



**NOTICE OF A REGULAR MEETING  
THE BRENHAM CITY COUNCIL  
THURSDAY OCTOBER 20, 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 – Mayor Milton Y. Tate, Jr.**
- 3. Citizens Comments**

**CONSENT AGENDA**

**4. 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.

**4-a. Minutes from the September 29, 2011 Council Meeting**

**Page 5 - 14**

**REGULAR AGENDA**

- 5. Discuss and Possibly Act Upon Ordinance No. O-11-017 on its Second Reading for the Creation of Reinvestment Zone Number 33 Requested by Valmont Industries for Commercial-Industrial Tax Phase-In Incentive on Certain Real Property Containing 80.088 Acres, More or Less, Being Located at 2551 Valmont Drive, Brenham, Texas, with Boundaries Further Described in Exhibit “A” of Said Ordinance, and Designating This Property as Qualifying for Tax Phase-In**
- 6. Discuss and Possibly Act Upon Resolution No. R-11-016 Authorizing the Execution of Tax Phase-In Agreement Between the City of Brenham and Valmont Industries**

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**Page 25 - 42**

7. **Discuss and Possibly Act Upon Resolution No. R-11-017 Nominating Valmont Industries to the Office of the Governor, Economic Development and Tourism for Designation as a Texas Enterprise Project**  
**Page 43 - 47**
8. **Public Hearing Regarding a Request for a Zoning District Change for Property Currently Zoned as R-1, Single-Family Residential District to B-1, Local Business/Residential Mixed Use District Located At or Near the 1600 Block of Longhofer Street (A Vacant Lot) with a Legal Description Being Altman's Subdivision, Lot 4, 0.254 Acres to Construct a Professional Office on this Property**  
**Page 48**
9. **Discuss and Possibly Act Upon an Ordinance on its First Reading Amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas; Amending the Official Zoning Map to Change Property Currently Zoned as R-1, Single-Family Residential District to B-1, Local Business/Residential Mixed Use District Located At or Near the 1600 Block of Longhofer Street (Vacant Lot) with a Legal Description Being Altman's Subdivision, Lot 4, 0.254 Acres to Construct a Professional Office on this Property**  
**Page 49 - 53**
10. **Public Hearing Regarding a Request for Specific Use Permit at 1404 North Park Street (Legal Description Being O'Malley Subdivision, Section 1, Lot 1-B), to Operate a Full Service Car Wash, Car Detail, and Lube Center Business**  
**Page 54**
11. **Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas; Amending the Official Zoning Map to Allow a Specific Use Permit at 1404 North Park Street (Legal Description Being O'Malley Subdivision, Section 1, Lot 1-B), for the Operation of a Full Service Car Wash, Car Detail, and Lube Center**  
**Page 55 -59**
12. **Public Hearing Regarding Amendment of Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, to Provide for Sexually Oriented Businesses as Specific Uses in I – Industrial Districts, in Accordance with the Specific Use Permit Approval Process and Chapter 16, Occupational Licenses and Business Regulations, City of Brenham Code of Ordinances**  
**Page 60**
13. **Discuss and Possibly Act Upon an Ordinance on its First Reading Amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas to Provide for Sexually Oriented Businesses as Specific Uses in I – Industrial Districts, in Accordance with the Specific Use Permit Approval Process and Chapter 16, Brenham Code of Ordinances Regulating Occupational Licenses and Business Regulations**  
**Page 61 - 64**
14. **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**  
**Page 65 - 102**

15. **Discuss and Possibly Act Upon an Order Calling a Special Election to be Held on January 21, 2012 for the Purpose of Electing One (1) Council Member to fill the Unexpired Term for the Place 5 – At Large Position**

**Considerar y Posiblemente Actuar Sobre una Orden para una Elección Especial que se efectuara el 21 de Enero, 2012 Con el Propósito de Elegir Un (1) miembro del Concejal para llenar el resto del termino de Lugar 5-Distrito Abierto.**

**Page 103 - 112**

16. **Discuss and Possibly Act Upon Resolution No. R-11-018 Nominating Candidates for Election to the Washington County Appraisal District Board of Directors**

**Page 113 - 117**

17. **Discuss and Possibly Act Upon an Ordinance on its First Reading Providing for Taxation of Goods-in-Transit that are Otherwise Exempted from Taxation by Texas Tax Code, Section 11.253**

**Page 118 - 125**

18. **Discuss and Possibly Act Upon Bid No. 12-002 for the Purchase of Road Base Materials for the Street Department and Authorize the Mayor to Execute any Necessary Documentation**

**Page 126 - 127**

19. **Discuss and Possibly Act Upon Bid No. 12-001 for Concrete Work for the Street Department and Authorize the Mayor to Execute any Necessary Documentation**

**Page 128 - 131**

20. **Discuss and Possibly Act Upon Resolution No. R-11-019 for Approval and Acceptance of the Dr. Bobbie M. Dietrich Memorial Amphitheater and Authorize the Mayor to Execute any Necessary Documentation**

**Page 133 - 138**

21. **Discuss and Possibly Act Upon a Recommendation from the Parks and Recreation Advisory Board for Rental Rates of the Dr. Bobbie M. Dietrich Memorial Amphitheater**

**Page 139 - 140**

22. **Discuss and Possibly Act Upon Final Payment to Mercer Construction Company for the Utility Line Extensions Along State Highway 36 North and Authorize the Mayor to Execute any Necessary Documentation**

**Page 141 - 155**

23. **Discuss and Possibly Act Upon Bid No. 12-003 for the Purchase of a 53' Aluminum Refuse Trailer and Authorize the Mayor to Execute any Necessary Documentation**

**Page 156 - 160**

**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 salutary 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.

24. **Administrative/Elected Officials Report**

**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 October 20, 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 October 17, 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

## **Brenham City Council Minutes**

A regular meeting of the Brenham City Council was held on September 29, 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 Charlie Pyle  
Councilmember Weldon Williams, Jr.

### Members Absent:

Councilmember Keith Herring

### Others present:

City Manager Terry Roberts, City Attorney Cary Bovey, City Secretary Jeana Bellinger, Deputy City Secretary Tammy Cook, Chief Financial Officer Carolyn Miller, Stacy Hardy, Debbie Gaffey, Christi Korth, Brandon Plumb, Rhonda Kuehn, Fire Chief Ricky Boeker, Police Chief Rex Phelps, Public Works Director Doug Baker, Kim Hodde, Leslie Kelm, Allen Jacobs, Charles Suessmuth, Will Felder, Andrew Felder, Assistant Public Utilities Director Dane Rau, Ande Bostain, Bobby Branham, Joe Moore, Dinnie Hicks, Janie Mehrens, Susan Nienstedt, Gary Jeter

### Citizens present:

Perry Thomas, Mike Brannon, Delbert Boeker, Paul Rudledge, Page Michel, Clint Kolby, Calvin Brown, Matthew Strickland, Dave Koziol, Douglas Price, Alfred Fischer, Shawna Goerlitz, Darren Heine, Traci Pyle, Jay T. Alexander, Tom Whitehead, Melinda Fabian, Leslie Harrell, Carissa Cox, Tommy Upchurch

### Media Present:

Arthur Hahn, Brenham Banner Press; Frank Wagner, KWHI

- 1. Mayor Tate Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags – City Manager Terry Roberts**

### 3. Service Recognitions

Service recognitions were presented to the following employees:

Andrew Felder	Streets	5 Years
Gary Jeter II	Information Technology	10 Years
Joe Moore	Gas Department	15 Years
Rhonda Kuehn	Municipal Court	15 Years
Dinnie Hicks	Sanitation	36 Years (RETIREMENT)

Bobby Branham expressed his appreciation to Mr. Hicks for his hard work and dedication to the City of Brenham.

### 4. Proclamations

- Mayor Tate read a proclamation declaring October 2011 as Domestic Violence Awareness Month. The Proclamation was accepted by Shawna Goerlitz. Ms. Goerlitz informed everyone of an upcoming candlelight vigil to be held on October 25<sup>th</sup> for Domestic Violence Awareness.
- Mayor Tate read a proclamation declaring October 6, 2011 as German American Day. The proclamation was accepted by Alfred Fischer of the Texas German Society.
- Mayor Tate read a proclamation declaring October 9 – 15, 2011 as Fire Prevention Week. The proclamation was received by Fire Chief Ricky Boeker.

### 5. Citizens Comments

There were no citizen comments.

## CONSENT AGENDA

### 6. Statutory Consent Agenda

#### 6-a. Minutes from the September 15, 2011 Council Meeting and the September 22, 2011 Special Council Meeting

A motion was made by Councilmember Pyle and seconded by Mayor Pro Tem Nix to approve the Statutory Consent Agenda Item 6-a. minutes from the September 15, 2011 council meeting and the September 22, 2011 special council meeting.

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
<b>Councilmember Keith Herring</b>	<b>Absent</b>
Councilmember Charlie Pyle	Yes
Councilmember Weldon Williams	Yes

## PUBLIC HEARING

### 7. Public Hearing, Discussion and Receipt of Input Related to the Proposed Creation of Reinvestment Zone Number 33 Requested by Valmont Industries for Commercial-Industrial Tax Phase-In Incentive on Certain Real Property Containing 80.088 Acres, More or Less, Being Located at 2551 Valmont Drive, Brenham, Texas

Clint Kolby with the Economic Development Foundation of Brenham introduced the project and the Valmont representatives in attendance. Mr. Kolby turned the hearing over to Dave Koziol, Plant Controller, of Valmont Industries. Mr. Koziol explained this expansion would create 90 to 100 jobs which consist primarily of highly skilled welding positions. Mr. Koziol opened the floor to discussion.

Councilmember Williams questioned where the highly skilled workers would be acquired. Mr. Koziol stated an outside recruiter was obtained and the Human Resource department is looking locally and outside the area as well.

Mayor Tate closed the public hearing.

## REGULAR AGENDA

**8. Discuss and Possibly Act Upon an Ordinance on its First Reading for the Creation of Reinvestment Zone Number 33 Requested by Valmont Industries for Commercial-Industrial Tax Phase-In Incentive on Certain Real Property Containing 80.088 Acres, More or Less, Being Located at 2551 Valmont Drive, Brenham, Texas, with Boundaries Further Described in Exhibit “A” of Said Ordinance, and Designating This Property as Qualifying for Tax Phase-In**

City Manager Terry Roberts explained a Tax Phase-In requires the creation of a Reinvestment Zone that is approved by Ordinance on two readings and a Resolution is then approved for the Tax Phase-In.

A motion was made by Councilmember Pyle and seconded by Councilmember Ebel to approve an ordinance on its first reading for the Creation of Reinvestment Zone Number 33 Requested by Valmont Industries for Commercial-Industrial Tax Phase-In Incentive on Certain Real Property Containing 80.088 Acres, More or Less, Being Located at 2551 Valmont Drive, Brenham, Texas, with Boundaries Further Described in Exhibit “A” of Said Ordinance, and Designating This Property as Qualifying for Tax Phase-In

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
<b>Councilmember Keith Herring</b>	<b>Absent</b>
Councilmember Charlie Pyle	Yes
Councilmember Weldon Williams	Yes

**9. Discuss and Possibly Act Upon a Recommendation from the Downtown Master Plan Consultant Selection Committee for the Selection of a Downtown Master Planning Consulting Firm and Authorize the Mayor to Execute any Necessary Documentation**

Jennifer Eckermann presented this item. Ms. Eckermann informed council of the creation of a Selection Committee which interviewed various consulting firms. After interviews and reference checks, the Selection Committee is recommending a Downtown Master Plan service agreement with MESA Design Associates. Ms. Eckermann introduced chairman of the Selection Committee, Tommy Upchurch, to explain their decision in choosing MESA Design Associates.

Mr. Upchurch expressed his excitement about the Downtown Master Plan. The Selection Committee felt MESA Design Associates best addressed the priorities of the city such as building on the historic character of downtown, their economic vision for the city, and their experience in this type of planning. Mr. Upchurch then introduced Carissa Cox, project manager for MESA.

Ms. Cox briefly explained the background of the MESA Design Associates and the firms that will oversee the different areas involved in the process. Ms. Cox opened the floor to questions. Councilmember Goss questioned if MESA was asked to be involved in anything outside the scope of downtown. Ms. Cox confirmed only the downtown area will be addressed at this time. Councilmember Goss asked what MESA can bring to Brenham that no other firms can. Ms. Cox feels from a planning perspective MESA provides, not only, a high quality of design work but an understanding of the economic development process.

A motion was made by Councilmember Williams and seconded by Councilmember Ebel to approve the contract between MESA Design Associates, Inc. and the City of Brenham for services pertaining to the creation of a downtown revitalization plan and authorize the mayor to execute a professional services agreement.

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	No
<b>Councilmember Keith Herring</b>	<b>Absent</b>
Councilmember Charlie Pyle	Yes
Councilmember Weldon Williams	Yes

**10. Discuss and Possibly Act Upon a Request for a Noise Variance from Ashley Hausman and Jason Brocato for an Outdoor Wedding Ceremony and Reception at 614 S. Austin Street on October 8, 2011**

Kim Hodde presented this item and asked for council's approval of this noise variance request.

A motion was made by Councilmember Pyle and seconded by Councilmember Williams to approve the request for a noise variance from Ashley Hausman and Jason Brocato for an outdoor wedding ceremony and reception at 614 S. Austin Street on October 8, 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
<b>Councilmember Keith Herring</b>	<b>Absent</b>
Councilmember Charlie Pyle	Yes
Councilmember Weldon Williams	Yes

**11. Discuss and Possibly Act Upon the Approval of the Routine Airport Maintenance Program (RAMP) Grant Agreement No. M217BRENM with TxDOT for Fiscal Year 2011-12 and Authorize the Mayor to Execute any Necessary Documentation**

Kim Hodde presented this item. Ms. Hodde informed council this is the Standard RAMP Agreement with TxDOT for the date of September 30, 2011 to August 31, 2012. As in previous years this agreement allows for the reimbursement of the cost of the monthly AWOS monitoring. Ms. Hodde also noted \$30,000 has been budgeted and with the 50% match by TxDOT, \$60,000 of maintenance can be completed at half the cost.

A motion was made by Councilmember Williams and seconded by Councilmember Ebel to approve Routine Airport Maintenance Program (RAMP) Grant Agreement No. M217BRENM with TxDOT for fiscal year 2011-12 and authorize the mayor to execute any necessary documentation.

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
<b>Councilmember Keith Herring</b>	<b>Absent</b>
Councilmember Charlie Pyle	Yes
Councilmember Weldon Williams	Yes

**12. Discuss and Possibly Act Upon a Ground Space Lease Agreement with John Startz dba Brenham Hanger, LLC at the Brenham Municipal Airport and Authorize the Mayor to Execute any Necessary Documentation**

Kim Hodde presented this item. Ms. Hodde distributed a corrected ground space lease agreement that was not included in the council packet.

A motion was made by Councilmember Pyle and seconded by Mayor Pro Tem Nix to approve a ground space lease agreement with John Startz dba Brenham Hanger, LLC at the Brenham Municipal Airport and authorize the mayor to execute any necessary documentation.

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
<b>Councilmember Keith Herring</b>	<b>Absent</b>
Councilmember Charlie Pyle	Yes
Councilmember Weldon Williams	Yes

**13. Discuss and Possibly Act Upon Resolution No. R-11-013 Authorizing the Acceptance of Woodbridge Subdivision, Section II**

Allen Jacobs presented this item. Mr. Jacobs informed council of the recent construction, by Stylecraft Builders, of forty-two new single family residential lots in section II of the Woodbridge Subdivision. All requirements and inspections have been completed and council was asked to approve the acceptance of this subdivision.

A motion was made by Councilmember Pyle and seconded by Councilmember Williams to approve Resolution No. R-11-013 authorizing the acceptance of Woodbridge Subdivision, Section II.

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
<b>Councilmember Keith Herring</b>	<b>Absent</b>
Councilmember Charlie Pyle	Yes
Councilmember Weldon Williams	Yes

**14. Discuss and Possibly Act Upon Approval of a Memorandum of Understanding with the Metropolitan Austin Interactive Network (MAIN) Regarding the Grant of Public Access Computers for the Nancy Carol Roberts Memorial Library and Authorize the Mayor to Execute any Necessary Documentation**

Charles Suessmuth presented this item. The Department of Commerce recently awarded a grant to the Texas Connects Coalition in collaboration with Austin Free-Net and the Metropolitan Austin Interactive Network (MAIN) to enhance public computer centers throughout Texas and provide computer access, technical support, and other services. The City of Brenham was awarded fourteen (14) computers to be used at the Nancy Carol Roberts Memorial Library. Due to lack of space at the Library, training will be held at the Blinn College Technical Center.

Mr. Suessmuth turned the floor over to Will Felder. Mr. Felder explained the Grant Period would continue through December 2012, after this time, the computers will be housed at the Nancy Carol Roberts Memorial Library.

A motion was made by Councilmember Williams and seconded by Mayor Pro Tem Nix to approve a memorandum of understanding with the Metropolitan Austin Interactive Network (MAIN) regarding the Grant of public access computers for the Nancy Carol Roberts Memorial Library and authorize the mayor to execute any necessary documentation.

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
<b>Councilmember Keith Herring</b>	<b>Absent</b>
Councilmember Charlie Pyle	Yes
Councilmember Weldon Williams	Yes

**15. Discuss and Possibly Act Upon Request for Proposal No. 11-016 and Recommendation from Holmes Murphy and Associates to Enter into Group Benefit Services Agreement for Third Party Administration of Group Health Plan for the City of Brenham and Authorize the Mayor to Execute any Necessary Documentation**

Janie Mehrens presented this item. As in the previous years, the services of Holmes Murphy and Associates have been utilized in obtaining Group Medical, Life and AD&D and Long Term Disability coverage. Holmes Murphy and Associates handles the request for the proposal process, response analysis, and recommendations for the purchase of various employee group benefits. Ms. Mehrens briefly explained the various employee group benefits and at this time is only requesting the selection of a Third Party Administrator to seek quotes for stop loss coverage on behalf of the City of Brenham.

A motion was made by Councilmember Pyle and seconded by Mayor Pro Tem Nix to approve request for proposal No. 11-016 and recommendation from Holmes Murphy and Associates to enter into a Group Benefits Services Agreement with Texas Municipal League Intergovernmental Employee Benefits Pool as the third party administrator for group health plans for the City of Brenham and authorize the mayor to execute any necessary documentation.

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
<b>Councilmember Keith Herring</b>	<b>Absent</b>
Councilmember Charlie Pyle	Yes
Councilmember Weldon Williams	Yes

**16. Discuss and Possibly Act Upon Resolution No. R-11-014 Changing the City's General Election Schedule to Odd-Numbered Year Elections and Changing Councilmember Terms to Four (4) Years, Pursuant to Senate Bill 100**

City Secretary Jeana Bellinger presented this item. Ms. Bellinger reminded council of previous discussions pertaining to Senate Bill (SB) 100. Due to changes by the Texas Legislature, in an effort to comply with the Military and Overseas Voters Empowerment Act, SB 100 was enacted.

In a recap of previous discussions, council recommended changing councilmember term limits to four years on a staggered schedule. Some positions would need a one year holdover and one or two positions would need to be elected to a short two year term in order to get all positions on a staggered schedule. This option would create a 3/4 election cycle.

Ms. Bellinger recapped council's decision of the new election schedule which will require an election for the following positions in May, 2013 for a 4-year term:

- Ward 1
- Ward 3
- At-Large, Place 5
- At-Large, Place 6

Council also determined Ward 2 would run in a special election for a short 2-year term in May, 2013 to get on the 2015 election cycle with the Mayor and Ward 4. Ms. Bellinger reminded council no election will be held in 2012 therefore creating a one year holdover for certain positions.

A motion was made by Councilmember Williams and seconded by Councilmember Goss to approve Resolution No, R-11-014 changing the City's general election schedule to odd-numbered year elections and changing councilmember terms to four (4) years, pursuant to Senate Bill 100.

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
<b>Councilmember Keith Herring</b>	<b>Absent</b>
Councilmember Charlie Pyle	Yes
Councilmember Weldon Williams	Yes

**17. Discuss and Possibly Act Upon Resolution No. R-11-015 Extending the Current Moratorium on the Processing, Approval, and Issuance of Sexually Oriented Business Licenses/Permits and Related Applications**

City Secretary Jeana Bellinger presented this item. In an effort to comply with the regulations outlined in the new sexually oriented business ordinance, passed on July 25, 2011, it was recommended the zoning ordinance be amended as well. The requested moratorium would be extended an additional thirty (30) days to November 22, 2011 so these zoning changes and revisions to the July Ordinance could go into effect at the same time.

A motion was made by Mayor Pro Tem Nix and seconded by Councilmember Goss to approve Resolution No. R-11-015 extending the current moratorium on the processing, approval, and issuance of sexually oriented business licenses/permits and related applications.

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
<b>Councilmember Keith Herring</b>	<b>Absent</b>
Councilmember Charlie Pyle	Yes
Councilmember Weldon Williams	Yes

**18. Administrative/Elected Officials Report**

- Doug Baker updated council on the Railroad Quiet Zone
- Citizen Perry Thomas expressed his appreciation to Mayor and Council for their help in creating the Railroad Quiet Zone
- Chief Financial Officer reminded council of Fiscal Year End

City Manager Terry Roberts Reported on the following:

- Tuesday – National Night Out
- BCDC Update on Southwest Industrial Park pond.

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> October 20, 2011	<b>DATE SUBMITTED:</b> October 17, 2011	
<b>DEPT. OF ORIGIN:</b> Administration	<b>SUBMITTED BY:</b> Jeana Bellinger	
<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 checked="" 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 Ordinance No. O-11-017 on its Second Reading for the Creation of Reinvestment Zone Number 33 Requested by Valmont Industries for Commercial-Industrial Tax Phase-In Incentive on Certain Real Property Containing 80.088 Acres, More or Less, Being Located at 2551 Valmont Drive, Brenham, Texas, with Boundaries Being Further Described in Exhibit "A" of Said Ordinance, and Designating This Property as Qualifying for Tax Phase-In.		
<b>SUMMARY STATEMENT:</b> Valmont Industries has been evaluating a possible expansion of their large pole production area. The proposed project will help Valmont better handle its expanding market by improving its production area.  Valmont Industries is proposing an estimated \$9,662,000 in new value creation and plans to create 90 new jobs with the project. The level of investment qualifies Valmont for a Level 5 abatement based on new value creation and a Level 5 abatement based on new job creation.  Economic Development Foundation and City of Brenham staff has reviewed Valmont's application for Tax Phase-In and have verified that the project meets the requirements of the Tax Phase-In policy. Representatives from the Economic Development Foundation of Brenham will be in attendance.		
<b>STAFF ANALYSIS (For Ordinances or Regular Agenda Items):</b>		
<b>A. PROS:</b> Approve the ordinance creating Reinvestment Zone Number 33 and contribute to the future economic development of the City.		
<b>B. CONS:</b> If the ordinance creating Reinvestment Zone Number 33 is not approved, the Valmont expansion would be reevaluated and may likely be terminated.		
<b>ALTERNATIVES (In Suggested Order of Staff Preference):</b>		

**ATTACHMENTS:** (1) Copy of Ordinance No. 0-11-017 for the creation of Reinvestment Zone Number 33

**FUNDING SOURCE (Where Applicable):** N/A

**RECOMMENDED ACTION:** Approve Ordinance No. O-11-017 on its second reading for the creation of Reinvestment Zone Number 33 requested by Valmont Industries for commercial-industrial Tax Phase-In incentive on certain real property containing 80.088 acres, more or less, being located at 2551 Valmont Drive, Brenham, Texas, with boundaries being further described in Exhibit “A” of said ordinance, and designating this property as qualifying for Tax Phase-In

**APPROVALS:** Terry Roberts

**ORDINANCE NO. O-11-017**

**AN ORDINANCE DESIGNATING ALL THAT CERTAIN TRACT OF LAND CONTAINING 14.888 ACRES OUT OF THE J. CARRINGTON SURVEY, A-120 AND BEING THE PROPERTY CONVEYED TO AMERICAN LIGHTING STANDARDS CORPORATION BY DEED DATED AUGUST 11, 1975, AS RECORDED IN VOLUME 338, PAGE 789, DEED RECORDS OF WASHINGTON COUNTY, TEXAS, AND ALSO INCLUDING THAT CERTAIN TRACT OF LAND CONTAINING 65.200 ACRES OUT OF THE J. CARRINGTON LEAGUE, A-120 AND BEING A RESIDUE OF THE 95.578 ACRE TRACT DESCRIBED IN A DEED FROM LINDA GIDDINGS ANDERSON TO AMERICAN LIGHTING STANDARDS CORPORATION, DATED NOVEMBER 4, 1974 AND RECORDED IN VOLUME 332, PAGE 314, DEED RECORDS OF WASHINGTON COUNTY, TEXAS, AS REINVESTMENT ZONE NUMBER THIRTY-THREE FOR COMMERCIAL TAX PHASE-IN INCENTIVE AS PROVIDED IN CHAPTER 312, TEXAS TAX CODE; ESTABLISHING THE NUMBER OF YEARS FOR THE ZONE, AUTHORIZING AN AGREEMENT FOR EXEMPTION FROM TAXATION THE INCREASE IN VALUE OF CERTAIN PROPERTY IN ORDER TO ENCOURAGE DEVELOPMENT AND REDEVELOPMENT AND OTHER MATTERS RELATING THERETO; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

**WHEREAS**, the City Council of the City of Brenham, Texas, ("City") desires to encourage supervised improvements by property owners and lessees through tax phase-in procedures within its jurisdiction by the creation of a reinvestment zone as authorized by Chapter 312, Texas Tax Code (the "Act"); and

**WHEREAS**, on the 29<sup>th</sup> day of September, 2011, the City Council held a public hearing to receive comments concerning the designation of proposed Reinvestment Zone Number Thirty-Three. The notice of such hearing was published on September 22, 2011, such date being not later than the seventh day before the date of the public hearing; and

**WHEREAS**, the City called a public hearing and published notice of such public hearing as required by Section 312.201 of the Act; and has delivered written notice to the presiding officer of the governing body of each taxing unit within the jurisdiction of the proposed Reinvestment Zone Number Thirty-Three for Commercial Tax Phase-In; and

**WHEREAS**, at said public hearing the City presented evidence that such proposed designation would be reasonably likely to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property, that the proposed improvements are feasible and practical, that said improvements would be a benefit to the land included in the zone and that would contribute to the economic development of the City; and

**WHEREAS**, the designation of the proposed reinvestment zone is consistent with the City's policies adopted by Council Resolution on the 17<sup>th</sup> day of December, 2009, and will benefit the land included within the Reinvestment Zone after the expiration of the Agreement; and

**WHEREAS**, the City at such public hearing invited any interested person or his attorney to appear and contend for or against the creation of the reinvestment zone, the boundaries of the proposed reinvestment zone, whether all or part of the territory which is referred to as City of Brenham Reinvestment Zone Number Thirty-Three for Commercial Tax Phase-In, should be included in such proposed reinvestment zone, and obtain tax phase-in; and

**WHEREAS**, at such hearing recommendations were given as to the number of years the reinvestment zone would be designated, the number of years in which an agreement would be available, as well as the percentage of potential tax exemption under the aforesaid tax phase-in guidelines and criteria to be applied to taxable real property which is redeveloped.

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

**Section 1.** That the facts and recitations contained in the preambles of this Ordinance are hereby found and declared to be true and correct and are incorporated herein for all purposes.

**Section 2.** That the City, after conducting such hearing having further studied recommendations, as well as the evidence presented at the public hearing, has made the following findings based on the evidence and testimony presented to it:

- a) That the public hearing on the adoption of the reinvestment zone under the provisions of the Act has been properly called, held and conducted and that notice of such hearing has been published as required by law and has been sent to the respective taxing units within the proposed reinvestment zone; and
- b) That the City has jurisdiction to hold and conduct said public hearing on the creation of the proposed reinvestment zone pursuant to the Act; and
- c) That creation of the proposed reinvestment zone with boundaries described herein will result in improvements made after the passage of this Ordinance and the execution of tax abatement agreements, that are feasible and practical and will benefit the City, its residents and property owners in the reinvestment zone; and

- d) That the proposed designation will be reasonably likely to contribute to the retention or expansion of primary employment or to attract major investments to the zone that would be a benefit to the property and contribute to economic development of the City.

**Section 3.** That the City hereby creates Reinvestment Zone Number Thirty-Three, designated as all that certain tract of land containing 14.888 acres out of the J. Carrington Survey, A-120 and being the property conveyed to American Lighting Standards Corporation by deed dated August 11, 1975, as recorded in Volume 338, Page 789, Deed Records of Washington County, Texas, and also including that certain tract of land containing 65.200 acres out of the J. Carrington League, A-120 and being a residue of the 95.578 acre tract described in a deed from Linda Giddings Anderson to American Lighting Standards Corporation, dated November 4, 1974 and recorded in Volume 332, Page 314, Deed Records of Washington County, Texas, said property being located at 2551 Valmont Drive, Brenham, Texas, said property being more fully described in Exhibit "A" attached hereto and incorporated herein for all purposes, and such reinvestment zone shall hereafter be identified as Reinvestment Zone Number Thirty-Three for Commercial Tax Phase-In, City of Brenham, Texas.

