

# City of Freeport

NOTICE OF PUBLIC MEETING  
THE FREEPORT CITY COUNCIL  
MONDAY, DECEMBER 1, 2008 6:00 P.M.  
MUNICIPAL COURT ROOM  
FREEPORT POLICE DEPARTMENT, 430 N. BRAZOSPORT BLVD.  
FREEPORT, TEXAS 77541

## AGENDA FORMAL SESSION

1. Call to Order.
2. Invocation.
3. Pledge of Allegiance.
4. Consideration of the approval of the November 17th, 2008 Council Minutes.  
Pg. 1493-1496
5. Attending Citizens and Their Business.
6. Consideration of the approval of Resolution No. 2008-2188 appointing Joyce Adkins to the Planning Commission of said City. Pg. 1497
7. Consideration of the approval of a request for street closures on East and West Park between Cherry and all side streets intersecting with 2<sup>nd</sup> Street for the 23<sup>rd</sup> Annual Dr. Martin Luther King, Jr. Celebration Parade on Monday, January 19, 2009, from 10:00 a.m. to 12:00 p.m. Pg. 1498
8. Consideration of the approval of advertising and setting a bid date for golf carts for the City of Freeport Municipal Golf Course. Pg. 1499
9. Consideration of the approval of selling Block 715, Lot 17, Velasco Townsite, known as 1209 North Ave. M, Tax Id 8110-3072-000. Pg. 1500-1503
10. Consideration of the approval of selling Block 71, Lot 7, Velasco Townsite, known as 214 South Ave. I., Tax Id 8110-0703-110. Pg. 1504-1507
11. Consideration of the approval of selling Block 748, 1/2 Sweeny Street right-of-way adjacent to Lot 13, Velasco Townsite. Pg. 1508-1514

12. Consideration of whether or not to close and abandon a portion of Gulf Boulevard right- of- way adjacent to and parallel to Lots 5 through 12, Block 708, Velasco Townsite. Pg. 1515-1516B
13. Consideration of the approval of selling Block 718, Lots 17 & 18, Velasco Townsite, known as 1207-1209 North Ave. P., Tax Id. 8110-3118-000. Pg. 1517-1520
14. Consideration of the approval of Resolution No. 2008-2189 ratifying the city managers decision to hire Jaco Construction for repairing City Halls roof. Pg. 1521-1524
15. Consideration of the approval of signing an agreement with Brazos Technology and use court technology funds to purchase an automated citation program-equipment. Pg. 1525-1540
16. Consideration of any action to be taken as result of closed executive session.

#### Elected Official Report

#### **Work Session:**

#### Administration Report

1. Discussion concerning a No Smoking Ordinance. Pg. 1540-B - 1547
2. Discussion amending sign ordinances to authorize repair or replacing after damage or destruction. Pg. 1548-1555

#### **Executive Session**

##### Section 551.074, Government Code:

Deliberations concerning the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee or to hear a complaint or charge against an officer or employee, to wit:

- A. City Manager

##### Section 551.071, Government Code:

Consultation with City Attorney concerning pending or contemplated litigation, settlement offers or other matter in which his duty to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551, Government Code, to wit:

- A. Gary Beverly
- B. Pinkey Hartline

Section 551.076, Government Code

Deliberations concerning the deployment, or specific occasions for implementation, of security personnel devices.

Adjourn

**NOTE: ITEMS NOT NECESSARILY DISCUSSED IN THE ORDER THEY APPEAR ON THE AGENDA. THE COUNCIL, AT ITS DISCRETION, MAY TAKE ACTION ON ANY OR ALL OF THE ITEMS AS LISTED.**

This notice is posted pursuant to the Texas Open Meeting Act. (Chapter 551, Government Code)

In compliance with the American with Disabilities Act, the City of Freeport will provide for reasonable accommodations for persons attending City Council Meetings. Request should be received 48 hours prior to the meetings. Please contact the City Secretary office at 979.233.3526.

I, Delia Muñoz, City Secretary, City of Freeport, Texas, hereby certify that this agenda was posted on the official bulletin board/glass door of City Hall, facing the rear parking lot of the building, with 24 hour a day public access, 200 W. 2nd Street, Freeport, Texas, on November 25th, 2008, at or before 5:00 p.m.

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Delia Muñoz  
City Secretary

State of Texas

Brazoria County

City of Freeport

BE IT REMEMBERED, that the City of Freeport, met in a regular meeting on Monday, November 17th, 2008 at 6:00 p.m., at the Freeport Police Department, Municipal Court Room, 430 North Brazosport Boulevard, Freeport Texas, for the purpose of considering the following agenda items:

City Council:

Larry L. McDonald  
Clan A. Cameron  
Jim Saccomanno  
Ron Wise  
Norma M. Garcia

Staff:

Jeff Pynes, Interim City Manager  
Wallace Shaw, City Attorney  
Delia Munoz, City Secretary  
Nat Hickey, Property Manager  
Larry Fansher, Parks Director  
Mary Stotler, Main Street Director  
Bob Welch, Finance Director  
Allan Lawson, Police Sergeant

Visitors:

Louie Jones	Jim Pirrung
Dorothy Pirrung	Edna Allan
Pixie Floyd	Joyce Akdins
Jerry Meeks	Brenda Laird
Eric Hayes	Lila Diehl
Annett Sanford	Chris Moore
Helen McQuaig	Johnny McQuaig
Tobey Davenport	Gary Pohl
Elma Sanchez	Jim McEntire
Lila Lloyd	Bobby Casale
Eileen Koenig	Jim Adkins
Nancy Gray	Wright Gore, III
Edmery Williams	

Call to Order.

Mayor McDonald called the meeting to order at 6:00 p.m.



Invocation.

Chris Moore from the Velasco Baptist Church offered the invocation.

Pledge of Allegiance.

Mayor McDonald led the Pledge of Allegiance.

Consideration of the approval of the November 3rd, 2008 Council Minutes.

On a motion by Councilman Cameron, seconded by Councilman Saccomanno, with all present voting "aye", Council unanimously approved November 3rd, 2008 Council Meeting.

Attending Citizens and Their Business.

Nancy Gary representing Boy Scouts of America asked Council for help in getting a Club Scout Pack organized in Freeport. She requested assistance in putting up a banner and using the City's marque sign to announce a rally.

Bobby Casale, resident from Bridge Harbor passed out photos of debris from Bridge Harbor caused by Hurricane Ike. Some businesses and residents still had debris that had not been picked up. He also addressed Councilwoman Garcia and asked for an update on the Gulfco Super Fund chemical dumpsite. He asked if the City would consider implementing a No Smoking Ordinance.

Consideration of the approval of Resolution No. 2008-2186 appointing Raul Ramirez to the Board of Adjustment to the City.

On a motion by Councilman Cameron, seconded by Councilman Wise, with all present voting "aye", Council unanimously approved Resolution No. 2008-2186, appointing Raul Ramirez to the Board of Adjustment to the City.

Consideration of the approval of Resolution No. 2008-2187 appointing Bobby Joe Casale to the Brazosport Water Authority board.

On a motion by Councilman Cameron, seconded by Councilman Wise, with all present voting "aye", Council unanimously approved Resolution No. 2008-2187, appointing Bobby Joe Casale to the Brazosport Water Authority Board.

Consideration of the approval of appointing a qualified person to the Planning Commission of the City of Freeport.

On a motion by Councilman Wise, seconded by Councilman Cameron, with all present voting "aye", Council unanimously approved Joyce Adkins to the Planning Commission Board of the City of Freeport.

Consideration of the approval of a request by the Texas Port Ministry, 1103 Cherry Street, for two (2) recreational vehicles to be on site for security and ministry purposes.

On a motion by Councilman Cameron, seconded by Councilman Wise, with all present voting "aye", Council unanimously approved a request from the Texas Port Ministry of 1103 Cherry Street for two (2) recreational vehicles to be on site for security and ministry purposes.

Consideration of the approval of canceling December 15<sup>th</sup>, 2008 Council Meeting due to the holidays.

On a motion by Councilman Cameron, seconded by Councilman Saccomanno, with all present voting 4 to 1, Council canceled December 15<sup>th</sup>, 2008 Council Meeting due to the holidays. Councilman Wise opposed.

#### Elected Official Report

Councilman Saccomanno reported that approximately 250 people attended the Senior Citizens Luncheon at RiverPlace. He commended the Freeport Police Department and Freeport Fire EMS Department for an outstanding job serving the senior citizens. The Main Street board meets November 20, 2008 at the City Hall.

Councilman Cameron announced that the EDC board has resolved the Wanda Jones eminent domain case and Trico building issues.

Mayor McDonald and Jeff Pynes attended a FEMA meeting in Galveston. Mayor McDonald thanked the EDC members for their hard work on resolving the issues.

#### **Work Session:**

##### Administration Report

No report.

Finance Director, Bob Welch reports on financials for year ending 9/30/08.

Mr. Welch reported on the financials for year ending 9-30-2008.

Mayor McDonald closed the formal session and opened the executive session at 6:40 p.m.

**Executive Session**

Section 551.074, Government Code:

Deliberations concerning the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee or to hear a complaint or charge against an officer or employee, to wit:

A. City Manager

Adjourn

On a motion by Councilman Cameron, seconded by Councilman Saccomanno, with all present voting “aye”, the meeting was adjourned at 8: 04 p.m.

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Delia Munoz  
City Secretary

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Larry L. McDonald  
Mayor

RESOLUTION NO. 2008-2188

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FREEPORT, TEXAS, NOMINATING, CONSTITUTING AND APPOINTING A QUALIFIED PERSON TO THE PLANNING COMMISSION OF THE CITY; PROVIDING FOR THE DUTIES OF OFFICE; AND PROVIDING FOR THE TAKING OF THE OATH OF OFFICE REQUIRED BY LAW.

WHEREAS, the City Council of the City of Freeport, Texas ("the City") has been advised that a vacancy exist on the Planning Commission of the City; and,

WHEREAS, the City Council of the City desires to appoint the below named qualified person as a member of said commission to fill such vacancy.

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

SECTION ONE (1): APPOINTMENT

The City Council of the City hereby nominates, constitutes and appoints the following named qualified person to the Planning Commission of the City for the remainder of the unexpired term of ROSEMARY HICKEY and until a successor for such person shall have been appointed and qualified, to-wit: JOYCE ADKINS.

SECTION TWO (2): DUTIES

The above named appointee shall perform all of the duties imposed on members of the Planning Commission of the City by law and the charter, ordinances and resolutions of the City.

SECTION THREE (3): OATH OF OFFICE

Before engaging in the performance of the duties of office, such appointee shall take the Constitutional Oath of Office and sign the affidavit required by law.

READ, PASSED AND ADOPTED this \_\_\_\_ day of November, 2008.

\_\_\_\_\_  
Larry McDonald, Sr., Mayor  
City of Freeport, Texas

ATTEST:

\_\_\_\_\_  
Delia Muñoz, City Secretary  
City of Freeport, Texas

Dr. Martin Luther King, Jr.  
Brazoria County, Texas  
Celebration Committee

216 Banyan Dr.  
Lake Jackson, TX 77566  
Contact: Mr. Will J. Brooks  
Phone: (979) 297-2801



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November 21, 2008  
Attention: Ms. Delia Munoz  
200 West 2<sup>nd</sup> Street  
Freeport, TX 77541

To the City Council of Freeport:

It is my pleasure to inform you about the 23rd annual Dr. Martin Luther King, Jr. Celebration Committee (MLKCC). We are a non-profit, 501(c) 3 organization. Since 1986, MLKCC – Brazoria County has sponsored events to celebrate the state and federal holiday honoring the birthday of the late Dr. Martin Luther King, Jr. and to perpetuate his memory and the legacy of his achievements for future generations. Additionally, our MLKCC seeks to honor Dr. King's admonition of service to the community by sponsoring both the MLKCC and Dennis R. Edwards Memorial scholarships to deserving Brazoria County high school graduates. This celebration also conducts various worthy community uplifting projects, and encourages its members to take roles in numerous civic, charitable, and cultural endeavors. This annual celebration is a time of unity and togetherness promoted through events including a Community Worship Service, MLKCC Commemorative Banquet, Job Fair & Career Expo, Parade & Rally, and Health Fair.

Dr. Martin Luther King, Jr. Celebration Committee request permission to close portions of the following streets during the Parade to be held on Monday, January 19, 2009. The parade will start at 12:00 noon and the set up (staging area) will start at 10:00 am on Cherry, East Park and Fourth Street. The parade route will begin at East Park Avenue and Fourth Street and continue along 2<sup>nd</sup> Street to 288-B to the Freeport Municipal Park. The celebration will continue through the Rally at the Freeport Municipal Park until 5:30 pm. In order to move forward with success, we are requesting your permission, support and participation in the 23rd Annual Dr. Martin Luther King, Jr. Celebration.

Thank you in advance for your consideration and we look forward to celebrating the legacy of Dr. Martin Luther King, Jr. with you.

Sincerely,

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Will J. Brooks  
Parade Chairman  
On behalf of MLKCC-BC Parade & Rally Committee

TO: Freeport City Council  
FROM: Terlesa Conyers  
DATE: November 20, 2008  
SUBJECT: Proposed Bid Date

The City Of Freeport Municipal Golf Course is interested in entering into a contract for leasing 45 new golf carts. This lease will be for a period of 48 months.

**SEALED BIDS OR PROPOSAL** marked “**GOLF CARTS**” **DECEMBER 19, 2008 2:00 P.M.**” Shall be submitted to the office of the City Secretary, 200 West Second St., Freeport, Texas 77541, no later than 2:00 p.m. Central Standard Time, at which time they will be opened publicly.

**BID SPECIFICATIONS** can be obtained upon request by contacting the Purchasing Agent, Terlesa Conyers at 200 West Second Street, Freeport. Texas.

ADS TO RUN DEC. 5<sup>TH</sup>, & DEC. 12<sup>TH</sup>, 2008



200 West 2nd Street • Freeport, TX 77541-5773

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## PROPERTY MANAGEMENT

November 24, 2008

Jeff Pynes  
City Manager

re: Lot 17, Block 715, Velasco Townsite  
Known as 1209 North Avenue M  
Tax ID 8110-3072-000

Please place the following item on the December 1, 2008, Council agenda:

Discuss / consider the sale of lot 17, block 715, Velasco  
Townsite, known as 1209 North Avenue M  
Tax ID 8110-3072-000

Ms Tiffanye Dunlap has made an offer of \$200 for this property. The Appraisal District fair market value is \$2030.00 which is in the marketable price range of properties in this area.

