



**NOTICE OF A REGULAR MEETING
THE BRENHAM CITY COUNCIL
THURSDAY APRIL 19, 2012 AT 1:00 P.M.
SECOND FLOOR CITY HALL
COUNCIL CHAMBERS
200 W. VULCAN
BRENHAM, TEXAS**

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags – Councilmember Andrew Ebel**
- 3. Proclamation**
 - **National Crime Victims’ Rights Week** **Page 1**
 - **Motorcycle Awareness Month** **Page 2**
- 4. Citizens Comments**

CONSENT AGENDA

5. 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.

- 5-a. Minutes from the April 5, 2012 Council Meeting** **Page 3-8**
- 5-b. Discuss and Possibly Act Upon Ordinance No. O-12-006 Granting a Specific Use Permit to the Washington County Healthy Living Association for a Senior Citizens Center (Philanthropic Use) to be Located at Block I, Lot 5 of the Kenjura Subdivision, Section I (Said Property Consisting of 4.482 Acres and Being Situated at the Northwest Corner of East Tom Green Street and Loesch Street), in an R-1, Residential District** **Page 9-11**

REGULAR AGENDA

6. **Discuss and Possibly Act Upon Approval of a Cost Participation Agreement between the City of Brenham and Valmont Industries, Inc. to Expand Water Service for the Improvement of Fire Protection at Valmont Industries, Inc. and Authorize the Mayor to Execute Any Necessary Documentation** **Page 12-21**
7. **Discuss and Possibly Act Upon Approval of an Agreement with Jones and Carter, Inc. for Engineering Services to Expand Water Service Related to the Improvement of Fire Protection at Valmont Industries, Inc. and Authorize the Mayor to Execute Any Necessary Documentation** **Page 22-33**
8. **Discuss and Possibly Act Upon the Approval of a Fiber Connectivity Interlocal Agreement between the City of Brenham and Brenham Housing Authority and Authorize the Mayor to Execute Any Necessary Documentation** **Page 34-42**
9. **Discuss and Possibly Act Upon an Ordinance on Its First Reading Authorizing the Closure of the Vulcan Street BNSF Railroad Crossing Located at Railroad Mile Post 126.15 to Establish a Quiet Zone** **Page 43-48**
10. **Discuss and Possibly Act Upon a Request to Use Sanitation Fund Reserves to Purchase a Used Haul Truck for the City of Brenham Transfer Station and Authorize the Mayor to Execute Any Necessary Documentation** **Page 49-50**
11. **Discuss and Possibly Act Upon an Amended Contract for Participation in the City of Brenham's Rotation Log for Non-Consent Tows and Authorize the City Manager to Execute Any Necessary Documentation** **Page 51-68**

WORK SESSION

12. **Presentation and Discussion on the Donald G. Austin Memorial Animal Shelter** **Page 69-77**
13. **Presentation and Discussion on a Proposed U.S. Highway 290 Corridor Overlay Zoning District** **Page 78-87**

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.
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14. **Administrative/Elected Officials Report**

Adjourn

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

CERTIFICATION

I certify that a copy of the April 19, 2012 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 April 16, 2012 at _____ AM PM.

Jeana Bellinger, TRMC,
City Secretary

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

I certify that the attached notice and agenda of items to be considered by the City Council was removed by me from the City Hall bulletin board on the _____ day of _____, 2012 at _____ AM PM.

Signature

Title

PROCLAMATION

WHEREAS, 18.7 million Americans are directly harmed by crime each year, and each crime affects many more family members, friends, neighbors, and co-workers; and

WHEREAS, The physical, emotional, and financial impact of crime falls on people of all ages and abilities, and of all economic, racial, and social backgrounds; and

WHEREAS, In 1982, the President's Task Force on Victims of Crime envisioned a national commitment to a more equitable and supportive response to victims; and

WHEREAS, Today, thousands of victim assistance programs provide help and support to child victims of violence and sexual abuse; stalking victims; survivors of homicide victims; victims of drunk-driving crashes; and victims of domestic, dating, and sexual violence and other crimes; and

WHEREAS, Now is the time to "Extend the Vision" through a comprehensive strategy for reaching and serving every victim of crime, especially traditionally underserved victims such as those with disabilities and victims from diverse cultures; and

WHEREAS, It is right and just that the City Council and all citizens recognize April 22–28, 2012 as National Crime Victims' Rights Week and extend that vision to every victim of crime in the United States—to ensure their access to the help they deserve; and

Now, **THEREFORE** I, Milton Y. Tate Jr., Mayor of the City of Brenham, Texas do Hereby Proclaim April 22-28, 2012 as

NATIONAL CRIME VICTIMS' RIGHTS WEEK

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

Milton Y. Tate Jr.
Mayor

PROCLAMATION

WHEREAS, With the good-weather season beginning and the increased popularity of motorcycles, more and more two- and three-wheeled traffic is present on Texas highways and city streets; and

WHEREAS, Motorcycles are difficult to see because of their smaller size so it's important for all drivers to take responsibility and be aware of the vehicles on the roads around them; and

WHEREAS, May is National Motorcycle Safety and Awareness Month so it's a good time to remind all roadway users that with almost a million licensed motorcyclists in Texas alone, safe travel for all always makes good sense; and

WHEREAS, It is right and just for the City Council and the residents of Brenham to join together to remind us all to accord all motorists, including the motorcyclists, the respect on the road they deserve;

Now, THEREFORE I, Milton Y. Tate Jr., Mayor of the City of Brenham, Texas do Hereby Proclaim May 2012 as

MOTORCYCLE SAFETY AND AWARENESS MONTH

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

Milton Y. Tate Jr.
Mayor

Brenham City Council Minutes

A regular meeting of the Brenham City Council was held on April 5, 2012 beginning at 1:00 p.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

Members present:

Mayor Milton Y. Tate, Jr.
Mayor Pro Tem Gloria Nix
Councilmember Mary E. Barnes-Tilley
Councilmember Andrew Ebel
Councilmember Danny Goss
Councilmember Keith Herring
Councilmember Weldon Williams, Jr.

Others present:

City Manager Terry K. Roberts, Assistant City Manager Kyle Dannhaus, City Attorney Cary Bovey, City Secretary Jeana Bellinger, Deputy City Secretary Jennifer Salsgiver, Chief Financial Officer Carolyn Miller, Adam Griffin, Deputy Fire Chief Alan Finke, Police Chief Rex Phelps, Development Services Director Julie Fulgham, Public Works Director Doug Baker, Kim Hodde, Leslie Kelm, Public Utilities Director Lowell Ogle, Wanda Kramer, and Kevin Boggus

Citizens present:

Clint Kolby, Willy Bilworth, Ebony Adams, Jacqueline Coto, Tyishia Austin, Renee Joswiak, Amanda Konieczny, Amanda Konieczny, Terrence Johnson, Holly Johnson, and Rebecca Winburn

Media Present:

Arthur Hahn, Brenham Banner Press; Frank Wagner, KWHI

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags – Danny Goss**

3. 3-a. Service Recognitions

Andrew Jozwiak – Fire Department	5 years
Shane Winkler – Street Department	5 years

3-b. New Employees

Mandy Hodde – Central Communications
Elizabeth Menjares – Utility Billing
Melissa Wilkerson – Utility Billing

Mayor Tate presented service recognitions and welcomed new employees.

4. Proclamation

➤ **Relay For Life – Paint the Town Purple**

Mayor Tate read a proclamation designating April 20-21, 2012 as Relay for Life Week. It was accepted by Renee Joswiak, Amanda Konieczny, Amanda Konieczny, Terrence Johnson, Holly Johnson, and Rebecca Winburn.

5. Citizens Comments

There were no citizen comments.

CONSENT AGENDA

6. Statutory Consent Agenda

6-a. Minutes from the March 22, 2012 Council Meeting

A motion was made by Councilmember Herring and seconded by Councilmember Barnes-Tilley to approve the Statutory Consent Agenda Item 6-a. Minutes from the March 22, 2012 Council meeting.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Gloria Nix	Yes
Councilmember Mary E. Barnes-Tilley	Yes
Councilmember Andrew Ebel	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes

REGULAR AGENDA

7. **Discuss and Possibly Act Upon the Acceptance of the 2011 Audit of Washington County Appraisal District by Seidel, Schroeder & Company**

Chief Financial Officer Carolyn Miller presented the audit for the Washington County Appraisal District budget year ending on August 31, 2011. Miller explained that Seidel, Schroeder & Company performed the audit and found that the appraisal district came in under the budgeted amount for the year.

Chief Appraiser Willy Dilworth, from the Washington County Appraisal District, explained plans to have a budget committee investigate the best uses for the surplus funds and present their findings to Council.

A motion was made by Mayor Pro Tem Nix and seconded by Councilmember Williams to accept the 2011 Audit of Washington County Appraisal District by Seidel, Schroeder & Company.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Gloria Nix	Yes
Councilmember Mary E. Barnes-Tilley	Yes
Councilmember Andrew Ebel	Yes
Councilmember Danny Goss	Abstain
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes

8. **Discuss and Possibly Act Upon an Ordinance on Its First Reading Granting a Specific Use Permit to the Washington County Healthy Living Association for a Senior Citizens Center (Philanthropic Use) to be Located at Block I, Lot 5 of the Kenjura Subdivision, Section I (Said Property Consisting of 4.482 Acres and Being Situated at the Northwest Corner of East Tom Green Street and Loesch Street), in an R-1, Residential District**

Public Works Director Doug Baker presented an ordinance to Council concerning a specific use permit for the Washington County Healthy Living Association. Baker noted that, in accordance with the motion that was approved following the public hearing, the ordinance states that: there will be two entrance/exit locations; there will be no restriction on the hours of operation; and Council reserves the right of the City to review complaints and amend the ordinance as necessary.

A motion was made by Councilmember Goss and seconded by Mayor Pro Tem Nix to approve an ordinance on its first reading granting a Specific Use Permit to the Washington County Healthy Living Association for a senior citizens center (philanthropic use) to be located at Block I, Lot 5 of the Kenjura Subdivision, Section I (said property consisting of 4.482 acres and being situated at the northwest corner of East Tom Green Street and Loesch Street), in an R-1, residential district.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Gloria Nix	Yes
Councilmember Mary E. Barnes-Tilley	Yes
Councilmember Andrew Ebel	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes

9. Discuss and Possibly Act Upon the Award of a Contract for Westwood Drive Improvements and Authorize the Mayor to Execute Any Necessary Documentation

Public Works Director Doug Baker presented the bids received for construction on Westwood Drive and recommended the contract be awarded to Collier Construction, LLC as the lowest bidder at \$257,140.

Councilmember Goss questioned if the Westwood Drive Project allowed the City to remain within budget. Chief Financial Officer Carolyn Miller explained that the City will be \$55,000 out of balance and the City will do a budget amendment. Councilmember Barnes-Tilley questioned the project's impact on the City's reserve. Miller explained that this project will not cause the general fund to fall below the 90 day reserve.

A motion was made by Councilmember Herring and seconded by Councilmember Barnes-Tilley to award a contract for Westwood Drive improvements to Collier Construction, LLC for the amount of \$257,140 and authorize the Mayor to execute any necessary documentation.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Gloria Nix	Yes
Councilmember Mary E. Barnes-Tilley	Yes
Councilmember Andrew Ebel	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes

10. Discuss and Possibly Act Upon Ordinance No. O-12-005 on Its Second Reading Amending Chapter 24, Taxation, of the Code of Ordinances of the City of Brenham Providing for the Powers, Duties, Organization, Operation, Board Membership and Additional Matters Related to the Brenham-Washington County Hotel Occupancy Tax Board

City Secretary Jeana Bellinger presented two changes to the ordinance on its second reading. Bellinger explained that one change sets up a minimum number of members to draw the short term December, 2012 expiration date and creates a 2-3-2 staggering of members appointed by the City Council. Bellinger also recommended adding a Vice-Chairman position because if the Chairman should resign, it makes it difficult on the staff liaison to work with a different board member for each meeting. City Attorney Cary Bovey clarified that Member Position 7 expires December 31, 2012.

City Manager Terry Roberts pointed out that the Ordinance requires board members to be residents of Washington County and requested Council feedback on this requirement. Councilmember Williams expressed his preference to have board members reside within Washington County.

A motion was made by Councilmember Barnes-Tilley and seconded by Mayor Pro Tem Nix to approve Ordinance No. O-12-005 on its second reading as presented amending Chapter 24, Taxation, of the Code of Ordinances of the City of Brenham providing for the powers, duties, organization, operation, board membership and additional matters related to the Brenham-Washington County Hotel Occupancy Tax Board with changes of Member Position 7 to a two (2) year term.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Gloria Nix	Yes
Councilmember Mary E. Barnes-Tilley	Yes
Councilmember Andrew Ebel	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes

Council adjourned into Executive Session at 1:50 p.m.

EXECUTIVE SESSION

11. Texas Government Code Section 551.071 – Consultation with the City Attorney Regarding Legal Issues Involved with a Building Set Back Encroachment to the Saeger Street Right Of Way

Executive Session adjourned at 2:10 p.m.

RE-OPEN REGULAR SESSION

12. Discuss and Possibly Take Action Regarding a Building Set Back Encroachment to the Saeger Street Right Of Way

No action was taken on this item.

13. Administrative/Elected Officials Report

Carolyn Miller reported on the following:

- Government Finance Officers Association Distinguished Budget Presentation Award

Alan Finke reported on the following:

- Maifest Fireworks- permit will be issued if qualifications met: licensed pyrotechnic contactor, liability insurance, and site survey.

Doug Baker reported on the following:

- Will review hanger waiting list

Terry Roberts reported on the following:

- TXDOT Airspace Report
- TXDOT meeting next week to discuss hangers
- Maifest parade May 5, 2012 at 10 a.m.
- TML Region 10 meeting RSVP by April 16th to Jeana
- Next Tuesday Down Town Master Plan in lobby at 5:30 p.m.
- Vacation next week
- Library Board up and running

The meeting was adjourned.

Milton Y. Tate, Jr.
Mayor

Jeana Bellinger, TRMC
City Secretary

ORDINANCE NO. O-12-006

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING APPENDIX A - "ZONING" OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS, AND AMENDING THE OFFICIAL ZONING MAP GRANTING A SPECIFIC USE PERMIT FOR THE 4.482 ACRE TRACT LOCATED AT THE NORTHWEST CORNER OF EAST TOM GREEN STREET AND LOESCH STREET (LEGAL DESCRIPTION BEING BLOCK 1, LOT 5 OF THE KENJURA SUBDIVISION, SECTION I); PROVIDING FOR CONDITIONS RELATED TO THE SPECIFIC USE PERMIT; PROVIDING FOR THE AMENDMENT OR RECISSION OF THE SPECIFIC USE PERMIT; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE CITY OF BRENHAM, TEXAS THAT APPENDIX A - "ZONING" OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS, AND THE OFFICIAL ZONING MAP ARE HEREBY 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 are hereby amended to grant a Specific Use Permit to the Washington County Healthy Living Association ("WCHLA") for the construction and operation of a Senior Citizens Center (philanthropic use) on the 4.482 acre tract located at the northwest corner of East Tom Green Street and Loesch Street (Legal description being Block 1, Lot 5 of the Kenjura Subdivision, Section I) (hereinafter "Property") in accordance with the City of Brenham adopted Building Codes, Zoning Ordinance, and other applicable ordinances and regulations. This Property is located in the R-1, Residential District and requires the approval of a Specific Use Permit for a philanthropic use.

SECTION 2. The development of the Property shall be in accordance with the following special conditions, restrictions and regulations:

- a. The development shall be in conformance with the Site Plan, attached hereto as Exhibit "A," providing for access to and from the Senior Citizens Center at two entrance/exit locations, one allowing ingress/egress from Loesch Street and one allowing ingress/egress from East Tom Green Street.

SECTION 3. 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 building, 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. There is a violation of any provision of the terms and conditions of the Specific Use Permit granted by this Ordinance; or
- d. As otherwise permitted by law and/or Brenham's Zoning Ordinance, as it exists or may be amended.

SECTION 4. This Ordinance shall take effect as provided by the Charter of the City of Brenham, Texas and applicable law.

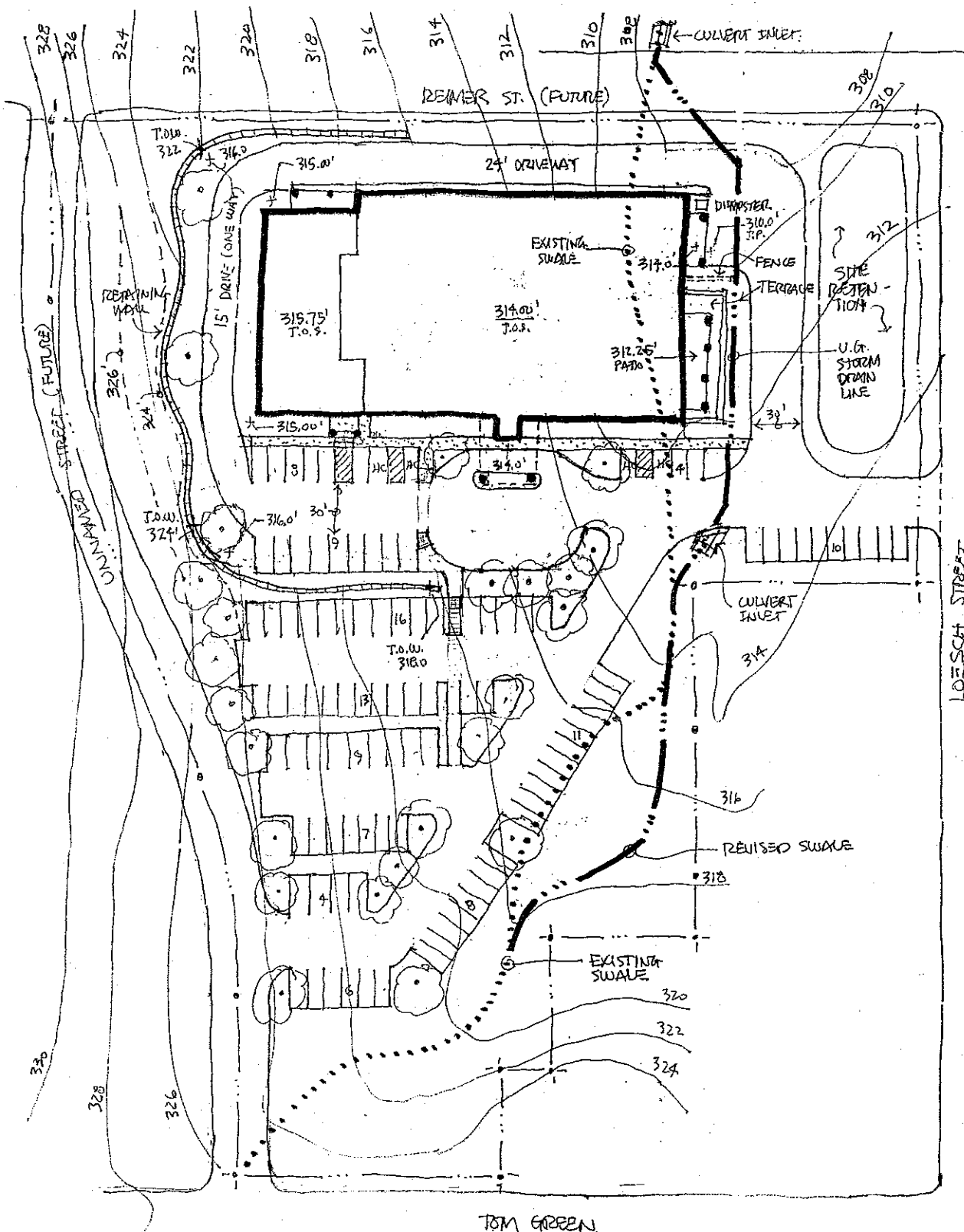
PASSED and APPROVED on its first reading this the 5th day of April, 2012

PASSED and APPROVED on its second reading this the 19th day of April, 2012.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC
City Secretary



WCHLA - SITE PLAN

1:50

9/26/11





AGENDA ITEM 6

DATE OF MEETING: April 19, 2012	DATE SUBMITTED: April 16, 2012
DEPT. OF ORIGIN: Administration	SUBMITTED BY: Terry K. Roberts

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

AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon Approval of a Cost Participation Agreement between the City of Brenham and Valmont Industries, Inc. to Expand Water Service for the Improvement of Fire Protection at Valmont Industries, Inc. and Authorize the Mayor to Execute Any Necessary Documentation

SUMMARY STATEMENT: Attached is a Cost Participation Agreement with Valmont Industries to improve water flow capacity to the Valmont plant for enhanced fire protection. You may recall Valmont recently undertook a major plant expansion and added 100 jobs to their Brenham facility.

