dangerous physical condition resulting from the damage or continuation of the covered peril that caused the damage, or the action is taken to enable the civil or military authority to have unimpeded access to the property.

Coverage for the loss will begin immediately after the first action of that civil or military authority that prohibits access to the

property identified in the Property Schedule, and will apply for a period of no more than four weeks. For the purposes of this provision, the **Member** is not a civil authority.

(5) Ingress/Egress

This **Agreement** is extended to cover the loss sustained during the period of time (not exceeding four weeks) when, as a direct result of a peril covered which causes damage to property other than property at the premise identified in the Property Schedule attached to the **declarations**, ingress to or egress from the **Member's** premises identified in the Property Schedule is thereby prevented.

(6) Expense Related to Reducing Loss

In reference to paragraphs 4.a.(1) and (3) above, this **Agreement** also covers such expenses as are necessarily incurred for the purpose of reducing loss under this **Agreement** (except expense incurred to extinguish fire) and such expenses, in excess of normal, as would necessarily be incurred in replacing any finished stock used by the **Member** to reduce loss under this **Agreement**; but in no event shall the aggregate of such expenses exceed the amount by which the loss otherwise payable under this **Agreement** is thereby reduced.

5. Personal Property of Employees and Officials

This **Agreement** covers personal property of the **Member's** officials, employees, and volunteers while used or intended for use on behalf of the **Member**, provided values are reported. Further, the limit of liability for such personal property of the **Member's** officials, employees, and volunteers shall be as shown on the **declarations** page.

6. Leasehold Interest

This **Agreement** covers:

a. Pro rata proportion from the date of loss to expiration date of the lease (to be paid without discount) on the **Member's** interest in:

- (1) Improvements and betterments to real property during the unexpired term of the lease which is not covered under any other section of this **Agreement**;
- (2) The amount of advance rental paid by the **Member** and not recoverable under the terms of the lease for the unexpired term of the lease;

when property is rendered wholly or partially untenable by any of the perils covered herein during the term of **Member's Agreement** and the lease is cancelled by the lessor in accordance with the conditions of the lease or by statutory requirements of the state in which the damaged or destroyed property is located; and

b. Member's Interest as Lessee

- (1) This **Agreement** covers the **Member's interest as lessee** when property is rendered wholly or partially untenable by any of the perils covered herein during the term of this **Agreement** and the lease is cancelled by the lessor in accordance with the conditions of the lease or by statutory requirements of the state in which the damaged or destroyed property is located.
- (2) **Member's interest as lessee** as referred to herein shall be paid for the first three months succeeding the date of the loss, and the **net lease interest** shall be paid for the remaining months of the unexpired lease.

c. Definitions:

The following terms, wherever used in this section, shall mean as follows:

- (1) **Member's interest as lessee** is defined as:

000345

(a) The excess of the rental value of similar premises over the actual rental payable by the lessee (including any maintenance or operating charges paid by the lessee) during the unexpired term of the lease;

(b) The rental income which would have been earned by the **Member** from sublease agreements, to the extent not covered under any other section of this **Agreement**, over and above the rental expenses specified in the lease between the **Member** and the lessor.

(2) **Net lease interest** is defined as that sum which, placed at 8% interest compounded annually, will be equivalent to the "**Member's interest as lessee**."

d. The **Fund** shall not be liable for any increase of loss which may be occasioned by the suspension, lapse, or cancellation of any license or by the exercising of an option to cancel the lease.

7. Outdoor Trees and Shrubs

This **Agreement** covers loss, damage, and debris removal expenses to outdoor trees, shrubs, and plants located within 100 feet of a structure listed on the Property Schedule attached to the **declarations** when there is a concurrent covered loss or damage to said structure. The maximum amount that will be paid for any one loss, disaster, or casualty under this extension of coverage for outdoor trees and shrubs shall be as stated in the **declarations**, with the further condition that the maximum amount that will be paid on any one tree, shrub, or plant shall be \$250.

8. Pollutant Clean Up and Removal

The **Fund** will pay expenses to extract pollutants ("pollutants" being defined as set forth in paragraph F of the General Exclusions) from land or water at premises identified in the Property Schedule attached to the **declarations** or covered under Section III.C.1. as newly acquired property, provided the re-

lease, discharge, dispersal, seepage, or migration of the pollutants is caused by or results from a peril covered herein that occurs during the **Agreement** period. The expenses will be paid only if they are reported in writing within 180 days of the date of the release, discharge, dispersal, seepage, or migration of the pollutants.

The maximum amount that will be paid during any one **Fund Year** under this extension of coverage is \$20,000 at each premises covered under this section.

D. Transit

1. This **Agreement** attaches and covers shipments within and between the territorial limits of this **Agreement**, including the coastal waters thereof, by any means of conveyance, from the time the property is moved for purpose of loading and continuously thereafter while awaiting and during loading and unloading and in temporary storage, including temporary storage on any conveyance intended for use for any outbound or used for inbound shipment, including during deviation and delay, until safely delivered into place of final destination.

2. This **Agreement** is extended to cover loss or damage to property:

a. Sold and shipped by the **Member** under terms of F.O.B. point of origin or other terms usually regarded as terminating the shipper's responsibility short of points of delivery;

b. Arising out of any unauthorized person(s) representing themselves to be the proper party(ies) to receive goods for shipment or to accept goods for delivery;

c. Occasioned by the acceptance by the **Member**, by its agents, or by its customers, of fraudulent bills of lading, shipping and delivery orders, or similar documents.

3. a. The **Member** may waive right(s) of recovery against private and contract carriers and accept bills of lading or receipts from carriers, bailees, warehousemen, or processors limiting their liability, but this transit coverage shall not inure to the benefit of any

carrier, bailee, warehouseman, or processor.

- b. With respect to shipments made under F.O.B. or similar terms, the **Fund** agrees to waive its rights of subrogation against consignees at the option of the **Member**.

IV. VALUATION - Actual Cash Value

In the case of loss the basis of adjustment shall be as follows:

- A. Buildings, machinery, equipment, furniture, fixtures, improvements, and betterments: the **actual cash value** of the property covered at the time of loss. In the event of loss or damage to improvements and betterments, the **Fund** agrees to accept and consider the **Member** as the sole and unconditional owner.
- B. Exhibitions, displays, fine arts, and historical structures: the cost to repair or the scheduled value, whichever is less.
- C. Household goods and personal effects: **actual cash value** of the property covered at the time of loss.
- D. **Valuable papers and records:** the cost to repair or replace the property with other of like kind and quality including the cost of gathering or assembling information or, if not so replaced, the cost of the property in blank or unused form.
- E. Property of others: **replacement cost** or the **Member's** legal liability, whichever is less.
- F. Other property not otherwise provided for: at the **actual cash value** of the property at the time and place of loss.
- G. When the full cost of repair or replacement in any one occurrence is the lesser of \$25,000 or 10% of the real and personal property limit of coverage, this **Agreement** is extended to cover the full cost of repair or replacement, without deduction for depreciation. The **Fund** shall not be liable under this paragraph unless and until the damaged property is actually repaired or replaced.

V. ADDITIONAL COVERAGES

A. Fire Department Service Charge

If the fire department is called to save or protect covered property from a peril covered, or because the covered property is destroyed or damaged by a peril covered, the **Fund** shall

pay for the **Member's** liability for fire department service charges:

1. Assumed by contract or agreement prior to loss; or
2. Required by local ordinance.

No deductible applies to this coverage.

B. Debris Removal

This **Agreement** covers the following expenses resulting from damage to property covered hereunder which is caused by or results from a peril covered hereunder:

1. The cost of removal of debris of property covered hereunder; and
2. The cost of removal of debris of property not covered hereunder from the premises of the **Member**.

Coverage for debris removal does not apply to costs to:

1. Extract pollutants ("pollutants" being defined as set forth in paragraph F. of the General Exclusions) from land or water; or
2. Remove, restore, or replace polluted land or water.

C. Demolition and Increased Cost of Construction

In the event of loss or damage under this **Agreement** that invokes the enforcement of any law or ordinance regulating the construction or repair of damaged facilities, the **Fund** shall be liable for:

1. The cost of demolishing the undamaged facility including the cost of clearing the site;
2. The proportion that the value of the undamaged part of the facility bore to the value of the entire facility prior to loss;
3. Increased cost of repair or reconstruction of the damaged and undamaged facility on the same or another site and limited to the minimum requirements of such laws or ordinances regulating the repair or reconstruction of the damaged property on the same site; however, the **Fund** shall not be liable for any increased cost of construction loss unless the damaged facility is actually rebuilt or replaced;

4. Any increase in the loss of revenue, extra expense, and rental value loss arising out of the additional time required to comply with said law or ordinance.

D. Expediting Expense

This **Agreement** covers the reasonable extra cost of temporary repair and of expediting the repair of damaged property covered hereunder, including overtime and express freight or other rapid means of transportation.

E. Consequential Loss

This **Agreement** covers consequential loss to the property described caused by change of temperature or humidity or by interruption of power, heat, air conditioning, or refrigeration as a result of damage to property covered hereunder or property of others within one statute mile of the covered premises.

F. Terrorism

This **Agreement** covers loss or damage caused by or resulting from acts of **terrorism** limited to the lesser of \$10,000,000 or the Real and Personal Property Limit of Coverage shown on the **declarations** applicable to any one occurrence.

NAMED PERIL COVERAGE OPTION

With respect to property on which the **Agreement Declarations** specifies "Named Peril," the Special Form Coverages Sections I and II are deleted and replaced by the following:

PERILS COVERED

This **Agreement** covers physical loss of or damage to property described herein commencing during the **Fund Year** and within the **territory**, including salvage and all other charges on shipments covered hereunder as a result of the following perils:

A. Fire

B. Lightning

C. Windstorm or Hail

1. The **Fund** will not be liable for loss caused directly or indirectly by frost or cold weather or ice (other than hail), snow, or sleet, whether driven by wind or not.
2. The **Fund** will not be liable for loss to the interior of the buildings or the property covered therein caused by rain, snow, sand, or dust, whether driven by wind or not, unless the buildings covered shall first sustain an actual damage to roof or walls by the direct action of wind or hail, and then shall be liable for loss to the interior of the buildings or the property covered therein as may be caused by rain, snow, sand, or dust entering the buildings through openings in the roof or walls caused by direct action of wind or hail.
3. This **Agreement** excludes loss or damage caused by or resulting from windstorm or hail for property located within the boundaries of first tier counties as defined in the Texas Windstorm Insurance Association Act, unless the **Fund** provides such coverage through an endorsement to this **Agreement**.

D. Explosion

Loss by explosion shall include direct loss resulting from the explosion of accumulated gases or unconsumed fuel within the firebox (or combustion chamber) of any fired vessel or within the flues or passages which conduct the gases of combustion therefrom. The **Fund** will not be liable for loss by ex-

plosion of steam boilers, steam pipes, steam turbines, or steam engines, if owned by, leased by, or operated under the control of the **Member**. The following are not explosions within the intent or meaning of these provisions:

1. Shock waves caused by aircraft, generally known as "sonic boom;"
2. Electric arcing;
3. Rupture or bursting of rotating or moving parts of machinery caused by centrifugal force or mechanical breakdown;
4. Water hammer;
5. Rupture or bursting of water pipes;
6. Rupture or bursting due to expansion or swelling of the contents of any building or structure, caused by or resulting from water; or
7. Rupture, bursting, or operation of pressure relief devices.

E. Sudden and Accidental Damage from Smoke, other than smoke from agricultural smudging or industrial operations.

F. Vehicles or Aircraft

Loss by aircraft shall include direct loss by falling aircraft or objects falling therefrom, but the **Fund** shall not be liable for loss by any vehicle or aircraft (except falling aircraft) owned or operated by the **Member**.

G. Riot, Riot Attending a Strike, or Civil Commotion

Loss by riot, riot attending a strike, or civil commotion shall include direct loss by acts of striking employees of the owner or occupants of the buildings while occupied by said striking employees and shall also include under this peril direct loss from pillage and looting occurring during and at the immediate place of a riot, riot attending a strike, or civil commotion. The **Fund** shall not be liable with respect to this peril for loss resulting from damage to or destruction of the property because of change in temperature or humidity or interruption of operations, whether or not such loss is covered by this **Agreement** as to other perils.

H. Vandalism or Malicious Mischief

Loss by vandalism or malicious mischief shall mean only the willful and malicious damage to or destruction of the property covered, including direct structural damage to the buildings covered hereunder resulting from burglary; provided, however, such damage resulting from burglary shall not include, nor shall the **Fund** be liable for, the value or replacement of any property, real or personal, including fixtures and/or contents of the covered buildings which are wrongfully and unlawfully removed from the premises. The **Fund** shall not be liable, with respect to these perils, for any loss:

1. To glass (other than building blocks constituting a part of the building);
2. By explosion, rupture, or bursting of steam boilers, steam pipes, steam turbines, steam engines, or rotating parts of machines or machinery owned, operated, or controlled by the **Member**;
3. Caused by or resulting from power, heating, or cooling failure unless such failure results from physical damage to power, heating, or cooling equipment situated on premises where the property covered is located.

I. Sprinkler Leakage

Direct loss by the leaking or discharge of water or other substance from within any automatic fire protection system including the cost of repairs and replacement of the automatic fire protection system when the damage sustained is caused directly by:

1. Breakage of any of its parts resulting in leakage; or
2. Direct loss caused by collapse or fall of a tank forming a part of such system.

Automatic fire protection system means sprinklers, discharge nozzles and ducts, pipes, valves, fittings, tanks (including component parts and supports thereof), pumps, and private fire projection mains, all connected with and constituting a part of an automatic fire protection system; and non-automatic fire protective systems, hydrants, standpipes, or outlets supplied from an automatic fire protection system.

- J. If a limit and deductible are stated in the **declarations** for the perils of **flood** and **earthquake**, the following perils are covered:

1. **Flood**, as provided under the Flood Coverage Option; and
2. **Earthquake**.

FLOOD COVERAGE OPTION

If a limit is shown on the **declarations** for flood:

I. Exclusion M. of the Special Form Property Coverage portion of this Property Coverage Document is deleted with respect to all locations listed on the Property Schedule attached to the **declarations**. Coverage is extended to cover risk of direct physical loss of or damage to covered property, as described under III.A. of Special Form Property Coverage, by those causes listed under exclusion M., hereinafter referred to collectively as "flood."

II. If any flood occurs within a period of the continued rising or overflow of any surface waters or if any flood results from any tidal wave or series of tidal waves caused by one disturbance, such flood shall be deemed to be a single occurrence within the meaning of the **Agreement**. However, the **Fund** will be liable for any losses occurring for a period of up to 72 hours after the expiration of the **Agreement** provided that the first flood damage occurred prior to the date and time that such coverage expired.

III. LIMITATIONS, EXCLUSIONS, AND RELATED PROVISIONS

A. Coverage under this option does not apply to tidal flooding to the following property, unless reported prior to a loss and a flood contribution charged:

1. Bulkheads, pilings, piers, wharves, docks;
2. Retaining walls that are not part of a building;
3. Structures located on or over a body of water, and any property in or on such structures; or
4. Any property that is determined to be in Flood Zone "V" at the time of loss.

The **Fund** shall not be liable for more than the value shown for such property on the Real and Personal Property Schedule. Such coverage is excess of the amount of coverage available under a National Flood Insurance Program policy, whether or not such policy is in effect at the time of loss.

B. With respect to property located on a barrier island in the Gulf of Mexico, regardless of applicable flood plain zones or within the boundaries of counties directly adjacent to the Gulf of Mexico and within the 100-year flood plain "A" zones at the time of loss, the following additional conditions and sublimits apply:

1. For buildings and/or contents of buildings with **actual cash value** in excess of the maximum amounts of coverage available through the National Flood Insurance Program, whether or not such policy is in effect at the time of loss, coverage shall be excess of such maximum amounts.
2. For buildings and/or contents of buildings covered under a National Flood Insurance Program policy, the **Fund** will reimburse the **Member** the difference between the **actual cash value** and **replacement cost** value of the loss, provided the **Member** elected the Replacement Cost Option as indicated on the **declarations**.

The above provision does not apply to:

- a. Property that is not eligible for coverage through the National Flood Insurance Program;
 - b. Coverage Extensions for **Loss of Revenue, Extra Expense, Valuable Papers and Records**, Accounts Receivable, or Outdoor Trees and Shrubs; or
 - c. Fine Arts.
- C. All conditions and sublimits under B. above apply to property located within the boundaries of Harris, Orange, and Jackson counties, but only as respects loss or damage caused by tidal waters.
- D. In reference to paragraphs A. through C. above, the **Fund** shall not be liable for more than \$2,500,000 for loss or damage in a single occurrence and within the 12-month coverage period beginning with the effective date shown on the **declarations**.
- E. In respect to flood caused by rising water, reasonable steps to protect the property from damage prior to the arrival of rising water are a reimbursable expense to the extent that such costs are in addition to regular ongoing operating costs. Examples of such costs include overtime to move and/or disassemble property, acquisition and placement of sand-bags and other protection, and moving equipment and property to higher ground to the extent that such costs exceed usual operating costs and excluding any employee time

except overtime. Such costs to be reimbursed are limited to \$25,000.

IV. DEDUCTIBLE

Loss under this coverage is subject to the flood deductible shown on the **declarations** which shall be deducted from the sum of all loss or damage arising out of any one occurrence. The deductible shall be reduced by amounts recoverable from a National Flood Insurance Program policy and any deductible under that policy.

BOILER & MACHINERY COVERAGE OPTION

With respect to property on which the **Agreement Declarations** specifies "Boiler & Machinery" coverage:

- I. A. Coverage is extended to cover direct damage to property covered under this Property Coverage Document caused by an **accident** to an **object**.
- B. In regards to Boiler & Machinery coverage, the following paragraphs from Perils Excluded of the Special Form Property Coverage portion of this Property Coverage Document are deleted with respect to all **objects** found at locations listed on the Real and Personal Property Schedule attached to the **declarations**:
 - I. Electrical injury or disturbance to electrical appliances, devices, or wiring caused by electrical currents artificially generated unless loss or damage from a peril covered herein ensues, and then this **Agreement** shall cover only for such ensuing loss or damage.
 - J. Mechanical breakdown unless loss or damage from a peril covered herein ensues and then this **Agreement** shall cover only for such ensuing loss or damage.
 - K. Explosion, rupture, or bursting of steam boilers, steam pipes, steam turbines, or steam engines owned or operated by the **Member** unless loss or damage from a peril covered herein ensues, and then this **Agreement** shall cover only for such ensuing loss or damage.
- C. Upon the discovery of a dangerous condition with respect to any **object**, any representative of the **Fund** may immediately suspend this addendum with respect to an **accident** to said **object** by written notice mailed to the **Member's** designee named in the **declarations**. Coverage so suspended may be reinstated by the **Fund** but only by an endorsement issued to form a part of this **Agreement**.

II. ADDITIONAL DEFINITIONS

When used in this Boiler & Machinery coverage:

- A. **Accident** means a sudden and accidental breakdown of an **object** or a part thereof which manifests itself at the time of its occurrence by physical damage to the **object** that necessitates repair or replacement of the **object** or part thereof.

1. **Accident** does not include any of the following:
 - a. Wear and tear, depletion, corrosion, erosion, or deterioration;
 - b. The leaking of any joint, connection, fitting, valve, seal, or packing;
 - c. The breakdown of any structure or foundation which supports, encloses, or covers an **object**; or
 - d. The normal or intended functioning of any safety or protective device.

B. Object

1. **Object** means any boiler, any fired or unfired pressure vessel, refrigeration or air conditioning system, any piping and its accessory equipment, any mechanical or electrical machine or apparatus used for the generation, transmission, or utilization of mechanical or electrical power, including compressors, pumps, engines, turbines, motors, generators, gears, sets of gears, fans, blowers; including couplers, clutches, wheels, or bearings on a shaft that constitute a part of an **object**; transformers, or electrical distribution equipment.
2. **Object** does not mean any of the following:
 - a. Stove, oven, kiln, furnace, motor vehicle or **mobile equipment**, elevator, escalator, or conveyor;
 - b. Any structure or foundation which supports, encloses, or covers an **object**;
 - c. Computer or data processing equipment unless used solely to operate or control an **object** as defined in this coverage;
 - d. Water, sewer, or gas piping, or sprinkler systems;
 - e. Equipment used for communication, lighting, advertising, display, research, diagnostic, therapeutic, sur-

gical, dental, or pathological purposes; or

- f. Mechanical or electrical machine or apparatus used for the generation of electrical power for sale to the public.

