AGENDA CITY COMMISSION

MONDAY, DECEMBER 14, 2015 REGULAR MEETING

HONORABLE ROBERT H. ALCORN COMMISSION CHAMBERS CITY HALL/200 EAST KLEBERG AVENUE 5:30 P.M.-Workshop 6:00 P.M.-Regular Meeting

APPROVED BY:

City Manager

I. Preliminary Proceedings.

OPEN MEETING

WORKSHOP: Discuss projects and equipment list for Certificates of Obligation series 2016. (City Manager).

REGULAR MEETING RESUMES

INVOCATION / PLEDGE OF ALLEGIANCE — (Mayor Fugate)

MINUTES OF PREVIOUS MEETING(S) - Required by Law

Regular Meeting - November 23, 2015

- II. Public Hearing (Required by Law).1
 - 1. Public Hearing for alcohol variance for a Wine & Beer Retailer's Permit for the establishment known as Pizza Hut, located at 1330. S. 14th Street. (Planning & Development Services Director).
- 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, Investment Report, Monthly Financial Reports; Police & Fire Department — Grant Update, Police & Fire Reports; Street Updates; Public Works-Building Maintenance, Construction Updates; Park Services — grant(s) update, miscellaneous park projects, Administration —Workshop Schedule, Interlocal Agreements, Public Information, Hotel Occupancy Report, Quiet Zone, Proclamations, Health Plan Update, Tax Increment Zone Presentation, Main Street Downtown, Chapter

59 project, Financial Advisor, Water And Wastewater Rate Study Presentation. No formal action can be taken on these items at this time."

IV. Public Comment on Agenda Items .3

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

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Consent Agenda

Notice to the Public

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being discussed separately unless requested by a Commission Member in which event the item or items will immediately be withdrawn for individual consideration in its normal sequence after the items not requiring separate discussion have been acted upon.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

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

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

- 1. Motion to approve final passage of an ordinance changing the zoning map in reference to Lots 22-24, Block 8, Vista Alegre, known as 1304 E. Kenedy from R2-Two Family District to C2-Retail District, amending the comprehensive plan to account for any deviations from the existing comprehensive plan. (Planning & Development Services Director).
- 2. Motion to approve the re-appointment of Nick Harrel to the Civil Service Commission for a three-year term. (Human Resources Director).
- 3. Motion to approve alcohol variance for a Wine & Beer Retailer's Permit for the establishment known as Pizza Hut, located at 1330. S. 14th Street, due to name change. (Planning & Development Services Director).
- 4. Motion to approve out-of-state travel for City Commission and staff to attend the National League of Cities 2016 Congressional City Conference in Washington, D.C. on March 5-9, 2016. (City Manager).
- 5. Motion to approve a resolution authorizing the City Manager to enter into an Extension of Memorandum of Understanding between the Kingsville Fire Department and U.S. Customs and Border Protection, Office of Border Patrol, Rio Grande Valley Sector. (Interim Fire Chief).

REGULAR AGENDA

CONSIDERATION OF MOTIONS, RESOLUTIONS, AND ORDINANCES:

VI. Items for consideration by Commissioners.4

6. Consider a resolution authorizing the Mayor to enter into an Interlocal Agreement between Kleberg County and the City of Kingsville for construction of paving services related to the TxDOT TIF Grant roads. (City Engineer/Public Works Director).

- 7. Consider appointing a member to the Joint Airport Zoning Board. (Planning & Development Services Director).
- 8. Consider award for Engineering Services (RFQ 16-03) for the Texas Department of Agriculture Community Development Block Grant, for contract negotiation and approval as per staff recommendation. (Purchasing & Technology Director).
- 9. Consider award for Professional Services (RFP 16-02) for the Texas Department of Agriculture Community Development Block Grant, for contract negotiation and approval as per staff recommendation. (Purchasing & Technology Director).
- 10. Consider authorizing the purchase of a modular building for use as the Kingsville Visitors Center via BuyBoard, as per staff recommendation. (Purchasing & Technology Director).
- 11. Consider accepting monetary donation for the Golf Course for fertilizer. (Golf Course Manager).
- 12. Consider introduction of an ordinance amending the Fiscal Year 2015-2016 General Fund budget to accept and expend a donation to the L.E.Ramey Golf Course. (Finance Director).
- 13. Consider introduction of an ordinance amending Chapter VII, Article 8, Traffic Control Devices, providing for the installation of seven stop signs in the Wildwood Trail Subdivision. (City Engineer/Public Works Director).
- 14. Consider introduction of an ordinance amending the Chapter V-Public Works, to adopt Article 7- R.O.W. Cuts and Excavations, providing regulations for right-of-way cuts and excavations. (City Engineer/Public Works Director).

VII. Adjournment.

- 1. No person's comments shall exceed 5 minutes. Cannot be extended by Commission.
- No person's comments shall exceed 5 minutes without permission of majority of Commission.
- 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:

<u>December 11, 2015</u> at <u>11:00 A.M.</u> and remained so posted continuously for at least 72 hours proceeding the schedule time of said meeting.

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

•	moved from the official posting board at the Kingsville City H	lall on the
By:		
City Secretary's Office		
City of Kingsville, Texas		

MINUTES OF PREVIOUS MEETING(S)

NOVEMBER 23, 2015

A REGULAR MEETING OF THE CITY OF KINGSVILLE CITY COMMISSION WAS HELD ON MONDAY, NOVEMBER 23, 2015 IN THE HONORABLE ROBERT H. ALCORN COMMISSION CHAMBERS 200 EAST KLEBERG AVENUE AT 6:00 P.M.

CITY COMMISSION PRESENT:

Sam Fugate, Mayor Al Garcia, Commissioner Arturo Pecos, Commissioner Noel Pena, Commissioner Dianne Leubert, Commissioner (arrived at 6:15 p.m.)

CITY STAFF PRESENT:

Jesús Garza, City Manager Mary Valenzuela, City Secretary Courtney Alvarez, City Attorney Tom Ginter, Director of Planning & Development Services Deborah Balli, Finance Director Diana Gonzales, Human Resources Director Charlie Cardenas, Public Works Director/Engineer Susan Ivy, Parks Manager Leo Alarcon, Tourism Director Emilio Garcia. Health Director Robert Rodriguez, Library Director David Mason, Purchasing Director Ricardo Torres. Police Chief Ken Starrs, Assistant Task Force Commander Melissa Perez, Risk Manager Pete Piña, Landfill Supervisor Tony Verdin, Systems Specialist Kyle Benson, Help Desk Coordinator Charlie Sosa, Street Supervisor Sharam Santanilla, Engineer's Assistant Luke Stevens, Sanitation Supervisor Rose Morrow, Municipal Court Supervisor

I. Preliminary Proceedings.

OPEN MEETING

Mayor Fugate called the meeting to order in the Robert H. Alcorn Commission Chamber at 6:00 p.m. and announced quorum with four Commission members present. Commissioner Leubert arrived at 6:15 p.m.

INVOCATION / PLEDGE OF ALLEGIANCE - (Mayor Fugate)

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

MINUTES OF PREVIOUS MEETING(S) -

Regular Meeting - November 9, 2015

Mayor Fugate called for a motion to approve the minutes of November 9, 2015.

Motion made by Commissioner Pena to approve the minutes of November 9, 2015 as presented, seconded by Commissioner Pecos. The motion was passed and approved by the following vote Garcia, Pecos, Pena, Fugate voting "FOR".

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

1. Public hearing for an ordinance changing the zoning map in reference to Lots 22-24, Block 8, Vista Alegre, known as 1304 E. Kenedy from R2-Two Family District to C2-Retail District, amending the comprehensive plan to account for any deviations from the existing comprehensive plan. (Planning & Economic Development Director).

Mayor Fugate announced and opened this public hearing at 6:02 P.M.

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

Mr. Tom Ginter, Planning & Economic Development Director, reported that this is a vacant lot located on the corner of Kenedy & 17th Street directly across the street from Harvey Elementary School. The Planning & Zoning Commission met on November 18, 2015 and recommended approval of the rezoning request from R2 to C2 by a 5-0 vote.

Mayor Fugate asked if there were any complaints or concerns from the citizens.

Mr. Ginter stated that staff has not received any complaints from the citizens. There was one gentleman who did call with concerns about keeping the property clean.

Mayor Fugate commented that the lot now is not clean at this time. If this item is approved by the Commission, the applicant requesting the rezone will maintain the property.

There being no further comments made by staff or the public, Mayor Fugate closed this public hearing at 6:04 p.m.

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, Investment Report, Monthly Financial Reports; Police & Fire Department - Grant Update, Police & Fire Reports; Street Updates; Public Works-Building Maintenance, Construction Updates; Park Services - grant(s) update, miscellaneous park projects, Administration -Workshop Schedule, Agreements, Public Information, Hotel Occupancy Report, Quiet Zone, Proclamations, Health Plan Update, Tax Increment Zone Presentation, Main Street Downtown, Chapter 59 project, Financial Advisor, Water And Wastewater Rate Study Presentation. No formal action can be taken on these items at this time."

Mrs. Courtney Alvarez, City Attorney, reported that City Offices will be closed for the Thanksgiving Holiday on Thursday, November 26th and Friday, November 27th, 2015. The next City Commission meeting is scheduled for December 14th with agenda and staff reports due on Friday, December 4th. Alvarez further stated that with regards to the final meeting in December 28th, unless there is urgent city business, this meeting is generally canceled unless there is any objection from the City Commission.

Mayor Fugate commented that unless anyone has any objections, he would like to see the December 28th meeting canceled. If anything comes up, staff can call a meeting. No objections were made by the City Commission.

Mr. Jesús Garza reported that the City received a refund check of \$50,000.00 from Texas Department of Transportation (TXDOT). The City had allocated some funds for the Caesar Drainage Project and not all funds were used, therefore TXDOT produced a refund check of a little less than \$50,000.00. This refund will be placed back into drainage projects. Mr. Garza updated the City Commission on the Care Building. During a meeting with Dr. Nix, he was told that they have hired Dr. William Warrick who will start in January, 2016 as the Executive Director of the Eagle Ford Center for Research Education and Outreach. Garza further commented that with the hiring of Dr. Warrick comes \$1.3 million dollars which will be used for the hiring of graduate assistant research work. Mr. Garza then spoke about the Tourism Building stating that staff has spoken with representatives of TXDOT regarding the timeline of their project. They stated that their project has been extended by a couple of months which works best for the City as the plan is to purchase a portable building within the next sixty days. Once the building is located in its new location, the Tourism Department will be able to move and then staff can decide on what to do with the existing building. Garza further commented that there is a new feature that was recently added to the City website that will allow for citizens to provide feedback or submit any concerns they may have with the city.

Commissioner Pecos asked Mr. Garza for the cost on the portable building that will house the Tourism Department. Mr. Garza responded that the original budget is for \$100,000.00 but staff does not plan to exceed that amount. The different buildings staff is looking at range from \$70,000.00 to \$100,000.00. Garza further stated that there has been some interest shown in the purchase of the existing building, which will help supplement the cost of the move.

Mayor Fugate commented that he agrees with the purchase of portable building verses moving the existing building to its new location.

Commissioner Pena commented that the Ranch Hand Festival had a great turn out and thanked staff for their hard work on putting this event together.

Commissioner Pecos asked for staff to get with the gas company regarding their plans and coordinate with them when they need to make a dig on city streets to place their gas lines.

Mr. Garza responded that Mr. Cardenas has already met with the gas company on coordinating with them on their plans. Garza further stated that the city needs to look into the need of a right-of-way permit. This would require different utility companies to request a permit to work in the city's right-of-way. This will help keep track on when these companies come in to do their work and how long they will work on city's right-of-way.

IV. Public Comment on Agenda Items .3

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

No public comments made.

Consent Agenda

Notice to the Public

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

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

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

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

- 1. Motion to approve final passage of an ordinance granting a special use permit for 1055 South US HWY 77 (.088 acres, Lot 8, Jesse 2) for car storage for Enterprise Rent A Car. (Planning & Economic Development Director).
- 2. <u>Motion to approve final passage of an ordinance amending the Fiscal Year 2015-2016 General Fund Budget to accept and expend 5K and other donations for the Parks Department.</u> (Finance Director).
- 3. Consider a resolution authorizing the release of Chapter 59 funds of the Kingsville Specialized Crimes and Narcotics Task Force for donation to Communities in School of the Coastal Bend for drug abuse prevention programs. (Task Force Commander).
- 4. Consider a resolution authorizing the release of Chapter 59 funds of the Kingsville Specialized Crimes and Narcotics Task Force for donation to Kingsville Amateur Boxing Club, Inc. for drug abuse prevention programs. (Task Force Commander).

REGULAR AGENDA

CONSIDERATION OF MOTIONS, RESOLUTIONS, AND ORDINANCES:

- VI. Items for consideration by Commissioners.⁴
 - 5. Consider introduction of an ordinance changing the zoning map in reference to Lots 22-24, Block 8, Vista Alegre, known as 1304 E. Kenedy from R2-Two Family District to C2-Retail District, amending the comprehensive plan to account for any deviations from the existing comprehensive plan. (Planning & Economic Development Director).

Introduction item.

6. Consider final passage of an ordinance amending the Code of Ordinances of the City of Kingsville, Texas, Chapter IX-General Regulations, Article 10-Streets and Sidewalks, to add Street Maintenance Fee Sections to establish monthly street maintenance fees for the purpose of funding the city streets system, establishing a street maintenance fund and an appeals process. (Public Works Director/City Engineer).

Mr. Cardenas reported that staff looked into the request made by the Commission during the previous meeting regarding the 501(c) non-profits. Cardenas stated that staff will be including all 501(c) organizations into this ordinance. Some additional information on the Street Maintenance Fee has been included on the city website. There will be a notification letter included in the December month utility bills to make citizens aware of the new fee that will take effect on January 1st.

Commissioner Leubert asked if staff has heard any feedback regarding this fee. Mr. Cardenas responded that staff has not received any feedback from the citizens.

Mayor Fugate commented that staff has spread the word as best as they can to make the citizens aware of the new fee.

Commissioner Pecos commented that he has received some positive feedback on the new street maintenance fee but he has also received some negative feedback from citizens that are on a fixed income.

Commissioner Garcia commented that a city employee commented that six months into this program, the city may begin to hear some complaints from its citizens.

Commissioner Pecos commented that he has received positive feedback from city employees on the new city manager.

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

7. Consider a resolution authorizing the City to submit an application to the Office of the Governor Criminal Justice Division for the purpose of requesting grant funding on behalf of the City for the 2015 Body-Worn Camera Program for law enforcement personnel for the Kingsville Police Department with an anticipated cash match. (Chief of Police).

Mr. Ricardo Torres, Chief of Police, reported that this item will allow them to apply for 35 body worn cameras and the associated computer space. The cost is \$45,482.00 with a cash match of 25% which is \$11,371.00. He further stated that he has met with the Finance Director regarding locating funds within the current budget that can be used for the cash match.

Commissioner Garcia asked if the storage will be in the units or will it be transmitted. Chief Torres responded that it will be a similar system as to what they have now.

Commissioner Pecos asked what the cost of the server was. Chief Torres responded that the server cost was \$17,780.00.

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

8. Consider a resolution of the City of Kingsville acknowledging the City's participation in a deferred compensation plan administered by ICMA Retirement Corporation. (Human Resources Director).

Mrs. Diana Gonzales, Human Resources Director reported that this item will expand some of the benefits options to the city employees. This will give them an opportunity to participate in a tax deferred program. The company name is International City/County Management Association Retirement Corporation (ICMA-RC). This company was founded in 1972 and it has over a million participants' accounts and about 9,000 plans across the country. It also offers retirement plan specialists to work with employees including opportunities to attend seminars, workshops, have mobile app access and

individual consultations. Currently the City offers Nationwide and by adding an additional company it won't negate anything with Nationwide. There is no financial impact to City budgets. Contributions to secondary retirement plans are 100% employee contribution.

Commissioner Garcia asked if TMRS will remain intact.

Mrs. Gonzales responded that TMRS is the City's mandatory pension plan and will not be affected by this.

Commissioner Garcia further asked what attracted the city to this plan.

Mr. Garza responded that this is something he asked for staff to look into. This is a program that is common in a local government profession. There are some employees that are currently employed with the city that in their former establishment were a member of ICMA-RC but couldn't continue the program as the City of Kingsville was not a member. This will benefit these employees to continue with this program and will give a new option to all employees.

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

9. Executive Session: Pursuant to Section 551.071, Texas Government Code, Consultation with Attorney Exception, the City Commission shall convene in executive session to seek legal advice from the City Attorney regarding a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter. (City Attorney).

Mayor Fugate announced and convened the meeting into Executive Session at 6:40 p.m.

Mayor Fugate reconvened the meeting into open session at 6:54 p.m.

10. <u>Executive Session: Pursuant to Section 551.074, Texas Open Meetings Act, the City Commission shall convene in Executive Session to deliberate the appointment, employment, and duties of the Fire Chief.</u> (City Manager).

Mayor Fugate announced and convened the meeting into Executive Session at 6:54 p.m.

Mayor Fugate reconvened the meeting into open session at 7:10 p.m.

VI. Adjournment.

There being no further business to come before the City Commission, the meeting was adjourned at 7:10 p.m.

ATTEST:	Sam R. Fugate, Mayor	
Mary Valenzuela, TRMC, City Secretary		

PUBLIC HEARING(S)

PUBLIC HEARING #1

Planning & Development Services Department

TO:

Mayor & City Commission

THROUGH:

Jesus Garza, City Manager

FROM:

Tom Ginter, Planning & Development Services Director

SUBJECT:

Request for Alcohol Variance at 1330 S. 14th Street

DATE:

December 7, 2015

Muy Pizza-Tejas LLC, applicant is requesting an alcohol variance for a Wine and Beer Retailer's Permit. This address is located at 1330 S. 14th Street and is within 1,000 ft. boundary of one daycare, one church and one school. The property in question therefore requires a variance according to City ordinance ORD-2004-20.

The reason for the variance request is because Muy Pizza LLC is changing names to Muy Pizza-Tejas LLC.

Wine and beer was sold previously.

Also, all required notices have been sent to the property owners within 300ft. Additionally, a public hearing notice was placed in the newspaper on November 18, 2015. As of this point, we have not received any negative feedback from the property owners or citizens that have been noticed.

