

City of Kingsville, Texas

AGENDA CITY COMMISSION

**MONDAY, SEPTEMBER 8, 2014
REGULAR MEETING**

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

I. Preliminary Proceedings.

OPEN MEETING

INVOCATION / PLEDGE OF ALLEGIANCE – (Mayor Fugate)

MINUTES OF PREVIOUS MEETING(S) – Required by Law

NONE

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

1. NONE

III. Reports from Commission & Staff.² (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, **HISTORICAL SURVEY PRESENTATION**. No formal action can be taken on these items at this time."*

IV. Public Comment on Agenda Items.³

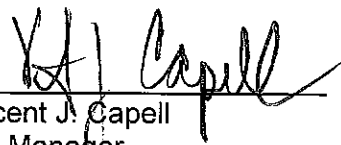
1. Comments on all agenda and non-agenda items.

V.

Consent Agenda

Notice to the Public

APPROVED BY:



Vincent J. Capell
City Manager

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being discussed separately unless requested by a Commission Member in which event the item or items will immediately be withdrawn for individual consideration in its normal sequence after the items not requiring separate discussion have been acted upon.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 resolution authorizing the release of Chapter 59 funds of the Kingsville Specialized Crimes and Narcotics Task Force for donation to the Douglass Youth Center. (Task Force Commander).
2. Motion to consider resolution authorizing the City Manager to enter into a second Temporary Commercial Wifi Site Lease Agreement between the City of Kingsville and Riviera Telecommunications. (Director of Purchasing & IT).

REGULAR AGENDA

CONSIDERATION OF MOTIONS, RESOLUTIONS, AND ORDINANCES:

VI. Items for consideration by Commissioners.⁴

3. Consider a resolution authorizing the Mayor to enter into an Interlocal Agreement between Kleberg County and the City of Kingsville for the Parks within the city limits. (City Manager).
4. Consider a resolution authorizing the Mayor to enter into an Interlocal Agreement between Kleberg County and the City of Kingsville for the L.E. Ramey Golf Course. (City Manager).
5. Consider introduction of an ordinance adopting the City Manager's Budget, as amended, of the City of Kingsville, Texas, and appropriating funds for the fiscal year beginning October 01, 2014 and ending September 30, 2015 in the particulars hereinafter stated. (Director of Finance).
6. Consider introduction of an ordinance establishing and adopting the ad valorem tax rate for all taxable property within the City of Kingsville, Texas for the Fiscal Year beginning October 01, 2014 and ending September 30, 2015, distributing the tax levy among the various funds, and providing for a lien on real and personal property to secure the payment of taxes assessed. (Director of Finance).
7. Consider introduction of an ordinance amending the City of Kingsville Code of Ordinances by amending Chapter III, Article 7, Personnel Policies. (Director of Human Resources).
8. Consider introduction of an ordinance ratifying classifications and prescribing the number of positions in such classifications for the classified service in the Police Department by removing one new officer position due to end of grant requirements. (Director of Human Resources).

9. Consider introduction of an ordinance amending the Code of Ordinances of the City of Kingsville, Texas, Article IX "General Regulations", Chapter 9 "Smoking Regulations" by adding Sections 40-43, "E-Cigarette, Electronic Cigarette, and Liquid Nicotine Regulations", for the purpose of prohibiting the sale and distribution of electronic cigarettes and liquid nicotine to minors and prohibiting the use and possession of electronic cigarettes and liquid nicotine by minors; providing a severability clause; providing for a penalty fine not to exceed the sum of five hundred (\$500.00) dollars for each offence. (Chief of Police).

VII. Adjournment.

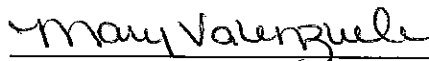
1. No person's comments shall exceed 5 minutes. Cannot be extended by Commission.
2. No person's comments shall exceed 5 minutes without permission of majority of Commission.
3. Comments are limited to 3 minutes per person. May be extended or permitted at other times in the meeting only with 5 affirmative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

NOTICE

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

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

September 4, 2014 at 5:00 P.M. and remained so posted continuously for at least 72 hours proceeding 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)

CONSENT AGENDA

AGENDA ITEM #1

RESOLUTION # 2014-_____

A RESOLUTION OF THE CITY OF KINGSVILLE AUTHORIZING THE RELEASE OF CHAPTER 59 FUNDS OF THE KINGSVILLE SPECIALIZED CRIMES AND NARCOTICS TASK FORCE FOR DONATION TO THE DOUGLASS YOUTH CENTER.

WHEREAS, the Texas Code of Criminal Procedure, Article 59.06(h) allows for the release of Chapter 59 funds for nonprofit programs for the prevention of drug abuse;

WHEREAS, the Douglass Youth Center is a non-profit organization part of whose mission is to provide educational assistance to youths and to work to turn the tide against drug and alcohol abuse in the Kingsville community by making a positive statement to our young people about living a drug-free and alcohol-free lifestyle; and

WHEREAS, the Douglass Youth Center intends to provide drug abuse/prevention programs at their facility;

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

I.

THAT the City Commission authorizes the Kingsville Specialized Crimes and Narcotics Task Force to assist with a \$5,000.00 donation to the Douglass Youth Center to help educate young people about living a drug-free and alcohol-free lifestyle and comply with any reporting requirement the Task Force may designate.

II.

THAT local elected representatives shall be encouraged to promote, endorse, and support the Douglass Youth Center for the benefit of the community.

PASSED AND APPROVED by a majority vote of the City Commission on the 8th day of September, 2014.

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

Courtney Alvarez, City Attorney



**KINGSVILLE SPECIALIZED CRIMES
AND NARCOTICS TASK FORCE**

**P. O. BOX 213
KINGSVILLE, TEXAS 78364
tfadmin@kingsvilletaskforce.com
(361) 595-5778
Fax (361) 595-5781**



received
8/29/2014

August 28, 2014

Mr. Vincent J. Capell
City Manager
City of Kingsville, Texas

Mr. Capell,

The Kingsville Specialized Crimes & Narcotics Task Force has received a Chapter 59 donation request from the Douglass Youth Center in Kingsville. This organization has submitted an application to the Task Force and the request has been approved by me.

The Kingsville Task Force's 2013/2014 Annual Budget was approved with a total of \$30,000.00 allocated in the Donation's line item (5-233.0-314.55). Five previous donation requests of \$5,000.00 each have been approved and distributed to local organizations by the Kingsville Task Force. The above organization will receive a \$5,000.00 donation resulting in an account balance of \$0.00 remaining in the above line item.

If you approve this request, can it be placed on the Regular City's Commissioners Court Agenda for Monday September 08, 2014? Your kind consideration to this request will be greatly appreciated.

Sincerely,

Guillermo "Willie" Vera, Commander
Kingsville Specialized Crimes & Narcotics Task Force

Attachments

**KINGSVILLE SPECIALIZED CRIMES
AND NARCOTICS TASK FORCE
APPLICATION FOR CHAPTER 59 DONATION**

1. APPLICANT'S

NAME Douglass Youth Center, Inc. **ADDRESS** 902 Martin Luther King Blvd. **PHONE** 361-675-0200

2. ORGANIZATION'S

NAME Douglass Youth Center **ADDRESS** 902 Martin Luther King Blvd. **PHONE** 361-592-3559

- 3. NARRATIVE:** Explain what will be done with the contribution to insure compliance with the disposition of forfeited property under Chapter 59 of the Texas Code of Criminal Procedure and the number of citizens it will affect in our community.

Funds will be utilized to promote drug prevention and awareness activities, events, supplies, and programs at the center, as well as for the 2014 Miss Kingsville Pageant to be held November 9. The objective of the pageant is to encourage and promote community involvement, leadership skills, lead a drug free life, and to have positive interactions between the contestants and their peers, in order that each contestant will excel academically and become productive citizens in the 21st Century.

APPROVED:

Guillermo Vera, Cmdr.
Guillermo Vera, Commander

DATE:

8/22/14

TIME:

4 PM

From: Kathy

Date: 8/21/2014 8:13:36 AM

To: tfadmin@kingsvilletaskforce.com

Subject: FW: Applicant Criteria to request Donation of Chapter 59 Funds (Autosaved), Applicant Narrative for Chapter 59 Donation

FYI ☺

Kathy Rios
Administrative Assistant II
Kingsville Specialized Crimes & Narcotics Task Force
P.O.Box 213
Kingsville, TX 78364
361-595-5778 (Office)
361-595-5781 (Fax)
kathyrios@kingsvilletaskforce.com

From: Jeannette Price [<mailto:price.jeannette@gmail.com>]

Sent: Wednesday, August 20, 2014 11:26 PM

To: Kathy

Subject: Re: Applicant Criteria to request Donation of Chapter 59 Funds (Autosaved), Applicant Narrative for Chapter 59 Donation

Good Morning Kathy!

I hope all went well at the National Night Out event at the university. I saw the picture in the newspaper. It looks like you all had lots of fun.

I have attached a copy of the Chapter 59 Donation Application for the Douglass Youth Center.

We thank Commander Vera and the TASK Force in advance for your continued support of the Douglass Youth Center.

Jeannette Price
Board President
361-675-0200

On Thu, May 15, 2014 at 10:03 AM, Kathy <kathyrios@kingsvilletaskforce.com> wrote:
Good morning,

I believe that this is what you need to submit for your donation request. If you have any questions, please contact me.

Thank you.

Kathy Rios
Administrative Assistant II
Kingsville Specialized Crimes & Narcotics Task Force
P.O.Box 213

Kingsville, TX 78364
361-595-5778 (Office)
361-595-5781 (Fax)
kathyrios@kingsvilletaskforce.com

Your message is ready to be sent with the following file or link attachments:

Applicant Criteria to request Donation of Chapter 59 Funds (Autosaved)
Applicant Narrative for Chapter 59 Donation

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

KINGSVILLE SPECIALIZED CRIMES AND NARCOTICS TASK FORCE

Chapter 59 Donation Policy

1. A person/entity seeking a donation (financial assistance) through the Kingsville Specialized Crimes and Narcotics Task Force and with particularity Chapter 59 Forfeiture Funds shall file an application with the Commander on forms provided through his office.
2. The filing procedures shall be as follows:
 - a. Filing period. An application for financial assistance shall be filed with the Commander not less than 30 days or more than 60 days prior to the proposed donation.
 - b. The name, address and telephone number of the entity seeking a donation.
 - c. No more than one donation will be made per calendar year.
 - d. Applicant shall provide documentation relating to any other financial assistance that they receive for review by the Commander.
3. Applicant must meet one of the following criteria:
 - a. Nonprofit program for the prevention of drug abuse, applicant must provide a copy of the organization's charter.
 - b. Nonprofit chemical dependency treatment facilities licensed under Chapter 464, Health and Safety Code;
 - c. Nonprofit drug and alcohol rehabilitation or prevention programs administered or staffed by professionals designated as qualified and credentialed by the Texas Commission on Alcohol and Drug Abuse; or
 - d. Must be an organization that has the same beliefs and value system as the Kingsville Specialized Crimes and Narcotics Task Force and the law enforcement code of ethics.
 - e. Short written statement explaining what will be done with the contribution to insure compliance with the disposition of forfeited property under Chapter 59 of

the Texas Code of Criminal Procedure and the number of citizens it will affect in our community.

4. The Commander shall grant or deny a permit solely on the basis of the requirements stated in the aforementioned sections above. The Commander shall advise the organization's point of contact of the decision to grant or deny the request for contribution no later than the sixtieth day after date of receiving the completed application and all required attachments.

AGENDA ITEM #2

RESOLUTION #2014-_____

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SECOND TEMPORARY COMMERCIAL WIFI SITE LEASE AGREEMENT BETWEEN CITY OF KINGSVILLE AND RIVIERA TELECOMMUNICATIONS; REPEALING ALL CONFLICTING RESOLUTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Kingsville staff has met with representatives of Riviera Telecommunications regarding a temporary commercial wifi site lease agreement in temporarily install equipment on City property, which may lead to a longer term contract that the parties need more time to negotiate;

WHEREAS, the City has entered into similar wifi site lease agreements previously;

WHEREAS, the parties believe the agreement to be in the best interest of both parties.

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 Temporary Commercial Wifi Site Lease Agreement between the City of Kingsville and Riviera Telecommunications 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 _____ 8th day of _____ September _____, 2014.

