



**NOTICE OF A REGULAR MEETING
THE BRENHAM CITY COUNCIL
THURSDAY, APRIL 1, 2021 AT 01:00 PM
SECOND FLOOR CITY HALL
COUNCIL CHAMBERS
200 W. VULCAN STREET
BREHAM, TEXAS**

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags - Councilmember Keith Herring**
- 3. Citizens Comments**
- 4. Proclamations**
 - ♦ Brenham Safe Digging Month**

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. Approve Ordinance No. O-21-008 on Its Second Reading Authorizing the Placement of A Stop Sign on Vineyard Pass at Its Intersection with State Highway 36 North**
 - 5-b. Approve Ordinance No. O-21-009 on Its Second Reading Authorizing the Placement of A Stop Sign on Ava Drive at Its Intersection with Old Masonic Road**
 - 5-c. Approve the Final Payment on Contract No. 65C-46 to 5-T Utilities, Inc. in the Amount of \$93,770.58 for the Baker Katz Sanitary Sewer Improvements and Authorize the Mayor to Execute Any Necessary Documentation**

- 5-d. Approve Amendment No. 2 to a Lease Agreement Between the City of Brenham and Wells Fargo Bank Texas for the Lease of the Motorbank and Authorize the Mayor to Execute Any Necessary Documentation

WORK SESSION

6. Discussion and Presentation of the Nancy Carol Roberts Memorial Library Annual Report
7. Discussion and Presentation on the City of Brenham's Little Free Library Program

REGULAR SESSION

8. Discuss and Possibly Act Upon a Lease Agreement with Aviators Plus, LLC to Lease and Occupy the Terminal Building located at the Brenham Municipal Airport and Authorize the Mayor to Execute Any Necessary Documentation
9. Discuss and Possibly Act Upon Amendment of the Existing Agreement Between Aviators Plus, LLC and the City of Brenham to Authorize Aviators Plus, LLC to Operate as a Fixed Base Operator at the Brenham Municipal Airport, and Authorize the Mayor to Execute Any Necessary Documentation
10. Administrative/Elected Officials Report

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

EXECUTIVE SESSION

11. Section 551.086 Texas Government Code - Utility Competitive Matters - City of Brenham Gas Utility System - Gas Sales Contract Between WTG Gas Marketing, Inc. and City of Brenham, Texas and Associated Issues
12. Section 551.071 - Texas Government Code - Consultation with City Attorney and Section 551.072 - Texas Government Code - Deliberation Regarding Real Property - Consultation with City Attorney and Deliberation Regarding the Possible Acquisition of the Barnhill Center at the Historic Simon Theater, and Associated Matters

RE-OPEN REGULAR SESSION

13. Discuss and Possibly Act Upon an Amendment to the Existing Gas Sales Contract Between WTG Gas Marketing, Inc. and the City of Brenham Regarding Gas Delivery Points and Authorize the Mayor to Execute Any Necessary Documentation
14. Discuss and Possibly Act Upon the Development, Operations, Funding and Possible Acquisition of the Barnhill Center at the Historic Simon Theater and Authorize the Mayor to Execute Any Necessary Documentation

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 Negotiation

CERTIFICATION

I certify that a copy of the April 01, 2021 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 St., Brenham, TX on Monday, March 29, 2021 at 11:00 a.m.

Jeana Bellinger, TRMC, CMC

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 _____, 2021 at ____ AM PM.

Signature

Title

PROCLAMATION

WHEREAS, Thousands of times each year, the underground infrastructure in Texas is damaged by those who do not have underground lines located prior to digging, resulting in service interruption, environmental damage, and threat to public safety; and

WHEREAS, In 2005, the Federal Communications Commission designated 811 to provide contractors and homeowners a simple number to contact utility operators to request the location of underground lines at the intended dig site; and

WHEREAS, The Damage Prevention Council of Texas, a stakeholder-driven organization dedicated to the prevention of damage to underground utilities in the Gulf Coast Region, promotes the national 811 notification system in an effort to reduce these damages; and

WHEREAS, Damage prevention is a shared responsibility; by using safe digging practices, the contractors and homeowners of Brenham can save time and money and help keep our infrastructure safe and connected; and

WHEREAS, The Damage Prevention Council of Texas encourages contractors and homeowners throughout Brenham and Washington County to always call 811 before digging; safe digging is no accident;

NOW THEREFORE, I Milton Y. Tate Jr., Mayor of the City of Brenham do hereby proclaim April 2021 as:

BRENHAM SAFE DIGGING MONTH

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



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

ORDINANCE NO. O-21-008

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS REQUIRING THE PLACEMENT OF CERTAIN STOP SIGNS IN THE CITY OF BRENHAM, TEXAS; ESTABLISHING THE LOCATION OF SAID STOP SIGNS; REGULATING THE TRAFFIC AT SAID STOP SIGNS; PROVIDING FOR A PENALTY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS it is necessary to place stop signs at certain locations in the City of Brenham to prevent accidents, collisions and damages; to promote the flow of traffic along and into such streets; and to regulate the same.

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

- Section 1.** That there shall be established and installed one (1) stop sign on Vineyard Pass regulating eastbound vehicular traffic, at its intersection with State Highway 36 North. The stop sign shall be erected at the top of a standard pole, installed in the ground on the right-hand side of the streets identified herein in accordance with the most recent edition of the Texas Manual on Uniform Traffic Control Devices.
- Section 2.** That every person, firm or corporation, operating a motor vehicle or other vehicle of any kind, in, on, along and into the streets or street intersections designated in Section 1 hereof, upon reaching a stop sign at the location so designated, shall bring said vehicle to a full and complete stop in compliance with the provisions of applicable state law, before proceeding further along said street or into or on said street intersection.
- Section 3.** That any person, firm or corporation, violating Section 2 hereof, shall be fined a sum of not less than \$1.00 and not more than \$200.00, plus applicable court costs.
- Section 4.** This Ordinance shall take full force and effect from and after its passage, approval and publication as required by applicable law.

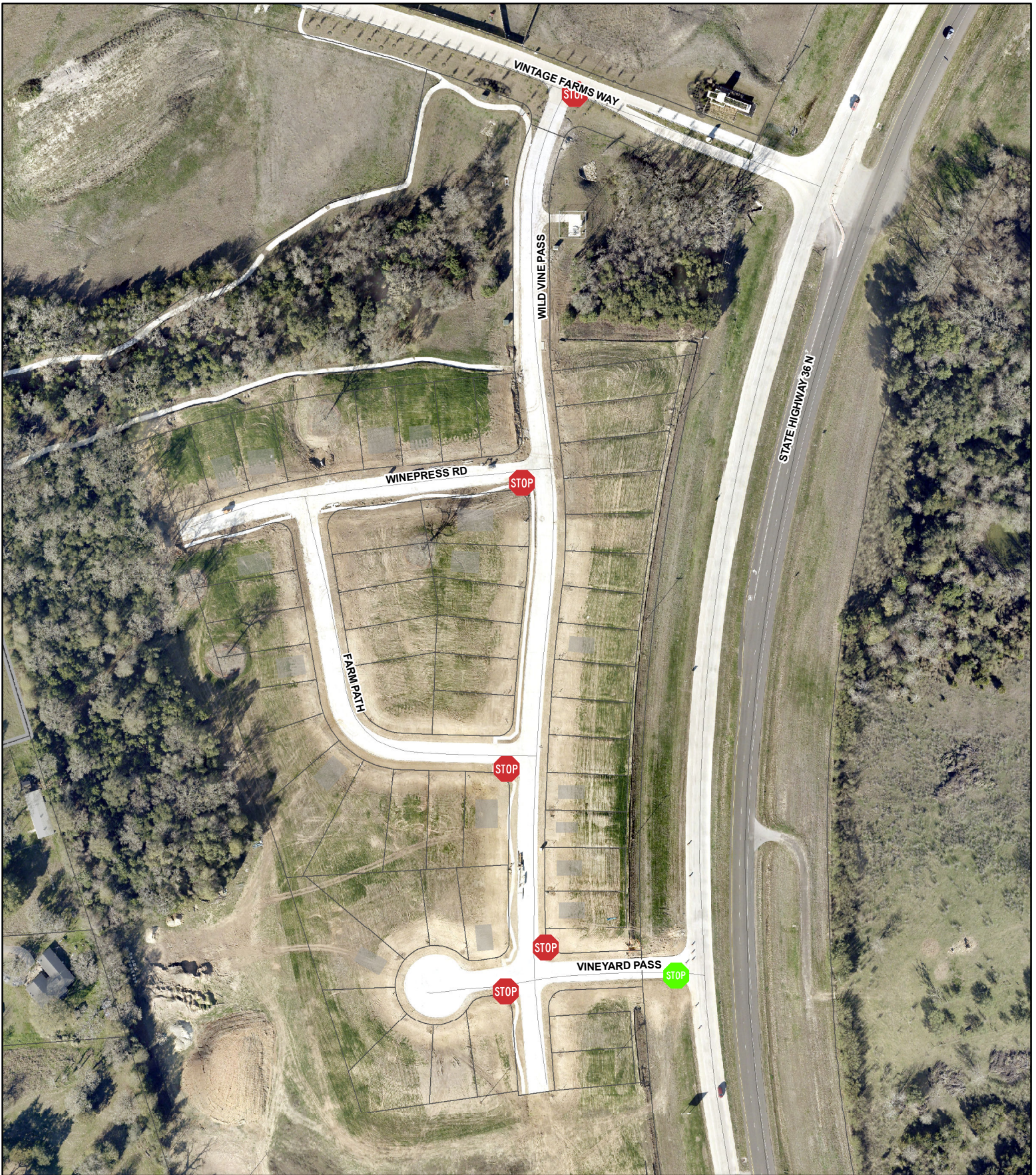
PASSED and APPROVED on its first reading this the 25th day of March 2021.