**Section 4.** That the designation of Reinvestment Zone Number Thirty-Three for Commercial Tax Phase-In, shall expire five (5) years from the date of this Ordinance, unless renewed as provided by the Act, or at an earlier time designated by subsequent ordinance.

**Section 5.** That written agreements as provided in the Act with owners of eligible property located within the reinvestment zone shall be for a period of up to ten (10) years, and that the eligible property that is subject to the above mentioned exemption from taxation shall be the land and improvements to the property in conformity with the City's criteria and guidelines, and written agreements shall provide for an exemption from taxation of the total increase in value of the eligible property over its value in the year the agreement is executed. The written agreement will require that all taxes be current at the time of execution of agreement and be kept current to all taxing entities during the term of said agreement.

**Section 6.** That said designation of Reinvestment Zone Number Thirty-Three for Commercial Tax Phase-In and the written agreement thereof are in accordance with the City of Brenham Policy Statement on Property Tax Phase-In Incentive for Selected Commercial Enterprises and will be a benefit to the land which will be included within the Reinvestment Zone and to the City of Brenham after the expiration of the agreement.

**Section 7.** That if any provision of this Ordinance shall be held to be invalid or unconstitutional, the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part of it.

**Section 8.** That it is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

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Milton Y. Tate, Jr.  
Mayor

**ATTEST:**

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Jeana Bellinger, TRMC  
City Secretary

TRACT ONE:

14.888 acre tract

ALL THAT TRACT OR PARCEL OF LAND situate in Washington County, Texas out of the J. Carrington Survey A-120 and the Phillip

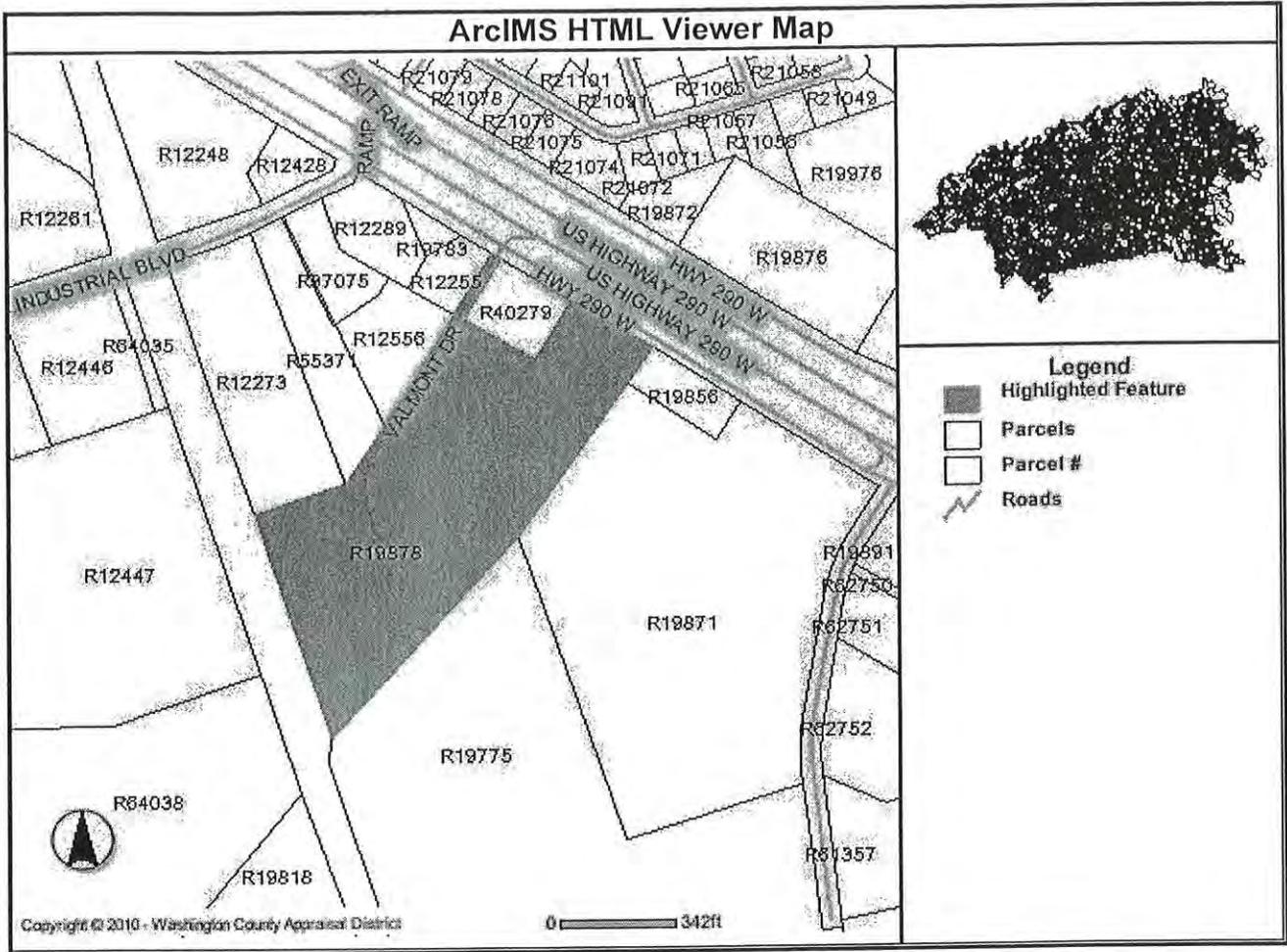
Coe Survey A-31 and being a portion of the lands conveyed to Leavens Allen by Jack S. Blanton and also a portion of the 78.370 acre tract described in a deed from Karl John Amelang to Jack S. Blanton, recorded in Vol. 264, Pg. 516, Washington County Deed Records, more particularly described as follows:

BEGINNING at an iron pin in the Southwest line of the Loop #290 at the North corner of a 1 acre tract conveyed to the Texas Department of Public Safety; THENCE S 34° 50' W, 208.71 ft. to the West corner of said tract; THENCE S 55° 10' E, 208.71 ft. to the <sup>(South)</sup> corner of said 1 acre tract; THENCE N 34° 50' E, 208.71 ft. to an iron pin in the Southwest line of the Loop #290 at the East corner of said Texas Department of Public Safety 1 acre tract; THENCE with said loop S 55° 10' E, 280.02 ft. to an iron pin; THENCE S 35° 26' 50" W, 702.28 ft. to an iron pin at the North corner of a tract owned by Linda P. Anderson; THENCE with the Northwest line of said tract as fenced S 43° 23' W, 806.25 ft. to an iron pin and fence corner in the East line of the G. C. & S. F. Railroad; THENCE with said railroad right of way N 15° 46' W, 729.48 ft. to an iron pin at the Southwest corner of a tract owned by R. Stolz; THENCE N 74° 46' E, 275.00 ft. to the Southeast corner of said tract; THENCE N 33° 34' 45" E, 605.78 ft. to an iron pin; THENCE N 34° 36' E, 220.00 ft. to an iron pin in the Southwest line of Loop #290; THENCE with said loop S 55° 10' E, 40.00 ft. to the point or place of beginning containing 14.888 acres of land.

EXHIBIT

"A"

Page 1 of 4



14.888 acre tract

EXHIBIT

"A"

Page 2 of 4

95.578 acre tract

All that tract or parcel of land situated in Washington County, Texas, out of the J. Carrington League, A-120, and being a portion of the 202.00 acre tract described as Tract 8 in a deed from Mrs. Carrie B. Giddings, et al to Linda Giddings Anderson, et al, recorded in Volume 128, Page 395, Washington County Deed Records, more particularly described as follows:

BEGINNING at an iron pin in the West line of State Highway #36, at the Southeast corner of the W. J. Burnes Tract;

THENCE with said highway line S 15° 32' E, 216.22 ft. to a concrete monument;

THENCE continuing with said highway line S 8° 54' E, 501.06 ft. to a concrete monument at the intersection of the West line of State Highway #36 with the North line of a Public Road;

THENCE with said road line S 67° 39' 20" W, 1262.89 ft.; S 66° 35' W, 96.38 ft.; S 74° 37' W, 100.82 ft.; S 77° 56' W, 578.28 ft. to an iron pin and fence corner at the intersection of said road line with the East line of the G.C. & S.F. Railroad;

THENCE with said railroad right of way N 37° 24' W, 674.69 ft. to an iron pin;

THENCE continuing with said railroad on a curve to the right, having a radius of 3124.91 ft., a distance of 1191.33 ft. to a point;

THENCE continuing with said railroad right of way N 15° 48' W, 1035.40 ft. to an iron pin and fence corner in the South line of the Phillip Coe Survey;

THENCE with said survey line as fenced N 43° 23' E, 832.06 ft. to an iron pin and fence corner in the West line of the land formerly owned by Dr. F. H. Hodde;

THENCE with said line S 15° 19' E, 926.04 ft. to an iron pin and fence corner;

THENCE N 74° 58' E, 631.96 ft. to an iron pin and fence corner at an interior corner of the former Hodde Tract;

THENCE with the West line of said tract and the West line of the Burnes Tract S 5° 31' E, 1381.27 ft. to an iron pin at the Southwest corner of the former Burnes Tract;

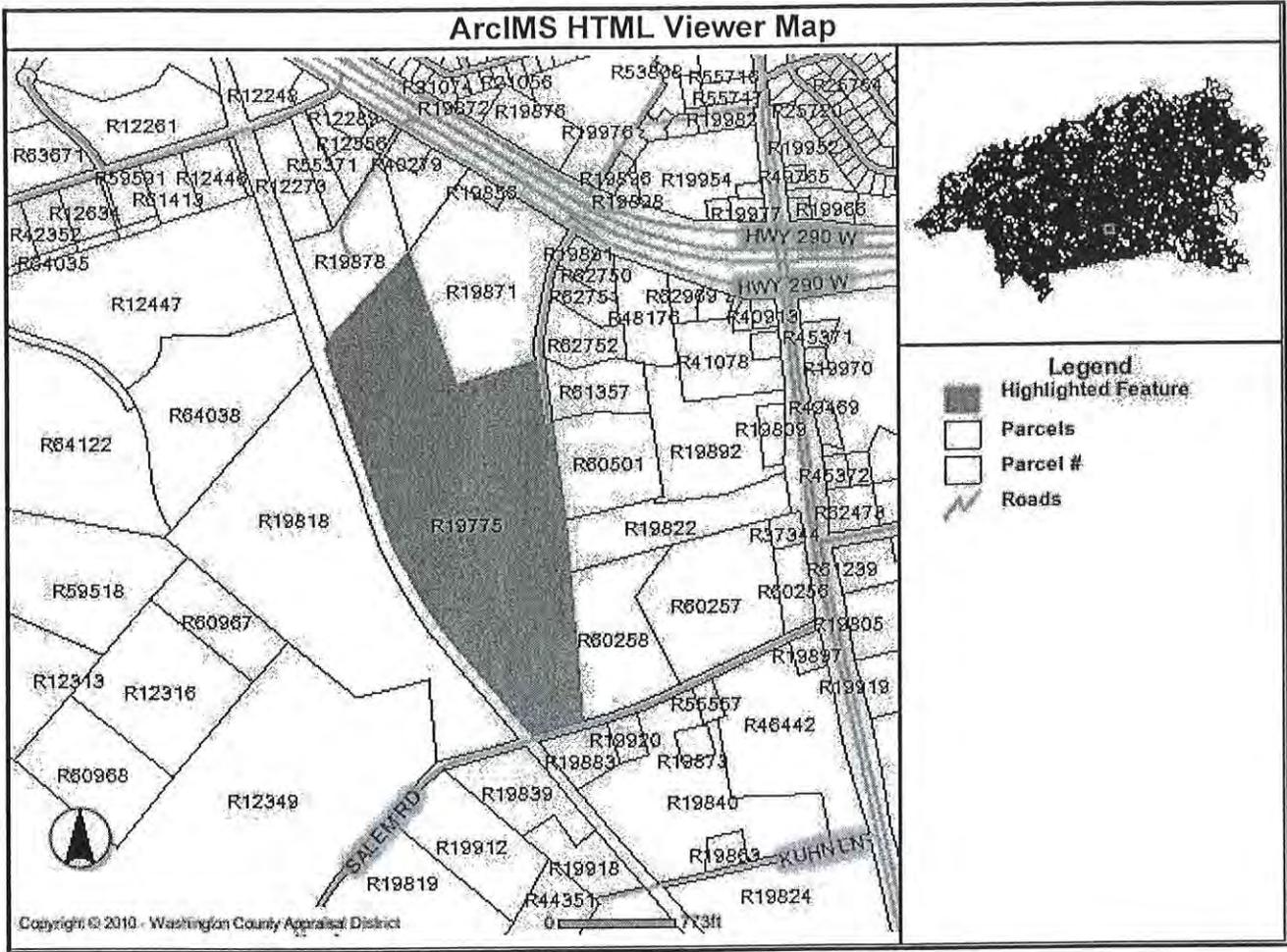
THENCE with the South line of said tract N 79° 09' E, 1471.13 ft. to the point or place of beginning containing 95.578 acres of land.

Surveyed by Donald R. Muzzy, Registered Public Surveyor, on May 22, 1974.

EXHIBIT

"A"

Page 3 of 4



65.200 acre residue of 95.578 acre tract

EXHIBIT  
"A"  
Page 4 of 4



## AGENDA FORM

<b>DATE OF MEETING:</b> October 20, 2011	<b>DATE SUBMITTED:</b> October 17, 2011	
<b>DEPT. OF ORIGIN:</b> Administration	<b>SUBMITTED BY:</b> Jeana Bellinger	
<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 checked="" type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
<b>AGENDA ITEM DESCRIPTION:</b> Discuss And Possibly Act Upon Resolution No. R-11-016 Authorizing The Execution Of A Tax Phase-In Agreement Between the City Of Brenham and Valmont Industries		
<b>SUMMARY STATEMENT:</b> As authorized in Chapter 312 of the Texas Tax Code, the Brenham City Council passed a resolution on December 17, 2009 indicating the City's intent to participate in a Tax Phase-In Agreement with qualified businesses that meet or exceed the required guidelines and criteria.		
As discussed at the September 29, 2011 council meeting, Valmont Industries has been evaluating a possible expansion of their large pole production area. The proposed project will help Valmont better handle its expanding market by improving its production area.		
Valmont Industries is proposing an estimated \$9,662,000 in new value creation and plans to create 90 new jobs with the project. The level of investment qualifies Valmont for a Level 5 abatement based on new value creation and a Level 5 abatement based on new job creation.		
Economic Development Foundation and City of Brenham staff has reviewed Valmont's application for Tax Phase-In and have verified that the project meets the requirements of the Tax Phase-In policy.		
<b>STAFF ANALYSIS (For Ordinances or Regular Agenda Items):</b>		
<b>A. PROS:</b> Approve the resolution adopting a commercial Tax Phase-In agreement with Valmont Industries and contribute to the future economic development of the City.		
<b>B. CONS:</b> If the resolution adopting a commercial Tax Phase-In agreement with Valmont Industries is not approved, Valmont may chose not to expand their operations in Brenham.		
<b>ALTERNATIVES (In Suggested Order of Staff Preference):</b>		
<b>ATTACHMENTS:</b> (1) Resolution No. R-11-016 for Tax Phase-In; and (2) Tax Phase-In Agreement		

**FUNDING SOURCE (Where Applicable):**

**RECOMMENDED ACTION:** Approve Resolution No. R-11-016 authorizing the execution of a Tax Phase-In Agreement between the City Of Brenham and Valmont Industries

**APPROVALS:** Terry Roberts

**RESOLUTION NO. R-11-016**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS, ADOPTING A COMMERCIAL TAX PHASE-IN AGREEMENT WITH VALMONT INDUSTRIES; AUTHORIZING THE MAYOR TO EXECUTE THE TAX PHASE-IN AGREEMENT; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.**

**WHEREAS**, Chapter 312 of the Texas Tax Code authorizes the City of Brenham, Texas, to participate in tax phase-in incentives; and

**WHEREAS**, in accordance with Section 312.002 of the Texas Tax Code, the City of Brenham, Texas previously passed a resolution stating the City's intent to participate in tax phase-in incentives; and

**WHEREAS**, in accordance with Section 312.002 of the Texas Tax Code, the City of Brenham, Texas also previously adopted tax phase-in incentive guidelines and criteria; and

**WHEREAS**, the City Council of the City of Brenham, Texas, finds and determines that the terms of the Tax Phase-In Agreement and the subject property meet the applicable tax phase-in incentive guidelines and criteria, and entering into the Tax Phase-In Agreement will be to the benefit of the citizens of the City of Brenham; and

**WHEREAS**, the City Council desires to adopt the Tax Phase-In Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein for all purposes, by and between the City of Brenham, Texas, and Valmont Industries, a Delaware corporation.

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

Section 1: That the foregoing recitals are hereby found to be true and correct legislative findings of the City of Brenham, Texas, and are fully incorporated into the body of this Resolution.

Section 2: That the City Council of the City of Brenham, Texas does hereby adopt the commercial Tax Phase-In Agreement, a copy of which is attached hereto as Exhibit "A", by and between the City of Brenham, Texas, and Valmont Industries.

Section 3: That the Mayor is hereby authorized to execute the Tax Phase-In Agreement between the City of Brenham, Texas and Valmont Industries a copy of which is attached hereto as Exhibit "A".

Section 4: This Resolution shall become effective immediately from and after its passage.

**RESOLVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Milton Y. Tate, Jr.  
Mayor  
City of Brenham, Texas

**ATTEST:**

\_\_\_\_\_  
Jeana Bellinger, TRMC  
City Secretary  
City of Brenham, Texas

**AGREEMENT FOR DEVELOPMENT AND TAX PHASE-IN  
IN REINVESTMENT ZONE NO. 33 CITY OF BRENHAM  
FOR COMMERCIAL TAX PHASE-IN, CITY OF BRENHAM, TEXAS**

**THE STATE OF TEXAS**

**COUNTY OF WASHINGTON**

This agreement entered into by and between the CITY OF BRENHAM, TEXAS, a Texas home-rule municipal corporation, of Washington County, Texas, acting herein by and through its Mayor, hereinafter referred to as CITY, and VALMONT INDUSTRIES, INC., hereinafter referred to as COMPANY.

**WITNESSETH:**

The City Council of the City of Brenham, Texas, ("COUNCIL") on February 20, 1992, adopted by resolution a policy for the creation of tax abatement zones in the City of Brenham, ("POLICY"). Said POLICY was amended by COUNCIL on April 2, 1992, amended on June 4, 1992, and re-adopted on December 1, 1994, November 20, 1997, October 21, 1999, November 1, 2001, January 15, 2004, December 20, 2007, and December 17, 2009 (as amended) (entitled "City of Brenham Policy Statement on Property Tax Phase-In Incentive for Selected Commercial Enterprises"). On October 20, 2011, the COUNCIL, by Ordinance, established Reinvestment Zone No. 33, City of Brenham, for Commercial Tax phase-in, City of Brenham, Texas, ("ZONE") as authorized by V.T.C.A., Tax Code Chapter 312.

WHEREAS, COMPANY has filed an application for the phase-in of ad valorem taxes,

WHEREAS, COUNCIL finds that this application, this Agreement, and the property subject to this Agreement meet the applicable guidelines and criteria of said POLICY,

WHEREAS, in order to provide for the proper development of such property and to aid in the conduct of the operation thereof to the best interest of the CITY in accordance with the above referenced ordinances and statutes, the parties do mutually agree as follows:

1. **Location of Tax Phase-In.** The property that is the subject matter of this Agreement is the land located at 2551 Valmont Drive and described more particularly as those certain tracts of land containing 14.888 acres and 65.2 acres, more or less, being located at 2551 Valmont Drive, Brenham, Texas, with boundaries further described in Exhibit “A” attached hereto and incorporated herein for all purposes, and which property is hereinafter referred to as "PREMISES."

2. **Improvements.** In consideration of COMPANY'S construction of approximately Nine Million Six Hundred Sixty Two Thousand (\$9,662,000.00) of real and personal property improvements to said PREMISES, including fixed machinery, equipment and buildings, CITY agrees that, subject to the terms and conditions contained herein, eligible improvements to the above described PREMISES shall be entitled to tax phase-in incentives in accordance with the schedule as provided in “Table 1A – Property Improvements by an Existing Local Business”, and tax phase-in incentives in accordance with the schedule as provided in “Table 2 – Jobs Created & Retained – by Existing Businesses or New/Relocating Businesses”, said Tables being set out in the attached Exhibit “B”, and that upon the expiration of such tax phase-in incentives this Agreement shall terminate.

"Improvements and renovation" as used herein shall be defined as including the building and all other associated improvements (personal and realty) and fixtures on the PREMISES added by the COMPANY within said zone. COMPANY will limit the uses of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect.

COMPANY acknowledges and agrees that the purpose of CITY in entering into this Agreement is to encourage development of the property in the ZONE and, therefore, COMPANY agrees to limit the use of the property to further said purpose.

3. **Submission of Plans.** COMPANY agrees that the site plan, interior and exterior design drawings and materials ("PLANS") for each improvement will be submitted to CITY and/or its designated representative for its approval when available. An official set of PLANS will be designated by the COMPANY and will be kept on file with the CITY.

4. **Other Applicable Regulations.** COMPANY agrees to construct any and all improvements in accordance with all applicable laws, ordinances, codes, rules, requirements or regulations of the City of Brenham, Washington County, the State of Texas and the United States, and any subdivision, agency or authority thereof.

5. **Liability of City in Approving Plans.** CITY, by approving the PLANS or any revised PLANS, assumes no liability or responsibility therefore for any defect in any fixed machinery or equipment installed or any structure constructed, renovated, or repaired from the Plans or approved revised Plans. The relationship between CITY and COMPANY at all times

shall not be deemed a partnership or joint venture for purposes of this Agreement or for any other purpose.

COMPANY agrees to reimburse CITY, its officers, agents, and/or employees for any damages suffered by them due to COMPANY'S negligence, such duty and liability not to exceed what COMPANY would owe to any of them under common law. CITY agrees to use best reasonable efforts to notify COMPANY as soon as possible after it becomes aware of any legal action (including pre-litigation notices, demand letters, etc.) which reasonably could then be foreseen as having the prospective potential of activating the terms of the immediately preceding sentence.

6. **Rights of City to Inspect.** At all reasonable times during the construction and installation of improvements on the PREMISES and following completion, CITY and its respective designees may inspect PREMISES in order to verify the construction, workmanship, materials and installations involved in or incident to the project are performed in substantial compliance with the approved PLANS and compliance with the applicable building permits and governmental regulations.

7. **Payment of Taxes by Company.** COMPANY agrees to pay all ad valorem taxes and assessments that may be owed to CITY or any other taxing entity by it prior to such taxes and/or assessments becoming delinquent; provided, that COMPANY shall have the right to contest in good faith the validity or application of any such tax or assessment and shall not be considered in default hereunder so long as such contest is diligently pursued to completion. If COMPANY undertakes any such contest, COMPANY shall so notify in writing CITY and keep

CITY appraised of the status of such contest. Should COMPANY be unsuccessful in such contest, COMPANY shall promptly pay the taxes, penalties, and/or interest, resulting therefrom.

COMPANY certifies that at the time of execution of this Agreement, there are no delinquent ad valorem taxes on the PREMISES owed to any taxing jurisdiction. Subject to the foregoing paragraph, COMPANY shall pay all non-phased-in taxes subject to all requirements and due dates, as it would be required to in the absence of this Agreement.

8. **Employment.** COMPANY anticipates hiring or retaining a minimum of ninety (90) employees upon opening and a total of at least ninety (90) employees over the tax phase-in period. COMPANY acknowledges and agrees that COMPANY'S failure to create and maintain jobs in accordance with this Agreement and the POLICY is a default in the performance of this Agreement, and subjects the COMPANY to the remedies for default as provided in this Agreement.

9. **Tax Recapture.** In the event COMPANY (i) does not construct the improvements and renovations to the PREMISES as contemplated by this Agreement, (ii) fails to use the PREMISES for the purposes that are contemplated by this Agreement, (iii) fails to comply with the terms of the "City of Brenham Policy Statement on Property Tax Phase-In Incentive for Selected Commercial Enterprises", or (iv) otherwise fails to comply with the terms of this Agreement, then the CITY shall recapture the property tax abated as a result of this Agreement in accordance with Texas Tax Code Sec. 312.205 after written notice of intended recapture by CITY to COMPANY and failure to cure by COMPANY within thirty (30) days of said notice.

10. **Default.** In the event COMPANY (i) allows the PREMISES to become vacant, (ii) fails to pay all non-abated ad valorem taxes as required by Section 7 hereof, (iii) fails to comply with the terms of the “City of Brenham Policy Statement on Property Tax Phase-In Incentive for Selected Commercial Enterprises”, or (iv) otherwise fails to comply with the terms of this Agreement, then COMPANY shall be in "default" in the performance of this Agreement. The CITY shall notify COMPANY in writing of said "default."

If COMPANY does not comply with this Agreement within thirty (30) days of written notice of such "default", CITY reserves the right to terminate this Agreement and terminate the benefits of tax phase-in provided for in this Agreement, and all taxes previously abated pursuant to this Agreement shall be recaptured and paid to the City. In such event, the PREMISES and all improvements, fixed machinery and equipment installed thereon shall be deemed taxable and not entitled to tax phase-in as provided herein. If this Agreement is terminated, any taxes abated for the calendar year of the termination shall be paid within sixty (60) days of the date of such termination, and all taxes and all taxes previously abated pursuant to this Agreement shall be recaptured and paid to the City within sixty (60) days of the date of termination.

11. **Tax Phase-In Amount.** COMPANY shall receive tax phase-in incentives for eligible property improvements in accordance with the schedule as provided in “Table 1A – Property Improvements by an Existing Local Business”, and tax phase-in incentives for job creation in accordance with the schedule as provided in “Table 2 – Jobs Created & Retained – by Existing Businesses or New/Relocating Businesses” said Tables being set out in the attached Exhibit “B”, and that upon the expiration of such tax phase-in incentives this Agreement shall

terminate. The total annual tax phase-in incentive amount received by the COMPANY, expressed on a percentage basis, shall be the sum of the respective percentages provided for in Table 1A and Table 2 for the applicable year of the tax phase-in.

COMPANY shall, on or before October 15 of each calendar year, submit a sworn statement to the Compliance Review Committee that COMPANY is in compliance with this Agreement, including such information as may be necessary to verify compliance (e.g. employment and payroll information), subject to verification by the City of Brenham and/or the Compliance Review Committee

During the term of this Agreement, the CITY, its officers and employees, and/or the Compliance Review Committee is entitled to review and verify the COMPANY'S employment records, payroll records, and such other information and documents as the CITY and/or the Compliance Review Committee deems reasonably necessary to verify compliance with this Agreement. The CITY, its officers and employees, and/or the Compliance Review Committee may conduct on-site inspections of the PREMISES and facilities located thereon during the term of this Agreement to verify compliance with this Agreement.

The estimated value of eligible property improvements for tax phase-in incentives is Nine Million Six Hundred Sixty Two Thousand Dollars (\$9,662,000.00). Notwithstanding anything contained herein to the contrary, COMPANY and CITY agree that the amount of eligible property improvements and jobs created & retained as set forth herein are based on projected property improvement and personnel employed, and the actual amount of tax phase-in incentives shall be determined annually by Table 1A and Table 2 of the POLICY based on the actual

eligible improvements and the actual number of employees. COMPANY agrees to reasonably cooperate with CITY to determine compliance with this Agreement and the applicable level of tax phase-in incentives.

12. **Certificate of Compliance.** Upon completion of the improvements to the PREMISES, COMPANY shall submit to CITY a sworn Certificate of Compliance certifying that all construction of the improvements to the PREMISES has been completed in accordance with the approved plans. After receipt of this Certificate of Compliance, CITY shall make a final inspection of PREMISES to determine whether the improvements have been constructed and installed in compliance with this Agreement. Upon so finding, CITY shall approve such a Certificate of Compliance and authorize tax phase-in to commence on January 1 of the year indicated in said certificate and terminate after the property has received the tax phase-in incentives as provided by this Agreement and Exhibit "B."

13. **Eligible and Ineligible Property.** "Eligible property" is defined to include all of the following items located on the PREMISES which were not so located prior to execution of this Agreement and whether or not they are so affixed as to become "real property": buildings, structures, fixed machinery and equipment, site improvements (including landscaping), office space and related fixed improvements necessary to the operation and administration of the facility.

"Ineligible Property" shall be fully taxable and ineligible for abatement, defined as including:

Land;  
Animals;  
Inventories;  
Supplies;  
Tools;  
Furnishings and other forms of movable personal property (except as described as "eligible property" above);  
Vehicles;  
Vessels;  
Aircraft;  
Hotels/motels;  
Housing or residential property;  
Fauna;  
Flora (excluding landscaping improvements);  
Retail facilities;  
Deferred maintenance investments;  
Improvements for the generation or transmission of electrical energy not wholly consumed by a new facility or expansion;  
Any improvements including those to produce, store or distribute natural gas or fluids that are not integral to the operation of the facility; or  
Property owned or used by the State of Texas or its political subdivisions or by any organization owned operated or directed by a political subdivision of the State of Texas.

14. **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under the present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added automatically as part of this Agreement a provision that is similar in terms and substance to such deleted provision as may be possible and yet be legal, valid and enforceable under the Texas Tax Code and related state statutes.