REPLACEMENT COST OPTION

With respect to property on which the **Agreement Declarations** specifies "Replacement Cost," the "Valuation - Actual Cash Value" Section IV of the Special Form Property Coverage is deleted and replaced by the following:

IV. REPLACEMENT VALUE

In case of loss, the basis of adjustment shall be as follows:

- A. On buildings, machinery, equipment, furniture, fixtures, improvements, and betterments: **replacement cost**. In the event of loss or damage to improvements and betterments, the **Fund** agrees to accept and consider the **Member** as the sole and unconditional owner. Notwithstanding the above, **actual cash value** only shall apply to the following buildings and structures:
 - 1. Buildings or portions thereof which, as a result of decay, deterioration, or dilapidation, are reasonably likely to fully or partially collapse, or which cannot be expected to withstand reasonably anticipated storms; or
 - 2. Buildings that have become deteriorated through accident, lack of repair, or natural causes, or by damage through exposure to the elements or damage through fire, to the extent that the building is no longer reasonably protected from the weather or from future damage that may be caused by a covered peril.
- B. Exhibitions, displays, fine arts, and historical structures: the cost to repair or the scheduled value, whichever is less.
- C. Household goods and personal effects: **replacement cost**.
- D. **Valuable papers and records**: the cost to repair or replace the property with other of like kind and quality, including the cost of gathering and/or assembling information or, if not so replaced, the cost of the property in blank or unused form.
- E. On property of others: **replacement cost** or the **Member's** legal liability, whichever is less.
- F. Other property not otherwise provided for: **replacement cost**.

- G. **Mobile Equipment**: **replacement cost**, but not exceeding the last value reported for the item replaced.
- H. The **Member** may make a claim for loss or damage covered by this coverage on an **actual cash value** basis instead of on a **replacement cost** basis. In the event the **Member** elects to have loss or damage settled on an **actual cash value** basis, the **Member** may still make a claim for the additional coverage this optional coverage provides if the **Member** notifies the **Fund** of its intent to do so within 180 days after the loss or damage.
- I. The **Fund** will pay on an **actual cash value** basis for any loss or damage until the loss or damaged property is actually repaired or replaced. The **Fund** will only pay **replacement cost** if the repairs or replacements are made as soon as reasonably possible after the loss or damage, but in no event will the **Fund** pay on a **replacement cost** basis for property not repaired or replaced within two years of the date of loss unless an extension is granted during such two year period, in writing, by the **Fund**.

MOBILE EQUIPMENT COVERAGE OPTION

With respect to **mobile equipment** on which the **Agreement Declarations** specify **mobile equipment** coverage, Paragraph 6 of Section III.B. of the "Special Form Property Coverage" is amended to read as follows:

6. Watercraft (except rowboats and canoes), aircraft, **automobiles**; but this exclusion shall not apply to **mobile equipment, com- mandeered mobile equipment, or com- mandeered boats.**

The following definitions shall apply to this Mobile Equipment Coverage Option:

- a. **Commandeered mobile equipment** means **mobile equipment** or a boat that the **Member** seizes, confiscates, or takes arbitrarily by force into the **Member's** temporary care, custody, or control while using it as part of an **emergency situation. Commandeered mobile equipment** or boat does not include **mobile equipment** or a boat owned or available to an employee or volunteer of the **Member** from whom the **Member** has tacit approval to use the **mobile equipment** or boat.
- b. **Emergency situation** means an unexpected situation demanding immediate official action.

Exclusions M, O, and R of Part II of the "Special Form Property Coverage" do not apply to **mobile equipment.**

CRIME COVERAGE OPTION

With respect to property on which the **Agreement Declarations** specifies "Public Employee Dishonesty Coverage," "Theft, Disappearance, and Destruction Coverage," "Forgery or Alteration Coverage," or "Computer Fraud Coverage":

I. GENERAL

In addition to the General Definitions, General Exclusions, and General Conditions contained in this Property Coverage Document, the following General Definitions, General Exclusions, and General Conditions apply to: (i) the Public Employee Dishonesty Coverage; (ii) the Theft, Disappearance, and Destruction Coverage; (iii) the Forgery or Alteration Coverage; and (iv) Computer Fraud Coverage.

A. GENERAL DEFINITIONS

1. **EMPLOYEE** means:

a. Any person:

- (1) While in the **Member's** service (and for 30 days after termination of service); and
- (2) Whom the **Member** has the right to direct and control while performing services for the **Member**.

b. But **employee** does not mean any:

- (1) Agent, broker, factor, commission merchant, consignee, independent contractor, or representative of the same general character;
- (2) Elected officials, except while performing acts coming within the scope of the usual duties of their office; or
- (3) Appointed officials, except while performing acts coming within the scope of the usual duties of an **employee**.

2. **MONEY** means:

- a. Currency, coins, and bank notes in current use and having a face value; and

- b. Travelers checks, register checks, and money orders held for sale to the public.

3. **PROPERTY OTHER THAN MONEY AND SECURITIES** means any tangible property other than **money** and **securities** that has intrinsic value.

4. **SECURITIES** means negotiable and nonnegotiable instruments or contracts representing either **money** or other property and includes:

- a. Tokens, tickets, revenue, and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
- b. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by the **Member**;

but does not include **money**.

B. GENERAL EXCLUSIONS

The **Fund** will not pay for loss as specified below:

1. **Indirect Loss:** Loss that is an indirect result of any act or occurrence covered by this coverage including, but not limited to, loss resulting from:

- a. The **Member's** inability to realize income that the **Member** would have realized had there been no loss of, or loss from damage to, covered property;
- b. Payment of damages of any type for which the **Member** is legally liable. But, the **Fund** will pay compensatory damages arising directly from a loss covered under this coverage; or
- c. Payment of costs, fees, or other expenses the **Member** incurs in establishing either the existence or the amount of loss under this coverage.

2. **Legal Expenses:** Expenses related to any legal action.

C. GENERAL CONDITIONS

1. Loss Sustained During Prior Insurance

- a. If the **Member**, or any predecessor in interest, sustained loss during the period of any prior insurance that the **Member** or the predecessor in interest could have recovered under that insurance except that the time within which to discover loss had expired, the **Fund** will pay for it under this coverage provided:

- (1) This coverage became effective at the time of cancellation or termination of the prior insurance; and

- (2) The loss would have been covered by this coverage had it been in effect when the acts or events causing the loss were committed or occurred.

- b. The coverage under this Condition is part of, not in addition to, the limits of liability applying to this coverage and is limited to the lesser of the amount recoverable under:

- (1) This coverage as of its effective date; or

- (2) The prior insurance had it remained in effect.

2. Loss Covered Under This Coverage and Prior Coverage Issued by the Fund: If any loss is covered:

- a. Partly by this coverage; and
- b. Partly by any prior canceled or terminated coverage that the **Fund** had issued to the **Member** or any predecessor in interest;

the most the **Fund** will pay is the larger of the amount recoverable under this coverage or the prior coverage.

3. Non-Cumulation of Limit of Liability: Regardless of the number of years this coverage remains in force or the number of contributions paid, no limit of liability cumulates from year to year or period to period.

4. Ownership of Property; Interests Covered: The property covered under this coverage is limited to property:

- a. That the **Member** owns or holds; or
- b. For which the **Member** is legally liable.

However, this coverage is for the **Member's** benefit only. It provides no rights or benefits to any other person or organization.

5. Records: The **Member** must keep record of all covered property so the **Fund** can verify the amount of any loss.

6. Valuation - Settlement

- a. Subject to the applicable limit of liability provision, the **Fund** will pay for:

- (1) Loss of **money** but only up to and including its face value. The **Fund** may, at its option, pay for loss of **money** issued by any country other than the United States of America:

- (a) At face value in the **money** issued by that country; or

- (b) In the United States of America dollar equivalent determined by the rate of exchange on the day the loss was discovered.

- (2) Loss of **securities** but only up to and including their value at the close of business on the day the loss was discovered. The **Fund** may, at its option:

- (a) Pay the value of such **securities** or replace them in kind, in which event the **Member** must assign to the **Fund** all of the **Member's** rights, title, and interest in and to those **securities**;

- (b) Pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the **securities**. However, the **Fund** will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty

not exceeding the lesser of the:

(i) Value of the **securities** at the close of business on the day the loss was discovered; or

(ii) Limit of liability.

(3) Loss of, or loss from damage to, **property other than money and securities** or loss from damage to the premises for not more than the:

(a) Actual cash value of the property on the day the loss was discovered;

(b) Cost of repairing the property or premises; or

(c) Cost of replacing the property with property of like kind and quality.

The **Fund** may, at its option, pay the **actual cash value** of the property, repair it, or replace it.

b. The **Fund** may, at its option, pay for loss of, or loss from damage to, property other than **money**:

(1) In the **money** of the country in which the loss occurred; or

(2) In the United States of America dollar equivalent of the **money** of the country in which the loss occurred determined by the rate of exchange on the day the loss was discovered.

c. Any property that the **Fund** pays for or replaces becomes the **Fund's** property.

7. **Discovery Period for Loss:** The **Fund** will pay only for covered loss discovered no later than one year from the end of the coverage period.

8. **Assignment:** Assignment of interest under the **Agreement** shall not bind the **Fund** until its consent is endorsed there-on.

9. **Territory:** This **Agreement** covers only acts committed or events occurring within the United States of America, U.S.

Virgin Islands, Puerto Rico, Canal Zones, or Canada.

10. **Reporting Period for Loss:** As soon as practical, but no later than 120 days from the day the loss was discovered.

II. PUBLIC EMPLOYEE DISHONESTY COVERAGE

A. COVERAGE

The **Fund** will pay for loss of, and loss from damage to, covered property resulting directly from the Covered Cause of Loss.

1. **Covered Property: Money, securities, and property other than money and securities.**

2. **Covered Causes of Loss: Employee dishonesty.**

3. Coverage Extension

Employees Temporarily Outside Coverage Territory: The **Fund** will pay for loss caused by any **employee** while temporarily outside the territory specified in the General Conditions for a period not more than 90 days.

B. LIMIT OF LIABILITY

If a per **occurrence** limit is shown in the **declarations**, the **Fund** will not be liable for more than the indicated limit for loss in any one **occurrence**. If a per **employee** limit is shown, the **Fund** will not be liable for more than the indicated limit for loss resulting from an act or series of acts by any one **employee**.

C. ADDITIONAL EXCLUSIONS, CONDITIONS, AND DEFINITIONS

In addition to the General Definitions, General Exclusions, and General Conditions contained in this Property Coverage Document and the Crime Coverage Option, Public Employee Dishonesty Coverage is subject to the following:

1. **Additional Exclusions:** The **Fund** will not pay for loss or damages as specified below:

a. **Employee Canceled Under Prior Insurance:** Loss caused by any **employee** for whom similar prior insurance has been canceled and not reinstated since the last such cancellation.

000359

- b. Inventory Shortages: Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:
 - (1) An inventory computation; or
 - (2) A profit and loss computation.
- c. Bonded Employee: Loss caused by any **employee** within the amount such **employee** is required by law to be individually bonded or for which the **employee** is bonded.
- d. Damages: Damages for which the **Member** is legally liable as a result of:
 - (1) The deprivation or violation of the civil rights of any person by an **employee**; or
 - (2) The tortious conduct of any **employee**, except conversion of property of other parties held by the **Member** in any capacity.
- e. Depository Failure: Loss resulting from the failure of any entity acting as a depository for the **Member's** property or property for which the **Member** is responsible.

2. Additional Conditions:

- a. Cancellation As To Any Employee: This coverage is canceled as to any **employee**:
 - (1) Immediately upon discovery by the **Member** or any official or **employee** authorized to manage, govern, or control the **Member's** **employees** of any act on the part of an **employee** whether before or after becoming employed by the **Member** which would constitute a loss covered under the terms of this Public Employee Dishonesty Coverage; or
 - (2) On the date specified in a notice mailed to the **Member**. That date will be at least 30 days after the date of mailing.

The mailing of notice to the **Member** at the last mailing address known to the **Fund** will be sufficient

b.

proof of notice. Delivery of notice is the same as mailing.

- b. Sole Benefit: This coverage is for the **Member's** sole benefit. No legal proceeding of any kind to recover on account of loss under this coverage may be brought by anyone other than the **Member**.

3. Additional Definitions:

- a. **Employee Dishonesty** in Paragraph A.2. of Section II of this Crime Coverage Option means any dishonest act committed by an **employee**, whether identified or not, acting alone or in collusion with other persons, with the manifest intent to:
 - (1) Cause the **Member** to sustain loss; and also
 - (2) Obtain financial benefit (other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions, or other employee benefit earned in the normal course of employment unless unlawfully taken to the deprivation of the **Member**) for:

(a) The **employee**; or

(b) Any person or organization intended by the **employee** to receive that benefit.

- b. **Occurrence** means all loss caused by, or involving, one or more **employees**, whether the result of a single act or series of acts.

III. THEFT, DISAPPEARANCE, AND DESTRUCTION COVERAGE

A. COVERAGE

The **Fund** will pay for loss of covered property resulting directly from the covered causes of loss.

1. Inside the Premises:

- a. Covered Property: **Money** and **securities** inside the **premises** or a **banking premises**.

Covered Causes of Loss:

(1) **Theft**;

(2) Disappearance; and

(3) Destruction.

c. Covered Extensions:

(1) Containers of Covered Property: The **Fund** will pay for loss of, and loss from damage to, a locked safe, vault, cash register, cash box, or cash drawer located in the **premises** resulting directly from an actual or attempted **theft** of or unlawful entry into those containers; and

(2) **Premises Damage:** The **Fund** will pay for loss from damage to the **premises** or its exterior resulting directly from an actual or attempted **theft** of covered property if the **Member** is the owner of the **premises** or is liable for damage to it.

2. **Outside the Premises:**

a. Covered Property: **Money** and **securities** outside the **premises** in the care and custody of a **messenger**.

b. Covered Causes of Loss:

(1) **Theft;**

(2) Disappearance; and

(3) Destruction.

c. Coverage Extension:

Conveyance of Property By Armored Motor Vehicle Company: The **Fund** will pay for loss of covered property resulting directly from the covered causes of loss while outside the **premises** in the care and custody of an armored motor vehicle company.

But the **Fund** will pay only for the amount of loss that the **Member** cannot recover:

(1) Under the **Member's** contract with the armored motor vehicle company; and

(2) From any insurance or indemnity carried by, or for the benefit of customers of, the armored motor vehicle company.

B. LIMIT OF LIABILITY

The most the **Fund** will pay for loss in any one occurrence is \$5,000, unless otherwise shown in the **declarations**.

C. ADDITIONAL EXCLUSIONS, CONDITIONS, AND DEFINITIONS

In addition to the General Definitions, General Exclusions, and General Conditions contained in this Property Coverage Document and the Crime Coverage Option, this Theft, Disappearance, and Destruction Coverage is subject to the following:

1. **Additional Exclusions:** The **Fund** will not pay for loss as specified below:

a. Accounting or Arithmetical Errors or Omissions: Loss resulting from accounting or arithmetical errors or omissions.

b. Acts of Employees, Elected or Appointed Officials, or Representatives: Loss resulting from any dishonest or criminal act committed by any of the **Member's employees**, elected or appointed officials, or authorized representatives:

(1) Acting alone or in collusion with other persons; or

(2) While performing services for the **Member** or otherwise.

c. Exchanges or Purchases: Loss resulting from the giving or surrendering of property in any exchange or purchase.

d. Fire: Loss from damage to the **premises** resulting from fire, however caused.

e. Money Operated Devices: Loss of property contained in any **money** operated device unless the amount of **money** deposited in it is recorded by a continuous recording instrument in the device.

f. Transfer or Surrender of Property:

(1) Loss of property after it has been transferred or surrendered to a person or place outside the **premises** or **banking premises**:

(a) On the basis of unauthorized instructions; or

(b) As a result of a threat to do bodily harm to any person or damage to any property.

(2) This Exclusion does not apply under Paragraph A.2. of Section III of this Crime Coverage Option to loss of covered property while outside the **premises** or **banking premises** in the care and custody of a **messenger** if the **Member**:

(a) Had no knowledge of any threat at the time the conveyance began; or

(b) Had knowledge of a threat at the time the conveyance began, but the loss was not related to the threat.

g. Vandalism: Loss from damage to the **premises** or its exterior or to containers of covered property by vandalism or malicious mischief.

h. Voluntary Parting of Title to or Possession of Property: Loss resulting from the **Member's**, or anyone acting on the **Member's** express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any property.

2. Additional Condition:

Duties in the Event of Loss: If the **Member** has reason to believe that any loss of, or loss from damage to, covered property involves a violation of law, the **Member** must notify the police.

3. Additional Definitions:

a. **Banking Premises** means the interior of that portion of any building occupied by a banking institution or similar safe depository.

b. **Messenger** means the **Member**, any of the **Member's** officials, or any **employee** while having care and custody of the property outside the **premises**.

c. **Occurrence** means an:

(1) Act or series of related acts involving one or more persons; or

(2) Act or event, or a series of related acts or events not involving any person.

d. **Premises** means the interior of that portion of any building the **Member** occupies in conducting the **Member's** business.

e. **Theft** means any act of stealing.

IV. FORGERY OR ALTERATION COVERAGE

A. COVERAGE

The **Fund** will pay for loss involving **covered instruments** resulting directly from the **covered causes of loss**.

1. **Covered Instruments**: Checks, drafts, promissory notes, or similar written promises, orders, or directions to pay a sum certain in **money** that are:

a. Made or drawn by or drawn upon the **Member**;

b. Made or drawn by one acting as the **Member's** agent;

or that are purported to have been so made or drawn.

2. **Covered Causes of Loss**: Forgery or alteration of, on, or in any **covered instrument**.

3. **Coverage Extension**:

Legal Expenses: If the **Member** is sued for refusing to pay any **covered instrument** on the basis that it has been forged or altered, and the **Member** has the **Fund's** written consent to defend against the suit, the **Fund** will pay for any reasonable legal expenses that the **Member** incurs and pays in that defense. The amount the **Fund** will pay under this extension is in addition to the limit of liability applicable to this coverage.

B. ADDITIONAL EXCLUSIONS, CONDITIONS, AND DEFINITIONS:

In addition to the General Definitions, General Exclusions, and General Conditions contained in this Property Coverage Document and the Crime Coverage Option, this For-

gery or Alteration Coverage is also subject to the following:

1. **Additional Exclusion:**

Acts of Employees, Elected, or Appointed Officials: The **Fund** will not pay for loss resulting from any dishonest or criminal act committed by any of the **Member's employees**, directors, or trustees:

- a. Acting alone or in collusion with other persons; or
- b. While performing services for the **Member** or otherwise.

2. **Additional Conditions:**

- a. Facsimile Signatures: The **Fund** will treat mechanically reproduced facsimile signatures the same as handwritten signatures.
- b. General Amendments: As respects this Forgery or Alteration Coverage, the words "covered property" or "property covered" in the General Conditions of the Crime Coverage Option mean **covered instruments**.
- c. Proof of Loss: The **Member** must include with the **Member's** proof of loss any instrument involved in that loss, or, if that is not possible, an affidavit setting forth the amount and cause of loss.
- d. Territory: The **Fund** will cover loss the **Member** sustains anywhere in the world.

3. **Additional Definition:**

Occurrence means all loss caused by any person or in which that person is involved, whether the loss involves one or more instruments.

V. COMPUTER FRAUD COVERAGE

A. COVERAGE

The **Fund** will pay for the loss of and loss from damage to **money and securities** and **property other than money and securities** resulting directly from **computer fraud**.

B. LIMIT

The most the **Fund** will pay for loss in any one **occurrence** is the applicable limit shown in the **Agreement Declarations**.

C. DEDUCTIBLE

The **Fund** will not pay for loss in any one **occurrence** unless the amount of loss exceeds the deductible amount shown on the **Agreement Declarations**. The **Fund** will then pay the amount of loss in excess of the deductible amount, up to the limit. In the event more than one deductible amount could apply to the loss, only the highest deductible amount may be applied.

D. ADDITIONAL EXCLUSIONS, CONDITIONS, AND DEFINITIONS:

1. **Additional Exclusions**: The **Fund** will not pay for loss as specified below:

- a. Acts of Employees, Directors, Trustees, or Representatives: Loss resulting from any dishonest or criminal act committed by any of the **Member's employees**, directors, trustees, or authorized representatives:

- (1) Acting alone or in collusion with other persons; or
- (2) While performing services for the **Member** or otherwise.

- b. Inventory Shortages: Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

- (1) An inventory computation; or
- (2) A profit and loss computation.

2. **Additional Conditions**

- a. Duties in the Event of Loss: If the **Member** has reason to believe that any loss of, or loss from damage to, covered property involves a violation of law, the **Member** must notify the police.

- b. Special Limit of Insurance for Specified Property: The **Fund** will only pay up to \$5,000 for any one **occurrence** of loss of, and loss from damage to, manuscripts, drawings, or records of any kind or the cost of

reconstructing them or reproducing any information contained in them.

3. Additional Definitions

- a. **Banking Premises** means the interior of that portion of any building occupied by a banking institution or similar safe depository.
- b. **Computer Fraud** means **theft** of property following and directly related to the use of any computer to fraudulently cause a transfer of the property from inside the **premises** or **banking premises** to a person (other than a **messenger**) outside those **premises** or to a place outside those **premises**.
- c. **Messenger** means the **Member**, the **Member's** officials, or any **employee** while having care and custody of the property outside the **premises**.
- d. **Occurrence** means an:
 - (1) Act or series of related acts involving one or more persons; or
 - (2) Act or event, or a series of related acts or events not involving any person.
- e. **Premises** means the interior of that portion of any building the **Member** occupies in conducting the **Member's** business.
- f. **Theft** means any act of stealing.

