

# *City of Kingsville, Texas*

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## **AGENDA CITY COMMISSION**

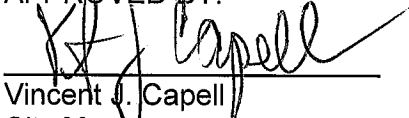
**MONDAY, NOVEMBER 5, 2012  
REGULAR MEETING**

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

### **I. Preliminary Proceedings.**

#### **OPEN MEETING**

APPROVED BY:

  
\_\_\_\_\_  
Vincent J. Capell  
City Manager

#### **INVOCATION / PLEDGE OF ALLEGIANCE – (Mayor Fugate)**

#### **MINUTES OF PREVIOUS MEETING(S) – Required by Law**

### **II. Public Hearing - (Required by Law).<sup>1</sup>**

1. Public hearing to consider amending the zoning ordinance by changing the zoning map in reference to Lots 9-16, Block 25 of Ninth Addition, known as 704-B East Fordyce from R1 Single Family Residential District to C2 Retail District, amending the comprehensive plan to account for any deviations from the existing comprehensive plan, and providing for publication. (Director of Planning & Economic Development).

### **III. Reports from Commission & Staff.<sup>2</sup> (City Manager's Staff Report Attached).**

*"At this time, the City Commission and Staff will report/update on all committee assignments which may include, but is not limited to the following: Planning & Zoning Commission, Zoning Board of Adjustments, Historical Board, Housing Authority Board, Library Board, Health Board, Tourism, Chamber of Commerce, Coastal Bend Council of Governments, Conner Museum, Keep Kingsville Beautiful, and Texas Municipal League. Staff reports include the following: Building & Development, Code Enforcement, Proposed Development Report; Accounting & Finance – Financial & Investment Information, Monthly Financial Reports; Police & Fire Department – Grant Update, Police & Fire Reports; Street Updates; Public Works- Building Maintenance, Construction Updates; Park Services - grant(s) update, miscellaneous park projects, Administration –Workshop Schedule, Interlocal Agreements, Public Information, Hotel Occupancy Report, Quiet Zone, Proclamations, Health Plan Update, Tax Increment*

*Zone Presentation, Main Street Downtown, Chapter 59 project, Financial Advisor. No formal action can be taken on these items at this time."*

#### **IV. Public Comment on Agenda Items<sup>3</sup>**

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

#### **V.**

##### **Consent Agenda**

##### **Notice to the Public**

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

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

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

1. Motion to approve final passage of an ordinance amending the Fiscal Year 2012-2013 budget for Community Appearance to transfer funds for maintenance projects. (Finance Director).
2. Motion to approve membership renewal with Electric Reliability Council of Texas ("ERCOT") for 2013 membership year. (City Attorney).
3. Motion to approve a resolution appointing Commissioner Dianne Leubert to represent the City of Kingsville at the Coastal Bend Council of Governments' general meetings as an alternate representative. (City Manager).

##### **REGULAR AGENDA**

##### **CONSIDERATION OF MOTIONS, RESOLUTIONS, AND ORDINANCES:**

#### **VI. Items for consideration by Commissioners.<sup>4</sup>**

4. Consider amending the zoning ordinance by changing the zoning map in reference to Lots 9-16, Block 25 of Ninth Addition, known as 704-B East Fordyce from R1 Single Family Residential District to C2 Retail District, amending the comprehensive plan to account for any deviations from the existing comprehensive plan, and providing for publication. (Director of Planning & Economic Development).
5. Consider a resolution authorizing staff to proceed with implementing the State of Texas Office of Court Administration's Collection Improvement Program. (Finance Director).
6. Consider a resolution authorizing the City Manager to execute a Lease-Purchase Agreement and Escrow Agreement with Leasing 2, Inc. for the Landfill Compactor. (Purchasing & Information Technologies Director).

7. Consider authorizing purchase of Pro-Patch TCM 425-80-DHE via BuyBoard from H.D. Industries, Inc. as per staff recommendation. (Purchasing & Information Technologies Director).
8. Consider introduction of an ordinance amending the Fiscal Year 2012-2013 budget for Solid Waste to purchase a Landfill compactor with dozer blade. (Finance Director).
9. Consider a resolution authorizing the City Manager to enter into a Settlement Agreement with AEP Texas Central Company. (Finance Director).
10. Consider waiving interest on Weed Liens for property owned by Pedro P. Talosig, Jr. Lot PT3, A3, Block 21, Chandler Acres. (Finance Director).

## VII. Adjournment.

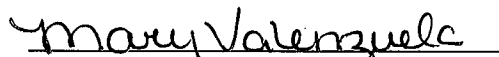
1. No person's comments shall exceed 5 minutes. Cannot be extended by Commission.
2. No person's comments shall exceed 5 minutes without permission of majority of Commission.
3. Comments are limited to 3 minutes per person. May be extended or permitted at other times in the meeting only with 5 affirmative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

### NOTICE

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

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

October 31, 2012 at 2:00 P.M. and remained so posted continuously for at least 72 hours preceding the schedule time of said meeting.

  
Mary Valenzuela  
City Secretary  
City of Kingsville, Texas

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

By: \_\_\_\_\_  
City Secretary's Office  
City of Kingsville, Texas

# **MINUTES OF PREVIOUS MEETING(S)**

OCTOBER 22, 2012

**A REGULAR MEETING OF THE CITY OF KINGSVILLE CITY COMMISSION WAS HELD ON MONDAY, OCTOBER 22, 2012 IN THE HONORABLE ROBERT H. ALCORN COMMISSION CHAMBERS 200 EAST KLEBERG AVENUE AT 6:00 P.M.**

**CITY COMMISSION PRESENT:**

Sam R. Fugate, Mayor  
Dianne Leubert, Commissioner  
Noel Pena, Commissioner  
Al Garcia, Commissioner  
Arturo Pecos, Commissioner

**CITY STAFF PRESENT:**

Vincent Capell, City Manager  
Mary Valenzuela, City Secretary  
Courtney Alvarez, City Attorney  
David Mason, Purchasing Director  
Mark Rushing, Finance Director  
James Bryson, Accountant Manager  
Mike Kellam, Director of Development Services  
Diana Gonzales, Personnel Director  
Diana Medina, Collections Manager  
Bill Donnell, Asst. Public Works Director  
Robert Rodriguez, Library Director  
Rick Torres, Chief of Police  
Roel Carrion, Interim Fire Chief  
Emilio Garcia, Health Director  
Willie Vera, Task Force Commander  
Daniel Ramirez, Building Official  
Bob Trescott, Tourism Director  
Rose Morrow, Municipal Court Supervisor

**I. Preliminary Proceedings.**

**OPEN MEETING**

Mayor Fugate called the meeting to order in the City Commission Chamber at 6:00 P.M. and announced quorum as present.

**INVOCATION / PLEDGE OF ALLEGIANCE – (Mayor Fugate)**

The invocation was delivered by Mark Rushing, Finance Director, followed by the Pledge of Allegiance and the Texas Pledge.

**MINUTES OF PREVIOUS MEETING(S) – Required by Law**

Mayor Fugate called for consideration of the minutes for regular meeting held on Monday, September 24, 2012. **Commissioner Pecos made a motion to accept the minutes, as presented, seconded by Commissioner Leubert. The motion was**

**passed and approved by the following vote: Garcia, Leubert, Pecos, Pena, Fugate voting "FOR".**

## **II. Public Hearing - (Required by Law).<sup>1</sup>**

1. Public hearing regarding condemnation proceeding for structures located at 519 N. 6<sup>th</sup> Street, Kingsville, Texas. (Director of Planning & Development Services).

Mayor Fugate opened the public hearing at 6:02 p.m.

Steve & Toni Curtis, 415 E. Henrietta. Lifelong Kingsville residents and is a license cosmetologist and a small business owner. Mrs. Curtis has been a downtown merchant for over 16 years. She purchased the property located at 519 N. 6<sup>th</sup> Street in 2007 and has intentions in developing it into her salon. She stated that the property has been in this location for the past 40-50 years. She is aware that it is up for condemnation and is asking the Commission to allow her additional time to renovate the property. She stated that while the exterior of the building may need some work, the interior of the building is in good condition. She stated that there is nothing on the inside that may be of hazard to anyone. There aren't any neighbors on either side of the property. She has had contractors look at it when she first purchased the property 4-5 years ago and has received a quote for repairs. The first phase of her plan is to pay the property off and then invest money in the development of her property. She is aware that the City's agenda is to beautify Kingsville, but she can assure that nobody wants to see it beautified more than she does. She further stated that when she purchased this property, she realized that it was the old Apple House which has some history to the property. Mr. Curtis stated that they have complied with all request made by the City of Kingsville with regards to this property.

Courtney Alvarez, City Attorney stated that Commission would need to allow Mr. Mike Kellam, Director of Development Services, address the Commission with regards to this property.

Mr. Kellam stated that this case started back in February 2012. There were conversations that took place with the previous building official. Notices of violations were mailed and a request for a repair plan was requested. A second notice was mailed on March 14, 2012 notifying them of the violation and requesting a repair plan. A third notice was sent on April 13, 2012 notifying the property owner of violations, those to include the roofing and signage. In this letter they were given a deadline of April 23, 2012. There was no compliance from the property owner. On June 14, 2012, the property owner was notified that since there was no compliance with previous notices sent, there would be a public hearing on July 9, 2012 regarding the condemnation of the property. The public hearing was held and property owners did attend the public hearing and they stated that they wanted to repair the property but would need additional time. The Commission awarded them additional time as requested. Commission asked property owner to get with staff and submit a repair plan and figure out what the next step would be for this process. Staff waited patiently to hear from the property owner, two months went by and staff did not hear from the property

owner. Staff mailed property owner a letter stating that they had not heard or received anything from them, therefore property would be scheduled for condemnation. As of this date, staff has not received a repair plan from the property owner. Mr. Kellam stated that Mr. & Mrs. Curtis did express to him that they would like to repair the building, but did not have the a time frame as to when it would begin or be completed at this time. Mr. Kellam responded to property owner that the City would need to have some type of repair plan to show that efforts to repair the property were being made. Staff has not received anything from the property owner as of today. Mr. Kellam stated that this property has a long history, but has received numerous complaints over the years. According to water service records, this property has not had water services for the past 20 years or investments in the last several years. He further stated that there are some serious concerns with this property. Because the property has been vacant for so long, one of the main reasons they are addressing this situation is because it's inviting to arsonist for other types of criminal activity. A similar case would be the property located on the 1300 block of Kenedy which was burned down by arsonist. He further stated that the property is a nuisance to the neighborhood.

Mayor Fugate asked how it's open to the elements.

Mr. Kellam stated that there are large gaps and flaking of the metal structure. Exposure to the elements is what's causing the problem. Once metal begins to rust, it's hard to stop. There are some serious concerns with regards to the structure.

Mayor Fugate asked other than the problems that have been mentioned, what other issues are there with the building.

Mr. Kellam stated that it's open to the elements allowing rust to continue. Roof has loose material, if the city gets strong winds or even a storm, the material would go flying off creating a danger to the entire area. Reports have been provided noting the unsafe conditions of this property.

Commissioner Garcia asked if only one of the columns had some form of rust.

Mr. Kellam stated that looking from the outside he could see two columns that have formed rust. He stated that where the concrete comes up, the metal frame has some flakiness and rust. When metal starts to flake, there are some serious penetrations from a structural prospective.

Commissioner Garcia stated that he has reviewed the property condition report stating that this property is unsafe and unacceptable.

Mr. Kellam stated that the property owner does a good job of mowing the property but there are some serious problems that need to be addressed.

Commissioner Garcia asked about the metal roof.

Mr. Kellam stated that the roof has rust and has some serious disrepair between the wood structures on top of the metal roof.

Commissioner Garcia asked about the condition of the foundation.



Mr. Kellam stated that there are no cracks in the foundation but the roofing has serious problems and the columns have rust.

Commissioner Garcia asked if there were any pictures taken of the roof.

Mr. Kellam stated they couldn't get up that high. They did give it a try but that no photos were taken.

Commissioner Leubert asked that on some of these older beams that have rotted from the bottom, are they able to build a sleeve and weld it at the bottom of the beam.

Mr. Kellam stated that it would have to be engineered and staff would certainly be open to that, but the point of this is that staff has not had any communication with the property owner regarding repair plans. Staff receives numerous complaints from citizens regarding this property and something needs to be done.

Commissioner Leubert asked if one of the major concerns was communication.

Mr. Kellam stated yes that it was communication. He had been willing to sit with the property owner to discuss repair plans and time frame. He stated that the property owner had stated that they didn't have the funds to complete the project by certain time frame. He stated that staff wanted a repair plan in place showing the phases that this building would be repaired, which we haven't received as of today. He stated that in his opinion it's been almost nine months in trying to resolve this issue.

Commissioner Pena asked if there were any other pictures showing the rotted area on the bottom of the column.

Mr. Kellam stated that this information was provided in the agenda packet.

Commissioner Garcia asked if staff has received any type of plans for this projects either oral or in a written form as of today.

Mr. Kellam stated that as of today, no. They did have conversations with the previous building official, but he is not aware of what was discussed. Staff did mail out two notices asking for repair plans, but received no response from the property owner.

Commissioner Garcia opposed the following question to Mrs. Courtney Alvarez, City Attorney. Would it be proper for me to ask if there are any property taxes owed on this property?

Mrs. Alvarez stated that it's not one of the elements for the condemnation, but he may ask if he chose to do so. The property owner would not have to answer the question if they don't wish to do so.

Commissioner Garcia stated that the reason he is heading that direction is if the property owner is planning on doing repairs, the taxes to the property would need to be paid to date.

Mayor Fugate asked Mr. & Mrs. Curtis to rebut on the discussion that has taken place.

Mr. Curtis stated that he has had contractors and an engineer look at the property and was told that he would take a big loss if the city decided to tear down the property.

Mrs. Curtis stated that when she purchased the property, she was not made aware of a time limit for renovations.

Mayor Fugate stated that he recalls telling Mrs. Curtis back in July, that because the City was receiving multiple complaints on this property, she should not delay in moving forward with the renovations. He stated that as of today, the City has not received anything showing a repair plan and the city has given her enough time to provide the city with some type of plan and time frame for completion.

Mrs. Curtis stated that she has a repair plan that's dated back in 2007.

Mayor Fugate asked if it had been submitted to the building officials.

Mrs. Curtis stated that it wasn't submitted. She stated that when she received the letter regarding the condemnation, she went to meet with Mr. Kellam. She stated that Mr. Kellam was adamant that the property was going to be condemned.

Mayor Fugate asked if Mr. Kellam was allowed to review the documents.

Mrs. Curtis stated that he didn't look at them and didn't give her the opportunity to show the plans to him.

Mr. Curtis stated that he had offered for Mr. Kellam to come view the building from the interior and Mr. Kellam's response was no and that the City had already made up their mind.

Mayor Fugate asked what contractors have looked at the property.

Mrs. Curtis stated that Carlos Segovia and Santiago Cantu. She stated that she has a proposal that was given to her of the property from 2007.

Mayor Fugate asked to see this proposal. He stated that this proposal was from 2007 and asked if the contractor has seen it since.

Mrs. Curtis stated that she has been in contact with them ever since then and still talking to them about this property.

Commissioner Garcia stated that the document has an engineering stamp dated back in 2009.

Mayor Fugate asked when the meeting with Mr. Kellam took place and if an appointment was made to meet with him.

Mrs. Curtis stated that she had made an appointment with Mrs. Courtney Alvarez about three weeks ago and was then taken to Mr. Kellam.

Mayor Fugate stated that he remembers telling her not to delay because the City was receiving a lot of complaints from citizens regarding this property.

Commissioner Garcia asked the Curtis's if they owed any back taxes on the property, and if they wish not to answer the question, it would be understood.

Mrs. Curtis stated that no back taxes were owed.

Mayor Fugate asked Mrs. Curtis if she had the \$55,000 it would take for the renovation. Mrs. Curtis stated that she did not have the funds and stated that she did not want to borrow the money. Mayor Fugate stated that the proposal was from five years ago and cost may have gone up by now.

Mayor Fugate asked Mr. Kellam to follow-up on the discussion that just took place.

Mr. Kellam stated that he met with the Curtis's after they received their letter. He stated that they were upset that the public hearing for condemnation of this property was going to take place. Mr. Kellam explained to them that staff had not heard from them and with the number of complaints received, it put everyone involved, in a position that a decision had to be made with regards to the property, and this is where we are at now. He stated that the value of the building as listed on the tax roll should be included in the agenda packet. Replacing the roof would probably exceed the value of the property.

Mayor Fugate stated that the bid received in 2009 shows \$55,000 to renovate this property.

Mr. Kellam stated that the Curtis's never presented this document to him or mentioned to him at no time. This is the first time he hears of any plans. If he had received these plans back in February, March or April, July or September, we wouldn't be here discussing this issue, if action had been taken by the property owner. Staff does not only need a repair plan we need a timeline for this project.

Mrs. Curtis stated that all she is asking from the City Commission is the opportunity to develop her business. She further stated she wants to work with the city and nobody wants to see that spot beautified more than she does. She stated that if Commission allows this property to be torn down, they are tearing her down as well as her dreams. She stated that Commission and staff may see it as an eye sore but she is not convinced that it is an eye sore. She has every intention in developing and repairing this property so she may start her business as a hair salon. She would like to pay the property off first before starting any repairs to the building.

Commissioner Leubert asked for a time frame as to how much longer she would need before renovations would begin.

Mrs. Curtis stated that she would need at least five more years.

Mayor Fugate stated that Commission appreciated her comments but it was time to move on and asked for any further discussion from anyone else present with regards to this public hearing.

No further comments were made regarding this public hearing. Mayor Fugate closed this hearing at 6:35 p.m.

Reports from Commission and staff followed.

Mr. Capell announced the new appointment and introduced the Health Director, Emilio Garcia. He stated that due to the next regularly scheduled meeting being on November 12<sup>th</sup>, and it being a holiday, the meeting would normally fall on the next business day. Due to Commission and staff attending the TML Conference

held November 13-16, 2012, there would be no quorum. He asked Commission for direction as to when they would like to schedule the next Commission meeting. He stated that there were a couple of options for Commission to choose from. They could decide to skip the first meeting in November and wait until November 26<sup>th</sup> or simply schedule the first meeting for November 5<sup>th</sup>. All were in agreement to schedule the next meeting for November 5<sup>th</sup>. He further gave Commission an update on the relocation of the H.E.B. canopy. He stated that this canopy would provide some opportunities for markets and other activities to be held in Kingsville. He reminded everyone of the 4<sup>th</sup> Annual Safe Trick or Treating Halloween Carnival which will be taking place on Thursday, October 25<sup>th</sup> on the 200 and 300 block of E. Kleberg from 4:00 – 6:00 p.m.

Mrs. Alvarez reminded staff that agenda items for the November 5<sup>th</sup> meeting are due this Friday, October 26, 2012 by 5:00 p.m. The City will be on holiday Monday, November 12<sup>th</sup> and TML Conference is November 13-16, 2012 in Grapevine, TX. On Friday, October 26, 2012, senior staff will be attending management training and will be out of the office from 9:00 a.m. – 4:00 p.m.

Mayor Fugate made a presentation to Mrs. Edna S. Lopez, retired City Secretary for her years of service to the City of Kingsville. Mrs. Lopez has worked with the City of Kingsville for 32 years, 8 of those years as City Secretary.

Commissioner Pena commended the Kingsville Police Department and Task Force for all their hard work.

Mayor Fugate commended staff on a job well done with regards to fixing potholes.

### **III. Reports from Commission & Staff.<sup>2</sup> (City Manager's Staff Report Attached).**

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

### **IV. Public Comment on Agenda Items<sup>3</sup>**

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

No public comments were made at this time.

Mayor Fugate asked for a motion to approve the consent agenda. Commissioner Pecos made a motion to approve the consent agenda as presented, second by Commissioner Leubert. The motion was passed and approved by the following vote: Leubert, Pecos, Pena, Garcia, Fugate voting "FOR".

V.

### **Consent Agenda**

#### **Notice to the Public**

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

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

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

1. Consider final passage of an ordinance amending the City of Kingsville Code of Ordinances Chapter XI, Article 2, Ambulance Service, providing for the ambulance billing rates for services provided by the City. (Finance Director).
2. Consider final passage of an ordinance amending the zoning ordinance by granting a special use permit for 822 South 9<sup>th</sup> Street (Lots 29-32, Block 11, 9<sup>th</sup> Addition) for a daycare facility, amending the comprehensive plan to account for any deviations from the existing comprehensive plan, providing for publication. (Director of Planning and Development Services).
3. Consider final passage of an ordinance amending the zoning ordinance by changing the zoning map in reference to Lots 1, 2 & 3 of Newman Center Addition, which is at the southwest corner of Retama St. and Corral Ave., from R1 Single Family District & R3 Multi-Family Residential District to solely R3 Multi-Family Residential District, amending the comprehensive plan to account for any deviations from the existing comprehensive plan, and providing for publication. (Director of Planning and Development Services).
4. Consider final passage of an ordinance amending the zoning ordinance by changing the zoning map in reference to 39.03 acres out of KT&I Co., Section 22, Lot 9 known as the Hawk's Landing area from AG Agriculture District to R3 Multi-Family Residential District, amending the comprehensive plan to account for any deviations from the existing comprehensive plan, and providing for publication. (Director of Planning and Development Services).

### **REGULAR AGENDA**

## **CONSIDERATION OF MOTIONS, RESOLUTIONS, AND ORDINANCES:**

### **VI. Items for consideration by Commissioners.<sup>4</sup>**

5. Consider condemnation of structures located at 519 N. 6<sup>th</sup> Street, Kingsville, Texas. (Director of Planning & Development Services).

Mayor Fugate stated that this item was discussed during today's public hearing. This is an opportunity for Commission to discuss this and no one else could be involved in this discussion. He stated that he remembers back in July of this year telling Mrs. Curtis that she should not delay on this project because the City was receiving multiple complaints with regards to the property. He stated that five additional years is a long time to grant due to the number of complaints.

Commissioner Leubert stated that it is an old building and with different opinions as to whether the building is unsafe or not, she would like to give the property owner a little more time to begin repairs, as long as there is communication with the property owner and Mr. Kellam. There needs to be action taken within a reasonable time period. She further stated that she could see the desire to repair this property and how much it meant to the property owner to receive the additional time. She stated that the building has a lot of problems, but it has good bones and could be saved. Mayor Fugate asked if Commissioner Leubert was prepared to wait five years. Commissioner Leubert's response was she couldn't wait five years.

Commissioner Pecos stated that he is aware of what the property owner is trying to do but it's unfortunate that she doesn't have the resources to begin the repairs. He stated that the Commission's goal is to beautify the city, and he can't see the Commission waiting five more years for repairs to begin on this property.

Commissioner Leubert stated that she would like to give the City and the property owners one more opportunity to discuss the issue with regards to this property.

Mayor Fugate stated that he feels it wouldn't make much of a difference to give that opportunity.

Commissioner Pecos stated that with what the building is worth on the tax roll and what it would cost to repair, he feels that it would be beneficial to the property owner to start from the ground up. They could build a new and safer building.

Commissioner Garcia stated he understands her emotional aspect and can side with her dreams. But when you compare human emotions with material things, you would have to think what matters most. If the building could be covered to not allow rodents and give it a cosmetic look to improve the look of the building, maybe the building would have a chance to survive.

Commissioner Pena stated that he had two comments to make, one being, was there reasonable effort made to get this done. He stated that he isn't convinced that there was reasonable effort made. He has reviewed all the documents pertaining to this property and he sees the due diligence as the role from the

City. The City has covered all there basis when it comes to this property. The other issue is that the property owner did not meet the City half way.

Mayor Fugate stated that back in July, he recalls mentioning to the property owner that she needed to move on this because the City could not wait very much longer due to the complaints being received from citizens. As of today, the property owner has not come up with a repair plan and the City cannot grant the additional five years that the property owner is asking for. He further stated that the City has already given the property owner four years, if they grant an additional five years, it would make it a total of nine years and that's just too much time.

Mr. Capell stated that if you don't have the resources to turn it around, you shouldn't buy the property. He stated that Mr. Kellam is trying to interpret the code as best as he can. It's unfortunate that we are where we are in this issue but staff didn't create this, staff is trying to make progress in beautifying the City. Staff has repeatedly asked for a repair plan and up to this date, staff has not received a repair plan from the property owner.

Mayor Fugate asked for a motion from the Commission. **Motion was made by Commissioner Pecos, motion finding-not able to repair, building or structure is unsafe; and present condition is a violation of ordinances; and cannot be corrected without substantial reconstruction; then declare the building or structure to be a public nuisance and order its demolition by owner/agent/person in charge within a specified time (city shall abate in any manner it deems necessary and proper), motion was seconded by Commission Pena. The motion was passed and approved by the following vote: Pecos, Pena, Fugate voting "FOR". Leubert and Garcia voting "AGAINST".**

6. Consider a resolution approving the assignment of the Tax Abatement Agreement between the City of Kingsville and NSH Fund, LP to NSHF-TAMUK, LLC, and authorizing the Mayor to execute an amended tax abatement agreement to reflect said assignment. (Director of Planning & Development Services).

**Motion made by Commissioner Leubert to approve resolution as presented, second by Commissioner Pecos and Commissioner Garcia. The motion passed by the following vote: Pena, Garcia, Leubert, Pecos, Fugate voting "FOR".**

Mrs. Alvarez stated that going back to agenda item #5, there would need to be a motion and vote on a time frame to demolish property located at 519 N. 6<sup>th</sup> Street.

**Commissioner Pecos made a motion to amend his previous motion to add 45-60 days as the designated time frame for demolition, second by Commissioner Pena. The motion was passed and approved by the following vote: Pena, Pecos, Fugate voting "FOR". Leubert and Garcia voting "AGAINST".**

7. Consider a resolution establishing the City of Kingsville Investment Policy and Investment Strategies; designating the City Manager, Director of Finance, and City Accounting Manager as the authorized city representatives with full authority for investment purposes, and providing for disclosure of financial interest. (Finance Director).

Mr. Mark Rushing, Finance Director, stated that annually staff updates and reviews the investment policy. Mr. James Bryson has taken the position of Accounts Manager and would need to be added. The other update is to change from quarterly reporting to annually reporting.

Commissioner Leubert asked why change from quarterly to annually reporting.

Mr. Capell stated that investments don't change quite often and the City does not have many investments. This was at his request to Mr. Rushing to make this change.

**Motion made by Commissioner Pecos to approve the resolution as presented, second by Commissioner Pena. The motion was passed and approved by the following vote: Garcia, Leubert, Pecos, Pena, Fugate voting "FOR".**

8. Consider introduction of an ordinance amending the Fiscal Year 2012-2013 budget for Community Appearance to transfer funds for maintenance projects. (Finance Director).