15. **Texas Law to Apply.** This Agreement shall be construed under the POLICY adopted by the CITY, including the Glossary of Terms, in accordance with said POLICY in force at the date of execution hereof and in accordance with the laws of the State of Texas. All obligations of the parties created hereunder are performable in Washington County, Texas. In

the event of litigation, or other claim or dispute arising out of or involving this Agreement, exclusive venue shall lie in a court of competent jurisdiction in Washington County, Texas.

16. **Prior Agreements Superseded.** This Agreement constitutes the sole agreement of the parties herein and supersedes any and all prior written or oral agreements, arrangements or understandings between the parties relating to the subject matter.

17. **Amendments.** No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing, dated subsequent to the date of this agreement and duly executed by the parties hereto.

18. **Rights and Remedies Cumulative.** The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its rights to use all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

19. **No Waiver.** No waiver by CITY in any event of default, or breach of any covenant, condition or stipulation herein contained by COMPANY shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition or stipulation hereof.

20. **Assignment.** This Agreement may be assigned by COMPANY upon CITY'S written approval of said assignment.

21. **Authority to Act.** The parties to this Agreement shall provide proof of authorization to execute this document.

22. **Notice.** Whenever notice or other communication is herein required to be given to COMPANY or to CITY, such notice will be sent, respectively, to the attention of COMPANY'S President or other designated officer at the address of Company's facility in the reinvestment zone, or to the attention of the City Manager at the address of said Manager's then-current office location, via certified or registered mail, return receipt requested. Such notice will be considered effectively delivered when sent if such is properly addressed and sent and the return receipt is received by the sender, or if addressee fails to receive or accept delivery and the undelivered item is returned to sender.

23. **Definitions.** It is specifically understood by the governing body of the jurisdiction and its signatory/agent as well as COMPANY and its signatory/agent that "new jobs," as used in both, this Agreement and the underlying CITY guidelines for tax phase-in, means (and calculations therefore include) COMPANY employees as follows: The number of "new jobs" each year shall be determined by the cumulative sum of all new jobs employed by the COMPANY in the reinvestment zone after execution of this Agreement. This includes all employees who, subsequently to the Agreement, begin working in the reinvestment zone for Applicant (whether newly hired or who were previously hired by COMPANY elsewhere and whose work location is transferred to within the reinvestment zone), and, for purposes of the tax phase-in schedules in the guidelines and this Agreement, who work an average of at least a forty (40) hour work week. Two part-time employees working an average of twenty (20) hours each per week shall constitute one full-time employee for the calculation of "new jobs."

Any definitions of words or phrases given in the currently effective tax phase-in guidelines entitled "City of Brenham Policy Statement on Property Tax Phase-in Incentive for Selected Commercial Enterprises" shall be controlling in this document as well, except as may be specifically modified herein.

24. This Agreement has been approved by the governing body of the CITY.

25. Any aspect of this Agreement which may happen to conflict with the underlying jurisdiction's tax phase-in guidelines shall be considered as an approved modification or clarification of such guidelines as may be required to affect the intent of this Agreement.

26. For the duration of this Agreement and for additional consideration for this tax phase-in, COMPANY agrees to purchase the following utilities: water, natural gas, sewer, and electricity, exclusively from the City of Brenham in its service area.

27. If any action is brought to enforce, construe or determine the validity of any term or provision of this Agreement (whether at the trial court level or any appeal therefrom), the prevailing party shall be entitled to reasonable attorney's fees and costs of the action.

The parties hereto have executed or caused to be executed by it's duly authorized officials this Agreement in multiple counterparts, each of equal dignity, on this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**VALMONT INDUSTRIES, INC.**

**CITY OF BRENHAM**

BY: \_\_\_\_\_  
David S. Koziol  
Title: \_\_\_\_\_  
2551 Valmont Drive  
Brenham, Texas 77833

BY: \_\_\_\_\_  
Milton Y. Tate, Jr.  
Mayor  
P.O. Box 1059  
Brenham, Texas 77834-1059

***ATTEST:***

BY: \_\_\_\_\_  
Jeana Bellinger  
City Secretary  
P.O. Box 1059  
Brenham, Texas 77834-1059

**THE STATE OF TEXAS**

**COUNTY OF WASHINGTON**

Before me, the undersigned authority, on this day personally appeared **MILTON Y. TATE, JR.**, Mayor of the City of Brenham, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

**THE STATE OF TEXAS**

**COUNTY OF \_\_\_\_\_**

Before me, the undersigned authority, on this day personally appeared **DAVID S. KOZIOL**, \_\_\_\_\_ of VALMONT INDUSTRIES, INC., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas



## AGENDA FORM

<b>DATE OF MEETING:</b> October 20, 2011	<b>DATE SUBMITTED:</b> October 17, 2011	
<b>DEPT. OF ORIGIN:</b> Administration	<b>SUBMITTED BY:</b> Jeana Bellinger	
<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 checked="" type="checkbox"/> RESOLUTION
<input type="checkbox"/> WORK SESSION		
<b>AGENDA ITEM DESCRIPTION:</b> Discuss and Possibly Act Upon Resolution No. R-11-017 Nominating Valmont Industries to the Office of the Governor Economic Development and Tourism as a Texas Enterprise Project		
<b>SUMMARY STATEMENT:</b> City Council is being asked to consider discussion and possible action on an ordinance nominating Valmont Industries as an Enterprise Project to the State of Texas. Participation in the Texas Enterprise Zone Program is possible because of Valmont's planned expansion of their large pole facility.  In order for the application to be submitted, the City is required to consider the attached Resolution nominating Valmont Industries for the State of Texas Enterprise Zone program.  A company that qualifies as a State Enterprise Project qualifies for reimbursement of the State portion of sales and use tax paid as a part of the business expansion. No local sales tax is rebated to the Company. The designation is for a five year period.		
<b>STAFF ANALYSIS (For Ordinances or Regular Agenda Items):</b>		
<b>A. PROS:</b> The Council should favorably consider this ordinance to provide state economic development incentive benefits to a local business that qualifies.		
<b>B. CONS:</b>		
<b>ALTERNATIVES (In Suggested Order of Staff Preference):</b>		
<b>ATTACHMENTS:</b> (1) Resolution No. R-11-017 nominating Valmont Industries as a Texas Enterprise Project.		
<b>FUNDING SOURCE (Where Applicable):</b>		
<b>RECOMMENDED ACTION:</b> Approve Resolution No. R-11-017 nominating Valmont Industries to the Office of the Governor Economic Development and Tourism as a Texas Enterprise Project.		

**APPROVALS:** Terry Roberts

## **RESOLUTION NO. R-11-017**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENHA, TEXAS NOMINATING VALMONT INDUSTRIES, INC. (“VALMONT” or THE “COMPANY”), TO THE OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM THROUGH THE TEXAS ECONOMIC DEVELOPMENT BANK FOR DESIGNATION AS AN ENTERPRISE PROJECT UNDER THE TEXAS ENTERPRISE ZONE PROGRAM PURSUANT TO THE TEXAS ENTERPRISE ZONE ACT, TEXAS GOVERNMENT CODE, CHAPTER 2303; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, on February 18, 2010, the City of Brenham (“City”) previously passed Ordinance No. O-10-002 electing to participate in the Texas Enterprise Zone Program, and the local incentives offered under this Ordinance are the same on this date as were outlined in Ordinance No. O-10-002;

**WHEREAS**, the Office of the Governor, Economic Development and Tourism (“OOGEDT”) through the Texas Economic Development Bank (“Bank”) will consider Valmont as an Enterprise Project pursuant to a nomination and an application made by the City;

**WHEREAS**, the City desires to pursue the creation of the proper economic and social environment in order to induce the investment of private resources in productive business enterprises located in the City and to provide employment to residents of enterprise zones and to other economically disadvantaged individuals;

**WHEREAS**, pursuant to Chapter 2303, Subchapter F of the Texas Enterprise Zone Act, Texas Government Code (the "Act"), Valmont has applied to the City for designation as an Enterprise Project; and

**WHEREAS**, the City finds that, based upon representations of Valmont, that the Company is a "qualified business" under Section 2303.402 of the Act since it will be engaged in the active conduct of a trade or business at a qualified business site within the governing body’s jurisdiction located outside of an enterprise zone and at least thirty-five percent (35.0%) of the business' new employees will be residents of an enterprise zone or economically disadvantaged individuals; and

**WHEREAS**, the City finds that Valmont further meets the criteria for designation as an Enterprise Project under Chapter 2303, Subchapter F of the Act on the following grounds:

- (1) There has been and will continue to be a high level of cooperation between public, private, and neighborhood entities within the area; and

- (2) The designation of Valmont as an Enterprise Project will contribute significantly to the achievement of the plans of the City for development and revitalization of the area.

**WHEREAS**, the City finds that Valmont meets the criteria for tax relief and other incentives adopted by the City and nominates the Company for enterprise project status on the grounds that it will be located at the qualified business site, will retain a high level of employment, economic activity and stability; and

**WHEREAS**, the City finds that it is in the best interest of the City to nominate Valmont as an Enterprise Project pursuant to the Act;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS** that the findings of the City and its actions approving this resolution taken at the council meeting are hereby approved and adopted.

**Section I:** The City finds that Valmont is a "qualified business", as defined in Section 2303.402 of the Act, and meets the criteria for designation as an Enterprise Project, as set forth in Section 2303, Subchapter F of the Act.

**Section II:** The City nominates Valmont as an Enterprise Project.

**Section III:** The Enterprise Project shall take effect on December 1, 2011 and terminate on December 1, 2016.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS** this \_\_\_\_ day of \_\_\_\_\_, 2011.

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**Milton Y. Tate, Jr.,**  
MAYOR

**ATTEST:**

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**Jeana Bellinger, TRMC,**  
CITY SECRETARY

**APPROVED AS TO FORM:**

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**Cary Bovey**  
CITY ATTORNEY



## AGENDA FORM

<b>DATE OF MEETING:</b> October 20, 2011	<b>DATE SUBMITTED:</b> October 14, 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 checked="" 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 type="checkbox"/> WORK SESSION	
<b>AGENDA ITEM DESCRIPTION:</b> Public Hearing Regarding a Request for a Zoning District Change for Property Currently Zoned as R-1, Single-Family Residential District to B-1, Local Business/Residential Mixed Use District Located At or Near the 1600 Block of Longhofer Street (A Vacant Lot) with a Legal Description Being Altman's Subdivision, Lot 4, 0.254 Acres to Construct a Professional Office on this Property		
<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> None		
<b>ATTACHMENTS:</b>		
<b>FUNDING SOURCE (Where Applicable):</b> N/A		
<b>RECOMMENDED ACTION:</b>		
<b>APPROVALS:</b> Doug Baker		



## AGENDA FORM

<b>DATE OF MEETING:</b> October 20, 2011	<b>DATE SUBMITTED:</b> October 14, 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 Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas; Amending the Official Zoning Map to Change Property Currently Zoned as R-1, Single-Family Residential District to B-1, Local Business/Residential Mixed Use District Located At or Near the 1600 Block of Longhofer Street (Vacant Lot) with a Legal Description Being Altman’s Subdivision, Lot 4, 0.254 Acres to Construct a Professional Office on this Property		
<b>SUMMARY STATEMENT:</b> The Planning & Zoning Commission held a regularly scheduled meeting on Monday, October 3, 2011. A Public Hearing was held in reference to a request for a Change of Zoning at the 1600 Block of Longhofer Street (vacant lot); legal description being Altman’s Subdivision, Lot 4, Acres 0.254. This property is presently zoned as R-1, Residential (Single Family Residential). The applicant is requesting a change of zoning to the B-1, Local Business/Residential Mixed Use District. The Change of Zoning request is being made in an effort to construct a professional office on this property.  After discussion, the Public Hearing was closed and the Planning & Zoning Commission unanimously made the recommendation to approve the request for the Change of Zoning .		
<b>STAFF ANALYSIS (For Ordinances or Regular Agenda Items):</b>		
<b>A. PROS:</b> Change of Zoning will allow a new business location.		
<b>B. CONS:</b> None voiced at Public Hearing.		
<b>ALTERNATIVES (In Suggested Order of Staff Preference):</b> None		
<b>ATTACHMENTS:</b> (1) Ordinance; (2) Map of property at the 1600 Block of Longhofer Street; (3) Final Report to City Council.		
<b>FUNDING SOURCE (Where Applicable):</b> N/A		

**RECOMMENDED ACTION:** Approve an Ordinance on its first amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas; amending the official Zoning Map to change property currently zoned as R-1, Single-Family Residential District to B-1, Local Business/Residential Mixed Use District Located at or near the 1600 Block of Longhofer Street (Vacant Lot) with a Legal Description Being Altman’s Subdivision, Lot 4, 0.254 Acres to Construct a Professional Office on this Property

**APPROVALS:** Doug Baker

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

**AN ORDINANCE AMENDING APPENDIX A - "ZONING" OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS, AMENDING THE OFFICIAL ZONING MAP TO CHANGE PROPERTY CURRENTLY ZONED AS R-1, SINGLE FAMILY RESIDENTIAL DISTRICT TO B-1, LOCAL BUSINESS/RESIDENTIAL MIXED USE DISTRICT LOCATED AT OR NEAR THE 1600 BLOCK OF LONGHOFFER STREET (VACANT LOT) WITH A LEGAL DESCRIPTION BEING ALTMAN'S SUBDIVISION, LOT 4, 0.254 ACRES, AND PROVIDING FOR AN EFFECTIVE DATE HEREOF.**

**BE IT ORDAINED BY THE CITY OF BRENHAM, TEXAS, THAT APPENDIX A - "ZONING" OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS, AND THE OFFICIAL ZONING MAP BE AMENDED IN THE FOLLOWING MANNER:**

SECTION 1. That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas, and the Official Zoning Map is hereby amended to amend the existing City of Brenham Zoning Map to change property currently zoned as R-1, Single Family Residential District Located at or near the 1600 Block of Longhofer Street (Vacant Lot) with a Legal Description being Altman's Subdivision, Lot 4, 0.254 Acres.

SECTION 2. This Ordinance shall take effect as provided by the Charter of the City of Brenham, Texas.

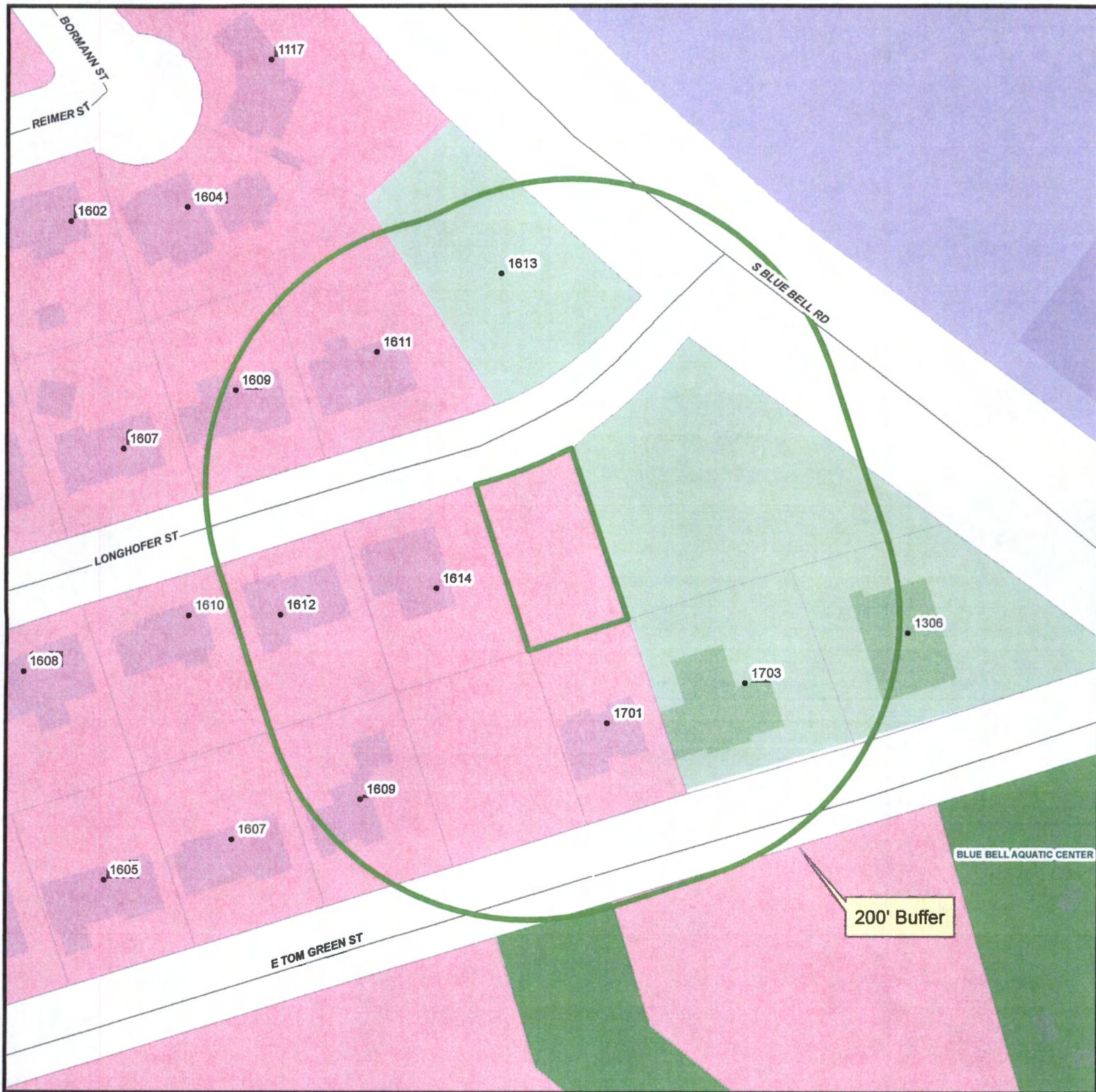
**PASSED and APPROVED** on its first reading this the \_\_\_\_\_ day of October, 2011.

**PASSED and APPROVED** on its second reading this the \_\_\_\_\_ day of November, 2011.

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

ATTEST:

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



### Legend

- B1 Local Business Mixed
- B2 Commercial Research & Technology
- B3 Historical & Central Business
- I Industrial
- R1 Residential
- R2 Mixed Residential
- R3 Manufactured Home Residential

1 inch = 100 feet



**Final Report to City Council Regarding  
Proposed Amendment of the City of Brenham Zoning Ordinance  
To Provide for a Change of Zoning District Request  
and Related Regulations**

A public hearing was conducted by the Planning & Zoning Commission, in the City Council Chambers, Brenham City Hall, 200 Vulcan Street, Brenham, Texas at 5:15 p.m., Monday, October 3, 2011.

The Public Hearing was conducted for the purpose of receiving testimony regarding the proposed amendment of the City of Brenham Zoning Ordinance to provide for a Change of Zoning District Request and related regulations. This being for a request being made at the 1600 Block of Longhofer Street (vacant lot), legal description being, Altman's Subdivision, Lot 4, consisting of 0.254 acres.

The Planning & Zoning Commission has reviewed the proposed amendment of the City of Brenham Zoning Ordinance to provide for a Change of Zoning District Request and related regulations, and makes the following findings and observations:

The Planning and Zoning Commission unanimously agreed to recommend that the City of Brenham Zoning District Map be amended as follows in an effort to change an existing R-1, Single Family Residential District property/lot to the B-1, Local Business/Residential Mixed Use District. This being for the particular property as described as follows:

1600 Block of Longhofer Street (vacant lot), legal description being, Altman's Subdivision, Lot 4, consisting of 0.254 acres.

The recommended change of zoning adjoins an existing B-1, Local Business/Residential Mixed Use District. This change of zoning will compliment this adjoining B-1, Local Business/Residential Mixed Use District.

The Planning & Zoning Commission hereby adopts and issues this final report in accordance with Section 211.007, Texas Local Government Code, and recommends to the City Council that the proposed amendment of the Zoning Ordinance be approved / approved with conditions / denied.

Sincerely,



Chairman  
Planning & Zoning Commission

Dated: 10-13, 2011.



## AGENDA FORM

<b>DATE OF MEETING:</b> October 20, 2011	<b>DATE SUBMITTED:</b> October 14, 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 checked="" 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 type="checkbox"/> WORK SESSION	
<b>AGENDA ITEM DESCRIPTION:</b> Public Hearing Regarding a Request for Specific Use Permit at 1404 North Park Street (Legal Description Being O'Malley Subdivision, Section 1, Lot 1-B), to Operate a Full Service Car Wash, Car Detail, and Lube Center Business		
<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> N/A		
<b>RECOMMENDED ACTION:</b> N/A		
<b>APPROVALS:</b> Doug Baker		



## AGENDA FORM

<b>DATE OF MEETING:</b> October 20, 2011	<b>DATE SUBMITTED:</b> October 14, 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 Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas; Amending the Official Zoning Map to Allow a Specific Use Permit at 1404 North Park Street (Legal Description Being O’Malley Subdivision, Section 1, Lot 1-B), for the Operation of a Full Service Car Wash, Car Detail, and Lube Center		
<b>SUMMARY STATEMENT:</b> The Planning & Zoning Commission held a regularly scheduled meeting on Monday, October 3, 2011. A Public Hearing was held in reference to a request for a Specific Use Permit at 1404 North Park Street to allow a Full Service Car Wash and Car Detail Business, and also a Lube Center (Automotive Quick-Lube) at this existing property. The Zoning District of this property is B-1, Local Business/Residential Mixed Use District, and requires a Specific Use Permit to allow for this type business at this location.  After discussion, the Public Hearing was closed and the Planning & Zoning Commission unanimously made the recommendation to approve the request for the Specific Use Permit .		
<b>STAFF ANALYSIS (For Ordinances or Regular Agenda Items):</b>		
<b>A. PROS:</b> New Business for our City.		
<b>B. CONS:</b> No comments voiced at Public Hearing.		
<b>ALTERNATIVES (In Suggested Order of Staff Preference):</b> None		
<b>ATTACHMENTS:</b> (1) Ordinance; (2) Map of property at 1404 North Park Street; and (3) Final Report to City Council.		
<b>FUNDING SOURCE (Where Applicable):</b> N/A		

**RECOMMENDED ACTION:** Approve an Ordinance on its first reading amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas; amending the Official Zoning map to allow a Specific Use Permit at 1404 North Park Street (Legal Description Being O’Malley Subdivision, Section 1, Lot 1-B), for the Operation of a Full Service Car Wash, Car Detail, and Lube Center

**APPROVALS:** Doug Baker

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

**AN ORDINANCE AMENDING APPENDIX A - "ZONING" OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS, AMENDING THE OFFICIAL ZONING MAP TO ALLOW A SPECIFIC USE PERMIT AT 1404 NORTH PARK STREET;(LEGAL DESCRIPTION BEING O'MALLEY SUBDIVISION, SECTION 1, LOT 1-B), FOR THE OPERATION OF A FULL SERVICE CAR WASH, CAR DETAIL, AND LUBE CENTER AT THIS EXISTING PROPERTY. THIS PROPERTY IS LOCATED IN THE B-1, LOCAL BUSINESS/RESIDENTIAL MIXED USE DISTRICT AND REQUIRES THE APPROVAL OF A SPECIFIC USE PERMIT, AND PROVIDING FOR AN EFFECTIVE DATE HEREOF.**

**BE IT ORDAINED BY THE CITY OF BRENHAM, TEXAS, THAT APPENDIX A - "ZONING" OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS, AND THE OFFICIAL ZONING MAP BE AMENDED IN THE FOLLOWING MANNER:**

SECTION 1. That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas, and the Official Zoning Map is hereby amended to allow a Specific Use Permit at 1404 North Park Street; (Legal description being O'Malley Subdivision, Section 1, Lot 1-B), to allow a Full Service Car Wash, Car Detail, and Lube Center at this property, in accordance with the City of Brenham adopted Building Codes and Zoning Ordinance. This property is located in the B-1, Local Business/Residential Mixed Use District and requires the approval of a Specific Use Permit.

SECTION 2. This Ordinance shall take effect as provided by the Charter of the City of Brenham, Texas.

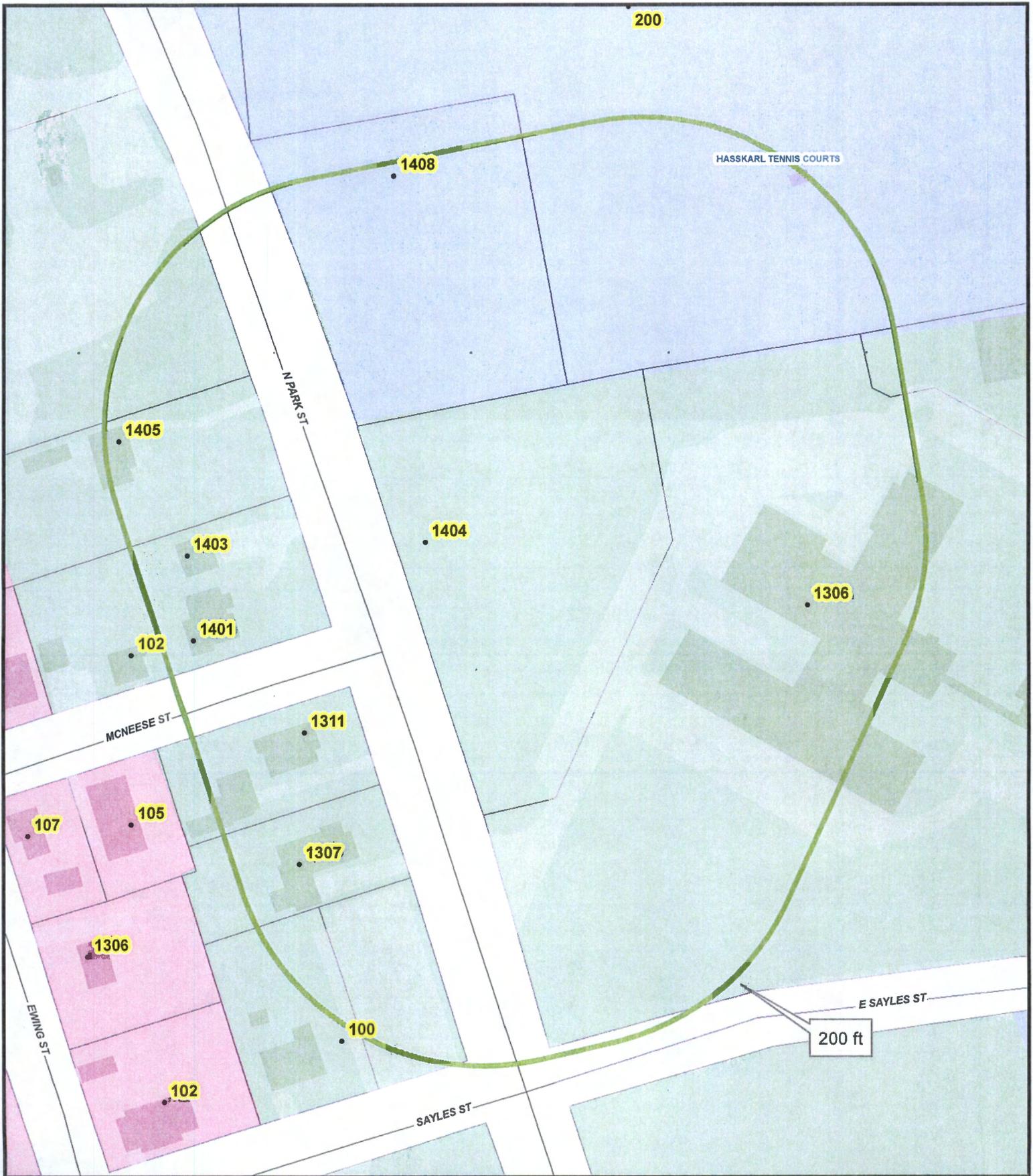
**PASSED and APPROVED** on its first reading this the \_\_\_\_\_ day of October, 2011.

**PASSED and APPROVED** on its second reading this the \_\_\_\_\_ day of November, 2011.

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

ATTEST:

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



1 inch = 101 feet

### 1404 N Park St



**Final Report to City Council Regarding  
Proposed Amendment of the City of Brenham Zoning Ordinance  
To Provide for a Specific Use Permit Request  
and Related Regulations**

A public hearing was conducted by the Planning & Zoning Commission, in the City Council Chambers, Brenham City Hall, 200 Vulcan Street, Brenham, Texas at 5:15 p.m., Monday, October 3, 2011.

The Public Hearing was conducted for the purpose of receiving testimony regarding the proposed amendment of the City of Brenham Zoning Ordinance to provide for a Specific Use Permit Request and related regulations. This being for a request being made at 1404 North Park Street; legal description being, O'Malley Subdivision, Section 1, Lot 1-B, for the operation of a full service car wash, car detail, and lube center at this property.

The Planning & Zoning Commission has reviewed the proposed amendment of the City of Brenham Zoning Ordinance to provide for a Specific Use Permit Request and related regulations, and makes the following findings and observations:

The Planning and Zoning Commission unanimously agreed to recommend that the City of Brenham Zoning District Map be amended as follows in an effort to allow a Specific Use Permit for a full service car wash, car detail, and lube center at this property as described as follows:

1404 North Park Street; legal description being, O'Malley Subdivision, Section 1, Lot 1-B.

Specific use permit will have car wash and lube center with operating hours of Monday thru Saturday, 8 am – 6 pm. There is a common business lobby that will be shared with a sandwich shop that will have operating hours of Monday – Sunday, 8 am – 9pm.