The attached map depicts a proposed expansion of the water system within their complex to significantly improve fire protection. Recently, Valmont commissioned an engineering study to evaluate fire flows within their complex. As a result of this analysis they want to undertake a major upgrade of their internal water system to achieve their objective of better fire protection.

To achieve the recommended flow a 12 inch water line is needed. Valmont is currently served by two 8 inch lines fed from a 10 inch main along the US 290 frontage road. The system improvements they want to make within their plant will not achieve the desired flow capacity results without a larger supply main in the City's system. The most cost effective route to supply Valmont from a 12 inch main is via Industrial Blvd. The attached map shows a recommended 12 inch main (red colored line) that begins at Industrial Blvd. and runs to the Valmont property line. The 12 inch main continues across the back of their property running along the railroad right of way (aqua colored line) and serves as the backbone for the rest of the improvements.

If this project is accomplished, Valmont would propose to dedicate the 12 inch "backbone" to the City and it would become part of the City's distribution system. The City would have the option of extending utility service along Salem Road either from the 10 inch main in S.H. 36 South or the new 12 inch trunk main constructed in the utility easement across Valmont's back property line. Since the new 12 inch main (red and aqua lines) will have some benefit to the general area and not just to Valmont, it would be staff's recommendation we accept responsibility for funding the offsite 12 inch line and accept the balance of the 12 inch trunk (constructed at Valmont's full cost) as a part of the City's water distribution system.

The estimated cost of the offsite extension from Industrial Blvd. to the Valmont property line is \$53,000. The cost of the water system improvements by Valmont within their property boundaries is estimated to cost several hundred thousand dollars. We believe it is reasonable for the City to participate in this project since our existing lines to the industry are inadequate to meet their recommended fire flow levels. It also does provide some enhancement to our distribution system in the area.

The participation agreement calls for Valmont to reimburse the City for 100% of the cost for improvements on their property and it limits our maximum participation in this endeavor to \$53,000 which is the projected cost of the offsite improvements from Industrial Blvd. to the Valmont property line. We emailed you a summary of the project about six weeks ago along with a copy of the aerial color coded map. If you have specific questions about the project before the meeting, Kyle or Lowell will be happy to meet with you.

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. PROS: Project will provide additional water flows to the Valmont complex to enhance fire protection and provide some water system enhancements in the southern part of the City.

B. CONS:

ALTERNATIVES (In Suggested Order of Staff Preference):

ATTACHMENTS: (1) Water Line Cost Participation Agreement

FUNDING SOURCE (Where Applicable): Water fund reserves.

RECOMMENDED ACTION: Approve a Cost Participation Agreement between the City of Brenham and Valmont Industries, Inc. to expand water service for the improvement of fire protection at Valmont Industries, Inc. and authorize the Mayor to execute any necessary documentation.

APPROVALS: Terry K. Roberts

WATER LINE COST PARTICIPATION AGREEMENT

This Agreement is entered into this the _____ day of _____, 2012, by and between the **City of Brenham**, a Texas home rule municipal corporation (hereinafter "CITY"), and **Valmont Industries, Inc.**, a Delaware corporation, (hereinafter "OWNER").

WHEREAS, OWNER owns and has developed property within the City of Brenham, more particularly described as 65.2 acres located in the John Carrington Survey, Abstract 1, Washington County, Texas, being out of Tract 1 (hereinafter "Property") which is located at 2551 Valmont Drive, Brenham, Texas 77833-5418, and CITY and OWNER desire to extend a twelve inch (12") water line for purposes of improving the CITY's water utility system and improving fire flow to various facilities of the OWNER located in Brenham, Texas as further described on **Exhibit A**, attached hereto and incorporated herein for all purposes; and

WHEREAS, the CITY and the OWNER agree that the twelve inch (12") water line improvements described in **Exhibit A** would enhance and improve the CITY'S water utility system and the CITY'S ability to serve additional customers and related development in the future; and

WHEREAS, the CITY shall construct the improvements as provided for in this Agreement and the OWNER shall participate in the costs of the public improvements; and

WHEREAS, the total estimated cost of the project is \$385,000.00, and the OWNER desires to pay all project costs except for the CITY's share of the project costs in the amount of \$53,000.00; and

WHEREAS, the OWNER has reviewed the data, plans, and cost estimate provided by CITY's engineer and OWNER desires to enter into this Agreement;

NOW, THEREFORE, for and in consideration of the recitations above and the promises and covenants herein expressed, the parties hereby agree as follows:

I. DEFINITIONS

- 1.1. Approved Plans means the plans and specifications that meet the requirements of this Water Line Cost Participation Agreement, the City of Brenham Codes and Ordinances and any other applicable laws, and that have been submitted to, reviewed and approved by the City of Brenham Public Utilities Department.
- 1.2. CITY of Brenham means the City of Brenham, a Texas home rule municipal corporation located at 200 W. Vulcan, Brenham, Texas 77833.

- 1.3. Certificate of Acceptance: A certificate issued by the City stating that the construction of the Project conforms to the plans, specifications and standards contained in or referred to in all applicable codes, ordinances, or laws.
- 1.4. Effective Date. The date on which this Agreement is signed by the last party whose signing makes the Agreement fully executed.
- 1.5. Final Completion. The term "Final Completion" means that all the work on the Project has been completed, all final punch list items have been inspected and satisfactorily completed, all payments to material men and subcontractors have been made, all documentation, and all closeout documents have been executed and approved by the CITY, a Certificate of Completion and Acceptance have been issued for the Project, and CITY has fully performed any other requirements contained herein or as otherwise required by law.
- 1.6. OWNER means Valmont Industries, Inc., a Delaware corporation, whose principal office is located at 1 Valmont Plaza, Fifth Floor, Omaha, NE 68154-5215.
- 1.7. Property means more particularly described as 65.2 acres located in the John Carrington Survey, Abstract 1, Washington County, Texas, being out of Tract 1, which is located at 2551 Valmont Drive, Brenham, Texas 77833-5418, and to which CITY and OWNER desire to extend a twelve inch (12") water line for purposes of improving the CITY's water utility system and improving fire flow to various facilities of the OWNER located in Brenham, Texas as further described on as Exhibit A attached hereto and incorporated herein by reference.
- 1.8. Project means the construction of the twelve inch (12") water line improvements as described in **Exhibit A** attached hereto and incorporated herein by reference.

II. COST PARTICIATION

CITY agrees to cost participate to construct the twelve inch (12") water line improvements as follows:

- 2.1. The estimated total cost of the project is \$385,233.00, which includes \$334,986.00 for construction and \$50,248.00 for engineering, surveying, and testing. CITY agrees to cost participate with OWNER (for construction and engineering) in an amount not to exceed \$53,000.00. CITY's participation shall not under any circumstances exceed \$53,000.00. The CITY shall construct this project in accordance with applicable bidding and procurement laws.

- 2.2. The CITY agrees that it will construct the project improvements in accordance with the plans, drawings and specifications approved by the CITY in the design phase of the project. The detailed total cost estimate of the water line improvements is attached hereto and incorporated herein for all purposes as **Exhibit B**. The parties hereto understand and agree that the actual costs related to the project may change during the project due to unforeseen circumstances, and are subject to any change orders approved by the CITY. CITY'S funding of cost participation pursuant to this Agreement shall not exceed \$53,000.00 under any circumstances.
- 2.3. OWNER shall reimburse the CITY for all costs incurred by the CITY associated with the construction and engineering of the project (except for the \$53,000.00 to be paid by the CITY), and said amounts must be paid by the OWNER as the project progresses. CITY shall submit invoices to the OWNER monthly, and said amounts must be paid to the CITY by the OWNER within ten (10) days of the OWNER's receipt of said invoices. CITY shall not provide water utility services to the OWNER utilizing the improvements constructed pursuant to this Agreement until all amounts due to the CITY under this Agreement have been paid by the OWNER.
- 2.4. OWNER and CITY acknowledge and agree that the improvements and facilities constructed pursuant to this Agreement shall be part of the CITY's utility system, and CITY shall be the owner of said project improvements. OWNER is further required to provide all necessary easements as may be required by the CITY, at no cost to the CITY.
- 2.5. Reports, books and other records. CITY shall make its books and other records related to the Project available for inspection by OWNER. CITY shall submit to OWNER any and all information or reports requested to verify the expenditures submitted for cost participation eligibility including but not limited to bid documents, payment applications, including any supporting information, cancelled checks, copies of construction and engineering documents for the verification of the cost estimate of the infrastructure detailed in **Exhibit B** of this Agreement. The submission of these reports and information shall be the responsibility of the CITY and shall be certified by CITY's Licensed Professional Engineer at CITY's expense.

III. GOVERNMENTAL IMMUNITY, INDEMNIFICATION AND RELEASE

- 3.1 **CITY is a political subdivision of the state and enjoys governmental immunity. By entering into this Agreement, CITY does not consent to suit; waive its governmental immunity, or the limitations as to damages under the Texas Tort Claims Act or any other applicable law.**

- 3.2 **OWNER agrees to and shall indemnify, hold harmless, and defend CITY and 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, expert fees and attorney's fees, for injury to or death of any person, or for damage to any property, or for breach of contract, arising out of or in connection with any act, omission or willful misconduct by OWNER.**

IV. PROJECT AND CONSTRUCTION

- 4.1. Right to Inspect the Work. The City Public Utilities Director or his designee will inspect the improvements for compliance with the Approved Plans during construction and will issue Certificate of Acceptance and Completion if the work performed and materials furnished hereunder are in strict accordance with the Approved Plans and this Agreement.
- 4.2. Independent Contractor. CITY shall be solely responsible for selecting, supervising, and paying the construction contractor(s) or subcontractors and for complying with all applicable laws, including but not limited to all requirements concerning workers compensation and construction retainage.
- 4.3. Payment for materials and labor. CITY is solely and exclusively responsible for compensating any of its contractors, employees, subcontractors, material men and/or suppliers on this project.
- 4.4. Performance Bond. CITY shall execute a performance and payment bond for the construction of the improvements as required by applicable law.
- 4.5. This Agreement does not alter, amend, modify or replace any other requirements contained in the Code of Ordinances, or other applicable law.

V. GENERAL PROVISIONS

- 5.1. Amendments. No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.
- 5.2. Choice of law and Venue. This Agreement has been made under and shall be governed by the laws of the State of Texas. Performance and all matters related thereto shall be in Washington County, Texas, United States of America. Exclusive venue for any claim, lawsuit, or other proceeding arising out of or involving this Agreement shall be in Washington County, Texas.

- 5.3. Authority to enter into Agreement. Each party represents that it has the full power and authority to enter into and perform this Agreement. The person executing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The person executing this Agreement on behalf of OWNER represents that he or she is authorized to sign on behalf of OWNER and agrees to provide proof of such authorization to CITY upon request.
- 5.4. Agreement read. The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.
- 5.5. All notices and documents required herein shall be sent and provided to the parties at the addresses and telephone numbers listed below:

Valmont Industries, Inc.

City of Brenham

Public Utilities Director
P.O Box 1059
Brenham, Texas 77834-1059

With copies to: City Manager and City Attorney
P.O. Box 1059
Brenham, Texas 77834-1059

All notices and documents shall be deemed received when mailed with sufficient postage and deposited in a regular mailbox of the United States Post Office. The parties may change addresses upon thirty (30) days' written notice sent certified mail, return receipt requested.

- 5.6. Assignment. This Agreement and the rights and obligations contained herein may not be assigned by OWNER without the prior written approval of CITY.
- 5.7. Default. In the event of a breach of this Agreement by OWNER, and such default is not cured within thirty (30) days after written notice from CITY to OWNER, CITY may terminate this Agreement and exercise any and all legal remedies available to it.

Executed this ____ day of _____, 2012.

VALMONT INDUSTRIES, INC.

CITY OF BRENHAM, TEXAS

Name: _____
Title: _____

Hon. Milton Y. Tate, Jr. Mayor

THE STATE OF TEXAS §

ACKNOWLEDGEMENT

COUNTY OF WASHINGTON §

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

Given under my hand and seal of office this the _____ day of _____, 2012.

Notary Public in and for the State of Texas

THE STATE OF TEXAS §

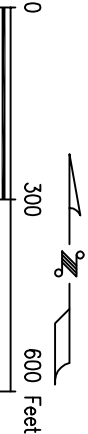
ACKNOWLEDGEMENT

COUNTY OF _____ §

Before me, the undersigned authority, on this day personally appeared _____, _____ of Valmont Industries, Inc. a Delaware corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the _____ day of _____, 2012.

Notary Public in and for the State of Texas



LEGEND

●

EXISTING FIRE
HYDRANT

●

PROPOSED FIRE
HYDRANT

—

EXISTING WATER
LINE (CITY)

—

EXISTING WATER
LINE (VALMONT)

—

8 " WATER LINE

—

12 " WATER LINE
(VALMONT)

—

12 " WATER LINE
(CITY)

NO.

DATE

REVISIONS

APP.

VALMONT
BRENNHAM, TEXAS

VALMONT FIRE FLOW STUDY
OPTION 2

JL

JONES & CARTER, Inc.

ENGINEERS • PLANNERS • SURVEYORS

Texas Board of Professional Engineers Registration No. F-439
1900 South Day Street, Brenham, Texas 77833 (979) 836-6631

SCALE: 1"=300'

DATE: 02-20-2012

JOB NO. VALMONT

SUBMITTED:

DGN. BY: GLL

DWG. BY: CDM

VALMONT

SURV. BY: _____

F.B. NO. _____

SHEET NO.
2
OF 4

Exhibit B

VALMONT FIRE FLOW STUDY OPTION 2 - 12" feed from Industrial Drive

ITEM	UNIT	UNIT AMOUNT	QTY	TOTAL PRICE
Mobilization	EA	7.5%	1	\$23,156
SWPPP	EA	1.0%	1	\$3,087
12" AWWA C-900 Class 150 PVC Water Line by Open Cut	LF	\$30	3660	\$109,800
12" AWWA C-900 Class 150 PVC Water Line by bore	LF	\$175	100	\$17,500
8" AWWA C-900 Class 150 PVC Water Line by Open Cut	LF	\$25	2535	\$63,375
8" AWWA C-900 Class 150 PVC Water Line by Bore	LF	\$150	0	\$0
12" Gate Valve and Valve Box	EA	\$2,000	3	\$6,000
8" Gate Valve and Valve Box	EA	\$1,200	6	\$7,200
Ductile Iron Fittings	TON	\$4,500	1.5	\$6,750
Sawcut and Replace 6" Reinforced Concrete Pavement	LF	\$45	150	\$6,750
Repair 6" of Flexible Base Material	LF	\$25	1700	\$42,500
6" Fire Hydrant Assymby	EA	\$4,000	4	\$16,000
Wet Connection (all sizes)	EA	\$1,200	4	\$4,800
Contengencies		10%	\$280,675	\$28,068
Total Probable Construction Cost				\$334,986
Engineering, Surveying and Testing		15%	\$334,986	\$50,248
Total				\$385,233

2/22/2012



AGENDA ITEM 7

DATE OF MEETING: April 19, 2012	DATE SUBMITTED: April 13, 2012			
DEPT. OF ORIGIN: Public Utilities	SUBMITTED BY: Lowell Ogle			
<table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top;"> MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION </td> <td style="width: 33%; vertical-align: top;"> CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION </td> <td style="width: 33%; vertical-align: top;"> ORDINANCE: ☐ 1ST READING ☐ 2ND READING ☐ RESOLUTION </td> </tr> </table>		MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION	ORDINANCE: ☐ 1ST READING ☐ 2ND READING ☐ RESOLUTION
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION	ORDINANCE: ☐ 1ST READING ☐ 2ND READING ☐ RESOLUTION		
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon Approval of an Agreement with Jones and Carter, Inc. for Engineering Services to Expand Water Service Related to the Improvement of Fire Protection at Valmont Industries, Inc. and Authorize the Mayor to Execute Any Necessary Documentation				
SUMMARY STATEMENT: Attached is an agreement from Jones and Carter, Inc. for engineering services related to improvements within the Water Distribution System. These improvements will involve extending a 12" water main from Industrial Blvd. into the Valmont property and installing some infrastructure within their property (see attached map) the 12" backbone portion of this line will be dedicated to the City. This line will also be extended at some point to Salem road to serve some customers, create an additional feed into the system and extend the new pressure plane. The City will only be paying for the portion of line from Industrial Blvd. to the Valmont property line. This extension will allow service to some future areas that will need to be served from the new pressure plane. Total project cost is estimated to be \$385,000 including engineering and construction. . The city's total participation in the project is \$53,000 as discussed in the participation agreement. The total amounts for engineering are \$30,150 for design and \$18,900 for additional services. The city's portion of these costs will be \$4136 for design services and \$3150 for additional services.				
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: Will loop system and extend new pressure plane. B. CONS:				
ALTERNATIVES (In Suggested Order of Staff Preference):				
ATTACHMENTS: (1) Agreement for Engineering Services				
FUNDING SOURCE (Where Applicable): Water fund reserves.				