Mr. Rushing stated that during the budget process, there is a need to move the Recycling Building Maintenance, Grounds and Fixtures originally budgeted in the 170.1 Recycle Center, to the Community Appearance Building Maintenance, Grounds and Fixtures under 160.3. The Building Maintenance amount of \$2,500 is for general maintenance of the building in which Mr. Kellam will be overseeing this line item. The Ground and Permanent Fixtures of \$6,222 is for the sidewalk enhancement at the building.

This is an introduction item only. No action was taken.

9. Consider awarding annual renewable contract for cleaning services at the Kingsville Law Enforcement Center to Valerio's Janitorial Service as per staff recommendation. (Bid 13-01). (Director of Purchasing & Information Technologies).

Mr. David Mason, Purchasing Director, stated that this item authorizes an annual renewable contract for cleaning services at the Law Enforcement Center. Staff advertised for Bid 13-01 on September 23, 2012 and September 30, 2012, and opened on October 9, 2012, receiving only one bid. Staff believes the best value for the City is Valerio's Janitorial Service. Mr. Valerio is the immediate past contract holder and has satisfactorily completed required contractual duties. Police Chief Torres concurs with this recommendation. This renewable contract will expend \$22,000 (2,000/mo. 11/1/2012 – 09/30/2012) for FY 2013. Renewal rates for FY 2014 are \$25,200 (2,100/mo.) and for 2015 is \$26,400 (2,200/mo.).

**Motion was made by Commissioner Garcia to accept staff recommendation to award bid to Valerio's Janitorial Service, second by Commissioner**



**Pecos. The motion was passed and approved by the following vote: Leubert, Pecos, Pena, Garcia, Fugate voting "FOR".**

10. Consider a resolution authorizing staff to proceed with placing for sale the City's building located at 2211 South Brahma Boulevard, Kingsville, Texas. (City Manager).

Mr. Capell stated that the City is paying \$30,000 per year and is asking for Commission approval to bid out and once an offer is made, submit the offer to Commission for approval.

**Motion was made by Commissioner Pecos to approve resolution as presented, second by Commissioner Pena. The motion was passed and approved by the following vote: Pecos, Pena, Garcia, Leubert, Fugate voting "FOR".**

**VI. Adjournment.**

There being no further business to come before the City Commission, the meeting was adjourned at 7:15 p.m.

---

Sam R. Fugate, Mayor

ATTEST:

---

Mary Valenzuela, City Secretary

# **PUBLIC HEARING(S)**

**ORDINANCE #2012-\_\_\_\_\_**

**AMENDING THE ZONING ORDINANCE BY CHANGING THE ZONING MAP IN REFERENCE TO LOTS 9-16, BLOCK 25 OF NINTH ADDITION, KNOWN AS 704-B EAST FORDYCE FROM R1 SINGLE FAMILY RESIDENTIAL DISTRICT TO C2 RETAIL DISTRICT; AMENDING THE COMPREHENSIVE PLAN TO ACCOUNT FOR ANY DEVIATIONS FROM THE EXISTING COMPREHENSIVE PLAN; AND PROVIDING FOR PUBLICATION.**

**WHEREAS**, the Planning Commission has forwarded to the City Commission its reports and recommendations concerning the application of Dale Raabe, for amendment to the zoning ordinance and zoning map of the City of Kingsville;

**WHEREAS**, with proper notice to the public, public hearings were held on Wednesday, October 17, 2012 during a meeting of the Planning and Zoning Commission, and on Monday, November 5, 2012 during a meeting of the City Commission, at City Hall, in the City of Kingsville, during which all interested persons were allowed to appear and be heard; and

**WHEREAS**, a majority of the Planning Commission by an 8-0 vote APPROVED the requested rezone; and

**WHEREAS**, the City Commission has determined that this amendment would best serve public health, necessity, and convenience and the general welfare of the City of Kingsville and its citizens.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KINGSVILLE, TEXAS:**

**SECTION 1.** That the Zoning Ordinance of the City of Kingsville, Texas, is amended by changing the zoning of Lots 9-16, Block 25 of Ninth Addition, known as 704-B East Fordyce from R1 Single Family Residential District to C2 Retail District, as more specifically described on the Zone Change Map, attached as Exhibit A.

**SECTION 2.** That the official Zoning Map of the City of Kingsville, Texas, is amended to reflect the amendments to the Zoning Ordinance made by Section 1 of this ordinance.

**SECTION 3.** That the Zoning Ordinance and Zoning Map of the City of Kingsville, Texas, as amended from time to time, except as changed by this ordinance and any other ordinances adopted on this date, remain in full force and effect.

**SECTION 4.** That to the extent that these amendments to the Zoning Ordinance represent a deviation from the Comprehensive Plan, the Comprehensive Plan is amended to conform to the Zoning Ordinance, as amended by this ordinance.

**SECTION 5.** That all ordinances or parts of ordinances in conflict with this ordinance are hereby expressly repealed.

**SECTION 6.** That publication shall be made in the official publication of the City of Kingsville as required by the City Charter of the City of Kingsville.

**INTRODUCED** on this the 5th day of November, 2012.

**PASSED AND APPROVED** on this the \_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2012.

**THE CITY OF KINGSVILLE**

\_\_\_\_\_  
Sam R. Fugate, Mayor

**ATTEST:**

\_\_\_\_\_  
Mary Valenzuela, City Secretary

**APPROVED:**

\_\_\_\_\_  
Courtney Alvarez, City Attorney

# 704 E. Fordyce

**E Lott**

5TH  
BLOCK 9  
LOT 8  
9

5TH  
BLOCK 9  
LOT 10  
11

5TH  
BLOCK 9  
LOT 12  
13  
W/2 14

5TH  
BLOCK 9  
LOT E/2 14  
15  
16

5TH  
BLOCK 10  
LOT 1-3

5TH  
BLOCK 10  
LOT 4  
5

5TH  
BLOCK 10  
LOT 6-8

5TH  
BLOCK 10  
LOT 9  
10

5TH  
BLOCK 10  
LOT 11  
12

5TH  
BLOCK 10  
LOT E/2 14  
15  
16  
"OV65 TAX DEFERRAL 2007"

RETAMA PARK  
BLOCK 11  
LOT 1

RETAMA PARK  
BLOCK 11  
LOT 2

RETAMA PARK  
BLOCK 11  
LOT 3

5TH  
BLOCK 9  
LOT 23  
24

5TH  
BLOCK 9  
LOT 21  
22

5TH  
BLOCK 9  
LOT 19  
20

5TH  
BLOCK 9  
LOT 17  
18

5TH  
BLOCK 10  
LOT 30-32

5TH  
BLOCK 10  
LOT 27-29

5TH  
BLOCK 10  
LOT 25  
26

5TH  
BLOCK 10  
LOT 23  
24

5TH  
BLOCK 10  
LOT 21  
22

5TH  
BLOCK 10  
LOT 17-20  
ACRES .0

50% UNDIVIDED INTEREST

RETAMA PARK  
BLOCK 11  
LOT 10

RETAMA PARK  
BLOCK 11  
LOT 9

RETAMA PARK  
BLOCK 11  
LOT 8

**S 11th**

**E Huisache**

9TH  
BLOCK 25  
LOT 9-16  
(EXEMPT)

9TH  
BLOCK 25  
LOT 25-27

9TH  
BLOCK 25  
LOT 17-24

9TH  
BLOCK 26  
LOT 1-8  
23-32  
(EXEMPT)

9TH  
BLOCK 26  
LOT 1-8  
23-32  
(EXEMPT)

9TH  
BLOCK 26  
LOT 9  
10  
W/8 11

9TH  
BLOCK 26  
LOT E1/2 11  
12  
13  
W1/2 14

9TH  
BLOCK 26  
LOT E1/2 14  
15  
16

**R2**

**S 12th**

RETAMA PARK  
BLOCK 27  
LOT 1

RETAMA PARK  
BLOCK 27  
LOT 2

RETAMA PARK  
BLOCK 27  
LOT 3

RETAMA PARK  
BLOCK 27  
LOT 10

RETAMA PARK  
BLOCK 27  
LOT 9

RETAMA PARK  
BLOCK 27  
LOT 8

**E Fordyce**

9TH  
BLOCK 31 - ALL & 32  
LOT 9-32  
CLOSED 11ST ST & ALLEY  
(EXEMPT)

**R1**

RETAMA PARK  
BLOCK 30  
LOT 1

RETAMA PARK  
BLOCK 30  
LOT 2

RETAMA PARK  
BLOCK 30  
LOT 3

RETAMA PARK  
BLOCK 30  
LOT 10  
"OV65 TAX DEFERRAL 2007"

RETAMA PARK  
BLOCK 30  
LOT 9

RETAMA PARK  
BLOCK 30  
LOT 8

**E Johnston**

704 E. Fordyce

0 50 100 200 Feet

Page  
1/1

Drawn By: JR Cavazos

Last Update: 10/29/2012

Note:

DISCLAIMER  
THIS MAP IS FOR VISUAL PURPOSES ONLY.  
THE INFORMATION ON THIS SHEET MAY  
CONTAIN INACCURACIES OR ERRORS.  
THE CITY OF KINGSVILLE IS NOT  
RESPONSIBLE IF THE INFORMATION CONTAINED  
HEREIN IS USED FOR ANY DESIGN,  
CONSTRUCTION, PLANNING, BUILDING,  
OR ANY OTHER PURPOSE.



**CITY OF KINGSVILLE**  
**ENGINEERING DEPARTMENT**  
200 East Kleberg  
Kingsville, Texas 78363  
Office: 361-595-8005  
Fax: 361-595-8035




## Planning & Development Services Department

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**TO:** Mayor & City Commission

**THROUGH:** Vincent Capell, City Manager

**FROM:** Michael Kellam, AICP, Director of Planning & Development Services 

**SUBJECT:** Rezoning Request Lots 9-16, Block 25 of Ninth Addition, property located at 704-B East Fordyce, also shown in the attached map.

**DATE:** October 23, 2012

---

The City of Kingsville Planning and Zoning Commission met on October 17, 2012 at 7:00 p.m. in regard to a request made by the Dale Raabe, to rezone Lots 9-16, Block 25 of Ninth Addition, property located at 704-B East Fordyce and as delineated on the attached property map. The request is to rezone from R-1 Single Family Residential District to C-2 Retail District. There were several persons in favor present at this meeting with no one on the record in opposition of the request.

All pertinent notices were published and sent out to the surrounding property owners that are within the 200ft radius 15 days prior to the meeting. No significant questions, comments or complaints regarding this rezone were made to the Planning Department. We received calls regarding minor clarifications but no formalized comments or concerns.

Staff presented the attached staff report and supplemental information to the Planning & Zoning Commission. As stated in the staff report the request was found to be consistent with proper planning and land use management due to the design and layout of the existing structure. Staff identifies the proposed adaptive re-use of the property as commercial office/training facility to be the best available option with no detrimental impact to the neighborhood.

Planning staff recommends approval of this rezoning request. The Planning & Zoning Commission recommended **Approval** of the request with a unanimous 8/0 vote.

Attachments



## Planning & Development Services Department

---

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**THROUGH:** Vincent Capell, City Manager

**FROM:** Michael Kellam, AICP, Director of Planning & Development Services

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Attachments

*704B E. Fordyce- Rezoning Request from R-1 Single Family to C-2 Retail Commercial District by Dale Raabe*





**CITY OF KINGSVILLE  
PLANNING AND ZONING DIVISION  
MASTER APPLICATION**

PROPERTY INFORMATION: (Please PRINT or TYPE)

Project Address 704-B E. FORDYCE Nearest Intersection 11<sup>TH</sup> AND FORDYCE

(Proposed) Subdivision Name NINTH ADDITION Lot 9-16 Block 25

Legal Description: \_\_\_\_\_

Existing Zoning Designation R2 Future Land Use Plan Designation C-2

OWNER/APPLICANT INFORMATION: (Please PRINT or TYPE)

Applicant/Authorized Agent DALE RAABE Phone 361-592-2911 FAX 361-592-9252

Email Address (for project correspondence only): DALE.RAABE@PARTNERS.MCD.COM

Mailing Address P.O. Box 1455 City KINGSVILLE State TX Zip 78364

Property Owner CHURCH OF CHRIST Phone \_\_\_\_\_ FAX \_\_\_\_\_

Email Address (for project correspondence only): \_\_\_\_\_

Mailing Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

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

<input type="checkbox"/> Annexation Request.....	No Fee	<input type="checkbox"/> Preliminary Plat.....	Fee Varies
<input type="checkbox"/> Administrative Appeal (ZBA).....	\$ 250.00	<input type="checkbox"/> Final Plat.....	Fee Varies
<input type="checkbox"/> Comp. Plan Amendment Request.....	\$ 250.00	<input type="checkbox"/> Minor Plat.....	\$ 100.00
<input checked="" type="checkbox"/> Re-zoning Request.....	\$ 250.00	<input type="checkbox"/> Re-plat.....	\$ 250.00
<input type="checkbox"/> SUP Request/Renewal.....	\$ 250.00	<input type="checkbox"/> Vacating Plat.....	\$ 50.00
<input type="checkbox"/> Zoning Variance Request (ZBA).....	\$ 250.00	<input type="checkbox"/> Development Plat.....	\$ 100.00
<input type="checkbox"/> PUD Request.....	\$ 250.00	<input type="checkbox"/> Subdivision Variance Request.....	\$ 25.00 ea.

Please provide a basic description of the proposed project: THE PROPOSED USE OF THE BUILDING IS FOR AN OFFICE HANDLING THE PAYMENTS AND DOCUMENTS FOR 10 McDONALD RESTAURANTS. ALSO USED AS A TRAINING CENTER AND 3 TIECLAS BASE THERE.

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

Applicant's Signature: [Signature] Date: 9/6/2012

Property Owner(s) Signature: [Signature] Date: 9/6/2012

Accepted by: [Signature] Date: \_\_\_\_\_

TO PLANNING AND ZONING DIVISION

CITY OF KINGSVILLE, TEXAS

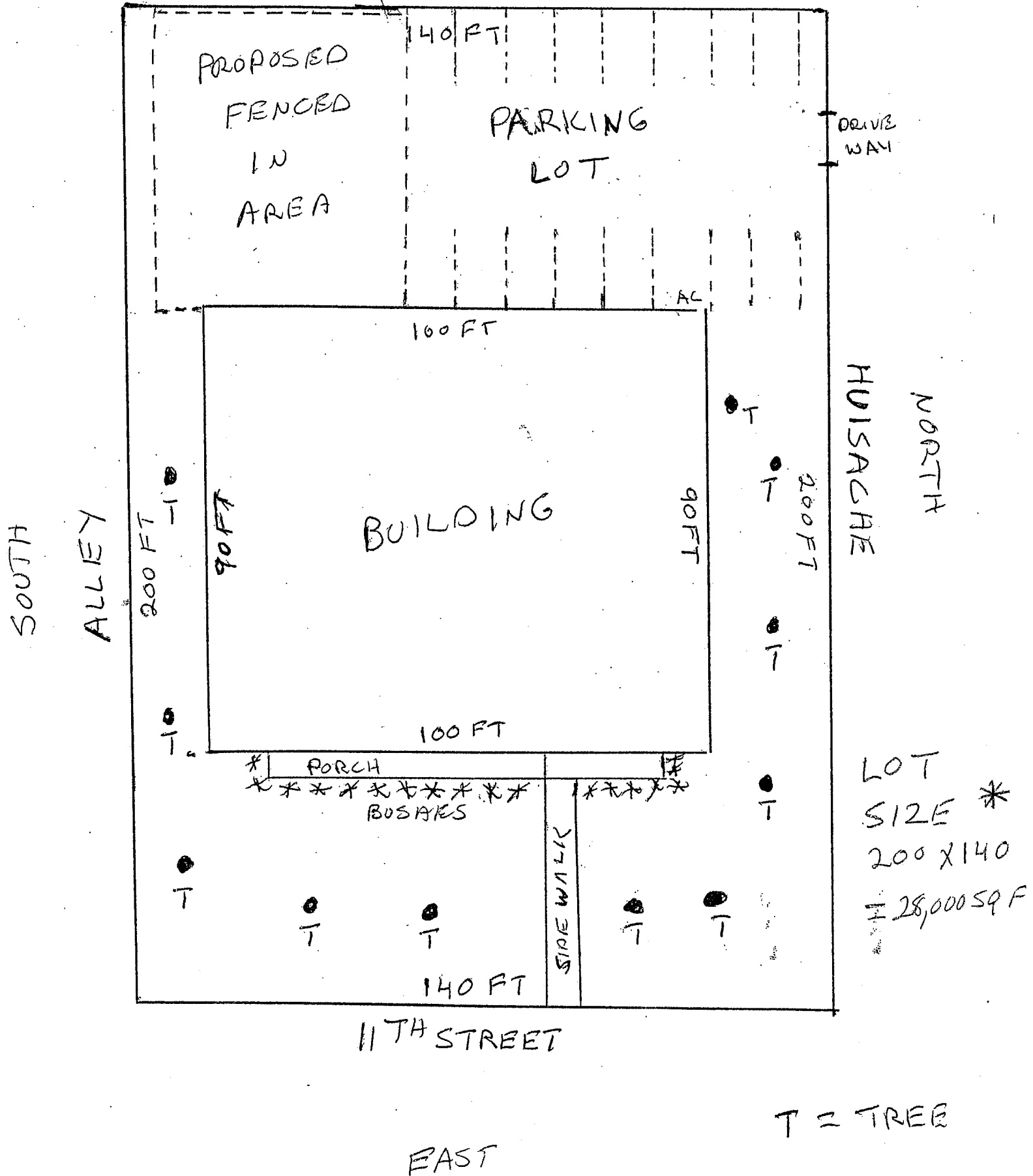
THIS REZONING REQUEST IS FOR THE PROPERTY LISTED AT 704-B, E. FORDYCE IN THE SUBDIVISION, NINETH ADDITION, LOT 9 -16, BLOCK 25. THE BUILDING FACING 11<sup>TH</sup> STREET BETWEEN FORDYCE AND HUISACHE IS CURRENTLY A CHURCH.

THE PROPERTY IS ZONED R-2 AND THE RE-ZONING REQUEST IS TO C-2. THE PROPOSED USE IS FOR AN OFFICE SUPPORTING 10 McDONALD'S RESTAURANTS IN THE SURROUNDING AREA.

THE BUILDING WILL ALSO BE USED AS A TRAINING CENTER FOR THE RESTAURANTS MANAGERS AND HOME BASE FOR THE THREE (3) EQUIPMENT TECHNICIANS WHO MAINTAIN THE EQUIPMENT IN ALL RESTAURANTS

WEST  
HOUSE

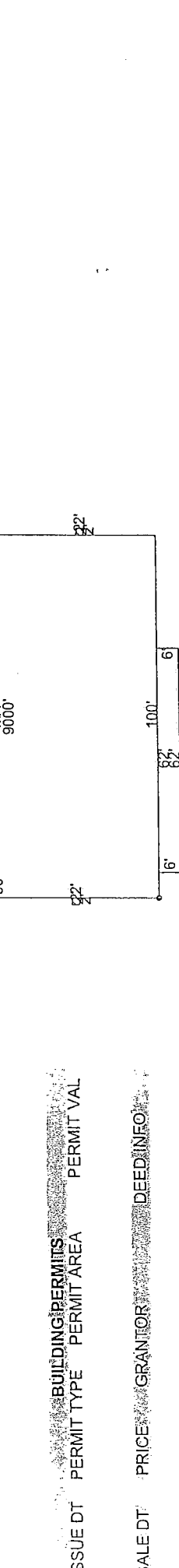
SITE PLAN \*



Legal Description	11507	704 E. FORDYCE	UNI	100.00%	LAND MARKET	339,610
TH, BLOCK 25, LOT 9-16, (E X E M P T)	OWNERSHIP	KINGSVILLE, TX 78363	GKL	100%	MARKET VALUE	339,610
	100.00%		SKI	100%	PRODUCTIVITY LOSS	0
			WST	100%	APPRAISED VALUE	339,610
					HS CAP LOSS	0
01002509000192		ACRES:			ASSESSED VALUE	339,610



NO.	DATE	BY	REASON	REMARKS
1	09/06/2001		LAST INSP. DATE	NEW FOR 2001 -- FOR '01 ADD NEW ACCT PER SPLIT OUT LOTS 9-16 AND IMP(2) FROM ACCT #101002501000192 PER NOT DONE IN ERROR - ADD EXEMPT STATUS - SEE FORM #F1-9141-01 9/6/01 LAM/TF/JO --
2			NEXT INSP. DATE	
3			LOAD ACCESS	
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5			EXT REASON	
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[illegible][illegible]

CHURCH OF CHRIST  
704 E. FORDYCE  
KINGSVILLE, TEXAS 78363

MR. BOBBY RICH:

"ASSESSMENT OF VALUE"

PER YOUR REQUEST I HAVE COMPLETED AN ASSESSMENT OF VALUE ON THE PROPERTY ACROSS 11<sup>TH</sup> ST. FROM 704 E. FORDYCE, KINGSVILLE, TEXAS 78363. (LEGAL: LOTS 9 THRU 16, BLOCK 25, NINTH ADDITION, KINGSVILLE, KLEBERG COUNTY, TEXAS.)

THE SUBJECT PROPERTY IS A 90' X 100' METAL BUILDING WITH A 6' X 62' OPEN PORCH ON THE EAST SIDE. THE FOUNDATION IS CONCRETE SLAB. ROOF IS METAL. THE FIRST FLOOR (9,000 SQ. FT.) HAS A FULL SIZE GYMNASIUM WITH INDOOR/OUTDOOR CARPET FLOORING. THERE IS A LARGE KITCHEN WITH STOVES, REFRIGERATORS, ICE MAKER, MICROWAVE, ADEQUATE SINKS WITH COUNTER SPACE AND A LARGE STOREROOM/PANTRY. THERE IS A NICE PARLOR WITH WOOD BURNING FIREPLACE OFF THE ENTRANCE AND THE KITCHEN. THERE IS A BUS BARN WITH OVERHEAD DOOR ON THE SOUTHWEST CORNER LARGE ENOUGH FOR A 72 PASSENGER BUS. THERE ARE CLASSROOMS ALONG THE WEST WALL. THERE ARE RESTROOMS WITH SHOWER FACILITIES.

THE SECOND FLOOR HAS APPROXIMATELY 4,197 SQ. FT. OF CLASSROOMS AND ~~REVERSES~~. THERE ARE THREE CENTRAL UNITS THAT HEAT AND COOL THE BUILDING. CONDITION OF THE BUILDING IS GOOD.

THE BUILDING IS ON A 200' X 140' LOT WITH STREET FRONTAGE ON TWO SIDES. ON THE WEST SIDE OF THE BUILDING IS SOME PAVED AREA THAT HAS OVER GROWN WITH GRASS. LAND VALUE IN THIS AREA IS \$100/FRONT FOOT OR \$20,000 FOR THE LOT VALUE.

THERE HAS BEEN THREE SALES OF LARGER COMMERCIAL BUILDINGS IN KINGSVILLE THE LAST TWELVE MONTHS. (FROM KINGSVILLE BOARD OF REALTORS MLS DATA). THE ONE MOST COMPARABLE WAS THE OLD CITY LUMBER BUILDING ON WEST LEE. BECAUSE OF THE AMENITIES IN THE SUBJECT I DO NOT FEEL THAT THE COMPARABLE SALES APPROACH GIVES A VALID ESTIMATE OF VALUE.

I HAVE CALCULATED AN ESTIMATE OF VALUE USING THE DEPRECIATED REPLACEMENT COST METHOD USING COST DATA TAKEN FROM "MARSHALL & SWIFT" REPLACEMENT COST HANDBOOK. THIS IS A NATIONWIDE COST ESTIMATING SERVICE THAT IS UP-DATED QUARTERLY AND ADJUSTED FOR OUR CONSTRUCTION AREA. I HAVE USED DIFFERENT COST FOR THE DIFFERENT COMPONENTS (ie GYMNASIUM, BUS STORAGE, CLASSROOMS, ETC.) THE SQUARE FOOTAGE OF THE SECOND LEVEL WAS GIVEN A VALUE OF 80% OF THE FIRST FLOOR SQUARE FOOTAGE. ( SEE ATTACHED WORKSHEET).