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

Courtney Alvarez, City Attorney

TEMPORARY
COMMERCIAL WIFI SITE LEASE AGREEMENT

Between
City of Kingsville
And
Riviera Communications

This Lease (sometimes referred to herein as the "Agreement") is entered into between the **City of Kingsville, a municipal corporation in the State of Texas** (hereinafter referred to as the "Landlord"), and Riviera Communications (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, Landlord/City desires to provide Tenant with facilities for the temporary housing and operating certain communications equipment, including the installation of towers and antennas or antenna systems or personal wireless facilities; and

WHEREAS, Landlord/City owns the premises needed for the wireless system and desires to allow Tenant to enter and utilize said premises;

NOW, THEREFORE, for the consideration and on the terms and conditions hereinafter set forth, the parties agree as follows:

ARTICLE I

TERM

1.01 Term of Lease: The term of this lease is ninety (90) days, beginning on the date of execution of this Agreement, and ending on the same date ninety (90) days later, unless terminated sooner as provided in this lease.

1.02 Option to Extend Term: Tenant may not extend the terms of this lease beyond the expiration date provided in Section 1.01.

1.03 Right of Early Cancellation After Installation of Equipment: After the installation of Tenant's equipment on the premises, but prior to the expiration of forty-five (45) days from the date of execution of this Agreement, Tenant may cancel this Agreement, by providing thirty (30) days written notice to the Landlord, without obligation of additional rent or consideration beyond the time that all of Tenant's equipment has been removed from Landlord's premises, except that Tenant shall remain obligated pursuant to this Agreement for all other obligations or provisions to the Landlord until all of Tenant's equipment has been removed from the premises without incident.

ARTICLE II

RENT & TAXES

2.01 Fixed Rent: As consideration for this Agreement, Tenant shall pay Landlord one hundred dollars and no/10th (\$100) for each 90 day term commencing on the

date of activation of equipment to be located on Landlord's premises and during the entire remaining term of this Agreement. Payment shall be past due ten (10) days from payment due date. Interest on late payments shall accrue at ten percent (10%) per annum. If this Agreement is terminated at a time other than the last day of the year of the term for any reason other than a default by Tenant, all Rental Fees shall be prorated as of the date of termination and all prepaid Rental Fees shall be refunded to Tenant.

2.02 Taxes: Tenant agrees to pay all taxes, if any, which are assessed against Landlord due to the real property taxes attributable to Tenant's equipment or use of the Landlord's property and personal property improvements constructed or maintained by Tenant on or about Landlord's property; provided, however, Landlord shall use its best efforts to provide prior notification of any taxes for which Tenant is to be charged, so Tenant will have the opportunity to appear before the taxing authority and contest any assessment.

ARTICLE III

USE OF PREMISES

3.01 Tenant's Warranty Regarding Use: Tenant represents and warrants to Landlord that Tenant intends to use the premises for the installation and operation of a wireless transmission station including one electrical outlet or service and location for tenant's electrical backup power supply. Tenant's use of the property is restricted to those purposes specified in this section unless Tenant obtains Landlord's prior written consent to any change in use.

3.02 Compliance with Laws: Tenant may not use, or permit using the premises in any manner that results or constitutes a nuisance or for any illegal purpose. Tenant, at its own expense, will comply, and will cause its officers, employees, agents, and invitees to comply, with all applicable laws, ordinances, and governmental rules and regulations concerning the use of the premises including, but not limited to, Hazardous Materials Laws, and including the operation of Tenant's equipment located on the premises.

3.03 Right of Inspection: Tenant must permit Landlord and Landlord's agents, servants, and employees, access to the premises. Tenant may not restrict access to any part of the premises, and Tenant may not impose any conditions to access but does restrict and prohibit any activities relating directly to the Tenant's equipment.

3.04 Tenant's Right of Use: Tenant shall have the right to quiet enjoyment of the use of the leased premises, but will work cooperatively with Landlord, to minimize disturbance to Landlord's premises. The Tenant will have access to their equipment at all times for emergency repairs but the Tenant will make reasonable effort to do all non-emergency repairs and maintenance during normal business hours and in cooperation with the Landlord.

3.05 Tenant Installation and Clean Up of Equipment: Tenant shall initially install all necessary equipment on the premises during the normal and regular working hours of Landlord. During the installation, operation and clean-up of Tenant's equipment the Tenant will work cooperatively with Landlord, to minimize disturbance to said premises. At the cancellation or end of this Agreement, Tenant shall return the leased premises to the same original condition as the premises existed at the beginning of this Agreement.

3.06 Tenant Owns Equipment: Tenant shall at all times own the equipment Tenant installs on the leased premises.

3.07 Location: The premises to be provided by Landlord are situated on certain real property owned by the Landlord. Landlord authorizes the City Manager for the City of Kingsville to approve or disapprove the locations to which Tenant may install its equipment on Landlord's property.

ARTICLE IV

REPAIRS AND MAINTENANCE

4.0 Repairs and Maintenance by Tenant: Tenant will throughout the lease term and any extensions of it, at its own expense and risk, maintain that immediate area of the premises where Tenant's equipment is located in good order and condition, including but not limited to making all repairs and replacements necessary to keep the premises and improvements in that condition. All maintenance, repairs, and replacements required by this section must be performed promptly when required. Failure to comply with this provision may be considered a breach of this Agreement. Tenant shall be responsible for the installation of devices to protect the leased premises against lightning.

ARTICLE V

UTILITIES

5.0 Utility Charges: Landlord is responsible for all monthly electric utility charges used in and about the premises during the lease term, excluding hookup, maintenance and disconnect charges due to Tenant's needs at Landlord's property. Landlord will notify Tenant within 24 hours prior to the Landlord's intent to disrupt electrical service at a location upon which Tenant has a connection. Tenant will be responsible for any and all costs associated with all other utilities, including, but not limited to, natural gas hookups, maintenance and service, which is due to Tenant's operations at the Landlord's property. Landlord shall provide and grant to Tenant any easements necessary for the provision of electric, natural gas, and telephone hookup and service to Landlord's property and Tenant's equipment.

ARTICLE VI

ALTERATIONS, ADDITIONS, AND IMPROVEMENTS

6.0 Consent of Landlord: Tenant may not make any alterations, additions, or improvements to the premises without Landlord's prior written consent. Landlord may not unreasonably withhold consent for nonstructural alterations, additions, or improvements. Landlord will not intentionally use its property in such a manner as to cause harm to the operations of Tenant, and will not under any circumstances obstruct Tenant's antenna or backup power supply installed on the premises. Tenant shall submit to Landlord a detailed proposal for any such relocation of replacement facilities and any supplemental materials as may be requested, for Landlord's evaluation and written approval. Landlord agrees that such approval will not be unreasonably withheld, conditioned or delayed. A current and accurate site plan must be submitted to Landlord by Tenant and maintained on file with Landlord for the entire term of this Agreement and all renewals thereof.

ARTICLE VII

MECHANIC'S LIEN

7.0 Mechanic's Lien: Tenant will not permit any mechanic's lien to be placed on the premises or improvements on the premises. Tenant will promptly pay any mechanic's lien that is filed on the premises or on improvements located on the premises. If default in payment of the lien continues for 20 days after Landlord's written notice to Tenant, Landlord may, at its option, pay the lien or any portion of it without inquiring into its validity. Any amounts Landlord pays to remove a mechanic's lien caused by Tenant to be filed against the premises or improvements on them, including expenses and interest, are due from Tenant to Landlord and must be repaid to Landlord immediately on rendition of notice, together with interest at the highest rate allowed by law until repaid.

ARTICLE VIII

INDEMNITY

8.01 Property Insurance: Tenant is responsible for and, at its own expense during the lease term, insure against loss or damage by fire or theft or other casualty all improvements on the premises made by Tenant. Landlord shall not insure Tenant's property or be responsible for loss of same.

8.02 Hold-Harmless Clause: Tenant will defend indemnify and hold Landlord harmless against any claims, demands, damages, costs, and expenses, including reasonable attorney's fees for defending claims and demands, arising from the installation, clean-up, conduct or management of Tenant's business on the premises or its use of them; or from any act of negligence of Tenant, its agents, contractors, employees, subtenants, concessionaires, or licensees in or about the premises. If any action or proceeding is brought against Landlord by reason of any such claim, Tenant, on notice from Landlord, will defend the action or proceeding by counsel acceptable to Landlord.

ARTICLE IX

DAMAGE OR DESTRUCTION OF PREMISES

9.01 Notice to Landlord: If the premises, or any structures or improvements on them, are damaged or destroyed by fire, tornado, or other casualty, Tenant must immediately give Landlord written notice of the damage or destruction, including a general description of the damage including, but not limited to, structural damages, electrical damages, damages to fencing, irrigation systems or landscaping and, as far as known to Tenant, the cause of the damage. Tenant shall immediately notify Landlord of any and all damages resulting from, arising out of, or caused to the Landlord's property and property surrounding Landlord's property, including, but not limited to, structural damages, electrical damages, damages to fencing, irrigation systems or landscaping by Tenant's operations or by Tenant, its officers, agents, employees and invitees. Tenant shall be solely responsible for the costs and the repair of all such damages and such repairs and/or replacements shall be completed in a timely manner acceptable to Landlord.

9.02 Total Destruction: If the building on the premises is totally destroyed by fire, hurricane, tornado, or other casualty by other than the negligence, gross negligence, or intentional tort of Tenant or any person in or about the premises with Tenant's express or implied consent, or if it is so damaged that rebuilding or repairs cannot be completed within a reasonable period of time, this lease will terminate, and rent will be abated for the unexpired portion of this lease.

9.03 Partial Destruction: If the building or other improvements on the premises are damaged by fire, hurricane, tornado, or other casualty by other than the negligence, gross negligence, or intentional tort of Tenant or any person in or about the premises with Tenant's express or implied consent, but not to such an extent that rebuilding or repairs cannot reasonably be completed within thirty (30) working days, this lease will not terminate.

9.04 Electrical Interference: Tenant shall not cause electrical interference to Landlord at any time during or after installation or operation of Tenant's equipment. Moreover, Tenant's use will not in any way adversely affect or interfere with Landlord's signal operation or its communication system. Should such interference occur, Tenant will promptly take all steps necessary to correct such interference within ten (10) days' notice of the problem and, if such interference cannot be eliminated within thirty (30) days of such notice, Tenant shall suspend operations ("transmissions") at the site while the interference problems are studied and a means to eliminate the problem is found. Any such method for correction of an interference problem must be acceptable to both Landlord and Tenant. If the interference complained of cannot be eliminated, Tenant will cease its operations, remove all problem-causing equipment from the Landlord's property at that location, and this Agreement shall be terminated.

ARTICLE X

CONDEMNATION

10.0 Total Condemnation: If, during the lease term or any extension or renewal of it, the area where Tenant's equipment is located is taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or are sold to the condemning authority under threat of condemnation, this lease will terminate, and the rent will be abated during the unexpired portion of this lease, effective as of the date the condemning authority takes the premises.

ARTICLE XI

TERMINATION AND DEFAULT

11.01 Tenant's Default: If Tenant allows the rent to be in arrears more than fifteen (15) days after written notice of the delinquency, or remains in default under any other condition of this lease for thirty (30) days after written notice from Landlord, Landlord may, at its option, without notice to Tenant, terminate this lease, or, in the alternative, Landlord may reenter and take possession of the premises and the Tenant may remove all property without being considered guilty of any manner of trespass.

11.02 Landlord's Lien: If Tenant defaults in paying rent or any other sum due from Tenant to Landlord under this lease, Landlord has a lien on all fixtures, chattels, or other property of any description belonging to Tenant that are placed in or on, or become a part of, the premises as security for rent due and to become due for the remainder of the Current lease term and any other sum Tenant owes Landlord. This lien is not in lieu of, nor in any way affects the statutory landlord's lien but is in addition to that lien, and Tenant grants Landlord a security interest in all of Tenant's property placed in or on the premises for purposes of this contractual lien.

11.03 Waiver of Breach: Landlord waiving a breach of this lease by the other party does not constitute a continuing waiver or a waiver of any subsequent breach.

11.04 Termination for Cause: Upon the occurrence of any one or more of the events listed below (hereinafter an "Event of Default") and Tenant's failure to cure as provided in § 11.06, Landlord may, without penalty, at its option and without prejudice to any other remedy to which it may be entitled at law or equity, or otherwise under this Agreement, terminate use or occupancy under this Agreement at any time, either in whole or in part, by giving at least twenty (20) days' prior written notice thereof to Tenant with the understanding that all use of the Landlord's property being terminated shall cease upon the date specified on such notice. Tenant shall equitably compensate Landlord in accordance with the terms of this Agreement for the use of the Landlord's property prior to the date specified in such notice, following inspection and acceptance of same by Landlord. Tenant shall not, however, be entitled to any damages, including, but not limited to, lost or anticipated profits, should Landlord choose to exercise its option to terminate.

