



**NOTICE OF A REGULAR MEETING  
THE BRENHAM CITY COUNCIL  
THURSDAY JULY 7, 2011 AT 1:00 P. M.  
SECOND FLOOR CITY HALL  
COUNCIL CHAMBERS  
200 W. VULCAN  
BRENHAM, TEXAS**

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags – City Attorney Cary Bovey**
- 3. Proclamations**
  - Texas Vietnam War Veterans Day – July 7, 2011**
  - Red Shirt Fridays Day – July 7, 2011**
- 4. a. Service Recognitions**

Casey Redman	Parks	10 Years
Chad Dismukes	Fire	10 Years
Kelvin Raven	Police	15 Years

  - b. New Employees**

Andrew Wancho	Wastewater
Eric Sommerfield	Water
Brandon Plumb	Finance
- 5. Citizens Comments**

**CONSENT AGENDA**

**6. Statutory Consent Agenda**

The Statutory Consent Agenda includes non-controversial and routine items that Council may act on with one single vote. A councilmember may pull any item from the Consent Agenda in order that the Council discuss and act upon it individually as part of the Regular Agenda.

**6-a. Minutes from the June 16, 2011 Council Meeting**

## **WORK SESSION**

- 7. Discuss Chapter 8½, Flood Damage Prevention, of the City of Brenham's Code of Ordinances**

## **REGULAR AGENDA**

- 8. Discuss and Possibly Act Upon an Ordinance on its First Reading Amending Chapter 8½, Flood Damage Prevention, of the City of Brenham's Code of Ordinances**
- 9. Discuss and Possibly Act Upon RFP No. 11-011 for Bank Depository Services and Authorize the Mayor to Execute any Necessary Documentation**
- 10. Discuss and Possibly Act Upon an Agreement with Survalent Technology for SCADA System Software and Support and Authorize the Mayor to Execute any Necessary Documentation**
- 11. Discuss and Possibly Act Upon an Agreement for Assignment of the Final Payment Related to the Henderson Park Lift Station Improvements Project Between The Guarantee Company of North America USA, Brazos Valley Services, and the City of Brenham, and Authorize the Mayor to Execute Any Necessary Documentation**

**Administrative/Elected Officials Reports:** Reports from City Officials or City staff regarding items of community interest, including expression of thanks, congratulations or condolences; information regarding holiday schedules; honorary or salutory recognitions of public officials, public employees or other citizens; reminders about upcoming events organized or sponsored by the City; information regarding social, ceremonial, or community events organized or sponsored by a non-City entity that is scheduled to be attended by City officials or employees; and announcements involving imminent threats to the public health and safety of people in the City that have arisen after the posting of the agenda.

- 12. Administrative/Elected Officials Report**

## **EXECUTIVE SESSION**

- 13. Texas Government Code 551.072 – Deliberation Regarding Real Property – Discuss and Consider the Acquisition of Street Right-of-Way for the Longwood Drive Extension Project**

*(Note: The City Council will convene in Room 2A, 2<sup>nd</sup> Floor of City Hall, for Executive Session item 14)*

- 14. Texas Government Code 551.071 – Consultation with City Attorney Regarding Chapter 16, Occupational Licenses and Business Regulations, of the City of Brenham's Code of Ordinances to Provide for the Regulation of Sexually Oriented Businesses within the City Limits**

**RE-OPEN REGULAR SESSION**

- 15. Discuss and Possibly Act Upon Resolution No. R-11-007 Determining the Public Need and Necessity for the Acquisition of Street Right-of-Way for the Construction, Repair and Maintenance of Street Improvements Incidental to the Longwood Drive Extension Project, Authorizing the City Manager to Agree on Amounts to be Paid to the Property Owner(s) as Compensation for Said Street Right-of-Way, and Authorizing the City Attorney to Institute Condemnation Proceedings, If Necessary, to Acquire Said Street Right-of-Way Across Land Lying in the City of Brenham, Washington County, Texas in the Phillip Coe Survey A-31 Owned by RPH Investments, L.L.C.**

**Adjourn**

**Executive Sessions:** The City Council for the City of Brenham reserves the right to convene into executive session at any time during the course of this meeting to discuss any of the matters listed, as authorized by Texas Government Code, Chapter 551, including but not limited to §551.071 – Consultation with Attorney, §551.072 – Real Property, §551.073 – Prospective Gifts, §551.074 - Personnel Matters, §551.076 – Security Devices, §551.086 - Utility Competitive Matters, and §551.087 – Economic Development Negotiations.

***CERTIFICATION***

I certify that a copy of the July 7, 2011 agenda of items to be considered by the City of Brenham City Council was posted to the City Hall bulletin board at 200 W. Vulcan, Brenham, Texas on July 1, 2011 at \_\_\_\_\_ Am Pm.

\_\_\_\_\_  
Tammy Cook, Deputy City Secretary

**Disability Access Statement:** This meeting is wheelchair accessible. The accessible entrance is located at the Vulcan Street entrance to the City Administration Building. Accessible parking spaces are located adjoining the entrance. Auxiliary aids and services are available upon request (interpreters for the deaf must be requested twenty-four (24) hours before the meeting) by calling (979) 337-7567 for assistance.

I certify that the attached notice and agenda of items to be considered by the City Council was removed by me from the City Hall bulletin board on the \_\_\_\_\_ day of \_\_\_\_\_, 2011 at \_\_\_\_\_ Am Pm.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

## PROCLAMATION

**WHEREAS,** During the Vietnam War, over 500,000 Texans served either in-country or at a duty station around the world; with over 3,400 Texans killed in action and some 107 who never returned; and

**WHEREAS,** In May, 2005 the Texas Legislature authorized the Texas Capitol Vietnam War Monument to be constructed on Capitol grounds from private donations; it is expected to be dedicated in early 2013; and

**WHEREAS,** While the war is history for some, for others, the healing continues. This monument, which will be created by Duke Sundt, the "Cowboy Artist", will stand as a tribute to all those who served, and is our way of saying "Welcome Home and Thank You";

**WHEREAS,** Vietnam Veteran and U.S. Marine Corps Retired Patrick M. Reilly, with the assistance of Chapter 1919 of the Military Order of the Purple Heart, is currently exhibiting the Texas Vietnam War bronze model throughout the State of Texas; and

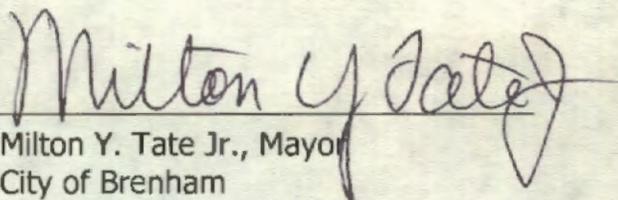
**WHEREAS,** It is right and just for the City Council and the residents of Brenham to join together to recognize and commend our Vietnam veterans for their dedication and support to our nation,

Now, THEREFORE I, Milton Y. Tate Jr., Mayor of the City of Brenham, Texas do Hereby Proclaim Thursday, July 7, 2011 as

### **Texas Vietnam War Veterans Day**

In Witness, Whereof, I have set my hand and affixed the Seal of Brenham.



  
Milton Y. Tate Jr., Mayor  
City of Brenham

## PROCLAMATION

**WHEREAS,** The mission of Red Shirt Fridays is to show support for the men and women who serve in the American Armed Forces all over the world; and

**WHEREAS,** American soldiers need to know that, no matter where they are or what war they are fighting, they are never forgotten by the American people; and

**WHEREAS,** The families of those who serve need our support as well; Red Shirt Fridays is a visible way of saying thank you to all those whose fathers, mothers, brothers and sisters are putting their lives on the line for all of us;

**WHEREAS,** America is the Home of the Free because of the Brave – and we are forever in their debt; and

**WHEREAS,** It is right and just for the City Council and the residents of Brenham to join together to recognize and commend all of our Armed Forces for their service to our country by wearing red shirts on Friday; and

Now, THEREFORE I, Milton Y. Tate Jr., Mayor of the City of Brenham, Texas do Hereby Proclaim Thursday, July 7, 2011 as

### Red Shirt Fridays Day

In Witness, Whereof, I have set my hand and affixed the Seal of Brenham.



*Milton Y. Tate Jr.*  
Milton Y. Tate Jr., Mayor  
City of Brenham

## **Brenham City Council Minutes**

A regular meeting of the Brenham City Council was held on June 16, 2011 beginning at 1:00 p.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

### Members present:

Mayor Milton Y. Tate, Jr.  
Mayor Pro Tem Gloria Nix  
Councilmember Andrew Ebel  
Councilmember Danny Goss  
Councilmember Keith Herring  
Councilmember Charlie Pyle  
Councilmember Weldon Williams, Jr.

### Others present:

City Manager Terry Roberts, City Attorney Cary Bovey, City Secretary Jeana Bellinger, Administrative Assistant Tammy Cook, Debbie Gaffey, Fire Chief Ricky Boeker, Police Chief Rex Phelps, Public Works Director Doug Baker, Kim Hodde, Public Utilities Director Lowell Ogle, Community Services Director Wesley Brinkmeyer, Angela Hahn, and Gary Jeter

### Citizens present:

Perry Thomas

### Media Present:

Arthur Hahn, Brenham Banner Press; Frank Wagner, KWHI

- 1. Mayor Tate called the meeting to order**
- 2. Invocation and Pledges to the US and Texas Flags – Mayor Milton Y. Tate, Jr.**
- 3. Citizens Comments**

There were no citizen comments.

## CONSENT AGENDA

### 4. Statutory Consent Agenda

#### 4-a. Minutes from the June 2, 2011 Council Meeting

#### 4-b. Second Reading of Ordinance No. O-11-007 Amending the FY2010-11 Adopted Budget

A motion was made by Councilmember Pyle and seconded by Councilmember Ebel to approve the Statutory Consent Agenda Item 5-a. minutes from the June 2, 2011 council meeting and 5-b. Ordinance No. O-11-007 amending the FY2010-11 adopted budget.

Mayor Tate called for a vote. The motion passed with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Gloria Nix	Yes
Councilmember Andrew Ebel	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	Yes
Councilmember Weldon Williams	Yes

Council convened into Executive Session at 1:02 p.m.