DEPRECIATED REPLACEMENT COST	\$362,746
KLEBERG CAD (MARKET VALUE) (KCAD IS IN ERROR BECAUSE THEY DO NOT SHOW ANY AREA ON THE SECOND FLOOR.)	\$339,610

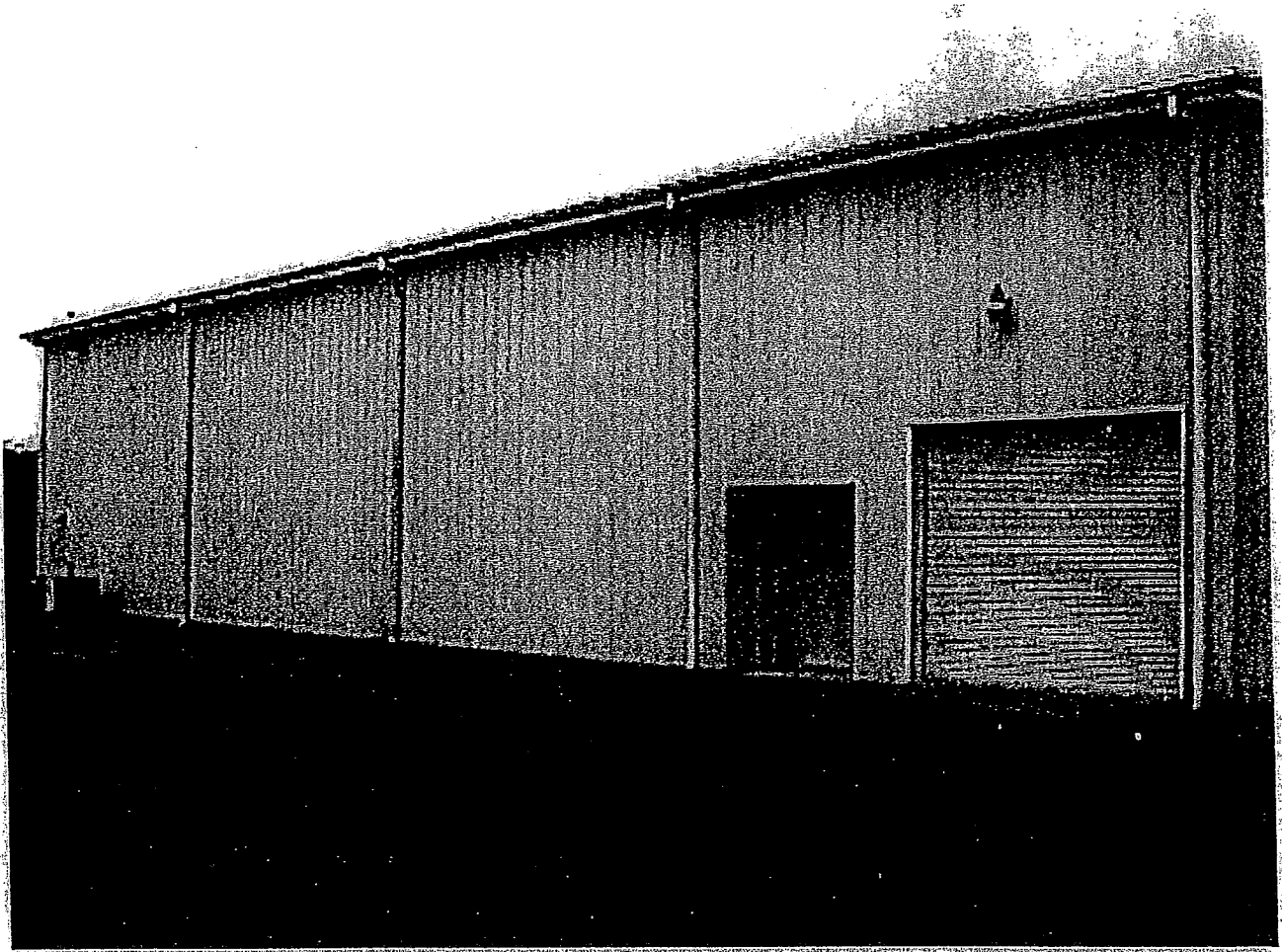
AFTER CONSIDERING ALL THE INFORMATION I FEEL THAT THE "FAIR MARKET VALUE" OF THE SUBJECT PROPERTY AS OF 1/14/2003 IS ~~\$350,000.00~~ DEMAND FOR THIS TYPE OF PROPERTY CAN BE VERY LIMITED. IF A QUICK SALE IS REQUIRED THEN PROPERTY VALUE

WOULD HAVE TO BE DISCOUNTED. IN LOOKING AT SALES THIS DISCOUNT CAN BE  
CONSIDERABLE.

IF YOU HAVE QUESTIONS OR IF I CAN BE OF FURTHER SERVICE PLEASE CALL AT 361-  
584-3604 OR 361-563-4293.

*Paul N. Thomas*

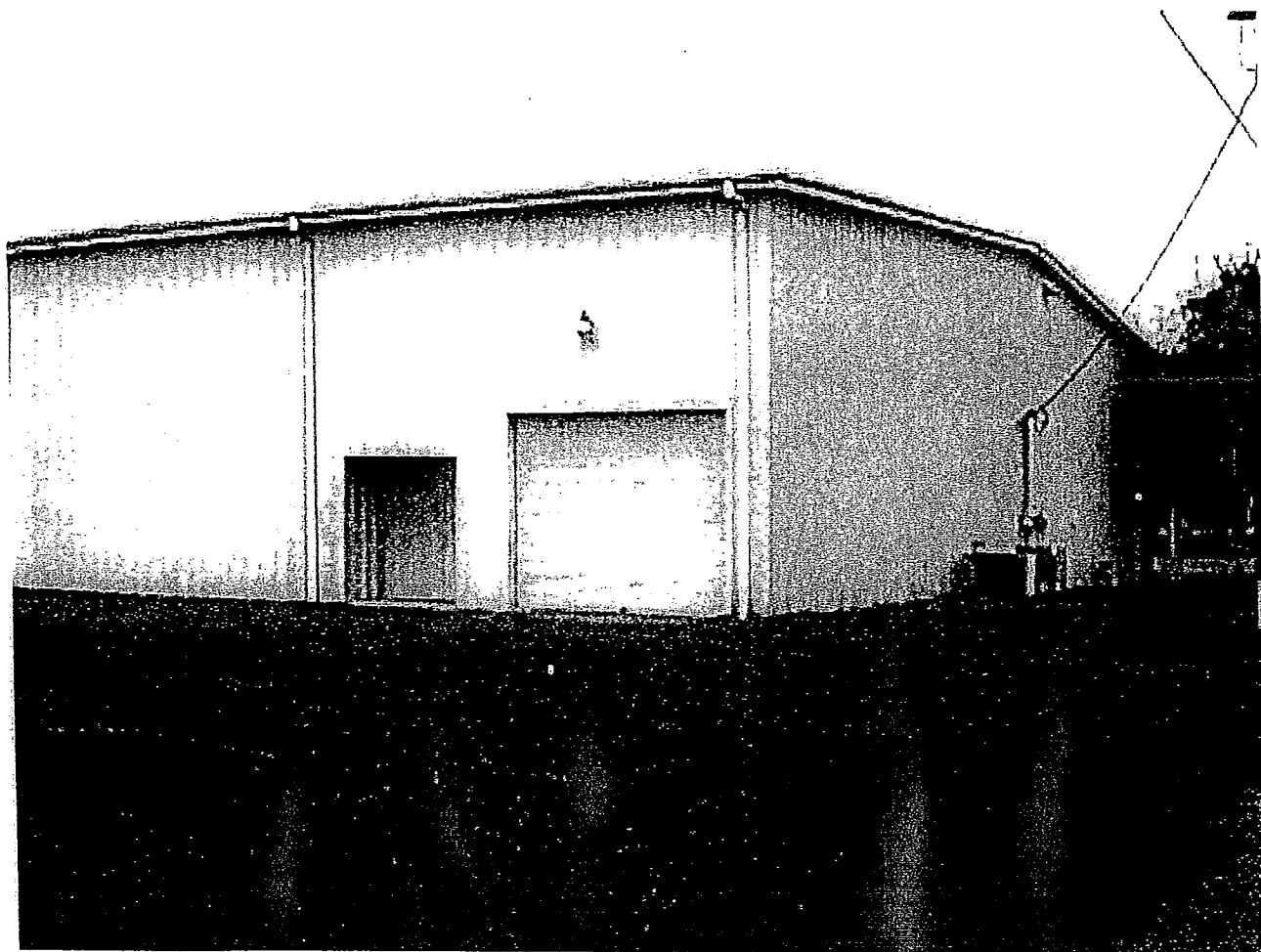
PAUL N. THOMAS  
BROKER



FAMILY LIFE BLDG. (BACK, WEST SIDE)



FAMILY LIFE BLDG. (FRONT, EAST SIDE)



SOUTHWEST CORNER (THIS SIDE)



TIRE  
&  
LUBE

LAND USE  
&  
ZONING

GAS STATION

BANK

BUSINESS

BUSINESS

13TH

R-2

← RESIDENTIAL →

LAUNDRY  
C-2

LOTT

↑  
RESIDENTIAL  
R2  
↓

HUISACHE

HOUSE

HOUSE

HOUSE

BOOKING

2 LUB C-2

PARKING

PARKING  
LOT

CHURCH

FORDYCH

12TH

OLD  
LAMAR  
SCHOOL

JOHNSTON

11TH

↓  
PROPOSED  
PROPERTY  
CHANGE  
R2  
TO  
C2

PARKING

HOUSE

PARKING  
LOT

CHURCH

ALLEY  
HOUSES

OLD  
LAMAR  
SCHOOL

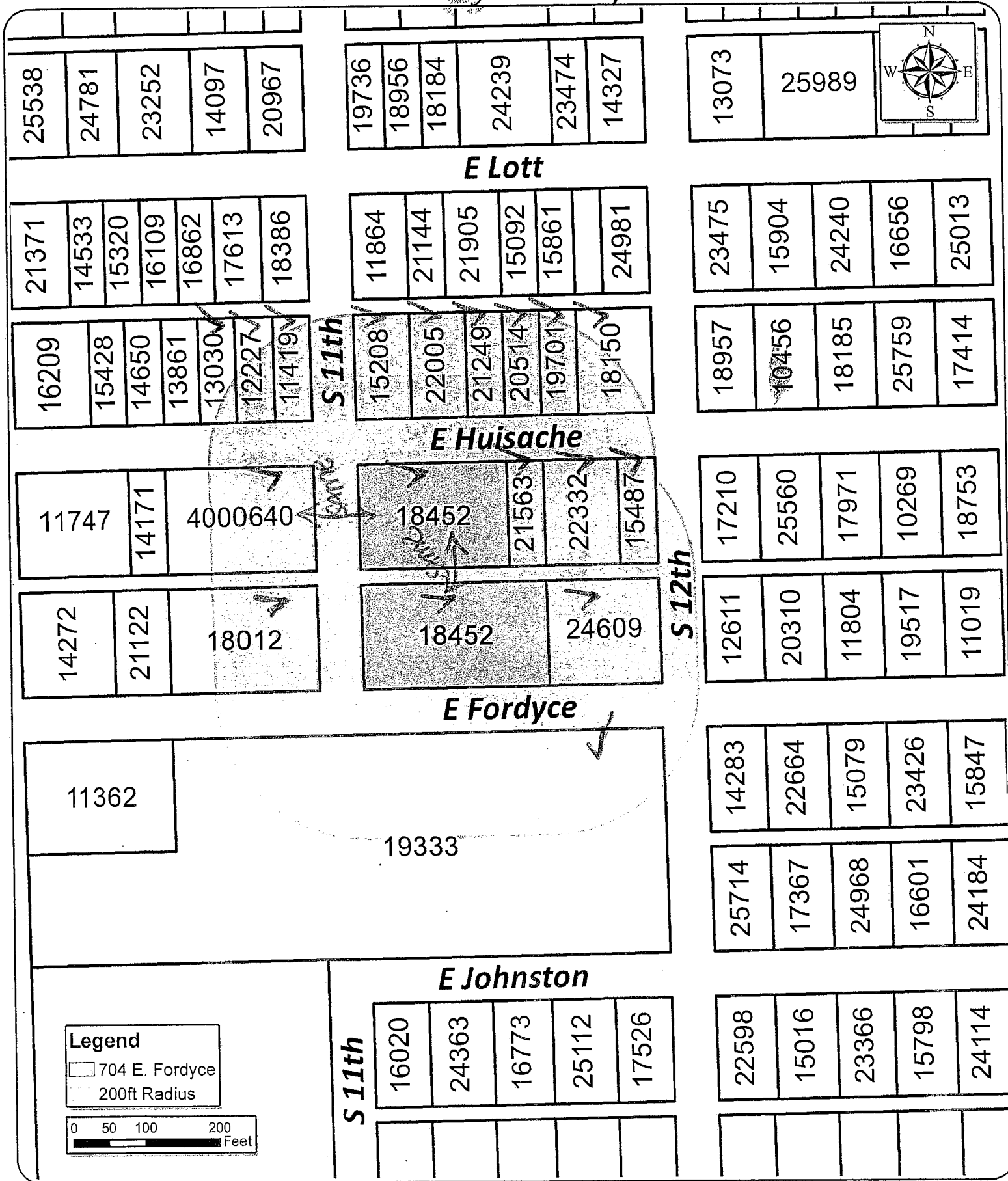
EARLY  
CHALLO HOOD

10TH

R-2

← RESIDENTIAL →

# 704 E. Fordyce - 200ft Radius



## PUBLIC HEARING NOTICE

The Planning & Zoning Commission of the City of Kingsville will hold a public hearing Wednesday, October 17, 2012 at 7:00 p.m. wherein the Commission will discuss and/or take action on the following items and at which time all interested persons will be heard:

ITEM #1, DALE RAABE -- Requesting approval for the rezoning of Lots 9-16, Block 25 of Ninth Addition, property located at 704-B East Fordyce., from R-2 Two-Family Residential District to C-2 Retail District.

The meeting will be held at City Hall, 200 East Kleberg, in the City Commission Chamber. If you have any questions about the items on the agenda, please contact the Planning Department at (361) 595-8055.

# **CONSENT AGENDA**

# **AGENDA ITEM #1**

ORDINANCE NO. 2012-

**AN ORDINANCE AMENDING THE FISCAL YEAR 2012-2013 BUDGET FOR COMMUNITY APPEARANCE TO TRANSFER FUNDS FOR MAINTENANCE PROJECTS.**

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

I.

BE IT ORDAINED by the City Commission of the City of Kingsville that the Fiscal Year 2012-2013 budget be amended as follows:

CITY OF KINGSVILLE  
DEPARTMENT EXPENSES  
BUDGET AMENDMENT

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

---

**Fund 001    General Fund**

Expenses

170.1 Solid Waste	Building Maintenance	511.00		<u>2,500</u>
				<u>2,500</u>

Expenses

160.3 Comm Appear.	Building Maintenance	511.00	<u>2,500</u>	
			<u>2,500</u>	

[To transfer Maintenance Costs from Solid Waste to Community Appearance.]

**Fund 091    General Fund Capital Projects Fund**

Expenses

170.1 Solid Waste	Grounds & Perm Fixtures	591.00		<u>6,222</u>
				<u>6,222</u>

**Fund 001    General Fund**

Expenses

160.3 Comm Appear.	Grounds & Perm Fixtures	591.00	<u>6,222</u>	
			<u>6,222</u>	

[Community Appearance does its own maintenance instead of having Solid Waste perform it, as has been the case in the past, so the budget needs to be moved to their Fund.]

---

II.

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

III.

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

IV.

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

INTRODUCED on this the 22nd day of October, 2012.

PASSED AND APPROVED on this the \_\_\_\_ day of November, 2012.

EFFECTIVE DATE: \_\_\_\_\_

\_\_\_\_\_  
Sam R. Fugate, Mayor

ATTEST:

\_\_\_\_\_  
Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Courtney Alvarez, City Attorney

# CITY OF KINGSVILLE



P. O. BOX 1458 – KINGSVILLE, TEXAS 78364

October 16, 2012

Vince Capell  
City Manager  
City of Kingsville  
P.O. Box 1458  
Kingsville, Texas 78364

Re: Budget Amendment to move FY13 Budget for the Recycle Center 170.1 to the Community Appearance Building 160.3 departmental budget.

Mr. Capell,

For your consideration is a FY13 Budget Amendment to move the Recycling Building Maintenance, Grounds and Fixtures originally budgeted in the 170.1 to the Community Appearance Building Maintenance, Grounds and Fixtures 160.3. The Building Maintenance amount of \$2,500 is for general maintenance of the building. The Ground and Permanent Fixtures of \$6,222 is for the sidewalk enhancement at the building.

Sincerely,

*Mark A. Rushing*

Mark A. Rushing



## **AGENDA ITEM #2**

Mr. Brewster's Direct Line: (512) 322-5831  
Email: [cbrewster@lglawfirm.com](mailto:cbrewster@lglawfirm.com)  
Fax: (512) 472-0532

## MEMORANDUM

TO: City and Other Political Subdivision Members of ERCOT

FROM: Chris Brewster

DATE: October 8, 2012

RE: ERCOT Membership Renewal for 2013

The purpose of this memorandum is to recommend that your city or other political subdivision renew its membership in the Electric Reliability Council of Texas ("ERCOT") for 2013. For the reasons that we detail below, we believe that an ERCOT membership is a straightforward and cost-effective way for your city to influence electric policy in Texas, and **we recommend that interested cities submit their ERCOT membership renewals by November 9, 2012**. The membership fee is \$100 per year.

### What is ERCOT?

ERCOT is the entity that is responsible for operating the electric grid in the deregulated portion of Texas. Furthermore, ERCOT maintains the set of complicated rules that frame the way that electricity is bought and sold in the deregulated wholesale market. Through a process of negotiation and deliberation within committees of interested parties, the ERCOT stakeholder process is constantly reviewing and revising these rules, known as the ERCOT protocols. Most of the issues addressed at ERCOT are addressed nowhere else — the Public Utility Commission ("PUC") has largely delegated these issues to the ERCOT stakeholder process.

### What role do cities play in the ERCOT process?

Consumers, such as cities and other political subdivisions, have a voice in ERCOT's decision-making process. Each segment of the ERCOT market has a vote on issues before ERCOT, through its representatives on the Technical Advisory Committee ("TAC") and the Board of Directors.

TAC and the Board are the bodies responsible for making the most important decisions about the detailed workings of the ERCOT market. These decisions can have bottom-line impacts on electricity prices. A total of **140** cities and other political subdivisions joined ERCOT in 2012. With this membership strength, cities successfully elected two city representatives to TAC and one director to ERCOT's Board of Directors for 2012. A strong contingent of city members would make continuation of this strong presence likely for 2013.

As you know, ERCOT faced many challenges in 2012 including trying to ensure that an adequate energy supply is in place over the next several years. Both ERCOT and the PUC are considering high-level market design changes that could significantly increase customers' bills. This will no doubt lead to another challenging year in 2013. We expect the PUC and the ERCOT stakeholder process to continue to examine many aspects of Texas's deregulated market design in 2013, making cities' presence in the ERCOT process on behalf of consumers of continued importance.

**What does an ERCOT membership require?**

It is not difficult to renew your ERCOT membership. A simple form is required, along with payment of a \$100 membership fee. In the pages that follow, you find a guide to completion of the form. We are also available to assist you; please feel welcome to call me (Chris Brewster) at my phone number at the top of this memorandum, or email me at [cbrewster@lglawfirm.com](mailto:cbrewster@lglawfirm.com).

**In order to vote for candidates for the 2013 Technical Advisory Committee and the Board of Directors, ERCOT must receive your renewal application and \$100 fee by Friday, November 9, 2012.**

**In completing the attached form, please note the following:**

- Only corporate members may vote in ERCOT matters. In response to **Question No. A.2** on the form, we recommend that cities renew as **Corporate**, rather than associate, members. [for your convenience, we have already checked this option]
- For corporate members in the Small or Large Commercial Consumer Segment, the renewal fee is **\$100**. The form designates how the payment is to be made in paragraph A.3.
- **Question No. A.4** asks that you designate the segment in which you are renewing. Cities qualify for membership in the **Consumer** segment, and within that segment **you must choose either the Small or Large Commercial Consumer** sub-segments.

**In the listing of cities on the attached page, we have noted which cities joined in each of these categories for 2012. We recommend that you choose the same segment when renewing your membership for 2013. Please call me (Chris Brewster) at 512-322-5831 (or email: [cbrewster@lglawfirm.com](mailto:cbrewster@lglawfirm.com)) if you have any questions about this.**

- In response to **Question No. A.5, please designate as your authorized representative** an employee of your city that can receive notices from ERCOT. ERCOT contacts its members very rarely; this person will not be inundated with emails. During the coming year, please feel free to forward anything you receive from ERCOT to me at the email address above.
- There is **no need to answer Question No. A.6**, as it is not relevant to cities' memberships in ERCOT.

- Item A.3 on the form states the address at which to mail the form to ERCOT, but this can also be done **by email: mpappl@ercot.com or fax: (512) 225-7079**. Please note that if you submit your application via email or fax, you must still send the \$100 renewal fee to ERCOT by mail or wire. **After you have sent your application to ERCOT, please forward a copy of your application to us at my email address or fax number shown above.** This will help us track pending applications, and will allow us to follow up with ERCOT if issues arise.

Please feel free to call or email us if you have any questions in completing the form or about ERCOT in general.

### Membership List for 2012

Small Commercial	Large Commercial
Aransas County Municipal Utility District No. 1	Aquilla Water Supply District
City of Anson	City of Abilene
City of Belton	City of Alamo
City of Benbrook	City of Allen
City of Breckenridge	City of Aransas Pass
City of Caddo Mills	City of Arlington
City of Carrizo Springs	City of Bay City
City of Cedar Hill	City of Big Spring
City of Celina	City of Brownwood
City of Charlotte	City of Canton
City of Clyde	City of Carrollton
City of Comanche	City of Cleburne
City of Commerce	City of Corpus Christi
City of Coppell	City of Dallas
City of Copperas Cove	City of Duncanville
City of Corinth	City of Euless
City of Crockett	City of Farmers Branch
City of Crowley	City of Fort Worth
City of Decatur	City of Galveston
City of Deer Park	City of Grapevine
City of DeSoto	City of Haltom City
City of Dilley	City of Harlingen
City of Dublin	City of Hewitt
City of Early	City of Houston
City of Eastland	City of Irving
City of Frisco	City of Killeen
City of George West	← City of Kingsville →
City of Glenn Heights	City of La Feria
City of Gunter	City of Lewisville
City of Hamilton	City of Mansfield
City of Harker Heights	City of McAllen
City of Honey Grove	City of McKinney
City of Howe	City of Mercedes
City of Hutto	City of Mesquite
City of Ingleside	City of Mission
City of Keller	City of Missouri City
City of Kerens	City of North Richland Hills
City of Lake Worth	City of Odessa
City of Lorena	City of Pearland
City of Los Fresnos	City of Plano
City of Malakoff	City of Port Lavaca
City of McCamey	City of Portland
City of Mont Belvieu	City of Rio Grande City
City of Morgan's Point	City of Rockport
City of Murchison	City of San Angelo
City of Murphy	City of Sherman
City of Nassau Bay	City of Stephenville
City of Ovilla	City of Sugar Land
City of Paris	City of Sweetwater
City of Piney Point Village	City of Taylor Lake Village
City of Point Comfort	City of Temple
City of Pottsboro	City of The Colony
City of Ranger	City of Tyler
City of River Oaks	City of Victoria
City of Rotan	City of Waco
City of Rowlett	City of Watauga
City of Seadrift	City of Waxahachie



**ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.  
MEMBERSHIP APPLICATION AND AGREEMENT FOR MEMBERSHIP YEAR 2013**

This Membership Application and Agreement (Agreement) is by and between the Electric Reliability Council of Texas, Inc. (ERCOT) and City of Kingsville, Texas (Member), whose address is 200 E. Kleberg Ave., Kingsville, Texas 78363. In consideration of the mutual covenants contained herein, the parties hereby agree that the Member shall become an ERCOT Member and receive the ERCOT Member Services and benefits described herein, subject to the terms and conditions of this Agreement. This Agreement shall be effective as of the date signed by the Member provided that the Member meets all of the qualifications for ERCOT Membership.

Capitalized terms that are not defined in this Agreement shall have the meaning as defined in the ERCOT Bylaws or the ERCOT Protocols.

**A. Membership Application Information**

1. Name of Entity applying for Membership: City of Kingsville, Texas
2. Type of Membership: Check **ONE** type of Membership. *Affiliated Entities as defined in the ERCOT Bylaws may hold only one Corporate Membership.* Entities applying for additional Memberships, such as an Associate Membership, should use a separate Agreement for each Membership. The applicable fees are listed below and entitle Members to services ERCOT provides such as hosting ERCOT meetings, providing Members with necessary information and such other Member Services as may from time to time be offered. Please note that any Member may request that the Member's Annual Member Service Fees be waived for good cause shown.
  - ☒ **Corporate.** Voting. \$2,000/year (except Residential and Commercial Consumer Members fees are \$100/year, and there is no charge for an association that qualifies pursuant to the ERCOT Bylaws for Commercial Consumer Membership). Corporate Membership includes the right to vote on matters submitted to the general membership such as election of Board Directors, election of TAC Representatives and TAC subcommittees thereof and amendments to the Articles of Incorporation and the ERCOT Bylaws. Residential Consumer Members do not elect Board Directors.
  - ☐ **Associate.** Non-voting. \$500/year (except Residential and Commercial Consumer Members fees are \$50/year). Associate Membership includes no voting rights. However, an Associate Member may be elected by Corporate Members to serve as a voting member of the Board, TAC or a TAC subcommittee thereof.
  - ☐ **Adjunct.** Non-voting. \$500/year. Entities not meeting the Segment requirements for Membership may join as Adjunct Members upon Board approval. Adjunct Membership does not include voting rights or the right to be elected to the Board, TAC or a TAC subcommittee thereof.
3. The Applicable Annual Member Services Fee must accompany this Agreement and be delivered to ERCOT by the Record Date in order for the Member to participate in the elections for the Membership Year. Please make checks payable to ERCOT and mail to ERCOT, Attention: Legal Department, 7620 Metro Center Drive, Austin, Texas 78744. Please send an email to [mpappl@ercot.com](mailto:mpappl@ercot.com) for wire instructions.

4. Segment Participation: (Check ONE Segment designation.)

☒ **Consumer.** Any organization or agency representing the interests of end-users of electricity in the ERCOT Region.

Check **ONE** Subsegment designation:

- ☐ **Residential Consumer**  
☐ **Small Commercial Consumer** (Peak demand of 1000 KW or less)  
☒ **Large Commercial Consumer** (Peak demand greater than 1000 KW)  
☐ **Industrial Consumer** (Average monthly demand greater than 1 megawatt and engaged in an industrial process)

☐ **Cooperative.** An Entity operating in the ERCOT Region that is: (i) a corporation organized under Chapter 161 of the Texas Utilities Code or a predecessor statute to Chapter 161 and operating under that chapter; (ii) a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas; (iii) a cooperative association organized under Tex.Rev.Civ.Stat. 1396-50.01 or a predecessor to that statute and operating under that statute; or (iv) a River Authority as defined in Tex. Water Code §30.003.

☐ **Independent Generator.** Any Entity that is not a Transmission and Distribution Entity (T&D Entity) or an Affiliate of a T&D Entity and (i) owns or controls generation of at least 10 MW in the ERCOT Region; or (ii) is preparing to operate and control generation of at least 10 MW in the ERCOT Region, and has approval of the appropriate governmental authority, has any necessary real property rights, has given the connecting transmission provider written authorization to proceed with construction and has provided security to the connecting transmission provider.

☐ **Independent Power Marketer.** Any Entity that is not a T&D Entity or an Affiliate of a T&D Entity and is registered at the Public Utility Commission of Texas (PUCT) as a Power Marketer to serve in the ERCOT Region.

☐ **Independent REP.** Any Entity that is certified by the PUCT to serve in the ERCOT Region as a Retail Electric Provider (REP) under PURA §39.352 and that is not an Affiliate of a T&D Entity operating in the ERCOT Region.

☐ **Aggregators** may register to participate in this Segment if unable to qualify in any other Segment.

☐ **Investor Owned Utility.** (i) An investor-held, for-profit “electric utility” as defined in PURA §31.002(6) that (a) operates within the ERCOT Region, (b) owns 345 KV interconnected transmission facilities in the ERCOT Region, (c) owns more than 500 pole miles of transmission facilities in the ERCOT Region, or (d) is an Affiliate of an Entity described in (a), (b) or (c); or (ii) a public utility holding company of any such electric utility.