The Planning & Zoning Commission hereby adopts and issues this final report in accordance with Section 211.007, Texas Local Government Code, and recommends to the City Council that the proposed amendment of the Zoning Ordinance be approved / approved with conditions / denied.

Sincerely,



Chairman  
Planning & Zoning Commission

Dated: 10-13, 2011.



## AGENDA FORM

<b>DATE OF MEETING:</b> October 20, 2011	<b>DATE SUBMITTED:</b> October 14, 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 checked="" 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 type="checkbox"/> WORK SESSION	
<b>AGENDA ITEM DESCRIPTION:</b> Public Hearing Regarding Amendment of Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, to Provide for Sexually Oriented Businesses as Specific Uses in I – Industrial Districts, in Accordance with the Specific Use Permit Approval Process and Chapter 16, Occupational Licenses and Business Regulations, City of Brenham Code of Ordinances		
<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> None		
<b>ATTACHMENTS:</b>		
<b>FUNDING SOURCE (Where Applicable):</b> N/A		
<b>RECOMMENDED ACTION:</b> N/A		
<b>APPROVALS:</b> Doug Baker		



## AGENDA FORM

<b>DATE OF MEETING:</b> October 20, 2011	<b>DATE SUBMITTED:</b> October 14, 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 Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas to Provide for Sexually Oriented Businesses as Specific Uses in I – Industrial Districts, in Accordance with the Specific Use Permit Approval Process and Chapter 16, Brenham Code of Ordinances Regulating Occupational Licenses and Business Regulations		
<b>SUMMARY STATEMENT:</b> The Planning & Zoning Commission held a regularly scheduled meeting on Monday, October 3, 2011. A Public Hearing was held in reference to a request for a proposed change of text (this being an addition to the text) of the City of Brenham Zoning Ordinance. The Planning and Zoning Commission agreed to make this recommendation to the City of Brenham City Council. The recommendation for this amendment is being submitted for approval in an effort to include terminology in the City of Brenham Zoning Ordinance that compliments the City of Brenham Occupational Licenses and Business Regulations. After discussion, the Public Hearing was closed and the Planning and Zoning Commission unanimously approved this recommendation.  Amendment is as follows:  Section 6 Industrial District  (Sec. 602.1) Specific uses: (1) Sexually Orientated Business (a) A sexually orientated business shall be allowed as a Specific Use in the I-Industrial District, in accordance with the Specific Use Permit Approval Process and Chapter 16, Brenham Code of Ordinances Regulating Occupational Licenses and Business Regulations.		
<b>STAFF ANALYSIS (For Ordinances or Regular Agenda Items):</b>		
<b>A. PROS:</b> Recommendation will complement the City of Brenham Occupational Licenses and Business Regulations		
<b>B. CONS:</b> None		

<b>ALTERNATIVES (In Suggested Order of Staff Preference):</b> None
<b>ATTACHMENTS:</b> (1) Ordinance; and (2) Final Report to City Council.
<b>FUNDING SOURCE (Where Applicable):</b> N/A
<b>RECOMMENDED ACTION:</b> Approve an Ordinance on its first reading amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas to Provide for Sexually Oriented Businesses as Specific Uses in I – Industrial Districts, in accordance with the specific use permit approval process and Chapter 16, Brenham Code of Ordinances Regulating Occupational Licenses and Business Regulations
<b>APPROVALS:</b> Doug Baker

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

**AN ORDINANCE AMENDING APPENDIX A - "ZONING" OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS, TO PROVIDE FOR SEXUALLY ORIENTED BUSINESSES AS SPECIFIC USES IN I-INDUSTRIAL DISTRICTS, IN ACCORDANCE WITH THE SPECIFIC USE PERMIT APPROVAL PROCESS AND CHAPTER 16, BRENHAM CODE OF ORDINANCES REGULATING OCCUPATIONAL LICENSES AND BUSINESS REGULATIONS, AND PROVIDING FOR AN EFFECTIVE DATE HEREOF.**

**BE IT ORDAINED BY THE CITY OF BRENHAM, TEXAS, THAT APPENDIX A - "ZONING" OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS, AND THE OFFICIAL ZONING MAP BE AMENDED IN THE FOLLOWING MANNER:**

SECTION 1. That Pt. II, Div. 2, Sec. 6 of Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas, is hereby amended to provide for Sexually Oriented Businesses as Specific Uses in I-Industrial Districts, in accordance with the Specific Use Permit approval process and Chapter 16, Brenham Code of Ordinances Regulating Occupational Licenses and Business Regulations.

SECTION 2. Section 6.02 (Specific Uses) shall be amended to add a classification entitled Sexually Oriented Businesses and shall read as follows:

(Sexually Oriented Businesses)

1. A sexually oriented business shall be allowed as a Specific Use in I-Industrial Districts, in accordance with the Specific Use Permit Approval Process and Chapter 16, Brenham Code of Ordinances Regulating Occupational Licenses and Business Regulations.

*SECTION 3.* This Ordinance shall take effect as provided by the Charter of the City of Brenham, Texas.

**PASSED and APPROVED** on its first reading this the \_\_\_\_\_ day of October, 2011.

**PASSED and APPROVED** on its second reading this the \_\_\_\_\_ day of November, 2011.

ATTEST:

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

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

**Final Report to City Council Regarding  
Proposed Amendment of the City of Brenham Zoning Ordinance  
To Provide for a Designated Zoning District for a Sexually Orientated Business  
and Related Regulations**

A public hearing was conducted by the Planning & Zoning Commission, in the City Council Chambers, Brenham City Hall, 200 Vulcan Street, Brenham, Texas at 5:15 p.m., Monday, October 3, 2011.

The Public Hearing was conducted for the purpose of receiving testimony regarding the proposed amendment of the City of Brenham Zoning Ordinance to provide for a designated zoning district for a Sexually Orientated Business (SOB) and related regulations.

The Planning & Zoning Commission has reviewed the proposed amendment of the City of Brenham Zoning Ordinance to provide for a designated zoning district for a Sexually Orientated Business (SOB) and related regulations, and makes the following findings and observations:

The Planning and Zoning Commission unanimously agreed to recommend that the City of Brenham Zoning Ordinance be amended as follows in an effort to compliment the City of Brenham Occupational Licenses and Business Regulations; particularly, that being those regulations pertaining to Sexually Orientated Businesses. The following information shall be included in the City of Brenham Zoning Ordinance, Part II, Division 2, Section 6:

Section 6 Industrial District

(Sec. 602.1) Specific uses:

(1) Sexually Orientated Business

(a) In accordance to the City of Brenham Code of Ordinances for Occupational Licenses and Business Regulations. This being Chapter 16 of the City of Brenham Code of Ordinances.

The Planning & Zoning Commission hereby adopts and issues this final report in accordance with Section 211.007, Texas Local Government Code, and recommends to the City Council that the proposed amendment of the Zoning Ordinance be approved / approved with conditions / denied.

Sincerely,



Chairman

Planning & Zoning Commission

Dated: 10-13, 2011.



## AGENDA FORM

<b>DATE OF MEETING:</b> October 20, 2011	<b>DATE SUBMITTED:</b> October 17, 2011	
<b>DEPT. OF ORIGIN:</b> Administration	<b>SUBMITTED BY:</b> Jeana Bellinger	
<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 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> At the July 25 <sup>th</sup> council meeting, the City Council approved Ordinance No. O-11-009 amending Chapter 16 of the City’s Code of Ordinances providing for the regulation of sexually oriented businesses. However, since the adoption of Ordinance No. O-11-009, staff has determined a few more regulations that need to be made. This new ordinance will add additional regulations and/or language to Ordinance No. O-11-009 as follows:		
<ul style="list-style-type: none"> <li>➤ Adds hotels and other similar commercial establishments to protected classes and a detailed explanation of the term “family oriented recreation facility” to Sec. 16-25;</li> <li>➤ Adds language to allow certain forms of nudity when it is in conjunction with a modeling class operated by a state licensed school, college, junior college, or university;</li> <li>➤ Adds exemption language for certain medical treatments and massage therapy programs; and</li> <li>➤ Adds a new section allowing for amortization (Sec. 16-45) for any existing sexually oriented businesses that are annexed into the city limits.</li> </ul>		
Staff is planning to meet with the Sexually Oriented Businesses Task Force on Wednesday, October 19 <sup>th</sup> to discuss the additional regulations. If there are any comments and/or additional recommendations from the Task Force, they will be presented to the Council at the meeting.		
<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) Ordinance amending Chapter 16; and (2) Copy of Ordinance No. O-11-009
<b>FUNDING SOURCE (Where Applicable):</b> N/A
<b>RECOMMENDED ACTION:</b> Approve 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.
<b>APPROVALS:</b> Terry K. Roberts

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

**AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING CHAPTER 16 OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS; PROVIDING FOR THE REGULATION OF SEXUALLY ORIENTED BUSINESSES WITHIN THE CITY LIMITS OF THE CITY OF BRENHAM, TEXAS; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR A SEVERABILITY, REPEALER AND SAVINGS CLAUSE; AND PROVIDING FOR PROPER NOTICE AND OPEN MEETINGS.**

**WHEREAS**, the City of Brenham (“City”) is a home rule municipality located in Washington County, Texas, acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

**WHEREAS**, pursuant to Texas Local Government Code section 51.001, the City of Brenham, Texas (“City”) has the authority to adopt ordinances and regulations that are for the good government, peace and order of the City; and

**WHEREAS**, Section 243.003 of the Texas Local Government Code authorizes municipalities to adopt regulations for Sexually Oriented Businesses; and

**WHEREAS**, the City Council desires to minimize and control the adverse secondary effects associated with sexually oriented businesses and thereby protect the health, safety and welfare of the citizenry, preserve the quality of life, preserve property values and the character of surrounding neighborhoods and to deter the spread of urban blight; and

**WHEREAS**, the City of Brenham finds that the amendments to Chapter 16, Occupational Licenses and Business Regulations of the Brenham Code of Ordinances, constitute effective tools for addressing the adverse secondary effects associated with sexually oriented businesses; and

**WHEREAS**, Chapter 16, Occupational Licenses and Business Regulations, of the Code of Ordinances of the City of Brenham, Texas shall be amended as follows; and

**WHEREAS**, the general welfare, health, morals and safety of the citizens of the City will be promoted by the enactment of this Ordinance;

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

## SECTION 1

Chapter 16, Section 16-25, Location requirements, of the Code of Ordinances shall be amended to read as follows:

### **Sec. 16-25. Location requirements.**

A person commits a violation if the person operates or causes to be operated a sexually oriented business in any zoning district other than an industrial zoning district as defined in the City's zoning ordinance.

A person commits a violation if the person operates or causes to be operated a sexually oriented business within one thousand, three hundred and twenty (1,320) feet of:

- (1) A religious institution including a church, synagogue, mosque, temple, or building which is used primarily for religious worship and related religious activities;
- (2) A public or private educational facility or child care facility, including but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges and universities. The term school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;
- (3) A boundary of a residential zoning district as defined in the City's zoning ordinance;
- (4) A public park or recreational area which has been designated for park or recreational activities, including but not limited to, a park, playground, nature trail, swimming pool, athletic field, basketball, or tennis court, pedestrian/bicycle path, or other similar public land within the City, or its ETJ;
- (5) The property line of a lot or parcel devoted to a residential use as defined in the City's zoning ordinance;
- (6) A family oriented recreation facility including but not limited to a roller skating rink, amusement park, ice skating rink, go-kart track, miniature golf course, or a facility used primarily for youth or children's recreational, entertainment or athletic activities;
- (7) Any premise licensed pursuant to the alcoholic beverage control regulations of the State of Texas, or an agency thereof;
- (8) A public library; or
- (9) A hotel, motel or similar establishment in which members of the public obtain sleeping accommodations for consideration. The term includes without limitation a hotel, motel, inn, or bed and breakfast or similar establishment. The term does not include:
  - (a) a hospital, sanitarium, or nursing home; or
  - (b) a dormitory or other housing facility owned or leased and operated by an institution of higher education or a private or independent institution of higher education as those terms are defined by Section 61.003, Education Code, used by the institution for the purpose of providing sleeping accommodations for persons engaged in an educational program or activity at the institution.

A person commits a violation if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one thousand, three hundred and twenty (1,320) feet of another sexually oriented business.

A person commits a violation if that person causes or permits the operation, establishment or maintenance of more than one sexually oriented business in the same building structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

Measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in Items (1) through (9) above. The presence of a City, county or other political subdivision boundary shall be irrelevant for the purposes of calculating and applying the distance requirements of this section.

The distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.

## **SECTION 2.**

Chapter 16, Section 16-39, Additional regulations concerning public nudity, of the Code of Ordinances shall be amended to add the following:

It is a defense to prosecution that a person appearing in a state of nudity did so in a modeling class operated:

- (1) By a proprietary school, licensed by the state; a college, junior college, or university supported entirely or partly by taxation;
- (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:
  - (a) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
  - (b) Where in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and
  - (c) Where no more than one (1) nude model is on the premises at any one time.

### **SECTION 3.**

Chapter 16, Section 16-42, Exemptions, of the Code of Ordinances shall be amended to read as follows:

#### **Sec 16-42. Exemptions.**

Any business activity or service that by federal or state law is required to be operated by or employing licensed psychologists, licensed physical therapists, registered massage therapists, registered nurses, licensed pharmacists or licensed athletic trainers engaged in practicing such licensed profession as generally recognized within their profession, including:

- a) A state-registered massage establishment that employs only state-registered massage therapists to perform massage therapy; conforming to all requirements of state law and other applicable law;
- b) A state-registered massage school with at least two registered massage therapists that teaches the course of instruction required for registration as a massage therapist or a school approved by the Texas Department of State Health Services, or successor agency, or that is otherwise approved by the state;
- c) A state-registered massage therapy instructor who instructs one or more students in any section of the course of instruction required for registration as a massage therapist;
- d) A business operated by or that employs a licensed physical therapist whose activities fall under the control of The Executive Council of Physical Therapy and Occupational Therapy Examiners or a license of another state agency performing health care service within the scope of the applicable licensing act who performs the activities for or on behalf of the business or commercial enterprise;
- e) Any business operated by or employing licensed physicians or licensed chiropractors engaged in practicing the healing arts as its sole business; or
- f) Any activity conducted or sponsored by any Texas independent school district, licensed or accredited private school, or public or private college or university.

### **SECTION 4.**

Chapter 16, Section 16-45, Amortization, of the Code of Ordinances is hereby added to read as follows:

#### **Sec 16-45. Amortization.**

If, due to annexation, rezoning, or other reason, an existing sexually oriented business is in violation of the location requirements in Sec. 16-25, the sexually oriented business may submit verified proof that the business has not recouped the owner's investment prior to the date of annexation, rezoning, or other reason for the location violation.

The required documentation shall include at a minimum, but is not limited to, the following:

- 1) The amount of the owner's investment in the existing enterprise to the date the proof is submitted;
- 2) The life expectancy of the enterprise;
- 3) The existence or nonexistence of lease obligations, as well as any contingency clauses therein permitting termination of the lease;
- 4) Proof of the income of the enterprise since it commenced operations and a projection of yearly income. Proof of income may be in the form of tax returns or reliable financial statements; and
- 5) A proposed schedule for amortization of the investment, to be considered in light of the intent of this section.

Upon evaluation of the proof and a finding that the proposed amortization is reasonable under the circumstances, the City Council shall approve a contingent sexually oriented business permit. The contingent sexually oriented business permit shall specifically state the reasons that the sexually oriented business permit would have been denied but for the fact that the enterprise was in existence prior to being annexed into the city limits, rezoned, or for other appropriate reasons.

The contingent sexually oriented business permit shall be renewed annually only through the end of the amortization period. No sexually oriented business permit shall be issued for that location beyond that the amortization period unless circumstances change so as to bring the enterprise into compliance with this article. The contingent sexually oriented business permit shall be subject to revocation and suspension pursuant to this article.

Upon a finding that the proposal is not reasonable under the circumstances, the City Manager, or his designee, shall make a counter-proposal or recommendation and the applicant may resubmit a revised proposal within fifteen (15) days of the City Manager's determination and counter-proposal. The City Council shall make a final determination using the counter-proposal.

#### **SECTION 5.** **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 6.**  
**SEVERABILITY**

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. City hereby declares that it would have passed this Ordinance, and each section, subsection, sentences, clauses and phrases be declared unconstitutional or invalid.

**SECTION 7.**  
**REPEALER**

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

**SECTION 8.**  
**EFFECTIVE DATE**

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

**SECTION 9.**  
**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

**ORDINANCE NO. O-11-009**

**AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING CHAPTER 16 OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS; PROVIDING FOR THE REGULATION OF SEXUALLY ORIENTED BUSINESSES WITHIN THE CITY LIMITS OF THE CITY OF BRENHAM, TEXAS; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR A SEVERABILITY, REPEALER AND SAVINGS CLAUSE; AND PROVIDING FOR PROPER NOTICE AND OPEN MEETINGS.**

**WHEREAS**, the City of Brenham ("City") is a home rule municipality located in Washington County, Texas, acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

**WHEREAS**, the Texas State Legislature, in Section 243.001 of the Texas Local Government Code finds "that the unrestricted operation of certain Sexually Oriented Businesses may be detrimental to the public health, safety, and welfare by contributing to the decline of residential and business neighborhoods and the growth of criminal activity;" and

**WHEREAS**, Section 243.003 of the Texas Local Government Code authorizes municipalities to adopt regulations restricting the location of Sexually Oriented Businesses, which are defined in Section 243.002 to mean a sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or other similar commercial enterprise, the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer; and

**WHEREAS**, the City, for the purpose of protecting the public health, safety and welfare, has regulated Sexually Oriented Businesses since December 2, 1993 by enactment of Ordinance No. O-93-034, and required permitting by the City of such businesses to this present date; and

**WHEREAS**, the City did not have a Sexually Oriented Business within its city limits on December 2, 1993 and no licenses or permits for such businesses have been reported or issued by the City from December 2, 1993 to the date of this Ordinance; and

**WHEREAS**, the City Council, in performance of its police power to protect the public health, safety and welfare of the City and its citizens, has determined that it is necessary and advisable to establish, implement and enforce new regulations, licensing procedures and location criteria applicable to Sexually Oriented Businesses; and

**WHEREAS**, the City Council intends that these regulations should have neither the purpose nor effect of imposing a limitation or restriction on the content of any speech, expression or communicative materials, including sexually oriented speech, expression and communicative materials, nor the effect of restricting or denying access by adults to sexually oriented speech, expression or communicative materials protected by the First Amendment, or denying access by the distributors and exhibitors of sexually oriented entertainment to their intended market; and

**WHEREAS**, studies, reports and findings considered by the City Council are as follows: *Survey of Texas Appraisers – Secondary Effects of Sexually Oriented Businesses on Market Values*, Texas City Attorneys Association (2008); *Report on Adult Oriented Businesses in Austin*, City of Austin, Texas (1986); *Report to City Council Regarding the Regulation of Sexually Oriented Businesses*, City of Burleson, Texas (2004); *Sexually Oriented Business Ordinance Revision Committee Legislative Report*, City of Houston, Texas (1997); and *Survey [of real estate appraisers regarding the secondary effects an adult bookstore would have on the surrounding community]*, City of Kennedale, Texas (2003); and

**WHEREAS**, said studies, reports and findings, which document the adverse secondary effects of Sexually Oriented Businesses, have been presented to and considered by the Mayor and each City Councilmember; and

**WHEREAS**, lawsuit case decisions considered by the Council are as follows: *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theaters*, 427 U.S. 50 (1976); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Erie v. Pap's A.M.*, 529 U.S. 277, 120 S. Ct. 1382 (2002); *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5<sup>th</sup> Cir. 2002); *LLEH, Inc. v. Wichita County, Texas*, 289 F. 3d 358 (5<sup>th</sup> Cir. 2002); *Schultz v. City of Cumberland*, 228, F. 3d 831 (7<sup>th</sup> Cir. 2000); and

**WHEREAS**, said legal opinions, which provide further documentation regarding the detrimental secondary effects associated with Sexually Oriented Businesses, have been presented to and considered by the Mayor and each City Councilmember; and

**WHEREAS**, based on its review, the City Council finds that the presence of a Sexually Oriented Business would have detrimental secondary effects on surrounding properties; and

**WHEREAS**, the above referenced studies, legal opinions, reports and findings show that Sexually Oriented Businesses have a deleterious effect on surrounding businesses and residential areas, causing increased crime, a downgrading of property values, and increased incidence of sexually transmitted diseases; and

**WHEREAS**, the City Council finds, based on the above referenced studies, legal opinions, reports and findings, that these ancillary, unlawful and unhealthy activities will not be controlled by the operators of Sexually Oriented Businesses, and absent municipal regulation aimed at reducing adverse secondary effects, there is no mechanism to make the owners of these establishments responsible for the activities that occur on or about their premises and as a consequence of their operations; and

**WHEREAS**, the City Council finds that based on the above cited studies, legal opinions, reports and findings, that it is reasonably likely that establishment of one or more Sexually Oriented Business within the City will give rise to adverse secondary effects; and

**WHEREAS**, the City Council finds that based on the above cited studies, legal opinions, reports and findings that adverse secondary effects associated with Sexually Oriented Businesses are magnified when such businesses are located within close proximity to each other; and

**WHEREAS**, the City has a legitimate and substantial governmental interest in limiting the adverse secondary effects associated with Sexually Oriented Businesses as a means of promoting the public health, safety and welfare of the citizens of Brenham; and

**WHEREAS**, the City Council finds that the institution of reasonable regulations, licensing procedures, and location criteria provides an appropriate mechanism for achieving said legitimate and substantial governmental interest; and

**WHEREAS**, the City Council finds, based on the above-referenced studies, legal opinions, reports and findings, that limiting the locations of Sexually Oriented Businesses as provided herein is necessary in order to minimize the adverse secondary effects of Sexually Oriented Businesses on surrounding properties; and

**WHEREAS**, the City Council finds that the regulations, licensing procedures and location criteria contained herein do not attempt and not intended to prohibit constitutionally protected speech, but rather, serve to mitigate the adverse secondary effects associated with Sexually Oriented Businesses; and

**WHEREAS**, the City Council finds that the regulations, licensing procedures and location criteria contained herein have neither the purpose, intent, nor effect of imposing a limitation or restriction on the content of any speech, expression or communicative materials, including sexually oriented speech, expression or communicative materials, nor is it the purpose or intent of this Ordinance to have the effect of restricting or denying access by adults to sexually oriented speech, expression or communicative materials protected by the First Amendment, or denying access by the distributors and exhibitors of sexually oriented entertainment to their intended market; and

**WHEREAS**, the City Council finds that the adoption of the regulations, licensing procedures and location criteria contained herein will still leave available reasonable locations for the establishment of Sexually Oriented Businesses within the city limits; and

**WHEREAS**, the City Council finds that the adoption of the regulations, licensing procedures, and location criteria contained herein will promote the public health, safety and general welfare of the citizens of the City;

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

**SECTION 1:**

The recitals and preamble to this Ordinance together with the June 2, 2011 *Report to the City of Brenham City Council on Sexually Oriented Businesses* prepared by the City Secretary, including all appendices, are incorporated in this Ordinance by reference for all purposes as if fully set forth herein.

**SECTION 2:**

Section 16-16 of the Code of Ordinances of the City of Brenham, Texas is hereby repealed.

**SECTION 3:**

Chapter 16 of the Code of Ordinances of the City of Brenham, Texas is hereby amended by adding the following provisions:

**SEXUALLY ORIENTED BUSINESSES**

**Sec. 16-20. Purpose and intent.**

It is the purpose of this article to regulate sexually oriented businesses, to promote the health, safety, and general welfare of the citizens of the City of Brenham, and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses in close proximity to each other within the City. The regulations contained herein have also been established for the purpose of limiting, the well-documented, adverse secondary effects suffered by properties located within one thousand, three hundred and twenty (1,320) feet of a sexually oriented business.

The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative speech, expression or communicative materials, including sexually oriented speech, expression or communicative materials. Similarly, it is not the intent or effect of this article to restrict or deny access by adults to sexually oriented speech, expression or communicative materials protected by the First Amendment or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

**Sec. 16-21. Findings and basis for regulation.**

The regulations contained herein, including those pertaining to the licensing, operation, and location of sexually oriented businesses, are based on studies, reports, findings, court case decisions, and evidence made available to and considered by the City Council. These regulations have also been established under the authority granted to municipalities by Chapter 243 of the Texas Local Government Code.

A copy of the City Secretary's report on sexually oriented businesses (dated June 2, 2011), together with the studies, reports, findings, and court case decisions (as referenced herein) are on file in the Office of the City Secretary.

**Sec. 16-22. Definitions.**

*Adult arcade.* Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by regularly depicting or describing specified sexual activities or specified anatomical areas.

*Adult bookstore, adult novelty store or adult video store.* A commercial establishment which regularly offers a service or regularly sells, rents or exhibits devices or any other items intended to provide sexual stimulation or sexual gratification to the customer including:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, DVD's, videocassettes or video reproductions, slides, or other visual representations, that depict or describe specified sexual activities or specified anatomical areas; or
- (2) Instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities, but not including items used for birth control or for the prevention of sexually transmitted diseases.

Adult cabaret. A commercial establishment that regularly features the offering to customers of live entertainment that:

- (1) Is intended to provide sexual stimulation or sexual gratification to such customer; and
- (2) Is distinguished by or characterized by an emphasis on matter depicting, simulating, describing, or relating to specified anatomical areas or specified sexual activities.

Adult motel. A hotel, motel, or similar commercial establishment that:

- (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides, or other photographic reproductions that are characterized by the regular depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from any public right-of-way that advertises the availability of this adult type of photographic reproductions;
- (2) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- (3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

Adult motion picture theater. A commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides, or similar photographic reproductions are regularly shown that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

Adult theater. A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear nude or semi-nude, or live performances which are characterized by the exposure of specified anatomical areas or by the depiction or description of specified sexual activities.

Applicant.

- (1) A person or entity in whose name a license to operate a sexually oriented business is requested to be issued;
- (2) Each individual who signs an application for a sexually oriented business license as required by Section 16-26
- (3) Each individual who is an officer of a sexually oriented business for which a license application is made under Section 16-26, regardless of whether the individual's name or signature appears on the application;
- (4) Each individual who has an ownership interest in a sexually oriented business for which a license application is made under Section 16-26, regardless of whether the individual's name or signature appears on the application; and

- (5) Each individual who exercises substantial de facto control over a sexually oriented business for which a license application is made under Section 16-26, regardless of whether the individual's name or signature appears on the application.

Chief of police. The Chief of Police of the City of Brenham or the Chief's designee.

Child-care facility. A facility licensed by the State of Texas, or other governmental entity having jurisdiction, or an agency thereof, whether situated within the City or not, that provides care, training, education, custody, treatment or supervision for more than six (6) children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

Conviction. A conviction in a federal court or a court of any state or foreign nation or political subdivision of a state or foreign nation that has not been reversed, vacated, or pardoned. Conviction includes disposition or charges against a person by probation, deferred disposition or deferred adjudication.

Distinguished or characterized by an emphasis upon. The dominant or principal theme of the object referenced. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or display of specified sexual activities or specified anatomical areas," the films so described are those whose dominant or principal character and theme are the exhibition or display of specified anatomical areas or specified sexual activities.

Employee. Any individual who:

- (1) Is listed as a part-time, full-time, temporary, or permanent employee on the payroll of an applicant, licensee, or sexually oriented business; or
- (2) Performs or provides entertainment or any other services on the sexually oriented business premises for any form of compensation or consideration.

Entertainer. A person who, for consideration, entertains for others.

Escort. A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease or other live performance that is distinguished by or characterized by an emphasis on matter depicting, simulating, describing, or relating to specified anatomical areas or specified sexual activities, for another person.

Escort agency. A person or business association that furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes, for a fee, tip, or other consideration.

Establishment. Any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (3) The addition of any sexually oriented business to any other existing sexually oriented business;
- (4) The relocation of any sexually oriented business; or
- (5) Any building, structure or premises operated as a sexually oriented business.

Hearing officer. The City Manager or his designee. The hearing officer shall exercise those powers authorized under applicable state law, the Charter of the City, and the Code of Ordinances of the City, as appropriate in the furtherance of his duties.

Hospital. A facility or area for providing health services primarily for human in-patient medical or surgical care for the sick or injured and including related facilities such as laboratories, out-patient departments, training facilities, central services facilities, and staff offices that are an integral part of the facilities.

Licensee.

- (1) A person in whose name a license to operate a sexually oriented business has been issued;
- (2) Each individual listed as an applicant on the application for a license;
- (3) Each individual who is an officer of a sexually oriented business for which a license has been issued under this article, regardless of whether the individual's name or signature appears on the license application;
- (4) Each individual who has an ownership interest in a sexually oriented business for which a license has been issued under this article, regardless of whether the individual's name or signature appears on the license application;
- (5) Each individual who exercises substantial de facto control over a sexually oriented business for which a license has been issued under this article, regardless of whether the individual's name or signature appears on the license application.

Manager. A person responsible for planning and/or directing the work of others and monitoring them when necessary.

Nude model studio. Any place where a person who appears in a state of nudity or displays specified anatomical areas is provided to be observed, viewed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration; however, nude modeling at or on behalf of any properly accredited institution of higher learning shall not fall within this definition.