## EXECUTIVE SESSION

### 5. Texas Government Code Section 551.071 – Consultation with Attorney – Executive Session for the Purpose of Consultation with Legal Counsel Regarding Redistricting Standards and City Councilmember District Redistricting Plan(s)

Executive session adjourned at 1:25 p.m.

## RE-OPEN REGULAR SESSION

### 6. Presentation and Discussion by Redistricting Counsel of Draft Redistricting Plans

Syd Falk with Bickerstaff Heath Delgado Acosta, LLP presented this item. Mr. Falk presented a pair of draft redistricting plans to council. He reminded council the deviation in the most populous and least populous ward cannot be more than 10%. Currently a 14.23% deviation exists. Ward Four is over populated by 7.92% and Ward One is under populated by 6.31% thus creating the need to redistrict.

Mr. Falk then went into detail on two (2) proposed draft plans (Draft Plan A and Draft Plan B) and two (2) minor “clean-up” changes to Ward boundaries. Both of the draft plans, along with the two (2) proposed clean-up boundary changes would bring the population in each Ward into a less than 10% deviation:

- **Draft Plan A** focuses primarily on the perimeter of Ward Four, Southwest of Hwy. 290, and shifts this population to Ward One. This draft plan (A) would create a deviation of 4.05% which is well below the 10% deviation standard that is required.
- **Draft Plan B** involves a transfer of population from Ward Four to Ward One within the central portion of the city, East of Blinn College. This draft plan (B) would create a deviation of 3.54%, which is also well below the 10% deviation standard that is required.
- **Two (2) minor clean-up changes** include moving a single census block, approximately 43 residents, from Ward One to Ward Two, and a population shift of about 85 residents from Ward Four would be transferred to Ward Three.

Councilmember Herring asked what the Department of Justice (DOJ) looks for when redistricting. Mr. Falk explained they are only interested in retrogression; this is whether or not the plan reduces minority voting strength in one or more voting districts. Mr. Falk assured council that neither of the draft plans he has presented create a retrogression issue.

Councilmember Goss questioned the need for redistricting as no minority voting groups were affected and the potential future growth in Ward One. Mr. Falk informed council that not redistricting is an option, but since the current ward configuration exceeds the ten percent deviation a complaint could be made and there would be little legal defense as to why redistricting was not done.

Mr. Falk informed council that the next step is to designate a draft plan to be submitted for public discussion and comment.

**7. Redistricting Plan Map-Drawing Session with Redistricting Legal Counsel (*Note: In the event a map-drawing session is conducted, the City Council will convene in Room 2A, 2<sup>nd</sup> Floor of City Hall, for this agenda item*)**

No action was needed.

**8. Discuss and Possibly Act Upon the Designation of One or More Draft Redistricting Plans as Illustrative Plan(s) to be Proposed for Public Consideration and Comment**

A motion was made by Councilmember Ebel and seconded by Mayor Pro Tem Nix to designate “Draft Plan B” as the Illustrative Plan to be proposed for public consideration and comment.

Mayor Tate called for a vote. The motion passed with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Gloria Nix	Yes
Councilmember Andrew Ebel	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	Yes
Councilmember Weldon Williams	Yes

**9. Discuss and Possibly Act Upon an Ordinance on its First Reading Amending Chapter 16, Occupational Licenses and Business Regulations, of the City of Brenham’s Code of Ordinances to Provide for the Regulation of Sexually Oriented Businesses within the City Limits**

City Attorney, Cary Bovey informed the Council that this item needed to be tabled. He stated that there are numerous changes that will be recommended and he would like some additional time to complete his legal research.

A motion was made by Mayor Pro Tem Nix and seconded by Councilmember Williams to table an ordinance on its first reading amending Chapter 16, Occupational Licenses and Business Regulation, of the City of Brenham’s Code of Ordinances to provide for the regulation of sexually oriented businesses within the City limits.

Mayor Tate called for a vote. The motion passed with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Gloria Nix	Yes
Councilmember Andrew Ebel	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	Yes
Councilmember Weldon Williams	Yes

**10. Discuss and Possibly Act Upon a Request from the Main Street Board Approving the Renewal of a Reserved Parking Space for Hospice Boutique**

This item was presented by Community Services Director, Wesley Brinkmeyer. Mr. Brinkmeyer explained this request, as in the past, is for the daily use of a parking space from 1:00 p.m. to 5:00 p.m. for donation drop offs. Mr. Brinkmeyer stated that this application was also submitted, and approved, by the Main Street Board on June 6<sup>th</sup>.

Councilmember Goss confirmed this parking space was given to Hospice Boutique at no charge because of their non-profit status and all others requesting a reserved space would have to pay. Mr. Brinkmeyer confirmed Councilmember Goss' statement and went on to say that downtown parking is being reviewed as part of the Downtown Master Plan.

Mayor Pro Tem Nix questioned the use of the two parking spaces located in the back of the Hospice Boutique. Councilmember Ebel explained the elevation at the back of the building created an issue for people unloading donated items.

A motion was made by Councilmember Herring and seconded by Councilmember Pyle to approve a request from the Main Street Board approving the renewal of a reserved parking space for Hospice Boutique.

Mayor Tate called for a vote. The motion passed with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Gloria Nix	Yes
Councilmember Andrew Ebel	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	Yes
Councilmember Weldon Williams	Yes

**11. Discuss and Possibly Act Upon a Request for a Noise Variance from the Citizens for Community Progress to Hold a Praise Dance and Step Contest at Henderson Park from 4:00 p.m. to 7:00 p.m. on June 26, 2011**

This item was presented by Kim Hodde. Ms. Hodde stated a sound amplification system would be used for this event therefore a variance to the noise ordinance has been requested.

A motion was made by Councilmember Williams and seconded by Councilmember Herring to approve a request for a noise variance from the Citizens for Community Progress to hold a praise dance and step contest at Henderson Park from 4:00 p.m. to 7:00 p.m. on June 26, 2011.

Mayor Tate called for a vote. The motion passed with Council voting as follows:

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Gloria Nix	Yes
Councilmember Andrew Ebel	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	Yes
Councilmember Weldon Williams	Yes

## 12. Administrative/Elected Officials Report

- City Manager Terry Roberts informed council of the upcoming Washington County Legislative Forum on June 24, 2011. He also advised Council that proposals have been received for the Downtown Master Plan and a committee has been formed to review the proposals.
- Mayor Tate reminded everyone of the Juneteenth Parade on Saturday.
- Councilmember Pyle reminded everyone that the first concert of the Hot Nights Cool Tunes series will be Saturday, July 2, 2011.
- Public Works Director, Doug Baker informed council of an upcoming public hearing regarding the annexation of the three newly acquired properties in the Southwest Industrial Park.
- Public Utilities Director, Lowell Ogle updated council on the current drought conditions.

The meeting was adjourned.

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Milton Y. Tate, Jr.  
Mayor

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Jeana Bellinger, TRMC  
City Secretary



## AGENDA FORM

<b>DATE OF MEETING:</b> July 7, 2011	<b>DATE SUBMITTED:</b> June 26, 2011	
<b>DEPT. OF ORIGIN:</b> Public Works	<b>SUBMITTED BY:</b> Allen Jacobs	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 <sup>ST</sup> READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 <sup>ND</sup> READING
<input type="checkbox"/> EXECUTIVE SESSION	<input type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input checked="" type="checkbox"/> WORK SESSION	
<b>AGENDA ITEM DESCRIPTION:</b> Discuss Chapter 8½, Flood Damage Prevention, of the City of Brenham's Code of Ordinances		
<b>SUMMARY STATEMENT:</b> Each time FEMA (Federal Emergency Management Agency) provides a community with new or revised flood hazard data, the community must amend its existing regulations to reference the new flood map and flood study.  Participating communities enables property owners within that community to participate in the National Insurance Program (NFIP). The NFIP is a Federal program enabling property owners in participating communities to purchase insurance as a protection against flood losses in exchange for compliance State and community floodplain management regulations that reduce future flood damages. Over 20,000 communities participate in the Program.		
<b>STAFF ANALYSIS (For Ordinances or Regular Agenda Items):</b>  <b>A. PROS:</b> Property owners are able to purchase NFIP flood insurance policies. Federal disaster assistance is available for repair of insurable buildings located in identified flood hazard damage caused by a flood.  <b>B. CONS:</b> None; however, in the event that a community does not adopt the appropriate floodplain management regulations property owners and communities will be sanctioned from the all NFIP benefits.		
<b>ALTERNATIVES (In Suggested Order of Staff Preference):</b>		
<b>ATTACHMENTS:</b> (1) Chapter 8 ½ Flood Damage Prevention Ordinance <i>Amended Changes</i>		
<b>FUNDING SOURCE (Where Applicable):</b> No additional funding is required.		
<b>RECOMMENDED ACTION:</b> It is recommended that this work session item be the bases to approve an ordinance to amend the City of Brenham Flood Damage Prevention Ordinance per the NFIP requirements.		
<b>APPROVALS:</b> Terry Roberts		



## Chapter 8½

### **FLOOD DAMAGE PREVENTION ORDINANCE**

Amended Changes to this Ordinance are noted as Follows:

#### **SECTION 8½-1. Statutory authorization.**

Basic change or addition of wording: Flood Control Insurance Act has been added to this section.

#### **SECTION 8½-2. Findings of fact.**

No significant changes in this section.

#### **SECTION 8½-3. Statement of purpose.**

No significant changes in this section.

#### **SECTION 8½-4. Methods of reducing flood losses.**

No significant changes in this section.

#### **SECTION 8½-5. Definitions.**

Addition of definitions as noted (the few definitions that have been omitted have not been noted):

*Alluvial fan flooding* means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

*Apex* means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

*Appurtenant structure* means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure

*Area of future conditions flood hazard* means the land area that would be inundated by the 1-percent-annual chance (100 year) flood based on future conditions hydrology.

*Base flood elevation (BFE)* is the elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1% chance of equaling or exceeding that level in any given year - also called the Base Flood.

*Basement* means any area of the building having its floor subgrade (below ground level) on all sides.