RECOMMENDED ACTION: Approve an agreement with Jones and Carter, Inc. for engineering services to expand water service related to the improvement of fire protection at Valmont Industries, Inc. and authorize the Mayor to execute any necessary documentation.

APPROVALS: Terry K. Roberts

PROFESSIONAL SERVICES AGREEMENT

Between

THE CITY OF BRENHAM, TEXAS

and

JONES & CARTER, INC.

The CITY OF BRENHAM, TEXAS, as CLIENT, engages JONES & CARTER, INC., as ENGINEER, to perform professional services for the assignment described as follows:

The extension of a 12-inch water line along the west side of the Valmont property from Industrial Drive to near Salem Road, including various improvements to the fire protection system within the Valmont property. The general route for the proposed improvements is as shown on Exhibit A attached. To include general engineering consultation, preparation of construction drawings and specifications, field surveys, and resident project representation.

- I. SERVICES: ENGINEER agrees to perform the design work for CLIENT as a part of ENGINEER'S Basic Services. Platting, Field Surveys, Resident Project Representation, and Reimbursable Expenses will be considered Additional Services. Basic Services and Additional Services will be performed in conformance with the following descriptions, terms, and conditions.

A. BASIC SERVICES: ENGINEER will perform these services in three phases.

1. Preliminary Phase: ENGINEER will discuss the assignment with CLIENT; arrange for surveys, soil borings, investigations, and tests for CLIENT'S account, as required; prepare preliminary drawings and preliminary construction cost estimates; and present recommendations.
2. Design Phase: After completion of Preliminary Phase and when authorized by CLIENT, ENGINEER will arrange for additional surveys, soil borings, investigations, and tests for CLIENT'S account, as required; prepare final contract drawings in ink on Mylar, specifications, and cost estimates; obtain necessary approvals from applicable federal, state, and local agencies; and prepare necessary bidding documents.
3. Construction Phase: After completion of Design Phase and when authorized by CLIENT, ENGINEER will assist CLIENT in securing and analyzing bids or negotiated proposals, recommend awards of construction contracts, and consult with CLIENT during construction; transmit instructions of CLIENT to Contractor; periodically visit construction site to observe progress and quality of work; interpret drawings and specifications; review shop drawings, material and equipment tests, and Contractor's pay estimates; observe the completed construction for conformity to contract documents; and issue to CLIENT a Certificate of Substantial Completion at which time Basic Services shall be deemed complete.

- B. ADDITIONAL SERVICES: All work performed by ENGINEER which is either described in this paragraph or not included in the Basic Services defined above shall constitute Additional Services. These shall include:

1. Travel and subsistence to points other than ENGINEER'S or CLIENT'S offices and project site;
2. Copies of construction documents in excess of five (5) sets;
3. Revisions to substantially completed construction documents or approved preliminary documents occasioned by changes in scope of work;
4. Soil borings; soil, mill, shop, and laboratory tests;
5. Field surveys, construction staking, lot staking, and related office computations and drafting;
6. Resident project representation;
7. Special reports or studies, bond application reports, property maps, plats, preparation of environmental statements, applications for permits or grants, appearances before regulatory agencies, and required filing fees;
8. Revisions to construction documents to indicate "Record" conditions;
9. Services as an expert witness including preparation of engineering data and reports on behalf of the CLIENT or in connection with litigation or other controversies, or in consultation with CLIENT or attorneys;
10. Renderings, exhibits, or scale models;
11. Additional or extended services during construction made necessary by work damaged by fire or other cause during construction; defective or neglected work of contractor; prolongation of construction contract time by more than 20%, acceleration of work schedule involving services beyond normal working hours; or default under construction contract due to delinquency or insolvency;
12. Services after issuance of Certificate of Substantial Completion;
13. Services to investigate existing conditions or facilities or to make measured drawings thereof, or to verify accuracy of drawings or other information furnished by CLIENT;
14. Other services not otherwise included in the Agreement or not customarily furnished in accordance with generally accepted engineering practice.

II. **COMPENSATION:** CLIENT agrees to pay ENGINEER for above-described services in accordance with the following descriptions, definitions, terms, and conditions.

- A. **BASIC SERVICES:** The project will be divided into two (2) phases for accounting purposes. The first phase will consist of that portion of the project from Industrial Drive to Valmont's north property line. The second phase of the project will include the improvements constructed on Valmont's property. Compensation for this project will be based on a percentage of the Total Construction Cost (Curve A) per contract as determined by the curves included in Exhibit B. Compensation will be paid for the various phases as follows.

PRELIMINARY PHASE	20%
DESIGN PHASE	60%
CONSTRUCTION PHASE	<u>20%</u>
 TOTAL	 100%

1. Total Construction Cost:

- a. Total Construction Cost shall be based on and include, among others, the following items: (1) all work designed and specified by ENGINEER, including labor, material, and equipment (including work covered by additive alternates that increase the cost of the project, if used); and (2) all labor, material, and equipment furnished by CLIENT or by others.
- b. Total Construction Cost shall not be based on nor include: (1) compensation payable to ENGINEER under this agreement; (2) compensation payable to any architect or other engineer, or (3) expenditures not connected with construction or design, such as land acquisition costs or attorney's fees.
- c. Total Construction Cost shall be: (1) the actual cost to the CLIENT of the finished project, if there is reasonably adequate information from which such cost amount can be determined, plus the amount of the proposal received from the successful bidder for each additive alternate not used (or the ENGINEER'S most recent cost estimate for such alternate, if no proposal is received); (2) if reasonably adequate information is not available from which actual cost can be determined, then the lowest bona fide proposal received for construction of the project, including all additive alternates of that proposal; (3) if such a proposal is not available, then the ENGINEER'S most recent opinion of cost for the project including all additive alternates. In determining Total Construction Cost, reduction shall not be made for any deductive alternates that decrease the cost of the project if used.

B. ADDITIONAL SERVICES: Compensation will be on the basis of ENGINEER'S current hourly rates plus reimbursable expenses in accordance with the SCHEDULE OF HOURLY RATES attached hereto (Exhibit C) and with the SCHEDULE OF REIMBURSABLE EXPENSES attached hereto (Exhibit D). Hourly rates and reimbursable expenses are subject to annual revision in January of each year that this Agreement is in force. CLIENT will be provided a schedule of rates for any services rendered which are not included in the basic SCHEDULE OF HOURLY RATES.

III. PAYMENTS: Engineer will invoice CLIENT monthly in amounts based on ENGINEER'S estimate of the portion of the Basic Services completed, plus charges for Additional Services performed. CLIENT agrees to promptly pay ENGINEER at his office in Washington County, Texas, the full amount of each such invoice upon receipt. A charge of 0.75% per month will be added to the unpaid balance of invoices not paid within 30 days after date of invoice.

IV. OWNERSHIP OF DOCUMENTS: All drawings, specifications, reports, studies, and other documents prepared by ENGINEER for CLIENT shall be CLIENT'S property. ENGINEER will serve as custodian of all drawings, specifications, reports, studies, and other documents and shall

furnish copies to CLIENT at CLIENT'S expense. CLIENT shall not reuse, modify, or alter the drawings or specifications without first removing all references to ENGINEER and its employees.

- V. **COST ESTIMATES:** Cost Estimates prepared by the ENGINEER represent his best judgment as a design professional familiar with the construction industry. It is recognized, however, that the ENGINEER has no control over the cost of labor, materials, or equipment; over the Contractor's methods of determining bid prices; or over competitive bidding or market conditions. Accordingly, the ENGINEER cannot and does not guarantee that bids will not vary from any cost estimate prepared by him.
- VI. **INSURANCE:** ENGINEER agrees to maintain Workers' Compensation Insurance to cover all of its own personnel engaged in performing services for CLIENT under this Agreement.
- VII. **LIABILITY LIMITATION:** The ENGINEER agrees to carry out and perform the services herein agreed to in a professional and competent manner. The CLIENT agrees that the ENGINEER shall not be liable for error, omission, or breach of warranty (either expressed or implied) in his preparation of designs and drawings, preparation of surveys, designation and selection of materials and equipment for the project, or the performance of any other services in connection with any assignment for which specific authorization is given by the CLIENT pursuant to Section I of this Agreement, except to the extent that he fails to exercise the usual degree of care and judgment of an ordinarily prudent engineer in the same or similar circumstances and conditions.
- VIII. **TERMINATION**
 - A. **CONDITIONS OF TERMINATION:** This Agreement may be terminated without cause at any time prior to completion of ENGINEER'S services either by CLIENT or by ENGINEER, upon seven (7) days written notice to the other at the address of record. Termination shall release each party from all obligations of this Agreement, except as specified in paragraph VIII.B below.
 - B. **COMPENSATION PAYABLE ON TERMINATION:** On termination, by either CLIENT or ENGINEER, CLIENT shall pay ENGINEER the full amount specified in paragraph II.A with respect to any phase of Basic Engineering Services which has been completed plus an amount fixed by applying the rate specified for Additional Services in paragraph II.B to all Basic Services performed to the date of termination for any phase then in progress, plus an amount fixed by applying the rate specified in paragraph II.B to all Additional Services performed to date of termination (including all Reimbursable Expenses incurred).
- IX. **SUCCESSORS AND ASSIGNS:** CLIENT and ENGINEER each binds himself, and his partners, successors, executors, administrators, and assigns to the other party of this Agreement and to partners, successors, executors, administrators, and assigns of such other party in respect to all covenants of this Agreement. Neither CLIENT nor ENGINEER shall assign, sublet, or transfer his interest in this Agreement without written consent of the other. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than CLIENT and ENGINEER.
- X. **SPECIAL PROVISIONS:** This instrument contains the entire Agreement between CLIENT and ENGINEER, except as additionally stated below:
 - A. The amount of any excise, VAT, gross receipts, or sales tax that may be imposed shall be added to the compensation as determined above.

B. All letter proposals describing the scope of services and method of compensation shall become part of this Agreement.

C. For this project, the ENGINEER anticipates that combined (all phases) ADDITIONAL SERVICES may include field surveys for design, construction staking, project representation, geotechnical support and materials testing. Compensation for these services shall not exceed \$19,000.00 without further written authorization by the CLIENT.

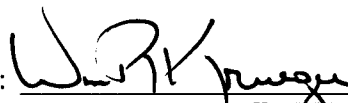
XI. INVALIDATION AND MODIFICATIONS: If this Agreement is not executed by CLIENT within 30 days of date tendered, it shall become invalid unless ENGINEER extends the time in writing. This Agreement can be modified only by mutual written consent of both parties.

XII. This Agreement shall be governed by the laws of the State of Texas. Executed and effective this ____ day of _____, 2012.

CITY OF BRENHAM
P.O. BOX 1059
BRENHAM, TEXAS 77834-1059

JONES & CARTER, INC.
1500 SOUTH DAY STREET
BRENHAM, TEXAS 77833

BY: _____
Milton Y. Tate, Jr.
Mayor

BY: _____
Wm. R. Krueger, P.E., RLS
Vice President
Brenham Operations Manager

DATE: _____

DATE: 3/28/12

ATTEST: _____
Jeana Bellinger
City Secretary

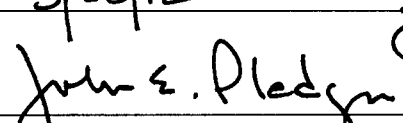
ATTEST: _____
John E. Pledger, III, P.E., RPLS
Vice President
Business Development

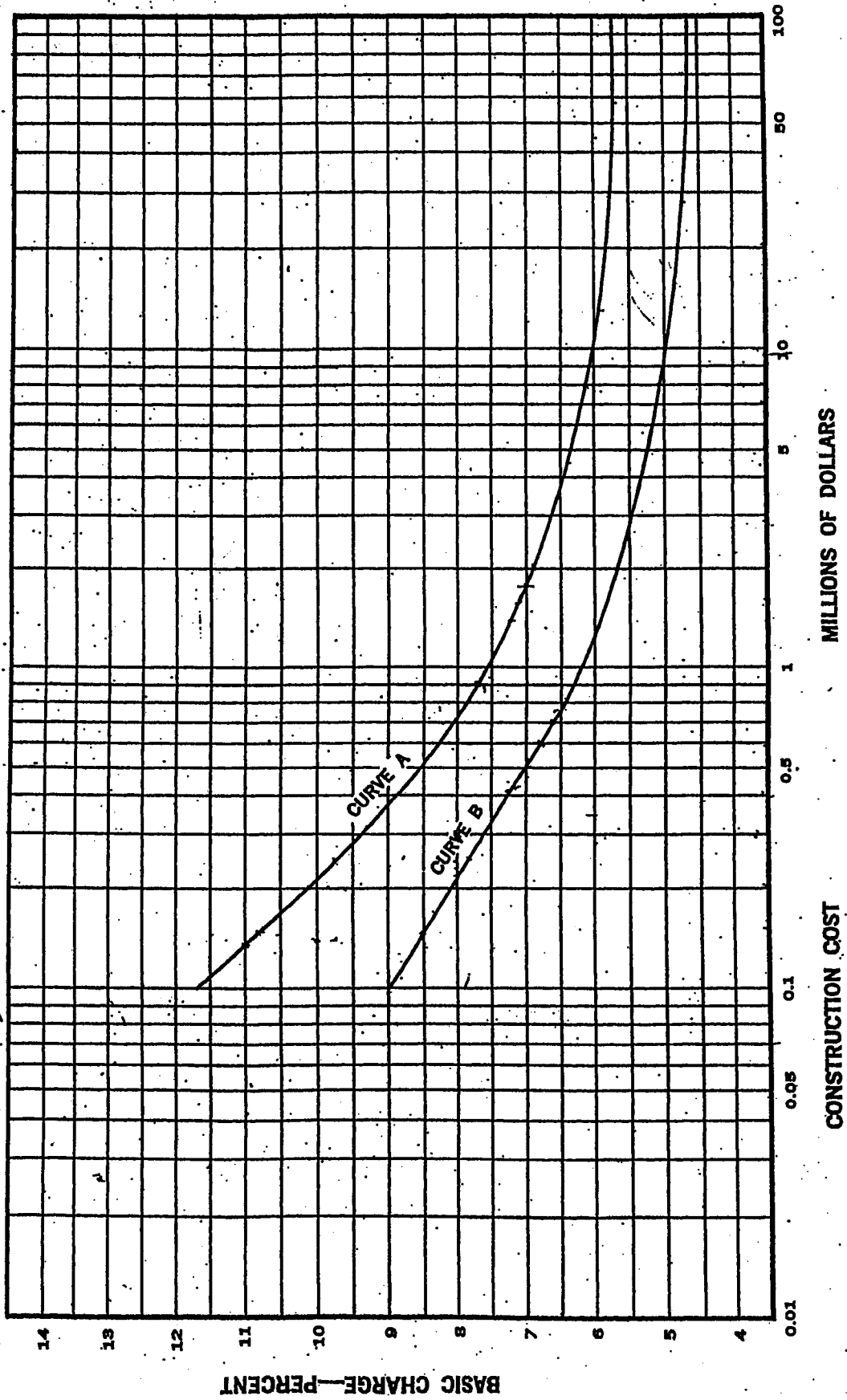
EXHIBIT A



EXHIBIT B

Curves of Median Compensation

CURVES A AND B



ROSENBERG	AUSTIN
SAN ANTONIO	DALLAS
THE WOODLANDS	HOUSTON
BRYAN/COLLEGE STATION	BRENNHAM

Texas Board of Professional Engineers Registration No. F-439

EXHIBIT C

SCHEDULE OF HOURLY RATES

Effective January 2012

Subject to Annual Revision in January 2013

ENGINEERING PERSONNEL

Engineer I	\$ 76
Engineer II	\$ 82
Engineer III	\$ 90
Engineer IV	\$100
Engineer V	\$115
Engineer VI	\$130
Staff Engineer	\$140
Project Engineer	\$150
Sr. Project Engineer	\$155
Sr. Project Manager	\$160
Department Manager	\$170
Division Manager	\$180
Officer – Regional Manager	\$190
Officer – Corporate Manager	\$200
Officer – President	\$225

ELECTRICAL ENGINEERING PERSONNEL

Electrical Engineer I	\$90
Electrical Engineer II	\$100
Electrical Engineer III	\$110
Electrical Engineering IV	\$120
Electrical Engineer V	\$130
Electrical Engineer VI	\$135
Electrical Project Representative	\$60

CONSTRUCTION PERSONNEL

(includes mileage)	
Project Representative I	\$ 48
Project Representative II	\$ 55
Project Representative III	\$ 65
Project Representative IV	\$ 75
Project Representative Coordinator	\$ 80
Construction Engineer I	\$ 76
Construction Engineer II	\$ 82
Construction Engineer III	\$ 90
Construction Engineer IV	\$100
Construction Engineer V	\$115
Construction Manager	\$150

OFFICE PERSONNEL

Office Assistant	\$ 25
Clerk	\$ 30
Engineer's Assistant I	\$ 45
Engineer's Assistant II	\$ 60
Secretary I	\$ 37
Secretary II	\$ 45
Secretary III	\$ 55
Contract Coordinator	\$ 60
Bookkeeper	\$ 65
Staff Assistant	\$ 70
Chief Accountant	\$ 90

SURVEYING PERSONNEL

4-Man Field Crew	\$140
3-Man Field Crew	\$130
2-Man Field Crew	\$110
4-Man Field Crew w/Robotic Survey System	\$180
3-Man Field Crew w/Robotic Survey System	\$170
2-Man Field Crew w/Robotic Survey System	\$150
1-Man Field Crew w/Robotic Survey System	\$125
4-Man Field Crew w/GPS System	\$210
3-Man Field Crew w/GPS System	\$200
2-Man Field Crew w/GPS System	\$170
1-Man Field Crew w/GPS System	\$150
Survey Technician I	\$ 50
Survey Technician II	\$ 60
Project Surveyor I	\$ 65
Project Surveyor II	\$ 78
Project Surveyor III	\$ 90
Chief of Survey Crews	\$ 90
Registered Prof. Land Surveyor	\$120
Survey Manager	\$130