Alcohol Permit - 300 ft. Radius 12801 70₄₅₄ 22846 13618 20250 42223 14419 12551 14922 21025 12610 18873 13339 20309 21791 11803 19514 26013 **E Miller** 11017 **E** Miller 21509 18752 10268 13876 30701 <u>Legend</u> 22274 Ownership 1330 S. 14th st. 300 ft. radius] Daycares Churches 160 ander Daycare_&_CBC 40 KISD_Schools Document Path: N:\Engineering\GIS Techs\MAPS\MAP_DOCUMENTS\Alcohol_Permit.mxd CITY OF KINGSVILLE Drawn By: Engineering Dept. ENGINEERING DEPARTMENT 200 East Kleberg Last Update: 11/5/2015 Kingsville, Texas 78363 Note: Please see attached Office: 361-595-8005

documents

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



Fax: 361-595-8035

CCO PROPERTIES 926 S. 14TH STE 103 KINGSVILLE, TX 78363 #12801 HERMAN OHLENBUSCH 1206 S. 14TH KINGSVILLE, TX 78363 #13618 KYLE PROPERTIES 1304 S. 14TH KINGSVILLE, TX 78363 #14419

CDO PROPERTIES 1021 CARLOS TRUAN KINGSVILLE, TX 78363 #21266 HUMBERTO SILVA 1203 W CIRCLE DR KINGSVILLE, TX 78363 #19454 ANALEE GOVEA 1209 W CIRCLE KINGSVILLE, TX 78363 #11739

FRANCISCO GARZA 1215 W CIRCLE KINGSVILLE, TX 78363 #20250 JESUS SANTIAGO LUNA 1221 W CIRCLE KINGSVILLE, TX 78363 #12251 ERIKA DE LA PAZ 1227 W CIRCLE KINGSVILLE, TX 78363 #21025

ELOY DE LA ROSA 1301 W CIRCLE KINGSVILLE, TX 78363 #13339 JESSE RAY ACUNA 1105 LAWNDALE KINGSVILLE, TX 78363 #14922 JUAN JOSE SANCHEZ 1228 W CIRCLE KINGSVILLE, TX 78363 #12610

RAMIRO CANTU JR 1302 W CIRCLE KINGSVILLE, TX 78363 #20309 RONALD RIPPS 1308 W CIRCLE KINGSVILLE, TX 78363 #11803 JAMES BUCKALEW 1314 W CIRCLE KINGSVILLE, TX 78363 #19514

ANGEL CANALS JR 1320 W CIRCLE KINGSVILLE, TX 78363 #11017 ARNOLD SNOWBERGER 1326 W CIRCLE KINGSVILLE, TX 78363 #18752 JACKSON STILLWAGON 1402 W CIRCLE KINGSVILLE, TX 78363 #10268

JUAN DE LA PAZ 1313 W CIRCLE KINGSVILLE, TX 78363 #21791 PATRICIA CONNER HAYES 1025 E MILLER KINGSVILLE, TX 78363 #21509 TC LASATER 1401 W CIRCLE KINGSVILLE, TX 78363 #13876

CINDY RIOS PEREZ 1407 W CIRCLE KINGSVILLE, TX 78363 #22274 CANDY SQUARES 1400 S 14TH KINGSVILLE, TX 78363 #30701 BRIJNESHKUMAR BHAKTA 1415 S. 14TH KINGSVILLE, TX 78363 #21149

DELWIN RANDALL 1304 S. 13TH KINGSVILLE, TX #18873 SHERWIN WILLIAMS COMPANY 1315 S. 14TH KINGSVILLE, TX 78363 #11129 DONALD RUHNKE 1203 S. 14TH KINGSVILLE, TX 78363 #22846

LAVINIA ISASSI 912 E. MILLER KINGSVILLE, TX 78363 #26013 JANE ROGERS
912 SHELTON
KINGSVILLE, TX 78363
#11748

GUADALUPE BENAVIDES JR 915 E SHELTON KINGSVILLE, TX 78363 #17667



just 20 minutes a day can make a difference,' N.R. Garcia said. (Submitted item)



November 18, 2015 - paper

PUBLIC NOTICE

The City Commission of the City of Kingsville will hold a public hearing on Monday, December 14, 2015, at 6:00 P.M. to discuss and/or take action on the following items:

Request for an alcohol variance for a Wine and Beer Retailer's Permit, for the establishment known as Pizza Hut, located at 1330 S. 14th Street.

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



Sports Injuries Motor Vehicle Accidents Occupational Injuries Worker's Comp

Pre/Post Op Total Knees/Hips Men's/Women's Health

1028 S. 14th Street Sundial Plaza • Kingsville, Texas

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NO WAITING!

Open: Monday - Thursday 8am - 6:30pm | Friday 8am - 5pm

MOST INSURANCES ACCEPTED

- Humana Military/Tricare
- Medicare UHC
- BCBS Humana Plans

PHYSICAL THERAPY & SPORTS MEDICINE

CONSENT AGENDA

AGENDA ITEM #1

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AMENDING THE ZONING ORDINANCE BY CHANGING THE ZONING MAP IN REFERENCE TO LOTS 22-24, BLOCK 8, VISTA ALEGRE, KNOWN AS 1304 E. KENEDY FROM R2- TWO FAMILY DISTRICT TO C2-RETAIL DISTRICT; AMENDING THE COMPREHENSIVE PLAN TO ACCOUNT FOR ANY DEVIATIONS FROM THE EXISTING COMPREHENSIVE PLAN; AND PROVIDING FOR PUBLICATION.

WHEREAS, the Planning Commission has forwarded to the City Commission its reports and recommendations concerning the application of Rosa Mireles & Ricardo Bazan, for amendment to the zoning ordinance and zoning map of the City of Kingsville;

WHEREAS, with proper notice to the public, public hearings were held on Wednesday, November 18, 2015 during a meeting of the Planning and Zoning Commission, and on Monday, November 23, 2015 during a meeting of the City Commission, at City Hall, in the City of Kingsville, during which all interested persons were allowed to appear and be heard; and

WHEREAS, a majority of the Planning Commission by a 5-0 vote APPROVED the requested rezone with one abstention; and

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

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

SECTION 1. That the Zoning Ordinance of the City of Kingsville, Texas, is amended by changing the zoning of Lot 22-24, Block 8, Vista Alegre, known as 1304 E. Kenedy from R2- Two Family District to C2- Retail District, as more specifically described on the Zone Change Map, attached as Exhibit A.

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

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

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

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

SECTION 6. That publication shall be made in the official publication of the City of Kingsville as required by the City Charter of the City of Kingsville.
INTRODUCED on this the 23rd day of November, 2015.
PASSED AND APPROVED on this the 14th day of December, 2015.
THE CITY OF KINGSVILLE
Sam R. Fugate, Mayor
ATTEST:
Mary Valenzuela, City Secretary
APPROVED:
Courtney Alvarez, City Attorney

To:

Planning & Zoning Commission Members

From:

Tom Ginter, Director of Planning and Development Services

Date:

November 13, 2015

Subject:

Agenda Items

- This is the vacant lot at the corner of Kenedy and 17th Street. It is across the street from 1&2 the KISD Harvey Elementary. Much of the zoning that surrounds this lot is either C2 (Retail) or R2 (Two Family). Contrary to the C2 use that you reviewed at your last meeting, this request can fit a neighborhood environment. I would think most of the traffic would be on the weekends, or during the day. Traffic wise while Kenedy is a busy street, I believe this location could handle the vehicle load. I think the biggest concern is not necessary the rezoning but how the property is developed for this business. Frankly that is a bit out of the scope of the board's decision but for me an important part of the end result, I hope to be meeting with the applicant to provide her with information and guidance on how the process works and what is expected when one redevelops property for a business.
- 3 At the last meeting when you considered these changes you requested to see the rest of the ordinance that was in that section. Enclosed is the current and suggested language, and Sec. 15-6-27 C 1-5.

CITY OF KINGSVILLE

200 E. Kleberg Avenue

Kingsville, Texas 78363 Phone: (361) 595-8055 Fax: (361) 595-8065

Planning & Development Services Dept. Planning & Zoning Division

Master Land Use Application									
PROPERTY INFORMATION: (Please PRINT or TYPE) Project Address 1304 E Kenedy Located in the City ETJ									
(Proposed) Subdivision NameTotal number of Lots									
Legal Description: VISTA ALEGRE, BLOCK 8, LOT 22-24									
Existing Zoning Designation RD Two Family Future Land Use Designation									
OWNER/APPLICANT INFORMATION: (Please PRINT or TYPE)									
Applicant/Authorized Agent Rosp Mireles Elicardo Phone 361/238-51938 FAX									
Email Address (for project correspondence only):									
Mailing Address 1301 & King City Kingsuille State TX Zip 78063 Property Owner 65 the Lacon Phone FAX —									
Email Address (for project correspondence only):									
Mailing Address City State Zip									
Select appropriate request(s) for which approval is sought. Attach appropriate checklist(s) with this application.									
Annexation Request No Fee Preliminary Plat Fee Varies Administrative Appeal (ZBA) \$250.00 Final Plat Fee Varies Comp. Plan Amendment Request \$250.00 Minor Plat \$100.00 Re-zoning Request \$250.00 Re-plat \$200.00 SUP Request/Renewal \$250.00 Vacating Plat \$50.00 Zoning Variance Request (ZBA) \$250.00 Conceptual Development Plat \$100.00 PUD Request \$250.00 Subdivision Variance Request \$25.00 ea Lot Line Adjustment Plat \$100.00 Amending Plat \$100.00									
Please provide a basic description of the proposed project: RETONE FROM- RZ - TWO-Family to CZ - Retvil Fur garden Shopt plants Sale.									
I hereby certify that I am the owner and/or duly authorized agent of the owner for the purposes of this application. I further certify that I have read and examined this application and know the same to be true and correct. If any of the information provided on this application is incorrect the permit or approval may be revoked.									
Applicant's Signature: Date: 10/08/2015									
Property Owner's Signature:Date:									
Application and Fee Accepted by: (I'di Oti, Barrent Date: 10/8/15									

City of Kingsville E King 17638 19167 18411 16887 19629 20425 8846 19961 21516 22279 16235 23045 21177 22712 E Kenedy 15213 Legend 1304 E. Kenedy 200 ft. Radius City Limits 45 90 180 Feet Document Path: N:\Engineering\GIS Techs\MAPS\MAP_DOCUMENTS\Arc_City_Base_Map_8.5x11.mxd CITY OF KINGSVILLE DISCLAIMER
THIS MAP IS FOR VISUAL PURPOSES ONLY.
THE INFORMATION ON THIS SHEET MAY Drawn By: Engineering ENGINEERING DEPARTMENT Department THE INFORMATION ON THIS SHEET MAY
CONTAIN INACCURACIES OR ERRORS.
THE CITY OF KINGSVILLE IS NOT
RESPONSIBLE IF THE INFORMATION CONTAINED
HEREIN IS USED FOR ANY DESIGN,
CONSTRUCTION, PLANNING, BUILDING, 200 East Kleberg Last Update: 10/13/2015 Kingsville, Texas 78363 Note: Office: 361-595-8005

WRIGHT JUAQUIN A 1251 E KING AVE KINGSVILLE, TX 78363 #18846

BAZAN RICARDO 1301 E KING AVE KINGSVILLE, TX 78363 #16887

MEDINA ELEAZAR R 1309 E KING AVE KINGSVILLE, TX 78363 #19167

CITIFINANCIAL SERVICING 1111 NORTH POINT BLDG 4 SUITE #100 COPPELL, TX 75019

CHAVEZ NATALIO 1318 E KENEDY KINGSVILLE, TX 78363 #22279 CARRION JOSE RENE 1423 E SANTA GERTRUDIS KINGSVILLE, TX 78363 #19629

CASAS PABLO JR 1305 E KING AVE KINGSVILLE, TX 78363 #17638

ESPINOZA ADOLFO 1313 E KING AVE KINGSVILLE, TX 78363 #19961

VAZQUEZ-CRUZ JUAN DIEGO 228 1/2 E LEE AVE KINGSVILLE, TX 78363 #16235

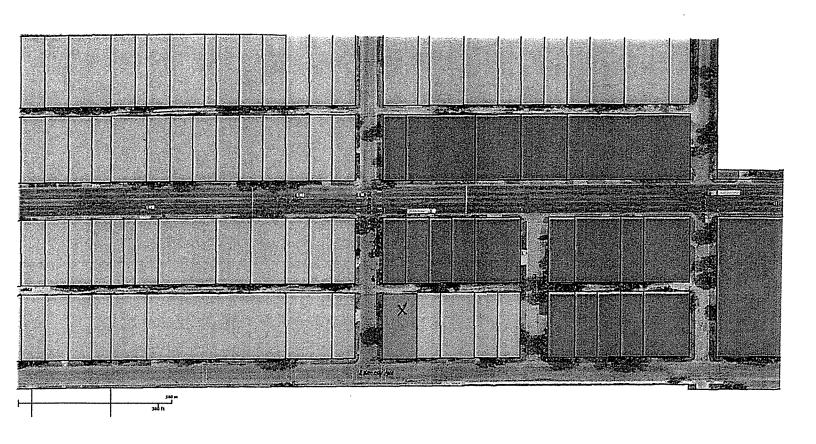
DEUTSCHE BANK NATIONAL 7105 CORPORATE PTX-C-32 PLANO, TX 75024 #21516 PEREZ ESMERALDA 1269 E KING AVE KINGSVILLE, TX 78363 #20425

MARTINEZ JOSE MARIA 627 E MILLER AVE KINGSVILLE, TX 78363 #18411

CENTRAL LATIN AMER CHURCH 1266 E KENEDY AVE KINGSVILLE, TX 78363 #22712

SALAZAR DALIA PO BOX 561 KINGSVILLE, TX 78364 #23045

K I S D PO BOX 871 KINGSVILLE, TX 78364 #15213



X 1304 E. Kenedy

Orange colored area is Zoned R2 (Two Family)

pink colored area is zoned C2 (Retail)

	RI	R2	R3	R4	MH	c1	c2	<u></u> 63	C4	JI	12	Ao
Bank or savings and loan						S	Р	Р	Р			
Book or stationary store						S	P	Р		<u> </u>	<u> </u>	
Barber or beauty shop						S	Р	Р	Р			
Bakery or confectionery shop, retail sales (less than 2,500 square feet)						Р	Р	Р	Р			
Cafeteria or restaurant						S	Р	Р	Р	Р	Р	
Camera shop						S	Р	Р	Р			
Laundry or self-service laundry shop (limited area)						S	Р	Р	Р			
Clinic, medical, dental, chiropractor, optometrist or other office of licensed Health related profession						S	Р	Р	Р	Р		
Drug store or pharmacy						Р	Р	Р	Р			
Department variety or discount store							Р	Р	Р			
Grocery store						Р	Р	Р	Р			
Furniture or appliance store							Р	Р	Р			
Florist shop						Р	Р	P	Р	İ		
Garden shop and plant sales		1					Р	Р	Р			Р
Kennel									S	Р	Р	Р
Handicraft and art object sale				T		S	Р	Р	Р	S		
Hardware store							Р	Р	Р	S	1	
Hobby shop						s	Р	Р	P		+	
Laboratory medical or dental						S	Р	P	P	1		

*



PUBLIC HEARING NOTICE

The Planning & Zoning Commission of the City of Kingsville will hold a Public Hearing Wednesday, November 18, 2015 at 6:00 p.m. wherein the Commission will discuss and/or take action on the following items and at which time all interested persons will be heard:

Luciano Bazan Est owner, Rosa Mireles agent – Requesting the rezone of VISTA ALEGRE, BLOCK 8, LOT 22-24 also known as 1304 E. Kenedy from R2 (Two-Family) to C2 (Retail) for a garden shop and plant sales.

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

PUBLIC HEARING NOTICE

The City Commission of the City of Kingsville will hold a Public Hearing Monday, November 23, 2015 at 6:00 p.m. wherein the City Commission will discuss the introduction on the following item and at which time all interested persons will be heard: Luciano Bazan Est owner, Rosa Mireles agent — Requesting the rezone of VISTA ALEGRE, BLOCK 8, LOT 22-24 also known as 1304 E. Kenedy from R2 (Two-Family) to C2 (Retail) for a garden shop and plant sales.

The meeting will be held at City Hall, 200 East Kleberg, in the City Commission Chambers. If you have any questions about the items on the agenda, please contact the City Secretary at (361) 595-8002.

To: Jesus Garza, City Manager, Courtney Alvarez, City Attorney

From: Tom Ginter, Director of Planning and Development Services

Date: November 19, 2015

Subject: Planning and Zoning Commission - Agenda Item

The Planning and Zoning commission met November 18, 2015 and recommended approval of the rezoning request at 1304 E. Kenedy from R2 to C2.

The vote was 5 to 0 recommending approval of the rezoning request.

If you have any questions, please feel free to ask.

AGENDA ITEM #2

MEMORANDUM

From The Human Resource Department

Date:

December 2, 2015

To:

Mr. Jesús Garza City Manager

From:

Diana Gonzales, SPHR Human Resource Director

Subject:

Civil Service Commission Reappointment

The three (3) year Civil Service Commission appointment for Mr. Nick Harrel has expired. He is interested in service for another three (3) year term.

History:

The City's Civil Service Commission consists of three (3) individuals who are appointed by the municipality's chief executive and confirmed by the governing body of the municipality. Members serve staggered three-year terms with the term of one member expiring each year. A person appointed to this position must meet guidelines established by Texas Local Government Code Chapter 143.006 (c) as follows:

- 1. be of good moral character;
- 2. be a United States citizen;
- 3. be a resident of the municipality who has resided in the municipality for more than three years;
- 4. be over 25 years of age; and
- 5. not have held a public office within the preceding three years.

Additional exceptions to (c)5 above,

"the municipality's chief executive may reappoint a commission member to consecutive terms. A commission member may not be reappointed to more than a third consecutive term unless the member's reappointment to a fourth or subsequent consecutive term is confirmed by a two-thirds majority of all the members of the municipality's governing body."