Nudity or a state of nudity. A state of dress which fails to fully and opaquely cover the anus, genitals, pubic region, or perineum anal region, or the exposure of any device, costume or covering that gives the realistic appearance of or simulates the anus, genitals, pubic region, or perineum anal region, regardless of whether the nipple and areola of the human female breast are exposed, or shows the covered male genitals in a discernibly turgid state.

Operates or causes to be operated. To cause to function or to put or keep in a state of doing business. Operator means any person on the premises of a sexually oriented business who is authorized to exercise operation control of the business. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.

Person. An individual, proprietorship, partnership, corporation, association, or other legal entity.

Public park. Any City park as defined by Chapter 19 of the Code of Ordinances, or any park or recreational area operated by a city/county/state government, or any park to which the general public has access.

Regularly features or regularly shown. A consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually oriented business.

Religious institution. A building or group of buildings in which persons regularly assemble for religious worship and activities intended primarily for purposes connected with such worship or for propagating a particular form of religious belief. For the purposes of this definition, the term religious institution shall include, but not be limited to, a church, synagogue, mosque or temple.

Residential district. A single-family, duplex, townhouse, multiple-family, manufactured home, mobile home, or other residential zoning district as defined in the City's zoning ordinance.

Residential use. A single-family, duplex, multiple-family, manufactured home park, manufactured home subdivision, mobile home park, mobile home subdivision, campground, or other residential use as defined in the City's zoning ordinance.

Semi-nude or semi-nudity or state of semi-nudity. The exposure of the female nipple or areola, or the exposure of any device, costume or covering that gives the realistic appearance of or simulates the female nipple or areola, so long as the following anatomical areas of an individual are fully and opaquely covered: the anus, genitals, pubic region and the perineum anal region of the human body. The term semi-nude shall not apply to an individual exposing a female nipple or areola in the process of breastfeeding a child under that person's care.

Sexual encounter center. A business or commercial establishment that as one of its primary business purposes, offers for any form of consideration, a place where two (2) or more persons may congregate, associate, or consort for the purpose of specified sexual activities. The definition of sexual encounter center or any sexually oriented business shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

Sexually oriented business. An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or other commercial enterprise which regularly offers a service or regularly sells, rents, or exhibits devices or any other items intended to provide sexual stimulation or sexual gratification to the customer. The term "sexually oriented business" shall also mean any commercial enterprise that self-identifies as an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency or nude model studio.

Sign. Any display, design, message, pictorial, image or other representation that is:

- (1) Constructed, placed, attached, painted, erected, fastened, or manufactured in any manner whatsoever so that it is visible from the outside of a sexually oriented business; and
- (2) Used to seek the attraction of the public to any goods, services, or merchandise available at the sexually oriented business.

The term sign also includes any representation painted on or otherwise affixed to any exterior portion of a sexually oriented business establishment or to any part of the tract upon which the establishment is situated.

Specified anatomical areas.

- (1) Any of the following, or any combination of the following, when less than completely and opaquely covered:
  - (a) Any human genitals, pubic region, or pubic hair;
  - (b) Any buttock; or
  - (c) Any portion of the female breast or breasts that is situated below a point immediately above the top of the areola; or
- (2) Human male genitals in a discernibly erect state, even if completely and opaquely covered.

Specified sexual activities. Any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (2) Sex acts, actual or simulated, including intercourse, oral copulation, or sodomy;
- (3) Masturbation, actual or simulated; or
- (4) Excretory functions as part of or in connection with any of the activities set forth in subsections (1) through (3) above.

Transfer of ownership or control of a sexually oriented business. Any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities that constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- (3) The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

**Sec. 16-23. Classification.**

Sexually oriented businesses are classified as follows:

- (1) Adult arcades;
- (2) Adult bookstores, adult novelty stores or adult video stores;
- (3) Adult cabarets;
- (4) Adult motels;
- (5) Adult theaters;
- (6) Adult motion picture theaters;
- (7) Escort agencies;
- (8) Nude model studios; and
- (9) Sexual encounter centers.

**Sec. 16-24. Nonconforming uses.**

- (1) Any sexually oriented business that is in violation of Section 16-25, or any other location requirement of any other City ordinance that was legally operating at the time it was licensed, or the effective date of any amendment of such ordinance or regulation, shall be deemed a nonconforming use.
- (2) Any legally established, sexually oriented business that is in violation of this article because of annexation into the City shall be deemed to be a nonconforming use.
- (3) A sexually oriented business that is lawfully operating within the City on or after the effective date of this article shall not be rendered a nonconforming use by the subsequent location of a protected use listed in Section 16-25 within one thousand, three hundred and twenty (1,320) feet of the sexually oriented business.
- (4) Notwithstanding anything contained in this article or in the City's zoning ordinance as amended to the contrary, a legal nonconforming sexually oriented business shall be required to meet all applicable requirements of this article except locational requirements established by Section 16-25 within sixty (60) days of the date the sexually oriented business becomes nonconforming. The Board of Adjustment may grant a nonconforming sexually oriented business an extension of time to comply with these requirements if the business shows, upon timely written application, that meeting these requirements within sixty (60) days imposes an unnecessary hardship on the business.
- (5) Legal nonconforming sexually oriented businesses shall not be increased, enlarged, extended or altered except that the use may be changed to a use other than a sexually oriented business to the extent allowed by the City's zoning ordinance. A person commits an offense if he increases, enlarges, extends or alters, or causes to be increased, enlarged, extended or altered, a nonconforming sexually oriented business.

**Sec. 16-25. Location requirements.**

A person commits a violation if the person operates or causes to be operated a sexually oriented business in any zoning district other than an industrial zoning district as defined in the City's zoning ordinance.

A person commits a violation if the person operates or causes to be operated a sexually oriented business within one thousand, three hundred and twenty (1,320) feet of:

- (1) A religious institution including a church, synagogue, mosque, temple, or building which is used primarily for religious worship and related religious activities;
- (2) A public or private educational facility or child care facility, including but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges and universities. The term school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;

- (3) A boundary of a residential zoning district as defined in the City's zoning ordinance;
- (4) A public park or recreational area which has been designated for park or recreational activities, including but not limited to, a park, playground, nature trail, swimming pool, athletic field, basketball, or tennis court, pedestrian/bicycle path, or other similar public land within the City, or its ETJ;
- (5) The property line of a lot or parcel devoted to a residential use as defined in the City's zoning ordinance;
- (6) A family oriented recreation facility including but not limited to a roller skating rink, an ice skating rink or a facility devoted to children's athletic activities;
- (7) Any premise licensed pursuant to the alcoholic beverage control regulations of the State of Texas, or an agency thereof; or
- (8) A public library.

A person commits a violation if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one thousand, three hundred and twenty (1,320) feet of another sexually oriented business.

A person commits a violation if that person causes or permits the operation, establishment or maintenance of more than one sexually oriented business in the same building structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

Measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in Items (1) through (8) above. The presence of a City, county or other political subdivision boundary shall be irrelevant for the purposes of calculating and applying the distance requirements of this section.

The distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.

#### **Sec. 16-26. Sexually oriented business license required.**

A person commits an offense if the person operates or causes to be operated a sexually oriented business without a valid license, issued by the City for the particular classification of a sexually oriented business. The person, association, firm, partnership or corporation desiring to obtain a sexually oriented business license shall make an application on a form provided by the City Secretary.

The fact that a person, association, firm, partnership, corporation or other legal entity possesses other types of state or City permits or licenses does not exempt the person from the requirement of obtaining a license for a sexually oriented business.

An application for a sexually oriented business license shall only be considered to be complete if it contains all information specified in Items (1) through (14) below:

- (1) The applicant's full and true name along with any other names used in the preceding five (5) years. Any person with interest in the business shall:
  - (a) Be considered to be an applicant and shall sign the license application form;
  - (b) Provide all information and documentation required of the applicant;
  - (c) Be considered a licensee if a license is granted.
- (2) The applicant's current address;
- (3) A set of fingerprints suitable for conducting necessary background checks pursuant to this article, and the applicant's Social Security number, to be used for the same purpose;
- (4) The business name as it is to be displayed on the premises, the company name, if different than the preceding, the property address and legal description, the business mailing address, business telephone number, and any e-mail or website addresses that are to be used in conjunction with the business;
- (5) Written proof of age, in the form of a birth certificate accompanied by a current photograph, a current driver's license, or other picture identification issued by a domestic governmental agency;
- (6) The issuing jurisdiction and the effective dates of any license or permit held by the applicant relating to a sexually oriented business, and whether any such license or permit has been denied, revoked, or suspended, and if so, the reason or reasons therefor;
- (7) The name and address of the statutory agent or other agent authorized to receive service of process;
- (8) A diagram showing a plan of the premises. The diagram shall:
  - (a) Be oriented to the north, or to a designated street;
  - (b) Be drawn to a designated scale with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches;
  - (c) Designate any portion of the premises in which customers will not be permitted;
  - (d) Specify the location of all manager's stations, if applicable; and

- (e) Designate the place at which the license, if granted, will be conspicuously displayed.
- (9) An approved City sign permit accompanied by a photograph verifying posting of notification signage required by Sec. 243.075 of the Texas Local Government Code;
- (10) A list of all employees, or prospective employees, along with copies of complete updated employment application, valid driver's license, state identification card, or passport containing a photograph of the employee;
- (11) A notarized affidavit signed by each applicant and certifying all information and documentation provided with the application to be true and correct;
- (12) A nonrefundable application fee in the amount of \$750.00;
- (13) A Certificate of Occupancy, if required, issued by the City's building inspector; and
- (14) All information, supported by any necessary documentation, required by this article.

An application submitted without all of the required information, or without the application fee, shall be deemed incomplete. Incomplete applications shall be denied and within forty-five (45) business days of its receipt by the City Secretary, be returned to the applicant, accompanied by a notice specifying the reasons for application denial.

**Sec. 16-27. Issuance of sexually oriented business license.**

The annual fee for a sexually oriented business license shall be \$750.00. A sexually oriented business license shall be valid from the date of issuance through January 31 of the following year. The annual fee shall not be prorated.

The Chief of Police, or his designee, shall approve the issuance of a license by the City Secretary to an applicant within forty-five (45) days after receipt of an application, unless the Chief, or his designee, finds one (1) or more of the following to be true:

- (1) The location of the sexually oriented business is or would be in violation of Section 16-25 of this article.
- (2) The applicant failed to supply all of the information requested on the application.
- (3) The applicant gave false, fraudulent or untruthful information on the application.
- (4) An applicant is under eighteen (18) years of age.
- (5) An applicant or an applicant's spouse is overdue in payment to the Secretary of State or the City of taxes, fees, fines or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a sexually oriented business.

- (6) An applicant or an applicant's spouse has been convicted or placed on deferred disposition, probation or community supervision for a violation of a provision of this article, within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.
- (7) The license fee required by this article has not been paid.
- (8) The applicant has not demonstrated that the owner of the sexually oriented business owns or holds a lease for the property or the applicable portion thereof upon which the sexually oriented business will be situated or has a legally enforceable right to acquire the same.
- (9) An applicant or an applicant's spouse has been convicted or placed on deferred disposition, probation, or community supervision for:
  - (a) Any offense under the laws of the United States of America, another state or the Uniform Code of Military Justice for an offense described in this subsection; or
  - (b) Any of the below offenses of the state or criminal attempt, conspiracy, or solicitation to commit same;
  - (c) Any of the following offenses as described in Chapter 43 of the Texas Penal Code:
    - (i) Prostitution;
    - (ii) Promotion of prostitution;
    - (iii) Aggravated promotion of prostitution;
    - (iv) Compelling prostitution;
    - (v) Obscenity;
    - (vi) Sale, distribution or display of harmful material to a minor;
    - (vii) Sexual performance by a child;
    - (viii) Possession of child pornography;
  - (d) Any of the following offenses as described in of the Texas Penal Code:
    - (i) Public lewdness;
    - (ii) Indecent exposure;
    - (iii) Indecency with a child;
    - (iv) Sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;
    - (v) Incest, solicitation of a child or harboring a runaway child as described in Chapter 25 of the Texas Penal Code; or
    - (vi) Those crimes defined as "drug-defined offenses" or "drug-related offenses" by the Bureau of Justice Statistics Drug and Crime Data Fact Sheet, 1994, for which punishment would be classified as a felony as set forth in Section 12.04 of the Texas Penal Code;
  - (e) For which:
    - (i) Less than two (2) years have elapsed since the date of conviction, or the date of release from the terms of community supervision, probation, parole or deferred disposition or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is a misdemeanor offense; or

- (ii) Less than five (5) years have elapsed since the date of conviction, or the date of release from the terms of community supervision, probation, parole or deferred disposition or the date of release from confinement for the conviction, whichever is the later date, if the conviction is a felony offense; or
  - (iii) Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period.
- (10) The applicant or the applicant's spouse is required to register as a sex offender under the provisions of Chapter 62 of the Texas Code of Criminal Procedure.
- (11) The applicant failed to comply with any of the requirements of Sec. 243.0075 of the Texas Local Government Code regarding the posting of an outdoor sign.
- (12) The applicant of the proposed establishment is in violation of or is not in compliance with any of the requirements outlined in Section 16-27 or Section 16-25, or any other applicable law, ordinance or regulation.

An applicant, or applicant's spouse, who has been convicted of or placed on deferred disposition, probation or community supervision for an offense listed in subsection 9(c) or 9(d) above, may qualify for a sexually oriented business license only when the time period required by subsection (9)(e)(i-iii) above, has elapsed.

The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date and the address of the sexually oriented business. The license shall be posted in accordance with the provisions of Section 16-26.

**Sec. 16-28. Manager/Entertainer license required.**

A person commits an offense if the person manages and/or or entertains in a licensed sexually oriented business without a valid manager and/or entertainer license, issued by the City.

The person desiring to obtain a manager and/or entertainer license shall make an application on a form provided by the City Secretary and provide all of the following information:

- (1) A valid copy of the current sexually oriented business license for each of the sexually oriented businesses in which the manager and/or entertainer proposes to work or perform;
- (2) Applicant's name, any aliases, mailing address for receipt of notices, home address and telephone number, date and place of birth, social security number, and, in the case of entertainers, any stage names or nicknames used in entertaining;

- (3) Name and address of each sexually oriented business where the applicant intends to work;
- (4) A statement that the applicant is eighteen (18) years or older, confirmed by provision of documentation issued by a state or federal agency bearing the applicant's date of birth and photograph;
- (5) A statement that the applicant has not been convicted of, or released from confinement or conviction of, or received an order for, deferred adjudication or disposition, of any felony or any misdemeanor (other than traffic offenses) where such felony or misdemeanor violation constitutes a specified criminal act; the fact that the applicant has appealed such action shall have no effect on the disqualification of the applicant;
- (6) A statement that the applicant has not been convicted of or released from confinement for conviction of, or received an order for, deferred adjudication or disposition, whichever event is later, of any other felony within the five (5) years or any other misdemeanor (other than traffic offenses) within the two (2) years immediately preceding the date of application; the fact that the applicant has appealed such action shall have no effect on the disqualification of the applicant;
- (7) A statement that the applicant has not had a sexually oriented business manager or entertainer license, or comparable license, of any type revoked within the past five (5) years nor one suspended within the past two (2) years, immediately preceding the date application, the fact that the applicant has appealed such action shall have no effect on the disqualification of the applicant;
- (8) A statement that the applicant has not had, within the two (2) years immediately preceding the date of application, an ownership, operational or managerial position, of a sexually oriented business that has demonstrated an inability to operate in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers;
- (9) A statement that the applicant does not owe delinquent taxes, assessments or other financial obligations to the City, or if such debts and/or obligations are owed, that arrangements satisfactory to the City Manager have been made for the payment of such debts or obligations; and
- (10) A statement signed under oath by the applicant that the information contained in the application is true and correct; that the applicant grants permission to the city to perform any necessary background checks on the applicant; and that the applicant has read all the provisions of the Chapter regulating sexually oriented businesses.

If the applicant fails to provide all of the information required by this Section, or if the information provided is false or misleading, the application shall be denied. Further, a license issued under this Section may be revoked and/or suspended after issuance if the information provided by the applicant is later found to be false or misleading.

**Sec. 16-29. Issuance of manager/entertainer license.**

The annual fee for a manager and/or entertainer license shall be \$150.00. A manager and/or entertainer's license shall be valid from the date of issuance through January 31 of the following year. The annual fee for a manager/entertainer license shall not be prorated.

If the applicant meets all the applicable requirements, the Chief of Police, or his designee, shall approve the issuance of a license by the City Secretary to an applicant within forty-five (45) days after receipt of a complete application.

In the event the application is determined incomplete, the notification to the applicant shall include a written explanation of the reason(s) why the application is incomplete. The applicant may resubmit the application within ten (10) days of the City's written notice to the applicant. Once a completed application has been re-submitted, the Police Chief shall have forty-five (45) days to approve or disapprove the application.

The Chief of Police shall base his decision on the information provided by the applicant, the police department's investigation, license requirements and denial criteria, and any other information provided by other City departments or governmental agencies. The applicant shall be notified in writing within ten (10) days after the Chief's decision.

The license, if granted, shall state on its face: the license number, the name of the license holder (including any stage names), a photograph of the licensee, the date of issuance and expiration, the address of the sexually oriented business where such license is applicable.

A valid copy of the manager's license shall be posted in accordance with the provisions of Section 16-26. A valid copy of the entertainer's license shall not be posted but shall be available for inspection on the premises of the sexually oriented business at any time.

**Sec. 16-30. Certificate of occupancy.**

Prior to submitting an application for a sexually oriented business license, the applicant must obtain a certificate of occupancy from the City's building official.

If a building and/or other construction related permit is required under applicable City ordinances, the applicant shall submit to the building inspection department, all necessary plans and permit applications. The building official shall cause all plans and permit applications to be processed and reviewed under the terms of applicable codes and ordinances. Upon approval of a final inspection, by applicable City departments, the building official shall issue a certificate of occupancy.

**Sec. 16-31. Inspection and maintenance of records.**

A licensee, owner, operator and/or employee of a sexually oriented business shall be subject to regulation under this article and shall permit representatives of the City, including but not limited to the police department, health department, fire department, building inspections division and code enforcement division to inspect all portions of the premises and to inspect the records required to be maintained under this article, for the purpose of ensuring compliance with all applicable regulations, at any time it is occupied or open for business.

A licensee, owner or operator of a sexually oriented business commits an offense if:

- (1) The person operates the establishment without maintaining a current list of all employees of the business, along with a completed, updated employment application for each employee. A legible copy of a valid driver's license, state identification card, or passport, with a photograph, together with an original photograph accurately depicting the employee as the person appears at the time the person is hired, shall be required and maintained on the premises with the employee's application.
- (2) The person refuses to permit a lawful inspection of the records and premises by a representative of the police department or other department of the City at any time the sexually oriented business is occupied or open for business.
- (3) The person does not maintain the required records on the premises of the licensed establishment.
- (4) The person does not permit representatives of the police department to take photographs of the licensee, owner, operator or employee of the sexually oriented business, for official police department purposes, at any time it is occupied or open for business.

The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

**Sec. 16-32. Expiration and renewal of licenses.**

An application for renewal of a sexually oriented business license shall be submitted to the City Secretary at least thirty (30) days before the expiration date of the then current and valid license. A licensee that fails to renew a license shall forfeit the right to conduct business within the City until such time as the renewal is approved. A sexually oriented business license may be renewed by submission to the City Secretary of an application on the form prescribed by the City Secretary and payment of a nonrefundable renewal fee of \$1,000.00. Annual renewal fees shall not be prorated.

An application for renewal of a manager and/or entertainer license shall be submitted to the City Secretary at least thirty (30) days before the expiration date of the then current and valid license. A person that fails to renew their license shall forfeit the right to manage and/or entertain within the City until such time as the renewal is approved. A manager and/or entertainer license may be renewed by submission to the City Secretary of an application on the form prescribed by the City Secretary and payment of a nonrefundable renewal fee of \$75.00. Annual renewal fees shall not be prorated.

**Sec. 16-33. Suspension of license.**

The Chief of Police shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the Chief determines that a licensee or an employee of a licensee has:

- (1) Violated or is not in compliance with any section of this article; or
- (2) Refused to allow an inspection of the sexually oriented business premises as authorized by this article; or
- (3) Knowingly permitted gambling by any person on the sexually oriented business premises; or
- (4) Demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.

**Sec. 16-34. Revocation of license.**

The Chief of Police shall issue a written notice of intent to revoke a sexually oriented business license if:

- (1) A cause of suspension in Section 16-33 occurs and the license has been suspended one (1) other time within the preceding twelve (12) months;
- (2) On two (2) or more occasions within a five (5) year period of time a licensee(s) or operator(s) (or any combination thereof) has/have been convicted of or placed on deferred adjudication or disposition, probation or community supervision for conduct occurring in a licensing period on the premises of a sexually oriented business that constitutes any of the offenses of the state or criminal attempt, conspiracy, or solicitation to commit same for:

- (a) Any of the following offenses as described in Chapter 43 of the Texas Penal Code:
    - (i) Prostitution;
    - (ii) Promotion of prostitution;
    - (iii) Aggravated promotion of prostitution;
    - (iv) Compelling prostitution;
    - (v) Obscenity;
    - (vi) Sale, distribution or display of harmful material to a minor;
    - (vii) Sexual performance by a child;
    - (viii) Possession of child pornography;
  - (b) Any of the following offenses as described in Chapter 21 of the Texas Penal Code:
    - (i) Public lewdness;
    - (ii) Indecent exposure;
    - (iii) Indecency with a child;
  - (c) Sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;
  - (d) Incest, solicitation of a child or harboring a runaway child as described in Chapter 25 of the Texas Penal Code; or
  - (e) Those crimes defined as “drug-defined offenses” or “drug-related offenses” by the Bureau of Justice Statistics Drug and Crime Data Fact Sheet, 1994, for which punishment would be classified as a felony as set forth in section 12.04 of the Texas Penal Code.
- (3) A licensee or operator gave false or misleading information in the material submitted to the Chief of Police during the application process;
  - (4) A licensee or operator has knowingly allowed possession, use or sale of a controlled substance on the premises;
  - (5) A licensee or operator has on two (2) or more occasions knowingly allowed prostitution on the premises;
  - (6) A licensee or operator knowingly operated the sexually oriented business during a period of time when the licensee’s license was suspended;
  - (7) A licensee or operator has, on two (2) or more occasions, knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or sexual contact to occur in or on the licensed premises. The term sexual contact shall have the same meaning as it is defined in Section 21.01, Texas Penal Code;
  - (8) A licensee is delinquent in payment to the City for hotel occupancy taxes, ad valorem taxes or sales taxes related to the sexually oriented business;
  - (9) The licensee is required to register as a sex offender under the provisions of Chapter 62 of the Texas Code of Criminal Procedure; or
  - (10) A license is transferred in violation of Section 16-36;

The fact that a conviction is being appealed shall have no effect on the revocation of the license.

Subsection (7) above does not apply to adult motels as a ground for revoking the license, unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation or sexual contact to occur in a public place or within public view.

**Sec. 16-35. Denial, suspension and revocation procedures.**

If the Chief of Police determines that facts exist for denial, suspension or revocation of a license under this article, the City Secretary shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend or revoke the license, including the grounds therefor, by personal delivery, or by certified mail.

The notification shall be directed to the most current business address on file with the City. Within five (5) business days of receipt of such notice, the respondent may provide to the City Secretary, in writing, a response that shall include a statement of reasons why the license or permit should not be denied, suspended or revoked. Within ten (10) business days of the receipt of respondent's written response, the City Secretary shall notify respondent in writing of the hearing date on respondent's denial, suspension or revocation proceeding.

Within fifteen (15) business days of the City Secretary's receipt of respondent's written response, the City Manager shall conduct a hearing at which respondent shall have the opportunity to be represented by counsel and present evidence and witnesses on his or her behalf. If a response is not received by the City Secretary in the time stated above or, if after the hearing, the City Manager finds that grounds as specified in this article exist for denial, suspension or revocation, then such denial, suspension, or revocation shall become final five (5) business days after the hearing unless within that time the City Manager sends, by certified mail, written notice that the license has been denied, suspended, or revoked or if the license will be issued or allowed to remain in effect. If the license is denied, suspended or revoked such notice shall include a statement advising the applicant or licensee of the right to appeal such decision to a court of competent jurisdiction.

If after a hearing, the City Manager finds that insufficient grounds exist for the denial, suspension or revocation of a license, then within five (5) business days after the hearing, the City Manager shall withdraw the intent to deny, suspend or revoke the license, and shall so notify the respondent in writing of such action by certified mail and shall contemporaneously issue the license or allow the license to remain in effect, as applicable.

When a decision to deny, suspend, or revoke a license becomes final, the applicant or licensee (aggrieved party) whose application of a license has been denied, or whose license has been suspended or revoked, shall have the immediate right to appeal such action to a court of competent jurisdiction. Until the court of competent jurisdiction issues its final judgment, the decision to deny, suspends or revoke a license shall remain in effect and be enforced.

A sexually oriented business license or the ownership or control of a sexually oriented business which is directly or indirectly a part of civil litigation, an administrative hearing, or procedures regarding the denial, suspension or revocation of the license, such license shall not be transferred, sold or given to another person during the pendency of the judicial or administrative processes.

**Sec. 16-36. Transfer of license.**

A person commits a violation if the person transfers a license or permits to another person or operates a sexually oriented business under the authority of a license at any place other than the address designated on the license. A transfer of a license is deemed to have occurred if there is a transfer of ownership or control of a sexually oriented business.

A person commits a violation if the person counterfeits, forges, changes, defaces or alters a license.

**Sec. 16-37. Regulations pertaining to exhibition of sexually explicit films, videos, or live entertainment in viewing rooms.**

A person who operates or causes to be operated a sexually oriented business (other than an adult motel) which exhibits on the premises, in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video, or live entertainment which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

- (1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises providing all information specified in Section 16-26(8) of this article. Manager stations shown on this diagram shall be dimensioned and shall not contain in excess of thirty-two (32) square feet of floor area per station.
- (2) No alteration in the configuration or location of a manager's station may be made without the prior approval of the City.
- (3) It is the duty of the licensee of the premises to ensure that at least one (1) employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

- (4) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two (2) or more managers' stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
- (5) It shall be the duty of the licensee to ensure that the view area specified in subsection (4) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks, or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (1) of this section.
- (6) No viewing room may be occupied by more than one (1) person at any time.
- (7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5) foot candles as measured at the floor level.
- (8) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- (9) No licensee shall allow openings of any kind to exist between viewing rooms or booths.
- (10) No person shall make or attempt to make an opening of any kind between viewing rooms or booths.
- (11) The licensee shall, during each business day, regularly inspect the walls between the viewing booths or rooms to determine if any openings or holes exist.
- (12) The licensee shall cause all floor coverings in viewing booths or rooms to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
- (13) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board, or other porous material shall be used within forty-eight (48) inches of the floor.

A person having a duty under subsections (1) through (13) above commits a violation if he or she knowingly fails to fulfill that duty.

**Sec. 16-38. Additional regulations for escort agencies.**

An escort agency shall not employ any person under the age of eighteen (18) years.

A person commits a violation if the person acts as an escort, or agrees to act as an escort, for any person under the age of eighteen (18) years.

**Sec. 16.39. Additional regulations concerning public nudity.**

A person commits a violation if the person knowingly and intentionally, in a sexually oriented business, appears nude or in a state of nudity or engages in specified sexual activities.

A person commits a violation if the person knowingly and intentionally, in a sexually oriented business, appears in a semi-nude state, unless the person is an employee who, while semi-nude, is at least six (6) feet from any patron or customer and on a stage at least two (2) feet from the floor.

A person commits a violation if the person receives directly any pay or gratuity from any patron or customer, or if any patron or customer pays or gives any gratuity directly to the person, while the person is an employee and semi-nude in a sexually oriented business.

A person commits a violation if the person, while semi-nude, knowingly and intentionally touches a part on or the clothing of a patron or customer.

**Sec. 16-40. Prohibition against children in a sexually oriented business.**

A person commits a violation if the person knowingly allows a person under the age of eighteen (18) years on the premises of a sexually oriented business.

**Sec. 16-41. Hours of operation.**

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of twelve o'clock (12:00) a.m. and eight o'clock (8:00) a.m. on weekdays and Saturdays, and twelve o'clock (12:00) a.m. and noon (12:00) p.m. on Sundays.

**Sec. 16.42. Exemptions.**

It is a defense to prosecution under Section 16-39 that a person appearing in a state of nudity did so in a modeling class operated:

- (1) By a proprietary school, licensed by the state; a college, junior college, or university supported entirely or partly by taxation;
- (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:
  - (a) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
  - (b) Where in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and
  - (c) Where no more than one (1) nude model is on the premises at any one time.

**Sec. 16-43. Violation a misdemeanor.**

Except as otherwise stated herein, any person, firm, corporation, agent or employee thereof who violates any provision of this article (a violation) shall be guilty of a Class A misdemeanor punishable by a fine not to exceed \$4,000.00 and/or confinement in jail for a term not to exceed one (1) year.

Each day that a violation exists or is permitted to exist shall constitute a separate offense.

The refusal to issue a license based on ineligibility shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the refusal to issue a license based on ineligibility.

The revocation or suspension of a license shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the revocation or suspension of a license.