ANIMAL MORTALITY/THEFT AND MEDICAL COVERAGE OPTION

I. ANIMAL MORTALITY AND THEFT COVERAGE

A. COVERAGE

With respect to property on which the **Agreement Declarations** specifies "Animal Mortality and Theft Coverage," this **Agreement** is extended to cover the interest of the **Member** in the animal(s) described in the schedule for loss caused by the following:

1. **Mortality**, meaning death which results directly or indirectly from:
 - a. Accident;
 - b. Illness; or
 - c. Disease.
2. Theft, including death resulting from such theft, subject to the following conditions:
 - a. The animal has a number that is registered with a recognized registry which is either tattooed on the animal or in a functional microchip inserted under the skin of the animal and such is stated on the application for this coverage.
 - b. If a theft occurs, the **Fund's** liability begins:
 - (1) 90 days from the date the **Member** notifies the **Fund** of the theft; and
 - (2) Provided the animal is not recovered in that time.
 - c. The **Member** must not:
 - (1) Pay or promise to pay a ransom; or
 - (2) Give any third party assurance of its intent to pay.
 - d. The **Fund** has the right to the return of any payment made if:
 - (1) The animal has been recovered after the theft; and

- (2) The **Fund** has paid a claim prior to the recovery.

- e. Coverage on a pregnant animal does not include any fetus within the animal.

B. PAYMENT OF LOSS

If a covered loss occurs, the **Fund** will pay to the **Member** the value shown in the schedule for the animal at the time of loss. Unless otherwise stated, all claim payments will be made to the **Member**.

C. EXCLUSIONS

1. For the purpose of this coverage only, Exclusion 11., under Paragraph B. of Section III of the Special Form Property Coverage, shall not apply with respect to the animal or animals described in the schedule.
2. The **Fund** will not cover any loss resulting directly or indirectly from:
 - a. Surgical operations, administration of drugs, medication, or inoculation, unless:
 - (1) Required only in an attempt to prevent death or "**humane destruction**" - defined as the destruction of an animal to prevent excessive continued suffering due to an incurable injury or terminal disease; and
 - (2) Performed and certified by a licensed veterinarian;
 - b. Mysterious disappearance or escape;
 - c. Intentional destruction. However, this Exclusion shall not apply if:
 - (1) The **Fund** agrees to the destruction of the animal; or
 - (2) The animal suffers an injury or contracts an excessively painful illness. A qualified Veterinary Surgeon must certify that the animal's suffering is:

- (a) Incurable; and
- (b) So excessive that immediate destruction is necessary for humane reasons;
- d. Destruction as a result of governmental order, due to exposure to or contraction of any communicable disease;
- e. Voluntary parting with the title or possession of the animal because of:
 - (1) Fraud,
 - (2) Trick, or
 - (3) False pretense;
- f. Death of an animal boarded outside the United States and then returned to the United States within the six months preceding its death.

D. CONDITIONS

1. Insurability Requirement

Unless otherwise endorsed, the **Fund** will not be liable for any claim on an animal that:

- a. Suffered from an illness and/or injury, prior to the inception of this coverage and not disclosed on the application form while owned by the **Member** and incurred in the 12 months preceding the date the animal becomes covered;
- b. The **Member** is not the sole owner of;
- c. Has been retired from active duty; or
- d. Has reached the age of ten years, except for horses that are 20 years or younger.

2. Thirty-Day Extension

If coverage is terminated, the coverage provided by the **Fund** will be extended to cover death which occurs:

- a. Within 30 days after the date of termination; and

- b. As a result of an accident, illness, or disease that:

- (1) Occurred during the period coverage was in force; and
- (2) The **Member** reported to the **Fund** before coverage expired.

3. Member's Duties

- a. The **Member** shall dispose of the remains of any animal at the **Member's** expense.
- b. In case of injury or illness to an animal, the **Member** must:
 - (1) Immediately notify the **Fund**;
 - (2) Employ a licensed veterinarian, at the **Member's** expense, to treat the animal; and
 - (3) Secure proper care and, if required, allow the animal to be removed for treatment, at the **Member's** expense.
- c. If the animal dies or is stolen, the **Member** must:
 - (1) Immediately notify the **Fund**, and in the case of theft, also the police, local animal control, and humane society.
 - (2) Give to the **Fund**, within 60 days, a copy of:
 - (a) The registration certificate;
 - (b) The postmortem examination report in the event of death; and
 - (c) A signed and sworn proof of loss.

4. Termination of Ownership

Coverage will cease on any animal in which the **Member** has, temporarily or permanently, given up all or part of its ownership rights;

- a. By sale;
- b. By lease (unless noted in the Schedule); or
- c. For any reason.

5. Assignment of Benefits

The proceeds of this coverage may not be assigned.

by both parties; and who will act as arbitrator. The decision made by the independent Veterinary Surgeon will be binding on both parties.

II. LOSS OF USE COVERAGE

A. COVERAGE

If the **Agreement Declarations** specifies "Loss of Use Coverage," the **Fund** will pay 60% of the value of a covered animal at the time of injury or 60% of the coverage amount specified in the Schedule, whichever is less, if the animal:

1. Is injured by external, accidental, and violent means during the period this additional coverage is in effect;
2. Becomes totally and permanently unfit for its current use as a result of such injury; and
3. Does not require destruction for humane reasons.

B. CONDITIONS

1. The **Member** must give the **Fund** immediate notice of any accident resulting in an injury which may give rise to a claim.
2. Within 14 days of such accident, the **Member** must provide a full veterinary report by a qualified Veterinary Surgeon, which will include:
 - a. A description of the injury suffered;
 - b. The treatment rendered; and
 - c. The opinion of the Veterinary Surgeon as to the animal's fitness for its current use.
3. The **Fund** reserves the right to appoint a Veterinary Surgeon to examine the animal.
4. If a claim is made and paid, coverage on the animal for which the claim is paid:
 - a. Will terminate; and
 - b. No return contribution will be paid.
5. Any disagreement between the **Member's** and the **Fund's** Veterinary Surgeons over the incapacity of the covered animal will be referred to an independent Veterinary Surgeon mutually agreed to

6. The provisions of this coverage:

- a. Apply only to claims for indemnity for loss of use; and
 - b. Do not extend to or vary covered claims for indemnity against all risks of mortality.
7. It is understood that upon expiration of coverage all liability ceases. However, coverage is extended to loss of use first occurring within 90 days after expiration, resulting from injury which occurs prior to expiration.

All other applicable terms and conditions under Animal Mortality and Theft Coverage also apply to this coverage.

III. CANINE VETERINARY FEE COVERAGE

A. COVERAGE

If the **Agreement Declarations** specifies "Canine Veterinary Fee Coverage," the **Fund** will pay reasonable and customary veterinary fees that result from **injury** to a covered animal. Veterinary fees include:

1. **Veterinary Medical Treatment**, including but not limited to: prescription medication, diagnostic radiology, surgery, and laboratory tests necessitated by **injury** to a covered animal.
2. **Hospitalization** of a covered animal necessitated by **injury**.
3. Euthanasia of a covered animal by a **veterinarian** when the **veterinarian** and the **Member** agree that such action is appropriate for humane reasons.

B. LIMIT AND DEDUCTIBLE

Coverage is subject to the limit and deductible shown on the **Agreement Declarations**.

C. DEFINITIONS

1. **Injury** means bodily **injury** caused by an accident, sustained by a covered animal, not attributable to illness.

2. **Veterinary Medical Treatments** are services performed by a duly licensed graduate doctor of veterinary medicine.
3. **Hospitalization** means confinement of the covered animal at the **veterinarian's** premises or at a veterinary hospital while receiving necessary treatment for an **injury** covered hereunder.
4. **Veterinarian** means a duly licensed graduate doctor of veterinary medicine.
5. **Medication** means prescription drugs which are available only from a **veterinarian** or licensed pharmacy.

D. EXCLUSIONS

This coverage does not apply to loss caused by, happening through, or in consequence of:

1. **Injury** existing before the effective date of this coverage;
2. **Injury** resulting from racing or commercial guarding;
3. Malicious, intentional, or willful **injury** by the owner or caretaker of the covered animal;
4. Any veterinary fees except for those services performed by or under the supervision of a duly licensed graduate doctor of veterinary medicine;
5. Autopsy, disposal, or burial of a covered animal; or
6. Any **injury** caused by or attributed to malnutrition, abuse, mistreatment, neglect, or other inhumane actions by the owner or caretaker of the covered animal.

E. NOTICE OF LOSS

For the purpose of this coverage only, the **Member** must file proof of a claim which is:

1. An accident/injury report telling how the **injury** occurred;
2. A report signed by the treating **veterinarian** describing the **injury** and treatment provided;
3. Copies of all service bills for which a claim is made (must be itemized and dated); and

4. Filed within 60 days after treatment.

All other applicable terms and conditions under Animal Mortality and Theft Coverage also apply to this coverage.

IV. SURGICAL COVERAGE

A. COVERAGE

If the **Agreement Declarations** specifies "Surgical Coverage," the **Fund** agrees to reimburse the **Member** for:

1. Reasonable and customary fees for surgical procedures performed on a covered animal as specified in the Schedule; and
2. Reasonable and customary after-care while the animal is kept on the premises where the surgery is performed.

B. LIMIT AND DEDUCTIBLE

1. The combined limit of liability for covered surgery and after-care per animal, per 12 month period is the amount shown under limits on the **Agreement Declarations**.
2. After-care is limited to:
 - a. 50% of the cost of surgery; and
 - b. No more than 15 days from the time of surgery.
3. The deductible shown on the **Agreement Declarations** shall be applied to each separate claim.

C. CONDITIONS

For the purpose of this coverage only, the **Member** must file a proof of claim within 60 days after surgery, including:

1. A report signed by the treating **veterinarian** describing the surgery performed and describing the animal's condition; and
2. Copies of all service bills for which the claim is made.

D. EXCLUSIONS

Coverage does not apply to:

1. Any surgery unless performed by a licensed **veterinarian** in a school of veterinary medicine or surgical clinic;

2. Conditions existing, diagnosed, or treated prior to the effective date of this coverage;
3. Any examination, medical treatment, or medication unless it is given in conjunction with the covered surgical procedure being claimed;
4. Operations not performed under a general anesthesia;
5. Any elective or voluntary surgical procedure;
6. Death benefits; or
7. Postmortem surgical operations.

All other applicable terms and conditions under Animal Mortality and Theft Coverage also apply to this coverage, with the exception of Animal Mortality and Theft Coverage exclusion C.2.



Texas Municipal League Intergovernmental Risk
Pool 1821 Rutherford Lane • Austin, TX 78754
P.O. Box 149194 • Austin, TX 78714-
9194 (512) 491-2300 • (800) 537-6655
www.tmlirp.org

Buffalo Springs Property Services

Client: State Farm Arena
Property: 2600 N 10th Street
Hidalgo, TX 78557

Operator: MBARBER

Estimator: Mark Barber
Company: Buffalo Springs Property Services
Business: 570 Calm Springs
San Antonio, TX 78260

Business: (830) 237-0133

Type of Estimate: Wind Damage
Date Entered: 10/10/2017 Date Assigned:
Date Est. Completed: 10/30/2017 Date Job Completed:

Price List: TXMC8X_JAN17
Labor Efficiency: Restoration/Service/Remodel
Estimate: STATEFARMARENA

Our report is based on the damage which was noted during our inspection. Should any additional information become available, we reserve the right to review any newly acquired information and determine if the original estimate and scope are impacted.

Buffalo Springs Property Services**STATEFARMARENA**

Source - Geomni Property

Contents

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
1. Clean furniture - Heavy clean	1.00 EA	0.00	7,500.00	748.93	1,575.04	9,823.97
2. Replace furniture	1.00 EA	0.00	4,500.00	371.34	0.00	4,871.34
3. R&R Electronic Board and equipment cleaning & testing	1.00 EA	0.00	7,500.00	33.74	1,582.08	9,115.82
Totals: Contents				1,154.01	3,157.12	23,811.13

Main Seating Area

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
4. Remove Carpet	26,300. SF 00	0.17	0.00	0.00	938.91	5,409.91
5. Carpet	30,245. SF 00	0.00	4.60	5,564.32	30,385.18	175,076.50
15 % waste added for Carpet.						
6. Contents - move out then reset - Extra large room	1.00 EA	0.00	1,200.00	0.00	252.00	1,452.00
Totals: Main Seating Area				5,564.32	31,576.09	181,938.41

Miscellaneous

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
7. Taxes, insurance, permits & fees (Bid Item)	1.00 EA	0.00	12,500.00	0.00	2,625.00	15,125.00
8. Dumpster load	1.00 EA	22,000.00	0.00	0.00	4,620.00	26,620.00
9. General clean - up	160.00 HR	0.00	28.71	458.70	964.68	6,016.98
10. R&R Temporary repairs west wall of arena and main entrance	1.00 EA	0.00	18,458.00	0.00	3,876.18	22,334.18
11. R&R Temporary repairs Main entrance	1.00 EA	0.00	1,120.00	0.00	235.20	1,355.20
12. R&R Temporary Waterproofing West side arena	1.00 EA	0.00	5,126.64	0.00	1,076.59	6,203.23
13. R&R Temporary Roof repairs	1.00 EA	0.00	12,390.57	0.00	2,602.02	14,992.59
14. R&R Temporary Metal panel repairs	1.00 EA	0.00	20,513.00	0.00	4,307.73	24,820.73
15. On-Site Evaluation and/or Supervisor/Admin - per hour	824.00 HR	0.00	39.42	3,242.52	6,821.24	42,545.84

Buffalo Springs Property Services**CONTINUED - Miscellaneous**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
16. Contents - move out then reset - Arena	1.00 EA	0.00	25,000.00	0.00	5,250.00	30,250.00
17. Special Systems - Electrician - per hour	80.00 HR	0.00	70.91	0.00	1,191.29	6,864.09
18. R&R Batt insulation - 6" - R19 - unfaced batt	6,200.00 SF	0.18	0.75	265.98	1,266.72	7,298.70
19. Engineering fees (Bid Item)	1.00 EA	0.00	30,000.00	0.00	6,300.00	36,300.00
20. Architectural fees (Bid Item)	1.00 EA	0.00	45,000.00	0.00	9,450.00	54,450.00
21. Contingency items	1.00 EA	0.00	911,000.00	0.00	191,310.00	1,102,310.00
Totals: Miscellaneous				3,967.20	241,896.65	1,397,486.54

Northwest Entrance

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
22. R&R 1/2" drywall - hung, taped, ready for texture	64.00 SF	0.26	1.37	2.16	22.37	128.85
23. Texture drywall - machine	416.00 SF	0.00	0.32	1.03	28.16	162.31
24. Seal/prime then paint the surface area (2 coats)	416.00 SF	0.00	0.71	5.15	63.12	363.63
25. Clean floor	416.00 SF	0.00	0.30	12.46	26.21	163.47
26. Mask or cover per square foot	416.00 SF	0.28	0.00	2.06	24.90	143.44
27. R&R Replace light	3.00 EA	11.82	262.57	31.56	179.50	1,034.23
Totals: Northwest Entrance				54.42	344.26	1,995.93

Backstage rows

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
28. R&R 1/2" drywall - hung, taped, ready for texture	351.00 SF	0.26	1.37	11.87	122.66	706.66
29. R&R Stud wall - 2" x 4" - 16" oc	351.00 SF	0.13	1.80	18.24	146.09	841.76
30. Texture drywall - machine	980.00 SF	0.00	0.32	2.43	66.37	382.40
31. R&R Cove base molding - rubber or vinyl, 4" high	96.00 LF	0.19	1.51	9.19	36.21	208.60
32. Mask or cover per square foot	360.00 SF	0.28	0.00	1.78	21.55	124.13
33. Clean floor	360.00 SF	0.00	0.30	10.78	22.68	141.46
Totals: Backstage rows				54.29	415.56	2,405.01

Buffalo Springs Property Services

Staging Area under seats

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
34. Seal/prime then paint the surface area (2 coats)	1,990.00 SF	0.00	0.71	24.63	301.88	1,739.41
35. Clean floor	1,250.00 SF	0.00	0.30	37.44	78.75	491.19
Totals: Staging Area under seats				62.07	380.63	2,230.60

Triangle Room

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
36. Seal/prime then paint the surface area (2 coats)	464.00 SF	0.00	0.71	5.74	70.38	405.56
37. Mask or cover per square foot	308.00 SF	0.28	0.00	1.52	18.43	106.19
Totals: Triangle Room				7.26	88.81	511.75

Game Room

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
38. R&R Replace wall Wrap	1.00 EA	0.00	2,500.00	0.23	525.05	3,025.28
39. R&R Television detach & reset	1.00 EA	17.33	158.08	8.76	38.68	222.85
40. Clean floor	330.00 SF	0.00	0.30	9.89	20.79	129.68
Totals: Game Room				18.88	584.52	3,377.81

VIP Room

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
41. R&R Acoustic ceiling tile	915.00 SF	0.38	2.93	118.52	660.92	3,808.09
42. Re-point masonry	40.00 SF	0.00	3.60	0.23	30.29	174.52
43. Seal/prime then paint the surface area (2 coats)	889.00 SF	0.00	0.71	11.00	134.86	777.05
44. Clean floor	1,830.00 SF	0.00	0.30	54.80	115.29	719.09
45. Mask or cover per square foot	1,830.00 SF	0.28	0.00	9.06	109.51	630.97
Totals: VIP Room				193.61	1,050.87	6,109.72

Control Room

Buffalo Springs Property Services**CONTINUED - Control Room**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
46. R&R Acoustic ceiling tile	325.00 SF	0.38	2.93	42.10	234.76	1,352.61
47. R&R Carpet	325.00 SF	0.17	2.60	59.79	201.62	1,161.66
Totals: Control Room				101.89	436.38	2,514.27

Party Room

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
48. Seal floor or ceiling joist system	240.00 SF	0.00	0.90	4.16	46.24	266.40
49. R&R Acoustic ceiling tile	472.00 SF	0.38	2.93	61.14	340.94	1,964.40
50. Mask or cover per square foot	472.00 SF	0.28	0.00	2.34	28.25	162.75
Totals: Party Room				67.64	415.43	2,393.55

Suite 20

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
51. R&R Acoustic ceiling tile	182.00 SF	0.38	2.93	23.57	131.47	757.46
52. R&R Carpet	182.00 SF	0.17	2.60	33.48	112.89	650.51
53. Seal stud wall for odor control	64.00 SF	0.00	0.63	0.74	8.62	49.68
54. R&R 1/2" drywall - hung, taped, ready for texture	64.00 SF	0.26	1.37	2.16	22.37	128.85
55. Seal/prime then paint the surface area (2 coats)	432.00 SF	0.00	0.71	5.35	65.54	377.61
Totals: Suite 20				65.30	340.89	1,964.11

Suite 17

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
56. R&R Acoustic ceiling tile	182.00 SF	0.38	2.93	23.57	131.47	757.46
57. R&R Carpet	182.00 SF	0.17	2.60	33.48	112.89	650.51
58. Seal stud wall for odor control	32.00 SF	0.00	0.63	0.37	4.32	24.85
59. R&R 1/2" drywall - hung, taped, ready for texture	64.00 SF	0.26	1.37	2.16	22.37	128.85
60. Seal/prime then paint the surface area (2 coats)	432.00 SF	0.00	0.71	5.35	65.54	377.61
Totals: Suite 17				64.93	336.59	1,939.28

Buffalo Springs Property Services

Suite	16						
DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL	
61. R&R Acoustic ceiling tile	182.00 SF	0.38	2.93	23.57	131.47	757.46	
62. R&R Carpet	182.00 SF	0.17	2.60	33.48	112.89	650.51	
63. Seal stud wall for odor control	32.00 SF	0.00	0.63	0.37	4.32	24.85	
64. R&R 1/2" drywall - hung, taped, ready for texture	64.00 SF	0.26	1.37	2.16	22.37	128.85	
65. Seal/prime then paint the surface area (2 coats)	432.00 SF	0.00	0.71	5.35	65.54	377.61	
Totals: Suite 16				64.93	336.59	1,939.28	

Suite	19						
DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL	
66. R&R Acoustic ceiling tile	182.00 SF	0.38	2.93	23.57	131.47	757.46	
67. R&R Carpet	182.00 SF	0.17	2.60	33.48	112.89	650.51	
68. Seal stud wall for odor control	32.00 SF	0.00	0.63	0.37	4.32	24.85	
69. R&R 1/2" drywall - hung, taped, ready for texture	64.00 SF	0.26	1.37	2.16	22.37	128.85	
70. Seal/prime then paint the surface area (2 coats)	432.00 SF	0.00	0.71	5.35	65.54	377.61	
Totals: Suite 19				64.93	336.59	1,939.28	

Suite	21						
DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL	
71. R&R Acoustic ceiling tile	182.00 SF	0.38	2.93	23.57	131.47	757.46	
72. Seal stud wall for odor control	32.00 SF	0.00	0.63	0.37	4.32	24.85	
73. Mask or cover per square foot	182.00 SF	0.28	0.00	0.90	10.90	62.76	
74. R&R 1/2" drywall - hung, taped, ready for texture	64.00 SF	0.26	1.37	2.16	22.37	128.85	
75. Seal/prime then paint the surface area (2 coats)	432.00 SF	0.00	0.71	5.35	65.54	377.61	
Totals: Suite 21				32.35	234.60	1,351.53	