AGENDA ITEM #3

Planning & Development Services Department

TO:

Mayor & City Commission

THROUGH:

Jesus Garza, City Manager

FROM:

Tom Ginter, Planning & Development Services Director

SUBJECT:

Request for Alcohol Variance at 1330 S. 14th Street

DATE:

December 7, 2015

Muy Pizza-Tejas LLC, applicant is requesting an alcohol variance for a Wine and Beer Retailer's Permit. This address is located at 1330 S. 14th Street and is within 1,000 ft. boundary of one daycare, one church and one school. The property in question therefore requires a variance according to City ordinance ORD-2004-20.

The reason for the variance request is because Muy Pizza LLC is changing names to Muy Pizza-Tejas LLC.

Wine and beer was sold previously.

Also, all required notices have been sent to the property owners within 300ft. Additionally, a public hearing notice was placed in the newspaper on November 18, 2015. As of this point, we have not received any negative feedback from the property owners or citizens that have been noticed.

Alcohol Permit - 300 ft. Radius 12801 70₄₅₄ 22846 13618 20₂₅₀ 14419 12551 14922 21025 12610 18873 13339 S 14th 20309 21791 11803 19514 26013 E Miller 11017 **E** Miller 21509 18752 10268 13876 21149 30701 Legend 22274 Ownership 1330 S. 14th st. 300 ft. radius **Daycares** Churches 160 ander Daycare_&_CBC 40 80 KISD_Schools Document Path: N:\Engineering\GIS Techs\MAPS\MAP_DOCUMENTS\Alcohol_Permit.mxd CITY OF KINGSVILLE DISCLAIMER
THIS MAP IS FOR Y NSUAL PURPOSES ONLY.
THE INFORMATION ON THIS SHEET MAY
CONTAIN INACCURACIES OR ERRORS.
THE CITY OF KINGSVILLE IS NOT
RESPONSIBLE IF THE INFORMATION CONTAINED
HEREIN IS USED FOR ANY DESIGN,
CONSTRUCTION, PLANNING, BUILDING,
OR ANY OTHER PURPOSE. Drawn By: Engineering Dept. ENGINEERING DEPARTMENT 200 East Kleberg Last Update: 11/5/2015 Kingsville, Texas 78363

Note: Please see attached documents.



Office: 361-595-8005 Fax: 361-595-8035

CCO PROPERTIES
926 S. 14TH STE 103
KINGSVILLE, TX 78363
#12801

HERMAN OHLENBUSCH 1206 S. 14TH KINGSVILLE, TX 78363 #13618 KYLE PROPERTIES 1304 S. 14TH KINGSVILLE, TX 78363 #14419

CDO PROPERTIES 1021 CARLOS TRUAN KINGSVILLE, TX 78363 #21266 HUMBERTO SILVA 1203 W CIRCLE DR KINGSVILLE, TX 78363 #19454 ANALEE GOVEA 1209 W CIRCLE KINGSVILLE, TX 78363 #11739

FRANCISCO GARZA 1215 W CIRCLE KINGSVILLE, TX 78363 #20250 JESUS SANTIAGO LUNA 1221 W CIRCLE KINGSVILLE, TX 78363 #12251 ERIKA DE LA PAZ 1227 W CIRCLE KINGSVILLE, TX 78363 #21025

ELOY DE LA ROSA 1301 W CIRCLE KINGSVILLE, TX 78363 #13339 JESSE RAY ACUNA 1105 LAWNDALE KINGSVILLE, TX 78363 #14922 JUAN JOSE SANCHEZ 1228 W CIRCLE KINGSVILLE, TX 78363 #12610

RAMIRO CANTU JR 1302 W CIRCLE KINGSVILLE, TX 78363 #20309 RONALD RIPPS 1308 W CIRCLE KINGSVILLE, TX 78363 #11803 JAMES BUCKALEW 1314 W CIRCLE KINGSVILLE, TX 78363 #19514

ANGEL CANALS JR 1320 W CIRCLE KINGSVILLE, TX 78363 #11017 ARNOLD SNOWBERGER 1326 W CIRCLE KINGSVILLE, TX 78363 #18752 JACKSON STILLWAGON 1402 W CIRCLE KINGSVILLE, TX 78363 #10268

JUAN DE LA PAZ 1313 W CIRCLE KINGSVILLE, TX 78363 #21791 PATRICIA CONNER HAYES 1025 E MILLER KINGSVILLE, TX 78363 #21509 TC LASATER 1401 W CIRCLE KINGSVILLE, TX 78363 #13876

CINDY RIOS PEREZ 1407 W CIRCLE KINGSVILLE, TX 78363 #22274 CANDY SQUARES 1400 S 14TH KINGSVILLE, TX 78363 #30701 BRIJNESHKUMAR BHAKTA 1415 S. 14TH KINGSVILLE, TX 78363 #21149

DELWIN RANDALL 1304 S. 13TH KINGSVILLE, TX #18873 SHERWIN WILLIAMS COMPANY 1315 S. 14TH KINGSVILLE, TX 78363 #11129 DONALD RUHNKE 1203 S. 14TH KINGSVILLE, TX 78363 #22846

LAVINIA ISASSI 912 E. MILLER KINGSVILLE, TX 78363 #26013 JANE ROGERS
912 SHELTON
KINGSVILLE, TX 78363
#11748

GUADALUPE BENAVIDES JR 915 E SHELTON KINGSVILLE, TX 78363 #17667



inrougnout ine school year; just 20 minutes a day can make a difference,' N.R. Garcia said. (Submitted item)



November 18, 2015 - paper

PUBLIC NOTICE

The City Commission of the City of Kingsville will hold a public hearing on Monday, December 14, 2015, at 6:00 P.M. to discuss and/or take action on the following items:

Request for an alcohol variance for a Wine and Beer Retailer's Permit, for the establishment known as Pizza Hut, located at 1330 S. 14th Street.

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



Sports Injuries Motor Vehicle Accidents Occupational Injuries Worker's Comp

Pre/Post Op Total Knees/Hips Men's/Women's Health

1028 S. 14th Street Sundial Plaza · Kingsville, Texas

Fax 1-361-232-4964

Facebook

NO WAITING!

Open: Monday - Thursday 8am - 6:30pm : Friday 8am - 5pm

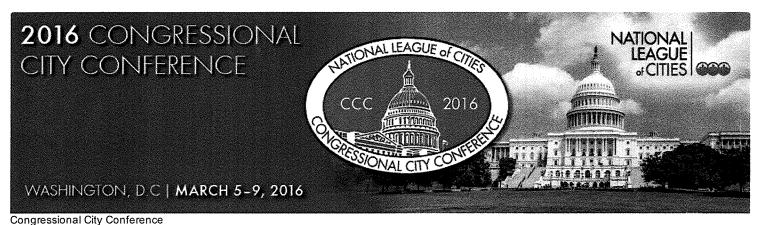
MOST INSURANCES ACCEPTED

- · Humana Military/Tricare
- BCBS Humana Plans

PHYSICAL THERAPY & SPORTS MEDICAL

AGENDA ITEM #4

Menu



Registration is open for NLC's legislative conference!

Washington, DC has been attracting visionaries, revolutionaries, and doers since 1790. As a city leader, you fit right in. Be a part of a long history of men and women who have come to Washington to make a difference for the lives of others.

Each year, the Congressional City Conference provides delegates with the opportunity to hear from policy makers and to educate members of Congress about the needs of cities.

Come to Washington, DC over March 5-9, 2016 to become a history-maker for your community. You'll get the information you need about federal policies affecting cities, and use what you've learned to make an impact on Capitol Hill.

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http://ccc.nlc.org/ 1/2

AGENDA ITEM #5

UTION #2015-

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN EXTENSION OF MEMORANDUM OF UNDERSTANDING BETWEEN THE KINGSVILLE FIRE DEPARTMENT AND U.S. CUSTOMS AND BORDER PROTECTION, OFFICE OF BORDER PATROL, RIO GRANDE VALLEY SECTOR; REPEALING ALL CONFLICTING RESOLUTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Kingsville Fire Department was previously approached in 2013 by the Border Patrol to conduct a program of clinical education or field work experience at the Fire Department to help train the agency's Emergency Medical Technicians and Emergency Medical Technician students;

WHEREAS, the City of Kingsville approved a Memorandum of Understanding (MOU) between the Kingsville Fire Department and U.S. Customs and Border Protection, Office of Border Patrol, Rio Grande Valley Sector (for Emergency Medical Technicians and Emergency Medical Technician students) on April 22, 2013 via Resolution #2013-27 and now desires to extend that MOU;

WHEREAS, the current MOU is set to expire on April 23, 2016 and the attached Extension of MOU would extend the agreement for a period of three years, causing the extension to expire on or about April 23, 2019;

WHEREAS, the City of Kingsville Fire Department is agreeable to conduct the training under the guidelines stated in the attached Extension and the original MOU agreements.

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

١.

THAT the City Manager is authorized and directed as an act of the City of Kingsville, Texas to enter into an Extension of Memorandum of Understanding between the Kingsville Fire Department and U.S. Customs and Border Protection, Office of Border Patrol, Rio Grande Valley Sector, 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.

THAT this Resolution shall be and become effective on and after adoption.				
PASSED AND APPROVED by a majority vote of the City Commission on 14th day of December , 2015.	the			
Sam R. Fugate, Mayor				
ATTEST:				
Mary Valenzuela, City Secretary				
APPROVED AS TO FORM:				
Courtney Alvarez, City Attorney				

Extension of Memorandum of Understanding Between:

KINGSVILLE FIRE DEPARTMENT

and

U.S. Customs and Border Protection, Office of Border Patrol, Rio Grande Valley Sector

On April 23, 2013, the above-mentioned parties entered into a Memorandum of Understanding ("MOU") concerning participation by Border Patrol in a program of clinical education / field work experience at KINGSVILLE FIRE DEPARTMENT for its Emergency Medical Technicians and Emergency Medical Technician students.

Whereas, the parties agree that, in the light of the positive outcome of cooperation activities carried out to date, they desire to extend the MOU for a further period of three years.

Accordingly, the parties hereby agree that the MOU shall be extended for a period of three years effective from the date of signature below.

Raul Ortiz, Acting Chief Patrol Agent			
U.S. Border Patrol, Rio Grande Valley Secto			
Date			
Joey Reed, Fire Chief			
City of Kingsville Fire Department			
Date			
Name / Tida (Drinted)			
Name / Title (Printed) City of Kingsville Representative			
Signature			
Date			

RESOLUTION #2013-<u>よ</u>れ

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MEMORANDUM OF UNDERSTANDING BETWEEN THE KINGSVILLE FIRE DEPARTMENT AND U.S. CUSTOMS AND BORDER PROTECTION, OFFICE OF BORDER PATROL, RIO GRANDE VALLEY SECTOR; REPEALING ALL CONFLICTING RESOLUTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Kingsville Fire Department has been approached by the Border Patrol to conduct a program of clinical education or field work experience at the Fire Department to help train the agency's Emergency Medical Technicians and Emergency Medical Technician students;

WHEREAS, the Department is agreeable to conduct the training under the guidelines stated in the attached agreement;

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

1.

THAT the City Manager is authorized and directed as an act of the City of Kingsville, Texas to enter into a Memorandum of Understanding between th Kingsville Fire Department and U.S. Customs and Border Protection, Office of Border Patrol, Rio Grande Valley Sector in accordance with Exhibit A hereto attached and made a part hereof.

11.

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 22 day of 12 pril . 2013,

Sam R. Fugate, Mayor

ATTEST:

Mary Valenzuela, City Secretary

APPROVED AS TO FORM:

Courtney Alvarez, City Attorney

Memorandum of Understanding Between:

KINGSVILLE FIRE DEPARTMENT

and

U.S. Customs and Border Protection, Office of Border Patrol, Rio Grande Valley Sector

- I. <u>PARTIES</u>. The parties to Memorandum of Understanding ("Agreement") are the Department of Homeland Security, U.S. Customs and Border Protection, Office of Border Patrol, Rio Grande Valley Sector ("Border Patrol") and KINGSVILLE FIRE DEPARTMENT.
- II. PURPOSE. The purpose of this Agreement is to set forth the terms by which the Border Patrol seeks to obtain a program of clinical education or field work experience at KINGSVILLE FIRE DEPARTMENT for its Emergency Medical Technicians and Emergency Medical Technician students and by which the KINGSVILLE FIRE DEPARTMENT is willing to provide such experiences. Both the Border Patrol and KINGSVILLE FIRE DEPARTMENT hereby agree to cooperate and work in good faith with each other to provide program(s), whereby students may obtain certifications as Emergency Medical Technicians, or enhance their skills as Emergency Medical Technicians, as a result of the clinical work or field experience gained at KINGSVILLE FIRE DEPARTMENT ("Program").

III. RESPONSIBILITIES.

A. JOINT RESPONSIBILITIES.

- 1. The clinical training provided in the Program shall include those services, which are mutually agreed upon between the parties.
- 2. Consideration for this Agreement shall consist of the mutual promises contained herein, the parties agreeing that monetary compensation shall neither be expected nor received by either party.
- **B. BORDER PATROL**. The Border Patrol agrees to fulfill the following obligations during the term of this Agreement:
- 1. Comply with the educational standards of the appropriate accreditation bodies.
- 2. Communicate with KINGSVILLE FIRE DEPARTMENT, through the KINGSVILLE FIRE DEPARTMENT'S Program Supervisor, on all items pertinent to the Program.

- 3. Notify KINGSVILLE FIRE DEPARTMENT through KINGSVILLE FIRE DEPARMENT'S Program Supervisor, of the planned schedule of student assignments, including the names of the students, each student's level of academic preparation, and length and dates of each student's assignment in the Program.
- 4. Refer to KINGSVILLE FIRE DEPARTMENT only students who have satisfactorily completed the prerequisite didactic portion of the curriculum applicable to KINGSVILLE FIRE DEPARTMENT.
- 5. Ensure that each student has provided proof of vaccination for, or serologic immunity to Measles, Mumps, Rubella, annual negative TB skin test or chest x-ray; and; Tetanus/Diphtheria inoculation within previous ten years.
- 6. Ensure that each student provide evidence of being immunized for Hepatitis B/Chickenpox or provide a written formal refusal of the vaccine.
- 7. Ensure that the students and the Border Patrol faculty support and follow KINGSVILLE FIRE DEPARTMENT 'S policies, rules and regulations.
- 8. Require that the students and Border Patrol faculty dress in a professional manner and wear a visible name tag identifying their level of training and name.
- 9. Implement a mechanism to notify KINGSVILLE FIRE DEPARTMENT if a student is unable for any reason to report for training.
- 10. Provide faculty that are approved by the certifying or accrediting agencies to supervise the clinical aspects of the Program. Such faculty member(s) retain(s) the ultimate responsibility of monitoring and supervising the students.
- 11. Make provisions for the Border Patrol faculty to engage in continuing communication and periodic evaluation and planning meetings with KINGSVILLE FIRE DEPARTMENT personnel involved with student learning, including preceptors, if assigned. Any problems arising from student training and the involvement of preceptors will be handled as they arise by the supervising Border Patrol faculty member and KINGSVILLE FIRE DEPARTMENT staff member(s). In the event of continued difficulty, the problem will be referred to the appropriate KINGSVILLE FIRE DEPARTMENT Administrator and the Border Patrol Administrator or equivalent.

- 12. Instruct the students and Border Patrol faculty to maintain the confidentiality of all information about KINGSVILLE FIRE DEPARTMENT 's patients/customers, including information about KINGSVILLE FIRE DEPARTMENT 's, diagnosis, evaluation, treatment of such patients, financial condition, or services rendered as required by applicable State and Federal laws and KINGSVILLE FIRE DEPARTMENT 's bylaws, rules and regulations. If, during the course of the Program and in conjunction with the Program requirements, employees and agents of KINGSVILLE FIRE DEPARTMENT are informed of or possess records of any student, KINGSVILLE FIRE DEPARTMENT shall comply with the confidentiality requirements of all federal and State laws and regulations in the handling of such records.
- C. <u>KINGSVILLE FIRE DEPARTMENT</u>. KINGSVILLE FIRE DEPARTMENT agrees to fulfill the following obligations during the term of this Agreement:
- 1. Maintain standards for appropriate health care services that are conducive to sound educational experiences for the students.
- 2. Assign a designee, with the required credentials, who will be responsible for facilitating the fieldwork/clinical experience of the students.
- 3. Make available to the students and Border Patrol faculty library facilities, appropriate records and equipment, classroom and conference space.
- 4. Provide orientation for the students and Border Patrol faculty to the physical facilities, policies and procedures of the KINGSVILLE FIRE DEPARTMENT.
- 5. Provide emergency medical care for students and Border Patrol faculty in the event of an illness or accident during his/her participation in the Program, the costs of which shall be borne by the individual student or Border Patrol faculty member or such individual's worker's compensation carrier, as applicable.
- 6. Advise the Border Patrol of any deficits noted in the ability of an assigned student to progress toward achievement of stated Program objectives in writing, and assist the Border Patrol and the student in attempting to correct these deficits. It will be the mutual responsibility of the student, the Border Patrol faculty, the fieldwork/clinical educator, and the academic fieldwork/clinical coordinator to develop a plan by which the student may be assisted to achieve the stated Program objectives.
- 7. Permit, upon written request from the Border Patrol, the inspection of the facilities, fieldwork, and services by the accrediting agencies.
- 8. KINGSVILLE FIRE DEPARTMENT shall notify the Border Patrol of the number of students it can accommodate during a given period of time.

- 9. KINGSVILLE FIRE DEPARTMENT has the right to recommend termination of any student's participation in the Program when such student's health or performance is a detriment to a patient's well-being, or to the achievement of the stated objectives of the Program. KINGSVILLE FIRE DEPARTMENT shall provide written documentation specifying the facts and circumstances necessitating such request for recommending termination of the student. The Border Patrol shall have the opportunity to review and to evaluate said student's health or conduct necessitating the termination.
- IV. <u>POINTS OF CONTACT</u>. All notices or other communications provided for in this Agreement shall be directed to the parties at the addresses below. Either party may change this address by providing written notice to the other party at the address listed below.

