

OCTOBER 13, 2008

**A REGULAR MEETING OF THE CITY OF KINGSVILLE CITY COMMISSION WAS HELD ON MONDAY, OCTOBER 13, 2008 IN THE HONORABLE ROBERT H. ALCORN COMMISSION CHAMBERS CITY HALL/200 EAST KLEBERG AVENUE AT 6:00 P.M.**

**CITY COMMISSION PRESENT:**

Sam R Fugate, Mayor  
 Al Garcia, Commissioner  
 Charles E Wilson, Commissioner  
 Arturo Pecos, Commissioner  
 Stanley Laskowski, Commissioner

**CITY STAFF PRESENT:**

Carlos Yerena, City Manager  
 Edna S Lopez, City Secretary  
 Courtney Alvarez, City Attorney  
 Mark Rushing, Finance Director  
 Dora Byington, Purchasing Director  
 Al Lopez, Fire Chief  
 Bill Donnell, Public Works Director  
 Diana Gonzales, Human Resource Director  
 Frank Garcia, Wastewater Supervisor  
 Armando Gutierrez, City Engineer  
 Tamera Blackstock, Sergeant  
 Robert Rodriguez, Library Director  
 Yolanda Cadena, Health Director  
 Dianne Leubert, Solid Waste Superintendent  
 James Creek, Firefighter  
 Johnny Campos, Police Officer  
 Rick Salinas, Police Officer

**I. Preliminary Proceedings.**

**OPEN MEETING**

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

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

The invocation was delivered by Ms Dora Byington, followed by the Pledge of Allegiance and the Texas Pledge.

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

**Mayor Fugate called for consideration of the minutes of the regular meeting of September 22<sup>nd</sup>, 2008 and the special meeting of September 25<sup>th</sup>, 2008. Commissioner Pecos made a motion to approve the minutes as presented, seconded by Commissioner Laskowski. The motion was passed and approved by the following vote: Fugate, Garcia, Wilson, Laskowski, Pecos voting “FOR”.**

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

Mayor Fugate announced there were no public hearings.

**III. Reports from Commission & Staff.<sup>2</sup>**

*“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, Convention and Visitor’s Bureau, Chamber of Commerce, Coastal Bend Council of Governments, Conner Museum, 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. No formal action can be taken on these items at this time."*

City Manager Yerena thanked the Kingsville Fire Department employees and the citizens for their support of the City's food drive; announced the next Trash-Off Day, Saturday, October 18<sup>th</sup> and provided information on the 5<sup>th</sup> Annual Haunted House and Halloween Carnival which is sponsored by the City of Kingsville and the Task Force on October 31<sup>st</sup>, from 6:00 P.M. to 10:00 P.M. City Manager Yerena reported on the date for the TML Conference in San Antonio, Texas and announced that the Safety Incentive Banquet will be held on Friday, December 19<sup>th</sup>.

Mayor Fugate made a presentation to Mr. Jose Palacios on his retirement from the City. Mr. Robert Falcon was not present.

Ms Alvarez announced the date of the City's Health Fair and TXDOT presentation on October 21<sup>st</sup>, 2008. She provided information on an Attorney General opinion regarding the Open Meetings Act section.

Mayor Fugate called for the Commissions' reports. Upon a request from Commissioner Wilson, City Manager Yerena provided an update on a major water leak. Mr. Donnell stated he does not have knowledge of any homes being damaged due to the leak, only water damage to the yards. Commissioner Wilson explained he spoke to the City Engineer because the City Manager was out-of-town. He expressed his concern about not receiving a call back from the City Engineer regarding his question. He voiced his concern about no lighting on University Blvd for quite some time and expressed his displeasure of the City Manager's staff not providing information.

Commissioner Pecos thanked the City Manager for having TXDOT clean a ditch on Highway 77; with regard to the water leak, he stated he received several calls about the color of the water.

Upon a question from Commissioner Garcia, Mr. Casillas provided a brief overview of the progress of the Water Well #24 project and stated the project is about 75% complete.

