NOTICE OF A REGULAR MEETING
THE BRENHAM CITY COUNCIL
THURSDAY, MAY 7, 2020 AT 1:00 P.M.
SECOND FLOOR CITY HALL
COUNCIL CHAMBERS
200 W. VULCAN ST.
BRENHAM, TEXAS

1. Call Meeting to Order

2. Invocation and Pledges to the US and Texas Flags – Councilmember Saunders

3. Proclamation
- **National Police Week** **Page 1**

4. April Service Recognitions
- **Terrence Johnson, Police** **5 Years**
- **Greg Nienstedt, Fire** **20 Years**
- **Kim Hodde, Development Services** **30 Years**
- **Pam Ruemke, Police/IT** **35 Years**

5. Citizens Comments

CONSENT AGENDA

6. Statutory Consent Agenda

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

6-a. Minutes from the April 16, 2020 Regular City Council Meeting

6-b. Ordinance No. O-20-007 on Its Second Reading Amending Appendix A – "Zoning" of the Code of Ordinances of the City of Brenham Granting a Specific Use Permit to Brenham Housing Authority to Allow for a Multifamily Development in the Mixed Residential (R-2) Zoning District on a Site of Two Acres or More of Land Located Generally West of Hasskarl Drive and South of Eleanor Drive, and Further Described as a 5.490 Acre Parcel Being a Portion of Tract 184 of the Arrabella Harrington Survey, in Brenham, Washington County, Texas (Case Number P-20-009)

6-c. Ordinance No. O-20-008 on Its Second Reading to Grant a Non-Exclusive Franchise to Pronto Services, LLC to Operate a Roll-Off Container Service for Residents, Businesses, and Industries Inside Brenham City Limits

6-d. Ordinance No. O-20-009 on Its Second Reading Amending Chapter 11, Garbage and Trash, of the Code of Ordinances, City of Brenham, Texas

6-e. Ordinance No. O-20-010 on Its Second Reading Amending the Rate Tariff Schedule for the City of Brenham Sanitation Rates

6-f. Discuss and Possibly Act Upon Final Payment in the Amount of $37,145.90 to Solid Bridge Construction for Contract No. 2019-02 Related to Hohlt Park Stream Restoration and Authorize the Mayor to Execute Any Necessary Documentation

6-g. Acceptance of a Donation from The Dorothy Elaine O'Connor Living Trust in the Amount of $25,000.00 for the Nancy Carol Roberts Memorial Library and Authorize the Mayor to Execute Any Necessary Documentation **Pages 2-59**

PUBLIC HEARING AND ASSOCIATED ACTION ITEM

7. Public Hearing, Discussion and Possibly Act Upon an Ordinance on Its First Reading Annexing Approximately 52.428 Acres of Land Located South and West of Dixie Road, Being Further Described as Tract 7 of the Phillip Coe Survey, A-31, in Brenham, Washington County, Texas **Pages 60-74**

8. Public Hearing, Discussion and Possibly Act Upon an Ordinance on Its First Reading Amending the Official Zoning Map of the City of Brenham, to Assign a Zoning Classification of a Planned Development District (PDD) on Approximately 52.428 Acres of Land Located South and West of Dixie Road, Being Further Described as Tract 7 of the Phillip Coe Survey, A-31, in Brenham, Washington County, Texas (Case Number P-20-012) **Pages 75-102**

9. **Public Hearing, Discussion and Possibly Act Upon an Ordinance on Its First Reading Amending the Official Zoning Map of the City of Brenham, to Change the Zoning District from a Mixed Residential District (R-2) to a Commercial, Research and Technology District (B-2) on Approximately 0.997 Acres of Land Located at 811 W. Fifth Street, Being Further Described as Lot 1 in Block 2 of the Blinn Fifth Street Subdivision, in Brenham, Washington County, Texas (Case Number P-20-013)** **Pages 103-121**

REGULAR SESSION

10. **Discuss and Possibly Act Upon an Amendment to the System Water Availability Agreement Between the City of Brenham and Brazos River Authority for the Temporary Resale of Water and Authorize the Mayor to Execute Any Necessary Documentation** **Pages 122-127**

11. **Discuss and Possibly Act Upon a Water Supply Resale Agreement Between the City of Brenham and The Dow Chemical Company Related to the Temporary Resale of Water and Authorize the Mayor to Execute Any Necessary Documentation** **Pages 128-152**

12. **Discuss and Possibly Act Upon the First Amendment to the Interlocal Agreement for Managing Entity by the Brazos Valley Council of Governments (BVCOG) for the Brazos Valley Wide Area Communications System (BVWACS) and Authorize the Mayor to Execute Any Necessary Documentation** **Pages 153-164**

13. **Discuss and Possibly Act Upon the First Amendment to the Second Restatement of the Interlocal Agreement for the Construction, Acquisition, Implementation, Operation and Maintenance of the Brazos Valley Wide Area Communications System (BVWACS) and Authorize the Mayor to Execute Any Necessary Documentation** **Pages 165-176**

14. **Discuss and Possibly Act Upon a Ground Space Lease Agreement Between Aviators Plus, LLC and the City of Brenham for the Construction and Operation of a Fuel Farm at the Brenham Municipal Airport, and Authorize the Mayor to Execute Any Necessary Documentation** **Pages 177-190**

15. **Discuss and Possibly Act Upon Amendment No. 01 to the Airport Project Participation Agreement Between the City of Brenham and the Texas Department of Transportation and Authorize the Mayor to Execute any Necessary Documentation** **Pages 191-195**

16. **Discuss and Possibly Act Upon Resolution No. R-20-020 Related to the Gas Fund and Maintenance of Cash Reserves** **Pages 196-198**

17. **Discussion and Update on the City of Brenham's COVID-19 (Coronavirus) Response and Recovery Efforts** **Page 199**

18. **Administrative/Elected Officials Report**

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

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

Adjourn

CERTIFICATION

I certify that a copy of the May 7, 2020 agenda of items to be considered by the City of Brenham City Council was posted to the City Hall bulletin board at 200 W. Vulcan, Brenham, Texas on May 4, 2020 at **12:15 PM**.

Kacey A. Weiss, TRMC
Deputy City Secretary I

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

I certify that the attached notice and agenda of items to be considered by the City Council was removed by me from the City Hall bulletin board on the _____ day of _____, 2020 at _____ AM PM.

_____ _____
Signature Title

PROCLAMATION

WHEREAS, The Congress and President of the United States have designated May 15th as Peace Officers' Memorial Day, and the week in which May 15th falls as National Police Week; and

WHEREAS, The members of the law enforcement community of the City of Brenham play an essential role in safeguarding the rights and freedoms of Brenham; and

WHEREAS, It is important that all citizens know and understand the duties, responsibilities, hazards, and sacrifices of their law enforcement agency, and that members of our law enforcement agency recognize their duty to serve the people by safeguarding life and property, by protecting them against violence and disorder, and by protecting the innocent against deception and the weak against oppression; and

WHEREAS, The men and women of the Brenham Police Department unceasingly provide a vital service; and

WHEREAS, All citizens of the City of Brenham are urged to observe Friday, May 15th as Peace Officers' Memorial Day in honor of those law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community or have become disabled in performance of duty, and let us recognize and pay respect to the survivors of our fallen heroes;

NOW, THEREFORE, I, Milton Y. Tate, Jr., Mayor of the City of Brenham, do hereby proclaim May 11, 2020 to May 17, 2020 as

NATIONAL POLICE WEEK

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

_____

Milton Y. Tate Jr., Mayor
City of Brenham

Brenham City Council Minutes

A regular meeting of the Brenham City Council was conducted virtually via teleconference and/or videoconference on April 16, 2020 beginning at 1:00 p.m.

Members present:

Mayor Milton Y. Tate, Jr. – On site at City Hall
Mayor Pro Tem Andrew Ebel – Via Videoconference
Councilmember Susan Cantey – Via Videoconference
Councilmember Keith Herring – Via Videoconference
Councilmember Clint Kolby – Via Videoconference
Councilmember Adonna Saunders – Via Videoconference
Councilmember Albert Wright – Via Teleconference

Members absent:

None

Others present:

City Manager James Fisher and City Secretary/Director of Administrative Services Jeana Bellinger.

Citizens present:

There were 36 participants in attendance via teleconference and/or videoconference.

Media Present:

Brenham Banner Press and KWHI.

DRAFT

1. Call Meeting to Order

2. Citizens Comments

There were no citizen comments.

CONSENT AGENDA

3. Statutory Consent Agenda

3-a. Minutes from the April 2, 2020 Regular City Council Meeting

3-b. Award ITB No. 20-002 for the Lease of Approximately 103.65 Acres of Land Located at 2080 Old Navasota Road, Brenham, Texas for Hay Production to Schulz Cattle Company in the Amount of $60.50 Per Acre and Authorize the Mayor to Execute Any Necessary Documentation

A motion was made by Councilmember Cantey and seconded by Mayor Pro Tem Ebel to approve the Statutory Consent Agenda Item 3-a. and Item 3-b. as presented.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Keith Herring	**Absent**
Councilmember Clint Kolby	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

PUBLIC HEARING AND ASSOCIATED ACTION ITEM

4. Public Hearing, Discussion and Possibly Act Upon an Ordinance on Its First Reading Amending Appendix A – "Zoning" of the Code of Ordinances of the City of Brenham Granting a Specific Use Permit to Brenham Housing Authority to Allow for a Multifamily Development in the Mixed Residential (R-2) Zoning District on a Site of Two Acres or More of Land Located Generally West of Hasskarl Drive and South of Eleanor Drive, and Further Described as a 5.490 Acre Parcel Being a Portion of Tract 184 of the Arrabella Harrington Survey, in Brenham, Washington County, Texas (Case Number P-20-009)

City Manager James Fisher presented this item. Fisher explained that the Brenham Housing Authority (applicant) is requesting approval of a Specific Use Permit on approximately 5.49 acres of land located south of E. Blue Bell Road and bounded by E. Blue Bell Road to the north, Henderson Park to the west, Hasskarl Drive to the east and Matilda Street to the south.

Fisher advised that the subject property is currently zoned as R-2, Mixed Residential Use District and developed with duplexes owned by the Brenham Housing Authority. The current R-2 zoning designation allows for a mixture of residential uses as permitted uses to include single-family, two-family, single-family attached (townhomes), cluster housing, zero lot line housing and small multifamily dwellings on sites of less than two (2) acres. In addition, multifamily development on a site of two (2) acres or more is permitted in the R-2 District with prior approval of a Specific Use Permit (SUP).

Fisher explained that the purpose of the SUP process is to identify those uses which might be appropriate within a zoning district, but due to either their location, function, or operation could have a potentially harmful impact on adjacent properties or the surrounding area; and to provide for a procedure whereby such uses might be permitted by further restricting or conditioning them so as to mitigate or eliminate such adverse impacts. Fisher informed the Council that the Planning and Zoning Commission voted unanimously to recommend approval of the SUP request as presented.

Mayor Tate opened the public hearing. There were no public comments received.

Mayor Tate closed the public hearing.

A motion was made by Councilmember Kolby and seconded by Councilmember Wright to approve an Ordinance on its first reading amending Appendix A – "Zoning" of the Code of Ordinances of the City of Brenham granting a Specific Use Permit to Brenham Housing Authority to allow for a multifamily development in the Mixed Residential (R-2) Zoning District on a site of two acres or more of land located generally west of Hasskarl Drive and south of Eleanor Drive, and further described as a 5.490 acre parcel being a portion of Tract 184 of the Arrabella Harrington Survey, in Brenham, Washington County, Texas (Case Number P-20-009).

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Keith Herring	Yes
Councilmember Clint Kolby	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

REGULAR SESSION

5. Discuss and Possibly Act Upon Resolution No. R-20-017 Approving Exhibit "D" Collection and Transfer Station Services to Said Agreement for Municipal Solid Waste Collection, Disposal and Recycling Services Between the City of Brenham and Brannon Industrial Group, LLC d/b/a BVR Waste and Recycling

City Manager James Fisher presented this item. Fisher explained that in March 2020 the City Council approved an agreement for Commercial and Residential Solid Waste Collection, Disposal and Recycling Services with Brannon Industrial Group, LLC d/b/a BVR Waste and Recycling and at that time the agreement related to the Collection and Transfer Station was not completed. Fisher stated that the past couple of weeks, the City Attorney, along with city staff, have finalized Exhibit "D" related to the collection and transfer station and it is now ready for City Council's approval.

Councilmember Herring inquired if improvements to the facility could be approved by the City Manager. Herring referenced the second paragraph in section "License of Station Facility" where it states that any improvement made to the Station must be approved by the City. Herring stated that he was fine with improvements being approved by the City Manager. All of the members of the City Council approved.

City Attorney Cary Bovey advised the Council of a change needed to the License Agreement. Bovey explained that Item 15.b. is not needed in the Agreement due to the language contained in the General Terms and Conditions to the Agreement for Municipal Solid Waste Collection, Disposal and Recycling Services between the City and BVR.

A motion was made by Councilmember Kolby and seconded by Councilmember Saunders to approve Resolution No. R-20-017 approving Exhibit "D" Collection and Transfer Station Services to said Agreement for Municipal Solid Waste Collection, Disposal and Recycling Services between the City of Brenham and Brannon Industrial Group, LLC d/b/a BVR Waste and Recycling with the approval of facility improvements being done by the City Manager and Section 15.b. of the License Agreement being deleted.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Keith Herring	Yes
Councilmember Clint Kolby	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

6. Discuss and Possibly Act Upon an Ordinance on Its First Reading to Grant a Non-Exclusive Franchise to Pronto Services, LLC to Operate a Roll-Off Container Service for Residents, Businesses, and Industries Inside Brenham City Limits

City Manager James Fisher presented this item. Fisher explained that the City of Brenham allows sanitation companies to provide roll-off container services for residents, businesses, and industries inside the city limits; however, the sanitation companies are required to have a franchise with the City prior to providing the service. Fisher stated that currently there are franchise agreements with (8) companies to provide this service for our citizens and businesses.

Fisher advised that on April 1, 2020 staff received a letter from Alex Basgal with Pronto Services, LLC requesting a franchise agreement in order to do business within the City. This company has been hired by a local church to assist with remodeling and construction debris. Fisher stated that staff recommends approving the franchise ordinance.

Mayor Pro Tem Ebel asked if there were any plans to discontinue this in the future since all other sanitation services have been outsourced to Brannon Industrial Group. Fisher explained that staff was looking into that and would be bringing a recommendation to Council in a future meeting.

A motion was made by Councilmember Saunders and seconded by Councilmember Cantey to approve an Ordinance on its first reading to grant a Non-Exclusive Franchise to Pronto Services, LLC to operate a Roll-Off Container Service for residents, businesses, and industries inside Brenham city limits.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Keith Herring	Yes
Councilmember Clint Kolby	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

7. Discuss and Possibly Act Upon the Acceptance of a Donation from the City of Brenham Community Projects Fund, Inc. and Authorize the Mayor to Execute Any Necessary Documentation

City Manager James Fisher presented this item. Fisher advised that at the August 27, 2015 City Council meeting, former Director of Community Services, Wende Ragonis, presented to Council the idea of forming a 501(c)(3) non-profit Charitable Organization (City of Brenham Community Projects Fund, Inc.) to provide funding for quality of life enrichment for recreation, literacy and community philanthropy and development.

In 2019, recreation staff began applying for various grants to help with the construction of a splashpad in Henderson Park. In February 2020, H-E-B awarded $50,000 to the Community Projects Fund for a splashpad in Henderson Park.

The Community Projects Fund Board made up of Mayor Tate, Councilmember Susan Cantey, and Councilmember Clint Kolby accepted the donation and unanimously approved it being donated to the City for the splashpad.

A motion was made by Councilmember Herring and seconded by Councilmember Wright to accept a donation in the amount of $50,000.00 from the City of Brenham Community Projects Fund, Inc. for the splashpad in Henderson Park and authorize the Mayor to execute any necessary documentation.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Keith Herring	Yes
Councilmember Clint Kolby	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

8. Discuss and Possibly Act Upon a Project Services Agreement Between the City of Brenham and MunicipalH2O Related to Regulatory Compliance Services and a Risk and Resilience Assessment and Authorize the Mayor to Execute Any Necessary Documentation

City Manager James Fisher presented this item. Fisher stated that on October 23, 2018, America's Water Infrastructure Act (AWIA) was signed into law. This Act requires community water systems serving 3,300 or more persons to conduct a risk and resilience assessment and develop an emergency response plan that must be updated every five years. Certification deadline for the Risk and Resilience Assessment is June 30, 2021 and the Emergency Response Plan certifications are due six months from the date of the Risk Assessment Certification.

Fisher explained that while the assessment is not due until June 30, 2021, it is a very technical and lengthy process to complete. Therefore, it is prudent to start this process as early as possible as many other Cities across the nation would be seeking these same services to complete their assessments.

Fisher stated that Municipal H20 (MHC) currently provides the City with Risk Management Program services in accordance with EPA requirements for the water and wastewater plants. Under that agreement, MHC will provide to the City all services required to ensure the Risk and Resilience Assessment is certified to EPA prior to the June 30, 2021 deadline and that the Emergency Response Plan for the City is completed and certified within six (6) months after certification of the Risk and Resilience Assessment. The cost for MHC to provide these services to the City is a one-time project fee of $22,500.

A motion was made by Councilmember Herring and seconded by Councilmember Saunders to approve a Project Services Agreement between the City of Brenham and MunicipalH2O for a one-time project fee of $22,500.00 related to Regulatory Compliance Services and a Risk and Resilience Assessment and authorize the Mayor to execute any necessary documentation.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Keith Herring	Yes
Councilmember Clint Kolby	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

9. Discuss and Possibly Act Upon an Amendment to the System Water Availability Agreement Between the City of Brenham and Brazos River Authority for the Temporary Resale of Water and Authorize the Mayor to Execute Any Necessary Documentation

City Manager James Fisher asked that the City Council please table this item to allow staff more time to review the agreement.

A motion was made by Mayor Pro Tem Ebel and seconded by Councilmember Cantey to table Item 9.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Keith Herring	Yes
Councilmember Clint Kolby	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

10. Discuss and Possibly Act Upon a Water Supply Resale Agreement Between the City of Brenham and The Dow Chemical Company Related to the Temporary Resale of Water and Authorize the Mayor to Execute Any Necessary Documentation

City Manager James Fisher asked that the City Council please table this item to allow staff more time to review the agreement.

A motion was made by Mayor Pro Tem Ebel and seconded by Councilmember Cantey to table Item 10.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Keith Herring	Yes
Councilmember Clint Kolby	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

11. Discuss and Possibly Act Upon a Professional Services Agreement Between the City of Brenham and Strand Associates, Inc. Related to 2020 On-Call Engineering Services and Authorize the Mayor to Execute Any Necessary Documentation

City Manager James Fisher presented this item. Fisher explained that the City would like to obtain engineering services from Strand Associates, Inc. on an "On-Call" or "As Needed" basis. The services would include, but not be limited to, General Engineering Services, Development Review Services, Floodplain Administration Services, and Part-Time Resident Project Representative Services for Developments.

Fisher advised that the services would be to attend meetings to discuss engineering-related matters, prepare opinions of probable construction costs for budgetary purposes, review preliminary and final plats submitted by developers, review water, sanitary sewer, paving, and drainage construction plans in accordance with the Code of Ordinances and Design Standards, communicate with the City regarding its floodplain administration, and part-time observation of development construction. Fisher stated that cost to provide those services would not exceed $50,000 a year.

Councilmember Herring asked whether an increase would have to come back to Council for approval if the cost was over $50,000. Fisher advised that it would.

A motion was made by Councilmember Kolby and seconded by Councilmember Wright to approve a Professional Services Agreement between the City of Brenham and Strand Associates, Inc., not to exceed $50,000.00, related to 2020 On-Call Engineering Services and authorize the Mayor to execute any necessary documentation.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Keith Herring	Yes
Councilmember Clint Kolby	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

12. Discuss and Possibly Act Upon a Professional Services Agreement Between the City of Brenham and Strand Associates, Inc. Related to Engineering Services and Resident Project Representative Services for the Raw Water Intake Repairs at Lake Somerville and Authorize the Mayor to Execute Any Necessary Documentation

City Manager James Fisher presented this item. Fisher explained that on February 20, 2020, Lindsey Corporation, Inc. was awarded Project Bid No. E2016-06 for the Raw Water Intake Repair at Lake Somerville. In order to assist with this important project, the City would like to obtain engineering services from Strand Associates, Inc. to provide part-time resident project representation for observation and inspection for work performed (12-16 hours per week) for up to 43 weeks.

Fisher stated that the Engineer would not supervise, direct, or have control over the contractor's work and would not be responsible for the contractor's construction means, methods, techniques, sequences, procedures, or health and safety precautions or programs. Fisher explained that the Engineer shall keep the City informed on progress of work, document all visits to the project site and observations concerning the project and furnish documentation of these visits to the City. Fisher advised the Council that Strand's services would be based on a 300-day construction schedule and shall not exceed $75,000.00.

A motion was made by Councilmember Cantey and seconded by Councilmember Wright to approve a Professional Services Agreement between the City of Brenham and Strand Associates, Inc., not to exceed $75,000.00, related to Engineering Services and Resident Project Representative Services for the raw water intake repairs at Lake Somerville and authorize the Mayor to execute any necessary documentation.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Keith Herring	Yes
Councilmember Clint Kolby	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

13. Discuss and Possibly Act Upon Resolution No. R-20-018 Expressing Official Intent to Reimburse Certain Costs Related to the Raw Water Intake Repair at Lake Somerville Project

City Manager James Fisher presented this item. Fisher advised Council that on November 13, 2019 the City of Brenham along with Gunda Corporation representatives opened bids regarding the Raw Water Intake Repair Project at Lake Somerville. This project resulted from the high lake levels that occurred from the 2016 and 2017 storm events causing infrastructure damage to the gabions and pump station, along with the access road.

Fisher explained that initially Gunda estimated the construction at $1,784,791 however, when bids were opened, the lowest bid was $4,999,991 from Lindsey Construction. The City advised TDEM and FEMA of the significant difference in estimated costs versus bid prices.

Fisher stated that on February 20, 2020, the Council awarded a contract to Lindsey Construction in the amount of $4,999,991 and although FEMA has communicated to the City that the higher construction estimates are reasonable, this Resolution allows Council the ability to reimburse certain costs related to this project from the issuance of Certificates of Obligation in the event that FEMA does not reimburse the City in whole or in part for the engineering and construction of this project.

A motion was made by Councilmember Cantey and seconded by Councilmember Saunders to approve Resolution No. R-20-018 expressing official intent to reimburse certain costs related to the Raw Water Intake Repair at Lake Somerville Project.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Keith Herring	Yes
Councilmember Clint Kolby	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

14. Discussion and Update on the City of Brenham's COVID-19 (Coronavirus) Response and Recovery Efforts

City Manager James Fisher advised the Council of the following COVID-19 response and recovery efforts:

- Susan Cates, Director of Economic Development, is working with Nextlink to provide wi-fi hotspots for citizens in the parks and other select locations around the City to help parents and students with homework.
- Several City employees are helping BISD with the school lunch program.

15. Administrative/Elected Officials Report

City Manager James Fisher reported on the following:

- The Recycling Center will remain open until June 1.
- The next City Council meeting will be on April 30th and will be an in-person meeting, held at City Hall.

DRAFT

The meeting was adjourned.

_____

Milton Y. Tate, Jr.
Mayor

_____

Jeana Bellinger, TRMC, CMC
City Secretary

DRAFT

ORDINANCE NO. O-20-007

AN ORDINANCE AMENDING APPENDIX A – "ZONING" OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS GRANTING A SPECIFIC USE PERMIT TO BRENHAM HOUSING AUTHORITY TO ALLOW FOR A MULTIFAMILY DEVELOPMENT IN THE MIXED RESIDENTIAL (R-2) ZONING DISTRICT ON A SITE OF TWO (2) ACRES OR MORE OF LAND LOCATED GENERALLY WEST OF HASSKARL DRIVE AND SOUTH OF ELEANOR DRIVE, AND FURTHER DESCRIBED AS A 5.490 ACRE PARCEL BEING A PORTION OF TRACT 184 OF THE ARRABELLA HARRINGTON SURVEY, IN BRENHAM, WASHINGTON COUNTY, TEXAS

WHEREAS, the City of Brenham has adopted Appendix A – "Zoning" of the City of Brenham Code of Ordinances, as amended, which divides the City of Brenham into various zoning districts; and

WHEREAS, Appendix A – "Zoning" of the City of Brenham Code of Ordinance authorizes the City Council to grant specific use permits for specific uses within the various zoning districts; and

WHEREAS, the requested specific use permit was recommended for approval by the Brenham Planning and Zoning Commission during its regular meeting on March 23, 2020; and

WHEREAS, the removal of existing duplex units and development of a 80-unit multifamily complex on 5.49 acres of land would be consistent with Resolution R-20-005 approved by City Council on February 20, 2020 to support Brenham Housing Authority's grant application for tax credit funding to allow for the replacing of existing affordable housing to accommodate individuals living in deteriorating conditions; and

WHEREAS, the City Council desires to approve this Ordinance granting the specific use permit, as described herein below;

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

SECTION 1. That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas, and the Official Zoning Map of the City of Brenham is hereby amended to grant a Specific Use Permit for a multifamily development use on a site of two (2) acres or more to uses permitted in the Mixed Residential (R-2) Zoning District on approximately 5.49 acres of land generally located west of Hasskarl Drive and South of Eleanor Drive, and further described as a 5.490 acre parcel being a portion of Tract 184 of the Arrabella Harrington Survey, in Brenham, Washington County, Texas (the "Property"), said 5.49 acres of land being more particularly described on Exhibit "A" attached hereto and incorporated herein for all purposes.

SECTION 2. Upon holding a properly notified public hearing, the City Council may amend, change, or rescind the Specific Use Permit granted by this Ordinance if:

a. There is a violation and conviction of any of the provisions of this Ordinance, or any ordinance of the City of Brenham, that occurs on the Property;

b. The premises, or Property, used pursuant to the Specific Use Permit granted by this Ordinance are enlarged, modified, structurally altered, or otherwise significantly changed unless a separate Specific Use Permit is granted for such enlargement, modification, structural alteration, or change;

c. As otherwise permitted by law and/or Brenham's Zoning Ordinance, as it exists or may be amended.

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

PASSED and APPROVED on its first reading this the 16th day of April, 2020.

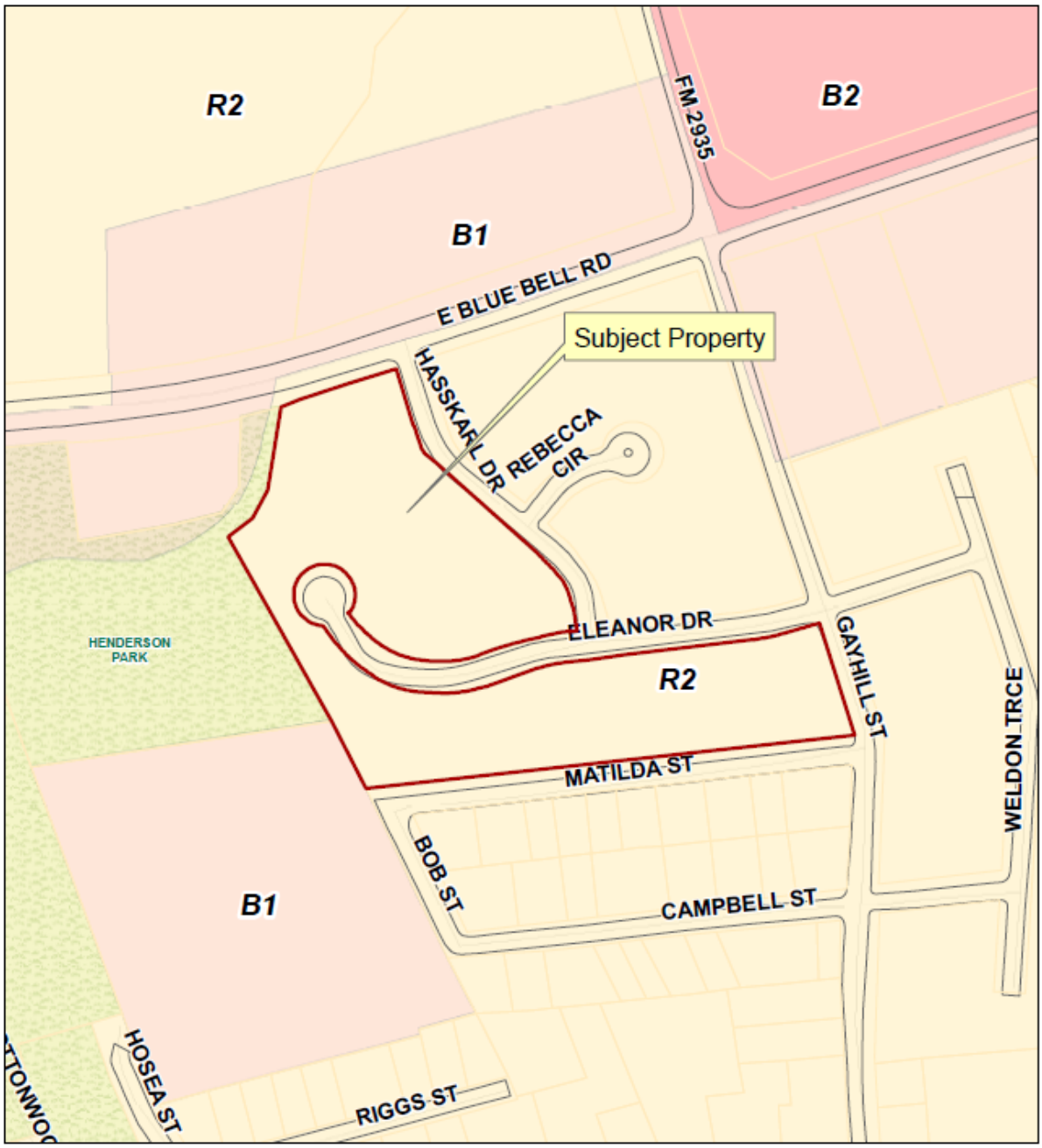
PASSED and APPROVED on its second reading this the 7th day of May, 2020.

_____
Milton Y. Tate, Jr.
Mayor

ATTEST:

_____
Jeana Bellinger, TRMC, CMC
City Secretary

Exhibit "A"

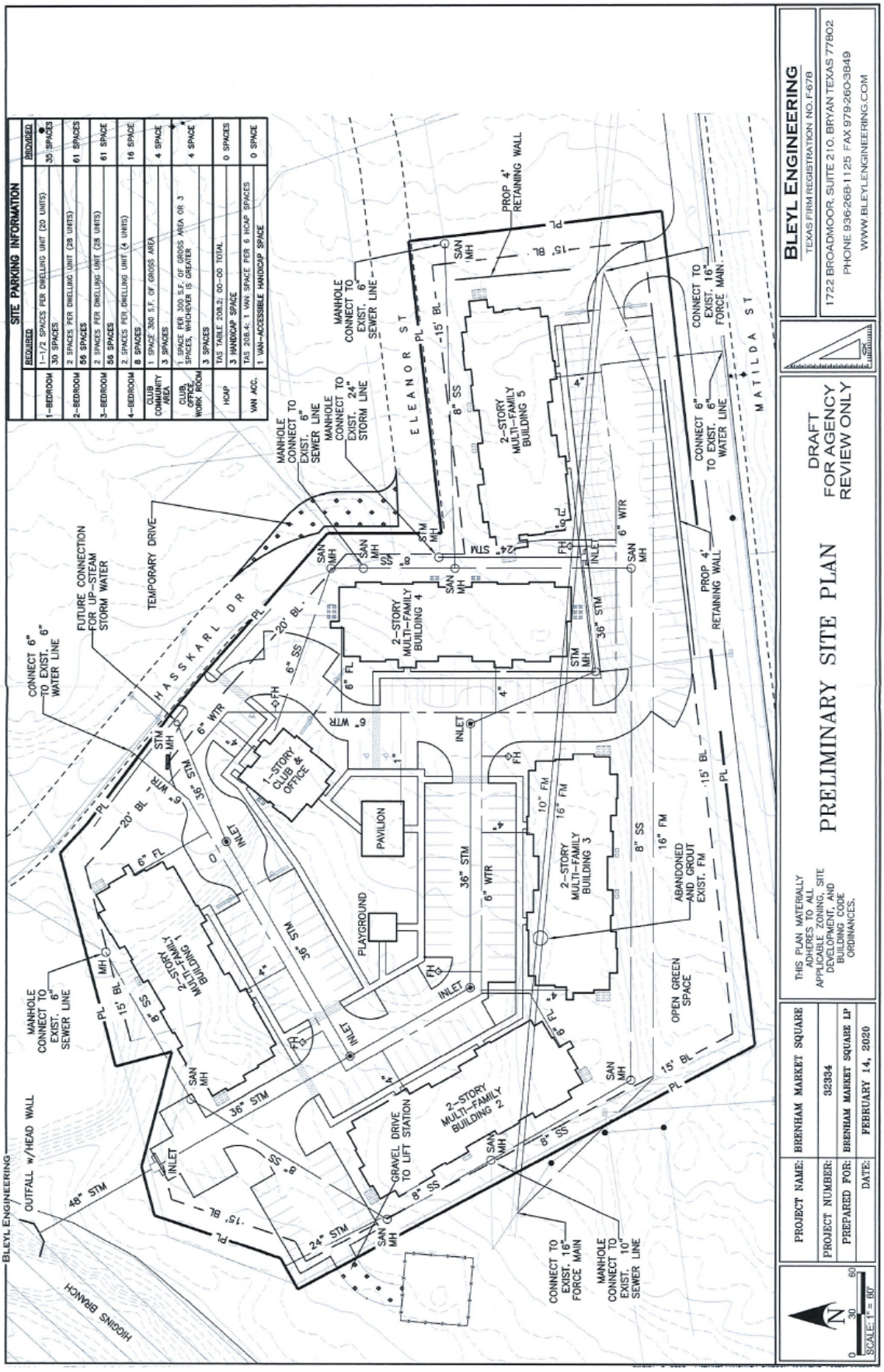


Brenham Housing Authority
Specific Use Permit Request

1 inch = 213 feet

City of BRENHAM

Exhibit "B"


SITE PARKING INFORMATION
REQUIRED
PROVIDED
1-BEDROOM
1-1/2 SPACES PER DWELLING UNIT (20 UNITS)
30 SPACES
30 SPACES
2-BEDROOM
2 SPACES PER DWELLING UNIT (28 UNITS)
56 SPACES
61 SPACES
3-BEDROOM
2 SPACES PER DWELLING UNIT (28 UNITS)
56 SPACES
61 SPACE
4-BEDROOM
2 SPACES PER DWELLING UNIT (4 UNITS)
8 SPACES
16 SPACE
CLUB COMMUNITY AREA
1 SPACE 300 S.F. OF GROSS AREA
3 SPACES
4 SPACE
CLUB, OFFICE WORK ROOM
1 SPACE PER 300 S.F. OF GROSS AREA OR 3 SPACES, WHICHEVER IS GREATER
3 SPACES
4 SPACE
HCAP
TAS TABLE 208.2; 00-00 TOTAL
3 HANDICAP SPACE
0 SPACES
VAN ACC.
TAS 208.4: 1 VAN SPACE PER 6 HCAP SPACES
1 VAN-ACCESSIBLE HANDICAP SPACE
0 SPACE
BLEYL ENGINEERING
TEXAS FIRM REGISTRATION NO. F-678
1722 BROADMOOR, SUITE 210, BRYAN TEXAS 77802
PHONE 936-268-1125 FAX 979-260-3849
WWW.BLEYLENGINEERING.COM
PRELIMINARY SITE PLAN
DRAFT FOR AGENCY REVIEW ONLY
THIS PLAN MATERIALLY ADHERES TO ALL APPLICABLE ZONING, SITE DEVELOPMENT, AND BUILDING CODE ORDINANCES.
PROJECT NAME: BRENHAM MARKET SQUARE
PROJECT NUMBER: 32334
PREPARED FOR: BRENHAM MARKET SQUARE LP
DATE: FEBRUARY 14, 2020
SCALE: 1" = 60'
HASSKARL DR
ELEANOR ST
MATILDA ST
TEMPORARY DRIVE
FUTURE CONNECTION FOR UP-STEAM STORM WATER
CONNECT 6" TO EXIST. 6" WATER LINE
MANHOLE CONNECT TO EXIST. 6" SEWER LINE
MANHOLE CONNECT TO EXIST. 24" STORM LINE
CONNECT TO EXIST. 16" FORCE MAIN
CONNECT 6" TO EXIST. 6" WATER LINE
PROP 4' RETAINING WALL
1-STORY CLUB & OFFICE
PAVILION
PLAYGROUND
2-STORY MULTI-FAMILY BUILDING 1
2-STORY MULTI-FAMILY BUILDING 2
2-STORY MULTI-FAMILY BUILDING 3
2-STORY MULTI-FAMILY BUILDING 4
2-STORY MULTI-FAMILY BUILDING 5
GRAVEL DRIVE TO LIFT STATION
ABANDONED AND GROUT EXIST. FM
OPEN GREEN SPACE
OUTFALL W/HEAD WALL
HIGGINS BRANCH
CONNECT TO EXIST. 16" FORCE MAIN
MANHOLE CONNECT TO EXIST. 10" SEWER LINE

ORDINANCE NO. O-20-008

AN ORDINANCE GRANTING PRONTO SERVICES, LLC, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE FOR THE PRIVILEGE AND USE OF PUBLIC STREETS, ALLEYS, AND PUBLIC WAYS WITHIN THE CORPORATE LIMITS OF THE CITY OF BRENHAM FOR THE PURPOSE OF ENGAGING IN THE BUSINESS OF COLLECTING SOLID WASTE FROM COMMERCIAL, RESIDENTIAL AND INDUSTRIAL SITES USING ROLL-OFF CONTAINERS AND/OR COMMERCIAL COMPACTORS; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS, AND LIMITATIONS UNDER WHICH SAID FRANCHISE SHALL BE EXERCISED; PROVIDING FOR THE CONSIDERATION; FOR PERIOD OF GRANT; FOR ASSIGNMENT; FOR METHOD OF ACCEPTANCE; FOR REPEAL OF CONFLICTING ORDINANCES AND FOR PARTIAL INVALIDITY.

WHEREAS, the City of Brenham, by ordinance, provides exclusively all solid waste collection and disposal services for solid waste generated from within the corporate limits of the City of Brenham; and

WHEREAS, the City of Brenham may, by ordinance and charter, grant franchises to other entities for the use of public streets, alleys and thoroughfares within the corporate limits of CITY and for the collection and disposal of solid waste generated from within the corporate limits of the City of Brenham; and

WHEREAS, the City of Brenham desires to exercise the authority provided to it by ordinance and charter to grant a franchise for the collection and disposal of certain solid waste generated from within the corporate limits of the City of Brenham; and

WHEREAS, the City of Brenham hereinafter referred to as "CITY" desires to grant this franchise to PRONTO SERVICES, LLC, under the terms of this Agreement as set out below.

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

SECTION 1.
DEFINITIONS

Agreement. This contract between the City of Brenham and for the provision of certain roll-off container and/or commercial compactor service within the corporate limits of the City of Brenham under certain terms and conditions set out herein.

City of Brenham. Also referred to as "CITY" in this Agreement.

City Council. Also referred to as "COUNCIL" denoting the governing body of the City of Brenham.

Customers. Those industrial, residential, and/or commercial premises located within the CITY that generates solid waste requiring collection using roll-off containers and/or commercial compactors.

Solid Waste. All putrescible and nonputrescible solid, semi-solid, and liquid wastes, including residential, industrial, commercial and municipal garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes.

Roll-Off Containers. A type of solid waste industry container that is loaded by a winch truck. Also referred to as "container".

Commercial Compactor. A type of solid waste industry container that is loaded by a winch truck and compacts solid waste. Also referred to as "compactor".

Pronto Services, LLC. Herein-after referred to as "PRONTO SERVICES, LLC". The party contracting with the CITY for roll-off container and/or commercial compactor service, which contains demolition/construction debris or solid waste.

SECTION 2.
GENERAL DESCRIPTION OF SERVICES TO BE PROVIDED

For and in consideration of the compliance by PRONTO SERVICES, LLC with the covenants and conditions herein set forth, and the Charter, Ordinances and Regulations of the City governing the collection and disposal of solid waste, CITY hereby grants to PRONTO SERVICES, LLC a non-exclusive franchise for use of designated public streets, alleys and thoroughfares within the corporate limits of City for the sole purpose of engaging in the business of collecting solid waste using roll-off containers and/or commercial compactors from commercial, residential and industrial sites within the jurisdictional limits of CITY, as approved by the City Manager or his designee.

SECTION 3.
AUTHORITY FOR TO PROVIDE SERVICE

CITY hereby grants to PRONTO SERVICES, LLC the privilege to collect from commercial, residential, and industrial customers within the City limits solid waste using roll-off containers and/or commercial compactors only.

SECTION 4.
DISPOSAL SITE TO BE USED

Unless approved otherwise in writing by the CITY, PRONTO SERVICES, LLC shall utilize any Type I permitted landfill that PRONTO SERVICES, LLC deems appropriate and is authorized for disposal of all solid waste, which is collected by PRONTO SERVICES, LLC from within the corporate limits of the CITY.

SECTION 5.
RATES TO BE CHARGED

A written Schedule of Rates that PRONTO SERVICES, LLC shall charge for the aforementioned services shall be provided to each customer, and such Schedule of Rates may be revised periodically as agreed by PRONTO SERVICES, LLC and its customers. PRONTO SERVICES, LLC shall immediately provide the CITY with copies of any and all revised Schedule of Rates documents.

SECTION 6.
PAYMENTS TO CITY

For and in consideration of the use of designated streets, alleys, and thoroughfares as well as in consideration of the covenants and agreements contained herein, PRONTO SERVICES, LLC agrees and shall pay to CITY upon acceptance of this Agreement and thereafter during the term hereof, a sum equivalent to five percent (5%) of PRONTO SERVICES, LLC monthly gross revenues generated from PRONTO SERVICES, LLC provision of solid waste roll-off container collection services within the CITY excluding actual landfill tipping charges.

Any revenue received by PRONTO SERVICES, LLC in excess of the actual landfill tipping charges will be subject to the franchise fee and shall be computed into PRONTO SERVICES, LLC monthly gross revenue. Said payment shall be paid monthly to the City of Brenham Attn: City Secretary and must be received by the CITY no later than the twenty-fifth (25^{th}) day of the month following the end of the previous month. If the payment due date falls on a Saturday, Sunday or other holiday designated by the CITY, the payment must be received by the CITY on the next regular business day.

Payments received by the CITY after the due date shall be assessed a ten percent (10%) penalty on the outstanding franchise fee amount owed under this Section.

Failure by PRONTO SERVICES, LLC to pay amounts due under this Agreement, after written notice by CITY, shall constitute Failure to Perform under this Agreement and CITY may invoke the provisions of Section 15 of this Agreement (FAILURE TO PERFORM), and/or any other remedy available to the CITY in law or equity.

SECTION 7.
ACCESS TO RECORDS & REPORTING

CITY shall have access to PRONTO SERVICES, LLC records, billing records of those customers served by PRONTO SERVICES, LLC and all papers relating to this Agreement and the operation of solid waste roll-off container collection and disposal services within the CITY. Access by CITY to PRONTO SERVICES, LLC records shall be provided to CITY within ten (10) business days, after written notice to PRONTO SERVICES, LLC during normal business hours.

The following records and reports shall be filed quarterly with the City Secretary or his/her designee:

A. Reports of all complaints, investigations, and actions taken by PRONTO SERVICES, LLC with regard to services provided pursuant to this Agreement.

B. A listing of all PRONTO SERVICES, LLC accounts served and monthly revenue derived from roll-off containers placed in the CITY under the terms of this Agreement. The reports should include: a unique customer identification or account number, frequency of pick-up, size of container and monthly charges.