Border Patrol:

KINGSVILLE FIRE DEPARMENT:

HECTOR R. ELIZONDO 2301 S. MAIN ST. MCALLEN, TEXAS 78503 City of Kingsville City Monager's Office P.D. Box 1458 Kingsville, Tx 78364

- V. <u>LIABILITY INSURANCE</u>. KINGSVILLE FIRE DEPARTMENT acknowledges that the Border Patrol is a government agency within the Department of Homeland Security and that, as such, the Border Patrol is self-insured under the Federal Tort Claims Act with respect to liability for property damage, personal injuries, or accidents caused by its employees in the course of official business. This includes medical training, which has been assigned to specific agents as part of their job description and/or collateral duty. In addition, Border Patrol employees are covered by the U.S. Department of Labor's Office of Worker's Compensation Programs with respect to injuries suffered in the course of federal employment or training. Such student will be responsible for providing the required documentation directly to KINGSVILLE FIRE DEPARTMENT.
- VI. PARTIES' RELATIONSHIP. It is understood and agreed that the parties are independent contractors and this Agreement shall not create any relationship of agency, partnership, joint venture or create an employment relationship between KINGSVILLE FIRE DEPARTMENT, the students or the Border Patrol faculty. It is understood and agreed that KINGSVILLE FIRE DEPARTMENT retains the ultimate responsibility for patient record keeping and for patient care while the Border Patrol and the students retain the obligations and limitations expressly stated in this Agreement.
- VII. <u>OTHER PROVISIONS</u>. Nothing in this Agreement is intended to conflict with current law or regulation or the directives of the Department of Homeland Security, U.S. Customs and Border Protection, Border Patrol or KINGSVILLE FIRE DEPARTMENT. If a term of this Agreement is inconsistent with such authority, then that term shall be

invalid, but the remaining terms and conditions of this Agreement shall remain in full force and effect.

- VIII. <u>EFFECTIVE DATE</u>. This Agreement will become effective on the date on which it is mutually entered into by the Border Patrol and KINGSVILLE FIRE DEPARTMENT (the "Effective Date").
- IX. <u>TERM</u>. The initial term of this Agreement shall be for one (1) year from the Effective Date. At the end of the initial term, this Agreement shall automatically renew for one (1) additional term of two (2) years, unless terminated as hereinafter provided. Notwithstanding the terms specified herein, this Agreement may be terminated by either party as provided in Section XI of this Agreement. This Agreement is subject to annual review as required by both parties and external licensing entities.
- X. <u>MODIFICATION</u>. This Agreement contains the entire understanding of the parties and shall be modified only by an instrument in writing signed on behalf of each party.
- XI. <u>TERMINATION</u>. This Agreement may be terminated prior to the expiration of the term hereof by mutual agreement of the parties; or by either party, without cause, upon thirty (30) days written notice to the other party; however, no such termination shall be effective upon any student enrolled in the Program, until the expiration of the then current course for such student.
- XII. GOVERNING LAW AND JURISDICTION. This Agreement shall be governed in all respects by, and be construed in accordance with, the laws of the United States.
- XIII. <u>CLAIMS OR ACTIONS</u>. That with respect to any claim or action arising out of any activities performed under or pursuant to this Agreement, pursuant to paragraph V, each party shall be liable for payment of that portion of any and all claims, liability, costs, expenses, demands, settlements, or judgments resulting from the negligence, actions, or omissions of itself or its own directors, representatives, and employees. The parties agree to notify each other, in writing, immediately upon receipt of any incident, occurrence, or claim arising out of or in connection with this Agreement, which could result in a liability or claim of liability to the other party.
- XIV. <u>COUNTERPART SIGNATURE</u>. This Agreement may be executed in one or more counterparts (facsimile transmission or otherwise), each counterpart shall be deemed an original and all of which shall constitute but one Agreement.
- XV. <u>NO WAIVER</u>. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach.

- **XVI. RIGHTS IN PROPERTY**. All title to KINGSVILLE FIRE DEPARTMENT supplies, equipment, furnishings, fiscal records, client charts, and client records shall remain the sole property of the KINGSVILLE FIRE DEPARTMENT.
- **XVII.** <u>AUTHORIZATION OF AGREEMENT</u>. Each party represents and warrants to the other that the execution of this Agreement has been duly authorized and that this Agreement constitutes a valid and enforceable obligation of such party according to its terms.
- **XVIII.** <u>SECTION HEADINGS</u>. The headings of sections contained in this Agreement are for convenience only and they shall not, expressly or by implication, limit, define, extend, or construe the terms or provisions of the sections of this Agreement.
- XIX. NO PRIVATE RIGHT CREATED. This document is an internal agreement between KINGSVILLE FIRE DEPARTMENT and the Border Patrol and does not create or confer any right or benefit on any other person or party, private or public. Nothing in this Agreement, addenda, attachments or other associated documents restricts the authority of either party to act as provided by law, statute, or regulation, nor does it restrict either party from enforcing any laws or taking any action within its authority or jurisdiction.
- **XX.** <u>NO PUBLICATION</u>. Neither the Border Patrol nor KINGSVILLE FIRE DEPARTMENT shall submit for publication any material relating to the Program without prior written approval of the non-submitting party.
- **XXI. NON-EXCLUSIVITY**. Each party shall have the right to enter into similar agreements with other parties.
- XXII. NON-DISCRIMINATION. The Border Patrol and KINGSVILLE FIRE DEPARTMENT mutually agree to make no distinction among students, on the basis of race, color, sex, creed, age, sexual orientation, marital status, or national origin. For the purpose of this Agreement, in addition to the aforementioned, a student shall not be denied any service or benefit that is different, is provided in a different manner or at a different time from the service provided to other students under this Agreement. A student may not be subjected to segregation or separate treatment in any manner related to receipt of any advantage or privilege enjoyed by others receiving the same service or benefit; or any other requirement or condition that individuals must meet in order to be provided any service or benefit.
- **XXIII.** WAIVER OF CONSTRUCTION AGAINST DRAFTER. Both parties have contributed to the review and drafting of this Agreement, with the assistance of their respective legal counsel. Therefore, both parties waive the rule of construction against the drafter.

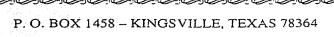
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

KINGSVILLE FIRE DEPARTMENT and the Border Patrol hereby agree that all oral or written agreements between them that were made prior to the execution of this Agreement have been reduced to writing and are contained herein. By signing below, each party acknowledges they are executing an interagency agreement based on the conditions and definitions contained in this Agreement.

IN WITNESS WHEREOF, KINGSVILLE FIRE DEPARTMENT and the Border Patrol have executed this Agreement, in multiple originals, to be effective as of the date on which this Agreement is fully executed.

	UNITED STATES BORDER PATROL,				
	RIO GRANDE VALLEY SECTOR				
	la Ward and Op				
A	to face				
Ø	Rosendo Winojosa, Chief Patrol Agent				
	U.S. Border Patrol, Rio Grande Valley Sector				
	Date				
	CITY OF KINGSVILLE PIRE DEPARTMENT				
	Jaley July 11 Fin B				
	Joey Reed, Fire Chief, City of Kingsville Fire Department				
	Date 4/22/13				
	Date // DE/()				
	CITY OF KINGSVILLE REPRESENTATIVE				
	Vivacant T Carall / City Manager				
	Vincent J. Capell/City Manager				
	Name/Title (Printed)				
	Lagell Capell				
	Signature				
	1				
	Data 4/23/13				
	Date				

CITY OF KINGSVILLE





April 23, 2013

U.S. Customs and Border Protection Attn: Hector Elizondo, Operations Supervisor 2301 S. Main Street McAllen, TX 78501

Re: Memorandum of Understanding between the City of Kingsville Fire Department and U.S. Customs and Border Protection.

Dear Mr. Elizondo,

As you may be aware at a meeting of the City Commission on April 22, 2013, the City Commission of the City of Kingsville discussed and approved Resolution No. 2013-27, authorizing the City Manager to enter into a Memorandum of Understanding between the Kingsville Fire Department and U.S. Customs and Border Protection.

Attached are two original copies of the Memorandum of Understanding (MOU) that were approved by the City Commission. Please execute both MOU's and forward one original to the City of Kingsville.

If you have any questions, please feel free to contact me at 595-8002.

Sincerely.

Mary Valenzuela City Secretary

Mary Valenguela

Enclosure

Cesar E. Falcon

Border Patrol Agent Sector i.ead Medic (N. COG) Chaplain AEMT

U.S. Department of Homeland Security

1501 E. Expressway 83 Weslaco, Texas 78599

956 647-8800 tel 956 454-7677 cel 956 647-8989 fax cesar.e.falcon@cbp.dhs.gov cef21173@yahoo.com



U.S. Customs and Border Protection

REGULAR AGENDA

AGENDA ITEM #6

PUBLIC WORKS DEPARTMENT

DATE: December 10, 2015

TO: Jesus A Garza, City Manager

CC: Courtney Alvarez, City Attorney

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

SUBJECT: Interlocal Agreement with Kleberg County to provide road paving services

Kleberg County has received a Transportation Infrastructure Fund (TIF) grant from the State of Texas. Using these funds, Kleberg County would like to enter into an agreement where the County would supply the materials and the City of Kingsville will place the roadway surface. The Roadways in question are County Road 1038 (Young Drive) from the city limits to FM 1355. The city is currently completing Young Drive from Sage Road to the city limits. Another road is CR 2130 from CR 2619 and CR 1065 in front of the City's landfill.

The Estimated cost in materials that would be supplied by Kleberg County is \$22,790.00. The Estimated labor and equipment cost supplied by the City of Kingsville is \$18,627.84.

RESOLUTION # 2015-

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN KLEBERG COUNTY AND THE CITY OF KINGSVILLE FOR CONSTRUCTION OF PAVING SERVICES RELATED TO THE TXDOT TIF GRANT ROADS; REPEALING ALL CONFLICTING RESOLUTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Kleberg County has received funding under the Transportation Infrastructure Fund ("TIF") Grant Program from the Texas Department of Transportation ("TxDOT"), #CTIF-01-137, to repair county roads affected by oil and gas exploration and production activity; and

WHEREAS, the Commissioners Court of Kleberg County and the City of Kingsville agree to cooperate in sharing of paving services and other related services to make improvements to certain TIF county roads for the mutual benefit of both parties; and

WHEREAS, Kleberg County and the City of Kingsville have previously entered into local agreements to share expenses on items that benefit the residents of their respective entities; and

WHEREAS, the County and the City believe that cooperating in completing such TIF roads improvements will contribute to 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:

١.

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 Construction of Paving Services related to the TxDOT TIF Grant Roads.

11.

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			
14 th day of	December , 2015.		
	-		
Sam R. Fugate, Mayor			
A sign reper person Co. sign			
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 CONSTRUCTION OF PAVING SERVICES RELATED TO THE TXDOT TIF GRANT ROADS

STATE OF TEXAS

COUNTY OF TEXAS

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, Kleberg County has received funding under the Transportation Infrastructure Fund ("TIF") Grant Program from the Texas Department of Transportation ("TxDOT"), #CTIF-01-137, to repair county roads affected by oil and gas exploration and production activity; and

WHEREAS, the Commissioners Court of Kleberg County and the City of Kingsville agree to cooperate in sharing of paving services and other related services to make improvements to certain TIF county roads for the mutual benefit of both parties; and

WHEREAS, Kleberg County and the City of Kingsville have previously entered into local agreements to share expenses on items that benefit the residents of their respective entities; and

WHEREAS, the County and the City believe that cooperating in completing such TIF roads improvements will contribute to the health and quality of life of the residents of their jurisdictions.

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. Purpose.

The City and the County agree to participate in completing certain road improvements by sharing labor, materials, and equipment as determined appropriate by the parties to accomplish responsibilities as set forth in contract no. TxDOT CTIF-01-137.

2. Responsibilities.

A. The parties agree that the County:

- 1. Through the County Judge, as the official representative, is responsible for any and all correspondence or discussion between the County and TxDOT related to the County TIF Grant Program.
- 2. Shall be responsible for compliance of all required responsibilities as set forth in TxDOT contract no. CTIF-01-137.
- 3. Retain separate records and track road improvements and activities, including all expenses to be reimbursed by the TIF program, by each county road to be improved.
- 4. Shall be responsible for the provision of materials for improvements of such agreed upon roads under the TIF program.

B. The parties agree that the City:

- 1. Shall be responsible for communicating with designated County Commissioners to complete improvements of designated roads.
- Shall not exceed agreed upon road limits as approved by TxDOT under the TIF project list.
- Shall be responsible for compliance of all requirements as may be deemed appropriate by City processes and procedures in completing such identified road improvements.
- 4. Retain separate records and track road improvements and activities by each county road.
- 5. Shall not seek reimbursement from the County from the TIF program for the payment of labor, materials, and equipment used in completing identified road improvements.

3. Term of the Agreement

A. This Agreement shall be from the last date approved by both parties until the TxDOT TIF grant is administratively closed by TxDOT.

4. Participant Funding

The County will comply with 2.A.4 and the City will comply with 2.B.5. as per the terms set out above.

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. <u>Notices</u>. 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. <u>Performance/Governing Laws</u>. This agreement shall be performed in Kleberg County, Texas, and shall be governed by the laws of the State of Texas.
- 12. <u>Venue</u>. Venue for an action arising under this Agreement is in Kleberg County, Texas.
- 13. <u>Assignment</u>. 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. <u>Effect of Waivers</u>. 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. <u>Warranty</u>. 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. <u>Immunities Not Waived</u>. 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. <u>Mutual Indemnification</u>. 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. <u>Captions</u>. 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 10 of this agreement.
- 24. **Effective Date**. This Agreement is effective on the date when the last party executes this agreement.
- 25. <u>Multiple Originals</u>. 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 t Kleberg County Commissioners Court authorizing such execution this ofDecember, 2015.	
Rudy Madrid County Judge	

ATTEST:	
Stephanie G. Garza County Clerk	
APPROVED AS TO FORM:	
Kira Talip County Attorney	
AUDITOR'S CER	TIFICATE
I hereby certify that funds are available to ac Kleberg County herein.	ecomplish and pay the obligations of
Melis	ssa Munoz, County Auditor
EXECUTED by the City of Kingsville on the2015	14th day of <u>December</u> ,
Sam R. Fugate Mayor	
ATTEST:	
Mary Valenzuela City Secretary	
APPROVED AS TO FORM:	
Courtney Alvarez City Attorney	

AGENDA ITEM #7

To: Jesus Garza, City Manager

Courtney Alvarez, City Attorney

Mary Valenzuela, City Secretary

From: Tom Ginter, Director of Planning and Development Services (2)

Date: December 3, 2015

Subject: December 14, 2015 – Agenda Item

The Joint Airport Zoning Board at an earlier meeting decided to place an ad in the Kingsville Record to determine if there were any citizens interested in being on the Joint Airport Zoning Board. A copy of the ad is attached.

We received interest from three citizens. Attached are their letters of interest.

As a reminder the other City appointee is Ramon Perez. The County appointees are Chuck Schulz and Daniel Morales. Ken Moses is the 5th member and Chairman of the Board.

To be clear, the JAZB did not conduct interviews nor are they making a recommendation, just submitting names of interested citizens to the City Commission for your review and possible approval.

If you have any questions, please feel free to ask.

Sundayis Paper 11-1-15

There is an extraordinary opportunity for an individual who is passionate about providing appropriate future growth around NAS Kingsville, to become a member of our Joint Airport Zoning Board (JAZB). The JAZB board is necessary to coordinate future planning efforts of the City of Kingsville, Kleberg County, and the region and that its future operational capacity should be protected because it fulfills an essential community purpose. The only requirement is to be a resident of the City of Kingsville. The board member will first serve a three year term to be eligible for re-appointment for a two year term. Board meetings are held every third Thursday of the month. Please contact Tom Ginter, the Planning and Development Services Director at 361-595-8053.

Brian Coufal

(physical) / PO Box 5247 (mailing)
Kingsville, TX 78363
(cell) / (361) 592-8501 (work)
bcoufal@fcbot.com

Professional Experience

First Community Bank, Kingsville TX

2004 to present

Senior Vice President and Branch Manager

Responsible for all aspects of branch operating and lending functions including maintaining a portfolio
of commercial, real estate and consumer loans, marketing and community relations. Direct supervision
of 11 employees.

Porter, Rogers, Dahlman, & Gordon, P.C., Corpus Christi TX

2002 - 2004

Associate Attorney

 Represented firm clients in matters related to bankruptcy, creditor, general business, employee, and general civil litigation matters.

State Bank of Kingsville, Kingsville TX

1998 - 1999

Vice President and Cashier

• Responsible for all aspects of branch operations. Direct supervision of 15 employees

Kleberg First National Bank, Kingsville TX

1981 - 1998

Vice President and Comptroller

 Began employment as Motor Bank teller and progressed through general operations service as Auditor, head of Loan Review, and ultimately Comptroller. Responsible for all accounting functions of bank as well as asset integrity. Served as Secretary to the Board and related parent Holding Company. Direct supervision of as many as 25 employees.

Education

- H.M. King High School, Kingsville TX, diploma with honors 1977
- Texas A&I University, Kingsville TX, Bachelor of Science, 1981
- Texas A&I University, Kingsville TX, Master of Business Administration, 1985
- Southwestern Graduate School of Banking, Southern Methodist University, Dallas TX, diploma 1988
- St. Mary's University School of Law, San Antonio, TX, Jurisdoctor magna cum laude 2002

Current Affiliations

- President, Kingsville Independent School District Board of Trustees
- Director, Kingsville Economic Development Council
- Treasurer, Kingsville Chorale
- Member, Kingsville Noon Rotary Club
- Advisory Board Member, Texas A&M Kingsville College of Business, Accounting and Finance
- Advisory Board Member, Kingsville Independent School District Career & Technology Department
- Trustee, Dotterweich Memorial Scholarship Fund

Frank S. Baumann, Jr.

PO Box 391

Kingsville, TX 78363

Personal Bio:

Born to Frank & Evelyn Baumann, February 20, 1950 at NAS Corpus Christi, TX Attended public schools in Corpus Christi, graduating from Richard King High School 1968

Attended Southwestern University, Georgetown, TX, 1968-1970 Graduated with BBA in Marketing from Texas A & I University, August 1972 Married Shari L. Raymond, June 3, 1972 Three children: Trey, Brandon, and Piper and five grandchildren

Employment History:

Held various jobs throughout high school and college K. A. Childs Ford Mercury, Kingsville, sales 1972-1974 State Farm Insurance Agent, Kingsville, 1974-2011

Community Involvement:

Member (previously) of Kingsville Chamber of Commerce, serving as a board member and officer

Member (previously) of Kingsville Economic Development Council, serving as a board member and officer

Currently (for the last 2 ½ years) serving as volunteer team member for the Baffin Bay Water Quality Study being conducted by the Harte Institute, Texas A & M Corpus Christi Board Member of the Brush Country Chapter of Coastal Conservation Association Member, Deacon, and Lay Chaplain First Baptist Church, Kingsville, TX Food Pantry (in conjunction with Food Bank of Corpus Christi) volunteer First Baptist Church, Kingsville, TX

Joint Airport Zoning Board:

NAS Kingsville has had an incredible impact, socially and economically, on the City of Kingsville, and Kleberg County for several decades. As the community and the airbase have continued to grow, so has the need for greater safety, consideration, and planning for joint land use compatability near NAS Kingsville. If appointed to serve on this board, I will strive to use common sense to help maintain the healthy relationship the community and airbase have developed over the years.