Commissioner Laskowski requested an update at the next meeting regarding the Shelly and Palm Street drainage project.

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

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

Mayor Fugate called for comments on all agenda and non-agenda items.

Ms Tamera Meyers, 512 E Kleberg, spoke in opposition of the approval agenda item #2.

Mr. Billy Woodruff, 2801 Brahma Blvd, requested renaming 2<sup>nd</sup> Street to Martin Luther King Blvd; and on placing a blinking light, stop sign and/or both on Franklin Adams and Caesar Street.

Ms Grettis Scott, 602 West Caesar (302 W Huisache) spoke about a tree that is damaging her roof and needs to be trimmed.

Mayor Fugate called for consideration of the Consent Agenda, Items 1-3. Commissioner Garcia made a motion to remove agenda item #2, and approve items 1 & 3, seconded by Commissioner Wilson. The motion was passed and approved by the following vote: Fugate, Pecos, Laskowski, Wilson, Garcia voting "FOR".

#### **V. Consent Agenda**

1. **ORDINANCE NO. ORD2008-32 Motion to approve final passage of an ordinance amending the City of Kingsville Code of Ordinances Chapter VII, Article 2, Stopping, Standing and Parking, Prohibited in specified places in the right of way or in a yard; Providing for appropriate penalties, fines, and fees regarding the regulation thereof. (City Attorney).**
2. **ORDINANCE NO. ORD2008-33 Motion to approve final passage of an ordinance abolishing a certain classified service position; creating a certain classified service position; ratifying classifications and prescribing the number of**

**positions in such classifications for the classified service in the Police Department. (Police Chief).**

Chief Torres briefed the Commission regarding information discussed at the last meeting. He stated the cost was minimal for the difference between the two positions.

There was discussion regarding law enforcement participation at the public schools.

Mayor Fugate stated that in response to the Commissions' concern, this was the Chief's idea. Chief Torres explained his initial position of the situation. He stated the ideal situation was to hire another IT person and he would be able to move the Sergeant in charge of IT out to the field. Upon a question from Mayor Fugate, Chief Torres stated it is better to have more people in the field.

Mayor Fugate called for further questions or comments. Commissioner Wilson commented that this comes down to limiting the career growth of its officers or to have more officers on the street serving the public good. Chief Torres explained the current work load of his officers. Commissioner Wilson stated he would like to work in an earnest as a group to find a Lieutenant's position to give the Police Department a career path. He stated that for most people in that career force they look forward to job growth and advancement instead of just being a patrol officer. Mayor Fugate stated that during Ms Meyers comments she mentioned the Police Department was "Brass Heavy" and asked if this position is really needed. Chief Torres stated the proposed organizational structure would work well.

Mayor Fugate called for questions or comments. **Commissioner Pecos made a motion to approve the final passage of this ordinance, seconded by Commissioner Garcia. The motion was passed and approved by the following vote: Fugate, Wilson, Laskowski, Garcia, Pecos voting "FOR".**

**3. Motion to approve expending funds from the City of Kingsville Employee Benefit Plan Trust for the City Health Fair. (Human Resource Director).**

**REGULAR AGENDA**

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

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

**4. RESOLUTION NO. R2008-23 Consider resolution authorizing the City Manager to enter into a multiple use agreement with the Texas Department of Transportation for landscape & signage improvements on Spur 169 (University Blvd.) from the intersection of SH 141 (King Street) to Santa Gertrudis Blvd. to be performed by Texas A&M University-Kingsville. (City Attorney).**

At this time Commissioner Wilson stated he would abstain from Agenda Item #4 & 5 and removed himself from the Commission Chambers.

Mayor Fugate stated if this resolution passes that he hopes that TXDOT does a better job than they have done on the landscaping on the by-pass. Commissioner Laskowski voiced his concern regarding the City's liability position in this project. Ms Alvarez provided an explanation stating that TXDOT is not allowed to deviate from this agreement. Upon a question from Mayor Fugate, Ms Alvarez replied the City has Blanket liability. Ms Alvarez stated the University will be responsible for all construction and maintenance.