The CITY is subject to the Texas Public Information Act ("Act"). Generally, the Act requires the release of requested information by the CITY, but there are exceptions. If the requested information meets the criteria outlined in the exceptions, the CITY may decline to release the information for the purpose of requesting a decision from the Texas Attorney General's Office. The Act excepts from public disclosure trade secrets and certain commercial or financial information. The Act states the CITY may withhold:

A. A trade secret obtained from a person and privileged or confidential by statute or judicial decision; or

B. Commercial or financial information for which it is determined based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

Pursuant to Section 552.305 of the Act, the CITY is obligated to make a good faith attempt to contact third parties who have a trade secret interest or a commercial financial interest in the information that's been requested so that the third party has an opportunity to submit reasons to the Texas Attorney General's Office why the information should be withheld or released.

The CITY will comply with Section 552.305 of the Act with regard to any requests for records concerning PRONTO SERVICES, LLC that invoke Section 552.305.

SECTION 8.
PLACEMENT OF CONTAINERS

All roll-off containers and/or compactors placed for service within CITY shall be located in such a manner so as not to be a safety or traffic hazard. Under no circumstances shall PRONTO SERVICES, LLC place containers on public streets, alleys and/or thorough fares without the prior written approval of the CITY. CITY reserves the right to specify to PRONTO SERVICES, LLC the exact location and time period allowed for placement of any roll-off container(s) it places for service in CITY.

PRONTO SERVICES, LLC agrees and acknowledges that it shall be liable for any and all damages it causes to any public street, alley and/or thorough fare, and associated improvements and PRONTO SERVICES, LLC will pay CITY's entire construction costs and other expenses associated with repairing and/or replacing the damaged public street, alley and/or through fare, and associated improvements.

SECTION 9.
CONTAINER MAINTENANCE

PRONTO SERVICES, LLC agrees to properly maintain as necessary, including but not limited to cleaning and painting, all roll-off containers placed for service within CITY.

SECTION 10.
COMPLAINTS REGARDING SERVICE/SPILLAGE

PRONTO SERVICES, LLC shall receive and directly respond to any complaints pertaining to service from their roll-off containers and/or compactor customers located within CITY. However, any such complaints received by CITY shall be forwarded to PRONTO SERVICES, LLC within twenty-four (24) hours of their receipt by CITY. PRONTO SERVICES, LLC shall respond to all complaints within twenty-four (24) hours of receiving notice of such complaint from CITY and shall report to CITY as to the action taken. Failure by PRONTO SERVICES, LLC to respond and report to CITY on action taken within this twenty four (24) hour period may subject PRONTO SERVICES, LLC to a $25.00 per incident charge from CITY payable with the next payment due to CITY under Section 6 of this Agreement.

PRONTO SERVICES, LLC agrees that during transport all vehicles used by PRONTO SERVICES, LLC in the removal of solid waste shall be properly covered to prevent spillage, blowing, or scattering of refuse onto public streets or properties adjacent thereto. All equipment necessary for the performance of this Agreement shall be in good condition and repair. A standby vehicle shall always be available. PRONTO SERVICES, LLC vehicles shall at all times be clearly marked with PRONTO SERVICES, LLC name in letters not less than three (3) inches in height.

SECTION 11.
OBEISANCE OF LAWS

PRONTO SERVICES, LLC agrees that it shall comply with all laws, policies, rules and regulations of the United States, State of Texas, and CITY. All collections made hereunder shall be made by PRONTO SERVICES, LLC without unnecessary noise, disturbance, or commotion.

SECTION 12.
UNDERSTANDINGS PERTAINING TO NON-EXCLUSIVITY

It is understood by and between the parties that this Agreement executed by and between the parties on the _____ day of _____, 20____, constitutes the only agreement between the parties. It is further understood and agreed that there are no other agreements between these parties with regard to the disposal of commercial, industrial or residential solid waste in the CITY using roll-off containers/compactors and that this Agreement does not authorize PRONTO SERVICES, LLC to utilize the streets, alleys or public ways to dispose of commercial, industrial, or residential solid waste other than demolition and construction debris. Both parties agree and understand that nothing in this Agreement conveys to PRONTO SERVICES, LLC an exclusive franchise for the services described in this Agreement and that this Agreement is non-exclusive.

SECTION 13.
OWNERSHIP OF MATERIALS COLLECTED

Nothing herein shall create or be construed to convey any title to CITY of any solid waste collected pursuant to the provisions of this agreement.

SECTION 14.
INTERRUPTION OF SERVICE OR DEFAULT

A. Termination of Service. In the event that PRONTO SERVICES, LLC terminates service to any customer with the CITY limits for cause, PRONTO SERVICES, LLC must notify the CITY through certified mail within forty-eight (48) hours of termination and state the cause of such termination.

B. Excessive Interruption in Service. If the interruption in service continues for a period of seventy-two (72) hours or more, then it may constitute Failure to Perform under this Agreement and CITY may invoke the provisions of Section 15 of this Agreement (FAILURE TO PERFORM).

SECTION 15.
FAILURE TO PERFORM

It is expressly understood and agreed by the parties that if at any time PRONTO SERVICES, LLC shall fail to perform any of the terms, covenants, or conditions herein set forth, CITY may after a hearing as described herein, revoke and cancel the Agreement by and between the parties and said Agreement shall be null and void. Upon the determination by the staff of CITY that a hearing should be held before the City Council, CITY shall mail notice of the hearing to PRONTO SERVICES, LLC, at the address designated herein or at such address as may be designated from time to time, by registered or certified mail. The notice shall specify the time and place of the hearing and shall include the allegations being asserted for the revocation of this Agreement. The hearing shall be conducted in public before the City Council and PRONTO SERVICES, LLC shall be allowed to present evidence and given an opportunity to answer all reasons for the termination set forth in the notice. In the event that the Council determines that the allegations set forth are true as set forth in the notice it may by majority vote cancel this Agreement between the parties at no penalty to the CITY.

SECTION 16.
INDEMNIFICATION

In the event CITY is damaged due to the act, omission, mistake, fault or default of PRONTO SERVICES, LLC, then PRONTO SERVICES, LLC shall indemnify and hold CITY harmless for such damage.

PRONTO SERVICES, LLC is to indemnify and hold CITY harmless for any disposal of any prohibited material whether intentional or inadvertent.

PRONTO SERVICES, LLC shall indemnify and hold CITY harmless from any and all injuries to or claims of adjacent property owners caused by PRONTO SERVICES, LLC, its agents, employees, and representatives.

PRONTO SERVICES, LLC agrees to and shall indemnify and hold harmless CITY, its officers, agents and employees, from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, or for damage to any property, arising out of or in connection with the work done by PRONTO SERVICES, LLC under this Agreement, regardless of whether such injuries, death or damages are caused in whole or in part by the negligence, including but not limited to the contractual comparative negligence, concurrent negligence or gross negligence, of CITY.

SECTION 17.
INSURANCE

PRONTO SERVICES, LLC shall procure and maintain at its sole cost and expense for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by PRONTO SERVICES, LLC, its agents, representatives, volunteers, employees or subcontractors.

PRONTO SERVICES, LLC insurance coverage shall be primary insurance with respect to the CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, employees or volunteers shall be considered in excess of the PRONTO SERVICES, LLC insurance and shall not contribute to it.

PRONTO SERVICES, LLC shall include all subcontractors as additional insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage’s for subcontractors shall be subject to all of the requirements stated herein.

Certificates of Insurance and endorsements shall be furnished to CITY and approved by CITY before work commences.

A. STANDARD INSURANCE POLICIES REQUIRED

1. Commercial General Liability Policy
2. Automobile Liability Policy
3. Worker's Compensation Policy

B. GENERAL REQUIREMENTS APPLICABLE TO ALL POLICIES

1. General Liability and Automobile Liability insurance shall be written by a carrier with a better rating in accordance with the current Best Key Rating Guide.

2. Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.

3. Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.

4. Claims Made Policies will not be accepted.

5. The CITY, its officials, employees and volunteers are to be added as "Additional Insured" to the General Liability and the Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officials, employees or volunteers.

6. A Waiver of Subrogation in favor of the CITY with respect to the General Liability, Automobile Liability, and Workers' Compensation insurance must be included.

7. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the CITY.

8. Upon request, certified copies of all insurance policies shall be furnished to the CITY.

C. COMMERCIAL GENERAL LIABILITY

1. Minimum Combined Single Limit of $1,000,000 per occurrence for Bodily Injury and Property Damage.

2. No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.

D. AUTOMOBILE LIABILITY

1. Minimum Combined Single Limit of $1,000,000 per occurrence for Bodily Injury and Property Damage.

E. WORKERS' COMPENSATION

1. Employer's Liability limits of $500,000/$500,000/ $500,000 are required.

F. CERTIFICATES OF INSURANCE

1. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain provisions representing and warranting the following:

    a. The company is licensed and admitted to do business in the State of Texas.

    b. The insurance set forth by the insurance company are underwritten on forms which have been approved by the Texas Department of Insurance or ISO.

    c. Sets forth all endorsements as required above and insurance coverage's as previously set forth herein.

    d. Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the CITY.

    e. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

SECTION 18.
ASSIGNMENT

This Agreement and the rights and obligations contained herein may not be assigned by PRONTO SERVICES, LLC without the specific prior written approval of the City Council. Any assignment by PRONTO SERVICES, LLC without prior written approval of the City Council shall be null and void.

SECTION 19.
SAFETY

PRONTO SERVICES, LLC shall perform the collection in accordance with applicable laws, codes, ordinances and regulations of the United States, State of Texas, Washington County, and CITY and in compliance with OSHA and other laws as they apply to its employees. It is the intent of the parties that the safety precautions are a part of the collection techniques for which PRONTO SERVICES, LLC is solely responsible. In the carrying on of the work herein provided for, PRONTO SERVICES, LLC shall use all proper skill and care, and PRONTO SERVICES, LLC shall exercise all due and proper precautions to prevent injury to any property, person or persons. PRONTO SERVICES, LLC assumes responsibility and liability and hereby agrees to indemnify the CITY from any liability caused by PRONTO SERVICES, LLC failure to comply with applicable federal, state or local laws and regulations, touching upon the maintenance of a safe and protected working environment, and the safe use and operation of machinery and equipment in that working environment.

SECTION 20.
AD VALOREM TAXES

PRONTO SERVICES, LLC agrees to render all personal property utilized in its solid waste operation services to Washington County Appraisal District so that said personal property will be the subject of ad valorem taxation for the benefit of CITY.

SECTION 21.
NOTICES

All notices required under the terms of this Agreement to be given by either party to the other shall be in writing, and unless otherwise specified in writing by the respective parties, shall be sent to the parties at the addresses following:

City of Brenham	_____
P.O. Box 1059	_____
Brenham, Texas 77834	_____
ATTN: City Secretary	ATTN: _____

All notices shall be deemed to have been properly served only if sent by certified mail, to the person(s) at the address designated as above provided, or to any other person at the address which either party may hereinafter designate by written notice to the other party.

SECTION 22.
AMENDMENTS

It is hereby understood and agreed by the parties to this Agreement that no alternation or variation to the terms of this Agreement shall be made unless made in writing, approved by both parties, and attached to this Agreement to become a part hereof.

SECTION 23.
SEVERABILITY

If any section, sentence, clause or paragraph of this Agreement is for any reason held to be invalid or illegal, such invalidity shall not affect the remaining portions of the Agreement.

SECTION 24.
TERM OF AGREEMENT

The term of this Agreement shall be effective beginning on the _____ day of _____, 20_____, being the date of acceptance by PRONTO SERVICES, LLC and shall terminate on September 30, 20__.

Thereafter, this Agreement shall automatically renew annually for a subsequent one (1) year terms beginning on October 1 and terminating on the following September 30 unless either party gives written notice of non-renewal by certified mail no later than sixty (60) days prior to the then current termination date. Further, either party may terminate this Agreement without cause at any time by providing the other party with sixty (60) days written notice of termination by certified mail. This section is not intended, nor shall this section be construed, to limit or prohibit a party's ability to terminate this Agreement as otherwise provided in this Agreement.

SECTION 25.
ACCEPTANCE OF AGREEMENT

That PRONTO SERVICES, LLC shall have sixty (60) days from and after the final passage and approval of this Ordinance to file its written acceptance thereof with the City Secretary, and upon such acceptance being filed, this Ordinance shall take effect and be in force from and after the date of its acceptance, and shall effectuate and make binding the agreement provided by the terms hereof.

SECTION 26.
AUTHORIZATION TO EXECUTE

The parties signing this Agreement shall provide adequate proof of their authority to execute this Agreement. This Agreement shall inure to the benefit and is binding upon the parties hereto and their respective successors or assigns but shall not be assignable by either party without the written consent of the other party.

SECTION 27.
PUBLIC MEETING

It is hereby found and determined that the meeting(s) at which this Ordinance was considered were open to the public, as required by Chapter 551, Texas Government Code, and that advance public notice of time, place, and purpose of said meetings was given in accordance with law.

PASSED and APPROVED on its first reading this 16th day of April, 2020.

PASSED and APPROVED on its second reading this 7th day of May, 2020.

_____
Milton Y. Tate, Jr.
Mayor

ATTEST:

_____
Jeana Bellinger, TRMC, CMC
City Secretary

ORDINANCE NO. O-20-009

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING CHAPTER 11, GARBAGE AND TRASH, OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS PROVIDING FOR THE REGULATION OF RESIDENTIAL AND COMMERCIAL SOLID WASTE COLLECTION, DISPOSAL AND RECYCLING SERVICES WITHIN THE CITY LIMITS; PROVIDING FOR THE REGULATION OF COMMERCIAL OR RESIDENTAL ROLL-OFF SERVICES AND FRANCHISE AGREEMENTS; PROVIDING FOR A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PROPER NOTICE AND MEETINGS

WHEREAS, the City of Brenham ("City") is a Texas home-rule municipality; and

WHEREAS, as a home-rule municipality, Texas Local Government Code, Section 51.072 confirms that the City has the full power of local self-government; and

WHEREAS, pursuant to Texas Local Government Code, Section 51.001, the City has the authority to adopt ordinances and regulations that are for good government, peace and order of the City; and

WHEREAS, in order to enhance, promote and protect the health, safety and general welfare of the citizens of Brenham, Texas the City Council must from time to time amend and/or adopt new regulations; and

WHEREAS, the City Council finds the following regulations to be reasonable and beneficial to the general health, safety and welfare of the citizens of Brenham;

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

SECTION 1.

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2.

Chapter 11, Garbage and Trash, of the Code of Ordinances of the City of Brenham, Texas, is hereby amended in its entirety to read as follows:

ARTICLE I. GENERAL PROVISIONS

Sec. 11-1. - Definitions.

As used in this chapter, the following terms shall have the respective meanings ascribed to them in this section:

Brush shall mean cuttings or trimmings from trees, shrubs, or lawns and similar materials.

Bulky Waste shall mean non-hazardous, non-freon containing items too large to fit in a Residential Customer's garbage container. Bulky waste does not include tires. Collection and acceptance of these items will be determined case by case.

Cart shall mean a receptacle/container, equipped with wheels and a bar, with a capacity of approximately sixty-four (64) or ninety-six (96) gallons, designed to be mechanically dumped into collection equipment via a fully automated truck arm or semi-automated truck tipper.

City shall mean the City of Brenham, Texas and the City's officers, elected officials, employees, agents, volunteers, and representatives.

City Council shall mean the governing body of the City.

City Facility shall mean a City-owned or operated facility.

Collect or Collection shall mean the act of removing Solid Waste, Recyclables, or Yard Waste for transport to a disposal or recycling facility.

Commercial Refuse shall mean all Refuse, Garbage, Solid Waste, and other waste generated by, at, or within a Commercial Unit, but not including Construction Debris.

Commercial Unit shall mean all premises, locations or entities, public or private requiring Refuse, Garbage and/or Solid Waste collection within the corporate limits of the City that are not classified as a Residential Unit or City Facility.

Construction Debris shall mean waste building materials resulting from construction, remodeling, repair, or demolition operations, typically collected in roll-off bins without lids or accepted at a permitted disposal or permitted processing facility.

Container shall mean a weatherproof container easily identifiable and designated for solid waste or recycling collection.

Contaminated Materials shall mean Recyclable Materials and/or Yard Waste mixed with solid waste or altered in a way that results in materials being unrecyclable or non-compostable.

Curbside shall mean the location within three (3) feet of the curb of the street abutting Customer's property that provides primary access to the Service Unit unless such placement interferes with or endangers movement of vehicles or pedestrians in the public right-of-way.

Customer(s) shall mean an occupant of a Residential Unit or Commercial Unit that has a City utility account that is billed for Solid Waste and/or Recyclable Materials service on a monthly basis.

Dead Animal (Small) shall mean an animal or part of an animal equal to or greater than ten (10) pounds in weight, but less than one hundred fifty pounds (150) pounds in weight, that has expired from any cause except those slaughtered or killed for human use.

Dead Animal (Large) shall mean an animal or part of an animal equal to or greater than one hundred fifty (150) pounds in weight, that has expired from any cause except those slaughtered or killed for human use.

Disposal shall mean the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or non-containerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater, as defined in 30 Texas Administrative Code § 330.3(44).

Disposal Site or Facility shall mean all contiguous land, structures, other appurtenances, and improvements on the land that is licensed and permitted, as required by all governmental bodies having jurisdiction, for disposing of Solid Waste. A Disposal Site may be publicly or privately owned and may consist of several Disposal operational units.

Dumpster shall mean a watertight receptacle, with a capacity of approximately two (2) cubic yards up to approximately eight (8) cubic yards, equipped with a tight-fitting lid and designed to be mechanically dumped into a loader-packer type truck.

Excluded Waste means Hazardous Waste, Special Waste, and Construction Debris.

Facility means all contiguous lands and structures, other appurtenances, and improvements on the land used for the storage, processing or disposal of Solid Waste or Recyclable Materials.

Garbage shall mean solid waste consisting of non-hazardous refuse, dead animals (small), putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products, as defined in 30 Texas Administrative Code §330.3(56).

Generator shall mean any person or entity that produces Solid Waste.

Hazardous Waste shall mean any solid waste identified or listed as a Hazardous Waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 United States Code, §6901 et seq., as amended and defined in 30 Texas Administrative Code §330.3(62).

Heavy Trash shall mean refuse that is of such size and weight that it cannot be placed in a sixty-four (64) or ninety-six (96) gallon container. Heavy trash shall include tree limbs less than four feet (4') in length and loose lumber less than five feet (5') in length.

Landfill shall mean a permitted municipal solid waste landfill.

Municipal Solid Waste (MSW) shall mean solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste, as defined in 30 Texas Administrative Code §330.3(88).

Non-Compacted Waste means Solid Waste not easily containerized in a Cart such as, but not limited to, appliances, furniture, etc.

Recyclables or Recyclable Materials shall mean materials, recovered from the solid waste stream for the purpose of reuse or reclamation, a substantial portion of which are consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable materials are not solid waste unless they are abandoned or disposed of as garbage rather than reprocessed into another product.

Recycling service shall mean the Collection of Recyclables for transport to a recycling facility for the purpose of reuse or reclamation.

Refuse or Rubbish shall mean non-putrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials, combustible rubbish, including paper, rags, cardboard, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; noncombustible rubbish, including glass, crockery, tin cans, aluminum cans, metal furniture and like materials which will not burn at ordinary incinerator temperatures (1600° F to 1800° F), as defined in 30 Texas Administrative Code §330.3(130).

Resident shall mean a person who resides in a Residential Unit.

Residential Unit(s) shall mean an improved property which is used, or capable of being used, for a dwelling, including but not limited to a single-family dwelling, duplex, four-plex, townhouse, apartment, condominium unit and similar dwellings. A Residential Unit shall be deemed occupied when either water or electric services are being supplied thereto.

Residential Service shall mean Solid Waste Services, Yard Waste Services, and Recycling Services for Residential Units.

Residue shall mean the material regularly associated with and attached to Recyclable Materials as a part of the original packaging or usage of that material that is not recyclable.

Roll-off shall mean an open top receptacle, having a minimum capacity of approximately ten (10) cubic yards up to approximately forty (40) cubic yards, intended to be loaded onto a motor vehicle.

Roll-off Compactor shall mean an enclosed, watertight Roll-off with a Compactor.

Roll-off Service shall mean the temporary placement of a roll-off or roll-off compactor for use other than regularly scheduled sanitation service, or collection/servicing of the same.

Solid Waste shall be defined in accordance with 30 Texas Administrative Code §330.3(145), as garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

1) Solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26;
2) Soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or
3) Waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or re-pressurizing plants and is Hazardous Waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 United States Code, §6901 *et seq.*).

Solid Waste Services shall mean the collection of Solid Waste and Disposal of Solid Waste at a Disposal Site.

Special Waste shall be defined in accordance with 30 Texas Administrative Code §330.3(148), as any solid waste or combination of solid wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and Disposal to protect the human health or environment. If improperly handled, transported, stored, processed, or disposed of or otherwise managed, it may pose a present or potential danger to the human health or the environment. Special wastes are:

1) Hazardous Waste from conditionally exempt small-quantity generators that may be exempt from full controls under Chapter 335, Subchapter N of Title 30 TAC (relating to household materials which could be classified as hazardous wastes);
2) Class 1 industrial nonhazardous waste;
3) Untreated medical waste;
4) Municipal wastewater treatment plant sludges, other types of domestic sewage treatment plant sludges, and water-supply treatment plant sludges;
5) Septic tank pumpings;
6) Grease and grit trap wastes;
7) Wastes from commercial or industrial wastewater treatment plants; air pollution control facilities; and tanks, drums, or containers used for shipping or storing any material that has been listed as a hazardous constituent in 40 Code of Federal Regulations (CFR) Part 261, Appendix VII but has not been listed as a commercial chemical product in 40 CFR §261.33(e) or (f);
8) Slaughterhouse wastes;
9) Dead animals (large);
10) Drugs, contaminated foods, or contaminated beverages, other than those contained in normal household waste;
11) Pesticide (insecticide, herbicide, fungicide, or rodenticide);
12) Discarded materials containing asbestos;
13) Incinerator ash;
14) Soil contaminated by petroleum products, crude oils, or chemicals in concentration of greater than 1,500 milligrams per kilogram total petroleum hydrocarbons; or contaminated by constituents of concern that exceed the concentrations listed in Table 1 of § 335.521(a)(1) of Title 30 TAC (relating to Appendices);
15) Used oil;
16) Waste from oil, gas, and geothermal activities subject to regulation by the Railroad Commission of Texas when those wastes are to be processed, treated, or disposed of at a solid waste management facility authorized under this chapter;
17) Waste generated outside the boundaries of Texas that contains;
    a. Any industrial waste;
    b. Any waste associated with oil, gas, and geothermal exploration production, or development activities; or
    c. Any item listed as a special waste in this paragraph;
18) Lead acid storage batteries; and,
19) Used oil filters from International combustible engines.

TAC shall mean the Texas Administrative Code now and as amended.

Unit shall mean Residential and Commercial Units that qualify for services.

Yard Waste shall be defined in accordance with 30 Texas Administrative Code § 330.3 (181) as leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. This term does not include stumps, roots, or shrubs with intact root balls, as defined in 30 Texas Administrative Code § 330.3 (181). Brush, tree limbs and similar materials must be securely tied together forming an easily handled package not exceeding four (4) feet in length or fifty pounds (50 lbs.) in weight; tree limbs shall not exceed three (3) inches in diameter.

Yard Waste Services shall mean the Collection of Yard Waste and Disposal of Yard Waste at a Disposal Site.

Sec. 11-2. Exclusivity.

The City retains the exclusive right to provide solid waste services, disposal and recycling services for commercial and residential customers within the city limits. The City may provide such services directly or by granting a franchise to one or more independent contractors. It shall be unlawful for any person, firm or corporation to provide solid waste services or recycling services without a franchise from the City.

Sec. 11 -3. Container Assignment

Solid waste and recycling containers are assigned and issued to the physical address of the customer. Containers shall not be removed, transferred, or replaced by the customer. This prohibition does not apply to City employees or an independent contractor with a franchise from the City.

Sec. 11-4. Unauthorized use of and or damage to residential or commercial containers.

It shall be unlawful for any person or business to place anything in a container, scavenge through or remove anything from a container, or relocate a container, or interfere with the servicing of a container that belongs to another customer or business.

It shall be unlawful to set fire to or burn any material in a container or paint or mark upon a container. Damage to a container caused by a customer's abuse, misuse, or neglect may result in additional charges equal to the cost of a new container. Sanitation service may also be discontinued until such fees for a replacement are paid in full. It is the customer's responsibility to file police reports for damaged, stolen or vandalized containers.

Sec. 11- 5. Obstruction of Containers Prohibited.

It shall be unlawful to park, place, allow, permit, or cause to be parked or placed any motor vehicle, trailer, boat, or similar obstruction within three (3) feet of a container, or in a way that obstructs the servicing of a container. If an obstruction prevents the servicing of a container, the City is authorized to remove the obstruction. Any and all costs associated with the removal of the obstruction shall be the responsibility of the customer.

Sec. 11- 6. Covering on vehicles to prevent scattering.

It shall be unlawful for any person to transport by vehicle or trailer any refuse, garbage, rubbish or junk within the City unless such refuse, garbage, rubbish or junk is covered in a manner sufficient to prevent any such from blowing out of or falling from said vehicle or trailer onto any public street or right-of-way.

Sec. 11- 7. Burning refuse.

It shall hereafter be unlawful for any person to burn any trash, waste, or rubbish within the corporate limits of the City. The fire marshal may adopt and promulgate rules necessary for the administration of this section consistent with the fire marshal's duties under Chapter 8 of this Code of Ordinances regarding the safety and welfare of the public.

Sec. 11-8. Rates for collection, removal and/or disposal of solid waste and recycling.

The charges for residential and commercial solid waste services, recycling services, and yard waste services from customers shall be established by the City Council.

Sec. 11-9. Failure to Pay.

Any customer who fails or refuses to pay the monthly charges established by the City Council when due shall no longer receive solid waste services, recycling services, or yard waste services until all related charges are paid in full.

Sec. 11-10. Holidays.

Thanksgiving, Christmas Day, and New Year's Day are designated as holidays. No solid waste services or recycling services shall be provided on these designated holidays. If a regularly scheduled pickup day falls on a holiday, collection shall take place within twenty-four (24) hours of the scheduled collection day unless a longer delay is approved by the City Manager.

Sec. 11- 11. Special programs.

The City Council may authorize special programs to assist eligible customers with the collection of solid waste and recyclable materials. Programs may include, but are not limited to, assistance moving containers to and from the curb, recycling opt-out programs, and reduced-size containers.

A customer's participation in any special program offered by the City shall be approved by the City Manager or his designee. The Customer will be responsible for any fees associated with a special program, change or reduction in service.

Sec. 11 - 12. Unlawful Dumping.

It shall be unlawful for any person, by his own action or that of his agent, employee or any person under his control, to cause any garbage, trash, refuse or other waste matter to be dumped, deposited or otherwise discharged or disposed of on any street, lot, park, public place or other area whether publicly or privately owned, except an area legally established as a dumping area. Waste matter includes, but is not limited to, tires, household furnishings, mattresses, appliances, household hazardous waste, vehicle parts, construction debris, solid waste, special waste, or brush.

Sec. 11 - 13. Special Sanitation Services.

When deemed necessary, in the best interests of the general public, the City may direct a special clean-up of unprepared waste, unbundled brush and limbs, and/or bulky waste in circumstances which constitute a health and sanitation or public safety concern. Rates for such special clean-up shall be set by City Council.

Sec. 11 - 14. Penalty.

Any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction of any such violation such person shall be punished by a fine of not less than one dollar ($1.00) and not more than two thousand dollars ($2,000.00). Each and every day, or portion thereof, during which any violation of any of the provisions of this chapter is committed, continued or permitted, shall be deemed a separate offense.

Secs. 11-15 – 11-19. - Reserved.

ARTICLE II. RESIDENTIAL WASTE COLLECTION

Sec. 11-20. Solid waste collection and prohibitions.

Only residential refuse is to be placed in the solid waste container. Yard waste, brush and limbs, construction debris, tires, special waste, large dead animals, hot ashes/coals and stable matter such as dirt, brick and rock will not be accepted. All solid waste shall be bagged prior to placement in a container to minimize wind-blown litter and scattered debris caused by spills or animals.

It shall be unlawful for any person to place any solid waste in or around a container that cannot be completely contained within the container. Any waste not placed in the container will not be collected and will remain the responsibility of the customer. Container lids shall be kept closed to prevent scattering of the contents thereof by the wind, and so that insects and vermin may not have access to the contents thereof.

Sec. 11-21. Container availability, placement and collection.

Customers shall be provided one (1) solid waste container per residential unit that has a City utility account that is billed for residential solid waste service on a bi-weekly basis. Additional containers may be available upon request, for an additional fee as established by the City Council.

Residential containers will be collected once per week on a regularly scheduled day. Containers must be placed at the curb, or other approved collection point, no later than 8:00 a.m. on the customer's designated collection day. Containers shall not be placed at the curb for collection before 8:00 p.m. on the day prior to the scheduled collection day. Serviced containers shall be removed from the curb, or other approved collection point, and returned to a location near or adjacent to the dwelling structure no later than 8:00 p.m. on the day of collection.

Customers shall ensure that containers placed for collection are not blocked by a motor vehicle and are at least three (3) feet from other carts, mailboxes, vehicles, trees, telephone poles, water or gas meters, or other fixed objects. Containers shall be placed with arrows on the top of the cart facing the street. Carts shall not be placed on a sidewalk, over sprinkler heads, or under low-hanging tree limbs or cable/electrical wires.

Containers cannot be stored at the curb. All containers must be stored near or adjacent to (side or back) the residential dwelling occupied by the customer. Residential structures that do not have an area on the side or back may store containers in front of the residential dwelling as long as they are stored in manner that is not displeasing to neighbors or diminish the overall look of the neighborhood.

Sec. 11-22. Yard waste disposal and collection.

Customers needing collection of brush and yard waste must request a special pick-up by contacting the Collection/Transfer Station. Prior to collection, yard waste and brush must be cut into four-foot lengths or shorter and put in a separate pile for collection.

Secs. 11-23 – 11-29. Reserved.

ARTICLE III RESIDENTIAL RECYCLING SERVICES

Sec. 11-30. Residential curbside recycling collection.

Only recyclable materials shall be placed in the recycling container. Solid waste, yard waste, brush and limbs, construction debris, tires, special waste, large dead animals, hot ashes/coals and stable matter such as dirt, brick and rock will not be accepted. In the event a customer places garbage or any other item in the container designated for recycling, the customer shall be responsible for removing the garbage or other items from the container.

It shall be unlawful for any person to place any recyclable materials in or around a container that cannot be completely contained within the container. Any recyclable materials not placed in the container will not be collected and will remain the responsibility of the customer. Container lids shall be kept closed to prevent scattering of the contents. Shredded paper may be recycled but must be contained in a clear plastic bag before placement in the container.

Sec. 11-31. Container availability, placement and collection.

Customers shall be provided one (1) recycling container per residential unit that has a City utility account that is billed for residential solid waste service on a monthly basis. Additional containers may be available upon request, for an additional fee as established by the City Council.

Recycling containers will be collected bi-weekly on a regularly scheduled day. Containers must be placed at the curb, or other approved collection point, no later than 8:00 a.m. on the customer's designated collection day. Containers shall not be placed at the curb for collection before 8:00 p.m. on the day prior to the scheduled collection day. Serviced containers shall be removed from the curb, or other approved collection point, and returned to a location near or adjacent to the dwelling structure no later than 8:00 p.m. on the day of collection.

Customers shall ensure that containers placed for collection are not blocked by a motor vehicle and are at least three (3) feet from other carts, mailboxes, vehicles, trees, telephone poles, water or gas meters, or other fixed objects. Containers shall be placed with arrows on the top of the cart facing the street. Carts shall not be placed on a sidewalk, over sprinkler heads, or under low-hanging tree limbs or cable/electrical wires.

Containers cannot be stored at the curb. All containers must be stored near or adjacent to (side or back) the residential dwelling occupied by the customer. Residential structures that do not have an area on the side or back may store containers in front of the residential dwelling as long as they are stored in manner that is not displeasing to neighbors or diminish the overall look of the neighborhood.

Secs. 11-32 – 11-39. Reserved.

ARTICLE IV: COMMERCIAL WASTE COLLECTION

Sec. 11-40. Commercial solid waste disposal and collection.

Commercial solid waste service is available to commercial customers within the city limits. Commercial solid waste rates shall be based on container size and customer's requested service level. All commercial solid waste rates shall be set by the City Council.

Sec. 11-41. Container availability, placement and collection.

Commercial solid waste containers issued to customers shall remain the property of the entity providing the solid waste services. Customers shall only use the containers for their proper and intended purpose and shall not overload (by weight or volume) or alter the containers.

Containers must be set in a place and manner approved by the City. Lids and doors of all containers shall be kept closed at all times except when the container is being filled. Screening must comply with applicable zoning regulations. The City may provide exceptions to screening requirements on a case-by-case basis.

All solid waste shall be bagged prior to placement in a container to minimize wind-blown litter and scattered debris caused by spills or animals. The customer for whom a container has been furnished shall be responsible for keeping the area around the container clean and clear of all garbage and trash. Container lids shall be kept closed to prevent scattering of the contents thereof by the wind, and so that insects and vermin may not have access to the contents thereof.

Customers shall provide safe and unobstructed access to containers on their designated collection days. If a container is blocked or contains prohibited items, it will not be serviced. The customer may be charged for an additional pickup, at a rate to be established by City Council.

Secs. 11-42 – 11-49. Reserved.

ARTICLE V COMMERCIAL RECYCLING SERVICES

Sec. 11-50. Commercial recycling.

Commercial recycling service is available to commercial customers within the city limits. Commercial recycling rates shall be based on container size and customer's requested service level. All commercial recycling rates shall be set by the City Council.

Secs. 11-51 – 11-59. Reserved.

ARTICLE VI COLLECTION/TRANSFER STATION SERVICES

Sec. 11-60. Authorized users of the Collection/Transfer Station.

The City owns a collection/transfer station which acts as a receiving and transfer point for certain municipal solid waste. Persons authorized to utilize the facility are:

(a) City of Brenham residents and commercial businesses; and

(b) Washington County residents and commercial businesses.

Sec. 11-61. Rules and regulations for Collection/Transfer Station.

The collection/transfer station must operate in compliance with all applicable Texas Commission on Environmental Quality ("TCEQ") rules, regulations, and the approved operating site plan. It shall be unlawful for the operator of the collection/transfer station to not comply with all applicable TCEQ rules, regulations, and the approved operating site plan.

Sec. 11-62. Hazardous and special waste.

The collection/transfer station is not permitted to receive hazardous waste or special waste. It shall be unlawful for any person, firm, or corporation to dispose of hazardous waste or special waste at the collection/transfer station.

Sec. 11-63. Operating hours.

The collection/transfer station shall be open during the hours set by the operator of the collection/transfer station. It shall be unlawful for any person to enter onto the premises or leave any waste on the premises when the collection/transfer station is not open.

Secs. 11-64 – 11-69. Reserved.

ARTICLE VII. COMMERCIAL OR RESIDENTIAL ROLL-OFF SERVICE; FRANCHISE REQUIRED.

Sec. 11-70. Roll-off container and commercial compactor services; franchise required.

Commercial and residential roll-off service shall be for the sole purpose of engaging in the business of collecting solid waste using roll-off containers and commercial compactors from commercial and residential sites within the city limits, as approved by the City Council.

No person, firm or corporation shall use any city street, alley or other public right of way in any manner for commercial or residential roll-off or compactor service, unless such person, firm or corporation obtains a franchise from the City for such purpose. Franchise payments shall be made to the City upon acceptance and approval of a franchise agreement by the City Council. The City Council reserves the right to grant an exclusive franchise to one person, firm or corporation to provide roll-off and commercial compactor services with the city limits.

Any person, firm or corporation that obtains a franchise from the City shall use a Type I permitted landfill for the disposal of all solid waste collected from within the corporate limits of the City.

SECTION 3.
SAVINGS CLAUSE

All provisions of any ordinance, resolution or other action of the City in conflict with this Ordinance are hereby repealed to the extent they are in conflict. Any remaining portions of said ordinances, resolutions or other actions shall remain in full force and effect.

SECTION 4.
SEVERABILITY

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

SECTION 5.
REPEALER

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

SECTION 6.
EFFECTIVE DATE

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

SECTION 7.
PROPER NOTICE AND MEETINGS

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

PASSED and APPROVED on its first reading this the 30th day of April 2020.

PASSED and APPROVED on its second reading this the 7th day of May 2020.

_____
Hon. Milton Y. Tate, Jr.
Mayor

ATTEST:

_____
Jeana Bellinger, TRMC, CMC
City Secretary

ORDINANCE NO. O-20-010

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING THE RATE TARIFF SCHEDULES FOR RESIDENTIAL AND COMMERCIAL SOLID WASTE COLLECTION, DISPOSAL AND RECYCLYING SERVICES, AND THE CITY'S COLLECTION AND TRANSFER STATION; AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, the City Council of the City of Brenham, Texas deems it necessary to change the rates for all residential and commercial solid waste collection, disposal and recycling services and the services that are provided at the City of Brenham's Collection and Transfer Station;

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

SECTION I.

The City Council of the City of Brenham, Texas, does hereby adopt the Residential and Commercial Solid Waste Collection, Disposal and Recycling Services Rate Schedule and the Citizen's Collection and Transfer Station Rate Schedule for compacted waste that is disposed of at the City of Brenham's Collection and Transfer Station as set forth in the attached Exhibit "A", which is made a part hereof for all purposes pertinent, to be effective with utility billing occurring on or after May 7, 2020.

SECTION II

This Ordinance shall take effect as provided by the Charter of the City of Brenham, Texas. The implementation of rates as set forth herein and on the attached Exhibit "A" shall be effective with utility billing occurring on and after May 7, 2020.

PASSED and APPROVED on its first reading this the 30th day of April 2020.

PASSED and APPROVED on its second reading this the 7th day of May 2020.

_____
Milton Y. Tate, Jr.
Mayor

ATTEST:

_____
Jeana Bellinger, TRMC, CMC
City Secretary

CITY OF BRENHAM
200 WEST VULCAN STREET P. O. BOX 1059
BRENHAM, WASHINGTON COUNTY, TEXAS 77834-1059

ALL SERVICES	800	810
TARIFF	**SECTION NO.**	**SHEET NO.**
RESIDENTIAL AND COMMERCIAL SOLID WASTE COLLECTION, DISPOSAL AND RECYCLING SERVICES AND COLLECTION AND TRANSFER STATION RATE SCHEDULE	MAY 7, 2020	
SECTION TITLE	**EFFECTIVE DATE**	

(Supersedes Rate Change effective – January 1, 2016)

RATE SCHEDULE - RESIDENTIAL

Residential Collection:

Curbside Solid Waste Collection and Recycling Services
One Time Per Week Solid Waste Collection
Bi-Weekly Recycling Collection
$15.00 per month/per household

Residential Collection: Senior/Disabled Persons (Age 65 or older):

Curbside Solid Waste Collection and Recycling Services
One Time Per Week Solid Waste Collection
Bi-Weekly Recycling Collection
$12.00 per month/per household (application required for discounted rate)

Additional Container: $8.00 per month, per container (sanitation customers only).

Curbside Brush Pick-up: Upon request only. $15.00 per request.

- Curbside brush pick-up is limited to 12 bags per household.
- All limbs must be bundled and tied together. Each bundle shall be no larger than four (4) foot in length and six (6) inches in diameter.

RATE SCHEDULE - COMMERCIAL

Commercial Collection – Front Load Dumpster:

	Number of Pick-Ups Per Week						
Size	**1X**	**2X**	**3X**	**4X**	**5X**	**6X**	**Extra**
2 YD	70.01	126.69	183.36	241.15	297.82	305.60	25.00
4 YD	87.79	162.24	236.71	312.27	386.72	462.29	35.00
6YD	96.30	177.62	262.15	334.91	415.16	498.62	40.00
8 YD	114.46	206.69	300.05	383.39	475.63	568.97	45.00

ALL SERVICES	800	811
TARIFF	**SECTION NO.**	**SHEET NO.**
RESIDENTIAL AND COMMERCIAL SOLID WASTE COLLECTION, DISPOSAL AND RECYCLING SERVICES AND COLLECTION AND TRANSFER STATION RATE SCHEDULE	MAY 7, 2020	
SECTION TITLE	**EFFECTIVE DATE**	

(Supersedes Rate Change effective – January 1, 2016)

Commercial Collection – 96 Gallon Cart:

No. Of Carts	Monthly Fee
1	$ 20.00
2	33.33
3	46.67
4	66.58
5	77.04
6	93.21

Commercial Recycling:

Choice of 2, 4, 6 or 8-Yard Dumpster
One Time Per Week Collection
$ 40.00 per month, per dumpster
$ 40.00 per additional pick-up

Any location where dumpster and/or cart is blocked and collection vehicle must return to provide service shall be an additional $15.00, per occurrence.

Lock bar installed on sanitation dumpster shall be an additional $45.00 per dumpster.

RATE SCHEDULE – COLLECTION/TRANSFER STATION

Transfer Station Services – Compactible Waste:

Receiving, hauling, packing and transporting to a Type 1 Landfill
In-City rate
$ 48.00 per ton

Receiving, hauling, packing and transporting to a Type 1 Landfill
Out-of-City rate
Price shall be negotiable between exclusive franchise holder and transfer company disposing of waste from outside the city limits.

ALL SERVICES	800	812
TARIFF	**SECTION NO.**	**SHEET NO.**
RESIDENTIAL AND COMMERCIAL SOLID WASTE COLLECTION, DISPOSAL AND RECYCLING SERVICES AND COLLECTION AND TRANSFER STATION RATE SCHEDULE	MAY 7, 2020	
SECTION TITLE	**EFFECTIVE DATE**	

(Supersedes Rate Change effective – January 1, 2016)

Transfer Station Services – Non-Compactible Waste:

Receiving, hauling, packing and transporting to a Type 1 Landfill
$ 90.00 per ton

Receiving, hauling, packing and transporting to a Type 1 Landfill
City of Brenham Departments only
$ 45.00 per ton

Collection Station Services – Brush

Residential Brush, Per Pound	$0.0125 ($20.00 minimum)
Residential Brush, Per Ton	$22.50 ($2.00 minimum)
Commercial Brush, Per Pound	$0.01625 ($32.50 minimum)
Commercial Brush, Per Ton	$32.50 ($32.50 minimum)
Residential Brush Collected by City of Brenham Departments	$22.50 per ton

Collection Station Services – Tires

15” or less	$3.00 per tire
16” or greater	$7.00 per tire
Tractor tires	$45.00 per tire
Tire with rim	$1.00 extra

Collection Station Services – Mulch

Double ground	$22.50 per ton
Single ground	$ 10.00 per ton
50 tons or more within 30 days	$17.50 per ton
2 cu.ft. bag	$2.50 per bag

Residential Garbage

$2.00 per bag

ALL SERVICES	800	813
TARIFF	**SECTION NO.**	**SHEET NO.**
RESIDENTIAL AND COMMERCIAL SOLID WASTE COLLECTION, DISPOSAL AND RECYCLING SERVICES AND COLLECTION AND TRANSFER STATION RATE SCHEDULE	MAY 7, 2020	
SECTION TITLE	**EFFECTIVE DATE**	

(Supersedes Rate Change effective – January 1, 2016)

Collection Station Services – Rake-Off Fees

Brush	$5.00 per occurrence
Debris	$10.00 per occurrence
Shingles and other roofing materials	$15.00 per occurrence

Collection Station Services – Recycling, Unlimited Drop-Offs

City of Brenham Resident	No Charge
Washington County (non-City resident)	$45.00 per year
City of Brenham Commercial Business	$45.00 per year*

*If the Commercial Business is participating in monthly recycling services, there will be no additional charge.

ALL SERVICES	800	814
TARIFF	**SECTION NO.**	**SHEET NO.**
RESIDENTIAL AND COMMERCIAL SOLID WASTE COLLECTION, DISPOSAL AND RECYCLING SERVICES AND COLLECTION AND TRANSFER STATION RATE SCHEDULE	MAY 7, 2020	
SECTION TITLE	**EFFECTIVE DATE**	

(Supersedes Rate Change effective – January 1, 2016)

POLICIES FOR SOLID WASTE COLLECTION, DISPOSAL AND RECYCLING SERVICES – RESIDENTIAL AND COMMERCIAL

1. A new customer or a change in service requires Form 7, Application of Service, be filled out at the Public Utilities Office. The form must be signed by the applicant. Copies will be disbursed to the following departments: Public Works and Utility Billing Department.