Not taken into consideration, are the City paving and care of premises liens in the amount of \$4442.13.

Recommendation: offer be rejected

N C Hickey  
Property

attach

/s

Lien Payoff Calculation

	A	B	C	D	E	F	G	H	I	J
1	Owner			Block		Lot(s)		Situs Address	Account No.	
2	Freeport Trust			715		17		1209 N Ave M	8110-3072-000	
3										
4	Cause No		81G0293							
5	Judgment date		1/27/1983							
6	Sheriff Deed		1771/207							
7	Deed Date		11/28/1983							
8										
9					Interest					
10	Lien No.	Date	Base	#Mo	per mo.	P&I	File	Total Due	C+F+G	
11										
12	3/171	4/11/1974	25	392	0.21	82.32		107.32		
13	3/301	6/18/1975	25	378	0.21	79.38		104.38		
14	3/339	10/24/1975	25.00	373	0.21	78.33		103.33		
15	3/479	8/5/1976	25	364	0.21	76.44		101.44		
16	208/789	1/17/1983	1301.5	312	8.68	2708.16	16	4025.66	Calc thru 12-21-08	
17										
18								4442.13		
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22	NOTE: Care of premises liens in the amount of \$416.47 in abatement program									
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## PROPERTY MANAGEMENT MEMO

Council Agenda Date: December 1, 2008

Agenda item:

Legal Description: Block 715, Lot 17  
Street Address: 1209 North Avenue M  
Between: Skinner & Stratton

Type of Property: Trust  
Sheriff Sale Date: 11-28-1983  
Sheriff Deed Number: vol 1771, page 207

Years Taxes Delinquent: 40 years  
Taxes extinguished by Sheriff Sale: \$ 143.45

Appraisal District Value: \$2030.00  
Offer by: Tiffanye Dunlap \$ 200.00  
Court Cost & Post Judgment: \$ 0.00  
Liens: Paving & Care of Premises \$4442.13\*

Amount Left to Distribute: \$ 200.00\* DOES NOT include liens  
Distribution Amount to Freeport: \$ 151.82\* DOES NOT include liens

Property Recommendation: Offer be denied

Action:  Accept Offer  
 Reject Offer  
 Re-agenda

### COMMENTS:

Fair market value of property at \$2000 per lot is within price of properties selling in the Velasco area.

See attached calculation sheet for details on liens

Motion by \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_

Trust sale-Council action

Brazoria CAD

Property Search Results > Property ID 261341 CITY OF FREEPORT IN TRUST for Year 2008

<b>Property Details</b>		<span>1: <input type="text" value="Zoom"/></span>	
<b>Account</b> Property ID: 261341 Geo. ID: 8110-3072-000 Type: Real Legal Description: VELASCO (FREEPORT), BLOCK 715, LOT 17, SUIT #81G0293 7-27-83			
<b>Location</b> Address: N AVE M FREEPORT, TX 77541 Neighborhood: FREEPORT ORIGINAL Mapsco: Jurisdictions: CAD, CFP, DR2, GBC, JBR, NAV, RDB, SBR			
<b>Owner</b> Name: CITY OF FREEPORT IN TRUST Address: 200 W 2ND ST FREEPORT, TX 77541-5773			
<b>Property</b> Appraised Value: \$2,030			
<a href="#">Map Layers</a> <a href="#">Radius Search</a>			

Website version: 1.2.1.50

Database last updated on: 11/19/2008 8:23 PM

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## PROPERTY MANAGEMENT

November 22, 2008

Jeff Pynes  
City Manager

re: Lots 7, Block 71, Velasco Townsite  
214 South Avenue I  
Tax ID 8110-0703-110

Please place the following item on the December 1, 2008, Council agenda:

Discuss / consider the sale of lots 7, block 71, known as  
214 South Avenue I, to Shiraz Laeeq  
Tax ID 8110-3118-000.

This is trust resale property approved by the Brazoria County Resale Committee.

This property joins Urban Renewal Properties.

Recommendation: Offer be denied

N C Hickey  
Property

attach

/s

Trust sale property



## PROPERTY MANAGEMENT MEMO

Council Agenda Date: December 1, 2008  
 Agenda item:

Legal Description: Block 71, Lot 7  
 Street Address: 214 South Avenue I  
 Between: Caldwell & DeZavala

Type of Property: Trust  
 Sheriff Sale Date: 10-11-1982  
 Sheriff Deed Number: vol. 1681, page 509

Years Taxes Delinquent: 34 years  
 Taxes extinguished by Sheriff Sale: \$ 89.76

Appraisal District Value: \$2,030.00  
 Offer by: Shiraz Laeeq \$ 102.00  
 Court Cost & Post Judgment: \$ 0.00  
 Lien(s): City Paving \$ 827.96\*

Amount Left to Distribute: \$ 102.00\* - Does not include M&M paving lien  
 Distribution Amount to Freeport: \$ 82.15\* - Does not include M&M paving lien

Property Recommendation: **Offer be denied**

Action:  Accept Offer  
 Reject Offer  
 Re-agenda

**COMMENTS:**

See lien pay-off calculation sheet for details on paving lien.

Motion by \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_



Brazoria CAD

Property Search Results > Property ID 260133 CITY OF FREEPORT IN TRUST for Year 2008

<b>Property Details</b>		<span>1: <input type="text" value="Zoom"/></span>	
<b>Account</b> Property ID: 260133 Geo. ID: 8110-0703-110 Type: Real Legal Description: VELASCO (FREEPORT), BLOCK 71, LOT 7, SUIT #80G1050 10-11-82			
<b>Location</b> Address: S AVE I FREEPORT, TX 77541 Neighborhood: FREEPORT ORIGINAL Mapsco: CAD, CFP, DR2, GBC, JBR, NAV, RDB, SBR			
<b>Owner</b> Name: CITY OF FREEPORT IN TRUST Address: 200 W 2ND ST FREEPORT, TX 77541-5773			
<b>Property</b> Appraised Value: \$2,030			
<a href="#">Map Layers</a> <a href="#">Radius Search</a>			

Website version: 1.2.1.50

Database last updated on: 11/19/2008 8:23 PM

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Lien Payoff Calculation

	A	B	C	D	E	F	G	H	I	J
1	<b>Owner</b>			<b>Block</b>		<b>Lot(s)</b>	<b>Situs Address</b>		<b>Account No.</b>	.
2	City of Freeport Trust			71		7	214 S Ave I		8110-0703-110	
3										
4	Cause No		80G1050							
5	Judgment date		6/28/1982							
6	Sheriff Deed		1681/509							
7	Deed Date		10/29/1953							
8										
9					<b>Per Mo.</b>					
10	<b>Lien</b>	<b>Date</b>	<b>Base</b>	<b>#Mo</b>	<b>Interest</b>	<b>P&amp;I</b>	<b>File</b>	<b>Total</b>	<b>C+F+G</b>	
11										
12	MM112/408	1/22/1972	\$ 259.50	302	1.73	\$ 522.46	16	\$ 797.96	Calc thru 12-31-08	
13						Administrative fee		\$ 30.00		
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15						<b>Total</b>		<b>\$ 827.96</b>		
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## PROPERTY MANAGEMENT

November 24, 2008

Jeff Pynes  
City Manager

re: Sale of 1/2 Sweeny St ROW adjacent to  
lot Lot 13, Block 748, Velasco Townsite

Please place the following item on the December 1, 2008, Council agenda:

Discuss / consider the sale of 1/2 Sweeny Street rights-of-way  
adjacent to lot 13, Block 748, Velasco Townsite.

We have a request from Lily Acuna Garcia to purchase the above described portion of the  
Sweeny Street rights-of-way.

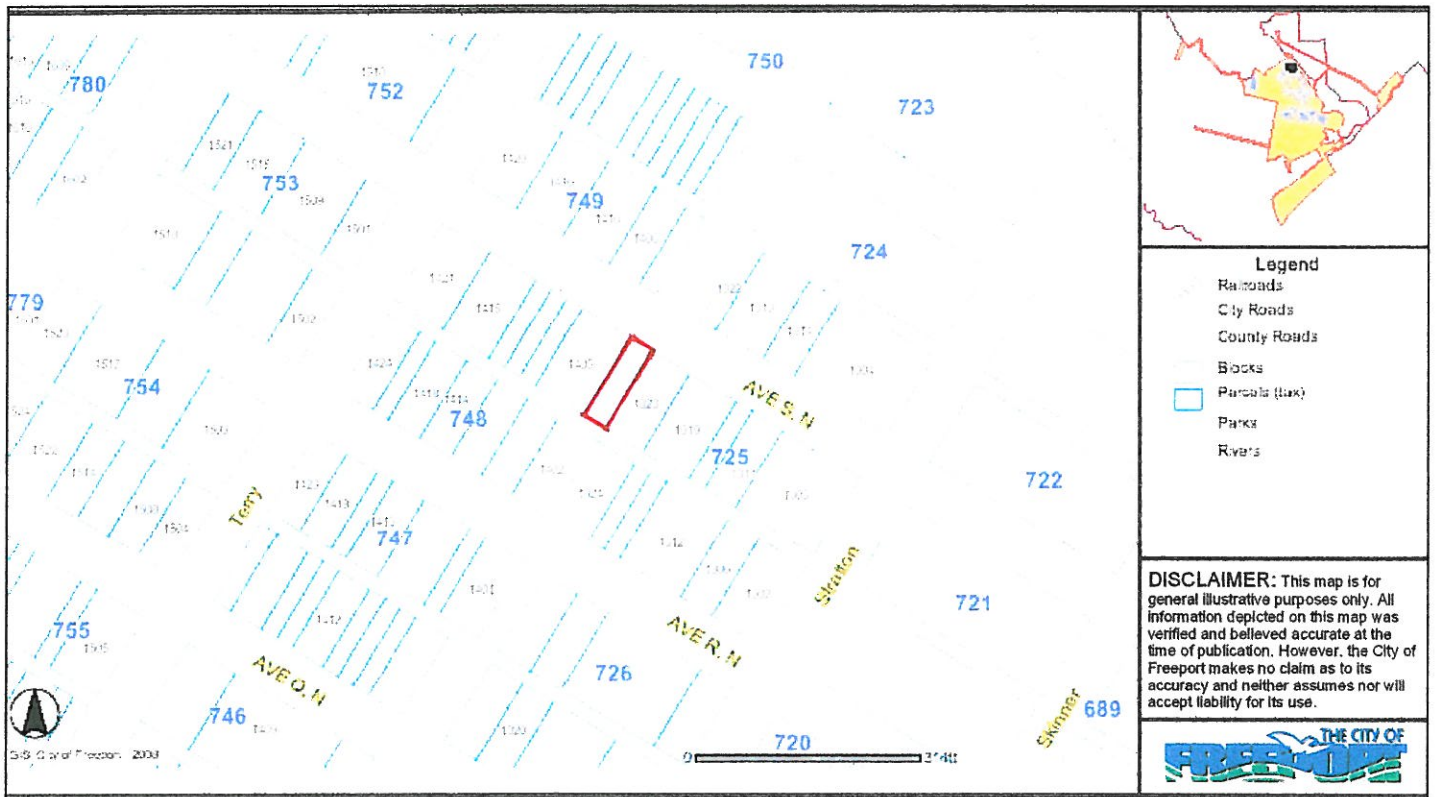
The property has been appraised by Joseph A. Fischer, Inc., for \$3,700. Ms. Garcia has  
asked if the Council would consider \$3,000 for this property rather than the appraised value?

Copy of appraisal attached.

N C Hickey  
Property

attach

/s





**APPRAISAL OF REAL PROPERTY**

**LOCATED AT:**

Sweeny Street ROW  
Freeport, Tx 77541  
Northeast half of Sweeny Street ROW in Block 725

**FOR:**

City of Freeport  
200 West 2nd Street  
Freeport, Tx 77541

**AS OF:**

**BY:**

Joseph A. Fischer  
Joseph A. Fischer & Co., Inc.  
54 White Oak Ct.  
Lake Jackson, Texas 77566

Form GA3 LT — "WinTOTAL" appraisal software by a la mode, inc. — 1-800-ALAMODE

RECEIVED  
SEP 29 2008

LAND APPRAISAL REPORT

Summary Appraisal Report

File No. 8548

Borrower N/A Census Tract 6643.00 Map Reference KM 911 K  
 Property Address Sweeny Street ROW  
 City Freeport County Brazoria State Tx Zip Code 77541  
 Legal Description Northeast half of Sweeny Street ROW in Block 725 between Terry and Stratton Streets  
 Sale Price \$ N/A Date of Sale N/A Loan Term N/A yrs. Property Rights Appraised  Fee  Leasehold  De Minimis PUD  
 Actual Real Estate Taxes \$ N/A (yr) Loan charges to be paid by seller \$ N/A Other sales concessions N/A  
 Lender/Client City of Freeport Address 200 West 2nd Street, Freeport, Tx 77541  
 Occupant N/A Appraiser Joseph A. Fischer Instructions to Appraiser \_\_\_\_\_

**NEIGHBORHOOD**

Location	<input checked="" type="checkbox"/> Urban	<input type="checkbox"/> Suburban	<input type="checkbox"/> Rural	Employment Stability	<input type="checkbox"/> Good	<input checked="" type="checkbox"/> Avg.	<input type="checkbox"/> Fair	<input type="checkbox"/> Poor
Built Up	<input checked="" type="checkbox"/> Over 75%	<input type="checkbox"/> 25% to 75%	<input type="checkbox"/> Under 25%	Convenience to Employment	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Growth Rate	<input type="checkbox"/> Fully Dev.	<input type="checkbox"/> Rapid	<input type="checkbox"/> Steady	Convenience to Shopping	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Property Values	<input type="checkbox"/> Increasing	<input checked="" type="checkbox"/> Stable	<input type="checkbox"/> Declining	Convenience to Schools	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Demand/Supply	<input type="checkbox"/> Shortage	<input checked="" type="checkbox"/> In Balance	<input type="checkbox"/> Oversupply	Adequacy of Public Transportation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marketing Time	<input type="checkbox"/> Under 3 Mos.	<input checked="" type="checkbox"/> 4-6 Mos.	<input type="checkbox"/> Over 6 Mos.	Recreational Facilities	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Present Land Use	<u>88%</u> 1 Family	<u>3%</u> 2-4 Family	<u>2%</u> Apts.	Adequacy of Utilities	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>0%</u> Industrial	<u>2%</u> Vacant	<u>%</u>	Property Compatibility	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Change in Present Land Use	<input checked="" type="checkbox"/> Not Likely	<input type="checkbox"/> Likely (*)	<input type="checkbox"/> Taking Place (*)	Protection from Detrimental Conditions	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(*) From _____ To _____			Police and Fire Protection	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Predominant Occupancy	<input checked="" type="checkbox"/> Owner	<input type="checkbox"/> Tenant	<u>15%</u> Vacant	General Appearance of Properties	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Single Family Price Range	<u>\$ 10,000</u> to <u>\$ 150,000</u>	Predominant Value <u>\$ 60,000</u>		Appeal to Market	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Single Family Age	<u>20</u> yrs. to <u>90</u> yrs.	Predominant Age <u>50</u> yrs.						