Mayor Fugate called for questions or comments. **Commissioner Garcia made a motion to approve the resolution, seconded by Commissioner Pecos. The motion was passed and approved by the following vote: Fugate, Laskowski, Pecos, Garcia voting "FOR". Wilson "ABSTAINED".**

**5. Consider authorizing the City Manager to enter into an Interlocal Agreement between the City of Kingsville and Texas A&M University Kingsville Relating to Signage on University Blvd. and Right-of-Way Islands on Santa Gertrudis Avenue. (City Attorney).**

Mr. Gutierrez stated that the highway permits for the landscaping and lighting have been secured. He stated this is only a formality and all permits have been received.

Commissioner Garcia made a motion to authorize the City Manager to enter into this Interlocal Agreement, seconded by Commissioner Pecos. The motion was passed and approved by the following vote: Fugate, Laskowski, Pecos, Garcia voting "FOR". Wilson "ABSTAINED".

**6. Consider awarding Bid No. 2009-07 for electrical repairs for Lift Stations and Wastewater Treatment Plants. (Purchasing Director).**

Ms Byington stated this item authorizes electrical repairs to be performed as needed. It is recommended that the bid be awarded to the bidder providing services at the best value, Rabalais Constructors.

Commissioner Laskowski made a motion to award this bid to Rabalais Constructors from Corpus Christi, Texas, seconded by Commissioner Garcia. The motion was passed and approved by the following vote: Fugate, Wilson, Pecos, Garcia, Laskowski voting "FOR".

**7. Consider awarding Bid No. 2009-10 for materials ONLY for the water line improvements project. (Purchasing Director).**

Ms Byington stated this item authorizes the purchase of materials only for water line improvements on twelve different locations in town. The bidder recommended submitted the lowest total bid; funds will come out from an ORCA grant under T.C.D.P. Contract No. 726311.

Commissioner Laskowski made a motion to authorize the contract to Ferguson Enterprises not to exceed \$167,077.58, seconded by Commissioner Wilson. The motion was passed and approved by the following vote: Fugate, Garcia, Pecos, Wilson, Laskowski voting "FOR".

**8. Consider introduction of an ordinance amending the Fiscal Year 2008-2009 Budget for the City of Kingsville to set up a General Fund Capital Projects Fund to come from Unrestricted General Fund Balance to be used on Capital Outlay and the Maintenance on Capital Outlay, to allocate funds from additional Municipal Court Fines for an alternate Municipal Court Judge, to accept a donation for Keep Kingsville Beautiful, and to budget the Tourism Fund. (Finance Director).**

Mr. Rushing explained the body of the ordinance stating this would accept donations for the Keep Kingsville Beautiful project and would allocate funds in Municipal Court Fines for expenses of an alternate Municipal Court Judge during the current's judge's absence or if there is a conflict in interest case. He stated this would set up a fund for the completion of the Fire Department project.

Mayor Fugate called for questions or comments.

**INTRODUCTION ONLY**

**9. Consider accepting donation of \$500 for City's Keep Kingsville Beautiful program from Kingsville Action Network. (Finance Director).**

Mr. Rushing stated this item accepts the \$500.00 donation. Commissioner Laskowski explained that three Board members made the decision to donate the money.

**Commissioner Wilson made a motion to accept the donation, seconded by Commissioner Pecos. The motion was passed and approved by the following vote: Fugate, Garcia, Laskowski, Pecos, Wilson voting "FOR".**

**10. Consider re-allocation of the monies remaining from the 2007 PPFCO for Sanitation Department equipment. (Public Works Director).**

Mr. Donnell explained that \$430,000 from the PPFCO 2007 is being requested for needed equipment, (1) Residential side loader truck, (1) enclosed brush grapple unit, (1) welding machine, and 1800 – 96 gallon residential carts. He stated that the residential side loader will replace the unit with the most maintenance problems and that they are not able to purchase current rollouts so this will help progress into the new rollouts.