PASSED and APPROVED on its second reading this the 1st day of April 2021.

ATTEST:

Milton Y. Tate, Jr.
Mayor

Jeana Bellinger, TRMC, CMC
City Secretary



1 inch = 193 feet



Proposed Stop Sign



Existing Stop Sign



ORDINANCE NO. O-21-009

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS REQUIRING THE PLACEMENT OF CERTAIN STOP SIGNS IN THE CITY OF BRENHAM, TEXAS; ESTABLISHING THE LOCATION OF SAID STOP SIGNS; REGULATING THE TRAFFIC AT SAID STOP SIGNS; PROVIDING FOR A PENALTY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS it is necessary to place stop signs at certain locations in the City of Brenham to prevent accidents, collisions and damages; to promote the flow of traffic along and into such streets; and to regulate the same.

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

- Section 1.** That there shall be established and installed one (1) stop sign on Ava Drive regulating westbound vehicular traffic, at its intersection with Old Masonic Road. The stop sign shall be erected at the top of a standard pole, installed in the ground on the right-hand side of the streets identified herein in accordance with the most recent edition of the Texas Manual on Uniform Traffic Control Devices.
- Section 2.** That every person, firm, or corporation, operating a motor vehicle or other vehicle of any kind, in, on, along and into the streets or street intersections designated in Section 1 hereof, upon reaching a stop sign at the location so designated, shall bring said vehicle to a full and complete stop in compliance with the provisions of applicable state law, before proceeding further along said street or into or on said street intersection.
- Section 3.** That any person, firm or corporation, violating Section 2 hereof, shall be fined a sum of not less than \$1.00 and not more than \$200.00, plus applicable court costs.
- Section 4.** This Ordinance shall take full force and effect from and after its passage, approval and publication as required by applicable law.

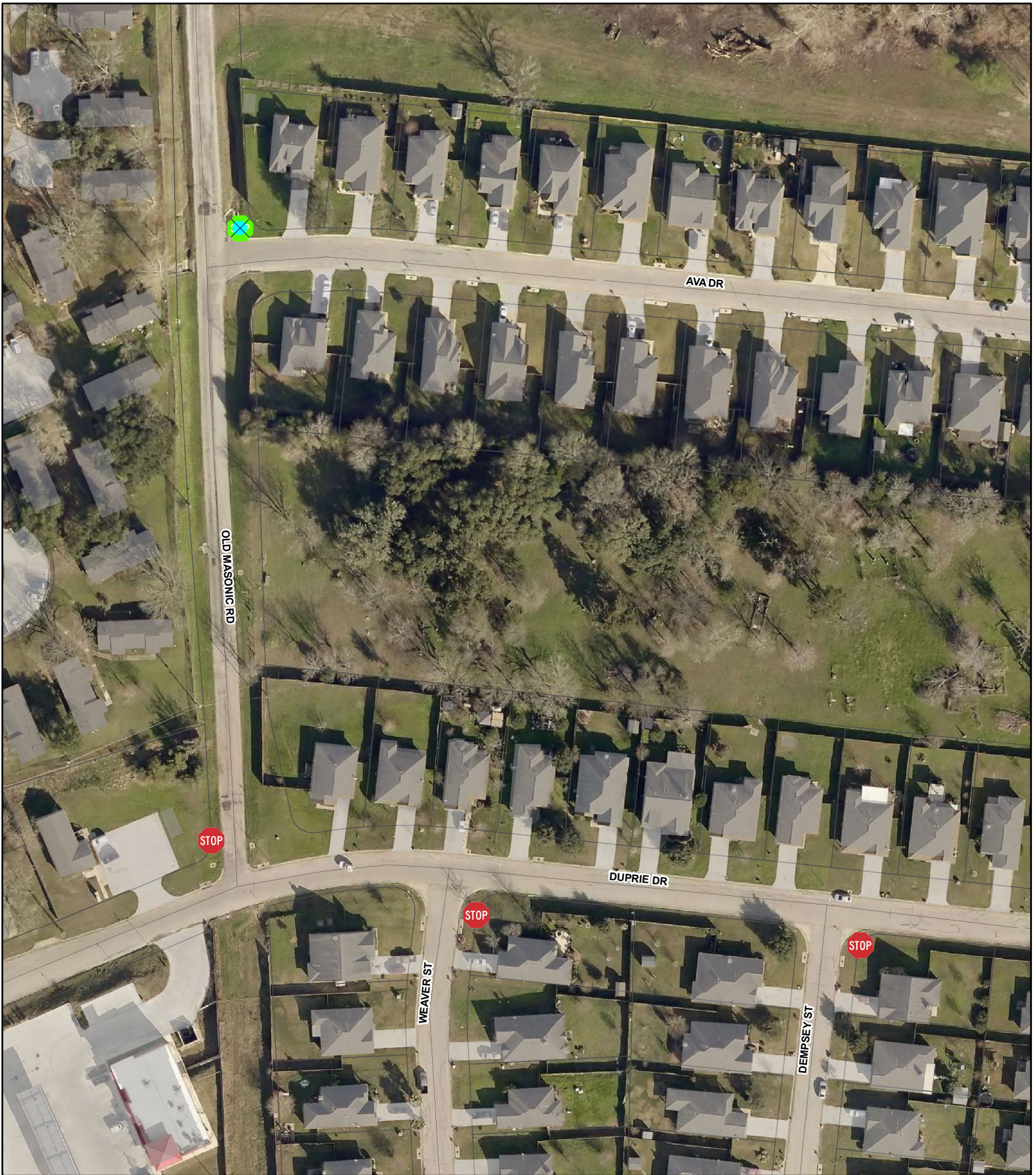
PASSED and APPROVED on its first reading this the 25th day of March 2021.

PASSED and APPROVED on its second reading this the 1st day of April 2021.

ATTEST:

Milton Y. Tate, Jr.
Mayor

Jeana Bellinger, TRMC, CMC
City Secretary



1 inch = 114 feet



Proposed Stop Sign



Existing Stop Sign





Regular City Council
AGENDA ITEM 5-C.

Agenda Item: Approve the Final Payment on Contract No. 65C-46 to 5-T Utilities, Inc. in the Amount of \$93,770.58 for the Baker Katz Sanitary Sewer Improvements and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-April 01, 2021

Department: Public Utilities

Staff Contact: Donald Reese

Classification: Consent

SUMMARY STATEMENT:

On February 20, 2020, City Council awarded 5-T Utilities, Inc. the bid in the amount of \$953,201.92 for the Baker Katz Sanitary Sewer Improvements.

The Improvements have been completed. The scope of work included 6,900 LF of 12, 10 and 8-inch PVC, 2,720 LF of 6-inch PVC force main, installation of 14 concrete and 9 fiberglass manholes, 380GPM lift station and decommission of an existing lift station. The project included one Change Order in the amount of \$14,034.12 due to the removal of 1 item in conjunction with the addition of 5 items, making the total construction cost \$967,236.04 with a final payment due in the amount of \$93,770.58.

ATTACHMENTS:

- (1) Application for Payment No. 7 & Final
- (2) Change Order No. 1
- (3) Certificate of Final Completion
- (4) Certification of Payment to Subcontractors and Suppliers
- (5) Consent of Surety to Final Payment

RELEVANCE TO COMPREHENSIVE PLAN:

Growth Capacity Goal GC 3: A growth pattern that provides for the long-term financial sustainability of the City, balancing infrastructure investment needs of new development with reinvestment/rehabilitation needs of existing developed areas.

RECOMMENDED ACTION:

Approve the final payment of Contract 65C-46 in the amount of \$93,770.58 to 5-T Utilities, Inc. related to the Baker Katz Sanitary Sewer Improvements; contingent upon the completion of the Project Punch List and authorize the Mayor to execute any necessary documentation.

APPLICATION FOR PAYMENT NO. 7 (FINAL)

TO OWNER: CITY OF BRENHAM, 200 WEST VULCAN, BRENHAM, TEXAS 77833
 FROM CONTRACTOR: S-T UTILITIES, INC., 1302 US HIGHWAY 190, HUNTSVILLE, TX 77340
 PROJECT: BAKER KATZ DEVELOPMENT SANITARY SEWER IMPROVEMENTS
 STRAND PROJECT NO. 3900.231

CONTRACT AWARDED: February 20, 2020
 PERIOD FROM: February 1, 2021
 CONST. TIME ALLOTTED (Days): 240

NOTICE TO PROCEED: May 4, 2020
 PERIOD TO: February 26, 2021
 TIME USED (Days): 299