☐ **Municipal.** An Entity operating in the ERCOT Region that owns or controls transmission or distribution facilities, owns or controls dispatchable generating facilities, or provides retail electric service and is either: (i) a municipally owned utility as defined in PURA §11.003 or (ii) a River Authority as defined in Tex. Water Code §30.003.

5. Identify your designated representative for required notices to ERCOT Members and for participation in meetings of the Corporate Members:

Name: Courtney Alvarez  
Title: City Attorney  
Address: 200 E. Kleberg Ave.  
City, State, Zip: Kingsville, TX 78363  
Phone: (361) 595-8016  
Fax: (361) 592-4696  
Email: attny@cityofkingsville.com

6. List any other ERCOT Memberships held by the Member or any Affiliates (attach extra pages if necessary):

(a) Entity name: \_\_\_\_\_  
Segment: \_\_\_\_\_

(b) Entity name: \_\_\_\_\_  
Segment: \_\_\_\_\_

(c) Entity name: \_\_\_\_\_  
Segment: \_\_\_\_\_

## **B. Membership Agreement**

1. **Membership.** Membership in ERCOT is open to any Entity that meets any of the Segment definitions set forth in the Bylaws. Members must be an organization that either operates in the ERCOT Region or represents consumers within the ERCOT Region. Members may join as a Corporate, Associate or Adjunct Member subject to the criteria set forth in the ERCOT Bylaws. Members must apply for Membership through an authorized officer or agent.

2. **Fees.** Annual Member Services Fees are described in the ERCOT Bylaws and may be changed through the procedure set forth therein. Any change in fees shall automatically become effective as to all ERCOT Members without the necessity of amending this Agreement. All Memberships are year to year and must be renewed annually. Annual Member Services Fee renewals will be billed to the Member and shall be due by the record date for the annual membership meeting. Membership fees may not be prorated. This Agreement shall renew in yearly increments upon ERCOT's receipt of the following (1) Member's Renewal Application and (2) Member's applicable Annual Member Services Fee. Any Member may request that the Member's Annual Member Service Fees be waived for good cause shown.

3. **Application for Membership.** Members will submit the following items in order to apply for Membership: (i) payment of the Annual Member Services Fee and (ii) a signed copy of this Agreement. Upon approval, ERCOT will promptly notify Member Applicant of the same.

4. **Change of Designated Representative.** An ERCOT Member may change its representative at any time by written request (signed by a duly authorized representative of the ERCOT Member) submitted to the ERCOT Legal Department.



5. **Suspension and Expulsion.** All ERCOT Members shall abide by the ERCOT Bylaws, as they may be amended from time to time, and any other rule or regulation duly adopted by the Board of Directors. Any ERCOT Member, who willfully violates any provision of this Agreement, the ERCOT Bylaws, or any other rule or regulation duly adopted by the Board of Directors, may be reprimanded, suspended, and/or expelled in accordance with procedures adopted by the Board of Directors or set forth in the ERCOT Bylaws. Such action will affect all persons deriving Membership privileges through such ERCOT Member.

6. **Amendment.** This Agreement may be amended, modified, superseded, canceled, renewed, or extended and the terms and conditions hereof may be waived only by a written instrument executed by both parties hereto or, in the case of a waiver, by the party waiving compliance.

7. **Governing Law.** This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. Parties consent to the exclusive jurisdiction of Texas.

IN WITNESS WHEREOF, the Member certifies that (i) the Member meets the requirements for ERCOT Membership in the Segment designated herein; (ii) all information provided herein is true and correct to the best of the Member's knowledge; and (iii) through its authorized representative the Member agrees to be bound by the terms of this Agreement, the ERCOT Bylaws and any other requirements duly adopted by the Board of Directors.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: Courtney Alvarez

Title: City Attorney

# **AGENDA ITEM #3**

**RESOLUTION NO. 2012-\_\_\_\_\_**

**A RESOLUTION APPOINTING COMMISSIONER DIANNE LEUBERT TO REPRESENT THE CITY OF KINGSVILLE AT THE COASTAL BEND COUNCIL OF GOVERNMENTS GENERAL MEETINGS AS AN ALTERNATE REPRESENTATIVE; REPEALING ALL RESOLUTIONS IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Kingsville is entitled to two voting representatives at the Coastal Bend Council of Governments general meetings;

**WHEREAS**, City Commissioner Al Garcia and the City Manager currently hold those two positions; and, as they may not be able to attend from time to time, the City proposes to have City Commissioner Dianne Leubert serve as an alternate voting representative in one or both of their absence at a CBCOG meeting and a non-voting representative in both of their presence at a CBCOG meeting;

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

I.

**THAT** the City of Kingsville hereby appoints Commissioner Dianne Leubert to represent the City of Kingsville at the Coastal Bend Council of Governments in the capacity as an alternate representative for the City of Kingsville as described hereinabove.

II.

**THAT** all Resolutions or parts of Resolutions in conflict with this Resolution are repealed to the extent of such conflict only.

III.

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

**PASSES AND APPROVED** by a majority vote of the City Commission on the 5th day of November, 2012.

\_\_\_\_\_  
Sam R. Fugate, Mayor

ATTEST:

\_\_\_\_\_  
Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Courtney Alvarez, City Attorney

# **REGULAR AGENDA**

# **AGENDA ITEM #4**

**ORDINANCE #2012-\_\_\_\_\_**

**AMENDING THE ZONING ORDINANCE BY CHANGING THE ZONING MAP IN REFERENCE TO LOTS 9-16, BLOCK 25 OF NINTH ADDITION, KNOWN AS 704-B EAST FORDYCE FROM R1 SINGLE FAMILY RESIDENTIAL DISTRICT TO C2 RETAIL DISTRICT; AMENDING THE COMPREHENSIVE PLAN TO ACCOUNT FOR ANY DEVIATIONS FROM THE EXISTING COMPREHENSIVE PLAN; AND PROVIDING FOR PUBLICATION.**

**WHEREAS**, the Planning Commission has forwarded to the City Commission its reports and recommendations concerning the application of Dale Raabe, for amendment to the zoning ordinance and zoning map of the City of Kingsville;

**WHEREAS**, with proper notice to the public, public hearings were held on Wednesday, October 17, 2012 during a meeting of the Planning and Zoning Commission, and on Monday, November 5, 2012 during a meeting of the City Commission, at City Hall, in the City of Kingsville, during which all interested persons were allowed to appear and be heard; and

**WHEREAS**, a majority of the Planning Commission by an 8-0 vote APPROVED the requested rezone; and

**WHEREAS**, the City Commission has determined that this amendment would best serve public health, necessity, and convenience and the general welfare of the City of Kingsville and its citizens.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KINGSVILLE, TEXAS:**

**SECTION 1.** That the Zoning Ordinance of the City of Kingsville, Texas, is amended by changing the zoning of Lots 9-16, Block 25 of Ninth Addition, known as 704-B East Fordyce from R1 Single Family Residential District to C2 Retail District, as more specifically described on the Zone Change Map, attached as Exhibit A.

**SECTION 2.** That the official Zoning Map of the City of Kingsville, Texas, is amended to reflect the amendments to the Zoning Ordinance made by Section 1 of this ordinance.

**SECTION 3.** That the Zoning Ordinance and Zoning Map of the City of Kingsville, Texas, as amended from time to time, except as changed by this ordinance and any other ordinances adopted on this date, remain in full force and effect.

**SECTION 4.** That to the extent that these amendments to the Zoning Ordinance represent a deviation from the Comprehensive Plan, the Comprehensive Plan is amended to conform to the Zoning Ordinance, as amended by this ordinance.

**SECTION 5.** That all ordinances or parts of ordinances in conflict with this ordinance are hereby expressly repealed.

**SECTION 6.** That publication shall be made in the official publication of the City of Kingsville as required by the City Charter of the City of Kingsville.

**INTRODUCED** on this the 5th day of November, 2012.

**PASSED AND APPROVED** on this the \_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2012.

**THE CITY OF KINGSVILLE**

\_\_\_\_\_  
Sam R. Fugate, Mayor

**ATTEST:**

\_\_\_\_\_  
Mary Valenzuela, City Secretary

**APPROVED:**

\_\_\_\_\_  
Courtney Alvarez, City Attorney

# 704 E. Fordyce

**E Lott**

5TH BLOCK 9 LOT 8 9	5TH BLOCK 9 LOT 10 11	5TH BLOCK 9 LOT 12 13 W/2 14	5TH BLOCK 9 LOT E/2 14 15 16
------------------------------	--------------------------------	------------------------------------------	------------------------------------------

5TH BLOCK 10 LOT 1-3	5TH BLOCK 10 LOT 4 5	5TH BLOCK 10 LOT 6-8	5TH BLOCK 10 LOT 9 10	5TH BLOCK 10 LOT 11 12	5TH BLOCK 10 LOT E/2 14 15 16 "OV65 TAX DEFERRAL 2007"
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RETAMA PARK BLOCK 11 LOT 1	RETAMA PARK BLOCK 11 LOT 2	RETAMA PARK BLOCK 11 LOT 3
----------------------------------	----------------------------------	----------------------------------



5TH BLOCK 9 LOT 23 24	5TH BLOCK 9 LOT 21 22	5TH BLOCK 9 LOT 19 20	5TH BLOCK 9 LOT 17 18
--------------------------------	--------------------------------	--------------------------------	--------------------------------

5TH BLOCK 10 LOT 30-32	5TH BLOCK 10 LOT 27-29	5TH BLOCK 10 LOT 25 26	5TH BLOCK 10 LOT 23 24 50% UNDIVIDED INTEREST	5TH BLOCK 10 LOT 21 22	5TH BLOCK 10 LOT 17-20 ACRES .0
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RETAMA PARK BLOCK 11 LOT 10	RETAMA PARK BLOCK 11 LOT 9	RETAMA PARK BLOCK 11 LOT 8
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**S 11th**

**E Huisache**

9TH BLOCK 25 LOT 9-16 (EXEMPT)
-----------------------------------------

9TH  
BLOCK 26  
LOT 1-8  
23-32  
(EXEMPT)

9TH BLOCK 26 LOT 9 10 W/8 11	9TH BLOCK 26 LOT E/2 11 12 13 W/15 14	9TH BLOCK 26 LOT E/2 14 15 16
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RETAMA PARK BLOCK 27 LOT 1	RETAMA PARK BLOCK 27 LOT 2	RETAMA PARK BLOCK 27 LOT 3
----------------------------------	----------------------------------	----------------------------------

9TH BLOCK 25 LOT 25-27	9TH BLOCK 25 LOT 17-24
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9TH  
BLOCK 26  
LOT 1-8  
23-32  
(EXEMPT)

9TH BLOCK 26 LOT 17-22 <b>R2</b>
-------------------------------------------

RETAMA PARK BLOCK 27 LOT 10	RETAMA PARK BLOCK 27 LOT 9	RETAMA PARK BLOCK 27 LOT 8
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**S 12th**

**E Fordyce**

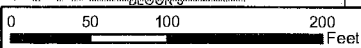
9TH BLOCK 31 - ALL & 32 LOT 9-32 CLOSED 11ST ST & ALLEY (EXEMPT) <b>R1</b>
-------------------------------------------------------------------------------------------

RETAMA PARK BLOCK 30 LOT 1	RETAMA PARK BLOCK 30 LOT 2	RETAMA PARK BLOCK 30 LOT 3
----------------------------------	----------------------------------	----------------------------------

RETAMA PARK BLOCK 30 LOT 10 "OV65 TAX DEFERRAL 2007"	RETAMA PARK BLOCK 30 LOT 9	RETAMA PARK BLOCK 30 LOT 8
---------------------------------------------------------------	----------------------------------	----------------------------------

704 E. Fordyce

**E Johnston**



Page  
1 / 1

Drawn By: JR Cavazos

Last Update: 10/29/2012

Note:

DISCLAIMER  
THIS MAP IS FOR VISUAL PURPOSES ONLY.  
THE INFORMATION ON THIS SHEET MAY  
CONTAIN INACCURACIES OR ERRORS.  
THE CITY OF KINGSVILLE IS NOT  
RESPONSIBLE IF THE INFORMATION CONTAINED  
HEREIN IS USED FOR ANY DESIGN,  
CONSTRUCTION, PLANNING, BUILDING,  
OR ANY OTHER PURPOSE.



**CITY OF KINGSVILLE**  
**ENGINEERING DEPARTMENT**  
200 East Kleberg  
Kingsville, Texas 78363  
Office: 361-595-8005  
Fax: 361-595-8035






## Planning & Development Services Department

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**TO:** Mayor & City Commission

**THROUGH:** Vincent Capell, City Manager

**FROM:** Michael Kellam, AICP, Director of Planning & Development Services 

**SUBJECT:** Rezoning Request Lots 9-16, Block 25 of Ninth Addition, property located at 704-B East Fordyce, also shown in the attached map.

**DATE:** October 23, 2012

---

The City of Kingsville Planning and Zoning Commission met on October 17, 2012 at 7:00 p.m. in regard to a request made by the Dale Raabe, to rezone Lots 9-16, Block 25 of Ninth Addition, property located at 704-B East Fordyce and as delineated on the attached property map. The request is to rezone from R-1 Single Family Residential District to C-2 Retail District. There were several persons in favor present at this meeting with no one on the record in opposition of the request.

All pertinent notices were published and sent out to the surrounding property owners that are within the 200ft radius 15 days prior to the meeting. No significant questions, comments or complaints regarding this rezone were made to the Planning Department. We received calls regarding minor clarifications but no formalized comments or concerns.

Staff presented the attached staff report and supplemental information to the Planning & Zoning Commission. As stated in the staff report the request was found to be consistent with proper planning and land use management due to the design and layout of the existing structure. Staff identifies the proposed adaptive re-use of the property as commercial office/training facility to be the best available option with no detrimental impact to the neighborhood.

Planning staff recommends approval of this rezoning request. The Planning & Zoning Commission recommended **Approval** of the request with a unanimous 8/0 vote.

Attachments



## Planning & Development Services Department

---

**TO:** Mayor & City Commission

**THROUGH:** Vincent Capell, City Manager

**FROM:** Michael Kellam, AICP, Director of Planning & Development Services

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Planning staff recommends approval of this rezoning request. The Planning & Zoning Commission recommended **Approval** of the request with a unanimous 8/0 vote.

Attachments

**704B E. Fordyce- Rezoning Request from R-1 Single Family to C-2 Retail Commercial District by Dale Raabe**



**CITY OF KINGSVILLE  
PLANNING AND ZONING DIVISION  
MASTER APPLICATION**

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

Project Address 704-B E. FORDYCE Nearest Intersection 11<sup>TH</sup> AND FORDYCE

(Proposed) Subdivision Name NINTH ADDITION Lot 9-16 Block 25

Legal Description: \_\_\_\_\_

Existing Zoning Designation R2 Future Land Use Plan Designation C-2

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

Applicant/Authorized Agent DALE RAABE Phone 361-592-2911 FAX 361-592-9252

Email Address (for project correspondence only): DALE.RAABE@PARTNERS.MLP.COM

Mailing Address P.O. Box 1455 City KINGSVILLE State TX Zip 78364

Property Owner CHURCH OF CHRIST Phone \_\_\_\_\_ FAX \_\_\_\_\_

Email Address (for project correspondence only): \_\_\_\_\_

Mailing Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

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

<input type="checkbox"/> Annexation Request..... No Fee	<input type="checkbox"/> Preliminary Plat..... Fee Varies
<input type="checkbox"/> Administrative Appeal (ZBA)..... \$ 250.00	<input type="checkbox"/> Final Plat..... Fee Varies
<input type="checkbox"/> Comp. Plan Amendment Request..... \$ 250.00	<input type="checkbox"/> Minor Plat..... \$ 100.00
<input checked="" type="checkbox"/> Re-zoning Request..... \$ 250.00	<input type="checkbox"/> Re-plat..... \$ 250.00
<input type="checkbox"/> SUP Request/Renewal..... \$ 250.00	<input type="checkbox"/> Vacating Plat..... \$ 50.00
<input type="checkbox"/> Zoning Variance Request (ZBA)..... \$ 250.00	<input type="checkbox"/> Development Plat..... \$ 100.00
<input type="checkbox"/> PUD Request..... \$ 250.00	<input type="checkbox"/> Subdivision Variance Request..... \$ 25.00 ea.

Please provide a basic description of the proposed project: THE PROPOSED USE OF THE BUILDING IS FOR AN OFFICE HANDLING THE PAYMENTS AND DOCUMENTS FOR 10 McDONALD RESTAURANTS. ALSO USED AS A TRAINING CENTER AND 3 TIECAS BASE THERE.

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

Applicant's Signature: Dale Raabe Date: 9/6/2012

Property Owner(s) Signature: Robley C. Rich Date: 9/6/2012

Accepted by: Jessica J. Storch Date: \_\_\_\_\_

TO PLANNING AND ZONING DIVISION

CITY OF KINGSVILLE, TEXAS

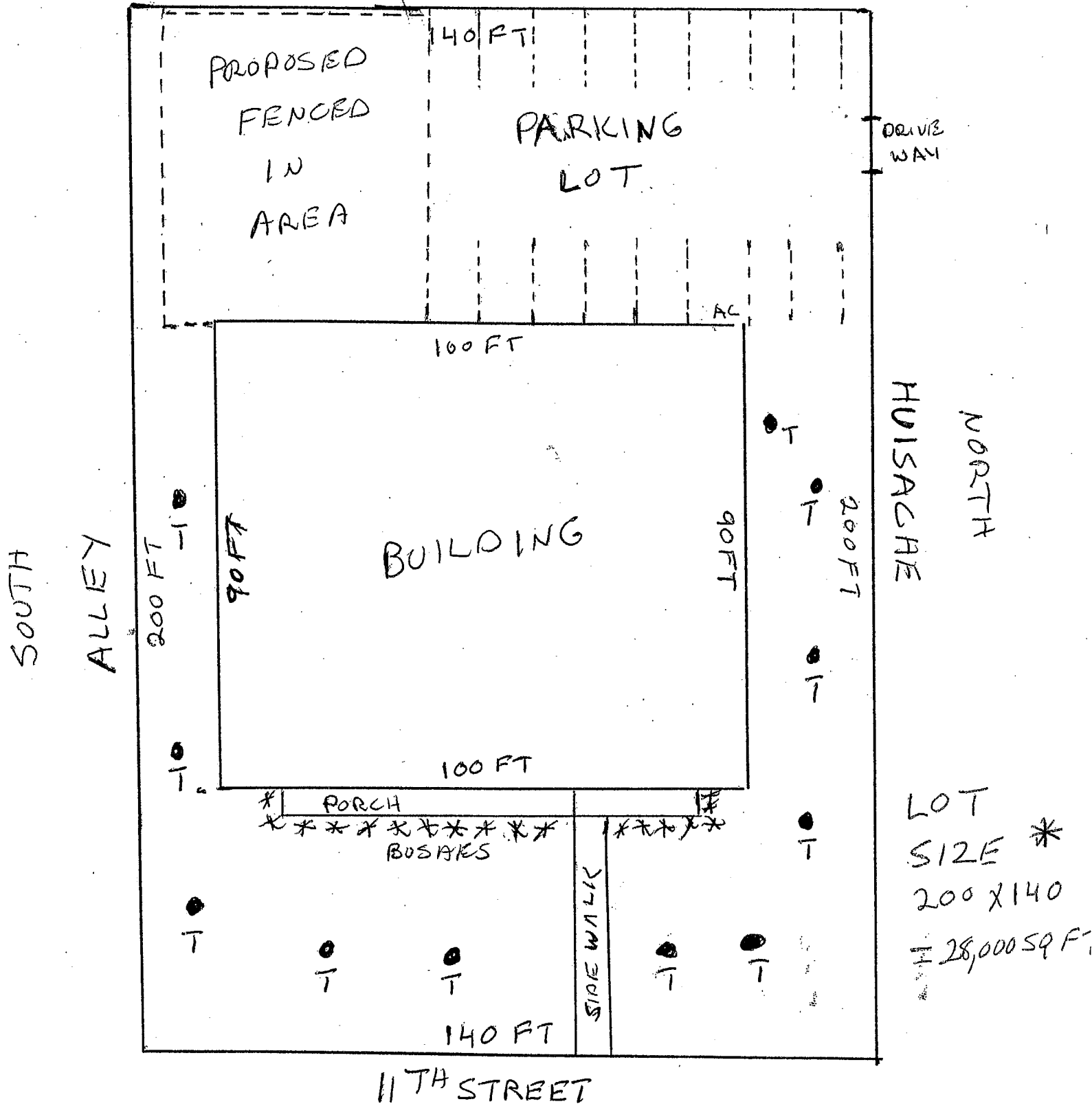
THIS REZONING REQUEST IS FOR THE PROPERTY LISTED AT 704-B, E. FORDYCE IN THE SUBDIVISION, NINETH ADDITION, LOT 9 -16, BLOCK 25. THE BUILDING FACING 11<sup>TH</sup> STREET BETWEEN FORDYCE AND HUISACHE IS CURRENTLY A CHURCH.

THE PROPERTY IS ZONED R-2 AND THE RE-ZONING REQUEST IS TO C-2. THE PROPOSED USE IS FOR AN OFFICE SUPPORTING 10 McDONALD'S RESTAURANTS IN THE SURROUNDING AREA.

THE BUILDING WILL ALSO BE USED AS A TRAINING CENTER FOR THE RESTAURANTS MANAGERS AND HOME BASE FOR THE THREE (3) EQUIPMENT TECHNITIONS WHO MAINTAIN THE EQUIPMENT IN ALL RESTAURANTS

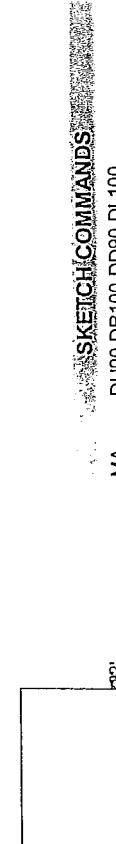
WEST  
HOUSE

SITE PLAN \*



Legal Description: 11507 OWNERSHIP 100.00%  
 5TH, BLOCK 25, LOT 9-16, (E X E M P T)  
 704 E FORDYCE  
 KINGSVILLE, TX 78363  
 ACRES: 101002509000192

SITUS  
 GENERAL  
 LAST APPR: None Ass  
 LAST APPR. YR: 2001  
 LAST INSP. DATE: 09/06/2001  
 NEXT INSP. DATE:  
 ZONING:  
 NEXT REASON:  
 REMARKS:  
 NEW FOR 2001 -- FOR '01 ADD NEW ACCT PER  
 SPLIT OUT LOTS 9-16 AND IMP(2) FROM ACCT  
 #101002501000192 PER NOT DONE IN ERROR -  
 ADD EXEMPT STATUS - SEE FORM  
 #F1-3141-01 9/6/01 LAM/TFJO -



SKETCH COMMANDS:  
 DU90.DR100.DD90.DL100  
 MR69.DD6.DL62.DU6.DR62  
 MR100.MU22.DR2.DD2.DL2.DU2  
 MR100.MU68.DR2.DU2.DL2.DD2  
 MU22.DU2.DL2.DD2.DR2  
 MU68.DL2.DU2.DR2.DD2

EXEMPTIONS:  
 EX TOTAL EXEMPTION

ISSUE DT: PRICE: GRANTOR: DEED INFO: PERMIT VAL

SALE DT: PRICE: GRANTOR: DEED INFO: PERMIT VAL

SALE DT: PRICE: GRANTOR: DEED INFO: PERMIT VAL

IMPROVEMENT INFORMATION									
#	TYPE	DESCRIPTION	MTHD	CLASS	AREA	UNIT PRICE	BUILT	EFF YR	COND.
1	MA	MAIN AREA	C	FR3A	9,000.0	39.12	1985		
2	OP1	OPEN PORCH B	R		372.0	7.82	1985		
3	OP1	OPEN PORCH B	R		4.0	7.82	1985		
4	OP1	OPEN PORCH B	R		4.0	7.82	1985		
5	OP1	OPEN PORCH B	R		4.0	7.82	1985		
					9,368.0				
					355,110				
					319,610*				

IMPROVEMENT FEATURES									
Foundation	FD1								
Interior Finish	IN4								
Roof Style	RT2, RM8								
Flooring	FL1								
Heating/Cooling	HA1								
Plumbing									

LAND INFORMATION									
UNIT PRICE	100.00	GROSS VALUE	20,000	ADJ FCTR	1.00	MASS ADJ	1.00	VAL SRC	A
DIMENSIONS	200X140								

LAND INFORMATION									
IRR Wells: 0	Capacity: 0	MASS ADJ	1.00	VAL SRC	A				
IRR Acres: 0		MKT VAL	20,000	NO					
			20,000						

LAND INFORMATION									
UNIT PRICE	100.00	GROSS VALUE	20,000	ADJ FCTR	1.00	MASS ADJ	1.00	VAL SRC	A
DIMENSIONS	200X140								

LAND INFORMATION									
UNIT PRICE	100.00	GROSS VALUE	20,000	ADJ FCTR	1.00	MASS ADJ	1.00	VAL SRC	A
DIMENSIONS	200X140								

LAND INFORMATION									
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DIMENSIONS	200X140								

LAND INFORMATION									
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DIMENSIONS	200X140								

LAND INFORMATION									
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DIMENSIONS	200X140								

LAND INFORMATION									
UNIT PRICE	100.00	GROSS VALUE	20,000	ADJ FCTR	1.00	MASS ADJ	1.00	VAL SRC	A
DIMENSIONS	200X140								

LAND INFORMATION									
UNIT PRICE	100.00	GROSS VALUE	20,000	ADJ FCTR	1.00	MASS ADJ	1.00	VAL SRC	A
DIMENSIONS	200X140								

CHURCH OF CHRIST  
704 E. FORDYCE  
KINGSVILLE, TEXAS 78363

MR. BOBBY RICH:

"ASSESSMENT OF VALUE"

PER YOUR REQUEST I HAVE COMPLETED AN ASSESSMENT OF VALUE ON THE PROPERTY ACROSS 11<sup>TH</sup> ST. FROM 704 E. FORDYCE, KINGSVILLE, TEXAS 78363. (LEGAL: LOTS 9 THRU 16, BLOCK 25, NINTH ADDITION, KINGSVILLE, KLEBERG COUNTY, TEXAS.)