2. Any changes to the rates contained herein must be approved by the City Council and shall be effective on the date determined by the City Council. Utility Billing Department will adjust customer bills accordingly.

3. Any customer requesting to be included in any special sanitation program must complete the necessary paperwork.

4. Any customer who has residential utility service with the City shall be subject to charges for solid waste collection, disposal and recycling services and shall comply with all City health ordinances regarding the disposal of solid waste.

5. Residential solid waste service shall be collected once per week on a regularly scheduled day.. Residential recycling service shall be collected bi-weekly on a regularly scheduled day.

6. Services are available outside the city limits to residential customers presently residing on a current residential truck route that is adjacent to the city limits.

7. Solid waste and recycling containers must be at the curb by 8:00 A.M. on collection day and removed from the curb by 8:00 p.m. on collection day. Containers shall not be placed at the curb for collection prior to 8:00 p.m. the day prior to the scheduled collection day.

8. All solid waste and recycling containers must be placed within three feet of the curb or edge of pavement if there is no curb.

9. Residential collection trucks will not pick up tires, grass clippings, leaves, tree trimming, batteries, carpet, construction materials, furniture and heavy metal objects.

10. Disposal of hazardous waste, explosives, ammunition, used oil and filters, flammable liquids, radioactive waste and/or lead-acid batteries at the Collection/Transfer Station is strictly prohibited. Vehicle tires shall not be placed for curb-side collection, but will be accepted for disposal at the Collection/Transfer Station

City of BRENHAM

Memo

To: Mayor Milton Tate
City Council
City Manager

From: Dane Rau

Date: May 7, 2020

Re: Consent Agenda

On December 19, 2019 City Council awarded Solid Bridge Construction the bid in the amount of $371,459 for the Hohlt Park Stream Restoration Project.

The repairs/improvements have been completed. The work consisted of removal/disposal of sediment along the channel by reestablishing flow lines, side slopes and armor areas that have been compromised due to storm events. Riprap was also added to sensitive areas along the channel. There were no change orders on this project. The final payment due is $37,145.90.

This project was a partnership with Natural Resources Conservation Service (NRCS), in which NRCS committed to 90% of the cost and the City of Brenham was responsible for 10%. Currently NRCS has reimbursed the City $173,720.70 for this project. As soon as final payment is made, staff will submit this to NRCS for reimbursement.

Attachments: Application for Payment No. 3 & Final
Certificate of Final Completion
Certificate of Payment to Subcontractors and Suppliers
Consent of Surety to Final Payment

APPLICATION FOR PAYMENT NO. 3 AND FINAL

TO OWNER: CITY OF BRENHAM, 200 WEST VULCAN STREET, BRENHAM, TEXAS 77833
FROM CONTRACTOR: SOLID BRIDGE CONSTRUCTION, LLC, 1204 SAM HOUSTON AVENUE, SUITE 1, HUNTSVILLE, TEXAS 77340
PROJECT: HOHLT PARK STREAM RESTORATION
STRAND PROJECT NO. 3900.229

CONTRACT AWARDED: January 10, 2020 — NOTICE TO PROCEED: January 27, 2020
PERIOD FROM: February 19, 2020 — PERIOD TO: April 2, 2020
CONST. TIME ALLOTED: 98 — TIME USED: 67

Item No.	Description	Contract Quantity	Completed Quantity: Previous Period	Completed Quantity: Current Period	Completed Quantity: Total	Unit Price	Total Value of Work Completed
BASE BID							
1	MOBILIZATION	1 LS	1	0	1	$ 15,000.00	$ 15,000.00
2	DEBRIS REMOVAL	1 LS	1	0	1	$ 12,000.00	$ 12,000.00
3	EROSION CONTROL (SILT FENCE)	940 LF	940	0	940	$ 1.85	$ 1,739.00
4	RIPRAP (COMMON STONE) (DRY) (18-INCH)	1,260 CY	1,260	0	1,260	$ 165.00	$ 207,900.00
5	EXCAVATION AND DISPOSAL OF EXISTING SPOILS	1,260 CY	1,260	0	1,260	$ 20.00	$ 25,200.00
6	EMBANKMENT	100 CY	100	0	100	$ 28.00	$ 2,800.00
7	REMOVE AND DISPOSE OF EXISTING 18-INCH CMP	12 LF	12	0	12	$ 50.00	$ 600.00
8	INSTALL 18-INCH CMP	20 LF	20	0	20	$ 80.00	$ 1,600.00
9	SEEDING	1 LS	1	0	1.00	$ 18,000.00	$ 18,000.00
ALTERNATE BID							
A.1	EROSION CONTROL (SILT FENCE)	360 LF	360	0	360	$ 2.00	$ 720.00
A.2	RIPRAP (COMMON STONE) (DRY) (18-INCH)	440 CY	440	0	440	$ 165.00	$ 72,600.00
A.3	EXCAVATION AND DISPOSAL OF EXISTING SPOILS	440 CY	440	0	440	$ 20.00	$ 8,800.00
A.4	SEEDING	1 LS	1	0	1	$ 4,500.00	$ 4,500.00

Original Contract:	$	371,459.00
Plus Additions:		
Less Deductions:	$	-
Adjusted Contract:	$	371,459.00

Value of Work Performed to Date	$	371,459.00
Plus Materials Stored at Close of Period	$	-
Net Amt Earned to Date	$	371,459.00
Less 10% Retainage	$	-
Subtotal	$	371,459.00
Less Previous Pay Applications	$	334,313.10
Amount Due this Application	**$**	**37,145.90**

AFFIDAVIT & CERTIFICATION OF PAY APPLICATION BY CONTRACTOR

STATE OF TEXAS
COUNTY OF Walker

WHEREAS, the undersigned, Travis Hanus, who being duly sworn, on oath, says that he is the legal representative of Solid Bridge Construction, LLC, has been employed by the City of Brenham to furnish labor and materials for the installation of the Hohlt Park Stream Restoration project in Brenham, Texas.

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

BY: _____ DATE: 4-6-2020
SOLID BRIDGE CONSTRUCTION, LLC

PRINTED NAME: Travis Hanus TITLE: V.P.

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 6 DAY OF April ,2020

_____
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS.

BRIAN P WOODWARD JR
Notary Public
STATE OF TEXAS
ID# 130660523
My Comm. Exp. May 12, 2020

RECOMMENDED BY: _____ DATE 4-7-2020
STRAND ASSOCIATES, INC.®

APPROVED BY: _____ DATE
CITY OF BRENHAM, TEXAS

Document 00641

CERTIFICATE OF FINAL COMPLETION

CERTIFICATE OF FINAL COMPLETION OF: Hohlt Park Stream Restoration

Project No.: 2019-02

Contract Dated: [*Contract Date*]

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Travis Hanus who, being by me duly sworn, on his oath says that he or she represents Solid Bridge Construction, the Contractor who has performed a contract with the City of Brenham for the construction of the Work described above, and is duly authorized to make this affidavit; that he or she has personally examined the Work described above as required by the Contract documents; that said Work and all items thereof have been completed and all known defects made good; that all surplus material, refuse, dirt and rubbish have been cleaned up and removed or disposed of ~~as directed by the City Engineer~~; that all parts of Work are in a neat, tidy, finished condition and ready in all respects for acceptance by the City; that all gravel or shell roadway surfaces removed during the course of the Work have been replaced in accordance with the Specifications, that rates of pay for all labor employed on said Work have not been below the minimum set out in "Labor Classification and Minimum Wage Scale" in the Contract documents and that within the knowledge of affiant all just bills for labor and material and for the rental or use of any equipment or apparatus, used in, on, or in connection with the Work have been paid in full by the Contractor.

Affiant's Signature

SWORN AND SUBSCRIBED before me on April 6, 2020
Date

Notary Public in and for the State of TEXAS

BRIAN P WOODWARD JR
Notary Public
STATE OF TEXAS
ID#130660523
My Comm. Exp. May 12, 2020

Brian P Woodward
Print or type name

My Commission Expires: May 12, 2020
Expiration Date

THIS IS TO CERTIFY that I have ~~thoroughly inspected~~ **observed** the Work performed by the above named Contractor on the above described Contract and find all things in accordance with the Contract documents governing this Work **to the best of my knowledge and belief**.

~~Inspector~~ **Resident Project Representative**

[*Project Manager or Construction Manager*]

Approved.

[*Title of Approval Authority*], [*Contracting Department*]

END OF DOCUMENT

Document 00642

CERTIFICATION OF PAYMENT TO SUBCONTRACTORS AND SUPPLIERS

The undersigned, Travis Hanus (Affiant), states that he is the V.P. (Title), of Solid Bridge Construction (Contractor) and that he is duly authorized to execute this Certification of Payment to Subcontractors and Suppliers; that Contractor has made payments to Subcontractors and Suppliers for all labor, materials, equipment, and services furnished to date for Work on Project No. 2019-02 in the amounts for which Contractor has been paid; that the labor, materials, equipment, and services covered by this Certificate of Payment have been furnished in accordance with and all in compliance with the Contract Documents; that no sums have been withheld by Contractor for Subcontractors and Suppliers as a result of any allegations of deficiencies in the Work; and that such payments were made in accordance with the Contract Documents and with the laws of the State of Texas.

Affiant's Signature

SWORN AND SUBSCRIBED before me on April 6, 2020 (Date).

Notary Public in and for the State of TEXAS

BRIAN P WOODWARD JR
Notary Public
STATE OF TEXAS
ID#130860523
My Comm. Exp. May 12, 2020

Brian Woodward
Print or type name

My Commission Expires: May 12, 2020 (Expiration Date)

END OF DOCUMENT

CONSENT OF SURETY COMPANY TO FINAL PAYMENT

AIA DOCUMENT G707

OWNER ☐
ARCHITECT ☐
CONTRACTOR ☐
SURETY ☒
OTHER ☐

PROJECT: Hohlt Park Stream Restoration
(name, address)

TO (Owner)

City of Brenham
200 W VulcanSt
Brenham, TX 77833

ARCHITECT'S PROJECT NO: 2019-02

CONTRACT FOR: City of Brenham, TX

CONTRACT DATE: 01/10/2020

CONTRACTOR: Solid Bridge Construction LLC.

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

Travelers Casualty and Surety Company of America,

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

Solid Bridge Construction LLC 1204 Sam Houston Ave Ste 1 Huntsville, TX 77340,

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

City of Brenham 200 W Vulcan St Brenham, TX 77833,

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

IN WITNESS WHEREOF,
the Surety Company has hereunto set its hand this 6th day of April 2020.

Travelers Casualty and Surety Company of America
Surety Company

Attest:
(Seal):

Signature of Authorized Representative

Shelly Murski Attorney-In-Fact
Title

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

AIA DOCUMENT G707 • CONSENT OF SURETY COMPANY TO FINAL PAYMENT • APRIL 1970 EDITION • AIA®
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ONE PAGE

TRAVELERS

Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Shelly Murski** of **Magnolia, Texas**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **3rd** day of **February, 2017.**

State of Connecticut

City of Hartford ss.

By: _____
Robert L. Raney, Senior Vice President

On this the **3rd** day of **February, 2017**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June, 2021**

Marie C. Tetreault
Marie C. Tetreault, Notary Public

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

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

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

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

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

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this 6th day of April , 2020

Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.

CONSENT AGENDA ITEM 6-g.

DATE OF MEETING: May 7, 2020 **DEPT. OF ORIGIN:** Administration		**DATE SUBMITTED:** May 4, 2020 **SUBMITTED BY:** Jeana Bellinger
MEETING TYPE: ☒ **REGULAR** ☐ **SPECIAL** ☐ **EXECUTIVE SESSION**	**CLASSIFICATION:** ☐ **PUBLIC HEARING** ☒ **CONSENT** ☐ **REGULAR** ☐ **WORK SESSION**	**ORDINANCE:** ☐ **1ST READING** ☐ **2ND READING** ☐ **RESOLUTION**
AGENDA ITEM DESCRIPTION: Acceptance of a Donation from The Dorothy Elaine O'Connor Living Trust in the Amount of $25,000.00 for the Nancy Carol Roberts Memorial Library and Authorize the Mayor to Execute Any Necessary Documentation		
SUMMARY STATEMENT: At the December 5, 2019 meeting, the City Council accepted a $25,000.00 donation from the Dorothy Elaine O'Conner Living Trust for the Nancy Carol Roberts Memorial Library. At that time, the City was advised that an additional distribution would be forthcoming once all of Mrs. O'Connor's assets had been liquidated. This $25,000 is an additional distribution to the Library and according to the April 28, 2020 letter from Moorman Tate (attached), there may be a smaller one still to come.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): **A. PROS:** **B. CONS:**		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: (1) Letter from Moorman Tate, LLP		
FUNDING SOURCE (Where Applicable):		
RECOMMENDED ACTION: Accept a donation from The Dorothy Elaine O'Connor Living Trust in the amount of $25,000.000 for the Nancy Carol Roberts Memorial Library and authorize the Mayor to execute any necessary documentation		
APPROVALS: James Fisher		

MOORMAN TATE, LLP

R. HAL MOORMAN*†
LAURA UPCHURCH
WENDY YATES*
ANDREW J. HEFFERLY

CHRISTOPHER S. HARDY
EMILY DE YOUNG

ATTORNEYS AT LAW
207 EAST MAIN STREET
BRENHAM, TEXAS 77833
P.O. BOX 1808
BRENHAM, TEXAS 77834-1808
(979) 836-5664
FAX (979) 830-0913
www.moormantate.com

BOARD CERTIFIED
*ESTATE PLANNING & PROBATE LAW
†CIVIL TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

GEORGE R. MOORMAN (1919-2011)
MILTON Y. TATE, JR. (RETIRED)
STEVEN C. HALEY (1955-2018)

April 28, 2020

Nancy Carol Roberts Memorial Library
c/o Andria Heiges
100 Martin Luther King, Jr. Parkway
Brenham, Texas 77833

RE: Dorothy Elaine O'Connor Living Trust, established February 19, 1997 (the "Trust")

Dear Ms. Heiges:

This is a follow-up to my letter to you dated October 30, 2019, in regard to a gift made to the Nancy Carol Roberts Memorial Library from the Trust established by the late Dorothy Elaine O'Connor. Following the liquidation of property owned by the Trust, the Trustee is now preparing to make an additional distribution of the Trust assets. The Library's beneficial share of that distribution will be $50,000.

As before, the Trustee will require a signed receipt for the distribution, acknowledging the Library's acceptance of this gift. The enclosed form must be signed before a notary and returned to this office. The distribution check will then be delivered to you by certified mail or personal delivery.

Upon the filing of the last income tax return for the Trust, in 2021, I anticipate that there may be a final Trust distribution to the Library, of a very nominal amount. Until that time, please contact me or my legal assistant, Jill Landry, if you have any questions about this gift from the Trust. However, I remind you that I represent Bill Burhans, as Trustee of the Trust, and cannot provide any legal or accounting advice to you about this matter.

Very truly yours,

Laura Upchurch

Laura Upchurch

Enclosure: Receipt and Release for Partial Distribution

cc: Bill Burhans, Trustee

AGENDA ITEM 7

DATE OF MEETING: May 7, 2020	**DATE SUBMITTED:** May 1, 2020
DEPT. OF ORIGIN: Administration	**SUBMITTED BY:** Jeana Bellinger

MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
☒ REGULAR	☒ PUBLIC HEARING	☒ 1ST READING
☐ SPECIAL	☐ CONSENT	☐ 2ND READING
☐ EXECUTIVE SESSION	☒ REGULAR	☐ RESOLUTION
	☐ WORK SESSION	

AGENDA ITEM DESCRIPTION: Public Hearing, Discussion and Possibly Act Upon an Ordinance on Its First Reading Annexing Approximately 52.428 Acres of Land Located South and West of Dixie Road, Being Further Described as Tract 7 of the Phillip Coe Survey, A-31, in Brenham, Washington County, Texas

SUMMARY STATEMENT: In February, the City received a request from the Estate of Joyce E. Baker to annex 52.428 acres of their 64-acre tract located in Washington County.

The Executrix of the Estate, Susan Love, advised the City that the property was currently under contract with 1983 Land Investments, LLC (Stylecraft Builders, Inc.) for the development of single-family residential lots to join the existing Vintage Farms Subdivision. Ms. Love also advised the City of their intent to request Planned Development zoning for this tract.

State law mandates that all annexations must provide for a Public Hearing to receive citizen input. This item allows for the Public Hearing as well as the first reading of the ordinance. The zoning of this 52.428-acre tract will be discussed in the following agenda item.

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. PROS:

B. CONS:

ALTERNATIVES (In Suggested Order of Staff Preference):

ATTACHMENTS: (1) Ordinance for first reading

FUNDING SOURCE (Where Applicable):

RECOMMENDED ACTION: Approve an Ordinance on its first reading annexing approximately 52.428 acres of land located south and west of Dixie Road, being further described as Tract 7 of the Phillip Coe Survey, A-31, in Brenham, Washington County, Texas
APPROVALS: James Fisher

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS FOR THE PURPOSE OF EXTENDING THE CORPORATE LIMITS OF THE CITY OF BRENHAM, TEXAS; PROVIDING FOR THE ANNEXATION OF APPROXIMATELY 52.428 ACRES OF LAND, COMPRISED OF ONE (1) TRACT HEREINAFTER MORE SPECIFICALLY DESCRIBED, TO THE CITY OF BRENHAM, TEXAS FOR ALL MUNICIPAL PURPOSES; FINDING THAT ALL NECESSARY AND REQUIRED LEGAL CONDITIONS HAVE BEEN SATISFIED; PROVIDING THAT SUCH AREAS SHALL BECOME A PART OF THE CITY AND THAT THE INHABITANTS THEREOF SHALL BE ENTITLED TO THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS AND BE BOUND BY THE ACTS AND ORDINANCES NOW IN EFFECT AND TO BE HEREINAFTER ADOPTED; PROVIDING FOR A MUNICIPAL SERVICES AGREEMENT FOR THE ANNEXED AREAS; PROVIDING FOR THE AMENDMENT OF THE OFFICIAL MAP OF THE BOUNDARIES OF THE CITY; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PROPER NOTICE AND MEETING.

WHEREAS, the City of Brenham, Texas is a Texas home-rule municipality; and

WHEREAS, Chapter 43 of the Texas Local Government Code, V.T.C.A., authorizes municipalities to annex territory in accordance with the procedures provided for therein; and

WHEREAS, Article I, Section 3 of the Charter of the City of Brenham authorizes annexation of territory to the City, in accordance with the laws of this State; and

WHEREAS, the hereinafter described property lies within the extraterritorial jurisdiction of the City of Brenham; and

WHEREAS, the owner of approximately 52.428 acres of land, described in Exhibit "A" attached hereto and incorporated herein for all purposes, has filed a written request with the City for the annexation of said area; and

WHEREAS, notice of the required public hearing was published in a newspaper having general circulation in the City of Brenham, Texas and the public hearing was conducted and held in accordance with applicable law; and

WHEREAS, the City of Brenham, Texas prepared a Municipal Services Agreement for the extension of municipal services into the area to be annexed, said Agreement being attached hereto as Exhibit "B" and incorporated herein for all purposes; and

WHEREAS, all notices, publications and hearings have been duly given and held as required by law; Now Therefore,

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

Section 1. That the hereinafter described tract of land is within the extraterritorial jurisdiction of, and is adjacent to and is contiguous to the present corporate limits of the City of Brenham, Texas, be, the same is hereby, annexed to the City of Brenham, Texas for all municipal purposes and the corporate boundaries and limits of the City of Brenham, Texas are hereby extended to embrace the said tract of land, which is more particularly described and attached hereto as Exhibit "A" and "C" and incorporated herein for all purposes.

Section 2. That the inhabitants, if any, of the property hereby annexed to the City of Brenham, Texas shall be entitled to all the rights and privileges of said citizens of the City of Brenham, Texas, and shall be bound by the acts, ordinances, codes, resolutions and regulations of the City of Brenham, Texas.

Section 3. That the Municipal Services Agreement which is attached hereto as Exhibit "B" is hereby approved and incorporated herein as part of this Ordinance for all purposes and is applicable to the areas annexed to the City as described herein.

Section 4. That the official map and boundaries of the City of Brenham, Texas, heretofore adopted and amended be and is hereby amended so as to include the aforementioned areas as part of the City of Brenham, Texas.

Section 5. That the City Secretary is hereby directed and authorized to perform or cause to be performed all acts necessary to amend the official map of the City of Brenham, Texas to add the territory hereby annexed as required by law.

Section 6. If any section, subsection, sentence, phrase, word, paragraph or provision of this Ordinance be found to be illegal, invalid or unconstitutional or if any portion of said property is incapable of being annexed by the City of Brenham, Texas, for any reason whatsoever, the adjudication shall not affect any other section, subsection, sentence, phrase, word, paragraph or provision of this Ordinance or the application of any other section, subsection, sentence, phrase, word, paragraph or provision of any other Ordinance of the City. The City Council declares that it would have adopted the valid portions and applications of this Ordinance and would have annexed the valid property without the invalid part, and as to this end the provisions of this Ordinance are declared to be severable.

Section 7. That this Ordinance shall become effective upon its passage.

Section 8. That the meetings at which this Ordinance was enacted were open to the public as required by the Texas Open Meetings Act, and that notice of the time, place, and subject matter of said meetings was given as required by the Texas Open Meetings Act.

PASSED and APPROVED on its first reading this the ___ day of _____ 2020.

PASSED and APPROVED on its second reading this the ____ day of _____ 2020.

_____
Milton Y. Tate, Jr.
Mayor

ATTEST

_____
Jeana Bellinger, TRMC, CMC
City Secretary

FIELD NOTES
52.428 ACRES

Being all that certain tract or parcel of land lying and being situated in the PHILLIP COE SURVEY, Abstract No. 31, Washington County, Texas and being part of the 61.00 acre tract described in the Correction Deed of Gift from E.L. Baker and wife, Mildred E. Baker to Eugene G. Baker and wife, Joyce E. Baker recorded in Volume 815, Page 93 of the Official Records of Washington County, Texas (O.R.W.C.), said tract being more particularly described by metes and bounds as follows:

BEGINNING: at a found1/2-inch iron rod marking the south corner of this herein described tract, said iron rod also being the west corner of the called 10.677 acre "Reserve A" tract, VINTAGE FARMS SUBDIVISION, PHASE I according to the Final Plat recorded in Plat Cabinet File No. 694B, 695A, 695B and 696A, Plat Records of Washington County, Texas (P.R.W.C.) and being in the east line of the called 90.000 acre James S. Brown and Melanie Ida Brown tract recorded in Volume 373, Page 476 of the Washington County Deed Records (W.C.D.R.);

THENCE: along the fenced common line of the called 61.00 acre Baker tract and the called 90.000 acre Brown tract for the following three (3) calls:

1) N 14°24'25" W for a distance of 693.12 feet to a found 1/2-inch iron rod,
2) N 38°50'54" E for a distance of 1,147.30 feet to a found 1/2-inch iron rod, and
3) N 07°57'40" W for a distance of 291.64 feet to a found 1/2-inch iron rod;

THENCE: N 63°32'27" E along a wire fence and crossing the called 61.00 acre Baker tract for a distance of 26.10 feet to an 8-inch cedar fence post marking the north corner of this herein described tract and being in the south margin of an asphalt road commonly known as Dixie Road;

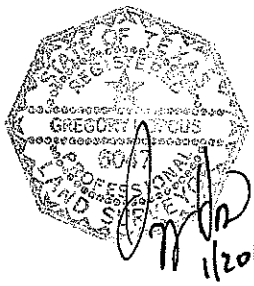
THENCE: along the fenced south and west margin of said Dixie Road for the following eighteen (18) calls:

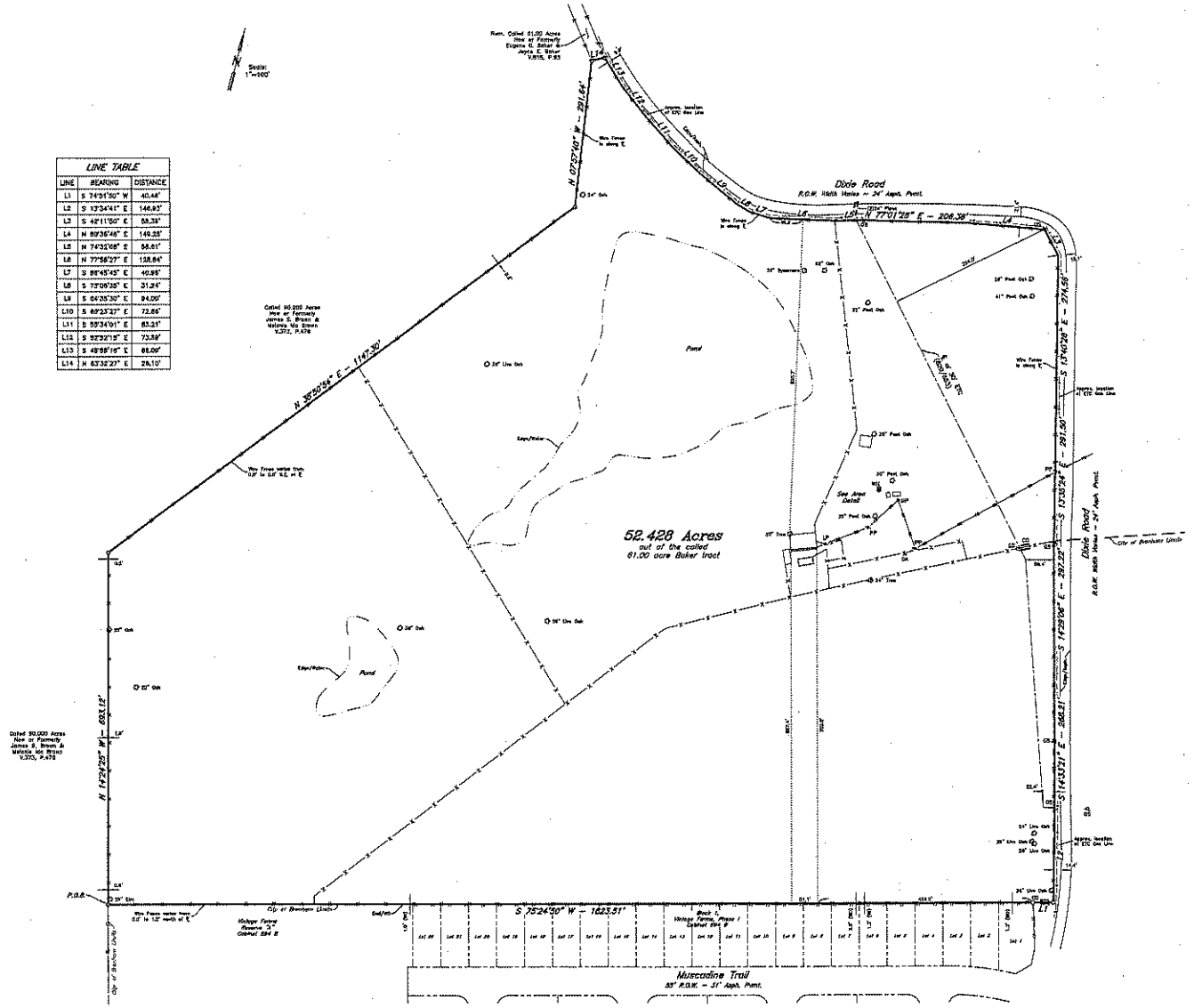
1) S 45°58'16" E for a distance of 66.09 feet to a fence post for angle,
2) S 52°52'15" E for a distance of 73.59 feet to a fence post for angle,
3) S 55°34'01" E for a distance of 83.21 feet to a fence post for angle,
4) S 60°23'27" E for a distance of 72.86 feet to a fence post for angle,
5) S 64°35'30" E for a distance of 94.00 feet to a fence post for angle,
6) S 73°06'35" E for a distance of 31.24 feet to a fence post for angle,
7) S 86°45'45" E for a distance of 40.96 feet to a fence post for angle,
8) N 77°58'27" E for a distance of 128.84 feet to a fence post for angle,
9) N 74°32'08" E for a distance of 58.61 feet to a fence post for angle,
10) N 77°01'25" E for a distance of 206.38 feet to a fence post for angle,
11) N 80°36'46" E for a distance of 149.28 feet to a fence post for angle,
12) S 42°11'50" E for a distance of 58.39 feet to a fence post for angle,
13) S 13°40'28" E for a distance of 274.56 feet to a fence post for angle,
14) S 13°35'24" E for a distance of 291.50 feet to a fence post for angle,
15) S 14°29'06" E for a distance of 297.22 feet to a fence post for angle,
16) S 14°33'21" E for a distance of 268.21 feet to a fence post for angle,
17) S 13°34'41" E for a distance of 146.93 feet to a 6-inch diameter treated fence post marking the east corner of this tract, and
18) S 74°51'50" W along the southeast line of the called 61.00 acre Baker tract for a distance of 40.46 feet to a 6-inch diameter treated fence post marking an angle point in the southeast line of this tract and being the northeast corner of said VINTAGE FARMS SUBDIVISION PHASE I;

THENCE: S 75°24'50" W along the fenced common line of the called 61.00 acre Baker tract and the said VINTAGE FARMS SUBDIVISION, PHASE I for a distance of 1,823.51 feet to the POINT OF BEGINNING and containing 52.428 acres of land, more or less.

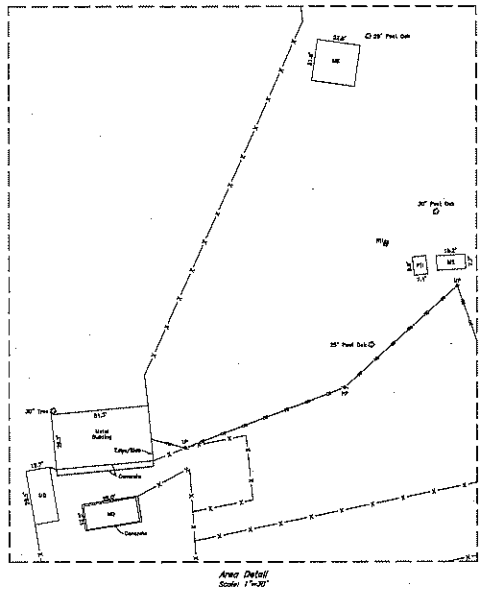
I, Gregory Hopcus, Registered Professional Land Surveyor No. 6047, State of Texas, do hereby certify to the best of my knowledge, information and belief, and in my professional opinion, that this survey is true and correct and agrees with a survey made on the ground under my supervision on January 20, 2020.

See survey plat on Page 1 of 2
for additional information.





LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 74°01'50" W	40.46'
L2	S 13°34'41" E	146.93'
L3	S 42°11'00" E	58.39'
L4	N 89°36'46" E	149.28'
L5	N 74°32'08" E	58.61'
L6	N 77°58'27" E	138.84'
L7	S 88°45'45" E	40.98'
L8	S 73°09'35" E	31.24'
L9	S 64°35'30" E	94.00'
L10	S 69°23'27" E	72.86'
L11	S 59°34'01" E	63.21'
L12	S 52°32'15" E	73.58'
L13	S 49°58'16" E	88.00'
L14	N 63°32'27" E	28.10'



GENERAL SURVEYOR NOTES:

1. ORIGIN OF BEARING SYSTEM: The bearing system is consistent with the final plat of Village Farms Subdivision, Phase I, recorded in Cabinet 684 B of the Official Records of Washington County, Texas.
2. According to the Flood Insurance Rate Maps for Washington County, Texas and Incorporated Areas, Map Numbers 48477C0295C effective August 16, 2011, this property is not located in a Special Flood Hazard area.
3. This survey is valid only if the print has original seal and signature of Surveyor.
4. See Page 2 of 2 for metes and bounds description prepared with this survey plat.
5. Subsurface and environmental conditions were not examined or considered as a part of this survey.
6. The locations of underground utilities as shown hereon are based on above-ground structures and record drawings provided to the surveyor. Locations of underground utilities/structures may vary from locations shown hereon. Additional buried utilities/structures may be encountered. No excavations were made during the progress of this survey to locate buried utilities/structures.
7. This survey does not constitute a title search by Surveyor. All information regarding recent easement and other documents that might affect the quality of title to tract shown hereon was gained from title commitment GF No. WCAT800024 prepared by WASHINGTON COUNTY ABSTRACT COMPANY of Washington County effective January 7, 2020.

I, Gregory Haycox, Registered Professional Land Surveyor No. 6047, State of Texas, hereby certify that this survey was made on the ground, and that this survey correctly represents the facts found at the time of survey and that this professional service conforms to the current Texas Society of Professional Surveyors Standards and Specifications for a Category 1A, Condition II Survey.

Gregory Haycox R.P.L.S. No. 6047

LEGEND

⊙	= 1/2" Iron Rod Found (DH)
⊙	= 1" Inside Pipe Found
⊙	= 1" Solid Iron Post
⊙	= Corner Stone
⊙	= Concrete Monument
⊙	= Electric Box
⊙	= Guy Anchor
⊙	= Gas Gas (GM)
⊙	= Light Pole
⊙	= Metal Bar (at natural ground)
⊙	= Metal Bar (at concrete)
⊙	= Metal Post (at natural ground)
⊙	= Pump House (at concrete)
⊙	= Power Pole
⊙	= Water Meter
⊙	= Wooden pap. Witness Iron 6" w Dee
⊙	= Wire Fence (WF)
⊙	= Steel Fence (WS)
⊙	= Overhead Electrical Line

LAND TITLE SURVEY

52.428 ACRE TRACT

OUT OF THE CALLED 61.00 ACRE BAKER TRACT
RECORDED IN VOLUME 815, PAGE 93

PHILLIP COE SURVEY, A-31
WASHINGTON COUNTY, TEXAS
JANUARY 20, 2020
SCALE 1" = 100'

Proposed Developer:
1953 Land Investments, LLC
4090 South TX Highway 6
College Station, Texas 77845
(979) 690-1222

Surveyor: Texas Firm Registration No. 10103300
McClure & Browne Engineering/Surveying, Inc.
1008 Woodcreek Dr., Suite 103
College Station, Texas 77845
(979) 693-3838

MB

M030001-LE

Exhibit "B"

MUNICIPAL SERVICES AGREEMENT

BETWEEN THE CITY OF BRENHAM, TEXAS

AND THE ESTATE OF JOYCE E. BAKER,

SUSAN B. LOVE, EXECUTRIX

This Municipal Services Agreement ("Agreement") is entered into on the 19th day of March, 2020 by and between the City of Brenham, a Texas a home-rule municipality ("City") and Susan B. Love, Executrix (individually and collectively referred to herein as "Owner").

RECITALS

The parties agree that the following recitals are true and correct and form the basis upon which the parties have entered into this Agreement.

WHEREAS, Section 43.0671 et seq. of the LGC permits the City to annex an area if each owner of land in an area requests the annexation;

WHEREAS, where the City elects to annex such an area, the City is required to enter into a written agreement with the property owner that sets forth the City services to be provided for the Property on or after the effective date of annexation;

WHEREAS, Owner owns certain parcel(s) of land situated in Washington, Texas, which consists of approximately 52.428 acres of land in the City's extraterritorial jurisdiction, such property being more particularly described in Exhibit A attached hereto and incorporated herein for all purposes pertinent ("Property");

WHEREAS, Owner has filed a written request with the City for annexation of the Property;

WHEREAS, in accordance with Section 43.0672 of the LGC City and Owner desire to set out the City services to be provided for the Property on or after the effective date of annexation;

WHEREAS, the annexation and execution of this Agreement are subject to approval by the Brenham City Council; and

NOW THEREFORE, in exchange for the mutual covenants, conditions and promises contained herein, City and Owner agree as follows:

1. **PROPERTY.** This Agreement is only applicable to the Property, which is the subject of the annexation.

2. **INTENT.** It is the intent of the City that this Agreement provide for the delivery of full, available municipal services to the Property in accordance with state law, which may be accomplished through any means permitted by law.

3. MUNICIPAL SERVICES.

a Commencing on the effective date of annexation, the City will provide the municipal services set forth below. As used in this Agreement, "providing services" includes having services provided by any method or means by which the City may extend municipal services to any other area of the City, including the City's infrastructure extension policies and developer or property owner participation in accordance with applicable city ordinances, rules, regulations, and policies.

i. Fire – The City's Fire Department will provide emergency and fire protection services.

ii. Police – The City's Police Department will provide protection and law enforcement services.

iii. Planning, Zoning, and Building – The City's Development Services Department will provide planning, land development, land use, and building review and inspection services in accordance with all applicable laws, rules, and regulations.

iv. Publicly Owned Parks, Facilities, and Buildings

1. Residents of the Property will be permitted to utilize all existing publicly-owned and available parks, facilities (including, community service facilities, libraries, swimming pools, etc.), and buildings throughout the City. Any private parks, facilities, and buildings will be unaffected by the annexation; provided, however, that the City will provide for maintenance and operation of the same upon acceptance of legal title thereto by the City and appropriations therefor.
2. In the event the City acquires any other parks, facilities, or buildings necessary for City services within the Property, the appropriate City department will provide maintenance and operations of the same.

v. Drainage Utility System – The Property will be included in the City's Drainage Utility System service area and will be assessed a monthly fee based on the amount of impervious area, in accordance with the provisions of the City's ordinances governing the Drainage Utility System. The fees will cover the direct and indirect costs of Drainage Utility System services and operations.

vi. Streets - The City's Public Works Department will maintain the public streets over which the City has jurisdiction. The City will provide regulatory signage services in accordance with the City policies and procedures and applicable laws.

vii. Natural Gas – The Property is located in the City's natural gas utility service area. If a property owner desires to connect to the City natural gas system, then the owner may request a connection in accordance with the City's natural gas utility connection and service policies, regulations and applicable law in effect at the time of connection. Once connected to the City's natural gas utility system, the natural gas service will be provided by the City at rates established by City ordinances for such services.

viii. Water and Wastewater

1. Existing, occupied homes that are using water well and validly-permitted and properly functioning on-site sewage facilities on the effective date of annexation may continue to use the same as long as the facilities remain validly-permitted and properly functioning. If a property owner desires to connect to the City water and/or sewer

system, then the owner may request a connection in accordance with the City's utility connection and service policies, regulations and applicable law in effect at the time of connection. Once connected to the City's water and sanitary sewer mains, the water and sanitary sewage service will be provided by the City at rates establish by City ordinances for such services.

2. New homes will be required to connect to the City's water and sewer system at the owner's expense and in accordance with the City's policies, regulations and applicable law in effect at the time of connection.

ix. Solid Waste Services – The City, or its contractor, will provide solid waste collection services in accordance with the City's ordinances, agreements and policies, except where prohibited by law.

x. Code Compliance – The City's Code Compliance Division will provide education, enforcement, and abatement relating to code violations within the Property.

b. It is acknowledged and agreed by the parties that the City is not required to provide a service that is not included in this Agreement.

c. Owner acknowledges that the City departments and divisions listed herein may change names or be re-organized by the City Manager. Any reference to a specific department or division also includes any subsequent City department or division that will provide the same or similar services.

5. **AUTHORITY.** City and Owner represent that they have full power, authority and legal right to execute, deliver and perform their obligations pursuant to this Agreement. Owner acknowledges and agrees that approval of the annexation is within the sole jurisdiction of the Brenham City Council. Nothing in this Agreement guarantees favorable decisions by the Brenham City Council.

6. **SEVERABILITY.** If any part, term, or provision of this Agreement is held by a court to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or unenforceability will not affect the validity of any other part, term or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.

8. **INTERPRETATION.** The parties to this Agreement covenant and agree that in any litigation relating to this Agreement, the terms and conditions of the Agreement will be interpreted according to the laws of the State of Texas. The parties acknowledge that they are of equal bargaining power and that each of them had the opportunity to be represented by legal counsel in the negotiation and drafting of this Agreement.

9. **GOVERNING LAW AND VENUE.** Exclusive venue shall be in the state courts located in Washington County, Texas or the United States District Court for the Western District of Texas, Austin Division and construed in conformity with the provisions of the laws of the State of Texas, including but not limited to Texas Local Government Code Chapter 43.

10. **NO WAIVER.** The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

11. **GOVERNMENTAL POWERS.** It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers or immunities.

12. **COUNTERPARTS**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

13. **CAPTIONS**. The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

14. **AGREEMENT BINDS SUCCESSORS AND RUNS WITH THE LAND**. This Agreement is binding on and inures to the benefit of the parties, their successors, and assigns. The term of this Agreement constitutes covenants running with the land comprising the Property and is binding on the Owner.

15. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements between said parties. This Agreement shall not be amended unless executed in writing by both parties.

16. **EFFECTIVE DATE.** This Agreement shall only be effective and binding on the parties upon the effective date of the ordinance annexing the Property adopted by the Brenham City Council.

Executed as of the day and year first above written to be effective on the effective date of annexation of the Property.

CITY OF BRENHAM

By: Milton Y. Tate, Jr.
Milton Y. Tate, Jr.
Mayor

CITY OF BRENHAM TEXAS

ATTEST:

Jeana Bellinger
Jeana Bellinger, TRMC, CMC
City Secretary

OWNER:

By: Susan B. Love
Susan B. Love, Executrix
Estate of Joyce E. Baker

State of Texas §
County of Washington §

This instrument was acknowledged before me on the 19th day of March, 2020 by Milton Y. Tate, Jr., Mayor of the City of Brenham, a Texas home-rule municipal corporation, on behalf of said municipal corporation.

By: Jeana C. Bellinger

Notary Public, State of Texas

JEANA C BELLINGER
Notary ID # 4296808
My Commission Expires
May 28, 2020

State of Texas §
County of Gillespie §

This instrument was acknowledged before me on the 17 day of March, 2020 by Susan B. Love, Executrix [Name of individual signing, title (if any)] on behalf of said Estate of Joyce E. Baker [insert name of company or individual where applicable].