ITEM	BASE BID	CONTRACT QUANTITY	UNIT	PREVIOUS PERIOD	CURRENT PERIOD	TOTAL	UNIT PRICE	TOTAL VALUE OF WORK COMPLETED
1	Mobilization	1	LS	1	0	1	\$ 86,654.71	\$ 86,654.71
2A	Wet Well	1	LS	1	0	1	\$ 20,540.79	\$ 20,540.79
2B	Submersible Pumps & Controls	1	LS	1	0	1	\$ 106,625.79	\$ 106,625.79
2C	Station Piping & Valves	1	LS	1	0	1	\$ 22,986.86	\$ 22,986.86
2D	Emergency Generator	1	LS	0.9	0.1	1	\$ 121,560.79	\$ 121,560.79
2E	Set wet well to finish grade	1	LS	1	0	1	\$ 25,000.00	\$ 25,000.00
2F	Pipe Installation	1	LS	1	0	1	\$ 25,000.00	\$ 25,000.00
2G	Concrete Generator Pad	1	LS	1	0	1	\$ 15,303.95	\$ 15,303.95
2H	Road Base	1	LS	1	0	1	\$ 12,000.00	\$ 12,000.00
2I	Fencing	1	LS	1	0	1	\$ 20,000.00	\$ 20,000.00
3	Decommission the existing Brenham State Supported Living Center pump station and appurtenances.	1	LS	0	1	1	\$ 22,000.00	\$ 22,000.00
4	8" ASTM D-3034 SDR 26 PVC sanitary sewer by open cut, depths 0 to 6 feet, complete in place.	295	LF	286	21	307	\$ 16.28	\$ 4,997.96
5	8" ASTM D-3034 SDR 26 PVC sanitary sewer in 16" welded steel pipe (0.375" minimum wall) by aerial crossing, complete in place.	100	LF	100	0	100	\$ 162.77	\$ 16,277.00
6	10" ASTM D-3034 SDR 26 PVC sanitary sewer by open cut, depths 0 to 6 feet, complete in place.	920	LF	958	0	958	\$ 18.03	\$ 17,272.74
7	10" ASTM D-3034 SDR 26 PVC sanitary sewer by open cut, depths 6 to 8 feet, complete in place.	1085	LF	486	309	795	\$ 18.75	\$ 14,906.25
8	10" ASTM D-3034 SDR 26 PVC sanitary sewer by open cut, depths 8 to 10 feet, complete in place.	930	LF	1150	0	1150	\$ 20.00	\$ 23,000.00
9	10" ASTM D-3034 SDR 26 PVC sanitary sewer by open cut, depths 10 to 12 feet, complete in place.	170	LF	170	1	171	\$ 22.00	\$ 3,762.00
10	10" ASTM D-3034 SDR 26 PVC sanitary sewer by open cut, depths 12 to 14 feet, complete in place.	80	LF	80	1	81	\$ 25.00	\$ 2,025.00
11	10" ASTM D-3034 SDR 26 PVC sanitary sewer by open cut, depths 14 to 16 feet, complete in place.	65	LF	65	0	65	\$ 28.00	\$ 1,820.00
12	10" ASTM D-3034 SDR 26 PVC sanitary sewer by open cut, depths 16 to 18 feet, complete in place.	80	LF	80	0	80	\$ 34.00	\$ 2,720.00
13	10" ASTM D-3034 SDR 26 PVC sanitary sewer by open cut, depths 18 to 20 feet, complete in place.	55	LF	55	0	55	\$ 42.00	\$ 2,310.00
14	10" ASTM D-3034 SDR 26 PVC sanitary sewer by bore, all depths, complete in place.	30	LF	30	0	30	\$ 100.00	\$ 3,000.00
15	10" ASTM D-3034 SDR 26 PVC sanitary sewer in 16" welded steel pipe (0.375" minimum wall) by aerial crossing, complete in place.	345	LF	345	0	345	\$ 152.34	\$ 52,557.30
16	12" ASTM D-3034 SDR 26 PVC sanitary sewer by open cut, depths 10 to 12 feet, complete in place.	45	LF	45	0	45	\$ 28.00	\$ 1,260.00
17	6" AWWA C900 DR 18 PVC force main by open cut, all depths, complete in place.	2,515	LF	2,515	0	2,515	\$ 33.90	\$ 85,258.50
18	6" AWWA C900 DR 18 PVC force main in 16" welded steel pipe (0.375" minimum wall) by aerial crossing, complete in place.	205	LF	205	0	205	\$ 155.96	\$ 31,971.80

ITEM	BASE BID	CONTRACT QUANTITY	UNIT	PREVIOUS PERIOD	CURRENT PERIOD	TOTAL	UNIT PRICE	TOTAL VALUE OF WORK COMPLETED
19	Construct 4-foot-diameter precast concrete manhole with manhole marker, standard depth 0 to 6 feet, complete in place.	14	EA	14	0	14	\$ 2,657.70	\$ 37,207.80
20	Construct additional vertical depth in feet above 6-foot standard manhole depth, complete in place.	42	VF	42	0	42	\$ 215.50	\$ 9,051.00
21	Construct drop connection to manhole, all lines sizes and depths, complete in place.	2	EA	2	0	2	\$ 1,000.00	\$ 2,000.00
22	Construct combination air release valve assembly in 4-foot diameter precast concrete manhole, all depths, complete in place.	1	EA	1	0	1	\$ 7,519.68	\$ 7,519.68
23	Tie-in new 6" PVC force main to existing 6" HDPE force main, including any bypass pumping required, complete in place.	1	EA	0	1	1	\$ 6,100.00	\$ 6,100.00
24	Construct 16"x16" prestressed concrete piles at aerial crossings, complete in place.	8	EA	8	0	8	\$ 16,429.00	\$ 131,432.00
25	Trench safety for depths less than 10-feet, complete in place.	5,745	LF	5,745	55	5,800	\$ 2.00	\$ 11,600.00
26	Trench safety for depths greater than 10-feet, complete in place.	495	LF	495	0	495	\$ 4.00	\$ 1,980.00
27	Site restoration, seeding, and cleanup, complete in place.	1	LS	0.75	0.25	1	\$ 5,000.00	\$ 5,000.00
28	Electric Utility Service allowance per Section 26 21 00.	1	LS	1	0	1	\$ 500.00	\$ 500.00
ITEM	CHANGE ORDER No. 1	CONTRACT QUANTITY	UNIT	PREVIOUS PERIOD	CURRENT PERIOD	TOTAL	UNIT PRICE	TOTAL VALUE OF WORK COMPLETED
1	Remove chain link fence for the lift station.	1	LS	1	0	1	\$ (14,000.00)	\$ (14,000.00)
2	Add cedar wood fence for the lift station.	1	LS	1	0	1	\$ 15,575.00	\$ 15,575.00
3	Add 6-foot by 6-foot concrete containment slab with a 4-inch curb.	1	LS	1	0	1	\$ 7,500.00	\$ 7,500.00
4	Add 6 inch by 6 inch box inlet with a 4 inch polyvinyl chloride (PVC) pipe to the lift station wet well.	1	LS	1	0	1	\$ 828.00	\$ 828.00
5	Connect a 4-inch PVC pipe to the lift station wet well.	1	LS	1	0	1	\$ 800.00	\$ 800.00
6	Add plug valves with locking handles at the lift station.	2	EA	2	0	2	\$ 1,665.56	\$ 3,331.12

Original Contract: \$ 953,201.92
Plus Additions: \$ 14,034.12
Less Deductions: \$ -
Adjusted Contract: \$ 967,236.04

Value of Work Performed to \$ 967,236.04
Plus Materials Stored at Close of \$ -
Net Amt Earned to Date \$ 967,236.04
Less 5% Retainage \$ -
Subtotal \$ 967,236.04
Less Previous Pay Applications \$ 873,465.46
Amount Due this Application \$ 93,770.58

AFFIDAVIT & CERTIFICATION OF PAY APPLICATION BY CONTRACTOR

STATE OF TEXAS
COUNTY OF WALKER

WHEREAS, the undersigned, Ray Twordecki, who being duly sworn, on oath, says that he is the legal representative of 5-T Utilities, Inc., has been employed by City of Brenham to furnish labor and materials for the installation of the Baker Katz Utility Improvements in Brenham, Texas.

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

BY: Ray Twordecki
5-T UTILITIES, INC.

DATE: 3-2-2021

PRINTED NAME: Ray Twordecki

TITLE: Vice President

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE

1st

DAY OF

MARCH

2021

Kevin A. Leal
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS.

RECOMMENDED BY:

[Signature]
STRAND ASSOCIATES INC.*

DATE: 3/17/2021

APPROVED BY:

CITY OF BRENHAM, TEXAS

DATE:

**Strand Associates, Inc.®**

1906 Niebuhr Street
Brenham, TX 77833
(P) 979-836-7937

June 4, 2020

CHANGE ORDER NO. 1

PROJECT: Baker Katz Development Sanitary Sewer Improvements
OWNER: City of Brenham, Texas
CONTRACT: 65C-46
CONTRACTOR: 5-T Utilities, Inc.

Description of Change

1a	Remove chain link fence for the lift station.	(DEDUCT)	(\$14,000.00)
1b	Add cedar wood fence for the lift station.	ADD	\$15,575.00
1c	Add 6-foot by 6-foot concrete containment slab with a 4-inch curb.	ADD	\$7,500.00
1d	Add 6-inch by 6-inch box inlet with a 4-inch polyvinyl chloride (PVC) pipe to the lift station wet well.	ADD	\$828.00
1e	Connect a 4-inch PVC pipe to the lift station wet well.	ADD	\$800.00
1f	Add plug valves with locking handles at the lift station (2 each (EA) at \$1,665.56 EA).	ADD	\$3,331.12
TOTAL VALUE OF THIS CHANGE ORDER:		ADD	\$14,034.12

Contract Price Adjustment

Original Contract Price	\$953,201.92
Previous Change Order Adjustments	\$0.00
Adjustment in Contract Price this Change Order	\$14,034.12
Current Contract Price including this Change Order	\$967,236.04

Contract Substantial Completion Date Adjustment

Original Contract Substantial Completion Date	October 30, 2020
Contract Substantial Completion Date Adjustments due to previous Change Orders	0 days
Contract Substantial Completion Date Adjustments due to this Change Order	31 days
Current Substantial Contract Completion Dates including all Change Orders	November 30, 2020

Contract Final Completion Date Adjustment

Original Contract Final Completion Date	November 29, 2020
Contract Final Completion Date Adjustments due to previous Change Orders	0 days
Contract Final Completion Date Adjustments due to this Change Order	31 days
Current Final Contract Completion Dates including all Change Orders	December 30, 2020

BRF:cdj\SA\BRE\3900--3999\3900\231\Construction\Change Orders\CO 1\CO1.docx

TBPE No. F-8405
TBPLS No. 10030000

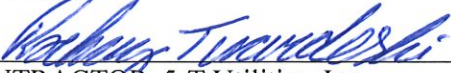
City of Brenham, Texas-5-T Utilities, Inc.
Contract 65C-46 Change Order No. 1
Page 2
June 4, 2020

This document shall become a supplement to the Contract and all provisions will apply hereto.