THE SUBJECT PROPERTY IS A 90' X 100' METAL BUILDING WITH A 6' X 62' OPEN PORCH ON THE EAST SIDE. THE FOUNDATION IS CONCRETE SLAB. ROOF IS METAL. THE FIRST FLOOR (9,000 SQ. FT.) HAS A FULL SIZE GYMNASIUM WITH INDOOR/OUTDOOR CARPET FLOORING. THERE IS A LARGE KITCHEN WITH STOVES, REFRIGERATORS, ICE MAKER, MICROWAVE, ADEQUATE SINKS WITH COUNTER SPACE AND A LARGE STOREROOM/PANTRY. THERE IS A NICE PARLOR WITH WOOD BURNING FIREPLACE OFF THE ENTRANCE AND THE KITCHEN. THERE IS A BUS BARN WITH OVERHEAD DOOR ON THE SOUTHWEST CORNER LARGE ENOUGH FOR A 72 PASSENGER BUS. THERE ARE CLASSROOMS ALONG THE WEST WALL. THERE ARE RESTROOMS WITH SHOWER FACILITIES.

THE SECOND FLOOR HAS APPROXIMATELY 4,197 SQ. FT. OF CLASSROOMS AND ~~RESTROOMS~~. THERE ARE THREE CENTRAL UNITS THAT HEAT AND COOL THE BUILDING. CONDITION OF THE BUILDING IS GOOD.

THE BUILDING IS ON A 200' X 140' LOT WITH STREET FRONTAGE ON TWO SIDES. ON THE WEST SIDE OF THE BUILDING IS SOME PAVED AREA THAT HAS OVER GROWN WITH GRASS. LAND VALUE IN THIS AREA IS \$100/FRONT FOOT OR \$20,000 FOR THE LOT VALUE.

THERE HAS BEEN THREE SALES OF LARGER COMMERCIAL BUILDINGS IN KINGSVILLE THE LAST TWELVE MONTHS. (FROM KINGSVILLE BOARD OF REALTORS MLS DATA). THE ONE MOST COMPARABLE WAS THE OLD CITY LUMBER BUILDING ON WEST LEE. BECAUSE OF THE AMENITIES IN THE SUBJECT I DO NOT FEEL THAT THE COMPARABLE SALES APPROACH GIVES A VALID ESTIMATE OF VALUE.

I HAVE CALCULATED AN ESTIMATE OF VALUE USING THE DEPRECIATED REPLACEMENT COST METHOD USING COST DATA TAKEN FROM "MARSHALL & SWIFT" REPLACEMENT COST HANDBOOK. THIS IS A NATIONWIDE COST ESTIMATING SERVICE THAT IS UP-DATED QUARTERLY AND ADJUSTED FOR OUR CONSTRUCTION AREA. I HAVE USED DIFFERENT COST FOR THE DIFFERENT COMPONENTS (ie GYMNASIUM, BUS STORAGE, CLASSROOMS, ETC.) THE SQUARE FOOTAGE OF THE SECOND LEVEL WAS GIVEN A VALUE OF 80% OF THE FIRST FLOOR SQUARE FOOTAGE. (SEE ATTACHED WORKSHEET).

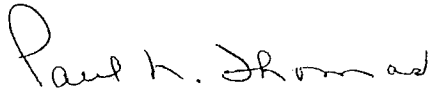
DEPRECIATED REPLACEMENT COST	\$362,746
KLEBERG CAD (MARKET VALUE) (KCAD IS IN ERROR BECAUSE THEY DO NOT SHOW ANY AREA ON THE SECOND FLOOR.)	\$339,610

AFTER CONSIDERING ALL THE INFORMATION I FEEL THAT THE "FAIR MARKET VALUE" OF THE SUBJECT PROPERTY AS OF 1/14/2003 IS ~~\$350,000.00~~ DEMAND FOR THIS TYPE OF PROPERTY CAN BE VERY LIMITED. IF A QUICK SALE IS REQUIRED THEN PROPERTY VALUE

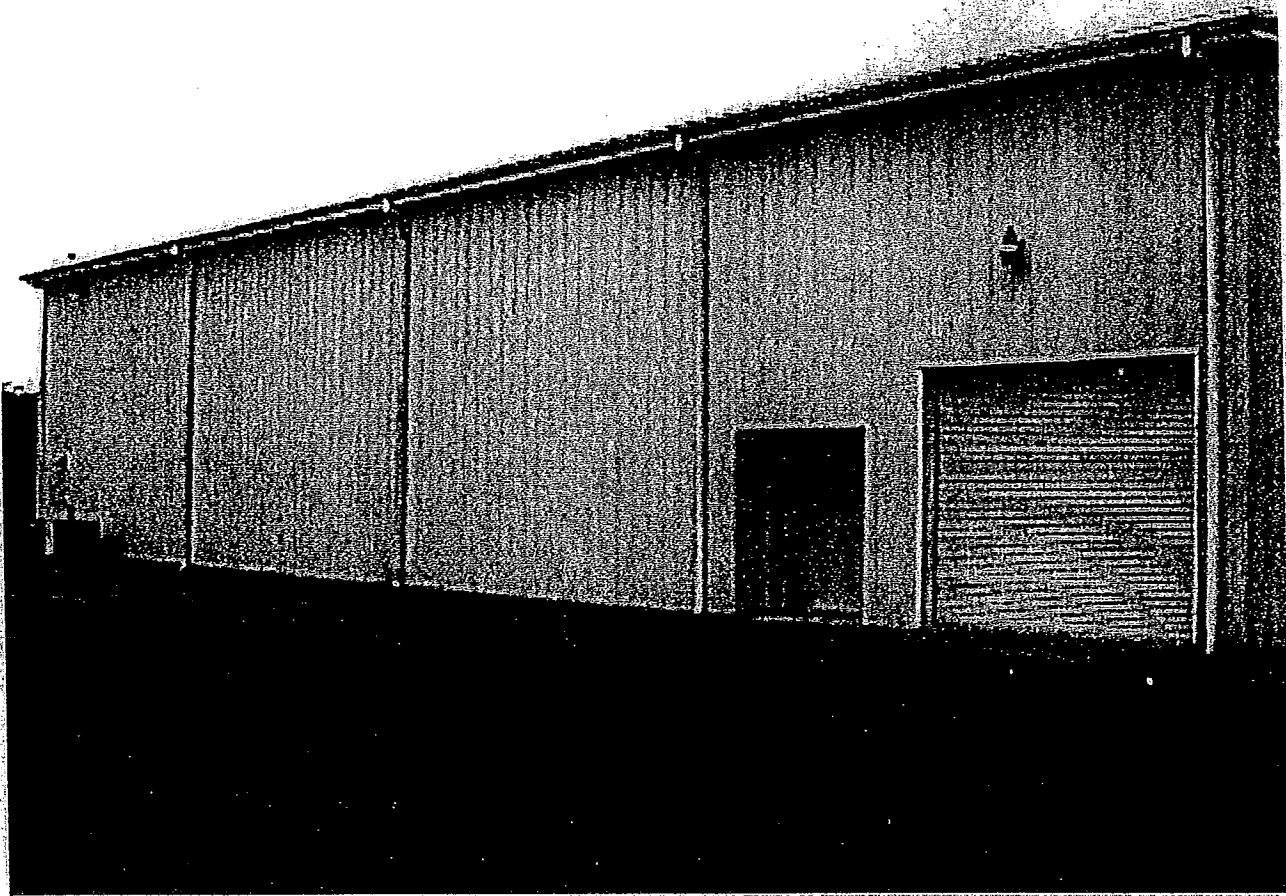


WOULD HAVE TO BE DISCOUNTED. IN LOOKING AT SALES THIS DISCOUNT CAN BE  
CONSIDERABLE.

IF YOU HAVE QUESTIONS OR IF I CAN BE OF FURTHER SERVICE PLEASE CALL AT 361-  
584-3604 OR 361-563-4293.

A handwritten signature in cursive script that reads "Paul N. Thomas".

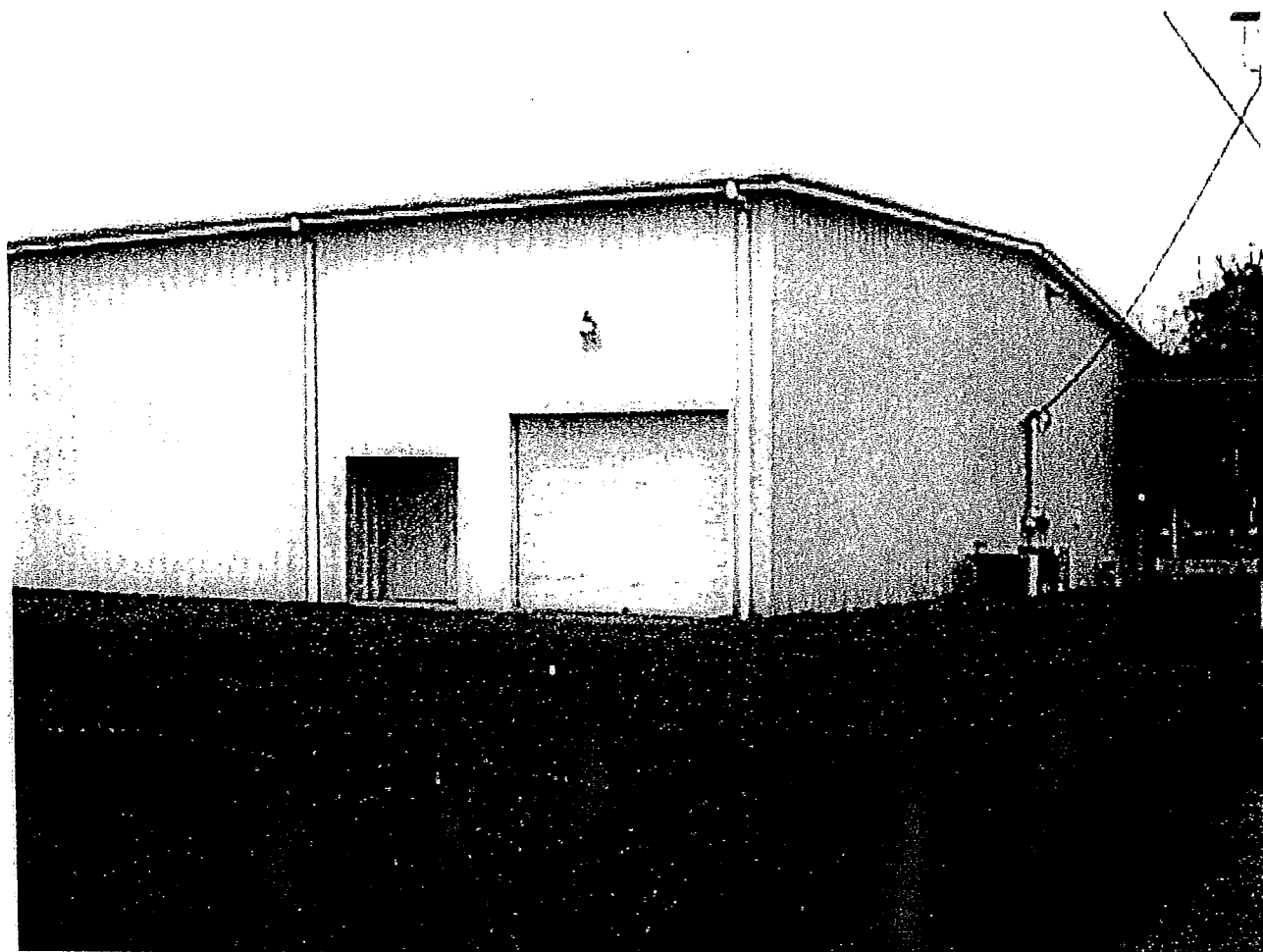
PAUL N. THOMAS  
BROKER



FAMILY LIFE BLDG. (BACK, WEST SIDE)



FAMILY LIFE BLDG. (FRONT, EAST SIDE)



SOUTHWEST CORNER (BUS BAY)

TIRE  
+  
LUBE

LAND USE  
\* AND  
ZONING

GAS STATION

BANK

BUSINESS

BOSIN

12TH

R-2

← RESIDENTIAL →



RESIDENTIAL

R2

LAUNDRY  
C-2

LOTT

HOUSE  
HOUSE  
HOUSE

BOOKING  
ZLUB C-2

PARKING

PARKING  
LOT

CHURCH

FORDYCE

12TH

OLD  
LAMAR  
SCHOOL

JOHNSTON

11TH



PROPOSED  
PROPERTY  
CHANGE  
R2  
TO  
C2



PARKING

HOUSE

PARKING  
LOT

CHURCH

ALLEY  
HOUSES

OLD  
LAMAR  
SCHOOL

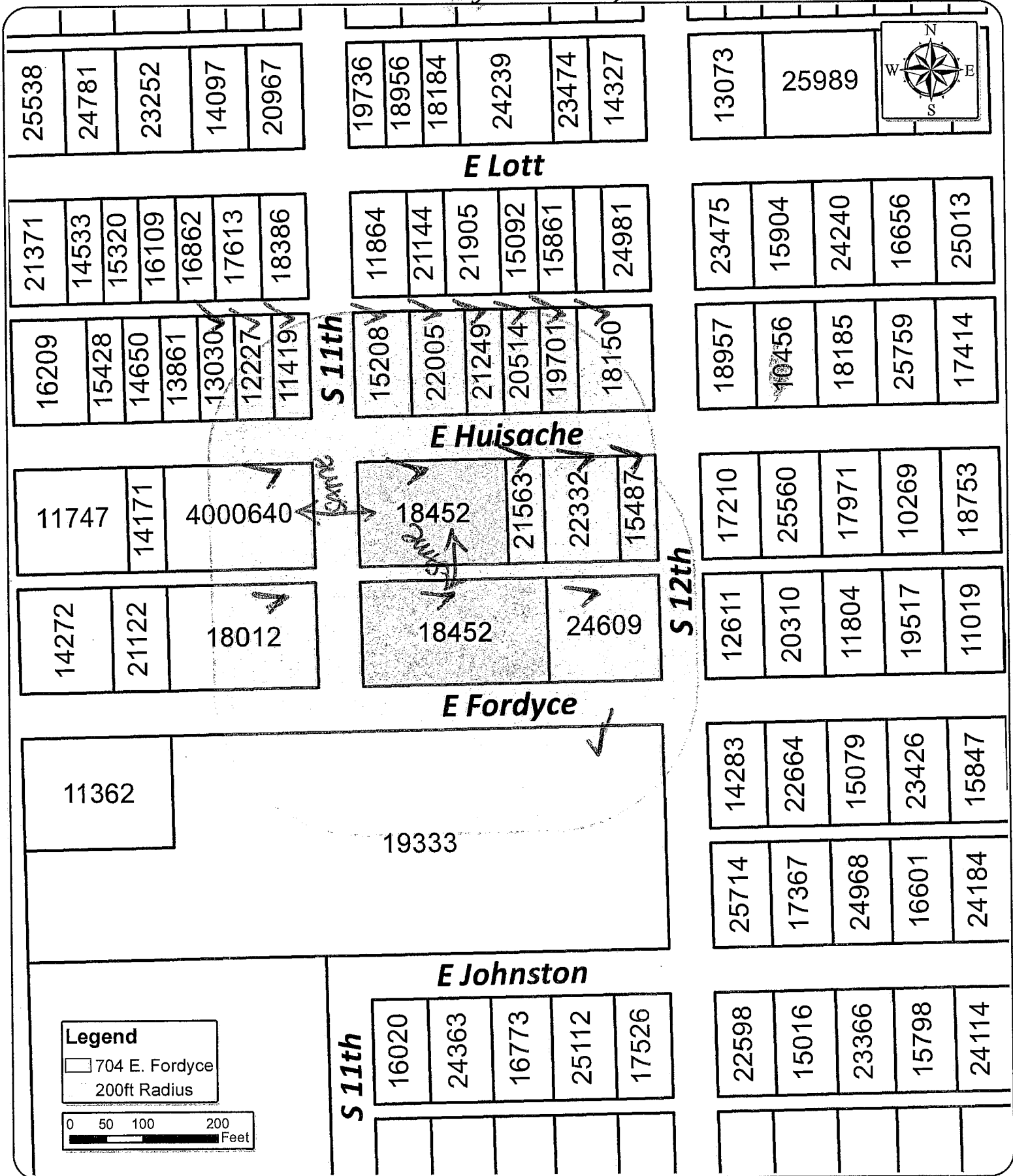
EARLY  
CHILHOOD

10TH

R-2

← RESIDENTIAL →

# 704 E. Fordyce - 200ft Radius



## **PUBLIC HEARING NOTICE**

The Planning & Zoning Commission of the City of Kingsville will hold a public hearing Wednesday, October 17, 2012 at 7:00 p.m. wherein the Commission will discuss and/or take action on the following items and at which time all interested persons will be heard:

ITEM #1, DALE RAABE -- Requesting approval for the rezoning of Lots 9-16, Block 25 of Ninth Addition, property located at 704-B East Fordyce., from R-2 Two-Family Residential District to C-2 Retail District.

The meeting will be held at City Hall, 200 East Kleberg, in the City Commission Chamber. If you have any questions about the items on the agenda, please contact the Planning Department at (361) 595-8055.

# **AGENDA ITEM #5**

**RESOLUTION #2012-\_\_\_\_\_**

**A RESOLUTION AUTHORIZING STAFF TO PROCEED WITH IMPLEMENTING THE STATE OF TEXAS OFFICE OF COURT ADMINISTRATION'S COLLECTION IMPROVEMENT PROGRAM.**

**WHEREAS**, the City of Kingsville Municipal Court has met with a representative of the State of Texas Office of Court Administration (OCA) about their Collection Improvement Program, which is a set of principles and processes for managing cases when defendants are not prepared to pay all court costs, fees, and fines, at the point of assessment and when time to pay is requested;

**WHEREAS**, the OCA's Collection Improvement Program is offered free of charge to the City and has no contractual obligations;

**WHEREAS**, through the program, the OCA will offer technological and consulting services and train municipal court personnel;

**WHEREAS**, the City Commission of the City of Kingsville finds it in the best interest of the citizens of Kingsville that the City implement the OCA's Collection Improvement Program;

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

**I.**

**THAT** the City Commission of the City of Kingsville authorizes staff to proceed with implementation of the State of Texas Office of Court Administration's Collection Improvement Program.

**II.**

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

**III.**

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

**PASSED AND APPROVED** by a majority vote of the City Commission the \_\_\_\_\_<sup>5<sup>th</sup></sup> day of November, 2012.

\_\_\_\_\_  
Sam Fugate, Mayor



ATTEST:

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Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

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Courtney Alvarez, City Attorney

# Memo

**To:** Courtney Alvarez, City Attorney.  
**From:** James Bryson, Accounting Manager  
**CC:** Mark Rushing   
**Date:** 10/29/2012  
**Re:** Office of Court Administration- Collections Program

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**Agenda Item:**

Judge Kreiger has requested the City enter into an agreement with the Office of Court Administration regarding its Collection Improvement Program. The Program Information Form, contact information, and overview of the program are included. The Municipal Court would like to move quickly on this proposal and is requesting that it be included in the Commissioner's Agenda for November 5<sup>th</sup>, 2012.



**Office of Court Administration**  
**{tc \11 "Office of Court Administration"}Collection**  
 Improvement Program  
 Court Collection Report System - Program Information Form

<b>1. County or City Name: <b>Kingsville</b></b>		<b>2. Date: 6/19/2012</b>	
<b>3. Courts included in this Collection Improvement Program:</b>			
<input type="checkbox"/> Some District Courts (list #s):		<input type="checkbox"/> All District Courts	
<input type="checkbox"/> Some County Courts (list #s):		<input type="checkbox"/> All County Courts	
<input type="checkbox"/> Some Justice Courts (list #s):		<input type="checkbox"/> All Justice Courts	
<input checked="" type="checkbox"/> Municipal Court			
<b>4. Name of Collection Program/Department:</b>			
<b>5. Fiscal Year (e.g., October 1 – September 30):</b>			
<b>6. Collection Program start date (see instructions):</b>			
<b>7. Are you able to separate court costs and fees from fines? (see instructions)</b>		<input checked="" type="checkbox"/> Yes	
		<input type="checkbox"/> No, estimated date:	
<b>8. Are you able to provide aging information on collections? (see instructions)</b>		<input checked="" type="checkbox"/> Yes	
		<input type="checkbox"/> No, estimated date:	
<b>9. Estimated start-up costs (e.g., furniture, office equipment, computer equipment) of the program: \$</b>			
<b>10. Software used for <b>Case Management:</b></b>		<b>11. Software used for <b>Collections:</b></b>	
<b>Incode</b>		<b>Incode</b>	
<b>12. Name of the <u>office or entity</u> that the collection program reports to:</b>			
<b>13. Name of person who manages the <u>daily operations</u> of the collections program:</b>		<b>15. Title of person who manages the <u>daily operations</u> of the collections program:</b>	
<b>14. Rose Morrow</b>		<b>16. Court Manager</b>	
<b>17. Mailing Address for program:</b>			
Address 1: <b>200 East Kleberg</b>		Phone: <b>361-592-8566</b>	
Address 2: <b>P.O. Box 1458</b>		Fax: <b>361-593-1736</b>	
City: <b>Kingsville</b>		Zip: <b>78364</b>	
Email: <b>municrt@cityofkingsville.com</b>			



**Office of Court Administration**  
**{tc \11 "Office of Court Administration"}Collection**  
Improvement Program  
Court Collection Report - Program Information Form  
(Continued)

<b>Information on primary person and secondary (backup) person that will be entering the monthly Court Collection Report into Office of Court Administration's online system.</b>			
<b>Primary Person</b>			
<b>18. Name:</b>			
First:	Middle or Initial (opt.):	Last:	Suffix (Jr., Sr., etc.)
<b>19. Title/Position:</b>			
<b>20. Office:</b>			
<b>21. Email Address (required):</b>			
<b>22. Phone Number (required):</b>			
<b>23. Cell Number (optional):</b>			
<b>24. Fax Number (optional):</b>			
<b>Secondary (Backup) Person</b>			
<b>25. Name:</b>			
First:	Middle or Initial (opt.):	Last:	Suffix (Jr., Sr., etc.)
<b>26. Title/Position:</b>			
<b>27. Office:</b>			
<b>28. Email Address (required):</b>			
<b>29. Phone Number (required):</b>			
<b>30. Cell Number (optional):</b>			
<b>31. Fax Number (optional):</b>			



Office of Court Administration, {tc \11 "Office of Court  
Administration} Collection Improvement Program  
Instructions – Court Collection Report - Program Information Form

Item	Description
1.	The county or city name.
2.	The current date.
3.	If only some of the courts are participating, check "Some" and list the court <b>numbers</b> at that level that are participating. If no courts at that court level are participating, do not check either box. If all the courts at that court level are participating, check "All."
4.	The name of the collections program or department.
5.	Your fiscal year.
6.	The date that your collection program was generally in compliance with the key components of the Collection Improvement Program.
7.	Can your computer system separate court costs and fees from fines? If no, please estimate the date that you will have this capability.
8.	Can your computer system provide aging information on dollars paid and/or dollars outstanding? This includes the time span from date of assessment through date of payment, broken down by 0-30 days, 31-60 days, 61-90 days, 91-120 days and greater than 120 days. If no, please estimate the date that you will have this capability.
9.	Estimate the start-up (e.g., computer equipment, office furniture, etc.) costs for the collection program. Do not include salaries.
10.	The name of the <b>Case Management Software</b> you use or plan to use (be as specific as possible).
11.	The name of the <b>Collection Software</b> you use or plan to use (be as specific as possible).
12.	The <u>office or entity</u> that the collection program/department reports to. (e.g., District Clerk)
13.	The <u>name</u> of the person who manages the day to day operations of the collection program.
14.	The <u>title</u> of the person in item 13 above.
15.	The mailing address, phone and fax number, and email address of the collection program.
16.	The primary person's name that will be doing the data entry. Middle name is optional.
17.	The title or position of the primary person.
18.	The office for whom the primary person works (e.g., District Clerk, County Collection Department, etc.)
19.	The email address of the primary person. This is required.
20.	The phone number of primary person. This is required.
21.	The cell phone number of the primary person. This is optional.
22.	The fax number of the primary person, if it is different than the office fax number in item 15.
23. - 29.	The same information as items 16 - 22, except that it is for the secondary or backup person that will be entering data into the Office of Court Administration's online system.



OFFICE OF COURT ADMINISTRATION

**Aaron Castillo**

Regional Collections Specialist  
South Region

1902 Joe Stephens Ave.  
Phone: (956) 968-8733

Weslaco, TX 78596  
Cell: (956) 236-5206  
Fax: (956) 973-7804

E-Mail: [aaron.castillo@courts.state.tx.us](mailto:aaron.castillo@courts.state.tx.us)

**Collections Program Manager**

**Jim Lehman**  
205 W. 14th St., Ste. 600  
Austin, Texas 78701  
Office (512) 954-5991  
Fax (512) 463-1648  
Email: Jim.Lehman@  
courts.state.tx.us

**Collections Financial Analyst**

**Berry Schiff, CPA**  
205 W. 14th St., Ste. 600  
Austin, TX 78701  
Office (512) 954-7557  
Fax (512) 463-1648  
Email: Berry.Schiff@  
courts.state.tx.us

**Central & West Region**

**Russ Duncan**  
205 W. 14th St., Ste. 600  
Austin, TX 78701  
Office (512) 954-7555  
Cell (512) 968-1512  
Email: Russ.Duncan@  
courts.state.tx.us

**East Region**

**Chad Graft**  
2110 Warren Dr.  
Harrison County Airport  
Marshall, TX 75671  
Bus. Mobile (936) 216-4308  
Bus. Fax (936) 954-0697  
Email: Chad.Graft@courts.state.tx.us

**Dallas Region**

**Melissa Williamson**  
616 Six Flags Drive, Ste. 491  
Arlington, TX 76011  
Bus. (817) 695-9175  
Mobile (817) 433-6695  
Bus. Fax (817) 690-4480  
Email: Melissa.Williamson@  
courts.state.tx.us

**Houston Region**

**Karolyn Drisdale**  
1207 Franklin, 7th Floor  
Houston, TX 77002  
Office (713) 755-5397  
Cell (281) 638-0776  
Fax (713) 755-8991  
Email: Karolyn.Drisdale@  
courts.state.tx.us

More information about the Collection Improvement Program may be obtained from our website at:

<http://www.txcourts.gov/oca/collections/collections.asp>

### *Contact Information*

#### Collection Program Manager

Jim Lehman

Phone: (512) 936-0991

FAX: (512) 463-1648

Email: [jim.lehman@txcourts.gov](mailto:jim.lehman@txcourts.gov)

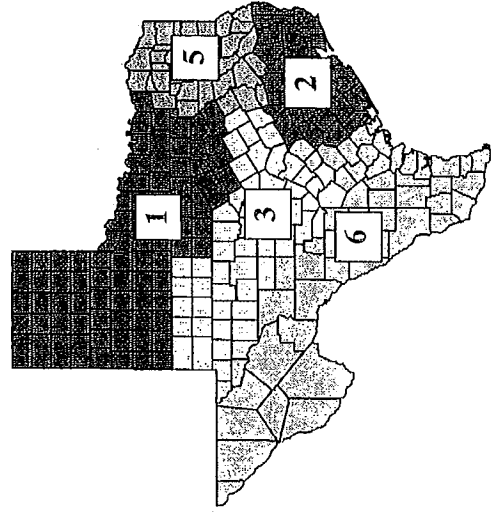
#### Collection Financial Analyst

Benny Schiff, CPA

Phone: (512) 936-7557

Email: [benny.schiff@txcourts.gov](mailto:benny.schiff@txcourts.gov)

### *Collection Regions*



### *Regional Collection Specialists*

#### 1 North Texas Region

Cynthia Montes

Phone: (940) 349-2818

Cell: (817) 455-3895

Email: [cynthia.montes@txcourts.gov](mailto:cynthia.montes@txcourts.gov)

#### 2 Houston Region

Karolyn D. Williams

Phone: (713) 755-5397

Cell: (281) 638-0776

Email: [karolyn.williams@txcourts.gov](mailto:karolyn.williams@txcourts.gov)

#### 3 Central Texas Region

Daphne Webber

Phone: (512) 936-7555

Cell: (512) 968-1512

Email: [daphne.webber@txcourts.gov](mailto:daphne.webber@txcourts.gov)

#### 5 East Texas Region

Chad Graff

Phone: (903) 216-4308

Email: [michael.graff@txcourts.gov](mailto:michael.graff@txcourts.gov)

#### 6 South Texas Region

Aaron Castillo

Phone: (956) 973-7830

Cell: (956) 236-5206

Email: [aaron.castillo@txcourts.gov](mailto:aaron.castillo@txcourts.gov)



# COLLECTION IMPROVEMENT PROGRAM

## Office of Court Administration

205 W. 14<sup>th</sup> St. Suite 600  
Austin, TX 78701  
(512) 463-1625



## Collection Improvement Program

The Office of Court Administration's (OCA's) Collection Improvement Program is a set of principles and processes for managing cases when defendants are not prepared to pay all court costs, fees, and fines, at the point of assessment and when time to pay is requested.