Suite 25

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL

Buffalo Springs Property Services**CONTINUED - Suite 25**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
76. R&R Acoustic ceiling tile	182.00 SF	0.38	2.93	23.57	131.47	757.46
77. R&R Carpet	182.00 SF	0.17	2.60	33.48	112.89	650.51
78. Seal stud wall for odor control	32.00 SF	0.00	0.63	0.37	4.32	24.85
79. R&R 1/2" drywall - hung, taped, ready for texture	64.00 SF	0.26	1.37	2.16	22.37	128.85
80. Seal/prime then paint the surface area (2 coats)	432.00 SF	0.00	0.71	5.35	65.54	377.61
Totals: Suite 25				64.93	336.59	1,939.28

Suite	24					
DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
81. R&R Acoustic ceiling tile	182.00 SF	0.38	2.93	23.57	131.47	757.46
82. R&R Carpet	182.00 SF	0.17	2.60	33.48	112.89	650.51
83. Seal stud wall for odor control	32.00 SF	0.00	0.63	0.37	4.32	24.85
84. R&R 1/2" drywall - hung, taped, ready for texture	64.00 SF	0.26	1.37	2.16	22.37	128.85
85. Seal/prime then paint the surface area (2 coats)	432.00 SF	0.00	0.71	5.35	65.54	377.61
Totals: Suite 24				64.93	336.59	1,939.28

Media	Suite					
DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
86. Seal floor or ceiling joist system	46.00 SF	0.00	0.90	0.80	8.86	51.06
87. R&R Acoustic ceiling tile	334.00 SF	0.38	2.93	43.26	241.25	1,390.05
88. Remove Carpet	334.00 SF	0.17	0.00	0.00	11.93	68.71
89. Carpet	384.10 SF	0.00	2.60	70.66	224.56	1,293.88
15 % waste added for Carpet.						
90. Seal/prime then paint the surface area (2 coats)	811.00 SF	0.00	0.71	10.04	123.02	708.87
91. Texture drywall - machine	811.00 SF	0.00	0.32	2.01	54.92	316.45
92. R&R 1/2" drywall - hung, taped, ready for texture	64.00 SF	0.26	1.37	2.16	22.37	128.85
Totals: Media Suite				128.93	686.91	3,957.87

Buffalo Springs Property Services**Rear 3rd floor seating & offset**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
93. Seal floor or ceiling joist system	242.00 SF	0.00	0.90	4.19	46.62	268.61
94. R&R 1/2" drywall - hung, taped, ready for texture	192.00 SF	0.26	1.37	6.49	67.07	386.52
95. Floor protection - plastic and tape - 10 mil	3,566.00 SF	0.00	0.23	29.42	178.42	1,028.02
96. R&R Acoustic ceiling tile	1,176.00 SF	0.38	2.93	152.32	849.44	4,894.32
97. Remove Carpet	3,485.00 SF	0.17	0.00	0.00	124.42	716.87
98. Carpet	4,007.75 SF	0.00	2.60	737.33	2,343.08	13,500.56
15 % waste added for Carpet.						
99. R&R Cove base molding - rubber or vinyl, 4" high	436.00 LF	0.19	1.51	41.73	164.41	947.34
100. Seal/prime then paint the surface area (2 coats)	3,486.00 SF	0.00	0.71	43.14	528.83	3,047.03
101. Texture drywall - machine	3,486.00 SF	0.00	0.32	8.63	236.07	1,360.22
Totals: Rear 3rd floor seating & offset				1,023.25	4,538.36	26,149.49

Mechanical Room

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
102. Seal floor or ceiling joist system	96.00 SF	0.00	0.90	1.66	18.49	106.55
103. Remove Carpet	158.00 SF	0.17	0.00	0.00	5.65	32.51
104. Carpet	181.70 SF	0.00	2.60	33.43	106.23	612.08
15 % waste added for Carpet.						
105. R&R Cove base molding - rubber or vinyl, 4" high	51.00 LF	0.19	1.51	4.88	19.24	110.82
106. Seal/prime then paint the surface area (2 coats)	560.00 SF	0.00	0.71	6.93	84.95	489.48
107. Texture drywall - machine	560.00 SF	0.00	0.32	1.39	37.92	218.51
108. General Laborer - per hour	6.00 HR	0.00	26.13	0.00	32.93	189.71
109. R&R 1/2" drywall - hung, taped, ready for texture	256.00 SF	0.26	1.37	8.66	89.45	515.39
Totals: Mechanical Room				56.95	394.86	2,275.05

Seating Offset

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
110. Seal floor or ceiling joist system	288.00 SF	0.00	0.90	4.99	55.48	319.67

Buffalo Springs Property Services**CONTINUED - Seating Offset**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
111. Remove Carpet	536.00 SF	0.17	0.00	0.00	19.13	110.25
112. R&R 1/2" drywall - hung, taped, ready for texture	742.00 SF	0.26	1.37	25.10	259.25	1,493.81
113. Texture drywall - machine	794.00 SF	0.00	0.32	1.97	53.78	309.83
114. Seal stud wall for odor control	384.00 SF	0.00	0.63	4.44	51.73	298.09
115. R&R Light fixture	2.00 EA	5.22	57.81	5.45	27.62	159.13
116. Carpet	616.40 SF	0.00	2.60	113.40	360.36	2,076.40
15 % waste added for Carpet.						
117. R&R Cove base molding - rubber or vinyl, 4" high	99.00 LF	0.19	1.51	9.47	37.33	215.10
118. Seal/prime then paint the surface area (2 coats)	1,329.00 SF	0.00	0.71	16.45	201.62	1,161.66
Totals: Seating Offset				181.27	1,066.30	6,143.94

Bathroom

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
119. Seal floor or ceiling joist system	82.00 SF	0.00	0.90	1.42	15.80	91.02
120. R&R Acoustic ceiling tile	68.00 SF	0.38	2.93	8.81	49.11	283.00
121. R&R Cove base molding - rubber or vinyl, 4" high	36.00 LF	0.19	1.51	3.45	13.58	78.23
122. Clean floor	68.00 SF	0.00	0.30	2.03	4.28	26.71
123. Mask or cover per square foot	68.00 SF	0.28	0.00	0.34	4.06	23.44
124. R&R 1/2" drywall - hung, taped, ready for texture	128.00 SF	0.26	1.37	4.33	44.73	257.70
125. Urinal - Detach & reset	1.00 EA	0.00	245.61	0.00	51.58	297.19
126. Toilet - Detach & reset	1.00 EA	0.00	170.32	0.41	35.86	206.59
127. Sink - double - Detach & reset	1.00 EA	0.00	111.11	0.00	23.33	134.44
128. Bathroom mirror - Detach & reset	6.00 SF	0.00	6.06	0.00	7.64	44.00
129. Toilet paper dispenser - Detach & reset	1.00 EA	0.00	20.94	0.00	4.39	25.33
130. Paper Towell dispenser - Detach & reset	1.00 EA	0.00	20.94	0.00	4.39	25.33
131. Seal/prime then paint the surface area (2 coats)	270.00 SF	0.00	0.71	3.34	40.96	236.00
132. Texture drywall - machine	270.00 SF	0.00	0.32	0.67	18.28	105.35
Totals: Bathroom				24.80	317.99	1,834.33

Buffalo Springs Property Services

Womens Bathroom

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
133. Texture drywall - machine	276.00 SF	0.00	0.32	0.68	18.70	107.70
134. Seal floor or ceiling joist system	82.00 SF	0.00	0.90	1.42	15.80	91.02
135. R&R Acoustic ceiling tile	81.00 SF	0.38	2.93	10.49	58.51	337.11
136. R&R Cove base molding - rubber or vinyl, 4" high	36.00 LF	0.19	1.51	3.45	13.58	78.23
137. Clean floor	81.00 SF	0.00	0.30	2.42	5.10	31.82
138. Mask or cover per square foot	81.00 SF	0.28	0.00	0.40	4.85	27.93
139. R&R 1/2" drywall - hung, taped, ready for texture	128.00 SF	0.26	1.37	4.33	44.73	257.70
140. Urinal - Detach & reset	1.00 EA	0.00	245.61	0.00	51.58	297.19
141. Toilet - Detach & reset	1.00 EA	0.00	170.32	0.41	35.86	206.59
142. Sink - double - Detach & reset	1.00 EA	0.00	111.11	0.00	23.33	134.44
143. Bathroom mirror - Detach & reset	6.00 SF	0.00	6.06	0.00	7.64	44.00
144. Toilet paper dispenser - Detach & reset	1.00 EA	0.00	20.94	0.00	4.39	25.33
145. Paper Towell dispenser - Detach & reset	1.00 EA	0.00	20.94	0.00	4.39	25.33
146. Seal/prime then paint the surface area (2 coats)	276.00 SF	0.00	0.71	3.42	41.88	241.26
Totals: Womens Bathroom				27.02	330.34	1,905.65

Mens Bathroom

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
147. Seal floor or ceiling joist system	82.00 SF	0.00	0.90	1.42	15.80	91.02
148. R&R Acoustic ceiling tile	81.00 SF	0.38	2.93	10.49	58.51	337.11
149. R&R Cove base molding - rubber or vinyl, 4" high	36.00 LF	0.19	1.51	3.45	13.58	78.23
150. Clean floor	81.00 SF	0.00	0.30	2.42	5.10	31.82
151. Mask or cover per square foot	81.00 SF	0.28	0.00	0.40	4.85	27.93
152. R&R 1/2" drywall - hung, taped, ready for texture	128.00 SF	0.26	1.37	4.33	44.73	257.70
153. Urinal - Detach & reset	1.00 EA	0.00	245.61	0.00	51.58	297.19
154. Toilet - Detach & reset	1.00 EA	0.00	170.32	0.41	35.86	206.59
155. Sink - double - Detach & reset	1.00 EA	0.00	111.11	0.00	23.33	134.44
156. Bathroom mirror - Detach & reset	6.00 SF	0.00	6.06	0.00	7.64	44.00
157. Toilet paper dispenser - Detach & reset	1.00 EA	0.00	20.94	0.00	4.39	25.33

Buffalo Springs Property Services**CONTINUED - Mens Bathroom**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
158. Paper Towell dispenser - Detach & reset	1.00 EA	0.00	20.94	0.00	4.39	25.33
159. Seal/prime then paint the surface area (2 coats)	287.00 SF	0.00	0.71	3.55	43.55	250.87
160. Texture drywall - machine	287.00 SF	0.00	0.32	0.71	19.43	111.98
Totals: Mens Bathroom				27.18	332.74	1,919.54

Hallway & Landing offset

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
161. R&R Acoustic ceiling tile	1,613.00 SF	0.38	2.93	208.92	1,165.06	6,713.01
162. Remove Carpet	1,613.00 SF	0.17	0.00	0.00	57.58	331.79
163. Carpet	1,855.00 SF	0.00	2.60	341.27	1,084.50	6,248.77
0 % waste added for Carpet.						
164. R&R Cove base molding - rubber or vinyl, 4" high	450.00 LF	0.19	1.51	43.07	169.71	977.78
165. Seal/prime then paint the surface area (2 coats)	1,710.00 SF	0.00	0.71	21.16	259.41	1,494.67
166. Seal floor or ceiling joist system	176.00 SF	0.00	0.90	3.05	33.91	195.36
167. Light fixture - Detach & reset	8.00 EA	0.00	34.91	0.00	58.65	337.93
Totals: Hallway & Landing offset				617.47	2,828.82	16,299.31

15 Suite

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
168. Seal floor or ceiling joist system	198.00 SF	0.00	0.90	3.43	38.14	219.77
169. R&R Acoustic ceiling tile	198.00 SF	0.38	2.93	25.65	143.02	824.05
170. Remove Carpet	198.00 SF	0.17	0.00	0.00	7.07	40.73
171. Carpet	227.70 SF	0.00	2.60	41.89	133.12	767.03
15 % waste added for Carpet.						
172. R&R Cove base molding - rubber or vinyl, 4" high	57.00 LF	0.19	1.51	5.45	21.50	123.85
173. Seal/prime then paint the surface area (2 coats)	452.00 SF	0.00	0.71	5.59	68.57	395.08
Totals: # 15 Suite				82.01	411.42	2,370.51

Buffalo Springs Property Services

# 12	Suite					
DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
174. Seal floor or ceiling joist system	46.00 SF	0.00	0.90	0.80	8.86	51.06
175. R&R Acoustic ceiling tile	205.00 SF	0.38	2.93	26.55	148.08	853.18
176. Remove Carpet	205.00 SF	0.17	0.00	0.00	7.32	42.17
177. Carpet	235.75 SF	0.00	2.60	43.37	137.84	794.16
15 % waste added for Carpet.						
178. R&R Cove base molding - rubber or vinyl, 4" high	97.00 LF	0.19	1.51	9.28	36.58	210.76
179. Seal/prime then paint the surface area (2 coats)	752.00 SF	0.00	0.71	9.31	114.07	657.30
Totals: # 12 Suite				89.31	452.75	2,608.63

# 11	Suite					
DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
180. Seal floor or ceiling joist system	46.00 SF	0.00	0.90	0.80	8.86	51.06
181. R&R Acoustic ceiling tile	205.00 SF	0.38	2.93	26.55	148.08	853.18
182. Remove Carpet	205.00 SF	0.17	0.00	0.00	7.32	42.17
183. Carpet	235.75 SF	0.00	2.60	43.37	137.84	794.16
15 % waste added for Carpet.						
184. R&R Cove base molding - rubber or vinyl, 4" high	97.00 LF	0.19	1.51	9.28	36.58	210.76
185. Seal/prime then paint the surface area (2 coats)	752.00 SF	0.00	0.71	9.31	114.07	657.30
Totals: # 11 Suite				89.31	452.75	2,608.63

# 8	Suite					
DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
186. Seal floor or ceiling joist system	46.00 SF	0.00	0.90	0.80	8.86	51.06
187. R&R Acoustic ceiling tile	167.00 SF	0.38	2.93	21.63	120.62	695.02
188. Remove Carpet	167.00 SF	0.17	0.00	0.00	5.96	34.35
189. Carpet	192.05 SF	0.00	2.60	35.33	112.28	646.94
15 % waste added for Carpet.						
190. R&R Cove base molding - rubber or vinyl, 4" high	52.00 LF	0.19	1.51	4.98	19.62	113.00

Buffalo Springs Property Services**CONTINUED - # 8 Suite**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
191. Seal/prime then paint the surface area (2 coats)	413.00 SF	0.00	0.71	5.11	62.65	360.99
Totals: # 8 Suite				67.85	329.99	1,901.36

6 & 7 Suite

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
192. Seal floor or ceiling joist system	46.00 SF	0.00	0.90	0.80	8.86	51.06
193. R&R Acoustic ceiling tile	162.00 SF	0.38	2.93	20.98	117.02	674.22
194. Remove Carpet	162.00 SF	0.17	0.00	0.00	5.78	33.32
195. Carpet	186.30 SF	0.00	2.60	34.27	108.92	627.57
15 % waste added for Carpet.						
196. R&R Cove base molding - rubber or vinyl, 4" high	51.00 LF	0.19	1.51	4.88	19.24	110.82
197. Seal/prime then paint the surface area (2 coats)	408.00 SF	0.00	0.71	5.05	61.91	356.64
Totals: # 6 & 7 Suite				65.98	321.73	1,853.63

5 Suite

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
198. Seal floor or ceiling joist system	46.00 SF	0.00	0.90	0.80	8.86	51.06
199. R&R Acoustic ceiling tile	176.00 SF	0.38	2.93	22.80	127.14	732.50
200. Remove Carpet	176.00 SF	0.17	0.00	0.00	6.28	36.20
201. Carpet	202.40 SF	0.00	2.60	37.24	118.33	681.81
15 % waste added for Carpet.						
202. R&R Cove base molding - rubber or vinyl, 4" high	53.00 LF	0.19	1.51	5.07	19.99	115.16
203. Seal/prime then paint the surface area (2 coats)	602.00 SF	0.00	0.71	7.45	91.33	526.20
Totals: # 5 Suite				73.36	371.93	2,142.93

1 & 2 Suite

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
204. Seal floor or ceiling joist system	46.00 SF	0.00	0.90	0.80	8.86	51.06

Buffalo Springs Property Services**CONTINUED - # 1 & 2 Suite**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
205. R&R Acoustic ceiling tile	205.00 SF	0.38	2.93	26.55	148.08	853.18
206. Remove Carpet	205.00 SF	0.17	0.00	0.00	7.32	42.17
207. Carpet	235.75 SF	0.00	2.60	43.37	137.84	794.16
15 % waste added for Carpet.						
208. R&R Cove base molding - rubber or vinyl, 4" high	97.00 LF	0.19	1.51	9.28	36.58	210.76
209. Seal/prime then paint the surface area (2 coats)	752.00 SF	0.00	0.71	9.31	114.07	657.30
Totals: # 1 & 2 Suite				89.31	452.75	2,608.63

2nd	Entry	DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
		210. R&R Metal J trim	24.00 LF	0.65	2.63	1.31	16.80	96.83
		211. Texture drywall - machine	64.00 SF	0.00	0.32	0.16	4.34	24.98
		212. Seal/prime then paint the surface area (2 coats)	840.00 SF	0.00	0.71	10.40	127.42	734.22
		213. Light fixture - Detach & reset	8.00 EA	0.00	34.91	0.00	58.65	337.93
		214. Mask or cover per square foot	840.00 SF	0.28	0.00	4.16	50.27	289.63
		215. Clean floor	840.00 SF	0.00	0.30	25.16	52.92	330.08
Totals: 2nd Entry						41.19	310.40	1,813.67

Main Entrance Interior

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
216. Seal floor or ceiling joist system	222.00 SF	0.00	0.90	3.85	42.77	246.42
217. R&R Acoustic ceiling tile	443.00 SF	0.38	2.93	57.38	319.98	1,843.69
218. R&R Cove base molding - rubber or vinyl, 4" high	48.00 LF	0.19	1.51	4.59	18.10	104.29
219. Clean floor	443.00 SF	0.00	0.30	13.26	27.91	174.07
220. Mask or cover per square foot	443.00 SF	0.28	0.00	2.19	26.50	152.73
221. Texture drywall - machine	1,315.00 SF	0.00	0.32	3.25	89.06	513.11
222. R&R 1/2" drywall - hung, taped, ready for texture	96.00 SF	0.26	1.37	3.25	33.56	193.29
223. Reglaze 3/16" glass - double pane	132.00 SF	0.00	14.22	135.36	422.60	2,435.00
224. Seal/prime then paint the surface area (2 coats)	1,315.00 SF	0.00	0.71	16.27	199.49	1,149.41

Buffalo Springs Property Services**CONTINUED - Main Entrance Interior**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
Totals: Main Entrance Interior				239.40	1,179.97	6,812.01

8 Office

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
225. Seal floor or ceiling joist system	12.00 SF	0.00	0.90	0.21	2.31	13.32
226. R&R Acoustic ceiling tile	106.00 SF	0.38	2.93	13.73	76.56	441.15
227. Remove Carpet	106.00 SF	0.17	0.00	0.00	3.78	21.80
228. Carpet	121.90 SF	0.00	2.60	22.43	71.26	410.63
15 % waste added for Carpet.						
229. R&R Cove base molding - rubber or vinyl, 4" high	42.00 LF	0.19	1.51	4.02	15.84	91.26
230. Seal/prime then paint the surface area (2 coats)	333.00 SF	0.00	0.71	4.12	50.51	291.06
Totals: # 8 Office				44.51	220.26	1,269.22

7 Office

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
231. Seal floor or ceiling joist system	32.00 SF	0.00	0.90	0.55	6.17	35.52
232. R&R Acoustic ceiling tile	96.00 SF	0.38	2.93	12.43	69.34	399.53
233. Remove Carpet	96.00 SF	0.17	0.00	0.00	3.43	19.75
234. Carpet	110.40 SF	0.00	2.60	20.31	64.53	371.88
15 % waste added for Carpet.						
235. R&R Cove base molding - rubber or vinyl, 4" high	40.00 LF	0.19	1.51	3.83	15.08	86.91
236. Seal/prime then paint the surface area (2 coats)	319.00 SF	0.00	0.71	3.95	48.40	278.84
237. R&R 1/2" drywall - hung, taped, ready for texture	32.00 SF	0.26	1.37	1.08	11.18	64.42
Totals: # 7 Office				42.15	218.13	1,256.85

6 Office

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
238. Seal floor or ceiling joist system	12.00 SF	0.00	0.90	0.21	2.31	13.32
239. R&R Acoustic ceiling tile	149.00 SF	0.38	2.93	19.30	107.62	620.11

STATEFARMARENA

10/30/2017

Page: 15

000386

Buffalo Springs Property Services**CONTINUED - # 6 Office**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
240. Remove Carpet	149.00 SF	0.17	0.00	0.00	5.32	30.65
241. Carpet	171.35 SF	0.00	2.60	31.52	100.18	577.21
15 % waste added for Carpet.						
242. R&R Cove base molding - rubber or vinyl, 4" high	49.00 LF	0.19	1.51	4.69	18.48	106.47
243. Seal/prime then paint the surface area (2 coats)	391.00 SF	0.00	0.71	4.84	59.31	341.76
Totals: # 6 Office				60.56	293.22	1,689.52