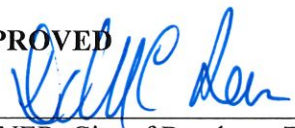
RECOMMENDED

 6/10/20
ENGINEER—Strand Associates, Inc.® Date

APPROVED

 6-8-2020
CONTRACTOR—5-T Utilities, Inc. Date

APPROVED

 6/2/2020
OWNER—City of Brenham, Texas Date

Document 00641

CERTIFICATE OF FINAL COMPLETION

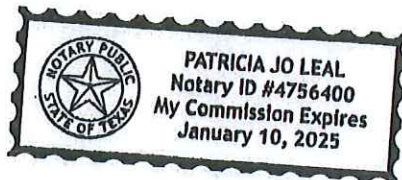
CERTIFICATE OF FINAL COMPLETION OF: Baker Katz Development Sanitary Sewer Improvements
Project No.: 65C-46
Contract Dated: 3-4-2020

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

Ray Twardeski
Affiant's Signature

SWORN AND SUBSCRIBED before me on

3-10-2021
Date



Patricia J. Leal
Notary Public in and for the State of TEXAS

PATRICIA J. LEAL
Print or type name

My Commission Expires: JAN. 10 - 2025
Expiration Date

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

Col. Chitt 03-17-21
Resident Project Representative

[Signature] 3/17/2021
[Project Manager or Construction Manager]

Approved:

[Title of Approval Authority], [Contracting Department]

END OF DOCUMENT

00641-1
04-01-2017

Document 00642

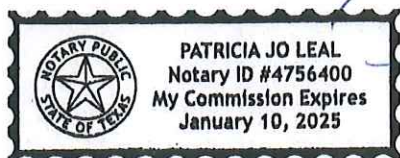
CERTIFICATION OF PAYMENT
TO SUBCONTRACTORS AND SUPPLIERS

The undersigned, Ray Twardowski, states that he is the Vice President,
of S-T Utilities
Affiant Contractor

and that he is duly authorized to execute this Certification of Payment to Subcontractors and Suppliers; that Contractor has made payments to Subcontractors and Suppliers for all labor, materials, equipment, and services furnished to date for Work on Project No. 65C-46 in the amounts for which Contractor has been paid; that the labor, materials, equipment, and services covered by this Certificate of Payment have been furnished in accordance with and all in compliance with the Contract Documents; that no sums have been withheld by Contractor for Subcontractors and Suppliers as a result of any allegations of deficiencies in the Work; and that such payments were made in accordance with the Contract Documents and with the laws of the State of Texas.

Ray Twardowski
Affiant's Signature

SWORN AND SUBSCRIBED before me on 3-10-2021
Date



Patricia J. Leal
Notary Public in and for the State of TEXAS
PATRICIA J. LEAL
Print or type name

My Commission Expires: JAN. 10, 2025
Expiration Date

END OF DOCUMENT

MERCHANTS
BONDING COMPANY™

Merchants Bonding Company (Mutual)

P.O. BOX 14498, DES MOINES, IOWA 50306-3498

PHONE: (800) 678-8171 FAX: (515) 243-3854

**CONSENT OF SURETY
TO FINAL PAYMENT**

OWNER
ARCHITECT
CONTRACTOR
SURETY
OTHER

☐
☐
☐
☐
☐

Bond No. TXC612802

TO OWNER:

CITY OF BRENHAM
200 West Vulcan

Brenham, TX 77883

ARCHITECT'S PROJECT NO.:

CONTRACT FOR:

Baker Katz Development Sanitary Sewer Improvements,
Project No. 65C-46

PROJECT:

Baker Katz Development Sanitary Sewer Improvements, Project No. 65C-46

CONTRACT DATED:

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

Merchants Bonding Company (Mutual)
P.O. Box 14498
Des Moines, Iowa 50306-3498

, SURETY,

on bond of

(Insert name and address of Contractor)

5-T Utilities, Inc. (TMT Utilities, Inc.)
PO Box 1318
Huntsville TX 77342

, CONTRACTOR,

hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall not
relieve the Surety of any of its obligations to

(Insert name and address of Owner)

CITY OF BRENHAM
200 West Vulcan

Brenham, TX 77883

, OWNER,

as set forth in said Surety's bond.

IN WITNESS WHEREOF, the Surety has hereunto set its hand on this date: March 22, 2021

(Insert in writing the month followed by the numeric date and year.)

Attest:


(Seal): Kristina Hernandez, Witness

Merchants Bonding Company (Mutual)

(Surety)


(Signature of authorized representative)

Alexandria Petroski

(Printed name and title)

Attorney-In-Fact

Printed in cooperation with American Institute of Architects (AIA). The
language in this document conforms exactly to the language used in
AIA Document G707-1994 Consent Of Surety to Final Payment.

MERCHANTS
BONDING COMPANY
POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Alexandria Petroski

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 22nd day of March, 2021.



MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

By

Larry Taylor
President

STATE OF IOWA
COUNTY OF DALLAS ss.

On this 22nd day of March, 2021, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



Polly Mason

Notary Public

(Expiration of notary's commission
does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 22nd day of March, 2021.



William Warner Jr.
Secretary



Regular City Council
AGENDA ITEM 5-D.

Agenda Item: Approve Amendment No. 2 to a Lease Agreement Between the City of Brenham and Wells Fargo Bank Texas for the Lease of the Motorbank and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-April 01, 2021

Department: Development Services

Staff Contact: Stephanie Doland

Classification: Consent

SUMMARY STATEMENT:

The City acquired the Motorbank property utilized by Wells Fargo as a Motorbank/ATM in 2001 and Wells Fargo has continued to maintain a lease agreement with the City. In 2017 Wells Fargo vacated the Motorbank and amended their original lease agreement to only lease space for the existing ATM and corresponding equipment.

In late 2020 the City was contacted by Wells Fargo about their intent to remove equipment from the Motorbank and upgrade the existing on-site ATM to a device which operated on cellular data. Following coordination with the Development Services Department the ATM was upgraded and equipment was removed from the Motorbank. Wells Fargo submitted to the City a Second Amendment to the Lease Agreement which reduces the amount of lease space to only the location of the ATM and clarifies the month-to-month lease rate of \$500 for the first five-years and increase of \$100 in monthly rent at the five and ten year anniversary date of the amendment. Additionally, Wells Fargo will continue to pay the City a monthly flat fee of \$150.00 for electric service to the unit.

The proposed amendment and removal of the equipment will allow the City to lease the motor bank to interested parties or proceed with additional options for the property. Staff is working with the Facilities Subcommittee of Council to consider all possible uses of the Motorbank.

Staff recommends approval of the proposed lease amendment as presented.

ATTACHMENTS:

- (1) Original Lease Agreement Wells Fargo ATM
- (2) First Amendment to Wells Fargo Lease
- (3) Second Amendment to Wells Fargo ATM Lease

RELEVANCE TO COMPREHENSIVE PLAN:

Growth Capacity Goal GC. 1: Continued investment in maintenance and upgrades to City-owned facilities.

RECOMMENDED ACTION:

Approve Amendment No. 2 to a Lease Agreement between the City of Brenham and Wells Fargo Bank Texas for the lease of the motorbank and authorize the Mayor to execute any necessary documentation.
--

LEASE AGREEMENT

This Lease Agreement ("Lease") is made and entered into as of the 3rd day of April, 2002, by and between the CITY OF BRENHAM, a home-rule municipality ("Landlord") and WELLS FARGO BANK TEXAS, NATIONAL ASSOCIATION, a national banking association ("Tenant").

RECITALS

A. Pursuant to a Purchase and Sale Agreement dated October 31, 2001, Landlord purchased from Tenant certain real property located in Brenham, Washington County, Texas, consisting of five tracts of land improved with a two-story office building ("Building"), attached drive-through banking lanes, a detached motorbank facility and related canopy and drive-through lanes, and related parking lots and driveways (collectively, the "Project").

B. Landlord agreed in connection with the purchase and sale of the Project to lease back to Tenant certain portions of the Project that are located on the tract of land described by metes and bounds in Exhibit A attached hereto and incorporated herein (the "Land"), as more particularly described below.

C. In consideration of the foregoing recitals, the Rent and other covenants and agreements set forth herein, Landlord and Tenant have entered into this Lease pursuant to the terms set forth below.