DESIGNERS/DRAFTING PERSONNEL

CAD Operator I	\$ 42
CAD Operator II	\$ 48
CAD Operator III	\$ 57
CAD Operator IV	\$ 66
CAD Operator V	\$ 76
CAD Manager	\$ 90
Designer I	\$ 80
Designer II	\$ 90
Chief Designer	\$ 93
Design Coordinator	\$100
Design Coordinator II	\$110
GIS Operator I	\$ 55
GIS Operator II	\$ 75
GIS Operator III	\$ 90
GIS Operator IV	\$100
Computer Tech	\$ 50
Computer Manager	\$100

Final Bren-Bry-CS 2012

EXHIBIT D

SCHEDULE OF REIMBURSABLE EXPENSES

Effective January 2012

Subject to Annual Revision in January 2013

1. Reproduction performed in office

Size	Black & White	Color
8½" x 11" (single-sided)	\$0.05/page	\$.50/page
8½" x 11" (double-sided)	\$0.15/page	\$ 1.00/page
8½" x 14"	\$0.15/page	\$.75/page
11" x 17"	\$0.20/page	\$ 1.00/page
<u>Large Document Prints/Plots</u>	<u>Black & White</u>	<u>Color</u>
Translucent Bond	\$0.20/sq ft	\$ 4.00/sq ft
Color Bond	\$0.30/sq ft	\$ 5.00/sq ft
Photographic Bond	\$4.00/sq ft	\$ 8.00/sq ft
Vellum	\$1.00/sq ft	N/A
Mylar (4 mil)	\$2.00/sq ft	N/A
<u>Aerial Backgrounds</u>		
All sizes	\$5.00/sheet (plus above sq. ft. cost)	

2. Facsimiles sent: \$1.00/each

3. Transportation (mileage): \$0.50/mile

4. Audio/Video Conferencing

- | | |
|-----------------------------|----------------------|
| a. Audio Conferencing | \$0.15/minute/person |
| b. Video Conferencing | \$0.50/minute/person |
| c. Audio/Video Conferencing | \$0.65/minute/person |

5. Subcontracts and all other outside expenses and fees: Actual cost plus 10% service charge

6. Surveying Expenses

- Crew Rates: Includes time charged portal to portal and the first 120 miles of transportation and standard survey equipment
- Special Rental Equipment: Actual cost plus 10%
- Stakes: Cost plus 10% service charge where an excessive number of wooden stakes or any special stakes are required
- Iron Rods and Pipes: Cost plus 10%
- All-Terrain Vehicle (ATV): \$150/day
- Overnight Stays: \$190/night
- Overtime Rates: Jobs requiring work on weekends or holidays billed at 1.5 times the standard rate
- Sales Tax: To be paid on boundary-related services.
- Deliveries, abstracting services, outside reproduction costs, and other reimbursable expenses charged at cost plus 10%

**City of Brenham
Valmont Water Line Extension
Engineering and Surveying Fees Estimate**

March 28, 2012

Item	Phase 1	Phase 2	Totals
Basic Services	\$4,136	\$26,014	\$30,150
Additional Services			
Surveys For Design	\$950	\$6,050	\$7,000
Easement Descriptions	\$750	\$750	\$1,500
Construction Staking	\$725	\$4,475	\$5,200
Part-Time Project Representative	\$725	\$4,475	\$5,200
Total Additional Services	\$3,150	\$15,750	\$18,900
Total Engineering and Surveying Fees	\$7,286	\$41,764	\$49,050



AGENDA ITEM 8

DATE OF MEETING: April 19, 2012	DATE SUBMITTED: April 13, 2012	
DEPT. OF ORIGIN: Information Technology	SUBMITTED BY: Gary Jeter	
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION	ORDINANCE: ☐ 1 ST READING ☐ 2 ND READING ☐ RESOLUTION
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon the Approval of a Fiber Connectivity Interlocal Agreement between the City of Brenham and Brenham Housing Authority and Authorize the Mayor to Execute Any Necessary Documentation		
SUMMARY STATEMENT: The proposed Inter-Local Agreement will allow the Brenham Housing Authority to connect their two office buildings together using new fiber they purchase. The City will install and assume ownership and maintenance of the fiber. An annual maintenance fee will be charged to Brenham Housing Authority.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: The City will benefit from the additional sing-mode fiber usage in expanding the fiber optic network to the All Sports Building and Parks Maintenance Shop, both located at Hohlt Park. These two buildings currently have no fiber connectivity. The I.T. Department Five Year Plan includes adding some of this fiber in the 2012-2013 budget year. Approving the ILA will save the City money by partnering with Brenham Housing Authority. B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: (1) Interlocal Agreement		
FUNDING SOURCE (Where Applicable):		
RECOMMENDED ACTION: Approve a Fiber Connectivity Interlocal Agreement between the City of Brenham and Brenham Housing Authority and authorize the Mayor to execute any necessary documentation.		
APPROVALS: Terry K. Roberts		

}

}

}

INTERLOCAL AGREEMENT

This Interlocal Agreement (“Agreement”) is made and entered into on this ____ day of _____, 2012 by and between the City of Brenham, a Texas home rule municipal corporation (the “CITY”), and Brenham Housing Authority. The City of Brenham and Brenham Housing Authority may be referred to, hereinafter as “the PARTIES”.

WHEREAS, Chapter 791 of the Texas Government Code, authorizes local governments to enter into agreements with one another to perform governmental functions and services; and

WHEREAS, the PARTIES to this Agreement desire to enter into an agreement to grant the Brenham Housing Authority the right to use the CITY'S Municipal Area Network (MAN) fiber ring to provide high speed network transport and related services and facilities to various Brenham Housing Authority offices; and

WHEREAS, the CITY is the owner of the Municipal Area Network (MAN) fiber ring as further described herein; and

WHEREAS, the PARTIES desire to promote mutual interest through cooperation in the provision of high-speed network transportation and services; and

WHEREAS, the PARTIES recognize that these undertakings are necessary for the benefit of each party, the public and the promotion of economic development in the CITY, County and the surrounding area;

**NOW FOR AND IN CONSIDERATION OF THE MUTUAL UNDERTAKINGS
HEREINAFTER SET FORTH AND FOR ADEQUATE CONSIERTATION, THE
SUFFICIENTCY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE
AS FOLLOWS:**

1. CITY OF BRENHAM FIBER

No existing single-mode fiber is available between the Brenham Housing Authority Administrative Office and the Brenham Housing Authority Office. In order to upgrade existing fiber connections between the Brenham Housing Authority buildings and to provide additional fiber connectivity for future CITY use new fiber will be connected to the CITY MAN at the Parks Warehouse building and at the specified distribution boxes near both Brenham Housing Authority buildings.

The MAN consists of a fiber ring further described in Exhibit "A" attached hereto and incorporated herein for all purposes. The CITY shall be responsible for the installation, repair, maintenance and physical support of the MAN fiber ring. The CITY shall own the fiber in the MAN.

The CITY will grant the Brenham Housing Authority the right to use single-mode fiber in the MAN as required and available.

The CITY agrees to provide only “dark” fiber connectivity between the prescribed Brenham Housing Authority Buildings; however, the Brenham Housing Authority will be responsible for providing all necessary equipment (i.e., switches, routers, media converters, repeaters, UPS’s, etc.) and configure all said equipment.

The CITY agrees to provide the contact information of at least one individual to the Brenham Housing Authority for assistance and maintenance requests as needed. The Brenham Housing Authority agrees to provide the CITY with the contact information of at least one individual qualified to handle technological issues and support when necessary.

The PARTIES intend that nothing contained in this Agreement should act as a limitation, restriction, or prohibition against the CITY with respect to any agreement which the CITY has heretofore entered into, or may in the future enter into with others regarding the fiber and the MAN and related equipment and facilities, including the identified portion of the fiber and the MAN and related equipment and facilities covered by this Agreement.

2. CITY OF BRENHAM FACILITIES

The Brenham Housing Authority is granted the right to install and use hardware as necessary for the operation of its equipment at the CITY’S MAN facilities. Furthermore, the Brenham Housing Authority is granted the right of access, through coordination with CITY representatives, to pertinent City facilities where the Brenham Housing Authority’s equipment is installed.

No use by the Brenham Housing Authority of the CITY’S MAN shall create or vest in the Brenham Housing Authority any easements or any other ownership or property rights of any nature in the fiber or the MAN and related equipment and facilities. This Agreement shall not constitute an assignment of any of the CITY’S rights to use the fiber or the MAN and related equipment and facilities, or the public or private property in which said fiber or the MAN and related equipment and facilities are located.

The PARTIES agree that this Agreement shall not be construed as limiting or interfering with the CITY’S right to manage, control, construct, locate, maintain and/or use: the fiber or the MAN and related equipment and facilities; the public right of way, and /or; any public or private property in which the fiber or the MAN and related equipment and facilities are located.

3. BRENHAM HOUSING AUTHORITY FIBER

The Brenham Housing Authority agrees to purchase 8,524 feet of fiber, the amount necessary to connect the Brenham Housing Authority Administrative Office to the Brenham Housing Authority Office building, as provided by Exhibit “B.” The fiber will contain thirty-six (36) single-mode fibers. The CITY will be responsible for the installation and physical support of the Brenham Housing Authority connecting fiber links from the MAN to the termination box at each Brenham Housing Authority building.

The Brenham Housing Authority agrees to pay for all fiber and installation hardware necessary to connect the Brenham Housing Authority Administrative Office to the Brenham Housing Authority Office building and the CITY will assume ownership of this piece of fiber. CITY will assume ownership of all fiber the Brenham Housing Authority purchases. The Brenham Housing Authority will reserve for use four (4) single-mode fibers from the Brenham Housing Authority Administrative Office to the Brenham Housing Authority Office building. The Brenham Housing Authority may be granted the use of more fiber as needed and pursuant to agreement by the designated representatives of the CITY.

4. BRENHAM HOUSING AUTHORITY FACILITIES

The CITY is granted the right to install and use hardware as necessary for the operation and maintenance of the MAN at the Brenham Housing Authority Buildings and to ensure proper function of all network connectivity. Furthermore, the CITY is granted the right of access, through coordination with Brenham Housing Authority representatives, to all pertinent Brenham Housing Authority Buildings as needed to address maintenance, connectivity issues, or other related network functions.

The Brenham Housing Authority agrees to install conduits at both networked Brenham Housing Authority buildings as specified by the City's Network Infrastructure Administrator.

5. ANNUAL MAINTENANCE FEE

The Brenham Housing Authority agrees to pay the CITY an annual maintenance fee of twenty cents (\$0.20) per foot for all fiber used to connect the Brenham Housing Authority buildings to each other. The initial amount of fiber used will be 8,524 feet for an annual maintenance fee amount of \$1,704.80. The maintenance fee covers the repair, troubleshooting and maintenance of all current and future fiber optic cable runs between the CITY and the Brenham Housing Authority. The maintenance fee will be paid quarterly for the ensuing quarter year period. The first quarterly payment will be pro-rated starting thirty (30) days after the fiber installation is completed.

The CITY shall be responsible for the installation, repair and physical support of the Brenham Housing Authority connecting fiber links from the MAN to the termination box at each Brenham Housing Authority building approved by the CITY for connection to the MAN. The CITY further agrees to hang fiber on poles and pay for any pole usage fees from third party organizations.

The CITY agrees to provide failed network connectivity support only after the Brenham Housing Authority has attempted in good faith to exhaust its own resources and troubleshooting steps. In the event that the CITY must provide failed network connectivity support, the contact point shall be the CITY'S I.T. Manager who will then dispatch a member(s) of the CITY'S I.T. staff to resolve the problem. Should the cost of resolving the failed network connectivity issue amount to more than the annual maintenance fee, the PARTIES will agree upon costs, and payment terms prior to the completion of the resolution of the connectivity issue.

6. UPGRADES

The CITY and Brenham Housing Authority agree to share the costs of any upgrades or new installations necessary for the MAN and mutually beneficial to both parties, on a pro rata basis as agreed upon by the designated representatives of the PARTIES.

7. EVALUATION AND PLANNING

The PARTIES agree to cooperate in planning for future growth and any upgrades necessary for the proper maintenance and success of the MAN. The PARTIES agree to keep each Party advised of each other's plans and priorities through submission of reports, data, and communication to each other.

The PARTIES will conduct technical and planning meetings as necessary. The meetings shall be called by each Party's network management or technical representative upon reasonable notice to the other party.

If the CITY determines that it is necessary to relocate, modify or alter the fiber or the MAN and related equipment and facilities, the CITY shall provide the Brenham Housing Authority thirty (30) days written notification prior to making the proposed relocation, modification or alteration in order to provide the Brenham Housing Authority a reasonable opportunity to rearrange, relocate or modify existing facilities. The Brenham Housing Authority shall have no responsibility for costs and expenses relating to the relocation, modification or alteration of the fiber or the MAN and related equipment and facilities for the purpose of meeting the CITY'S needs.

In all cases, each party shall bear the costs incurred in any rearrangement, relocation, modification or alteration its facilities. The notification requirement of this section shall not apply to emergency situations.

8. MODIFICATION AND TERMINATION

This Agreement is valid from _____, 2012 until _____, 2015 or until terminated by mutual consent of the PARTIES. Any party may withdraw from this Agreement by giving written notice of intent to withdraw at least one-hundred eighty (180) calendar days in advance of the effective withdrawal date. Notice of withdrawal shall be given to all parties covered by this Agreement. This Agreement may be amended at any time by written mutual agreement of the PARTIES to the Agreement at the time of the amendment. Such amendments will require the approval of the governing bodies of the PARTIES to the Agreement. This Agreement will be reviewed and may be adjusted every three (3) years to account for inflationary increases.

9. NOTICES

All notices, demands, and other writings may be delivered by either party hereto to the other by U.S. Mail, or by a reliable commercial courier at the following address:

City of Brenham:

City Manager
PO Box 1059
200 W. Vulcan Street
Brenham, TX 77833-1059

Brenham Housing Authority:

Executive Director
1801 Northview Circle Drive
Brenham, TX 77833

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service, or three (3) days after the date the notice is deposited in the U.S. Mail system or with a commercial courier.

10. GENERAL PROVISIONS

A. Section Headings. All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

B. Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of Texas. Venue shall lie exclusively in Washington County, Texas.

C. Severability. In the event any one or more of the sections, provisions or clauses contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

D. Entire Agreement. This Agreement incorporates all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No other prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

E. Amendment. This Agreement shall not be modified or amended except by a written instrument executed by the parties.

F. Counterparts. This Agreement may be executed in duplicate original counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one in the same instrument.

G. Force Majeure. No party shall be responsible for delays or failures in performance of any part of this Agreement (other than an obligation to make money payments) resulting from any acts or occurrences due to fire, flood, explosion, pest damage, power failures, strikes or labor disputes, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages or other cause beyond its control.

Executed on this ____ day of _____, 2012.

CITY OF BRENHAM

Milton Y. Tate, Jr., Mayor,

ATTEST

Jeana Bellinger, City Secretary

BRENHAM HOUSING AUTHORITY

John Harris, Chairman

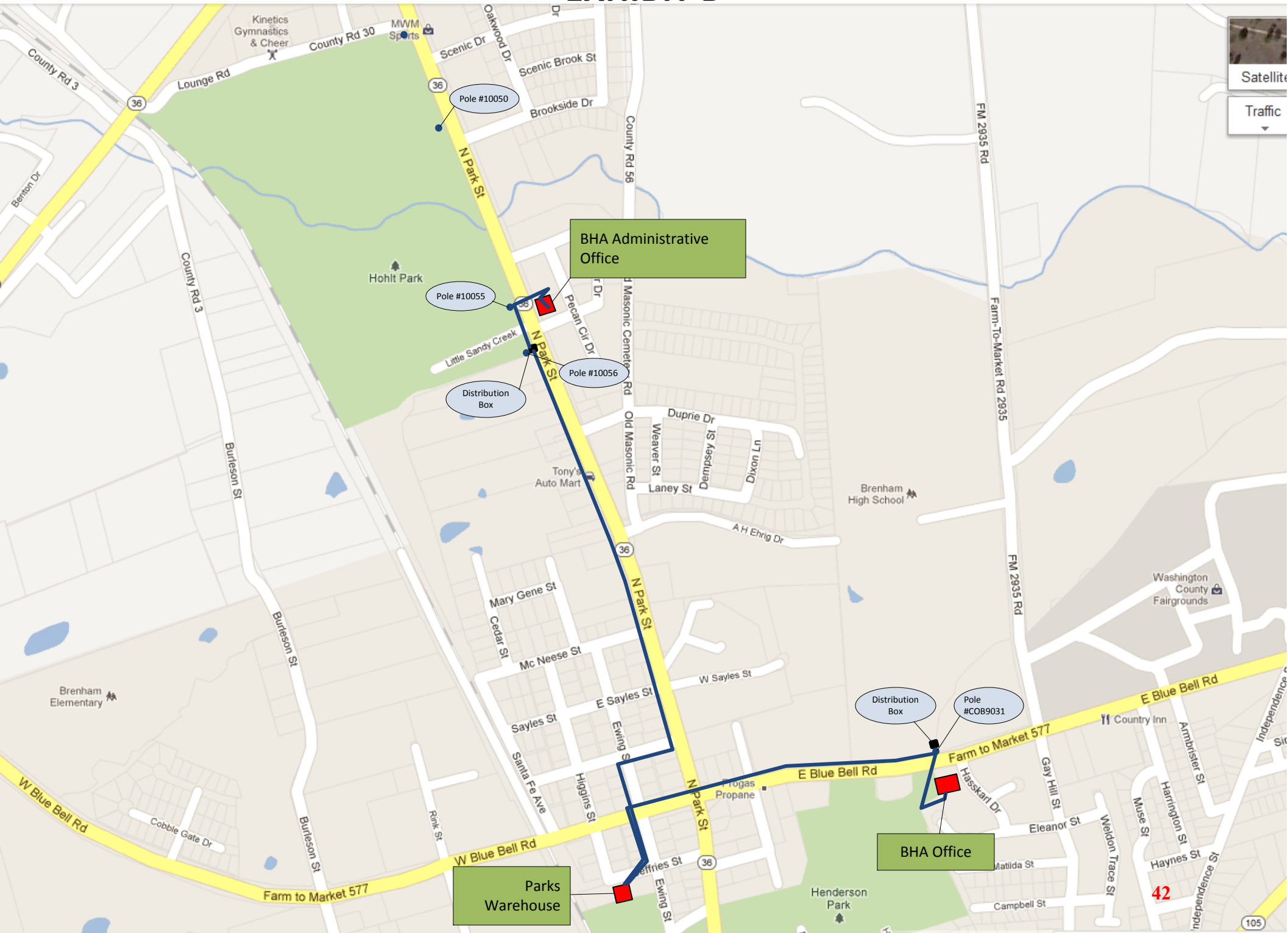
ATTEST

Bill Decker, Executive Director

EXHIBIT A

Fiber Optic Cable Purchase Length				
From	To	Length (in feet)	Add Length	Total
BHA Office	Park's Warehouse	3,229	300	3,529
Park's Warehouse	BHA Administrative Office	4,595	400	4,995
Total =				8,524
Annual Maintenance				
From	To	Length (in feet)		
BHA Office	Park's Warehouse	3,529		
Park's Warehouse	BHA Administrative Office	4,995		
Total Footage of fiber used =		8524		
Annual Maintenance Fee per foot used =		\$0.20		
Annual Maintenance Fee =		\$1,704.80		
Details of Proposal				
City of Brenham will install the fiber. Installation includes hanging the fiber, terminating the fiber and patching connectivity through from end to end with the end result being ready to light up, dark fiber.				
BHA will be responsible for all adjustments to their buildings including the installation of conduit from agreed upon locations both outside and inside their buildings, cutting, drilling, mounting of all hardware, etc.				
BHA will provide a Primary Contact for this project through whom all installations will be coordinated.				
Once the fiber is installed and terminated the City of Brenham will invoice BHA for Bill of Materials shown above.				
BHA will not be charged for installation labor. This is included in the annual maintenance fee which will be charged at the end of each fiscal/calendar year (choose one). The first year will be pro-rated starting with the first full month after installation is completed.				
City of Brenham will not provide any network configuration, network hardware (switches, routers, etc.) or support of network hardware. This agreement is to provide dark fiber which BHA will need to light up with their own hardware and resources.				
The Annual Maintenance Fee covers any maintenance or repairs that are needed to the fiber optic cable and is charged per pair of fiber used.				
BHA will provide the City of Brenham a Primary contact for this agreement. This contact will be provided contact information with instructions on how to request support for damaged fiber cables. I.T. Staff will not respond to requests from any one else.				
City of Brenham will assume ownership and maintenance of the Fiber Optic Cable installed and will pay any annual pole usage fees that result from hanging on non-City owned poles.				