Respectfully,

Frank Bauman, Jr.

Tom Ginter

From:

Rhonda Remmers <rhonda.remmers@coldwellbanker.com>

Sent:

Tuesday, November 10, 2015 9:44 AM

To:

Tom Ginter

Subject:

JAZB

Dear Mr. Ginter,

I am interested in being a member of the JAZB because I understand the importance of NAS Kingsville to our community. I also understand the necessity for restricting certain types of development around the base.

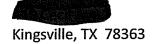
I have been a Realtor in Kingsville for a little over 23 years. I worked for Coldwell Banker Homestead Properties the entire time. I retired at the end of 2014 but my license is still active. I feel that my experience in real estate makes me well qualified to serve on this board.

I am currently serving on the Kleberg County Appraisal Review Board.

I served on the Housing Authority Board years ago. I have also served in several offices on the Board of Realtors, including president. I was a member of the Javelina Booster Club board for several years. I am a past member of the Women's Club of Kingsville and have held several offices in that organization.

Please consider me as a candidate for the JAZB.

Thank you, Rhonda Remmers





AGENDA ITEM #8



Purchasing/IT Department

361-595-8025 361-595-8035 Fax

DATE:

TO: City Commission through City Manager

FROM: David Mason, Purchasing Director

SUBJECT: Engineering Services-CDBG RFQ 16-03

SUMMARY

This items provides staff recommendation for RFQ 16-03 Engineering Services related to engineering design for the Texas Department of Agriculture Community Development Block Grant (TDA CDBG). The grant is for replacement of 3,100 l.f. of 8" water line, hydrants, service connections, etc. along Armstrong Street from Kenedy Avenue to Caesar Avenue. The grant must be managed by a TDA approved firm of which both respondents meet that requirement. RFQ Review Committee consisted of Jesús Garza, City Manager; Charlie Cardenas, City Engineer; Deborah Balli, Finance Director; Tom Ginter, Director of Development Services with David Mason, Purchasing /IT Director serving as a non-voting facilitator.

BACKGROUND

Evaluation Criteria	Max Pts. Per Evaluator	Max Pts. Total	Alpha Engineering	LNV Engineering
Experience	60	300	276	295
Work				
Performance	25	125	108	114
Capacity To				
Perform	15	75	66	71
TOTAL	100	500	450	480

FINANCIAL IMPACT

The award will expend \$10,000 of the \$60,000 of the matching funds provided by the City of Kingsville for this grant. The other \$50,000 in matching funds will be used for other items during the construction phase as shown on the budget page.

RECOMMENDATION

It is recommended the award for RFQ 16-03 Engineering Services for the TDA CDBG grant be awarded to LNV Engineering, the most highly qualified provider based on demonstrated competence and qualifications. Staff will negotiate a contract for a fair and reasonable price not

to exceed the allotted amount. If these negotiations fail, staff will begin negotiating with the next choice. This item authorizes the award to negotiate and the contract to be negotiated.

City of Kingsville Grant Budget

Project Activities	Contract Funds	Other Funds ¹	Total Funds
Construction	\$221,500	\$50,000	\$271,500
Engineering	\$45,500	\$10,000	\$55,500
Administration	\$33,000	\$0	\$33,000
TOTALS	\$300,000	\$60,000	\$360,000
¹ City of Kingsville Utility Fund			

AGENDA ITEM #9



Purchasing/IT Department

DATE: December 3, 2015

TO: City Commission through City Manager

FROM: David Mason, Purchasing/IT Director

SUBJECT: Professional Services-CDBG-RFP 16-02

SUMMARY

This items provides staff recommendation for RFP 16-02 Professional Services related to grant management for the Texas Department of Agriculture Community Development Block Grant (TDA CDBG). The grant is for replacement of 3,100 l.f. of 8" water line, hydrants, service connections, etc. along Armstrong Street from Kenedy Avenue to Caesar Avenue. The grant must be managed by a TDA approved firm of which both respondents meet that requirement. RFP Review Committee consisted of Jesús Garza, City Manager; Charlie Cardenas, City Engineer; Deborah Balli, Finance Director; Tom Ginter, Director of Development Services with David Mason, Purchasing /IT Director serving as a non-voting facilitator.

BACKGROUND

Evaluation Criteria	Max Pts. Per Evaluator	Max Pts. Total	Grant Works	Community Development Services
Experience	30	150	145.00	129.00
Work Performance	30	150	125.00	133.00
Capacity To Perform	20	100	94.00	80.00
Proposed Cost	20	100	86.35	100.00
TOTAL	100	500	450.35	442.00

FINANCIAL IMPACT

This item does not expend the City's budgeted funds. While the City is providing matching funds of \$60,000 for this grant, the \$33,000 for grant management services will be paid from the awarded grant funds as shown on the budget page.

RECOMMENDATION

It is recommended the award for RFP 16-02 Professional Services for management od the TDA CDBG grant be awarded to GrantWorks, 2201 Northland Drive, Austin, TX 78756.

City of Kingsville Grant Budget

Project Activities	Contract Funds	Other Funds ¹	Total Funds
Construction	\$221,500	\$50,000	\$271,500
Engineering	\$45,500	\$10,000	\$55,500
Administration	\$33,000	\$0	\$33,000
TOTALS	\$300,000	\$60,000	\$360,000
¹ City of Kingsville Utility Fund			

AGENDA ITEM #10



Purchasing/Technology Department

361-595-8025 361-595-8035 Fax

DATE:

December 3, 2015

TO:

City Commission through City Manager

FROM:

David Mason, Purchasing/Technology Director

SUBJECT: Tourism Building

SUMMARY

This item authorizes purchase of a modular building for use as the Kingsville Visitors Center.

BACKGROUND

As the new backage road associated with I-69 will necessitate the relocation of the Kingsville Visitors Center, a new building is being purchased and placed along the I-69 access road at Klare Estates, Block 1 Lot1 (1.1896 ac) contiguous with KT&I Co, Block 11 Lot PT 5 (.234 ac), which at the south east corner of the northbound I69 access road where it intersects with King Ave.

RECOMMENDATION

The recommendation is for a Mobile Modular Office Maker DW 24x64 TX (Item 1949). The purchase price of the building is \$67,580.00 with delivery and setup at \$12,230.00 per attached quote. The item can be purchased through BuyBoard, thereby satisfying state purchasing law regarding competitive bidding regulations.

FINANCIAL

This purchase will expend \$79,810.00 from 002-5-170.1-713.00 of which \$100,000 is budgeted.



Mobile Modular Management Corporation 4445 E Sam Houston Parkway South Pasadena, TX 77505-3912

Phone: (281) 487-9222 Fax: (281) 487-1289 www.mobilemodular.com

Lease Quotation and Agreement

Quotation Number: 54083 Customer PO/Ref: Date of Quote: 11/24/2015

Term: 12 Months

Sign up for the Easy Lease Option (see end of document for details)

Customer Information	Site Information	Mobile Modular Contact
City of Kingsville PO BOX 1458 Kingsville, TX 78364 David Mason purchdir@cityofkingsville.com Phone: (361) 595-8025	City of Kingsville Tourist Center PO BOX 1458 Kingsville, TX 78364	Questions? Contact: Brian Doherty Brian.Doherty@mobilemodular.com Direct Phone: 713-378-8516 Fax: 281-487-7814

Product Information	Qty	Monthly Rent	Extended	Monthly Rent
OfficeMaker DW 24x64 TX (Item1949) NA130 mph Exposure C4' weldedHampton Panel Grey~5/8" Fi	1 RP (white)Commercial 1	\$1,438.00 Tell Star Pro Doors with1	0x106	\$1,438.00
Charges Upon Delivery	Qty	Charge Each	To	tal One Time
OfficeMaker DW 24x64 TX (Item1949) Block and Level Building (A5) Delivery Haulage 12 wide Install Foundation, Tiedown (BlvI) Installation, Skirting, Wood	1 2 26 176	\$3,290.00 \$1,757.00 \$75.00 \$19.75		\$3,290.00 \$3,514.00 \$1,950.00 \$3,476.00 \$12,230.00
			Total	\$ 12,230.00
Charges Upon Return	Qiy	Charge Each	Tre	tal One Time
OfficeMaker DW 24x64 TX (Item1949) Prepare Equipment For Removal (A5) Removal, Skirting, Wood (Dispose) Removal, Tiedown Return Haulage 12 wide	1 176 26 2	\$1,790.00 \$6.00 \$30.00 \$1,757.00		\$1,790.00 \$1,056.00 \$780.00 \$3,514.00 \$7,140.00
			Total	\$7,140.00
Alternate Pricing	Qty	Monthly Rent	To	tal One Time
New Modular Building Purchase	1	\$0.00 \$0.00		\$67,580.00 \$67,580.00
		Total \$0.00	Total	\$67,580.00
Special Notes				

Budgetary Quote: Pricing provided is for budgetary purposes only. A revised quotation will be provided once project details are clarified. If you are new to modular buildings and wondering what you need to know about them, please visit www.mobilemodularrents.com and view our FAQ worksheet "Considering Modular Buildings for Your Space Needs?". *Pilots and permits not included and may be required. We look forward to working with you to refine your requirements.

Buildings containing a restroom(s): Restrooms are not self-contained. Where applicable, manifolds are shipped loose and assembled and connected by others. Water & sewer stub-out locations may vary. Paper & soap dispensers, sanitary and trash receptacles are not

Delivery Date: Delivery date will not be confirmed until MMMC receives the signed lease agreement (or an acceptable equivalent) and all credit conditions have been met.

Delivery of Equipment: Lessee shall select a suitable site and physically mark on the site/pad the corner locations for the Equipment and

Lease Quotation and Agreement

Quotation Number: 54083 Customer PO/Ref: Date of Quote: 11/24/2015

Term: 12 Months



direct Lessor on exact placement/orientation of the Equipment.

General: Customer's site must be dry, compacted, level and accessible by normal truck delivery. Pricing does not include any clearing or grading of sites, obstruction removal, site or final building clean up, any asphalt transitions, dolly, crane, forklift, electrical or plumbing connections, window coverings, furniture, casework, appliances, doorstops, phone or data lines, gutters, downspouts or tie-in, temporary power, temporary fencing, traffic control, flagmen, soil and/or pull test, custom engineering, fees associated with inspections, city or county submittals and/or use permits, security screens, door bars and any item not specifically listed as being included.

PPE and Taxes: Applicable Personal Property Expense and taxes are not reflected in the pricing provided in this quote. Prior to issuing a purchase order or other agreement, please consult with the sales representative to ensure that all PPE and taxes applicable to the products and services outlined herein are appropriately identified and included.

Site Installation Requirements: Prior to delivery, the Lessee shall mark the four corners of the building on the site/pad location itself, including door/ramp location. Should special handling be required to position, install, or remove the classroom on the Lessee's site due to site conditions/constraints and/or obstructions, additional costs will be charged to Lessee.

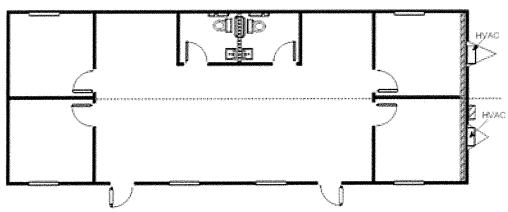
Site Plan Review: Lessor is not responsible for review and verification of Lessee site plans, civil plans, soils tests/survey's, etc. It is the responsibility of the Lessee to ensure the site plans and site conditions meet applicable codes and governing body approvals. This includes, but is not limited to, ensuring the building pad/site allows for standard delivery and installation based on the minimum foundation design tolerances as per applicable approved stockpile drawings/foundation design.

Ramps: Site conditions may affect ramp configuration and cost. Ramp transitions by others (from end of ramp to grade). Optional wood ramps and decking are available for \$18.00 per sq. ft. based on site requirements; a separate quote will be provided upon request.

Additional Note: [BUY BOARD CONTRACT 463-63]

Floor Plans

OfficeMaker DW 24x64 TX (Item1949)



All drawings and specifications are nominal.

Additional Information

- · Quote is valid for 30 days
- A minimum cleaning charge per floor will apply for modular buildings and for containers with offices, no minimum cleaning charge applies for storage containers.
- Customer's site must be dry, compacted, level and accessible by normal truck delivery. Costs to dolly, crane, forklift, etc. will be paid by customer. Unless noted, prices do not include permits, ramp removal, stairs, foundation systems, foundation system removal, temporary power, skirting, skirting removal, engineering, taxes or utility hookups.
- Subject to equipment availability. Unless noted, equipment and related furnishings, finishes, accessories and appliances provided are
 previously leased and materials, dimensions, and specifications vary. Detailed specifications may be available upon request.
 For lease transactions, Mobile Modular reserves the right to substitute equal or better equipment prior to delivery without notice.
- This transaction is subject to prior credit approval and all terms, conditions, and attachments of MMMC's standard contract.
- · Security deposit and payment in advance may be required.
- Rent will be billed in advance every 30 calendar days.
- Prices do not include applicable sales tax and personal property expense.
- Unless otherwise noted, prices do not include prevailing wages, Davis-Bacon wages, or other special or certified wages.

Lease Quotation and Agreement

Quotation Number: 54083 Customer PO/Ref: Date of Quote: 11/24/2015

Term: 12 Months



Mobile Modular Easy Lease, Sign Me Up!

Getting your modular building on its way has never been easier... and faster. With Mobile Modular Easy Lease you can convert your Lease Quotation directly into a Lease Agreement by signing below. It's as easy as 1, 2, 3. Once we receive your signed Easy Lease option, we'll finalize your building details and get your project on its way.

1. Review and acknowledge agreement.

This Quotation is subject to Mobile Modular Management Corporation, a California corporation, herein known as lessor (the "Lessor") credit approval of Customer, herein known as lessee (the "Lessee"). Lessor does not warrant that the equipment meets any local or state code not specifically listed herein. Equipment is subject to availability. By signing below, customer accepts the terms of this quotation including prices and specifications, and instructs Lessor to make appropriate arrangements for the preparation and delivery of the Equipment identified herein, and agrees that such signature constitutes customer's acceptance of and agreement to the Lessor's Lease or Sale Agreement. Such lease or sale, and customer's agreement thereto, is subject to Lessor's standard terms and conditions located in the Solutions section of the Lessor's web site at (www.mobilemodular.com/resources/terms-of-use) which are incorporated by reference herein. Customer may request a copy of the terms and conditions from Lessor. If customer has previously executed a master agreement with Lessor, those terms and conditions shall govern the transaction. Such terms and conditions are incorporated as if fully set forth herein. No alterations, additions, exceptions, or changes to any Quotation or Agreement made by Lessee shall be effective against Lessor, whether made hereon, contained in any printed form of Lease or elsewhere, unless accepted in writing by Lessor. Any customer purchase order or other customer-provided document purporting to replace, supersede or supplement the terms and conditions of the Lessor's Lease or Sale Agreement shall carry no force or effect except as an instrument of billing.

Lessor: Mobile Modular Management Corporation	Lessee: City of Kingsville							
Ву:	Signature:							
Name:	Print Name:							
Title:	Title:							
Date:	Date:							
2. Request your delivery date. Requested delivery date: Please note: For modular buildings, as a "rule of thumb" allow one day per module to accommodate for set up after delivery. We will attempt to meet your desired date. However, the date is subject to change based on equipment availability and readiness and must be confirmed by a Mobile Modular representative.								
3. Tell us how you would like to pay.								
☐ Bill me on approved credit (you will be sent an invoice for payment as charges are incurred) ☐ Credit card payment (a representative will contact you to obtain the credit card information for billing)								

TERMS OF USE

PLEASE READ THIS TERMS OF USE AGREEMENT CAREFULLY BEFORE USING THIS SITE.

McGrath RentCorp, dba Mobile Modular Management Corporation ("Mobile Modular Management Corporation", "Mobile Modular", or "us" or "we"), provides this web site and all site-related information and services (collectively, the "Site") subject to your compliance with the terms and conditions set forth in this agreement (the "Agreement"). By using the Site, you agree to be bound by these terms and conditions. If you do not agree to these terms and conditions, please do not use the Site.

This Agreement is made between Mobile Modular and you, the Site visitor and/or member ("you"). We reserve the right at any time to:

- · Change the terms and conditions of this Agreement;
- Change the Site, including eliminating or discontinuing any content on or feature of the Site; or
- Change any fees or charges for use of the Site.

Any changes we make will be effective immediately upon notice, which we may provide by means including, without limitation, posting on the Site or via electronic mail. Your use of the Site after such notice will be deemed acceptance of such changes. Be sure to review this Agreement periodically to ensure familiarity with the most current version. Upon our request, you agree to sign a non-electronic version of this Agreement.

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- Use any robot, spider, site search/retrieval application, or other manual or automatic device or process to retrieve, index, "data mine," or in any way reproduce or circumvent the content, navigational structure or presentation of the Site;
- Modify, adapt, sub-license, translate, sell, reverse engineer, decompile or disassemble any portion of the Site;

- Harvest or collect information about Site visitors or members without their express consent;
- Restrict or inhibit any other visitor or member from using the Site, including, without limitation, by means of "hacking" or defacing any portion of the Site;
- · Use the Site for any unlawful purpose;
- Transmit(a) any content or information that is unlawful, fraudulent, threatening, abusive, libelous, defamatory, obscene or otherwise objectionable, or infringes on our or any third party's intellectual property or other rights; (b) any material, non-public information about companies without the authorization to do so; (c) any trade secret of any third party; or (d) any advertisements, solicitations, chain letters, pyramid schemes, investment opportunities, or other unsolicited commercial communication (except as otherwise expressly permitted by us),
- · Engage in spamming or flooding;
- Transmit any software or other materials that contain any virus, worm, time bomb, Trojan horse, or other harmful or disruptive component;
- Remove any copyright, trademark, or other proprietary rights notices contained in the Site;
- "Frame" or "mirror" any part of the Site without our prior written authorization; or
- Link to any page of or material on the Site other than the URL located at www.mobilemodularrents.com.