1. Definitions. The following terms have the meanings set forth below:

a) Effective Date. April 3, 2002, the date of the Closing of the sale of the Project to Landlord.

b) Leased Premises. The Leased Premises, which are located within the Project and on the Land, consist of: (i) a free-standing motorbank building with a street address of 110 W. Vulcan (the "Motorbank"), (ii) exclusive use of the four west covered drive-through lanes with canopy ("Motorbank Lanes") associated with the Motorbank (the Motorbank and Motorbank Lanes are sometimes collectively referred to herein as the "Motorbank Facility"), (iii) the concrete island on which sits the automatic teller machine ("ATM") located in the outermost lane of the motorbank facility attached to the Building, and (iv) exclusive use of the lane where the ATM is located ("ATM Lane"), together with any and all improvements, fixtures, personal property and equipment now or hereafter situated thereon. The Motorbank, Motorbank Lanes, ATM and ATM Lane are identified on the site plan attached hereto as Exhibit B.

c) Temporary Leased Premises. The Temporary Leased Premises consist of (i) the communications room ("COM Room") located in the Building that serves the ATM, and (ii) the night depository located in the Building near the attached drive-through lanes, as shown on Exhibit C attached hereto and incorporated herein. The Temporary Leased Premises shall be a part of the Leased Premises for all purposes hereunder until June 30, 2002, or such earlier time

as Tenant relocates the COM Room to the Motorbank and removes or abandons the night depository. Landlord shall ensure that Tenant, its employees or agents shall have unfettered access to the COM Room and the night depository at all times while they are part of the Leased Premises.

d) Permitees. All employees, agents, contractors, customers, visitors and invitees of a party to this Lease.

2. Demise, Term.

a) Demise. Landlord hereby leases to Tenant and Tenant accepts from Landlord subject to the provisions of this Lease the Leased Premises commencing on the Effective Date and continuing until the expiration of the Term as hereinafter provided.

b) Term. The original term of this Lease ("Primary Term") shall commence as of the Effective Date. The Primary Term shall expire on the last day of the fifth (5th) year following the Effective Date. The Primary Term together with any extension thereof pursuant to subparagraph 2(c) below is hereinafter referred to as the "Term."

c) Options. Tenant shall have the right to extend the Term ("Extension Option(s)") for three (3) consecutive five (5) year periods ("Renewal Terms") upon the same terms, conditions and provisions set out herein for the Primary Term, except that Minimum Rent (hereinafter defined) during any Renewal Term will be as follows:

First Renewal Term	\$400.00/Month
Second Renewal Term	\$500.00/Month
Third Renewal Term	\$600.00/Month

The first Renewal Term shall commence on the expiration of the Primary Term and each subsequent Renewal Term shall commence upon the expiration of the preceding Renewal Term. Each Extension Option shall be deemed to be automatically exercised by Tenant unless Tenant gives Landlord written notice that Tenant will not extend the Term, such notice to be given at least ninety (90) days prior to the expiration of the Primary Term with respect to the first Renewal Term, and at least ninety (90) days prior to the expiration of the Renewal Term then in effect with respect to any successive Renewal Term.

d) Termination Option. Notwithstanding anything to the contrary herein, Tenant has the right, on not less than ninety (90) days' written notice at any time during the Term, to (i) terminate this Lease as to the entire Leased Premises, or (ii) terminate this Lease as to the ATM and ATM Lane only.

e) Quiet Enjoyment. Upon Tenant's payment of all rent hereunder and observance and performance of all of the covenants, terms and conditions to be observed and performed by Tenant pursuant to this Lease, Tenant shall have throughout the Term the peaceful, quiet and undisturbed use and possession of the Leased Premises and all rights and privileges appertaining thereto, subject to the terms, conditions and provisions of this Lease.

f) AS IS. TENANT WAS THE OWNER OF THE LEASED PREMISES PRIOR TO THE EFFECTIVE DATE AND ACKNOWLEDGES THAT IT IS FAMILIAR WITH THE CONDITION OF THE LEASED PREMISES AND IS ACCEPTING IT AS-IS, WITH ALL FAULTS.

3. Rent. Tenant shall pay to Landlord annual minimum rent ("Minimum Rent") in the amount of one dollar (\$1.00) during the Primary Term. Minimum Rent during any Renewal Term will be in the amount set forth in Paragraph 2(c) above. The Minimum Rent during the Primary Term shall be paid annually beginning on the Effective Date, and on each anniversary of the Effective Date thereafter during the Term, to Landlord, at the address provided below. Minimum Rent during any Renewal Term shall be paid to Landlord on the first day of every month. Minimum Rent shall not be prorated for any partial year during the Primary Term, but will be prorated for any partial month during a Renewal Term.

4. Tax Payment Obligation.

a) Real Estate Taxes. In addition to the Minimum Rent, Tenant shall pay or cause to be paid and discharged directly to the taxing authority or reimburse to Landlord all real property taxes which may be levied on or assessed against the Leased Premises and all interest thereon to the extent such taxes are attributable to the Term following the Effective Date. Landlord and Tenant shall attempt to have the tax assessor-collector separately assess the Leased Premises from the remainder of Landlord's real property or, if such taxes are not assessed separately, Landlord and Tenant shall fairly apportion any real property taxes on the Land and/or Project so that Tenant only pays its proportionate share thereof. If not separately assessed, Landlord shall provide Tenant with copies of the tax statements and its calculation of Tenant's share, and Tenant will pay same when due to the taxing authority or within fifteen (15) days of receipt of the statements from Landlord, whichever is later. If Tenant fails to timely pay and discharge said taxes through no fault or delay of Landlord, Landlord may pay the same, and Tenant shall reimburse Landlord immediately upon notice thereof for such tax payments, including any penalties and interest, and for all costs incurred in connection therewith by Landlord. Landlord and Tenant shall prorate such taxes for any partial year during the Term. Landlord shall use its best efforts to cause all tax bills, notices of assessments, and similar correspondence to be sent directly to Tenant from the tax assessor-collector to the extent they are separately assessed.

b) Indemnification. Tenant agrees to protect and hold harmless Landlord from liability for any and all such taxes, assessments and charges for which Tenant is responsible, together with any interest, penalties or other sums thereby imposed, and from any sale or other proceeding to enforce payment thereof. Notwithstanding the foregoing, Tenant shall not be responsible for any late fees, penalties or interest due to Landlord delay in providing tax statements.

c) Contest. Notwithstanding anything to the contrary herein, Tenant shall have the right to contest the amount or validity of real property taxes and assessments pertaining to the Leased Premises by appropriate administrative and legal proceedings brought either in its own name, Landlord's name or jointly with Landlord, as Tenant may deem appropriate, by

counsel selected and engaged by Tenant; provided, however, that in the event Tenant involves Landlord in any such proceeding, Tenant shall reimburse Landlord for its reasonable out-of-pocket expenses associated therewith. In such event, Landlord shall execute and deliver to Tenant whatever documents may be reasonably necessary or proper (subject to Landlord's approval, not to be unreasonably withheld or delayed) to permit Tenant to so contest real property taxes or which may be necessary to secure payment of any refund which may result from any such proceedings.

d) Personal Property Taxes. Tenant shall pay, or cause to be paid, before delinquency, any taxes levied or assessed on Tenant's Equipment (hereinafter defined) located on the Leased Premises.

5. Signs, Alterations and Repairs.

a) Signage.

(1) Existing and New Tenant Signs. Tenant's existing ATM sign on the canopy over the ATM Lane may remain as long as Tenant maintains that ATM; additionally, Tenant may alter such signage as reasonably necessary to differentiate between Landlord's operations adjacent to the ATM Lane and Tenant's operations. Tenant may place a new sign on the canopy above the Motorbank Lanes that is visible to West Vulcan Street. Tenant's existing pylon sign adjacent to the westernmost West Vulcan Street entrance to the Project, as well as any other signage existing as of the Effective Date, may remain. Landlord consent will be required for installation of any additional signage, which will not be unreasonably withheld or delayed.

(2) Maintenance, Removal and Sign Changes. All signs which Tenant elects to construct or utilize pursuant to Paragraph 5(a) shall be constructed and maintained in good repair at Tenant's sole cost and expense, and Tenant shall pay the cost of any electricity consumed in illuminating the same. Tenant may, but is not obligated to, remove all signs and repair any damage caused by such removal following the expiration or earlier termination of this Lease so long as the removal is completed within 15 business days following the expiration or earlier termination date and Tenant, at Tenant's expense, restores the surface to which the signs were attached to its original condition. If Tenant fails to remove all signs within the 15-day period, the signs become the property of Landlord without any credit or compensation to Tenant. Tenant has the right, at any time, to change any of Tenant's signage containing Tenant's name or trademark. Landlord retains the right to approve or disapprove of the aesthetic content of any change in signage that is not dictated or permitted by any corporate signing, graphics, and lettering policies, as amended from time to time, that are followed by Tenant or Tenant's parent company, and their successors and assigns. Landlord must respond in writing to Tenant's request for approval within 15 days from receipt of the schematics of Tenant's signage. If Landlord fails to respond during this 15-day period, it will be deemed to have approved the change in signage. Tenant will bear the costs of changing its signage.

(3) Interior Signs. Tenant shall have the right to install and maintain such signs as it may desire on the interior of the Leased Premises.

(b) Alterations.

(1) Required Alterations. Prior to June 30, 2002, Tenant shall remove the three (3) concrete drive-through islands of the Motorbank Facility that are marked in black on Exhibit B in order to permit traffic to exit onto North Park Street from the Project. The overhead canopy above those islands may be removed or remain, at Tenant's discretion. Tenant shall also relocate the COM Room to the Motorbank, which will involve trenching a line from the ATM to the Motorbank to connect the COM Room to the ATM. All alterations to the Leased Premises described in this Paragraph 5(b)(1) shall be made at Tenant's sole cost and expense.