*Breakaway wall* means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

*Elevated building* means, for insurance purposes, a non-basement building, which has its lowest elevated floor, raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns. (Note: this definition has been shortened)

*Existing manufactured home park or subdivision* means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

*Expansion to an existing manufactured home park or subdivision* means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

*Flood elevation study* means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards. (Note: this definition has been expanded by a few word).

*Floodplain management* means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

*Floodplain management regulations* means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

*Flood protection system* means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

*Floodproofing* means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

*Historic structure* means any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(4) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:

(a) By an approved state program as determined by the Secretary of the Interior or;

(b) Directly by the Secretary of the Interior in states without approved programs.

*Manufactured home park or subdivision* means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

*New construction* means, for the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures. (Note: this definition was in the previous ordinance; however, now it has been expanded).

*New manufactured home park or subdivision* means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

*Recreational vehicle* means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

*Regulatory floodway* means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

*Riverine* means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

*Special flood hazard area - see Area of Special Flood Hazard*

*Substantial damage* means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

*Substantial improvement* means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either: (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."

**SECTION 8½-6. Lands to which this ordinance applies.**

No significant changes in this section.

**SECTION 8½-7. Basis for establishing the areas of special flood hazard.**

The noted dates in this section have been changed in accordance to the FIRM requirements.

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for [Washington County, TX and incorporated areas](#)" dated [August 16, 2011](#), with accompanying Flood Insurance Rate Maps dated [August 16, 2011](#), and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

**SECTION 8½-8. Establishment of development permit.**

No significant changes in this section.

**SECTION 8½-9. Compliance.**

No significant changes in this section.

**SECTION 8½-10. Abrogation and greater restrictions.**

No significant changes in this section.

**SECTION 8½-11. Interpretation.**

No significant changes in this section

**SECTION 8½-12. Warning and disclaimer or liability.**

No significant changes in this section.

**ADMINISTRATION**

**SECTION 8½-13. Designation of the floodplain administrator.**

Change in wording as noted:

The [Building Official](#) is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (Emergency Management and Assistance - National Flood Insurance Program Regulations) pertaining to floodplain management.

**SECTION 8½-14. Duties and responsibilities of the floodplain administrator.**

Item (10) as noted, was added to this section.

(10) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than 1 foot, provided that the community first completes all of the provisions required by Section 65.12.

**SECTION 8½-15. Permit procedures.**

No significant changes in this section.

### **SECTION 8½-16. Variance procedures.**

No significant changes in this section.

### **SECTION 8½-17. Provisions for flood hazard reduction-General standards.**

No significant changes in this section.

### **SECTION 8½-18. Specific standards.**

The noted change in this section is the minimum elevation requirement of, “ at least one foot.” Additional specifications have been added to the manufactured home criteria for “substantial damage” clause. The standard for the “recreational vehicles” has been added to this section. No other significant changes in this section.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in (i) Section 8 ½ -7, (ii) Section 8 ½ -14(8), or (iii) Section 8 ½ -14 (3), the following provisions are required:

(1) **Residential Construction** - new construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to [at least one foot](#) above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Section 8 ½ -15 (1) a., is satisfied.

(2) **Nonresidential Construction** - new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to [at least one foot](#) above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.

**(4) Manufactured Homes -**

(a) Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

(b) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(c) Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either:

(i) the lowest floor of the manufactured home is at **least one foot** above the base flood elevation, or

(ii) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

**(5) Recreational Vehicles -** Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either (i) be on the site for fewer than 180 consecutive days, or (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements of Section 8 ½-15 (1), and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of section 8 ½ -18. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick

disconnect type utilities and security devices, and has no permanently attached additions.

**SECTION 8½-19. Standards for subdivision proposals.**

No significant changes in this section.

**SECTION 8½-20. Standards for areas of shallow flooding (AO/AH zones)**

The noted change in this section is the minimum elevation requirement of, “ at least one foot.” No other significant changes in this section.

Located within the areas of special flood hazard established in Section 8 ½ -7, are areas designated as shallow flooding. These areas have special flood hazards associated with flood depths of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

(1) All new construction and substantial improvements of **residential** structures have the lowest floor (including basement) elevated to **at least one foot** above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least 2 feet if no depth number is specified) **plus one foot**.

(2) All new construction and substantial improvements of **non-residential** structures;

(a) have the lowest floor (including basement) elevated to **at least one foot** above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least 2 feet if no depth number is specified) **plus one foot**, or

(b) together with attendant utility and sanitary facilities be designed so that below the base specified flood depth in an AO Zone, or below the Base Flood Elevation in an AH Zone, level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

(3) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Section 8 ½ -15 are satisfied.

(4) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

**SECTION 8½-21. Floodways.**

Item (3) has been added to this section.

Floodways - located within areas of special flood hazard established in Section 8 ½ -7, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

(1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(2) If Section 8 ½ -21 (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of sections 8 ½ -17 thru 8 ½ -23.

(3) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first completes all of the provisions required by Section 65.12.

**SECTION 8½-22. Severability.**

This “severability” section has been added to this ordinance.

If any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

**SECTION 8½-23. Penalties for non compliance.**

This “penalties for noncompliance” section has been added to this ordinance.

No structure or land shall hereafter be constructed, located, extended,

converted, or altered without full compliance with the terms of this court order and other applicable regulations. Violation of the provisions of this court order by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this court order or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500 for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent City of Brenham City Council from taking such other lawful action as is necessary to prevent or remedy any violation.

**SECTION 8½-24. Certification of adoption.**

This approval section was added to this ordinance.

**APPROVED:** \_\_\_\_\_  
(community official)

**PASSED:** \_\_\_\_\_  
(adoption date)

**ORDINANCE BECOMES EFFECTIVE:** \_\_\_\_\_  
(effective date)

I, the undersigned, {name of certifying official}, do hereby certify that the above is a true and correct copy of an ordinance duly adopted by the {governing body}, at a regular meeting duly convened on {date}.

\_\_\_\_\_  
{Signature of Certifying Official}

{SEAL}



## AGENDA FORM

<b>DATE OF MEETING:</b> July 7, 2011	<b>DATE SUBMITTED:</b> June 30, 2011	
<b>DEPT. OF ORIGIN:</b> Public Works	<b>SUBMITTED BY:</b> Allen Jacobs	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input checked="" type="checkbox"/> 1 <sup>ST</sup> READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 <sup>ND</sup> READING
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
<input type="checkbox"/> WORK SESSION		
<b>AGENDA ITEM DESCRIPTION:</b> Discuss and Possibly Act Upon an Ordinance on its First Reading Amending Chapter 8 ½, Flood Damage Prevention, of the City of Brenham’s Code of Ordinances		
<b>SUMMARY STATEMENT:</b> Each time FEMA (Federal Emergency Management Agency) provides a community with new or revised flood hazard data, the community must amend its existing regulations to reference the new flood map and flood study.  Participating communities enables property owners within that community to participate in the National Flood Insurance Program (NFIP). This Amended Ordinance consists of revisions that the NFIP requires as part of this update. The wording of this Amended Ordinance has been coordinated with our regional NFIP Specialist of the Houston Regional Office, of the Texas Water Development Board.		
<b>STAFF ANALYSIS (For Ordinances or Regular Agenda Items):</b>  <b>A. PROS:</b> The City of Brenham is in compliance with the NFIP and our community property owners are able to purchase NFIP flood insurance policies. Federal disaster assistance is available for repair of insurable buildings located in identified flood hazard damage caused by a flood.  <b>B. CONS:</b> None; however, in the event that a community does not adopt the appropriate floodplain management regulations property owners and communities will be sanctioned from all NFIP benefits.		
<b>ALTERNATIVES (In Suggested Order of Staff Preference):</b> None		
<b>ATTACHMENTS:</b> (1) Ordinance		
<b>FUNDING SOURCE (Where Applicable):</b> No additional funding is required.		
<b>RECOMMENDED ACTION:</b> Approve an ordinance on its first reading amending Chapter 8 ½, Flood Damage Prevention, of the City of Brenham’s Code of Ordinances		
<b>APPROVALS:</b> Terry Roberts		

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING CHAPTER 8½ OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS; PROVIDING FOR THE REGULATION OF FLOOD HAZARDS WITHIN THE CITY LIMITS OF THE CITY OF BRENHAM, TEXAS; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PROPER NOTICE AND MEETINGS**

**WHEREAS**, the National Flood Insurance Program (NFIP) was established with the passage of the National Flood Insurance Act of 1968;

**WHEREAS**, the NFIP is a Federal Program enabling property owners in participating communities to purchase insurance as a protection against flood losses in exchange for State and community floodplain management regulations that reduce flood damage;

**WHEREAS**, over 20,000 communities participate in the program; and

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Brenham, Texas that:

**SECTION 1.**

Chapter 8½ of the Code of Ordinances, City of Brenham, Texas is hereby amended to read as follows:

**FLOOD DAMAGE PREVENTION**

**Sec. 8½-1. Statutory authorization.**

The Legislature of the State of Texas has in the Flood Control Insurance Act, Texas Water Code, Section 16.315, delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the City Council of the City of Brenham, Texas does ordain as follows:

**Sec. 8½-2. Findings of fact.**

- (1) The flood hazard areas of the City of Brenham are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.
- (2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

**Sec. 8½-3. Statement of purpose.**

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
- (7) Insure that potential buyers are notified that property is in a flood area.

**Sec. 8½-4. Methods of reducing flood losses.**

In order to accomplish its purposes, this ordinance uses the following methods:

- (1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;

- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging and other development which may increase flood damage;
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

### **Sec. 8½-5. Definitions.**

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

***Alluvial fan flooding*** means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

***Apex*** means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

***Appurtenant structure*** means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure

***Area of future conditions flood hazard*** means the land area that would be inundated by the 1-percent-annual chance (100 year) flood based on future conditions hydrology.

***Area of shallow flooding*** means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

***Area of special flood hazard*** is the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed rate making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE or V.

**Base flood** means the flood having a 1 percent chance of being equaled or exceeded in any given year.

**Base flood elevation (BFE)** is the elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for Zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a 1% chance of equaling or exceeding that level in any given year - also called the Base Flood.