Comments including those factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, view, noise): Freeport is one of four small towns (population 13,000) making up the "Brazosport" area sixty miles south of Houston. Base employment is petrochemicals. Freeport lies in the southeast sector of Brazosport exactly opposite the area's pattern of growth. Homes are primarily older, wood exterior dwellings with some brick veneer homes. Employment, shopping and schools are within ten miles.

**SITE**

Dimensions 35' x 125' = 4,375 Sq. Ft. or Acres  Corner Lot  
 Zoning classification None Present Improvements  do  do not conform to zoning regulations  
 Highest and best use  Present use  Other (specify) Residential  
 Elec.  Public  Other (Describe) \_\_\_\_\_  
 Gas  \_\_\_\_\_  
 Water  \_\_\_\_\_  
 San. Sewer  \_\_\_\_\_  
 Underground Elect. & Tel. \_\_\_\_\_

OFF SITE IMPROVEMENTS  
 Street Access  Public  Private  
 Surface Asphalt  
 Maintenance  Public  Private  
 Storm Sewer  Curb/Gutter  
 Sidewalk  Street Lights

Topo Level  
 Size Below average  
 Shape Rectangular  
 View Residential  
 Drainage Appears adequate

Is the property located in a HUD Identified Special Flood Hazard Area?  No  Yes

Comments (favorable or unfavorable including any apparent adverse easements, encroachments, or other adverse conditions): The subject site is the Sweeny Street right-of-way between Terry and Stratton Streets. The street was never built. The property is not zoned. Adjacent land use is residential. The site is too narrow for new construction. Thus, highest and best use is to provide additional land area for adjacent property owner(s).

The undersigned has recited three recent sales of properties most similar and proximate to subject and has considered these in the market analysis. The description includes a dollar adjustment reflecting market reaction to those items of significant variation between the subject and comparable properties. If a significant item in the comparable property is superior to or more favorable than the subject property, a minus (-) adjustment is made thus reducing the indicated value of subject; if a significant item in the comparable is inferior to or less favorable than the subject property, a plus (+) adjustment is made thus increasing the indicated value of the subject.

ITEM	SUBJECT PROPERTY	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
Address	Sweeny Street ROW Freeport	500 Blk W. 9th Freeport	Avenue B. Freeport	1500 Avenue G & Terry Freeport
Proximity to Subject		2.68 miles	1.44 miles	0.77 miles
Sales Price	\$ N/A	\$ 12,000	\$ 7,500	\$ 13,000
Price PSF	\$	\$ 0.69	\$ 0.78	\$ 1.02
Data Source	Field Review	MLS #L40559C & L40560C	MLS #L34648C	MLS #L41683C
Date of Sale and Time Adjustment	DESCRIPTION 09/08	DESCRIPTION 04/08	DESCRIPTION 02/06	DESCRIPTION 06/08
Location	Urban	Urban	Urban	Urban
Site/View	4,375	17,272 SF	9,625 SF	12,750 SF
Sales or Financing Concessions	N/A	N/A	N/A	N/A
Net Adj. (Total)		<input type="checkbox"/> + <input type="checkbox"/> - : \$	<input type="checkbox"/> + <input type="checkbox"/> - : \$	<input type="checkbox"/> + <input type="checkbox"/> - : \$
Indicated Value of Subject		Net % \$ 0.69	Net % \$ 0.78	Net % \$ 1.02

Comments on Market Data: Each sale is a residential property. Sale 1 was two non-contiguous lots sold at the same time by the same buyer and seller.

Comments and Conditions of Appraisal: The indicated values for the subject property range from \$0.69 PSF to \$1.02 PSF. The most reliance is given to Sales 1 and 3 since they are the most recent.

Final Reconciliation: The final value estimate for the subject tract is \$0.85 PSF or 4,375 SF @ \$0.85 PSF = \$3,719, rounded to \$3,700.

I ESTIMATE THE MARKET VALUE, AS DEFINED, OF SUBJECT PROPERTY AS OF September 26 2008 to be \$ 3,700

Joseph A. Fischer  Did  Did Not Physically Inspect Property  
 Appraiser(s) Review Appraiser (if applicable)

(Y2K)

**FIRREA / USPAP ADDENDUM**

Lender/Client City of Freeport File No. 8548  
 Property Address Sweeny Street ROW  
 City Freeport County Brazoria State Tx Zip Code 77541  
 Lender City of Freeport

**Purpose**

The purpose of this appraisal is to estimate market value for a possible sale of the property. This appraisal is intended for use by the client in evaluating any proposed sales. This report is not intended for any other use, nor is it intended for use by others.

**Scope of Work**

A field review of the subject property was made September 26, 2008 for the purpose of gathering information relevant to the property's value. The field review was limited to readily observable components only. Physical characteristics of the lot was obtained from the client. Research for comparable sales included the appraiser's files and MLS. The compiled data was analyzed using the traditional direct sale comparison approach to value. Since the property is primarily vacant land, the cost and income approaches were not applicable.

**Intended Use / Intended User**

Intended Use: The purpose of this appraisal is to estimate market value for a possible sale of the property.

Intended User(s): City of Freeport.

**History of Property**

Current listing information: None.

Prior sale: N/A

**Exposure Time / Marketing Time**


Reasonable Exposure Time - Reasonable exposure time for the subject property is the same as the typical marketing time for the defined subject neighborhood on page 1 unless otherwise noted. Reasonable exposure time occurs prior to the effective date of the appraisal. Marketing time occurs after the effective date.

**Personal (non-realty) Transfers**

None.

**Additional Comments****Certification Supplement**

1. This appraisal assignment was not based on a requested minimum valuation, a specific valuation, or an approval of a loan.
2. My compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event.
3. I certify that the use of this report is subject to the requirements of the Appraisal Institute relating to review by duly authorized representatives. As of this date, I have completed the continuing education requirements of the appraisal Institute.

Appraiser:  Joseph A. Fischer  
 Signed Date: September 29, 2008  
 Certification or License #: 1320173-G  
 Certification or License State: Tx Expires: 3/31/2009  
 Effective Date of Appraisal: \_\_\_\_\_

Supervisory Appraiser: \_\_\_\_\_  
 Signed Date: \_\_\_\_\_  
 Certification or License #: \_\_\_\_\_  
 Certification or License State: \_\_\_\_\_ Expires: \_\_\_\_\_  
 Inspection of Subject:  Did Not  Exterior Only  Interior and Exterior

**DEFINITION OF MARKET VALUE:** The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he considers his own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions\* granted by anyone associated with the sale.

\*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgement.

## STATEMENT OF LIMITING CONDITIONS AND APPRAISER'S CERTIFICATION

**CONTINGENT AND LIMITING CONDITIONS:** The appraiser's certification that appears in the appraisal report is subject to the following conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.
2. The appraiser has provided a sketch in the appraisal report to show approximate dimensions of the improvements and the sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
5. The appraiser has estimated the value of the land in the cost approach at its highest and best use and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used.
6. The appraiser has noted in the appraisal report any adverse conditions (such as, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property or adverse environmental conditions (including the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
7. The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
8. The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice.
9. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that completion of the improvements will be performed in a workmanlike manner.
10. The appraiser must provide his or her prior written consent before the lender/client specified in the appraisal report can distribute the appraisal report (including conclusions about the property value, the appraiser's identity and professional designations, and references to any professional appraisal organizations or the firm with which the appraiser is associated) to anyone other than the borrower; the mortgagee or its successors and assigns; the mortgage insurer; consultants; professional appraisal organizations; any state or federally approved financial institution; or any department, agency, or instrumentality of the United States or any state or the District of Columbia; except that the lender/client may distribute the property description section of the report only to data collection or reporting service(s) without having to obtain the appraiser's prior written consent. The appraiser's written consent and approval must also be obtained before the appraisal can be conveyed by anyone to the public through advertising, public relations, news, sales, or other media.

**APPRAISER'S CERTIFICATION:** The Appraiser certifies and agrees that:

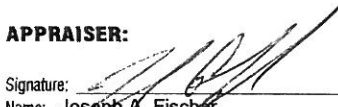
1. I have researched the subject market area and have selected a minimum of three recent sales of properties most similar and proximate to the subject property for consideration in the sales comparison analysis and have made a dollar adjustment when appropriate to reflect the market reaction to those items of significant variation. If a significant item in a comparable property is superior to, or more favorable than, the subject property, I have made a negative adjustment to reduce the adjusted sales price of the comparable and, if a significant item in a comparable property is inferior to, or less favorable than the subject property, I have made a positive adjustment to increase the adjusted sales price of the comparable.
2. I have taken into consideration the factors that have an impact on value in my development of the estimate of market value in the appraisal report. I have not knowingly withheld any significant information from the appraisal report and I believe, to the best of my knowledge, that all statements and information in the appraisal report are true and correct.
3. I stated in the appraisal report only my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the contingent and limiting conditions specified in this form.
4. I have no present or prospective interest in the property that is the subject to this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or the estimate of market value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property.
5. I have no present or contemplated future interest in the subject property, and neither my current or future employment nor my compensation for performing this appraisal is contingent on the appraised value of the property.
6. I was not required to report a predetermined value or direction in value that favors the cause of the client or any related party, the amount of the value estimate, the attainment of a specific result, or the occurrence of a subsequent event in order to receive my compensation and/or employment for performing the appraisal. I did not base the appraisal report on a requested minimum valuation, a specific valuation, or the need to approve a specific mortgage loan.
7. I performed this appraisal in conformity with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place as of the effective date of this appraisal, with the exception of the departure provision of those Standards, which does not apply. I acknowledge that an estimate of a reasonable time for exposure in the open market is a condition in the definition of market value and the estimate I developed is consistent with the marketing time noted in the neighborhood section of this report, unless I have otherwise stated in the reconciliation section.
8. I have personally inspected the interior and exterior areas of the subject property and the exterior of all properties listed as comparables in the appraisal report. I further certify that I have noted any apparent or known adverse conditions in the subject improvements, on the subject site, or on any site within the immediate vicinity of the subject property of which I am aware and have made adjustments for these adverse conditions in my analysis of the property value to the extent that I had market evidence to support them. I have also commented about the effect of the adverse conditions on the marketability of the subject property.
9. I personally prepared all conclusions and opinions about the real estate that were set forth in the appraisal report. If I relied on significant professional assistance from any individual or individuals in the performance of the appraisal or the preparation of the appraisal report, I have named such individual(s) and disclosed the specific tasks performed by them in the reconciliation section of this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in the report; therefore, if an unauthorized change is made to the appraisal report, I will take no responsibility for it.

I certify that the use of this report is subject to the requirements of the Appraisal Institute relating to review by duly authorized representatives. As of this date, I have completed the continuing education requirements of the appraisal Institute.

**SUPERVISORY APPRAISER'S CERTIFICATION:** If a supervisory appraiser signed the appraisal report, he or she certifies and agrees that: I directly supervise the appraiser who prepared the appraisal report, have reviewed the appraisal report, agree with the statements and conclusions of the appraiser, agree to be bound by the appraiser's certifications numbered 4 through 7 above, and am taking full responsibility for the appraisal and the appraisal report.

**ADDRESS OF PROPERTY APPRAISED:** Sweeny Street ROW, Freeport, Tx 77541

**APPRAISER:**

Signature:   
 Name: Joseph A. Fischer  
 Date Signed: September 29, 2008  
 State Certification #: 1320173-G  
 or State License #: \_\_\_\_\_  
 State: Tx  
 Expiration Date of Certification or License: 3/31/2009

**SUPERVISORY APPRAISER (only if required):**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Date Signed: \_\_\_\_\_  
 State Certification #: \_\_\_\_\_  
 or State License #: \_\_\_\_\_  
 State: \_\_\_\_\_  
 Expiration Date of Certification or License: \_\_\_\_\_

Did  Did Not Inspect Property



200 West 2nd Street • Freeport, TX 77541-5773  
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## PROPERTY MANAGEMENT

November 21, 2008

Jeff Pynes  
City Manager

re: Close & Abandon Portion of Gulf Blvd ROW

Please place the following item on the December 1, 2008, City Council Agenda:

Discuss / consider closing and abandoning a portion of Gulf Boulevard rights-of-way adjacent to and parallel to lots 5 through 12, block 708, Velasco Townsite.

Baytown Seafood owns the adjoining properties and has requested to purchase this property for expansion of their restaurant.

A corresponding amount of Gulf Blvd, more-or-less, has been acquired by Church's Fried Chicken immediately to the east of this property.

A request for survey and appraisal of the above referenced property is pending.

An aerial photograph and diagram of these properties attached.