(2) Optional Alterations. Tenant may not remove the night depository located in the Building. Landlord may use the night depository for its own purposes, and Tenant reserves the right to require that Landlord install adequate signage advising Tenant's customers that the night depository in the Building is not for bank deposits and directing them to the night depository in the Motorbank. Tenant may remodel the Motorbank Facility to add an interior walk-up bank, or make other alterations, additions or changes to the exterior of the Motorbank Facility or the adjacent parking and driveway areas, subject to Landlord's consent, which shall not be unreasonably withheld or delayed. Landlord consent shall not be required for any interior alterations, additions or changes, whether or not structural in nature, or for installation of a night depository.

(3) Adjacent Property. Landlord is considering selling a portion of the Land near the Motorbank Facility to the owner of the adjacent property so that owner can construct a drive-through pharmacy lane, as depicted on Exhibit C. In such event, (i) Tenant shall not be responsible for the cost of removing the canopy over the ATM Lanes if required for such construction, and (ii) Landlord shall cause the retaining wall adjacent to Tenant's parking area to be reinforced to permit use of the pharmacy lane without undue risk of the retaining wall collapsing, at no expense to Tenant. Furthermore, if the retaining wall collapses for any reason, Landlord acknowledges that it will be repaired or modified promptly at no cost to Tenant, and in such event all of Tenant's parking spaces adjacent to the retaining wall will be preserved.

(c) Repairs.

(1) Tenant's Repairs. Commencing from and after the Effective Date, Tenant shall, at its cost, perform all maintenance, repairs, and replacements necessary to keep the Motorbank Facilities in good condition and repair, reasonable wear and tear excepted, including but not limited to the foundations, roof, downspouts, subfloors, interior and exterior walls, glass, doors, windows, moldings, the interior of the Motorbank, plumbing pipes, plumbing fixtures, water heaters, HVAC Systems, light and electric fixtures, and all equipment located in the Motorbank Facilities and the ATM.

(2) Landlord's Repairs. Commencing from and after the Effective Date, Landlord shall, at its cost, perform all maintenance, repairs, and replacements necessary to keep the ATM Lane and canopy and the exterior side of the Building adjacent to the ATM Lane in good condition and repair, reasonable wear and tear excepted, except that Tenant shall have

sole responsibility for maintaining the ATM itself and any related equipment or systems. Landlord shall have no obligation to maintain the Motorbank Facilities.

(3) Emergency Repairs. In an emergency situation, Landlord shall have the right to perform Tenant's repairs if Tenant fails to commence such repairs within 24 hours after notice to Tenant of the need for such repairs, or such shorter period of time, with or without notice, as may be reasonable under the circumstances, provided that if the emergency is of such a nature as to make prior notice infeasible, Landlord shall attempt in good faith to provide contemporaneous notice to Tenant of the existence of the emergency and the action being taken in connection therewith. Tenant will reimburse Landlord for performing the same the reasonable cost of such emergency repairs within thirty (30) days following receipt of notice accompanied by invoices evidencing the payment of the cost of such repairs. In the event of any dispute between the parties as to the cost to be reimbursed, such reimbursement shall be equal to the average of three competitive bids obtained by Landlord from independent third-party contractors for such repairs under the same emergency circumstances; provided, however, if Tenant objects to the amount of such reimbursement, Tenant shall obtain three additional competitive bids from independent third-party contractors for such repairs under the same emergency circumstances, in which event the amount of such reimbursement shall be equal to the average of the six competitive bids obtained by Landlord and Tenant. For purposes hereof, an "emergency situation" shall mean a situation in which there is imminent threat of bodily injury to person or substantial damage to property.

(d) Tenant's Fixtures. Tenant may install in or upon the Leased Premises such fixtures and equipment as Tenant deems desirable, and all of said items shall remain Tenant's property whether or not affixed or attached to the Leased Premises and may be removed by Tenant at any time during the Term.

6. Services and Utilities.

(a) Utility Charges. To the extent separately metered, Tenant shall arrange with the appropriate utility suppliers for services to the Leased Premises, pay all connection and service charges and deposits required to connect utilities to the Leased Premises, and pay such utility suppliers directly for such services. For any utilities that are not separately metered as of the Effective Date, Landlord shall maintain continuous utility services to the Leased Premises, and Landlord and Tenant shall agree to reasonable apportionment of such expenses. Tenant shall reimburse Landlord for its pro-rata share of utility charges within fifteen (15) days of receipt of a detailed written statement from Landlord setting forth Tenant's share of such charges.

(b) Janitorial Services. Tenant shall provide its own janitorial services and shall keep the exterior portions of the Leased Premises clean and swept on a regular basis. Tenant shall not be responsible for any landscaping services or maintenance.

(c) Lighting. Landlord shall cooperate with Tenant in keeping the areas of the Project adjacent to the ATM and Motorbank Facilities well-lighted at all times, but in no event less than the lighting and other requirements imposed on Tenant pursuant to the provisions of any law and any and all rules and regulations with respect thereto, at no expense to Landlord.

7. Parking and Access.

(a) Parking. Tenant and Tenant's Permittees have the exclusive right to use five (5) parking spaces across from the Motorbank and adjacent to the retaining wall in the area shown on Exhibit B, which spaces may be designated "Bank Parking Only" at Tenant's discretion, and the non-exclusive right to use any other non-reserved parking in the Project. Additionally, Tenant's employees have the non-exclusive right to park in the Project parking lot across North Park Street from the Motorbank. Landlord may not alter, reduce, or modify any parking or driveway areas of the Project or take any other actions regarding the parking or driveway areas that would deny access by Tenant or its Permittees to the Motorbank and Motorbank Lanes, the ATM and ATM Lane, or any parking.

(b) Access. Tenant and Tenant's Permittees have the non-exclusive right to use the pedestrian and vehicular paths and driveways within the Project. Landlord shall ensure that Tenant and Tenant's Permittees have full and unimpaired access to the Leased Premises at all times. Following completion of the alterations described in Section 5(b)(1) herein, Landlord and Landlord's Permittees shall have the non-exclusive right to use the driveway through the Motorbank Facility depicted on Exhibit D to provide access to North Park Street.

8. Use, Transfers or Assignments.

(a) Tenant's Use. Tenant may use the Leased Premises for operating a bank, general office use, and all business and activities which Tenant or any of its affiliates are authorized by law to engage in and conduct as a financial institution, both directly and through subsidiaries.

(b) Assignment, Subletting. Tenant may assign its rights under this Lease or sublet all or any part of the Leased Premises without Landlord's prior approval to any (i) entity controlling, controlled by, or under common control with Tenant or into which Tenant is merged or consolidated; (ii) state or national banking association; or (iii) state or federal savings and loan association or federal savings bank ("Permitted Transferee"). Tenant may assign its rights under this Lease to any other party with Landlord's prior written approval, which approval may be withheld by Landlord in Landlord's sole discretion. If Landlord fails to indicate its approval or disapproval within thirty (30) days after any written request for approval of an assignment to a party other than a Permitted Transferee, Landlord will be deemed to have approved the requested assignment. Any assignment of Tenant's rights under this Lease that is not in accordance with this subsection is voidable at Landlord's option.

(c) Transfer or Mortgage. If Landlord should convey, mortgage, or refinance or propose to convey, mortgage, or refinance all or part of any interest in the Leased Premises, Tenant shall execute the following:

(1) Attornment. An agreement in recordable form, reasonably acceptable to Tenant and such lender, successor, or assignee, to attorn to any successor or assignee of Landlord so long as such successor or assignee agrees to perform the obligations of Landlord hereunder.

(2) Estoppel Certificate. Tenant shall, from time-to-time within three (3) weeks after notice, execute and deliver to Landlord and/or to Landlord's lender a certificate in recordable form stating (i) whether this Lease is in full force and effect and, if modified, the substance of such modification, (ii) the dates to which the Minimum Rent has been paid, (iii) whether either party is in default in performance of any provision of this Lease, and if there is a default, the reason therefor, and (iv) the expiration date of the then-current Term and number of Renewal Terms remaining.

9. Indemnification, Insurance.

a) Indemnification. Tenant shall indemnify and hold harmless Landlord and its agents, successors and assigns, from and against all injury, loss, claims or damage, including attorneys' fees, and disbursements to any person or property arising from, related to, or in connection with, Tenant's use, occupancy, construction or repair of the Leased Premises, except injury, loss, claims or damage caused primarily by the gross negligence or willful misconduct of Landlord or Landlord's Permittees.

b) Insurance. Tenant shall provide and maintain comprehensive general liability insurance with broad form coverage endorsement (including broad form property damage endorsement) insuring it against claims for personal injury, bodily injury or death, and property damage or destruction. Such insurance shall be written with an insurer licensed to do business in the State of Texas and shall name Landlord as additional insured by endorsement. The limits of liability of all such insurance shall be not less than \$2,000,000.00 for personal injury, bodily injury or death of more than one person in one occurrence and \$500,000.00 with respect to damage to or destruction of property; or, in lieu of such coverage, a combined single limit (covering personal injury, bodily injury or death and property damage or destruction) with a limit of not less than \$2,000,000.00 per occurrence. Tenant shall furnish Landlord with certificates evidencing such insurance.

c) Blanket Policy. All insurance which Tenant is required to maintain hereunder may be provided under a blanket policy provided such policy otherwise complies with the requirements of this Lease.