The key elements of the Program are:

- Staff or staff time dedicated to collection activities. This may include county or city employees or contract employees.
- Expectation that all court costs, fees, and fines are generally due at the time of assessment.
- In most cases, defendants unable to pay in full on the day of assessment are required to complete an application for extension of time to pay.
- Application information is verified and evaluated to establish an appropriate payment plan for the defendant.
- Payment terms are usually strict (e.g., 50% of the total amount due must be paid within 48 hours; 80% within 30 days; and 100% within 60 days).

- Alternative enforcement options (e.g., community service) are available for those who do not qualify for a payment plan.

- Defendants are closely monitored for compliance, and action is taken promptly for non-compliance:

- Actions include telephone contact, letter notification, possible issuance of warrant, and possible application of statutorily permitted collection remedies, such as programs for non-renewal of driver's license or vehicle registration.

- A county or city may contract with a private attorney or a public or private vendor for the provision of collection services on delinquent cases (61+ days), after in-house collection efforts are exhausted.



The Collection Improvement Program began over a decade ago as a voluntary model. In FY 2005, those programs reporting both a pre-program and a post-program collection rate averaged an 88% increase in their collection rate (from an average pre-program collection rate of 33% to an average post-program collection rate of 62%), bringing in an additional \$42 million in revenue.

The 79th Texas Legislature recognized the importance of enforcing the collection of court-ordered payments by adding Article 103.0033 to the Code of Criminal Procedure. This statute requires counties with a population of 50,000 or more, and cities with a population of 100,000 or more, to implement a court collection improvement program based on OCA's model.

### Estimated Additional Revenue Generated by Mandatory Collection Improvement Programs

State Fiscal Year	State	Local
2006	\$5,235,455	\$15,706,365
2007	\$21,150,486	\$63,451,458
2008	\$21,332,823	\$63,998,469
2009	\$19,834,715	\$59,504,147
2010	\$17,652,549	\$52,957,646
Total	\$85,206,028	\$255,618,085

As of October 2011, OCA has assisted with the development and implementation of collection programs in 79 counties and 92 cities. These include both mandatory and voluntary programs.

Time and resources permitting, OCA will assist cities and counties interested in developing and implementing a collection improvement program on a voluntary basis. Assistance will be provided at no cost to the city or county.

## COMPLIANCE PROCESS REVIEW/CHECKLIST

Applies to defendants that cannot pay all court costs, fees, and fine in full on day of assessment

Action	Requirement	Timeline
Application Taken	Application must be completed by defendant and all spaces filled.	Preferably on the day of but no more than <u>one month</u> after the day of assessment.
Application Verified	Home/contact number and employment/source of support contact verified and documented.	Preferably on the day of but no more than <u>5 days</u> after the receipt of the application.
Defendant Interviewed	Payment terms and conditions must be reviewed and documented.	Preferably on the day of but no more than <u>14 days</u> after the <u>day of assessment</u> or receipt of the application.
Payment Terms Established	Preferably the shortest period possible. Unless set by the judge: Justice & Municipal: 120 days max. County & District: 60 days before expiration of probation. If not on probation, 180 days max.	On the <u>day of assessment</u> or when application is taken.
Phone Contact Made	Phone call must be made and efforts documented if defendant defaults and has not contacted the court.	No more than <u>one month</u> following date of default.
Mail Contact Made	Delinquency notice must be sent and efforts documented if defendant defaults and has not contacted the court.	No more than <u>one month</u> following date of default.
Capias Contact Made	A pre or post warrant phone call or notice must be made and efforts documented if defendant has not responded to previous contact efforts and a warrant is issued by the court.	Within <u>one month</u> of the last contact effort.

### Communication Compliance Scenarios

Scenario #1	Compliant If	Example
Payment agreement is established on 06/18 in the total amount of \$230. Defendant is required to make two payments of \$115 each, one on 07/18 and the final payment on 08/18. A compliance audit is conducted after 07/18, which reveals the defendant failed to make a payment or contact the court.	Phone <b>call</b> and <b>notice</b> are made and documented <u>on or before 08/18</u> and capias pro fine call or notice is made not more than <u>one month</u> after the date of the last contact effort.	Call made 07/23. Notice sent 07/30. Capias call or notice must occur no later than 8/30 (no more than <u>one month</u> after last contact effort).

**Scenario #2****Compliant If****Example**

Payment agreement signed on 06/18 for \$230. Defendant must make payment in full by 07/08. Defendant fails to make payment but contacts the court on 07/07 asking for an extension to 07/18. Court grants the extension. Clerk updates the file with the new payment due date. A compliance audit is conducted after 07/18, which shows the defendant failed to make his payment.

Phone **call** and **notice** are made and documented **on or before 08/18** and **capias pro fine** call or notice is made not more than **one month** after the date of the last contact effort.

Call made 07/28.  
Notice sent 07/28.  
Capias call or notice must occur no later than **8/28** (no more than **one month** after last contact effort).

# **AGENDA ITEM #6**

**RESOLUTION #2012-\_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE-PURCHASE AGREEMENT AND ESCROW AGREEMENT WITH LEASING 2, INC. FOR THE LANDFILL COMPACTOR; REPEALING ALL CONFLICTING RESOLUTIONS AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Kingsville City Commission has determined that a true and very real need exists for the acquisition of a new compactor for the Landfill as described in the Lease-Purchase Agreement by and between the City and Leasing 2, Inc. dated as of November 5, 2012, and has further determined that the Equipment will be used solely for essential governmental functions and not for private business use;

**WHEREAS**, the City of Kingsville recently authorized the lease-purchase of a new compactor for the City Landfill after compliance with applicable laws for the bidding and acquisition of such equipment;

**WHEREAS**, the City now needs to authorize the City Manager to execute the negotiated lease-purchase agreement and escrow agreement for the new compactor and the City believes it to be in the best interest of the City of Kingsville to enter into the attached lease-purchase agreement and escrow agreement and any related documents necessary to the consummation the transactions contemplated by the Lease-Purchase Agreement and Escrow Agreement;

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

I.

**THAT** the City Manager is authorized and directed as an act of the City of Kingsville, Texas to execute the Lease-Purchase Agreement and Escrow Agreement with Leasing 2, Inc., in accordance with Exhibit A hereto attached and made a part hereof.

II.

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

III.

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

**PASSED AND APPROVED** by a majority vote of the City Commission on the 5th day of November, 2012.

\_\_\_\_\_  
Sam R. Fugate, Mayor

ATTEST:

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Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

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Courtney Alvarez, City Attorney



## l e a s i n g   2

October 23, 2012

Sent via Email: [dmason@cityofkingsville.com](mailto:dmason@cityofkingsville.com)

David Mason  
City of Kingsville

Re: Financing (1) Bomag Landfill Compactor

The following lease documentation is enclosed for execution and completion. Please carefully follow the instructions below, checking off each item as completed, and return a copy of the checklist along with the original executed documents. If you have questions, please call us at (800) 287-5155.

- ✓ PLEASE EXECUTE DOCUMENTS IN BLUE INK.
- ✓ DOCUMENTATION COMPLETED IMPROPERLY WILL DELAY FUNDING.

- ☐ **Lease Purchase Agreement**
  - Signed and dated by Lessee's authorized signatory.
- ☐ **Exhibit A – Resolution of Governing Body Extract of Minutes**
  - Enter the date your resolution was adopted.
  - Signed by Lessee's authorized signatory.
  - Signed and dated by Secretary/Clerk or other authorized board member of Lessee at bottom of page.
- ☐ **Exhibit B – Opinion of Lessee's Counsel**
  - Printed on attorney's letterhead and signed by attorney. Original signature required.
- ☐ **Exhibit C – Certificate as to Arbitrage**
  - Enter the date by which the equipment is expected to be fully acquired in Item 4.
  - Signed and dated by Lessee's authorized signatory.
- ☐ **Exhibit D – Description of Equipment**
  - Signed and dated by Lessee's authorized signatory.
- ☐ **Exhibit E – Payment Schedule**
  - Signed and dated by Lessee's authorized signatory.
- ☐ **Exhibit F – Acceptance Certificate**
  - If already delivered and accepted, check Item 1 and enter the date of acceptance.
  - If not delivered, check Item 2 and enter the date the equipment is expected to be delivered and accepted by.
  - Check this option only if making a 100% PREPAYMENT to your equipment vendor.
  - Signed and dated by Lessee's authorized signatory.
- ☐ **Exhibit G – Essential Use/Source of Funds Letter**
  - Enter a description of how the equipment will be used and the services it will provide.
  - Signed and dated by Lessee's authorized signatory.
- ☐ **Exhibit H – Designation of Bank Qualification**
  - Signed and dated by Lessee's authorized signatory.

- ☐ **Exhibit I – Notice and Acknowledgement of Assignment**
- Signed and dated by Lessee's authorized signatory.
- ☐ **Exhibit J – Vendor Terms**
- Signed and dated by Lessee's authorized signatory.
- ☐ **Insurance Coverage Requirement**
- Enter the name, address & phone number of your insurance agent.
  - If self-insured, check Item 2 and provide information regarding the nature of your self-insurance program along with the amounts of liability and physical damage coverage listed on a certificate.
- ☐ **UCC Financing Statement**
- For your information only – no action required.
- ☐ **Billing Information**
- Enter all of the requested information.
- ☐ **Customer Identification Program Organized Entity**
- Enter all of the requested information.
  - Signed by Lessee's authorized signatory.
- ☐ **Internal Escrow Letter**
- Signed and dated by Lessee's authorized signatory.
- ☐ **RETURN ALL DOCUMENTS BY: November 16, 2012**

**NOTE:** This lease agreement has been sent to you now in the interest of saving time and does not necessarily mean that your credit has been approved or that our commitment to you has been finalized.

**All documentation should be:**

- (1) faxed or emailed for review prior to overnighting
- (2) after review, overnight the signed originals to Leasing 2, Inc.

Email/fax to:

Laurie Tindel

([ltindel@leasing2.com](mailto:ltindel@leasing2.com))

Fax: (813) 258-9333

Phone: (800) 287-5155, Ext. 14

Overnight to:

Leasing 2, Inc.

1720 W. Cass St.

Tampa, FL 33606

(800) 287-5155

Alternate contact:

Lois Fronk

([lfronk@leasing2.com](mailto:lfronk@leasing2.com))

Fax: (813) 258-9333

Phone: (800) 287-5155, Ext. 10

**Thank you for your business.**



# LEASE-PURCHASE AGREEMENT

**LESSEE:**  
**City of Kingsville**  
**200 E. Kleberg Avenue**  
**Kingsville, TX 78363**

**LESSOR:**  
**Leasing 2, Inc.**  
**1720 West Cass Street**  
**Tampa, FL 33606-1230**

**Dated as of November 5, 2012**

This Lease-Purchase Agreement (the "Agreement") dated as of **November 5, 2012** by and between **Leasing 2, Inc.** ("Lessor"), and **City of Kingsville** ("Lessee"), a body corporate and politic duly organized and existing under the laws of the State of **Texas** ("State").

## **WITNESSETH:**

WHEREAS, Lessor desires to lease the Equipment, as hereinafter defined, to Lessee, and Lessee desires to lease the Equipment from Lessor, subject to the terms and conditions of and for the purposes set forth in this Agreement; and

WHEREAS, Lessee is authorized under the Constitution and laws of the State to enter into this Agreement for the purposes set forth herein;

NOW, THEREFORE, for and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

## **ARTICLE I DEFINITIONS**

Section 1.01. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Agreement" means this Lease-Purchase Agreement, including the Exhibits attached hereto, as the same may be supplemented or amended from time to time in accordance with the terms hereof.

"Commencement Date" is the date when the term of this Agreement begins and Lessee's obligation to pay rent accrues, which shall be the commencement date shown on the Exhibit E Payment Schedule.

"Equipment" means the property described in Exhibit D and which is the subject of this Agreement.

"Lease Term" means the Original Term and all Renewal Terms provided for in this Agreement under Section 4.01.

"Lessee" means the entity which is described in the first paragraph of this Agreement and which is leasing the Equipment from Lessor under the provisions of this Agreement.

"Lessor" means (i) **Leasing 2, Inc.**, acting as Lessor hereunder; (ii) any surviving resulting or transferee corporation; and (iii) except where the context requires otherwise, any assignee(s) of Lessor.

"Original Term" means the period from the Commencement Date until the end of the fiscal year of Lessee in effect at the Commencement Date.

"Purchase Price" means the amount indicated with respect to any date after payment of all Rental Payments (defined below) due through such date, all as set forth in Exhibit E hereto, or Supplemental Exhibit E hereto, as the case may be.

"Renewal Terms" means the renewal terms of this Agreement as provided for in Article IV of this Agreement, each having a duration of one year and a term co-extensive with the Lessee's fiscal year, except the last of such automatic renewal terms which shall end on the due date of the last Rental Payment set forth in Exhibit E to this Agreement.

"Rental Payments" means the basic rental payments payable by Lessee pursuant to the provisions of this Agreement during the Lease Term, payable in consideration of the right of Lessee to use the Equipment during the then current portion of the Lease Term. Rental Payments shall be payable by Lessee to the Lessor or its assignee in the amounts and at the times during the Lease Term, as set forth in Exhibit E of this Agreement.

"Vendor" means the manufacturer of the Equipment as well as the agents or dealers of the manufacturer from whom Lessee has purchased or is purchasing the Equipment.

## **ARTICLE II COVENANTS OF LESSEE**

Section 2.01 Lessee represents, covenants and warrants, for the benefit of Lessor and its assignees, as follows:

(a) Lessee is a public body, corporate and politic, duly organized and existing under the Constitution and laws of the State.

(b) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body, corporate and politic.

(c) Lessee is authorized under the Constitution and laws of the State to enter into this Agreement and the transaction contemplated hereby, and to perform all of its obligations hereunder.

(d) Lessee has been duly authorized to execute and deliver this Agreement under the terms and provisions of the resolution of its governing body, attached hereto as Exhibit A, or by other appropriate official approval, and further represents, covenants and warrants that all requirements have been met, and procedures have occurred in order to ensure the enforceability of this Agreement, and Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment hereunder. Lessee shall cause to be executed and delivered to Lessor an opinion of its counsel substantially in the form attached hereto as Exhibit B.

(e) During the term of this Agreement, the Equipment will be used by Lessee only for the purpose of performing one or more essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority and will not be used in a trade or business of any person or entity other than the Lessee.

(f) During the period this Agreement is in force, Lessee will annually provide Lessor with such current financial statements, budgets, proof of appropriation for ensuing fiscal year or such other financial information relating to the decision of Lessee to continue this Agreement as may be reasonably requested by Lessor or its assignee.

(g) The Equipment will have a useful life in the hands of the Lessee that is substantially in excess of the Original Term and all Renewal Terms.

(h) The Equipment is, and during the period this Agreement is in force will remain, personal property and when subjected to use by the Lessee under this Agreement, will not be or become fixtures.

(i) Lessee shall not voluntarily or involuntarily create, incur, assume or suffer to exist any lien, security interest or other encumbrance or attachment of any kind whatsoever on, affecting or with respect to the Equipment.

(j) Lessee shall not give up possession or control of the Equipment.

(k) Lessee shall not change the location of the Equipment without giving prior written notice of the proposed new location to the Lessor and provided that Lessee shall obtain and deliver to Lessor any landlord waivers reasonably requested by Lessor so as to protect Lessor's right, title and interest in and to the Equipment and Lessor's ability to exercise its remedies with regard to the Equipment.

(l) Lessee shall not alter or modify the Equipment in any manner which would reduce the value or the marketability thereof.

(m) Lessee will take no action that will cause the interest portion of any Rental Payment to become includable in gross income of the recipient for purposes of federal income taxation under the Code, and Lessee will take, and will cause its officers, employees and agents to take, all affirmative action legally within its power to prevent such interest from being includable in gross income for purposes of federal income taxation under Section 103(a) of the United States Internal Revenue Code of 1986 as amended (the "Code"). Lessee represents and warrants that the Lease is to be treated as an obligation of a political subdivision of a state within the meaning of Section 150(e) of the Code and that Lessee has complied with the requirements of Section 147(f) of the Code.

## **ARTICLE III LEASE OF EQUIPMENT**

Section 3.01 Lessor hereby demises, leases and lets to Lessee, and Lessee rents, leases and hires from Lessor, the Equipment, in accordance with the provisions of this Agreement, to have and to hold for the Lease Term.

## **ARTICLE IV LEASE TERM**

Section 4.01. Commencement of Lease Term. The Original Term of this Agreement shall commence on the Commencement Date and shall terminate on the last day of Lessee's fiscal year then in effect. Lessee may renew this Agreement beyond the expiration of the Original Term, or beyond the expiration of any Renewal Term then in effect, up to the number of additional fiscal years provided in Exhibit E of this Agreement by appropriating sufficient funds to make scheduled Rental Payments for the ensuing fiscal year (each a "Renewal Term"). Terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in Exhibit E of this Agreement.

Section 4.02. Termination of Lease Term. The Lease Term will terminate upon the earliest of any of the following events:

(a) The expiration of the Original Term or any Renewal Term of this Agreement and the non-renewal of this Agreement in the event of non-appropriation of funds pursuant to Section 6.07;

(b) The exercise by Lessee of the option to purchase the Equipment before expiration of this Agreement granted under the provisions of Articles IX or XI of this Agreement;

(c) A default by Lessee and Lessor's election to terminate this Agreement under Article XIII; or

(d) Payment by Lessee of all Rental Payments authorized or required to be paid by Lessee hereunder through the full lease term.

**Section 4.03. Return of Equipment on Termination.** Upon expiration or earlier termination of the Original Term or any Renewal Term under any provision of this Agreement at a time when Lessee does not exercise its option to purchase the Equipment granted under the provisions of Articles IX or XI of this Agreement, Lessee hereby agrees to deliver the Equipment to Lessor packaged or otherwise prepared in a manner suitable for shipment by truck or rail common carrier to a location specified by Lessor. All expenses resulting from the return of Equipment on termination will be borne by Lessee.

#### ARTICLE V ENJOYMENT OF EQUIPMENT

**Section 5.01.** Provided that no default or event of default shall have occurred hereunder, Lessor hereby covenants that during the Lease Term Lessor will not interfere with Lessee's quiet use and enjoyment of the Equipment.

Lessor shall have the right at all reasonable times during business hours to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

#### ARTICLE VI RENTAL PAYMENTS

**Section 6.01. Rental Payments to Constitute a Current Expense of Lessee.** Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee.

**Section 6.02. Payment of Rental Payments.** During the Original Term and during each Renewal Term elected by Lessee, Lessee shall pay Rental Payments, exclusively from legally available funds, in lawful money of the United States of America to Lessor or, in the event of assignment by Lessor, to its assignee, in the amounts and on the dates set forth in Exhibit E hereto. Rental Payments shall be in consideration for Lessee's use of the Equipment during the applicable year in which such payments are due. The Rental Payment amounts set forth in Exhibit E are based on the Equipment Cost to be paid by Lessor being the amount set forth in Exhibit E. Lessor shall have no obligation to pay or disburse any amount greater than the amount set forth as the Equipment Cost. Lessee shall not amend any purchase contract, purchase order, or any other agreement that would have the effect of increasing the cost of the Equipment above set forth in Exhibit E as the Equipment Cost without the prior written consent of Lessor. In the event that the actual cost of the Equipment is greater than the amount set forth in Exhibit E, Lessee shall be solely responsible for and hereby agrees to promptly pay such excess to the vendor (s), provided that Lessee may request that Lessor finance such excess, which Lessor may, in its sole discretion elect to do or decline to do. Lessee shall indemnify and hold Lessor harmless from and against any loss, damages, costs and expenses resulting from or relating to any increase in the Equipment Cost. If Lessor, in its sole discretion, elects to finance such excess the amount of each installment of rent will be increased to provide the same yield to Lessor as would have been obtained if the actual cost had been the same as the stated Equipment Cost. In such event, Lessee shall at the request of Lessor execute and deliver an amendment reflecting the increase in the Equipment Cost and the Rental Payments.

**Section 6.03. Interest and Principal Components.** A portion of each Rental Payment is paid as, and represents payment of, interest, and the balance of each Rental Payment is paid as, and represents payment of principal. Exhibit E hereto sets forth the interest component and the principal component of each Rental Payment during the Lease Term.

**Section 6.04. Additional Interest in the Event the Interest is Taxable.** Lessee acknowledges that Lessor's yield with respect to this Agreement is dependent upon the full amount of each Rental Payment being excluded from Lessor's income pursuant to the Code. Accordingly, if at any time, as a result of a determination that Lessee has breached a representation or covenant contained herein, or as a result of any change in the Code, any payment of either the interest component or the principal component of any Rental Payment is, in the opinion of counsel for the Lessor, subject to or affected by any income, preference, excess profits, minimum or other federal tax, Lessee shall pay, as additional interest, an amount which is necessary to provide to Lessor the same net income as Lessor would have received but for such event. Lessor's calculations of such additional interest shall be binding upon Lessee in the absence of manifest error.

**Section 6.05. Rental Payments to be Unconditional.** During the Original Term and during each Renewal Term elected by Lessee, the obligations of Lessee to make payment of the Rental Payments required under this Article VI and other sections hereof and to perform and observe the covenants and agreements contained herein shall be absolute and unconditional in all events, except as expressly provided under this Agreement. Notwithstanding any dispute between Lessee and Lessor, any Vendor or any other person, Lessee agrees to pay all Rental Payments when due and shall not withhold any Rental Payments pending final resolution of such dispute, nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such payments when required under this Agreement. Lessee's obligation to make Rental Payments during the Original Term or the then current Renewal Term elected by Lessee shall not be abated through accident or unforeseen circumstances.

**Section 6.06. Continuation of Lease Term by Lessee.** Lessee intends, subject to the provisions of Section 6.07, to continue the Lease Term through the Original Term and all the Renewal Terms hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all Rental Payments during the Original Term and each of the Renewal Terms can be obtained. The officer of Lessee responsible for budget preparation shall do all things lawfully within his/her power to obtain and maintain funds from which the Rental Payments may be made, including making provision for such payments to the extent necessary in each annual budget submitted and adopted in accordance with applicable provisions of State law, to have such portion of the budget approved, and to exhaust all available reviews and appeals in the event such portion of the budget is not approved. Notwithstanding the foregoing, the decision whether or not to budget and appropriate funds is within the discretion of Lessee's governing body.

**Section 6.07. Termination by Nonappropriation.** In the event Lessee does not appropriate sufficient funds for the payment of the Rental Payments scheduled to be paid in the next occurring Renewal Term, then Lessee may terminate this Agreement at the end of the then current Original Term or Renewal Term, and Lessee shall not be obligated to make payment of the Rental Payments provided for in this Agreement beyond the end of the then current Original or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination at least 90 days prior to the end of the then current Original or Renewal Term.

**Section 6.08. Late Charges.** If any Rental Payment is not paid in full to Lessor within twenty (20) days after the payment first became due and payable, Lessee shall immediately pay to Lessor an additional one time late charge equal to five (5%) percent or, if less the maximum rate permitted by law, of each such amount past due along with the Rental Payment. If any Rental Payment remains unpaid beyond 45 days after it first became due and payable, or if Lessor has elected to exercise any remedies following an event or default, interest shall accrue on past due amounts at the rate of 1% per month or the highest rate allowed by law, whichever is less. Partial payments by Lessee shall be applied first to the accrued interest component of past due Rental Payments and the balance to the remaining principal component of past due Rental Payments.

**Section 6.09. Prepayment.** Lessee shall have the right to prepay principal components of Rental Payments in whole on any date set forth in Exhibit E by paying the then applicable Purchase Price set forth in Exhibit E on such date.

#### ARTICLE VII TITLE TO EQUIPMENT

**Section 7.01. Title to the Equipment.** During the term of this Agreement, title to the Equipment and any and all additions, repairs, replacements or modifications shall vest in Lessee, subject to the rights of Lessor under this Agreement. In the event of default as set forth in Section 13.01 or nonappropriation as set forth in Section 6.07, title to Equipment, shall immediately vest in Lessor, and Lessee will immediately surrender possession of the Equipment to Lessor.

**Section 7.02. Security Interest.** To secure the payment of all Lessee's obligations under this agreement, Lessee grants to Lessor a security interest constituting a first lien on the Equipment and on all additions, attachments, accessions and substitutions thereto, and on any proceeds therefrom. Lessee hereby authorizes Lessor to prepare and file such financing statements, any amendments thereto and other such documents to establish and maintain Lessor's valid first lien and perfected security interest. Lessee hereby acknowledges the receipt of copies of the financing statements prepared by Lessor and hereby confirms the accuracy of the information contained therein. Lessee further agrees to execute such additional documents, including affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest, and upon assignment, the security interest of any assignee of Lessor, in the Equipment.