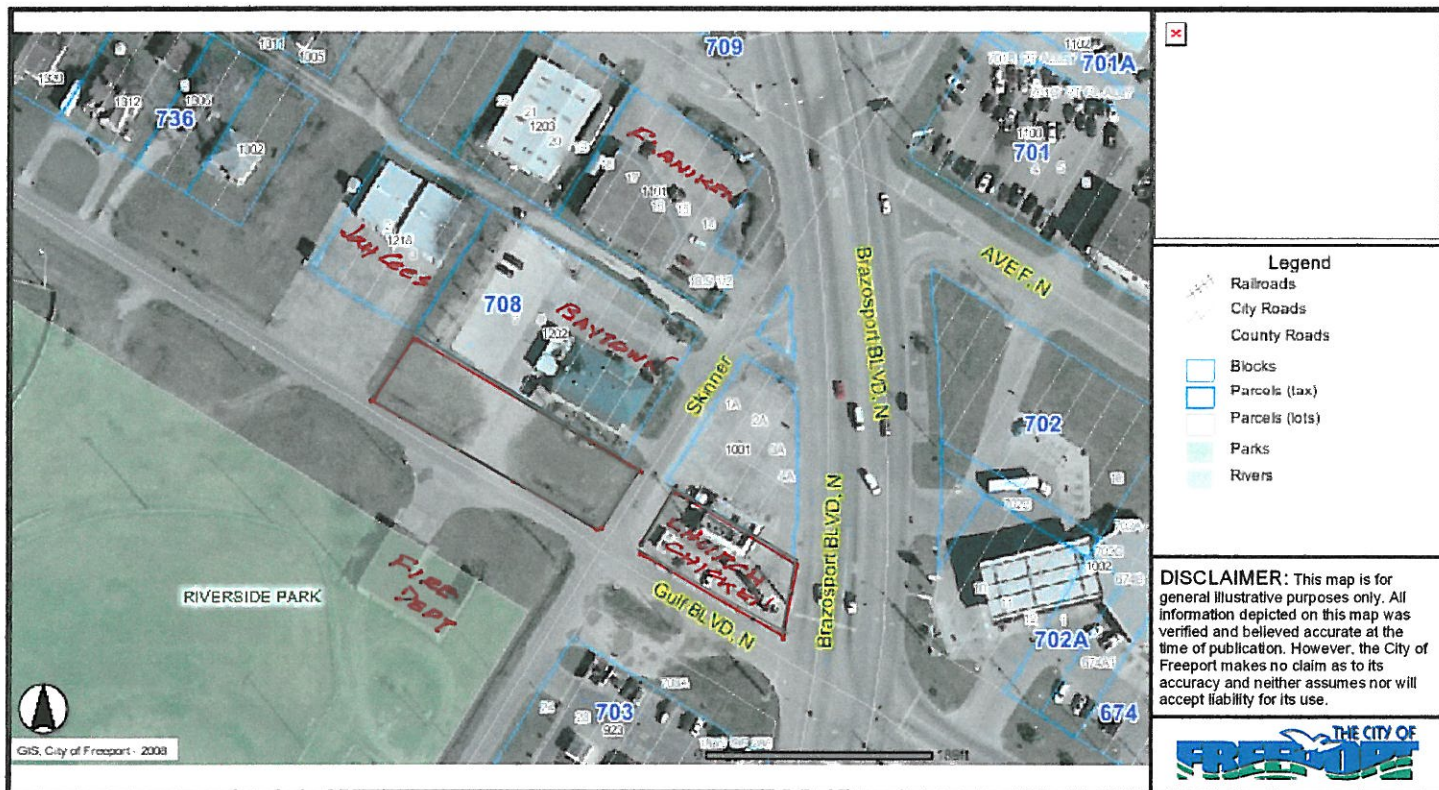
N C Hickey  
Property

attach

/s

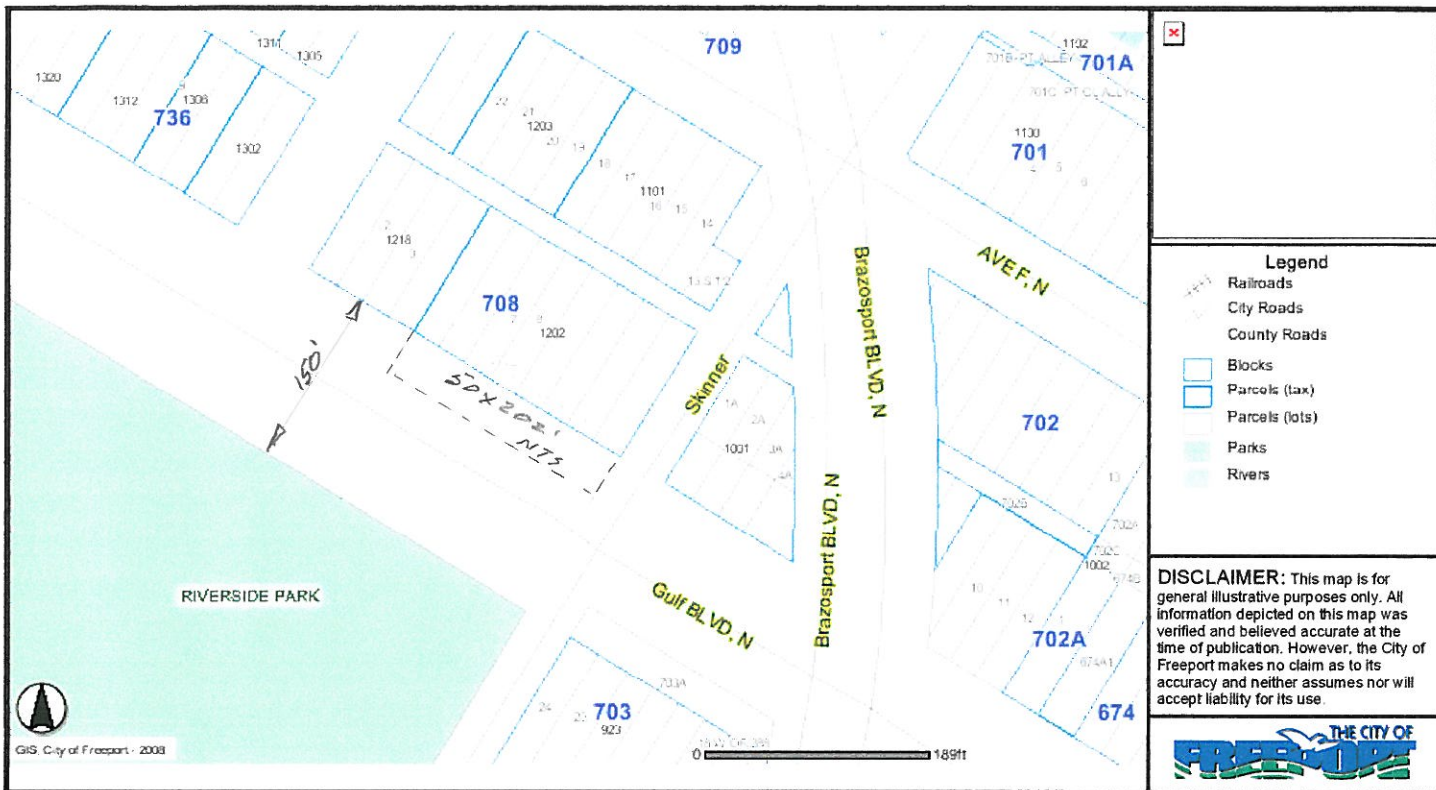


### Gulf Blvd adjacent to Block 708, Lots 5 thru 12



*50 x 202 ✓ would leave 100' ROW for GULF BLVD  
(10,100 ft<sup>2</sup>)*

### Gulf Blvd adjacent to Block 708, Lots 5 thru 12



*50x202' (10,100 ft<sup>2</sup>) LEAVES 100' GULF BLVD ROW*

*Pg 516-B*





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## PROPERTY MANAGEMENT

November 22, 2008

Jeff Pynes  
City Manager

re: Lots 17-18, Block 718, Velasco Townsite  
1207-1209 North Ave P  
Tax ID 8110-3118-000

Please place the following item on the December 1, 2008, Council agenda:

Discuss / consider the sale of lots 17 & 18, block 717, known as  
1207 and 1209 North Avenue P, to Tiffanye Dunlap  
Tax ID 8110-3118-000.

This is trust resale property approved by the Brazoria County Resale Committee.

N C Hickey  
Property

attach

/s



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## PROPERTY MANAGEMENT MEMO

Council Agenda Date: December 1, 2008

Agenda item:

Legal Description: Block 718, Lots 17, 18  
Street Address: 1207-1209 North Avenue P (Street not open)  
Between: Skinner and Stratton Streets

Type of Property: Trust  
Sheriff Sale Date: 6-15-1999  
Sheriff Deed Number: vol. 776, page 246

Years Taxes Delinquent: 21 years  
Taxes extinguished by Sheriff Sale: \$33.30

Appraisal District Value: \$200.00  
Offer by: Tiffanye Dunlap \$200.00  
Court Cost & Post Judgment: \$0

Amount Left to Distribute: \$ 200.00  
Distribution Amount to Freeport: \$ 122.01

Property Recommendation: Pleasure of Council

Action:  Accept Offer  
 Reject Offer  
 Re-agenda

COMMENTS:

Motion by \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_

Trust sale-Council action



**BID ANALYSIS**

**Cause Number:** 8300221

**Account Number:** 10-318-000

**Offer Amount:** \$200.00

**Value \$:** \$200.00

**Person Offering:** Tiffany Dunlap

**Adjudged Value\$:** 113.63

**Judgement Information**

Taxing Entity	Tax Years	Amount Due
BC	1977-1980	\$17.57
Brazosport ISD	1977-1980	\$29.83
BRHND	1977-1980	\$4.71
Brazosport College	1977-1980	\$3.63
Velasco Drainage	1977-1980	\$3.37
Road Dist 34	1977-1980	\$0.34
City of Freeport	1977-1980	\$93.01

**Total** \$152.46

**Costs**

Court Costs	\$0.00	Sheriff Fees	
Publication Fees		Research Fees	\$0.00
Ad Litem		Recording fee's	
Liens			0

**Total** \$0.00

**Post Judgement Information**

Taxing Entity	Tax Year's	

**Post Judgment Total** \$0.00

**Proposed Distribution**

<b>Offer Amount</b>	<b>Costs + P &amp; J</b>
\$200.00	\$0.00
<b>Net to Distribute \$</b>	<b>\$200.00</b>

BC	11.52%	\$23.05
Brazosport ISD	19.57%	\$39.13
BRHND	3.09%	\$6.18
Brazosport College	2.38%	\$4.76
Velasco Drainage	2.21%	\$4.42
Road Dist 34	0.22%	\$0.45
City of Freeport	61.01%	\$122.01

RECEIVED  
OCT - 8 2008

RESOLUTION NO. 2008-2189

A RESOLUTION OF THE CITY OF FREEPORT, TEXAS, CONTAINING A PREAMBLE; MAKING FINDINGS OF FACT THAT AN EMERGENCY EXISTED AUTHORIZING THE CITY MANAGER TO EXPEND FUNDS FOR THE REPAIR OF THE CITY HALL ROOF WITHOUT COMPLYING WITH THE COMPETITIVE BIDDING REQUIREMENTS OF CHAPTER 252 OF THE LOCAL GOVERNMENT CODE; RATIFYING AND CONFIRMING SUCH ACTION; CONTAINING A SEVERANCE CLAUSE; PROVIDING THAT THIS RESOLUTION SHALL TAKE EFFECT AND BE IN FORCE FROM AND AFTER ITS PASSAGE AND ADOPTION; AND PROVIDING THAT THE ORIGINAL OF THIS RESOLUTION SHALL BE MAINTAINED BY THE CITY SECRETARY IN THE PERMANENT RECORDS OF SAID CITY.

WHEREAS Subsection (b) of Section 252.021, Local Government Code (hereinafter "the Code") provides that before a municipality may enter into a contract that requires an expenditure of more than \$50,000.00 such municipality must comply with the bidding procedure prescribed in Chapter 252 of the Code; and,

WHEREAS, Item (3) of Subsection (a) of Section 252.022 of the Code provides that Chapter 252 of the Code does not apply to a procurement made necessary because of unforeseen damage to public machinery, equipment or other property; respectively; and,

WHEREAS, the City of Freeport, Texas, (hereinafter sometimes "the City") is a "Home Rule City" and a "Home Rule Municipality" in Brazoria County, Texas, as described in and defined by Section 5, Article XI of the Constitution of Texas and Section 1.005 of the Local Government Code of Texas, respectively; and,

WHEREAS, the roof of the City Hall, located within the City at 200 West Second Street, was damaged as a result Hurricane Ike and began leaking badly; and,



WHEREAS, it was necessary for the City Manger to immediately engage a contractor to immediately repair the roof of the City Hall before a meeting of the City Council could be convened, permission to advertize for bids obtained, a bid date set and formal bids obtained from prospective contractors in order to have the roof of the City Hall repaired and avoid further damage to the roof and the interior of the City Hall; and,

WHEREAS, the City Manager did obtain informal proposals from several contractors: Jaco Construction (\$61,460.00), Diaz Roofing (\$3,280.00), Southeast Roofing (\$68,760.00), and Galaxy Roofing (\$69,480.00) and then engaged Jaco Construction to repair the City Hall roof; and,

WHEREAS, by the adoption of this resolution, the City Council desires to ratify the action of the City Manager set forth above.

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

First, the City Council of the City of Freeport, Texas, has determined and does here now declare that each of the facts recited above are true and correct and that an emergency existed requiring the City Manager to immediately expend funds to repair the unforeseen damage to the City Hall roof.

Second, the action taken by the City Manager described above, without first complying with the competitive bidding requirements of Chapter 252 of the Local Government Code, is hereby ratified and confirmed by the City Council.

Third, this resolution shall be in force and take effect from and after its passage and adoption.

Fourth, this resolution, after execution and attestation, shall be maintained by the City Secretary in the permanent files of the City.

READ, PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Larry McDonald, Sr., Mayor,  
City of Freeport, Texas

ATTEST:

\_\_\_\_\_  
Delia Muñoz, City Secretary  
City of Freeport, Texas

APPROVED AS TO FORM ONLY;

*Wallace Shaw*  
\_\_\_\_\_  
Wallace Shaw, City Attorney  
City of Freeport, Texas

C:\Freeport.Rsl\City Hall Roof

**jeff pynes**

---

**From:** LFan [lfansher@freeport.tx.us]  
**Sent:** Monday, November 10, 2008 4:45 PM  
**To:** 'Jeff Pynes'  
**Cc:** 'Laura Tolar'; bwelch@freeport.tx.us  
**Subject:** City Hall roof replacement

FEMA has just recently completed the inspection of the city hall roof. This was required before we could address the damage and to qualify for partial funding reimbursement (cost difference of what our insurance company will not pay) to replace the roof. We had a local roofer put a temporary cover over the damaged portion of the roof but don't know how long this will hold up and protect the interior. We want to avoid further water damage and any chances of the roof collapsing and suggest having the roof replaced under an emergency order.

Jeff, did you have an opportunity to discuss this matter with the mayor to determine how to go about proceeding with the roof replacement. Whether the mayor might declare the roof work an emergency and sign a purchase order and let the council approve the funding at a future council meeting or if we are going to have to go out for bids before awarding the job to a vendor?