**Basement** means any area of the building having its floor subgrade (below ground level) on all sides.

**Breakaway wall** means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

**Critical feature** means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

**Development** means any man-made change to improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

**Elevated building** means, for insurance purposes, a non-basement building, which has its lowest elevated floor, raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

**Existing construction** means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

**Existing manufactured home park or subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**Expansion to an existing manufactured home park or subdivision** means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**Flood or flooding** means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters.
- (2) the unusual and rapid accumulation or runoff of surface waters from any source.

**Flood elevation study** means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

**Flood insurance rate map (FIRM)** means an official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

**Flood insurance study (FIS)** - see *Flood Elevation Study*

**Floodplain or flood-prone area** means any land area susceptible to being inundated by water from any source (see definition of flooding).

**Floodplain management** means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

**Floodplain management regulations** means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**Flood protection system** means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

**Floodproofing** means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**Floodway** - see *Regulatory Floodway*

**Functionally dependent use** means a use, which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**Highest adjacent grade** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**Historic structure** means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - (a) By an approved state program as determined by the Secretary of the Interior or;
  - (b) Directly by the Secretary of the Interior in states without approved programs.

**Levee** means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

**Levee system** means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

**Lowest floor** means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

***Manufactured home*** means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

***Manufactured home park or subdivision*** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

***Mean sea level*** means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

***New construction*** means, for the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

***New manufactured home park or subdivision*** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

***Recreational vehicle*** means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

***Regulatory floodway*** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

***Riverine*** means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

***Special flood hazard area*** - see *Area of Special Flood Hazard*

***Start of construction*** (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

***Structure*** means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

***Substantial damage*** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

***Substantial improvement*** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either: (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."

***Variance*** means a grant of relief by a community from the terms of a floodplain management regulation. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations.)

***Violation*** means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

***Water surface elevation*** means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

**Sec. 8½-6. Lands to which this ordinance applies.**

The ordinance shall apply to all areas of special flood hazard with the jurisdiction of the City of Brenham.

**Sec. 8½-7. Basis for establishing the areas of special flood hazard.**

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for Washington County, TX and incorporated areas" dated August 16, 2011, with accompanying Flood Insurance Rate Maps dated August 16, 2011, and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

**Sec. 8½-8. Establishment of development permit.**

A Floodplain Development Permit shall be required to ensure conformance with the provisions of this ordinance.

**Sec. 8½-9. Compliance.**

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this ordinance and other applicable regulations.

**Sec. 8½-10. Abrogation and greater restrictions.**

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**Sec. 8½-11. Interpretation.**

In the interpretation and application of this ordinance, all provisions shall be; (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under State statutes.

**Sec. 8½-12. Warning and disclaimer or liability.**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

**Sec. 8½-13. Designation of the floodplain administrator.**

The Building Official is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (Emergency Management and Assistance - National Flood Insurance Program Regulations) pertaining to floodplain management.

**Sec. 8½-14. Duties and responsibilities of the floodplain administrator.**

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

- (1) Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance.
- (2) Review permit application to determine whether to ensure that the proposed building site project, including the placement of manufactured homes, will be reasonably safe from flooding.
- (3) Review, approve or deny all applications for development permits required by adoption of this ordinance.

- (4) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
- (5) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.
- (6) Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the Texas Water Development Board (TWDB) and also the Texas Commission on Environmental Quality (TCEQ), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (7) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- (8) When base flood elevation data has not been provided in accordance with Section 8 ½-7, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of Article 5.
- (9) When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
- (10) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than 1 foot, provided that the community first completes all of the provisions required by Section 65.12.

**Sec. 8½-15. Permit procedures.**

- (1) Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:
  - (a) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
  - (b) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
  - (c) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Section 8 ½ -18(2);
  - (d) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;
  - (e) Maintain a record of all such information in accordance with Section 8 ½ -14(1);
- (2) Approval or denial of a Floodplain Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:
  - (a) The danger to life and property due to flooding or erosion damage;
  - (b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (c) The danger that materials may be swept onto other lands to the injury of others;
  - (d) The compatibility of the proposed use with existing and anticipated development;
  - (e) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (f) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;

- (g) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
- (h) The necessity to the facility of a waterfront location, where applicable;
- (i) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

**Sec. 8½-16. Variance procedures.**

- (1) The Appeal Board, as established by the community, shall hear and render judgment on requests for variances from the requirements of this ordinance.
- (2) The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.
- (3) Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.
- (4) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- (5) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this ordinance.
- (6) Variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section C (2) of this Article have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.
- (7) Upon consideration of the factors noted above and the intent of this ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance (Section 8 ½ - 3).
- (8) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

- (9) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (10) Prerequisites for granting variances:
- (a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - (b) Variances shall only be issued upon: (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
  - (c) Any application to which a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (11) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria outlined in Section 8 ½ -16(1)-(9) are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

**Sec. 8½-17. Provisions for flood hazard reduction-General standards.**

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

- (1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;

- (4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,
- (7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

**Sec. 8½-18. Specific standards.**

In all areas of special flood hazards where base flood elevation data has been provided as set forth in (i) Section 8 ½ -7, (ii) Section 8 ½ -14(8), or (iii) Section 8 ½ -14 (3), the following provisions are required:

- (1) **Residential Construction** - new construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to at least one foot above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Section 8 ½ -15 (1) a., is satisfied.
- (2) **Nonresidential Construction** - new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to at least one foot above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.

(3) **Enclosures** - new construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

- (a) A minimum of two openings on separate walls having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided.
- (b) The bottom of all openings shall be no higher than 1 foot above grade.
- (c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(4) **Manufactured Homes** -

- (a) Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
- (b) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- (c) Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either:

- (i) The lowest floor of the manufactured home is at least one foot above the base flood elevation, or
  - (ii) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- (5) **Recreational Vehicles** - Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either (i) be on the site for fewer than 180 consecutive days, or (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements of Section 8 ½-15 (1), and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of section 8 ½ -18. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

**Sec. 8½-19. Standards for subdivision proposals.**

- (1) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Sections 8 ½ -2, 8 ½ -3, and 8 ½ -4 of this ordinance.
- (2) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Floodplain Development Permit requirements of Section 8 ½ -8; Section 8 ½ -15; and the provisions for flood hazard reduction, sections 8 ½ -17 thru 8 ½ - 23 of this ordinance.
- (3) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to Section 8 ½ -7 or Section 8 ½ -14 (8) of this ordinance.
- (4) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- (5) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

## **Sec. 8½-20. Standards for areas of shallow flooding (AO/AH zones)**

Located within the areas of special flood hazard established in Section 8 ½ -7, are areas designated as shallow flooding. These areas have special flood hazards associated with flood depths of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

- (1) All new construction and substantial improvements of **residential** structures have the lowest floor (including basement) elevated to at least one foot above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least 2 feet if no depth number is specified) plus one foot.
- (2) All new construction and substantial improvements of **non-residential** structures;
  - (a) have the lowest floor (including basement) elevated to at least one foot above the base flood elevation or the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least 2 feet if no depth number is specified) plus one foot, or
  - (b) together with attendant utility and sanitary facilities be designed so that below the base specified flood depth in an AO Zone, or below the Base Flood Elevation in an AH Zone, level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.
- (3) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Section 8 ½ -15 are satisfied.
- (4) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.

## **Sec. 8½-21. Floodways.**

Floodways - located within areas of special flood hazard established in Section 8 ½ -7, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

- (1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in

accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

- (2) If Section 8 ½ -21 (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of sections 8 ½ -17 thru 8 ½ -23.
- (3) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first completes all of the provisions required by Section 65.12.

**Sec. 8½-22. Severability.**

If any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

**Sec. 8½-23. Penalties for non compliance.**

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this court order and other applicable regulations. Violation of the provisions of this court order by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this court order or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500 for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent City of Brenham City Council from taking such other lawful action as is necessary to prevent or remedy any violation.

**Sec. 8½-24. Certification of adoption.**

**SECTION 2.**  
**SAVINGS CLAUSE**

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

**SECTION 3.**  
**REPEALER**

Any other ordinances or parts of ordinances in conflict with this Ordinance are hereby expressly repealed.

**SECTION 4.**  
**EFFECTIVE DATE**

This Ordinance shall become effective upon adoption and publication as required by law.

**SECTION 5.**  
**PROPER NOTICE AND MEETINGS**

It is hereby officially found and determined that the meetings at which this ordinance was passed were open to the public as required and that public notice of the time, place and purpose of said meetings were given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

**PASSED AND APPROVED**, on its first reading at the meeting of the City Council held on this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**PASSED AND APPROVED**, on its second reading at the meeting of the City Council held on this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Milton Y. Tate, Jr.  
Mayor

**ATTEST:**

\_\_\_\_\_  
Jeana Bellinger, TRMC  
City Secretary



## AGENDA FORM

<b>DATE OF MEETING:</b> July 7, 2011	<b>DATE SUBMITTED:</b> June 23, 2011	
<b>DEPT. OF ORIGIN:</b> Finance	<b>SUBMITTED BY:</b> Carolyn D. Miller	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 <sup>ST</sup> READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 <sup>ND</sup> READING
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
<b>AGENDA ITEM DESCRIPTION:</b> Discuss and Possibly Act Upon Request for Proposal No. 11-011 for Bank Depository Services and Authorize the Mayor to Execute any Necessary Documentation.		
<b>SUMMARY STATEMENT:</b> The City recently solicited requests for proposals (RFP) for bank depository services for a two year period in accordance with City charter. The Purchasing Agent sent electronic RFP's to six (6) local banks: Bank of Brenham, Capital One, Citizens State Bank, Brenham National Bank, JPMorgan Chase and Wells Fargo. The City received notices of non-participation from Brenham National Bank and Citizens State Bank, and we received two proposals, one from JPMorgan Chase and one from Wells Fargo.		
Linda Patterson with Patterson & Associates assisted with the process of bidding for services and the analysis of bank depository service proposals. <i><b>Her complete analysis is included as an attachment to this agenda form.</b></i> After careful analysis and detailed compilation of findings, she noted that the two banks are essentially equal in service capabilities. However, over the two year contract period, the monthly average fees would be lower with Chase Bank. Chase Bank is also offering a 1% floor rate for the ECR (earnings credit rate). The ECR is the internal bank rate at which the City's "target or compensating balance" earns interest. These earnings pay the banking fees. Therefore the higher the ECR the smaller the amount of funds required to be left in the bank as a compensating balance. These funds can then be invested in alternative investments. In low interest rate environments the ECR is usually higher than the outside investment rates so a higher ECR also a good investment alternative.		
The rates set by the banks for the ECR along with the fees charged combines to set the balance required to be maintained by the City. The two banks proposed the following ECR and balance requirements:		
<u>Depository</u>	<u>ECR</u>	<u>Balance Requirement</u>
Chase Bank	1.00%	\$ 1,544,776
Wells Fargo	0.36%	\$ 4,354,430
With the service capabilities of the banks being equal and considering the average monthly fees and the benefit of the 1.00% floor on the earnings credit rate (ECR), Linda Patterson is recommending the Chase Bank proposal. She also recommends that the City use the 1.00% floor until the Fed Funds rate moves closer to or above 3% at which point the 3-month T-Bill may be higher. The City has the ability to change the managed rate on 60 day notice.		