Mayor Fugate called for questions or comments. Commissioner Laskowski stated he originally proposed to piggy back the \$430,000 on issuance of the ladder truck. He stated it was his intent that garbage trucks were going to be purchased. He voiced his concern about purchasing only one garbage truck and 1,800 roll outs. He asked that if that garbage truck breaks down, how the 1,800 roll outs will be serviced. Mr. Donnell replied the old trucks can be retro fitted to be able to service the containers. Commissioner Laskowski questioned the cost for an enclosed grabble unit and the welding machine. He stated that during a conversation with Staff there was discussion about using the Unrestrictive Reserves to cover the additional costs in order to have cash in hand to order the equipment. He stated this is an operational issue and would like to get what is really needed. He stated he would prefer to put \$92,000 toward another garbage truck and pull some Unrestrictive Reserves to cover the balance of the garbage truck until the certificates of obligation are received. City Manager Yerena stated that Staff was under the impression this was the only monies, but if the Unrestrictive Reserves are used that would help.

Mayor Fugate called for further questions or comments. Commissioner Garcia voiced his concern about not purchasing the welding machine. City Manager Yerena stated this could be purchased with Unrestrictive Reserve funds.

**Commissioner Laskowski made a motion to use \$430,000 to order two trucks, 1,800 residential cans and to come back to cover additional cost of the garbage truck from Unrestrictive Reserves and monies will be paid back when the bonds are issued, Commissioner Pecos asked if this was allowable. Mayor Fugate called for a second to the motion. Commissioner Wilson seconded the motion. Mr. Rushing further explained the financing. City Manager Yerena explained the funding would be presented in a budget amendment. Commissioner Wilson suggested this item be managed all at one time. Commissioner Wilson withdrew his second and Commissioner Laskowski withdrew his motion. Commissioner Laskowski made a motion to table this item; he changed his motion from table to POSTPONE, seconded by Commissioner Garcia. The motion was withdrawn.**

**POSTPONED/ PASSED**

**11. Discuss and consider action to take regarding Amendment to Article V of the Contract Between the City of Kingsville and Kleberg County Relating to the Jail. (City Attorney).**

The Commission was under the consensus that this item was settled. Ms Alvarez provided the Commission the background information on the Jail Contract amendment. She stated that if the City agrees to pay more than \$45.00 per bed per day or pay for more beds a budget amendment would be needed. She stated a third option would be

to consider an arbitration committee to settle this contract. The Arbitration Committee would be made up of the County Judge, Mayor, City Manager, County Court at Law Judge, the Sheriff and the Police Chief. If the Arbitration Committee does not come up with a resolution after sixty days this would be deemed an impasse, and would be submitted to an American Arbitration Association, Arbitrator and the expenses for the arbitration would be bore by each party.

Mayor Fugate asked what if nothing is done. Ms Alvarez replied the City would still be paying the \$35.00 per bed per day.

Mayor Fugate called for a motion. The item was PASSED.

Mayor Fugate called for a break. The Commission reconvened at 7:45 P.M.

**12. Consider introduction of an ordinance approving an electric power contract with Cities Aggregation Power Project, Inc. ("CAPP"), a political subdivision corporation for electric capacity and energy, approving the articles of incorporation and bylaws of CAPP; accepting membership in CAPP; providing capacity payments as public property finance contractual obligations of the city, pledging and levying an ad valorem tax to such payments, providing for energy payments for electric energy subject to annual appropriation by the city, providing for the assignment of such capacity payments to support debt issued by CAPP incurred to acquire electric capacity rights from Luminant Generation Company and related entities pursuant to a 24-year Power Purchase Agreement ("PPA"); authorizing the City Manager or other appropriate city officer or employee to execute and deliver the energy sales contract between CAPP and the City ("Member Contract"); further authorizing the City Manager or other appropriate city officer or city employee to sign additional agreements arranged by STAP for electric power needed by the City in the period 2009-2013 in excess of the amount obtained under the Member Contract; acknowledging, authorizing and directing the City Manager or appropriate City Officer or City Employee to sign and return CAPP's disclosure letter; further authorizing the City Manager or appropriate City Officer or other City Employee to accept conforming changes to the Member Contract dependent on the final terms of the CAPP PPA; providing for validity and sufficiency of City Employee's or City Officer's signature if the Officer or Employee leaves office or employment prior to the delivery of the Member Contract; adopting a savings clause; determining that this ordinance was passed in accordance with the requirements of the Texas Open Meetings Act. (City Manager).**