Our suggestion is to go with Jaco Construction out of Clute who has been in business for many years now. They offer the cheapest price of the estimates obtained offering a 15 year warranty Duro-last membrane system. This would be a switch from the existing fiberglass felt tar & gravel roof with the much shorter warranty. The membrane system is used on many commercial flat roofs including many of the newer school facilities.

Just let me know which way to proceed. Thanks Jeff.

Larry

City Hall Roof Replacement estimates:

\$ 61,460.00	Jaco	-- Duro-last nominal 40 mil. White membrane (Vinyl covering)	-- 15 year warranty
	Clute, Texas		
68,760.00	Southeast Roofing	-- Duro-last roof	-- 15 year warranty
	Sweeny, Texas		
\$69,480.00	Galaxy Roofing	-- tar/gravel roof	3-ply fiberglass felt/asphalt tar & gravel -- 4 year warranty --
	Local vendor		
63,280.00	Diaz Roofing	-- tar/gravel roof	2-ply fiberglass felt/asphalt tar & gravel -- 5 year warranty --
	Local vendor		

Larry





## SOFTWARE LICENSE AGREEMENT

THIS AGREEMENT is entered into as of the 3<sup>rd</sup> day of November 2008, (hereinafter referred to as the "Effective Date") by and between Brazos Technology Corporation, a Texas corporation, with its principal offices located at 707 Texas Ave., Suite 103-D, College Station, Texas 77845 (hereinafter referred to as "Brazos Technology"), and City of Freeport, a Texas Municipality, with its principal offices located at 200 W. 2<sup>nd</sup> Street, Freeport, TX 77541 (hereinafter referred to as "Licensee").

This Agreement is made with respect to the following facts and objectives:

### RECITALS:

- A. Brazos Technology has developed a proprietary software product, which is designed to extend data and processes across multiple platforms and technologies (hereinafter referred to as the "Software").
- B. Licensee desires to obtain a non-exclusive license to use the Software and Brazos Technology desires to grant Licensee such a license.

### AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. License. Brazos Technology hereby grants to Licensee a non-exclusive license to use the Software and the documentation, if any, provided in connection therewith (hereinafter referred to as the "Documentation") solely in connection with RDC and eCitation. Licensee may make one copy of the Software and Documentation for back-up and/or archival purposes.
2. Licensee Fee. Licensee agrees to pay Brazos Technology the license fee identified in Exhibit A to this Agreement. Such fee shall be due immediately upon execution of this Agreement by the parties.
3. Limitations of Use. Licensee acknowledges and agrees that Licensee will not timeshare, modify, sublicense, transfer, assign, copy, reverse engineer or decompile the Software, Documentation or any portion thereof except as expressly set forth herein. Licensee further acknowledges and agrees that Licensee will limit its use of the Software and Documentation to the number of users and/or the site location identified in Exhibit A to this Agreement.

4. Non-disclosure. Licensee acknowledges and agrees that the Software and Documentation contain trade secrets and/or confidential information (hereinafter collectively referred to as "Confidential Information") and that Licensee will take reasonable efforts to prevent the disclosure of such Confidential Information to any third party.

5. Ownership. Licensee acknowledges and agrees that Brazos Technology is the sole owner of all right, title and interest in and to the Software and Documentation and that nothing contained herein shall grant Licensee any ownership interest in the Software or Documentation.

6. Upgrades. In the event that Brazos Technology, in its sole discretion, should provide Licensee with any upgrades, corrections or modifications to the Software or Documentation, such upgrades, corrections or modifications shall be considered, as applicable, "Software" or "Documentation" for the purposes of this Agreement. Notwithstanding the foregoing, nothing contained in this Agreement shall be construed as obligating Brazos Technology to provide Licensee with any upgrades, corrections, modifications, maintenance services or support services hereunder.

7. Warranty.

a. Brazos Technology warrants and represents that it is the owner of all right, title and interest in and to the Software and Documentation and that use of the Software and Documentation as contemplated herein shall not infringe upon any third party patent or copyright. This warranty and representation does not apply to any infringement arising out of any unauthorized modification of the Software or Documentation or any infringement arising out of the use of the Software or Documentation in combination with any third party product.

b. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 7, THE SOFTWARE AND DOCUMENTATION IS PROVIDED "AS IS" AND BRAZOS TECHNOLOGY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, WRITTEN OR VERBAL, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BRAZOS TECHNOLOGY DOES NOT WARRANT OR REPRESENT THAT ANY USE OF THE SOFTWARE OR DOCUMENTATION WILL BE UNINTERRUPTED OR ERROR FREE. LICENSEE EXPRESSLY ASSUMES ALL RISKS AND LIABILITIES RESULTING FROM THE USE OR INABILITY TO USE THE SOFTWARE OR DOCUMENTATION, INCLUDING WITHOUT LIMITATION ANY ECONOMIC LOSS, PROPERTY DAMAGE, PHYSICAL INJURY, LOST PROFITS, LOST SAVINGS, LOSS OF RECORDS OR LOSS OF DATA.

8. Indemnification. Brazos Technology agrees to indemnify and defend Licensee from and against any third party claim arising out of a breach of the Warranty provisions set forth in this Agreement, provided that Brazos Technology is provided with prompt notice of any such third party

SECTIONS OF THIS AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT, EVEN IF ANY REMEDY CONTAINED HEREIN IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

11. Term and Termination.

a. This Agreement shall commence as of the Effective Date and shall continue unless and until terminated as set forth herein.

b. Either party may terminate this Agreement in the event that the other party commits a material breach of this Agreement and fails to cure such material breach within twenty (20) days after receiving written notice of the same.

c. Brazos Technology may terminate this Agreement, immediately upon written notice to Licensee, in the event that Licensee fails to use the Software and Documentation for the purpose contemplated herein.

d. Immediately upon any termination of this Agreement, Licensee shall return to Brazos Technology any and all copies of any Software or Documentation in its possession.

e. The terms and conditions of this Agreement relating to Non-disclosure, Warranty, Limitation of Liability and Allocation of Risks shall survive any termination or expiration of this Agreement.

12. Assignment. Licensee acknowledges and agrees that it may not assign any right or obligation arising under this Agreement to any third party without the express written consent of Brazos Technology which may be withheld for any or no reason.

13. Governing Law. This Agreement, including its interpretation, performance and enforcement shall be governed by and construed in accordance with the laws of the State of Texas applicable to contracts entered into and performed in Brazos County, and exclusive jurisdiction over any dispute arising out of or relating to this Agreement shall be held by the appropriate state and/or federal courts located in Brazos County, Texas.

14. Binding Effect. This Agreement shall inure to the benefit of and binding upon the parties hereto and to their respective successors and legal representatives.

15. Nonwaiver. No provisions of this Agreement will be waived by any party except in writing. The parties hereto agree that the waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that provision by the same party, or any other provision or condition of this Agreement.

16. No Joint Venture. Nothing herein contained shall be construed to place the parties in the relationship of partners, joint venturers, or principal and agent and neither party shall have any power to obligate or bind the other party in any manner whatsoever.

17. Severability. If any provision or application of this Agreement shall be held invalid or unenforceable the remaining provisions and applications of this Agreement shall not be affected, but rather shall remain valid and enforceable.

18. Entire Agreement. This Agreement constitutes the entire agreement and supersedes any and all other understandings and agreements between the parties with respect to the subject matter hereof and no representation, statement or promise not contained herein shall be binding on either party. This Agreement may be modified only by a written amendment duly signed by persons authorized to sign agreements on behalf of the parties and shall not be supplemented or modified by any course of dealing or trade usage.

IN WITNESS WHEREOF, the parties have hereunder executed this Agreement effective as of the date last signed.

CITY OF FREEPORT

BRAZOS TECHNOLOGY

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT A

Eight (8) RunIT software license for PDA	\$5,200 USD
Software Includes:	
Unlimited number of logins to the PDA	
One-Year of Software Maintenance	
One-Year of Software Support	
Configuration/Installation Fee	\$7,500 USD
Configuration Includes:	
Customized PDA/Web screen layouts	
Customized citation receipt for defendant	
Customized citation report for court and PD	
Integration with INCODE	
Extended Training	\$3,000 USD
2 days of on-site training of officers	
1 day of administrator training	
Classroom and practical training	

\* Brazos will deliver the equipment to eliminate shipping to customer.

## SOFTWARE MAINTENANCE AGREEMENT

This Agreement ("Agreement") is made and entered into and effective 3<sup>rd</sup> day of November 2008, by and between Brazos Technology Corporation, having its principal place of business at 707 South Texas Ave, Suite 103D, College Station, Texas 77840, USA ("Brazos Technology") and City of Freeport, a Texas Municipality, having its principal place of business at 200 W. 2<sup>nd</sup> Street, Freeport, TX 77541 ("Licensee").

Licensee

WHEREAS, BRAZOS TECHNOLOGY has provided to Licensee certain software as specified in Exhibit A of this Agreement ("Covered Software") pursuant to a software license agreement between the parties (the "License Agreement"); and

WHEREAS, Licensee wishes to have BRAZOS TECHNOLOGY provide maintenance and support services pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, the parties agree as follows:

### I. INCORPORATION OF DOCUMENTS

The following documents are attached hereto and, by this reference, incorporated in this Agreement:

Exhibit A	Covered Sites, Software & Configuration
Exhibit B	Authorized Licensee Contacts
Exhibit C	Services and Fees

### II. COVERAGE

During the term of this Agreement, BRAZOS TECHNOLOGY agrees to provide maintenance and support services for the Covered Software operating at the site(s) and on the hardware configurations listed in Exhibit A ("Maintenance Services"). Unless specifically listed in Exhibit A, Section II, Covered Software does not include hardware vendor operating systems and other system software, Licensee-developed software, and third-party software (except any third party software embedded in the Covered Software).

### III. DESCRIPTION OF MAINTENANCE SERVICES

A. Support Services. During the term of this Agreement, BRAZOS TECHNOLOGY will provide the services described herein so as to maintain the Covered Software in good working order, keeping it free from material defects so that the Covered



Software shall function properly and in accordance with the accepted level of performance as set forth in the License Agreement.

(1) Service Response. BRAZOS TECHNOLOGY will make available to Licensee a telephone number (the "Support Center HOTLINE") for Licensee to call requesting service of the Covered Software. The Support Center HOTLINE operates during business hours, 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. Extended coverage is available for an additional fee. The HOTLINE can also be used to notify BRAZOS TECHNOLOGY of problems associated with the Covered Software and related documentation.

B. Remedial Support. Upon receipt by BRAZOS TECHNOLOGY of notice from Licensee through the Support Center HOTLINE of an error, defect, malfunction or nonconformity in the Covered Software, BRAZOS TECHNOLOGY shall respond as provided below:

Severity 1: Produces an emergency situation in which the Covered Software is inoperable, produces incorrect results, or fails catastrophically.

RESPONSE: BRAZOS TECHNOLOGY will provide a response by a qualified member of its staff to begin to diagnose and to correct a Severity 1 problem as soon as reasonably possible, but in any event a response via telephone will be provided within one (1) hour. BRAZOS TECHNOLOGY will continue to provide best efforts to resolve Severity 1 problems in less than forty-eight (48) hours. The resolution will be delivered to Licensee as a work-around or as an emergency software fix. If BRAZOS TECHNOLOGY delivers an acceptable work-around, the severity classification will drop to a Severity 2.

Severity 2: Produces a detrimental situation in which performance (throughput or response) of the Covered Software degrades substantially under reasonable loads, such that there is a severe impact on use; the Covered Software is usable, but materially incomplete; one or more mainline functions or commands is inoperable; or the use is otherwise significantly impacted.

RESPONSE: BRAZOS TECHNOLOGY will provide a response by a qualified member of its staff to begin to diagnose and to correct a Severity 2 problem as soon as reasonable possible, but in any event a response via telephone will be provided within four (4) hours. BRAZOS TECHNOLOGY will exercise best efforts to resolve Severity 2 problems within five (5) days. The resolution will be delivered to Licensee in the same format as Severity 1 problems. If BRAZOS TECHNOLOGY delivers an acceptable work-around for a Severity 2 problem, the severity classification will drop to a Severity 3.

Severity 3: Produces an inconvenient situation in which the Covered Software is usable, but does not provide a function in the most convenient or expeditious

manner, and the user suffers little or no significant impact.

RESPONSE: BRAZOS TECHNOLOGY will exercise best efforts to resolve Severity 3 problems in the next maintenance release.

Severity 4: Produces a noticeable situation in which the use is affected in some way which is reasonably correctable by a documentation change or by a future, regular release from BRAZOS TECHNOLOGY.

RESPONSE: BRAZOS TECHNOLOGY will provide, as agreed by the parties, a fix or fixes for Severity 4 problems in future maintenance releases.

C. Maintenance Services. During the term of this Agreement, BRAZOS TECHNOLOGY will maintain the Covered Software by providing software updates and enhancements to Licensee as the same are offered by BRAZOS TECHNOLOGY to its licensees of the Covered Software under maintenance generally ("Updates"). All software updates and enhancements provided to Licensee by BRAZOS TECHNOLOGY pursuant to the terms of this Agreement shall be subject to the terms and conditions of the License Agreement between the parties. Updates will be provided on an as-available basis and include the items listed below:

(1) Bug fixes;

(2) Enhancements to market data service software provided by BRAZOS TECHNOLOGY to keep current with changes in market data services or as BRAZOS TECHNOLOGY makes enhancements;

(3) Enhancements to keep current with the current hardware vendor's OS releases, as available from BRAZOS TECHNOLOGY, provided that the current hardware vendor's OS release is both binary and source-compatible with the OS release currently supported by BRAZOS TECHNOLOGY; and

(4) Performance enhancements to Covered Software.

(5) Updates do not include:

(a) Platform extensions including product extensions to (i) different hardware platforms; (ii) different windowing system platforms; (iii) different operating system platforms; and

(b) New operating system updates or hardware bios updates.

Updates will be provided in machine-readable format and updates to related documentation will be provided in hard copy form. All such deliveries shall be

made electronically to the installed computers automatically during a sync process. Licensee agrees to sync each device no less than once per month to obtain any software or configuration changes. Duplication, distribution and installation of documentation updates are the responsibility of Licensee. If requested, BRAZOS TECHNOLOGY will provide on-site assistance in the installation of Updates on a time and materials basis, plus expenses.