**STAFF ANALYSIS (For Ordinances or Regular Agenda Items):**

**A. PROS:**

**B. CONS:**

**ALTERNATIVES (In Suggested Order of Staff Preference):**

**ATTACHMENTS:** (1) Patterson & Associates Analysis of Bank Depository Service Proposals

**FUNDING SOURCE (Where Applicable):**

**RECOMMENDED ACTION:** Award Bank Depository Services Contract to JPMorgan Chase for a period commencing August 1, 2011 through July 31, 2013 and select the Earnings Credit Rate Option (1) 1.00% Fixed Rate.

**APPROVALS:** Carolyn D. Miller

## **CITY OF BRENHAM**

### **Analysis of Bank Depository Service Proposals June 2011**

The City of Brenham solicited proposals for banking services to serve the City with efficient and cost effective banking services in April 2011. The City intended for its banking partner to provide state-of-the-art technology to assure that its current banking needs would be met and that it will be able to incorporate technological changes and improvements into its operations over the period of the contract. The contract is to be for a two-year period.

The City received two proposals for banking services in response to its Request for Proposal (RFP). The proposals were made by Chase Bank and Wells Fargo. Chase Bank is the incumbent bank. All the banks have local facilities and services and are solid financial institutions which can provide the basic services required by the City. The banks are highly credit rated and have been shown to have contributed to the health of the community through their 'satisfactory' and 'outstanding' CRA ratings (Community Reinvestment Act).

During this recessionary period, the creditworthiness and continuing strength of the City's banking partner is of utmost importance. The strength and credit condition of the banks has been evaluated through credit ratings and independent bank rating agencies which look at more than the credit background of the banks.

The City established objectives in the RFP and the evaluation was guided by these objectives:

- 35% Cost of banking services
- 35% Responsiveness and ability to provide services and reports required,
- 10% Experience, references and continuity of bank and bank officials, and
- 20% Creditworthiness and stability of bank.

Since banks bundle services and price services differently, the evaluation of the proposals was made on several different levels to capture and evaluate those differences equitably.

(1) The services have been evaluated on the response to each question. The level of services offered are compared to the required specifics, the level of automation which can improve staff productivity, level of control, and availability of customer service on an on-going basis. The bank is also evaluated to determine its adaptability and capability to grow into new technologies as they become available.

(2) The cost of specific and overall services has been compared between the banks on an equal basis based on the City's historical volumes.

(3) The potential for earnings has been compared based on various account structures and based on historical data and future projections.

(4) The proposals have been evaluated combining all these factors and netting earnings and costs to create a final, unbiased assessment through net impact.

These four levels of analysis have been completed and a detailed compilation of findings prepared. The following report summarizes those findings. Comments here are not all-inclusive but are made on specific differences between banks by way of explanation and illustration.

**REQUIRED SERVICES EVALUATION**

The City’s RFP outlined and requested detailed information on all the services which would be required under the contract to perform its current banking services and to meet its projected needs. The goal is to have the banks perform those duties in the most cost effective/cost efficient manner. The RFP also requested information on one optional service for remote deposit which could be added during the contract period. These banks are very similar in their service capabilities with few minor differences with how the services are provided.

The various responses to all questions were scored and weighted to produce a total service score for each bank:

Chase Bank	650
Wells Fargo	632

The banks are essentially equal in service capability. The only minor differences occur in cutoff times and the costing of a sample deposit provided in the RFP (Chase at \$56.80 and Wells \$75.16) which is an indication of depository service fees. The City would be well served by either bank.

**BANKING COSTS EVALUATION**

In its RFP the City has reserved the right to pay for services on either a fee or compensating balance basis dependent upon the interest rate environment<sup>1</sup>. Regardless of the method of compensation used, compensating balances are based on these fees and the volumes of those services used. The individual fees proposed by the banks were multiplied against historical service volumes from the City. Based on straight fees the banks estimated costs per month over two years are:

	Basic Fee/mo
Chase Bank	\$ 1,321
Wells Fargo	\$ 1,356

The fees are extremely close for both banks also. In addition, the banks were asked if they were offering transition or retention incentives to the City. The incentives offered were.

- Chase has offered one scanner and a floor rate on the ECR of 1%.
- Wells Fargo has offered one scanner, \$ 500 credit for transition supplies plus 1,000 tamper proof deposit bags, and a free safe deposit box for the duration of the contract.

The scanners were priced at \$800 each for costing purposes.

Incorporating the incentives into the costs, over the period of two years the monthly average fees would be:

	Initial	2 Yr Basis
Chase Bank	\$ 1,321	\$ 1,287
Wells Fargo	\$ 1,356	\$ 1,297

<sup>1</sup> In very low interest rate environments the ECR may exceed the interest paid in accounts or money funds. Rates rise however the ECR usually earns half of Fed Funds (i.e. overnight rates).

A second major factor influencing the overall cost of the contract is the earnings credit rate (ECR) which is the internal bank rate at which the City's "target or compensating balance" earns. These earnings pay the banking fees. Therefore the higher the ECR the smaller the amount of funds required to be left in the bank as a compensating balance. These funds can then be invested in alternative investments. In low interest rate environments the ECR is usually higher than the outside investment rates so a higher ECR is also a good investment alternative (although it can only be used for paying the fees and is limited to the required target balance).

The rates set by the banks for the ECR along with the fees charged combines to set the balance required to be maintained by the City. Therefore, the higher the ECR rate the less balance need be kept along with the fact that the City is receiving more interest from the target balance. Chase is offering two options on the ECR. They have given the City the option of using a 1.0% floor rate on its ECR or an ECR indexed to the three month T-Bill. This makes a considerable difference in the amount the City earns on its target balance and how much target balance it must keep. The effects of the higher ECR can be seen below. It is strongly recommended that the City use the floor 1% ECR rate until the Fed Funds rate moves closer to or above 3% at which point the 3-month T-Bill may be higher. Vigilance on the ECR versus the outside investment rates will best utilize this option. The City has the ability to change to the managed rate on 60 day notice.

	ECR	Balance Requirement
Chase Bank	1.00 %	\$ 1,544,776
Wells Fargo	0.36 %	\$ 4,354,430

The attached combination sheet has calculated the impact of the ECR rates and the interest bearing rates (historical or proposed) to indicate which bank would provide (a) the lowest balance requirement and (b) the best earning potential on both a fee and compensating balance basis.

Considering that the service capabilities of the banks is equal and considering the benefit of the 1.0% floor on the ECR Chase offers the best offer to the City. Therefore on the basis of services, fees and rates, we would recommend that the City award the banking services contract to Chase Bank.

Patterson & Associates  
Austin, TX

**COMBINED FINANCIAL ANALYSIS**

City of Brenham

2011

*incumbent*

	<u>Chase</u>	<u>Wells Fargo</u>
<b>Proposed Bank Fees/Mo</b>	1,321	1,356
<b>Incentive Impact</b>		
Scanner cost	800	800
Direct Credit		600
Supplies annually		
Total Incentive Value	800	1,400
Per year cost 1st year	15,048	14,867
2nd year	15,848	16,267
Avg mo. cost (over 2 years)	1,287	1,297

<b>Rates</b>	<i>1.0% fixed option initially</i>	
ECR	1.00%	0.36%
Interest Bearing	0.23%	0.23%
Money Market Account	0.23%	0.05%
Sweeps	0.00%	0.00%
Avg Balance Interest Bearing	1,584,776	1,584,776

<b>Compensating Balance Basis</b>		
Mo. Comp Balance Req.	1,544,776	4,354,430
Balance Avail for Invest	40,000	-2,769,654
Earnings in Interest Bearing Accts	8	-539

<b>Fee Basis</b>		
Fee per Month	1,287	1,297
Earnings in Interest Bearing per Month	297	308
Net Best Earnings	-990	-989

<i>Incentives Offered</i>		
	<i>none</i>	
	<i>free scanner</i>	
		<i>\$500 for supplies, 1,000 deposit bags free safe deposit box for contract one scanner</i>

## **BANK DEPOSITORY AGREEMENT**

This Bank Depository Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of July, 2011 by and between the **City of Brenham, Texas** (the "City") and **JPMorgan Chase** (the "Bank"), a bank chartered by the State of Texas.

### **Section I. Designation as Depository**

The City, through action of its City Council, hereby designates the Bank as its depository for banking services for the period commencing on August 1, 2011 through July 31, 2013. In the event the City is actively involved in a new bank depository services application process at the time of termination of this Agreement, the City and Bank agree that this Agreement shall be automatically extended for a period not to exceed ninety (90) days for the purpose of finalizing the selection of a depository bank.

### **Section II. Designation of Custodian**

The City and Bank hereby designate the **JP MORGAN CHASE** (the "Custodian") to hold in trust, according to the terms and conditions of the City Request for Applications (the "RFP") and pursuant to a separate Safekeeping Agreement, attached as Exhibit "A", all securities pledged as depository collateral in accordance with the City's Investment Policy.