11.04.1 Upon expiration of this Agreement, or in the event of termination by Tenant, or in the event of termination of this Agreement by Landlord because an Event of Default remains uncured by Tenant after applicable cure periods have expired, Tenant shall remove its tower and/or equipment from the Landlord's property.

11.05 Event of Default: Such termination may be in whole or in part, and may be as provided elsewhere in this Agreement or upon the occurrence of any one or more of the following "Events of Default":

- a. In the event Tenant knowingly violates any provision of this Agreement; or
- b. In the event that termination is in the best interest of the public health, safety and welfare. This determination shall be within the sole but reasonable discretion of the City Commission of the City of Kingsville based upon reasonable evidence.
- c. In the event that Tenant fails to maintain the Landlord's property in a neat, orderly, and aesthetically acceptable condition.
- d. In the event Tenant (a) terminates or suspends its business, (b) becomes subject to any bankruptcy or insolvency proceeding under federal or state statute, (c) becomes insolvent or subject to direct control by a trustee, receiver or similar authority, or (d) has wound up or liquidated, voluntarily or otherwise.

11.06 Notice and Opportunity to Cure: Upon the occurrence of an Event of Default, a party shall deliver to the defaulting party a Notice of Intent to Terminate that identifies in detail the Event of Default. If the Event of Default remains uncured for fifteen (15) days after receipt of said notice, the party may terminate this Agreement and the license granted herein by delivering to the defaulting party a Notice of Termination that identifies the effective date of the termination, which date shall not be less than thirty (30) days after the date of delivery of the Notice of Intent to Terminate.

11.07 Primary Function of Landlord's Property: The parties understand and agree that the interests of Tenant are superseded by the public health, safety, and welfare of the citizens of the City of Kingsville. In the event that the City Commission or the Mayor of the City of Kingsville declares a public emergency caused by the operation of Tenant's equipment or of the Antenna Facilities or if there exists a threat caused by Tenant's Equipment Compound or Antenna Facilities that would detrimentally impact public health, safety and welfare such that immediate action is necessary, Tenant shall immediately remove its improvements from the Landlord's property or cease operation of the equipment or of the Antenna Facilities, as the case might be, upon receipt of written notice from Landlord. In the event that Tenant is not able to immediately respond, Landlord may remove Tenant's improvements without incurring any liability for damages of any type. Costs of removal and reattachment of improvements shall be borne by Tenant.

11.08 Temporary Removal of Improvements: If Tenant's tower, equipment, or antenna facilities must be temporarily removed, whether such removal is done pursuant to § 11.07 above or another reason, Tenant shall have the right to set up some other similar temporary structure approved by Landlord, on Landlord's property to allow Tenant to continue to provide commercial wireless internet service. Tenant may maintain its temporary structure for a period of thirty (30) days past the date of removal of improvements. To maintain the temporary antenna or other temporary structure for a period in excess of thirty (30) days, Tenant must obtain written approval from Landlord, such approval not to be unreasonably withheld or denied. If the Landlord's property are not in such condition as to be utilized by Tenant at the end of the initial thirty- (30) day period, Landlord may provide as many additional thirty- (30) day extensions for such temporary structures as are necessary to allow Tenant to continue its operations as authorized by this Agreement.

ARTICLE XII

INSPECTION BY LANDLORD

12.0 Inspection: Tenant will permit Landlord and its agents, representatives, and employees to enter the premises at all reasonable times for the purpose of inspection or any other purpose necessary to protect Landlord's interest in the premises or to perform Landlord's duties under this lease. Landlord will take reasonable efforts to notify Tenant, but may enter the Landlord's property without first notifying Tenant and take such emergency action as is required. In no event shall Landlord be liable for any expenses associated with its entry or for lost or anticipated profits. Tenant, at its expense and exclusive use, may use any and all reasonable and appropriate means of restricting access to the Tenant's equipment. If Tenant does not remove or protect any improvements made by Tenant after receipt of notice from Landlord of commencement of any emergency work pursuant to and in compliance with this Section, then Landlord shall not be liable for any damage to said improvements during emergency access to the Landlord's property.

ARTICLE XIII

NOTICES AND ADDRESSES

13.01 Notices and Addresses: All notices required under this lease may be given by the following methods:

By first class mail, addressed to the proper party, at the following addresses:

Landlord: City of Kingsville

P.O.Box 1458

Kingsville, Texas 78364

Contact: City Manager, Vincent J. Capell

Phone: 361-595-8002

Fax: 361-595-8035

Tenant: Riviera Communications

P.O. Box 997

Riviera, Texas 78379

Contact: V.P. of Operations, Billy Colston, III

Phone: 361-296-3232

Fax: 361-296-3125

Notices are effective when received and are deemed to be received three (3) days after the date of deposit in the United States mail. Either party may change the address to which notices are to be sent by sending written notice of the new address or number to the other party in accordance with the provisions of this section.

13.02 Parties Bound: This agreement binds, and inures to the benefit of, the parties to the lease and their respective heirs, executors, administrators, legal representatives, successors, and assigns when this agreement permits. Both Tenant and Landlord represent that they have full capacity and authority to grant all rights and assume all obligations they have granted and assumed under this Agreement.

13.03 Texas Law to Apply: This agreement is to be construed under Texas law, and all obligations of the parties created by this lease are performable in Kleberg County, Texas.

13.04 Legal Construction: If one or more of the provisions contained in this agreement are for any reason held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision of the agreement, which will be construed as if it had not included the invalid, illegal, or unenforceable provision. This Agreement is the product of negotiation between the parties hereto, and neither party shall be deemed to be the drafting party of this Agreement.

13.05 Prior Agreements Superseded: This agreement constitutes the parties' sole agreement and supersedes any prior understandings or written or oral agreements between the parties with respect to the subject matter.

13.06 **Amendment:** No amendment, modification, or alteration of this agreement is binding unless made in writing, dated subsequent to the date of this agreement, and duly executed by the parties.

13.07 **Rights and Remedies Cumulative:** The rights and remedies provided by this lease are cumulative, and either party's using any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

13.08 **Attorney's Fees and Costs:** If, as a result of either party's breaching this agreement, the other party employs an attorney to enforce its rights under this lease, then the breaching or defaulting party will pay the other party the reasonable attorney's fees and costs incurred to enforce the lease.

13.09 **Force Majeure:** Neither Landlord nor Tenant is required to perform any term or covenant in this lease so long as performance is delayed or prevented by *force majeure*, which includes acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within Landlord's or Tenant's control and that Landlord or Tenant's cannot, by exercising due diligence and paying money, prevent or overcome, in whole or part.

13.10 **Multiple Originals:** This Agreement may be executed in multiple originals.

13.11 **No Creation of Joint Venture or Partnership or Employment Relationship:** Nothing in this Agreement creates, nor shall be construed to create, a joint venture or partnership or employment relationship between the parties hereto and no third party may make such reliance. Tenant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of Landlord; that Tenant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between Landlord and Tenant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between Landlord and Tenant.

13.12 **Successors and Assigns:** Neither Landlord nor Tenant will assign, sublet, subcontract or transfer any interest in this Agreement without the written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of Landlord. Tenant shall not assign, sublet, subcontract, transfer or allow the use of any interest in the Landlord's property or any use of Tenant's facilities, including, but not limited to, equipment, lines or frequencies, on the Landlord's property without the prior written consent of Landlord. Landlord's consent may be conditioned upon Tenant successfully obtaining contracts from such third parties wherein those parties agree to directly compensate Landlord for all benefits incurred by the use of the Landlord's property.

The undersigned Landlord and Tenant execute this agreement on the _____ day of _____, 20____, in the City of Kingsville, Kleberg _____ County, Texas.

LANDLORD:

City of Kingsville

By: _____

Vincent J. Capell, City Manager

The undersigned Landlord and Tenant execute this agreement on the _____
day of _____, 20____, in the City of Kingsville, Kleberg County,
Texas.

TENANT:

Riviera Communications

By: _____

Billy Colston, III, V.P. Operations

REGULAR AGENDA

AGENDA ITEM #3

RESOLUTION # 2014-__

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN KLEBERG COUNTY AND THE CITY OF KINGSVILLE FOR THE PARKS WITHIN THE CITY LIMITS; REPEALING ALL CONFLICTING RESOLUTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Kingsville owns several parks within the city limits and Kleberg County owns several parks within the city limits, which have been operated under an interlocal agreement for the past several decades with the County having responsibility for the operation and maintenance of the parks;

WHEREAS, the City and County now desire to transfer operations and maintenance of all of the parks within the city limits from the County to the City;

WHEREAS, the County of Kleberg and the City of Kingsville have previously entered into interlocal agreements to share expenses for various departments for the residents of their respective entities; and

WHEREAS, these interlocal agreements were enacted to reduce duplicitous services and expenses from having each entity provide the same services; and

WHEREAS, the County and the City desire to see the continued operation of the parks within the city limits; and

WHEREAS, the County and the City believe the continued operation of the parks will improve the health and quality of life of the residents of their jurisdictions.

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

I.

THAT the City authorizes and directs the Mayor, as an act of the City of Kingsville, Texas, to enter into an Interlocal Cooperation Agreement Between Kleberg County and the City of Kingsville for the maintenance and operation of the parks within the city limits for continued use as a parks and recreation area.

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
_____ 8th day of _____ September , 2014.

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

Courtney Alvarez, City Attorney

**INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF KINGSVILLE, TEXAS
AND
THE COUNTY OF KLEBERG, TEXAS
FOR
PARKS WITHIN THE CITY LIMITS**

**STATE OF TEXAS §
 §
COUNTY OF KLEBERG §**

This Interlocal Cooperation Agreement made, entered into and executed by and between the County of Kleberg, a body and corporate and politic under the laws of the State of Texas (hereinafter referred to as "County") and the City of Kingsville, Texas, a home rule municipal corporation under the laws of the State of Texas (hereinafter referred to as "City"); pursuant to the Interlocal Cooperation Act, Texas Government Code Annotated Chapter 791.

WITNESSETH:

WHEREAS, the City of Kingsville owns several parks within the city limits and Kleberg County owns several parks within the city limits, which have been operated under an interlocal agreement for the past several decades with the County having responsibility for the operation and maintenance of the parks;

WHEREAS, the City and County now desire to transfer operations and maintenance of all of the parks within the city limits from the County to the City;

WHEREAS, the County of Kleberg and the City of Kingsville have previously entered into interlocal agreements to share expenses for various departments for the residents of their respective entities; and

WHEREAS, these interlocal agreements were enacted to reduce duplicitous services and expenses from having each entity provide the same services; and

WHEREAS, the County and the City desire to see the continued operation of the parks within the city limits; and

WHEREAS, the County and the City believe the continued operation of the parks will improve the health and quality of life of the residents of their jurisdictions, and

NOW, THEREFORE, in consideration of the premises and of the terms, provisions and mutual promises and covenants herein contained, the City and County mutually agree as follows:

1. Properties Covered.

A. Generally

This contract provides for acquisition, development, maintenance, operation and improvement of public parks within the city limits of the City of Kingsville, Kleberg County, Texas. It is the intent of the parties that this agreement shall apply to those properties which are specifically listed in Article I, Sections 2-4 which represent the current parks system as well as those properties which may be acquired and those improvements which may be constructed subsequent to this agreement.

B. City Property

The properties listed in Exhibit I and the improvements thereon are owned by the City of Kingsville. Such properties are to be located within the corporate limits of the City and are park properties to be used for public recreation. Exhibit I is incorporated in this agreement by reference.

C. County Property

The properties listed in Exhibit II and the improvements thereon are owned by the County of Kleberg. Such properties are located within the corporate limits of the City and are park properties to be used for public recreation. Exhibit II is incorporated into this agreement by reference.

D. Public Rights-of-Way

The properties listed in Exhibit III are located on public right-of-way within the corporate limits of the City. These properties and the improvements thereon have been developed to beautify the community. Exhibit III is incorporated into this agreement by reference.