BRAZOS TECHNOLOGY will provide support services for previous releases for a minimum period of six (6) months following the general availability of a new release or software update. After this time, BRAZOS TECHNOLOGY shall have no further responsibility for supporting and maintaining the prior releases.

BRAZOS TECHNOLOGY assumes no responsibility for the correctness of, performance of, or any resulting incompatibilities with, current or future releases of the Covered Software if the Licensee has made changes to the system hardware/software configuration or modifications to any supplied source code which changes effect the performance of the Covered Software and were made without prior notification and written approval by BRAZOS TECHNOLOGY. BRAZOS TECHNOLOGY assumes no responsibility for the operation or performance of any Licensee-written or third-party application.

D. Services Not Included. Maintenance Services do not include any of the following: (1) custom programming services; (2) on-site support, including installation of hardware or software; (3) support of any software not Covered Software; (4) training; or (5) out-of-pocket and reasonable expenses, including hardware and related supplies.

#### IV. ON-SITE SUPPORT

As requested by Licensee, and upon reasonable notice and approval by BRAZOS TECHNOLOGY, BRAZOS TECHNOLOGY shall maintain personnel at any of the covered Sites. On-site personnel will perform ongoing system administration, monitoring, reconfiguration and tuning, problem diagnosis, and resolution, and interfacing with Licensee personnel on production system issues, to the extent possible during normal business hours. These personnel shall also be responsible for the installation of new BRAZOS TECHNOLOGY software releases on the production system and the distribution of documentation updates. In addition, on-site personnel will provide training to Licensee personnel on the operation and administration of the Covered Software as time permits.

#### V. TIME AND MATERIALS SERVICES

A. For Non-BRAZOS TECHNOLOGY Problems. In the event that Licensee notifies BRAZOS TECHNOLOGY of a problem experienced by Licensee in connection with the operation of the Covered Software, BRAZOS

TECHNOLOGY shall respond as provided in Section III.B., above. If the cause of such problem is not an error, defect or nonconformity in the Covered Software, Licensee shall compensate BRAZOS TECHNOLOGY for all work performed by BRAZOS TECHNOLOGY in connection therewith, on a time and materials basis at Brazos Technology's then current standard rates, unless otherwise agreed by the parties in writing at the time, plus expenses. Expenses for travel and travel-related expenses and individual expenses in excess of US\$500 require the prior approval of Licensee.

B. For Non-BRAZOS TECHNOLOGY Software. Upon request and reasonable notice from Licensee, BRAZOS TECHNOLOGY will provide assistance in the installation of non-BRAZOS TECHNOLOGY software on a time and materials basis, plus expenses. Non-BRAZOS TECHNOLOGY software consists of any software not specifically listed in Exhibit A, Section II, including the following:

1. New releases and updates to hardware vendor operating systems and other system software not listed in Exhibit A;
2. Licensee-developed software; and
3. Third-party software (except third party software embedded in the Covered Software).

## VII. ACCESS

Software Maintenance is conditioned upon provision by Licensee to BRAZOS TECHNOLOGY of reasonable appropriate access to the system(s) running the Covered Software, including, but not limited to, passwords, system data, file transfer capabilities, and remote log-in-capabilities. BRAZOS TECHNOLOGY will maintain security of the system and use such access only for the purposes of this Agreement and will comply with Licensee standard security procedures. Information accessed by BRAZOS TECHNOLOGY agents or employees as a result of accessing Licensee system shall be deemed confidential information pursuant to the terms of the Software License Agreement executed concurrently between the parties hereto.

Licensee shall also use commercially reasonable efforts to provide an active voice telephone line at each site which is available continuously when required for support access.

## VIII. PROBLEM REPORTING AND TRACKING PROCEDURES

Licensee may use the services described herein only by making reference to the authorized support Agreement number. All such reports and requests will be made through the authorized individuals (up to two [2] per site), designated by Licensee in Exhibit B, who may be changed by Licensee from time to time by written notice to BRAZOS TECHNOLOGY. A twenty-four (24) hour Support Center HOTLINE is

provided for problem reporting outside of normal business hours.

## IX. FEES

A. Maintenance Fees. Fees for Maintenance Services provided under this Agreement are contained in Exhibit C. Any time a site or software package is added or deleted from Exhibit A, BRAZOS TECHNOLOGY will automatically adjust and/or amend Exhibit A and Exhibit C accordingly. BRAZOS TECHNOLOGY will also perform a bi-annual audit of all sections in Exhibit A. If changes have occurred, BRAZOS TECHNOLOGY will adjust and/or amend Exhibit A and Exhibit C, and maintenance fees will be adjusted accordingly.

Rates will be reviewed and adjusted accordingly when another site is added and/or the workstation/server base increases (i.e., added equipment and/or installed software) and/or software to be supported exceeds the Covered Software.

B. Expenses. Licensee agrees to reimburse BRAZOS TECHNOLOGY for reasonable expenses related to the performance of services. Expenses may include, but are not limited to, charges for materials, freight, travel (including lodging and associated expenses), printing and documentation, and other out-of-pocket expenses reasonably required for performance. Expenses for travel and travel-related expenses and individual expenses in excess of US\$500 require the prior approval of Licensee.

## X. PAYMENT

A. Maintenance fees and fees for on-site support, if applicable, will be invoiced annually, thirty (30) days in advance of the year.

## XI. EXCLUSION OF LIABILITY

BRAZOS TECHNOLOGY MAKES AND LICENSEE RECEIVES NO WARRANTY EXPRESS OR IMPLIED AND THERE IS EXPRESSLY EXCLUDED ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LICENSEE ACKNOWLEDGES AND AGREES THAT THE MAINTENANCE FEES AND OTHER CHARGES WHICH BRAZOS TECHNOLOGY IS CHARGING UNDER THIS AGREEMENT DO NOT INCLUDE ANY CONSIDERATION FOR ASSUMPTION BY BRAZOS TECHNOLOGY OF THE RISK OF LICENSEE CONSEQUENTIAL OR INCIDENTAL DAMAGES OR OF UNLIMITED DIRECT DAMAGES. ACCORDINGLY, BRAZOS TECHNOLOGY SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT FOR CONSEQUENTIAL, EXEMPLARY, OR INCIDENTAL DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT IN THE CASE OF GROSS NEGLIGENCE OR WILFUL MISCONDUCT, IN NO EVENT SHALL BRAZOS TECHNOLOGY BE LIABLE HEREUNDER TO LICENSEE FOR CUMULATIVE DIRECT DAMAGES IN ANY AMOUNT GREATER THAN THAT PAID



BY LICENSEE TO BRAZOS TECHNOLOGY UNDER THIS AGREEMENT AS A MAINTENANCE FEE FOR THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE ACCRUAL OF THE CAUSE OF ACTION.

## XII. General

A. Each party acknowledges that it is bound by the terms of this Agreement and further agrees that it is the complete and exclusive statement of the Agreement between the parties, which supersedes and merges all prior proposals, understandings and all other Agreement with respect to software maintenance, oral and written, between the parties relating to this Agreement. This Agreement may not be modified or altered except by a written instrument duly executed by both parties.

B. This Agreement and performance hereunder shall be governed by and construed in accordance with the laws of the State of Texas. Any and all proceedings relating to the subject matter hereof shall be maintained in the state or federal courts of Brazos County, Texas, which courts shall have exclusive jurisdiction for such purpose. Each of the parties waives any objection to venue or in personam jurisdiction, provided that service is effective.

C. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

D. Neither party may assign, without the prior written consent of the other, its rights, duties or obligations under this Agreement to any other person or entity, in whole or in part.

E. The waiver or failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.

## XIII. TERM AND TERMINATION

The term of this Agreement shall be for one (1) year. Software Maintenance service shall commence upon the expiration of the Warranty Period set forth in the License Agreement and shall remain in effect for the original one-year (1-year) term and, thereafter, for renewal terms on a year-to-year basis until terminated (i) by Licensee in the event the Covered Software is taken out of service and upon sixty (60) days' notice to BRAZOS TECHNOLOGY; (ii) by either party upon sixty (60) days' notice prior to the expiration of the original one-year (1-year) or any subsequent one-year (1-year) renewal term; (iii) by either party upon a default of the other party, such default remaining uncured for thirty (30) days from the date of written notice from the non-defaulting party to the other specifying such default; (iv) upon the bankruptcy or insolvency of BRAZOS TECHNOLOGY; or (v) the License Agreement is terminated.





v1.0

Upon such termination, BRAZOS TECHNOLOGY shall refund to Licensee a portion of the maintenance fee prorated to reflect the date of termination and neither BRAZOS TECHNOLOGY nor Licensee shall have any further obligations hereunder.

IN WITNESS WHEREOF, each party has caused a counterpart of the original of this Agreement to be executed as of the date first written above by its duly authorized representative.

CITY OF FREEPORT

BRAZOS TECHNOLOGY

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT A -- COVERED SITES, SOFTWARE AND CONFIGURATION**

### **A. Covered Sites.**

This Agreement covers the following Licensee sites:

Freeport Police Department  
Freeport Municipal Court

### **B. Covered Software.**

This Agreement covers the following software components at each site listed in Exhibit A, Section A:

Brazos BuildIT Website for eCitation processing  
Brazos RunIT Mobile software  
eCitation processing for both Symbol MC70s

### **C. Covered Configuration.**

This Agreement covers the following configuration:

Eight (8) workstation/PDA licenses of Covered Software purchased by Licensee.

**EXHIBIT B -- AUTHORIZED LICENSEE CONTACTS**

For purposes of this Agreement, the following individuals shall be designated per site as the authorized Licensee support contacts:

Freeport PD Address:

Name	Title	Phone #
------	-------	---------

Contact: \_\_\_\_\_

**EXHIBIT C -- SERVICES AND FEES****A. Maintenance Fee**

Maintenance Services for the applications and configuration listed in Exhibit A will be included in the software cost for the first year of this Agreement. This fee will be adjusted at each anniversary date of this Agreement to the then current pricing. Should additional software be licensed and installed at the Covered Site(s), the fee will be adjusted to reflect the additional software.

AMC. FLJ

ORDINANCE NO. 05-1799

AN ORDINANCE OF THE CITY OF LAKE JACKSON, TEXAS, AMENDING CHAPTER 38, ARTICLE I, OF THE CODE OF ORDINANCES BY ADDING SECTIONS 38-1 ET SEQ PROHIBITING SMOKING IN CERTAIN PUBLIC FACILITIES IN THE CITY, INCLUDING RESTAURANTS, SHOPPING MALLS, AND HOTEL AND MOTEL LOBBIES; PROVIDING FOR A PENALTY AS FOLLOWS: A PERSON WHO SMOKES IN AN AREA WHERE SMOKING IS PROHIBITED BY THE PROVISIONS OF THIS ARTICLE SHALL BE GUILTY OF AN INFRACTION, PUNISHABLE BY A FINE NOT EXCEEDING FIFTY DOLLARS (\$50); A PERSON WHO OWNS, MANAGES, OPERATES, OR OTHERWISE CONTROLS A PUBLIC PLACE OR PLACE OF EMPLOYMENT AND WHO FAILS TO COMPLY WITH THE PROVISIONS OF THIS ARTICLE SHALL BE GUILTY OF AN INFRACTION, PUNISHABLE BY: A FINE NOT EXCEEDING ONE HUNDRED DOLLARS (\$100) FOR A FIRST VIOLATION; A FINE NOT EXCEEDING TWO HUNDRED DOLLARS (\$200) FOR A SECOND VIOLATION WITHIN ONE YEAR; A FINE NOT EXCEEDING FIVE HUNDRED DOLLARS (\$500) FOR EACH ADDITIONAL VIOLATION WITHIN ONE (1) YEAR; EACH DAY ON WHICH A VIOLATION OF THIS ARTICLE OCCURS SHALL BE CONSIDERED A SEPARATE AND DISTINCT VIOLATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES TO THE EXTENT OF THE CONFLICT ONLY; PROVIDING A SAVINGS CLAUSE; AND PROVIDING THAT THIS ORDINANCE SHALL TAKE EFFECT AND BE IN FORCE ON MAY 1, 2006, AND FIVE DAYS AFTER ITS DESCRIPTIVE CAPTION IS PUBLISHED WITHIN TEN DAYS OF FINAL PASSAGE IN THE BRAZOSPORT FACTS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LAKE JACKSON, TEXAS:

SECTION 1: That Chapter 38 of the Code of Ordinances is hereby amended by adding Sections 38-1 et seq to read as follows:

Article I

This article shall be known as the City of Lake Jackson, Texas Smokefree Air Act of 2005.

Sec. 38-1 Findings and Intent

The City Council does hereby find that:

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing second hand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually. (National Cancer Institute (NCI), "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental protections Agency. Smoking and Tobacco Control Monograph 10, Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI), August 1999.)

The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen. (Environmental health Information Service (EHIS), "Environmental tobacco smoke: first listed in the Ninth Report on Carcinogens, U.S. Department of Health and Human Services (DHHS), Public health Service, NTP, 2000; reaffirmed by the NTP in subsequent reports on carcinogens, 2003 2005.)

A study of hospital admissions for acute myocardial infarction in Helena, Montana before, during, and after a local law eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smokefree workplaces and public places may be associated with a reduction in morbidity from heart disease. (Sarget, Richard P.; Shepard, Robert M.; Glantz, Stanton A., "Reduced incidence of admissions for myocardial infarction associated with public smoking ban: before and after study," *British Medical Journal* 328: 977-980, April 24, 2004.)

Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer. (California Environmental Protection Agency (Cal EPA), "Health effects of exposure to environmental tobacco smoke", *Tobacco Control* 6(4): 346-353, Winter, 1997.)

The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability. (Daynard, R.A., "Environmental tobacco smoke and the Americans with Disabilities Act," *Nonsmokers' Voice* 15(1): 8-9.)

The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke. (Department of Health and Human Services. *The Health Consequences of Involuntary Smoking: A Report of the Surgeon General*. Public Health Service, Centers for Disease Control, 1986.) The Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particular matter and odors in smoke, do not eliminate the known toxins in secondhand smoke. (Environmental Protection Agency (EPA), "Indoor air facts no. 5: environmental tobacco smoke," Washington, D.C.: *Environmental Protection Agency (EPA)*, June 1989.)

The Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking. (Pechacek, Terry F.; Babb, Stephen, "Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke?" *British Medical Journal* 328: 980-983, April 234, 2004.)