By: Christi Renee Benedict

Notary Public, State of Texas

CHRISTI RENEE BENEDICT
Notary Public, State of Texas
Comm. Expires 09-27-2023
Notary ID 132190396

CHRISTI RENEE BENEDICT
Notary Public, State of Texas
Comm. Expires 09-27-2023
Notary ID 132190396

After Recording Return to:
City Secretary
City of Brenham
P.O. Box 1059
Brenham, Texas 77834-1059

FIELD NOTES
52.428 ACRES

Being all that certain tract or parcel of land lying and being situated in the PHILLIP COE SURVEY, Abstract No. 31, Washington County, Texas and being part of the 61.00 acre tract described in the Correction Deed of Gift from E.L. Baker and wife, Mildred E. Baker to Eugene G. Baker and wife, Joyce E. Baker recorded in Volume 815, Page 93 of the Official Records of Washington County, Texas (O.R.W.C.), said tract being more particularly described by metes and bounds as follows:

BEGINNING: at a found1/2-inch iron rod marking the south corner of this herein described tract, said iron rod also being the west corner of the called 10.677 acre "Reserve A" tract, VINTAGE FARMS SUBDIVISION, PHASE I according to the Final Plat recorded in Plat Cabinet File No. 694B, 695A, 695B and 696A, Plat Records of Washington County, Texas (P.R.W.C.) and being in the east line of the called 90.000 acre James S. Brown and Melanie Ida Brown tract recorded in Volume 373, Page 476 of the Washington County Deed Records (W.C.D.R.);

THENCE: along the fenced common line of the called 61.00 acre Baker tract and the called 90.000 acre Brown tract for the following three (3) calls:

1) N 14°24'25" W for a distance of 693.12 feet to a found 1/2-inch iron rod,
2) N 38°50'54" E for a distance of 1,147.30 feet to a found 1/2-inch iron rod, and
3) N 07°57'40" W for a distance of 291.64 feet to a found 1/2-inch iron rod;

THENCE: N 63°32'27" E along a wire fence and crossing the called 61.00 acre Baker tract for a distance of 26.10 feet to an 8-inch cedar fence post marking the north corner of this herein described tract and being in the south margin of an asphalt road commonly known as Dixie Road;

THENCE: along the fenced south and west margin of said Dixie Road for the following eighteen (18) calls:

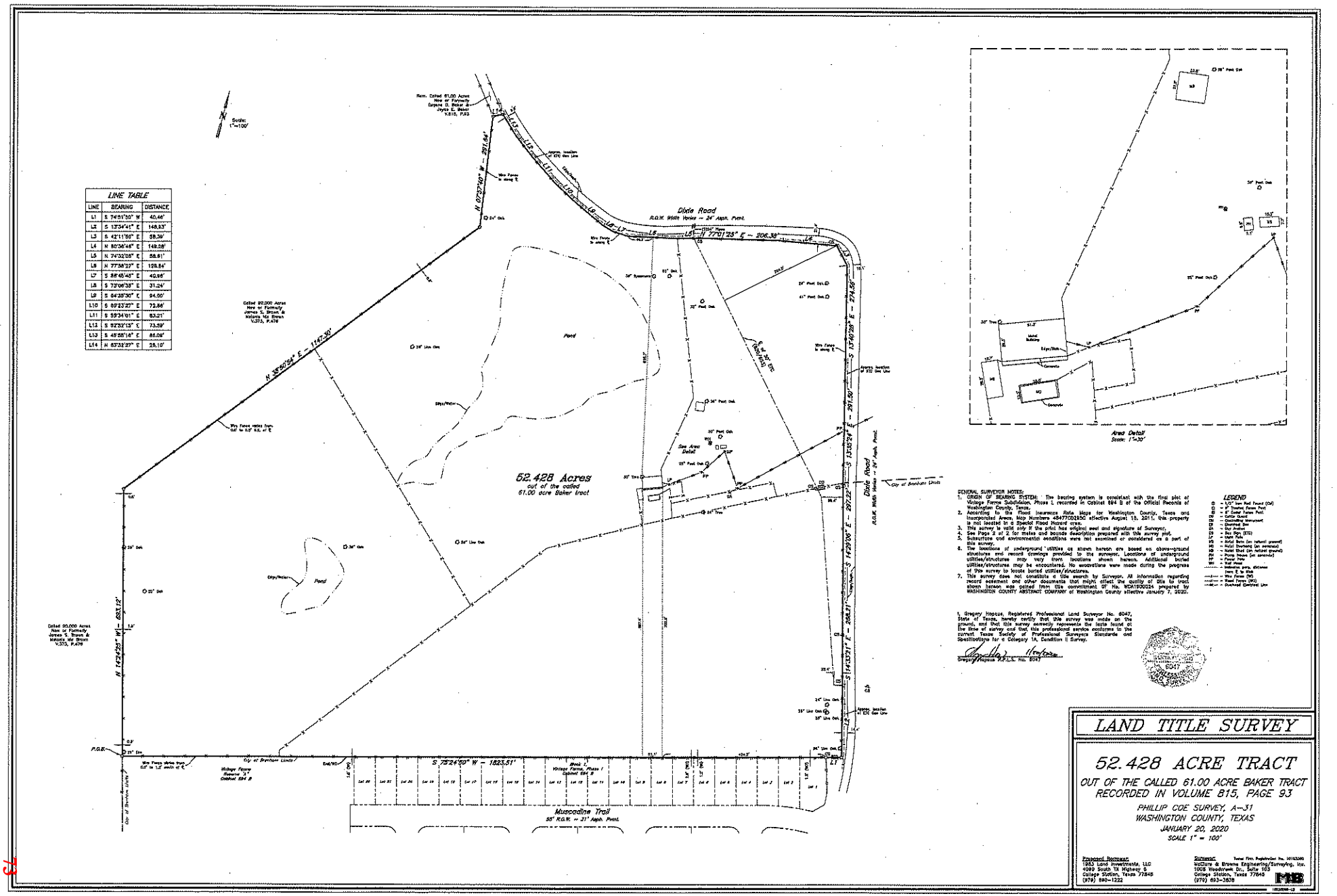
1) S 45°58'16" E for a distance of 66.09 feet to a fence post for angle,
2) S 52°52'15" E for a distance of 73.59 feet to a fence post for angle,
3) S 55°34'01" E for a distance of 83.21 feet to a fence post for angle,
4) S 60°23'27" E for a distance of 72.86 feet to a fence post for angle,
5) S 64°35'30" E for a distance of 94.00 feet to a fence post for angle,
6) S 73°06'35" E for a distance of 31.24 feet to a fence post for angle,
7) S 86°45'45" E for a distance of 40.96 feet to a fence post for angle,
8) N 77°58'27" E for a distance of 128.84 feet to a fence post for angle,
9) N 74°32'08" E for a distance of 58.61 feet to a fence post for angle,
10) N 77°01'25" E for a distance of 206.38 feet to a fence post for angle,
11) N 80°36'46" E for a distance of 149.28 feet to a fence post for angle,
12) S 42°11'50" E for a distance of 58.39 feet to a fence post for angle,
13) S 13°40'28" E for a distance of 274.56 feet to a fence post for angle,
14) S 13°35'24" E for a distance of 291.50 feet to a fence post for angle,
15) S 14°29'06" E for a distance of 297.22 feet to a fence post for angle,
16) S 14°33'21" E for a distance of 268.21 feet to a fence post for angle,
17) S 13°34'41" E for a distance of 146.93 feet to a 6-inch diameter treated fence post marking the east corner of this tract, and
18) S 74°51'50" W along the southeast line of the called 61.00 acre Baker tract for a distance of 40.46 feet to a 6-inch diameter treated fence post marking an angle point in the southeast line of this tract and being the northeast corner of said VINTAGE FARMS SUBDIVISION PHASE I;

THENCE: S 75°24'50" W along the fenced common line of the called 61.00 acre Baker tract and the said VINTAGE FARMS SUBDIVISION, PHASE I for a distance of 1,823.51 feet to the POINT OF BEGINNING and containing 52.428 acres of land, more or less.

I, Gregory Hopcus, Registered Professional Land Surveyor No. 6047, State of Texas, do hereby certify to the best of my knowledge, information and belief, and in my professional opinion, that this survey is true and correct and agrees with a survey made on the ground under my supervision on January 20, 2020.

See survey plat on Page 1 of 2
for additional information.

1/20/2020



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 74°51'30" W	40.46'
L2	S 13°34'41" E	148.83'
L3	S 42°11'50" E	58.39'
L4	N 80°36'48" E	149.28'
L5	N 74°32'05" E	58.61'
L6	N 77°58'27" E	128.84'
L7	S 88°45'45" E	40.96'
L8	S 73°06'38" E	31.24'
L9	S 64°35'30" E	94.00'
L10	S 60°23'27" E	72.86'
L11	S 59°34'01" E	63.21'
L12	S 52°32'13" E	73.59'
L13	S 48°58'16" E	66.06'
L14	N 63°32'27" E	28.10'

GENERAL SURVEYOR NOTES:

1. ORIGIN OF BEARING SYSTEM: The bearing system is consistent with the final plat of Village Farms Subdivision, Phase I, recorded in Cabinet 594 B of the Official Records of Washington County, Texas.
2. According to the Flood Insurance Rate Maps for Washington County, Texas and Incorporated Areas, Map Numbers 48477C0265C effective August 18, 2011, this property is not located in a Special Flood Hazard area.
3. This survey is valid only if the print has original seal and signature of Surveyor.
4. See Page 2 of 2 for metes and bounds description prepared with this survey plat.
5. Subsurface and environmental conditions were not examined or considered as a part of this survey.
6. The locations of underground utilities as shown hereon are based on above-ground structures and record drawings provided to the surveyor. Locations of underground utilities/structures may vary from locations shown hereon. Additional buried utilities/structures may be encountered. No excavations were made during the progress of the survey to locate buried utilities/structures.
7. This survey does not constitute a title search by Surveyor. All information regarding record easement and other documents that might affect the quality of title to tract shown hereon was pulled from title commitment GF No. WCA1900024 prepared by WASHINGTON COUNTY ABSTRACT COMPANY at Washington County effective January 7, 2020.

I, Gregory Hoppus, Registered Professional Land Surveyor No. 6047, State of Texas, hereby certify that this survey was made on the ground, and that this survey correctly represents the facts found at the time of survey and that this professional service conforms to the current Texas Society of Professional Surveyors Standards and Specifications for a Category 1A, Condition II Survey.

Gregory Hoppus R.P.L.S. No. 6047

LEGEND

- 1/2" Iron Rod Found (CM)
- 5/8" Fnd. Iron Rod
- 1/2" Iron Rod Set
- Concrete Monument
- Set Nail
- Found Nail
- Set Mag Nail
- Calculated point, distance from 5/8" Iron Rod Set
- Power Pole
- Guy Wire
- Wire Fence (W)
- Wood Fence (WD)
- Overhead Electric Line

LAND TITLE SURVEY

52.428 ACRE TRACT

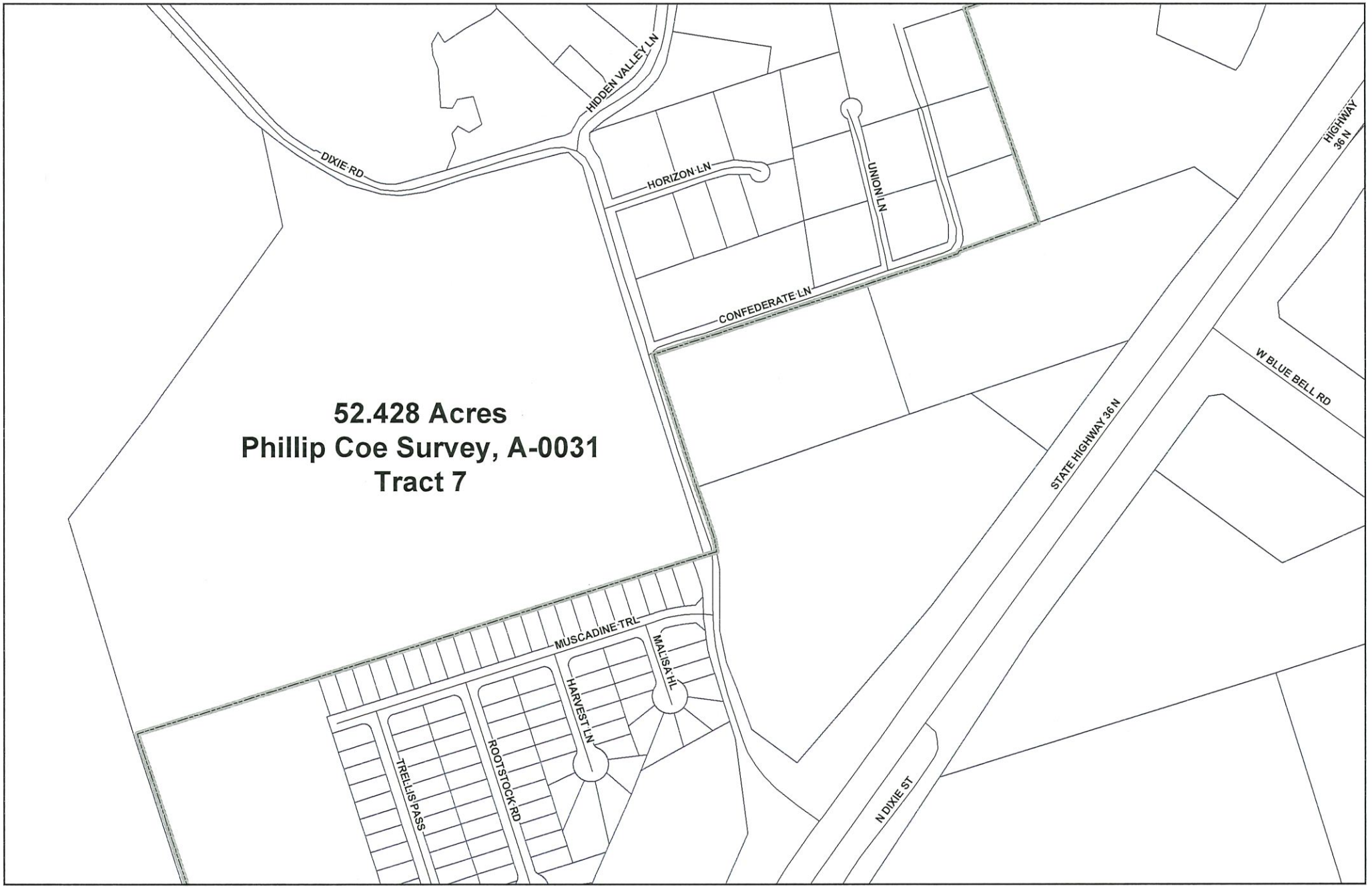
OUT OF THE CALLED 61.00 ACRE BAKER TRACT
RECORDED IN VOLUME 815, PAGE 93

PHILLIP COE SURVEY, A-31
WASHINGTON COUNTY, TEXAS
JANUARY 20, 2020
SCALE 1" = 100'

Prepared For:
1953 Land Investments, LLC
4989 South TX Highway 6
College Station, Texas 77845
(979) 690-1222

Surveyed:
McClure & Browne Engineering/Surveying, Inc.
1008 Woodcreek Dr., Suite 103
College Station, Texas 77845
(979) 693-3838
Texas Firm Registration No. 10103300

MB



1 inch = 400 feet

Exhibit "C"

City of BRENHAM

AGENDA ITEM 8

DATE OF MEETING: May 7, 2020	**DATE SUBMITTED:** April 30, 2020
DEPT. OF ORIGIN: Development Services	**SUBMITTED BY:** Stephanie Doland

MEETING TYPE:	**CLASSIFICATION:**	**ORDINANCE:**
☒ **REGULAR**	☒ **PUBLIC HEARING**	☒ **1ST READING**
☐ **SPECIAL**	☐ **CONSENT**	☐ **2ND READING**
☐ **EXECUTIVE SESSION**	☒ **REGULAR**	☐ **RESOLUTION**
	☐ **WORK SESSION**	

AGENDA ITEM DESCRIPTION: Public Hearing, Discussion and Possibly Act Upon an Ordinance on Its First Reading Amending the Official Zoning Map of the City of Brenham, to Assign a Zoning Classification of a Planned Development District (PDD) on Approximately 52.428 Acres of Land Located South and West of Dixie Road, Being Further Described as Tract 7 of the Phillip Coe Survey, A-31, in Brenham, Washington County, Texas (Case Number P-20-012)

SUMMARY STATEMENT: The subject property is an approximate 52.428-acre tract of vacant land located north of the existing Vintage Farms Subdivision. The property is currently located in the Brenham Extraterritorial Jurisdiction (ETJ) and has been requested by the property owners to be annexed into the City of Brenham. The City Council is scheduled to consider the requested annexation during their regularly scheduled meetings on May 7th and May 21st, 2020. Upon annexation of the subject property the owners are requesting the tract be assigned the zoning district of Planned Development District (PDD) for the development of a single-family home subdivision known as The Lakes at Vintage Farms. A small and separate portion of the subject tract is planned to be developed with patio homes and is referred to as The Cove at Vintage Farms. Please see the concept plan included in the attached Ordinance.

The applicants are requesting the PD district in order to establish alternative standards to the City's typical zoning and subdivision development standards. The proposed PD would establish the underlying base zoning district as Residential (R-1) for the construction of single-family dwellings and Mixed Residential District (R-2) for the construction of patio homes.

The proposed request is in accordance with the future land use map adopted in Historic Past, Bold Future: Plan 2040, the City of Brenham Comprehensive Plan which suggests that Residential uses are appropriate at this location. The applicants are proposing development standards for The Lakes at Vintage Farms that include reductions in some City standards such as lot size and setbacks in exchange for amenities that are listed in Plan 2040 as attributes which contribute to a "Quality Neighborhood Design." Amenities proposed with this development plan include concrete sidewalks, 2,800 feet of regional trails, a 15-acre passive park with a pavilion and 4-acre pond. A complete list of the development amenities is enclosed in the attached Staff Report to the Planning and Zoning Commission.

No public comments concerning this proposed rezoning were received prior to the Planning and Zoning Commission meeting, or during the Public Hearing for this item. On Monday, April 27, 2020, after conducting a Public Hearing, the Planning and Zoning Commission **voted unanimously to recommend approval of the rezoning request as presented, contingent on City Council's approval of the annexation**.

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. PROS: The proposed rezoning request would be in keeping with Plan 2040 and the Future Land Use Map which recommends single-family residential at this location.

B. CONS: No cons are foreseen at this time.

ALTERNATIVES (In Suggested Order of Staff Preference):

1. Approve the requested zoning change (contingent on approval of annexation of the subject property) as recommended by the Planning and Zoning Commission;
2. Deny the requested zoning change.

ATTACHMENTS: (1) Ordinance for first reading; (2) Staff Report; and (3) Letter from Washington County Citizen

FUNDING SOURCE (Where Applicable): N/A

RECOMMENDED ACTION: Approve an Ordinance on its first reading amending the Official Zoning Map of the City of Brenham, to Assign a Zoning Classification of a Planned Development District (PDD) on approximately 52.428 acres of land located South and West of Dixie Road, being further described as Tract 7 of the Phillip Coe Survey, A-31, in Brenham, Washington County, Texas (Case Number P-20-012)

APPROVALS: James Fisher

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS, AMENDING APPENDIX A - "ZONING" OF THE CODE OF ORDINANCES, AND THE OFFICIAL ZONING MAP OF THE CITY OF BRENHAM, TO ASSIGN A ZONING CLASSIFICATION OF PLANNED DEVELOPMENT DISTRICT (PDD) ON APPROXIMATELY 52.428 ACRES OF LAND LOCATED SOUTH AND WEST OF DIXIE ROAD, BEING FURTHER DESCRIBED AS TRACT 7 OF THE PHILLIP COE SURVEY, A-31, IN BRENHAM, WASHINGTON COUNTY, TEXAS.

WHEREAS, the owners of the 52.428 acres of land generally located south and west of Dixie Road, being further described as Tract 7 of the Phillip Coe Survey, A-31, in Brenham, Washington County, Texas, (the "Property"), have requested that the Property be annexed into the City of Brenham and assigned zoning; and

WHEREAS, the owners have presented an application to the City for a Planned Development District to allow the construction of a single-family residential development; and

WHEREAS, at least ten (10) days after publication in the official newspaper of the City of the time and place of the public hearing and at least ten (10) days written notice of that hearing to the owners of the land within two hundred feet (200') of the Property in the manner required by law, the Planning & Zoning Commission held a public hearing on the proposal to rezone the Property to a Planned Development District; and

WHEREAS, the Planning & Zoning Commission recommended on April 27, 2020 that City Council grant such request to assign the Property as Planned Development District upon annexation into the City of Brenham city limits; and

WHEREAS, the City Council deems it appropriate to grant such proposed zoning district classification of the Property;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS THAT APPENDIX A – "ZONING" OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS, AND THE OFFICIAL ZONING MAP BE AMENDED AS FOLLOWS:

That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas, and the Official Zoning Map of the City of Brenham are hereby amended by assigning the zoning district classification of Planned Development District (PDD) on approximately 52.428 acres of land generally located south and west of Dixie Road, being further described as Tract 7 of the Phillip Coe Survey, A-31, in Brenham, Washington County, Texas, said area of land being further described and depicted in Exhibits "A" and "B" attached hereto and incorporated herein for all purposes.

SECTION I.

PURPOSE AND INTENT. The Lakes at Vintage Farms Planned Development District ("The Lakes PD") is intended to guide land use and physical development of the subject property. This development plan is enacted as a means to provide the City of Brenham and the Developer with alternative standards set forth by the City for their mutual benefit. The Lakes PD is intended to add this approximately 52.428 acre tract of land to the existing Vintage Farms Subdivision ("Vintage Farms") development by incorporating the existing design and feel of Vintage Farms while providing new elements which will differentiate The Lakes at Vintage Farms as unique. Additionally, The Lakes PD looks to improve property utilization by facilitating the highest and best uses, provide quality cost-efficient housing, strengthen the area economy, and enhance the general welfare of the surrounding community. The Lakes PD reflects the goals of the City's adopted Comprehensive Plan - Historic Past, Bold Future: Plan 2040 which establishes recommendations for developing quality neighborhood design. To this end, The Lakes at Vintage Farms shall include public amenities such as, but not limited to, sidewalks, landscaping, and parkland which exceed City of Brenham subdivision standards and are intended to provide a valuable product for the Brenham community. The Lakes PD shall allow only single-family residential uses on approximately 52.428 acres of land out of the Phillip Coe Survey, being generally west of Dixie Road and State Highway 36 (Concept Plan - Exhibit A).

SECTION II.

LAND USE AND PHYSICAL DEVELOPMENT. The Lakes at Vintage Farms by Stylecraft Builders will be managed and maintained by the existing Vintage Farms Homeowners Association ("HOA") but shall be subject to a separate Declaration of Covenants, Conditions and Restrictions from the current Declaration pertaining to Vintage Farms. Nothing herein shall modify or amend the existing ordinances or Declaration applicable to Vintage Farms.

A. No floor plan shall be repeated on the lot directly across the street, diagonally across the street, or within two (2) lots on either side of the subject lot.

B. Minimum square footage of each home shall be 1,200 square feet exclusive of garages, porches, patios and areas of the home that are not conditioned space (heat/AC). This square footage minimum matches the existing restrictions in Vintage Farms.

C. Each single-family dwelling shall include, at a minimum, a two-car private, enclosed garage.

D. Each home in Planning Area 1 (Exhibit A) shall have a minimum of 60% masonry on its front face exclusive of windows, doors, eaves, gables, trim work, walls above roof lines, and entryways/porches/patios.

E. Each home in Planning Area 2 (Exhibit A) shall have a minimum of 20% masonry on its front face exclusive of windows, doors, eaves, gables, trim work, walls above roof lines, and entryways/porches/patios.

F. The required minimum right-of-way shall be a 55-foot wide publicly dedicated right-of-way with 30-foot wide pavement, measured back-of-curb to back-of-curb.

G. A minimum of 4,500 linear feet of five foot (5') wide concrete sidewalks and concrete trails shall be constructed within the residential area, and a minimum of 2,800 linear feet of eight foot (8') wide concrete sidewalks shall be constructed in the greenspace/common areas. The Developer shall provide:
    a. Minimum of 4,500 linear feet of five foot (5') wide concrete sidewalks on one side of the streets, which shall correspond with the same look and feel of the design and layout of Vintage Farms.
    b. Minimum of 2,800 linear feet of eight foot (8') wide concrete trails within the greenspace around the lakes and common areas throughout the development to be consistent with the trail system of Vintage Farms. The final location of the trail system may differ from what is shown on Exhibit A because the exact location and design shall be determined by the topography and location of preserved trees.
    c. Pedestrian connectivity to the existing phase of Vintage Farms sidewalks and trails, as shown on Exhibit A.
    d. Five (5) pedestrian access points connecting the greenspace trails to the neighborhood sidewalk system.

H. Landscape/Fencing
    a. Perimeter fencing shall be installed along Dixie Road, and shall be stained, capped and trimmed wooden privacy fence with steel posts to match the existing perimeter fence in Vintage Farms, Phase 1. This fencing will be maintained by the HOA.
    b. Ten (10) masonry columns shall be installed in the perimeter fencing installed along Dixie Road, and shall be maintained by the HOA.
    c. Each lot shall be landscaped and irrigated, at a minimum, with full sod in the front yard.
    d. Single-family residential lots shall have at least one (1) two inch (2") or larger caliper (measured six inches (6") above the tree base) canopy or shade tree or two (2) non-canopy ornamental trees, as well as a minimum of five (5) one-gallon shrubs, planted in the front yard of the residence prior to the Certificate of Occupancy being issued by the City.
    e. Community Trees - Prior to the first Certificate of Occupancy being issued by the City for each phase of the development, community trees shall be planted throughout the development at a ratio of at least one-half (1/2) of the total number of lots in each phase as reflected on the final plat. Required trees shall be planted in common areas, greenspace, along trails and sidewalks and other areas viewable to the public. Fifty percent (50%) of the required trees shall be canopy trees measuring at least six feet (6') tall and two inches (2") in caliper when measured six inches (6") from the ground.
    f. Preservation of trees – In accordance with Appendix A - Zoning, Part II, Division 1, Section 12.05 (3) of the City of Brenham Code of Ordinances, developer shall receive credit for each existing tree that is preserved towards the number of community trees that are required by Section II (I)(f) herein above.

I. Greenspace
   a. Developer shall reserve a minimum of fifteen (15) acres of greenspace and common area for neighborhood use, including four (4) acres of lakes, all of which shall be maintained by the HOA.
   b. Developer shall install signage around the lakes with posted rules and warnings regarding usage and safety. This signage shall be maintained and updated by the HOA.
   c. Developer shall provide at minimum a 400 square foot pavilion in the greenspace/park area with the location and size to be determined based on topography, location of preserved trees, and final design of trail system. Pavilion and associated landscaping shall be maintained by the HOA.

SECTIION III.

DEVELOPMENT OF LAND. The development of land within The Lakes at Vintage Farms includes two different single-family dwelling products. Dwellings located in Planning Area 1 (Exhibit A) shall comply with the development standards applicable to properties in a Single-Family Residential (R-1) zoning district, and dwellings located in Planning Area 2 (Exhibit A) shall comply with the development standards applicable to properties in a Mixed Residential (R-2) zoning district, except as follows:

A. Planning Area 1 - The Lakes at Vintage Farms – Single-Family Residential Detached Homes
   a. 100% of the lots shall be a minimum of 6,600 square feet
   b. 35% of the lots shall be a minimum of 7,000 square feet
   c. Minimum lot width shall be 55 feet except for radial lots which shall be a minimum 50 feet measured at the front setback.
   d. Minimum lot depth shall be 120 feet (determined by the average of the two side lot lines) except for radial lots which shall have an average minimum lot depth of 110 feet.
   e. Front yards shall be setback a minimum of 25 feet as per current City development requirements.
   f. Side yards shall be setback a minimum of 7.5 feet unless adjacent to a side street in which case the minimum shall be 15 feet.
   g. Rear yards shall be setback a minimum of 20 feet

B. Planning Area 2 - The Cove at Vintage Farms – Patio Homes
   a. 100% of the lots shall be a minimum of 4,400 square feet
   b. 30% of the lots shall be a minimum of 5,700 square feet
   c. Minimum lot width shall be 40 feet
   d. Minimum lot depth shall be 120 feet (determined by the average of the two side lot lines). Three lots shall be permitted to have a minimum lot depth of 100 feet, as established in current City development requirements.
   e. Front yards shall be setback a minimum of 20 feet

f. Side yards shall be setback a minimum of 5 feet unless adjacent to a side street in which case the minimum shall be 15 feet. Distances between adjacent patio homes shall not be less than 10 feet. Lots adjacent to common areas shall maintain the 5-foot side setback.
g. Rear yards shall be setback a minimum of 15 feet

SECTION IV.

SUBDIVISION OF LAND. The subdivision of land within the Liberty Village PD shall be in accordance with subdivision standards for properties in a Residential (R-1) zoning district with the following exceptions or additions to ordinary standards:

A. Front yards shall have a minimum depth of 25 feet as per current city ordinance.

B. Side yards shall have a minimum depth of 7.5 feet unless adjacent to a side street in which case the minimum side yard shall be 15 feet.

C. Rear yards shall have a minimum depth of 20 feet.

D. The average lot depth shall not be less than 115 feet as per current city ordinance.

E. The minimum lot width shall be 55 feet.

F. The minimum lot area shall be 6,325 square feet.

G. At least 40% of all platted lots within the development shall be a minimum of 7,000 square feet or greater.

H. At least 60% of all platted lots within the development shall be a minimum of 6,600 square feet or greater.

I. The minimum right-of-way standards shall be a 50 feet wide dedicated right-of-way with 30-foot wide pavement, measured from back-of-curb to back-of-curb.

J. Three (3) pedestrian peninsulas as shown on Planning Area Exhibit 2 shall be provided as traffic calming measures to break up longer than average block lengths. Pedestrian crossings shall be provided at the pedestrian peninsula locations.

SECTION V.

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

SECTION VI.

This Ordinance shall in no manner amend, change, supplement or revise any portion of any ordinance of the City, save and except the change in zoning classification for the Property provided herein subject to the regulations, restrictions, terms and conditions of the Planned Development District provided for herein.

PASSED and APPROVED on its first reading this the ____ day of _____ 2020.

PASSED and APPROVED on its first reading this the _____ day of _____ 2020.

_____
Milton Y. Tate, Jr.
Mayor

ATTEST:

_____
Jeana Bellinger, TRMC, CMC
City Secretary

EXHIBIT A

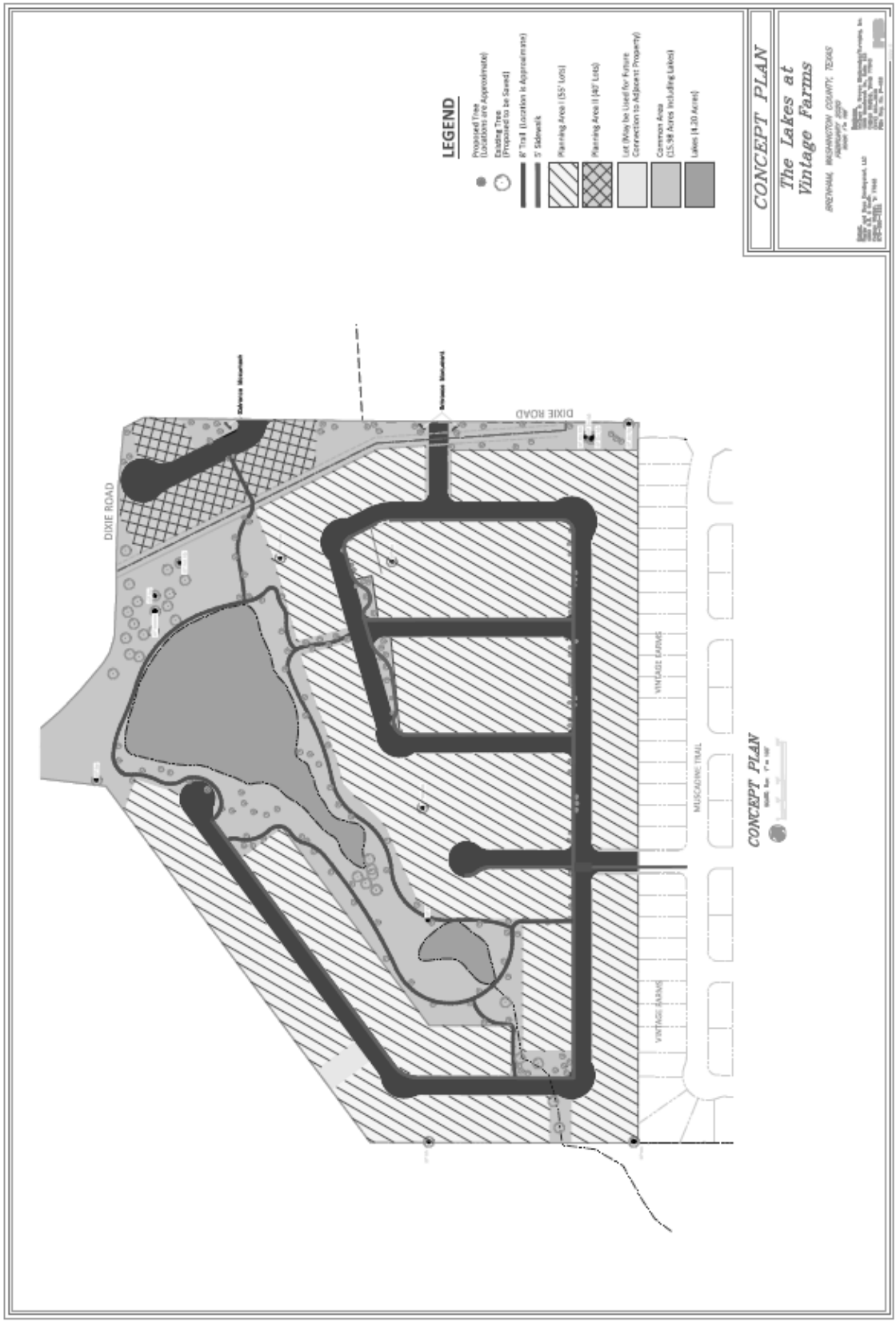
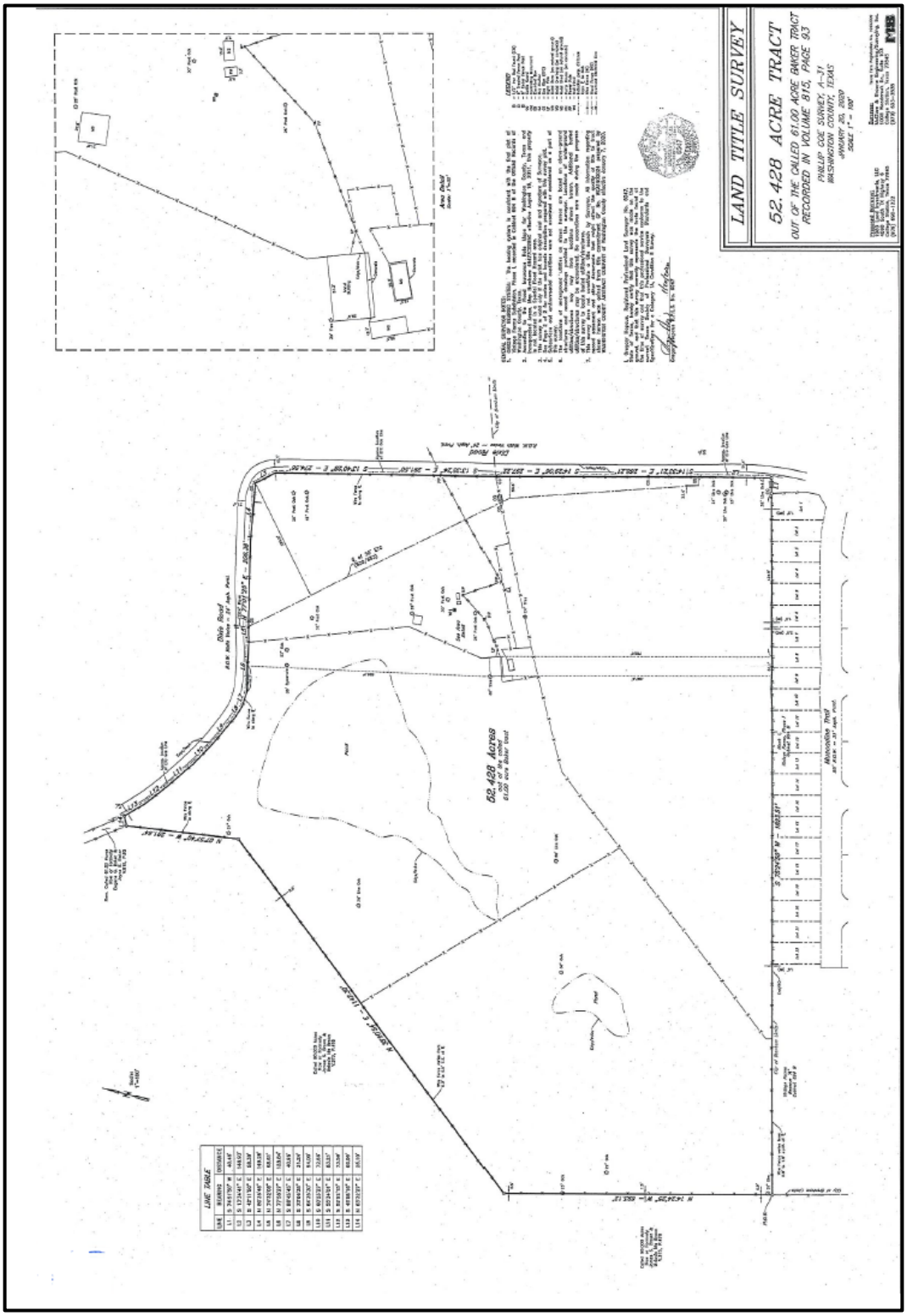

CONCEPT PLAN
The Lakes at Vintage Farms
LEGEND
Proposed Tree (Locations are Approximate)
Existing Tree (Proposed to be Saved)
8' Trail (Location is Approximate)
5' Sidewalk
Planning Area I (55' Lots)
Planning Area II (40' Lots)
Lot (May be Used for Future Connection to Adjacent Property)
Common Area (15.56 Acres including Lakes)
Lakes (4.20 Acres)
DIXIE ROAD
DIXIE ROAD
VINTAGE FARMS
MUSCADINE TRAIL
VINTAGE FARMS
CONCEPT PLAN

EXHIBIT B


LAND TITLE SURVEY
52.428 ACRE TRACT
OUT OF THE CALLED 61.00 ACRE BAKER TRACT
RECORDED IN VOLUME 815, PAGE 93
PHILLIP COE SURVEY, A-31
WASHINGTON COUNTY, TEXAS
JANUARY 20, 2009
SCALE 1" = 100'
52.428 Acres
out of the called
61.00 acre Baker tract
Old Chief
Mckeesbie Trail
LINE TABLE

City of Brenham
Planning and Zoning Commission
Staff Report
April 27, 2020

CASE NUMBER P-20-012
ZONE CHANGE REQUEST – Establishing a Planned Development District on 52.428 acres of land south and west of Dixie Road

STAFF CONTACT:	Stephanie Doland, Director of Development Services
OWNERS:	Susan B. Love, Executrix of the Joyce Baker Estate
APPLICANT:	Rainer & Son Development Company **(Stylecraft Builders)**
ADDRESS/LOCATION:	South and west of Dixie Road (Exhibit A).
LEGAL DESCRIPTION:	Tract 7 of the Phillip Coe Survey, A-31
LOT AREA:	Approximately 52.428 acres of land
ZONING DISTRICT/USE:	Not currently zoned as property is in the ETJ / Vacant undeveloped land (Exhibit B)
FUTURE LAND USE:	Single-Family Residential
REQUEST:	A request to assign a zoning classification of Planned Development District (PD) for the development of a single-family home subdivision (Exhibit C).

BACKGROUND:

The subject property is located generally south and west of Dixie Road and north of Muscadine Trail. The property is currently vacant land and is not assigned a zoning distinction because it is located in the City of Brenham ETJ. The applicant, Stephen Grove of Stylecraft Builders on behalf of Rainer & Son Development Company is requesting the subject 52.428 acres be annexed into the City of Brenham and assigned Planned Development District zoning for the development of a single-family home subdivision. The subject tract is north of the existing Vintage Farms Subdivision which is currently under construction by Stylecraft Builders. Stylecraft intends to connect the existing subdivision to the subject tract and identify an additional phase of development known as The Lakes at Vintage Farms.

PROPOSED PLANNED DEVELOPMENT (PD) DISTRICT "The Lakes PD"

The applicants are requesting zoning of the property to PD district upon its annexation into the City of Brenham. To establish alternative standards to the City's typical zoning and subdivision development standards. The proposed PD establishes the underlying base zoning district as the Residential (R-1) district for the construction of single-family dwellings and as Mixed Residential District (R-2) for construction of a small section of Patio Homes. The applicants are proposing the following development standards. The complete PD proposal and exhibits are enclosed (Exhibit D).

Subdivision Features and Characteristics:

- 4,500 linear foot of five foot (5') wide sidewalk and concrete trails shall be constructed within the residential area and a minimum of 2,800 linear feet of eight foot (8') wide sidewalks to be constructed in the greenspace/common areas
- Masonry column fencing along Dixie Road
- A (1) canopy tree or two (2) ornamental trees in the front yard of all single-family residential lots
- Community trees planted at a ratio of one-half (1/2) the number of lots in each phase reflected on the plat
- Credit for trees preserved during development
- Passive park consisting of one 400 square foot pavilion, fifteen (15) acres of greenspace and four (4) acres of lakes

Subdivision of Land:

- Planning Area 1 – The Lakes (Traditional Single-Family homes)
    - 60% masonry on front façade
    - 100% of the lots shall be minimum 6,600 square feet
    - 35% of the lots shall be minimum 7,000 square feet
    - 55-foot minimum lot width
    - 120-foot minimum lot depth
    - 25-foot front setback
    - 7.5-foot side setback
    - 20-foot rear setback
- Planning Area 2 – The Cove (Patio Homes)
    - 20% masonry on front façade
    - 100% of the lots shall be minimum of 4,400 square feet
    - 30% of the lots shall be minimum of 5,700 square feet
    - 40-foot minimum lot width
    - 120-foot minimum lot depth (with 3 lots shall be minimum of 100 feet deep (per City Ordinance))
    - 20-foot front setback
    - 5-foot side setback
    - 15-foot rear setback

RELATION TO THE BRENHAM COMPREHENSIVE PLAN, PLAN 2040: HISTORIC PAST, BOLD FUTURE

Plan 2040 was adopted as the City of Brenham Comprehensive Plan on September 19, 2019 and serves as the City's guiding document in determining zoning and land uses decisions. Adopted with the Comprehensive Plan is the Future Land Use Plan and the establishment of use-specific land use policies, general city-wide land use policies, and standards which produce a quality neighborhood design. Staff finds the following excerpt from Plan 2040 (page 37-38) is relevant for consideration of this request:

Typical features of a quality neighborhood design include:

- Some focal point, whether a park or central green, school, community center, place of worship, or small-scale commercial activity, that enlivens the neighborhood and provides a gathering place.
- Equal importance of pedestrian and vehicular circulation. Street design accommodates, but also calms, necessary automobile traffic. Sidewalks along or away from streets, and/or a network of off-street trails, provide for pedestrian and bicycle circulation (especially for school children) and promote interconnectivity of adjacent neighborhoods.
- A variety of compatible dwelling types to address a range of needs among potential residents (based on age, income level, household size, etc.).

- An effective street layout that provides multiple paths to external destinations (and critical access for emergency vehicles) while also discouraging non-local or cut-through traffic.
- Appealing streetscapes, whether achieved through street trees or other design elements, which "soften" an otherwise intensive atmosphere and draw residents to enjoy common areas of their neighborhood. This should include landscape designs consistent with local climate and vegetation.
- Compatibility of fringe or adjacent uses, or measures to buffer the neighborhood from incompatible development.
- Evident definition of the neighborhood "unit" through recognizable identity and edges, without going so far (through walls and other physical barriers) as to establish "fortress" neighborhoods.
- Set-aside of conservation areas, greenbelts or other open space as an amenity, to encourage leisure and healthful living, and to contribute to neighborhood buffering and definition.
- Use of local streets for parking to reduce the lot area that must be devoted to driveways and garages, and for the traffic calming benefits of on-street parking.

ANALYSIS OF CITY OF BRENHAM ZONING POLICIES:

The purpose of zoning policies is to provide guidelines for considering future amendments to the zoning ordinance (Part 1, Section 4 of Appendix A – "Zoning" of the Brenham Code of Ordinances). They are as follows:

(1) The city's zoning should recognize and seek to preserve the small-town attributes that make Brenham a special place for its citizens to live, work and play.

The subject property is currently located in the Brenham ETJ, generally west of the intersection of State Highway 36 N and Dixie Road. Property located to the south is zoned Planned Development District and is currently being developed with a Mixed-Use development, primarily the single-family residential subdivision known as Vintage Farms. Property to the east and across Dixie Road is developed and zoned with a mixture of uses, including rural residential along Dixie and industrial along SH 36 N. Stylecraft Builders intends to develop theses 50+ acres of land with additional phases of single-family homes, to be known as The Lakes and The Cove at Vintage Farms. The Lakes at Vintage Farms is proposed to be traditional single-family homes, whereas The Cove at Vintage Farms is planned to be developed with patio homes.

The Lakes portion of the proposed development plan deviates from the City of Brenham standard zoning by including a mixture of lot sizes including 35% of the subdivision at 7,000 square feet or greater (City standard) and the remainder at 6,600 square feet or greater. Current standards for the existing Vintage Farms Subdivision allow for all lots to be 6,600 square feet or greater. In this portion of the subdivision Stylecraft proposes reduced side building setbacks of 7.5-feet (15-foot standard) and a rear setback of 20-feet (25-foot standard). Stylecraft also proposes to include 60% masonry on all front facades.

The Cove portion of the proposed development plan is planned to be developed with a single cul-de-sac for construction of patio homes. Patio homes are sometimes referred to zero-lot line or garden style homes and are typically located on 4,000 square foot (smaller) lots and have a reduced setback. Stylecraft proposes the patio homes within this portion of the development be located on lots that are between 4,400 and 5,700 square feet. Homes within this portion of the development are planned to include 20% masonry on all front facades.