2. RESPONSIBILITIES-PERSONNEL, EQUIPMENT, INSURANCE, ETC.

- A. The County agrees that it will transfer the operation and maintenance of the parks within the city limits to the City starting October 1, 2014, which includes the use and maintenance of the real property, buildings, fixtures, inventory, and equipment. The County will retain its ownership interest in the real property, buildings, fixtures, inventory, and equipment.
- B. The City agrees that it will accept responsibility for the operation and maintenance of the parks within the city limits starting October 1, 2014. The City will assume responsibility for any legally existing written agreements for services and any legally existing lease payments on equipment to be provided by the County for the operation and maintenance of the parks within the city limits.

- C. The City will provide employment opportunities for the County personnel employed to work at the parks within the city limits at the time of this agreement.
- D. The City shall have at its discretion the right to institute charges and fees for the use of the property and services covered by this agreement. Such charges shall, however, treat residents of the City and County equally. Any revenue derived from fees and charges shall be the property of the City.
- E. The City agrees to indemnify, defend and hold the County harmless from any and all causes of action related to the use, operation or maintenance of park facilities covered by this agreement for incidents occurring on and after October 1, 2014. The City further agrees to acquire and maintain insurance in the amounts required by law and to name the County as an additional insured party to said policies. The County will be liable for any audits, claims, assessments, or liabilities of any nature arising from incidents occurring prior to October 1, 2014.

3. Term of the Agreement

- A. This agreement shall be for a Primary Term of twenty (20) years beginning on October 1, 2014 and expiring on September 30, 2034.
- B. The City shall have the right to extend the term for up to two (2) additional ten (10) year periods (each an "Option Period") upon the same terms, conditions and provisions set out herein for the Primary Term. Each Option Period shall be deemed to be automatically exercised by City, unless City gives County written notice that City will not extend the Term, such notice to be given at least one hundred eighty (180) days prior to the expiration of the Primary Term with respect to the first Option Period, and at least one hundred eighty (180) days prior to the expiration of the Option Period then in effect with respect to the successive Option Periods thereafter.
- C. This Agreement may be terminated by City at any time with or without cause upon one hundred-eighty (180) days advance written notice.
- D. Any notice of termination shall be sent to the other party to this interlocal agreement at the address listed in paragraph 10 of this agreement.

4. Participant Funding

In consideration of the services provided by the City pursuant to this agreement, the County agrees to pay the City Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00) per year. The sum of Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00) shall be paid in equal monthly installments within the first fifteen (15) days of each month.

5. Complaints

In the event either party believes that the remaining party has not complied fully with the terms of this agreement, that party shall submit written notice stating fully the nature of the complaint. The remaining party shall have thirty (30) calendar days within which to correct the complaint. In the event the complaint is not corrected within thirty (30) days, the complaining party may request a joint meeting with the City and County Commissions to discuss the complaint and resolve the matter. In the event a joint meeting does not produce a resolution of the complaint, each party shall retain all legal rights, remedies and resources available to it prior to initiation of the complaint procedure.

6. Authorization for Funding

The City and the County each separately certify that payments made under this Agreement will be made from current revenues, and any future payments are subject to future appropriations. County appropriations are subject to verification and authorization by the County Auditor, pursuant to the attached form.

7. **Approval By Governing Bodies.** Each party represents that this Agreement has been duly passed and approved by the governing body of the party as required by the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code.
8. **Amendment Of Interlocal Agreement.** This Agreement may be amended at any time. Any amendment to this Agreement must be in writing, agreed to by the governing bodies of the parties, and signed by an authorized representative of the City and the County. No officer or employee of any of the parties has authority to waive or otherwise modify the limitations in this Agreement, without the express action of the governing body of the party.
9. **Severability.** If any portion of this agreement, or its application to any person or circumstance, is held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of this agreement shall not be affected and shall continue to be enforceable under the terms of this agreement.
10. **Notices.** Notices under this Agreement shall be addressed to the parties as indicated below, unless changed by written notice to such effect, and shall be effected when delivered or when deposited in the U.S. mail, postage prepaid, certified, return receipt requested.

City of Kingsville
Attn: City Manager
P.O. Box 1458
Kingsville, Texas 78364
Telephone: (361) 595-8002
Facsimile: (361) 595-8024

Kleberg County
Attn: County Judge
P.O. Box 752
Kingsville, Texas 78364
Telephone: (361) 595-8585
Facsimile: (361) 592-0838

11. **Performance/Governing Laws.** This agreement shall be performed in Kleberg County, Texas, and shall be governed by the laws of the State of Texas.
12. **Venue.** Venue for an action arising under this Agreement is in Kleberg County, Texas.
13. **Assignment.** This Agreement is binding upon and inures to the benefit of the parties to this Agreement and their respective successors and permitted assigns. This Agreement may not be assigned by any party without the written consent of all of the parties.
14. **Not For The Benefit Of Third Parties.** This Agreement and all activities under this Agreement are solely for the benefit of the parties and not the benefit of any third party.
15. **Effect Of Waivers.** No waiver by either party of any default, violation, or breach of the terms, provisions, and covenants contained in this Agreement may be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and covenants of this Agreement.
16. **Exercise Of Police Power.** This Agreement and all activities under this Agreement are undertaken solely as an exercise of the police power of the parties, exercised for the health, safety, and welfare of the public generally, and not for the benefit of any particular person or persons. The parties do not have and may not be deemed to have any duty to any particular person or persons.
17. **Validity And Enforceability.** If any current or future legal limitations affect the validity or enforceability of a provision of this Agreement, then the legal limitations are made a part of this Agreement and operate to amend this Agreement to the minimum extent necessary to bring this Agreement into conformity with the requirements of the limitations, and so modified, this Agreement continues in full force and effect.
18. **Warranty.** The individuals executing this agreement on behalf of each party represent and warrant that they are each the duly authorized representatives of such party on whose behalf the individuals are signing, each with full power and authority to bind said party to each term and condition set forth in this agreement.
19. **Immunities Not Waived.** Nothing in this Agreement waives any governmental, official, or other immunity or defense of any of the parties or their officers,

employees, representatives, and agents as a result of the execution of this Agreement and the performance of the covenants contained in this Agreement.

20. **Mutual Indemnification.** To the extent allowed by the Constitution and Laws of the State of Texas, County and City agree that each party assumes any and all risks of liability, loss, damages, claims, or causes of action and related expenses, including attorney fees, caused or asserted to have been caused directly or indirectly by or as the result of the negligent acts or omissions of that party and the officers, employees, and agents thereof.
21. **Captions.** Captions to provision of this Agreement are for convenience and shall not be considered in the interpretation of the provisions.
22. **Interlocal Cooperation Act Applies.** The parties enter into this Interlocal Agreement under the Texas Government Code Chapter 791 (Interlocal Cooperation Act). The parties agree that activities under this Agreement are "governmental functions and services" and that the parties are a "local government" as that term is defined in this Agreement and in the Interlocal Cooperation Act.
23. **Entire Agreement.** This Agreement represents the entire agreement between the parties and may not be modified by any oral agreements or understandings. Any amendments must be made in writing and signed by all parties, as provided in paragraph 5 of this agreement.
24. **Effective Date.** This Agreement is effective on the date when the last party executes this agreement.
25. **Multiple Originals.** Two (2) copies of this Agreement are executed; each shall be deemed an original.

EXECUTED on behalf of the County of Kleberg pursuant to an Order of the Kleberg County Commissioners Court authorizing such execution this _____ day of _____, 2014.

Juan M. Escobar
County Judge

ATTEST:

Stephanie G. Garza
County Clerk

APPROVED AS TO FORM:

Kira Talip
County Attorney

AUDITOR'S CERTIFICATE

I hereby certify that funds are available to the City to accomplish and pay the obligations of Kleberg County herein.

Melissa Munoz, County Auditor

EXECUTED by the City of Kingsville on the _____ day of September, 2014.

Sam R. Fugate
Mayor

ATTEST:

Mary Valenzuela
City Secretary

APPROVED AS TO FORM:

Courtney Alvarez
City Attorney

EXHIBIT I

1. Lots 17-30, Block 3 and Lots 17-32, Block 4, Fifth Addition (14th and Kenedy) a/k/a Kenedy Park.
2. All of Block 3, Ninth Addition (11th and Doddridge) a/k/a Flato Park.
3. Lots 1-32, Block 11, Tenth Addition (S. Armstrong and Caesar) a/k/a Thomson Park.
4. Lots 29-31, Block 5, Sims #2 and the area bordered by 12th Street, Santa Gertrudis Avenue, and Tranquitas Creek a/k/a Flores Park.
5. Plaza Colonia Mexicana Addition (6th and Avenue B) a/k/a Plaza Park.

EXHIBIT II

1. 2.52 acres out of Farm Lot 12, Section 6, KT&I (17th and Avenue B) a/k/a Brookshire I Park.
2. 3.00+ acres out of Farm Lot 10, Section 10, KT&I (20th and Kenedy) a/k/a Brookshire II Park.
3. Farm Lots 1, 2, 3, and 6, Section 32, KT&I and parts of Lots 4 and 5 North of Escondido Creek a/k/a Dick Kleberg Park.
4. All of Block 1, College Heights Addition (West Corral Street and 1st Street) a/k/a Corral Avenue Park*

*The City shall retain maintenance and operation of the Fire Department Training Tower if any located with Corral Avenue Park.

EXHIBIT III

1. West Santa Gertrudis Avenue Esplanade beginning at the 1100 Block of West Santa Gertrudis Avenue (intersection of Univ. Blvd. & Sta. Gert. Ave.) proceeding west to the intersection with King Avenue (S.H. 141).
2. University Boulevard Esplanade beginning at King Avenue (S.H. 141) and proceeding north to Santa Gertrudis Boulevard.
3. Palm trees within right-of-way of Sixth Street and U.S. 77 Business.
4. Vegetation within the right-of-way Park Street (100 South and 100-300 North Blocks).
5. All park areas shown and dedicated on the Lantana Park Subdivision as recorded in Volume 2, page 72 of the Map Records of Kleberg County except the area if any occupied by Fire Substation #2.
6. "Opal Cochran Park" located at the intersection of West Santa Gertrudis Avenue and Santa Rosa Avenue.

AGENDA ITEM #4

RESOLUTION # 2014-__

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN KLEBERG COUNTY AND THE CITY OF KINGSVILLE FOR THE L. E. RAMEY GOLF COURSE; REPEALING ALL CONFLICTING RESOLUTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the County of Kleberg and the City of Kingsville have previously entered into interlocal agreements to share expenses for various departments for the residents of their respective entities; and

WHEREAS, these interlocal agreements were enacted to reduce duplicitous services and expenses from having each entity provide the same services; and

WHEREAS, the County is currently responsible for the operation and maintenance of the L.E. Ramey Golf Course located just outside the city limits within the City's extraterritorial jurisdiction

WHEREAS, the County and the City desire to see the continued operation of the L.E. Ramey Golf Course within Kleberg County; and

WHEREAS, the County and the City propose that the City should take over responsibility for the operation and maintenance of the 534 acres the County currently maintains that includes the L.E. Ramey Golf Course and its surrounding land for its continued use as parks and recreation purposes, and

WHEREAS, the County and the City believe the continued operation of the golf course and surrounding area will improve the health and quality of life of the residents of their jurisdictions.

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

I.

THAT the City authorizes and directs the Mayor, as an act of the City of Kingsville, Texas, to enter into an Interlocal Cooperation Agreement Between Kleberg County and the City of Kingsville for maintenance and operation of the 534 acres of land the County is currently under contract with the U.S. Department of the Interior for which includes the L. E. Ramey Golf Course for continued use as a golf course and recreation area.

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
8th day of September, 2014.

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

Courtney Alvarez, City Attorney

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN
THE CITY OF KINGSVILLE
AND
KLEBERG COUNTY
FOR L. E. RAMEY GOLF COURSE**

This Interlocal Cooperation Agreement made, entered into and executed by and between the County of Kleberg, a body and corporate and politic under the laws of the State of Texas (hereinafter referred to as "County") and the City of Kingsville, Texas, a home rule municipal corporation under the laws of the State of Texas (hereinafter referred to as "City"); pursuant to the Interlocal Cooperation Act, Texas Government Code Annotated Chapter 791.