Any changes we make will be effective immediately upon notice, which we may provide by means including, without limitation, posting on the Site or via electronic mail. Your use of the Site after such notice will be deemed acceptance of such changes. Be sure to review this Agreement periodically to ensure familiarity with the most current version. Upon our request, you agree to sign a non-electronic version of this Agreement.

While using the Site, you agree to comply with all applicable laws, rules and regulations.

2. Rental and Purchase Agreements Between You and Mobile Modular. Any purchase or rental of any modular buildings or other products by you will be governed by a separate rental or purchase agreement and all of your rights and remedies relating to your order, rental and use of any such modular building and other products are governed by such separate agreement.

3. Registration.

Some areas of the Site, and the right to enjoy certain services, may require you to be or become an E-Customer Services member. When and if you register to become a member, you agree to (a) provide accurate, current, and complete information about yourself as prompted by our registration form (including your email address) and (b) to maintain and update your information (including your email address) to keep it accurate, current, and complete. You acknowledge that, if any information provided by you is untrue, inaccurate, not current, or incomplete, we reserve the right to terminate this Agreement and your use of the Site. As part of the registration process, you will be asked to provide an email address (username) and password. We may refuse to grant you use of an email address that is already registered, is or may be illegal,

is or may be protected by trademark or other proprietary rights law, is vulgar or otherwise offensive, or may cause confusion, as determined by us in our sole discretion. You will be responsible for the confidentiality and use of your email address and password and agree not to transfer or resell your use of or access to the Site to any third party. YOU ARE ENTIRELY RESPONSIBLE FOR MAINTAINING THE CONFIDENTIALITY OF YOUR EMAIL ADDRESS AND PASSWORD AND ENTIRELY RESPONSIBLE FOR ANY AND ALL ACTIVITIES (INCLUDING SERVICE REQUESTS, AS APPLICABLE) THAT ARE CONDUCTED THROUGH YOUR ACCOUNT.

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Certain information about you is subject to the Mobile Modular privacy policy. For more information, please see the full Mobile Modular privacy policy at www.mobilemodularrents.com.

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As our availability and descriptions for products and services may change from time to time, and as you may have access to information on the Site provided by third parties, Mobile Modular does not guarantee the accuracy, integrity or quality of any product lists, model numbers, product information and availability information and any other information, data, text, messages or materials posted on the Site and any web pages linked therefrom ("Content"). Under no circumstances will Mobile Modular be liable in any way for any Content, including, but not limited to, for any errors or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content posted, emailed or otherwise transmitted via the Service. You agree that you must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content. In this regard, you acknowledge that you may not rely on any Content created by Mobile Modular or submitted to Mobile Modular.

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8. Termination.

This Agreement shall remain effective until terminated in accordance with its terms. Either party may terminate this Agreement immediately upon notice to the other party. In addition, we reserve the right to immediately terminate this Agreement, and/or your access to and use of the Site or any portion thereof, at any time and for any reason, with or without cause. Upon termination of this Agreement by either party, your right to use the Site shall immediately cease, and you shall destroy all materials obtained from the Site and all copies thereof, whether made under the terms of this Agreement or otherwise.

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11. Indemnification.

You agree to indemnify, defend and hold us, our officers, directors, employees, agents and representatives harmless from and against any and all claims, damages, losses, costs (including reasonable attorneys' fees), or other expenses that arise directly or indirectly out of or from (a) your breach of this Agreement, including any violation of the Code of Conduct above; (b) any allegation that any materials that you submit to us or transmit to the Site infringe or otherwise violate the copyright, trademark, trade secret or other intellectual property or other rights of any third party; and/or (c) your activities in connection with the Site.

12. Forward Looking Statements.

Some of the information on this web site may contain projections or other forward-looking statements regarding future events or the future financial performance of Mobile Modular. We wish to caution you that these statements are only predictions and that actual events or results may differ materially. We refer you to the documents Mobile Modular (McGrath RentCorp) files from time to time with the Securities and Exchange Commission, specifically, Mobile Modular's Registration Statement on Form S-1. These documents contain and identify important factors that could cause actual results to differ materially from those contained in our projections or forward-looking statements.

13. Miscellaneous.

This Agreement is governed by and construed in accordance with the laws of the State of California, United States of America, without regards to its principles of conflicts of law. You agree to personal jurisdiction by the federal and state courts located in the County of San Francisco, located in San Francisco, California, United States of America, and waive any jurisdictional, venue, or inconvenient forum objections to such courts. If any provision of this Agreement is found to be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions. This is the entire Agreement between us relating to the subject matter herein and supersedes and any all prior or contemporaneous written or oral Agreements between us. This Agreement is not assignable, transferable or sublicensable by you except with Mobile Modular's prior written consent. No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. Any heading, caption or section title contained in this Agreement is inserted only as a matter of convenience and in no way defines or explains any section or provision hereof.

FIND A LOCATION

EDUCATION SOLUTIONS

Classroom

Complexes

Restrooms

Accessories

OFFICE SOLUTIONS

Complexes

Ground Level Offices

Mobile Offices

Restrooms

See more

INDUSTRIES

Construction

Education

Government

Manufacturing

See more

RESOURCES

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HOME / CALL TODAY / MY QUOTE / REQUEST A QUOTE

AGENDA ITEM #11

CITY OF KINGSVILLE





Date: December 7, 2015

To: Mr. Jesús Garza, City Manger

From: Jimmy Saenz, Golf Course Manager

Re: Donation

The Kingsville Golf Association is making a donation of \$2,000 to the golf course. The money will be put into our chemicals budget to purchase fertilizer.

AGENDA ITEM #12

AN ORDINANCE AMENDING THE FISCAL YEAR 2015-2016 GENERAL FUND BUDGET TO ACCEPT AND EXPEND A DONATION TO THE L.E.RAMEY GOLF COURSE.

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

١.

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

CITY OF KINGSVILLE DEPARTMENT EXPENSES BUDGET AMENDMENT

Dept. Department No. Name:	Account Name:	Account Number:	Budget Increase	Budget Decrease
Fund 001 General Fund				
Revenues 4-4502 L.E. Ramey Golf Course	Golf Course Donations	58000	\$ <u>2,000</u> \$ <u>2,000</u>	
Expenses 5-4502 L.E. Ramey Golf Course	Chemicals	21400	\$2,000 \$2,000	

[To amend the City of Kingsville FY 15-16 General Fund Budget to accept and expend a \$2,000 donation to the L.E. Ramey Golf Course from the Men's Golf Association to be used for Fertilizer as per the attached memo from the Golf Course Manager.]

11.

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

III.

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

full force and effect for its purpose.
IV.
THAT this Ordinance shall not be codified but shall become effective on and after adoption and publication as required by law.
INTRODUCED on this the 14 th day of <u>December</u> , 2015.
PASSED AND APPROVED on this the day of, 2015.
EFFECTIVE DATE:
Sam R. Fugate, Mayor
ATTEST:
Mary Valenzuela, City Secretary
APPROVED AS TO FORM:

Courtney Alvarez, City Attorney

CITY OF KINGSVILLE





Date: December 7, 2015

To: Mr. Jesús Garza, City Manger

From: Jimmy Saenz, Golf Course Manager

Re: Donation

The Kingsville Golf Association is making a donation of \$2,000 to the golf course. The money will be put into our chemicals budget to purchase fertilizer.

AGENDA ITEM #13

0	R	D	١	١	1	4	N	IC	E	1	V	C).	2	0	1	5	_

AMENDING THE CITY OF KINGSVILLE CODE OF ORDINANCES CHAPTER VII, ARTICLE 8, TRAFFIC CONTROL DEVICES; PROVIDING FOR THE INSTALLATION OF SEVEN STOP SIGNS IN THE WILDWOOD TRAIL SUBDIVISION; 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:

1.

THAT Section 7-8-3 of Article 8: Traffic Control Devices of Chapter VII, Traffic Code, of the Code of Ordinances of the City of Kingsville, Texas, shall be amended to read as follows:

§ 7-8-3 TRAFFIC CONTROL AREAS.

.. (B)

...

AREA O		
Intersection	Direction	Device
1.Lawndale Dr. at Circle Dr. South	Southbound	Install stop sign
2. Kathleen St. at Lawndale Dr.	Southbound	Install stop sign
3. Lawrence Dr. at Center Dr.	Northbound	Install yield sign
4. Lawrence Dr. at Lawndale Dr.	Eastbound	Install yield sign
5. Elizabeth Ave. at Lawndale Dr.	Eastbound	Install yield sign
6. Elizabeth Ave. at Annette St.	Westbound	Install stop sign
7. Ailsie Ave. at Annette St.	Southbound	Install stop sign
8. Ailsie Ave. at Jerome Dr.	Northbound	Install stop sign
9. Ailsie Ave. at Shelly Dr.	Northbound	Install stop sign
10. Ailsie Ave. at Bilvan Dr.	Northbound	Install stop sign
11. Ailsie Ave. at Kelly Dr.	Northbound	Install stop sign
12. Shelly Dr. at Palm Ave.	Westbound	Install stop sign
13. General Cavazos Boulevard (FM 1356 at Shelly Dr.	Southbound	Install stop sign

14. Paulson Falls Blvd. at General Cavazos Boulevard	Northbound	Install stop sign
15. Margaret Lane at Paulson Falls Boulevard	Eastbound	Install stop sign
16. Margaret Lane at Paulson Falls Boulevard	Westbound	Install stop sign
17. Margaret Lane at Alice Lane	Eastbound	Install stop sign
18. Alice Lane at 140 feet west of FM 3320	Westbound	Install stop sign
19. Alice Lane at FM 3320	Eastbound	Install stop sign
20. Windcrest Drive at Sherwood Ave.	Eastbound	Install stop sign
21. Windcrest Drive at Rettye Drive	Westbound	Install stop sign
22. Brook Lane at Paulson Falls Boulevard	Eastbound	Install stop sign
23. Brook Lane at Paulson Falls Boulevard	Westbound	Install stop sign
24. Bilvan Drive at Brenda Ave.	Southbound	Install stop sign
25. Margaret Lane at Alice Lane	Eastbound	Install stop sign
26. Alice Lane at 140 feet west of FM 3320	Westbound	Install stop sign
27. Alice Lane at FM 3320	Eastbound	Install stop sign
28. Wildwood Trail Blvd. at Sen. Carlos Truan Blvd.	Southbound	Install stop sign
29. Wildwood Trail Blvd. at Caesar Ave.	Northbound	Install stop sign
30. Grand Drive at Wildwood Trail Blvd.	Eastbound	Install stop sign
31. Grand Drive at Wildwood Trail Blvd.	Westbound	Install stop sign
32. Park Drive at Wildwood Trail Blvd.	Westbound	Install stop sign
33. Virginia Circle at Virginia Street	Eastbound	Install stop sign
34. Virginia Street at Grand Drive	Northbound	Install stop sign

II.

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

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 14th day of December, 2015.	
PASSED AND APPROVED on this theth day of, 20)
Sam Fugate, Mayor ATTEST:	
Mary Valenzuela, City Secretary APPROVED AS TO FORM:	
Courtney Alvarez, City Attorney	

PUBLIC WORKS DEPARTMENT

DATE: December 4, 2015

TO: Jesus A Garza, City Manager

CC: Courtney Alvarez, City Attorney

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

SUBJECT: Stop Signs on Wildwood Subdivision

As the Wildwood Trail Subdivision is developing so is the need to establish stop signs at key intersections. Stop signs in the subdivision are not used for speed control but more for safety and traffic control. The following are the locations where stop signs are needed.

- South Bound Wildwood Trail Blvd. at Senator Carlos Truan Blvd.
- 2. North Bound Wildwood Trail Blvd. at Caesar Avenue.
- 3. East Bound Grand Drive at Wildwood Trail Blvd.
- 4. West Bound Grand Drive at Wildwood Trail Blvd.
- 5. West Bound Park Drive at Wildwood Trail Blvd.
- 6. East Bound Virginia Circle at Virginia Street.
- 7. North Bound Virginia Street at Grand Drive.

The City of Kingsville furnished the signs to First Compass Homes. First Compass Homes agreed to mount and maintain the pole assemblies throughout the subdivision. Engineering staff has performed a traffic study and recommends an ordinance for placement and enforcement at the above mentioned locations.

Wildwood Trail Wildi ale 8th Vnd Caesar lle Ranger Grand Dr a Wildwood Trail Blud e STOP Stilley Simo. Silver Silver Senator Carlos Fruan 210 420 840 Feet Document Path: \\SAM\Engineering and Public Works\Engineering\GIS Techs\MAPS\MAP_DOCUMENTS\Arc_City_Address_Assign_Map_8.5x11.mxd Drawn By: CITY OF KINGSVILLE **Engineering Department**

Note:

Last Update: 12/3/2015

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



ENGINEERING DEPARTMENT 200 East Kleberg Kingsville, Texas 78363

Office: 361-595-8005 Fax: 361-595-8035

AGENDA ITEM #14

PUBLIC WORKS DEPARTMENT

DATE: December 4, 2015

TO: Jesus A Garza, City Manager

CC: Courtney Alvarez, City Attorney

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

SUBJECT: Utility excavation and cutting ordinance

In an effort to improve the quality of life, the City of Kingsville has taken steps improving the ride quality of our streets utilizing full depth road construction and creating a street maintenance program. To help extend the longevity of the local street within the city limits, the proposed utility excavation and street cutting ordinance will prevent unauthorized digging and trenching. The proposed ordinance will provide specifications and accountability for repairs to our city streets when an entity is authorized to excavate to develop, install and maintain a utility. Furthermore, all excavating will require a cut and excavation permit from the permitting section of the Planning and Development Services Department. Excavations and cutting inspections will be conducted by the Street Division of the Public Works Department.

ORDINANCE NO. 2015-____

AMENDING THE CITY OF KINGSVILLE CODE OF ORDINANCES CHAPTER V-PUBLIC WORKS, TO ADOPT ARTICLE 7-R.O.W. CUTS AND EXCAVATIONS; PROVIDING REGULATIONS FOR RIGHT-OF-WAY CUTS AND EXCAVATIONS; 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:

1.

THAT Article 7: R.O.W. Cuts and Excavations of Chapter V- Public Works of the Code of Ordinances of the City of Kingsville, Texas, shall be adopted to read as follows:

. . .

ARTICLE VII. R.O.W. CUTS AND EXCAVATIONS

Sec. 5-7-1. Applicability of fees; conflicts.

Sec. 5-7-2. Definitions.

Sec. 5-7-3. Application.

Sec. 5-7-4. Drawings to accompany application; exceptions.

Sec. 5-7-5. In general.

Sec. 5-7-6. Permit required; issuance of permit; denial of permit.

Sec. 5-7-7. Fees.

Sec. 5-7-8. Removal or relocation of facilities.

Sec. 5-7-9. Applicability of article to emergencies.

Sec. 5-7-10. Work warranty.

Sec. 5-7-11. Owner business plans; coordination of excavations.

Sec. 5-7-12. Newly constructed or reconstructed streets.

Sec. 5-7-13. Defaults; unauthorized excavations.

Sec. 5-7-14. Liability of right-of-way user; insurance.

Sec. 5-7-15. Extensions.

Sec. 5-7-16. Access to fire hydrants; crossings; traffic control devices.

Sec. 5-7-17. Steel plate temporary surfaces.

Sec. 5-7-18. Completion of excavation; warranty.

Sec. 5-7-19. Warranty of excavation; correction of defects.

Sec. 5-7-20. Work requirements.

Sec. 5-7-21. Inspections of excavations.

Sec. 5-7-22. Damage to facility.

Sec. 5-7-23. As-built drawings and specifications.

Sec. 5-7-24. Reserved.

Sec. 5-7-1 APPLICABILITY OF FEES; CONFLICTS.

Nothing in this article authorizes the city to charge any fee in conflict with state law, franchise agreements authorized by the city commission, or this Code, as amended.

Sec. 5-7-2 DEFINITIONS.

As used in this article, the following terms shall have the meanings ascribed in this article, unless the context of their usage clearly indicates another meaning:

Abandoned facilities means facilities no longer in service or physically disconnected from the operating facilities, or from any other facilities that are in use or that still carry service.

Applicant means any person who seeks a permit for an excavation.

Area of influence means that area around a utility excavation where the pavement and subgrade is impacted by the excavation and is subject to more rapid deterioration due to the trench excavation.

Backfill means excavation fill material meeting city specified quality requirements or the placement thereof.

Certificated telecommunications provider or CTP means a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the Texas Public utility Commission or "PUC" to offer local exchange telephone service as defined by V.T.C.A., Local Government Code ch. 283 or "the Act."

City means the City of Kingsville.

City of Kingsville Building Code shall mean the Building Code in the City of Kingsville Code of Ordinances.

Construction standards means the City of Kingsville Standard Specifications and Details as they may be amended from time to time by the department of engineering services and approved by the city engineer.

Contractor means any public or private person or organization, other than the city.

Department means the department of planning & development services.

Director means the director of planning & development services department, or his or her designee.

Emergency means an unforeseeable event or occurrence that endangers health, life, or property, or a situation in which public need for uninterrupted utility service requires immediate corrective action to restore services.

Emergency operations are defined as those operations and repairs necessary to prevent damage or injury to the health or safety of the public or any person and the work necessary to address a service interruption and requires written notice to city commission when the contractual repair value exceeds fifty thousand dollars (\$50,000.00) or otherwise written notice to the director within twenty-four (24) hours to ensure compliance with this and other articles of the Code. Upgrading of facilities, new service installation and neighborhood improvement projects are not emergency operations.

Excavation means an activity that cuts, penetrates, or bores under any portion of the public way that has been improved with a paved surface for street, sidewalk, surface drainage, or related public transportation infrastructure purposes. The term includes but is not limited to, cutting, tunneling, jacking and boring, backfilling, restoring, repairing, and installing and maintaining a temporary surface in, the public way. The term does not include a transportation improvement; however, it does include excavations that are undertaken for the improvement or maintenance of publicly owned utility systems, such as water and wastewater lines and facilities. The term also does not include utility maintenance or other activities that are performed within already existing structures, vaults, conduits, or cable ways that are located underneath street improvements, provided that any access required for the work is obtained through manholes, or other previously constructed entrances that may be utilized without cutting or penetrating any pavement or other street improvement.