In exchange for the deviations to the City of Brenham subdivision standards, Stylecraft proposes amenities including a minimum of 2,800 linear feet of eight-foot wide concrete walking trails,

sidewalks along both sides of the street and a 15-acre greenspace/public park with a water feature and pavilion.

The City of Brenham Subdivision and Zoning Ordinances seek to establish standards which provide for the orderly, safe and healthful development of the community and protect the morals and general welfare of residents and citizens while protecting small town character as reflected in the Comprehensive Plan. Staff finds that the proposed PD meets the intent of the development standards by providing neighborhood design characteristics and elements which make a subdivision attractive and valuable for the long-term.

(2) The city's zoning should be guided by the future land use plan and other applicable guidelines found in the Comprehensive Plan.

The future land use map portion of Plan 2040: Historic Past, Bold Future, suggests the subject property may be appropriate for single-family residential uses. If the requested zone change were approved, the subject property would allow for development in keeping with the Future Land Use Plan and polices by allowing a single-family home subdivision with a mixture of housing types at this location.

Furthermore, the proposed PD includes amenities and subdivision design characteristics that exceed the City's standard subdivision and zoning standards as recommended in Plan 2040. Plan 2040 includes an excerpt which highlights what neighborhood attributes contribute to a sustainable and attractive subdivision. The applicants are proposing to meet a majority of these guidelines by providing features such as, traffic calming measures, street scaping, a passive park, a regional walking trail and a design with equal importance to pedestrian and vehicular traffic. Staff finds that the proposed request is aligned with the goals and land use policies established in the Comprehensive Plan.

(3) The city's zoning should be designed to facilitate the more efficient use of existing and future city services and utility systems in accordance with the Comprehensive Plan.

The subject property has access to City of Brenham water, gas and sanitary sewer along Dixie Road as well as access to additional services within the existing Vintage Farms Subdivision. The applicant plans to extend services located at the property throughout the development. The 50+ acres are within the Bluebonnet electric service area and the applicant has been in contact with this provider for extension of services. Staff finds that utilities in the area can be extended to serve the subject property and the proposed development.

(4) The city's zoning should be organized and as straight forward as possible to minimize use problems and enforcement problems.

The proposed zone change, if approved, will be reflected on the City of Brenham zoning map available for citizen viewing on the City of Brenham homepage.

(5) The city's zoning process should be fair and equitable, giving all citizens adequate information and opportunity to be heard prior to adoption of zoning amendments.

Property owners within 200 feet of the project site were mailed notifications of this request on April 16, 2020. The Notice of Public Hearing was published in the Brenham Banner on April 16, 2020. Any public comments submitted to staff will be provided in the Planning & Zoning Commission and City Council packets or during the public hearing.

(6) The city's zoning should ensure that adequate open space is preserved as residential and commercial development and redevelopment occur.

If approved, the subject property will be required to adhere to site development standards established in the proposed PD, all applicable ordinances adopted by the City of Brenham and not specified in the PD document. Furthermore, adherence to adopted building codes, maximum impervious coverage requirements, and drainage standards for property zoned R-1 and R-2 shall apply to the subject tract. The Lakes at Vintage Farms includes development of a 15-acre passive park, 4-acre pond, and multi-use trails to account for a mixture of lot sizes in the development, specifically those which fall below the adopted minimum lot size of 7,000 square feet. Staff finds that the public green space requirements will ensure that adequate open spaces are maintained throughout the proposed subdivision.

(7) The city's zoning should ensure Brenham's attractiveness for the future location of business and housing by preserving an attractive and safe community environment in order to enhance the quality of life for all of its residents.

Staff believes that the requested zoning and associated land uses are appropriate in this location given adjacent zoning designations, existing development in the vicinity, and conformance with the City's adopted future land use map.

(8) The city's zoning ordinance should preserve neighborhood culture by retaining and promoting land uses consistent with the community's plan for the development and/or redevelopment of its neighborhoods.

The applicant proposes a variety of subdivision standards that contribute to quality neighborhood culture and promote land development consistent with adopted development standards and the adopted Comprehensive Plan. For example, the City of Brenham subdivision ordinance does not currently require the development of sidewalks or parks within a single-family home subdivision. However, the applicant proposes to provide 5-foot wide sidewalks on one side of the street as well as a 15 acre park, and regional concrete trails. While smaller than normal lot sizes are proposed, the aforementioned amenities meet the intent of the ordinance in terms of preserving open spaces within the development.

Additionally, the applicant proposes landscaping on each platted lot and throughout the development. Each lot within the subdivision shall have either one canopy tree or two ornamental trees to contribute to an aesthetic street scape. Similar to Vintage Farms, Stylecraft plans to include a wooden fence with masonry columns along Dixie Street and landscaping throughout the development in common areas and along rights-of-way. The City's development standards do not require the aforementioned fence or landscaping standards for residential development and staff finds that these offerings (and the additional proposed standards) will ensure the long term viability of the. In summary, staff finds that the proposed PD, if approved will allow for the development of a single-family neighborhood in accordance with the adopted development standards and Plan 2040 in terms of promoting land uses consistent with the community's plan.

(9) The city's zoning should protect existing and future residential neighborhoods from encroachment by incompatible uses.

The subject property is adjacent to vacant land, Dixie Road and Vintage Farms Subdivision. Staff is unable to determine any incompatible uses or development with the proposed PD.

(10) The city's zoning should assist in stabilizing property values by limiting or prohibiting the development of incompatible land uses or uses of land or structures, which negatively impact adjoining properties.

Staff is unable to determine any destabilizing effects on the neighboring properties should this rezoning request be approved.

(11) The city's zoning should make adequate provisions for a range of commercial uses in existing and future locations that are best suited to serve neighborhood, community and regional markets.

If approved, the proposed rezoning will allow for the development of a single-family home subdivision. The subject property is adjacent to a local street and therefore not located in an area where commercial development is likely to prosper. The nearest land currently available for Commercial development is located southeast of the subject tract immediately adjacent to SH 36 N and planned for Commercial Development with the original Vintage Farms PD.

(12) The city's zoning should give reasonable accommodation to legally existing incompatible uses, but it should be fashioned in such a way that over time, problem areas will experience orderly change through redevelopment that gradually replaces the nonconforming uses.

The property is currently undeveloped, vacant land. Staff is not aware of any hindrances on the property created by legally existing incompatible uses. The proposed rezoning will allow for compatible, legally conforming development.

(13) The city's zoning should provide for orderly growth and development throughout the city.

Staff finds that the proposed rezoning change will allow for the orderly growth and development in the general vicinity and throughout the city. Furthermore, the proposed rezoning is in accordance with the City's adopted Future Land Use Map and Comprehensive Plan.

PLANNED DEVELOMENT DISTRICT GENERAL GUIDELINES:

In addition to the zoning policies above, Planned Development Districts must also meet the following guidelines:

(1) A Planned Development District shall conform to applicable regulations and standards established by this ordinance.

The zoning regulations that The Lakes at Vintage Farms PD deviates from do not undermine the density requirements or intent of the single-family residential zoning district. Furthermore, modifications to lot size and setbacks are accommodated by quality neighborhood design standards as specified in the Comprehensive Plan, Plan 2040.

(2) A Planned Development District should be compatible with existing or permitted uses on abutting sites, in terms of use, building height, bulk and scale, setbacks and open spaces, landscaping, drainage, or access and circulation features.

This proposed single-family residential development is compatible with the surrounding land uses, including Dixie Street, rural residential and industrial uses. The proposed PD includes the underlying R-1 and R-2 zoning district standards and does not deviate from

building height, drainage, access or impervious coverage requirements. As mentioned above, the smaller than standard lot sizes and reduced setbacks proposed are mitigated by the 15-acre park and trail system proposed within the development.

(3) A Planned Development District shall not create unfavorable effects or impacts on other existing or permitted uses on abutting sites that cannot be mitigated by the provisions of the planned development.

There are no foreseen unfavorable effects or impacts on the area.

(4) A Planned Development District shall not adversely affect the safety and convenience of vehicular and pedestrian circulation in the vicinity, including traffic reasonably expected to be generated by the proposed development and other uses reasonably anticipated in the area considering existing zoning and land uses in the area.

This property is adjacent to the existing Vintage Farms Subdivision and the attached conceptual plan shows connection between the two phases of construction. The existing subdivision currently has two access points to SH 36 N, one direct access and one access point through Vintage Farms Way. State Highway 36 is a freeway that is capable of handling large volumes of traffic and will serve as the primary route for traffic into and out of the subdivision. In addition to connection to the existing subdivision, Stylecraft intends to construct a primary entrance to The Lakes along Dixie Road.

A feature of quality neighborhood design listed in Plan 2040 includes placing equal importance on vehicular and pedestrian traffic. The proposed subdivision layout includes reduced block lengths and pedestrian crosswalks in an effort to increase pedestrian safety within the subdivision, specifically to connect homes to the regional trail system and park. Staff finds the proposed PD accounts for the safety and convince of vehicular and pedestrian traffic generated within the development.

(5) A Planned Development District must reasonably protect persons and property from erosion, flood or water damage, fire, noise, glare, and similar hazards or impacts.

Drainage information will be required at the time of platting and a Homeowners Association will be created with bylaws and governing documents pertaining to the maintenance of the proposed detention areas.

(6) A Planned Development District shall not adversely affect traffic control or adjacent properties by inappropriate location, lighting, or types of signs.

Staff is unable to determine any adverse impacts caused by inappropriate lighting or types of signs. As with all development, an increase in traffic is expected around the subject property. Staff will review traffic counts and mitigation measures proposed by the developer at the time the civil construction documents are submitted to the City for review.

(7) A Planned Development District must protect the public health, safety, or welfare, and shall not be materially injurious to properties or improvements in the vicinity.

This request should not have any adverse impact on the public health, safety or welfare of adjacent property or property in the general vicinity. Furthermore, the proposed amenities

within the subdivision will enhance the public health and welfare of the Vintage Farms homeowners and City of Brenham residents in general.

STAFF RECOMMENDATION:

Staff recommends approval of the proposed zoning to a Planned Development District (PD) for the subject 52.428-acre tract known as the Lakes of Vintage Farms Planned Development.

EXHIBITS:

A. Aerial Map
B. Zoning Map
C. Future Land Use Map
D. Proposed Planned Development District and Exhibits
E. Site Photos

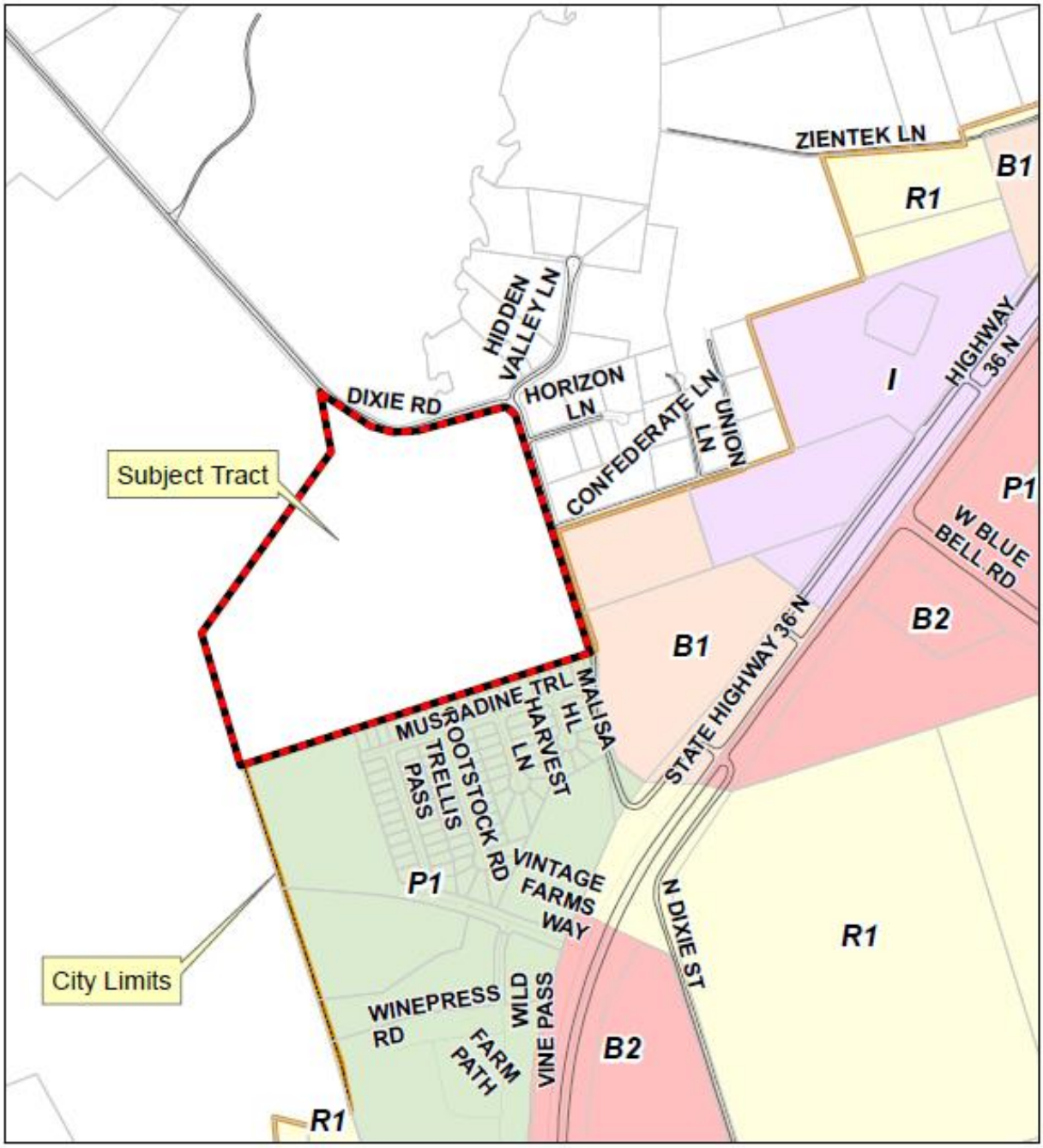
EXHIBIT "A"
AERIAL MAP

Aerial Map
Lakes at Vintage Farms

1 inch = 682 feet

City of BRENHAM

EXHIBIT "B"
ZONING MAP

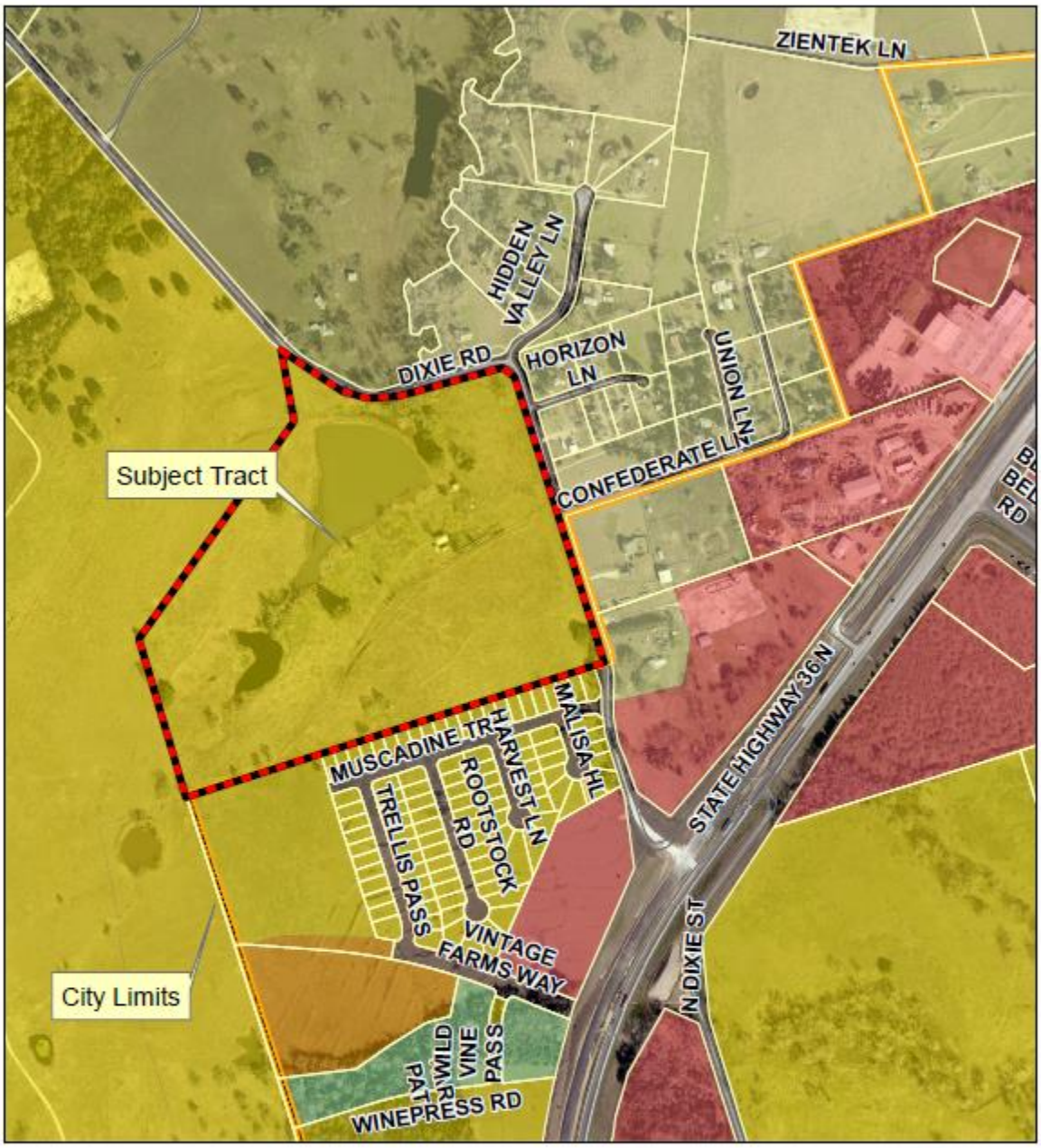


Zoning Map
Lakes at Vintage Farms

1 inch = 682 feet

City of BRENHAM

EXHIBIT "C"
FUTURE LAND USE MAP



Legend

- City Limits
- Future Land Use Plan
- FLU_FINAL
- Rural
- Open Space
- Park
- Estate Residential
- Single Family Residential
- Manufactured Homes
- Multi-Family Residential
- Mixed Use Blinn Adjacent
- Mixed Use Downtown Adjacent
- Corridor Mixed Use
- Planned Development
- Downtown
- Local Public Facilities
- Commercial
- Industrial

Future Land Use Map

City of BRENHAM

1 inch = 568 feet

EXHIBIT "D"

PROPOSED PLANNED DEVELOPMENT DISTRICT AND EXHIBITS

Development Requirements for
The Lakes at Vintage Farms Planned Development District

I. Purpose and Intent:

The Lakes at Vintage Farms Planned Development District ("The Lakes PD)" is intended to guide land use and physical development of the subject property. This development plan is enacted as a means to provide the City and the Developer with alternative standards set forth by the City for their mutual benefit. The Lakes PD is intended to add this tract of land to the current Vintage Farms development by incorporating the existing design and feel of Vintage Farms while providing new elements which will differentiate The Lakes at Vintage Farms as unique. Additionally, The Lakes PD looks to improve property utilization by facilitating the highest and best uses, provide quality cost-efficient housing, strengthen the area economy, and enhance the general welfare of the surrounding community. The Lakes PD reflects the goals of the City's adopted Comprehensive Plan - Historic Past, Bold Future: Plan 2040 which establishes recommendations for developing quality neighborhood design. To this end, the Lakes at Vintage Farms shall include public amenities such as, but not limited to, sidewalks, landscaping, and parkland which exceed City of Brenham subdivision standards and are intended to provide a valuable product for the Brenham community. The Lakes PD shall allow only single-family residential uses on approximately 53.5 acres of land out of the Phillip Coe Survey, being generally west of Dixie Road and State Highway 36 (Concept Plan - Exhibit A).

II. Land Use and Physical Developments:

A. The Lakes at Vintage Farms by Stylecraft Builders will be managed by the existing HOA but shall be subject to a separate set of Declaration of Covenants, Codes and Restrictions from the current declarations pertaining to Vintage Farms. Nothing in this agreement shall impact the existing ordinance or declarations of Vintage Farms.

B. No floor plan shall be repeated on the lot directly across the street, diagonally across the street, or within two lots on either side of the subject lot.

C. Minimum square footage of each home shall be 1,200 square feet exclusive of garages, porches, patios and areas of the home that are not conditioned space (heat/AC). This square footage minimum matches the existing restrictions in Vintage Farms.

D. Each single-family dwelling shall include, at a minimum, a two-car private, enclosed garage.

E. Each home in Planning Area 1 (Exhibit A) shall have a minimum of 60% masonry on front face exclusive of windows, doors, eaves, gables, trim work, walls above roof lines, entryways/porches/patios.

F. Each home in Planning Area 2 (Exhibit A) shall have a minimum of 20% masonry on front face of patio homes, exclusive of windows, doors, eaves, gables, trim work, walls above roof lines, entryways/porches/patios.

G. The minimum right-of-way standards shall be a 55-foot wide dedicated right-of-way with 30-foot wide pavement, measured back-of-curb to back-of-curb.

H. A minimum of 4,500 linear foot of five foot (5') wide sidewalk and concrete trails shall be constructed within the residential area and a minimum of 2,800 linear feet of eight

foot (8') wide sidewalks to be constructed in the greenspace/common areas. The Developer Shall provide:

a. Minimum of 4,500 linear foot five foot (5') wide sidewalks on one side of the streets shall correspond with the same look and feel of the design and layout of Vintage Farms.
b. Minimum 2800 linear foot of eight foot (8') wide concrete trails within the greenspace around the lakes and common areas throughout the development to be consistent with the trail system of Vintage Farms. The final location of the trail system may differ from what is shown on Exhibit A as exact location and design shall be determined by topography, and location of preserved trees.
c. Pedestrian connectivity to the existing phase of Vintage Farms sidewalks and trails, as shown on Exhibit A.
d. Multiple pedestrian access points connecting the greenspace sidewalks to the neighborhood sidewalk system.

I. Landscape/Fencing

a. Fencing along Dixie Road shall be stained, capped and trimmed wooden perimeter fence with steel posts to match existing perimeter fence in Vintage Farms Phase 1 and will be maintained by HOA.
b. Ten (10) masonry columns shall be installed along Dixie Road and maintained by HOA.
c. Each lot shall be landscaped and irrigated, at a minimum, with full sod in the front yard.
d. Single-family residential lots shall have at least one (1) two inch (2") or larger caliper (measured six inches (6") above the tree base) canopy or shade tree or two (2) non-canopy ornamental trees as well as a minimum of five (5) one-gallon shrubs planted in the front yard of the residence and prior to certificate of occupancy being issued.
e. Community Trees - Prior to the first Certificate of Occupancy being issued for each phase of the development, community trees shall be planted throughout the community at a ratio of one-half (1/2) the number of lots in each phase reflected on the plat. Required trees shall be placed in common areas, greenspace, along trails and sidewalks and other areas viewable to the public. Fifty percent of the required trees shall be canopy trees measuring six feet (6') tall and two inches (2") in caliper when measured six inches (6") from the ground.
f. Preservation of trees – Per city code Section 12.05 (3) developer shall receive credit against planting community trees for every existing tree that is preserved.

J. Greenspace

a. Developer will reserve at a minimum fifteen (15) acres of greenspace and common area for neighborhood use, including four (4) acres of lakes, all of which shall be maintained by the HOA.
b. Developer to install signage around the lakes with posted rules and warnings regarding usage and safety to be maintained and updated by the HOA.
c. Developer shall provide at minimum a 400 square foot pavilion in the greenspace/park area with a location and size to be determined based on topography, location of preserved trees, and final design of trail system. Pavilion and associated landscaping shall be maintained by the HOA.

III. Subdivision of Land:

The subdivision of land within The Lakes at Vintage Farms includes two different single-family dwelling products. Dwellings located in Planning Area 1 (Exhibit A) shall be in

accordance with subdivision standards for properties in a Residential (R-1) zoning district, and dwellings located within Planning Area 2 (Exhibit A) shall be in accordance with Mixed Residential District (R-2), with the following exceptions or additions to ordinary standards:

A. *Planning Area 1* - The Lakes at Vintage Farms – Single-Family Residential Detached Homes
    a. 100% of the lots shall be minimum 6,600 square feet
    b. 35% of the lots shall be minimum 7,000 square feet
    c. Minimum lot width shall be 55 feet except for radial lots which shall be a minimum 50 feet measured at the front setback.
    d. Minimum lot depth shall be 120 feet (determined by the average of the two lot lines) except for radial lots which shall have an average minimum lot depth of 110 feet.
    e. Front yards shall be setback a minimum of 25 feet as per current city ordinance.
    f. Side yards shall be setback a minimum of 7.5 feet unless adjacent to a side street in which case the minimum shall be 15 feet.
    g. Rear yards shall be setback a minimum of 20 feet
B. *Planning Area 2* - The Cove at Vintage Farms – Patio Homes
    a. 100% of the lots shall be minimum of 4,400 square feet
    b. 30% of the lots shall be minimum of 5,700 square feet
    c. Minimum lot width shall be 40 feet
    d. Minimum lot depth shall be 120 feet (determined by the average of the two lot lines). Three lots shall be permitted to have a minimum lot depth of 100 feet, as established in current city ordinance.
    e. Front yards shall be setback a minimum of 20 feet
    f. Side yards shall be setback a minimum of 5 feet unless adjacent to a side street in which case the minimum shall be 15 feet. Distances between adjacent patio homes shall not be less than 10 feet. Lots adjacent to common areas shall maintain the 5 foot side setback.
    g. Rear yards shall be setback a minimum of 15 feet

Exhibit A

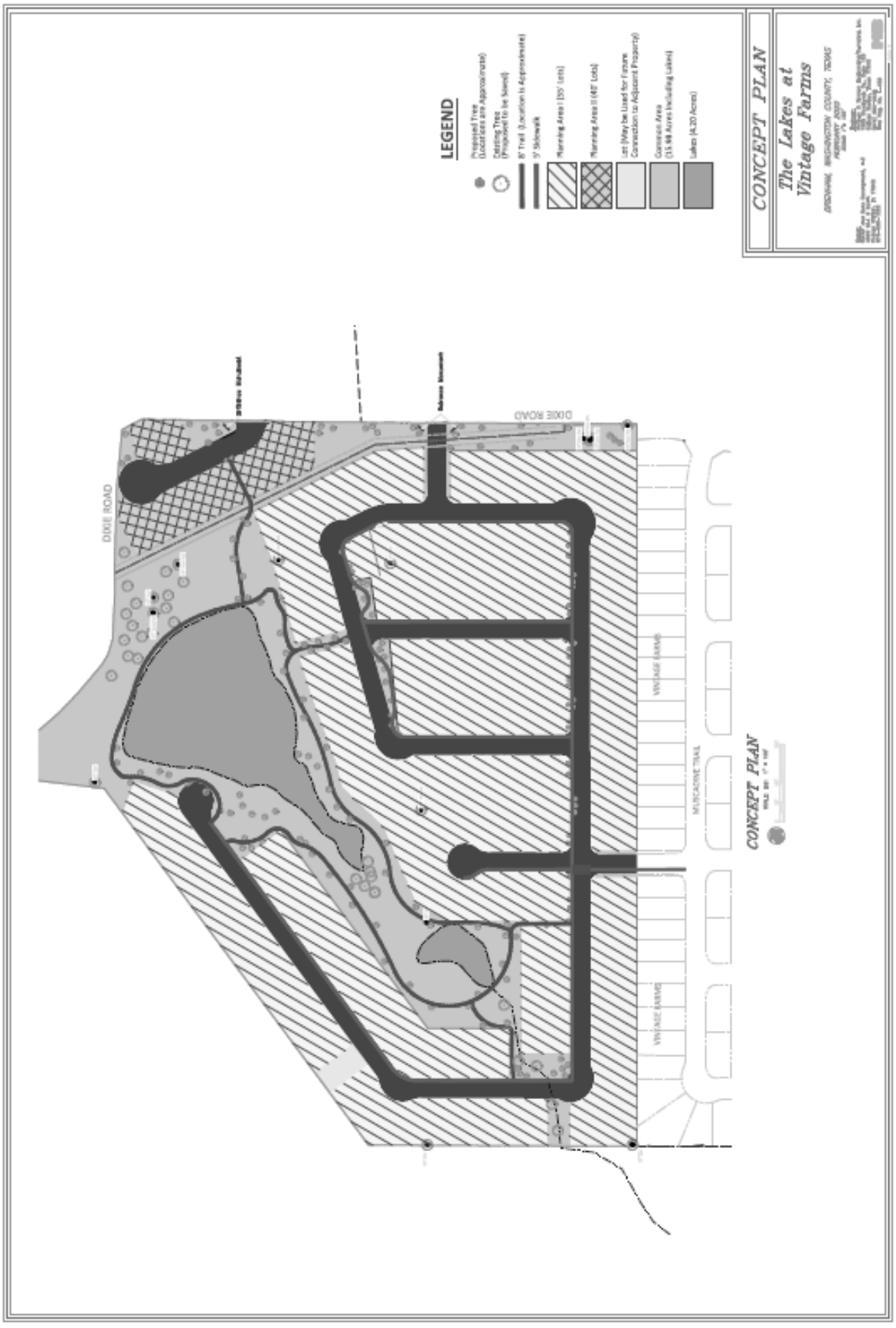

CONCEPT PLAN
The Lakes at Vintage Farms
LEGEND
Proposed Tree (Locations are Approximate)
Existing Tree (Proposed to be Saved)
8' Trail (Location is Approximate)
5' Sidewalk
Planning Area I (55' Lots)
Planning Area II (45' Lots)
Lot (May be Used for Future Connection to Adjacent Property)
Common Area (15.98 Acres Including Lakes)
Lakes (4.20 Acres)
DIXIE ROAD
VINTAGE FARMS
MUSCADINE TRAIL
CONCEPT PLAN

EXHIBIT "E"

View from Dixie Road – Vintage Farms Subdivision in Background

Subject Property facing west from Dixie Road

To: Sdoland@cityofbrenham.org

Please include the following questions and comment into the record for the May 7, 2020 meeting. Please email me and let me know that you have received this.

May 1, 2020

Dear Councilmen:

RE: The annexation of 52.428 acres of land, south and west of Dixie Road, Tract 7 of Phillip Coe Survey A-31. I have 3 questions and a comment.

1. In looking at the Aerial Map, Exhibit "A" in the Planning and Zoning minutes on April 27, 2020, the yellow line indicating city limits appears to go past this tract down toward N. Berlin Road, incorporating more than the 52.428 acres of land. Is the City annexing MORE than the 52.428 acres of land? If so, why isn't this made public?
2. How many homes and patio homes does the developer plan to have in this section of the development?
3. Dixie road is substandard at best with no shoulder and two sharp turns in the road. The developer plans to have the primary entrance, (section 4, page 7 of the proposal) on Dixie road. With another 100-300 cars using Dixie Road what plans does the City have in improving Dixie Road and how soon?

COMMENT

As Homeowners on N. Berlin Road near Dixie, I believe our property value will decrease with the additional traffic and accidents both on N. Berlin from 290 and Dixie road. Dixie is already filled with pot holes and has two dangerous curves.

Respectively submitted,

Steve and Eileen Snider

AGENDA ITEM 9

DATE OF MEETING: May 7, 2020	**DATE SUBMITTED:** April 28, 2020
DEPT. OF ORIGIN: Development Services	**SUBMITTED BY:** Shauna Laauwe

MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
☒ REGULAR	☒ PUBLIC HEARING	☒ 1ST READING
☐ SPECIAL	☐ CONSENT	☐ 2ND READING
☐ EXECUTIVE SESSION	☒ REGULAR	☐ RESOLUTION
	☐ WORK SESSION	

AGENDA ITEM DESCRIPTION: Public Hearing, Discussion and Possibly Act Upon an Ordinance on Its First Reading Amending the Official Zoning Map of the City of Brenham, to Change the Zoning District from a Mixed Residential District (R-2) to a Commercial, Research and Technology District (B-2) on Approximately 0.997 Acres of Land Located at 811 W. Fifth Street, Being Further Described as Lot 1 in Block 2 of the Blinn Fifth Street Subdivision, in Brenham, Washington County, Texas (Case Number P-20-013)

SUMMARY STATEMENT: The subject property is an approximate one-acre (0.997 acre) tract of vacant land addressed as 811 West Fifth Street and generally located on the southeast corner of the T-intersection of West Fifth Street and High Street. The property is currently zoned R-2, Mixed Residential Use District. The applicant, Blinn Junior College, is requesting the 0.997-acre tract to be rezoned to B-2, Commercial, Research and Technology District to allow for the development of an accessory off-street parking area to serve a planned student dormitory to be located immediately to the west, across High Street.

Blinn Jr. College has begun the building permit process for a student dormitory to be located to the west, across High Street that will encompass the 900 block of West Fifth Street. The dormitory site will provide a portion of the required off-street parking, while the subject one-acre tract is proposed to be an accessory parking lot for the dormitory. The R-2 District does not allow parking lots as a permitted use, however the B-2 District does allow property to be developed as accessory uses for permitted uses. Thus, rezoning the subject property to B-2 would allow the lot to be developed as an accessory parking lot to the permitted dormitory to be located at 901 West Fifth Street.

The adjacent and surrounding properties of the subject tract to the south and east are zoned R-2 District and developed as single-family, two-family and multi-family residential uses. Properties to the north, across West Fifth Street and to the west, across High Street, are zoned B-2 and developed as Prairie Lea Cemetery and as part of the Blinn Jr. College Campus. The requested rezoning to B-2 would be consistent with the surrounding Blinn Jr. College properties. The Future Land Use Map, part of the 2040 Comprehensive Plan adopted on September 19, 2019, indicates that the subject property is suitable for institutional uses such as Blinn Jr. College.

In addition, the Comprehensive Plan encourages the partnership between the City of Brenham and Blinn Jr. College. The proposed development and coordinating rezoning request meet two Strategic Action Priorities outlined in the Comprehensive Plan, to identify capacity to construct additional on-campus housing and to identify parking needs, availability and utilization.

If the rezoning is approved, any proposed development of the property will undergo a planning permit process to ensure that all zoning, building and fire codes are met. Any B-2 Development adjacent to residential property will be required to provide a twenty (20) foot buffer yard in addition to the required side and rear yard setbacks. Within the buffer yard, a screening fence or hedge is required and at least 20 percent must be landscaped. The proposed parking lot will also be required to provide landscape islands on the ends of each parking row, shrubbery or hedge along the public rights-of-way and a tree for every twelve (12) parking spaces.

On Monday, April 27, 2020, after conducting a Public Hearing, the Planning and Zoning Commission **voted unanimously to recommend approval** of the rezoning request as presented.

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. PROS: The future land use map portion of the Envision 2020 Comprehensive Plan suggests the subject property may be appropriate for institutional uses, that includes College or University, development. The proposed request aligns with the goals and land use polices established in the Comprehensive Plan.

B. CONS: None identified.

ALTERNATIVES (In Suggested Order of Staff Preference): N/A

ATTACHMENTS: (1) Ordinance for first reading; and (2) Staff Report to the Planning and Zoning Commission

FUNDING SOURCE (Where Applicable): N/A

RECOMMENDED ACTION: Approve an Ordinance on its first reading amending the Official Zoning Map of the City of Brenham, to change the Zoning District from a Mixed Residential District (R-2) to a Commercial, Research and Technology District (B-2) on approximately 0.997 acres of land located at 811 W. Fifth Street, being further described as Lot 1 in Block 2 of the Blinn Fifth Street Subdivision, in Brenham, Washington County, Texas (Case Number P-20-013).

APPROVALS: James Fisher

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS, AMENDING APPENDIX A - "ZONING" OF THE CODE OF ORDINANCES, AND THE OFFICIAL ZONING MAP OF THE CITY OF BRENHAM, BY CHANGING THE ZONING DISTRICT CLASSIFICATION FROM MIXED RESIDENTIAL DISTRICT (R-2) TO A COMMERCIAL, RESEARCH AND TECHNOLOGY DISTRICT (B-2) ON AN APPROXIMATELY 0.997 ACRE TRACT OF LAND DESCRIBED AS LOT 1 IN BLOCK 2 OF THE BLINN FIFTH STREET SUBDIVISION, IN BRENHAM, WASHINGTON COUNTY, TEXAS.

WHEREAS, the owner(s) of the 0.997 acres of land generally located on the southeast corner of the T-intersection of West Fifth Street and High Street, addressed as 801 West Fifth Street, and being further described as Lot 1 in Block 2 of the Blinn Fifth Street Subdivision, in Brenham, Washington County, Texas, (the "Property"), have requested that the Property be rezoned; and

WHEREAS, the City of Brenham has adopted Appendix A – "Zoning" of the City of Brenham Code of Ordinances, as amended, which divides the City of Brenham into various zoning districts; and

WHEREAS, Appendix A – "Zoning" of the City of Brenham Code of Ordinance authorizes the City Council to grant zoning changes by adopting ordinances amending Appendix A for each individual permanent zoning change; and

WHEREAS, at least ten (10) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days after written notice of that hearing was mailed to the owners of land within two hundred feet of the Property in the manner required by law, the Planning & Zoning Commission held a public hearing on the requested rezoning; and

WHEREAS, this amendment was recommended for approval by the City of Brenham Planning and Zoning Commission in its final report during its regular meeting on April 27, 2020; and

WHEREAS, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing for the requested rezoning, the City Council held the public hearing for the requested rezoning and the City Council considered the final report of the Planning & Zoning Commission; and

WHEREAS, the City Council deems it appropriate to grant such proposed change in the zoning district classification of the Property.

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

SECTION 1. That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas, and the Official Zoning Map of the City of Brenham are hereby amended by changing the zoning district classification from a Mixed Residential District (R-2) to a Commercial, Research and Technology District (B-2) on approximately 0.997 acres of land addressed as 801 West Fifth Street, and further described as Lot 1 in Block 2 of the Brenham Fifth Street Subdivision, in Brenham, Washington County, Texas, said area of land being further described and depicted in Exhibit "A" attached hereto and incorporated herein for all purposes.

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

PASSED and APPROVED on its first reading this the ____ day of _____ 2020.

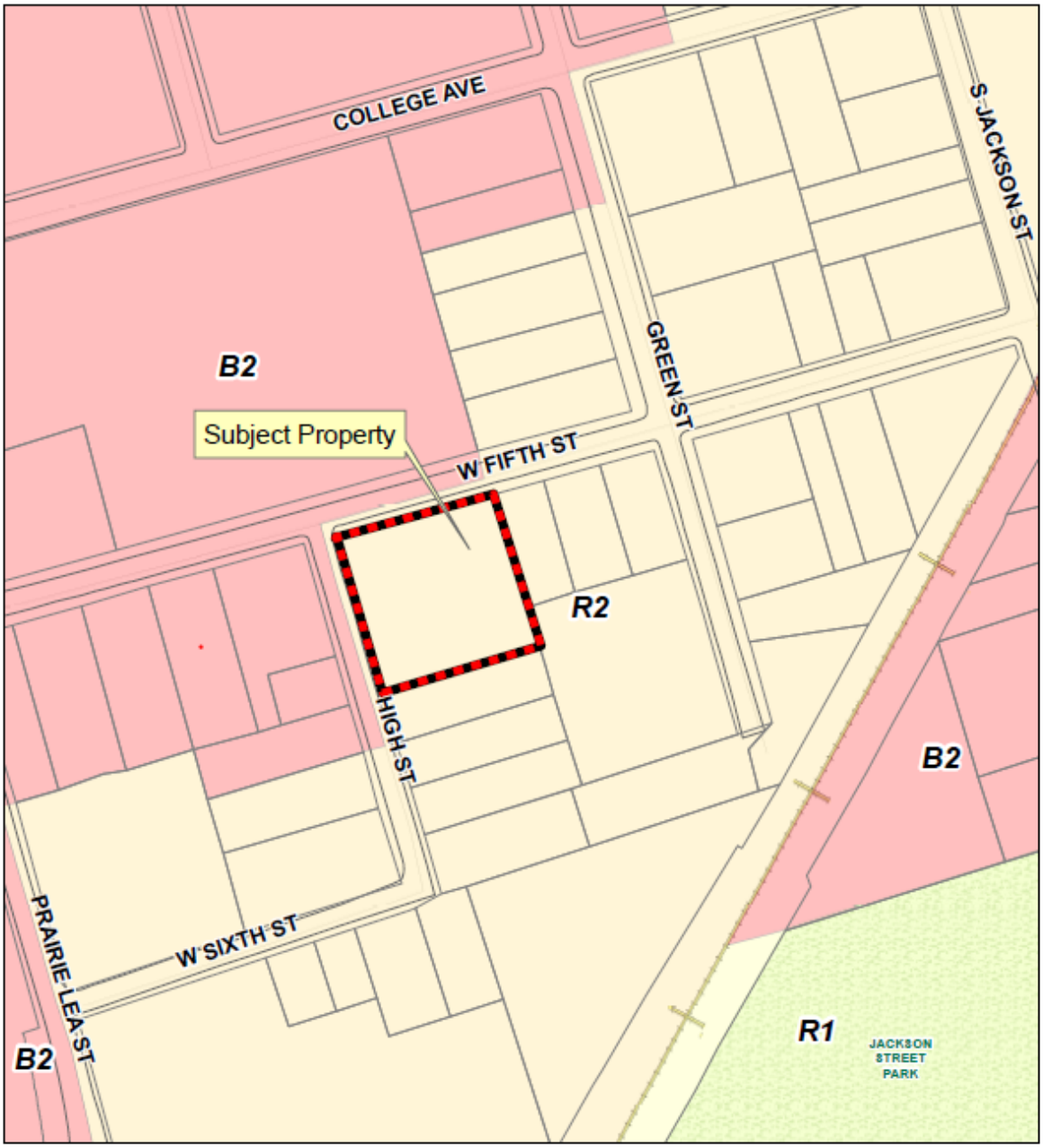
PASSED and APPROVED on its second reading this the _____ day of _____ 2020.

_____
Milton Y. Tate, Jr.
Mayor

ATTEST:

_____
Jeana Bellinger, TRMC, CMC
City Secretary

Exhibit "A"



Zoning Map
811 W Fifth Street

City of BRENHAM

1 inch = 170 feet

City of Brenham
Planning and Zoning Commission
Staff Report
April 27, 2020

CASE NUMBER P-20-013
ZONE CHANGE REQUEST – 811 W. FIFTH STREET

STAFF CONTACT:	Shauna Laauwe, AICP, Project Planner
OWNERS/APPLICANTS:	Blinn Jr. College
ADDRESS/LOCATION:	811 W. Fifth Street (Exhibit A)
LEGAL DESCRIPTION:	Lot 1 in Block 2 of the Blinn Fifth Street Subdivision
LOT AREA:	Approximately 0.997 acres
ZONING DISTRICT/USE:	Mixed Residential Use District (R-2) / Commercial (Exhibit B)
FUTURE LAND USE:	Local Public Facilities/Blinn Junior College
REQUEST:	A request to change the zoning classification from a Mixed Residential Use District (R-2) to a Commercial Research and Technology Use District (B-2) (Exhibit C)

BACKGROUND:

The subject property is owned by Blinn Jr. College and zoned as R-2, Mixed Residential Use Zoning District. The subject property consists of a 0.997-acre vacant tract of land located at 811 W. Fifth Street. The property owner/applicant is requesting to rezone the property to be consistent with adjacent Blinn properties and to utilize this property as a parking lot for the needs of the College. Blinn Jr. College is requesting that the property be rezoned to B-2, Commercial Research and Technology Use District, to match Blinn's existing zoning and to facilitate future development.