Any and all fees from the Custodian associated with the safekeeping of securities pledged to the benefit of the City shall be borne by the Bank.

### **Section III. Collateral**

City time and demand deposits, inclusive of interest, in excess of the Federal Deposit Insurance Corporation insurance shall be secured at all times by collateral, acceptable to the City and in accordance with the Public Funds Collateral Act (Texas Government Code, Chapter 2257), pledged by the Bank and held in trust by the Custodian in an amount equal to at least 102% of the total of those funds. Custodian will provide a monthly report of the collateral directly to the City.

Such pledged securities shall be subject only to the joint written instructions of both (A) authorized representatives of the City and (B) specifically authorized representatives of the Bank. The Bank shall have the right, with the prior written consent of the City, to substitute or replace, any or all of the pledged securities with collateral acceptable to the City.

### **Section IV. Financial Position**

The Bank will provide a statement of its financial position on at least a quarterly basis. The Bank will provide an annual statement audited by its independent auditors including a letter as to its "fair representation".

**Section V. Authorized City Representative**

For the term of this Agreement, the City and Bank designate the individuals as listed in Exhibit “B” as authorized to represent and act for the City in any and all matters including collateral assignment and substitution, execution of agreements and transfer of funds. Any change in the representatives will be made in writing.

**Section VI. Scope of Services**

The City’s Request for Proposals (“RFP”) and the Bank’s response to the City’s RFP, dated May 31, 2011 (the “Response”) are incorporated into this Agreement for all purposes, including service charges, time deposit, demand deposit and loan rates, and are attached as Exhibit “C”. If any provisions of the Response and this Agreement are in conflict, this Agreement will control.

The Bank shall faithfully perform all of its duties and obligations required by the laws of the State of Texas for public funds depositories and shall upon presentation pay all checks drawn on it against collected funds on demand deposits, and shall, at the expiration of the Agreement, turn over its successor all funds, City-owned securities, property and things of value held as depository.

The City shall have the power to determine and designate the character and amount of the funds to be deposited in the Bank. The City may arrange for time deposits and Bank may accept such deposits subject to the terms of the Bank’s Response and this Agreement.

This Agreement, along with all Exhibits and other incorporated documents shall constitute the entire Agreement between the parties.

**Section VII. Bank Compensation**

Bank will be compensated for any and all services rendered to City under this Agreement on a cost per item or monthly charge basis as set forth in the service charges or other provisions of the Bank’s Response.

**Section VIII. Default**

The Bank shall be in default if it fails to pay all or part of a demand deposit, and matured time deposit, or a matured certificate of deposit, including accrued but unpaid interest, at a specified maturity date. The Bank shall also be in default if ruled “bankrupt”, “insolvent” or “failed” by a federal or state banking regulator, or if a receiver is appointed for the Bank.

In the event of a default, failure or insolvency of the Bank, the City shall be deemed to have vested full title to all securities pledged under this Agreement. The City is empowered to take possession of and transfer and or sell any and all securities, and immediately terminate this Agreement. If the security is liquidated, any proceeds over the defaulted amount, plus expenses related to liquidation, shall be returned to the Bank. This power is in addition to other remedies which the City may have under this Agreement or by law or equity and without prejudice to its rights to maintain any suit in any court for redress of injuries sustained by the City under this Agreement.

**Section IX. Non-Assignability**

This Agreement is not assignable in whole or in part but is binding on the parties, their successors and assigns.

**Section X. Termination**

This Agreement may be terminated by either the City or the Bank by giving sixty (60) days prior written notice to the other party. The Bank will be compensated for the services satisfactorily performed prior to the termination date. If, through any cause, the Bank fails to fulfill its obligations under this Agreement, or if the Bank violates any of the terms and conditions of this Agreement, the City has the right to terminate this Agreement by giving the Bank five (5) days written notice. The Bank will be compensated for the services satisfactorily performed before the termination date. No term or provision of this Agreement shall be construed to relieve the Bank of liability to the City for damages sustained by the City because of any breach of contract. The City may withhold payments to the Bank until the exact amount of damages due the City is determined and paid.

**Section XI. Law Governing; Venue**

All applicable provisions and requirements of the laws of the State of Texas governing depositories for the City shall be a part of this Agreement. The parties acknowledge and agree that this Agreement is performable in Washington County, and venue for any cause of action arising out of this Agreement shall be in Washington County, Texas.

**Section XII. Bank Authorization**

The Bank represents and warrants that this Agreement is made pursuant to and is duly authorized by the Board of Directors of the Bank and recorded in the official records of the Bank.

**Section XIII. Notices**

All notices shall be in writing and delivered to the parties at the addresses listed below. Personal hand delivery to an officer authorized to receive notices of the mailing of the notice by certified mail, return receipt requested, postage prepaid, shall be sufficient for service. The addresses of the parties for notice purposes shall be as follows, unless notified otherwise in writing:

If to the City:

Attn: Carolyn Miller  
Chief Financial Officer  
City of Brenham  
P.O. Box 1059  
Brenham, TX 77834-1059

If to the Bank:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section XV. Severability**

If any part of this Agreement for any reason is declared invalid or unenforceable by a court of competent jurisdiction, such decision shall not affect the validity or enforceability of any remaining portion, which remaining portion shall remain in force and effect as if this Agreement had been executed with the invalid or unenforceable portion thereof eliminated. It is hereby declared the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portions of this Agreement which may, for any reason, be hereafter declared invalid or unenforceable.

**Section XVI. Attorney's Fees**

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees from the other party, which fees may be set by the court in the trial of such action or may be enforced in a separate action brought for that purpose, and which fees shall be in addition to any other relief which may be awarded, in accordance with Section 271.159, Texas Local Government Code.

Executed on this \_\_\_\_\_ day of July, 2011, said Agreement to be effective for the period beginning August 1, 2011 through July 31, 2013.

**CITY:**

**BANK:**

\_\_\_\_\_  
Gloria Nix, Mayor Pro Tem

\_\_\_\_\_  
\_\_\_\_\_  
Name and Title

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
Tammy Cook, Deputy City Secretary

\_\_\_\_\_  
\_\_\_\_\_  
Name and Title

**EXHIBIT "B"**

**AUTHORIZED REPRESENTATIVES**

The following individuals are authorized representatives of the City empowered to direct the Bank and the Custodian for the Bank, in regard to collateral pledges, releases and substitutions in the joint safekeeping account as well as authorized to represent and act for the City in any and all matters including execution of agreements and transfer of funds.

**City Representatives Signature**

**Name and Title**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Milton Y. Tate, Jr., Mayor  
Terry K. Roberts, City Manager  
Carolyn D. Miller, Chief Financial Officer  
Jeana Bellinger, City Secretary

**Bank Representatives Signature**

**Name and Title**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## AGENDA FORM

<b>DATE OF MEETING:</b> July 7, 2011	<b>DATE SUBMITTED:</b> June 29, 2011	
<b>DEPT. OF ORIGIN:</b> Public Utilities	<b>SUBMITTED BY:</b> Lowell Ogle	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>
<input checked="" type="checkbox"/> <b>REGULAR</b>	<input type="checkbox"/> <b>PUBLIC HEARING</b>	<input type="checkbox"/> <b>1<sup>ST</sup> READING</b>
<input type="checkbox"/> <b>SPECIAL</b>	<input type="checkbox"/> <b>CONSENT</b>	<input type="checkbox"/> <b>2<sup>ND</sup> READING</b>
<input type="checkbox"/> <b>EXECUTIVE SESSION</b>	<input checked="" type="checkbox"/> <b>REGULAR</b>	<input type="checkbox"/> <b>RESOLUTION</b>
	<input type="checkbox"/> <b>WORK SESSION</b>	
<b>AGENDA ITEM DESCRIPTION:</b> Discuss and Possibly Act Upon an Agreement with Survalent Technology for SCADA System Software and Support and Authorize the Mayor to Execute any Necessary Documentation		
<b>SUMMARY STATEMENT:</b> This Agreement is for the Annual Software Support/Maintenance of our SCADA system. In the past we have purchased this support/maintenance on an annual basis. Survalent Technology is offering a multi-year discount if we purchase a 5 year Support Agreement. The Agreement offers Business Hour Hot-line support, free after hours support calls, access to Survalent's support site and Annual software upgrade(s). If we continue to purchase this support annually the cost would be \$9,450/year or \$47,250 for 5 years. Should any costs increase over that same five years, the increase would be passed along to the city. With the Multi-year Agreement the city is locked into the current pricing and we would be saving 5% per year, 25% over the 5-year period or a total of \$11,812. This item was discussed with city council and approved during the budget process.  Staff is recommending that Council approve the Multi-Year Agreement with Survalent Technology.		
<b>STAFF ANALYSIS (For Ordinances or Regular Agenda Items):</b>		
<b>A. PROS:</b> Will guarantee cost of Annual Software Support/Maintenance.		
<b>B. CONS:</b>		
<b>ALTERNATIVES (In Suggested Order of Staff Preference):</b>		
<b>ATTACHMENTS:</b> (1) Survalent Technology Quote No. Q11-04-1687rev1		
<b>FUNDING SOURCE (Where Applicable):</b> 102-5-105-160-424.00		
<b>RECOMMENDED ACTION:</b> Approve multi-year agreement with Survalent Technology for SCADA system software and support in the amount of \$35,437.50		
<b>APPROVALS:</b> Lowell Ogle Jr.		



2600 Argentia Road  
 Mississauga, Ontario  
 L5N 5V4 Canada  
 Phone: (905) 826-5000  
 Fax: (905) 826-7144  
 www.survalent.com

Prepared for: CITY OF BRENHAM, TX

This quotation remains valid for 90 days from date below. Prices and/or delivery may be subject to revision after 90 days.