**Sec. 16-44. Civil remedies.**

The City reserves the right to seek all available civil remedies in a court of law to include, but not be limited to, injunction and civil fines for any violations of this article.

Any person, firm, corporation, agent or employee thereof who violates any provision of this article, in addition to any criminal remedies, shall be subject to a civil fine up to and including one thousand dollars (\$1,000.00) per day for each day the violation occurs.

**Sec. 16.45. Notice of violation.**

The City shall provide to a sexually oriented business written notice of each citation issued to an operator or employee of the business for an alleged violation of this article. The notice may be sent by certified mail, return receipt requested, to the business address of the sexually oriented business as it appears on its license application, to the attention of the licensee, as it appears on the license application, or may be personally delivered to the licensee. A failure of the City to provide such notice is not a violation of this article, and shall not affect or invalidate the citation.

**Sec. 16-45 – 16.49. RESERVED.**

**SECTION 4.**  
**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 violations occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

**SECTION 5.**  
**SEVERABILITY**

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. City hereby declares that it would have passed this Ordinance, and each section, subsection, sentences, clauses and phrases be declared unconstitutional or invalid.

**SECTION 6.**  
**REPEALER**

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

**SECTION 7.**  
**EFFECTIVE DATE**

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

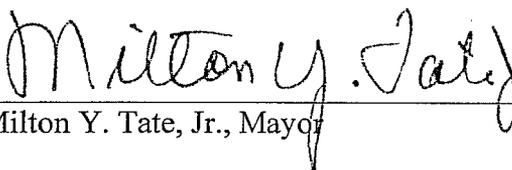
**SECTION 8.**  
**PROPER NOTICE AND MEETINGS**

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.

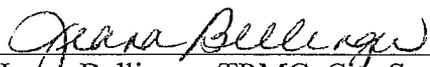
**PASSED AND APPROVED**, on its first reading at the meeting of the City Council held on this the 21<sup>st</sup> day of July, 2011.

**PASSED AND APPROVED**, on its second reading at the meeting of the City Council held on this the 25<sup>th</sup> day of July, 2011.



  
Milton Y. Tate, Jr., Mayor

**ATTEST:**

  
Jeana Bellinger, TRMC, City Secretary



## AGENDA FORM

<b>DATE OF MEETING:</b> October 20, 2011	<b>DATE SUBMITTED:</b> October 17, 2011	
<b>DEPT. OF ORIGIN:</b> Administration	<b>SUBMITTED BY:</b> Jeana Bellinger	
<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 an Order Authorizing the Calling of a Special Election on January 21, 2012 to Fill the Unexpired Term of the Place 5 – At Large Councilmember		
<b>SUMMARY STATEMENT:</b> The recent resignation of Place 5 At Large Councilmember Charlie Pyle requires the City Council to order a Special Election to fill his vacancy. The Texas Constitution mandates that a city with terms of office greater than two (2) years must hold a Special Election to fill the vacancy within 120 days after the vacancy occurs. The proposed election calendar calls for the Special Election to be held on Saturday, January 21 <sup>st</sup> with Early Voting to begin on Wednesday, January 4, 2012. The first day for candidate to file for a place on the ballot will be Friday, October 21, 2011.  Attached is the English and Spanish versions of the Election Order for the January 21, 2012 City of Brenham Special Election. The Special Election will be to fill the unexpired term of the Place 5 – At Large Position previously held by Charlie Pyle. Due to the City Council’s recent action pursuant to SB 100, the current term of the Place 5 – At Large Position will expire in May of 2013. Please note that the Ward 4 polling place has been moved to the Blinn Student Center due to a conflict in scheduled activities in the gymnasium on Election Day.		
<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> (1) Election Order in English and Spanish; and (2) Special Election Calendar		
<b>FUNDING SOURCE (Where Applicable):</b>		

**RECOMMENDED ACTION:** Approve the Order authorizing the calling of a Special Election on January 21, 2012 to fill the unexpired term of the Place 5 – At Large position.

**APPROVALS:** Terry K. Roberts

## **ORDER**

### **AN ORDER PROVIDING FOR A SPECIAL ELECTION TO BE HELD ON SATURDAY, JANUARY 21, 2012, FOR THE PURPOSE OF ELECTING A COUNCILMEMBER FOR THE CITY OF BRENHAM, TEXAS**

A special election is hereby ordered to be held on **JANUARY 21, 2012**, the same being the third Saturday in January, for the purpose of:

#### **ELECTING ONE COUNCILMEMBER TO THE CITY COUNCIL TO FILL THE UNEXPIRED TERM OF COUNCILMEMBER PLACE 5 – AT LARGE.**

Early voting by personal appearance will be conducted every weekday at the **Washington County Annex Building, 100 S. Park Street, Brenham, Texas**, as follows:

**Wednesday, January 4, 2012 through Tuesday, January 17, 2012  
from 8:00 a.m. to 5:00 p.m., provided, however, that Early Voting shall  
be conducted for twelve (12) hours on the following weekdays:**

**Monday, January 9, 2012 and Tuesday, January 10, 2012 from  
8:00 a.m. to 8:00 p.m.**

The first day for a candidate to file an application for a place on the special election ballot is Friday, October 21, 2011.

The last day for a candidate to file an application for a place on the special election ballot is 5:00 p.m., Monday, November 21, 2011.

All applications for ballots by mail should be mailed to:

**Jeana Bellinger, TRMC  
Early Voting Clerk & City Secretary  
City of Brenham  
P. O. Box 1059  
Brenham, Texas 77834-1059**

Applications for ballot by mail must be received no later than the close of business on **January 6, 2012**.

Said election shall be held at the following designated voting places in the City of Brenham, Texas, for voters of the particular Wards:

Ward 1: Nancy Carol Roberts Memorial Library  
100 West Academy  
Brenham, Texas

Ward 2: Alton Elementary School Gymnasium  
304 Kerr Street  
Brenham, Texas

Ward 3: Brenham Junior High Band Hall  
1200 Carlee Drive  
Brenham, Texas

Ward 4: Blinn Jr. College Student Center  
1007 Walter Schwartz Way  
Brenham, Texas

The City shall provide at least one AutoMARK v. 1.0. Voting System in each polling place in every polling location used to conduct this election.

**PASSED AND APPROVED** by the City Council of the City of Brenham on this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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

**ATTEST:**

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



## FORMULARIO DE AGENDA

<b>FECHA DE REUNION:</b> 20 de Octubre, 2011	<b>FECHA DE PRESENTACIÓN:</b> 17 de Octubre, 2011	
<b>DEPT. DE ORIGIN:</b> Administracion	<b>PRESENTADA POR:</b> Jeana Bellinger	
<b>TIPO DE REUNION:</b>	<b>CLASIFICACIÓN:</b>	<b>ORDENANZA:</b>
<input checked="" type="checkbox"/> <b>REGULAR</b>	<input type="checkbox"/> <b>AUDIENCIA PUBLICA</b>	<input type="checkbox"/> <b>1<sup>RA</sup> LECTURA</b>
<input type="checkbox"/> <b>ESPECIAL</b>	<input type="checkbox"/> <b>CONSENTIMIENTO</b>	<input type="checkbox"/> <b>2<sup>DA</sup> LECTURA</b>
<input type="checkbox"/> <b>SESSION EJECUTIVA</b>	<input checked="" type="checkbox"/> <b>REGULAR</b>	<input type="checkbox"/> <b>RESOLUCIÓN</b>
	<input type="checkbox"/> <b>SESSION DE TRABAJO</b>	
<b>DESCRIPCIÓN DE ASUNTO EN AGENDA:</b> Considerar y posiblemente actuar sobre una orden para una elección Especial que se efectuara el 21 de Enero, 2012 Con el Propósito de Elegir Un (1) miembro del Concejal para llenar el resto del termino del Lugar 5-Distrito Abierto.		
<b>DECLARACIÓN DE RESUMEN:</b> La reciente resignación del Concejal Charlie Pyle Lugar 5-Distrito Abierto requiere que el Ayuntamiento ordene una Elección Especial para llenar su vacante. Los mandatos de La Constitución de Texas exigen que una ciudad con términos de puesto mayor de dos (2) anos debe llevar a cabo una Elección Especial para llenar la vacante dentro de 120 días después que la vacante ocurre. El calendario electoral propuesto exige que la elección se efectúe el Sábado 21 de Enero con elecciones tempranas comenzando el Miércoles, 4 de Enero, 2012. El primer día que un candidato puede entregar una solicitud para un lugar en la papeleta es el Viernes, 21 de Octubre, 2011.  Adjunto están las versiones en Inglés y en Español de la Orden de Elección para la Elección Especial de la ciudad de Brenham que se conducirá el 21 de Enero, 2012. La Elección Especial será para llenar el resto del termino del Lugar 5-Distrito Abierto que previamente tenia Charlie Pyle. Debido a la reciente acción del Ayuntamiento conforme a SB 100, el termino actual del Lugar 5-Distrito Abierto expirara en Mayo 2013. Favor de notar que el lugar de votar para el Distrito 4 se ha trasladado a el Blinn Student Center debido a un conflicto de actividades previamente programadas para el gimnasio el día de la elección.		
<b>ANÁLISIS POR EL PERSONAL (DE ORDENANZAS O ASUNTOS REGULARES DE AGENDA):</b>		
<b>A. PROS:</b>		
<b>B. CONTRAS:</b>		
<b>ALTERNATIVAS (EN ORDEN DE PREFERENCIA SUGERIDA POR EL PERSONAL):</b>		
<b>ADJUNTAMIENTOS:</b> (1) Orden de elección en Ingles y en Español; y (2) Calendario Electoral Especial.		
<b>PROCEDENCIA DE FONDOS (CUANDO APLICABLE):</b>		

**ACCIÓN RECOMENDADA:** Aprobar la orden autorizando el llamamiento de una Elección Especial para llenar el resto del termino del Lugar 5-Distrito Abierto el 21 de Enero, 2012.

**APROBACIONES:** Terry K. Roberts

## **ORDEN**

### **UNA ORDEN PROVEYENDO PARA UNA ELECCION ESPECIAL QUE TENDRA LUGAR EL SABADO, 21 DE ENERO, 2012 CON EL PROPOSITO DE ELEGIR UN CONCEJAL PARA LA CIUDAD DE BRENHAM, TEXAS**

Por este medio esta ordenada una elección general para el 21 de Enero, 2012, el mismo siendo el tercer Sábado en Enero con el propósito de:

### **ELEGIR UN CONCEJAL PARA POSICION EN EL CONCILIO: PARA LLENAR EL RESTO DEL TERMINO DEL CONCEJAL DE LUGAR 5-DISTRITO ABIERTO.**

Votación temprana efectuada en persona será conducida cada día entre semana en el **Washington County Annex Building, 100 S. Park Street, Brenham, Texas** como sigue:

**Miércoles, 4 de Enero, 2012 al Martes, 17 de Enero, 2012 de las 8:00 a.m. hasta las 5:00 p.m., sin embargo, proveyendo que Votación Temprana se lleve a cabo por doce (12) horas consecutivas en los siguientes días de la semana:**

**Lunes, 9 de Enero, 2012 y Martes, 10 de Enero, 2012  
de las 8:00 a.m. a las 8:00 p.m.**

El primer día que un candidato puede entregar una solicitud para un lugar en la papeleta de la elección especial es el **Viernes, 21 de Octubre, 2011.**

El ultimo día que un candidato puede entregar una solicitud para un lugar en la papeleta de la elección especial es el **Lunes, 21 de Noviembre, 2011.**

Aplicaciones para papeletas por correo deben ser enviadas a:

**Jeana Bellinger, TRMC  
Early Voting Clerk & City Secretary  
City of Brenham  
P. O. Box 1059  
Brenham, Texas 77834-1059**

Aplicaciones para papeletas por correo tienen que recibirse a no tardar el **6 de Enero, 2012** antes de la hora de cerrar la oficina.

Dicha elección se efectuara en lugares designados para votar por cada distrito particular de la ciudad de Brenham, Texas como sigue:

Distrito 1: Nancy Carol Roberts Memorial Library  
100 West Academy  
Brenham, Texas

Distrito 2: Alton Elementary School Gymnasium  
304 Kerr Street  
Brenham, Texas

Distrito 3: Brenham Junior High Band  
1200 Carlee Drive  
Brenham, Texas

Distrito 4: Blinn Student Center  
1007 Walter Schwartz Way  
Brenham, Texas

La ciudad proveerá por lo menos un Auto MARK v. 1.0 Sistema de Votar en cada lugar de votar en toda localidad usada para conducir esta elección.

**ACEPTADO Y APROBADO** en este día por el Concilio del Municipio de Brenham en este \_\_\_\_ día de \_\_\_\_\_, 2011.

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MILTON Y. TATE, JR.  
Alcalde

**ATESTIGUAR:**

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JEANA BELLINGER, TRMC  
Secretario de Ciudad

**CITY OF BRENHAM - SPECIAL ELECTION**

**January 21, 2012**

# of Days	Date	Action
124	Monday, September 19, 2011	Obtain supply of election forms (M§7.11, 18.10)
124	Monday, September 19, 2011	Review steps for an election; as listed in Election Manual for possible
99	Friday, October 14, 2011	action and/or submission to DOJ for preclearance (M§9.02, 20.06, 14.03)
<b>121</b>	<b>Thursday, September 22, 2011</b>	<b>Last day to begin posting on bulletin board the NOTICE of the dates of the filing period (M§11.05(f))</b> *
<b>103</b>	<b>Monday, October 10, 2011</b>	<b>Recommended period for CALLING ELECTION and POSTING</b>
<b>88</b>	<b>Tuesday, October 25, 2011</b>	<b>NOTICE OF ELECTION on bulletin board (M§10.03 and 10.12)</b>
<b>103</b>	<b>Monday, October 10, 2011</b>	<b>Recommended period to submit requests for PRECLEARANCE to</b>
<b>85</b>	<b>Friday, October 28, 2011</b>	<b>Department of Justice (M§20.06)</b>
<b>92</b>	<b>Friday, October 21, 2011</b>	<b>First day for FILING APPLICATION for place on ballot (M§11.05)</b>
92	Friday, October 21, 2011	First day for FILING DECLARATION OF WRITE-IN (M§11.10)
88	Tuesday, October 25, 2011	Recommended last day for order DESIGNATING PRECINCTS AND POLLING PLACES (M§3.07)
64	Friday, November 18, 2011	Recommended last day to POST 72 HOUR NOTICE OF DRAWING for order of names on ballot (M§8.06)
<b>62</b>	<b>Monday, November 21, 2011</b>	<b>Last day for ORDERING THE ELECTION (M§10.03)</b>
<b>62</b>	<b>Monday, November 21, 2011</b>	<b>Last day for FILING APPLICATION FOR PLACE ON BALLOT (M§11.05; 11.06)</b>
60	Tuesday, November 22, 2011	Last day to deliver notice to County Clerk and Voter Registrar (M§10.16)
60	Tuesday, November 22, 2011	First day to accept applications for voting by mail ballot (M§16.51)
59	Wednesday, November 23, 2011	Recommended period to CONDUCT DRAWING FOR ORDER OF
57	Friday, November 25, 2011	NAMES ON BALLOT (M§8.06)
57	Friday, November 25, 2011	Last day for a write in candidate to declare candidacy (M§11.10)
54	Monday, November 28, 2011	Recommended period for APPOINTING ELECTION JUDGES
43	Friday, December 09, 2011	(M§4.03, 4.04, 4.05, 10.15)
53	Tuesday, November 29, 2011	Last day for a candidate to withdraw (M§8.05, 11.22, 11.23, 11.24)
51	Thursday, December 01, 2011	Recommended date to print ballots (M§8.16)
50	Friday, December 02, 2011	Beginning date of MANDATORY OFFICE HOURS (M§2.15)
45	Wednesday, December 07, 2011	First day to MAIL EARLY VOTING BALLOTS (M§16.57)
38	Wednesday, December 14, 2011	Last day to MAIL EARLY VOTING ballots (M§16.57)
30	Thursday, December 22, 2011	1st report of campaign contributions & expenditures due (M§18.06)
30	Thursday, December 22, 2011	Last day to submit voter registration application (M§6.23, 6.25)
30	Thursday, December 22, 2011	Recommended last day to request voter lists (M§6.32, 6.35, 7.42)
30	Thursday, December 22, 2011	PERIOD FOR PUBLISHING NOTICE
10	Wednesday, January 11, 2012	OF ELECTION (M§10.12, 20.04)
21	Saturday, December 31, 2011	Last day for POSTING NOTICE OF ELECTION (M§10.12(c))
18	Tuesday, January 03, 2012	Last day for publication of Notice of the test of automatic tabulating equipment to be used in Early Voting (M§7.40)
<b>17</b>	<b>Wednesday, January 04, 2012</b>	<b>FIRST DAY OF EARLY VOTING (M§16.21, 16.22(d)&amp;(i))</b>
15	Friday, January 06, 2012	Last day to receive application from voter in person for mail ballot (M§16.51)
15	Friday, January 06, 2012	Last day for conducting first test of automatic tabulating equipment for early voting (M§7.40(c)&(d))
15	Friday, January 06, 2012	Last day for NOTIFYING JUDGES of duty to hold the election (M§10.15(a))
15	Friday, January 06, 2012	Last day to challenge write-in candidate for compliance (M§11.10(i))
10	Wednesday, January 11, 2012	Last day for PUBLICATION OF NOTICE OF ELECTION (M§10.12)
8	Friday, January 13, 2012	2nd report of campaign contributions & expenditures due (M§18.06, 18.08)
7	Friday, January 13, 2012	Last day to receive application by mail for a mail ballot (M§16.51(b), 16.55(b))
6	Sunday, January 15, 2012	Last day to publish notice of first test of automatic tabulating equipment to be used at a polling place on election day (M§7.40(b) & (d))
5	Monday, January 16, 2012	Last day to publish notice of first test of automatic tabulating equipment to be used at a central counting station (M§7.40(b) & (d))
<b>4</b>	<b>Tuesday, January 17, 2012</b>	<b>LAST DAY OF EARLY VOTING (M§16.21(c), 16.74(a) &amp; (c))</b>
3	Wednesday, January 18, 2012	Last day to conduct first test of automatic tabulating equipment to be used at a polling place on election day (M§7.40(c) & (d))

**CITY OF BRENHAM - SPECIAL ELECTION**

**January 21, 2012**

<b># of Days</b>	<b>Date</b>	<b>Action</b>
2	Thursday, January 19, 2012	Last day to conduct test of automatic tabulating equipment to be used at a central counting station (M§7.40(b))
<b>0</b>	<b>Saturday, January 21, 2012</b>	<b>ELECTION DAY</b>
0	Saturday, January 21, 2012	UNOFFICIAL TABULATION OF RESULTS (M§9.35)
3	Tuesday, January 24, 2012	Provide official STATEMENT OF ELECTED OFFICER and OATH OF OFFICE to candidate (M§12.32(d))
3	Tuesday, January 24, 2012	Period for OFFICIAL CANVASS and issuance of CERTIFICATE OF ELECTION (M§9.42(b), 9.44)
11	Wednesday, February 01, 2012	
8	Sunday, January 29, 2012	Period for ordering RUN OFF ELECTION, if needed (M§14.04)
17	Tuesday, February 07, 2012	

**\* Due to the time constraints of this Election, the Secretary of State advised that I should post this notice immediately following Council's order of the Special Election**



## AGENDA FORM

<b>DATE OF MEETING:</b> October 20, 2011	<b>DATE SUBMITTED:</b> September 23, 2011	
<b>DEPT. OF ORIGIN:</b> Administration	<b>SUBMITTED BY:</b> Terry K. Roberts	
<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-11-018 Nominating Candidates for Election to the Washington County Appraisal District Board of Directors		
<p><b>SUMMARY STATEMENT:</b> The governing body of the Washington County Appraisal District is nominated and appointed by the governing bodies that levy and collect a property tax. A ballot will be prepared for one of your November meetings based on the nominations received from the governmental entities. Attached is a letter from Chief Appraiser Willy Dilworth outlining the process and reporting on the status of the five current board members. Three have expressed a willing to serve again (Delton Keorth, Johanna Fatheree and John Schaer). Two of the members, John Garnett and Albert Wright do not wish to be considered for re-election.</p> <p>Two names are being presented for consideration in addition to those who are willing to stay on the board. The names of the two are Charles Gaskamp and Joel Romo. Both are willing to have their names placed in nomination.</p>		
<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) Letter from Chief Appraiser, Willy Dillworth; and (2) Resolution No. R-11-018		
<b>FUNDING SOURCE (Where Applicable):</b> N/A		
<b>RECOMMENDED ACTION:</b> Approve Resolution No. R-11-018 nominating five individuals to serve on the Washington County Appraisal District Board of Directors.		
<b>APPROVALS:</b> Terry Roberts		

# WASHINGTON COUNTY APPRAISAL DISTRICT

**P. O. BOX 681  
BRENHAM, TEXAS 77834-0681  
(979) 277-3740**

September 8, 2011

City of Brenham  
Mr. Milton Tate  
PO Box 1059  
Brenham TX 77834-1059

Re: Nomination and Election of Washington County Appraisal  
District Board Members

Dear Mr. Tate,

It is again time to elect the board members of the Washington County Appraisal District. As in years past, each voting taxing entity may nominate from one to five candidates to serve on the Washington County Board. **All nominations must be by written resolution and must be received in my office before November 1, 2011.**

The calculation of the number of votes your entity will receive is illustrated below. Please examine this calculation and contact me with any questions you may have.

<u>ENTITY</u>	<u>2012 Election - 2010 TAX LEVY</u>	<u>% of TOTAL VOTING MEMBERS LEVY</u>	<u>VOTES</u>
Washington County	\$11,222,044	26.0221%	1301
City of Burton	\$ 71,411	0.1655%	8
City of Brenham	\$4,921,760	11.4127%	571
Burton I.S.D.	\$4,286,916	9.9406%	497
Brenham I.S.D.	\$22,450,111	52.0583%	2603
<u>Giddings ISD</u>	<u>\$172,696</u>	<u>0.4004%</u>	<u>20</u>
Total Lev y	\$43,124,938	100.0000%	5,000

To arrive at your taxing unit's votes, please use the following formula:

$(\text{UNIT'S 2010 LEVY} / \text{TOTAL OF ALL LEVIES}) \times 5,000 = \# \text{ OF VOTES}$

After all nominations have been received, the official ballot will be prepared and delivered to the presiding officer of each voting taxing entity. The entity will then cast their votes for whichever candidate(s) they choose and submit the ballot to this office before November 31, 2011.

For those of you who are interested, the current members of the Board of Directors of our appraisal district are as follows:

John Garnett  
Delton Koerth  
Albert Wright  
Johanna Fatheree  
John Schaer

Three of these board members have indicated a willingness to serve an additional two-year term if it is your desire. They are Delton Koerth, Johanna Fatheree, and John Schaer. The other two board members would like to step down at the end of this term in December. I have enclosed a copy of the qualifications for serving on the board of directors. I trust you will call (277-3749) if you have any questions concerning these qualifications or the election process.

As an aside, I would like to point out that Mr. Garnett is one of the original WCAD board members when the appraisal district was created in 1980. We will recognize both him and Mr. Wright for their service at our December meeting.

Again, please remember that all nominations must be received by written resolution before November 1, 2011, to be included on the ballot.

Sincerely,

A handwritten signature in black ink, appearing to read "Willy Dilworth". The signature is fluid and cursive, with a large loop at the end.

Willy Dilworth  
Chief Appraiser

## ELIGIBILITY REQUIREMENTS

### Board of Directors

To be eligible to serve on the board, a person must have resided in the appraisal district for at least two years immediately preceding the date of taking office.

Persons who meet the basic residence test could still be disqualified from serving. These reasons for disqualification ensure directors are not exposed to conflicts of interest.

An employee of a taxing unit that participates in the appraisal district may not serve. However, an elected official or member of the governing body of a participating taxing unit may serve.

Effective January 1, 1999, the Tax code provides that the county tax assessor-collector will serve on the appraisal district board of directors. The county tax assessor automatically will serve as a nonvoting district director, if the county tax assessor is not appointed to the board of directors under the regular process. If a taxing unit, such as the county commissioner's court, appoints the county tax assessor to the appraisal district board, then the county tax assessor serves as a voting member.

The county tax assessor does not have to meet the residency requirements for serving as a nonvoting director.

The county tax assessor-collector is ineligible to serve as a nonvoting or voting director if the county tax assessor also serves as the CAD's chief appraiser. The county tax assessor is ineligible to serve as a nonvoting director if the county has contracted for the assessment and collection of county taxes with another taxing unit or with the CAD. In Washington County the county contracts with the Brenham ISD for the assessment and collection services.

A person may not be appointed or continue to serve on the board, if related within the second degree of consanguinity or affinity to the following persons:

- An appraiser who appraises property for use in the appraisal district's appraisal review board proceeding, or;
- A tax representative who represents taxpayers for compensation before the appraisal district's appraisal review board.

A director who is related to an appraisal district employee within the second degree by affinity or within the third degree by consanguinity may not serve as long as the relative remains employed by the appraisal district. This provision went into effect September 1, 1989, so a director related to an appraisal district employee must either resign or the employee must resign.

Members of the board of directors serve two-year terms beginning on January 1 of even-numbered years.

**RESOLUTION NO. R-11-018**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS NOMINATING CANDIDATES FOR ELECTION TO THE WASHINGTON COUNTY APPRAISAL DISTRICT BOARD OF DIRECTORS**

**WHEREAS**, the Washington County Tax Appraisal District has been established with the responsibility to fairly and equitably appraise taxable property in Washington County; and

**WHEREAS**, the Washington County Tax Appraisal District is governed by a Board of five directors, serving two-year terms beginning on January 1, of even-numbered years; and

**WHEREAS**, the governing boards of the participating taxing entities may nominate from one to five candidates to serve as directors of this appraisal district;

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

The following people are nominated as candidates for membership on the Board of Directors for the Washington County Tax Appraisal District:

Delton Koerth  
Johanna Fatheree  
John Schaer  
Charles Gaskamp  
Joel Romo

**BE IT FURTHER RESOLVED** that this Resolution be adopted and entered upon the pages of the minutes of the City Council of Brenham, Texas, and that a copy of this Resolution be presented to the Chief Appraiser of the Washington County Tax Appraisal District office at 1302 Niebuhr Street, Brenham, Texas.

**APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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

**ATTEST:**

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



## AGENDA FORM

<b>DATE OF MEETING:</b> October 20, 2011	<b>DATE SUBMITTED:</b> October 17, 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 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 Providing for Taxation of Goods-in-Transit that are Otherwise Exempted from Taxation by Property Code Section 11.253, subsection (j-1).		
<b>SUMMARY STATEMENT:</b> In November of 2007, the City Council approved Ordinance O-07-027 providing for the taxation of goods-in-transit that are otherwise exempted from taxation by Property Tax Code Section 11.253. A copy of that Ordinance is attached.		
<p>The 82<sup>nd</sup> Legislature has now enacted Senate Bill 1, amending Tax Code Section 11.253 and, through that amendment, has narrowed the definition of “goods-in-transit”. The only exemption now authorized relates only to those goods being <u>stored</u>. See background memo from attorney representing Washington County Tax Assessor Collector.</p> <p>Senate Bill 1, under the new subsection (j-1) of Section 11.253, also requires that if a taxing unit wishes to tax the newly defined “goods-in-transit”, then it must take affirmative action to do so, even if the taxing unit previously acted under House Bill 621 back in 2007.</p> <p>A joint Public Hearing was held on October 11, 2011 by all taxing units in Washington County for the purpose of hearing opinions expressed by citizens on this subject. Councilmember Keith Herring and CFO Carolyn Miller attended the Public Hearing. No citizen comments were made.</p> <p>Following the public hearing, the recommendation from staff is to approve an Ordinance on its first reading providing for the taxation of such goods-in-transit personal property, as exempted by Texas Property Tax Code Section 11.253, Subsection j-1, by the City of Brenham for tax year 2012 and all subsequent years.</p>		
<b>STAFF ANALYSIS (For Ordinances or Regular Agenda Items):</b>		
<b>A. PROS:</b>		
<b>B. CONS:</b>		

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

**ATTACHMENTS:** (1) Ordinance O-07-027; (2) Background Memo from Attorney Representing Washington County Tax Assessor Collector (Linebarger Goggan Blair & Sampson, LLP); and (3) Ordinance

**FUNDING SOURCE (Where Applicable):**

**RECOMMENDED ACTION:** Approve the Ordinance on its First Reading to Tax Goods-in-Transit Personal Property that are Otherwise Exempted by the Texas Property Tax Code Section 11.253, subsection (j-1).