EXHIBIT B





AGENDA ITEM 9

DATE OF MEETING: April 19, 2012		DATE SUBMITTED: April 12, 2012	
DEPT. OF ORIGIN: Public Works		SUBMITTED BY: Doug Baker	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	
☒ REGULAR	☐ PUBLIC HEARING	☒ 1 ST READING	
☐ SPECIAL	☐ CONSENT	☐ 2 ND READING	
☐ EXECUTIVE SESSION	☒ REGULAR	☐ RESOLUTION	
	☐ WORK SESSION		
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon an Ordinance on Its First Reading Authorizing the Closure of the Vulcan Street BNSF Railroad Crossing Located at Railroad Mile Post 126.15 to Establish a Quiet Zone			
SUMMARY STATEMENT: In August of 2011 you adopted any ordinance that provided for the closure of the railroad crossing at Vulcan Street. The crossing was being closed in exchange for the \$25,000 BNSF was offering for the closure of the crossing. Section 2 of that ordinance reads “That this Ordinance does not release or convey any right, title or interest in or to any portion of Vulcan street. The City of Brenham reserves all right, title, and interest in Vulcan Street”. Even though BNSF reviewed and approved this ordinance prior to its adoption, they have now determined that it does not agree with the text of the closure agreement that was approved in October of 2011. Their concern is that the ordinance does not permanently vacate the city’s right of way across BNSF’s right of way, thereby leaving open the possibility of re-establishing the crossing in the future. In addition to providing for repealing the existing ordinance (Section 3 of the revised ordinance), this new ordinance includes provisions that satisfy BNSF. Specifically, (1) Section 2 of the existing ordinance as described above is not included in the revised ordinance, and (2) this paragraph has been added to the new ordinance [WHEREAS, BNSF Railway Company and the City have joined together to eliminate the street/railroad crossing on Vulcan Street at Railroad Milepost 126.15 as unnecessary and in furtherance of the City’s establishment of a Railroad Quiet Zone; and]. This revised ordinance was prepared by Cary and has been approved by BNSF attorney Zachary T. Abel. I don’t think their request is unreasonable in that, if BNSF is paying \$25,000 for the closure of the crossing, they want to be assured that it will never be re-established in the future.			
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: B. CONS:			

ALTERNATIVES (In Suggested Order of Staff Preference):
ATTACHMENTS: (1) Railroad Crossing Ordinance; and (2) BNSF Correspondence
FUNDING SOURCE (Where Applicable):
RECOMMENDED ACTION: Approve an Ordinance on its first reading authorizing the closure of the Vulcan Street BNSF Railroad Crossing located at railroad mile post 126.15 to establish a quiet zone.
APPROVALS: Terry K. Roberts

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE CLOSURE OF THE VULCAN STREET BNSF RAILROAD CROSSING LOCATED AT RAILROAD MILEPOST 126.15 TO ESTABLISH A QUIET ZONE; PROVIDING FOR THE TERMS AND CONDITIONS OF SUCH CLOSURE; AUTHORIZING THE MAYOR TO EXECUTE ANY DOCUMENTS NECESSARY TO CLOSE THE VULCAN STREET RAILROAD CROSSING.

WHEREAS, the silencing of the train horns within the corporate limits of the City of Brenham, Texas will improve the quality of life for the citizens of Brenham; and

WHEREAS, the train horns can be silenced by the establishment of a Railroad Quiet Zone; and

WHEREAS, certain safety measures must be taken in accordance with federal law and regulations governing the establishment of a Railroad Quiet Zone; and

WHEREAS, Vulcan Street is divided into two sections by the Burlington Northern Santa Fe Railroad (BNSF); and

WHEREAS, BNSF Railway Company and the City have joined together to eliminate the street/railroad crossing on Vulcan Street at Railroad Milepost 126.15 as unnecessary and in furtherance of the City's establishment of a Railroad Quiet Zone; and

WHEREAS, the City Council of the City of Brenham hereby finds that the closing of the Vulcan Street BNSF Railroad Crossing is in the best interest of the citizens of Brenham promotes the health, safety and general welfare; NOW THEREFORE,

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

SECTION 1. That the Vulcan Street BNSF Railroad Crossing be and the same is hereby closed and vacated and shall no longer be used by the public as a thoroughfare for vehicular traffic.

SECTION 2: That the City Council does hereby authorize the City Manager or his designee to take any appropriate action to close and vacate the Vulcan Street BNSF Railroad Crossing located at Railroad Milepost 126.15 to establish a Railroad Quiet Zone, and further does hereby authorize the Mayor to execute any and all documents necessary to close and vacate the Vulcan Street BNSF Railroad Crossing as authorized by this Ordinance.

SECTION 3: That Ordinance No. O-11-013 is hereby repealed. Further, all other ordinances that are in conflict with the provisions of this Ordinance be, and the same are hereby, repealed and all other ordinances of the City not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION 4: Should any paragraph, sentence, subdivision, clause, phrase, or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

SECTION 5: That this Ordinance shall take effect immediately from and after its passage and publication as required by law; however, notwithstanding any other provisions herein, this Ordinance shall not be effective unless BNSF provides a cash reimbursement to the City of Brenham in exchange for the closing and vacating of the Vulcan Street BNSF Railroad Crossing in an amount not less than \$25,000.

PASSED and APPROVED on its first reading this the 19th day of April, 2012

PASSED and APPROVED on its second reading this the 3rd day of May, 2012.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC
City Secretary

Doug Baker

From: Huya, Tim J <Tim.Huya@bnsf.com>
Sent: Thursday, March 01, 2012 9:16 AM
To: Doug Baker
Cc: Huya, Tim J
Subject: 3-01-12 - need new/revised closure ordinance to match Agreement
Attachments: 022852P - CLOSURE ORDINANCE for Vulcan St in Brenham, TX.doc; 022852P - fully executed Closure Agreement for Vulcan Street.pdf

Doug

Our Audit folks found a discrepancy between the text of the Agreement and the City Ordinance attached to the agreement. The Agreement calls for the City to permanently vacate its roadway right of way across the BNSF right of way in Brenham in exchange for receiving the \$25,000 incentive payment from BNSF. Section 2 of the City Ordinance reads "This Ordinance does not release or convey any right, title or interest in or to any portion of Vulcan Street. The City of Brenham retains and reserves all right, title and interest in Vulcan Street." The two of these need to match, and both need to provide for the City permanently vacating its right of way across BNSF's right of way. Otherwise, we could get into a situation where some time in the future the City could point to its reservation of rights in the City Ordinance and attempt to re-establish a grade crossing at Vulcan Street, without having to repay BNSF the incentive payment.

It is suggested that the City to get a new ordinance in which they permanently vacate their roadway right of way where it crosses BNSF's 100-ft right of way at Vulcan Street.

Attached is a sample closure ordinance that has been used by other cities – it does contain the minimum language for approval by our Audit/Law folks.

Feel free to scan and email me the new/revised ordinance so the closure payment can be progressed.

Thank you for your assistance in this matter.

Tim Huya
BNSF Railway
817-352-2902

Doug Baker

From: Abel, Zachary T <Zachary.Abel@BNSF.com>
Sent: Tuesday, April 10, 2012 2:42 PM
To: Huya, Tim J; Doug Baker
Subject: RE: PAGE - need BNSF LAW to accept the revised closure ordinance for Vulcan Street in Brenham, TX

I approve this as-is. Thank you for your help.

Zachary T. Abel | Attorney I
BNSF Railway Company | 2500 Lou Menk Drive, AOB-3 | Fort Worth, TX 76131
(817) 352-2339 (Office) | (817) 352-2399 (Fax) | (682) 239-7317 (Mobile)

This message is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this message in error, please delete this message from all computers and notify us immediately by return email and/or phone (817) 352-2339. Thank you.

From: Huya, Tim J
Sent: Tuesday, April 10, 2012 2:15 PM
To: Doug Baker (DBaker@cityofbrenham.org); Abel, Zachary T
Cc: Huya, Tim J
Subject: PAGE - need BNSF LAW to accept the revised closure ordinance for Vulcan Street in Brenham, TX

Doug Baker (City)
Zach Abel (BNSF Law Dept)

The attached revised closure ordinance looks good to me (Public Projects Dept).
I just need Zach Abel to accept it.

Zach- please provide a REPLY TO ALL with your comments and/or approval of the revised City street closure ordinance.

Thanks

Tim

From: Doug Baker [<mailto:DBaker@cityofbrenham.org>]
Sent: Tuesday, April 10, 2012 9:49 AM
To: Huya, Tim J
Subject: FW: Railroad revised closure ordinance

Tim,

Our attorney sent this draft ordinance this morning. Unless I hear something from you saying that this is not sufficient, it will be presented to our city council for a first of two readings on April 19th. The second reading would occur on May 3rd, so the you could expect to receive the executed ordinance a few days after that.



AGENDA ITEM 10

DATE OF MEETING: April 19, 2012		DATE SUBMITTED: April 12, 2012	
DEPT. OF ORIGIN: Public Utilities		SUBMITTED BY: Lowell Ogle	
MEETING TYPE:		CLASSIFICATION:	
☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION		☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION	
ORDINANCE:			
☐ 1 ST READING ☐ 2 ND READING ☐ RESOLUTION			
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon a Request to Use Sanitation Fund Reserves to Purchase a Used Haul Truck for the City of Brenham Transfer Station and Authorize the Mayor to Execute Any Necessary Documentation			
SUMMARY STATEMENT: During the last 8 months the Brenham Transfer Station has run into many issues with their transfer trucks which haul waste from Brenham to the Sunset Farms Landfill in Austin, TX. Currently the transfer station owns 3 transfer trucks and 5 haul trailers. Our transfer fleet is comprised of a '95 International, '99 Sterling and a '07 International. We have run into many issues with the 99' Sterling and have since taken it off the road. It has been a problematic truck early on and has continued to deteriorate more quickly than the International trucks that we have purchased. This truck has topped over 700,000 miles, had the turbo charger replaced two times, starter replaced and repaired numerous times, and the dash and electronics on the inside of the truck are literally falling apart. During the 2011-2012 budget we had planned to haul waste to the BVSMA Landfill in College Station, TX and at that point decided that the two reliable trucks would be suitable for this application due to the decreased distance and quicker run times. At that time we decided to budget for a haul trailer instead and push the replacement of the 99' Sterling back a year. Since that point we have negotiated a significant rate decrease with the Austin Landfill and have been hauling to Austin since August of 2011. These longer distances and longer run times have required at all times two reliable trucks and many times a third truck. The Sterling is not suitable for these runs and we have been limping along using the '95 International and the '07 International. The '95 International just received an engine over haul and structurally is much better than the 99' Sterling. When we have one of the two trucks in the shop it causes a burden on the department without having a reliable third truck. Staff is recommending that council allow us to move forward and purchase a used haul truck with low miles that will suit our needs. Our maintenance staff has looked at these trucks and feels comfortable buying a used truck of this nature. The going rate, depending on the mileage, for used semi-trucks are anywhere from \$20,000-\$50,000. We feel that if council allows staff to purchase a used truck, we can obtain one with fewer miles for around \$45,000 or under. In 2007 we purchased a new semi-truck for \$80,190. At this time we cannot wait until the new budget to purchase a truck and will need to move forward now in order to maintain our service that the Transfer Station offers. We will take this purchase out of sanitation reserves, which currently has \$717,623.00. The '99 Sterling will be placed on GovDeals.com.			

STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: Will allow us to add a more reliable piece of equipment to our fleet. Will also buy used instead of new. B. CONS: Need to buy a truck earlier than expected
ALTERNATIVES (In Suggested Order of Staff Preference):
ATTACHMENTS: None
FUNDING SOURCE (Where Applicable): 106-5-042-813.00
RECOMMENDED ACTION: Approve a request to use sanitation fund reserves to purchase a used haul truck for the City of Brenham transfer station and authorize the Mayor to execute any necessary documentation.
APPROVALS: Lowell Ogle Jr.



AGENDA ITEM 11

DATE OF MEETING: April 19, 2012	DATE SUBMITTED: April 13, 2012	
DEPT. OF ORIGIN: Police Department	SUBMITTED BY: Chris Jackson	
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION	ORDINANCE: ☐ 1 ST READING ☐ 2 ND READING ☐ RESOLUTION
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon an Amended Contract for Participation in the City of Brenham's Rotation Log for Non-Consent Tows and Authorize the City Manager to Execute Any Necessary Documentation		
SUMMARY STATEMENT: Staff would recommend that the new language regarding the complaint process be accepted and adopted in the City of Brenham wrecker rotation contract to make sure a more reliable process is in place to ensure accountability. The continued use of the existing City of Brenham wrecker rotation contract with added language in reference to a complaint process promotes transparency and accountability by documenting incidents. There is also another change in the contract to allow for an Addendum that was approved by Council in May, 2011. The Addendum was prepared as a separate document and has never been incorporated into the whole contract.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: New complaint process will better document complaints, as well as, hold complaints accountable for accusations made. This in turn will decrease wasted staff time utilized on frivolous complaints and hopefully decrease industry complaints. B. CONS: None identified.		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: (1) Wrecker Contract		
FUNDING SOURCE (Where Applicable): N/A		
RECOMMENDED ACTION: Approve the amended contract for participation in the City of Brenham's rotation log for non-consent tows and authorize the City Manager to execute any necessary documentation.		
APPROVALS: Rex Phelps		

NON-CONSENT TOW CONTRACT FOR THE CITY OF BRENHAM

This Contract is entered into by and between the City of Brenham, a Texas home rule City situated in Washington County, Texas, hereinafter referred to as "CITY," and _____, hereinafter referred to as "OPERATOR," upon the following terms and conditions performable in Washington County, Texas:

I. PURPOSE

The purpose of this Contract is to establish acceptable standards and criteria for the provision of wrecker services by operators participating on the CITY'S Rotation Logs; provided, however, nothing herein shall obligate the CITY to the use of operators on the Rotation Logs as the sole or exclusive means of providing wreckers services and the CITY reserves the right to control, independently of the provisions of this Contract, wrecker services for any particular situation it deems appropriate. Wrecker services procured pursuant to the provisions of this Contract shall be administered by the Department through the Department's representative, who shall have authority to promulgate reasonable rules and regulations in furtherance and implementation of this Contract so long as they do not conflict with any provision hereof.

II. DEFINITIONS

For the purposes of this Contract, the following terms and words are defined as follows:

- (1) "Abandoned Vehicle", means a motor vehicle as defined in Section 683.002, Texas Transportation Code.
- (2) "Call" or "Dispatch" means a request for wrecker services by an OPERATOR on any of the Rotation Logs of the Department resulting in an OPERATOR being required to perform wrecker services pursuant to the provisions hereof.
- (3) "CITY" means the City of Brenham, Texas, a Texas home rule municipality situated in Washington County.
- (4) "Consent Tow" means any tow of a vehicle initiated by the owner or operator of a vehicle, or the person who has possession, custody, and control of the vehicle. The term does not include a tow requested and directed by a police officer.
- (5) "Department" means the Brenham Police Department, its chief or representative.
- (6) "Disabled Vehicle" means a vehicle other than an "abandoned" or "impounded" vehicle, which as a result of an accident or equipment failure, or both, is incapable of safe or legal operation, or both, and is required by a peace officer to be removed from a public street or alley.