5**Office**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
244. Seal floor or ceiling joist system	12.00 SF	0.00	0.90	0.21	2.31	13.32
245. R&R Acoustic ceiling tile	178.00 SF	0.38	2.93	23.06	128.57	740.81
246. Remove Carpet	178.00 SF	0.17	0.00	0.00	6.36	36.62
247. Carpet	204.70 SF	0.00	2.60	37.66	119.67	689.55
15 % waste added for Carpet.						
248. R&R Cove base molding - rubber or vinyl, 4" high	54.00 LF	0.19	1.51	5.17	20.37	117.34
249. Seal/prime then paint the surface area (2 coats)	431.00 SF	0.00	0.71	5.33	65.38	376.72
Totals: # 5 Office				71.43	342.66	1,974.36

4**Office**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
250. Seal floor or ceiling joist system	12.00 SF	0.00	0.90	0.21	2.31	13.32
251. R&R Acoustic ceiling tile	143.00 SF	0.38	2.93	18.52	103.29	595.14
252. Remove Carpet	143.00 SF	0.17	0.00	0.00	5.10	29.41
253. Carpet	164.45 SF	0.00	2.60	30.25	96.15	553.97
15 % waste added for Carpet.						
254. R&R Cove base molding - rubber or vinyl, 4" high	48.00 LF	0.19	1.51	4.59	18.10	104.29
255. Seal/prime then paint the surface area (2 coats)	383.00 SF	0.00	0.71	4.74	58.09	334.76
Totals: # 4 Office				58.31	283.04	1,630.89

Buffalo Springs Property Services

3

Office

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
256. Seal floor or ceiling joist system	12.00 SF	0.00	0.90	0.21	2.31	13.32
257. R&R Acoustic ceiling tile	160.00 SF	0.38	2.93	20.72	115.57	665.89
258. Remove Carpet	160.00 SF	0.17	0.00	0.00	5.71	32.91
259. Carpet	184.00 SF	0.00	2.60	33.85	107.57	619.82
15 % waste added for Carpet.						
260. R&R Cove base molding - rubber or vinyl, 4" high	51.00 LF	0.19	1.51	4.88	19.24	110.82
261. Seal/prime then paint the surface area (2 coats)	405.00 SF	0.00	0.71	5.01	61.44	354.00
Totals: # 3 Office				64.67	311.84	1,796.76

2

Office

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
262. Seal floor or ceiling joist system	12.00 SF	0.00	0.90	0.21	2.31	13.32
263. R&R Acoustic ceiling tile	292.00 SF	0.38	2.93	37.82	210.92	1,215.26
264. Remove Carpet	292.00 SF	0.17	0.00	0.00	10.42	60.06
265. Carpet	335.80 SF	0.00	2.60	61.78	196.33	1,131.19
15 % waste added for Carpet.						
266. R&R Cove base molding - rubber or vinyl, 4" high	73.00 LF	0.19	1.51	6.99	27.54	158.63
267. Seal/prime then paint the surface area (2 coats)	876.00 SF	0.00	0.71	10.84	132.89	765.69
Totals: # 2 Office				117.64	580.41	3,344.15

1

Office

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
268. Seal floor or ceiling joist system	12.00 SF	0.00	0.90	0.21	2.31	13.32
269. R&R Acoustic ceiling tile	180.00 SF	0.38	2.93	23.31	130.00	749.11
270. Remove Carpet	180.00 SF	0.17	0.00	0.00	6.43	37.03
271. Carpet	207.00 SF	0.00	2.60	38.08	121.02	697.30
15 % waste added for Carpet.						
272. R&R Cove base molding - rubber or vinyl, 4" high	54.00 LF	0.19	1.51	5.17	20.37	117.34

Buffalo Springs Property Services**CONTINUED - # 1 Office**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
273. Seal/prime then paint the surface area (2 coats)	432.00 SF	0.00	0.71	5.35	65.54	377.61
Totals: # 1 Office				72.12	345.67	1,991.71

Side Entrance

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
274. Seal floor or ceiling joist system	172.00 SF	0.00	0.90	2.98	33.14	190.92
275. R&R 1/2" drywall - hung, taped, ready for texture	574.00 SF	0.26	1.37	19.42	200.56	1,155.60
276. Seal/prime then paint the surface area (2 coats)	2,478.00 SF	0.00	0.71	30.67	375.91	2,165.96
277. Floor protection - plastic and tape - 10 mil	573.00 SF	0.00	0.23	4.73	28.67	165.19
278. Light fixture - Detach & reset - Large	3.00 EA	0.00	64.19	0.00	40.44	233.01
279. R&R Additional cost for high wall or ceiling - over 14' to 20'	574.00 SF	0.13	0.45	0.00	69.91	402.83
Totals: Side Entrance				57.80	748.63	4,313.51

Settlement room

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
280. Seal stud wall for odor control	128.00 SF	0.00	0.63	1.48	17.24	99.36
281. Seal floor or ceiling joist system	172.00 SF	0.00	0.90	2.98	33.14	190.92
282. R&R Acoustic ceiling tile	172.00 SF	0.38	2.93	22.28	124.25	715.85
283. R&R 1/2" drywall - hung, taped, ready for texture	128.00 SF	0.26	1.37	4.33	44.73	257.70
284. Texture drywall - machine	607.00 SF	0.00	0.32	1.50	41.11	236.85
285. Seal/prime then paint the surface area (2 coats)	607.00 SF	0.00	0.71	7.51	92.09	530.57
286. R&R Cove base molding - rubber or vinyl, 4" high	76.00 LF	0.19	1.51	7.27	28.66	165.13
287. Mask or cover per square foot	345.00 SF	0.28	0.00	1.71	20.65	118.96
288. Clean floor	345.00 SF	0.00	0.30	10.33	21.74	135.57
Totals: Settlement room				59.39	423.61	2,450.91

Buffalo Springs Property Services

3

Entry

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
289. Clean walls	269.00 SF	0.00	0.30	8.06	16.95	105.71
290. Seal/prime then paint the surface area (2 coats) walls	269.00 SF	0.00	0.71	3.33	40.81	235.13
291. Remove Carpet	59.17 SF	0.17	0.00	0.00	2.12	12.18
292. Carpet	68.05 SF	0.00	2.60	12.52	39.78	229.23
15 % waste added for Carpet.						
293. R&R Carpet pad	59.17 SF	0.08	0.49	2.20	7.54	43.46
Totals: # 3 Entry				26.11	107.20	625.71

3 Dressing Room

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
294. Clean walls	826.00 SF	0.00	0.30	24.73	52.04	324.57
295. Seal/prime then paint the surface area (2 coats) walls	826.00 SF	0.00	0.71	10.22	125.30	721.98
296. Remove Carpet	662.00 SF	0.17	0.00	0.00	23.63	136.17
297. Carpet	761.30 SF	0.00	2.60	140.06	445.09	2,564.53
15 % waste added for Carpet.						
298. R&R Carpet pad	662.00 SF	0.08	0.49	24.58	84.41	486.33
299. R&R Cove molding - 3/4"	103.00 LF	0.10	1.03	4.25	25.34	145.98
300. Paint cove molding - one coat	103.00 LF	0.00	0.46	0.51	10.06	57.95
Totals: # 3 Dressing Room				204.35	765.87	4,437.51

2 Dressing Room

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
301. Clean walls	682.00 SF	0.00	0.30	20.42	42.97	267.99
302. Seal/prime then paint the surface area (2 coats) walls	682.00 SF	0.00	0.71	8.44	103.45	596.11
303. Mask or cover per square foot	451.00 SF	0.28	0.00	2.23	26.99	155.50
Totals: # 2 Dressing Room				31.09	173.41	1,019.60

#1 Dressing Room

Buffalo Springs Property Services**CONTINUED - #1 Dressing Room**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
304. Clean walls	1,164.00 SF	0.00	0.30	34.86	73.33	457.39
305. Seal/prime then paint the surface area (2 coats) walls	1,164.00 SF	0.00	0.71	14.40	176.57	1,017.41
306. Mask or cover per square foot	451.00 SF	0.28	0.00	2.23	26.99	155.50
Totals: #1 Dressing Room				51.49	276.89	1,630.30

Suite Club entrance

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
307. Reglaze 3/16" glass - double pane	1,040.00 SF	0.00	14.22	1,066.49	3,329.61	19,184.90
308. Reglaze window, 17 - 24 sf side areas	10.00 EA	0.00	174.21	87.09	384.13	2,213.32
309. Re-point masonry	180.00 SF	0.00	3.60	1.04	136.29	785.33
310. Clean floor - tile	1,066.00 SF	0.00	0.43	50.60	97.18	606.16
311. Texture drywall - light hand texture	900.00 SF	0.00	0.40	2.97	76.23	439.20
312. Seal/prime then paint the surface area (2 coats)	1,325.00 SF	0.00	0.71	16.40	201.00	1,158.15
313. Light fixture - Detach & reset	4.00 EA	0.00	34.91	0.00	29.32	168.96
314. Mask or cover per square foot	900.00 SF	0.28	0.00	4.46	53.86	310.32
Totals: Suite Club entrance				1,229.05	4,307.62	24,866.34

Mechanical

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
315. R&R Boiler - Replace 4 units damaged by debris, wind and water intrusion	4.00 EA	1,800.00	32,000.00	2,387.22	28,893.31	166,480.53
316. R&R Detach & Reset Boiler roof mounted units at both ends of arena behind deflector shield	2.00 EA	32,000.00	0.00	2,079.00	13,876.59	79,955.59
317. Overhead crane - rental	5.00 MO	0.00	33,646.66	11,756.25	37,797.81	217,787.36
318. Boom lift - 50'-60' reach	60.00 DA	0.00	375.00	0.00	4,725.00	27,225.00
319. General Mobilization/Demolition	1.00 EA	32,000.00	0.00	0.00	6,720.00	38,720.00
320. HVAC Control center replace per bid	1.00 EA	0.00	15,000.00	0.00	3,150.00	18,150.00
321. R&R Central air - condenser unit - 4 ton - 16-21 SEER	4.00 EA	26.16	2,676.87	761.15	2,430.39	14,003.66
322. Comb/straighten a/c cond. fins - Large	12.00 EA	0.00	156.25	0.00	393.75	2,268.75

Buffalo Springs Property Services**CONTINUED - Mechanical**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
323. R&R Central air - condenser unit - 4 ton - 14-15 SEER on genrator trailer	1.00 EA	26.16	1,910.76	127.08	433.45	2,497.45
Totals: Mechanical				17,110.70	98,420.30	567,088.34

Maintenance Building

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
324. R&R Corrugated fiberglass roofing (greenhouse type)	384.00 SF	0.26	2.06	36.43	194.72	1,122.03
325. R&R Roof mount power attic vent - Large	6.00 EA	15.65	925.00	73.71	1,200.70	6,918.31
326. R&R Gutter / downspout - aluminum - 6"	340.00 LF	0.32	7.58	132.12	591.80	3,409.92
327. R&R Eave trim for metal roofing - 29 gauge	404.42 LF	0.52	3.00	40.04	307.35	1,770.95
328. R&R Ridge cap - metal roofing	151.00 LF	1.71	4.03	27.78	187.85	1,082.37
329. R&R Gable trim for metal roofing - 29 gauge	104.00 LF	0.52	3.71	16.39	95.82	552.13
330. R&R Batt insulation - 4" - R11 - paper faced	7,800.00 SF	0.15	0.53	231.66	1,162.49	6,698.15
331. R&R Siding - steel (29 gauge)	3,800.00 SF	0.30	5.29	1,028.28	4,676.76	26,947.04
332. R&R Metal J trim	230.00 LF	0.65	2.63	12.52	161.06	927.98
333. Temporary Repairs - per hour	6.00 HR	0.00	56.20	0.00	70.81	408.01
334. Boom lift - 30'-45' reach	5.00 DA	0.00	300.00	0.00	315.00	1,815.00
335. R&R Metal roofing	7,812.06 SF	0.32	7.50	824.95	13,002.23	74,917.49
Totals: Maintenance Building				2,423.88	21,966.59	126,569.38

Arena Roof

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
336. R&R Modified bitumen roof - hot mopped commercial application	1,068.27 SQ	220.00	850.00	8,955.12	241,920.84	1,393,924.86
337. R&R Modified bitumen roof - hot mopped commercial application flat areas	825.00 SQ	220.00	850.00	6,915.83	186,829.82	1,076,495.65
338. R&R Sheathing - plywood - 5/8" CDX	189,327.00 SF	0.35	2.75	12,339.39	125,843.16	725,096.25
339. R&R Rigid foam insulation board - 2"	189,327.00 SF	0.19	4.20	13,276.56	177,328.63	1,021,750.72
340. R&R Cap flashing - large	2,780.14 LF	0.37	20.65	3,708.78	13,050.95	75,198.27

Buffalo Springs Property Services**CONTINUED - Arena Roof**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
341. R&R Flashing, 20" wide	2,780.14 LF	0.37	2.74	318.81	1,882.66	10,847.70
342. Remove Additional charge for high roof (2 stories or greater)	1,068.27 SQ	3.31	0.00	0.00	742.56	4,278.53
343. Additional charge for high roof (2 stories or greater)	1,068.27 SQ	0.00	120.00	0.00	26,920.40	155,112.80
344. R&R Modified bitumen roof - hot mopped parapet wall	228.00 SQ	32.32	825.00	1,911.28	41,449.86	238,830.10
345. Roof mounted HVAC and equipment lower level - Detach & reset	14.00 EA	0.00	343.65	0.00	1,010.33	5,821.43
346. R&R Flashing - pipe jack	36.00 EA	4.41	26.02	27.12	235.74	1,358.34
347. R&R Exhaust fan - Commercial	22.00 EA	11.74	664.66	977.56	3,330.26	19,188.62
348. Electrician - per hour detach and reset roof wiring	80.00 HR	0.00	70.91	0.00	1,191.29	6,864.09
349. R&R Exhaust fan - Commercial - large	4.00 EA	11.74	768.09	191.07	695.20	4,005.59
350. Wind barrier / mechanical - protection at each end of bldg. Detach & reset	2.00 EA	0.00	8,000.00	0.00	3,360.00	19,360.00
351. R&R Stand pipe - 12"	14.00 LF	5.87	73.79	31.80	240.89	1,387.93
352. R&R Metal roofing - High grade	3,662.00 SF	0.32	7.50	552.87	6,129.84	35,319.55
353. Roof drain system	20.00 EA	0.00	500.00	0.35	2,100.08	12,100.43
Totals: Arena Roof				49,206.54	834,262.51	4,806,940.86

Ticket Area

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
354. R&R Storefront - bronze anodized frame - Double pane	167.00 SF	1.18	32.03	358.77	1,240.03	7,144.87
355. Glass, Glazing, & Storefronts (Bid Item)	1.00 EA	0.00	1,550.00	0.00	325.50	1,875.50
356. R&R Acoustic ceiling tile	270.00 SF	0.38	2.93	34.97	195.03	1,123.70
357. Remove Carpet	270.00 SF	0.17	0.00	0.00	9.64	55.54
358. Carpet	310.50 SF	0.00	2.60	57.12	181.52	1,045.94
15 % waste added for Carpet.						
359. Seal & paint trim - two coats	324.00 LF	0.00	1.01	2.67	69.28	399.19
Totals: Ticket Area				453.53	2,021.00	11,644.74

Exterior**Exterior**

Buffalo Springs Property Services**CONTINUED - Exterior**

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
360. R&R Siding - steel - Commercial - High grade rear exposure	1,072.00 SF	0.30	6.23	373.22	1,548.41	8,921.79
361. Prime & paint metal siding upper yellow panels	13,340.00 SF	0.00	0.65	231.12	1,869.44	10,771.56
362. Prime & paint metal siding lower grey panels	7,200.00 SF	0.00	0.65	124.74	1,008.99	5,813.73
363. R&R Siding - steel - Commercial - High grade front exposure	1,072.00 SF	0.30	6.23	373.22	1,548.41	8,921.79
364. R&R Metal studding, 3 5/8" wide, 16" OC, 20 gauge	1,092.00 SF	0.23	1.81	72.07	482.96	2,782.71
365. R&R Batt insulation - 6" - R19 - paper faced	1,092.00 SF	0.18	0.76	47.75	225.59	1,299.82
366. R&R Wall/roof panel - ribbed - 24 gauge - 1 1/8" to 1 1/2"	1,092.00 SF	0.32	3.62	174.77	940.22	5,417.47
367. Metal siding - Reset loose panels	12,500.00 SF	0.00	1.61	30.94	4,232.74	24,388.68
368. Masonry brick and mortar joint work	950.00 SF	0.00	32.00	0.00	6,384.00	36,784.00
369. R&R Flashing replacement sou, 20" wide	425.00 LF	0.37	2.74	48.74	287.81	1,658.30
370. Commercial sign (Bid Item)	1.00 EA	0.00	3,500.00	0.00	735.00	4,235.00
371. R&R Commercial Overhead door & hardware - west end	1.00 EA	399.00	8,500.00	63.48	1,882.12	10,844.60
372. R&R Door opening repairs frame and masonry	1.00 EA	1,200.00	3,500.00	8.59	988.81	5,697.40
Total: Exterior				1,548.64	22,134.50	127,536.85
Total: Source - Geomni Property				87,526.44	1,285,588.13	7,417,069.45
Labor Minimums Applied						
DESCRIPTION	QTY	REMOVE	REPLACE	TAX	O&P	TOTAL
373. Finish carpentry labor minimum	1.00 EA	0.00	2.83	0.00	0.59	3.42
Totals: Labor Minimums Applied				0.00	0.59	3.42
Line Item Totals: STATEFARMARENA				87,526.44	1,285,588.72	7,417,072.87

Buffalo Springs Property Services

Grand Total Areas:

0.00	SF Walls	0.00	SF Ceiling	0.00	SF Walls and Ceiling
0.00	SF Floor	0.00	SY Flooring	0.00	LF Floor Perimeter
0.00	SF Long Wall	0.00	SF Short Wall	0.00	LF Ceil. Perimeter
0.00	Floor Area	0.00	Total Area	0.00	Interior Wall Area
142,497.82	Exterior Wall Area	10,393.01	Exterior Perimeter of Walls		
0.00	Surface Area	0.00	Number of Squares	3,184.55	Total Perimeter Length
0.00	Total Ridge Length	0.00	Total Hip Length		

Buffalo Springs Property Services

Summary

Line Item Total	6,043,957.71
Material Sales Tax	82,385.29
Cleaning Mtl Tax	4.83
Subtotal	6,126,347.83
Overhead	612,185.14
Profit	673,403.58
Cleaning Sales Tax	5,136.32
Replacement Cost Value	\$7,417,072.87
Net Claim	\$7,417,072.87

Mark Barber

Buffalo Springs Property Services

Recap by Category

O&P Items	Total	%
ACOUSTICAL TREATMENTS	28,848.78	0.39%
CONT: GARMENT & SOFT GOODS CLN	32,482.08	0.44%
CONT: CLEAN - HARD FURNITURE	7,500.00	0.10%
CLEANING	7,747.48	0.10%
CONTENT MANIPULATION	937,200.00	12.64%
GENERAL DEMOLITION	682,760.20	9.21%
DOORS	12,000.00	0.16%
DRYWALL	10,315.41	0.14%
ELECTRICAL	17,852.96	0.24%
ELECTRICAL - SPECIAL SYSTEMS	5,672.80	0.08%
MISC. EQUIPMENT - COMMERCIAL	3,500.00	0.05%
HEAVY EQUIPMENT	192,233.30	2.59%
FLOOR COVERING - CARPET	172,284.83	2.32%
FLOOR COVERING - VINYL	5,941.29	0.08%
PERMITS AND FEES	87,500.00	1.18%
FINISH CARPENTRY / TRIMWORK	16,108.92	0.22%
FIRE PROTECTION SYSTEMS	1,033.06	0.01%
FRAMING & ROUGH CARPENTRY	521,281.05	7.03%
GLASS, GLAZING, & STOREFRONTS	23,564.85	0.32%
HEAT, VENT & AIR CONDITIONING	175,354.34	2.36%
INSULATION	804,787.32	10.85%
LABOR ONLY	5,829.58	0.08%
LIGHT FIXTURES	1,794.10	0.02%
MASONRY	31,192.00	0.42%
METAL STRUCTURES & COMPONENTS	3,953.04	0.05%
PLUMBING	11,581.12	0.16%
PAINTING	40,632.92	0.55%
ROOFING	2,081,754.71	28.07%
SIDING	54,252.14	0.73%
SOFFIT, FASCIA, & GUTTER	2,577.20	0.03%
TOILET & BATH ACCESSORIES	234.72	0.00%
TEMPORARY REPAIRS	57,945.41	0.78%
WINDOW REGLAZING & REPAIR	1,742.10	0.02%
O&P Items Subtotal	6,039,457.71	81.43%
Non-O&P Items	Total	%
CONT: CLEAN - HARD FURNITURE	4,500.00	0.06%
Non-O&P Items Subtotal	4,500.00	0.06%
O&P Items Subtotal	6,039,457.71	81.43%
Material Sales Tax	82,385.29	1.11%
STATEFARMARENA	10/30/2017	Page: 26

000397

Buffalo Springs Property Services

Cleaning Mtl Tax	4.83	0.00%
Overhead	612,185.14	8.25%
Profit	673,403.58	9.08%
Cleaning Sales Tax	5,136.32	0.07%
Total	7,417,072.87	100.00%

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

Client: State Farm Arena Property (City of Hidalgo)
Property: 2600 N. 10th Street
Hidalgo, TX 78557

Operator Info:

Operator: ABERRYHI

Estimator: Al Berryhill
Company: CrossPointe Construction, Inc.
Business: P.O. Box 163114
Austin, TX 78735

Type of Estimate:	Wind/Hail	
Date Entered:	3/21/2018	Date Assigned:
Date Est. Completed:	4/30/2018	Date Job Completed:

Price List: TXMC7X_MAR18
Labor Efficiency: Restoration/Service/Remodel
Estimate: STATE_FARM_ARENA_DMG

The following report and estimate is based on my inspection of the subject property on March 9, 2018, completion of a detailed drone survey of the roof and exterior finishes, and my review of project documents provided in conjunction with the subject insurance claim. Access to the property was provided by arena staff on behalf of the City of Hidalgo, who also provided floor plans of the arena building for use during our inspection and accompanied our representatives. Documents reviewed include:

- Littleton Group estimates dated June 12, 2016, July 8, 2016, and July 22, 2016.
- Littleton Group report dated June 13, 2016 and accompanying inspection photos.
- Littleton Group supplemental report dated July 8, 2016.
- Littleton Group supplemental report dated July 22, 2016.
- Buffalo Springs estimate dated October 30, 2017 and accompanying photos.
- Demand letter from Martin Phipps to Texas Municipal League Intergovernmental Risk Pool.
- Documents pertaining to prior March 29, 2012 wind claim.
- Documents pertaining to April 20, 2012 hail claim.
- Google Earth images from 2005, 2009, 2010, 2013, 2016 and 2017.
- National Weather Service SPC storm report for May 31, 2016 and June 1, 2016.
- National Weather Service weather station data for McAllen Miller Airport from May 1, 2016 through June 1, 2016.