**APPROVALS:** Carolyn D. Miller

**ORDINANCE NUMBER O-07-027**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS PROVIDING FOR TAXATION OF GOODS-IN-TRANSIT THAT ARE OTHERWISE EXEMPTED FROM TAXATION BY PROPERTY TAX CODE SECTION 11.253.**

**WHEREAS,** The Texas Legislature, during the 80<sup>th</sup> Regular Session, enacted House Bill 621 which added Section 11 253 to the Texas Property Tax Code, and which grants an exemption from property taxation for certain goods-in-transit personal property, and

**WHEREAS,** Section 11 253 of the Texas Property Tax Code provides for a local option under which a taxing unit may tax such goods-in-transit property otherwise exempt, if the governing body of such taxing unit, after a public hearing, takes official action to tax such goods-in- transit personal property, and

**WHEREAS,** On October 24, 2007, the governing body of the City of Brenham held a public hearing at which members of the public were permitted to speak for or against the taxation of certain goods-in-transit personal property, and

**WHEREAS,** After said public hearing, the governing body of the City of Brenham has determined that such goods-in-transit personal property, as exempted by Texas Property Tax Code Section 11 253, should be subject to taxation by the City of Brenham for tax year 2008 and all subsequent years

**THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRENHAM THAT:**

**SECTION I**

All of the above recitals are incorporated and made a part of this Ordinance

**SECTION II**

All such goods-in-transit personal property as defined in Texas Property Tax Code Section 11 253 shall be, and are hereby declared to be, taxable by the City of Brenham for tax year 2008 and for every year thereafter, all as provided for and in accordance with Texas Property Tax Code, Section 11 253

**SECTION III**

Any provision of any ordinance of the City of Brenham, Texas in conflict with the provisions of this Ordinance is hereby repealed, and all other provisions of the ordinances of the City of Brenham, not in conflict with the provisions of this Ordinance, shall remain in full force and effect

**SECTION IV**

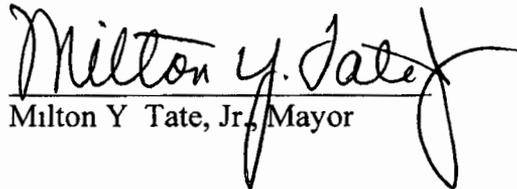
It is the intention of the City Council that this Ordinance and every provision thereof shall be considered severable and the invalidity of any section, clause or provision, or portion of any section, clause or provision of this Ordinance shall not affect the validity of any other portion or provision of this Ordinance

**SECTION V**

This Ordinance shall become effective as provided by the Charter of the City of Brenham

PASSED AND APPROVED on its first reading this the 1<sup>st</sup> day of November 2007

PASSED AND APPROVED on its second reading this the 15<sup>th</sup> day of November 2007

  
Milton Y Tate, Jr., Mayor

ATTEST

  
Doris Ann Seilheimer  
City Secretary

**LINEBARGER GOGGAN BLAIR & SAMPSON, LLP**

ATTORNEYS AT LAW

1300 MAIN STREET, Suite 300 (77002)

P.O. BOX 3064 (77253)

HOUSTON, TEXAS

713/576-7228

FAX 713/844-3528

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**RE: Senate Bill 1 / Exemption of Goods In Transit**

To All Taxing Entities and Tax Assessor-Collectors,

**BACKGROUND**

In 2007, the 80<sup>th</sup> Texas Legislature enacted Tex. Tax Code § 11.253 (House Bill 621) which implemented the goods-in-transit exemption authorized by Texas Constitution, Art. 8, sec. 1-n. That bill defined “goods-in-transit” in part as tangible personal property detained in a location in this state whose owner did not have direct or indirect ownership of the facility at which the property was assembled, stored, manufactured, processed, or fabricated.

House Bill 621 also provided for a local option to tax goods-in-transit notwithstanding the authorized exemption. And, a number of taxing units chose to do so beginning in tax year 2008 by taking official action through their governing bodies.

**NEW LOCAL OPTION AVAILABLE**

The 82<sup>nd</sup> Legislature has now enacted Senate Bill 1, amending § 11.253 and, through that amendment, has narrowed the definition of “goods-in-transit.” The amendment is effective October 1, 2011 and it applies to tax years 2012 and subsequent. The only exemption now authorized relates only to those goods being stored.

*Senate Bill 1, under the new subsection (j-1) of Section 11.253, also requires that if a taxing unit wishes to tax the newly defined goods-in-transit, then it must take affirmative action to do so, even if the taxing unit previously acted under House Bill 621 back in 2007. If the taxing unit favors the exemption, then no affirmative action need be taken.*

**STEPS TO TAKE IN EXERCISING LOCAL OPTION TO TAX THE PROPERTY**

*The governing body of a local taxing entity may elect to tax goods-in-transit, but only after holding a public hearing for the purpose of providing your taxpayers the opportunity to express their opinions on the subject. The public hearing may be held in conjunction with a regular meeting of the governing body. And, there is no requirement for publishing notice of the hearing other than including notice of the public hearing on a regular meeting agenda.*

COLORADO • DELAWARE • FLORIDA • ILLINOIS • MARYLAND  
MISSOURI • NEVADA • OHIO • PENNSYLVANIA • TENNESSEE • TEXAS • VIRGINIA

***If your taxing unit chooses to tax goods-in-transit for the tax year 2012 and subsequent years, the governing body must act no sooner than October 1, 2011 and no later than December 31, 2011.*** If your taxing unit elects to tax goods-in-transit, those goods will remain taxable until the governing body takes action to rescind or repeal its previous action and grant the exemption.

In the event that your governing body wishes to take the affirmative action necessary in taxing the property, we are enclosing herewith a form of Resolution, Ordinance, or Order which needs to be passed and approved by the governing body prior to January 1, 2012.

Finally, you must ***send a copy of any resolution, ordinance, or order passed by your governing body to each chief appraiser for each appraisal district that serves your taxing unit.*** A form of transmittal letter to the chief appraiser is enclosed for your convenience.

A copy of the relevant part of Senate Bill 1 and a copy of its analysis are also enclosed. We hope you find this material helpful, regardless of which policy your taxing unit chooses to follow. Should you have any further questions or comments regarding this matter, please feel free to give me a call.

Very truly yours,

LINEBARGER GOGGAN BLAIR  
& SAMPSON, LLP

By:   
\_\_\_\_\_  
Maris A. Blair  
Partner

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS PROVIDING FOR TAXATION OF GOODS-IN-TRANSIT THAT ARE OTHERWISE EXEMPT FROM TAXATION BY TEXAS TAX CODE §11.253**

**WHEREAS,** The 82<sup>nd</sup> Texas Legislature during its Special Session enacted Senate Bill 1 which amended Tex. Tax Code §11.253, under which personal property consisting of goods-in-transit, as newly defined, are exempt from taxation; and

**WHEREAS,** a new subsection (j-1) was added to §11.253 by Senate Bill 1, which provides for a local option under which a taxing unit may tax such goods-in-transit otherwise exempt, if the governing body of such taxing unit after a public hearing takes official action to tax such personal property; and

**WHEREAS,** On October 11, 2011, the governing body of the City of Brenham held a public hearing at which members of the public were permitted to speak for or against the taxation of certain goods-in-transit personal property; and

**WHEREAS,** following the public hearing, the governing body of the City of Brenham has determined that such goods-in-transit personal property, as exempted by Tex. Tax Code §11.253, should be subject to taxation by the City of Brenham for tax year 2012 and all subsequent years.

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

**SECTION I**

All of the above recitals are incorporated herein and made a part of this Ordinance.

**SECTION II**

All such goods-in-transit personal property as defined by the amendments to Tex. Tax Code §11.253 under Senate Bill 1, shall be, and are hereby declared to be, taxable by the City of Brenham for tax year 2012 and for every year thereafter, all as provided for and in accordance with Texas Tax Code §11.253.

**SECTION III**

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict. Any remaining portions of said ordinances shall remain in full force and effect.

**SECTION IV**

It is the intention of the City Council that this Ordinance and every provision thereof shall be considered severable and the invalidity of any section, clause, or provision, or portion of any section, clause or provision of this Ordinance shall not affect the validity of any other portion or provisions of this Ordinance.

**PASSED AND APPROVED** on its first reading this the \_\_\_\_\_ day of October 2011.

**PASSED AND APPROVED** on its second reading this the \_\_\_\_\_ day of November 2011.

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

ATTEST:

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



## AGENDA FORM

<b>DATE OF MEETING:</b> October 20, 2011	<b>DATE SUBMITTED:</b> October 11, 2011	
<b>DEPT. OF ORIGIN:</b> 141 - Street Department	<b>SUBMITTED BY:</b> Leslie Kelm	
<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 Bid No. 12-002 for the Purchase of Road Base Materials for the Street Department and Authorize the Mayor to Execute any Necessary Documentation		
<b>SUMMARY STATEMENT:</b> Two bids were received for Road Base Materials (crushed limestone). Lhoist North America (fka Franklin Industrial Minerals) submitted the lowest bid in the amount of \$16.50 per ton. I recommend awarding this year's Road Base Material contract to Lhoist North America in the amount of \$16.50 per ton.  Last year's bid was \$15.00 per ton.		
<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) Bid information sheet		
<b>FUNDING SOURCE (Where Applicable):</b> Budgeted funds		
<b>RECOMMENDED ACTION:</b> Approve Bid No. 12-002 and Award the 2011-2012 Annual Road Base Material Contract to Lhoist North America		
<b>APPROVALS:</b> Doug Baker		



**Bid Information Sheet**

**October 6, 2011**

**Bid No. 12-002**

**Bid Opening: October 6, 2011, 2:00 P.M.**

**For: Annual Contract for Road Base Material**

**Vendors requesting bid packets: 3**

**Number of bids received: 2**

**Current Supplier: Lhoist North America (Franklin Industrial Minerals)**

**Current Price: \$15.00 per ton**

**Annual Contract for Road Base Material**

**Bid No. 12-002**

<b><u>Bidder</u></b>	<b><u>Cost per ton</u></b>	<b><u>Total \$ (10,000 tons)</u></b>
<b>Lhoist North America Belton, Texas</b>	<b>\$16.50</b>	<b>\$165,000</b>
<b>Superior Crushed Stone Jarrell, Texas</b>	<b>\$18.50</b>	<b>\$185,000</b>



## AGENDA FORM

<b>DATE OF MEETING:</b> October 20, 2011	<b>DATE SUBMITTED:</b> October 12, 2011	
<b>DEPT. OF ORIGIN:</b> 141 - Street Department	<b>SUBMITTED BY:</b> Leslie Kelm	
<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 Bid No. 12-001 for Concrete Work for the Street Department and Authorize the Mayor to Execute any Necessary Documentation		
<b>SUMMARY STATEMENT:</b> Two bids were submitted for our 2011-2012 Annual Concrete Work Contract. The lowest bid was submitted by LaBu, Inc. in the amounts shown on the attached bid evaluation. To determine the lowest bid, we use theoretical quantities for four bid items (items 1-2, Alt. A and Alt. B), as shown on the sheet titled bid evaluation quantities. LaBu, Inc.'s total bid was the lowest of the two bids. I recommend awarding the above referenced contract to LaBu, Inc. in the amounts shown for each of the twenty six items shown on bid evaluation sheet.  For reference purposes, the pricing information for the 2010-2011 contract has been included for each item.		
<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) Bid evaluation recap		
<b>FUNDING SOURCE (Where Applicable):</b> Budgeted funds		
<b>RECOMMENDED ACTION:</b> Approve Bid No. 12-001 and Award the 2011-2012 Annual Concrete Work Contract to LaBu, Inc.		
<b>APPROVALS:</b> Doug Baker		

**BID EVALUATION**

**BID #12-001**

**ANNUAL CONCRETE WORK**

**ITEM**

	<b>BIDDER</b>	<b>BIDDER</b>
	<b>Myers Concrete, LLC Wimberly, TX.</b>	<b>LaBu, Inc. Brenham, TX.</b>
1. Labor/materials for standard curb & gutter per linear foot. Alt. A* (Total linear ft = 3,475***)	\$18.27	\$16.47
1. Labor/materials for standard curb & gutter per linear foot. Alt. B** (Total linear ft = 3,475***)	\$20.25	\$17.25
2. Labor/materials for historical curb & gutter per cubic foot. Alt. A* (Total cubic ft = 300***)	\$15.10	\$14.00
2. Labor/materials for historical curb & gutter per cubic foot. Alt. B** (Total cubic ft = 300***)	\$17.10	\$14.67
3. Labor/materials for 4" reinforced concrete flatwork per square foot. Alt. A* (Total square ft = 10,840)	\$3.56	\$3.60
3. Labor/materials for 4" reinforced concrete flatwork per square foot. Alt. B** (Total square ft = 10,840)	\$5.35	\$4.40
4. Labor/materials for 6" reinforced concrete flatwork per square foot. Alt. A* (Total square ft = 2,392)	\$4.65	\$4.70
4. Labor/materials for 6" reinforced concrete flatwork per square foot. Alt. B** (Total square ft = 2,392)	\$5.64	\$5.40
5. Labor/materials for 6" reinforced concrete driveway per square foot. Alt. A* (Total square ft = 1,750)	\$4.80	\$4.85
5. Labor/materials for 6" reinforced concrete driveway per square foot. Alt. B** (Total square ft = 1,750)	\$5.79	\$5.55
6. Labor/materials for reinforced concrete valley gutters per square foot. Alt. A*	\$4.80	\$4.67
6. Labor/materials for reinforced concrete valley gutters per square foot. Alt. B**	\$5.59	\$5.07
7. Labor/materials for reinforced concrete inlets (0-2') incl. ring & cover per cubic foot. Alt. A*	\$45.69	\$45.07
7. Labor/materials for reinforced concrete inlets (0-2') incl. ring & cover per cubic foot. Alt. B**	\$50.74	\$50.00
8. Labor/materials for reinforced concrete inlets (0-4') incl. ring & cover per cubic foot. Alt. A*	\$34.25	\$33.67
8. Labor/materials for reinforced concrete inlets (0-4') incl. ring & cover per cubic foot. Alt. B**	\$38.61	\$38.00
9. Labor/materials for reinforced concrete inlets (0-6') incl. ring & cover per cubic foot. Alt. A*	\$40.59	\$40.00
9. Labor/materials for reinforced concrete inlets (0-6') incl. ring & cover per cubic foot. Alt. B**	\$44.65	\$44.00
10. Labor/materials for reinforced concrete manholes (0-2') incl. ring & cover per cubic foot. Alt. A*	\$40.59	\$44.00
10. Labor/materials for reinforced concrete manholes		

(0-2') incl. ring & cover per cubic foot . Alt. B**	\$49.75	\$49.25
11. Labor/materials for reinforced concrete manholes (0-4') incl. ring & cover per cubic foot. Alt. A*	\$34.00	\$33.67
11. Labor/materials for reinforced concrete manholes (0-4') incl. ring & cover per cubic foot. Alt. B**	\$38.10	\$37.72

<b>ITEM</b>	<b>BIDDER</b>	<b>BIDDER</b>
	<b>Myers Concrete LLC Wimberly, TX.</b>	<b>LaBu, Inc. Brenham, TX.</b>
12. Labor/materials for reinforced concrete manholes (0-6') incl. ring & cover per cubic foot. Alt A*	\$36.63	\$36.00
12. Labor/materials for reinforced concrete manholes (0-6') incl. ring & cover per cubic foot. Alt B**	\$40.59	\$40.00
13. Labor/materials for reinforced concrete walls & footings (4' max. ht. or depth of beam footings) per cubic foot. Alt. A*	\$33.51	\$32.92
13. Labor/materials for reinforced concrete walls & footings (4' max ht or depth of beam footings) per cubic foot. Alt. B**	\$39.60	\$39.00
Discount	5% - net 10 days	5% - net 10 days

\*Alt. A: Where removal of existing concrete is required, City will break up existing concrete and dispose of it. City will excavate or backfill to within one inch of finished grade. During this process, City will erect and maintain it's own barricades. Contractor will excavate or backfill to finish grade, furnish and erect forms, furnish and install reinforcing steel, furnish, place and finish concrete, and remove forms. Contractor will furnish and maintain his own barricades during his portion of the work.

\*\*Alt. B: Where removal and replacement of existing concrete is required, City will break up existing concrete. City will erect and maintain it's own barricades during this work. All other work will be responsibility of Contractor, including removal of existing concrete, grading, backfilling behind the new concrete with select material will be responsibility of Contractor. Contractor will be responsible for erecting and maintaining his own barricades during this work.

\*\*\* These quantities will be used to determine the low bidder. Quantities are arbitrary and have no significance in determining the actual amount of work to be done during the course of the contract.

10/6/2011

<b>2010-2011 Pricing</b>
\$18.45
\$20.45
\$15.25
\$17.25
\$3.60
\$5.40
\$4.70
\$5.70
\$4.85
\$5.85
\$4.85
\$5.65
\$46.15
\$51.25
\$34.60
\$39.00
\$41.00
\$45.10
\$45.10

\$50.25
\$34.35
\$38.45

<b>2010-2011 Pricing</b>
\$37.00
\$41.00
\$33.85
\$40.00
5% - net 10 days

I,



## AGENDA FORM

<b>DATE OF MEETING:</b> October 20, 2011		<b>DATE SUBMITTED:</b> October 14, 2011	
<b>DEPT. OF ORIGIN:</b> Public Works		<b>SUBMITTED BY:</b> Doug Baker	
<b>MEETING TYPE:</b>		<b>CLASSIFICATION:</b>	
<input checked="" type="checkbox"/> <b>REGULAR</b>		<input type="checkbox"/> <b>PUBLIC HEARING</b>	
<input type="checkbox"/> <b>SPECIAL</b>		<input type="checkbox"/> <b>CONSENT</b>	
<input type="checkbox"/> <b>EXECUTIVE SESSION</b>		<input checked="" type="checkbox"/> <b>REGULAR</b>	
		<input type="checkbox"/> <b>WORK SESSION</b>	
<b>ORDINANCE:</b>			
<input type="checkbox"/> <b>1<sup>ST</sup> READING</b>			
<input type="checkbox"/> <b>2<sup>ND</sup> READING</b>			
<input type="checkbox"/> <b>RESOLUTION</b>			
<b>AGENDA ITEM DESCRIPTION:</b> Discuss and possibly act upon Resolution No. R-11-019 for Approval and Acceptance of the Dr. Bobbie M. Dietrich Memorial Amphitheater and Authorize the Mayor to Execute any Necessary Documentation.			
<b>SUMMARY STATEMENT:</b> The Dr. Bobbie M. Dietrich Memorial Amphitheater has been completed by the builder, Constantin Barbu, in accordance with the plans and specifications. By these documents, Dr. Wilfred Dietrich requests acceptance of the amphitheater for ownership, operation and maintenance by the City of Brenham.			
<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 No. R-11-019; (2) Bill of Sale; (3) Affidavit of All Bills Paid; and (4) Unconditional Waiver and Release of Liens			
<b>FUNDING SOURCE (Where Applicable):</b>			
<b>RECOMMENDED ACTION:</b> Approve Resolution No. R-11-019 for Approval and Acceptance of the Dr. Bobbie M. Dietrich Memorial Amphitheater and authorize the Mayor to execute any necessary documentation.			
<b>APPROVALS:</b> Doug Baker			

**RESOLUTION NO. R-11-019**

**WHEREAS**, on the City of Brenham (the “City”) and Wilfred Dietrich (the “Donor”) entered into an Agreement entitled “Amphitheater Project and Dedication Agreement” (the “Agreement”) which requires, among other things, the Donor to construct and install certain amphitheater improvements and facilities at Fireman’s Park (the “Improvements”); and

**WHEREAS**, the construction of the Improvements as provided for in the Agreement has been completed in accordance with the plans and specifications approved by the City; and

**WHEREAS**, the Donor has executed a Bill of Sale to the City in accordance with said Agreement; and

**WHEREAS**, the City of Brenham desires to formally accept the Improvements and acquire full and unencumbered title and all rights of ownership pertaining to the Improvements;

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

The City of Brenham hereby formally accepts the Improvements, acquires full and unencumbered title and all rights of ownership pertaining to the Improvements, and authorizes the Mayor to execute any necessary documentation.

**RESOLVED** this the 20<sup>th</sup> day of October, 2011.

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

**ATTEST:**

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

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER**

**BILL OF SALE**

**DR. BOBBIE M. DIETRICH MEMORIAL AMPHITHEATER IMPROVEMENTS**

By this BILL OF SALE made on this 14<sup>th</sup> day of October, 2011, Dr. Wilfred Dietrich, hereinafter called "Donor," for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, and the further consideration of the benefits conferred by the City of Brenham, Washington County, Texas in accepting the ownership, operation and maintenance of the herein described amphitheater improvements, the receipt and sufficiency of which is hereby acknowledged, hereby grants, bargains, sells, transfers, delivers and conveys to the City of Brenham, all of the following property:

The personal property, improvements, fixtures and equipment comprising the amphitheater improvements (the "Improvements") constructed and installed pursuant to the "Amphitheater Project and Dedication Agreement" (the "Agreement") between the City of Brenham, Texas and Dr. Wilfred Dietrich ("Donor") dated April 7, 2011. All of the Improvements are included on the construction plan drawings prepared by Constantin Barbu, approved by the City of Brenham (the "Plans"), said improvements being more particularly described in the Agreement. All of the Improvements are located in Hohlt Park, Brenham, Texas.

The Donor does, for himself and his successors, heirs and assigns, covenant to the City of Brenham and its successors and assigns, that the Donor is the lawful owner of said Improvements; that the Improvements are free of all encumbrances; that the Donor has good right and title to sell and convey the same; and that the Donor will warrant and defend the sale and conveyance of the Improvements against the claims and demands of all persons.

The Donor hereby agrees that the Improvements accepted by the City of Brenham for ownership, operation and maintenance are unconditionally warranted against any and all defects in materials and workmanship for a period of one (1) year from acceptance of the Improvements by the City of Brenham in writing, and that Donor will repair or replace any defects in said Improvements within that period, at no cost to the City of Brenham. The City acknowledges that the Donor has assigned to Constantin Barbu ("Barbu"), the architect and contractor on the project, by separate agreement, certain rights, duties and obligations under the Agreement, including but not limited to the obligation to unconditionally warrant any and all defects in materials and workmanship (said warranty being more fully described in the Agreement) of the Improvements for a period of one (1) year from the date of the City's acceptance of the Improvements. The City acknowledges that the Donor will require Barbu to perform any and all warranty work related to the Improvements; however, pursuant to the Agreement, the Donor is liable for the nonperformance

of Barbu. In the case of nonperformance of the warranty work by Barbu, the City shall require the Donor to perform any and all warranty work related to the Improvements.

**IN WITNESS WHEREOF**, the undersigned Dr. Wilfred Dietrich has executed this instrument on this 14<sup>th</sup> day of October, 2011.

**DR. WILFRED DIETRICH**

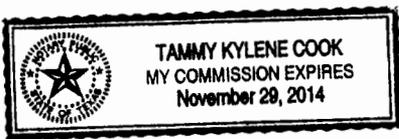
*Wilfred O. Dietrich*  
Dr. Wilfred Dietrich

**STATE OF TEXAS** §  
§  
**COUNTY OF WASHINGTON** §

This instrument was acknowledged before me on the \_\_\_\_ day of October, 2011, by Dr. Wilfred Dietrich.

*Tammy Kyrene Cook*  
Notary Public in and for the State of Texas

(NOTARY SEAL)



**AFFIDAVIT OF ALL BILLS PAID**

Developer/Owner: Dr. Wilfred Dietrich

Project: Dr. Bobbie M. Dietrich Memorial Amphitheater  
1825 North Park Street, Brenham, Texas

The undersigned ("Developer/Owner"), certifies that all bids, charges, accounts or claims for labor performed and material furnished in connection with the construction of the Dr. Bobbie M. Dietrich Memorial Amphitheater have been paid in full and further certifies that there are no unreleased recorded liens filed against the Dr. Bobbie M. Dietrich Memorial Amphitheater, or the property to which they are affixed.

I certify under penalty of perjury under laws of the State of Texas that the above is a true and correct statement.

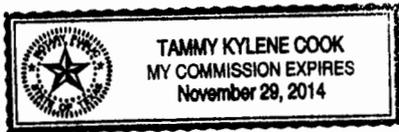
Signature: Wilfred O. Dietrich

Printed Name: Dr. Wilfred Dietrich

Title: Developer/Owner

Dated this the 14<sup>th</sup> day of October, 2011

Subscribed and sworn before me, a Notary Public in and for the State of Texas, on this this the 14<sup>th</sup> day of October, 2011 by Dr. Wilfred Dietrich.



Tammy Kylene Cook  
Notary Signature

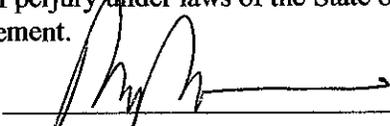
**UNCONDITIONAL WAIVER AND RELEASE OF LIENS**

Contractor                                    CONSTANTIN BARBU  
Project:                                        HOHLT PARK AMHITHEATRE  
    1825 North Park, Brenham, Texas

The undersigned has paid all Labor, Materials and Equipment Rentals related to the above mentioned Project.

The undersigned does hereby release pro tanto any Mechanic Liens, Stop Notice or Bond Rights that the undersigned has on said Project.

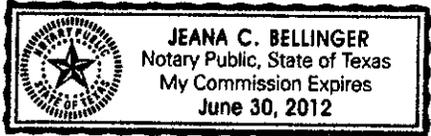
I certify under penalty of perjury under laws of the State of Texas that the above is a true and correct statement.

SIGNATURE                                      
PRINTED NAME                                CONSTANTIN BARBU  
TITLE    ARCHITECT - BUILDER  
Dated this                                      24<sup>TH</sup> day of AUGUST 20 11

At    City of Brenham City Hall  
Subscribed and Sworn before me on this 24 day of Aug 20 11

Notary Public, State of Texas

*Jeana C. Bellinger*





## AGENDA FORM

<b>DATE OF MEETING:</b> October 20, 2011	<b>DATE SUBMITTED:</b> October 13, 2011	
<b>DEPT. OF ORIGIN:</b> Recreation - 149	<b>SUBMITTED BY:</b> Jamie Maurer	
<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 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 a Recommendation from the Parks and Recreation Advisory Board for Rental Rates of the Dr. Bobbie M. Dietrich Memorial Amphitheater		
<b>SUMMARY STATEMENT:</b> With the completion of the Dr. Bobbie M. Dietrich Memorial Amphitheatre, rental rates need to be set for future bookings of the facility. The Parks Advisory Board discussed rate options at their past two meetings. The board is recommending the following:  Deposit: \$100 Full day rental: \$100 Half day rental: \$ 75; 7am – 2pm or 3pm-11pm With lights: \$ 25  The board looked at various options including profit vs. nonprofit rates and rates based on event. The board agreed that it would be best to start basic and reevaluate the rates after 6-8 months of use when we will have a better idea of how the facility will be most used. Staff is also working on a rental contract for the amphitheater that outlines rules and responsibilities of both the renter and the City.		
<b>STAFF ANALYSIS (For Ordinances or Regular Agenda Items):</b>		
A. <b>PROS:</b>		
B. <b>CONS:</b>		
<b>ALTERNATIVES (In Suggested Order of Staff Preference):</b> Increase or decrease recommended rental rates.		
<b>ATTACHMENTS:</b> N/A		
<b>FUNDING SOURCE (Where Applicable):</b>		
<b>RECOMMENDED ACTION:</b> Approve rental rates for the Dr. Bobbie M. Dietrich Memorial Amphitheater as stated above with the understanding that the rates will be reevaluated in 6-8 months		

**APPROVALS:** Kyle Dannhaus



## AGENDA FORM

<b>DATE OF MEETING:</b> October 20, 2011	<b>DATE SUBMITTED:</b> October 10, 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"/> 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 Final Payment to Mercer Construction Company for the Utility Line Extensions Along State Highway 36 North and Authorize the Mayor to Execute Any Necessary Documentation		
<b>SUMMARY STATEMENT:</b> Mercer Construction has completed their work on SH 36/North Park Utility Extensions. Their contract consisted of installation of a 12" water line along SH36/North Park to tie-in to an existing 10" water main, fire hydrant installation and related appurtenances to extend water service along SH 36. The contract also consisted of a sewer line extension including the construction of manholes, services and related appurtenances. These extensions were needed to serve customers who were recently annexed.		
<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) Application for Payment No. 4 (Final) with signed Affidavit & Certification of Pay Application by Contractor; (2) Change Order No. 2 & Reconciliation; (3) Certificate of Substantial Completion; (4) Consent of Surety Company to Final Payment; and (5) Affidavit of Bills Paid.		
<b>FUNDING SOURCE (Where Applicable.</b>		
<b>RECOMMENDED ACTION:</b> Approve final payment to Mercer Construction Co. in the amount of \$19,035.61 for work completed on the SH 36/North Park utility extensions		
<b>APPROVALS:</b> Terry K. Roberts		

APPLICATION FOR PAYMENT NO. 4 & Final

TO OWNER: City of Brenham, P.O. Box 1059, Brenham, Texas 77834-1059

FROM CONTRACTOR: Mercer Construction Company, P.O. Box 888, Edna, Texas 77957-0888