Reference:	Date: May 25, 2011
------------	--------------------

Quote/Rev #	Terms	Shipment	Shipping Terms	Currency
Q11-04-1687rev1	Net 30 days	1 week from receipt of purchase order	N/A	USD

Item	Quantity	Description	Line Total
1	1Year	<p><b>Gold Service/Annual Software Support/Maintenance:</b></p> <p><b><u>\$8,900.00 per Dual Redundant Master Station:</u></b>            Windows based with No Operator Workstations            \$550.00 for support of WebSurv</p> <p><b><u>Standard service includes:</u></b>            - Business hour Hot-line support, telephone support from 8:00 AM to 6:00 PM EST            - Annual software upgrade(s)*            Free after hours support calls **.            Access to Survalent's User Support site:              o Software downloads              o Knowledge base articles              o Online manuals              o User support forums</p> <p>* Survalent Technology does not keep backup copies of customer data. Customers are responsible for ensuring their data is backed-up and kept in a secure location.            ** Limit of 2 calls per year, after a fee of \$1,000 per call will be charged.</p>	<p>\$8,900.00</p> <p>\$550.00</p> <p><b>Total:</b>  <b>\$9,450.00</b></p>
2	5Years	<p>Same Gold tier support listed in line 1, for a 5 year term.</p> <p><math>\\$9,450.00 \times 5\text{yrs} = \\$47,250.00 - 25\% = \\$35,437.50</math></p>	\$35,437.50



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		<b>Multiple year support:</b> After 2 <sup>nd</sup> year, 5% discount per year to a maximum of 25% for 5 years.	
		<b>Subtotal</b>	TBA
		<b>Sales Tax</b>	TBA
		<b>Grand Total</b>	TBA

Prepared by: Lee Schwab, lschwab@survalent.com

**TERMS AND CONDITIONS OF SALE**

**ACCEPTANCE OF ORDERS**

Purchaser's offer to buy based on Survalent Technology Corporation's quotation or proposal shall be subject to the acceptance of Survalent Technology Corporation in Mississauga, Ontario. Should the Purchaser's order include changes or additions to specifications which are not included in Survalent Technology Corporation's quotation or proposal, acceptance and acknowledgment of the order by Survalent Technology Corporation shall not be deemed a waiver of Survalent Technology Corporation's right to make additional charges for such changes or additions. In addition, Survalent Technology Corporation shall, in event of changes or additions to specifications made after receipt of an order, make whatever charges are necessitated.

**TITLE**

The title, ownership, and right of property of the equipment sold hereunder shall remain with Survalent Technology Corporation, and such equipment shall remain personal property until all payments, including deferred payments, shall have been paid in full, and the Purchaser shall do all that is necessary to maintain such right and title in Survalent Technology Corporation. The Purchaser shall assume all risk of loss or damage incurred after the equipment is delivered.

**TERMS OF PAYMENT**

Invoiced amounts are due in full net 30 days. Overdue amounts are subject to 1.5% interest charge per month (18% per annum). These terms are extended to Purchasers for domestic shipment only and are subject to approval by Survalent Technology Corporation's Credit Department. Terms of payment on orders for export shipment are full cash with order unless specified otherwise in our quotation. Survalent Technology Corporation reserves the right to suspend shipments and to change the terms of payment at any time, should doubt arise as to the financial responsibility of the Purchaser. Pro rata payments shall become due as shipments are made. If shipments are delayed by the Purchaser, payments shall become due from date when Survalent Technology Corporation is prepared to make shipment. If Survalent Technology Corporation is delayed by the Purchaser, payment shall be based on the contract price and percentage of completion.



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#### **PROGRESS PAYMENTS**

Survalent Technology Corporation will invoice the Purchaser for percentages of job completion as per agreed schedule, on all contracts over \$30,000, unless other terms are mutually agreed upon and specified in our quotation. Such invoices are subject to Terms of Payment above.

#### **HOLDBACKS**

All holdbacks are limited to 10% of the contract amount and to 90 days after delivery of the equipment to the carrier. Holdbacks required for periods longer than 90 days carry an interest charge of 1.5% per month (18% per annum). Holdbacks do not apply to amounts invoiced for taxes, freight, spare parts, documentation and commissioning.

#### **SHIPMENT**

Shipping promises are approximate and are based upon factory conditions at the time of quotation. They are subject to modification depending upon conditions existing at the time Purchaser's order is received. Shipping promises are also based upon receipt of complete and final specifications with order. Any changes or additions made to the Purchaser's specifications after an order is accepted and acknowledged will require that shipment be rescheduled based upon date of receipt of final specifications and upon factory conditions existing at that time. Delivery of the equipment hereunder shall be made F.O.B. factory, unless otherwise agreed upon. Survalent Technology Corporation shall not be liable for delay in delivery due to causes beyond its reasonable control, such as acts of God, acts of the Purchaser, acts of civil or military authority, priorities, fires, strikes, floods, epidemics, quarantine restrictions, war, riot, delays in transportation, car shortages, and inability due to causes beyond its reasonable control to obtain necessary labour, materials, or manufacturing facilities, not in any event for consequential damages. In event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay. When Purchaser is not prepared to accept shipment upon completion as scheduled, Survalent Technology Corporation is prepared to store the equipment at its plant for a monthly rate corresponding to space occupied and to prevailing commercial storage charges.

#### **WARRANTY**

All equipment manufactured by Survalent Technology Corporation is warranted for a period of one year from date of shipment, to be free from all inherent electrical and mechanical defects in parts and workmanship provided said equipment is properly installed, fully protected, adequately maintained, and operated under normal conditions with competent supervision. Survalent Technology Corporation agrees to supply the Purchaser, free of charge, F.O.B. factory, parts affecting operation, which prove defective in workmanship or material within a period of one year following date of shipment of the equipment from the factory, Survalent Technology Corporation shall have no liability to the Purchaser nor to third parties for consequential or extended damages incurred as the direct or indirect result of equipment failure. Warranty on resold items specified in the Contract as such is carried by the original manufacturer and limited to the terms of such manufacturer. All warranties become ineffective during the time the Purchaser's account is in default. The warranty period is not extended beyond its original term.

#### **CANCELLATION OR DELIVERY DEFERMENT**

Orders accepted and acknowledged by Survalent Technology Corporation will not be subject to cancellation or delivery deferment without written consent from the General Office of Survalent Technology Corporation, except upon terms which will reimburse Survalent Technology Corporation for expenses incurred, work done, and commitments made.

#### **TAXES**



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Mississauga, Ontario  
L5N 5V4 Canada  
Phone: (905) 826-5000  
Fax: (905) 826-7144  
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All present or future sales, use, excise or similar taxes applicable to the purchase of sale of equipment, covered by an order, are payable by the Purchaser and, where Survalent Technology Corporation is directed to collect such taxes, the amount will be added to the price of the equipment and paid by the Purchaser in the same manner and with the same effect as if originally added thereto.

#### **RETURN OF EQUIPMENT**

Survalent Technology Corporation will not be responsible for any parts returned without written authorization from Survalent Technology Corporation.

#### **WAIVER OF TERMS**

Survalent Technology Corporation's failure to object to provisions contained in the Purchaser's order or other communication shall not be deemed a waiver of the terms or conditions hereof, nor acceptance of such provisions. No representation or warranties other than those contained herein shall be binding upon Survalent Technology Corporation unless made in writing and signed by an officer of Survalent Technology Corporation.

#### **APPROVAL OF DRAWINGS**

In event approval of drawings is necessary, any time required in excess of fourteen (14) calendar days from the date of initial mailing of drawings to the Purchaser for final approval if not specified in the Specification or Purchase Order, may be added to the scheduled delivery date.

#### **MANUALS**

Survalent Technology Corporation agrees to supply up to one (1) manual for each item. In the event that more are required, Survalent Technology Corporation reserves the right to either supply these manuals at no charge or add the full or a portion thereof of the standard price to the price of the equipment and be, paid by the Purchaser in the same manner and with the same effort as if originally added thereto. Survalent Technology Corporation reserves the right to supply manuals 30 days after the delivery of the equipment without affecting the original terms of payment.

#### **ACCEPTANCE OF EQUIPMENT**

Purchaser's inspection and acceptance test of equipment at Survalent Technology Corporation's plant constitutes acceptance, at which time invoice for payment in full, less holdback, is issued. Survalent Technology Corporation warranty terms are applicable thereafter. Special arrangements may be made for acceptance in the field, not later than 30 days after shipment.

#### **PERFORMANCE BOND**

If issued, such bond will be terminated at time of acceptance test by Purchaser at Survalent Technology Corporation's plant or at time of shipment.



## AGENDA FORM

<b>DATE OF MEETING:</b> July 7, 2011	<b>DATE SUBMITTED:</b> June 30, 2011	
<b>DEPT. OF ORIGIN:</b> City Attorney	<b>SUBMITTED BY:</b> Cary Bovey	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>
<input checked="" type="checkbox"/> <b>REGULAR</b>	<input type="checkbox"/> <b>PUBLIC HEARING</b>	<input type="checkbox"/> <b>1<sup>ST</sup> READING</b>
<input type="checkbox"/> <b>SPECIAL</b>	<input type="checkbox"/> <b>CONSENT</b>	<input type="checkbox"/> <b>2<sup>ND</sup> READING</b>
<input type="checkbox"/> <b>EXECUTIVE SESSION</b>	<input checked="" type="checkbox"/> <b>REGULAR</b>	<input type="checkbox"/> <b>RESOLUTION</b>
	<input type="checkbox"/> <b>WORK SESSION</b>	
<b>AGENDA ITEM DESCRIPTION:</b> Discuss and Possibly Act Upon an Agreement for the Assignment of Final Payment Related to the Henderson Park Lift Station Improvements Project Between The Guarantee Company of North America USA, Brazos Valley Services, and the City of Brenham, and Authorize the Mayor to Execute Any Necessary Documentation		
<b>SUMMARY STATEMENT:</b> The original contract amount on the Henderson Park Lift Station Improvements project was \$392,275.00. Due to change orders the final contract amount was revised to \$340,631.00. To date, the City of Brenham (“City”) has paid to Brazos Valley Services (“BVS”) a total of \$221,652.45, leaving a balance of \$118,978.55 payable to BVS under the Contract.		
<p>The City has requested that BVS provide the City with releases or receipts from the subcontractors showing that they have been paid. No such documentation from the subcontractors on the project has been provided to the City by BVS. Based on the provisions of the General Conditions, the City has informed BVS that no final payment will be made until BVS submits releases or receipts from the subcontractors furnishing labor, materials or equipment on the project showing that all amounts owed have been paid in full.</p> <p>In an effort to resolve the City’s involvement in this project, the City proposes to make final payment of the remaining balance of the funds payable on the project to the surety company on the project, The Guarantee Company of North America USA, with the express written consent of BVS, and that the City be released from any further responsibility for payment on the project pursuant to a written assignment agreement executed by The Guarantee Company of North America USA, BVS and the City. The parties have verbally indicated a willingness to enter into an assignment agreement approving final payment to the surety company. The assignment agreement has not been finalized as of the date of this Agenda Form, but I anticipate it can be completed by the date of the City Council meeting.</p>		
<b>STAFF ANALYSIS (For Ordinances or Regular Agenda Items):</b>		
<b>A. PROS:</b> Allows the City to make final payment, close out project, and meet grant funding documentation deadlines		
<b>B. CONS:</b>		