Based on my review of National Weather Service information, no wind speeds or gusts in excess of 60 mph were reported at the McAllen Miller airport from May 1, 2016 through June 1, 2016. However, two reports of a possible tornado were reported near

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

I Road and Military and I Road and Polk in Pharr on May 31, 2018. Two wind gusts were report inn excess of 50 mph at the airport, one on May 5 and the other on May 31. No hail was reported to the National Weather Service in Hidalgo on either May 31, 2016 or June 1, 2016, but hail was reported south of Pharr, Texas on May 31, 2016. Pharr is located several miles east of the subject property.

At the time of my inspection, two recent repairs were evident to the building exterior, both located in the back right (NW) corner of the arena building. A TPO roof patch was noted on the arena barrel roof partly overlying one or more previous repairs to the modified bitumen roofing in the same location. These repairs were not evident in January 2016 Google Earth images of the property, but were visible in September 2016 photos, consistent with the damage described in the Littleton report. Part of the metal siding on the upper back wall of the building had also been replaced. The newer siding was a slightly different paint shade due to oxidation, but the panel and paint match was excellent. The modified bitumen roofing on the building was blistered at many overlaps, consistent with the condition of the roof in photos taken after the 2012 hail damage claims. Although some spot repairs to the roofing may have been completed, the roofing and appurtenances appeared to be in similar condition to that documented by Rimkus in 2013 and Cunningham Lindsey in 2012.

Inside the building, scattered ceiling tiles stains, most of which had been painted over during normal maintenance activities, were noted in the offices and arena suites. The majority of these stains appear to be related to condensation from the mechanical systems and roof drains and below previous roof repairs, although some tiles in the northwest corner of the building may have been damaged as a result of the 2016 wind storm. Similar stains, as well as stains on the office carpeting, were documented in the 2012 Cunningham Lindsey photos. Minor damage was observed to the paint and texture finish on drywall and textured concrete block and clad columns as well, predominantly located below the area of repaired roofing in the northwest area of the building. Specific damage areas are discussed in applicable rooms or areas of the building.

I reviewed repair estimates and photos taken by The Littleton Group and by Buffalo Springs Property Services in conjunction with the subject claim. Based on a comparison of photos taken in conjunction with the June 1, 2016 claim and the 2012 wind and hail claims, some of the repairs included in the Littleton Group estimate are likely related to previous damage and long-term wear and tear, particularly to the roof systems. Some of the repairs included in the Littleton Group estimate had already been completed and were not documented as damaged, but no receipts were available for review to understand the timing and extent of the alleged repairs and damage. However, the Littleton Group estimate is sufficient to repair all damage reasonably attributable to the May 31/June 1, 2016 storm event and other damage observed during our inspection or documented by others.

The Buffalo Springs estimate was highly excessing and generally unfounded based on my observations and review of the Buffalo Springs inspection photos and photos taken by others. The estimate included excessive unit pricing, repairs to undamaged finishes, excessive repairs to finishes with damage, and unnecessary additional allowances. Examples include, but are not limited to:

- Excessive charges to clean furnishing. The alleged damaged furniture was limited and easily cleaned.
- Unnecessary charges to replace the "electronic board". Neither the arena scoreboard or control room circuitry was damaged and would not have been reasonably damaged by this event.
- Unnecessary carpet replacement in the main arena. Even the cleaning budget in the Littleton estimate appears to be related to normal arena traffic, not storm damage.
- Excessive charges for permitting. Trades would pull permits as necessary as part of their overhead, and little additional expense would be incurred.
- Unnecessary charges for architectural and engineering fees. The building is not being re-designed, and the documented and alleged damage can be and was repaired without engineering or architectural drawings.
- Unnecessary charges for "temporary repairs" that were clearly not temporary - wall paneling, main entrance, etc.
- Double charges for cleanup and supervision. Cleanup is built into each work item, and worker supervision is built into the Xactimate G&A labor markups.

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

- Excessive and redundant charges for contents manipulation.
- Unnecessary contingency fee allowance. The Buffalo Springs estimate includes a highly excessive scope that would not necessitate any need for additional contingency, and the actual damage to this property was mostly repaired already.
- Unnecessary drywall removal and repainting in suites with no damage except for stained ceiling tiles.
- Excessive ceiling tile replacement where only a few tiles were stained.
- Excessive repairs in the corridors and walkways. The interior water damage reasonably related to the 2016 wind event was localized below the area of roof repair on the west side of the building.
- Excessive and unnecessary charges for carpet replacement.
- Unnecessary replacement of "boiler systems". No damage was observed or documented, and the systems depicted in the Buffalo Springs photos were of cooling systems for the arena and ice making system. The scope also included highly excessive and unnecessary charges to detach and reset two boiler systems, five months of unnecessary crane charges, and an additional unnecessary lump sum charge for mobilization.
- Unnecessary replacement of HVAC equipment. The dents found in some condensing unit fins were also documented in the 2012 claim photos.
- Unnecessary charges to replace the entire arena barrel roof and flat roof systems, as well as the metal roofing. The majority of damage to the roof was blistering, which was documented in the prior claim. The completed repair to the barrel roof would not require complete replacement of the roof. Further, the work components and unit costs were highly excessive.
- Excessive and unnecessary charges to replace all metal siding on the arena building.
- Excessive charges for replacement of the maintenance building roof, siding and appurtenances. The damage to this building was minimal and limited to the west roof eave. No wind or hail damage to the metal siding was observed.

This estimate addresses all damage that could be reasonably attributed to the subject storm, as well as storm-related repairs that appear to have been previously completed based on photos taken shortly after the storm.

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

STATE_FARM_ARENA_DMG**Arena Building****Contents**

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No contents damage was observed at the time of my inspection, and none was documented by Buffalo Springs. A few water marks were visible on a red sofa set depicted in the Littleton Group photos, and some cleaning of these items may be required. No damage was observed or documented to the electronic circuit board, which appeared to be operational and used during games and events. An allowance for cleaning the leather sofas and upholstery was included for comparison purposes.					
1. Cleaning - Upholstery, Soft Furniture - per hour	16.00 HR	37.19	595.04	(0.00)	595.04
Totals: Contents			595.04	0.00	595.04

Main Arena Area

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
The flooring in the main arena area was primarily exposed concrete on the arena floor and bleachers. Some removable carpeting was noted on the lower bleachers and near one end of the arena, as well as in some walkways. This carpeting was heavily used and the arena carpeting appeared to be used to protect the floor from equipment and vehicle traffic. The Buffalo Springs estimate included enough carpeting to cover the entire arena at an excessive unit cost of more than \$40 per cy. No water damage or other storm-related damage was observed or documented by Buffalo Springs to necessitate this work. An allowance to clean the carpet was included for comparison purposes, but the observed stains on the carpet corresponded to traffic patterns, not storm damage.					
2. Clean and deodorize carpet	26,300.00 SF	0.33	8,679.00	(0.00)	8,679.00
Totals: Main Arena Area			8,679.00	0.00	8,679.00

Temporary Repairs/ Misc.

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
The Buffalo Springs estimate included a large and inappropriate budget for "temporary repairs" and miscellaneous work items, including excessive permitting charges, excessive dumpster charges for more than 1,200 cubic yards of trash, highly excessive charges for project supervision, excessive charges for wall panel and insulation repair that were clearly permanent, not temporary, excessive charges for contents manipulation, excessive and likely unnecessary charges for engineering fees, unnecessary charges for architectural fees, and a completely unfounded budget for "contingency items" and electrical repairs.					
3. Dumpster load - Approx. 40 yards, 7-8 tons of debris for non-roof waste*	1.00 EA	625.00	625.00	(0.00)	625.00
5. Temporary roof repairs (TPO and Mod Bit)	1.00 EA	7,500.00	7,500.00	(0.00)	7,500.00
Totals: Temporary Repairs/ Misc.			8,125.00	0.00	8,125.00

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

Northwest Entrance

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
One small stain was noted on the ceiling in the area of the northwest entrance, which was labelled "Martinez Furniture & Appliance Entrance" (see Photo DSC03031). The stain is located below the transition from the west side lower flat roof to the upper arena room. All lights were operational, and the repair to the ceiling would be minimal.					
6. 5/8" drywall - hung, taped, floated, ready for paint	128.00 SF	1.71	218.88	(0.00)	218.88
28. R&R Batt insulation - 6" - R19 - unfaced batt	128.00 SF	0.94	120.32	(0.00)	120.32
26. Light fixture - Detach & reset - Large	2.00 EA	72.42	144.84	(0.00)	144.84
27. Mask and prep for paint - plastic, paper, tape (per LF)	96.00 LF	1.02	97.92	(0.00)	97.92
7. Seal/prime then paint the surface area (2 coats)	410.00 SF	0.72	295.20	(0.00)	295.20
8. Labor to tape drop cloths	410.00 SF	0.11	45.10	(0.00)	45.10
9. Additional cost for high wall or ceiling - Over 14'	410.00 SF	0.05	20.50	(0.00)	20.50
Totals: Northwest Entrance			942.76	0.00	942.76

Staging Area

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No damage was observed or documented in the backstage staging area.					
Totals: Staging Area			0.00	0.00	0.00

Triangle Room

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Ths room was included in the Buffalo Springs estimate but was not documented as to location or damage.					
Totals: Triangle Room			0.00	0.00	0.00

Game Room

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No damage was observed or documented by others.					

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

CONTINUED - Game Room

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Totals: Game Room			0.00	0.00	0.00

VIP Room

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Several stained ceiling tiles and previously painted ceiling tiles were noted in the VIP room. This room is located below the flat roof section at the east end of the arena building. No other damage was observed. This suite was not in the vicinity of the roof or exterior wall storm damage.					
Totals: VIP Room			0.00	0.00	0.00

Suites Floor**Hallway and Landing**

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Four stained ceiling tiles were noted in the second floor corridors. The glue-down carpet had been replaced with laminate flooring.					
129. R&R Acoustic ceiling tile	16.00 SF	3.34	53.44	(0.00)	53.44
130. R&R Batt insulation - 6" - R19 - unfaced batt	16.00 SF	0.94	15.04	(0.00)	15.04
131. Remove Glue down carpet	1,277.00 SF	0.41	523.57	(0.00)	523.57
132. Glue down carpet	1,469.00 SF	1.83	2,688.27	(0.00)	2,688.27
133. R&R Cove base molding - rubber or vinyl, 4" high	450.00 LF	1.70	765.00	(0.00)	765.00
Totals: Hallway and Landing			4,045.32	0.00	4,045.32

Suite 1 and 2

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
This was a large combined suite. The carpet had been replaced with laminate flooring. A few ceiling tiles had been spot-sealed or painted. No other damage was observed. This suite was not located in the vicinity of the roof or exterior wall storm damage.					
Totals: Suite 1 and 2			0.00	0.00	0.00

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

Bathroom

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
This bathroom is located between Suites 1/2 and Suite 3. No damage was observed.					
Totals: Bathroom			0.00	0.00	0.00

Suite 3

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No damage was observed in this suite.					
Totals: Suite 3			0.00	0.00	0.00

Suite 4

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No damage was observed in this suite or identified in any other photos.					
Totals: Suite 4			0.00	0.00	0.00

Suite 5

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
The carpet had been replaced with laminate flooring in this suite. Two ceiling tiles had been spot-sealed or painted. No other damage was observed. This suite was not in the vicinity of the roof or exterior wall storm damage.					
Totals: Suite 5			0.00	0.00	0.00

Suite 6 and 7

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
This was a large combined suite. The carpet had been replaced with laminate flooring. Two ceiling tiles had been spot-sealed. No other damage was observed. This suite was not in the vicinity of the roof or exterior wall storm damage.					
Totals: Suite 6 and 7			0.00	0.00	0.00

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

Suite 8

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
The carpet had been replaced with laminate flooring. Two ceiling tiles had been spot-sealed or painted. No other damage was observed. This suite was not in the vicinity of the roof or exterior wall storm damage.					
113. R&R Acoustic ceiling tile	4.00 SF	3.34	13.36	(0.00)	13.36
114. R&R Batt insulation - 6" - R19 - unfaced batt	4.00 SF	0.94	3.76	(0.00)	3.76
115. Remove Glue down carpet	167.00 SF	0.41	68.47	(0.00)	68.47
116. Glue down carpet	192.05 SF	1.83	351.45	(0.00)	351.45
117. R&R Cove base molding - rubber or vinyl, 4" high	52.00 LF	1.70	88.40	(0.00)	88.40
118. Contents - move out then reset	1.00 EA	35.65	35.65	(0.00)	35.65
Totals: Suite 8			561.09	0.00	561.09

Suite 9

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No damage was observed in Suite 9.					
Totals: Suite 9			0.00	0.00	0.00

Suite 10

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No damage was observed in Suite 10.					
Totals: Suite 10			0.00	0.00	0.00

Suite 11

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No damage was observed in Suite 11.					
Totals: Suite 11			0.00	0.00	0.00

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

Suite 12 and 12a

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Two stained ceiling tiles were noted in Suite 12. No damage was observed in Suite 12a.					
119. R&R Acoustic ceiling tile	8.00 SF	3.34	26.72	(0.00)	26.72
120. R&R Batt insulation - 6" - R19 - unfaced batt	8.00 SF	0.94	7.52	(0.00)	7.52
Totals: Suite 12 and 12a			34.24	0.00	34.24

Suite 14

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No damage was observed in Suite 14.					
Totals: Suite 14			0.00	0.00	0.00

Suite 15

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
One stained ceiling tile was observed in Suite 15, and the glue down carpet had been replaced with laminate flooring. No wall damage was observed, but the walls may have been repaired and painted.					
121. R&R Acoustic ceiling tile	198.00 SF	3.34	661.32	(0.00)	661.32
122. R&R Batt insulation - 6" - R19 - unfaced batt	198.00 SF	0.94	186.12	(0.00)	186.12
123. Remove Glue down carpet	198.00 SF	0.41	81.18	(0.00)	81.18
124. Glue down carpet	227.70 SF	1.83	416.69	(0.00)	416.69
125. R&R Cove base molding - rubber or vinyl, 4" high	56.00 LF	1.70	95.20	(0.00)	95.20
126. R&R 1/2" drywall - hung, taped, floated, ready for paint	32.00 SF	1.86	59.52	(0.00)	59.52
127. Seal/prime then paint the surface area (2 coats)	452.00 SF	0.72	325.44	(0.00)	325.44
128. Contents - move out then reset - Large room	1.00 EA	53.49	53.49	(0.00)	53.49
Totals: Suite 15			1,878.96	0.00	1,878.96

Womens Restroom

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
This restroom is located downslope from the repaired roof section in the northwest corner of the building, and under the flat roof area. The ceiling tiles were stained and did not appear to have been replaced. Stains were also visible on the walls.					
197. R&R Acoustic ceiling tile	74.00 SF	3.34	247.16	(0.00)	247.16
198. R&R Batt insulation - 6" - R19 - unfaced batt	74.00 SF	0.94	69.56	(0.00)	69.56
199. Clean floor	74.00 SF	0.30	22.20	(0.00)	22.20
200. R&R 1/2" drywall - hung, taped, floated, ready for paint	64.00 SF	1.86	119.04	(0.00)	119.04
201. Seal/prime then paint the surface area (2 coats)	276.00 SF	0.72	198.72	(0.00)	198.72
202. Toilet - Detach & reset	1.00 EA	170.94	170.94	(0.00)	170.94
203. Sink - single - Detach & reset	1.00 EA	103.99	103.99	(0.00)	103.99
204. Mirror - plate glass - Detach & reset	6.00 SF	4.02	24.12	(0.00)	24.12
205. Toilet & Bath Accessory - Labor Minimum	1.00 EA	102.16	102.16	(0.00)	102.16
Totals: Womens Restroom			1,057.89	0.00	1,057.89

Mens Restroom

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
This restroom is located downslope from the repaired roof section in the northwest corner of the building, and under the flat roof area. The ceiling tiles were stained and did not appear to have been replaced. Stains were also visible on the walls.					
206. R&R Acoustic ceiling tile	80.00 SF	3.34	267.20	(0.00)	267.20
207. R&R Batt insulation - 6" - R19 - unfaced batt	80.00 SF	0.94	75.20	(0.00)	75.20
208. Clean floor	80.00 SF	0.30	24.00	(0.00)	24.00
209. R&R 1/2" drywall - hung, taped, floated, ready for paint	64.00 SF	1.86	119.04	(0.00)	119.04
210. Seal/prime then paint the surface area (2 coats)	246.00 SF	0.72	177.12	(0.00)	177.12
211. Urinal - Detach & reset	1.00 EA	245.60	245.60	(0.00)	245.60
212. Toilet - Detach & reset	1.00 EA	170.94	170.94	(0.00)	170.94
213. Sink - single - Detach & reset	1.00 EA	103.99	103.99	(0.00)	103.99
214. Mirror - plate glass - Detach & reset	6.00 SF	4.02	24.12	(0.00)	24.12
215. Toilet & Bath Accessory - Labor Minimum	1.00 EA	102.16	102.16	(0.00)	102.16
Totals: Mens Restroom			1,309.37	0.00	1,309.37

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

Backstage Rows

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
This appears to be the same area also described as the Seating Offset in the Littleton Group estimate. This area is on the suite level at the west end of the arena. Although the majority of the ceilings in this area are open, some drywall was present on the walls, ceiling and girder cladding and stains were noted in several places. This area is generally located below the arena roof repair. No damage was observed in the west or southwest areas, or anywhere on the ground level, but minor water stains, ripples in paint finish, and drywall damage was observed in the upper level in the northwest section below and downslope from the large arena roof patches. Most of the exposed walls were painted CMU block or concrete columns. No framing damage was observed.					
159. R&R 5/8" drywall - hung, taped, floated, ready for paint	672.00 SF	1.98	1,330.56	(0.00)	1,330.56
160. R&R Batt insulation - 6" - R19 - paper faced	288.00 SF	0.95	273.60	(0.00)	273.60
161. Mask and prep for paint - plastic, paper, tape (per LF)	100.00 LF	1.02	102.00	(0.00)	102.00
162. Seal the surface area w/anti-microbial coating - one coat	384.00 SF	1.12	430.08	(0.00)	430.08
163. Floor protection - plastic and tape - 10 mil	535.00 SF	0.23	123.05	(0.00)	123.05
164. Seal/prime then paint the surface area (2 coats)	793.00 SF	0.72	570.96	(0.00)	570.96
165. R&R Cove base molding - rubber or vinyl, 4" high	100.00 LF	1.70	170.00	(0.00)	170.00
166. Light fixture - Detach & reset	2.00 EA	39.39	78.78	(0.00)	78.78
167. Content Manipulation charge - per hour	4.00 HR	26.14	104.56	(0.00)	104.56
Totals: Backstage Rows			3,183.59	0.00	3,183.59

Rear 3rd Floor Seating Area

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
178. R&R 5/8" drywall - hung, taped, floated, ready for paint	192.00 SF	1.98	380.16	(0.00)	380.16
179. R&R Batt insulation - 6" - R19 - paper faced	192.00 SF	0.95	182.40	(0.00)	182.40
180. Mask and prep for paint - plastic, paper, tape (per LF)	435.00 LF	1.02	443.70	(0.00)	443.70
181. Seal the surface area w/anti-microbial coating - one coat	192.00 SF	1.12	215.04	(0.00)	215.04
182. Floor protection - plastic and tape - 10 mil	3,566.00 SF	0.23	820.18	(0.00)	820.18
183. Seal/prime then paint the surface area (2 coats)	3,485.00 SF	0.72	2,509.20	(0.00)	2,509.20
187. Remove Glue down carpet	3,566.00 SF	0.41	1,462.06	(0.00)	1,462.06
188. Glue down carpet	4,100.00 SF	1.83	7,503.00	(0.00)	7,503.00