ANALYSIS OF CITY OF BRENHAM ZONING POLICIES:

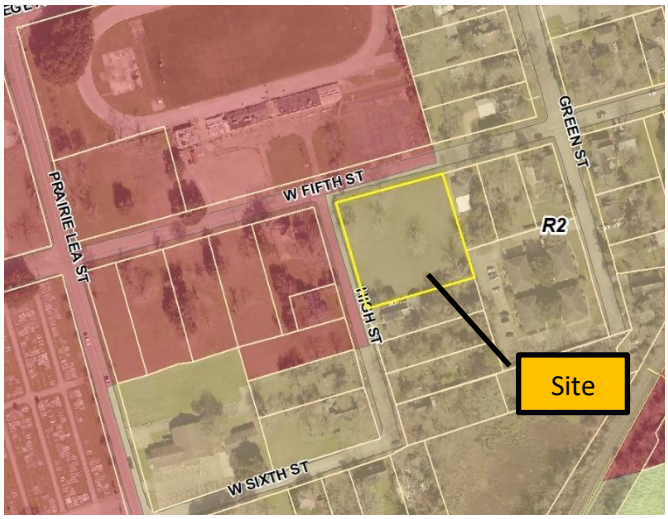
The purpose of zoning policies is to provide guidelines for considering future amendments to the zoning ordinance (Part 1, Section 4 of Appendix A – "Zoning" of the Brenham Code of Ordinances). They are as follows:

(1) The city's zoning should recognize and seek to preserve the small-town attributes that make Brenham a special place for its citizens to live, work and play. *Please refer to Map 1 on the following page for a visual of the current zoning described herein.*

The subject property is in the vicinity of Blinn Jr. College and surrounded by a mixture of institutional and residential uses. The approximate 1-acre tract is located on the southeast corner of the T-intersection of West Fifth Street and High Street and directly south of the former Blinn football stadium. The adjacent properties, across High Street to the west and W. Fifth Street to the

north, are also owned by Blinn Jr. College and zoned B-2, Commercial Research and Technology District. The adjacent property to the west is currently vacant, whereas the property to the north is the former parking lot for the Blinn Jr. College football stadium and track. In addition, surrounding properties further to the north and west are part of Blinn Jr. College campus. Adjacent properties to the south and east are not owned by the applicant and are zoned R-2, Mixed Residential District. The adjacent properties to the south and east are developed as single-family homes. The adjacent property to the southeast is developed as Brenham Oak Creek Apartments.

Figure 1



The applicant is currently pursuing a building permit to develop the vacant tract directly to the west, across High Street, as a student dormitory with the subject one-acre tract serving as a parking lot to support the development. The current R-2 zoning designation does not allow for a parking lot to be the primary use of a stand-alone lot. As evidenced, the subject property is located within an area of a mixture of land uses, and approval of the proposed rezoning request would allow the applicant to develop additional parking for Blinn Jr. College residents while in keeping with the development pattern in the general vicinity.

(2) The city's zoning should be guided by the future land use plan and other applicable guidelines found in the Comprehensive Plan.

Figure 2- *Future Land Use Map*

As shown in Figure 2, the future land use map portion of the Historic Past, Bold Future: Plan 2040 Comprehensive Plan suggests the subject property may be appropriate as part of a future expanded Institutional Use, specifically, Blinn Junior College. The requested B-2 zoning district allows for a mixture of land uses, including Educational institutions, multifamily, including dormitories for students on sites of two (2) acres or more, and accessory buildings and uses of permitted uses. These permitted uses would include an accessory parking lot on the subject property for the proposed dormitory development to the west, across High Street. The Future Land Use Map, shown in Figure 2 includes the subject site and surrounding area. The subject property and the properties to the north and west are shaded in gray, which represent envisioned institutional uses, while the orangish color represents envisioned multifamily residential uses.

If the requested zone change were approved, the subject property would be permitted to develop with the proposed accessory parking area for the future dormitory to be located on the vacant

property to the west, across High Street. The Comprehensive Plan contains a section dedicated to the importance of the partnership and coordination between the City and Blinn College- Brenham Campus, to include a list of wide-ranging strategic action priorities. The proposed development of the dormitory and the accessory parking area meets two of the strategic action priorities listed; to identify capacity to construct additional on-campus housing, such as potential for larger dorms; and two, to identify parking needs, availability and utilization. Staff finds that the proposed request meets the Future Land Use Plan and is a step towards the goals and land use policies established in the Comprehensive Plan.

(3) The city's zoning should be designed to facilitate the more efficient use of existing and future city services and utility systems in accordance with the Comprehensive Plan.

The subject property is a vacant lot with existing utility services located along the rights-of-way for W. Fifth and High Streets, which can be utilized to serve the future development on the property.

(4) The city's zoning should be organized and as straight forward as possible to minimize use problems and enforcement problems.

The proposed zone change, if approved, will be reflected on the City of Brenham zoning map available for citizen viewing on the City of Brenham homepage.

(5) The city's zoning process should be fair and equitable, giving all citizens adequate information and opportunity to be heard prior to adoption of zoning amendments.

Property owners within 200 feet of the project site were mailed notifications of this request on April 16, 2020. The Notice of Public Hearing was published in the *Brenham Banner* on April 16, 2020. Any public comments submitted to staff will be provided in the Planning & Zoning Commission and City Council packets or during the public hearing.

(6) The city's zoning should insure that adequate open space is preserved as residential and commercial development and redevelopment occur.

If approved, the property will be required to adhere to minimum building setbacks and maximum impervious coverage requirements for property zoned B-2. The B-2 zoning district establishes a maximum impervious coverage limit of 85% and minimum building setbacks. Furthermore, development on the subject property will have additional buffer yard requirements along the property lines to the south and east that abut residential uses. Staff finds that the adopted zoning ordinance and building codes will ensure that adequate open spaces are preserved on the subject property.

(7) The city's zoning should insure Brenham's attractiveness for the future location of business and housing by preserving an attractive and safe community environment in order to enhance the quality of life for all of its residents.

Staff finds that the requested zoning and associated land uses are appropriate for this location given adjacent zoning designations, existing development in the vicinity, and conformance with the City's adopted future land use map.

(8) The city's zoning ordinance should preserve neighborhood culture by retaining and promoting land uses consistent with the community's plan for the development and/or redevelopment of its neighborhoods.

Rezoning the subject property to B-2 will allow Blinn Jr. College to develop the subject property in accordance with property in the general vicinity. The one-acre subject tract is near other Blinn Junior College properties to the north, across Fifth Street, and to the west, across High Street. The abutting properties to the south and east are mixed residential uses, with single family residences to the south and east and a multi-family apartment abutting the southeast corner of the subject site.

Rezoning the property from a residential use to a commercial use would allow the property to develop as an accessory parking lot that would provide additional off-street parking for the proposed development of the dormitory to the immediate west. At the time of development, Blinn College will be required to adhere to applicable minimum setbacks and buffer yard and screening requirements. Buffer yard and screening requirements are established to preserve existing neighborhoods and ensure adjacent property develops in a manner compatible to nearby land uses. Any commercial development, to include the proposed off-street parking lot, would be required to have a 20-foot buffer yard in addition to the standard setbacks. In addition, twenty percent (20%) of the buffer yard is required to be landscaped and a screening hedge or fence is mandated. Staff finds that the proposed zoning would preserve the existing neighborhood culture and is consistent with the community's plan for the development and/or redevelopment of its neighborhoods.

(9) The city's zoning should protect existing and future residential neighborhoods from encroachment by incompatible uses.

Staff finds that rezoning the property will protect and not adversely affect adjacent existing and future residential neighborhoods due to the City's adopted development standards including requirements related to buffer yards, screening, setbacks, drainage and landscaping.

(10) The city's zoning should assist in stabilizing property values by limiting or prohibiting the development of incompatible land uses or uses of land or structures that negatively impact adjoining properties.

Staff is unable to determine any destabilizing effects on the neighboring properties should this rezoning request be approved. The proposed B-2 zoning for the subject property is aligned with other existing Blinn Junior College properties that are prevalent in the surrounding area.

(11) The city's zoning should make adequate provisions for a range of commercial uses in existing and future locations that are best suited to serve neighborhood, community and regional markets.

The subject property is within an area predominately made up of the Blinn Jr. College campus, the Prairie Lea Cemetery, and a mixture of residential uses. Property zoned for commercial uses is located generally south of the subject tract, near US 290 Highway. Staff finds that the proposed zoning change, if approved, will allow for orderly commercial development that will serve the properties in the general vicinity and the community. Similarly, there are additional properties in the vicinity that could be utilized for residential use.

(12) The city's zoning should give reasonable accommodation to legally existing incompatible uses, but it should be fashioned in such a way that over time, problem areas will experience orderly change through redevelopment that gradually replaces the nonconforming uses.

The property is primarily institutional, and staff is not aware of any hindrances on the property created by legally existing incompatible uses. The applicant's request will allow the subject property

to develop with a mixture of land uses and if approved, will allow for compatible, legally conforming development.

(13)The city's zoning should provide for orderly growth and development throughout the city.

Staff finds that the proposed rezoning change will allow for the orderly growth and development in the general vicinity and throughout the city. Furthermore, the proposed rezoning is in accordance with the City's adopted Future Land Use Map and Comprehensive Plan.

STAFF RECOMMENDATION:

Based on the evidence and findings above, Staff recommends **approving** the proposed rezoning of the 0.997-acre tract generally located at 811 W. Fifth Street to the Commercial Research and Technology zoning use district (B-2) for the subject tract.

EXHIBITS:

A. Aerial Map
B. Zoning Map
C. Future Land Use Map
D. Cover Letter
E. Site photos

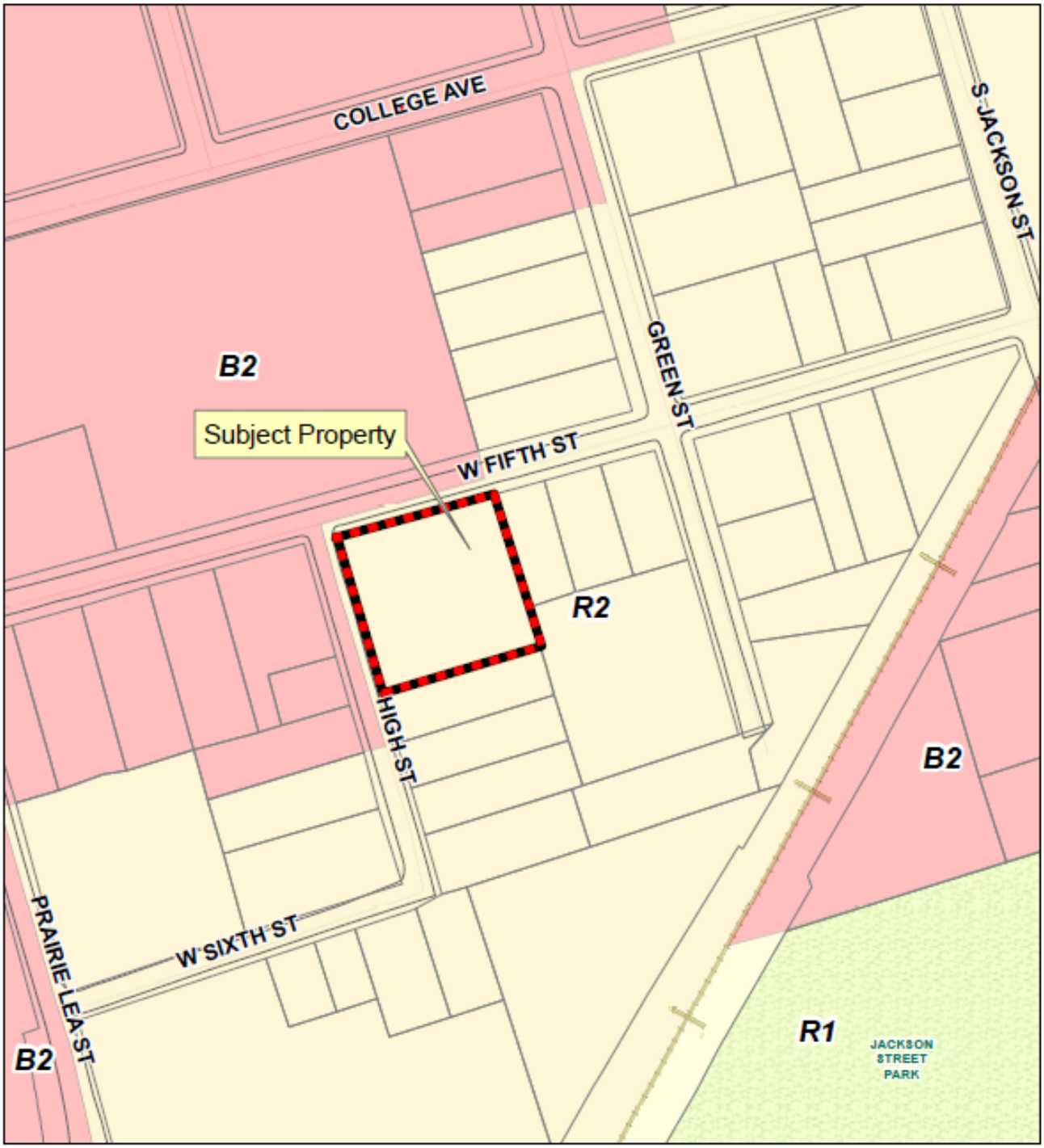
EXHIBIT "A"
AERIAL MAP

Aerial Map
811 W Fifth Street

City of BRENHAM

1 inch = 204 feet

EXHIBIT "B"
ZONING MAP



Zoning Map
811 W Fifth Street

City of BRENHAM

1 inch = 170 feet

EXHIBIT "C"
FUTURE LAND USE MAP

Future Land Use Map

Legend

Future Land Use Plan
FLU_FINAL

- Rural
- Open Space
- Park
- Estate Residential
- Single Family Residential
- Manufactured Homes
- Multi-Family Residential
- Mixed Use Blinn Adjacent
- Mixed Use Downtown Adjacent
- Corridor Mixed Use
- Planned Development
- Downtown
- Local Public Facilities
- Commercial
- Industrial

City of BRENHAM

1 inch = 204 feet

EXHIBIT "D"
ZONE CHANGE COVER LETTER

SERVITAS
COLLEGIATE REAL ESTATE SERVICES

Date: March 06, 2020

City of Brenham
Developments Services Department
P.O. Box 1059
200 W. Vulcan Street
Brenham, Texas 77834

Subject: A request for Zone Change

We are requesting a rezoning of the subject tract to allow the development of a parking lot facility to accommodate the needs of the land owner, Blinn Jr. College.

Sincerely,

Alfred Scheer
Director of Design / Development
O: 972.759.1624 | C: 214.773.8948 | E: ascheer@servitas.com
5525 N. MacArthur Blvd | Suite 760 Irving, TX 75038

RECEIVED
MAR 11 2020

EXHIBIT "E"
SITE PHOTOS

Subject Site: SE Intersection of High St. & Fifth St.

Dormitory site: SW Intersection of High St. & Fifth St.

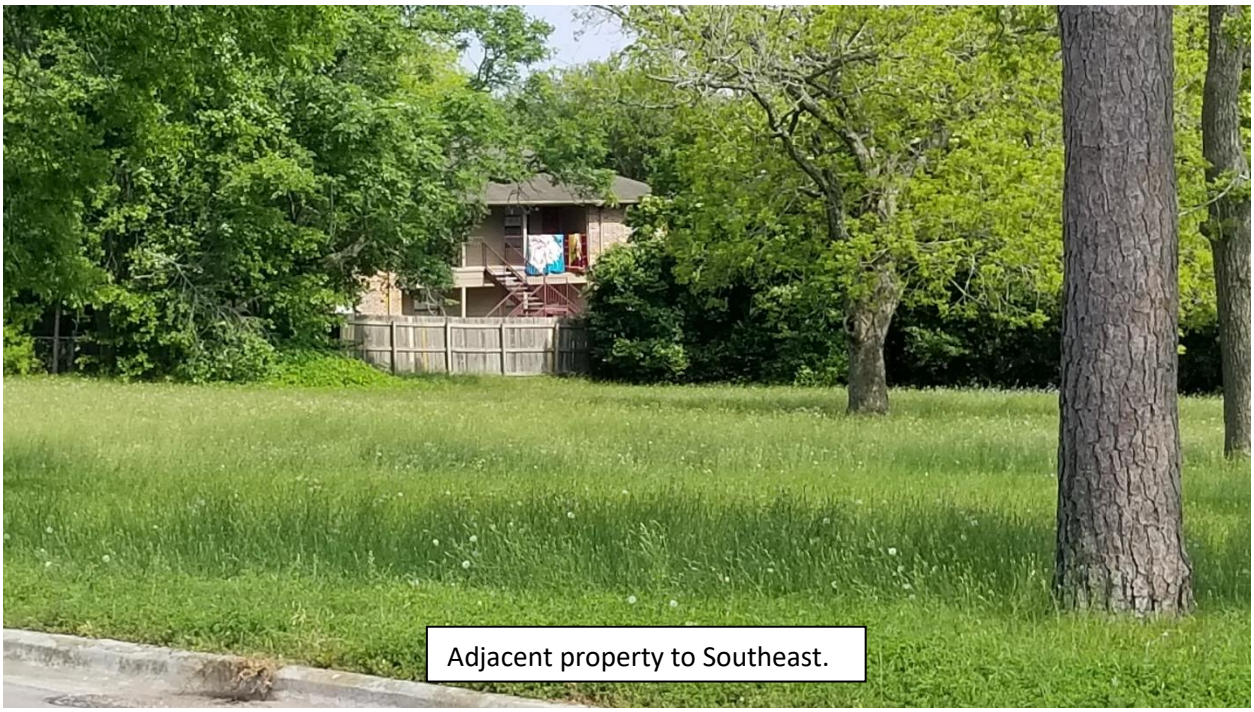
Subject Property from east (High Street)

Subject Property from NW corner looking south

Looking south on High Street.

Looking south on High Street.

High Street from North.



Adjacent property to Southeast.

Adjacent property to East.

Stadium parking lot to North.

AGENDA ITEM 10

DATE OF MEETING: May 7, 2020	**DATE SUBMITTED:** April 8, 2020
DEPT. OF ORIGIN: Public Utilities	**SUBMITTED BY:** Donald Reese

MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
☒ REGULAR	☐ PUBLIC HEARING	☐ 1ST READING
☐ SPECIAL	☐ CONSENT	☐ 2ND READING
☐ EXECUTIVE SESSION	☒ REGULAR	☐ RESOLUTION
	☐ WORK SESSION	

AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon an Amendment to the System Water Availability Agreement Between the City of Brenham and Brazos River Authority for the Temporary Resale of Water and Authorize the Mayor to Execute Any Necessary Documentation

SUMMARY STATEMENT: THIS ITEM WAS TABLED ON APRIL 16, 2020.

On September 1, 2019, an agreement was entered into by and between Brazos River Authority (BRA), a river authority of the State of Texas, and the City of Brenham (Purchaser). BRA made available and Purchaser agreed to purchase 774 acre-feet of raw water per fiscal year for municipal purposes. The intent of this agreement was to secure additional water to sustain long-term future growth for the City of Brenham. The term of the Agreement began September 1, 2019 and shall end on August 31, 2045. Purchase price of the 774 acre-feet was $79/acre-foot or $61,146.00 annually. The 774 acre-feet of water is in addition to the City's primary water availability agreement for 4,200 acre-feet, of which, 2,777 acre-feet are used annually on average. While securing this water for future use is prudent, the additional water is not needed at this time.

Section 33 of the Agreement allows Purchaser to elect to resell excess water on a temporary basis to a third party (Resale Purchaser) with prior approval of the BRA, in compliance with the BRA's Water Policy. To facilitate the resale, Purchaser requires the addition of temporary diversion points from which Resale Purchaser may access water made available under the Agreement and the authorization to use the water for industrial purposes.

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. PROS: Allows the City to resale any excess water.

B. CONS:

ALTERNATIVES: N/A

ATTACHMENTS: (1) Temporary Resale Amendment to System Water Availability Agreement between Brazos River Authority and City of Brenham

FUNDING SOURCE: N/A

RECOMMENDED ACTION: Approve an Amendment to the System Water Availability Agreement between the City of Brenham and Brazos River Authority for the Temporary Resale of Water and authorize the Mayor to execute any necessary documentation
APPROVALS: James Fisher

TEMPORARY RESALE AMENDMENT TO SYSTEM WATER AVAILABILITY AGREEMENT BETWEEN BRAZOS RIVER AUTHORITY AND CITY OF BRENHAM

This Temporary Resale Amendment ("Amendment") is entered into to be effective as of the ____ day of _____, 2020 ("Effective Date"), by and between Brazos River Authority ("BRA"), a river authority of the State of Texas, City of Brenham ("Purchaser"), and The Dow Chemical Company ("Resale Purchaser"), (collectively, the "Parties").

RECITALS

WHEREAS, BRA and Purchaser entered into a System Water Availability Agreement ("Agreement") with an effective date of September 1, 2019, whereby BRA agreed to make available and Purchaser agreed to purchase 774 acre-feet of raw water per Fiscal Year for municipal purposes; and

WHEREAS, in accordance with Section 33 of the Agreement, Purchaser has requested to temporarily resell 774 acre-feet of raw water made available under the Agreement to Resale Purchaser; and

WHEREAS, to facilitate this resale, Purchaser requires the addition of temporary diversion points from which Resale Purchaser may access water made available under the Agreement and the authorization to use the water for industrial purposes.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree to temporarily amend the Agreement as follows:

AMENDMENTS

1. The BRA hereby consents to the temporary assignment of 774 acre-feet of water under the Agreement to the Resale Purchaser. Unless terminated earlier consistent with the terms of this Amendment, this consent shall be effective from the Effective Date to August 31, 2020 (the "Termination Date").

2. Until the Termination Date, Resale Purchaser may divert raw water made available under the Agreement at the locations shown on Exhibit "A-1", attached hereto and incorporated by reference herein.

3. Resale Purchaser may utilize the water for industrial purposes.

4. Until the Termination Date, any reference to Exhibit "A" in the Agreement shall also be deemed a reference to Exhibit "A-1".

5. Resale Purchaser hereby agrees to abide by all of the terms and conditions contained in the Agreement and accepts any and all liability for any failure to do so.

6. Resale Purchaser shall be responsible for all coordination with BRA and the Brazos Watermaster related to ordering and stopping releases, coordinating run-of-river diversions if applicable, as well as reporting, metering, and notification requirements under the Agreement, and notwithstanding the foregoing, Resale Purchaser agrees to comply

with all BRA water reporting requirements, water conservation plans, drought contingency plans and TCEQ Brazos Watermaster requirements.

7. This Amendment shall in no way relieve Purchaser from any of its obligations, including payment, under the Agreement, and Purchaser shall be responsible for ensuring that Resale Purchaser complies with all the terms and conditions contained therein and accepts any and all liability for any failure to do so.

8. BRA reserves the right to withdraw its consent of the resale at any time and for any cause without penalty or liability. Upon receipt of such written withdrawal of consent from BRA, Resale Purchaser shall immediately cease diverting BRA water made available under this Amendment.

9. In the event the amount of water made available to Purchaser under the Agreement is reduced for any reason, Resale Purchaser agrees that such reduction shall also result in a reduced amount available under this Amendment.

10. The address for Resale Purchaser, for the purposes of Section 28 of the Agreement, shall be as follows:

    The Dow Chemical Company
    2301 Brazosport Boulevard
    B-3501
    Freeport, Texas 77541

11. Capitalized terms used but not defined herein shall have the respective meanings given to them in the Agreement.

12. This Amendment shall commence on the Effective Date and shall continue until the Termination Date. This Amendment shall no longer be of any force or effect after the Termination Date, and the terms and conditions of the Agreement shall be as they were prior to the execution of this Amendment, and Exhibit "A-1" shall be deleted in its entirety. Following the Termination Date, BRA and Purchaser shall be the only parties to the Agreement.

This Amendment shall be deemed a part of the Agreement and shall be binding on the parties. Except as amended herein, the terms and conditions of the Agreement remain in full force and effect.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed, intending to be bound thereby.

BRAZOS RIVER AUTHORITY

By: _____
DAVID COLLINSWORTH
Title: **GENERAL MANAGER/CEO**

Date: _____

Attest: _____

CITY OF BRENHAM

By: _____

Title: _____

Date: _____

Attest: _____

THE DOW CHEMICAL COMPANY

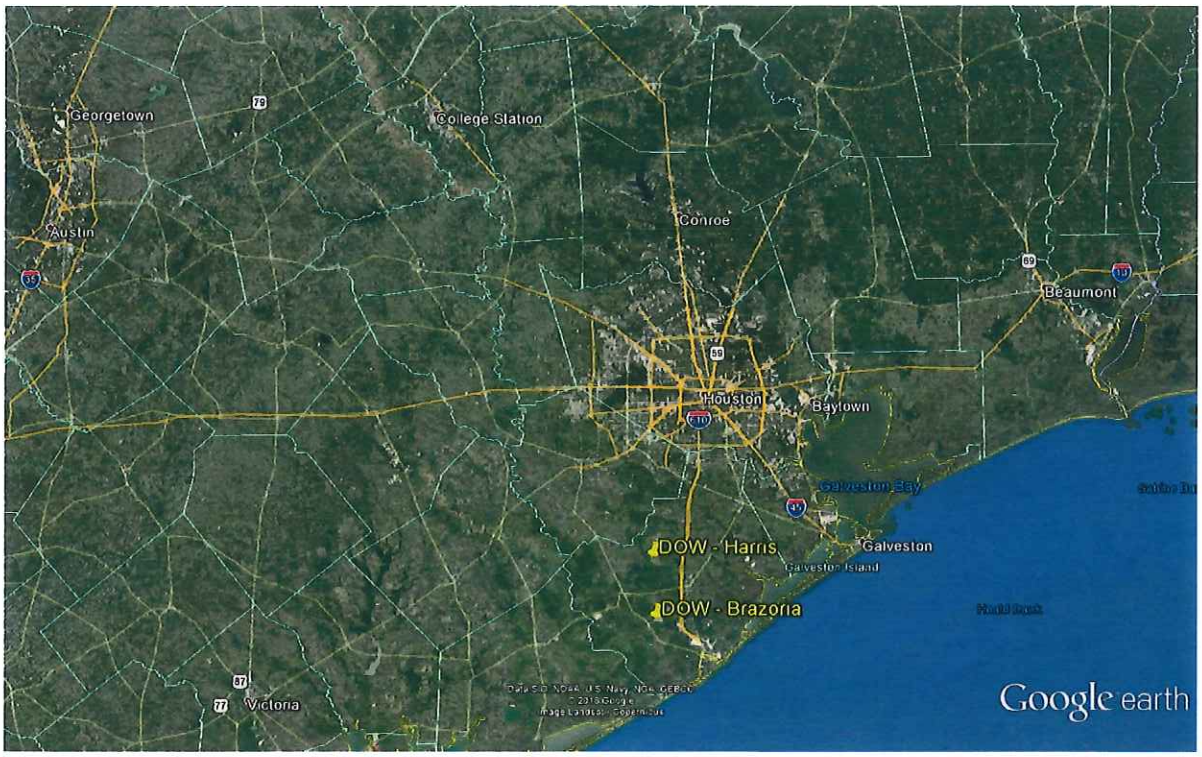
By: _____

Title: _____

Date: _____

Attest: _____

EXHIBIT A-1



RESALE with CITY OF BRENHAM

EXHIBIT A-1: DOW CHEMICAL COMPANY, 774-ACFT (IN)

Contract ID: BRENHAM-DOW 20

Diversion ID: BRENHAM-DOW 20

BRENHAM – DOW - Brazoria

N29.052426 W95.552414, ROST2 ROST2 (1110), Main Stem Brazos River Lower Basin, Brazoria County, WAP Reach: Richmond Gage to Gulf – Dow Brazoria

BRENHAM – DOW - Harris

N29.243325 W95.562173, ROST2 ROST2 (1110), Main Stem Brazos River Lower Basin, Brazoria County, WAP Reach: Richmond Gage to Gulf – Dow Harris

Prepared by: Julie Andress, Water Accounting Specialist, 2/12/2020

AGENDA ITEM 11

DATE OF MEETING: May 7, 2020	**DATE SUBMITTED:** April 8, 2020
DEPT. OF ORIGIN: Public Utilities	**SUBMITTED BY:** Donald Reese

MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
☒ REGULAR	☐ PUBLIC HEARING	☐ 1ST READING
☐ SPECIAL	☐ CONSENT	☐ 2ND READING
☐ EXECUTIVE SESSION	☒ REGULAR	☐ RESOLUTION
	☐ WORK SESSION	

AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon a Water Supply Resale Agreement Between the City of Brenham and The Dow Chemical Company Related to the Temporary Resale of Water and Authorize the Mayor to Execute Any Necessary Documentation

SUMMARY STATEMENT: THIS ITEM WAS TABLED ON APRIL 16, 2020.

On September 1, 2019, an agreement was entered into by and between Brazos River Authority (BRA), a river authority of the State of Texas, and the City of Brenham (Purchaser). BRA made available and Purchaser agreed to purchase 774 acre-feet of raw water per fiscal year for municipal purposes. The intent of this agreement was to secure additional water to sustain long-term future growth for the City of Brenham. The term of the Agreement began September 1, 2019 and shall end on August 31, 2045. Purchase price of the 774 acre-feet is $79/acre-foot or $61,146.00 annually. The 774 acre-feet of water is in addition to the City's primary water availability agreement for 4,200 acre-feet, of which, 2,777 acre-feet are used annually on average. While securing this water for future use is prudent, the additional water is not needed at this time.

Section 33 of the Agreement allows The City of Brenham to elect to resell excess water on a temporary basis to a third party (Resale Purchaser) with prior approval of the BRA, in compliance with the BRA's Water Policy. To facilitate the resale, Purchaser requires the addition of temporary diversion points from which Resale Purchaser may access water made available under the Agreement and the authorization to use the water for industrial purposes.

Dow Chemical Company desires to purchase the city's excess water on a temporary basis and will pay to the City $79.00 per acre-foot or $61,146.00 for the 774 acre-feet of water within thirty days from the effective date of this Agreement. Purchaser will withdraw from the Point of Delivery an amount not to exceed 774 acre-feet of Water, as specified under the Contract between the BRA and City. This Agreement is effective upon the BRA approval of the Temporary Resale Amendment and terminates when the Purchaser has withdrawn 774 acre-feet of water or August 31, 2020, whichever occurs first.

STAFF ANALYSIS (For Ordinances or Regular Agenda Items): **A. PROS:** Allows the City to regain cost of original purchase price of excess water. **B. CONS:**
ALTERNATIVES: N/A
ATTACHMENTS: (1) Water Supply Resale Agreement between City of Brenham and The Dow Chemical Company
FUNDING SOURCE: N/A
RECOMMENDED ACTION: Approve a Water Supply Resale Agreement between the City of Brenham and The Dow Chemical Company related to the Temporary Resale of Water and authorize the Mayor to execute any necessary documentation
APPROVALS: James Fisher

WATER SUPPLY RESALE AGREEMENT
BETWEEN CITY OF BRENHAM
AND THE DOW CHEMICAL COMPANY

This Water Supply Resale Agreement ("Agreement") is entered into by and between the **CITY OF BRENHAM, TEXAS**, a Texas home-rule municipal corporation ("City") and **THE DOW CHEMICAL COMPANY**, a Delaware corporation ("Purchaser").

Agreement

The City and the Purchaser agree as follows:

Article I. Definitions

In this Agreement:

BRA means the Brazos River Authority.

City means the City of Brenham, Texas.

Contract means a contract between the BRA and City, made and entered into on October 1st, 2019 (effective September 1, 2019), attached hereto and incorporated herein as Exhibit A for all pertinent purposes.

Purchaser means The Dow Chemical Company.

Point of Delivery means the point(s) where the Purchaser will divert Water from the Brazos River as shown on Exhibit B-1 of the Temporary Resale Amendment.

Temporary Resale Amendment means an agreement between BRA, City and Purchaser, dated _____, attached hereto and incorporated herein as Exhibit B for all pertinent purposes.

Water means the raw water the City has a right to receive under the Contract between the BRA and City.

Article II. Term

2.1. This Agreement is effective upon the BRA approval of the Temporary Resale Amendment ("Effective Date") and terminates when the Purchaser has withdrawn 774 acre-feet of Water or August 31, 2020, whichever occurs first ("Termination Date"). None of the parties to this Agreement will have any rights or obligations set forth in this Agreement before Effective Date. This Agreement will be null and void if, and at such time as, the BRA does not approve the Temporary Resale Amendment or the BRA terminates the Temporary Resale Amendment for any reason prior to the Termination Date set forth in this Agreement.

Article III. Water Supply Resale

3.1. The City allows the Purchaser to withdraw from the Point of Delivery an amount of Water not to exceed 774 acre-feet of Water**,** as specified under the Contract between the BRA and City, to supplement the Purchaser's water supplies.

3.2. The Purchaser is not allowed to withdraw any Water before the Effective Date of the Temporary Resale Amendment, and Purchaser must withdraw the Water under this Agreement prior to the Termination Date or at such time as specified by the BRA in the Temporary Resale Amendment.

3.3. Until the Termination Date, the City designates Purchaser as its agent to the BRA for the sole purpose of coordinating the delivery of Water under this Agreement.

3.4. Under this Agreement:

(a) The Purchaser must abide by all of the terms and conditions of the Contract between the BRA and City, attached hereto and incorporated herein as Exhibit B for all pertinent purposes, and the Temporary Resale Amendment between BRA, City and Purchaser, attached hereto and incorporated herein as Exhibit A for all pertinent purposes.

(b) The Water availability is dependent on the provisions specified in the Contract between the BRA and City.

(c) The City does not represent or guarantee that the quality of the Water meets the Purchaser's intended use(s).

(d) The Purchaser must comply with all BRA water reporting requirements.

(e) The Purchaser represents and warrants that it will use the 774 acre-feet of Water under this Agreement for industrial use purposes.

Article IV. Payment

4.1. The Purchaser will pay the City the applicable BRA System Rate of $79.00 per acre-foot of Water. The Purchaser will pay the City $61,146.00 for the 774 acre-feet of Water within thirty (30) days from the Effective Date of this Agreement ("Due Date").

4.2. Payment must be delivered by the Due Date to the City's Chief Financial Officer at, P.O. Box 1059, Brenham, Texas 77834-1059.

4.3. The City will refund to the Purchaser any amount paid to the City by the Purchaser for Water the BRA is unable to provide as specified under the terms of the Contract between the BRA and City.

Article V. Miscellaneous Provisions

5.1. Notices. All notices and other communications given or made pursuant to this Agreement must be in writing and deemed effective (i) upon personal delivery to the party to be notified; (ii) when sent by facsimile or electronic mail (E-mail) if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day of the date sent; (iii) the first (1st) business day following deposit with any courier service that provides a same day or overnight courier service that guarantees receipted delivery; or (iv) three (3) days after the notice is deposited in the United States mail as certified or registered mail, postage prepaid; in each case addressed to the party to be notified, at the address set forth below or at such other address, facsimile number or electronic mail (E-mail) address for a party as that party may specify in writing to the other party from time to time:

For the City:

City of Brenham
200 W Vulcan St.
Brenham, Texas 77833
Attention: City Manager
Phone: (979) 337-7590
jfisher@cityofbrenham.org

With a copy to:
City of Brenham
P.O. Box 1059
Brenham, Texas 77834-1059
Attention: Assistant City Manager – Public Works / Services
Phone: (979) 337-7593
dreese@cityofbrenham.org

For the Purchaser:

The Dow Chemical Company
2301 Brazosport Blvd., B-3501
Freeport, Texas 77541
Attention: Derek Rester
Phone: 989-238-2151
E-mail: MBKuettel@Dow.com

With a copy to:
Paul Bork, Lead Counsel
The Dow Chemical Company
332 Highway 332 E
Lake Jackson, Texas 77566
Phone: 979-238-5595
E-mail: PBork@DOW.com

Either party may change its address or contact information by giving notice, within ten (10) business days, to the other party.

5.2 **INDEMNITY/HOLD HARMLESS CLAUSE. THE PURCHASER SHALL COMPLY WITH THE REQUIREMENTS OF THIS AGREEMENT AND ALL APPLICABLE LAWS, RULES AND REGULATIONS AND SHALL EXONERATE, INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY AND ALL LIABILITY OR DAMAGES RESULTING FROM FAILURE TO DO SO. IN ADDITION, THE PURCHASER AGREES TO KEEP, SAVE AND HOLD THE CITY HARMLESS FROM ANY AND ALL ACTIONS, LIABILITIES, DAMAGES, JUDGMENTS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, IN CASE AN ACTION IS FILED OR DOES IN ANY WAY ACCRUE AGAINST THE CITY, ITS' OFFICIALS, OFFICERS, AND EMPLOYEES IN CONSEQUENCE OF THIS AGREEMENT OR FOR ANY NEGLIGENT ACT OR OMISSION OF THE PURCHASER RELATED TO THE PROVISION OF WATER MADE AVAILABLE UNDER THIS AGREEMENT OR THAT MAY RESULT FROM THE CARELESSNESS OR LACK OF SKILL OF THE PURCHASER OR THE PURCHASER'S AGENTS, SUBCONSULTANT, OR EMPLOYEES.**

5.3. Law and Venue. Texas law governs this Agreement and any lawsuit arising out of this Agreement must be filed in a court that has jurisdiction in Washington County, Texas.

5.4. Force Majeure. Neither party is in default if performance of this Agreement is delayed, disrupted, or becomes impossible because of any act of God, war, earthquake, fire, strike, accident, civil commotion, epidemic, act of government, its agencies or offices, or any other cause beyond the control of the parties.

5.5. Entire Agreement. This Agreement represents the entire agreement between the City and the Purchaser and supersedes all prior negotiations, representations, or contracts, either written or oral between the City and Purchaser. This Agreement may be amended only by written instrument signed by both parties.

CITY OF BRENHAM, TEXAS	**THE DOW CHEMICAL COMPANY**
_____	_____
James Fisher, City Manager	Derek Rester, Director of Environmental Operations
Date: _____	Date: _____
ATTEST:	ATTEST:

_____ _____

Jeana Bellinger, City Secretary Paul Bork, Dow Attorney

APPROVED AS TO FORM:

_____

Cary L. Bovey, City Attorney

Exhibit A

SYSTEM WATER AVAILABILITY AGREEMENT

Brazos River Authority
P. O. Box 7555
Waco, Texas 76714-7555
(254) 761-3100

CITY OF BRENHAM

BRA: CD

SYSTEM WATER AVAILABILITY AGREEMENT
BETWEEN
BRAZOS RIVER AUTHORITY
AND
CITY OF BRENHAM

AGREEMENT made and entered into this the 1st day of October 2019, by and between **BRAZOS RIVER AUTHORITY** ("BRA"), a river authority of the State of Texas, and **CITY OF BRENHAM** ("Purchaser") of Washington County, Texas.

1. **RECITALS**. BRA owns and operates various reservoirs in the Brazos River Basin. BRA also has entered into contracts with the United States of America by virtue of which it has obtained the right to utilize for water supply purposes a portion of the usable storage space in various reservoirs owned and operated by the United States Army Corps of Engineers ("USACE"). BRA is authorized by the State of Texas to store state waters in the reservoirs owned by BRA and various reservoirs owned and operated by the USACE in the Brazos River Basin; BRA has been granted water rights permits and certificates of adjudication by the Texas Commission on Environmental Quality, or its predecessors, and to make such stored waters available for beneficial use. BRA is authorized to operate the System as a hydrologic unit(s) to more efficiently utilize the waters of the Brazos River Basin included in the System and to make water available to meet the needs of BRA's customers.

BRA's System Operation Permit authorization allows BRA to use naturally occurring flows in the basin and return flows from wastewater treatment plants, in conjunction with the water supply in the reservoirs within the BRA water supply system. The uncontrolled natural flow, originating downstream of the BRA's reservoirs during wet times, can be augmented by releases from BRA reservoirs upstream during dry times and collectively achieve a System yield that is greater than the sum of the individual reservoir yields.

Purchaser wishes to contract with BRA to make available 774 acre-feet of Sys Ops Water per Fiscal Year under the terms of this Agreement pursuant to the System-wide pricing methodology, and BRA agrees to make water available to Purchaser pursuant to the terms and conditions herein provided.

2. **DEFINITIONS.**

a) The term "Agreement" means this agreement.

b) The term "Annual Contracted Amount" shall mean the total volume, expressed in acre-feet per Fiscal Year, which BRA agrees to make available and Purchaser agrees to purchase. For this Agreement, the amount is 774 acre-feet.

c) The term "BRA" shall mean Brazos River Authority.

d) The term "Board" shall mean the Board of Directors of Brazos River Authority.

e) The term "Budgeted Cost of Service" shall mean all reasonable economic requirements to develop, operate, maintain, protect and/or expand the System. Specific

costs include, but are not limited to, personnel, operations, capital, infrastructure, financing, administration and overhead.

f) The term "Fiscal Year" shall mean BRA's fiscal year from September 1 through August 31, or such other annual fiscal year period as BRA may later determine.

g) The term "Industrial Use" shall mean the use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric, but does not include agricultural use.

h) The term "Irrigation Use" shall mean the use of water for the irrigation of crops, trees, and pasture land, including, but not limited to, golf courses and parks which do not receive water through a municipal distribution system.

i) The term "Mining Use" shall mean the use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.

j) The term "Municipal Use" shall mean the use of potable water within a community or municipality and its environs for domestic, recreational, commercial, or industrial purposes or for the watering of golf courses, parks and parkways, or the use of reclaimed water in lieu of potable water for the preceding purposes or the use of return flows authorized pursuant to Texas Water Code, §11.042, in lieu of potable water for the preceding purpose, the application of municipal sewage effluent on land, under a Texas Water Code, Chapter 26, permit where:

(A) the application site is land owned or leased by the Chapter 26 permit holder; or

(B) the application site is within an area for which the TCEQ has adopted a no-discharge rule.

k) The term "Overuse" shall mean withdrawal or release of water in excess of the amount contracted.

l) The term "Purchaser" shall mean City of Brenham.

m) The term "Reuse" shall mean the authorized use of any portion of the water sold hereunder that remains unconsumed after the water is used for the purpose authorized herein.

n) The term "Sys Ops Water" shall mean raw water derived from and made available under this Agreement through the issuance of BRA's System Operation Permit.

o) The term "System" shall mean BRA's water supply system and shall include the BRA's facilities, infrastructure and properties insofar as they are related to making water available from the BRA together with all future extensions, improvements, enlargements, and additions to and/or all replacements thereof whether from surface water supplies, groundwater, System Operation Permit, current and/or future TCEQ water right permits or certificates of adjudication, contractual rights to water supply, or a combination thereof, unless specifically excluded from the System by resolution of the Board.

p) The term "System Operation Permit" shall mean Permit No. 5851 issued on November 30, 2016; whereby the BRA is authorized by TCEQ the right to contract for Sys Ops Water with customers in areas designated by TCEQ.

q) The term "System Rate" shall mean the annual rate per acre-foot of water established by BRA from time to time under the system-wide pricing methodology for water made available to Purchaser from the System under this Agreement.

r) The term "TCEQ" shall mean the Texas Commission on Environmental Quality or any successor regulatory bodies, either state or federal, with the power to regulate water rights permitting, water quality, metering and/or reporting within the Brazos River Basin.

3. **EFFECTIVE DATE.** The effective date of this Agreement is **September 1, 2019**.

4. **AVAILABILITY OF WATER.** While this Agreement remains in force, BRA agrees to make available to Purchaser for withdrawal from the System an amount of water not to exceed the Annual Contracted Amount; provided however, BRA may curtail the water supplied under this Agreement as required by law or in accordance with the BRA's Drought Contingency Plan. Purchaser agrees that it is contracting to have water made available to it in amounts and at such times and locations as are provided for herein and that the water to be provided under this Agreement is subject to local availability. Purchaser acquires no property right in the water made available to it under this Agreement beyond the right to have the water made available to it for diversion and use under the terms of this Agreement. BRA agrees to make water available from the System, and Purchaser acquires no rights or interests in any of the water supply sources that comprise the System above and beyond those rights that accrue to it as a customer of the System under this Agreement.

5. **TYPE OF USE.** Purchaser represents, and BRA relies on such representation, that all water to be made available by BRA under this Agreement to Purchaser shall be used solely for municipal purposes.