#### ARTICLE VIII MAINTENANCE; MODIFICATION; TAXES; INSURANCE AND OTHER CHARGES

**Section 8.01. Maintenance of Equipment by Lessee.** Lessee agrees that at all times during the Lease Term Lessee will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair, working order and condition, and that Lessee will from time to time make or cause to be made all necessary and proper repairs, replacements and renewals. Lessor shall have no responsibility in any of these matters, or for the making of improvements or additions to the Equipment.

**Section 8.02. Taxes, Other Governmental Charges and Utility Charges.** In the event that the use, possession or acquisition of the Equipment is found to be subject to taxation in any form (except for income taxes of Lessor), Lessee will pay during the Lease Term, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Equipment and any equipment or other property acquired by Lessee in substitution for, as a renewal or replacement of, or a modification, improvement or addition to the Equipment, as well as all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment; provided that, with respect to any governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as have accrued during the time this Agreement is in effect.

**Section 8.03. Provisions Regarding Insurance.** At its own expense, Lessee shall cause casualty, public liability and property damage insurance to be carried and maintained, or shall demonstrate to the satisfaction of Lessor that adequate self-insurance is provided with respect to the Equipment, sufficient to protect the Full Insurable Value (as that term is hereinafter defined) of the Equipment, and to protect Lessor from liability in all events. All insurance proceeds from casualty losses shall be payable as hereinafter provided in this Agreement. Lessee shall furnish to Lessor certificates evidencing such coverage throughout the Lease Term. Alternatively, Lessee may insure the Equipment under a blanket insurance policy or policies which cover not only the Equipment but other properties. If Lessee insures similar properties by self-insurance and upon approval by Lessor, Lessee may insure the Equipment by means of an adequate insurance fund.

The term "Full Insurable Value" as used herein shall mean the full replacement value of the Equipment.

Any insurance policy pursuant to this Section 8.03 shall be so written or endorsed as to make losses, if any, payable to Lessee and Lessor as their respective interests may appear. The Net Proceeds (as defined in Section 9.01) of the insurance required in this Section 8.03 shall be applied as provided in Article IX hereof. Each insurance policy provided for in this

Section 8.03 shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interest of Lessor without first giving written notice thereof to Lessor at least 30 days in advance of such cancellation.

**Section 8.04. Advances.** In the event Lessee shall fail to perform any of its obligations hereunder Lessor may (but shall be under no obligation to) take such action as may be necessary to cure such failure, including, without limitation, the advancement of money; and all amounts so advanced by Lessor shall become additional rent for the then current Original Term or Renewal Term, which amounts, together with interest thereon at the rate of 12% per annum, or if less the maximum rate permitted by law, Lessee agrees to pay.

#### **ARTICLE IX DAMAGE, DESTRUCTION AND CONDEMNATION: USE OF NET PROCEEDS**

**Section 9.01. Damage, Destruction and Condemnation.** If prior to the termination of the Lease Term (a) the Equipment or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of the Equipment or any part thereof or the estate of Lessee or Lessor in the Equipment or any part thereof shall be taken under the exercise of the power eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee.

For purposes of Section 8.03 and this Article IX, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorney's fees) incurred in the collection of such claims or award.

**Section 9.02. Insufficiency of Net Proceeds.** If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 9.01 hereof, Lessee shall either (a) complete the work and pay any cost in excess of the amount of Net Proceeds, and Lessee agrees that if by reason of any such insufficiency of the Net Proceeds, Lessee shall make any payments pursuant to the provisions of this Section 9.02, Lessee shall not be entitled to any reimbursement therefrom from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article VI hereof or (b) if Lessee is not in default hereunder, Lessee shall pay to Lessor the amount of the then applicable Purchase Price, and, upon such payment, the Lease Term shall terminate and Lessor's interest in the Equipment shall terminate as provided in Article XI of this Agreement. The amount of the Net Proceeds in excess of the then applicable Purchase Price, if any, may be retained by Lessee.

#### **ARTICLE X DISCLAIMER OF WARRANTIES; VENDOR'S WARRANTIES; USE OF EQUIPMENT**

**Section 10.01. Disclaimer of Warranties.** LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR WARRANTY WITH RESPECT THERETO. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning or Lessee's use of any item of Equipment.

**Section 10.02. Vendor's Warranties.** Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default hereunder, to assert from time to time whatever claims and rights, including warranties of the Equipment, if any which Lessor may have against the Vendor of the Equipment. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the Equipment, and not against the Lessor, nor shall such matter have any effect whatsoever on the rights of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representation or warranties whatsoever as to the existence or availability of such warranties of the Vendor of the Equipment.

**Section 10.03. Use of the Equipment.** Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Equipment) with all laws of the jurisdictions in which its operations involving any item of Equipment may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Equipment; provided, however, that Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor, adversely affect the estate of Lessor in and to any of the items of the Equipment or its interest or rights under this Agreement.

#### **ARTICLE XI OPTION TO PURCHASE**

**Section 11.01.** At the request of Lessee, Lessor's interest in the Equipment and additional Rental Payments will be terminated and this Agreement shall terminate:

- (a) At the end of the final Renewal Term, upon payment by Lessee of all Rental Payments scheduled as set forth in Exhibit E to this Agreement; or
- (b) if the Lease Term is terminated pursuant to Article IX of this Agreement, in the event of total damage, destruction or condemnation of the Equipment; or
- (c) any time when Lessee is not on such date in default under this Agreement, upon payment by Lessee of the then applicable Purchase Price to Lessor.

Upon the occurrence of any of such events, Lessor shall, if requested by Lessee, deliver a Bill of Sale of its remaining interest in the Equipment to Lessee "AS IS - WHERE IS" without additional cost or payment by Lessee.

#### **ARTICLE XII ASSIGNMENT, SUBLEASING, INDEMNIFICATION MORTGAGING AND SELLING**

**Section 12.01. Assignment by Lessor.** This Agreement, and the rights of Lessor hereunder, may be assigned and reassigned in whole or in part to one or more assignees and subassignees by Lessor at any time subsequent to its execution, without the necessity of obtaining the consent of Lessee; provided, however, that no such assignment or reassignment shall be effective unless and until (i) Lessee shall have received notice of the assignment or reassignment disclosing the name and address of the assignee or subassignee, and (ii) in the event that such assignment is made to a bank or trust company as trustee for holders of certificates representing interests in this Agreement, such bank or trust company agrees to maintain, or cause to be maintained, a book-entry system by which a record of names and addresses of such holders as of any particular time is kept and agrees, upon request of the Lessee, to furnish such information to Lessee. Upon receipt of notice of assignment, Lessee agrees to keep a written record thereof, and to make all payments to the assignee designated in the notice of assignment, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach of this Agreement or otherwise) that Lessee may from time to time have against Lessor, or the assignee. Lessee agrees to execute all documents which may be reasonably requested by Lessor or its assignee to protect their interests in this Agreement.

**Section 12.02. No Sale, Assignment or Subleasing by Lessee.** This Agreement and the interest of Lessee in the Equipment may not be sold, assigned or encumbered by Lessee without the prior written consent of Lessor.

**Section 12.03. Lessee Negligence.** To the extent permitted by the laws and Constitution of the State, Lessee shall protect and hold harmless Lessor from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest arising out of or as the result of the entering into this Agreement, the ownership of any item of the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment or any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death of any person, to the extent that such liability, obligation, loss, claim or damage arises out of or is proximately caused by the negligent conduct of Lessee, its officers, employees or agents. The obligation of Lessee arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all other obligations under this Agreement or the termination of the Lease Term for any reason.

#### **ARTICLE XIII EVENTS OF DEFAULT AND REMEDIES**

**Section 13.01. Events of Default Defined.** The following shall be "events of default" under this Agreement and the terms "event of default" and "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

- (a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein; and
- (b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Section 13.01 (a), for a period of 30 days after written notice, specifying such failure and requesting that it be remedied as given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to the expiration, provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.
- (c) The filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift any execution, garnishment, or attachment of such consequence as would impair the ability of Lessee to carry on its governmental function or adjudication of Lessee as a bankrupt or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to Lessee in any proceedings instituted under the provisions of the Federal Bankruptcy Statute, as amended, or under any similar acts which may hereafter be enacted.

The foregoing provisions of this Section 13.01 are subject to (i) the provisions of Section 6.07 hereof with respect to nonappropriation; and (ii) if by reason of force majeure Lessee is unable in whole or in part to carry out its agreement on its part herein contained, other than the obligations on the part of Lessee contained in Article VI hereof, Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other employee relations disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the state wherein Lessee is located or any of their departments, agencies or officials, or any civil or military authority, insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; or explosions.

**Section 13.02. Remedies on Default.** Whenever any event of default referred to in Section 13.01 hereof shall have happened and be continuing, Lessor shall have the right at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

- (a) Declare all Rental Payments due or to become due during the Original Term or Renewal Term then in effect to be immediately due and payable, whereupon such Rental Payments shall be immediately due and payable;

- (b) With or without terminating this Agreement, retake possession of the Equipment and sell, lease or sublease the Equipment for the account of Lessee, and apply the proceeds of such sale, lease or sublease to pay the following items in the following order: (i) all cost and expenses of Lessor relating to the implementation of remedies under this Agreement as further provided herein; (ii) the applicable Purchase Price of the Equipment and (iii) the Rental Payments due during the Original Term or Renewal Term then in effect; and
- (c) Take whatever action under the Uniform Commercial Code or under other law or in equity as may appear necessary or desirable to enforce its rights as the owner or secured creditor of the Equipment.

Lessee further agrees that Lessee shall pay to Lessor such further amounts as may be sufficient to reimburse Lessor fully for its costs and expenses as incurred as a result of Lessee's default including, without limitation, Lessor's costs and expenses in enforcing, or endeavoring to enforce, its rights and remedies under the Agreement or incident thereto, including without limitation and to the extent not prohibited by applicable law, the Lessor's reasonable attorney's fees and expenses for enforcing Lessee's obligations hereunder.

Section 13.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy give under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver hereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

#### ARTICLE XIV MISCELLANEOUS

Section 14.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at their respective places of business.

Section 14.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 14.03. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 14.04. Amendments. The terms of the Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the Lessor and the Lessee.

Section 14.05. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14.06. Delayed Closing. In the event of a delayed closing, Lessor shall receive as additional compensation any amount that accrues between the Commencement Date and the Closing Date.

Section 14.07. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 14.08. Captions. The captions or headings in this Agreement are for convenience only and do not define, limit or describe the scope or intent of any provisions of sections of this Agreement.

Section 14.09. Entire Agreement. This Agreement and the executed Exhibits attached hereto constitute the entire agreement between Lessor and Lessee. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations or warranties, express or implied, not specified herein, regarding this Agreement or the equipment leased hereunder.

Section 14.10. Execution of Facsimile. In the interest of time, each party agrees that execution of signature pages of this Agreement by such party followed by transmission of such pages by facsimile/Telecopier will be legally binding upon such party. After each party has executed and transmitted such signature pages, each party agrees to execute hard copies of this Agreement and to promptly forward originals to the other party hereto.

Section 14.11. Correction of Documents. Lessee agrees to execute and deliver, or provide, as required by Lessor, any documents and information, from time to time, that may be necessary for the purpose of correcting any errors or omissions in this Lease or to reflect the true intent of Lessor in this transaction. All such documents and information must be satisfactory to Lessor.

Section 14.12 WAIVER OF JURY TRIAL. Lessee and Lessor hereby irrevocably waive any right to a jury trial with respect to any matter arising under or in connection with this Lease and agree that any dispute shall be determined by a court sitting without a jury.

Section 14.13. Performance Bonds. If requested by Lessor to facilitate payments to vendors in advance of delivery and acceptance, Lessee agrees to require the Equipment manufacturer, and all other contractors and/or subcontractors (collectively, "Contractors") with whom Lessee has contracted for the acquisition of the Equipment, to provide performance bond satisfactory to Lessor conditioned upon the construction of the Equipment as expeditiously as reasonably possible from the date of execution of such Lease and also conditioned upon delivery of possession of the Equipment to the Lessee free and clear of all liens and encumbrances, except the security interest granted to Lessor under the Lease-Purchase Agreement. Each such bond shall be in a form and with a surety acceptable to Lessor and shall name Lessor as a dual obligee. The Lessee shall proceed promptly to pursue diligently any remedies available against a Contractor that is in default under any agreement relating to the acquisition and construction of the Equipment and/or against each surety on any bond securing the performance of such Contractor's obligations with respect to the acquisition and construction of the Equipment. The Lessee and Lessor shall cause the net proceeds recovered by way of the foregoing to be applied, at Lessor's option, to (i) the completion of the Equipment, or (ii) the payment of all rent payments then due plus the then applicable Termination Balance. Any balance of net proceeds remaining after completion of Equipment construction or payment of the outstanding balance owed under the applicable Lease shall be paid promptly to Lessee.

Section 14.14. Time is of the Essence. Lessor and Lessee agree that time is of the essence of all provisions of each Lease entered into under this Agreement.

Any terms and conditions of any purchase order or other document submitted by Lessee in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on Lessor and will not apply to this Agreement. Lessee by the signature below of its authorized representative acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, Lessor has executed this Agreement in its corporate name and by its duly authorized officer, and Lessee has caused this Agreement to be executed in its corporate name and by its duly authorized officer. All of the above occurred as of the date first written below; this Agreement shall be binding on Lessee beginning on the date it is accepted and executed by Lessor.

#### LESSOR: Leasing 2, Inc.

Execute:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

#### LESSEE: City of Kingsville

Execute:

By: \_\_\_\_\_  
Vince Capell

Title: \_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

**EXHIBIT A**

**RESOLUTION OF GOVERNING BODY  
EXTRACT OF MINUTES**

**LESSEE:      City of Kingsville**

At a duly called meeting of the governing body of Lessee held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the following resolution was introduced and adopted.

**RESOLVED**, whereas the governing body of Lessee has determined that a true and very real need exists for the acquisition of the Equipment described in the Lease-Purchase Agreement by and between Lessee and **Leasing 2, Inc.** dated as of **November 5, 2012** and presented to this meeting; and has further determined that the Equipment will be used solely for essential governmental functions and not for private business use.

**WHEREAS**, Lessee has taken the necessary steps, including, without limitation to compliance with legal bidding requirements, under applicable law to arrange for the acquisition of such Equipment.

**BE IT RESOLVED**, by the governing body of Lessee that the terms of said Lease-Purchase Agreement and Escrow Agreement are in the best interest of Lessee for the acquisition of such Equipment, and the governing body of Lessee designates and confirms the following person to execute and deliver, the Lease-Purchase Agreement and Escrow Agreement and any related documents necessary to the consummation of the transactions contemplated by the Lease-Purchase Agreement and Escrow Agreement.

\_\_\_\_\_  
(Signature of Party to Execute  
Lease-Purchase Agreement and Escrow Agreement)

\_\_\_\_\_  
Vince Capell, City Manager  
(Print Name and Title)

The undersigned further certifies that the above resolution has not been repealed or amended and remains in full force and effect and further certifies that the above and foregoing Lease-Purchase Agreement and Escrow Agreement is the same as presented at said meeting of the governing body of Lessee.

(SEAL)

\_\_\_\_\_  
Secretary/Clerk

\_\_\_\_\_  
Date

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**{LETTERHEAD OF LESSEE'S COUNSEL}**

**EXHIBIT B**

**OPINION OF LESSEE'S COUNSEL**

**LESSEE:**           **City of Kingsville**

**DATE OF AGREEMENT:**           **November 5, 2012**

**Leasing 2, Inc.  
1720 West Cass Street  
Tampa, FL 33606-1230**

Ladies/Gentlemen:

As counsel for **City of Kingsville** ("Lessee"), I have examined duly executed originals of the Lease-Purchase Agreement and Escrow Agreement (the "Agreement"), between Lessee and Leasing 2, Inc. ("Lessor"), dated as of **November 5, 2012** and the proceedings taken by Lessee to authorize and execute the Agreement. Based upon such examination and upon such other examination as I have deemed necessary or appropriate, I am of the opinion that:

1. Lessee is a public body corporate and politic, legally existing under the laws of the State of **Texas**.
2. The Agreement has been duly authorized, executed and delivered by Lessee, pursuant to Constitutional, statutory and/or home rule provisions which authorize this transaction and Resolution No. \_\_\_\_\_, attached as Exhibit A to the Agreement.
3. The Agreement is a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms. In the event the Lessor obtains a judgment against Lessee in money damages, as a result of an event of default under the Agreement, Lessee will be obligated to pay such judgment.
4. Applicable public bidding requirements have been complied with.
5. To the best of my knowledge, no litigation is pending or threatened in any court or other tribunal, state or federal, which questions or affects the validity of the Agreement.
6. The signature of the officer of Lessee which appears on the Agreement is true and genuine; I know said officer and know him/her to hold the office set forth below his/her names.
7. The Equipment leased pursuant to the Agreement constitutes personal property and when subjected to use by Lessee will not be or become fixtures under applicable law.
8. The leasing of the Equipment pursuant to the Agreement is exempt from all sales and use taxes against either the Lessor or the Lessee during the term of the Lease and the Equipment will be exempt from any state and local personal property or other ad valorem taxes during the term of the Lease.

This opinion may be relied upon by the addressee hereof and its successors and assignees of interests in the Lease, but only with regard to matters specifically set forth herein.

Sincerely,

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## EXHIBIT C

### CERTIFICATE AS TO ARBITRAGE

I, **Vince Capell**, hereby certify that I am duly qualified and acting **City Manager**, of **City of Kingsville** (the "Lessee"), and that in my official capacity as such officer, I am responsible for executing and delivering, on behalf of the Lessee, the Lease-Purchase Agreement dated **November 5, 2012** (the "Agreement"), by and between Leasing 2, Inc. ("Lessor") and the Lessee. This Certificate is being issued pursuant to Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the Treasury Regulations promulgated thereunder (the "Regulations"). The following facts, estimates and circumstances are in existence on the date of this Certificate or are reasonably expected to occur hereafter.

1. The Lease provides for the acquisition and financing of certain equipment described therein (the "Equipment") Pursuant to the Agreement, the Lessor is required to lease the Equipment to the Lessee and the Lessee is required to make rental payments with respect thereto, comprising principal and interest, on the dates and in the amounts set forth therein (the "Rental Payments").

2. On the date hereof, Lessor will deposit into escrow to be held for the benefit of Lessee the amount of **\$414,191.00**, which, together with interest earned thereon until disbursed if necessary, will be used to pay the costs of the Equipment in the amount of **\$414,191.00**. In the event any interest income remains in escrow after payment of such Equipment cost, such amount shall be retained by Lessor as additional fee income.

3. The Lessee has entered into or will within six (6) months of the date hereof enter into contracts for the acquisition of the Equipment, which contracts will obligate the payment of all amounts held in escrow.

4. The Equipment will be acquired with due diligence and will be fully acquired on or before \_\_\_\_\_.

5. In any event, all of the spendable proceeds of the Agreement will be expended on the Equipment within three (3) years from the date of execution of the Agreement. No proceeds of the Agreement will be used to reimburse the Lessee for expenditures made prior to the date of the issuance of the Agreement, unless Lessee shall have complied with the requirements of Section 1.150-2 of the Regulations. If applicable, a copy of Lessee's official intent with respect to such reimbursement is attached hereto as attachment 1.

6. The original proceeds of the Agreement, and the interest to be earned thereon, do not exceed the amount necessary for the governmental purpose for which the Agreement is issued.

7. The interest of the Lessee in the Equipment has not been, and is not expected during the term of the Agreement, to be sold or otherwise disposed of by the Lessee.

8. No sinking fund will be maintained by the Lessee with respect to the Rental Payments.

9. The Agreement is not a "hedge bond" within the meaning of Section 149 (G) of the Code. The Lessee expects to spend not less than 85% of the spendable proceeds of the Agreement within three years after the date hereof and less than 50% of the proceeds of the Agreement is invested in Nonpurpose investments having a substantially guaranteed yield for four years or more.

10. In the Agreement the Lessee has covenanted to take all actions necessary to ensure that the interest paid under the Agreement remains excludable from gross income under the Code. Such covenant includes, without limitation, the requirement to comply with the requirements of the Code relating to the rebate of arbitrage profit to the United States Government.

11. To the best of the knowledge and belief of the undersigned, the expectations of the Lessee as set forth above, are reasonable; and there are no present facts, estimates and circumstances which would damage the foregoing expectations.

WITNESS, my hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

LESSEE: **City of Kingsville**

By: \_\_\_\_\_  
Vince Capell

Title: \_\_\_\_\_  
City Manager

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**EXHIBIT D**  
**DESCRIPTION OF EQUIPMENT**

The Equipment which is the subject of the attached Lease-Purchase Agreement is as follows:

Bomag BC 572 Landfill Compactor

SN: \_\_\_\_\_

together with all additions, accessions and replacements thereto.

Lessee hereby certifies that the description of the personal property set forth above constitutes an accurate description of the "Equipment", as defined in the attached Lease-Purchase Agreement.

LOCATION OF THE EQUIPMENT:

\_\_\_\_\_  
348 E. CR 2130

\_\_\_\_\_  
Kingsville, TX 78363

LESSEE: City of Kingsville

By: \_\_\_\_\_  
Vince Capell

Title: \_\_\_\_\_  
City Manager

Date: \_\_\_\_\_



**EXHIBIT E**  
**PAYMENT SCHEDULE**

LESSEE: City of Kingsville  
EQUIPMENT COST: \$414,191.00  
COMMENCEMENT DATE: November 5, 2012  
INTEREST RATE: 2.87%

PAYMENT						PURCHASE
<u>NO.</u>	<u>DATE</u>	<u>PAYMENT</u>	<u>INTEREST</u>	<u>PRINCIPAL</u>	<u>PRICE*</u>	
1	5/5/2013	\$ 65,242.37	\$ 5,981.62	\$ 59,260.75	\$ 368,179.46	
2	5/5/2014	\$ 65,242.37	\$ 10,194.95	\$ 55,047.42	\$ 309,490.68	
3	5/5/2015	\$ 65,242.37	\$ 8,613.78	\$ 56,628.59	\$ 249,757.24	
4	5/5/2016	\$ 65,242.37	\$ 6,987.19	\$ 58,255.18	\$ 188,960.55	
5	5/5/2017	\$ 65,242.37	\$ 5,313.88	\$ 59,928.49	\$ 127,081.68	
6	5/5/2018	\$ 65,242.37	\$ 3,592.50	\$ 61,649.87	\$ 64,101.36	
7	5/5/2019	\$ 65,242.37	\$ 1,821.67	\$ 63,420.70	\$ 0.00	
Grand Totals		\$ 456,696.59	\$ 42,505.59	\$ 414,191.00		

LESSEE: City of Kingsville

By: \_\_\_\_\_  
Vince Capell

Title: \_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

\_\_\_\_\_  
\* After payment of Rental Payment due on such date.

## ACCEPTANCE CERTIFICATE

1. Equipment delivered and accepted: Lessee has received in good condition all of the Equipment described in the Agreement and in Exhibit D thereto and accepts the Equipment for all purposes this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,

3. **Vendor will be paid in full prior to delivery of equipment:** A 100% pre-funding will be made by Lessor to Vendor of the lease amount identified as "Equipment Cost" on the Exhibit E – Payment Schedule of the Agreement. Lessee agrees to indemnify and hold Lessor harmless from and against any and all claims, costs and expenses incurred (including Lessor's attorneys' fees). Lessee further acknowledges that the Agreement is not subject to the successful delivery of the Equipment, and that in the event of non-performance by the Vendor, Lessee will retain all responsibility for performance under the Agreement.

The undersigned officer of the Lessee hereby reaffirms on behalf of the Lessee in all respects the covenants of the Lessee set forth in Article II of the Agreement and represents that, to the best of his or her knowledge, information and belief, the expectations therein expressed were reasonable as of the Commencement Date, and that there were, and are as of the date on which they were made, and are reasonable as of the Commencement Date, no facts, estimates or circumstances other than those expressed therein that would materially affect the expectations expressed therein.

By: Vince Capell

Date: \_\_\_\_\_

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EXHIBIT G

ESSENTIAL USE/SOURCE OF FUNDS LETTER

TO: Leasing 2, Inc.

RE: Lease-Purchase Agreement Dated November 5, 2012.

Gentlemen:

Reference is made to certain Lease-Purchase Agreement dated **November 5, 2012**, between **Leasing 2, Inc.** and **City of Kingsville**, leasing the personal property described in Exhibit D to such Lease. This confirms and affirms that such equipment is essential to the functions of the undersigned or to the service we provide to our citizens.

Further, we have an immediate need for, and expect to make immediate use of, substantially all the Equipment, which need is not temporary or expected to diminish in the foreseeable future. The Equipment will be used by us only for the purpose of performing one or more of our governmental or proprietary functions consistent with the permissible scope of our authority. Specifically, the Equipment was selected by us to be used as follows:

Please describe USE of equipment:

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Sincerely,

---

Vince Capell, City Manager

---

Date

**EXHIBIT H**

**DESIGNATION OF BANK QUALIFICATION**

In consideration of the mutual covenants of the Lessor and Lessee pursuant to the Lease-Purchase Agreement dated **November 5, 2012**, (the "Agreement") between **Leasing 2, Inc.** ("Lessor") and **City of Kingsville** ("Lessee"), such Agreement is modified as follows:

Lessee certifies that it reasonably anticipates that it and all of its subordinate entities will not issue more than \$10,000,000 of "qualified tax-exempt obligations" (as that term is defined in Section 265(b)(3)(B) of the Internal Revenue Code of 1986 ("the Code")) during the current calendar year .

Further, lessee hereby designates the Agreement as a "qualified tax-exempt obligation" in accordance with Section 265 (b)(3)(B) of the Code so that it is eligible for the exception contained in Section 265 (b)(3) of the Code and further certifies for the purpose of the overall limitation of Section 265 (b)(3)(D) of the Code that it and its subordinate entities have not as of this calendar year issued more than \$10,000,000 of obligations which it has designated for these purposes.

All terms contained herein not otherwise defined shall have the same meaning as such terms are used and defined in the Lease.

Attached hereto is a completed Internal Revenue Service Form 8038-G, Information Return for Tax-Exempt Governmental Bond Issues, completed on behalf of the Lessee (or, if the invoice price of the Equipment under such schedule is less than \$100,000, a Form 8038-GC).