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

CONTINUED - Rear 3rd Floor Seating Area

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
184. R&R Cove base molding - rubber or vinyl, 4" high	435.00 LF	1.70	739.50	(0.00)	739.50
185. Light fixture - Detach & reset	2.00 EA	39.39	78.78	(0.00)	78.78
186. Content Manipulation charge - per hour	4.00 HR	26.14	104.56	(0.00)	104.56
Totals: Rear 3rd Floor Seating Area			14,438.58	0.00	14,438.58

Mechanical Room

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No damage was observed in the mechanical room, although the carpeting had been replaced and the room may have been painted. This room was not in the vicinity of the roof or exterior wall storm damage.					
Totals: Mechanical Room	0.00			0.00	0.00

Media Suite

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Five stained ceiling tiles and two missing ceiling tiles were noted in this suite. The carpet had also been replaced with laminate flooring, and the damaged drywall had been repaired. This suite was not in the vicinity of the roof or exterior wall storm damage.					
Totals: Media Suite	0.00			0.00	0.00

Restroom South

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
This is the mens restroom serving the south side suites. No damage was observed at the time of my inspection, but repair appear to have been made since the Littleton Group photos.					
216. R&R Acoustic ceiling tile	68.00 SF	3.34	227.12	(0.00)	227.12
217. R&R Batt insulation - 6" - R19 - unfaced batt	68.00 SF	0.94	63.92	(0.00)	63.92
218. Clean floor	68.00 SF	0.30	20.40	(0.00)	20.40

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

CONTINUED - Restroom South

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
219. R&R 1/2" drywall - hung, taped, floated, ready for paint	128.00 SF	1.86	238.08	(0.00)	238.08
220. Seal/prime then paint the surface area (2 coats)	270.00 SF	0.72	194.40	(0.00)	194.40
221. Urinal - Detach & reset	1.00 EA	245.60	245.60	(0.00)	245.60
222. Toilet - Detach & reset	1.00 EA	170.94	170.94	(0.00)	170.94
223. Sink - single - Detach & reset	1.00 EA	103.99	103.99	(0.00)	103.99
224. Mirror - plate glass - Detach & reset	6.00 SF	4.02	24.12	(0.00)	24.12
225. Toilet & Bath Accessory - Labor Minimum	1.00 EA	102.16	102.16	(0.00)	102.16
Totals: Restroom South			1,390.73	0.00	1,390.73

Suite 16

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Six previously sealed ceiling tiles were noted in this suite. No other damage was observed or documented by others. This suite was not in the vicinity of the roof or exterior wall storm damage.					
Totals: Suite 16			0.00	0.00	0.00

Suite 17

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
One stained ceiling tile and 2 previously sealed tiles were noted in this suite. No other damage was observed, and the walls may have been repaired and painted. The carpet had also been replaced with laminate flooring. This suite was not in the vicinity of the roof or exterior wall storm damage.					
Totals: Suite 17			0.00	0.00	0.00

Suite 18

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

CONTINUED - Suite 18

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Suite 18 was not accessible.					
Totals: Suite 18			0.00	0.00	0.00

Suite 19

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
One stained ceiling tile was observed in this suite. No other damage was noted or documented by others. This suite was not in the vicinity of the roof or exterior wall storm damage.					
Totals: Suite 19			0.00	0.00	0.00

Suite 20

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Two stained ceiling tiles were observed in this suite. No other damage was noted or documented by others. This suite was not in the vicinity of the roof or exterior wall storm damage.					
Totals: Suite 20			0.00	0.00	0.00

Suite 21

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Two previously sealed ceiling tiles were observed in this suite. No other damage was noted or documented by others. This suite was not in the vicinity of the roof or exterior wall storm damage.					
Totals: Suite 21			0.00	0.00	0.00

Suite 22

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

CONTINUED - Suite 22

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Two previously sealed ceiling tiles were noted in this suite. No other damage was observed. This suite was not in the vicinity of the roof or exterior wall storm damage.					
Totals: Suite 22			0.00	0.00	0.00

Suite 23

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No damage was observed in Suite 23.					
Totals: Suite 23			0.00	0.00	0.00

Suite 24

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Three previously sealed ceiling tiles were observed in this suite. No other damage was noted or documented by others. This suite was not in the vicinity of the roof or exterior wall storm damage.					
Totals: Suite 24			0.00	0.00	0.00

Suite 25

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Six previously sealed ceiling tiles were observed in this suite. No other damage was noted or documented by others. This suite was not in the vicinity of the roof or exterior wall storm damage.					
Totals: Suite 25			0.00	0.00	0.00

Party Room

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

CONTINUED - Party Room

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
12 previously sealed ceiling tiles were noted in this room. No other damage was observed. The stained concrete flooring had been overlaid with laminate. This suite was not in the vicinity of the roof or exterior wall storm damage.					
Totals: Party Room			0.00	0.00	0.00

Control Room

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Three stained ceiling tiles were observed in the control room. No other damage was noted or documented by others. This room was not in the vicinity of the roof or exterior wall storm damage.					
Totals: Control Room	0.00			0.00	0.00
Total: Suites Floor	27,899.77			0.00	27,899.77

2nd Entry

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No damage was observed or documented by others.					
Totals: 2nd Entry			0.00	0.00	0.00

Main Entrance

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No damage was observed in the main (east) entrance area except for stained ceiling tiles. The missing drywall depicted in the Littleton photos had been repaired.					
10. R&R Acoustic ceiling tile	220.00 SF	3.34	734.80	(0.00)	734.80
20. R&R Batt insulation - 6" - R19 - unfaced batt	220.00 SF	0.94	206.80	(0.00)	206.80
77. 5/8" drywall - hung, taped, floated, ready for paint	96.00 SF	1.71	164.16	(0.00)	164.16
78. R&R Batt insulation - 4" - R13 - paper faced	96.00 SF	0.78	74.88	(0.00)	74.88

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

CONTINUED - Main Entrance

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
79. Seal/prime then paint the surface area (2 coats)	1,314.00 SF	0.72	946.08	(0.00)	946.08
80. Mask and prep for paint - plastic, paper, tape (per LF)	85.00 LF	1.02	86.70	(0.00)	86.70
81. Labor to tape drop cloths	443.00 SF	0.11	48.73	(0.00)	48.73
82. Content Manipulation charge - per hour	4.00 HR	26.14	104.56	(0.00)	104.56
Totals: Main Entrance			2,366.71	0.00	2,366.71

Office 1

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No repairs were evident in this office. Stains were noted on 2 ceiling tiles. The carpet had been cleaned and no damage was observed except for minor wear in higher traffic areas. This suite was not in the vicinity of the roof or exterior wall storm damage.					
Totals: Office 1	0.00			0.00	0.00

Office 2

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
The carpet had been replaced with laminate flooring in this office. One stained ceiling tile was noted. This suite was not in the vicinity of the roof or exterior wall storm damage.					
Totals: Office 2			0.00	0.00	0.00

Office 3

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
The carpet had been replaced with laminate flooring in this office, and the room appears to have been painted. Two stained ceiling tiles were noted. This office was not in the vicinity of the roof or exterior wall storm damage.					
Totals: Office 3			0.00	0.00	0.00

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

Office 4

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
The carpet had been replaced with laminate flooring in this office. One stained ceiling tile was noted. This office was not in the vicinity of the roof or exterior wall storm damage.					
Totals: Office 4			0.00	0.00	0.00

Office 5

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
The carpet had been replaced with laminate flooring in this office. No damage was observed. This office was not in the vicinity of the roof or exterior wall storm damage.					
Totals: Office 5			0.00	0.00	0.00

Office 6

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
The carpet had been replaced with laminate flooring in this office. No damage was observed. This office was not in the vicinity of the roof or exterior wall storm damage.					
Totals: Office 6			0.00	0.00	0.00

Office 7

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No damage was observed in this office, and carpet had been installed (the carpet was not present in the Littleton photos). The room also appears to have been painted. This office was not in the vicinity of the roof or exterior wall storm damage.					
Totals: Office 7			0.00	0.00	0.00

Office 8

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No damage was observed in this room. This office was not in the vicinity of the roof or exterior wall storm damage.					
Totals: Office 8			0.00	0.00	0.00

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

Side Entrance

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No damage was observed around the side entrance.					
Totals: Side Entrance			0.00	0.00	0.00

Settlement Room

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Three stained ceiling tiles were observed in the settlement room. The stained tiles depicted in the Littleton Group photos had been replaced but some were stained again. No drywall damage was observed, and no drywall damage other than trickle marks on painted walls was depicted in the Littleton photos. An allowance to replace the damaged ceiling tiles and paint the room was included for comparison purposes.					
19. Drywall Repair - Minimum Charge - Labor and Material	1.00 EA	284.35	284.35	(0.00)	284.35
21. R&R Acoustic ceiling tile	172.00 SF	3.34	574.48	(0.00)	574.48
22. Batt insulation - 6" - R19 - unfaced batt	172.00 SF	0.75	129.00	(0.00)	129.00
23. Seal/prime then paint the surface area (2 coats)	606.00 SF	0.72	436.32	(0.00)	436.32
24. Labor to tape drop cloths	606.00 SF	0.11	66.66	(0.00)	66.66
25. Contents - move out then reset - Large room	1.00 EA	53.49	53.49	(0.00)	53.49
Totals: Settlement Room			1,544.30	0.00	1,544.30

Entrance 3

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No damage was observed in the area of the west entrance (Entrance 3). A small area of carpet was still present, but undamaged. An allowance for replacement was included from the Littleton Group estimate.					
16. Remove Glue down carpet	59.00 SF	0.41	24.19	(0.00)	24.19
17. Glue down carpet	68.00 SF	1.83	124.44	(0.00)	124.44
18. Additional labor cost for Berber or patterned carpets	59.00 SF	0.14	8.26	(0.00)	8.26
Totals: Entrance 3			156.89	0.00	156.89

#3 Dressing Room

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No damage was observed in this room, and no Berber type carpet was found. An allowance to replace the carpet was included from the Littleton Group estimate.					
13. Remove Glue down carpet	662.00 SF	0.41	271.42	(0.00)	271.42
15. Glue down carpet	761.00 SF	1.83	1,392.63	(0.00)	1,392.63
14. Additional labor cost for Berber or patterned carpets	661.00 SF	0.14	92.54	(0.00)	92.54
Totals: #3 Dressing Room			1,756.59	0.00	1,756.59

#2 Dressing Room

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No damage was observed in this room. An allowance to clean the CMU block walls was included from the Littleton Group estimate.					
12. Clean masonry	683.00 SF	0.43	293.69	(0.00)	293.69
Totals: #2 Dressing Room			293.69	0.00	293.69

#1 Dressing Room

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No damage was observed in this room. An allowance to clean the CMU block walls was included from the Littleton Group estimate.					
11. Clean masonry	1,164.00 SF	0.43	500.52	(0.00)	500.52
Totals: #1 Dressing Room			500.52	0.00	500.52

Suite/Club Entrance

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No damage was observed in the suite entry area, and no repairs were evident.					
Totals: Suite/Club Entrance			0.00	0.00	0.00

Mechanical Systems

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
No damage to the HVAC systems or other mechanical systems was observed. Allowances for labor to manipulate equipment is included in the roof section.					

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

CONTINUED - Mechanical Systems

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Totals: Mechanical Systems			0.00	0.00	0.00

Arena Roof

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
A large TPO repair was observed on the northwest corner of the main arena roof, as well as a linear modified bitumen roof patch. The remainder of the roof was in generally good condition, with seam blisters typical of those depicted in the 2012 claim photos and normal granular wear. An allowance to complete a permanent repair is included, as complete replacement of the roof is not necessary.					
270. Remove Insulation - ISO board, 1"	50.00 SQ	26.18	1,309.00	(0.00)	1,309.00
271. Insulation - ISO board, 1"	50.00 SQ	137.40	6,870.00	(0.00)	6,870.00
272. R&R Modified bitumen roof - hot mopped	50.00 SQ	301.22	15,061.00	(0.00)	15,061.00
273. Remove Additional charge for high roof (2 stories or greater)	50.00 SQ	3.43	171.50	(0.00)	171.50
274. Additional charge for high roof (2 stories or greater)	50.00 SQ	13.34	667.00	(0.00)	667.00
275. R&R Cap flashing	120.00 LF	15.73	1,887.60	(0.00)	1,887.60
305. Remove Insulation - ISO board, 4"	50.00 SQ	26.18	1,309.00	(0.00)	1,309.00
306. Insulation - ISO board, 4"	50.00 SQ	324.29	16,214.50	(0.00)	16,214.50
Totals: Arena Roof	43,489.60			0.00	43,489.60

Rear Mod Bit Roof

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
The flat roofs around the arena barrel roof were blistered along roof seams and exhibited normal wear and tear for high-traffic roofing (most mechanical systems and maintenance access was located on these roofs). This condition was also depicted in photographs from the 2012 hail claims, and no additional wind or hail damage from the June 2016 storm was evident except on the west side where the metal wall panels had been repaired.					
276. Remove Insulation - fiberglass board, 1"	79.20 SQ	26.18	2,073.46	(0.00)	2,073.46
277. Insulation - fiberglass board, 1"	79.20 SQ	130.09	10,303.13	(0.00)	10,303.13

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

CONTINUED - Rear Mod Bit Roof

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
278. R&R Modified bitumen roof - hot mopped	79.20 SQ	301.22	23,856.62	(0.00)	23,856.62
279. R&R Cap flashing	356.00 LF	15.73	5,599.88	(0.00)	5,599.88
280. Remove Additional charge for high roof (2 stories or greater)	79.20 SQ	3.43	271.66	(0.00)	271.66
281. Additional charge for high roof (2 stories or greater)	79.20 SQ	13.34	1,056.53	(0.00)	1,056.53
282. Roof drain cover - Detach & reset	3.00 EA	27.43	82.29	(0.00)	82.29
283. R&R Flashing - pipe jack - lead	3.00 EA	54.27	162.81	(0.00)	162.81
284. R&R Roof scupper - aluminum	2.00 EA	155.72	311.44	(0.00)	311.44
307. Remove Insulation - ISO board, 2"	79.20 SQ	26.18	2,073.46	(0.00)	2,073.46
308. Insulation - ISO board, 2"	79.20 SQ	195.72	15,501.02	(0.00)	15,501.02
Totals: Rear Mod Bit Roof	61,292.30			0.00	61,292.30

Ticket Sales Area

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Four stained ceiling tiles were noted in the ticket sales area. Laminate flooring had been installed (no flooring was present in the Littleton photos). An allowance to repair the damaged ceiling tiles was included.					
75. R&R Acoustic ceiling tile	16.00 SF	3.34	53.44	(0.00)	53.44
76. R&R Batt insulation - 6" - R19 - unfaced batt	16.00 SF	0.94	15.04	(0.00)	15.04
Totals: Ticket Sales Area			68.48	0.00	68.48

Exterior

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
A cosmetic split-faced brick veneer had been applied to the CMU block exterior of the building, primarily on the east end around the entrances. Gaps and some cracks were noted along some corners and mortar joints, typical for normal movement in a large building. Some cracking was also noted in the ceramic tile around large support columns in the east entry, also typical of normal building movement or settlement. The damaged metal wall panels on the west side of the building had been repaired prior to my inspection, and the "State Farm" sign on the rear elevation had also been repaired.					

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

CONTINUED - Exterior

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
289. R&R Storefront - aluminum anodized frame - Double pane	138.00 SF	25.67	3,542.46	(0.00)	3,542.46
290. Glass, Glazing, & Storefronts - Labor Minimum	1.00 EA	141.34	141.34	(0.00)	141.34
291. R&R Metal J trim on left side*	10.00 LF	3.31	33.10	(0.00)	33.10
292. R&R Siding - steel (29 gauge)	1,072.00 SF	5.73	6,142.56	(0.00)	6,142.56
296. R&R Wall/roof panel - ribbed - 26 gauge - 1 1/8" to 1 1/2"	1,092.00 SF	3.25	3,549.00	(0.00)	3,549.00
293. Prime & paint metal siding	10,996.00 SF	0.65	7,147.40	(0.00)	7,147.40
294. R&R Metal studding, 2 1/2" wide, 16" OC, 20 gauge	450.00 SF	1.89	850.50	(0.00)	850.50
295. R&R Batt insulation - 6" - R19 - paper faced	1,092.00 SF	0.95	1,037.40	(0.00)	1,037.40
298. Electrician - per hour to reset electrical/mech panels*	24.00 HR	80.00	1,920.00	(0.00)	1,920.00
299. General Laborer - per hour	80.00 HR	26.14	2,091.20	(0.00)	2,091.20
300. Overhead door - Detach & reset - Large	1.00 EA	226.55	226.55	(0.00)	226.55
301. R&R Overhead door & hardware - 10' x 7'	1.00 EA	740.77	740.77	(0.00)	740.77
302. R&R Overhead door panel - 13' to 18' - High grade	2.00 EA	282.75	565.50	(0.00)	565.50
Totals: Exterior			27,987.78	0.00	27,987.78
Total: Arena Building			185,698.43	0.00	185,698.43

Warehouse/Maintenance Bldg

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Mechanical damage was noted to several metal panels on the west side of the maintenance building roof. The panels were sharply bent around secured fasteners and one was torn, which is not typical of wind damage, but could be related to mechanical impact. An allowance to replace the damaged panels was included for comparison purposes.					
304. R&R Metal roofing - ribbed - 24 gauge - 1 1/8" to 1 1/2"	512.00 SF	4.62	2,365.44	(0.00)	2,365.44
Totals: Warehouse/Maintenance Bldg			2,365.44	0.00	2,365.44

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

Miscellaneous

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
286. Telehandler/forklift (per week) - no operator	3.00 WK	795.00	2,385.00	(0.00)	2,385.00
287. Dumpster load - Approx. 40 yards, 7-8 tons of debris	3.00 EA	625.00	1,875.00	(0.00)	1,875.00
288. Scaffold - per section (per month)	6.00 MO	112.88	677.28	(0.00)	677.28
303. Taxes, insurance, permits & fees - incl. labor*	1.00 EA	2,500.00	2,500.00	(0.00)	2,500.00
Totals: Miscellaneous			7,437.28	0.00	7,437.28
Line Item Totals: STATE_FARM_ARENA_DMG			195,501.15	0.00	195,501.15

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

Summary

Line Item Total			195,501.15
Overhead	@	10.0%	19,550.18
Profit	@	10.0%	19,550.18
Replacement Cost Value			\$234,601.51
Net Claim			\$234,601.51

Al Berryhill

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

Recap by Room**Estimate: STATE_FARM_ARENA_DMG****Area: Arena Building**

Contents	595.04	0.30%
Main Arena Area	8,679.00	4.44%
Temporary Repairs/ Misc.	8,125.00	4.16%
Northwest Entrance	942.76	0.48%

Area: Suites Floor

Hallway and Landing	4,045.32	2.07%
Suite 8	561.09	0.29%
Suite 12 and 12a	34.24	0.02%
Suite 15	1,878.96	0.96%
Womens Restroom	1,057.89	0.54%
Mens Restroom	1,309.37	0.67%
Backstage Rows	3,183.59	1.63%
Rear 3rd Floor Seating Area	14,438.58	7.39%
Restroom South	1,390.73	0.71%

Area Subtotal: Suites Floor	27,899.77	14.27%
Main Entrance	2,366.71	1.21%
Settlement Room	1,544.30	0.79%
Entrance 3	156.89	0.08%
#3 Dressing Room	1,756.59	0.90%
#2 Dressing Room	293.69	0.15%
#1 Dressing Room	500.52	0.26%
Arena Roof	43,489.60	22.25%
Rear Mod Bit Roof	61,292.30	31.35%
Ticket Sales Area	68.48	0.04%
Exterior	27,987.78	14.32%

Area Subtotal: Arena Building	185,698.43	94.99%
Warehouse/Maintenance Bldg	2,365.44	1.21%
Miscellaneous	7,437.28	3.80%

Subtotal of Areas	195,501.15	100.00%

Total	195,501.15	100.00%

CrossPointe Construction, Inc.