WITNESSETH:

WHEREAS, the County of Kleberg and the City of Kingsville have previously entered into interlocal agreements to share expenses for various departments for the residents of their respective entities; and

WHEREAS, these interlocal agreements were enacted to reduce duplicitous services and expenses from having each entity provide the same services; and

WHEREAS, the County and the City desire to see the continued operation of the L.E. Ramey Golf Course and surrounding area within Kleberg County; and

WHEREAS, the County is currently responsible for the operation and maintenance of the golf course and both the County and the City believe the continued operation of the course will improve the health and quality of life of the residents of their jurisdictions, and

WHEREAS, the County and the City propose that the City should take over responsibility for the operation and maintenance of the golf course and surrounding area, and

WHEREAS, the L. E. Ramey Golf Course and surrounding area are within the extraterritorial jurisdiction of the City; and

WHEREAS, the County and the City believe the continued operation of the parks will improve the health and quality of life of the residents of their jurisdictions, and

NOW, THEREFORE, the County and City, in consideration of these mutual covenants and agreements, agree as follows:

1. RESPONSIBILITIES-PERSONNEL, EQUIPMENT, INSURANCE, ETC.

- a. The County agrees that it will transfer the operation and maintenance of the golf course and surrounding property to the City starting October 1, 2014, which includes the use and maintenance of the real property, buildings, fixtures, inventory, and equipment. The County will retain its ownership interest in the real property, buildings, fixtures, inventory, and equipment.
- b. The City agrees that it will accept responsibility for the operation and maintenance of the golf course and surrounding property starting October 1, 2014. The City will assume responsibility for any legally existing written agreements for services and any legally existing lease payments on equipment to be provided by the County for the operation and maintenance of the golf course.
- c. The City will provide employment opportunities for the County personnel employed to work at the golf course at the time of this agreement.
- d. The City shall have at its discretion the right to institute charges and fees for the use of the property and services covered by this agreement. Such charges shall, however, treat residents of the City and County equally. Any revenue derived from fees and charges shall be the property of the City.
- e. The City agrees to indemnify, defend and hold the County harmless from any and all causes of action related to the use, operation or maintenance of golf course facilities covered by this agreement for incidents occurring on and after October 1, 2014. The City further agrees to acquire and maintain insurance in the amounts required by law and to name the County as an additional insured party to said policies. The County will be liable for any audits, claims, assessments, or liabilities of any nature arising from incidents occurring prior to October 1, 2014.

2. TERM AND RENEWAL.

- a. This agreement shall be for a Primary Term of twenty (20) years beginning on October 1, 2014 and expiring on September 30, 2034.
- b. The City shall have the right to extend the term for up to two (2) additional ten (10) year periods (each an "Option Period") upon the same terms, conditions and provisions set out herein for the Primary Term. Each Option Period shall be deemed to be automatically exercised by City, unless City gives County written notice that City will not extend the Term, such notice to be given at least one hundred eighty (180) days prior to the

expiration of the Primary Term with respect to the first Option Period, and at least one hundred eighty (180) days prior to the expiration of the Option Period then in effect with respect to the successive Option Periods thereafter.

- c. This Agreement may be terminated by City at any time with or without cause upon one hundred-eighty (180) days advance written notice.
- d. Any notice of termination shall be sent to the other party to this interlocal agreement at the address listed in paragraph 9 of this agreement.

3. **PARTICIPANT FUNDING.** In consideration of the services provided by the City pursuant to this agreement, the County agrees to pay the City Thirty-Five Thousand and No/100 Dollars (\$35,000.00) per year. The sum of Thirty-Five Thousand and No/100 Dollars (\$35,000.00) shall be paid in equal monthly installments within the first fifteen (15) days of each month. After the first two years of this agreement, the City will set aside three percent (3%) of the revenues after taxes received at the golf course to be placed in a golf course capital maintenance fund.

4. **AUTHORIZATION FOR FUNDING.**

The City and the County each separately certify that payments made under this Agreement will be made from current revenues, and any future payments are subject to future appropriations. County appropriations are subject to verification and authorization by the County Auditor, pursuant to the attached form.

5. **COMPLAINTS.** In the event either party believes that the remaining party has not complied fully with the terms of this agreement, that party shall submit written notice stating fully the nature of the complaint. The remaining party shall have thirty (30) calendar days within which to correct the complaint. In the event the complaint is not corrected within thirty (30) days, the complaining party may request a joint meeting with the City and County Commissions to discuss the complaint and resolve the matter. In the event a joint meeting does not produce a resolution of the complaint, each party shall retain all legal rights, remedies and resources available to it prior to initiation of the complaint procedure.
6. **APPROVAL BY GOVERNING BODIES.** Each party represents that this Agreement has been duly passed and approved by the governing body of the party as required by the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code.
7. **AMENDMENT OF INTERLOCAL AGREEMENT.** This Agreement may be amended at any time. Any amendment to this Agreement must be in writing, agreed to by the governing bodies of the parties, and signed by an authorized

representative of the City and the County. No officer or employee of any of the parties has authority to waive or otherwise modify the limitations in this Agreement, without the express action of the governing body of the party.

8. **SEVERABILITY.** If any portion of this agreement, or its application to any person or circumstance, is held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of this agreement shall not be affected and shall continue to be enforceable under the terms of this agreement.
9. **NOTICES.** Notices under this Agreement shall be addressed to the parties as indicated below, unless changed by written notice to such effect, and shall be effected when delivered or when deposited in the U.S. mail, postage prepaid, certified, return receipt requested.

City of Kingsville
Attn: City Manager
P.O. Box 1458
Kingsville, Texas 78364
Telephone: (361) 595-8002
Facsimile: (361) 595-8024

Kleberg County
Attn: County Judge
P.O. Box 752
Kingsville, Texas 78364
Telephone: (361) 595-8585
Facsimile: (361) 592-0838

10. **PERFORMANCE/GOVERNING LAWS.** This agreement shall be performed in Kleberg County, Texas, and shall be governed by the laws of the State of Texas.
11. **VENUE.** Venue for an action arising under this Agreement is in Kleberg County, Texas.
12. **ASSIGNMENT.** This Agreement is binding upon and inures to the benefit of the parties to this Agreement and their respective successors and permitted assigns. This Agreement may not be assigned by any party without the written consent of all of the parties.
13. **NOT FOR THE BENEFIT OF THIRD PARTIES.** This Agreement and all activities under this Agreement are solely for the benefit of the parties and not the benefit of any third party.
14. **EFFECT OF WAIVERS.** No waiver by either party of any default, violation, or breach of the terms, provisions, and covenants contained in this Agreement

may be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and covenants of this Agreement.

15. **EXERCISE OF POLICE POWER.** This Agreement and all activities under this Agreement are undertaken solely as an exercise of the police power of the parties, exercised for the health, safety, and welfare of the public generally, and not for the benefit of any particular person or persons. The parties do not have and may not be deemed to have any duty to any particular person or persons.
16. **VALIDITY AND ENFORCEABILITY.** If any current or future legal limitations affect the validity or enforceability of a provision of this Agreement, then the legal limitations are made a part of this Agreement and operate to amend this Agreement to the minimum extent necessary to bring this Agreement into conformity with the requirements of the limitations, and so modified, this Agreement continues in full force and effect.
17. **WARRANTY.** The individuals executing this agreement on behalf of each party represent and warrant that they are each the duly authorized representatives of such party on whose behalf the individuals are signing, each with full power and authority to bind said party to each term and condition set forth in this agreement.
18. **IMMUNITIES NOT WAIVED.** Nothing in this Agreement waives any governmental, official, or other immunity or defense of any of the parties or their officers, employees, representatives, and agents as a result of the execution of this Agreement and the performance of the covenants contained in this Agreement.
19. **MUTUAL INDEMNIFICATION.** To the extent allowed by the Constitution and Laws of the State of Texas, County and City agree that each party assumes any and all risks of liability, loss, damages, claims, or causes of action and related expenses, including attorney fees, caused or asserted to have been caused directly or indirectly by or as the result of the negligent acts or omissions of that party and the officers, employees, and agents thereof.
20. **CAPTIONS.** Captions to provision of this Agreement are for convenience and shall not be considered in the interpretation of the provisions.
21. **INTERLOCAL COOPERATION ACT APPLIES.** The parties enter into this Interlocal Agreement under the Texas Government Code Chapter 791 (Interlocal Cooperation Act). The parties agree that activities under this Agreement are "governmental functions and services" and that the parties are a "local government" as that term is defined in this Agreement and in the Interlocal Cooperation Act.

22. **ENTIRE AGREEMENT.** This Agreement represents the entire agreement between the parties and may not be modified by any oral agreements or understandings. Any amendments must be made in writing and signed by all parties, as provided in paragraph 5 of this agreement.
23. **EFFECTIVE DATE.** This Agreement is effective on the date when the last party executes this agreement.
24. **MULTIPLE ORIGINALS.** Two (2) copies of this Agreement are executed; each shall be deemed an original.

EXECUTED on behalf of the County of Kleberg pursuant to an Order of the Kleberg County Commissioners Court authorizing such execution this ____ day of September, 2014.

Juan M. Escobar
County Judge

ATTEST:

Stephanie G. Garza
County Clerk

APPROVED AS TO FORM:

Kira Talip
County Attorney

AUDITOR'S CERTIFICATE

I hereby certify that funds are available to the City to accomplish and pay the obligations of Kleberg County herein.

Melissa Munoz, County Auditor

EXECUTED by the City of Kingsville on the _____ day of September, 2014.

Sam R. Fugate
Mayor

ATTEST:

Mary Valenzuela
City Secretary

APPROVED AS TO FORM:

Courtney Alvarez
City Attorney

AGENDA ITEM #5

ORDINANCE NO. 2014-_____

AN ORDINANCE ADOPTING THE CITY MANAGER'S BUDGET, AS AMENDED, OF THE CITY OF KINGSVILLE, TEXAS, AND APPROPRIATING FUNDS FOR THE FISCAL YEAR BEGINNING OCTOBER 01, 2014 AND ENDING SEPTEMBER 30, 2015 IN THE PARTICULARS HEREINAFTER STATED.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KINGSVILLE, TEXAS, that the budget for FY 2014-2015 is adopted as follows:

Section One: The official budget for the City of Kingsville for the fiscal year beginning October 01, 2014 and ending September 30, 2015 has been presented to the City Commission by the City Manager, several budget workshops were conducted on such budget, along with a duly noticed public hearing, and the budget is hereby approved.

Section Two: The budget contains a complete financial statement of the City and shows (1) the outstanding obligations of the City of Kingsville, Texas, (2) the cash on hand to the credit of each fund, (3) the funds received from all sources during the preceding year, (4) the funds available from all sources during the ensuing year, (5) the estimated revenue available to cover the proposed budget, and, (6) the estimated tax rate required to cover the proposed budget. The budget shows each of the projects for which expenditures are set up and the estimated amount of money appropriated for each project.

Section Three: The sum of \$52,515,032 is hereby appropriated for the budget revenues and expenses in the amounts shown on the attached Condensed Statement of all Operating and General Obligation Debt Service Funds – Summary of Revenues and Expenditures. The General Obligation Debt Service principle is \$1,185,000 and interest is \$272,442.

Section Four: The budget and all the attached support material as outlined in the above sections shall be deemed the official budget for the City of Kingsville, Texas, for the fiscal year starting October 01, 2014 and ending September 30, 2015. A copy of the official budget shall be kept by the City Secretary with the designation thereon as the official budget for FY 2014-2015, with the date of the adoption clearly stated, and filed with the County Clerk's Office. The official budget shall be available for inspection by any taxpayer.

Section Five: The City Commission is authorized to levy taxes in accordance with this budget. The City Commission may authorize the expenditure of City funds only in strict compliance with the budget, except in an emergency. The City Commission may authorize an emergency expenditure as an amendment to the original budget only in case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent care and attention. If the City Commission

amends the original official budget to meet an emergency, the City Commission shall file a copy of its ordinance amending the budget with the City Secretary, and the City Secretary shall attach it to the original budget. The City Manager shall provide for the filing of true copy of the approved budget in the office of the County Clerk of Kleberg County. The City Commission reserves the right to make changes in the official budget for municipal purposes.

Section Six: All Ordinances of parts of Ordinances in conflict with this Ordinance are repealed to the extent of such conflict only.

Section Seven: 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.

Section Eight: This Ordinance shall NOT be codified but will become effective on and after adoption and publication as required by law.

Section Nine: This Ordinance was considered, passed, and approved at a regular meeting of the City Commission of the City of Kingsville, Texas at which a quorum was present and which was held in accordance with Chapter 551 of the Texas Government Code, and Chapter 102 of the Texas Local Government Code.

INTRODUCED on this the 8th day of September, 2014.

PASSED on this the 15th day of September, 2014.