City Manager Yerena stated that the STAP Board has been looking at this option for the past two years. He stated that initially it was looked on with heavy favor due to the rising cost of gas prices. He stated that the City waited as long as it could to make sure there were enough details. He provided the Commission with some specific information on the long-term 24 year contract. He stated the entire concept of the 24 year contract relies on a prepayment of approximately \$465,000,000 and this would go to the seller of the electricity. He stated this would impact the City's STAP capacity and ability to fund additional debt, and the city would be responsible for the entire 24 yrs. City Manager Yerena added that the recent trend is price of gas is coming down, and there is uncertainty of the market. He stated another option on the table is Agenda Item #13 which would require less risk. He stated that to his knowledge the City of Rockport and the City of Port Lavaca have rejected this contract and added that Staff's recommendation is not to go into this contract, but to approve the five (5) year option.

Commissioner Laskowski stated the price per kilowatt hour that is being guaranteed is only 60% of capacity, so anything above 60% you will be paying the prevailing market rate for the balance of your electricity. For clarification, City Manager Yerena explained that if the City chose to move forward with Item #13, then this item will not come forward at the next meeting. Mayor Fugate called for questions or comments.

**13. RESOLUTION NO. R2008-24 Consider resolution authorizing the South Texas Aggregation Project, Inc. (STAP) to negotiate an electric supply agreement for deliveries of electricity and necessary, related services effective January 1, 2009; approving STAP contracting with FPL Energy and Direct Energy and authorizing the Mayor or other designated City Official to sign a contract with STAP for the City's electricity needs for the period beginning January 1, 2009 and extending up to December 31, 2013; committing to budget for energy purchases and to honor the City's commitments to purchase power through STAP for its electrical needs for the period beginning January 1, 2009, and extending up to December 31, 2013. (City Manager).**

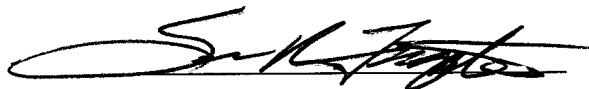
City Manager Yerena stated based on the risk factors, City Staff is happy with this option because it provides the City of Kingsville with a fixed price contract for five years without having to go into a high element of risk as the other option.

Commissioner Laskowski stated that the City of Rockport City Manager stated they had signed a contract directly with Florida Power for electricity less per kilowatt hour than then the contract. City Manager Yerena stated that is an option but would not give the comfort level as in the past in dealing with the electrical considerations. City Manager Yerena stated Staff could explore that and would provide information at the next meeting. After a brief discussion, City Manager Yerena realized that Florida Power is STAP's provider.

Mayor Fugate called for a motion. **Commissioner Pecos made a motion to accept the resolution, seconded by Commissioner Wilson. The motion was passed and approved by the following vote: Fugate, Garcia, Laskowski, Wilson, Pecos voting "FOR".**

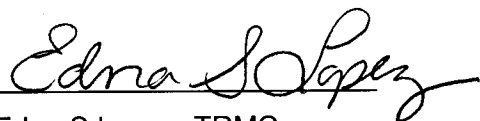
#### **VI. Adjournment.**

There being no further business to come before the City Commission, the meeting was adjourned at 7:53 P.M.



Sam R Fugate, Mayor

ATTEST:



Edna S Lopez, TRMC

City Secretary