6. **DATE AND PLACE OF PAYMENTS.** Payments to be made hereunder shall be made at BRA's office in Waco, McLennan County, Texas. BRA contemplates that by the first day of each Fiscal Year (currently September 1) it will have adopted budgets for BRA for said Fiscal Year and established the System Rate for said Fiscal Year. Payments for water made available each Fiscal Year may be made under one of three payment options from which Purchaser will select at the beginning of each Fiscal Year. Annual payments shall be made on or before September 15 of each year. Quarterly payments shall be made on or before September 15, December 15, March 15, and June 15 of each year. Monthly payments shall be made on or before the fifteenth of each month each year. Quarterly payments or monthly payments shall include a multiplier to be applied to the Annual Contracted Amount to allow BRA to recover interest lost on any unpaid balance plus a service charge for administrative costs, including but not limited to costs involving the billing, accounting, and collecting for the quarterly or monthly payments. The multiplier to recover lost interest revenue and the service charge for administrative costs shall be determined on an annual basis using the method approved by the Board and shall be just and reasonable.

If, in accordance with Section 7b) of this Agreement, BRA increases the payment due from Purchaser during a Fiscal Year, it shall notify Purchaser of any increased amount of payment due for the remainder of the Fiscal Year and the increased amount shall be paid by Purchaser (i) within 30 days after receipt of notice of the increase if Purchaser has already paid all amounts otherwise due to BRA for such Fiscal Year, or (ii) in approximately equal installments added to any further installment amounts owed by Purchaser for the remainder of such Fiscal Year if Purchaser has selected a payment option which resulted in Purchaser still having payments due to BRA during the remainder of such Fiscal Year.

7. UNCONDITIONAL NATURE OF PAYMENT OBLIGATION; PRICE.

a) Purchaser unconditionally agrees to pay BRA annually for the water agreed to be made available to Purchaser hereunder at a price equal to the product of multiplying the System Rate times the Annual Contracted Amount regardless of whether the full Annual Contracted Amount of water is diverted and used by Purchaser.

b) The System Rate shall be established annually by the Board; it shall be calculated by utilizing a Budgeted Cost of Service basis considering the water supply System costs and the acre-feet of long term water sold under contract; and it shall be just, reasonable and non-discriminatory. Purchaser shall be provided at least 15 days' notice of the proposed amount and the meeting date at which the System Rate shall be established and shall be provided an invoice before the payment is due and payable. The System Rate has been established by the Board at a rate of $79.00 per acre-foot of water agreed to be made available annually to Purchaser for the current Fiscal Year. BRA shall not increase the System Rate other than on a Fiscal Year basis, which determines the System Rate for the following Fiscal Year under this Agreement, except for unforeseeable reasons of a serious or substantial nature. Such reasons include Force Majeure, government legislation or regulations, or permit requirements.

8. SOURCE OF PAYMENTS. The payments to be made hereunder by Purchaser shall constitute operating expenses of Purchaser's water works system or Purchaser's combined water works and sewer system. Purchaser shall charge rates for services of its water works system or its combined water works and sewer systems that will be sufficient to pay the operating and maintenance expenses thereof, including the payments provided for hereunder, and the interest on and principal of, as the same come due and mature, obligations issued by Purchaser now or hereafter payable from the revenues of said system or systems.

9. INTEREST ON PAST DUE PAYMENT. In the event of failure of Purchaser to make any payment to BRA provided to be made in this Agreement at the time when same shall be due, the past due payment shall bear interest at the lesser of the highest rate allowed by applicable law or 18 percent per year.

10. REMEDIES FOR NONPAYMENT OR DEFAULT. Should Purchaser fail to make any payment to BRA when due hereunder or otherwise be in default in performance or compliance of any provision herein, BRA, at its sole option and in addition to and without impairing any other remedy available to it on account of the default, may elect to: (i) suspend its duty to make water available to Purchaser under this Agreement; (ii) terminate this Agreement, by providing written notice of such termination delivered to Purchaser on or before 30 days before the date specified in said notice of termination, provided that the nonpayment or other default with respect to which notice of termination of this Agreement has been given, shall not be cured by the date specified in such notice; or (iii) disable Purchaser's meter and not allow Purchaser to divert water.

In the event, BRA elects to terminate this Agreement for a breach of any of the terms of this Agreement or as provided herein, the Purchaser shall immediately discontinue all diversions and use of water made available hereunder.

Nothing in this Agreement shall be construed in any manner so as to abridge, limit, or deprive either party hereunto of any means which it would otherwise have of enforcing any right or remedy either in law or in equity for breach of any of the provisions hereof.

11. REMEDIES FOR OVERUSE. Purchaser recognizes that any diversion of water in excess of its Annual Contracted Amount will impact BRA's ability to make available water to BRA's other raw water customers. Purchaser agrees that if for any reason it needs to exceed the Annual Contracted Amount, Purchaser will give written notice to BRA 30 days in advance of the need for such additional water and in such notice will state the reason for the additional need, the amount of water needed to be made available, and the duration of the need. BRA, in its sole discretion, may make all or a portion of the requested water available. Nothing contained herein shall obligate the BRA to provide water in excess of the Annual Contracted Amount nor should Purchaser rely on additional water being made available in excess of the Annual Contracted Amount except as approved by BRA under the terms stated herein.

In the event that BRA determines that it can make all or a portion of the requested water available without adversely impacting its ability to make water available to its other customers, Purchaser shall pay for such water to be made available in advance of diversion at a rate that is equal to twice the current System Rate.

In the event Purchaser fails to notify BRA of its need for additional water to be made available, and exceeds the Annual Contracted Amount or should Purchaser, after notification of BRA and BRA's determination that additional water is not available for Purchaser's use, nonetheless exceed the Annual Contracted Amount, BRA may elect to: (i) cancel this Agreement by providing written notice of such cancellation delivered to Purchaser on or before thirty (30) days before the date specified in said notice of cancellation; (ii) charge the Purchaser for the overuse at a rate of the lesser of ten times the System Rate or the highest charge allowed by law at the time of breach; and/or (iii) disable Purchaser's meter and not allow Purchaser to divert water.

In the event, BRA elects to terminate this Agreement for a breach for overuse, the Purchaser shall immediately discontinue all diversions of use of water made available hereunder.

Nothing in this Agreement shall be construed in any manner so as to abridge, limit, or deprive either party hereunto of any means which it would otherwise have of enforcing any right or remedy either in law or in equity for breach of any of the provisions hereof.

12. DIVERSION POINT(S). Upon execution of this Agreement, the BRA and the Purchaser shall agree on a point(s) of diversion which shall be attached hereto and incorporated by reference herein for all purposes as Exhibit "A". Withdrawal facilities for diversion of water made available under this Agreement shall be solely the responsibility of Purchaser and shall comply with Section 14., below. Subsequent changes regarding the location of the diversion point(s) are in the sole discretion of the BRA and shall only be made by written amendment. Any change in the location of the diversion point(s) without the written consent of BRA is not allowed.

13. DIVERSION RATE. The water to be made available to Purchaser under this Agreement may be diverted from System at daily rates desired by Purchaser provided that BRA shall not be required to make water available for diversion by Purchaser at a daily rate in excess of five times the average daily rate which would result in diversion during a Fiscal Year of the total number of acre-feet of water per year then agreed to be made available for diversion by Purchaser.

14. WITHDRAWAL FACILITIES. The provision of facilities for diversion of the water agreed to be made available by BRA to Purchaser hereunder shall be solely the responsibility of Purchaser, including the right to legally access land to place such facilities. Where applicable, BRA may allow the construction of such facilities on and across BRA land, subject to the conditions, requisites, insurance requirements and/or obligations as established from time to time by the BRA, USACE and/or any other applicable regulatory body. Prior to construction of such facilities, Purchaser shall coordinate with BRA to determine the location, size and type of facilities to be installed. At the termination of this Agreement, all facilities must be removed and the land restored to its original condition in a manner acceptable to BRA.

15. METERING. Purchaser agrees that, at its sole cost and expense, it shall own, install, operate and maintain meters for the accurate measuring of all water diverted by Purchaser under this Agreement in order to aid BRA in accurately reporting water usage to the TCEQ as required by applicable law or regulation. Prior to pumping any water, Purchaser shall allow BRA and any other regulatory agencies access to such meter in order to verify its accuracy. Such meter or meters shall be tested and calibrated for accuracy by and at the expense of Purchaser once each Fiscal Year at intervals of approximately 12 months, and a report of such test and calibration shall be furnished to BRA. BRA shall be given at least two prior days' notice of the time of any test and calibration of Purchaser's meters, or any of them, and BRA shall have the right to have a representative present at each test to observe the test and any adjustments found thereby to be necessary. BRA shall have the right to inspect and check the accuracy of Purchaser's meter or meters at any time during usual business hours after not less than one nor more than five (5) days' notice. In the event any question arises at any time as to the accuracy of any such meter, such meter shall be tested promptly upon demand of BRA, the expense of such test to be borne by BRA if the meter is found to be correct and by Purchaser if it is found to be incorrect. Readings within 5% of accuracy, plus or minus, shall be considered correct. If, as a result of any test, any meter is found to be registering inaccurately (i.e., in excess of 5% of accuracy, plus or minus), the readings of such meter shall be corrected at the rate of its inaccuracy for any period which is definitely known and agreed upon, but in case the period is not definitely known and agreed upon, the period shall be extended back 180 days from the date of the initial BRA demand for meter testing, and the records of readings shall be adjusted accordingly. In addition, Purchaser shall permit BRA to access its meter at all times and releases BRA from any and all liability for disabling the meter in the event Purchaser is in default of this Agreement.

16. REPORTING Purchaser agrees that it will keep accurate records of the daily readings from the meter or meters installed pursuant to Section 15., Metering, above. These records shall be subject to inspection by BRA and/or TCEQ at reasonable times and places. Purchaser shall submit reports to BRA pursuant to BRA and/or TCEQ requirements

at regular time intervals specified by BRA or as required by TCEQ, in addition to any other reporting requirements set forth by BRA and/or TCEQ. In addition to other contractual penalties and/or damages, failure to comply with BRA and/or TCEQ reporting requirements will result in monetary penalties assessed by BRA, TCEQ, and/or any other applicable regulatory body.

17. SYSTEM EXPANSION. Purchaser and BRA understand that BRA may desire to make water available to other customers in a manner or in an amount which may necessitate expansion or enlargement of or additions to the System and that in connection with any such expansion, enlargement or addition, BRA will incur additional costs. The reasonable costs incurred by BRA related to such expansion, enlargement, or addition shall be costs of the System.

18. DROUGHT CONTINGENCY PLAN. Purchaser agrees to abide by any and all policies and/or procedures, adopted from time to time by the BRA, related to water conservation and drought response, including but not limited to: the BRA "Drought Contingency Plan" adopted by the Board on April 29, 2019, or any subsequent Drought Contingency Plan duly adopted by the Board, and any and all drought contingency programs developed by the BRA. If required by applicable law or regulation or by BRA, Purchaser agrees to develop a drought contingency program, submit a copy to the BRA for review, and agrees the water made available and diverted by Purchaser pursuant to this Agreement will be used in accordance with such program. Purchaser recognizes and agrees that should the BRA's Drought Contingency Plan, and the implementation of any requirements thereof, result in the curtailment of water, Purchaser shall be required to immediately reduce the water made available under this Agreement by an amount determined solely by the BRA, and any withdrawal in excess of this amount during the time of drought shall be considered a default by Purchaser. In the event Purchaser furnishes water or water services to a third party that in turn will furnish the water or services to the ultimate consumer, the requirements relative to BRA's Drought Contingency Plan and Purchaser's plan shall be met through contractual agreements between Purchaser and the third party providing for the establishment and implementation of a drought contingency program in compliance with such applicable law or regulation.

19. WATER CONSERVATION. It is the intent of the parties to this Agreement to provide to the maximum extent practicable for the conservation of water, and Purchaser agrees that it is a condition of this Agreement that it shall maintain and operate its facilities in a manner that will prevent unnecessary waste of water. BRA, in accordance with applicable law or regulation, may from time to time adopt reasonable rules and regulations relating to water conservation. Purchaser agrees to abide by the "Brazos River Authority Water Conservation Plan" adopted by the Board on April 29, 2019, or any subsequent Water Conservation Plan duly adopted by the Board and any Water Conservation Plan developed and adopted by the BRA. In addition, Purchaser agrees to implement its own water conservation plan and submit a copy to the BRA for review. Purchaser further agrees that the water impounded and/or diverted by Purchaser pursuant to this Agreement will be used in accordance with such plans. Purchaser shall implement water conservation measures that provide for the utilization of those reasonable practices, techniques, and technologies that will reduce on a per unit basis the consumption of water, prevent or

reduce the loss or waste of water, improve the efficiency in the use of water, increase the recycling an reuse of water, and prevent the pollution of water, so that a water supply is made available for future and alternative uses. The practices, techniques, and technologies used shall be designed to achieve a level of efficiency of use that is equal to or greater than the level provided for in BRA's Water Conservation Plan. Purchaser further agrees to amend its water conservation plan, as necessary, to reflect amendments in state law, regulations or BRA's water conservation rules and regulations. Purchasers agrees that if a shortage of water results from drought, accident, or other cause, BRA shall divide the water made available to all its customers on a pro rata basis in accordance with the amount of water to which each customer may be entitled or the amount of water to which each customer may be entitled, less the amount of water the customer would have saved if the customer had operated its water system in compliance with the water conservation plan. In the event Purchaser furnishes water or water services to a third party that in turn will furnish the water or services to the ultimate consumer, the requirements relative to the BRA's Water Conservation Plan and Purchaser's plan shall be met through contractual agreements between Purchaser and the third party providing for the establishment and implementation of a water conservation program in compliance with such applicable law or regulation.

20. WATER QUALITY. As a further condition of this Agreement, Purchaser also agrees that it will comply with applicable water quality standards of the State in the diversion, use, or discharge of water made available hereunder. BRA, in accordance with applicable law or regulation, may from time to time adopt reasonable rules and regulations relating to water quality protection. If required by applicable law or regulation, Purchaser agrees to implement appropriate water quality protection measures including, without limitation, a non-point source water pollution abatement program in accordance with a non-point source water pollution abatement plan.

21. REUSE. All rights to Reuse made available under this Agreement that is either disposed of or discharged or otherwise allowed to flow into a watercourse, reservoir, or other body of state-owned water shall remain with the BRA. Purchaser may not use, sell, or make available to others, any form of Reuse without the express written consent of the BRA. However, Purchaser may directly reuse treated wastewater effluent or untreated water provided that such water has not been previously disposed of or discharged or otherwise allowed to flow into a watercourse, reservoir, or other body of state-owned water.

22. INTERBASIN TRANSFER. Water made available under this Agreement shall not be transferred or used outside of the Brazos River Basin unless Purchaser obtains the express written consent of BRA and obtains all required governmental approvals.

23. SHORTAGES AND YEARLY REPORTS. BRA makes no guarantee that any reservoirs or other sources of supply in the System will be maintained at any specific level at any particular time. Purchaser bears all transportation losses prior to final diversion. It is fully understood by the parties hereto that the level of reservoirs or other sources of supply in the System will vary as a result of weather conditions beyond the control of BRA, the use of water from the System by other water customers of BRA, and in USACE reservoirs, as a result of releases made by the USACE and that this instrument

is merely an agreement to require BRA to make available water when and if water is present in the System, and to allow Purchaser to make withdrawals of the water subject to the general law on distribution and allocation of water during shortages of supply and in conformity with BRA's water rights from the TCEQ and the System.

BRA covenants that it will use its best reasonable efforts in accordance with accepted hydrological engineering practices to provide the quantities of water agreed to be provided herein. In the event of a drought of greater severity than that previously experienced, or if for any other reason water in the System becomes in short supply, Purchaser acknowledges and agrees that BRA may curtail or cutback Purchaser's water utilization. Purchaser acknowledges that it shall hold BRA harmless from any and all liability, damages, claims or actions which may exist as a result of shortages of water to be made available.

24. REDUCTION IN CONTRACTED AMOUNT. Purchaser recognizes and agrees that the Annual Contracted Amount made available is Sys Ops Water and may be reduced by regulatory bodies in charge of issuing such permits. If a regulatory body reduces the amount of water made available to BRA under the System Operation Permit, BRA shall reduce the amount of water made available under this Agreement to Purchaser in a manner that equitably affects all impacted BRA customers.

25. OPERATION OF SYSTEM; BRA'S OTHER CONTRACTS. The right of BRA to maintain and operate the System and at any and all times to impound, release and make available waters therefrom in any lawful manner and to any lawful extent BRA may see fit is recognized by Purchaser; and, except as otherwise provided herein, there shall be no obligation hereunder upon BRA to pump or not pump, store or not to store, or to release and make available or not to release or make available any waters at any time or to maintain any waters at any specified level or to operate the System in any manner not in compliance with applicable laws or regulations, and BRA's water rights. BRA may enter into agreements with other parties regarding the System, including its operation and maintenance and the storage, release and making available water therefrom. BRA makes no representation as to the quality of the water in the System.

26. FORCE MAJEURE. Notwithstanding anything herein to the contrary, neither party hereto shall be under any liability or be deemed in default with respect to its obligations under this Agreement for any failure to perform or for delay in performing such party's obligations hereunder (except for the obligation to pay money) where such failure or delay is due to force majeure, while and to the extent that such performance is prevented by such cause. The term force majeure means acts of God, fire, storm, flood, war, terrorist activity, riots, sabotage, major infrastructure failure, drought, lack of availability of water due to sedimentation, low inflows of water to, or lack of water supply in the System, strikes or other differences with labor (whether or not within the power of the parties to settle same), decrees, actions or orders of the courts or other governmental authority, or other similar or dissimilar causes not within the reasonable control of such party and not due to negligence of such party. Each party shall use due diligence to resume performance of any obligation suspended by force majeure at the earliest practicable time.

27. WAIVER. Any waiver at any time by any party of its rights with respect to default or any right granted under this Agreement shall not be deemed a waiver of such rights with respect to any subsequent default or matter.

28. NOTICES AND CERTIFICATIONS. Notices and certifications provided for in this Agreement shall be in writing. The same shall be delivered by standard overnight carriers or postal service, sent postage paid, or hand delivered, to the respective parties at the following addresses:

BRA:
Brazos River Authority
P.O. Box 7555
Waco, Texas 76714-7555
or
4600 Cobbs Drive
Waco, Texas 76710
Telephone: 254-761-3100
Email: info@brazos.org

Purchaser:
City of Brenham
P. O. Box 1059
Brenham, TX 77834-1059
Telephone: 979-337-7593
Email: logle@cityofbrenham.org

Either party may change its address as shown above by written notice to the other party.

29. OTHER REQUIREMENTS. This Agreement is subject to all conditions, provisions, and limitations included in BRA's water rights from applicable state agencies. Further, this Agreement is subject to all applicable federal, state and local laws, BRA policies and procedures, any and all regulatory requirements, and any other applicable ordinances, rules, orders and regulations of any local, state or federal governmental authority having jurisdiction. However, nothing contained in this Agreement shall be construed as a waiver of any right to question or contest any law, ordinance, order, rule, or regulation of any governmental authority.

30. SEVERABILITY. The provisions of this Agreement are severable, and if for any reason any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement and this Agreement shall remain in effect and be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Agreement.

31. INDEMNITY/HOLD HARMLESS CLAUSE. TO THE EXTENT ALLOWED BY LAW, THE PURCHASER SHALL COMPLY WITH THE REQUIREMENTS OF ALL APPLICABLE LAWS, RULES AND REGULATIONS AND SHALL EXONERATE, INDEMNIFY AND HOLD BRA HARMLESS FROM ANY AND ALL LIABILITY OR DAMAGES RESULTING FROM FAILURE TO DO SO. IN ADDITION, THE PURCHASER AGREES TO KEEP, SAVE AND HOLD BRA HARMLESS FROM ANY AND ALL ACTIONS, LIABILITIES, DAMAGES,

JUDGMENTS, COSTS AND EXPENSES INCLUDING REASONABLE ATTORNEY'S FEES, IN CASE AN ACTION IS FILED OR DOES IN ANY WAY ACCRUE AGAINST BRA, ITS' OFFICIALS, OFFICERS, AND EMPLOYEES IN CONSEQUENCE OF THIS AGREEMENT OR FOR ANY NEGLIGENT ACT OR OMISSION OF THE PURCHASER RELATED TO THE PROVISION OF WATER MADE AVAILABLE UNDER THIS AGREEMENT OR THAT MAY RESULT FROM THE CARELESSNESS OR LACK OF SKILL OF THE PURCHASER OR THE PURCHASER'S AGENTS, SUBCONSULTANT, OR EMPLOYEES.

32. MULTIPLE CONTRACTS. If Purchaser possesses more than one long-term water supply agreement with the BRA for diversion of water with the same diversion point or a diversion point within the same general location, water use or consumption shall be applied against the oldest contract first, until all quantities of water that may be diverted from such diversion point under that contract have been fully utilized and billed against, and then in like manner to each successive contract in date order, from oldest to most recent. Once water use or consumption has been so applied against all previous contracts, any remaining usage shall be applied against this Agreement.

33. WATER SURPLUS, RESALE AND ASSIGNMENT. Should Purchaser determine that it has water surplus to its anticipated needs from the water to be made available by BRA under this Agreement, Purchaser may provide the BRA with a minimum of ninety days' written notice as to the amount of water no longer needed to be made available to it and, subject to BRA approval, return such water to BRA. If approved by BRA, this Agreement will be amended to reduce the amount of water to be made available to Purchaser, and Purchaser will be relieved of the obligation to make payments for such availability of water beginning on the first day of the next Fiscal Year.

If Purchaser does not wish to return the excess water to the BRA, Purchaser may elect to resell the water on a temporary basis to a third party with prior approval of the BRA, on a form approved by the BRA, and in compliance with the BRA's Water Policy, as in effect at the time of request. Purchaser shall remain responsible for tendering full payment to the BRA in advance of the temporary resale period and agrees to monitor the third party's performance, ensuring compliance with all terms of this Agreement.

The assignment of BRA water by Purchaser is prohibited; provided, however, the Brazos River Authority may allow Purchaser to permanently assign the Agreement to a third party in the event of the following: 1) name changes, restructuring, mergers, acquisitions, assignments, or other transfers of a business, organization or entity; 2) acquisition, transfer of an interest in the Agreement through inheritance, change in marital status, or interfamily transfer; 3) Purchaser has sold the real property underlying the Agreement and the new owner of the real property desires to continue use of Agreement; 4) a court order necessitating the assignment of the Agreement has been issued; or 5) a change in BRA Water Policy. Such assignments will only be approved if the diversion location and use remain are not modified or changed and only on a form acceptable to the BRA.

Additionally, if the Purchaser intends to resell the water under this Agreement, then the contract for resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water is required to implement water conservation measures meeting the requirements of this Agreement.

34. TERM OF AGREEMENT. The term of this Agreement shall begin on the Effective Date, Section 3, and shall end on August 31, 2045. At the sole discretion of the BRA, this Agreement may be renewed thereafter at the written request of Purchaser under the terms and conditions of BRA's standard long-term water availability contract at that time for so long as, and to the extent that, BRA determines it has Sys Ops Water available for purchase.

CITY OF BRENHAM

By _____
Milton Y. Tate, Jr.
Mayor

ATTEST:

_____

BRAZOS RIVER AUTHORITY

By _____
David Collinsworth
General Manager/CEO

ATTEST:

_____

EXHIBIT A: CITY OF BRENHAM 774-ACFT (MU)

Contract ID: BRENHAM 20

Diversion 1:

BRENHAM 19, N30.30612 W96.536515, SOMT2 SOMT2 (1212),
Lakeside Lake Somerville, Lower Basin, Washington County
WAP Reach: SO Lake Somerville

Prepared by: Julie Andress, Water Accounting Specialist, 7/16/2019

Exhibit B

TEMPORARY RESALE AMENDMENT TO SYSTEM WATER AVAILABILITY AGREEMENT BETWEEN BRAZOS RIVER AUTHORITY AND CITY OF BRENHAM

This Temporary Resale Amendment ("Amendment") is entered into to be effective as of the ____ day of _____, 2020 ("Effective Date"), by and between Brazos River Authority ("BRA"), a river authority of the State of Texas, City of Brenham ("Purchaser"), and The Dow Chemical Company ("Resale Purchaser"), (collectively, the "Parties").

RECITALS

WHEREAS, BRA and Purchaser entered into a System Water Availability Agreement ("Agreement") with an effective date of September 1, 2019, whereby BRA agreed to make available and Purchaser agreed to purchase 774 acre-feet of raw water per Fiscal Year for municipal purposes; and

WHEREAS, in accordance with Section 33 of the Agreement, Purchaser has requested to temporarily resell 774 acre-feet of raw water made available under the Agreement to Resale Purchaser; and

WHEREAS, to facilitate this resale, Purchaser requires the addition of temporary diversion points from which Resale Purchaser may access water made available under the Agreement and the authorization to use the water for industrial purposes.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree to temporarily amend the Agreement as follows:

AMENDMENTS

1. The BRA hereby consents to the temporary assignment of 774 acre-feet of water under the Agreement to the Resale Purchaser. Unless terminated earlier consistent with the terms of this Amendment, this consent shall be effective from the Effective Date to August 31, 2020 (the "Termination Date").

2. Until the Termination Date, Resale Purchaser may divert raw water made available under the Agreement at the locations shown on Exhibit "A-1", attached hereto and incorporated by reference herein.

3. Resale Purchaser may utilize the water for industrial purposes.

4. Until the Termination Date, any reference to Exhibit "A" in the Agreement shall also be deemed a reference to Exhibit "A-1".

5. Resale Purchaser hereby agrees to abide by all of the terms and conditions contained in the Agreement and accepts any and all liability for any failure to do so.

6. Resale Purchaser shall be responsible for all coordination with BRA and the Brazos Watermaster related to ordering and stopping releases, coordinating run-of-river diversions if applicable, as well as reporting, metering, and notification requirements under the Agreement, and notwithstanding the foregoing, Resale Purchaser agrees to comply

with all BRA water reporting requirements, water conservation plans, drought contingency plans and TCEQ Brazos Watermaster requirements.

7. This Amendment shall in no way relieve Purchaser from any of its obligations, including payment, under the Agreement, and Purchaser shall be responsible for ensuring that Resale Purchaser complies with all the terms and conditions contained therein and accepts any and all liability for any failure to do so.

8. BRA reserves the right to withdraw its consent of the resale at any time and for any cause without penalty or liability. Upon receipt of such written withdrawal of consent from BRA, Resale Purchaser shall immediately cease diverting BRA water made available under this Amendment.

9. In the event the amount of water made available to Purchaser under the Agreement is reduced for any reason, Resale Purchaser agrees that such reduction shall also result in a reduced amount available under this Amendment.

10. The address for Resale Purchaser, for the purposes of Section 28 of the Agreement, shall be as follows:

    The Dow Chemical Company
    2301 Brazosport Boulevard
    B-3501
    Freeport, Texas 77541

11. Capitalized terms used but not defined herein shall have the respective meanings given to them in the Agreement.

12. This Amendment shall commence on the Effective Date and shall continue until the Termination Date. This Amendment shall no longer be of any force or effect after the Termination Date, and the terms and conditions of the Agreement shall be as they were prior to the execution of this Amendment, and Exhibit "A-1" shall be deleted in its entirety. Following the Termination Date, BRA and Purchaser shall be the only parties to the Agreement.

This Amendment shall be deemed a part of the Agreement and shall be binding on the parties. Except as amended herein, the terms and conditions of the Agreement remain in full force and effect.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed, intending to be bound thereby.

BRAZOS RIVER AUTHORITY

By: _____
DAVID COLLINSWORTH
Title: **GENERAL MANAGER/CEO**

Date: _____

Attest: _____

CITY OF BRENHAM

By: _____

Title: _____

Date: _____

Attest: _____

THE DOW CHEMICAL COMPANY

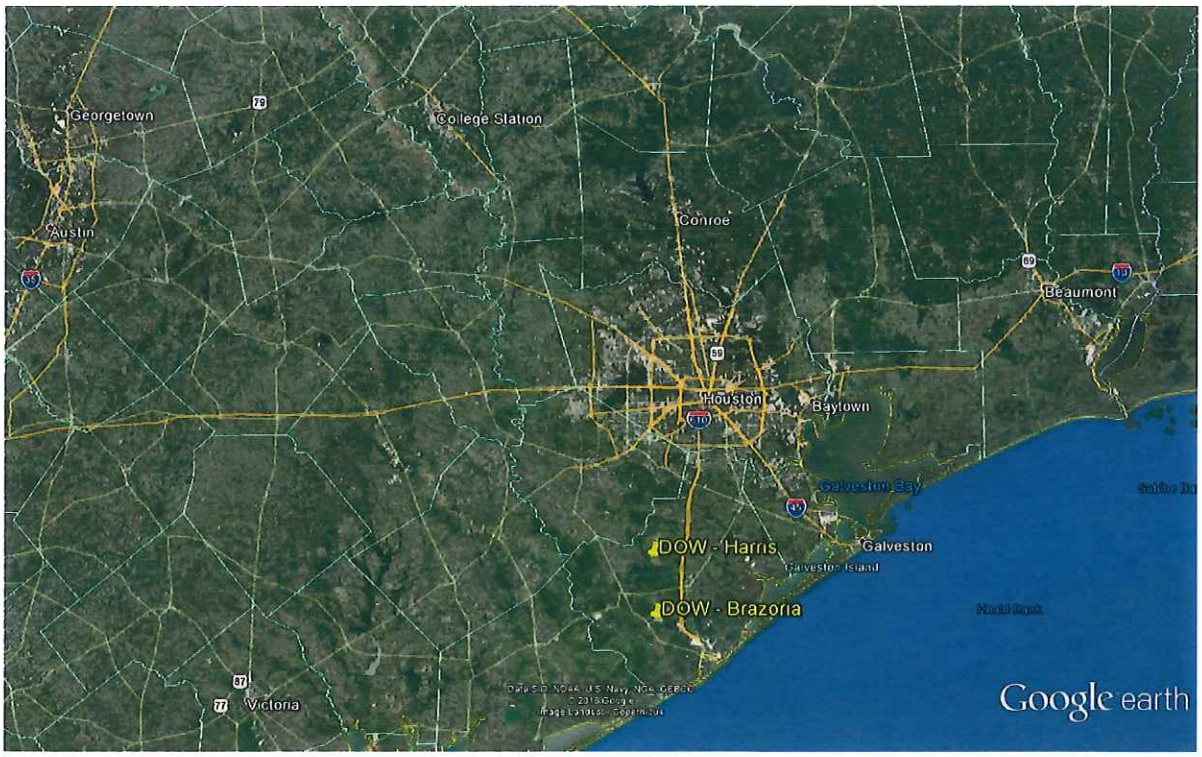
By: _____

Title: _____

Date: _____

Attest: _____

EXHIBIT A-1



RESALE with CITY OF BRENHAM

EXHIBIT A-1: DOW CHEMICAL COMPANY, 774-ACFT (IN)

Contract ID: BRENHAM-DOW 20

Diversion ID: BRENHAM-DOW 20

BRENHAM – DOW - Brazoria

N29.052426 W95.552414, ROST2 ROST2 (1110), Main Stem Brazos River Lower Basin, Brazoria County, WAP Reach: Richmond Gage to Gulf – Dow Brazoria

BRENHAM – DOW - Harris

N29.243325 W95.562173, ROST2 ROST2 (1110), Main Stem Brazos River Lower Basin, Brazoria County, WAP Reach: Richmond Gage to Gulf – Dow Harris

Prepared by: Julie Andress, Water Accounting Specialist, 2/12/2020

AGENDA ITEM 12

DATE OF MEETING: May 7, 2020	**DATE SUBMITTED:** April 30, 2020
DEPT. OF ORIGIN: Fire	**SUBMITTED BY:** Ricky Boeker

MEETING TYPE:	**CLASSIFICATION:**	**ORDINANCE:**
☒ **REGULAR**	☐ **PUBLIC HEARING**	☐ **1ST READING**
☐ **SPECIAL**	☐ **CONSENT**	☐ **2ND READING**
☐ **EXECUTIVE SESSION**	☒ **REGULAR**	☐ **RESOLUTION**
	☐ **WORK SESSION**	

AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon the First Amendment to the Interlocal Agreement for Managing Entity by the Brazos Valley Council of Governments (BVCOG) for the Brazos Valley Wide Area Communications System (BVWACS) and Authorize the Mayor to Execute Any Necessary Documentation

SUMMARY STATEMENT: The Brazos Valley Wide Area Communications System (BVWACS) was started in 2010 with City of Brenham, Washington County, City of Bryan, City of College Station, Brazos County and Texas A&M University. The BVWACS system is part of the Harris County System which gives all radios on both systems the ability to talk to each other on an emergency scene thru mutual aid channels that are programmed in all our radios. Since the inception of the BVWACS the goal was to have all seven (7) Counties in the BVCOG on this system. We have added Grimes County and City of Navasota last year and now we are wanting to add Madison County to the system, we will have 3879 radios on the system when Madison County joins.
The BVWACS has contracted the BVCOG to be the managing entity of the radio system and this agreement is to allow Madison County to be added to the Interlocal Agreement.

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. PROS: Allows for the maintenance cost to be divided by another entity and lowers cost for all members

B. CONS:

ALTERNATIVES (In Suggested Order of Staff Preference):

ATTACHMENTS: (1) First Amendment to the Interlocal Agreement for Managing Entity by the BVCOG for the Brazos Valley Wide Area Communications System (BVWACS)

FUNDING SOURCE (Where Applicable):

RECOMMENDED ACTION: Approve the First Amendment to the Interlocal Agreement for Managing Entity by the Brazos Valley Council of Governments (BVCOG) for the Brazos Valley Wide Area Communications System (BVWACS) and authorize the Mayor to execute any necessary documentation
APPROVALS: James Fisher

FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT FOR MANAGING ENTITY BY THE BVCOG FOR THE BRAZOS VALLEY WIDE AREA COMMUNICATIONS SYSTEM (BVWACS)

	§	**COUNTIES OF BRAZOS,**
STATE OF TEXAS	§	**WASHINGTON, GRIMES**
	§	**AND MADISON**

This First Amendment to the Interlocal Agreement for Managing Entity by the BVCOG for the Brazos Valley Wide Area Communications System (BVWACS) is entered into this ___ day of _____ 2020 and is effective as of October 1, 2020.

WHEREAS, the Brazos Valley Council of Governments and the Cities of Bryan, College Station and Brenham, and the Counties of Washington, Grimes, and Brazos, and Texas A&M University (BVWACS Parties) entered into an interlocal agreement (the "Agreement") for Managing Entity by the BVCOG for the Brazos Valley Wide Area Communications System (BVWACS); and

WHEREAS, Article 7 of the Agreement provides for Changes and Amendments of the Agreement; and

WHEREAS, Madison County is a new BVWACS party subsequent to execution of the First Amendment to the Second Restatement of the Interlocal Agreement for the Construction, Acquisition, Implementation, Operation and Maintenance of the Brazos Valley Wide Area Communications System (BVWACS); and

WHEREAS, the BVWACS parties wish to amend this Agreement to add Madison County; and

WHEREAS, Madison County agrees to abide by all covenants outlined in the Agreement;

NOW, THEREFORE, the BVWACS parties hereby amend the Agreement as follows:

1. The Agreement is amended to include the Cities of Bryan, College Station and Brenham, and the Counties of Washington, Grimes, Brazos, and Madison, and Texas A&M University.

2. Article 12 is amended to add the following:

   County:
   Madison County
   Attention: County Judge, with a copy to County Attorney
   103 West Trinity, Suite 113
   Madisonville, TX 77864

IN WITNESS WHEREOF, this Amendment has been executed and delivered on behalf of the BVWACS Parties by their duly authorized representatives in one or more counterparts, which together shall constitute one agreement.

MADISON COUNTY

By: _____ Date: _____

County Judge A.J. "Tony" Leago

CITY OF BRYAN, TEXAS

_____
Andrew Nelson, Mayor

ATTEST:

_____
Mary Lynne Stratta, City Secretary
Date: _____

APPROVED AS TO FORM:

_____
Janis K. Hampton, City Attorney

CITY OF COLLEGE STATION

By: _____ Date: _____
Mayor Karl Mooney

ATTEST:

By: _____ Date: _____
Tanya Smith, City Secretary

APPROVED:

By: _____ Date: _____
Bryan Woods, City Manager

By: _____ Date: _____
Carla Robinson, City Attorney

By: _____ Date: _____
Jeffrey Kersten, Assistant City Manager/ CFO

CITY OF BRENHAM

By: _____ Date: _____
Mayor Milton Tate

BRAZOS COUNTY

By: _____ Date: _____
Duane Peters, County Judge

ATTEST:

_____ Date: _____
Karen McQueen, County Clerk

APPROVED:

By: _____ Date: _____
Edward C. Bull IV, Assistant County Attorney

WASHINGTON COUNTY

By: _____ Date: _____
County Judge John Durrenberger

TEXAS A&M UNIVERSITY

By: _____ Date: _____
Dr. Jerry Strawser

GRIMES COUNTY

By: _____ Date:_____
County Judge Joe Fauth

BRAZOS VALLEY COUNCIL OF GOVERNMENTS

_____ Date:_____

Tom Wilkinson, Executive Director

AGENDA ITEM 13

DATE OF MEETING: May 7, 2020	**DATE SUBMITTED:** April 30, 2020
DEPT. OF ORIGIN: Fire	**SUBMITTED BY:** Ricky Boeker

MEETING TYPE:	**CLASSIFICATION:**	**ORDINANCE:**
☒ **REGULAR**	☐ **PUBLIC HEARING**	☐ **1ST READING**
☐ **SPECIAL**	☐ **CONSENT**	☐ **2ND READING**
☐ **EXECUTIVE SESSION**	☒ **REGULAR**	☐ **RESOLUTION**
	☐ **WORK SESSION**	

AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon the First Amendment to the Second Restatement of the Interlocal Agreement for the Construction, Acquisition, Implementation, Operation and Maintenance of the Brazos Valley Wide Area Communications System (BVWACS) and Authorize the Mayor to Execute Any Necessary Documentation

SUMMARY STATEMENT: This is a companion document to the previous one about the BVCOG Managing Entity. This document is allowing Madison County to become a full BVWACS party and it also states what equipment they will bring to the BVWACS system and what their role will be in the upkeep of that equipment. They are anticipating 198 radios they will be putting on the system.

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. PROS: Allows for the maintenance cost to be divided by another entity and lowers cost for all members

B. CONS:

ALTERNATIVES (In Suggested Order of Staff Preference):

ATTACHMENTS: (1) First Amendment to the Second Restatement of the Interlocal Agreement for the Construction, Acquisition, Implementation, Operation and Maintenance of the Brazos Valley Wide Area Communications System (BVWACS)

FUNDING SOURCE (Where Applicable):

RECOMMENDED ACTION: Approve the First Amendment to the Second Restatement of the Interlocal Agreement for the Construction, Acquisition, Implementation, Operation and Maintenance of the Brazos Valley Wide Area Communications System (BVWACS) and authorize the Mayor to execute any necessary documentation

APPROVALS: James Fisher

FIRST AMENDMENT TO THE SECOND RESTATEMENT OF THE INTERLOCAL AGREEMENT FOR THE CONSTRUCTION, ACQUISITION, IMPLEMENTATION, OPERATION AND MAINTENANCE OF THE BRAZOS VALLEY WIDE AREA COMMUNICATIONS SYSTEM (BVWACS)

	§	**COUNTIES OF BRAZOS,**
STATE OF TEXAS	§	**WASHINGTON, GRIMES**
	§	**AND MADISON**

This First Amendment to the Second Restatement Interlocal Agreement for the Construction, Acquisition, Implementation, Operation and Maintenance of the Brazos Valley Wide Area Communications System (BVWACS) is entered into this ___ day of _____ 2020 and is effective as of October 1, 2020.

WHEREAS, the Brazos Valley Council of Governments and the Cities of Bryan, College Station and Brenham, and the Counties of Washington, Grimes, and Brazos, and Texas A&M University entered into an interlocal agreement (the "Agreement") for the construction, acquisition, implementation, operation and maintenance of the Brazos Valley Wide Area Communications System (BVWACS); and

WHEREAS, Section 11 of the Agreement provides for the addition of new parties to the BVWACS system; and

WHEREAS, Section 6 of the Agreement provides for the amendment of the Agreement; and

WHEREAS, Madison County wishes to become a full BVWACS party; and

WHEREAS, Madison County agrees to abide by all covenants outlined in the Agreement; and

WHEREAS, the existing BVWACS parties wish to amend the Interlocal Agreement to add Madison County as a full BVWACS party; and

WHEREAS, the Brazos Valley Council of Governments has arranged to have a six-channel 700MHz RF site equipment rack provided for installation at a tower site, located at 1101 E. Collard Street in Madisonville; and

WHEREAS, Madison County has agreed to furnish space on said tower and in the associated equipment shelter,

NOW, THEREFORE, the BVWACS parties and Madison County hereby agree as follows:

1. Unless expressly written herein, the terms of this amendment shall follow the terms of the Agreement and will continue until September 30, 2023, as defined in Section 2 of the Agreement.

2. Madison County will fund any and all costs associated with bringing the RF infrastructure into service. This includes, but is not limited to, preparation of the existing tower shelter for proper operation and protection of existing and new equipment based on industry best practices, as well as any grant funding provided by the State of Texas or locally budgeted funds.

3. Madison County understands that costs associated with being a BVWACS Party are calculated every year, based on the number of subscriber devices they have in service on the BVWACS System versus the total Operating, Maintenance, and Capital Fund Budgets.

4. Madison County further understands that, if their initial subscriber count is insufficient to cover the actual maintenance and operation costs of their membership, they will be responsible for payment of a sufficient number of subscriber units to offset those costs.

5. Madison County understands that, once their actual number of subscriber units in-service is sufficient to cover the actual maintenance and operation costs of their membership, they will be billed at their actual subscriber count.

6. Madison County agrees to provide antenna and equipment shelter space at the tower located at 1101 E. Collard Street in Madisonville, as well as prepare the shelter for the installation of new equipment in a manner consistent with industry best practices for the installation and protection of RF equipment at tower sites, including any reconfiguration of existing equipment as may be necessary, working in conjunction with the BVWACS Radio System Manager to determine the best course of action, and Madison County agrees that they will be wholly responsible for any and all lease fees that may be charged by the owner of said tower structure, so long as they remain a BVWACS Party.

7. Madison County will receive subscriber devices, at no cost, from the Brazos Valley Council of Governments, at a quantity to be coordinated between Madison County and the BVWACS Radio System Manager, in an effort to lessen the initial Capital Expenditure burden on Madison County. Madison County agrees that they will receive the subscriber devices only, and Madison County will be financially responsible for any costs associated with purchasing the necessary accessories to put the subscriber devices into service, including any batteries, antennas, microphones, speakers, power cables, installation services, or any other ancillary costs.

8. In accordance with Section 4.B. and 5.B of the Agreement, Madison County shall appoint One (1) official to the BVWACS Governing Board, and One (1) primary representative and One (1) alternate representative to the BVWACS Operating Board.

9. The BVWACS Parties agree that, for testing and verification purposes, RF site infrastructure and subscriber units may become active prior to the effective date of this Amendment. The BVWACS Parties further agree that, should these units become active prior to the effective date of this Amendment, Madison County shall not be billed for this

testing, verification, and usage of the BVWACS System until the effective date of this Amendment.

10. In accordance with Section 22.D. of the Agreement, Notices to Madison County shall be directed to:

Madison County
Attention: County Judge, with a copy to the County Attorney
103 W. Trinity, Suite 113
Madisonville, TX 77864

IN WITNESS WHEREOF, this Amendment has been executed and delivered on behalf of the BVWACS Parties by their duly authorized representatives in one or more counterparts, which together shall constitute one agreement.