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

Courtney Alvarez, City Attorney

EFFECTIVE DATE: _____

AGENDA ITEM #6

ORDINANCE NO. 2014-_____

AN ORDINANCE ESTABLISHING AND ADOPTING THE AD VALOREM TAX RATE FOR ALL TAXABLE PROPERTY WITHIN THE CITY OF KINGSVILLE, TEXAS FOR THE FISCAL YEAR BEGINNING OCTOBER 01, 2014 AND ENDING SEPTEMBER 30, 2015, DISTRIBUTING THE TAX LEVY AMONG THE VARIOUS FUNDS, AND PROVIDING FOR A LIEN ON REAL AND PERSONAL PROPERTY TO SECURE THE PAYMENT OF TAXES ASSESSED.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KINGSVILLE, TEXAS, that the ad valorem tax rate for all taxable property within the city limits of Kingsville, Texas for FY 2014-2015 be established and adopted as follows:

Section One: **THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE.**

THE TAX RATE WILL EFFECTIVELY BE RAISED BY 2.67 PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A \$100,000 HOME BY APPROXIMATELY \$1.54.

Section Two: That there be and there is hereby levied and ordered collected on each One Hundred Dollar (\$100) valuation of all taxable property, real, personal, and mixed, within the corporate limits of the City of Kingsville, Texas, for the tax corporate limits of the City of Kingsville, Texas, for the tax year 2014 starting October 01, 2014 and ending September 30, 2015, the sum of \$.84220 based on 100% of the fair market value.

Section Three: Said levy shall be distributed in the following manner:

FOR GENERAL FUND EXPENDITURES (Maintenance & Operations), the sum of \$.65558 on each one hundred dollar (\$100.00) assessed valuation of such property.

FOR DEBT SERVICE FUND EXPENDITURES of annual principal, interest, and service fees of all General Obligation Bonds, Warrants, Certificates of Obligation, and Combination Tax and Junior Lien Revenue

Certificates of Obligations, of the City of Kingsville, the sum of \$.18662 on each one hundred dollar (\$100) assessed valuation of such property.

Section Four: That said taxes shall be due and payable at the time and in the manner provided by ordinances of the City of Kingsville and laws of the State of Texas, relating to the payment of taxes and providing for penalties and interest on delinquent taxes.

Section Five: There is hereby fixed, levied on each and every item of taxable property a lien for the purpose of securing the certain payment of the taxes assessed against said item of property and said lien shall continue to exist against any item of property against which a tax is assessed hereunder until such tax together with all penalties and interest shall be paid.

Section Six: This ordinance shall be in full force and effective ten days from and after the date of the second publication in a local newspaper as provided by law and the City Charter of the City of Kingsville.

Section Seven: The tax rate established and adopted by this ordinance and a copy of this ordinance shall be filed in the office of the Tax Assessor Collector.

Section Eight: That no discounts or split payments are allowed for the 2014 tax year.

Section Nine: That an exemption of \$8,400.00 be granted for any person of age sixty-five (65) or over.

Section Ten: The Kleberg County Tax Assessor-Collector is hereby authorized to assess and collect the taxes of the City of Kingsville employing the above tax rate.

INTRODUCED on this the 8th day of September, 2014.

PASSED on this the 15th day of September, 2014.

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

Courtney Alvarez, City Attorney

EFFECTIVE DATE: _____

AGENDA ITEM #7

ORDINANCE NO. _____

AMENDING THE CITY OF KINGSVILLE CODE OF ORDINANCES BY AMENDING CHAPTER III, ARTICLE 7, PERSONNEL POLICIES; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE AND PUBLICATION.

WHEREAS, this Ordinance is necessary to protect the public safety, health, and welfare of the City of Kingsville.

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

I.

THAT Section 3-7-1 of Article 7: Personnel Policies of Chapter III. Administration of the Code of Ordinances of the City of Kingsville, Texas, shall be amended to read as follows:

§ 3-7-1 ADOPTION OF THE JOB CLASSIFICATION AND COMPENSATION PLAN.

The City of Kingsville Classification and Compensation Plan dated effective as of October ____, 2014 is hereby adopted by reference providing for certain classifications and positions as more particularly defined therein. Classified positions and incumbents thereof who have completed the designated probationary period and any extensions thereof shall be subject to the terms and conditions of all policies incorporated by reference and adopted by the City Commission by resolution. Except members of the Fire and Police collective bargaining units, all other employees (executive, managerial, or hourly) serve at will, at the pleasure of the City Manager, or designee, or at the pleasure of the City Commission if appointed by the City Commission, and shall have and continue such at-will status, notwithstanding any other provision of this Classification Plan, any other City Ordinance, or any rule or regulation of the City.

All hourly ~~Non-Exempt~~ Management Non-Civil Service employees of the City of Kingsville, in their current positions, are placed in the step corresponding to the anniversary of their current hire date with the City according to Fiscal Year ~~2013-2014~~ 2014-2015 Hourly Chart.

New hires shall be placed at the compensation Class for the designated positions. New hires may be placed in the Step within the designated Class corresponding to the years of experience the new employee brings to the City correlating to the designated duties of the position not to exceed the Ten (10) Year Step unless approved by City Commission.

Non-Exempt Hourly employees promoted, transferred or temporarily assigned to a position in a higher classification range shall commence at the first step of the higher Class classification-range that causes an increase in the employees' hourly pay rate. Each promoted, transferred or temporarily assigned employee shall then proceed to the next step after one (1) year in their current position and shall proceed to each step thereafter on the 3rd, 6th, 10th, 15th, 20th and 25th year or until the employee reaches the last step of the compensation schedule.

Employees demoted, transferred, temporarily assigned, or accepting a position in a lower Class classification-range shall commence at the same step of pay in the lower Class classification-range as the employee held at the time of such demotion, transfer, temporary assignment or acceptance of the lower Class range position. Employees meeting these criteria shall proceed to the next step of the compensation plan, as scheduled, based on years of City service.

All management employees of the City of Kingsville shall be placed in a step program to receive a scheduled salary increase on the anniversary date of their 1st, 3rd, 6th, 10th, 15th, 20th and 25th year of service in the their Management Level position. Percentage increases shall correspond to the

Management Level Step Program included in the Classification and Compensation Plan for Fiscal Year 2013-2014 2014-2015.

Executive Level 1 & 2 positions shall receive a cost of living adjustment when Non-Exempt Non-Civil Service employees receive a cost of living adjustment. The City Commission shall evaluate the performance of and recommend salaries for Executive Level 1 & 2 positions each July to prepare for the up-coming fiscal year.

II.

THAT all Ordinances of 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 ____ day of September, A. D., 2014.

PASSED AND APPROVED on this the _____ day of _____, A. D., 2014.

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

Approved As to Form:

Courtney Alvarez, City Attorney

CITY OF KINGSVILLE
CLASSIFICATION AND COMPENSATION PLAN
FISCAL YEAR 2013-2014 2014-2015

Ordinance Introduced: _____

Ordinance Approved: _____

NON-EXEMPT / NON-CIVIL SERVICE		MIN/HOURLY	MAX/HOURLY
CLASS 7	Custodian	\$ 8.64	\$11.39
	Equipment Service Worker	<u>\$ 9.36</u>	
	Maintenance Worker		
	Plant Helper		
	<u>Golf Pro-Shop Attendant (NEW Position)</u>		
	Utility Worker		
CLASS 8	Animal Control Officer Specialist/Kennel Attendant (Separated & Renamed)	\$ 8.83	\$11.64
	<u>Animal Care Attendant</u>	<u>\$ 9.73</u>	\$11.69
	Children's Services Librarian		
	Equipment Operator I		
	Recycling Technician		
CLASS 9	Customer Service Representative	\$ 9.04	\$12.22
	Municipal Court Deputy Clerk	<u>\$ 9.90</u>	\$12.24
	Reference/Information Librarian		
CLASS 10	Circulation Librarian	\$ 9.46	\$12.33
	Technician Services Assistant	<u>\$ 10.17</u>	
CLASS 11	Pump Operator	\$ 9.90	\$13.06
		<u>\$10.69</u>	
CLASS 12	Inventory Clerk	\$10.36	\$13.52
	Information and Technology Librarian	<u>\$10.92</u>	\$13.72
CLASS 13	<u>Tourism Services Technician (New Job Title)</u>	\$10.83	\$13.98
		<u>\$11.39</u>	\$14.19
CLASS 14	Aeeountant-I (Delete Title-not in use)	\$11.34	\$14.49
	Customer Billing Specialist	<u>\$11.90</u>	\$14.71
	Engineering Technician		
	Equipment Operator II		
	GIS Technician		
	Meter Reader Technician		
	<u>Police Telecommunications Operator</u>		
	<u>Municipal Court Specialist (NEW Position)</u>		
	<u>Fire Telecommunications Operator (NEW Position)</u>		
CLASS 15	Administrative Assistant I	\$11.83	\$15.00
		<u>\$12.42</u>	\$15.23
CLASS 16	Lead Telecommunications Operator	\$12.39	\$16.12
		<u>\$13.05</u>	\$16.36

CLASS 17	Accountant II (Positions renamed – see below)	\$12.98	\$16.14
	A/P Specialist (Title Updated from Accountant II)	\$13.59	\$16.38
	Payroll Specialist (Title Updated from Accountant II)		
	Accounting Assistant (Title Updated from Accountant II)		
	Administrative Assistant II		
	Assistant Library Administrator		
	Equipment Operator III		
	Help Desk		
	Maintenance Technician		
	Water/Wastewater Operator		
	Welder/Fabricator		
CLASS 18	Lab Technician	\$13.56	\$16.71
	Legal Assistant/Paralegal	\$14.16	\$16.96
CLASS 19	Code Enforcement Officer Community Appearance Inspector	\$14.21	\$17.37
	Lead Maintenance Technician (1 Position From CLASS 17)	\$14.82	\$17.22
	(New Job Title - Fill from existing staff)		
CLASS 20	Foreman	\$14.86	\$18.41
		\$15.88	\$18.29
CLASS 21	City Marshal (Moved to TF CLASSIFICATION)	\$17.43	\$21.09
	Crime Scene Specialist	\$17.96	\$20.61
	Health Inspector I		
CLASS 22	Building Inspector	\$18.11	\$22.22
	City Marshal – Senior (Moved to TFS CLASSIFICATION)	\$19.10	\$21.76
	Engineer's Assistant (Moved from Exempt ML4)		
	Health Inspector II		
CLASS TF	City Marshal (FROM CLASS 21)	\$ 18.48	\$ 20.81
CLASS TFS	Senior City Marshal (FROM CLASS 22)	\$ 21.23	\$ 23.91
OTHER POSITIONS			
	Seasonal/Temporary Employees	\$ 8.00	\$12.00
	Example of positions include: Brookshire Pool Attendants/Instructors/Lifeguards, Park Recreational Program Assistants, etc.		
	Probationary Firefighters (0-12 months)	\$ 13.52	\$15.00
		\$ 14.08	
	Probationary Police Officers (0-12 months)	\$ 13.50	\$19.00
		\$ 17.00	\$18.85

**CLASSIFICATION PLAN
EXEMPT LEVEL SALARY PLAN
FY 2013-2014 2014-2015**

	<u>BEGINNING</u> <u>MIN</u>	<u>BEGINNING</u> <u>MAX</u>
EXECUTIVE OFFICER – 1	\$ 91,350	\$121,800
City Manager	<u>\$ 95,000</u>	<u>\$140,000</u>
 EXECUTIVE OFFICER - 2	 \$ 76,125	 \$ 98,455
City Attorney	<u>\$ 80,000</u>	<u>\$120,000</u>
Municipal Court Judge		
 MANAGEMENT LEVEL - 1	 \$ 60,900	 \$ 91,350
Fire Chief	<u>\$ 70,000</u>	<u>\$100,000</u>
Finance Director		
Police Chief		
City Engineer/Public Works Director		
Planning & Development Services Director		
 MANAGEMENT LEVEL - 2	 \$ 46,183	 \$ 78,155
Assistant City Attorney	<u>\$ 50,000</u>	
Human Resources Director		
Purchasing and Technology Director		
<u>Task Force Commander (From ML3 & Renamed)</u>		
Tourism Services Director		
 MANAGEMENT LEVEL - 3	 \$ 40,600	 \$ 68,005
Accounting Manager	<u>\$ 41,209</u>	
<u>Assistant Task Force Commander (From ML4 & Renamed)</u>		
Assistant Public Works Director		
<u>City Marshal (Commander) (Moved to ML2 & Renamed)</u>		
<u>Golf Course Manager – New Position</u>		
Health Director		
Library Director		
<u>Parks & Recreation Manager – New Position</u>		
Risk Manager		