d) Scope. Each policy to be provided by Tenant hereunder shall name the Landlord or its designee as an additional insured and shall also contain a provision whereby the insurer agrees that such policy shall not be canceled except after thirty (30) days' written notice to the Landlord or its designee. The insurance policies or duly executed certificates thereof, together with satisfactory evidence that the premium has been paid, shall be deposited with Landlord on the Effective Date; and, thereafter, evidence of continuing insurance and premium payment shall be delivered to Landlord not less than thirty (30) days prior to the expiration of each policy required to be in force hereunder. If Tenant fails to maintain the required insurance, Landlord may, but shall not be obligated to, obtain such insurance and be reimbursed upon demand.

e) Waiver of Subrogation. Notwithstanding any contrary provision contained in this Lease, neither party shall be liable, and each party hereby expressly waives every claim

against the other, which arises or may arise in its favor and against the other party during the term of this Agreement for any injury or damage to any person or property or other loss (including, but not limited to, loss of income), in or about the Project and/or the Premises, which loss or damage is required to be insured in accordance with this Lease. The waiver contained in this paragraph shall be effective whether such loss or damage is actually insured or self-insured pursuant to the terms of this Lease. Landlord and Tenant shall provide written notice of this waiver to their respective insurance carriers, if required by the terms of their respective insurance policies, and shall cause said insurance policies to be properly endorsed (if necessary) to prevent the invalidation of such insurance coverage by reason of said waiver. If requested in writing by the other party, Landlord and Tenant each shall give to the other party a certificate from their respective insurance companies to that effect.

f) Landlord Insurance. During the Term Landlord shall carry personal property insurance covering its personal property in the Project, general liability insurance in the same amounts required of Tenant, and all-risk property insurance in an amount equal to the full replacement cost (including demolition and removal of debris) of the improvements now or hereafter located in the Project, including the Leased Premises. Landlord may self-insure for any insurance required to be carried by Landlord hereunder.

10. Destruction, Condemnation.

(a) Destruction. In the event all or part of the Leased Premises has been damaged or destroyed, this Lease shall continue and Tenant's obligation to pay Minimum Rent shall be unimpaired thereby except as set forth below.

(1) Lease Termination. In the event the Leased Premises are damaged or destroyed due to casualty and such damage or destruction renders the Leased Premises reasonably unsuitable for Tenant's business operations, Tenant shall have the right to terminate this Lease upon written notice to Landlord within thirty (30) days after the occurrence of such damage or destruction. If Tenant so elects to terminate this Lease, the Term shall terminate as of the date Landlord receives such notice.

(2) Restoration. Subject to Tenant's lease termination rights set forth herein, in the event the Leased Premises are damaged or destroyed, Tenant shall have the right, but not the obligation, to proceed with the repair or restoration of the Leased Premises and use all available insurance proceeds for such restoration.

(b) Condemnation.

(1) Taking of Leased Premises. In the event of a taking by the power of eminent domain or conveyance in lieu thereof ("Taking") of the whole or any material part of the Leased Premises, and such Taking renders the Leased Premises reasonably unsuitable for Tenant's business operations, Tenant shall have the right to terminate this Lease upon notice to Landlord within ninety (90) days after receiving notice of the intended Taking. If Tenant elects to terminate this Lease, the Term shall cease as of the day the public authority takes physical

possession. If following a Taking this Lease shall continue in effect as to any portion of the Leased Premises, Minimum Rent shall not be reduced.

(2) Awards. All compensation awarded for any Taking of Landlord's ownership interest in the Leased Premises Center shall be the property of Landlord. Tenant shall be entitled to any and all awards or payments made with respect to any damage to Tenant's leasehold estate, trade fixtures or for loss of business, goodwill, depreciation or injury to and cost of removal of stock-in-trade.

(3) Restoration. If there is a Taking of all or part of the Leased Premises and the Lease is not terminated, Tenant may, at its sole expense, restore and rebuild the Leased Premises, but Tenant shall have no duty to so restore or rebuild the Leased Premises.

11. Default.

(a) Events of Default. The following are events of default ("Events of Default"):

(1) Rent. Tenant fails to pay when due any installment of Rent and such failure continues for ten (10) days after Tenant's receipt of written notice from Landlord.

(2) Other Obligations. Either party fails to perform any obligation, covenant or condition or to comply with any provisions of the Lease (other than the payment of Rent by Tenant) and such failure continues for thirty (30) days after written notice from the nondefaulting party, unless said default requires more than thirty (30) days to cure and the defaulting party commences a cure within thirty (30) days after written notice and thereafter maintains a diligent effort to complete the cure and thereafter completes the cure within a reasonable time period.

(3) Bankruptcy. Either party files in any court pursuant to any statute a petition in bankruptcy or insolvency or for reorganization or arrangement or makes an assignment for the benefit of creditors or any such petition is filed against a party and a receiver or trustee of all or any portion of that party's property is appointed and such proceeding is not dismissed or the trusteeship discontinued within thirty (30) days after such appointment.

(b) Landlord's Remedies. Upon the occurrence of an Event of Default by Tenant, Landlord's sole remedy shall be to terminate this Lease by written notice to Tenant.

12. Removal of Tenant's Equipment. Tenant's Equipment is the property of Tenant. Tenant may, but is not obligated, to remove all Tenant's Equipment from the Leased Premises so long as the removal is completed within 15 business days following the expiration or termination of the Term and Tenant, at its sole cost and expense, repairs any damage caused by the removal. The term "Equipment" includes, regardless of the manner of installation, all furnishings, furniture, sign faces, computers, computer related equipment or property, cabling, tubing, pneumatic tubing, ATMs and other electronic equipment, safes, halon systems, security systems, communications equipment, and other equipment or personal property used by Tenant in its operations. Equipment does not include vaults (other than mobile vaults) or teller lines.

13. General Provisions.

(a) Notice. "Notice" shall mean any notice, notification, consent, approval, request, designation, submission, specification, election or other communication required or permitted under this Lease. All notices shall be in writing and shall be deemed to have been given and received the earlier of (1) the date the notice is delivered by one party to the other party personally or delivered to the party's address by a party or by a delivery service which records delivery dates, or (2) three (3) days after the notice is placed in the mail addressed to the other party at the party's address, properly stamped, certified or registered mail, return receipt requested. A party's address shall be as follows or as set forth in a notice to the other party:

Landlord: City of Brenham
204 W. Vulcan Street, Suite ____
Brenham, Texas ____
Attn: _____

Tenant: Wells Fargo Bank Texas, N.A.
Attention: William A. Holik
4406 West Piedras, Suite 120
MAC #T5600-012
San Antonio, Texas 78228

With a Copy to: Wells Fargo Corporate Properties
Attention: Texas Lease Manager
MAC S4101-140
100 West Washington
Phoenix, Arizona 85003

(b) Entire Agreement. Tenant acknowledges that neither Landlord nor any one on Landlord's behalf has made any representation, warranty or promise with respect to the Leased Premises except as expressly set forth in this Lease. This Lease embodies the entire agreement and understanding between the parties as to the Leased Premises and supersedes all prior negotiations, agreements and understandings. Any provision of this Lease may be modified, waived or discharged only by an instrument in writing signed by the party against which enforcement of such modification, waiver or discharge is sought.

(c) Force Majeure. Except for Tenant's payment of Rent, each party shall be excused from performing an obligation or undertaking provided for in this Lease for so long as such performance is prevented, delayed, retarded or hindered by an Act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, mob violence, sabotage, strike, lockout, action of labor unions, requisitions, laws, or orders of government or civil or military authorities.

(d) Surrender. Upon the expiration of the Term or earlier termination of this Lease, Tenant shall surrender the Leased Premises to Landlord in good condition and repair, reasonable wear and tear and casualty excepted. Tenant may, but shall not be obliged to, remove

Tenant's Equipment. Any Tenant Equipment not removed by Tenant within fifteen (15) business days following the expiration or earlier termination of this Lease may be retained by Landlord without any claim by Tenant. Tenant shall in any event repair any damage to the Leased Premises caused by the removal of Tenant's Equipment.

(e) Holding Over. If Tenant does not surrender possession of the Leased Premises upon the expiration of the Term or earlier termination of this Lease, Tenant, at the option of the Landlord, shall thereafter become a Tenant from month-to-month subject to all conditions, provisions and obligations of this Lease insofar as they are applicable to a month-to-month tenancy.

(f) Applicable Law, Construction. The laws of the State of Texas shall govern the validity, performance and enforcement of this Lease. The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provision. If any provision of this Lease is capable of two constructions, one of which would render the provision invalid and the other of which would make the provision valid, the provision shall have the meaning which renders it valid.

(g) Attorneys' Fees. If either party hereto brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in such action shall be entitled to reasonable attorneys' fees and costs of suit.

(h) Time of the Essence. Time is of the essence with respect to each provision, term and covenant of this Lease.

(i) Captions. The captions are for convenience and do not limit or define the provisions of this Lease.

(j) Gender, Number. Whenever the sense of this Lease requires it, the use of (1) singular number shall be deemed to include the plural, (2) the masculine gender shall be deemed to include the feminine or neuter gender, and (3) the neuter gender shall be deemed to include the masculine and feminine gender.

(k) Brokerage Commissions. Each party represents and warrants that no real estate brokerage fees or commissions are due as a result of commission agreements entered into by such party attributable to the Leased Premises, and each party shall indemnify and hold the other harmless from and against any and all liabilities arising from any and all claims for any real estate brokerage fees or commissions caused or incurred by such party (including, without limitation, the costs of attorney's fees in connection therewith).