CrossPointe Construction Inc.
P.O. Box 163114
Austin, Texas 78716

Recap by Category

O&P Items			Total	%
ACOUSTICAL TREATMENTS			2,525.20	1.08%
CLEANING			9,560.31	4.08%
CONTENT MANIPULATION			456.31	0.19%
CONT: CLEAN,UPHOLSTRY & SOFT			595.04	0.25%
GENERAL DEMOLITION			19,210.18	8.19%
DOORS			1,428.81	0.61%
DRYWALL			3,340.75	1.42%
ELECTRICAL			1,920.00	0.82%
HEAVY EQUIPMENT			2,385.00	1.02%
FLOOR COVERING - CARPET			12,577.28	5.36%
FLOOR COVERING - VINYL			1,650.43	0.70%
PERMITS AND FEES			2,500.00	1.07%
GLASS, GLAZING, & STOREFRONTS			3,515.44	1.50%
INSULATION			1,992.24	0.85%
LABOR ONLY			2,091.20	0.89%
LIGHT FIXTURES			302.40	0.13%
MIRRORS & SHOWER DOORS			72.36	0.03%
METAL STRUCTURES & COMPONENTS			3,199.56	1.36%
PLUMBING			1,315.99	0.56%
PAINTING			15,280.00	6.51%
ROOFING			95,262.35	40.61%
SCAFFOLDING			677.28	0.29%
SIDING			5,836.54	2.49%
TOILET & BATH ACCESSORIES			306.48	0.13%
TEMPORARY REPAIRS			7,500.00	3.20%
O&P Items Subtotal			195,501.15	83.33%
Overhead	@	10.0%	19,550.18	8.33%
Profit	@	10.0%	19,550.18	8.33%
Total			234,601.51	100.00%

AFFIDAVIT OF JULIAN GONZALEZ

STATE OF TEXAS
BEXAR COUNTY

§
§

Before me, the undersigned notary, on this day personally appeared Julian Gonzalez, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

1. My name is Julian Gonzalez. I am over 18 years of age, of sound mind, and capable of making this affidavit.

2. The facts stated in this affidavit are within my personal knowledge and are true and correct.

3. I currently serve as the City Manager for the City of Hidalgo. As part of my job, I have access to property associated with the City including the Payne Arena located at 2600 North 10th Street, Hidalgo, Texas 78557 (formerly known as the State Farm Arena).

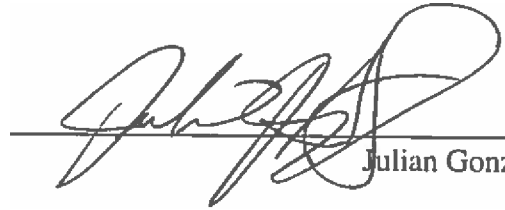
4. I was present for the appraisal that occurred on July 3, 2020. I accompanied the Umpire, Randall Taylor, and the two Appraisers, Mark Barber and Al Berryhill, for the majority of the inspection. My role was to assist in providing access to the arena.

5. Throughout the appraisal I consistently witnessed the Insurance Appraiser, Al Berryhill, point to various components of the arena and tell the Umpire that damage was caused by a storm in 2012.

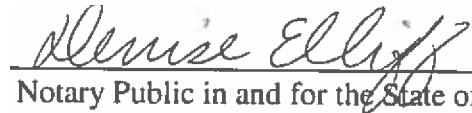
6. I did not understand why there was any mention of a 2012 storm. The City of Hidalgo received no money for damage to the arena that occurred in 2012 and the arena sustained heavy damage from a large storm in 2016.

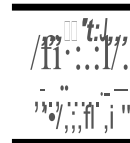
DRAFT

7. Shortly after the appraisal was complete and various parties began to disperse, I witnessed the Insurance Appraiser and the Umpire conversing alone in the parking lot far away from anyone else. I do not know what they were discussing. I got in my truck and left before they were finished talking.


Julian Gonzalez

Sworn to and subscribed before me on
September 15, 2020


Notary Public in and for the State of Texas

 DENISE ELLIFF
Notary Public, State of Texas
Comm. Expires 07-30-2022
Notary ID 6713675

DRAFT

2 of 2

000428

CAUSE NO. C-1896-18-C

CITY OF HIDALGO	§	IN THE DISTRICT COURT
	§	
<i>Plaintiff,</i>	§	
	§	
VS.	§	139TH JUDICIAL DISTRICT
	§	
TEXAS MUNICIPAL LEAGUE	§	
INTERGOVERNMENTAL RISK POOL	§	
	§	
<i>Defendant.</i>	§	HIDALGO COUNTY, TEXAS

PLAINTIFF'S SECOND AMENDED PETITION

TO THE HONORABLE JUDGE ROBERTO "BOBBY" FLORES:

COMES NOW, PLAINTIFF CITY OF HIDALGO ("PLAINTIFF"), and files its *Second Amended Petition*, complaining of TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL ("RISK POOL" or "DEFENDANT"), and alleges and states as follows:

A. DISCOVERY CONTROL PLAN

1. Plaintiff intends for discovery in this action be conducted under Level 3, in accordance with Tex. R. Civ. P. 190.4.

B. STATEMENT OF RELIEF AND DAMAGES

2. As required by Rule 47(b), Texas Rules of Civil Procedure, Plaintiff's counsel states that the damages sought are in an amount within the jurisdictional limits of this Court. As required by Rule 47(c), Texas Rules of Civil Procedure, Plaintiff's counsel states that Plaintiff seeks monetary relief of over \$1,000,000, including damages of any kind, penalties, costs, expenses, prejudgment interests and attorney's fees. A jury, however, will ultimately determine the amount of monetary relief actually awarded.

C. PARTIES

3. Plaintiff, CITY OF HIDALGO (“PLAINTIFF”), is a unit of government within Hidalgo County, Texas, located at 704 Ramon Ayala Dr., Hidalgo, Texas 78557.

4. Defendant, TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL, (“RISK POOL”), is a governmental entity authorized to conduct insurance business in Texas, whose home office is located in Travis County at 1821 Rutherford Lane, First Floor, Austin, Texas 78754, and may be served with process by serving Holly Gray-Moore, its President, at that address.

D. JURISDICTION

5. This Court has jurisdiction over the City of Hidalgo, which has its principal place of business in Hidalgo County, Texas. This Court also has subject-matter jurisdiction over the lawsuit because the amount in controversy exceeds this Court’s minimum jurisdictional requirements; and

6. This Court has jurisdiction over this suit because the Texas Legislature waived the RISK POOL’s immunity from suit for the claim(s) mentioned herein when it enacted the Local Government Contracts Claim Act (the “Act”). TEX. LOC. GOV’T CODE § 271.152. Pursuant to the Act, this Court has jurisdiction over Plaintiff’s claim for breach of contract, enforcement of appraisal, and attorney’s fees.

E. VENUE

7. Venue is proper in Hidalgo County, Texas, because the insured property at issue is situated in Hidalgo County, Texas. TEX. CIV. PRAC. & REM. CODE §15.032.

F. AGENCY AND RESPONDENT SUPERIOR

8. Whenever in this petition it is alleged that the RISK POOL did any act or omission, it is meant that the RISK POOL itself or its agents, officers, servants, employees, or representatives did such act or omission, and it was done with the full authorization or ratification of the RISK POOL or done in the normal routine, course and scope of the agency or employment of the RISK POOL or its agents, officers, servants, employees, or representatives.

G. FACTS

9. The Texas Municipal League Intergovernmental Risk Pool is an administrative agency created under the provisions of the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and Chapter 2259, Texas Government Code, that allows local governmental entities to jointly self-insure. The RISK POOL administers the self-insurance program created jointly by the member governmental entities.

10. Plaintiff is a member of the RISK POOL, with a Member ID number of 9559. Plaintiff pays an annual contribution to the RISK POOL in exchange for self-insurance coverage. Plaintiff's coverage under this self-insurance fund is governed by its Interlocal Agreement, which states, "[t]his Interlocal Agreement shall be construed to incorporate the TML Liability Self-Insurance Plan and/or the TML Property Self-Insurance Plan, Declarations of Coverage, and Endorsements and addenda whether or not physically attached hereto."

11. Therefore, the Interlocal Agreement, along with the Property Coverage Document effective from October 1, 2015 to October 1, 2016 ("Coverage Document"), the applicable Declarations of Coverage, and Endorsements constitute an enforceable contract as defined by TEX. LOC. GOV'T CODE § 271.151(2) (collectively "Agreement").

12. Plaintiff owns the State Farm Arena, a commercial property located at 2600 N. 10th St., Hidalgo, Texas (hereinafter referred to as “the Property”). The Property, built in 2003 at a cost of about \$20,000,000.00, features a 6,800-seat arena.

13. Pursuant to the Agreement, Plaintiff jointly self-insures multiple properties within its municipal borders, including the Property.

14. On or about May 31, 2016, a severe hailstorm and/or windstorm struck Hidalgo County, Texas, causing severe damage to homes and businesses throughout the area, including Plaintiff’s Property (“the Storm”). Peak winds in the Hidalgo area were estimated to be 85 to 95 miles per hour, though winds in excess of 100 miles per hour could have occurred.

15. The Property’s roof sustained extensive damage during the Storm. Further, among the substantial exterior damages caused by the Storm, the western wall of the Property collapsed, and the east-facing exterior of the main entrance sustained significant structural damage. Water intrusion through the roof and exterior walls caused extensive damage throughout the interior of the Property including, but not limited to: the main seating area, the arena suites, offices, dressing rooms, men’s restroom, women’s restroom, ticketing area, and mechanical room.

16. On June 1, 2016, immediately after the Storm, Plaintiff filed a claim (Claim No. PR 37325) with the RISK POOL for the damages to the Property caused by the Storm. Plaintiff submitted this claim against the Agreement for roof damage, structural damage, water damage, and windstorm and hail damage to the Property.

17. Plaintiff requested that Defendant RISK POOL cover the cost of repairs to the Property pursuant to the Agreement, including, but not limited to: repair and/or replacement of the roof and repair of the interior and exterior damages to the Property.

18. John D. House (“House”) of the Littleton Group was the adjuster assigned by the RISK POOL to adjust the claim. House and/or RISK POOL failed to perform a thorough investigation of Plaintiff’s Hail and Wind Damage Property claim and denied a portion of Plaintiff’s Hail and Wind Damage Property claim by engaging in false and/or misleading acts and practices of omission and commission which ultimately resulted in Plaintiff being denied those benefits guaranteed to it pursuant to its Agreement with the RISK POOL.

19. The RISK POOL’s adjustment of the claim wrongfully and negligently denied portions of the claim and undervalued the cost of repair and/or replacement of covered items of damage to the insured Property. This resulted in Plaintiff receiving insufficient funds from the RISK POOL to cover losses sustained to Plaintiff to repair and/or replace the insured Property, excluding the amounts of the deductible and recoverable depreciation assessed pursuant to the terms and conditions of the Agreement for which Plaintiff is responsible.

20. As a result, thereof, on or about June 27, 2016, Patti Tabor (“Tabor”) a RISK POOL Senior Claims Specialist, sent Plaintiff a claim check in the amount of \$283,666.81—the amount the RISK POOL alleged was owed to Plaintiff after applying the \$2,500.00 deductible to the claim and withholding excessive depreciation, as well as overhead/profit. This amount was wholly insufficient to repair and/or replace the covered damages to the Property resulting from the Storm, as Plaintiff’s actual covered damage to the Property as a result of the Storm exceeded the sum of \$7,329,546.

21. On June 27, 2016, despite knowing that the purpose of the proof of loss was for the City to inform the RISK POOL of the amount of damages it alleged were caused by the Storm, the RISK POOL provided the City of Hidalgo with a proof of loss that had already been filled out by the RISK POOL with the information contained in House’s assessment of the claim.

22. On June 27, 2016, the RISK POOL was put on notice that PLAINTIFF disagreed with its initial estimate and findings for covered damages to the Property caused by the Storm.

23. On November 15, 2016, in an email to Mary Alvarez (“Alvarez”), the Plaintiff’s Risk Management Director, Tabor informed Plaintiff that the file would be left “open pending review under the Replacement Cost coverage.” Further, the RISK POOL was on notice that Plaintiff was gathering estimates to produce to the RISK POOL so that it could resolve this claim and establish the amount of loss.

24. On December 8, 2017, the RISK POOL was informed that that Plaintiff had received an estimate for covered damages to the Property caused by the Storm. Based on the results of this estimate, the Risk Pool was put on notice that Plaintiff disagreed with the RISK POOL’s initial coverage decision, as the estimate reflected that the damages to the Property covered pursuant to the Agreement far exceeded those listed in the initial estimate prepared by House on behalf of the Risk Pool. Plaintiff’s actual covered damage to the Property as a result of the Storm exceeded the sum of \$7,329,546.43.

25. On May 14, 2018, Plaintiff attempted to invoke its contractual right to appraisal pursuant to Subsection E of the Coverage Document—a provision in the contract that, when invoked, determines the amount of loss owed to Plaintiff for its Storm-covered damages. Plaintiff named Mark Barber, the expert retained by Plaintiff to prepare an estimate for covered damages, as its designated appraiser.

26. Thereafter, the RISK POOL rejected Plaintiff’s invocation of appraisal.

27. At all times material herein, the Agreement assured Plaintiff that the RISK POOL had a contractual legal duty to timely, fairly and fully investigate, process, adjust, and pay for all covered losses sustained by its fund members as the result of a covered peril—a hail and/or

windstorm.

28. RISK POOL breached the duties owed to Plaintiff pursuant to the Agreement by failing to fully investigate and evaluate Plaintiff's insured loss based upon local replacement and/or repair costs for each item of damage, as indicated below in sub-paragraphs (a) thru (d):

- a) The RISK POOL's investigation and inspection for damages to the Plaintiff's Property was performed in less than one day, which is an insufficient time period to perform an adequate assessment of the damage to the Property resulting from the Storm;
- b) The RISK POOL did not inspect for hidden or latent damage resulting to Plaintiff's Property that is customarily found to exist on property that has gone through a hail and wind storm of the severity of that which occurred in Hidalgo County on May 31, 2016;
- c) The RISK POOL failed and refused to include the usual and customary charges for costs of materials, supplies, labor and contractor's overhead and profit charged by contractors in the Hidalgo County area for the repair, replacement and restoration of the Plaintiff's Property damaged by the Storm;
- d) The RISK POOL performed only a cursory inspection of the roof and exterior, and interior of the insured Property; and failed to assess, estimate and include all covered damage to the Property in the report and adjustment of the loss;

29. As a result of the RISK POOL's unreasonable investigation, including its under-scoping and incomplete inspection of Plaintiff's Storm damages during its investigation(s) and

failure to provide full coverage for the damages sustained by Plaintiff, Plaintiff's claim was improperly adjusted, and Plaintiff was denied adequate and sufficient payment to repair the Property and has suffered damages.

30. To date, Plaintiff has yet to receive the full payment to which it is entitled under the Agreement and has not been able to fully repair or replace the damage to the insured Property.

31. Defendant RISK POOL failed to perform its contractual duties to adequately compensate Plaintiff under the terms of the Agreement. Specifically, it refused to pay the full proceeds owed pursuant to the Agreement, although due demand was made for proceeds to be paid in an amount sufficient to cover the damaged Property. Further, all conditions precedent to recovery upon the Coverage Document and/or Agreement had been carried out and accomplished by Plaintiff and/or waived by the RISK POOL. Defendant RISK POOL's conduct constitutes a breach of the insurance contract between the RISK POOL and Plaintiff.

32. As a result of Defendants' wrongful acts and omissions, Plaintiff was forced to retain the professional services of the attorney and law firm who is representing it with respect to these causes of action.

H. CAUSES OF ACTION AGAINST TEXAS MUNICIPAL LEAGUE INTERGOVERNMENTAL RISK POOL

BREACH OF CONTRACT

33. Plaintiff repleads all of the material allegations above set forth in Paragraphs 1-32 and incorporates the same herein by this reference as if here set forth in full.

34. As the RISK POOL is a governmental entity that it authorized to enter into a contract, it waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of contract. TEX. LOC. GOV'T CODE § 271.152.

35. From October 1, 2015 to October 1, 2016, Plaintiffs self-insurance coverage was governed by the Agreement, or contract, with the RISK POOL. By this contract, the parties agreed that Plaintiff would pay an annual contribution to the RISK POOL, and that Defendant RISK POOL would provide insurance coverage for certain properties within Plaintiffs municipal borders, including the Property at issue.

36. The contract provided for insurance coverage for damages resulting from a direct physical loss during the Fund Year-including damages arising from a hail and/or windstorm. Following the Storm, Defendant RISK POOL failed to perform its contractual duties to adequately compensate Plaintiff under the terms of the Agreement. Defendant RISK POOL's failure and/or refusal, as described above, to pay the adequate compensation as it is obligated to do under the terms of the Agreement in question, and under the laws of the State of Texas, constitutes a breach of RISK POOL's insurance contract with Plaintiff.

NONCOMPLIANCE WITH TEXAS INSURANCE CODE

37. The Texas Municipal League Intergovernmental Risk Pool is not subject to the Texas Insurance Code as stated in Chapter 2259, Texas Government Code.

I. EQUITABLE RELIEF: DEMAND FOR APPRAISAL

38. As the RISK POOL has waived its governmental immunity as to Plaintiffs claim for enforcement of the appraisal provision contained in the Coverage Document, Plaintiff hereby invokes its contractual right to appraisal. TEX. LOCAL Gov'T CODE §§ 271.153; 271.154. Plaintiff names the following appraiser competent and disinterested appraiser:

Don Staples
STAPLES CONSULTING GROUP
1100 Nasa Parkway,
Houston, Texas 77583
(303) 915-8746
don@staplesconsultinggroup.com

J. DAMAGES

39. In the alternative, Plaintiff would show that all of the aforementioned acts, taken together or singularly, constitute the producing causes of the damages sustained by Plaintiff.

40. As previously mentioned, the damages caused to the Property by the May 31, 2016 hailstorm and/or windstorm have not been properly addressed and/or covered by the RISK POOL. For breach of contract, Plaintiff is entitled to regain the benefit of its bargain—the amount owed to it pursuant to the Agreement. However, Plaintiff does not seek any damages precluded by TEX. LOC. GOV'T CODE § 271.153.

41. Plaintiff also seeks pre-judgment and post-judgment interest at the highest legal rate pursuant to TEX. LOC. GOV'T CODE § 271.153(a)(4).

42. Further, for the prosecution and collection of this claim, Plaintiff has been compelled to engage the services of the attorney whose name is subscribed to this pleading. Therefore, Plaintiff is entitled to recover a sum for the reasonable and necessary services of Plaintiff's attorney in the preparation and trial of this action, including any appeals to the Court of Appeals and/or the Supreme Court of Texas. TEX. LOC. GOV'T CODE § 271.153(a)(3).

K. RESERVATION OF RIGHTS

43. Plaintiff reserves the right to prove the amount of damages at trial. Plaintiff reserves the right to amend its petition to add additional counts upon further discovery and as its investigation continues.

L. JURY DEMAND

44. Plaintiff hereby requests that all causes of action alleged herein be tried before a jury consisting of citizens residing in Hidalgo County, Texas. Plaintiff hereby tenders the appropriate jury fee.

M. CONDITIONS PRECEDENT

45. All conditions precedent to recovery have been performed, waived, or have occurred.

N. REQUEST FOR DISCLOSURE

46. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the appraisal provision pursuant to the Agreement and Coverage Document be invoked so as to make a determination as to the amount of loss on this matter. Further, Plaintiff prays that upon trial hereof, said Plaintiff has and recovers such sum as would reasonably and justly compensate it in accordance with the rules of law and procedure, as to actual damages. In addition, Plaintiff requests the award of attorney's fees for the trial and any appeal of this case, for all costs of Court on his behalf expended, for pre-judgment and post-judgment interest as allowed by law, and for any other and further relief, either at law or in equity, to which he is justly entitled to.

Respectfully submitted,

PHIPPS ANDERSON DEACON, LLP

THE PHIPPS
102 9th Street
San Antonio, Texas 78215
Telephone: (210) 340-9877
Telecopier: (210) 340-9887
Email: mphipps@phippandersondeacon.com
Email: rdelgado@phippsllp.com

BY: /s/ Martin J. Phipps
MARTIN J. PHIPPS
State Bar No. 00791444
RYAN DELGADO
State Bar No. 24097587

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has sent in accordance with the Texas Rules of Civil Procedure on this 26th day of September to:

VIA ELECTRONIC FILING:

Barry Abrams
Jack W. Higdon
Stephanie E. Holden
BLANK ROME LLP
717 Texas Ave., Suite 1400
Houston, TX 77002-2727
(713) 228-6601
(713) 228-6605 (Fax)
Email: babrams@blankrome.com
Email: jhigdon@blankrome.com
Email: sholden@blankrome.com

BY: /s/ Martin J. Phipps
MARTIN J. PHIPPS

Automated Certificate of eService

This automated certificate of service was created by the eFiling system.
The filer served this document via email generated by the eFiling system
on the date and to the persons listed below:

Envelope ID: 54173596

Status as of 6/7/2021 4:13 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Barry Abrams		babrams@BlankRome.com	6/7/2021 3:49:39 PM	SENT
Jack Higdon		jhigdon@BlankRome.com	6/7/2021 3:49:39 PM	SENT
Penny Johnson		pljohnson@blankrome.com	6/7/2021 3:49:39 PM	SENT
Samatha Castillo		scastillo@phippsdeaconpurnell.com	6/7/2021 3:49:39 PM	SENT
Martin Phipps		mhipps@phippsmayes.com	6/7/2021 3:49:39 PM	SENT
Gabriel Ortiz		gortiz@phippsmayes.com	6/7/2021 3:49:39 PM	SENT
Charles Hardy		chardy@phippsmayes.com	6/7/2021 3:49:39 PM	SENT
James Barnett		jbarnett@blankrome.com	6/7/2021 3:49:39 PM	SENT
Evan Santos		esantos@phippsortiztalafuse.com	6/7/2021 3:49:39 PM	SENT