MANAGEMENT LEVEL - 4

~~\$ 35,525~~

\$ 55,825

Accounting Supervisor

\$ 36,058

Building Official

~~City Marshal (Assistant Commander) (Moved to ML3 & Renamed)~~

City Secretary

Collection's ~~Manager~~ Supervisor

Police Communication's Supervisor (New Position)

Community Appearance Supervisor

Downtown and Volunteer ~~Manager~~ Supervisor

~~Engineer's Assistant (Moved to Non-Exempt Schedule Range 22)~~

Garage Supervisor

~~Information System Technician (2)~~ Systems Specialist (Renamed)

Landfill Supervisor

Municipal Court ~~Manager~~ Supervisor

Sanitation Supervisor

Street Supervisor

Wastewater Supervisor

Water Production Supervisor

Water Supervisor

NON-EXEMPT RATE CHART

FISCAL YEAR
2014-2015

PROPOSED

Class 7 - 11 adjustments

Starting at Class 12
COLA positions

1.015

→→

	STEP	B NEW HIRE	C 1	D 3	E 6	F 10	G 15	H 20	I 25
CLASS									
7	\$ 8.64	\$ 9.00	\$ 9.36	\$ 9.72	\$ 10.08	\$ 10.43	\$ 10.80	\$ 11.16	\$ 11.39
		\$ 9.36	\$ 9.72	\$ 10.08	\$ 10.43	\$ 10.88	\$ 11.15	\$ 11.39	
8	\$ 8.83	\$ 9.21	\$ 9.73	\$ 10.09	\$ 10.44	\$ 10.81	\$ 11.16	\$ 11.52	\$ 11.64
		\$ 9.73	\$ 10.09	\$ 10.44	\$ 10.81	\$ 11.15	\$ 11.52	\$ 11.69	
9	\$ 9.04	\$ 9.47	\$ 9.90	\$ 10.33	\$ 10.76	\$ 11.19	\$ 11.61	\$ 12.06	\$ 12.22
		\$ 9.90	\$ 10.33	\$ 10.76	\$ 11.19	\$ 11.61	\$ 12.06	\$ 12.24	
10	\$ 9.46	\$ 9.82	\$ 10.17	\$ 10.53	\$ 10.89	\$ 11.24	\$ 11.63	\$ 12.09	\$ 12.33
		\$ 10.17	\$ 10.53	\$ 10.89	\$ 11.24	\$ 11.63	\$ 12.09	\$ 12.33	
11	\$ 9.90	\$ 10.30	\$ 10.69	\$ 11.07	\$ 11.48	\$ 11.88	\$ 12.27	\$ 12.66	\$ 13.06
		\$ 10.69	\$ 11.07	\$ 11.48	\$ 11.88	\$ 12.27	\$ 12.66	\$ 13.06	
12	\$ 10.36	\$ 10.76	\$ 11.15	\$ 11.55	\$ 11.95	\$ 12.34	\$ 12.73	\$ 13.12	\$ 13.52
		\$ 10.92	\$ 11.32	\$ 11.72	\$ 12.13	\$ 12.53	\$ 12.92	\$ 13.32	\$ 13.72
13	\$ 10.83	\$ 11.22	\$ 11.61	\$ 12.02	\$ 12.40	\$ 12.80	\$ 13.19	\$ 13.59	\$ 13.98
		\$ 11.39	\$ 11.78	\$ 12.20	\$ 12.59	\$ 12.99	\$ 13.39	\$ 13.79	\$ 14.19
14	\$ 11.34	\$ 11.72	\$ 12.12	\$ 12.52	\$ 12.91	\$ 13.30	\$ 13.70	\$ 14.12	\$ 14.49
		\$ 11.90	\$ 12.30	\$ 12.71	\$ 13.10	\$ 13.50	\$ 13.91	\$ 14.33	\$ 14.71

15	\$ 11.83	\$ 12.24	\$ 12.63	\$ 13.03	\$ 13.43	\$ 13.81	\$ 14.21	\$ 14.61	\$ 15.00
	\$ 12.42	\$ 12.82	\$ 13.23	\$ 13.63	\$ 14.02	\$ 14.42	\$ 14.83	\$ 15.23	
16	\$ 12.39	\$ 12.86	\$ 13.32	\$ 13.78	\$ 14.25	\$ 14.71	\$ 15.18	\$ 15.65	\$ 16.12
	\$ 13.05	\$ 13.52	\$ 13.99	\$ 14.46	\$ 14.93	\$ 15.41	\$ 15.88	\$ 16.36	
17	\$ 12.98	\$ 13.39	\$ 13.76	\$ 14.17	\$ 14.56	\$ 14.96	\$ 15.34	\$ 15.73	\$ 16.14
	\$ 13.59	\$ 13.97	\$ 14.38	\$ 14.78	\$ 15.18	\$ 15.57	\$ 15.97	\$ 16.38	
18	\$ 13.56	\$ 13.95	\$ 14.34	\$ 14.74	\$ 15.14	\$ 15.54	\$ 15.93	\$ 16.32	\$ 16.71
	\$ 14.16	\$ 14.56	\$ 14.96	\$ 15.37	\$ 15.77	\$ 16.17	\$ 16.56	\$ 16.96	
19	\$ 14.21	\$ 14.60	\$ 15.00	\$ 15.38	\$ 15.78	\$ 16.18	\$ 16.59	\$ 16.97	\$ 17.37
	\$ 14.82	\$ 15.23	\$ 15.61	\$ 16.02	\$ 16.42	\$ 16.84	\$ 17.22		
20	\$ 14.86	\$ 15.65	\$ 16.05	\$ 16.43	\$ 16.84	\$ 17.23	\$ 17.62	\$ 18.02	\$ 18.41
	\$ 15.88	\$ 16.29	\$ 16.68	\$ 17.09	\$ 17.49	\$ 17.88	\$ 18.29		
21	\$ 17.43	\$ 17.69	\$ 18.30	\$ 18.91	\$ 19.51	\$ 19.91	\$ 20.31	\$ 20.70	\$ 21.09
	\$ 17.96	\$ 18.57	\$ 19.19	\$ 19.80	\$ 20.21	\$ 20.61			
22	\$ 18.11	\$ 18.82	\$ 19.42	\$ 20.04	\$ 20.65	\$ 21.05	\$ 21.44	\$ 21.84	\$ 22.22
	\$ 19.10	\$ 19.71	\$ 20.34	\$ 20.96	\$ 21.37	\$ 21.76			
TF	<u>\$ 18.48</u>	<u>\$ 18.85</u>	<u>\$ 19.23</u>	<u>\$ 19.61</u>	<u>\$ 20.40</u>	<u>\$ 20.81</u>			
TFS	<u>\$ 21.23</u>	<u>\$ 21.65</u>	<u>\$ 22.09</u>	<u>\$ 22.53</u>	<u>\$ 23.44</u>	<u>\$ 23.91</u>			

*Note: +/- 1 cent(s) due to rounding

HOURLY CHART

STEP A — City discretion for part-time and temporary positions. NOT USED

STEP B - New Hire — Orientation Period

STEP C - Step following completion of one (1) year of employment.

STEP D - Step for eligible employees with three (3) years of current uninterrupted City service.

STEP E - Step for eligible employees with six (6) years of current uninterrupted City service.

STEP F - Step for eligible employees with ten (10) years of current uninterrupted City service.

- STEP G -** Step for eligible employees with fifteen (15) years of current uninterrupted City service.
- STEP H -** Step for eligible employees with twenty (20) years of current uninterrupted City service.
- STEP I -** Step for eligible employees with twenty-five (25) years of current uninterrupted City service.

The hourly chart shall be relevant to all ~~non-exempt, non-civil service full-time non-civil service, non-management~~ employees maintaining a position in the same CLASS. ~~Part time employees (less than 32 hours per week) shall be paid at the beginning hourly rate of the hourly chart or at the federal minimum wage rate,~~ unless otherwise approved by the City Manager.

**CERTIFICATION PAY -
HOURLY NON-EXEMPT EMPLOYEES
(EXCLUDES CIVIL SERVICE PERSONNEL)**

Hourly personnel in the Solid Waste Management divisions, Water Department, Water Production Department and Wastewater divisions are eligible for the following certification pay:

Class/Grade/Unit	Monthly	Per Pay Period Basis *
<u>TCEQ</u> I or D	\$ 30.00	\$ 13.85
<u>TCEQ</u> C	\$ 40.00	\$ 18.47
<u>TCEQ</u> II or B	\$ 55.00	\$ 25.39
<u>TCEQ</u> III or A	\$ 85.00	\$ 39.24
<i>Intermediate Peace Officer</i>	\$ 30.00	\$ 13.85
<i>Advanced Peace Officer</i>	\$ 52.00	\$ 24.00
<i>Master Peace Officer</i>	\$ 100.00	\$ 46.15

* Rounding may be required for payroll purposes up one cent on per pay period amounts

**MANAGEMENT LEVEL STEP PROGRAM
INCREASE DUE ON ANNIVERSARY DATE OF MANAGEMENT LEVEL POSITION.**

1 ST YEAR	3%
3 RD YEAR	3%
6 TH YEAR	3%
10 TH YEAR	2%
15 TH YEAR	2%
20 TH YEAR	2%
25 TH YEAR	2%

AGENDA ITEM #8

ORDINANCE NO. 2014-_____

AN ORDINANCE RATIFYING CLASSIFICATIONS AND PRESCRIBING THE NUMBER OF POSITIONS IN SUCH CLASSIFICATIONS FOR THE CLASSIFIED SERVICE IN THE POLICE DEPARTMENT BY REMOVING ONE NEW OFFICER POSITION DUE TO END OF GRANT REQUIREMENT; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, CODIFICATION INSTRUCTIONS, AND AN EFFECTIVE DATE.

WHEREAS, this Ordinance is necessary to protect the public safety, health, and welfare of the City of Kingsville.

WHEREAS, the City is deleting one Police Officer position in Fiscal Year 2014-2015 due to the end of the school resource officer grant program requirements.

WHEREAS, the three year grant and one year carry-on period of the police officer position has concluded so that the extra position can be removed from the number of Police Officer positions.

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

I.

THAT one position of Police Officer is hereby removed beginning in Fiscal Year 2014-2015.

II.

THAT in accordance with section 143.021, Texas Local Government Code, the City Commission ratifies the following previously established classifications and hereby prescribes the number of positions in each classification by Ordinance duly passed, to wit:

<u>CLASSIFICATION</u>	<u>NUMBER OF POSITIONS</u>
Police Chief	1
Lieutenant	2
Sergeant	6
Corporal	5
Police Officers	36 35

Notes: History – Police Officer positions includes one (1) police officer position created in October 2011 to be designated primarily for warrant duties.

III.

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

IV.

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.

V.

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

INTRODUCED on this the 8th day of September, 2014.

PASSED AND APPROVED on this the 15th day of September, 2014.

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

Approved As to Form:

Courtney Alvarez, City Attorney

AGENDA ITEM #9

ORDINANCE NO. 2014-_____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF KINGSVILLE, TEXAS, ARTICLE IX "GENERAL REGULATIONS"; CHAPTER 9 "SMOKING REGULATIONS" BY ADDING SECTIONS 40-43, "E-CIGARETTE, ELECTRONIC CIGARETTE, AND LIQUID NICOTINE REGULATIONS", FOR THE PURPOSE OF PROHIBITING THE SALE AND DISTRIBUTION OF ELECTRONIC CIGARETTES AND LIQUID NICOTINE TO MINORS AND PROHIBITING THE USE AND POSSESSION OF ELECTRONIC CIGARETTES AND LIQUID NICOTINE BY MINORS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FINE NOT TO EXCEED THE SUM OF FIVE HUNDRED (\$500.00) DOLLARS FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, City Commission of the City of Kingsville finds that the sale and production of electronic cigarettes (or e-cigarettes), which deliver nicotine to users via a vaporized solution, are not currently regulated by the U.S. Food and Drug Administration ("FDA") or state law;

WHEREAS, initial studies performed by the FDA have found that e-cigarettes contain carcinogens and other unknown contents that can pose health risks to users and the public;

WHEREAS, the City Commission recognizes that e-cigarettes are heavily marketed to Minors;

WHEREAS, the City Commission finds that amending the Code of Ordinances to include regulations of the sale and possession of e-cigarettes to and by minors is in the best interest of the City of Kingsville and will promote the health, safety and welfare of the citizens of the City of Kingsville and general public;

WHEREAS, the City Commission has further investigated and determined that protection of the citizens of the City against an untested nicotine product like electronic cigarettes, e-cigarettes and liquid nicotine represents sound public health and fiscal policy;

WHEREAS, the City Commission has further investigated and determined that a ban on the sale of electronic cigarettes, e-cigarettes, liquid nicotine and like products in the City to persons under the age of eighteen (18) and a prohibition on a self-service merchandising in the retail sale of electronic cigarettes, e-cigarettes liquid nicotine and like products in order to minimize their physical accessibility to minors serves an important public interest in furtherance of the health, safety and general welfare of the citizens of the City;

WHEREAS, the City Commission has further investigated and determined that the Texas Legislature currently prohibits the possession, purchase, consumption or receipt of cigarettes or tobacco products by minors, and the City enforces such regulations;

WHEREAS, the City Commission has further investigated and determined that the Texas Legislature currently regulates vendor assisted sales and vending machines of cigarettes or tobacco products, including, but not limited to, prohibiting the use of the same by minors;

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

I.