Facility means any structure, device, or other thing whatsoever that may be installed or maintained in, on, within, under, over, or above a public way by an excavation.

FCC means Federal Communications Commission.

Governing body means the Mayor and the City Commission of the City of Kingsville, Texas.

Governmental entity means any county, township, city, town, village, school district, library district, road district, drainage or levee district, wastewater district, water district, fire district or other municipal corporation, quasi-municipal

corporation or political subdivision of the State of Texas or of any other state of the United States and any agency or instrumentality of the State of Texas or of any other state of the United States or of the United States.

Inspection means the inspection of an excavation by any person approved by the director to determine compliance with this article.

New street means the paved portion of the right-of-way that has been constructed, reconstructed, or resurfaced with an asphalt overlay, hot in place recycling, full-depth reclamation, reconstruction or other structural street maintenance treatment. "New street" includes all concrete paved streets, streets constructed or structurally resurfaced during the preceding seven (7) years, for a collector or arterial street or during the preceding five (5) years for a residential street or alley or any street with a pavement condition index greater than eighty-five (85), as defined herein.

Owner means a person, including the city, who is the owner or will, following the completion of the installation, become the owner of any facility that is installed or is proposed to be installed or maintained in the public way.

Pavement condition index (PCI) means a measure of the condition of the right-of-way on a scale of 1-100. The PCI for a specific street segment can be requested through the department.

Pavement cost recovery fee means the cost incurred by the city and the public associated with a decrease in the useful life of a street caused by excavations.

Permit means a permit issued under this article authorizing excavation in the right-of-way.

Permittee means any person or right-of-way user to whom a permit is issued to excavate a right-of-way.

Person means any person, company, partnership, agency or other public or private entity, including city departments.

Public way means any public street right-of-way located in the city, including the entire area between the boundary lines of every way (including but not limited to, roads, streets, alleys, highways, boulevards, bridges, tunnels, or similar thoroughfares), whether acquired by purchase, grant, or dedication and acceptance by the city or by the public, that has been opened to the use of the public for purposes of vehicular travel.

Public way construction entity means the City of Kingsville, the Texas Department of Transportation, Kleberg County, or any other public entity performing or causing to be performed transportation improvement construction or construction-related activities in public ways.

Repair means the temporary or permanent construction work necessary to make the right-of-way useable.

Repair area means that area around an excavation where the pavement and subgrade is impacted by an excavation.

Restoration means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition, or better, than existed before the commencement of the work.

Resurfacing means any repaving, overlay, seal or reconstruction which creates a new pavement surface over the entire width of the street, excluding crack seals and localized base and pavement repairs.

Right-of-way (ROW) or public right-of-way means the surface of, and the space above and below, any street, road, highway, freeway, lane, path, drainage way, channel, fee interest, public way or place, sidewalk, alley, boulevard, parkway, drive, or other easement now or hereafter held by the city or over which the city exercises any rights of management or control and shall include but not be limited to all easements now held, or hereafter held, by the city but shall specifically exclude private property.

Right-of-way (ROW) user means a person, its successors and assigns, that uses the right-of-way for purposes of work, excavation, provision of services, or to install, construct, maintain, repair facilities thereon, including, but not limited to, landowners and service providers.

Routine service operation means a work activity that makes no material change to the facilities and does not disrupt traffic.

Service means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the right-of-way, including, but not limited to, gas, telephone, cable television, internet services, open video systems, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewage.

Standard specifications and details (specifications) shall mean the City of Kingsville Standard Specifications and Details as published by the engineering services department, latest edition.

Street means the pavement, curb and gutter and sub-grade of a city local, collector or arterial roadway.

Supplementary application means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend a permit that has already been issued.

TMUTCD shall mean Texas Manual on Uniform Traffic Control Devices, latest edition.

Traffic-control device means a traffic sign, signal, or marking that is placed and maintained in accordance with state law and this Code.

Transportation improvement means the portion of work within the finished paved surface of a public way undertaken by or pursuant to contract for the state or a political subdivision of the state for the purpose of improving or maintaining

public way transportation and related storm drainage and street lighting infrastructure, but does not include any activity, such as connection to other facilities, that cuts, penetrates, or bores under a public way other than the one being improved or maintained pursuant to the contract or that cuts, penetrates or bores under the public way after installation of new paving.

Utility shall mean any privately or publicly owned entity which uses public rights-of-way to furnish to the public any general public service, including, without limitation, wastewater, gas, electricity, water, telephone, petroleum products, telegraph, heat, steam or chilled water, together with the equipment, structures, and appurtenances belonging to such entity and located within and near the right-of-way.

White lining means marking the excavation site with white washable marking paint or flags prior to requesting a utility locate in order to further identify the site.

Sec. 5-7-3 APPLICATION.

- (A) A permit for any excavation shall be obtained by the owner of the facility. If the owner of a facility will not be making the excavation with its own personnel, then the contractor retained to perform the work shall join with the owner as an applicant in obtaining the permit. Where two (2) or more related excavations are being performed as part of the same project, the application and permit may cover the related work, consistent with the regulations issued under subsection 5-7-5(g) of this Code.
- (B) Applications for permits shall be in the form prescribed by the director, who may provide for the filing and processing of applications by electronic means. Each application shall be submitted to the director, shall be signed and sworn to before an officer authorized to administer oaths by each applicant and shall include the following:
 - (1) The name, assumed name, or business name, business type (corporation, partnership, individual/sole proprietor or other) of each applicant;
 - (2) Each applicant's mailing address (and street address if different), telephone number, facsimile number, and e-mail address;
 - (3) The location (including key map number), depth, length, and width of each excavation to be made in each block and/or intersection, which may alternatively be set forth on the provided drawings and specifications;
 - (4) The purpose of the excavation, including a description of the facilities to be installed, maintained, and/or repaired;
 - (5) The method of excavation;
 - (6) The proposed excavation start date and duration;

- (7) A statement that each person executing the application is fully authorized to act on behalf of and bind his principal in executing and filing the application;
- (8) A statement that each applicant accepts and obligates itself to the following release and indemnification provisions:

RELEASE

PERMITTEE AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THE PERMIT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S ACTUAL OR ALLEGED JOINT OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

INDEMNIFICATION

PERMITTEE AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS PERMIT, INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (i) PERMITTEE'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', PRINCIPALS', OR SUBCONTRACTORS OF PERMITTEES' (COLLECTIVELY IN NUMBERED PARAGRAPHS (i)—(iii), "PERMITTEE") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- (ii) THE CITY'S AND PERMITTEE'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER PERMITTEE IS IMMUNE FROM LIABILITY OR NOT; AND
- (iii) THE CITY'S AND PERMITTEE'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER PERMITTEE IS IMMUNE FROM LIABILITY OR NOT.

PERMITTEE SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THE PERMIT AND FOR FOUR YEARS AFTER THE PERMIT TERMINATES.

WHERE APPLICABLE, THE PROVISIONS OF SECTION 283.057 OF THE TEXAS LOCAL GOVERNMENT CODE SHALL CONTROL IN LIEU OF THE FOREGOING; ADDITIONALLY, TO THE EXTENT THAT THE APPLICANT HOLDS A CURRENT AND VALID UTILITY FRANCHISE FROM THE CITY, THE RELEASE AND INDEMNIFICATION PROVISIONS OF THE FRANCHISE SHALL CONTROL IN LIEU OF THE FOREGOING.

- (9) The name of the owner of the facility:
- (10) The twenty-four-hour telephone number at which each applicant's representative who will respond to emergencies may be contacted;
- (11) The name, mailing address, telephone number, facsimile number, and e-mail address of a person who is authorized to receive all notices authorized to be given by the city under this article to each applicant;
- (12)Confirmation that all materials necessary for construction will be on hand and ready for use so as not to delay the excavation;
- (13)A transmittal number issued by the Texas One-Call Notification Center (811) evidencing that the applicant has complied with the Texas Underground Facility Damage Prevention and Safety Act, or an assurance that the transmittal number will be provided to the director before the excavation commences;
- (14) Evidence of insurance as required in section 5-7-14 of this Code;
- (15)Drawings and specifications, as provided in section 5-7-3(B)3 of this Code;
- (16) The work warranty as required by section 5-7-10 of this Code; and
- (C) An application for a permit for an excavation performed pursuant to section 5-7-9 of this Code shall, in addition to the items required above, also include a written statement:
 - (1) Explaining the basis for the emergency actions;
 - (2) Describing the excavation being performed;
 - (3) Describing any work remaining to be performed in the public way; and
 - (4) Stating the time and date when the emergency occurred.

Sec. 5-7-4 DRAWINGS TO ACCOMPANY APPLICATION; EXCEPTIONS.

- (A) Unless otherwise provided in the rules and regulations promulgated under section 5-7-5(G) of this Code, each application shall be accompanied by drawings and specifications, which shall show:
 - (1) The location of the excavation;
 - (2) The method and manner in which the excavation will be performed; and

- (3) The methods by which vehicular and pedestrian traffic will be controlled during the prosecution of the excavation, including any proposed signage, use of flaggers, or use of peace officers to direct traffic. The drawings and specifications shall be prepared in compliance with all applicable laws, rules, regulations, and construction standards. The director may approve standard details for frequently encountered types of excavations, and the approved details may be incorporated into drawings and specifications, where applicable.
- (B) Consistent with applicable laws, sound engineering practices, and the nature and extent of the excavation, the director may require the drawings and specifications to be sealed by a professional engineer who is licensed in Texas.
- (C) An emergency excavation may be commenced under section 5-7-9 of this Code without submission of drawings and specifications. Consistent with the nature of the emergency and the excavation required, the director shall allow the applicant a reasonable period of time to produce any required drawings and specifications.

Sec. 5-7-5 IN GENERAL.

(A) Prohibited activities.

- (1) It shall be unlawful for any person to excavate or cause an excavation within the city unless the person is a permittee to whom a permit has been issued for the excavation pursuant to this article.
- (2) It shall be unlawful for a permittee to excavate or cause an excavation within the city in violation of any term of a permit issued pursuant to this article.
- (3) It shall be unlawful for any permittee to fail to exhibit a permit upon request as required by subsection 5-7-6(E) of this Code. In any prosecution under this article, it shall be presumed that there is no permit if the permit is not properly exhibited.
- (4) It shall be unlawful for any permittee to fail to restore the public way following excavation as required by this article.
- (5) It is an affirmative defense to prosecution under subsections (b)(1) and (b)(3) above, that the excavation was begun in response to an emergency and that a permit was timely applied for in compliance with section 5-7-9 of this Code.

(B) Provisions cumulative.

(1) The provisions of this article are cumulative of all other requirements of this Code and other laws, including, without limitation, the City of Kingsville Building Code, and utility franchises, as well as all applicable state and federal laws and regulations. Compliance with this article does not excuse compliance with any other law, and permittees are additionally required to obtain any other permits, licenses, and authorizations required by law, including but not limited to, utility franchises, permits, licenses, and authorizations that are required to be obtained from the city, the Texas Department of Licensing and Regulation, the Texas Public Utility Commission, Texas Underground Facility Notification Corporation (One-Call Board of Texas), and the Railroad Commission of Texas or any other appropriate governmental agency. However, to the extent that any provision set forth in this article may not be imposed upon any person because its imposition would be inconsistent with a controlling state or federal law, then this article shall be construed and applied in a manner that conforms to the applicable state or federal law. In addition, this article shall not be construed to require an owner to pay any fee that is prohibited by applicable state or federal law or valid city utility franchise.

- (2) To the extent that any other city permit or authorization is required for work that is also governed by this article, the director shall, to the extent practicable, devise consolidated application forms and issue the required permits or authorizations on a combined basis.
- (C) Penalty. Violation of this article is unlawful. Any person who violates any provision of this article shall be guilty of an offense and, upon conviction thereof, shall be punished as provided in section 1-1-99 of this Code. Each and every day that any violation continues shall constitute a separate offense and shall be punishable as such.
- (D) No private rights in public way. Nothing in this article shall be construed to give any person or permittee any property right in or to the use of the public way. All permits issued and held under this article shall be subject to the superior right of the public to control the use of the public way and ensure the safe and orderly movement of traffic, and a separate permit shall be required under this Code where applicable to any work that causes an obstruction.
- (E) Appeals; hearing. Any person whose permit is denied or who is otherwise aggrieved by a notice, action, or decision of the director hereunder shall, upon written request, be entitled to a hearing to be conducted in accordance with the City of Kingsville Building Code. The decision of the hearing officer shall be final. Where time is of the essence, the aggrieved person may so advise and state the reason therefor in the request and, to the extent reasonably warranted and allowed by the circumstances, an expedited hearing of the issue shall be afforded.
- (F) Public entities not exempt. In addition to their application to other persons, the provisions of this article are applicable to excavations made by the city and its contractors, as well as to excavations made by or on behalf of other governmental entities and subdivisions, to the extent of the city's police power jurisdiction. In connection with excavations made by the city, the

director may waive compliance with insurance and other requirements that have no practical application as applied to the city.

(G) Rules and regulations.

- (1) The director in association with the city engineer is authorized to promulgate rules and regulations regarding any aspect of the operation of this article, including without limitation requirements for drawings and specifications, methods by which excavations will be performed, traffic control procedures, application processing and hearing procedures, debarment procedures, construction management procedures, and inspection procedures. The rules and regulations must be consistent with applicable federal and state laws, city ordinances, and sound engineering practices. The director shall make copies of the rules and regulations available for inspection in the director's office, and copies may be purchased at the fees prescribed by law.
- (2) Notifications to the One-Call Notification Center (811) must be made prior to commencing an excavation and must be consistent with Title 16, Texas Administrative Code, Chapter 18 Underground Pipeline Damage Prevention. The one-call notification should be requested no earlier than five (5) working days prior to the start of the excavation, but no later than two (2) workings days before the excavation is to begin.

Sec. 5-7-6 Permit required; issuance of permit; denial of permit.

(A) Permit required.

- (1) Before issuing a permit, the director shall have been provided a written application, on a form furnished by the director, setting forth the name and residence or business address of the applicant; the location and approximate area of the excavation, including its approximate length and width, and, if the excavation is in a street, whether it is parallel or transverse to the direction of the travel lanes; and, the purpose of the excavation. The application form shall include plans prepared in accordance with city's standards, specifications, and details as well as any other documentation required by the department as part of their review process.
 - The director shall work with the public works departments to develop a streamlined form for their use under this article.
 - Joint applications. Applicants may apply jointly for permits to excavate the right-of-way at the same time and place. The city will recognize only one (1) point of contact.
 - c. Supplementary applications. A permit shall only be valid for the area of the right-of-way specified within the permit. No permittee may cause any work to be done outside the area specified in the permit, except as provided herein. Any permittee who determines that an

area greater than that which is specified in the permit must be excavated must:

- 1. Make application for a permit extension and pay any additional fees required thereby; and
- 2. Receive a new right-of-way permit or permit extension.
- (2) Permits will be issued or denied within ten (10) days of application. Unless granted for a longer period, an excavation permit shall be valid for thirty (30) days and for the dates specified in the permit. The applicant may request the permit be valid for such longer period as may be necessary in the circumstances, in advance, as part of the application. The city may approve or deny the application for such extended permit period. No permittee may commence work before the permit start date or, except as provided herein, may continue working after the end date. If a permittee does not complete the work by the permit end date, the permittee must apply for and may receive a new right-of-way permit or a permit extension for additional time. This supplementary application must be submitted to the city prior to the permit end date.
- (3) An expedited permit may be requested, and shall be issued within two (2) days of application upon a showing of good cause.
- (4) The proposed location, depth and other characteristics of any facilities for which the permit is issued shall be subject to approval of the director, and all backfilling, compaction and pavement restoration performed for any excavation shall comply with the requirements of this article and the city's standard specifications and details.
- (5) No fee or requirement authorized or imposed pursuant to this article shall be construed to affect or alter in any way any obligation of public and private utilities with facilities installed in any right-of-way to relocate the facilities at no cost to the city, subject to state law, if applicable, in the event that relocation is required by the city to accommodate a proper governmental use of the right-of-way.
- (6) Combinations of permits shall be permitted at the discretion of the director.
- (7) Subdivision monuments, historical markers, and any other signs or structures with foundations in the right-of-way, excluding billboards, are subject to this article.
- (B) Issuance of permit. Every person making application for a permit in accordance with the provisions of this article and having complied with such provisions shall be entitled thereto, and, upon filing such application with the director, it shall be his duty to issue the permit, when the provisions of this article shall have been complied with.

- (1) Upon receiving a written application for an excavation permit and a plan prepared in accordance with the city's standard specifications and details, the director's designee shall set forth all requirements, approve or disapprove the application, sign and return it to the applicant. Excepting only emergency excavations, at least one (1) working day prior to the start of work, the applicant shall telephone the city's department of development services and request a permit number, informing the city of the date the work will commence. A permit number shall then be assigned to the job and a permit shall be sent to the applicant.
- (2) A permit is not transferable. A permit is void unless the excavation to be made pursuant thereto is commenced within the time stated therein and the work diligently completed.
- (3) Each permit shall state a time period for completion of all the work to be done thereunder. The director may grant extensions of time.
- (4) No person in violation of any requirement of this article shall be issued an excavation permit, nor shall any contractor or agent apply for or be issued an excavation permit on the person's behalf, until the outstanding violation is corrected or a plan for correction is approved by the director. The foregoing requirement is in addition to any penalty or remedy for violation that may be imposed or sought by the city at law or equity.
- (5) No work shall be done under any permit issued under this article except as stated in the permit. If the permit is allowed to expire, the ROW user shall procure a new permit before proceeding with any such work.
- (6) The appeal of a denied permit shall follow the appeal procedures outlined in the City of Kingsville Building Code.
- (C) Denial of permit. A permit may be denied or suspended for any of the following reasons:
 - (1) Failure to provide proof of liability insurance acceptable to the city.
 - (2) Failure to secure a contractor's license or other required license.
 - (3) Failure to perform in accordance with the requirements of these provisions and/or referenced documents.
 - (4) The excavation would be in a new street and not otherwise permitted by this article.
 - (5) The proposed warning or other traffic control procedures or equipment do not comply with the requirements of the TMUTCD or the requirements of the director.
 - (6) The proposed activity would violate a city ordinance or state or federal statute.
 - (7) The permit application contains false or misleading information.