- (7) "Day" is twenty-four (24) continuous hours unless otherwise specified.
- (8) "Heavy Tow" means a vehicle with a gross vehicle weight of 15,001 pounds or more. For the purposes of this Contract, a vehicle's weight shall be determined by the Gross Vehicle Weight Rating indicated by the manufacturer's label on the vehicle itself. If the vehicle does not have a manufacturer's label, then the gross vehicle weight shall be the registered weight of the vehicle. These vehicles will be assigned to the "Heavy Tow Rotation Log".
- (9) "Impounded Vehicle" means a vehicle other than an "abandoned vehicle" involved in a parking violation, a vehicle impounded for overdue parking tickets, a vehicle whose driver is arrested, a vehicle involved in an accident or a vehicle which is taken into custody in the investigation of a crime. These vehicles will be assigned to the "Regular Rotation Log" unless the vehicle has a gross vehicle weight of 15,000 pounds or more.
- (10) "Junked Vehicle" means a motor vehicle as defined in Section 683.071, Texas Transportation Code.
- (11) "Motorist Assist" means any service to a motorist whose vehicle has been disabled or rendered unusable, not including a tow. Examples include but are not limited to fixing flat tires, providing gasoline, or gaining entry to locked cars.
- (12) "Non-Consent Tow" means any tow that is not a consent tow. If the Department requests a tow, but the owner, operator, or person with possession of the vehicle requests a specific towing company, it is no longer a non-consent tow.
- (13) "Normal Business Hours" shall mean the hours of 8 a.m. to 6 p.m., Monday through Friday and the hours of 2 p.m. to 4 p.m. Saturdays, Sundays and holidays.
- (14) "OPERATOR" means the specific operator, as described below, which is the signatory to this Contract. For the purposes of this Contract, terms that are applicable to OPERATOR are exclusively applicable to the signatory to this Contract and terms that are applicable to operators are generally applicable to all operators.
- (15) "Operator" or "operators" means any person, firm, or entity owning or operating a Texas licensed wrecker service that is listed as an authorized participant on the Rotation Logs, including employees, agents and drivers. If a person, firm, or entity owns an interest in more than one licensed wrecker service then each and every wrecker service in which the person, firm, or entity owns an interest shall be collectively considered a single operator for the purpose of position on the Rotation Logs.
- (16) "Overtime at Scene" means any "time on scene" exceeding first one-half (1/2) hour.

- (17) "Regular Tow" means a vehicle with a gross vehicle weight of less than 15,001 pounds. For the purposes of this Contract, a vehicle's weight shall be determined by the Gross Vehicle Weight Rating indicated by the manufacturer's label on the vehicle itself. If the vehicle does not have a manufacturer's label, then the gross vehicle weight shall be the registered weight of the vehicle.
- (18) "Rotation Logs" shall mean a sequential list, as maintained by the Department, of those OPERATORS duly qualified and authorized pursuant to the provisions of this Contract to receive and respond to calls from the Department, when the vehicle owner/operator has not or cannot express a preference or consent for such services from a specific operator or towing company. One Rotation Log will be used for wrecker services in regard to impounded vehicles as hereinafter provided. A second Rotation Log will be used for wrecker services in regard to abandoned, disabled and junked vehicles. A third Rotation Log will be used for wrecker services in regard to motorist assist calls. A fourth Rotation Log will be used for "Heavy Tow Vehicles" that need to be towed whether involved in an accident or not.
- (19) "Shift Supervisor" means the police officer with the Department who is the shift supervisor currently on duty.
- (20) "Security Fence" means an enclosure of wood, chain link, iron, concrete or masonry, placed around an area used for storage of vehicles and designed to prevent intrusion and escape, which is at least six feet high, with a gate that is locked at all times when the OPERATOR is not present.
- (21) "Time on Scene" means the amount of time from when an operator arrives on scene up to the time the operator has secured the vehicle, cleaned debris, and finished an environmental cleanup. Time en route to scene and/or en route to storage is not included in this definition.
- (22) "Wrecker Services" means any non-consent tow or motorist assist rendered following a dispatch initiated by the Department.

III. TERM

This Contract shall be effective for an initial term beginning on the ____ day of _____, 20____ and will automatically terminate on the 30th day of April, following the effective date. Thereafter, this Contract shall automatically be renewed on the 1st day of May each year, for a term of one (1) year, under the terms and conditions then in effect, unless terminated as provided herein.

IV. CONSIDERATION

In consideration of the CITY'S administration, regulation and operation of the rotation system and the CITY'S permission to participate in Non-Consent tows within the City of Brenham, and specifically for a place on the Rotation Logs, OPERATOR agrees to pay the CITY an annual fee of five hundred dollars (\$500.00) due on or before the renewal of this Contract by the OPERATOR. All payments by OPERATOR to CITY under this Contract must be delivered to the City Secretary for the City of Brenham, 200 W. Vulcan, Brenham, Texas 77833. Payments must be in the form of a cashier's check or money order, and must state the following on the face of the check or money order: WRECKER SERVICE FOR [year]. Payment is due on or before May 1st of each year. OPERATOR will not be permitted to participate in CITY's Rotation Logs until payment is received by the CITY.

V. PROCEDURES FOR OPERATORS' PARTICIPATION ON CITY'S ROTATION LOGS

The following section includes provisions, rules, regulations, and procedures that are generally applicable to all operators who contract with the CITY for a place on the CITY's Rotation Logs. The City Manager, or his designee, shall have the authority to implement and enforce the terms of this Contract.

A. OPERATION

The following conditions shall govern the conduct of operators on the Rotation Logs:

- (1) *Department dispatch necessary, exception.* Except for private requests for wrecker services by the vehicle owner/driver, no operator shall proceed to the location requiring wrecker service without being dispatched to do so by the Department.
 - a. No operator shall solicit business at the scene of an accident or other incident requiring wrecker services, and
 - b. All operators and their drivers shall at all time conduct themselves and wrecker services in a reasonable and safe manner.
- (2) *Obedience to traffic laws.* Each wrecker driver shall obey all state and municipal traffic laws when responding to a dispatch for wrecker service.
- (3) *Submission of telephone numbers.* OPERATOR shall furnish the Community Services Officer with one telephone number to be used for dispatches. Any changes in the aforementioned telephone number shall be immediately transmitted to the Community Services Officer. No pagers or answering machines are permitted as call out numbers.
- (4) *Twenty-four-hour service.* OPERATOR shall maintain and be fully capable of providing twenty-four-hour, seven-day-a-week wrecker service.
- (5) *Availability.* OPERATOR shall not accept a dispatch for wrecker services from a Rotation Log unless the OPERATOR has a wrecker and the necessary equipment immediately available to perform the requested service.

- (6) *Response with own wreckers.* OPERATOR shall respond to a dispatch with its own wreckers and shall not send another wrecker service in response to a Rotation Log dispatch. If it appears to OPERATOR or the CITY'S representative on the scene, that OPERATOR is not capable to perform the required services or needs assistance, OPERATOR may request that another operator be dispatched. Under such circumstances, OPERATOR may designate the operator to be called for assistance; otherwise the next operator on the log will be dispatched.
- (7) *Response while impaired prohibited.* No driver of a wrecker shall respond to a dispatch when he or she is under the influence of alcoholic beverages, controlled substances or is otherwise impaired physically or mentally so as to be a danger to self or others or incapable of performing wrecker services.
- (8) *Proficiency.* All operators on the rotation logs shall provide drivers who are proficient and competent in the operation of such wrecker and the securing and movement of towed vehicles,
- (9) *Reflective wear required.* At all times, all of OPERATOR'S drivers shall wear reflective vests, coats or shirts as defined by Federal regulation 23-CFR-634 (ANSI/ISEA 107-2004) while on the scene of any dispatch.
- (10) *Consent Tow Service.* In addition to the non-consent tows, operators may also be called upon by the CITY to conduct consent tows of municipal vehicles, vehicle seizures as directed by the Department, and towing and storage of vehicles needed for evidentiary purposes as directed by the Department.

B. ROTATION LOGS

- (1) OPERATOR shall promptly respond to a dispatch and arrive with a wrecker on the scene within the time limits provided in Section VIII below. If OPERATOR is not capable at the time of dispatch to respond, it shall immediately tell the Department's communication center. OPERATOR will be passed over for that call and the dispatch will go to the next operator on the proper Rotation Log.
- (2) If OPERATOR responds to a dispatch, but renders no services, the response will not be considered a turn on the proper Rotation Log and OPERATOR'S position will not be forfeited.
- (3) An operator that has received a dispatch must arrive on the scene with a wrecker within the time limit provided in Section VIII below. If OPERATOR does not arrive on the scene on time or if the public health, safety and welfare necessitate more expeditious action, the Department reserves the right to request the services of the next operator on the proper Rotation Log for that turn. Any operator that is late in responding to dispatches for wrecker service without an acceptable reason may be subject to penalties as provided herein in addition to the liquidated damages provided in Section VIII below.

- (4) When emergency conditions necessitate, the CITY reserves the right to request the services of the operator who, in the CITY'S sole opinion, is best able to handle the situation and/or can reach the scene most expeditiously, regardless of that operator's position on any Rotation Log. For the purposes of this subsection, the Police Department's shift supervisor will make the determination that emergency conditions exist. If a dispatch is made under these circumstances, the operator who would have otherwise made the call will not forfeit its respective position on the proper Rotation Logs.
- (5) Upon written request, the Department will furnish OPERATOR with a monthly report of the Department's rotation call-out logs.
- (6) The Department's representative has the right to inspect any of OPERATOR'S wreckers or equipment at any time to ascertain if it is being maintained and all required equipment is on the wrecker and in proper operating order.
- (7) All operators on each Rotation Log shall have their wreckers and equipment inspected annually by the Department.
- (8) Participation in the Rotation Log system shall be considered personal to OPERATOR. Participation on any Rotation Log shall not constitute a property interest, but is rather a license.
- (9) Operators are permitted only a single position on each Rotation Log regardless of the number of wreckers that the Operator owns. If an Operator is a parent entity or a subsidiary of another wrecker service, that wrecker service is not entitled to contract with the City for a position on any of the Rotation Logs.
- (10) If Operator is dispatched off the abandoned, disabled, and junked vehicle Rotation Log and declines for any reason, the Operator will lose its next turn on the Regular Rotation Log (Impounded).
- (11) If Operator is dispatched off the motorist assist Rotation Log and declines for any reason, the Operator will lose its next turn on the Regular Rotation Log (Impounded).

C. PENALTIES

- (1) Violation of any rule, regulation or provision of this Contract is cause for suspension or removal of OPERATOR from all Rotation Logs. The Department shall notify OPERATOR in writing of a violation and the applicable penalty.

- a. Upon receipt of notification, OPERATOR may, within fifteen (15) days thereof, deliver a written request to the Department for a hearing to be held before the Wrecker Service Contract Review Board to consist of a representative of the Department, the Director of Finance (or his or her designee), and a representative from the local wrecker industry to be appointed by the City Manager (hereinafter "Board"). The City Manager shall also appoint an alternate representative from the local wrecker industry who shall serve in the event that there is a conflict of interest with the original representative. The receipt of a timely written request by the Department for a hearing shall stay the penalty pending final disposition unless it is determined by the Chief of the Department that it would endanger public safety to allow OPERATOR to continue on the Rotation Logs.
 - b. A hearing shall be held within fourteen (14) days after receipt by City of a written request. The Department's representative shall notify OPERATOR of the time, date, and place of the hearing at least three (3) days before the date of the hearing. At such public hearing, OPERATOR shall be provided an opportunity to be heard. The Board may hear from CITY representatives and others who may have relevant information.
 - c. The Board shall render a decision within three (3) business days from the date of such hearing setting forth the reasons for the same. The Board may affirm, modify, or overrule a finding or penalty.
- (2) After a suspension has been ordered, in order to be reinstated to the Rotation Logs after the period of suspension has elapsed, the operator must file a written application and pay to City of a reinstatement fee of five hundred dollars (\$500.00). The Department may only reinstate a suspended operator after it has determined that such operator is in compliance with all regulations and the terms of this Contract.
 - (3) If any violations of the regulations or provisions of this Contract are deemed by the CITY or Department to be of such nature as to endanger public safety, the Department shall immediately suspend OPERATOR from all Rotation Logs and then provide notice pursuant to the provisions above.
 - (4) The following penalties shall be assessed for violations of this Contract:

First Violation:	Written Warning
Second Violation:	Written Warning
Third Violation :	Thirty-Day Suspension
Fourth Violation :	Six-Month Suspension
Fifth Violation :	One-Year Suspension
Sixth Violation :	Permanent Removal and Termination of Contract

- (5) Penalties for violations involving failure to arrive on the scene of a dispatched Rotation Log call, charging in excess of the rates established herein or any infraction which jeopardizes the safety of the public, depending upon the severity thereof as determined by the Chief of the Police Department, may result in a penalty in a higher class regardless of the number of prior violations up to and including permanent removal without following the above progressive penalty steps. There shall be no written warnings for violations described in this paragraph and the minimum penalty for a violation described in this paragraph shall be a thirty-day suspension.
- (6) OPERATOR will have an opportunity to cure any previous violations by submitting a written request to the Department to have a violation removed no earlier than seventy-five (75) days and no later than forty-five (45) days before the end of each term. The written request must set forth, in detail, a description of the act or omission that constituted the violation, the date(s) of the warning or suspension, and an explanation of the actions taken by OPERATOR to remedy the situation. For the purposes of this Contract, when an operator has cured a violation, that violation is no longer on OPERATOR's record and is not counted towards future suspensions or other penalties. The Department will determine if the actions taken are sufficient to justify allowing OPERATOR to cure. If the Department denies the request, it shall do so in writing and OPERATOR shall have the right to follow the same procedure as listed for appealing notices for violations.
- (7) OPERATOR will be immediately removed from all Rotation Logs and the OPERATOR'S contract terminated if during the term of the contract, OPERATOR declines a dispatch eight (8) times on any of the Rotation Logs without prior notification to Dispatch that the OPERATOR is out of service.

VI. ASSIGNMENT AND SALE

A. ASSIGNMENT

- (1) The rights, duties, obligations, and privileges under this Contract, including but not limited to a position on any of the Rotation Logs, is non-transferable, and are exclusively granted to the undersigned. OPERATOR may not sell, transfer, convey, or assign an ownership interest in OPERATOR'S business to an operator that has had its position on the Rotation Logs suspended or terminated.

B. SALE

- (1) In the event that OPERATOR sells, transfers, conveys, or assigns its business, the CITY must be given notice of the sale, transfer, conveyance, or assignment within thirty (30) days or this Contract may be terminated by the City. Delay in exercise of this termination option does not constitute a waiver.
- (2) If notice of a sale, transfer, conveyance, or assignment is properly given to the City, the new operator may apply for reinstatement to the Rotation Logs before the end of the suspension period, but only if the sale, transfer, conveyance, or assignment was the result of a bona fide exchange of a majority of the assets of the business for

a reasonable consideration. All documents demonstrating the same, including but not limited to the contract for sale and any filings with the Texas Secretary of State, must be provided to the Department's representative.

VII. AUTHORIZED PERSONS

OPERATOR hereby agrees to provide wrecker services when requested by the Department on behalf of any CITY organization for the towing and storage of junked, abandoned, impounded and disabled vehicles as those terms are defined herein. Only response to requests for wrecker services received from Department's dispatch are authorized under this Contract and response to requests from any other source may subject OPERATOR to penalty as provided in Section V. C. above.

VIII. RESPONSE TIME

OPERATOR agrees to respond promptly to any and all requests made by the Department. In this section, "promptly" shall mean within twenty (20) minutes between the hours of 6:00 a.m. and 10:00 p.m. and thirty (30) minutes between the hours of 10:01 p.m. and 5:59 a.m. provided, however, if OPERATOR notifies the CITY'S communication center of a delay not attributable to OPERATOR (e.g. traffic near the scene, weather, etc.) and of a reasonable time of arrival on the scene, OPERATOR may be allowed fifteen (15) additional minutes to arrive. All times run from the time the call is made by Department dispatch to OPERATOR. In the event OPERATOR fails to respond or to respond "promptly" more than two (2) times during any calendar month OPERATOR shall pay City, as liquidated damages, the sum of two hundred dollars (\$200.00) for each response that was not "prompt" as compensation to CITY for the extra time its employees were required to remain with the vehicle to be towed as a result of OPERATOR'S tardiness. Such payment is in addition to and is not a substitute for any other penalty that may be assessed against OPERATOR pursuant to Section V.C. above. When the wrecker is called, Department dispatch will note the call time as part of the Rotation Log.

IX. EQUIPMENT AND PERSONNEL

OPERATOR must own or lease adequate equipment and vehicles to perform all requirements of this Contract. OPERATOR shall provide experienced, trained, properly licensed, qualified, and trustworthy personnel to safely and expediently operate the equipment and vehicles in performing work under this Contract. OPERATOR shall be responsible for and in sole control of the acts and omissions of said personnel. OPERATOR must have adequate off-street parking for all of OPERATOR'S equipment. If, in the course of this Contract, CITY learns that OPERATOR has failed to conform to this provision, the failure shall constitute a default entitling the CITY to terminate this Contract.

X. SUPERVISORY RELEASE WITHOUT COST

OPERATOR shall release any vehicle towed pursuant to this Contract without charge if requested to do so in writing by the Chief of Police or Assistant Chief of Police.

XI. VEHICLE STORAGE FACILITY

A. STORAGE REQUIRED

- (1) OPERATOR shall provide licensed storage facilities and a primary place of business within Washington County, Texas. The vehicle storage facility shall meet the requirements of state law and any applicable County regulations regarding vehicle storage facilities.
- (2) OPERATOR shall meet all requirements of both State and Federal law regarding the towing and storage for vehicles carrying material classified as "Hazardous in Nature".

Comment [JB1]: This change was made per an addendum that approved by the City Council on May 1, 2011.

Deleted: the City limits

Deleted: both

Deleted: the

Deleted: CITY zoning and building

B. SECURITY

- (1) Every storage facility shall be adequately secured against theft and vandalism and have Security Fencing. The OPERATOR will be responsible for each vehicle and its contents while in its care, custody and control, The storage facility premises and office area must be kept clean and orderly. All vehicles in the storage facility shall be stored in such a manner that there exists a minimum of three feet on the side of each vehicle to allow for access to the interior of the vehicle in order to check the vehicle's identification numbers.

C. ALTERNATIVE STORAGE

- (1) All vehicles towed by OPERATOR pursuant to this Contract shall be taken to OPERATOR'S storage facility, unless the vehicle owner or driver authorizes in writing that the vehicle be taken to another location specified by the owner or driver. It is sufficient that the other location is written by the owner or driver on the OPERATOR'S towing receipt or ticket at the scene and, signed by the owner or driver.

XII. RECORDS

A. RETENTION

- (1) OPERATOR shall maintain during the term of this Contract, and for three (3) years following the expiration or termination of this Contract, complete and accurate copies of all books records, receipts and tickets generated under this Contract. OPERATOR agrees to make its books and records, regarding the performance of this Contract, available to CITY'S duly authorized representatives at OPERATOR'S place of business during normal business hours for inspection, copying and auditing. Failure to maintain the records described above or to provide access to will be a basis for termination of this Contract. Audits will be preformed by the City on an as needed basis solely determined by the City.

B. QUARTERLY REPORTS

- (1) OPERATOR shall submit quarterly reports to the CITY that include a cover page and copies of all the invoices, and supporting documents, for non-consent tows for the preceding calendar quarter. For any charges calculated by the pound, a copy of the bill of lading must be included. The cover page shall contain the total amount of all fees charged pursuant to this Contract, the number of non-consent tows conducted pursuant to this Contract, the number of motorist assists performed pursuant to this Contract, the number of vehicles towed pursuant to this Contract that remain unclaimed. These reports are due by January 10th, April 10th, July 10th and October 10th. If the quarterly reports are delinquent, CITY may prohibit OPERATOR from participating in the Rotation Logs until the reports are submitted as required.