**ALTERNATIVES (In Suggested Order of Staff Preference):**

1. Retain final payment until BVS provides documentation of payment of subcontractors; or
2. Make final payment to BVS directly without assignment agreement

**ATTACHMENTS:** None

**FUNDING SOURCE (Where Applicable):**

**RECOMMENDED ACTION:** Approve the Agreement for the Assignment of Final Payment Related to the Henderson Park Lift Station Improvements Project Between The Guarantee Company of North America USA, Brazos Valley Services, and the City of Brenham, and Authorize the Mayor to Execute Any Necessary Documentation

**APPROVALS:** Terry Roberts



## AGENDA FORM

<b>DATE OF MEETING:</b> July 7, 2011	<b>DATE SUBMITTED:</b> July 1, 2011	
<b>DEPT. OF ORIGIN:</b> Administration	<b>SUBMITTED BY:</b> Terry Roberts	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>
<input type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 <sup>ST</sup> READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 <sup>ND</sup> READING
<input checked="" type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
<b>AGENDA ITEM DESCRIPTION:</b> Discuss and Consider the Acquisition of Street Right-of-Way for the Longwood Drive Extension Project		
<b>SUMMARY STATEMENT:</b>		
<b>STAFF ANALYSIS (For Ordinances or Regular Agenda Items):</b>		
<b>A. PROS:</b>		
<b>B. CONS:</b>		
<b>ALTERNATIVES (In Suggested Order of Staff Preference):</b>		
<b>ATTACHMENTS:</b>		
<b>FUNDING SOURCE (Where Applicable):</b>		
<b>RECOMMENDED ACTION:</b> Discussion Only		
<b>APPROVALS:</b> Terry Roberts		



## AGENDA FORM

<b>DATE OF MEETING:</b> July 7, 2011	<b>DATE SUBMITTED:</b> July 1, 2011	
<b>DEPT. OF ORIGIN:</b> Administration	<b>SUBMITTED BY:</b> Jeana Bellinger	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>
<input type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 <sup>ST</sup> READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 <sup>ND</sup> READING
<input checked="" type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
<b>AGENDA ITEM DESCRIPTION:</b> Consultation with City Attorney Regarding Chapter 16, Occupational Licenses and Business Regulations, of the City of Brenham's Code of Ordinances to Provide for the Regulation of Sexually Oriented Businesses within the City Limits		
<b>SUMMARY STATEMENT:</b>		
<b>STAFF ANALYSIS (For Ordinances or Regular Agenda Items):</b>		
A. PROS:		
B. CONS:		
<b>ALTERNATIVES (In Suggested Order of Staff Preference):</b>		
<b>ATTACHMENTS:</b>		
<b>FUNDING SOURCE (Where Applicable):</b>		
<b>RECOMMENDED ACTION:</b> Discussion Only		
<b>APPROVALS:</b> Terry Roberts		



## AGENDA FORM

<b>DATE OF MEETING:</b> July 7, 2011	<b>DATE SUBMITTED:</b> July 1, 2011	
<b>DEPT. OF ORIGIN:</b> Administration	<b>SUBMITTED BY:</b> Cary Bovey	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 <sup>ST</sup> READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 <sup>ND</sup> READING
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
<b>AGENDA ITEM DESCRIPTION:</b> Discuss and Possibly Act Upon Resolution No. R-11-007 Determining the Public Need and Necessity for the Acquisition of Street Right-of-Way for the Construction, Repair and Maintenance of Street Improvements Incidental to the Longwood Drive Extension Project, Authorizing the City Manager to Agree on Amounts to be Paid to the Property Owner(s) as Compensation for Said Street Right-of-Way, and Authorizing the City Attorney to Institute Condemnation Proceedings, If Necessary, to Acquire Said Street Right-of-Way Across Land Lying in the City of Brenham, Washington County, Texas in the Phillip Coe Survey A-31 Owned by RPH Investments, L.L.C.		
<b>SUMMARY STATEMENT:</b> As Discussed in Executive Session		
<b>STAFF ANALYSIS (For Ordinances or Regular Agenda Items):</b>		
<b>A. PROS:</b>		
<b>B. CONS:</b>		
<b>ALTERNATIVES (In Suggested Order of Staff Preference):</b>		
<b>ATTACHMENTS:</b> (1) Resolution R-11-007		
<b>FUNDING SOURCE (Where Applicable):</b>		
<b>RECOMMENDED ACTION:</b> Approve Resolution No. R-11-007 Determining the Public Need and Necessity for the Acquisition of Street Right-of-Way for the Construction, Repair and Maintenance of Street Improvements Incidental to the Longwood Drive Extension Project, Authorizing the City Manager to Agree on Amounts to be Paid to the Property Owner(s) as Compensation for Said Street Right-of-Way, and Authorizing the City Attorney to Institute Condemnation Proceedings, If Necessary, to Acquire Said Street Right-of-Way Across Land Lying in the City of Brenham, Washington County, Texas in the Phillip Coe Survey A-31 Owned by RPH Investments, L.L.C.		
<b>APPROVALS:</b> Terry Roberts		

**RESOLUTION NO. R-11-007**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS, DETERMINING THE NECESSITY OF ACQUIRING CERTAIN REAL PROPERTY NEEDED FOR THE PUBLIC PURPOSE OF CONSTRUCTION, USE, REPAIR, AND MAINTENANCE OF STREET IMPROVEMENTS AS PART OF THE LONGWOOD DRIVE EXTENSION PROJECT FOR THE CITY OF BRENHAM, TEXAS; AUTHORIZING THE CITY MANAGER TO AGREE ON COMPENSATION FOR SAID REAL PROPERTY; AUTHORIZING THE CITY ATTORNEY TO INSTITUTE CONDEMNATION PROCEEDINGS, IF NECESSARY, TO ACQUIRE SAID PROPERTY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Brenham is authorized by Chapter 251, Texas Local Government Code, and Art. II, Sec. 3 of the Brenham City Charter to acquire property by condemnation to extend, straighten, widen, or otherwise improve any public street; and

**WHEREAS**, the City Council of the City of Brenham hereby finds and determines that public need and necessity require the City of Brenham to acquire fee simple title to certain real property for the public purpose of construction, use, repair and maintenance of street improvements as part of the Longwood Drive Extension Project, in the City of Brenham, Washington County, Texas, as described herein and as further described in Exhibit "A" attached hereto and made a part hereof for all purposes (hereinafter the "Property"); and

**WHEREAS**, the City Council hereby finds and determines that the Property described herein is suitable for such public purpose and that it is necessary to acquire said Property for the Longwood Drive Extension Project to provide for improved traffic flow in the City of Brenham, Texas;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS THAT:**

**Section 1.** The facts and recitals set forth in the preamble of this Resolution are hereby found to be true and correct, and are incorporated herein for all purposes.

**Section 2.** The City Council of the City of Brenham hereby finds and determines that public need and necessity require the City of Brenham to acquire the following described Property for the public purpose of construction, use, repair and maintenance of street improvements as part of the Longwood Drive Extension Project:

**Being all that 0.0596 acre tract or parcel of land situated in the City of Brenham, Washington County, Texas out of the Phillip Coe Survey A-31 and being a portion of Reserve A of Southwest Industrial Park, Section II, as recorded in Plat Cabinet File No. 298A of the Plat Records of Washington County and being a portion of the tract of land called 7.293 acres in a deed dated November 8, 2006 from Roy Horton and Patti Horton to RPH Investments, L.L.C. as recorded in Volume 1224, Page 032 of the Official Records of Washington County, said 0.0596 acre parcel being more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes.**

**Section 3.** The City Manager is hereby authorized on behalf of the City of Brenham to take all appropriate actions to attempt to agree on compensation and damages, if any, to be paid to the owner(s), and any others having any interest in the Property, for the acquisition of the Property, including but not limited to the authority to make bona fide final offers to the owner(s) of the Property, in accordance with the laws of the State of Texas, for the acquisition of the Property as herein described. In the event the City Manager determines that an agreement as to compensation and damages, if any, cannot be reached, then the City Attorney is hereby authorized and directed to file, against the owner(s) and any interested parties, condemnation proceedings (proceedings in eminent domain) to acquire fee simple title to the Property described herein and to conduct all parts of the condemnation in accordance with the laws and procedures of the State of Texas.

**Section 4.** The Property is needed for the construction, use, repair and maintenance of street improvements as part of the Longwood Drive Extension Project to improve traffic flow in the City of Brenham, Texas.

**Section 5.** It is the intent of the City Council that this Resolution authorizes the condemnation of all property required for the public purpose of construction, use, repair and maintenance of street improvements as part of the Longwood Drive Extension Project. If it is later determined that there are any errors in the descriptions contained herein or if later surveys contain more accurate revised descriptions, the City Attorney is authorized to have such errors corrected or revisions made without the necessity of obtaining a new City Council resolution authorizing the condemnation of the corrected or revised property.

**Section 6.** This Resolution shall become effective immediately from and after its approval.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Brenham, Texas this the 7<sup>th</sup> day of July, 2011.

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Gloria Nix  
Mayor Pro Tem

**ATTEST:**

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Jeana Bellinger, TRMC  
City Secretary