- (8) The activity would cause a public health or safety hazard.
- (9) The ROW user is in violation of this article relative to work in progress and/or has outstanding violations on other permits of this type issued by the city.

A permit shall no longer be valid if there are material changes to the excavation, including but not limited to, a change in the scope of the work or the method of performing the work of such consequence that the drawings and specifications no longer accurately depict the work, extending the excavation into any geographical area not included in the permit or an excavation that is not authorized by the original permit.

- (D) Permit not transferable; void if excavation not timely commenced.
 - (1) A permit issued under this article is personal to the permittee and may not be transferred to another person or used by any other person to perform the excavation authorized in the permit.
 - (2) A permit is valid only for the location(s) described on the application, depicted on the drawings and specifications, and authorized in the permit, and no excavation shall be authorized at any other location without another permit.
 - (3) Unless sooner extended by the director upon written request and for reasonable cause, a permit shall become void if the excavation is not commenced within sixty (60) days from the date of its issuance.
- (E) Record at excavation-site; public notice.
 - (1) A permittee shall, at all times while an excavation is in progress, keep, at the location of the excavation, the original permit (or a copy thereof) and shall, immediately on demand, exhibit the permit upon request to the director or any other person.
 - (2) Each permittee shall post and maintain notices in the vicinity of the excavation in the time, place, and manner prescribed in the rules and regulations promulgated under subsection 5-7-5(G). Failure to post and maintain the required notice shall be unlawful.
 - (3) Such notice required in subsection (b) above shall include, but not be limited to, the name of the permittee, the permittee's telephone number, and the city permit number.

Sec. 5-7-7 Fees.

Pavement cost recovery (PCR) fee. This reimbursement to the city is due prior to permit issuance and is collected to account for the decrease in the useful life of a street caused by excavations and is based on the Mid-American Regional Council Degradation Cost Recovery Method.

Pavement cost recovery fee calculation. Is calculated by multiplying unit cost (per square yard) for street construction/reconstruction, overlays and seal coats by depreciation rate for each maintenance type and the area of influence of the cut. The area of influence adjacent to the trench is equal to the area of the cut plus three (3) feet on each side (in square yards). All damage(s) caused directly or indirectly to the street surface or subsurface outside the pavement excavated area shall be regarded as a part of the excavation repair area. This includes any holes drilled into the pavement and not properly plugged, as well as damages caused by work equipment. These areas, as established by the director, will be included in the total area to be repaired.

The PCR Fee is calculated by multiplying:
each street maintenance unit cost (\$/SY) X
area of influence (SY - actual cut dimensions plus three feet on each side) X

depreciation factor (account for the age of the maintenance).

Example Calculation: Collector Street constructed 10 years ago (unit cost \$90.12/SY); sealed 3 years ago (unit cost \$6.06/SY); actual size of cut - 5' x 5' square; area of influence - 11' x 11' (13.44 SY). Depreciation value of 10 yr old street construction = 0.79. Depreciation value of 3 year old seal = 0.4

Cost Recovery Fee for Construction = \$90.12 X 13.44 X 0.79 = \$956.86

Cost Recovery Fee for Seal = \$6.06 X 13.44 X 0.4 = \$32.58

Total Cost Recovery Fee = \$956.86 + \$32.58 = \$989.44

Unit costs for each street maintenance type (construction/reconstruction, overlay, and seal) shall be updated annually by the engineering department with assistance from the street department and shall be based on the current market costs of construction/reconstruction, overlay, and seal work.

Sec. 5-7-8 REMOVAL OR RELOCATION OF FACILITIES.

All permittees who place facilities thereby obligate and bind themselves to move or change the location of facilities whenever required or instructed to do so by the city in order to accommodate the construction, repair, or relocation of city infrastructure facilities, and failure to do so shall be unlawful. Furthermore, the permittees must relocate their facilities in a timely manner and communicate their expected relocation timeline to the city engineer.

Sec. 5-7-9 APPLICABILITY OF ARTICLE TO EMERGENCIES.

Nothing contained in this article shall be construed to prevent any person from making an excavation that is necessitated by an emergency, provided that the owner shall: (1) before the excavation is initiated, notify the Texas One-Call Center (811) and/or director by telephone at the twenty-four-hour city's response telephone number provided in the procedures established under subsection 5-7-5(G) and also notify any other city, state, or federal authority required under law to be notified; and (2) apply for a permit for the excavation within twenty-four (24) hours after the initiation of the excavation or, if the city's offices are then closed, within twenty-four (24) hours after the offices of the city are first opened subsequent to the initiation of the excavation.

Sec. 5-7-10 WORK WARRANTY.

Each applicant shall execute and provide a work warranty in a form approved by the city attorney, which shall be incorporated into the application form. The purpose of the work warranty is to undertake and ensure that the permittee will:

- (1) Timely perform the excavation in accordance with the permit, the drawings and specifications, all applicable laws, rules, and regulations, and the construction standards adopted in or pursuant to this article, subject to remediation as provided in section 5-7-18; and
- (2) Warrant the excavation following its completion for two (2) years, subject to remediation as provided in section 5-7-19 of this Code.

Sec. 5-7-11 OWNER BUSINESS PLANS; COORDINATION OF EXCAVATIONS.

- (A) On or before June 1 of each year, owners shall submit a plan of excavations anticipated to be done in the public way during the five-year period commencing on July 1 of that year. Additionally, the director shall annually solicit a five-year transportation improvement plan from the various public way construction entities. As soon as practicable following receipt and compilation of the plans, the director shall make available for inspection a composite list of all projects and transportation improvements designated in the various plans. Applicants are responsible for keeping themselves apprised of the current status of the list. An owner or public way construction entity may change, add, or delete any project in its five-year business plan, and if any modification is made, the owner and/or public way construction entity shall notify the city engineer.
- (B) Prior to issuance of a permit, the director shall check the application against the composite list. The director may require owners to: (i) coordinate their excavations; (ii) coordinate excavations with transportation improvements that are ongoing or are scheduled by public way construction entities; and (iii)

complete excavations before transportation improvements commence. The director may grant a waiver of coordination requirements for good cause. The director shall consider the following before granting a waiver:

- Effect of each proposed excavation(s) on the surrounding vicinity and on traffic mobility;
- (2) The applicant's need for the facility;
- (3) The need to facilitate the deployment of new technology as directed pursuant to official city policy; and
- (4) Public health, safety, welfare and convenience.

Sec. 5-7-12 NEWLY CONSTRUCTED OR RECONSTRUCTED STREETS.

- (A) Except as provided in subsection (b) below, no permit shall be issued for an excavation in any public way that has been constructed, reconstructed, repaved, or resurfaced in the preceding period of five (5) years, as measured from the date of acceptance by the public works construction entity. Owners shall determine alternative methods of making necessary repairs and facility installations to avoid excavations that are subject to this section.
- (B) The director, for good cause, shall grant a variance to an applicant for repair of existing utilities, to respond to emergencies, or to afford an owner the means to provide service to buildings that the owner has no other reasonable means of serving in the determination of the city engineer. Variances shall be granted subject to special conditions that the director determines to be appropriate to the circumstances, such as special coordination with other excavations, special paving requirements, additional soil compaction test reports, or any other requirements needed to restore the integrity of the public way to "as new" condition. In addition to the information provided on the application, applicant shall provide the following with respect to that part of the public way subject to this provision:
 - Reason why the excavation was not performed before or when public way was paved;
 - (2) Reason why the excavation cannot be delayed until after the five-year period expires; and
 - (3) Reason why the excavation cannot be performed at another location or the owner's need cannot be accomplished by a method that does not require excavation.

Sec. 5-7-13 DEFAULTS; UNAUTHORIZED EXCAVATIONS.

(A) The director shall not issue a permit to any person who is in default or breach of any obligation to the city under this article on a prior permit or on a warranty obligation under sections 5-7-18 and 5-7-19 of this Code.

- (B) The director is authorized to debar from obtaining a permit any person who has performed an unpermitted excavation or any owner who has knowingly allowed that practice. Any such debarment shall be for a reasonable period of time that is consistent with the nature and circumstances of the alleged transgressions. Regulations shall be issued for debarment under subsection 5-7-5(G) of this Code.
- (C) Before invoking the provisions of this section, the director shall provide a written notice to the affected persons and afford them a right to a hearing under subsection 5-7-5(F) of this Code.
- (D) It shall be unlawful for any person to make, cause or allow to be made, any excavation, or to install, cause or allow to be installed any tank, pipe, conduit, duct, tunnel, utility pole or other utility or appliance in or under the surface of any street, alley, sidewalk, right-of-way or other public place, at any location, other than that described in the application for the permit and as shown on the plans filed with the director, and in accordance with the requirements of the permit. If the circumstances appearing after the excavation is commenced make it impossible to comply with the permit, the director may grant a waiver to take the circumstances into account.
- (E) Failure to comply with requirements set forth in the article or on any permit shall be cause for revocation of the subject permit and of any other permits held by the same permittee until the violations have been corrected or the director has approved alternative requirements.
- (F) Each violation of this article shall be punishable by a fine not to exceed five hundred dollars (\$500.00). Each day during which a violation continues shall be deemed a separate violation of this article.

Sec. 5-7-14 LIABILITY OF RIGHT-OF-WAY USER; INSURANCE.

- (A) Liability of right-of-way user. To the extent allowed by law, the right-of-way user shall be liable to the city for any damage or loss occasioned by any act or omission occurring in connection with his excavation, and subject to state law, the ROW user shall fully indemnify, hold harmless and defend city, its officers and employees from and against any and all suits, actions, judgments, losses, costs, demands, claims, expenses (including attorney's fees), damages, and liabilities of every kind to which the city, its officers or employees may be subjected for injury of any type, death or property damage arising from or connected with any such act or omission. City shall promptly notify a permittee, or ROW user, at the address set forth in the permit, or last known address, of any claim or suit served upon the city and alleging negligent or wrongful conduct by the permittee or ROW user in connection with an excavation.
- (B) Insurance.

- (1) As a condition of the issuance of a permit, the applicant shall provide evidence that the applicant holds a current policy of comprehensive general liability insurance covering the excavation, with an endorsement for any liability assumed under this article and policy limits as currently required by the city. Each policy shall include a provision obligating the insurer to furnish to the director at least ten (10) days prior written notice of any cancellation.
- (2) The failure of the permittee to continuously maintain any required coverage shall cause any permit covered thereby to become invalid. No work may be performed on any excavation at any time when any required proof of insurance coverage is not on file in the director's office. Following notice and an opportunity for a hearing under subsection 5-7-5(E) of this Code, the director shall revoke any permit for which any required proof of insurance is not being maintained.
- (3) For joint applications and permits, the coverage required in this section may be provided by a policy jointly covering all of the applicants or by separate proofs of coverage for each applicant or permittee.

Sec. 5-7-15 EXTENSIONS.

For good cause not relating to any fault of the permittee in diligently prosecuting the excavation, the director may extend the number of days allowed in the permit for completion of the excavation. To obtain an extension, the permittee shall submit an application therefor and indicating the number of additional days needed for final completion. Extensions of time granted under this subsection shall be noted on the records regarding the permit.

Sec. 5-7-16 ACCESS TO FIRE HYDRANTS; CROSSINGS; TRAFFIC CONTROL DEVICES.

- (A) Access to fire hydrants. Each excavation shall be performed so it does not obstruct emergency access to any fire hydrant or public water supply valve.
- (B) Crossings; traffic control devices. It shall be the duty of each permittee to make provisions for the safe crossing of pedestrians and the orderly movement of vehicular traffic. Provisions therefor shall be included in the drawings and specifications for the excavation. Any required traffic control devices shall conform to applicable laws and to the Texas Manual on Uniform Traffic Control Devices.

Sec. 5-7-17 STEEL PLATE TEMPORARY SURFACES.

It shall be unlawful to place a steel plate at an excavation without a permit. The director may authorize as a condition of a permit the use of a steel plate as a

temporary surface for an excavation. Any such permit shall specify the length of time the steel plate is allowed to remain in the public way. It shall be unlawful for any permittee or former permittee to maintain or cause to be maintained a steel plate in the public way after the time specified in the permit for the excavation at which the steel plate is located. Each steel plate shall be clearly marked with the name of the owner of the steel plate, and a permittee's failure to use a steel plate so marked shall be a violation of this article.

Sec. 5-7-18 COMPLETION OF EXCAVATION; WARRANTY.

- (A) In accordance with the rules and regulations promulgated under subsection 5-7-5(G), a permittee shall notify the director before commencing and obtain permission to commence the excavation before it enters into the public way. In connection with the notification and permission, the authorized date of entry on the public way, for purposes of section 5-7-6 shall be established. In connection with the notification, the permittee shall also furnish the transmittal number required under subsection 5-7-3-(B)(13), if it has not previously been provided. The permittee shall diligently prosecute the excavation to its final completion within the time authorized under the permit. It shall be unlawful for a permittee to fail, refuse or neglect to diligently prosecute or to timely complete the excavation in accordance with the permit and all applicable rules and regulations and the construction standards adopted in or pursuant to this article.
- (B) If a permittee commences an excavation and then fails, refuses, or neglects to diligently prosecute or to timely complete the excavation in accordance with the permit and all applicable rules and regulations and the city's design standards, the city's standards, specifications and details, the director may, following written notice to the permittee, perform the excavation or cause a contractor of the city to perform the excavation. The director shall afford the permittee five (5) days' written notice and opportunity to cure before taking over the excavation, unless the director determines that hazards to public safety and convenience that are posed by the condition of the excavation require a shorter notice period. The director may charge the cost of having the excavation performed, including related administrative expenses, to the permittee. The director shall so notify the permittee, and the permittee shall be obliged to pay the cost within thirty (30) days following receipt of notification. Disputes over costs assessed shall be subject to the hearing process established under subsection 5-7-5(E) and applicable rules or regulations promulgated under subsection 5-7-5(H) of this Code.

Sec. 5-7-19 WARRANTY OF EXCAVATION; CORRECTION OF DEFECTS.

Each permittee shall warrant its excavations against all defects in workmanship and materials for a period of two (2) years after final completion. Whenever within the two-year period any portion of the pavement or surface of

any public way excavated under such a warranty is, in the engineering determination of the director, in need of repairs, by reason of any defect in workmanship or materials, the director shall serve upon the permittee a written notice stating the repairs necessary, and requiring the repairs to be made within five (5) days after service of the notice. If the repairs are not timely made, the director shall at once make or cause to the repairs to be made at the expense of the permittee. The expenses, including any related administrative expenses, shall be charged to the permittee, and the permittee is hereby required to pay the cost within thirty (30) days following receipt of notification. Disputes over costs assessed shall be subject to the hearing process established under subsection 5-7-5 (E) and applicable rules or regulations promulgated under subsection 5-7-5 (H) of this Code.

Sec. 5-7-20 WORK REQUIREMENTS.

- (A) The installation of a utility that crosses the right-of-way at a perpendicular or near perpendicular angle and has an outside diameter of six (6) inches or less will not be permitted to be installed by cutting of the road section. Any exceptions to this will have to be approved by the director.
- (B) Any street excavation/cut shall repair not only the impacted trench but also a full lane overlay for parallel cuts and twelve (12) feet for perpendicular cuts on asphalt streets and shall replace full panels on concrete streets.
- (C) All work shall be completed in accordance with the city's standards specifications and details.
- (D) The permittee and ROW user shall comply with all applicable federal, state and local safety regulations and requirements.
- (E) The permittee shall make the work-site accessible to the city, and others as authorized by law, for inspection at all reasonable times during performance of the work.
- (F) The department may require testing of materials used in construction in or near the right-of-way to determine conformance to required specifications, including, but not limited to, compaction tests on backfill materials, subgrade, aggregate base course, Portland concrete (rigid pavement), asphaltic concrete (flexible pavement) and other construction materials as deemed necessary by the department.
- (G) All work completed by the permitee shall be guaranteed and warranted for a term of no less than twenty-four (24) months from the date the work was completed. This does not prohibit the city from pursuing repairs after this date if it believes there were latent defects in the work completed under this permit.
- (H) At any time, the director may order the immediate cessation of any work which poses a threat to the health, safety or well-being of the public. The

director may revoke the permit of any permittee in any instance where there is a threat to the health, safety or well-being of the public.

Sec. 5-7-21 INSPECTIONS OF EXCAVATIONS.

- (A) All excavations shall be inspected by the city. Based upon the complexity and nature of the excavation and as specified in the permit, inspections may be required during the performance of the excavation, immediately upon completion of the excavation, or both.
- (B) Consistent with applicable laws, sound engineering practices, and the nature of the excavation, upon approval of the city engineer, the director may, in addition to or in lieu of the inspections called for under subsection (a), require that a permittee, at the permittee's expense, retain a professional engineer licensed in Texas to observe the excavation and, based upon the observations, to provide written certification upon completion of the excavation stating that the public way has been restored in accordance with the drawings and specifications and all other applicable technical requirements.

Sec. 5-7-22 DAMAGE TO FACILITY.

A permittee who, in connection with an excavation, damages another owner's facility shall immediately notify the director and, to the extent that the owner's identity is reasonably determinable, the owner of the damaged facility.

Sec. 5-7-23 AS-BUILT DRAWINGS AND SPECIFICATIONS.

Upon final completion of an excavation, the permittee shall provide to the director a set of as-built drawings and specifications for the excavation, which shall be in a form provided by the rules and regulations promulgated under subsection 5-7-5(G) of this Code. In the event that the work was performed exactly in accordance with the drawings and specifications provided with the permit application, then the permittee may so advise the director in writing, and the previously supplied drawings and specifications will be regarded as the asbuilt drawings and specifications.

Sec. 5-7-24 Reserved.

Charter reference— Control of sidewalks and streets, Art. II, § 9-29.

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

III.

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

IV.

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

INTRODUCED on this the 14th day of _	December	, 2015.
PASSED AND APPROVED on this the	th day of	, 201
Sam Fugate, Mayor		
ATTEST:		
Mary Valenzuela, City Secretary		
APPROVED AS TO FORM:		
Courtney Alvarez, City Attorney		