XIII. NOTICES AND AUCTION

Vehicles which are left at OPERATOR'S storage facility for more than ten (10) days after notice is sent by registered or certified mail, return receipt requested, to the owner to pick up the vehicle in accordance with Subchapter C of Chapter 683, Texas Transportation Code, shall be disposed of according to the provisions of such statute, as amended. OPERATOR shall dispose of junked vehicles according to state law and shall retain the proceeds of such disposal as provided by law.

XIV. CITY EXEMPT.

CITY shall never be held responsible for any wrecker or towing fees, storage fees or any other charges for non-consent tows incurred as a result of this Contract. OPERATOR'S sole source of revenue and recourse for services performed under this Contract, in every case, shall be from and against title owner or operator of vehicles or a third party in privity with those. OPERATOR may charge CITY no more than one hundred dollars (\$100.00) per occurrence for the towing and storage of any CITY owned vehicles or for the towing and storage of vehicles impounded by CITY for evidentiary purposes under Article 18.23 of the Texas Code of Criminal Procedure.

XV. INDEMNITY

OPERATOR, INCLUDING ITS OFFICERS, PARTNERS, MANAGERS, HEIRS, ASSIGNS, AND SUCCESSORS, AGREES TO HOLD CITY HARMLESS FROM AND INDEMNIFY IT, ITS OFFICERS, ELECTED OFFICIALS, EMPLOYEES, AGENTS, AND REPRESENTATIVES AGAINST ANY AND ALL CLAIMS, DEMANDS, SUITS, DAMAGES, COSTS, ATTORNEY'S FEES, AND INTEREST, RELATING TO ANY AND ALL PERSONAL INJURIES, DEATHS, AND/OR PROPERTY DAMAGE BY WHOMSOEVER SUFFERED, ARISING OUT OF, RESULTING FROM, OR IN ANY MANNER CONNECTED WITH ANY ACT OR OMISSION BY OPERATOR, ITS AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, WORKMEN, AND OTHER PERSONS USED BY IT OR OTHERWISE UNDER ITS DIRECTION IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT.

XVI. FEES

OPERATOR shall neither charge nor attempt to collect any other fees or charges of any kind or character for the towing, waiting, debris removal, storage, security, or release of any vehicles except those fees authorized by this Contract. Any additional services and their associated fees specifically authorized in writing by the scene commander or the on-scene supervisor will be considered as an authorized fees. Storage charges shall cease when a properly completed request for release is made. The following are the maximum fees OPERATOR can charge for any vehicle or service under this Contract:

Permissible Charges	Regular Tow	Heavy Tow Non Accidents	Heavy Tow Accidents	Notes
Towing	\$175.00	Not more than \$500.00 per registered unit.	May charge price per pound as calculated by the price per pound calculator on the WreckMaster website.	
Overtime charge	\$35.00 for each 15 minute period	\$35.00 for each 15 minute period		Applies only in excess of the first ½ hour at the scene. Time is calculated as defined for "Time at Scene". This does not include the time en route to scene or en route to storage facility. At every accident, Operator must pick up glass, metal, plastic debris and properly dispose of such at storage facility.
Winching	\$35.00 per 15 minutes	n/a		Only a loaded trailer can result in charges by the pound.
Up-righting	\$50.00 flat fee	n/a		Only a loaded trailer can result in charges by the pound.
Additional Truck	\$100.00	\$185.00		
Storage Fee	Not to exceed State allowable	Not to exceed State allowable	Not to exceed State allowable.	Shall not charge in excess of one day's storage for a vehicle, which remains in storage less than twelve (12) hours notwithstanding the passage of midnight.
Mileage Fee	\$5.00 per mile	\$7.00 per mile		Starts and ends at City limits outbound/inbound. There is no mileage allowance for a point-to-point tow within the City.
Impoundment Fee	\$20.00	\$20.00		
Certified Letter Fee	Not to exceed State allowable	Not to exceed State allowable	Not to exceed State allowable	
Motorist Assist	Not more than \$65.00	Not more than \$65.00		

Duplicate fees for additional trucks or drivers may only be charged if approval for additional truck or driver is obtained, in advance, by the Department's shift supervisor. The term "loaded trailer" includes flatbeds, van trailers, and oversized loads put on axles. Measurements by the pound refer to actual weight as determined by the bill of lading. The determination of whether a trailer is a "loaded trailer" will be made by the Department's shift supervisor. If the circumstances require, and approval of the shift supervisor is obtained, an operator may charge up to an additional 50% of the towing, overtime, winching, and up-righting fees if the non-consent tow involves hazardous materials. No fees not specifically authorized above may be charged.

XVII. INQUIRIES

On all bills, invoices, receipts, tickets, etc. issued by OPERATOR for services rendered under this Contract, OPERATOR shall notify customers of the fees specified in Section VIII above and, the mailing address for the Community Services Officer, P.O. Box 682, Brenham, TX 77834 and telephone number (979) 337 – 7324 of the Brenham Police Department for purpose of directing questions regarding those fees or services. OPERATOR shall give customers an itemized receipt that reflects the services and fees specified above. This notice must be pre-printed on the forms used by OPERATOR or a legible sticker or rubber stamp maybe used to convey the required information. The required information must be in a sans serif font of not less than ten (10) points. A notice containing this same information shall also be posted on a sign prominently displayed to the public at the place of payment, in letters at least one inch high, with a contrasting background. This sign shall be posted within fifteen (15) days after Contract is signed.

XVIII. LEGAL COMPLIANCE

OPERATOR shall comply with all provisions of Federal and Texas laws and regulations and the applicable sections of the Brenham Municipal Code (specifically including but not limited to, Title 43 Part 1 Chapter 18 Subchapter G "Vehicle Storage Facilities" of the Texas Administrative Code and Chapters 2303 and 2308 of the Texas Occupation Code) and all other laws and regulations regarding the licensing and registration of tow vehicles. Additionally when removing a wrecked or damaged vehicle from a street or public right-of-way OPERATOR MUST pick up and remove broken glass and debris from the street or public right-of-way and properly dispose of it at the storage facility. Failure to comply with this paragraph is grounds for a penalty in accordance with Section V.C. above.

XIX. COMPLAINTS AND OVERCHARGES

Complaints concerning OPERATOR'S performance of this Contract received by the CITY shall be promptly investigated by OPERATOR and a satisfactory written explanation made to CITY within five (5) days of the time OPERATOR is notified verbally and/or in writing of the complaint by CITY. OPERATOR agrees to promptly and without delay take whatever action is necessary to correct any and all complaints. OPERATOR'S failure to timely investigate or to promptly correct errors, overcharges or complaints shall constitute a breach of this Contract and authorize CITY to penalize OPERATOR as provided in Section V. C. above. Overcharges for towing or storage or both shall be promptly refunded. When a complaint is initiated, all charges will stop, until such time as the complaint has been resolved in writing and signed by all parties involved. All complaints by the public, or other operators, must be received in writing by the CITY. Oral complaints will not be acted upon in any way. A complaint form will be provided by the City.

XX. VEHICLE RELEASE

OPERATOR shall release vehicles in its custody twenty-four (24) hours per day. Vehicles must be released within one (1) hour of a request. OPERATOR shall release personal property during normal business hours without fee.

XXI. POLICE HOLD

OPERATOR must provide a uniquely numbered receipt (a card stub) to the CITY on impounded vehicles that describes the vehicle to be impounded and designates whether or not there is a police hold on the vehicle. Before releasing a vehicle with a police hold marked on the stub, the OPERATOR will ensure that the police hold has been canceled. Police holds may only be placed by a Department officer with the rank of Lieutenant or above and must be in writing. The CITY is not responsible for additional storage fees that are the result of an improperly placed police hold.

XXII. INSURANCE

OPERATOR shall provide insurance coverage in amounts that are at minimum in compliance with State and Federal law, prior to the execution of this Contract and maintain such coverage, without interruption for the full term of this Contract. All policies shall be issued by an insurer with a Best Rating of B+ or better, authorized to write such coverage in Texas. A certificate of insurance must be filed with the CITY prior to the execution of this Contract. The policy must list the City of Brenham as an "additional insured" and require the company to give CITY forty-five (45) days advance notice of non-renewal, cancellation or other material changes by the carrier.

XXIII. SAVINGS

In case of any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable, in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Contract shall be construed

as if such invalid, illegal or unenforceable provision had never been contained herein.

XXVII. INDEPENDENT CONTRACTOR

The parties intend that the relationship created between them by this Contract shall be that of CITY and independent contractor. No agent, employee, or sub-operator of OPERATOR shall be or shall be deemed to be the employee, agent or servant of CITY. CITY is interested only in the results obtained under this Contract. The manner and means of conducting the work are under the sole control of OPERATOR. None of the benefits provided by CITY to its employees, including, but not limited to compensation insurance, hospitalization insurance, or unemployment insurance are available from CITY to the employees, agents, servants or sub-operators of OPERATOR.

XXVIII. LABELS

The titles for each section are for convenience only and are non-substantive, and do not expand or limit the text of the section.

XXIX. GOVERNING LAW

The validity and interpretation of any of the terms and provisions of this Contract or of the rights and duties of the parties hereunder shall be governed by the laws of the State of Texas. Any action arising out of this Contract shall be filed in any appropriate Court having jurisdiction in Washington County, Texas.

EXECUTED ON THIS, THE ____ DAY OF _____, 20 ____.

CITY OF BRENHAM

OPERATOR

Terry Roberts, City Manager

Title: _____

ATTEST:

Jeana Bellinger, TRMC, City Secretary

XXIV. TERMINATION

Either party shall have the right to terminate this Contract, without cause, upon thirty (30) days written notice.

XXV. NOTICES

Notices required by this Contract shall be complete upon actual receipt by the party to whom notice is sent. All notices required hereunder shall be delivered or mailed as follows:

CITY OF BRENHAM:

Community Services Officer
City of Brenham Police Department
P.O. Box 682
Brenham TX 77834

OPERATOR:

Name: _____
Attn: _____
Address: _____
City: _____ State: _____ Zip Code _____
Telephone: _____ Cellular: _____
Facsimile: _____
E-Mail: _____

XXVI. WAIVER OR AMENDMENT AND ESTOPPEL

Waiver, alternation, or modification of any of the provisions of this Contract shall not be binding unless such waiver, alteration, or modification is in writing and signed by an authorized representative of the parties. Failure by either party to enforce a breach of this Contract on one or more occasions shall not constitute a waiver of further breaches or estoppel enforcement on the subsequent occasions. The terms of this Contract are exclusively applicable to the OPERATOR and the CITY and it is the intent of the parties that no third party operators are intended beneficiaries of this Contract.



AGENDA ITEM 12

DATE OF MEETING: April 19, 2012	DATE SUBMITTED: April 13, 2012															
DEPT. OF ORIGIN: Police /Animal Shelter	SUBMITTED BY: Rex Phelps															
<table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top;">MEETING TYPE:</td> <td style="width: 33%; vertical-align: top;">CLASSIFICATION:</td> <td style="width: 33%; vertical-align: top;">ORDINANCE:</td> </tr> <tr> <td>☒ REGULAR</td> <td>☐ PUBLIC HEARING</td> <td>☐ 1ST READING</td> </tr> <tr> <td>☐ SPECIAL</td> <td>☐ CONSENT</td> <td>☐ 2ND READING</td> </tr> <tr> <td>☐ EXECUTIVE SESSION</td> <td>☐ REGULAR</td> <td>☐ RESOLUTION</td> </tr> <tr> <td></td> <td>☒ WORK SESSION</td> <td></td> </tr> </table>		MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	☒ REGULAR	☐ PUBLIC HEARING	☐ 1 ST READING	☐ SPECIAL	☐ CONSENT	☐ 2 ND READING	☐ EXECUTIVE SESSION	☐ REGULAR	☐ RESOLUTION		☒ WORK SESSION	
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	☒ WORK SESSION															
AGENDA ITEM DESCRIPTION: Presentation and Discussion on the Donald G. Austin Memorial Animal Shelter																
SUMMARY STATEMENT: It has been determined by staff the animal shelter is not sufficient in size to service community demands. It is at the end of its life in terms of wear and tear, viability, and age. The options to be discussed are whether we repair existing facility and expand at the current location or build a new shelter.																
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: Continue and improve level of service to the community. Save more animals, facilitate more adoptions and meet state mandatory standards. Meet and exceed community expectations in the most clean and humane way. B. CONS: Will take considerable staff time and funding avenues will have to be explored. However, doing nothing is not recommended. We are rapidly approaching a time where this facility will not meet standards or community demand.																
ALTERNATIVES (In Suggested Order of Staff Preference): 1. Explore the avenue of constructing a new facility 2. Explore the avenue of refurbishment and expansion 3. Explore the avenue of refurbishment without expansion for a limited time frame																
ATTACHMENTS: (1) Memorandum from Chief Phelps; (2) Example of an Animal Shelter Proposal; and (3) Needs Assessment																
FUNDING SOURCE (Where Applicable): To be discussed and determined.																
RECOMMENDED ACTION: Discussion only.																
APPROVALS: Terry K. Roberts																

BRENHAM POLICE DEPARTMENT



Memo

To: City Manager, Terry Roberts
From: Rex Phelps, Chief of Police
CC: File
Date: 4/16/2012
Re: Facility Need - Animal Shelter Proposal

As you know it has been determined through inspection and general knowledge that our animal shelter is reaching the end of its life in terms of viability, age, wear and tear. The cement mortar of the interior kennels is falling out and has been patched or repaired many times to pass state inspections.

The actual metal structure bracing the exterior walls has rusted through in numerous places and may be compromising structural integrity. Our animal shelter is now housing well over 1500 animals annually with over 4,000 processing events and the facility does not leave room for continued growth or demand of a growing community. We are housing in excess of designed capacity on a daily basis.

The metal fittings, fences, gates, doors, hinges, etc. within the facility show signs of significant rust and deterioration. This is not to mention the equipment and furnishings that are at the end of service. Our current shelter does not have an adoption center or facilities designed to accommodate service ergonomics to citizens. For example, an interaction area or adoption center does not currently exist. The shelter has not been updated in terms of equipping to the industry norms. Another example, there are currently no hydraulic tables, private office areas, etc.

I have talked with a number of construction entities over the past year or so and all seem to believe the costs per square foot is more to refurbish, remodel and repair than to just construct a new facility.

The current facility has 29 dog kennels and 27 cat kennels, which is a designed capacity to house up to 56 animals. One day this very week there was total of 74 animals being housed. It became necessary to euthanize 18 animals for an array of reasons. Some were ill, aggressive or deemed not as adoptable as others. If we had more room certainly more animals could be saved for adoption. Today we have 25 cats and 26 dogs, which is a total of 51 animals. This is a typical

day at the shelter. We are simply running at or above capacity. If we were to stay with the current facility an expansion is still necessary in addition to a refurbishment. This is why a newly constructed facility may be more advantageous and more affordable.

There are options that should be considered. Do we rebuild the old facility and add on square footage? Is there enough of a land footprint at the current location to stay in the current location? Do we build a new shelter? Can we build on the city owned land next to the police department? Site selection can have an impact on the department's operational costs and also its effectiveness and efficiency. Do we partner with local veterinarians and build next to one of them to enhance services and operations? Do we acquire stand-alone land in the city or in the county to build a new shelter?

There are other questions to consider. For example, will the county want to continue its agreement for services with our city shelter? If so, what should be their contribution to the expenses of a new or rebuilt shelter? Of the 1,515 animals processed through the shelter this past fiscal year 708 were county animals and 807 were city animals. This means that approximately 47% of animals housed in the shelter were processed for county residents and 53% were housed for city residents.

I do have a suggestion regarding the possible acquisition of a new or rebuilt and expanded animal shelter. This facility as all city service facilities takes community resources to erect and maintain. It is important that the community support our efforts and it is incumbent on us that we are transparent as possible to our citizens.

Therefore, I would propose the Mayor and City Council appoint a citizen board that would research and consider all the options like those mentioned above. They could drive the initiative and even propose a feasibility study to determine the need in an objective and transparent fashion.

I do believe there are many citizens passionate about the needs of our local animal and pet populations and the care we provide them. Currently we have received approximately \$60,000 dollars in donations for shelter needs without asking for any contributions. This community need could benefit from a fundraising drive if headed by a civilian board. The Library board is a good example of the type of board I am recommending. It is possible this initiative could be funded by donations and contributions at least in a significant way. If tax dollars are required to fund this capital project then both the city and the county should share on the cost.

I have also attached a proposal that is to be used as an **example only**. This proposal communicates a design that I feel is comparable to the needs of this shelter and its community. The proposal gives two scenarios. One scenario accounts for serving both the county and the city and one scenario serving just the City of Brenham.

We may want to task the citizen board with evaluating and advising through the project and or leading a capital fundraising initiative. Of course we would not advocate or suggest the board to administer in a long-term oversight role of the operations once the facility is attained.

Please consider this letter and the attachment at your convenience. Once you have had a chance to evaluate the proposal I will be open for your direction on how to proceed.

Animal Control

Animal Shelter

The Animal Shelter and Animal Control Department is responsible for enforcing local and state animal control ordinances for the City of Brenham. Their goal is to safeguard both the public and the animals within its jurisdiction.

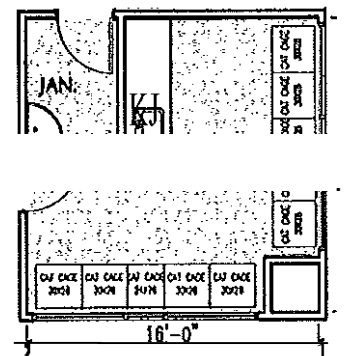
Currently, the City of Brenham serves Washington County residents in some capacity regarding animal control and shelter needs. No specific conclusions have been reached at the time of this study, so two scenarios are presented. The main scenario represents a facility to serve both City and County. The second scenario, shown on page 5.15, represents a shelter that is sized just for the anticipated future animal holding needs for Brenham alone.

Public Access and Adoption

The facility will have an open lobby with seating for six and space for an information kiosk. A reception counter will provide space for staff to greet the public. Directly adjacent to the lobby should be two public restrooms as well as two visitation rooms. These rooms provide a place for visitors to socialize with an animal before deciding on adoption.