THAT Chapter IX "General Regulations, Article 9 "Smoking Regulations", of the Kingsville Code of Ordinances is hereby amended by adding Sections 40-44, "E-Cigarette Regulations", and amending 9-9-99 "Penalty", which shall read as follows:

...

Secs. 9-9-24 ~~9-9-39 and 9-9-44~~ 9-9-98. Reserved

...

§9-9-40. PURPOSE.

This Ordinance is adopted so that the City Commission may promote, protect and improve the health, safety and general welfare of the citizens of the City by discouraging the unhealthy practice of using electronic cigarettes or e-cigarettes and liquid nicotine and to help prevent the addiction to nicotine, especially by minors, through regulation of the sale and merchandising of certain electronic cigarettes or e-cigarettes and liquid nicotine products, the regulation of which is not preempted to the federal or state government.

§9-9-41. DEFINITIONS.

1. "Electronic Cigarette" or "E-Cigarette" shall mean any device that uses an atomizer or similar device that allows users to inhale nicotine vapor or other vapor without the use of fire, smoke, or ash. The definition of e-cigarette shall include, but is not limited to, electronic cigars, electronic cigarettes, or electronic pipe, and any cartridge or other component of the device or related product including any liquid products that are manufactured for use with e-cigarettes. This term shall include every version and type of such devices whether they are manufactured or marketed as electronic cigarettes, e-

cigarettes, electronic cigars, electronic pipes, e-pipes or under any other product name or description.

2. "*Minor*" shall mean any individual younger than eighteen (18) years of age.

3. "*Person*" shall mean an individual, corporation, partnership, wholesaler, retailer or any licensed or unlicensed business.

4. "*Liquid Nicotine*" shall mean any liquid product composed either in whole or part of pure nicotine and propylene glycol and/or any other substance and manufactured for use with electronic cigarettes or e-cigarettes.

5. "*Open Display Unit*" shall mean, in the context of the retail sale of electronic cigarettes or e-cigarettes and/or liquid nicotine, any device, furniture or furnishing within or upon which electronic cigarettes or e-cigarettes and/or liquid nicotine are displayed to customers, and includes, but is not limited to, any case, rack, shelf, counter, table, desk, kiosk, booth, stand, vending machine and other surface.

6. "*Place of Business*" shall mean: (A) a commercial business location where cigarettes, tobacco products, electronic cigarettes or e-cigarettes and/or liquid nicotine is/are sold; (B) a commercial business location where cigarettes, tobacco products, electronic cigarettes or e-cigarettes and/or liquid nicotine are kept for sale or consumption or other stores; or (C) a vehicle from which cigarettes, tobacco products, electronic cigarettes or e-cigarettes and/or liquid nicotine is/are sold.

7. "*Possessed, Possession or Possession*" shall mean actual care, custody, control or management.

8. "*Retail Electronic Cigarette Store*" shall mean a retail store utilized solely for the sale and sampling of electronic cigarettes or e-cigarettes and/or liquid nicotine and related accessories.

9. "*Retailer*" shall mean a person, place of business or retail and service establishment, who/which engages in the practice of selling cigarettes, tobacco products, electronic cigarettes or e-cigarettes and/or liquid nicotine to consumers and includes, without limitation, the owner of an open display unit.

10. "Smoke(s) or Smoking" shall mean and includes the carrying, possessing or holding of a pipe, cigarette, tobacco product, electronic cigarette or e-cigarette or liquid nicotine of any kind which is burning or emitting a vapor.

11. "Self-service Merchandising" shall mean, in the context of the retail sale of electronic cigarettes or e-cigarettes, and/or liquid nicotine, the open display, including, without limitation, the use of an open display unit of electronic cigarettes or e-cigarettes and/or liquid nicotine, whether packaged or otherwise, for direct retail customer access and handling prior to purchase without the intervention or assistance of the retailer or the retailer's owner, employee or agent.

12. "Tobacco Product" shall mean: (A) cigar; (B) smoking tobacco, including granulated, plug-cut, crimp cut, ready-cutbed, and any form of tobacco suitable for smoking in a pipe or as a cigarette; (C) chewing tobacco, including Cavendish, twist, plug scrap and any kind of tobacco suitable for chewing; (D) snuff or other preparations of pulverized tobacco; or (E) an article or product that is made of tobacco or a tobacco substitute and that is not a cigarette.

§ 9-9-42 REGULATIONS

(A) *Sell, distribution, or offering for sale to minors.* It shall be unlawful for any person to give, sell, distribute, or offer for sale any an electronic cigarette, e-cigarette or liquid nicotine to any minor within the territorial limits of the City of Kingsville.

(B) *Use, purchase, or possession of an electronic cigarette, e-cigarette or liquid nicotine by minor.* It shall be unlawful for any minor to use, purchase, or possess with intent to use any an electronic cigarette, e-cigarette or liquid nicotine within the territorial limits of the City of Kingsville.

(C) *Purchase of an electronic cigarette, e-cigarette or liquid nicotine by a minor utilizing false information.* It shall be unlawful for any minor, in order to acquire an electronic cigarette, e-cigarette or liquid nicotine, to state to any person engaged in the business of selling electronic cigarettes, e-cigarettes or liquid nicotine that such minor is eighteen (18) years of age or older.

§ 9-9-43 DEFENSES

It shall be a defense to a violation of subsection (A) and (B) of Section 9-9-42 above if the minor is:

1. In the course and scope of the minor's employment by a person or entity holding a permit issued by the state authorizing the person to engage in the business of being a distributor, wholesaler, bonded agent or retailer of an electronic cigarette, e-cigarette or liquid nicotine;

2. In the presence of a parent, guardian, spouse or other adult to whom the minor had been committed by a court.

...

§ 9-9-99. Penalty.

(A) Any person who violates any provision of this article for which no penalty is otherwise provided shall be subject to the penalty provided in § 1-1-99.

(B) Any person violating any provisions of §§ 9-9-1 through 9-9-8 shall be fined not less than \$1.00 nor more than \$200.00 for each offense, and a separate offense shall be deemed committed on each occasion on which a violation occurs or continues after a warning to stop or desist.

(C) Any person violating any provisions of § 9-9-43 shall be fined not less than \$1.00 nor more than \$500.00 for each offense, and a separate offense shall be deemed committed on each occasion on which a violation occurs or continues after a warning to stop or desist.

II.

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

III.

THAT: That all ordinances of the City of Kingsville, Kleberg County, Texas, in conflict with the provisions of this ordinance be, and the same are hereby repealed; provided, however; that all other provisions of said ordinances not in conflict with the provisions of this ordinance shall remain in full force and effect.

IV.

THAT: Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

V.

THAT: Any person, firm, or corporation violating any provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances, as amended, and upon conviction shall be punished by a fine not to exceed the sum of Five Hundred Dollars (\$500.00) for each offense, and each and every day such violation shall continue shall be deemed to constitute a separate offense.

VI.

THAT: This Ordinance was considered, passed, and approved at a regular meeting of the City Commission of the City of Kingsville, Texas at which a quorum was present and which was held in accordance with Chapter 551 of the Texas Government Code.

VII.

THAT: This ordinance shall take effect immediately from and after its passage, and publication of the caption, as the law and charter in such cases provide.

INTRODUCED on this the 8th day of September, 2014.

PASSED AND APPROVED on this the _____ day of _____, 2014.

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

Courtney Alvarez, City Attorney

**KINGSVILLE POLICE DEPARTMENT
INTER-OFFICE MEMORANDUM**

TO : Vincent J. Capell, City Manager
Courtney Alvarez, City Attorney

FROM : Chief R. Torres

SUBJECT : Amend Article IX "General Regulations"; Chapter 9 "Smoking Regulations" by adding Sections 40-43 of the Code of Ordinances as it relates to the sale, use and possession of electronic cigarettes and liquid nicotine products to minors.

Due to an increase in the popularity of the use of electronic cigarettes, and in an effort to protect the health and safety of the younger citizens of the City of Kingsville, the purpose of this item is to discuss amending Article IX "General Regulations"; Chapter 9 "Smoking Regulations" by adding Sections 40-43 of the Code of Ordinances as it relates to the sale, use and possession of electronic cigarettes and liquid nicotine products to minors.

BACKGROUND INFORMATION

Electronic cigarettes have been on the market for several years and were designed to assist smokers in breaking their nicotine habit. In July 2013, the World Health Organization stated the efficacy in using electronic cigarettes to aid in smoking cessation has not been demonstrated scientifically. *They recommend that "consumers should be strongly advised not to use" electronic cigarettes until a reputable national regulatory body has found them safe and effective. This has not been done as of this date.* This statement began to stir additional controversy across the nation regarding the use of electronic cigarettes. Some worried that electronic cigarettes were luring children and exposing them to nicotine, an addictive substance. According to the U.S. Centers for Disease Control and Prevention, the number of high school students who have tried electronic cigarettes is growing annually. Cities locally began to pass ordinances that prohibit the use and sale of electronic cigarettes to children that are eighteen years of age or younger.

Electronic cigarettes have not been proven to be safe, although the UK National Health Service has noted that the toxic chemicals found by a preliminary analysis conducted by the US Food and Drug Administration were at levels one-thousandth that of cigarette smoke, and that while there is no certainty that these small traces are harmless, initial test results are reassuring. Nevertheless, due to the highly addictive nature of nicotine and the potential that the use of electronic cigarettes by teens may lead to addiction to cigarettes, it is in the best interest of the public that the City of Kingsville pass an ordinance that helps protect our children. Prohibiting the sale and use of electronic cigarettes to and by our children is a step in the right direction.

DISCUSSION

Electronic cigarettes are battery powered and are used in a manner similar to traditional cigarettes except that they don't involve burning tobacco. They contain a heating element that

vaporizes a liquid solution, and they emit a vapor instead of smoke. The liquid solution can contain liquid nicotine, which has caused concern for area law enforcement officials.

Manufacturers and marketers of electronic cigarettes advertise their products as safe nicotine delivery devices and smoking cessation modalities. *Electronic cigarettes are entirely unregulated; there is no regulation by the federal government and no Texas statutes or regulations that in any way limit the production, distribution or use of electronic cigarettes to anyone.* A few states have either banned the sale to minors or regard electronic cigarettes in the same manner as traditional cigarettes.

The following cities have enacted ordinances prohibiting the possession and sale of electronic cigarettes to minors: Dennison, Flower Mound, Frisco, Georgetown, Lewisville, Murphy, Rowlett and Rockwall.

SUMMARY

Protecting the younger citizens of the City of Kingsville against an untested nicotine product like electronic cigarettes and liquid nicotine represents sound public health and fiscal policy. A ban on the sale of electronic cigarettes, liquid nicotine and associated paraphernalia in the City of Kingsville to persons under the age of 18, a prohibition on self-service merchandising in order to minimize their physical accessibility to minors, and the prohibition of the use and possession of such products by minors, serves an important public interest in furtherance of the health, safety, and general welfare of the citizens of the City of Kingsville.

RECOMMENDED ACTION

Provide direction to staff on the proposed schedule to amend Article IX "General Regulations"; Chapter 9 "Smoking Regulations" by adding Sections 40-43 of the Code of Ordinances as it relates to the sale, use and possession of electronic cigarettes, liquid nicotine products to minors.