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decreased in lung function. (Pitsavos, C.; Panagiotakos, D.B.; Chrysohoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzas, P., "Association between exposure to environmental tobacco smoke and development of acute coronary syndromes: The CARDIO2000 case-control study," *Tobacco Control* 11(3): 220-225, September 2002.)

Smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke. ("The high price of cigarette smoking," *Business & Health* 15(8), Supplement A: 6-9, August 1997.)

Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety. (Glantz, S.A. & Smith, L. The effect of ordinances requiring smokefree restaurants on restaurant sales in the United States. *American Journal of Public Health*, 87: 1687-1693, 1997; Colman, R.; Urbonas, C.M., "The economic impact of smoke-free workplaces: an assessment for Nova Scotia, prepared for Tobacco Control Unity, Nova Scotia Department of Health," *GPI Atlantic*, September 2001.)

Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses. ("The high price of cigarette smoking," *Business & Health* 15(8), Supplement A: 6-9, August, 1997.)

The smoking of tobacco is a form of air pollution, a positive danger to health, and a material public nuisance.



Accordingly, the City Council finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

Sec. 38-2 Definitions

The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

- A. "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
- B. "Billiard or Pool Hall" shall mean premises used primarily for any of several games played on an oblong table by driving small balls against one another or into pockets with a cue and wherein at least 50 percent of the area accessible to the public, excluding restrooms, hallways, and entries, has to be occupied by pool tables.
- C. "Bingo Facility" shall mean premises used primarily for the purpose of conducting games of chance.
- D. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
- E. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
- F. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- G. "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by solid smoke impermeable walls or windows (exclusive of doorways), which extend from the floor to the ceiling.
- H. "Health Care Facility" means an office or institution providing care or treatment of disease, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentist, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- I. "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a childcare, adult day care, or health care facility.
- J. "Private Club" means organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used

exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established by laws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501. A Private Club in this ordinance is not a private club as defined by the Texas Alcoholic Beverage Code or Beverage Commission.

- K. "Private Office" shall mean a space for an officer or employee sequestered or withdrawn from public areas; not intended primarily for general public use or entry.
- L. "Public Place" means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation facilities, reception areas, restaurant, retail food production and marketing establishments, retail service establishment, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private club is a "public place" when being used for a function to which the general public is invited. A private residence is not a "public place" unless it is used as a childcare, adult day care, or health care facility.
- M. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.
- N. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of their products is merely incidental.
- O. "Service Line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.
- P. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- Q. "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe or other lighted tobacco product in any manner or in any form.
- R. "Sports Arena" means sports pavilions, stadiums, gymnasium, health spas, boxing arenas, swimming pools, roller and ice rinks, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

Sec. 38-3. Reserved

Sec. 38-4. Prohibition of Smoking in Enclosed Public Places

Smoking shall be prohibited in the following enclosed public places within in the City of Lake Jackson:

- A. Aquariums, galleries, libraries, and museums.

- B. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including banks, laundromats, hotels, and motels.
- C. City facilities that are enclosed, including buildings, owned, leased or operated by the City of Lake Jackson.
- D. Convention facilities.
- E. Educational facilities, both public and private.
- F. Elevators.
- G. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
- H. Hotel and motel lobbies, and hallways.
- I. Licensed childcare and adult day care facilities.
- J. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple unit residential facilities.
- K. Polling places.
- L. Restaurants.
- M. Restrooms, lobbies, reception areas, and other common use areas.
- N. Retail stores.
- O. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City.
- P. Service lines.
- Q. Shopping malls.
- R. Sports arenas, including enclosed places in outdoor arenas, excluding bowling alleys.

Sec. 38-5. Enclosed areas require solid wall isolation and separate isolated ventilation systems

- A. Permitted smoking areas may be created within an enclosed area. However, the permitted smoking area created within an enclosed area shall be no larger than 30% of the total public accessible floor space of the entire facility, and shall be separate from the other areas, by demarcated solid wall isolation and separate ventilation systems.

Sec. 38-6. Prohibition of Smoking in Outdoor Arenas and Stadiums

Smoking shall be prohibited in the seating areas of all outdoor arenas, stadiums, and amphitheaters.

Sec. 38-7. Reasonable Distance

Smoking is prohibited within the reasonable distance of fifteen (15) feet radius from any exterior door and operable windows outside an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or other means. Enclosed

public places where smoking is prohibited may establish smoking areas outside of the building as long as placement does not violate this article.

Sec. 38-8. Where Smoking Not Regulated

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the provisions of Sections 38-4 and 38-5:

- A. Private residences, except when used as a licensed childcare, adult day care, or health care facility.
- B. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; providing, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this Article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- C. Retail tobacco stores; providing that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Article.
- D. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Article.
- E. Private clubs as defined under Section 38-2H.
- F. Outdoor areas of places of employment except those covered by the provisions of Sections 38-6, 38-7.
- G. Bars
- H. Billiard or Pool Halls
- I. Bingo Facilities
- J. Private Offices
- K. Public transportation facilities, including buses and taxicabs, under the authority of the City of Lake Jackson, and ticket, boarding, and waiting areas of public transit depots.

Sec 38-9. Declaration of Establishment as Nonsmoking

Notwithstanding any other provisions of this Article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 38-10(A) is posted.

Sec. 38-10. Posting of Signs

- A. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted between four (4) and six (6) feet above the ground or floor on the entry door in every public place and place of employment where smoking is prohibited by this Article, by the owner, operator, manager, or other person in control of that place.

- B. Every public place and place of employment where smoking is prohibited by this Article shall have posted at every entrance a conspicuous sign posted between four (4) and six (6) feet above the ground or floor on the entry door clearly stating that smoking is prohibited.
- C. All ashtrays shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager, or other person having control of the area.

Sec. 38-11. Nonretaliation; Nonwaiver of Rights

- A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment or customer because that employee, applicant, or customer exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article.
- B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Sec. 38-12. Enforcement

- A. This Article shall be enforced by the City Manager or an authorized designee.
- B. Notice of the provisions of the Article shall be given to all applicants for a business license in the City of Lake Jackson.
- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the City Manager.
- D. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.
- E. An owner, manager, operator, or employee of an establishment regulated by this Article shall inform persons violating this Article of the appropriate provisions thereof.
- F. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.
- G. In addition to the remedies provided by the provisions of this Section, the City Manager or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Sec. 38-13. Violations and Penalties

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).
- B. A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by:
  - 1. A fine not exceeding one hundred dollars (\$100) for a first violation.

2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

C. In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

D. Violation of this Article is hereby declared to be a public nuisance, which may be abated by the City Manager by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.

E. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

#### Sec. 38-14. Public Education

The City Manager shall engage in a continuing program to explain and clarify the purposes and requirements of this Article to citizens affected by it, and to guide owners, operators, and managers in their compliance within. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

#### Sec. 38-15. Governmental Agency Cooperation

The City Manager shall annually request other governmental and educational agencies having facilities within the City to establish local operating procedures in cooperation and compliance with this Article. This includes urging all Federal, State, City, and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

#### Sec. 38-16. Other Applicable Laws

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

#### Sec. 38-17. Liberal Construction

This Article shall be liberally construed so as to further its purposes.

**SECTION 2:** All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict only.

**SECTION 3:** Any person, firm, corporation, association or other entity that violates any provision of this ordinances shall be deemed guilty of a misdemeanor and upon conviction hereof shall be punished as follows:

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).
- B. A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by:
  1. A fine not exceeding one hundred dollars (\$100) for a first violation.
  2. A fine not exceeding two hundred dollars (\$200) for a second violation within one year.



3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

C. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

**SECTION 4:** If any part or portion of this ordinance shall be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair any remaining portions or provisions of this ordinance.


**SECTION 5:** The City Secretary shall publish the caption of this ordinance within ten days of final passage in the official newspaper of the City. This ordinance shall take effect on May 1, 2006, and be in force five days after publication in accordance with Section 3-15 of the Charter of the City of Lake Jackson, Texas.

**PASSED AND APPROVED** on the first reading this 7th day of November, 2005

**PASSED AND ADOPTED** on this second and final reading this 21<sup>st</sup> day of November 2005.

  
Shane W. Pirtle  
Mayor

**ATTEST:**

  
Alice A. Rodgers  
City Secretary

### § 113.03 HANDBILLS, CIRCULARS, AND THE LIKE.

The practice of throwing, casting, distributing, scattering, and depositing handbills, dodgers, circulars, booklets, posters, printed matter, advertising literature, advertising samples and devices, upon public and private property in the city without a written permit from the City Manager therefor, is hereby declared to constitute a public nuisance. ('68 Code, § 3-3) Penalty, see § 10.99

### § 113.04 VOLUNTARY ACCEPTANCE OF HANDBILLS REQUIRED.

It shall be unlawful for any person to throw, cast, distribute, scatter, deposit, or place upon any public or private place within the city, including streets, alleys, public parks, and school grounds, any handbill, dodger, circular, paper, booklet, poster, or any other printed matter or literature, or any advertising, sample, or device except that the same may be personally delivered to those who are willing to accept the same. ('68 Code, § 3-4) Penalty, see § 10.99

### § 113.05 DISTRIBUTION OF HANDBILLS BY AUTOMOBILE RESTRICTED.

It shall be unlawful for any person to throw, distribute, or place in any automobile, or other vehicle, in the city without first having obtained permission of the owner, or person in possession thereof, any handbill, dodger, circular, newspaper, paper, booklet, poster, printed matter, advertising literature, advertising samples and devices. ('68 Code, § 3-5) Penalty, see § 10.99

### § 113.06 EXEMPTIONS.

(A) This chapter shall not be deemed to prohibit the distribution of United States Mail, nor the delivery of any newspaper to any subscriber thereof, or to any person who has requested the delivery of the same, nor to the sale of separate copies thereof.

(B) For the purpose of this section, *NEWS-PAPER* as herein used, shall be construed to mean a newspaper of general circulation as the same is defined in TEX. GOV'T CODE § 2051.044. ('68 Code, § 3-6)

### § 113.07 SIGNS.

(A) *Definitions.* As used in this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

***CHANGEABLE ELECTRONIC VARIABLE MESSAGE SIGN (CEVMS).*** Any sign which permits light to be turned on or off intermittently or which is operated in a way whereby light is turned on or off intermittently, including any illuminated sign on which such illumination is not kept stationary or constant in intensity and color at all times when such sign is in use, including an LED (light emitting diode) or digital sign, and which varies in intensity or color. A *CEVMS* sign does not include a sign located within the right-of-way that functions as a traffic control device and that is described and identified in the Manual on Uniform Traffic Control Devices (MUTCD) approved by the Federal Highway Administrator as the National Standard.

***DIRECTIONAL SIGN.*** Any sign designed to provide directions to an off-premises location.

***FREESTANDING SIGN.*** A sign supported solely by posts or structures other than a building.

***GROUND SIGN.*** Any sign that is supported by one monolithic structure that is not less in width than one-half the maximum sign height, set upon the ground and is not part of a building, including ground signs that advertise for more than one occupancy on the premises (multiple tenants).

***MARQUEE OR CHANGE-PANEL SIGN.*** A sign specifically designed for periodic changes in its advertising message; for example, a theater marquee. All marquee signs shall contain a mechanism to prevent tampering with or removal of changeable lettering by individuals or weather-related events.

**OFF-PREMISES SIGN.** A sign that identifies or advertises a business, person, activity, goods, products or services not located, sold or offered for sale on the premises where the sign is installed and maintained, or that directs persons to a location other than the premises where the sign is installed and maintained.

**ON-PREMISES SIGN.** Any sign identifying or advertising a business, person, activity, goods, products or services located, sold or offered for sale on the premises where the sign is installed and maintained, or that directs persons to a location on the premises where the sign is installed and maintained.

**PERMANENT SIGN.** One that remains in place for a period exceeding 15 calendar days.

**PORTABLE SIGN.** Any sign designed or constructed to be moved easily from one location to another, including A-frame signs and signs mounted upon or designed to be mounted upon a trailer, wheeled carrier or other non-motorized mobile structure. A sign located on a motor vehicle is a portable sign if the vehicle remains parked in the same place for less than 24 hours.

**SIGN.** Any outdoor display, design, pictorial or other representation that is so constructed, placed, attached, painted, erected, fastened or manufactured in any manner so that the same shall be used for advertising or the visual dissemination of any information, symbol or picture in any manner whatsoever, whether temporary or permanent.

**TEMPORARY SIGN.** Any sign that remains in place for a period not exceeding 15 calendar days.

**WALL SIGN.** Any permanent sign that is placed on the wall (front, side or rear) of a building, or any part thereof, whether such sign is separate and mounted on the wall or is painted, drawn or written on the wall.

(1) An off-premises sign;

(2) An on-premises freestanding sign, the bottom of which is not less than 16 feet above the ground and the top of which extends no more than 35 feet above the ground;

(3) Any sign, whether on-premises or off-premises, which exceeds 66 square feet in area;

(4) A temporary sign, whether on-premises or off-premises;

(5) A portable sign, whether on-premises or off-premises, except as provided in division (G);

(6) A political sign, whether on-premises or off-premises, unless all requirements of state law for such sign are met;

(7) A sign located in the right-of-way of any road or highway subject to state control, unless all state requirements for such sign are met;

(8) A sign located in the right-of-way of any street or alley subject to city control;

(9) A sign displaying or advertising any matter regulated by Ch. 123, except in the zoning district and manner permitted by such chapter;

(10) A permanent sign for which a building permit has not been issued by the building official;

(11) A permanent sign for which an engineer's windload certificate has been required by but has not been filed with the building official;

(12) A ground sign which obstructs the view of traffic and pedestrians by persons operating a vehicle traveling on intersecting streets and entering and exiting private property; or

(13) Changeable electronic variable message sign (CEVMS), whether on-premises or off-premises.

(C) Any freestanding sign erected prior to the effective date of the ordinance adopting this section shall only be removed in the manner provided by TEX. LOCAL GOV'T CODE, Chapter 216, Subchapter A.

(D) No person, firm or corporation shall enlarge or otherwise modify in a manner which results in a different sign:

(1) Any off-premises freestanding sign; or,

(2) An on-premises freestanding sign exceeding the dimensions specified in (B) (3) above, which in either case, was in place on the date of the adoption of the ordinance adding this division to this section.