MADISON COUNTY

By: _____ Date: _____
County Judge A.J. "Tony" Leago

CITY OF BRYAN, TEXAS

_____
Andrew Nelson, Mayor

ATTEST:

_____
Mary Lynne Stratta, City Secretary
Date: _____

APPROVED AS TO FORM:

_____
Janis K. Hampton, City Attorney

CITY OF COLLEGE STATION

By: _____ Date: _____
Mayor Karl Mooney

ATTEST:

By: _____ Date: _____
Tanya Smith, City Secretary

APPROVED:

By: _____ Date: _____
Bryan Woods, City Manager

By: _____ Date: _____
Carla Robinson, City Attorney

By: _____ Date: _____
Jeffrey Kersten, Assistant City Manager/ CFO

CITY OF BRENHAM

By: _____ Date: _____
Mayor Milton Tate

BRAZOS COUNTY

By: _____ Date: _____
Duane Peters, County Judge

ATTEST:

_____ Date: _____
Karen McQueen, County Clerk

APPROVED:

By: _____ Date: _____
Edward C. Bull IV, Assistant County Attorney

WASHINGTON COUNTY

By: _____ Date: _____
County Judge John Durrenberger

TEXAS A&M UNIVERSITY

By: _____ Date: _____
Dr. Jerry Strawser

GRIMES COUNTY

By: _____ Date:_____
County Judge Joe Fauth

AGENDA ITEM 14

DATE OF MEETING: May 7, 2020	**DATE SUBMITTED:** April 13, 2020
DEPT. OF ORIGIN: Airport	**SUBMITTED BY:** Kim Hodde

MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
☒ **REGULAR**	☐ **PUBLIC HEARING**	☐ **1ST READING**
☐ **SPECIAL**	☐ **CONSENT**	☐ **2ND READING**
☐ **EXECUTIVE SESSION**	☒ **REGULAR**	☐ **RESOLUTION**
	☐ **WORK SESSION**	

AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon a Ground Space Lease Agreement Between Aviators Plus, LLC and the City of Brenham for the Construction and Operation of a Fuel Farm at the Brenham Municipal Airport, and Authorize the Mayor to Execute Any Necessary Documentation

SUMMARY: Aviators Plus, LLC (Brent Nedbalek) is a Fixed Base Operator ("FBO") at the Brenham Municipal Airport. Mr. Nedbalek constructed a Jet-A fuel farm on the property he has leased located at 2901 Aviation Way. He also requested a ground space lease for construction of an AvGas (aviation gasoline) fuel farm. The proposed location was reviewed and approved by the Airport Advisory Board. Mr. Bovey's office modified the standard ground space lease agreement that is used for hangar leases to meet the requirements of a fuel farm operation. Per Mr. Nedbalek's FBO agreement, he is required to provide and maintain an adequate supply of AvGas and Jet-A fuel for sale to airport users.

The following are some of the provisions included in the Agreement:

- 0.0177-acre of land (770 square feet) being leased for the construction and operation of a fuel farm.
- Initial term of agreement begins upon approval of lease agreement and ends October 31, 2029.
- Unless terminated as provided in the lease, the lease shall automatically renew for two (2) subsequent five (5) year renewal terms.
- At the expiration of the second five (5) year renewal term, this lease will renew annually for one (1) year terms unless either party sends written notice of its intention to not renew the lease.
- Rental rate shall be ten cents ($.10) per square foot per year. Rate can be increased in an amount not to exceed an increase of two cents ($.02) per square foot in a five (5) year period.
- Lessee is granted the right and privilege to use the premises for construction, repair, maintenance, use and operation of a fuel farm. Fuel Farm shall include storage facilities for aviation gasoline (AvGas) such as fuel storage tanks and other components of the fuel delivery system.
- Does not grant or authorize an exclusive right.
- Fuel flowage fee of four cents ($.04) per gallon of AvGas purchased due to the City of Brenham.

Aviators Plus has been operating its business at the Brenham Airport for numerous years and will be making a substantial investment in its new endeavor.

STAFF ANALYSIS (For Ordinances or Regular Agenda Items): **A. PROS:** **B. CONS:**
ALTERNATIVES
ATTACHMENTS (1) Ground Space Lease Agreement for Fuel Farm Operation
FUNDING SOURCE (Where Applicable):
RECOMMENDED ACTION: Approve a Ground Space Lease Agreement between Aviators Plus, LLC and the City of Brenham for the Construction and Operation of a Fuel Farm at the Brenham Municipal Airport, and authorize the Mayor to execute any necessary documentation
APPROVALS: James Fisher

GROUND SPACE LEASE AGREEMENT FOR FUEL FARM OPERATION

THE STATE OF TEXAS
COUNTY OF WASHINGTON

This Ground Space Lease Agreement for Fuel Farm Operation (hereinafter referred to as "Lease") is made and entered into this 7th day of May, 2020 by and between City of Brenham, a Texas home-rule municipal corporation (hereinafter referred to as "Lessor") and as the owner of the Brenham Municipal Airport, and Aviators Plus, LLC, a Texas limited liability company (hereinafter referred to as "Lessee").

WITNESSETH:

WHEREAS, Lessor is the owner of the Brenham Municipal Airport (hereinafter referred to as "Airport"); and

WHEREAS, Lessee is a Fixed Base Operator ("FBO") at the Airport; and

WHEREAS, Lessee desires to lease a 0.0177 acre tract of land from Lessor for the construction and operation of a fuel farm; and

WHEREAS, Lessor desires to lease the 0.0177 acre tract of land to Lessee for the fuel farm;

NOW THEREFORE, in consideration of the terms and conditions listed herein to be kept and performed by Lessee, Lessor does lease unto said Lessee the following described property situated in Washington County, Texas, to have and to hold all and singular the said premises and improvements thereon, together with the rights, privileges and appurtenances thereunto belonging to said Lessee, subject to compliance with the following terms and conditions:

ARTICLE I – PREMISES AND PRIVILEGES

A. DESCRIPTION OF PREMISES.

Lessor hereby leases to Lessee a 0.0177 acre tract of land located at the Airport, said tract being more fully described on Exhibit "A" which is attached hereto and incorporated herein for all purposes (hereinafter referred to as "Premises").

Lessee accepts the Premises in its present condition subject to and including all defects and Lessee will, without expense to Lessor, repair and maintain any and all buildings, improvements and installations thereon and remove, or cause to be removed, any debris, buildings, improvements to the extent required for Lessee's use thereof in accordance with this Lease.

B. TERM AND RENT.

The term of this Lease shall begin upon the effective date of this Lease and terminate on October 31, 2029 ("Initial Term"). Unless otherwise terminated as provided herein, this Lease shall automatically renew for two (2) subsequent five (5) year renewal terms unless either party sends the other party written notice of its intention to not renew this Lease. At the expiration of the second five (5) year renewal term, this Lease shall renew annually for one (1) year terms unless either party sends the other party written notice of its intention to not renew this Lease. Any written notice of intent to not renew this Lease shall be sent at least sixty (60) days prior to the expiration of the then current term of this Lease.

The rental rate for the first year shall be ten cents ($0.10) per square foot per year for the 770 square feet and shall be paid upon the execution of this Lease by Lessee. Subsequent rental payments are payable annually on the anniversary hereof. Any rental payment not paid by the tenth of the month in which it is due is subject to a late fee of five ($5.00) dollars. The Lessee acknowledges and agrees that the Lessor reserves the right to adjust the Lease rental rate in an amount not to exceed an increase of two cents ($0.02) per square foot in a five (5) year period.

C. ACCESS.

Upon executing this Lease and paying the first year's rental payment hereunder and performing the requirements of this Lease, Lessee shall have the right of access to and from the Premises over such roadway(s), as may be designed for that purpose and the right of access to and from the landing area for airplanes over taxiways and aircraft parking ramps as provided by Lessor at its sole discretion. Said roadway(s), aircraft parking ramps and taxiways shall be used jointly with other airport tenants and Lessee shall not interfere with the rights and privileges of other persons or firms using said facilities and shall be subject to such weight and type use restrictions as Lessor deems appropriate.

D. OBJECTS AND PURPOSES OF LEASE.

Lessee is hereby granted the right and privilege to use the Premises for the construction, repair, maintenance, use and operation of a Fuel Farm. In this Lease "Fuel Farm" shall mean fuel storage facilities for aviation gasoline ("avgas"), such as fuel storage tanks, and all other components of the fuel delivery system that are owned or operated by Lessee.

Lessee shall not use the Premises for any purposes other than those authorized herein, without the prior written consent of Lessor.

It is understood and agreed that nothing herein shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958, [49 USCA Chapter 471 or successor statute].

E. LESSOR'S RESERVED RIGHTS.

1. Development. Lessor, at its sole discretion, reserves the right to further develop or improve the aircraft operating area of the Airport as it sees fit and to take action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Lessee from erecting or permitting to be erected, any building or other structure on the Airport which, in the opinion of the Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft.

2. Oil, Gas, Mineral Interests. It is understood and agreed that this Lease is made subject and subordinate to the terms of any oil, gas, and other mineral interest; leases; or right-of-way easements of any nature that may have been executed heretofore.

   Lessor agrees that (1) if it should, as a mineral owner under the premises, develop all or part of the Airport for oil, gas or other mineral purposes, no well will be drilled or other operations conducted on the Premises, and (2) in the event it should hereafter execute an oil, gas or other mineral lease in favor of a third party covering the Airport area, or a portion thereof, it will cause such lease to contain a provision that the lessee therein will not conduct any of its drilling or other operations on the land covered by this Lease, or in a manner which would unreasonably interfere with Lessee's use and enjoyment of the Premises.

3. Other Contracts. Lessee hereby acknowledges that Lessor is bound by the terms and conditions of any and all Federal Aviation Administration, Texas Department of Transportation, and other grant agreements, grant assurances and regulations regarding the Airport, and terms of any grant, loan, regulation, or agreement under Section 22.055 of the Texas Transportation Code, as amended or superseded, whether now existing or made in the future. Lessee agrees not to take any action or omit to take any action in relation to the Fuel Farm and this Lease that would cause Lessor to be in violation of such terms, conditions, agreements, assurances, regulations, grant or loan.

4. Other Laws. Lessee hereby acknowledges that there are in effect federal, state, county, and municipal laws, rules, regulations, standards, and policies (together, "laws") and that the same may hereafter be modified or amended and additional laws may hereafter be enacted or go into effect, relating to or affecting the Fuel Farm or this Lease. Lessee shall not cause, or permit or allow anyone to cause, any violation of any applicable laws. Further, Lessee shall have no claim against Lessor by reason of any changes Lessor may make in the Fuel Farm or this Lease required by any applicable laws or any charges imposed upon Lessee, Lessee's customers or other invitees of Lessee as a result of changes in applicable laws.

5. Other Leases. Nothing herein contained shall limit Lessor with respect to the granting of leases to other aviation tenants under other terms as herein set forth or to granting of leases for non-commercial aviation or non-aviation purposes at terms different from those set forth herein.

6. Entry. Lessor shall have the right to enter upon the Premises for the purpose of a) confirming the performance by Lessee of all obligations under this Lease; b) doing any other act which the Lessor may be obligated or have the right to perform under this Lease; or c) inspecting and copying the books and records of Lessee related to Lessee's performance of its obligations under this Lease.

F. CONSTRUCTION OF FUEL FARM.

Lessee agrees to complete the construction of the Fuel Farm and all other improvements on the Premises within 365 days of the effective date of this Lease, except that a longer period of time may be granted by the Lessor upon a showing by the Lessee that progress has been delayed because of reasons beyond the control of Lessee. If Lessee fails to complete construction within 365 days of the date stated or within such additional period of time as granted by Lessor, this lease shall become voidable at Lessor's option. The construction of any improvements on the Premises is at the sole cost and expense of Lessee.

Lessee understands that all development and construction shall conform to Airport Master Plan Guidelines, the Airport Layout Plan ("ALP"), and other Airport Rules and Regulations as approved by Lessor. Further, the Fuel Farm must comply with all appropriate City of Brenham Code of Ordinances, applicable National Fire Protection Association standards, applicable International Fire Code requirements, and other applicable state and federal regulations. A site plan of Lessee's area is attached as Exhibit "A". Intentional failure to conform development to approved plans and as scheduled shall be cause for termination of this Lease upon failure to conform within thirty (30) days of Lessor's notice to Lessee of its failure to conform.

Should any action of the Lessee require the Lessor to submit an amended ALP to the Federal Aviation Administration ("FAA") for its approval, then Lessee shall be responsible for all costs incurred by Lessor in creating and submitting the amended ALP. Further, Lessee shall be responsible for all costs incurred by Lessor for any environmental review initiated by the FAA pursuant to the National Environmental Policy Act because of the construction of the Fuel Farm.

H. EXPIRATION OR TERMINATION.

Upon the expiration or termination of this Lease, the Lessor may purchase the Fuel Farm and any other improvements on the Premises at a fair market value as determined by an Independent Appraiser mutually agreeable to the Lessor and the Lessee, all fees for such appraisal services to be paid by the Lessee.

Upon the expiration or termination of this Lease, the Lessee shall, at Lessee's sole expense, conduct a Phase 1 environmental site assessment of the Premises.

I. DEFAULT.

Any of the following events constitutes default:

1. An act of the Lessee which is in variation with the site plan and is not corrected after thirty (30) days' notice by Lessor to Lessee of said default, or

2. The nonperformance by Lessee of any other covenant or condition of this lease which is not cured within thirty (30) days after written notice thereof from Lessor, or

3. The Lessee's Fixed Base Operator Agreement with the City of Brenham is terminated or expires, or

4. The subjection of any of Lessee's property to any levy, seizure, assignment, application, or sale for or by any creditor or governmental agency.

J. LESSOR'S RIGHTS UPON DEFAULT.

On the occurrence of any of the events defined as constituting "default", Lessor may without notice to or demand on Lessee terminate this Lease and take possession of the Premises and lease the same or any portion thereof, for such period and such rental, and to such persons, as Lessor shall elect.

K. MORTGAGE OF LEASEHOLD INTEREST.

Lessee shall have the right, subject to written approval from the City Manager of the City of Brenham, to place a first mortgage lien upon its leasehold. Any approved lender shall notify Lessor of all action taken by it in the event payments on such loans shall become delinquent.

ARTICLE II – OBLIGATIONS OF LESSEE

A. NET LEASE: MAINTENANCE AND OPERATION.

The use and occupancy of the leased Premises by Lessee will be without cost or expense to Lessor. During the term of this Lease, Lessee, at Lessee's sole expense, shall maintain, repair and replace all equipment at the Fuel Farm, including, but not limited to fuel storage tanks and all fuel loading and unloading equipment, such as hoses, couplings, swivels and such other devices related to the fuel storage tanks.

Lessee shall maintain the Premises at all times in a safe, neat and attractive condition and shall not permit the accumulation of any trash or debris on the Premises. Lessee shall repair all

damages to said Premises caused by its employees, patrons, or its operation thereon; shall maintain and repair all buildings, pavements, equipment and improvements; and shall repaint the improvements as necessary. Lessee shall pay all taxes against the property and indemnify Lessor from any tax lien.

Lessor reserves the right to make periodic inspection of the Premises and improvements and equipment thereon.

Lessor, in its reasonable discretion, shall be the sole judge of the quality of maintenance that shall apply to the Premises. Upon written notice by Lessor to Lessee, Lessee shall be required to perform whatever reasonable maintenance Lessor deems necessary. If said maintenance is not undertaken by Lessee within ten (10) days after receipt of written notice, Lessor shall have the right to enter upon the leased premises and perform the necessary maintenance, the cost of which shall be borne by Lessee.

B. ALTERATIONS TO AND CONDITIONS OF PREMISES.

Lessee agrees not to construct, install, remove and/or materially modify any improvements on the Premises without prior written approval of the Lessor subject to the conditions considered by Lessor to be necessary.

Lessee shall not remove or demolish, in whole or in part, any improvements upon the Premises without the prior written consent of Lessor, which may, at its discretion, condition such consent upon the obligation of Lessee to replace the same by an improvement specified in such consent.

C. TRASH, GARBAGE, LANDSCAPING.

Lessee shall provide a complete and proper arrangement of the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage, and other refuse caused as a result of the operation of the Fuel Farm. Lessee shall provide and use approved receptacles for all such garbage, trash and other refuse. Piling of boxes, cartons, barrels or other similar items in an unattractive or unsafe manner, on or about the Premises, is prohibited.

Lessee is specifically responsible for mowing, if applicable, and to ensure that weed or grass growth is never allowed in excess of that allowed by Lessor's weed ordinance requirements, and removal of weeds from around fences and improvements for the area within ten (10) feet of the Premises shown on the attached Exhibit "A". Lessee is encouraged to provide additional landscaping beyond the minimum required by Lessor to assist in enhancing Airport appearance.

D. SIGNS.

Lessee may not install identifying signs on the Premises except with the written permission of Lessor.

E. UTILITIES.

Lessee shall assume and pay for all costs or charges for utility services furnished to Lessee during the term hereof; provided, however, that Lessee shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense; and Lessee shall pay for any and all service charges incurred therefor.

F. FIELD USE CHARGES.

Nothing herein shall be deemed to relieve Lessee and its tenants, sublessees, patrons, invitees, and others from field landing fees, nor its guests from fuel flowage fees, as are levied by Lessor or the Fixed Base Operator.

G. PAYMENTS DUE.

Lessee agrees that no payments owed by Lessee of any nature whatsoever to Lessor, including payment in advance for service charges, such as garbage collection, or any other sums of any character whatsoever, shall become delinquent or in arrears.

H. COMPLIANCE WITH RULES.

Lessee will comply with any and all federal or state laws, rules and regulations, and all regulations made by the City of Brenham and approved by the City Council of the City of Brenham.

I. NONDISCRIMATION/FEDERALLY REQUIRED ASSURANCES.

Lessee, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby agree that "as a covenant running with the land" (1) no person on the grounds of race, color, sex, creed, national origin, or handicapped status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, or in the construction of any improvements on, or under such land, or the furnishing of services thereof, and (2) that Lessee shall use the premises in compliance with and conduct its operations in accordance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, or Section 504 of the Rehabilitation of 1973 (23 USC 794) and 49 CFR Part 27 and as said regulations may be amended, and that Lessee will comply with such enforcement procedures as the United States might demand that Lessor take.

J. FAA AND OTHER APPROVAL OF USE.

Lessee agrees to secure approval from the Federal Aviation Administration concerning the height and location of all buildings or improvements or modifications thereof which may be constructed or installed on the Premises and to satisfy any applicable environment or other requirements of federal, state, and local authorities as to noise, smoke, fumes emissions, storm water, or other hazards or potential hazards or other offensive sues, if any, which may occur as a result of Lessee's operations on the Premises.

K. NON-INTERFERENCE WITH OPERATION OF AIRPORT/EASEMENTS.

1. Lessee, by accepting this Lease, expressly agrees for itself, its successors and assigns that it will not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft at Airport or otherwise constitute a hazard. If Lessee violates this, Lessor reserves the right to enter upon the Premises and remove the interference at the expense of the Lessee.

2. Lessor shall maintain and keep in good repair the landing area of the Airport, and shall have the right to direct and control all activities of the Lessee in this regard.

3. Lessor shall retain an easement over, above and on the Premises in relation to aircraft noise and the utilization of the air space for the purposes of the operation of said Airport.

L. FUEL STORAGE.

Fuel delivered, stored, or dispensed by Lessee shall fully comply with the quality specifications outlined in ASTM (American Society for Testing and Materials) D1910 (avgas). Ensuring the quality of fuel is the sole responsibility of Lessee.

M. LESSEE AUTHORITY.

The officer of the Lessee who executes this Lease represents and promises that he is duly authorized by corporate resolution or other appropriate authorization to execute the same on behalf of Lessee.

N. INDEMNIFICATION.

1. Lessee agrees to defend, indemnify, and hold harmless the Lessor from and against and reimburse the Lessor for any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to reasonable attorneys' fees), fines, environmental costs and/or penalties (collectively "Costs") which may be imposed upon, claimed against or incurred by the Lessor and which, in whole or in part, directly or indirectly, arise from or are in any way connected with any of the following , except to the extent resulting from the gross negligence or willful

misconduct of the Lessor or Lessor's employees, agents, or contractors: (a) any act, omission or negligence of Lessee or Lessee's partners, officers, directors, agents, employees, invitees or contractors; (b) any use, occupation, management or control of the Premises by Lessee, whether or not due to Lessee's own act or omission and whether or not occurring on the Premises; (c) any condition created in or about the Premises by Lessee or any of its agents, including any accident, injury or damage occurring on or about the Premises after the effective date of this Lease; (d) any breach, violation or nonperformance of any of Lessee's obligations under this Lease; (e) any damage caused by Lessee on or to the Premises. For purposes of this section, Lessee shall to be deemed to include Lessee and Lessee's employees, agents, invitees and contractors.

2. Notwithstanding any provisions of this Agreement, Lessee agrees to defend, indemnify and hold harmless the Lessor and its directors, agents and employees from and against any and all damages, fines, penalties, judgments, losses, liabilities, costs and reasonable expenses (including without limitation, reasonable attorneys' fees and expenses), claims, actions, suits and other proceedings (collectively "Liabilities"), which result from, are related to, or arise out of the existence or discovery of any Hazardous Substance on, under, from, through, about or within the Premises.

O. INSURANCE.

Lessee shall secure the below referenced insurance coverage, in which Lessor shall be named an additional insured. Such policies of insurance shall protect Lessor and Lessee against any and all liability for death, injury, loss or damage against which Lessee has elsewhere in this Lease undertaken to save and hold the Lessor, and its authorized agents, officers, representatives and employees harmless from and against any and all penalties, liability and annoyance of loss resulting from claims or court action of any nature and arising directly or indirectly out of the acts of Lessee, its agents, servants, guests, employees, business visitors or others under this Lease or by result of any act or omission of such persons. Such policies shall be placed with a company authorized to do business in the State of Texas and shall have not less than the following limits:

1. $1,000,000 Comprehensive General Liability
2. Medical Expense Limit (Any one Person) $5,000
3. Personal & Advertising Injury Aggregate Limit $1,000,000
4. Products/Completed Operations Aggregate Limit $1,000,000
5. Pollution Liability -- $1,000,000 per loss

Lessee shall provide the above referenced coverage and, if applicable, also procure and maintain Worker's Compensation insurance, including employer's liability, in the amounts required by the State of Texas.

The amounts of said insurance shall not be deemed a limitation of Lessee's agreement to save and hold Lessor harmless, and if Lessee becomes liable for an amount in excess of the insurance Lessee will save and hold Lessor harmless as the holder thereof. Lessee shall furnish to the Lessor certificates of insurance for the insurance coverage required herein.

Lessee shall maintain the insurance with an insurance company authorized to do business in the State of Texas and approved by Lessor. Lessee shall furnish Lessor with a certificate from the insurance carrier showing the insurance to be in full force during the entire term of this Agreement or shall deposit with the Lessor copies of the policies.

The policies or certificates shall contain a provision that written notice of cancellation or of any material change in the policy by the insurer shall be delivered to Lessor thirty (30) days in advance of the effective date of the cancellation or change.

ARTICLE III – OTHER CONDITIONS

1. Lessee agrees to pay all public utility charges that may be assessed, including charges for gas, electric, water and any other utility charge.

2. Any holding over by Lessee or his successors, at the expiration or termination of this Lease, in whatever manner its termination may be brought about, shall not operate as a renewal of this lease, but during the period of such holding over Lessee shall be a tenant at the will of Lessor.

3. The Lessor requires that Lessee and users of Lessee's Premises shall agree to be bound by all of the regular rules and regulations as may be set out by the FAA as to pilots and their conduct and that they agree to abide by any and all local rules that may be approved by the City Council of the City of Brenham, Texas, for pilots at the City of Brenham Municipal Airport and as may be adopted by the Airport Advisory Committee of the City of Brenham. Lessee shall agree that in the event it is found not to have abided by the rules or does not correct a situation required to be corrected by the City of Brenham, then and in that event it may lose its privilege to operate the Fuel Farm that is located on the Premises being leased from the City of Brenham.

4. This Lease is governed by the laws of the State of Texas and performable in Washington County, Texas. Venue shall lie exclusively in Washington County, Texas.

5. If any provision herein is held to be invalid in a court of law, the invalidity of such provision shall in no way affect the validity of any other provision.

6. Any notice required herein shall be effective upon mailing to the address described herein by depositing said notice in the mail, certified mail – return receipt requested to the addresses below.

APPROVED this the ____ day of _____, 2020.

CITY OF BRENHAM:

_____
Milton Y. Tate, Jr., Mayor
City of Brenham
P. O. Box 1059
Brenham, TX 77834-1059

ATTEST:

_____
Jeana Bellinger, City Secretary, TRMC, CMC

AVIATORS PLUS, LLC:

_____ 3/13/2020
Brent Nedbalek, Member
Aviators Plus, LLC
2901 Aviation Way
Brenham, Texas 77833

Exhibit "A"

30 0 30 60 90

GRAPHIC SCALE. – FEET

GRID NORTH

SCALE: 1" = 30'

NOTES:

1. THE BEARINGS AND COORDINATES SHOWN HEREON ARE RELATIVE TO THE TEXAS STATE PLANE GRID SYSTEM, NAD–83 {2011}, CENTRAL ZONE 4203. CONVERGENCE ANGLE AT N: 10063157.87' – E: 3547344.52' IS 2'–02'–23.7", COMBINED SCALE FACTOR IS 0.99996823, U.S. SURVEY FEET, UTILIZING NATIONAL GEODETIC SURVEY (NGS) MONUMENT BM1073 LOCATED ON THE AIRPORT PROPERTY. DISTANCES SHOWN HEREON ARE GROUND DISTANCES.

2. NO PART OF THE SUBJECT PROPERTY LIES WITHIN THE SPECIAL FLOOD HAZARD AREA ACCORDING TO THE FLOOD INSURANCE RATE MAP (FIRM) AS COMPILED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, NATIONAL FLOOD INSURANCE PROGRAM, MAP NUMBER 48477C0325D, EFFECTIVE DATE MAY 16, 2019, WASHINGTON COUNTY, TEXAS.

3. ◉ – DENOTES A 5/8" IRON ROD SET WITH ID. CAP STAMPED "HODDE & HODDE LAND SURVEYING" UNLESS OTHERWISE NOTED ON THE PLAT.

4. A CURRENT TITLE COMMITMENT OR REPORT WAS NOT AVAILABLE OR PROVIDED TO THE UNDERSIGNED SURVEYOR AS OF THE DATE OF THIS SURVEY AND THE UNDERSIGNED SURVEYOR DID NOT ABSTRACT THE SUBJECT PROPERTY.

5. (DRWCT) DENOTES DEED RECORDS OF WASHINGTON COUNTY, TEXAS.

SURVEY MAP

SHOWING A SURVEY OF 0.0177 ACRE OF LAND (770 SQ. FT.) LEASE AREA, LYING AND BEING SITUATED IN WASHINGTON COUNTY, TEXAS, PART OF THE JOHN COLE SURVEY, A–32, BEING PART OF THE SAME LAND DESCRIBED AS 31.125 ACRES IN THE DEED FROM LILLIE MAE CARAWAY DOCKERY, ET VIR TO THE CITY OF BRENHAM, DATED FEBRUARY 15, 1964, AS RECORDED IN VOLUME 251, PAGE 561, IN THE DEED RECORDS OF WASHINGTON COUNTY, TEXAS.

CERTIFICATION

THE STATE OF TEXAS

COUNTY OF WASHINGTON

I, JON E. HODDE, REGISTERED PROFESSIONAL LAND SURVEYOR, NO. 5197 OF THE STATE OF TEXAS, DO HEREBY CERTIFY THAT THIS MAP SHOWING A SURVEY OF 0.0177 ACRE OF LAND (770 SQ. FT.) LEASE AREA, IS TRUE AND CORRECT IN ACCORDANCE WITH AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY PERSONAL DIRECTION AND SUPERVISION.

DATED THIS THE 30TH DAY OF JULY, 2019, A.D.

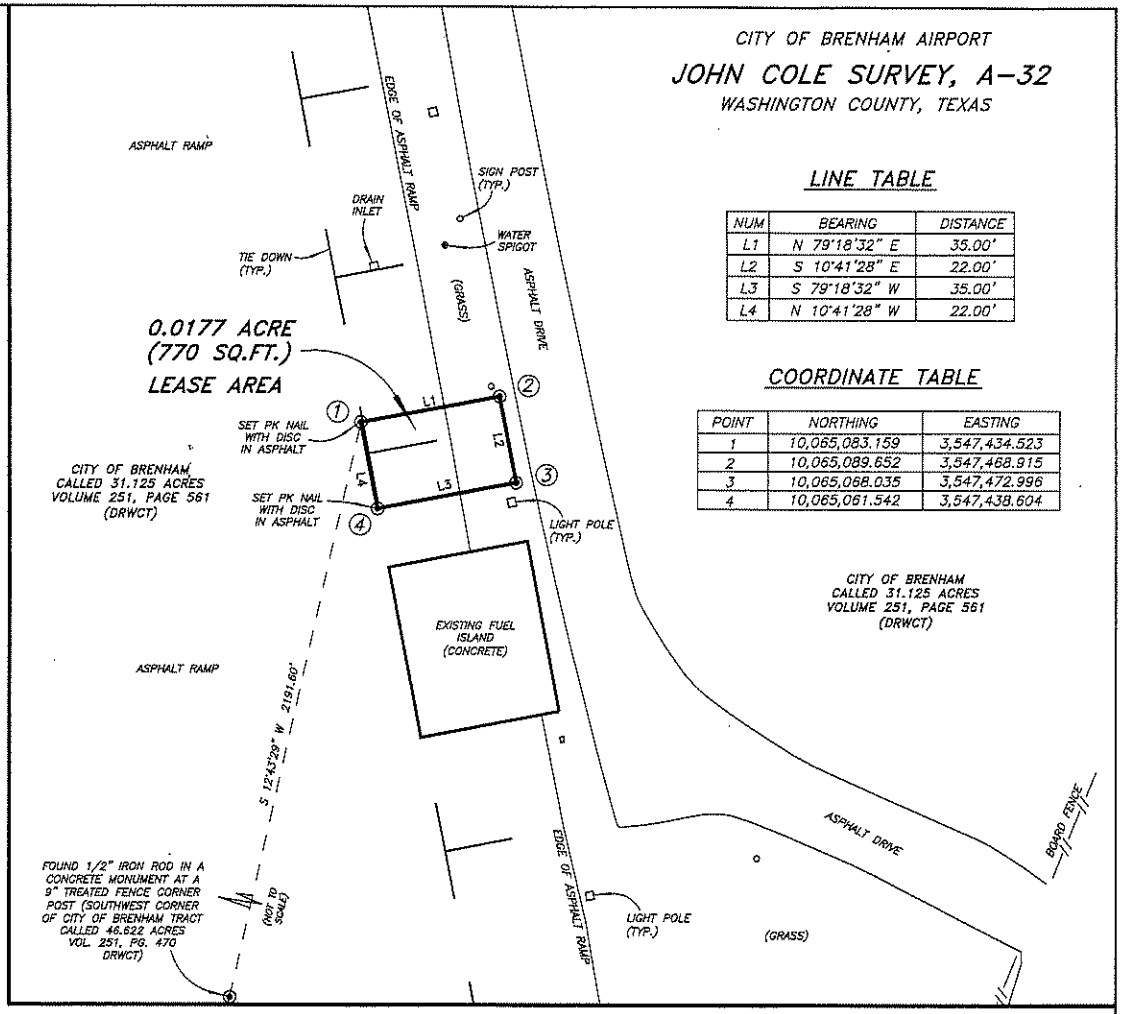
STATE OF TEXAS
REGISTERED
JON E. HODDE
5197
PROFESSIONAL
LAND SURVEYOR

JON E. HODDE
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 5197
HODDE & HODDE LAND SURVEYING, INC.
613 EAST BLUE BELL ROAD
BRENHAM, TEXAS 77833
(979)–836–5681
TEXAS FIRM REGISTRATION NO. 10018800

CITY OF BRENHAM AIRPORT

JOHN COLE SURVEY, A–32

WASHINGTON COUNTY, TEXAS



LINE TABLE

NUM	BEARING	DISTANCE
L1	N 79°18'32" E	35.00'
L2	S 10°41'28" E	22.00'
L3	S 79°18'32" W	35.00'
L4	N 10°41'28" W	22.00'

COORDINATE TABLE

POINT	NORTHING	EASTING
1	10,065,083.159	3,547,434.523
2	10,065,089.652	3,547,468.915
3	10,065,068.035	3,547,472.996
4	10,065,061.542	3,547,438.604

W.O. NO. 7560 (AVIATORSPLUS7473.DWG/MVIEW)
REF: AVIATORSPLUS7473.SURVEY

Hodde & Hodde Land Surveying, Inc.
Professional Land Surveying
613 E. Blue Bell Road . Brenham, Texas 77833
979-836-5681 . 979-836-5683 (Fax)
www. hoddesurveying.com

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LAND SURVEYING, INC.
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AGENDA ITEM 15

DATE OF MEETING: May 7, 2020	**DATE SUBMITTED:** April 27, 2020
DEPT. OF ORIGIN: Airport	**SUBMITTED BY:** Donald Reese / Kim Hodde

MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
☒ REGULAR	☐ PUBLIC HEARING	☐ 1ST READING
☐ SPECIAL	☐ CONSENT	☐ 2ND READING
☐ EXECUTIVE SESSION	☒ REGULAR	☒ RESOLUTION
	☐ WORK SESSION	

AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon Amendment No. 1 to the Airport Project Participation Agreement Between the City of Brenham and the Texas Department of Transportation and Authorize the Mayor to Execute Any Necessary Documentation

SUMMARY STATEMENT: Below is a timeline of the project to-date:

- December 2017 - the City was notified that the runway bump/hump issue was getting worse and becoming a safety issue.
- April 20, 2018 - the City of Brenham submitted a Letter of Interest (LOI) to TxDOT with a preliminary estimate of $421,200.
- May 2018 - a runway study was performed by TTI for TxDOT and it showed the area as needing to be repaired.
- December 13, 2018 - a Resolution was approved by City Council in support of this project in the amount of $453,000 based on an opinion of probable costs (OPC) prepared by Strand Associates. This estimated was based on a mill and overlay.
- February 12, 2019, TxDOT and City of Brenham met for the kick-off meeting for the project. After TxDOT reviewed the project, they increased the estimated project costs to $500,000.
- February 28, 2019 – Transportation Commission approved the project.
- July 24, 2019 – Design contract with Strand executed.
- August 8, 2019 – Pre-design kick-off meeting.
- December 19, 2019 – updated OPC ($576,549) from Strand with Alt #1 and #2 (does not include the design costs).
- February 24, 2020 – updated OPC ($603,644.75) from Strand with Alt #1 and #2 (error in calculation and increase for TxDOT's change from coal tar to paint. This number does not include the design costs).
- March 17, 2020 – bids opened. Low bidder for construction base bid plus Alt #1 and #2 - $525,748.40.
- April 10, 2020 – updated project costs from TxDOT after construction costs, RPR, surveying, testing etc. were finalized - $706,583.48

Initially, when this project was scoped, it was estimated and intended to be done as a mill and overlay project that would take approximately 2-weeks to complete. However, when the engineering work was performed it was determined that in order to properly repair the issue, the section needed to be removed and reconstructed instead of just a mill and overlay.

The reconstruction project will take approximately 4-6 weeks to complete. Since there are businesses and pilots on field that would be affected by this lengthy runway closure, it was decided to put an Alternate #1 in the bid that would allow a partially closed runway and allow the majority of the runway to be open and used during the construction. When the full runway is re-opened, it will have to be re-striped for the area that was closed. This fee is included in Alternate #1.

Alternate #2 is to restripe the remainder of the runway so that the striping is all new rather than part new and part old since it would make everything uniform and much easier to see. The change in the scope of the project, some material changes requested by TxDOT, as well as the decision to keep the runway partially open during the construction project account for the increase in the projected costs.

This amendment Number 1 increases the grant agreement from $500,000 to $706,590 for this runway hump/bump project. The City's share is 10% or $70,659.00. To date, the City has paid $62,783.00 of the 10% match. The final payment to TxDOT will be for $7,876. 00 upon approval of this amendment.

There is a possibility that the City can receive a $69,000 grant from the CARES Act program that was recently enacted by the Federal Aviation Administration (FAA) to be used to offset most of the City's share of this project. TxDOT is working with the FAA and will notify the City as soon as the grant funds have been confirmed and the process/timeline is in place.

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. PROS:

B. CONS:

ALTERNATIVES (In Suggested Order of Staff Preference):

ATTACHMENTS: (1) Texas Department of Transportation Airport Project Participation Agreement

FUNDING SOURCE (Where Applicable): Budgeted funds

RECOMMENDED ACTION: Approve Amendment No. 1 to the Airport Project Participation Agreement Between the City of Brenham and the Texas Department of Transportation and authorize the Mayor to execute any necessary documentation

APPROVALS: James Fisher

DocuSign Envelope ID: B820DBBE-66CC-4A0E-98F9-2E2270E5BF14

TEXAS DEPARTMENT OF TRANSPORTATION
AIRPORT PROJECT PARTICIPATION AGREEMENT

(Federally Assisted Airport Development)

TxDOT CSJ No.: 1917BRENM
TxDOT Project No.: BRENHAM
Commission Approval: February 28, 2019
February 27, 2020
NPE Funds Applied: FY16-20
DUNS: 939864294
C.F.D.A.:20.106

Amendment No. 01 to the Agreement

Part I - Identification of the Project

TO: City of Brenham, Texas

FROM: The State of Texas, acting through the Texas Department of Transportation

City of Brenham, Texas, hereinafter referred to as the "Sponsor," and the Texas Department of Transportation, hereinafter referred to as the "State," have entered into an Airport Project Participation Agreement TxDOT CSJ Number 1917BRENM, executed by the Sponsor on March 7, 2019, and by the State on March 15, 2019, for the development of Brenham Municipal Airport, hereinafter referred to as the "Airport".

The project is described as design and construction services to: reconstruct 400' section of Runwy 16-34 for grades and pavement markings at the Brenham Municipal Airport.

It is in the mutual interest of the Sponsor and the State to increase the grant by $206,590 based on bids received.

Part II - Offer of Financial Assistance, estimates total project costs to be $500,000; and financial assistance is currently limited to $450,000 in federal funds and $50,000 in local sponsor funds.

The following amendment to the Airport Project Participation Agreement shall become effective upon execution of this Amendment by the Sponsor and the State.

The Airport Project Participation Agreement is amended as follows:

1. On Part II, Item No. 2 of the Agreement, change Amount A, estimated total project costs,

DocuSign Envelope ID: B820DBBE-66CC-4A0E-98F9-2E2270E5BF14

and any further references in the Agreement to Amount A, to $706,590.

2. On Part II, Item No. 2 of the Agreement, change Amount B, estimated project costs eligible for federal financial assistance, and any further references in the Agreement to Amount B, to $706,590.

3. On Part II, Item 3 of the Agreement, change Amount C, the maximum obligation of the United States payable under this offer, and any further references in the Agreement to Amount C, to $635,931.

4. On Part II, Item 4 of the Agreement, change Amount D, Sponsor's share of the estimated project costs, and any further references in the Agreement to Amount D, to $70,659.

All other terms and conditions of the agreement are unchanged and remain in full force and effect.

This Amendment to the Airport Project Participation Agreement between City of Brenham, Texas, and the Texas Department of Transportation is mutually agreed to and accepted.

City of Brenham, Texas
Sponsor

_____
Sponsor Signature

_____
Sponsor Title

_____
Date

DocuSign Envelope ID: B820DBBE-66CC-4A0E-98F9-2E2270E5BF14

Execution by the State

Executed by and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs and grants heretofore approved and authorized by the Texas Transportation Commission.

STATE OF TEXAS
TEXAS DEPARTMENT OF TRANSPORTATION

By:_____

Date:_____

AGENDA ITEM 16

DATE OF MEETING: May 7, 2020	**DATE SUBMITTED:** April 29, 2020
DEPT. OF ORIGIN: Finance	**SUBMITTED BY:** Carolyn D. Miller

MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
☒ REGULAR	☐ PUBLIC HEARING	☐ 1ST READING
☐ SPECIAL	☐ CONSENT	☐ 2ND READING
☐ EXECUTIVE SESSION	☒ REGULAR	☒ RESOLUTION
	☐ WORK SESSION	

AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon Resolution No. R-20-020 Related to the Gas Fund and Maintenance of Cash Reserves

SUMMARY STATEMENT: The City is a charter member of the Joint Gas Purchase Contract with Municipal Gas Acquisition and Supply Corporation (MuniGas). The contract is administered by Municipal Energy Resources Corporation (MERC). During 2008 when the cost of natural gas rose exponentially, MERC adopted internal policies to address financial risk to protect the 74 municipal customers in the Joint Gas Purchase Program. They felt that all the municipal customers have joint responsibility for the Program and should maintain reserves sufficient to minimize the risk. In 2013, the City Council approved a resolution to maintain unrestricted cash reserves in the Gas Fund of at least $850,000 for the purpose of paying our gas supplier.

Over the past several years, gas purchase costs have significantly declined and MERC has agreed that we can reduce the level of unrestricted cash reserves from $850,000 to $666,000. Reducing this amount provides additional working capital dollars for the Gas Fund.

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. PROS: Maintain compliance with Joint Gas Purchase Program

B. CONS:

ALTERNATIVES (In Suggested Order of Staff Preference): N/A

ATTACHMENTS: (1) Resolution No. R-20-020

FUNDING SOURCE (Where Applicable): N/A

RECOMMENDED ACTION: Approve Resolution No. R-20-020 Related to the Gas Fund and Maintenance of Cash Reserves

APPROVALS: James Fisher

RESOLUTION NO. R-20-020

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS CONCERNING ITS GAS FUND AND MAINTENANCE OF CASH RESERVES

WHEREAS, The City of Brenham, through its Gas Utility, strives to provide all of its residents and customers with the lowest priced utilities available while maintaining the best service possible,

WHEREAS, The City of Brenham Gas Utility has materially reduced the cost of its gas supplies through its long-standing participation in the municipal gas purchasing cooperative with Municipal Gas Acquisition and Supply Corporation ("MuniGas"),

WHEREAS, in its efforts to maintain its credit-worthy and cost-saving relationship with MuniGas on terms similar to other participating municipal utilities, The City of Brenham represents and confirms on behalf of itself and of its Gas Utility that:

1. As of March 31, 2020, the unrestricted cash reserves of the Gas Utility, available for the payment of its operating and maintenance expenses (specifically, including purchases of natural gas supplies), exceeds $666,000.
2. The Gas Utility shall continually maintain the above noted level of unrestricted cash reserves, except to the degree such required balance is reasonably adjusted in writing by MuniGas, consistent with its requirement of other similar municipal participants in the cooperative Program as a result of material changes in (a) natural gas prices, (b) the Gas Utility's gas supply requirements, and/or (c) other currently unforeseen requirements, including those related to Program gas suppliers, rating agencies and/or significant credit changes in the Gas Utility's major customers.
3. The staff of the City of Brenham shall notify MuniGas within one business day of the City's determination that the balance of this reserve fund falls below the level required in item 2 above.
4. This Resolution will be submitted for approval by future City Councils as necessary to perpetuate the underlying understanding of this Resolution. Furthermore, to the extent this Resolution is deemed ineffective and/or not approved by future City Councils in a timely manner, the City will promptly notify MuniGas in writing.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF BRENHAM, TEXAS that the Mayor is authorized to execute all documents necessary concerning the City of Brenham's Gas Fund and maintenance of cash reserves.

PASSED and APPROVED on this the 7th day of May 2020.

_____
Milton Y. Tate, Jr.
Mayor

ATTEST:

By: _____
Jeana Bellinger, TRMC, CMC
City Secretary

AGENDA ITEM 17

DATE OF MEETING: May 7, 2020 **DEPT. OF ORIGIN:** Administration	**DATE SUBMITTED:** April 30, 2020 **SUBMITTED BY:** James Fisher

MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
☒ REGULAR	☐ PUBLIC HEARING	☐ 1ST READING
☐ SPECIAL	☐ CONSENT	☐ 2ND READING
☐ EXECUTIVE SESSION	☒ REGULAR	☐ RESOLUTION
	☐ WORK SESSION	

AGENDA ITEM DESCRIPTION: Discussion and Update on the City of Brenham's COVID-19 (Coronavirus) Response and Recovery Efforts

SUMMARY STATEMENT: City Manager James Fisher will provide the City Council with an update on the City's COVID-19 response and recovery efforts.

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. PROS:

B. CONS:

ALTERNATIVES (In Suggested Order of Staff Preference): N/A

ATTACHMENTS: None

FUNDING SOURCE (Where Applicable): N/A

RECOMMENDED ACTION: No action needed – discussion and update only.

APPROVALS: James Fisher