PROJECT: SH 36/North Park Utility Extensions

OR JOB NO. 1006.057 UA/UB

PERIOD FROM: June 28, 2011

TO: June 30, 2011

CONST. TIME ALLOTTED: 90 Calendar days

TIME USED: 90 Calendar Days

CONTRACT AWARDED: February 3, 2011

NOTICE TO PROCEED: April 1, 2011

ITEM NO.	DESCRIPTION	CONTRACT QUANTITY	COMPLETED QUANTITY			UNIT PRICE	TOTAL VALUE COMPLETED WORK
			FROM PREVIOUS APPLICATIONS	THIS PERIOD	TOTAL COMPLETED		
<b>BASE BID: WATER LINE</b>							
1	Furnish and install 12" Class 150 AWWA C-900 PVC water line by open cut, with trace wire,	1,435 LF	1,523	0	1,523	\$ 34.85	\$ 51,858.15
2	Furnish and install 12" Class 150 AWWA C-900 PVC water line by bore, with trace wire	370 LF	338	0	338	\$ 63.75	\$ 21,547.50
3	Furnish and install 12" Class 150 AWWA C-900 PVC water line in 20" DR-25 AWWA C-905 PVC casing by open cut, with trace wire	80 LF	60	0	60	\$ 78.75	\$ 4,725.00
4	Furnish and install 12" Class 150 AWWA C-900 PVC water line in 20" DR-25 AWWA C-905 PVC casing by bore, with trace wire	20 LF	0	0	0	\$ 100.00	\$ -
5	Furnish and install 12" gate valve and valve box	2 EA	2	0	2	\$ 2,000.00	\$ 4,000.00
6	Furnish and install fire hydrant unit	4 EA	4	0	4	\$ 3,300.00	\$ 13,200.00
7	Furnish and install automatic flush valve unit per detail	1 EA	1	0	1	\$ 2,875.00	\$ 2,875.00
8	Furnish all labor and materials and make wet connection to existing 10" water line	1 EA	1	0	1	\$ 750.00	\$ 750.00
9	Furnish and install ductile iron fittings	1.1 TON	1.27	0.00	1.27	\$ 5,300.00	\$ 6,985.00
10	Furnish all labor and materials to remove and dispose of existing flush valve unit	1 EA	1	0	1	\$ 100.00	\$ 100.00
11	Furnish all labor and materials to remove and dispose of existing air release valve, including cap/plug on existing lead to main line	1 LS	1	0	1	\$ 550.00	\$ 550.00
12	Furnish trench safety per Technical Specification Section 02229, all depths	10 LF	28	0	28	\$ 2.00	\$ 56.00
13	Furnish materials and perform traffic control in accordance with the TxDOT permit and Texas MUTCD,	1 LS	1	0	1	\$ 500.00	\$ 500.00
14	Perform staking in all areas disturbed by construction,	1 LS	1	0	1	\$ 800.00	\$ 800.00
<b>ADDITIVE ALTERNATE BID A: SANITARY SEWER</b>							
A1	Furnish and install 6" ASTM D-2241 SDR-26 PVC sanitary sewer, with trace wire, 0-8' cut,	53 LF	38	0	38	\$ 23.00	\$ 874.00
A2	Furnish and install 6" ASTM D-2241 SDR-26 PVC sanitary sewer, with trace wire, 8-8' cut,	224 LF	224	0	224	\$ 25.00	\$ 5,600.00
A3	Furnish and install 6" ASTM D-2241 SDR-26 PVC sanitary sewer, with trace wire, 8-10' cut,	136 LF	136	0	136	\$ 28.00	\$ 3,808.00
A4	Furnish and install 6" ASTM D-2241 SDR-26 PVC sanitary sewer, with trace wire, 10-12' cut,	55 LF	60	0	60	\$ 31.00	\$ 1,860.00
A5	Furnish and install 6" ASTM D-2241 SDR-26 PVC sanitary sewer, with trace wire 12' cut and over cut,	26 LF	24	0	24	\$ 35.00	\$ 840.00
A6	Furnish and install 6" ASTM D-2241 SDR-26 PVC sanitary sewer by bore, with trace wire, all depths	445 LF	473	0	473	\$ 60.00	\$ 28,380.00
A7	Furnish and install 6" ASTM D-3034 SDR-26 PVC sanitary sewer, with trace wire, 0-8' cut	27 LF	32	0	32	\$ 23.00	\$ 736.00
A8	Furnish and install 6" ASTM D-3034 SDR-26 PVC sanitary sewer, with trace wire, 8-8' cut	350 LF	407	0	407	\$ 25.00	\$ 10,175.00
A9	Furnish and install 6" ASTM D-3034 SDR-26 PVC sanitary sewer, 8-10' cut	278 LF	270	0	270	\$ 28.00	\$ 7,560.00
A10	Furnish and install 6" ASTM D-3034 SDR-26 PVC sanitary sewer, 10-12' cut	65 LF	45	0	45	\$ 31.00	\$ 1,395.00

A11	Furnish and install 6" ASTM D-3034 SDR-26 PVC sanitary sewer by bore, with trace wire, all depths	180 LF	115	0	115	\$ 60.00	\$ 6,900.00
A12	Furnish and install pre-cast concrete manhole	7 EA	6	0	6	\$ 2,300.00	\$ 13,800.00
A13	Furnish and install extra depth for	13.9 VF	13.9	0.0	13.9	\$ 175.00	\$ 2,432.50
A14	Furnish and install drop connection on manhole	2 EA	2	0	2	\$ 450.00	\$ 900.00
A15	Furnish and install extra depth for drop connection	1.5 VF	1.5	0.0	1.5	\$ 30.00	\$ 45.00
A16	Furnish all labor and materials to tie existing sanitary sewer into new manhole	1 EA	0	0	0	\$ 150.00	\$ -
A17	Furnish and install main line cleanout	1 EA	1	0	1	\$ 350.00	\$ 350.00
A18	Furnish all labor and materials to remove and dispose of existing sanitary sewer and cleanout	1 LS	1	0	1	\$ 75.00	\$ 75.00
A19	Perform trench safety per Technical Specification Section 02229, 5-10' cut	1,110 LF	1,171	0	1,171	\$ 1.00	\$ 1,171.00
A20	Perform trench safety per Technical Specification Section 02229, 10' and over cut	150 LF	129	0	129	\$ 2.00	\$ 258.00
A21	Perform additional seeding in all areas disturbed by additional construction work for sanitary sewer	1 LS	1	0	1	\$ 500.00	\$ 500.00

**CHANGE ORDER NO. 1**

**ADDITIONS**

**WATER**

1	Furnish and install 12" Class 150 AWWA C-900 PVC water line by bore, with trace wire	20 LF	0	0	0	\$ 63.75	\$ -
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**SANITARY SEWER**

2	Furnish and install 6" ASTM D-2241 SDR-26 PVC sanitary sewer, with trace wire, 6-8' cut	43 LF	4	0	4	\$ 25.00	\$ 100.00
3	Furnish and install 6" ASTM D-2241 SDR-26 PVC sanitary sewer by bore, with trace wire	40 LF	40	0	40	\$ 60.00	\$ 2,400.00
4	Furnish all labor and materials to tie new sanitary sewer into existing manhole	1 EA	1	0	1	\$ 250.00	\$ 250.00

**DEDUCTIONS**

**WATER**

5	Furnish and install 12" Class 150 AWWA C-900 PVC water line in 20" DR-25 AWWA C-905 PVC casing by bore, with trace wire	20 LF	0	0	0	\$ 100.00	\$ -
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**SANITARY SEWER**

6	Furnish and install pre-cast concrete manhole	1 EA	0	0	0	\$ 2,300.00	\$ -
7	Furnish all labor and materials to tie existing sanitary sewer into new manhole	1 EA	0	0	0	\$ 150.00	\$ -

**CHANGE ORDER NO. 2 & RECONCILIATION**

**DEDUCTIONS**

1	Credit for fence	0 LS	0	0	0	\$ (800.00)	\$ (800.00)
Original Contract \$ 201,747.75				Net Amount Earned to Date		\$ 197,556.15	
Plus Change Order No. 1: 550.00				Plus Materials Stored Close of Period		\$ -	
Less Change Order No. 2 & Rec.: (4,741.60)				Amount Earned To Date Plus Mat		\$ 197,556.15	
Adjusted Contract \$ 197,556.15				Less 10% Retained		\$ 197,556.15	
				Subtotal		\$ 178,520.54	
				Less Previous Payments		\$ 19,035.61	
				Amount Due on Contract This Est.		\$ 19,035.61	

**AFFIDAVIT & CERTIFICATION OF PAY APPLICATION BY CONTRACTOR**

STATE OF TEXAS  
COUNTY OF Jackson

WHEREAS, the undersigned MICHAEL MEIZER who being duly sworn, on oath, says that he is the legal representative of Mercer Construction Company, has been employed by the City of Brenham to furnish labor and materials for the installation of BH 36/North Park Utility Extensions in Brenham, Texas.

The undersigned Contractor certifies that: (1) all previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interests or encumbrances); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

BY: [Signature] DATE: 8.26.11  
MERCER CONSTRUCTION COMPANY

PRINTED NAME: MICHAEL MEIZER TITLE: EXEC. VP

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 26<sup>th</sup> DAY OF AUGUST, 2011

[Signature]  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS



RECOMMENDED BY: [Signature] DATE: 9.1.11  
QUALLEY ENGINEERS, L.L.P.

APPROVED BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
CITY OF BRENHAM

Change Order No. 2 & Reconciliation

REASON: Reconciliation of quantities and credit for fence.

ITEM NO. & DESCRIPTION	CONTRACT QUANTITY	FINAL QUANTITY	QUANTITY INCREASE	QUANTITY DECREASE	UNIT PRICE	AMOUNT INCREASE	AMOUNT DECREASE
1 Furnish and install 12" Class 150 AWWA C-900 PVC water line by open cut, with trace wire.	1,455 LF	1,523	68	0	\$ 34.05	\$ 2,315.40	\$ -
2 Furnish and install 12" Class 150 AWWA C-900 PVC water line by bore, with trace wire	370 LF	338	0	(32)	\$ 63.75	-	(2,040.00)
3 Furnish and install 18" Class 150 AWWA C-900 PVC water line in 20" DR-25 AWWA C-905 PVC casing by open cut, with trace wire	80 LF	60	0	(20)	\$ 78.75	-	(1,575.00)
4 Furnish and install 12" Class 150 AWWA C-900 PVC water line in 20" DR-25 AWWA C-905 PVC casing by bore, with trace wire	20 LF	0	0	0	\$ 100.00	-	-
5 Furnish and install 12" gate valve and valve box	2 EA	2	0	0	\$ 2,000.00	-	-
6 Furnish and install fire hydrant unit	4 EA	4	0	0	\$ 3,300.00	-	-
7 Furnish and install automatic flush valve unit per detail	1 EA	1	0	0	\$ 2,875.00	-	-
8 Furnish all labor and materials and make wet connection to existing 10" water line	1 EA	1	0	0	\$ 750.00	-	-
9 Furnish and install specific iron fittings	1.1 TON	1.27	0.17	0	\$ 5,500.00	\$ 935.00	\$ -

ITEM NO. & DESCRIPTION	CONTRACT QUANTITY	FINAL QUANTITY	QUANTITY INCREASE	QUANTITY DECREASE	UNIT PRICE	AMOUNT INCREASE	AMOUNT DECREASE
10 Furnish all labor and materials to remove and dispose of existing flush valve unit	1 EA	1	0	0	100.00	-	-
11 Furnish all labor and materials to remove and dispose of existing air release valve, including cup/lug on existing lead to main line	1 LS	1	0	0	550.00	-	-
12 Perform trench safety per Technical Specification Section 62229, all depths	10 LF	28	18	0	2.00	36.00	-
13 Furnish materials and perform traffic control in accordance with the TxDOT permit and Texas MUTCD,	1 LS	1	0	0	500.00	-	-
14 Perform staking in all areas disturbed by construction.	1 LS	1	0	0	800.00	-	-
<b>ADDITVE ALTERNATE BID-A: SANITARY SEWER</b>							
A1 Furnish and install 6" ASTM D-2241 SDR-26 PVC sanitary sewer, with trace wire, 0-6' out.	55 LF	38	0	(17)	23.00	-	(391.00)
A2 Furnish and install 6" ASTM D-2241 SDR-26 PVC sanitary sewer, with trace wire, 6-8' out.	224 LF	224	0	0	25.00	-	-
A3 Furnish and install 6" ASTM D-2241 SDR-26 PVC sanitary sewer, with trace wire, 8-10' out.	120 LF	136	16	0	28.00	448.00	-
A4 Furnish and install 6" ASTM D-2241 SDR-26 PVC sanitary sewer, with trace wire, 10-12' out.	55 LF	60	5	0	31.00	155.00	-
A5 Furnish and install 6" ASTM D-2241 SDR-26 PVC sanitary sewer, with trace wire, 12' out and over cut.	26 LF	24	0	(2)	35.00	-	(70.00)
A6 Furnish and install 6" ASTM D-2241 SDR-26 PVC sanitary sewer by boxes, with trace wire, all depths.	445 LF	473	28	0	68.00	1,680.00	-
A7 Furnish and install 6" ASTM D-2241 SDR-26 PVC sanitary sewer, with trace wire, 0-5' out.	27 LF	32	5	0	23.00	115.00	-

ITEM NO. & DESCRIPTION	CONTRACT QUANTITY	FINAL QUANTITY	QUANTITY INCREASE	QUANTITY DECREASE	UNIT PRICE	AMOUNT INCREASE	AMOUNT DECREASE
A8 Furnish and install 6" ASTM D-3034 SDR-26 PVC sanitary sewer, with trace wire, 6-8' cut	350 LF	407	57	0	\$ 25.00	1,425.00	-
A9 Furnish and install 6" ASTM D-3034 SDR-26 PVC sanitary sewer, 8-10' cut	278 LF	270	0	(8)	\$ 28.00	-	(224.00)
A10 Furnish and install 6" ASTM D-3034 SDR-26 PVC sanitary sewer, 10-12' cut	65 LF	45	0	(20)	\$ 31.00	-	(620.00)
A11 Furnish and install 6" ASTM D-3034 SDR-26 PVC sanitary sewer by bore, with trace wire, all depths	180 LF	115	0	(65)	\$ 60.00	-	(3,900.00)
A12 Furnish and install pre-cast concrete manhole	7 EA	6	0	0	\$ 2,300.00	-	-
A13 Furnish and install extra depth for manhole	13.9 VF	13.9	0	0	\$ 175.00	-	-
A14 Furnish and install deep connection at manhole	2 EA	2	0	0	\$ 450.00	-	-
A15 Furnish and install extra depth for deep connection	1.5 VF	1.5	0	0	\$ 30.00	-	-
A16 Furnish all labor and materials to tie existing sanitary sewer into new manhole	1 EA	0	0	0	\$ 150.00	-	-
A17 Furnish and install main line cleanout	1 EA	1	0	0	\$ 350.00	-	-
A18 Furnish all labor and materials to remove and dispose of existing sanitary sewer and cleanout	1 LS	1	0	0	\$ 75.00	-	-
A19 Perform trench safety per Technical Specification Section 02229, 5-10' cut	1,110 LF	1,171	61	0	\$ 1.00	61.00	-
A20 Perform trench safety per Technical Specification Section 02229, 10' and over cut	150 LF	129	0	(21)	\$ 2.00	-	(42.00)
A21 Perform additional seeding in all areas disturbed by additional construction work for sanitary sewer	1 LS	1	0	0	\$ 500.00	-	-

ITEM NO. & DESCRIPTION	CONTRACT QUANTITY	FINAL QUANTITY	QUANTITY INCREASE	QUANTITY DECREASE	UNIT PRICE	AMOUNT INCREASE	AMOUNT DECREASE
<b>CHANGE ORDER NO. 1</b>							
<b>ADDITIONS</b>							
<b>WATER</b>							
1 Furnish and install 12" Class 150 AWWA C-900 PVC water line by bore, with trace wire	20 LF	0	0	(20)	\$ 63.75	-	(1,275.00)
<b>SANITARY SEWER</b>							
2 Furnish and install 6" ASTM D-2241 SDR-26 PVC sanitary sewer, with trace wire, 6-8' out,	43 LF	4	0	(39)	\$ 25.00	-	(975.00)
3 Furnish and install 6" ASTM D-2241 SDR-26 PVC sanitary sewer by bore, with trace wire	40 LF	40	0	0	\$ 60.00	-	-
4 Furnish all labor and materials to the new sanitary sewer into existing manhole	1 EA	1	0	0	\$ 250.00	-	-
<b>DEDUCTIONS</b>							
<b>WATER</b>							
5 Furnish and install 12" Class 150 AWWA C-900 PVC water line in 20" DR-25 AWWA C-905 PVC casing by bore, with trace wire	20 LF	0	0	0	\$ 100.00	-	-
<b>SANITARY SEWER</b>							
6 Furnish and install pre-cast concrete manhole	1 EA	0	0	0	\$ 2,300.00	-	-
7 Furnish all labor and materials to the existing sanitary sewer into new manhole	1 EA	0	0	0	\$ 150.00	-	-
<b>CHANGE ORDER NO. 2 &amp; RECONCILIATION</b>							
<b>DEDUCTIONS</b>							
1 Credit for fence	0 LS	1	1	0	\$ (800.00)	-	(800.00)

ITEM NO. & DESCRIPTION	CONTRACT QUANTITY	FINAL QUANTITY	QUANTITY INCREASE	QUANTITY DECREASE	UNIT PRICE	AMOUNT INCREASE	AMOUNT DECREASE
SUBTOTAL ADDITIONS						\$ 7,170.40	
SUBTOTAL DEDUCTIONS							\$ (11,912.00)
TOTAL CHANGE ORDER NO. 2 & RECONCILIATION							\$ (4,741.60)
ORIGINAL CONTRACT AMOUNT						\$ 201,747.75	
PLUS CHANGE ORDER NO. 1						\$ 550.00	
LESS CHANGE ORDER NO. 2 & RECONCILIATION							\$ (4,741.60)
ADJUSTED CONTRACT AMOUNT						\$ 197,556.15	

REQUESTED BY: *David [Signature]* DATE: 8.26.11  
 MERCER CONSTRUCTION COMPANY  
 RECOMMENDED BY: *John [Signature]* DATE: 9.1.11  
 O'MALLEY ENGINEERS D.L.P.  
 APPROVED BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
 CITY OF BRENHAM

K:\010061006-057\ub\Letter\CO 2 & Reconciliation.xls

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

DATE OF ISSUANCE June 17, 2011

OWNER City of Brenham

CONTRACTOR Mercer Construction Company

Contract: \_\_\_\_\_

Project: City of Brenham – SH 36/North Park Utility Extensions

OWNER's Contract No. \_\_\_\_\_

ENGINEER's Project No. 1006.057-UA/UB

This Certificate of Substantial Completion applies to all Work under the Contract Documents or to the following specified parts thereof: N/A

To City of Brenham

OWNER

And To Mercer Construction Company

CONTRACTOR

The Work to which this Certificate applies has been inspected by authorized representatives of OWNER, CONTRACTOR and ENGINEER, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on

June 17, 2011

DATE OF SUBSTANTIAL COMPLETION

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by CONTRACTOR within N/A days of the above date of Substantial Completion.

EJCDC No. 1910-8-D (1996 Edition)

Prepared by the Engineers' Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specifications Institute.

The responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees shall be as follows:

OWNER: As of the date of substantial completion, the OWNER shall assume responsibility for security, operation, safety, maintenance, and utilities associated with the portion of the project certified as substantially complete. Within 15 days from the date of substantial completion the OWNER shall become responsible for insurance associated with the portion of the project certified as substantially complete.

CONTRACTOR: The CONTRACTOR shall be responsible for providing warranties and guarantees in accordance with the CONTRACT DOCUMENTS.

The following documents are attached to and made a part of this Certificate:

*[For items to be attached see definition of Substantial Completion as supplemented and other specifically noted conditions precedent to achieving Substantial Completion as required by Contract Documents.]*

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR's obligation to complete the Work in accordance with the Contract Documents.

Executed by ENGINEER on 9.1.11  
Date

O'Malley Engineers. L.L.P.  
ENGINEER

By:   
(Authorized Signature)

CONTRACTOR accepts this Certificate of Substantial Completion on 8.26.11  
Date

Mercer Construction Company  
CONTRACTOR

By:   
(Authorized Signature)

OWNER accepts this Certificate of Substantial Completion on \_\_\_\_\_  
Date

City of Brenham  
OWNER

By: \_\_\_\_\_  
(Authorized Signature)

**CONSENT OF  
SURETY COMPANY  
TO FINAL PAYMENT**

AIA DOCUMENT G707

OWNER   
ARCHITECT   
CONTRACTOR   
SURETY   
OTHER

**Bond No. 105521673**

Houstoun, Woodard, Eason, Gentle,  
Tomforde and Anderson, Inc  
dba Insurance Alliance  
1776 Yorktown, Suite 200  
Houston, Texas 77056-4114  
TDI License #1381 FEIN #760362043

PROJECT: **SH 36/North Park Utility Extension**  
(name, address)

TO: (Owner)

**City of Brenham  
PO Box 1059  
Brenham, Texas 77834**

ARCHITECT'S PROJECT NO:

CONTRACT FOR:

CONTRACT DATE:

CONTRACTOR:

**Mercer Construction Company  
P.O. Box 888  
Edna, Texas 77957-0888**

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the (here insert name and address of Surety Company)

**Travelers Casualty and Surety Company of America  
4650 Westway Park Blvd.  
Houston, TX 77041**

, SURETY COMPANY,

on bond of (here insert name and address of Contractor)

**Mercer Construction Company  
P.O. Box 888  
Edna, Texas 77957-0888**

, CONTRACTOR,

hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety Company of any of its obligations to (here insert name and address of Owner)

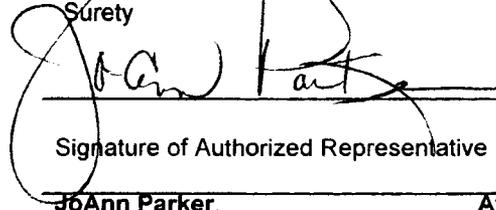
**City of Brenham  
PO Box 1059  
Brenham, TX 77834**

, OWNER,

as set forth in the said Surety Company's bond.

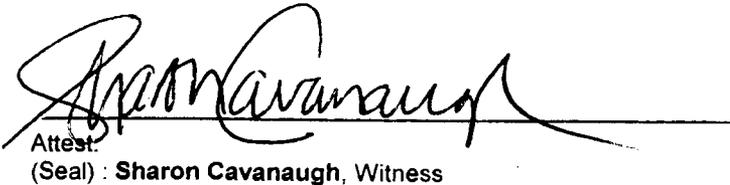
IN WITNESS WHEREOF,  
the Surety Company has hereunto set its hand this **15th** day of **September, 2011**.

**Travelers Casualty and Surety Company of America**  
Surety

  
\_\_\_\_\_  
Signature of Authorized Representative

**JoAnn Parker,**  
Title

**Attorney-in-Fact**

  
\_\_\_\_\_  
Attest:  
(Seal) : **Sharon Cavanaugh, Witness**

NOTE: This form is to be used as a companion document to AIA DOCUMENT G706, CONTRACTOR'S AFFIDAVIT OF PAYMENT OF DEBTS AND CLAIMS, Current Edition



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 214281

Certificate No. 003863743

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

C. W. Adams, Harlan J. Berger, Andrew J. Janda, Donald E. Woodard Jr, Michael Cole, Sue Kohler, Cheryl R. Colson, Sharon Cavanaugh, Leland L. Rauch, and JoAnn Parker

of the City of Houston, State of Texas, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 26th day of August, 2010

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
George W. Thompson, Senior Vice President

On this the 26th day of August, 2010, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2011.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kori M. Johanson, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 15th day of September, 2011

  
Kori M. Johanson, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at [www.travelersbond.com](http://www.travelersbond.com). Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

AFFIDAVIT

STATE OF TEXAS  
COUNTY OF JACKSON

WHEREAS, the undersigned, Michael Mercer, who being duly sworn, on oath, says that he is the legal representative of Mercer Construction Company, has been employed by the City of Brenham to furnish labor and materials for the installation of the SH 36/North Park Utility Extension in Brenham, Texas.

The undersigned hereby acknowledges receipt of payments from the City of Brenham as full compensation, less retainage, for work performed and materials stored on-site through June 27, 2011, and warrants that previous progress payments received on account of said project have been applied on account to discharge legitimate obligations of undersigned associated with prior payments received through June 27, 2011.

Date September 15, 2011

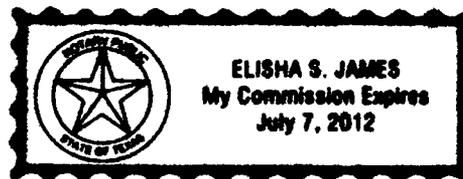
*Michael Mercer*

BY: Michael Mercer

TITLE: Executive Vice President

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 15th DAY OF September,  
2011.

*Elisha S. James*  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS





## AGENDA FORM

<b>DATE OF MEETING:</b> October 20, 2011	<b>DATE SUBMITTED:</b> October 13, 2011			
<b>DEPT. OF ORIGIN:</b> Public Utilities	<b>SUBMITTED BY:</b> Dane Rau			
<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 Bid No. 12-003 for the Purchase of a 53' Aluminum Refuse Trailer and Authorize the Mayor to Execute any Necessary Documentation				
<b>SUMMARY STATEMENT:</b> On October 11, 2011 the Purchasing Dept. opened bids for the purchase of an aluminum refuse trailer. The bids were as follows:				
Bidder	Year	Mfg.	Del.	Bid Price
Travis Body & Trailer (Houston, TX)	2012	Travis Body	120 ARO	\$58,328.00
Interstate Manufacturing	2012	Interstate	N/A	No Bid
<p>As seen above Travis Body and Trailer was the only bid received even though bids were sent to two manufactures. Travis Body and Trailer met all bid specifications. Bids were advertised and only two packets were requested. Travis Body and Trailer did receive the bid in 2010 for a 48' trailer at the cost of \$56,922.00. We did ask vendors to quote an alternate 53' aluminum trailer. This would allow our operation to become more efficient with our recent modifications to the roll-off area. With utilizing a 53' trailer for non-compactible waste it will give us more room to haul additional debris to the landfill. Other options were requested as seen in the bid information sheet. We have chosen to accept the alternate bid for the 53' trailer along with options #3, #4, #5, and #6. The total package which includes the 53' trailer and option #3, #4, #5, and #6 total \$60,653.00. During the 2011-12 budget process a total of \$59,000 was budgeted. We have also excluded options such as aluminum wheels, extra spare tire and rim, inspection, and freight.</p> <p>Staff is recommending that Council approve the bid from Travis Body and Trailer for the purchase of 53' aluminum refuse trailer along with options #3, #4, #5, and #6 in the amount of \$60,653.00.</p>				

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

**A. PROS:** Will allow us to haul additional garbage to our landfill by utilizing a 53' trailer.

**B. CONS:** Slightly over budget, but makes sense and will recover costs by hauling more in each load.

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

**ATTACHMENTS:** (1) Bid Information Sheet

**FUNDING SOURCE (Where Applicable):** 106-5-042-810.00

**RECOMMENDED ACTION:** Approve Bid No. 12-003 and Award Contract to Travis Body and Trailer in the Amount of \$60,653 for the Purchase of a 53' Aluminum Refuse Trailer along with options #3, #4, #5, and #6 and Authorize the Mayor to Execute Any Necessary Documentation.

**APPROVALS:** Lowell Ogle Jr.



## **Bid Information Sheet**

**October 11, 2011**

**Requesting Department: Sanitation**

**Amount Budgeted: \$59,000**

**Bid No. 12-003**

**For: 48' Aluminum, Live Floor, Refuse Transfer Trailer**

**Number of vendors requesting a bid packet: 2**

**Number of completed bids returned to Purchasing: 1**

**Note: Mr. Kevan Bessire, with Interstate Manufacturing located in Rupert, Idaho, could not meet our specifications because their trailer design is a sheet and post riveted style trailer.**

## Bid Evaluation Sheet

### Bid No. 12-003 48' Aluminum, Live Floor, Refuse Transfer Trailer

Bidder	Year/Model/Manufacturer	Total
Interstate Manufacturing, Inc. Rupert, Idaho	No Bid	
Travis Body & Trailer, Inc. Houston, TX.	2012 Travis Aerolite S-102 Live Floor Travis Body & Trailer, Inc.	\$56,502.00
<b>Delivery: 120 days from date of order</b>		
<b><u>Options:</u></b>		
1. Extra Wheel & Tire		\$730.00
2. Aluminum Wheels		\$2040.00
3. Tarp		\$1700.00
4. Mesh Window in Nose		\$100.00
5. Tow Hooks on Subframe		\$150.00
6. Cat Walk on Front of Trailer		\$375.00
7. Inspection		\$60.00
8. Freight		\$475.00
<b>Note: <i>Steel Wheels included in base price of trailer</i></b>		

**Alternate Bid**  
**53' Aluminum, Live Floor, Refuse Trailer**

<b>Bidder</b>	<b>Year/Model/Manufacturer</b>	<b>Total</b>
<b>Interstate Manufacturing, Inc. Rupert, Idaho</b>	<b>No Bid</b>	
<b>Travis Body &amp; Trailer, Inc. Houston, TX.</b>	<b>2012 Travis Aerolite S-102 Live Floor Travis Body &amp; Trailer, Inc.</b>	<b>\$58,328.00</b>
<b>Delivery: 120 days from date of order</b>		
<b><u>Options:</u></b>		
1. Extra Wheel & Tire		<b>\$730.00</b>
2. Aluminum Wheels		<b>\$2040.00</b>
3. Tarp		<b>\$1700.00</b>
4. Mesh Window in Nose		<b>\$100.00</b>
5. Tow Hooks on Subframe		<b>\$150.00</b>
6. Cat Walk on Front of Trailer		<b>\$375.00</b>
7. Inspection		<b>\$60.00</b>
8. Freight		<b>\$475.00</b>

**Travis Body & Trailer: Nearest parts and service center is located in Houston, Texas.**