(E) Division (B) of this section shall not apply to the following signs:

(1) A directional sign of a church located on city right-of-way which does not exceed four square feet;

(2) A temporary sign advertising an event by or for a non-profit organization recognized as exempt from income tax by the Internal Revenue Service under § 501(c) of the Internal Revenue Code;

(3) A marquee sign, operated by and located on city right-of-way, advertising events occurring in the city;

(4) A school spirit sign for the duration of the applicable season or school term; and,

(5) A garage sale sign located on the premises where the sale is being conducted, but only for the duration of such sale.

(F) Sections 113.07 and 113.08 of this chapter, including all applicable definitions, shall, pursuant to the authority of Chapter 216.902 TEX. LOCAL GOV'T CODE apply to property located within the extraterritorial jurisdiction of the city as if such

property were located within the incorporated limits of the city.

(G) On-premises portable signs located on any premises on the date of the ordinance adding this division to § 113.07 may remain on such premises if anchored in a manner approved by the Building Official, but such signs may not be replaced and shall be removed if the ownership of the business being advertised changes.

(Ord. 2004-2055, passed 7-19-04; Am. Ord. 2004-2065, passed 9-24-04; Am. Ord. 2005-2075, passed 2-22-05; Am. Ord. 2006-2118, passed 3-20-06; Am. Ord. 2008-2198, passed 5-5-08) Penalty, see § 10.99

#### § 113.08 ADMINISTRATIVE APPEALS.

The City Council shall serve and perform the duties of an Appeal Board under the provisions of this section. The Board shall have the following powers and duties:

(A) To hear and decide appeals where it is alleged that there is an error in any requirement, order, decision or determination made by the City Manager, Building Official or by any Code Enforcement Officer in the enforcement of this chapter.

(B) To authorize upon appeal from the decision of the Building Official or by a Code Enforcement Officer in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where, upon adequate proof, it is shown that owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary hardship. For the purpose of this chapter, a variance shall be authorized only when the strict application of the provisions hereof will:

(1) Cause real and substantial financial hardship to the sign user; or

(2) Result in arbitrary and unreasonable taking of property or in the practical closing or elimination of any lawful business.

(Ord. 2004-2072, passed 12-6-04)



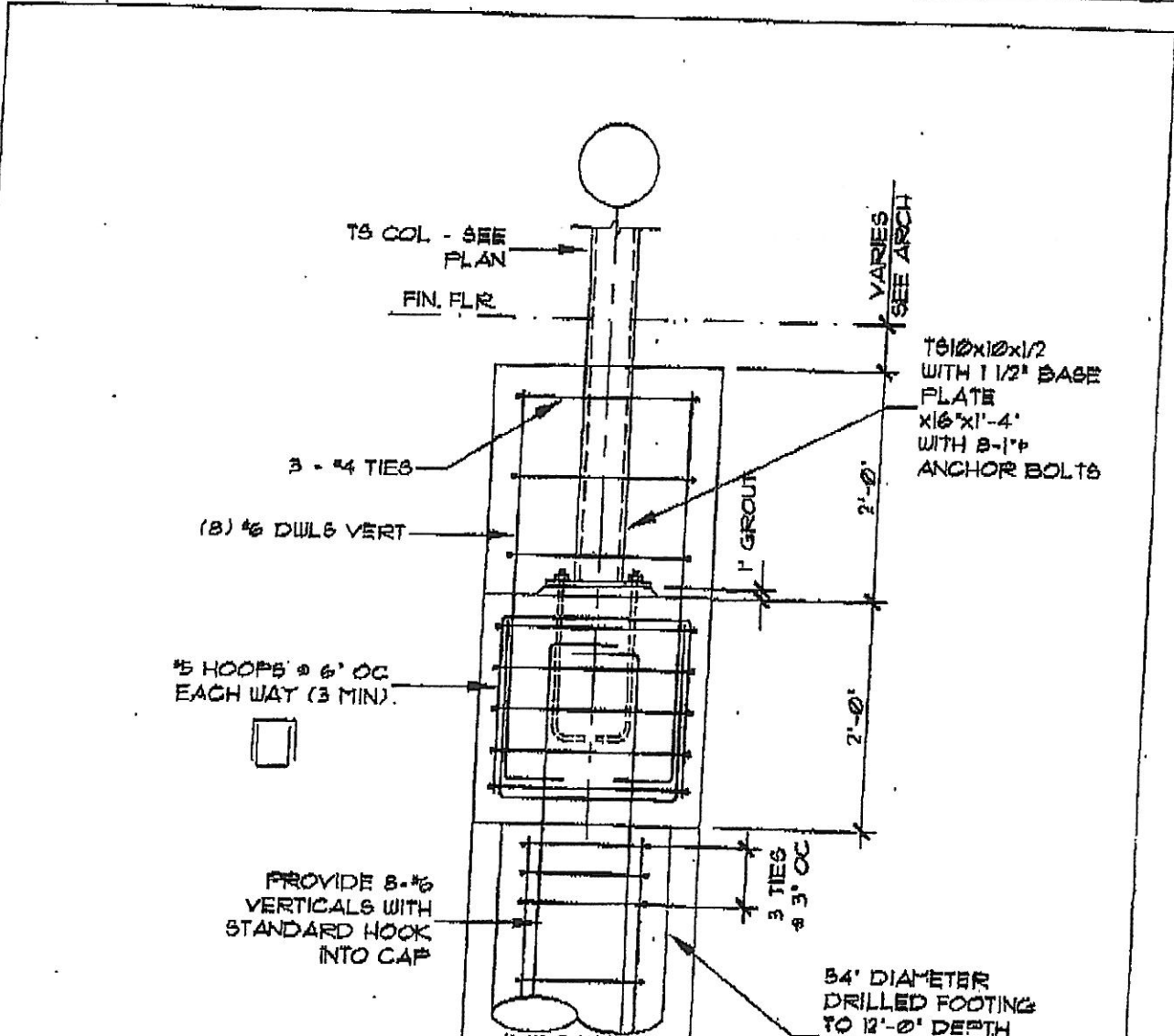
JOB BRAZOSPORT HIGH SCHOOL

SHEET NO. 1 OF 1

CALCULATED BY JG DATE 1/11/06

CHECKED BY BG DATE 1/11/06

SCALE 3/4" = 1'-0"



**MARQUEE SIGN PIER CAP DETAIL**

14

SCALE: 3/4" = 1'-0"

**S3.04**



MARQUEE  
SIGN  
ELEVATION

EL. 22'-0" 11"  
TOP OF COLUMN  
EL. 22'-0"

TS 12x6x1/4

4x4x3/8  
TAB

TS 10x10x1/2

10'-6"  
BOTTOM OF  
PLATE

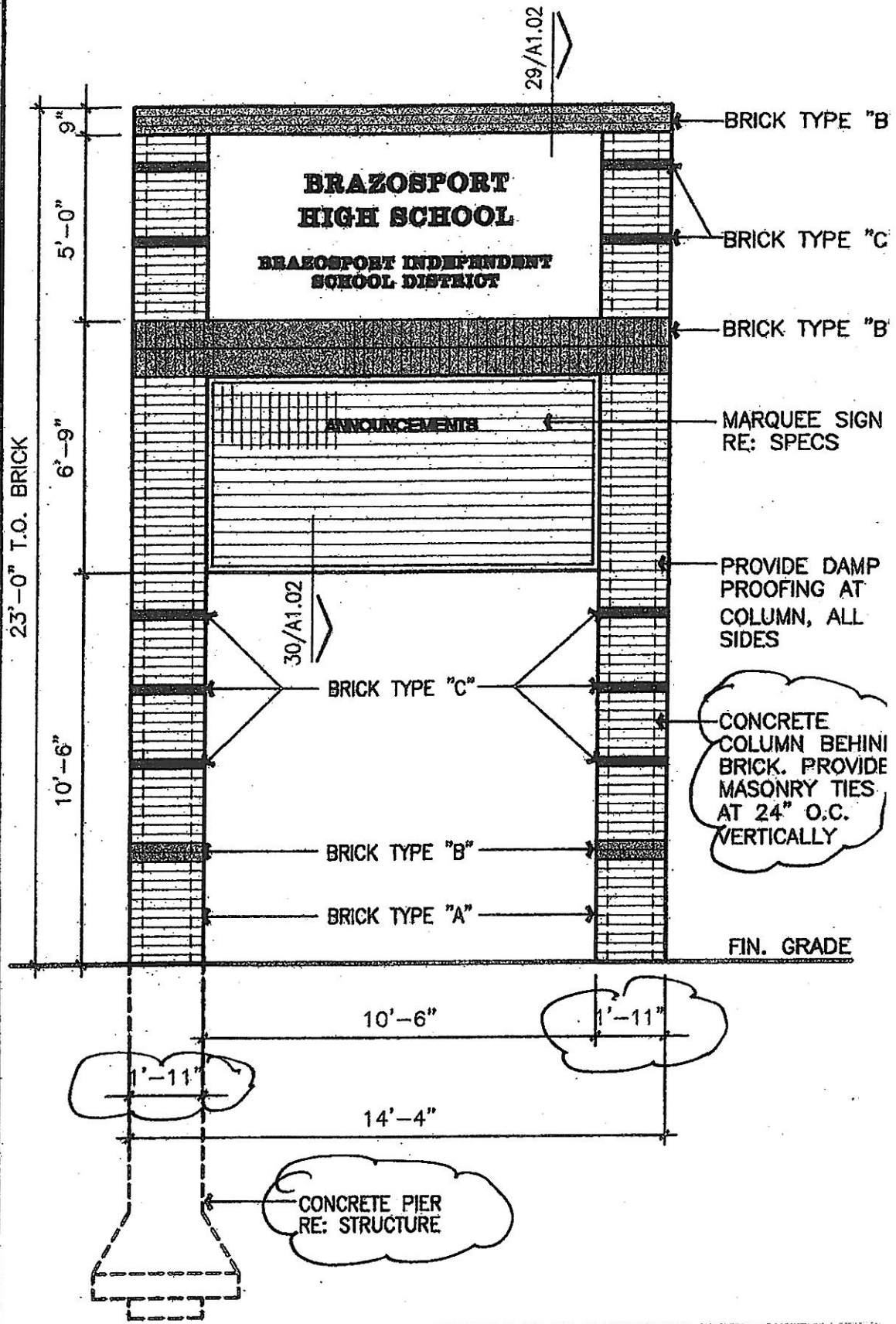
TS 12x6x3/8  
W/ 3/8" E x 1'-10"  
GALV

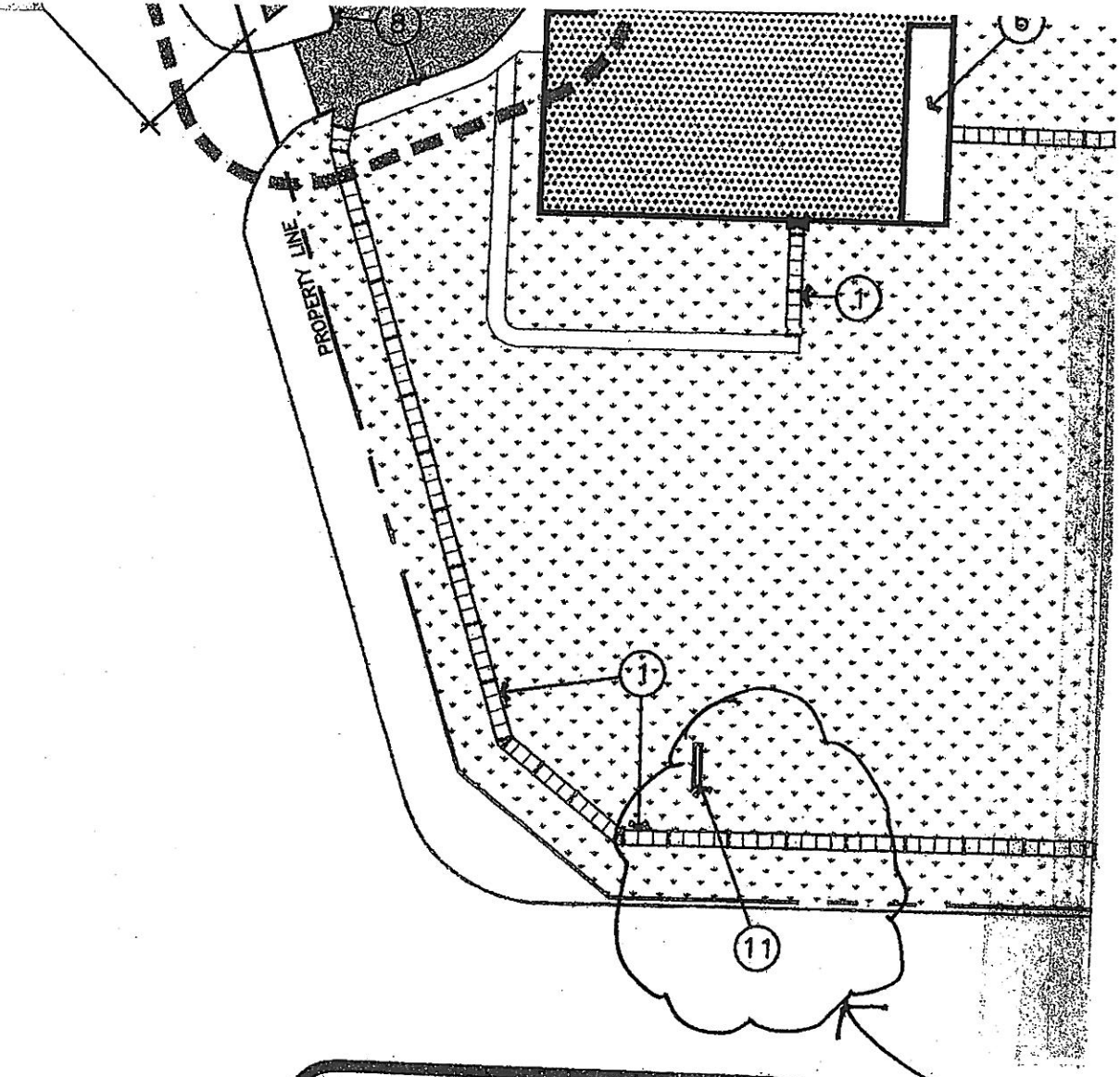
VERIFY

FINISH  
GRADE

SEE  
14/S3.04

SEE  
14/S3.04





PROJECT NO. 0314  
DATE 04/09/04  
DRAWN  
CHECKED JS  
REVISIONS

ISSUE FOR CONSTRUCTION

**A1.01**

**SITE PLAN**