IN WITNESS WHEREOF, the Lessee has caused this Agreement to be executed by its duly authorized officer on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

LESSEE: **City of Kingsville**

By: \_\_\_\_\_

Printed Name: Vince Capell, City Manager

**EXHIBIT I**

**NOTICE AND ACKNOWLEDGMENT OF ASSIGNMENT**

**Leasing 2, Inc.** ("Lessor") hereby gives notice to the **City of Kingsville** ("Lessee") that Lessor has assigned all rights to payments under the Lease-Purchase Agreement, dated as of **November 5, 2012**, between **Leasing 2, Inc.** ("Lessor") and **City of Kingsville** ("Lessee"). **Leasing 2, Inc.** ("Lessor") hereby requests, gives notice and instructs **City of Kingsville** ("Lessee") that payments that hereafter come due pursuant to the Lease-Purchase Agreement be paid to **Sovereign Bank, N.A.** or its Assignee.

**Sovereign Bank, N.A.**  
**P. O. Box 14565**  
**Reading, PA 19612**

LESSEE: **City of Kingsville**

By: \_\_\_\_\_  
Vince Capell

Title: City Manager

Date: \_\_\_\_\_

**EXHIBIT J**  
**VENDOR TERMS**

**LESSEE:**      **City of Kingsville**

Lessor shall have funds not immediately paid to vendor(s) at closing deposited in an "Escrow Account" in order to facilitate payment to vendors for equipment deliveries that are scheduled to occur according to the following schedule:

<b>EQUIPMENT DESCRIPTION</b>	<b>AMOUNT</b>	<b>PAYMENT NO EARLIER THAN</b>
Final payment	\$414,191.00	Upon delivery & acceptance

Lessee acknowledges and is in agreement with this schedule and the "Payment No Earlier Than" dates as indicated.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

**LESSEE:**      **City of Kingsville**

By: \_\_\_\_\_  
Vince Capell

Title: \_\_\_\_\_  
City Manager

## INSURANCE COVERAGE REQUIREMENT

TO: Leasing 2, Inc. and/or its Assigns  
1720 West Cass Street  
Tampa, FL 33606-1230

FROM: City of Kingsville  
200 E. Kleberg Avenue  
Kingsville, TX 78363

RE: INSURANCE COVERAGE REQUIREMENTS (Check one):

\_\_\_\_ 1. In accordance with Section 8.03 of the Agreement, we have instructed the insurance agent named below (please fill in name, address and telephone number)

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/ ST/ ZIP: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

to issue:

a. All Risk Physical Damage Insurance on the leased equipment evidenced by a Certificate of Insurance and Long Form Loss Payable Clause naming **Leasing 2, Inc. and/or its Assigns** as Loss Payee.

Coverage Required: Full Replacement Value

b. Public Liability Insurance evidenced by a Certificate of Insurance naming **Leasing 2, Inc. and/or its Assigns** as an Additional Insured.

Minimum Coverage Required:

\$500,000.00 per person

\$1,000,000.00 aggregate bodily injury liability

\$1,000,000.00 property damage liability

\_\_\_\_ 2. Pursuant to Section 8.03 of the Agreement, we are self insured for all risk, physical damage, and public liability and will provide proof of such self insurance in letterform together with a copy of the statute authorizing this form of insurance.

By: \_\_\_\_\_  
Vince Capell

Title: \_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

## UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

OR	1a. ORGANIZATION'S NAME <b>City of Kingsville</b>				
	1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
1c. MAILING ADDRESS <b>200 E. Kleberg Avenue</b>		CITY <b>Kingsville</b>	STATE <b>TX</b>	POSTAL CODE <b>78363</b>	COUNTRY
1d. TAX ID #: SSN OR EIN <b>74-6001513</b>	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION <b>Municipality</b>	1f. JURISDICTION OF ORGANIZATION <b>Texas</b>		1g. ORGANIZATIONAL ID #, if any <input checked="" type="checkbox"/> NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

OR	2a. ORGANIZATION'S NAME				
	2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY
2d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION		2g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

OR	3a. ORGANIZATION'S NAME <b>Sovereign Bank, N.A.</b>				
	3b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
3c. MAILING ADDRESS <b>3 Huntington Quadrangle</b>		CITY <b>Melville</b>	STATE <b>NY</b>	POSTAL CODE <b>11747</b>	COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

**Bomag BC 572 Landfill Compactor**

SN: \_\_\_\_\_

5. ALTERNATIVE DESIGNATION (if applicable): ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING

6. ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable] 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional] ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2

8. OPTIONAL FILER REFERENCE DATA



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## BILLING INFORMATION

Please indicate below how you would like us to bill you for the lease payments due under this Agreement, including a contact name, if applicable:

Contact Name: \_\_\_\_\_

Company: \_\_\_\_\_

Street Address or Box #: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

County: \_\_\_\_\_

Telephone: \_\_\_\_\_ (       ) \_\_\_\_\_

Fax: \_\_\_\_\_ (       ) \_\_\_\_\_

Email Address: \_\_\_\_\_

**CUSTOMER IDENTIFICATION PROGRAM  
ORGANIZED ENTITY**

Notice: To help the government fight the funding of terrorism and money laundering activities, U.S. Federal law requires financial institutions to obtain, verify and record information that identifies each person (individuals or businesses) who opens an account. What this means for you: When you open an account or add any additional service, we will ask you for your name, address, federal employer identification number and other information that will allow us to identify you. We may also ask to see other identifying documents.

---

CUSTOMER NAME: City of Kingsville

**CUSTOMER IDENTIFICATION**

Taxpayer ID Number: **74-6001513**

Business Structure (check one): City Government: \_\_\_\_\_ County Government: \_\_\_\_\_ Tax District: \_\_\_\_\_ Corporation: \_\_\_\_\_

Other, description: \_\_\_\_\_

We may request certified copies of your organizational documents as part of the identification procedure.

**PRIMARY ADDRESS AND REGISTRATION**

Address: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

State of Registration/Organization: \_\_\_\_\_

**MAILING ADDRESS (if different from above)**

Address: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Acknowledgment: The information contained herein is true and correct.

**City of Kingsville**

By: \_\_\_\_\_  
Vince Capell

Its: City Manager

## Internal Escrow Letter

October 23, 2012

Sovereign Bank, N. A.  
3 Huntington Quadrangle, Suite 101N  
Melville, NY 11747

Re: Lease Purchase Agreement dated **November 5, 2012** (the "Lease") by and between **City of Kingsville** ("Lessee") and **Leasing 2, Inc.** ("Lessor"), concurrently assigned to **Sovereign Bank, N.A.** ("Assignee").

Ladies and Gentlemen:

We have entered into the above referenced Lease for the purpose of financing a **landfill compactor** (the "Equipment") in the amount of **\$414,191.00** (the "Financed Amount"). Lessee hereby requests that Assignee retain \$\_\_\_\_\_ (the "Retained Amount"). Lessee further requests that Assignee hold the Retained Amount in an internal escrow pending Assignee's receipt of confirmation from Lessee that the Equipment has been delivered, inspected and accepted for all purposes by the Lessee and that payment can be remitted to the vendor of such Equipment. There will be no separate escrow fee charged Lessee for internally escrowing the Retained Amount.

Lessee understands and agrees that interest shall accrue on the entire Financed Amount as of the date hereof, and further understands and agrees that any interest earned on the Retained Amount shall be paid to Assignee in consideration of managing the internal escrow account.

Lessee acknowledges that Assignee may commingle the Retained Amount held by Assignee for the benefit of Lessee with other funds held by Assignee for its own account, so long as Assignee maintains segregation of such amounts on the books and records of Assignee.

Sincerely,

LESSEE: **City of Kingsville**

By: \_\_\_\_\_  
Vince Capell

Title: City Manager

Date: \_\_\_\_\_

# **AGENDA ITEM #7**



# Purchasing Department

361-595-8025  
361-595-8035 Fax

DATE: October 25, 2012  
TO: City Commission through City Manager  
FROM: David Mason, Purchasing/IT Director  
SUBJECT: Pro-Patch

## SUMMARY

This item authorizes the purchase of a **Pro-Patch** TCM 425-80-DHE per specifications.

## BACKGROUND

The **Pro-Patch** will be mounted on the chassis currently occupied by the Dura Patcher and the Dura Patcher will then be mounted on a trailer so we will now have two machines to assist in the patching of asphaltic streets.

## RECOMMENDATION

The **Pro-Patch**, manufactured in Jacksonville, TX, is available through H.D. Industries, Inc. under BuyBoard contract #358-10, satisfying Texas public procurement bidding statutes.

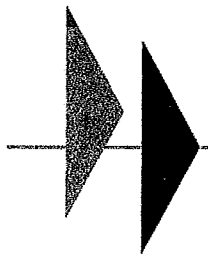
## FINANCIAL IMPACT

The purchase will expend \$67,520.86 from 001-5-305.0-712.00 of which \$70,000 is budgeted for this purpose.

Approved

---

Vince Capell, City Manager



# H.D. Industries, Inc.

*Pro-Patch Pothole Patcher*

P.O. Box 8250 / Jacksonville, TX 75766 / (903) 586-6126 / [www.pro-patch.com](http://www.pro-patch.com)

August 24, 2012

City of Kingsville  
Attn: Art Perez  
Fleet Supervisor  
1300 E. Carrol  
Kingsville, TX 78363

Dear Mr. Perez:

I have enclosed specifications and the following quote for the **Pro-Patch** Asphalt Pothole Patcher. This unit is available at the following price under our Buy Board Proposal #358-10.

1. Basic Model TCM 425-80-DHE.....	\$ 41,705.00
2. Secondary Auger Motor .....	1,260.00
3. 1.0 Cubic yard 36" wide, 2/3 Spoils Bin .....	1,795.00
4. Wacker WP1550AW Compactor Plate .....	2,290.75
5. Hydraulic Rear Lift Platform with Pavement Breaker Mount.....	2,470.00
6. Stanley BR72 Pavement Breaker .....	2,781.59
7. Hydraulic Tool Line Hose Reel .....	1,260.00
8. Hydraulic Bi-Fold Steel Fold Top Doors .....	2,793.00
9. Diesel Fuel Hose Reel with 20 Ft. Hose .....	332.50
10. 10 Gallon Drip & Waste Oil Tank .....	332.50
11. 10 Gallon Water Tank with Rust Proof Liner .....	332.50
12. 50 Gallon Frame Mounted LP Gas Bottle .....	1,282.50
13. Wanco WSBAL-14 Directional Arrow Board .....	1,757.50
14. Meteorlight SY2000 Strobe Light .....	289.75
15. 18" Work Deck.....	902.50
16. Two (2) Asphalt Lute/Shovel Holders @ 100.00 each .....	200.00
17. Muncie or Chelsea Hot Shift PTO .....	1,963.70
18. Electronic Engine Throttle Control .....	362.07
19. Move rear axle back 18", extend drive line, and add another carrier bearing .....	<u>1,200.00</u>
Sub total .....	\$ 65,310.86
Delivery and two (2) days training .....	<u>\$1,510.00</u>
<b>Total for Pothole Patcher.....</b>	<b>\$66,820.86</b>

If we pick the truck up and bring it to our shop, please add..... \$700.00

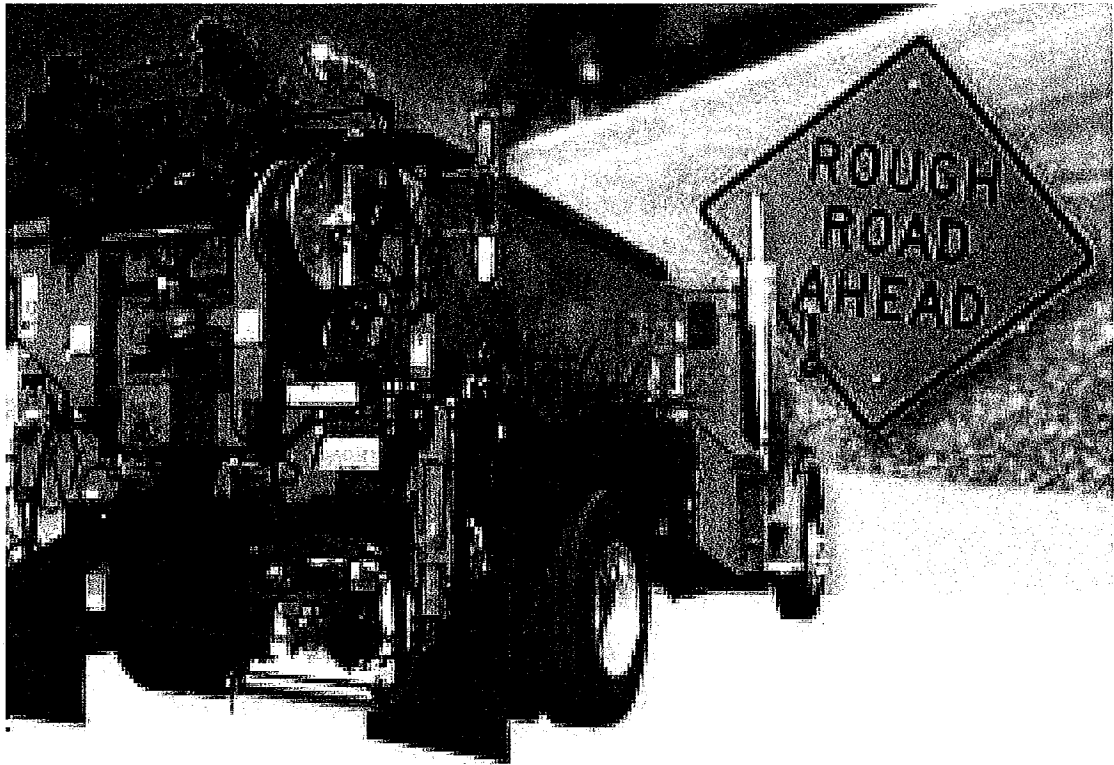
You may contact the Buy Board at 800-695-2919 or their web site – [www.buyboard.com](http://www.buyboard.com).

I hope this information is helpful to you and I look forward to the possibility of working with you. If you have any questions or need any additional information, please feel free to give me a call at 1-800-256-6126.

Sincerely,

*Harold Dillingham*

Harold Dillingham  
President



# **AGENDA ITEM #8**



**ORDINANCE NO. 2012-**

**AN ORDINANCE AMENDING THE FISCAL YEAR 2012-2013 BUDGET FOR SOLID WASTE TO PURCHASE A LANDFILL COMPACTOR WITH DOZER BLADE.**

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

I.

BE IT ORDAINED by the City Commission of the City of Kingsville that the Fiscal Year 2012-2013 budget be amended as follows:

**CITY OF KINGSVILLE  
DEPARTMENT EXPENSES  
BUDGET AMENDMENT**

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

Asset

170.3 Solid Waste	Field Equipment	660.00		<u>414,191</u>	
				<u>414,191</u>	

Revenue

000-Non Departmental	Other Income-LF Lease Purchase	599.44	<u>414,191</u>		
			<u>414,191</u>		

[To record the purchase of one (1) Bomag BC-2 Landfill Compactor with Dozer Blade for the Landfill.]

---

II.

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

III.

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

IV.

THAT this Ordinance shall be codified and become effective on and after adoption and publication as required by law.

INTRODUCED on this the 5th day of November, 2012.

PASSED AND APPROVED on this the \_\_\_ day of \_\_\_\_\_, 2012.

EFFECTIVE DATE: \_\_\_\_\_

\_\_\_\_\_  
Sam R. Fugate, Mayor

ATTEST:

\_\_\_\_\_  
Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Courtney Alvarez, City Attorney



# Purchasing Department

361-595-8025  
361-595-8035 Fax

DATE: October 1, 2012  
TO: City Commission through City Manager  
FROM: David Mason, Purchasing/IT Director  
SUBJECT: Landfill Compactor

## **SUMMARY**

This item authorizes the purchase of one Bomag BC-2 Landfill Compactor with Dozer Blade for the Landfill..

## **BACKGROUND**

The current compactor is at the end of its useful life and the cost of remanufacturing of the current model is equivalent to purchase of a new one.

## **RECOMMENDATION**

We believe the best value for the City is a Bomag BC-2 Landfill Compactor with Dozer Blade through Anderson Machinery under the Buy Board contract # 345-10.

## **FINANCIAL IMPACT**

The Bomag BC-2 is \$414,191 and can be leased for 5 years/60 months at an interest rate of 2.69% for \$88,480.46 annual payments for a total of \$442,402.30; or 7 years/84 months at an interest rate of 2.87% for \$65,242.37 annual payment for a total of \$456,696.59.

Approved

---

Vince Capell, City Manager

# **AGENDA ITEM #9**

**RESOLUTION # 2012-\_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SETTLEMENT AGREEMENT WITH AEP TEXAS CENTRAL COMPANY; REPEALING ALL CONFLICTING RESOLUTIONS AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Kingsville and AEP Texas Central Company ("AEP") have performed an inventory of the street lights in the city served by AEP; and

**WHEREAS**, AEP has concluded their calculation using the inventory for the last few years and arrived at an amount that appears equitable to the City; and

**WHEREAS**, the parties desire to resolve potential claims arising from the inventory; and

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

I.

**THAT** the City Manager is authorized and directed as an act of the City of Kingsville, Texas to enter into a Settlement Agreement with AEP Texas Central Company in accordance with Exhibit A hereto attached and made a part hereof.

II.

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

III.

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

**PASSED AND APPROVED** by a majority vote of the City Commission on the 5<sup>th</sup> day of November, 2012.

\_\_\_\_\_  
Sam R. Fugate, Mayor

**ATTEST:**

\_\_\_\_\_  
Mary Valenzuela, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Courtney Alvarez, City Attorney

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") executed and made effective this \_\_\_ day of \_\_\_\_\_, 2012 ("Effective Date") is by and between **THE CITY OF KINGSVILLE** ("Kingsville") and **AEP TEXAS CENTRAL COMPANY** ("AEP") (individually, the "Party", and collectively, the "Parties").

This Agreement, once fully implemented, will resolve any and all claims or causes of action that Kingsville may have against AEP or any of its affiliates, directors, officers or employees related directly or indirectly to street lighting services provided by AEP to Kingsville on or before September 14, 2012, including without limitation claims related to transmission and distribution charges and electric energy charges associated with such street lighting services, regardless of whether such charges originated with AEP or with Kingsville's retail electric provider(s). Street Light Services covered by this agreement are for the follow ESI's:

10032789405435691
10032789405435693
10032789405435692
10032789469089430
10032789432782021
10032789460167210
10032789487552400
10032789468737989
10032789474166075

1. **Acceptance of Inventory.** AEP completed a street light facilities inventory on September 14, 2012 that identified all AEP facilities that were used to provide street lighting services to Kingsville as of that date. A copy of that inventory (attached to an e-mail to Kingsville on 9/17/2012) has been provided to Kingsville (the "Inventory") and is incorporated herein by this reference. The Parties have accepted that Inventory and have used it as the basis for billing for street lighting service provided by AEP to Kingsville, beginning with the September 14, 2012 billing.
2. **Billing Adjustment.** In settlement of any billing discrepancies (both base rate and energy, including interest) that may have occurred related to street lighting services provided by AEP to Kingsville on or before the September 14, 2012 billing, AEP has agreed to pay, and Kingsville has agreed to accept, the sum of \$104,831.86 (the "Settlement Payment"). AEP will pay that amount to Kingsville within fifteen (15) days of the Effective Date of this Agreement.
3. **General Release by Kingsville.** *Subject to receipt of the Settlement Payment set forth above, Kingsville hereby covenants not to sue, and to fully, finally, and forever generally RELEASE and FOREVER DISCHARGE, AEP and its current and former directors, officers, shareholders, employees, parent companies, subsidiaries and affiliates, (collectively, the "Released Parties") from any and all claims, liabilities, damages, suits*

*(whether at law or in equity) costs, expenses, and/or causes of action of whatever kind or character, that Kingsville has or may have against any of the Released Parties arising out of, in any way relating to, or in connection with AEP street lighting service provided to Kingsville on or before September 14, 2012. The Parties further understand and agree that this Agreement is intended to settle and resolve any refund obligations that Kingsville's retail electric providers may have relating to, or in connection with AEP electric street lighting service provided to Kingsville; and, subject to receipt of the Settlement Payment set forth above, Kingsville hereby covenants not to assert claims against, or to sue, its retail electric providers for any base rate or energy charges associated with such street lighting service. Kingsville acknowledges that upon its receipt of the Settlement Payment set forth above, AEP will be fully subrogated to any claims that Kingsville may have against its retail electric providers for base rate or energy charges associated with such street lighting service, and Kingsville hereby assigns such claims to AEP. In the event Kingsville's retail electric providers assert claims against, or sue, AEP for any base rate or energy charges associated with such street lighting service, Kingsville will, if requested by AEP, fully cooperate with AEP in defending against such claims.* Kingsville expressly warrants and represents that: (i) it is the lawful owner of all claims herein released; (ii) it has full power and express authority to settle and release such claims as set forth in this Agreement; (iii) it has not made any assignment or transfer of such claims, including but not limited to assignment or transfer by subrogation or by operation of law; (iv) it is not relying upon any statements, understandings, representations, expectations, or agreements other than those expressly set forth in this Agreement; (v) it is represented and has been advised by counsel in connection with this Agreement, which Kingsville executes wholly voluntarily and of its own choice, after consultation with such counsel; and (vii) it has made its own investigation of the facts and is relying solely upon its own knowledge and the advice of its counsel. Kingsville agrees and stipulates that AEP is relying upon these representations in entering into this Agreement. These representations shall survive the execution of this Agreement.

4. **Effects of Settlement.** It is expressly understood and agreed that the terms hereof are contractual and not merely recitals, and that the agreements contained herein and the consideration transferred are to compromise doubtful and disputed claims and to buy peace, and that payments made, or releases or other consideration given, shall not be construed as an admission of liability by those hereby released, all liability being expressly denied.
5. **Confidentiality.** To the extent permitted by law, both parties agree to maintain the confidentiality of the terms of this Agreement by limiting disclosure of its terms to only its attorneys and other representatives working for it who have a legitimate need to know such information, and provided that each person to whom such information is disclosed agrees, prior to disclosure, to maintain the confidentiality of such information in accordance with the terms of this Agreement. If either party (or its attorneys or other representatives to whom such information has been provided) is requested to disclose the terms of this Agreement and such disclosure is required in order to comply with applicable law (including but not limited to the Texas Open Meetings Act and Texas Public Information Act, Chapters 551 and 552, Texas Government Code) then that party will provide written notice to the other party in a reasonable and timely manner to enable that party to object to such production.

6. **Expenses.** All costs of court, litigation expenses, and attorneys' fees shall be borne by the party incurring same, except to the extent such costs relate to a non-defaulting Party's efforts to enforce the terms of this Agreement against a Party in default of its obligations.
7. **Authority of Parties.** Each person executing this Agreement represents that she or he is authorized to sign this Agreement on behalf of the Party represented.
8. **Governing Law.** This Agreement shall be exclusively governed by and construed according to the laws of the State of Texas except that any conflicts of law rule requiring reference to the laws of another jurisdiction shall be disregarded.
9. **Further Assurances.** The Parties agree that they shall, from time to time, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered to the other Party instruments, agreements, lien waivers, releases, and other documents as each Party shall reasonably request in order to further evidence the releases and other covenants described in this Agreement. The Parties further agree that the releases contracted herein shall be broadly and comprehensively construed.
10. **Entire Agreement.** This Agreement contains and constitutes the entire agreement and understandings of the Parties and supersedes as of the Effective Date all prior negotiations, discussions, undertakings or agreements of any sort whatsoever, whether oral or written, or any claims that might have ever been made by one Party against any opposing Party. There are no representations, agreements, or inducements except as set forth expressly and specifically in this Agreement.
11. **Amendments in Writing.** This Agreement may only be amended or modified by a written instrument that has been executed by the Parties and that unequivocally indicates the Parties' intention to modify this Agreement. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend or modify any provision of this Agreement.
12. **No Author.** All terms and provisions of this Agreement, and the drafting of this Agreement, have been negotiated by the Parties at arm's length and to mutual agreement, with consideration by and participation of each, and no party shall be deemed the scrivener of this Agreement.
13. **Captions and Headings.** The Parties agree that the captions and headings contained in this Agreement are for convenience only and shall not be deemed to constitute a part of this Agreement.
14. **No Waiver.** The failure by either Party to this Agreement to enforce at any time, or for any period of time, any one or more of the terms or conditions of this Agreement or a course of dealing between the Parties, shall not be a waiver of such terms or conditions or of such Party's right thereafter to enforce each and every term and condition of this Agreement.



15. **Severability**. If any provision hereof is invalid or unenforceable, then, to the fullest extent permitted by law, the other provisions hereof shall remain in full force and effect and there shall be deemed substituted for the provision at issue a valid, legal, and enforceable provision as similar as possible to the provision at issue in order to carry out the intentions of the Parties hereto as nearly as may be possible.

**AEP TEXAS CENTRAL COMPANY:**

**THE CITY OF KINGSVILLE:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

# **AGENDA ITEM #10**

# CITY OF KINGSVILLE



P. O. BOX 1458 – KINGSVILLE, TEXAS 78364

October 1, 2012

Vince Capell  
City Manager  
City of Kingsville  
P.O. Box 1458  
Kingsville, Texas 78364

Re: Consider waiving interest on Weed Liens  
Property owned by Pedro P. Talosig Jr.  
Lot PT3, A3, Block 21, Chandler Acres

Lien # 1	Vol. 358 Page 458, filed 3/27/07	principal \$ 870.12 + interest \$ 391.54 = \$1,261.66
Lien # 2	Vol. 384 Page 770, filed 2/26/08	principal \$2,282.84 + interest \$ 818.70 = \$3,101.54
Lien # 3	Vol. 402 Page 277, filed 11/20/08	principal <u>\$ 930.96</u> + interest <u>\$ 358.71</u> = <u>\$1,289.67</u>
		\$4,083.72                      \$1,568.95      \$5,652.87

Mr. Capell,

Mr. Pedro P. Talosig Jr. is requesting the City waive the Weed Lien Interest accrued on the property he owns located at Lot PT3, A3, Block 21, Chandler Acres. There are three (3) separate Weed Lien filed against the property. The liens have been numbered Lien # 1, Lien # 2, and Lien # 3 for reference purposes of this letter. Lien #1 covers work performed on 09/16/2005 and 01/11/2005 by the City, Lien # 2 covers work performed on 03/1/2006, 08/23/2006, and 10/19/2007 by the City, and Lien # 3 covers work performed on 12/3/2003, 01/11/2005, and 04/30/2008 by the City.

If the Commission were to approve the waiver of interest in the amount of **\$1,568.95**, Mr. Pedro P. Talosig Jr. would be required to pay the principal amount of **\$4,083.72** within 30 days after the Commission approval date for the waiver of interest to be effective.

Sincerely,

Mark A. Rushing