At the heart of the public side of this facility should be the Cat and Dog display areas. The cat room should accommodate up to 30 cages that can be viewed by the public through a full-height window wall. (Refer to B-7.) Likewise, the adoption dog kennels should be easy for the public to look into and walk around. Each dog kennel block contains 20 separate kennels. (See B-8.) These areas should contain a janitor's sink, water hose reel, and cleaning supplies for staff convenience. Other elements of these rooms discussed are:

- Natural light skylights
- Sound baffles to cut down the noise levels
- Stainless steel kennels with sliding access doors between compartments. These access doors allow staff to move animals between kennels for cleaning, or to provide more space to move.
- Fold-up sleeping platform, covering continuous drench drain.



B-7

CAT DISPLAY

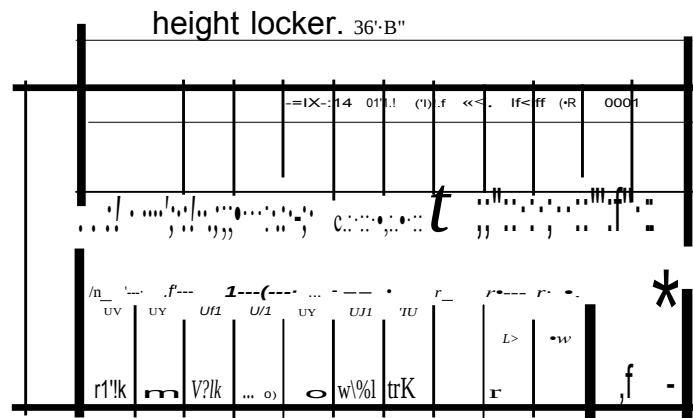
30 cats (two 5 x 3 high on 12' carts)

256 sq.ft.

Staff

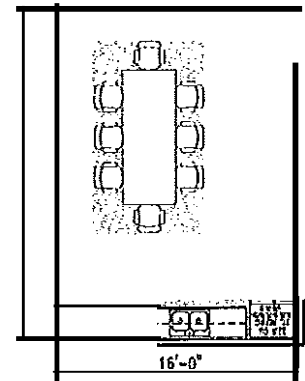
The animal control officers will have a shared office; they will have individual workstations within the space. Two workstations will be available for volunteers. The facility Supervisor will have a private office. There will be a work/copy area, as well as a break room that also serves as a small conference/training room. (816) Each staff member should have a 12" wide full-

The lockers should be adjacent to two staff toilet/shower rooms.



B-8

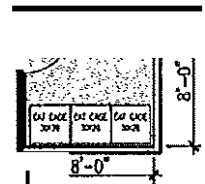
DOG DISPIAY
20 dogs (need two of these @
697 sq.ft. per pod)
1394 sq.ft. total



B-16

BREAKffRAINING
352 sq.ft.

Once staff has unloaded animals from their vehicles, they'll move them into the processing room. This area should be large enough to give staff room to "check-in" an animal. A computer station and weigh scale are needed for this purpose. (Refer to sketch B-12.) This room should also provide two kennels which will allow staff to secure dangerous dogs. Two wash areas provide a convenient place for staff to wash animals before moving them into other parts of the building.



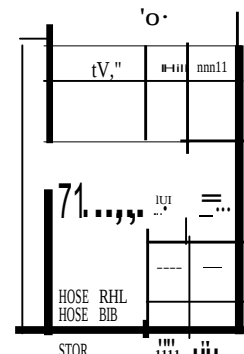
B-9

CAT QUARANTINE-
ISOIATION
9 cats (3x3 high)
64 sq.ft.

In order to maintain a healthy and safe environment for all animals at the facility, two segregation areas are needed. The quarantine rooms for dogs and cats will allow staff to observe new animals.

Isolation rooms are also needed for cats and for dogs, to prevent the spread of disease.

Other support spaces in the facility are a large supply and laundry room (B-15) along with a staff workroom. This workroom is where staff can sanitize water and food bowls, store food, and perform some animal grooming. (B -14) A medical/euthanasia room and



B-10

walk-in freezer will round out the support spaces. (B-13) DOG QUARANTINE 500G5
247 sq.ft.

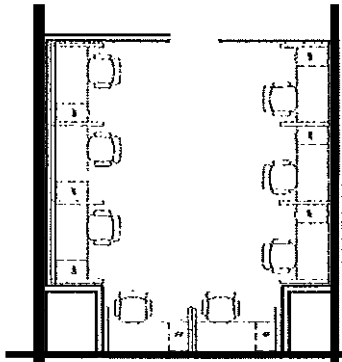
Building Support Spaces:

Several specialty rooms will complete the facility. These should include a central janitor/supply room, a server/I.T. room, space for mechanical systems and an electrical room. A central storage room for extra building materials (such as light bulbs, ceiling tiles, etc.) will assist in future maintenance. Space has also been programmed to maintain a location for the facility drawings and system operation manuals.

Exterior Yard:

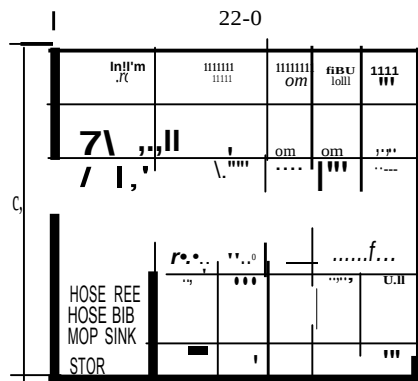
Staff requested an outside yard where dogs can get exercise and visitors can interact with dogs up for adoption. This area should be fenced in and have several fenced compartments. For easier care and maintenance, an artificial grass surface is desired for the yard.

Sketches



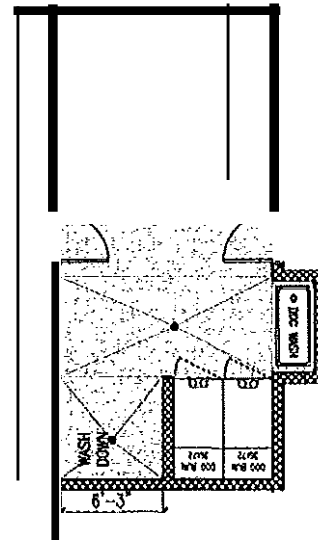
B-50

STAFF WORK
378 sq.ft.



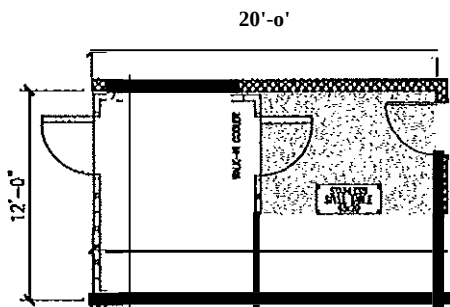
B-11

DOG ISOLATION
10 dogs
418 sq.ft.



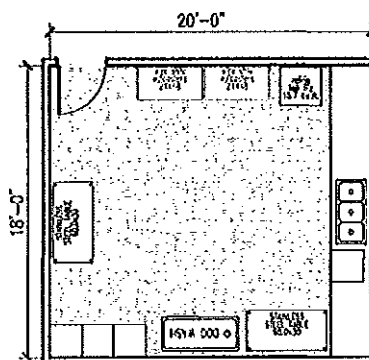
B-12

PROCESSING
364 sq.ft.



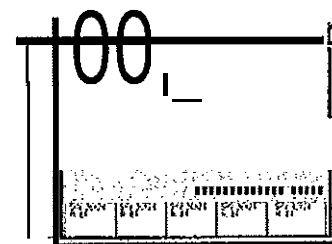
B-13

MEDICAL/EUTHANASIA
240 sq.ft.



B-14

WASH ROOM/FOOD PREP
360 sq.ft.



B-15

LAUNDRY/STORAGE
176 sq.ft.

City Animal Shelter

If city leaders decide to reduce the animal shelter to just serve the needs of Brenham, then the animal holding areas should be reduced by 30% - 50% because some areas will inherently demand square footage minimums regardless of the number of animals processed. For example, a sally port is decided by vehicle size requirements. Other select support spaces should also be reduced. Refer to the program chart on page 5.15 for the modified square footage changes from the regional program on the following page.

City of Brenham & Washington County Public Safety Needs Assessment

Public				
Vestibule		10x10	100	
Lobby (6)		16x16	256	
Kiosk		5x5	25	
Reception Counter (1)		9x10	90	
Public Toilets		8x8	64	
Visitation Room		9x10	90	
Adoption Display				
Cat Display (30)	B7	16x16	256	
Janitor				
Dog Display (40)	B8	19x37	1394	
Staff				
Staff Work (8)	S01	18x21	378	
Supervisor Office	P01	10x12	120	
Work/Copy/Coats		10x12	120	
Break/Training	B16	16x22	352	
Staff Support				
Staff Toilet/Shower		8x12	128	
Lockers (12-18"wx22"dx72"h		7x12	84	
Sally port		15x27	405	
Storage		10x27	270	
Processing/scale	B12	28x13	364	
Quarantine				
dog (5)	B10	13x19	247	
cat (9)	B9	8x8	64	
Isolation				
Isolation/stray dog (10)		19x22	418	
Isolation/stray cat (9)		8x8	64	
Medical/Euthanasia	B13	12x20	240	
Freezer (walk-in)				
Laundry/Supply	B15	11x16	176	
	B14	18x20	360	
Su art				
Central Janitor/Supply		8x10	80	80
I.T.Room		8x7	56	56
Mechanical		8x7	56	2 112
Electrical Closet		10x9	90	90
Building Maint/Storage		8x10	80	80
Building Documents/Mgmt		8x7	56	56
Subtotal				7 6,757
25% Gross Circulation				2,252
Total Gross Sq. Footage				9,009
5.5% Walls/Mech Shafts				455
Total Building				9,465
Dog play yard				2327

City of Brenham Public Safety Needs Assessment

Future Space Needs				
Item Description	Space Code	Unit Size	Unit Area	
Public				
Vestibule		10x10	100	
Lobby(6)		14x14	170	
Kiosk		5x5	25	
Reception Counter (1)		9x10	90	
Public Toilets		8x8	64	
Visitation room		9x10	90	
Adoption Display				
Cat Display (20)			200	
Cat Play room				
Janitor				
(Dof1D1se/y J78)		19x49	850	
Staff				
Work Area		18x16	250	
Supervisor Office	P01	10x12	120	
Work/Copy/Coats		10x12	120	
Break room		16x19	250	
Staff Support				
Staff Toilet/Shower		8x12	96	
Lockers (8-18"wX22"dX72"h)		7x9	63	
Animal Support				
Sally port		15x27	405	
Storage		10x19	150	
Processing/scale	812	28x13	364	
Quarantine				
dog(4)		10x19	150	
cat (6)		6.5x8	52	
Isolation				
Isolation/ stray cat		19x16	250	
Isolation/stray cat_(6		6 5x8	52	
		12x20	240	
Medical/Euthanasia	B13			
Freezer (walk-in)				
Laundry/ supply		11x13	120	
..Workroom		15x20	250	
Building Support				
Central Janitor/Supply		8x10	80	80
LT. Room		8x7	56	56
Mechanical		8x7	56	2 112
Electrical Closet		10x9	90	90
Building Main Storage		8x10	80	80
Building Documents/Mgmt		8x7	56	56
Net Subtotal			7	5,117
25% Gross Circulation				1,200
Total Gross Sq. Footage				6317
5.5% Walls/Mech Shafts				300
Total Building				6,617
Dog play yard				2327



AGENDA ITEM 13

DATE OF MEETING: April 19, 2012	DATE SUBMITTED: April 13, 2012															
DEPT. OF ORIGIN: Development Services	SUBMITTED BY: Julie Fulgham															
<table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top;">MEETING TYPE:</td> <td style="width: 33%; vertical-align: top;">CLASSIFICATION:</td> <td style="width: 33%; vertical-align: top;">ORDINANCE:</td> </tr> <tr> <td>☒ REGULAR</td> <td>☐ PUBLIC HEARING</td> <td>☐ 1ST READING</td> </tr> <tr> <td>☐ SPECIAL</td> <td>☐ CONSENT</td> <td>☐ 2ND READING</td> </tr> <tr> <td>☐ EXECUTIVE SESSION</td> <td>☐ REGULAR</td> <td>☐ RESOLUTION</td> </tr> <tr> <td></td> <td>☒ WORK SESSION</td> <td></td> </tr> </table>		MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	☒ REGULAR	☐ PUBLIC HEARING	☐ 1 ST READING	☐ SPECIAL	☐ CONSENT	☐ 2 ND READING	☐ EXECUTIVE SESSION	☐ REGULAR	☐ RESOLUTION		☒ WORK SESSION	
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	☒ WORK SESSION															
AGENDA ITEM DESCRIPTION: Presentation and Discussion on a Proposed U.S. Highway 290 Corridor Overlay Zoning District																
SUMMARY STATEMENT: Citizens formed a task force in the fall of 2010 consisting of business leaders, City staff, economic development representatives, and Planning & Zoning Commission members to discuss the concerns about how our community will develop aesthetically along the Highway 290 Corridor, being described generally as the area from Highway 577 to the east and to the city limits to the west. Envision Brenham 2020, the City's Comprehensive Plan, set as primary goals, protecting and enhancing the community's appearance, and developing commercial design standards. With this in mind, the Task Force has been working to develop a 290 Corridor Overlay Zoning District for this area that would create a definite community identity for commercial development in Brenham. The standards that are being proposed for the District encourage well thought design in new developments through building design and orientation; landscape and site improvements; parking lots; signage; and lighting. The standards for the District are not intended to restrict creativity or limit design solutions, but to improve and enhance the overall scale, quality and character that are needed to keep Brenham attractive and distinguishable in the region. This has been identified as a goal in the Envision 2020 Comprehensive Plan. Staff recommends reforming a Task Force to work on drafting a proposed ordinance.																
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: Corridor Overlay standards will astatically enhance future development in the overlay district. B. CONS: New development/redevelopment in this area will have more restrictive regulations to follow than elsewhere in the City of Brenham.																
ALTERNATIVES (In Suggested Order of Staff Preference): 1. Appoint a Task Force to further research and develop corridor overlay standards as they relate to development.																

2. Direct staff to research and develop corridor overlay standards.
3. Direct staff and or the former Task Force to *stop* further research and development of corridor overlay standards

ATTACHMENTS: (1) Highway 290 Corridor Overlay Zoning District; and (2) Proposed Stakeholders List

FUNDING SOURCE (Where Applicable): N/A

RECOMMENDED ACTION: Discussion only.

APPROVALS: Terry K. Roberts



Highway 290 Corridor Overlay Zoning District

Hwy. 290 Corridor Overlay Zoning District



- Overlay districts are typically developed in conjunction with, or as a result of, the preparation of a comprehensive land-use plan.
- An overlay district is an additional zoning requirement that is placed on a geographic area but does not change the underlying zoning.
 - Overlay districts have been used to impose development restrictions in specific locations in addition to standard zoning requirements.
- A property would still maintain the standard zoning district (B-1, B-2, etc.) and properties within the overlay district would have ***additional*** regulations to follow.

Hwy. 290 Corridor Overlay Zoning District



- History
 - Envision 2020 was adopted in 2007 and set community appearance as a primary goal.
 - The 290 Corridor Overlay Zoning District was identified as one solution to this goal.
 - A Task Force formed in 2010 to help accomplish this goal.
 - Hwy. 290 Corridor Overlay Zoning District draft standards were created.

Hwy. 290 Corridor Overlay Zoning District



- The Hwy. 290 Corridor Overlay District Task Force was established in 2010 to discuss how the 290 Corridor should develop over time.
- The Task Force was comprised of the following individuals:
 - Doug Baker – *City of Brenham*
 - Wesley Brinkmeyer – *Bluebonnet Electric Cooperative (City of Brenham Community Services Director at the time the committee was active.)*
 - Tee Dippel – *Brenham National Bank*
 - Jennifer Eckermann – *Main Street Brenham*
 - Clint Kolby – *Brenham Economic Development Foundation*
 - Nancy Low – *P&Z Commissioner*
 - Page Michel – *Washington County Chamber of Commerce*
 - Lynnette Sheffield – *Washington County Real Estate & P&Z Commissioner*

Hwy. 290 Corridor Overlay Zoning District



- The topics of regulation within the overlay district, suggested by the Task Force, are:
 - Building Placement
 - Open/Green Space
 - Landscaping
 - Parking and Circulation
 - Pedestrian Elements
 - Access and Driveways
 - Screening, Loading areas, Outdoor Storage
 - Lighting
 - Architectural Requirements
 - Signage

Hwy. 290 Corridor Overlay Zoning District



- The suggested boundaries of the overlay district are:



Hwy. 290 Corridor Overlay Zoning District



- Next Steps:
 - *Support?*
 - *Task Force?*
 - *Timeframe?*
 - *Standards?*

The following is a list of the Highway 290 Corridor Overlay District proposed stakeholders. This list is for reference purposes only but includes individuals from a range of businesses that may be related to development. It is recommended any Task Force be limited to approximately 10 members.

City of Brenham City Council Members

Maximum of 3

Contractors

Arlen Thielemann – Thielemann Construction Company & Board of Adjustment Chair

Mike Collier – Collier Construction

Ray Andrejczak – Chappell Hill Construction

Robert Grabarschick – RWG Construction Management

Architects

Tommy Upchurch – Upchurch Architects & Downtown Master Plan Steering Committee Chairman

Ben Boettcher– BBA Architects

Darren Heine – BBA Architects & Board of Adjustment Member

Charles Keese – Keese & Associates

Brad Cutright – Cutright Allen Architects

Engineers

William Krueger – Jones & Carter

Bob Schmidt or Craig Kankel – O’Malley Engineers

Thomas Gessner – Gessner Engineering

Developers

David Hightower – Wolff Companies

Sandy Gaido – High Meadows Land & Cattle

Carl Detering – The Detering Company

Michael Benestante – Christians Development Company

Realtors

George Alexander – Global Partners & Southwest Partners

Cyndee Smith – Oldham Goodwin Group

Boo Christensen – RE/MAX Advantage

Lindi Braddock – Coldwell Banker Properties Unlimited

Michael Boyd – Boyd Commercial

ORIGINAL HIGHWAY 290 CORRIDOR OVERLAY ZONING DISTRICT TASK FORCE

Doug Baker – City of Brenham

Wesley Brinkmeyer – Bluebonnet Electric Cooperative

Tee Dippel – Brenham National Bank

Jennifer Eckermann – Main Street Brenham

Clint Kolby – Brenham Economic Development Foundation

Nancy Low – P&Z Commissioner

Page Michel – Washington County Chamber of Commerce

Lynnette Sheffield – Washington County Real Estate P&Z Commissioner