(l) Exclusive. Landlord agrees that it will not lease any portion of the remainder of the Project to (i) a full service retail state, national, or banking association, state or federal savings and loan association, federal savings bank, or credit union, (ii) any other financial services entity, including, but not limited to, an investment brokerage firm, mortgage company, or any entity offering ATM services, or (iii) any tenant whose business would detrimentally affect the Project (collectively, the "Prohibited Tenants"). For purposes of this Section, an entity

will be considered to be conducting (A) a “full service retail” operation if it accepts cash deposits or accepts cash deposits and makes loans to its customers through a walk-up or drive-through facility (including an automatic teller machine facility) located in the Project and (B) a “business that detrimentally affects the Project” if the business attracts public protest or demonstration to the Project that materially disrupts or interferes with the conduct of Tenant’s business within the Leased Premises or the safe and convenient access of Tenant’s Permittees to the Leased Premises.

(m) Waiver of Landlord’s Lien. Landlord expressly waives and releases any liens, security interests, claims, demands, causes of action, and other rights Landlord now has or hereafter may acquire with respect to any of Tenant’s Equipment or other property now or hereafter located in the Leased Premises.

(n) Binding Effect. All provisions of this Lease shall be binding upon and inure to the benefit of the parties and their respective personal representatives, heirs, successors and assigns.

(o) Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.

[signature page follows]

EXECUTED effective as of the date and year first above written.

LANDLORD:

CITY OF BRENHAM
a home-rule municipality

By: Walter C. Schwartz
Name: Walter C. Schwartz
Title: Mayor

TENANT:

WELLS FARGO BANK TEXAS, N.A.
a national banking association

By: _____
William A. Holik, Senior Vice President

EXECUTED effective as of the date and year first above written.

LANDLORD:

CITY OF BRENHAM
a home-rule municipality

By: _____
Name: _____
Title: _____

TENANT:

WELLS FARGO BANK TEXAS, N.A.
a national banking association

By:  _____
William A. Holik, Senior Vice President

EXHIBIT "A"

LEGAL DESCRIPTION OF TRACT 5

Page 1 of 2

TRACT 5:

ALL THAT CERTAIN TRACT OR PARCEL OF LAND, LYING AND BEING SITUATED IN WASHINGTON COUNTY, TEXAS BEING LOCATED IN THE CITY OF BRENHAM, TEXAS, CONTAINING 2.8254 ACRES (123,074 SQUARE FEET) OF LAND, BEING THE SAME PROPERTIES DESCRIBED IN DEED DATED JUNE 27, 1991, EXECUTED BY FEDERAL DEPOSIT INSURANCE CORPORATION AS RECIEVER OF WASHINGTON COUNTY STATE BANK, BRENHAM, TEXAS TO CHANNELVIEW BANK, RECORDED IN VOLUME 653, PAGE 350, WASHINGTON COUNTY OFFICIAL RECORDS. BEING MORE FULLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

ALL THAT CERTAIN TRACT OR PARCEL OF LAND, LYING AND BEING SITUATED IN THE CITY OF BRENHAM, WASHINGTON COUNTY, TEXAS, PART OF THE A. HARRINGTON SURVEY, ABSTRACT 55, AND PART OF ORIGINAL TOWN LOTS 71 AND 74, BEING THE SAME LAND DESCRIBED IN A DEED AS 21,421.8 SQUARE FEET, FROM LOWELL S. FINK TO WASHINGTON COUNTY STATE BANK, DATED JANUARY 5, 1982, RECORDED IN VOLUME 429, PAGE 527, DEED RECORDS OF WASHINGTON COUNTY, TEXAS, BEING ALL OF THE SAME LAND DESCRIBED AS 23,685.9 SQUARE FEET IN A DEED FROM THE BRENHAM BANNER -PRESS, INC. TO WASHINGTON COUNTY STATE BANK, DATED JUNE 3, 1983, RECORDED IN VOLUME 450, PAGE 524, DEED RECORDS OF WASHINGTON COUNTY, TEXAS BEING ALL OF THE SAME LAND DESCRIBED IN THE FOLLOWING DEEDS TO WASHINGTON COUNTY STATE BANK, DATED JULY 19, 1978: (I) 41,738 SQUARE FEET FROM JULIAN E. WEISLER, II, TRUSTEE, RECORDED IN VOLUME 347, PAGE 766, (2) 31,095 SQUARE FEET FROM R. WILLIAM SPINN, TRUSTEE, RECORDED IN VOLUME 347, PAGE 763, DEED RECORDS OF WASHINGTON COUNTY, TEXAS, AND (II) BEING A PORTION OF THE SAME LAND DESCRIBED AS 21,441.3 SQUARE FEET IN A DEED FROM ROY WIESE, JR., ET UX TO WASHINGTON COUNTY STATE BANK, DATED MARCH 31, 1983, RECORDED IN VOLUME 448, PAGE 373, DEED RECORDS OF WASHINGTON COUNTY, TEXAS, AND BEING MORE FULLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN OLD "X" FOUND IN A CONCRETE SIDE WALK FOR THE NORTHWEST CORNER OF SAID ORIGINAL TRACT DESCRIBED AS 31,095.5 SQUARE FEET IN SAID DEED FROM R. WILLIAM SPINN, TRUSTEE, RECORDED IN VOLUME 347, PAGE 763, DEED RECORDS IN WASHINGTON COUNTY, TEXAS, BEING AN INTERIOR ELL CORNER IN THE SOUTHEAST MARGIN OF NORTH AUSTIN PARKWAY AN EXTERIOR CORNER HEREOF;

THENCE ALONG THE NORTH LINE OF SAID ORIGINAL 31,095.5 SQUARE FEET TRACT, COMMON WITH SAID STREET LINE, NORTH 76 DEGREES, 56 MINUTES, 00 SECONDS EAST 22.92 FEET TO A 1/2 INCH IRON ROD FOUND FOR THE MOST WESTERN OR SOUTHWEST CORNER OF SAID FINK TO WASHINGTON COUNTY STATE BANK TRACT CALLED 21,421.8 SQUARE FEET, BEING AN INTERIOR CORNER HEREOF AND AN EXTERIOR CORNER IN THE SOUTHEAST MARGIN OF NORTH AUSTIN PARKWAY;

THENCE ALONG SAID STREET MARGIN, NORTH 32 DEGREES, 50 MINUTES, 00 SECONDS EAST 180.00 FEET TO A 1/2 INCH IRON ROD FOUND AT A BEGINNING OF A CURVE TO THE RIGHT;

THENCE IN A NORTHEASTERLY DIRECTION ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90 DEGREES, 00 MINUTES, 00 SECONDS HAVING A RADIUS OF 50.00 FEET, A CHORD OF NORTH 77 DEGREES, 50 MINUTES EAST 70.71 FEET, FOR AN ARC DISTANCE OF 78.54 FEET TO A 1/2 INCH IRON ROD FOUND AT THE END OF SAID CURVE ON A SOUTHWEST MARGIN OF NORTH PARK STREET AT THE BEGINNING OF ANOTHER CURVE TO THE RIGHT;

THENCE ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 43 DEGREES, 32 MINUTES, 05 SECONDS, HAVING A RADIUS 180.14 FEET, A CHORD OF SOUTH 35 DEGREES, 24 MINUTES, 00 SECONDS EAST 133.606 FEET, FOR AN ARC DISTANCE OF 136.87 FEET TO A "X" MARK FOUND IN THE TOP OF A CONCRETE RETAINING WALL AT THE END OF SAID CURVE;

THENCE ALONG THE WEST MARGIN OF NORTH PARK STREET, SOUTH 13 DEGREES 38 MINUTES, 00 SECONDS EAST 0.57 FEET TO A "X" MARKED IN A CONCRETE CURB FOR THE SOUTHEAST CORNER OF SAID ORIGINAL TRACT FROM FINK TO SAID BANK, BEING AN EXTERIOR ELL CORNER IN THE WEST MARGIN OF NORTH PARK STREET AND AN INTERIOR CORNER HEREOF, BEING ON THE NORTH LINE OF THE ORIGINAL ROY WIESE, JR. TO WASHINGTON COUNTY STATE BANK TRACT;

THENCE ALONG THE NORTH LINE OF SAID ORIGINAL WIESE TRACT, COMMON WITH SAID STREET LINE, NORTH 76 DEGREES, 56 MINUTES, 00 SECONDS EAST 10.00 FEET TO A "X" MARK FOIND IN CONCRETE FOR THE NORTHEAST CORNER OF SAID ORIGINAL WIESE TRACT, BEING AN INTERIOR CORNER OF SAID STREET LINE AND AN EXTERIOR CORNER HEREOF;

EXHIBIT "A"

LEGAL DESCRIPTION OF TRACT 5

Page 2 of 2

TRACT 5 cont'd:

THENCE ALONG THE WEST MARGIN OF NORTH PARK STREET, SOUTH 13 DEGREES, 38 MINUTES, 00 SECONDS EAST 0.26 FEET TO A "X" FOUND MARKED IN CONCRETE FOR THE NORTHEAST CORNER OF A 0.4271 ACRE OR 18,604 SQUARE FEET TRACT OF LAND FOR WASHINGTON COUNTY STATE BANK OUT OF SAID ORIGINAL WIESE TRACT;

THENCE LEAVING SAID STREET AND SEVERING SAID ORIGINAL WIESE TRACT WITH THE NORTH LINE OF SAID 18,604 SQUARE FEET TRACT, SOUTH 76 DEGREES, 39 MINUTES, 27 SECONDS WEST 108.89 FEET TO A 1/2 INCH IRON ROD FOUND AT THE CORNER OF A CONCRETE WALL FOR THE NORTHWEST CORNER OF SAID TRACT 18,604 SQUARE FEET;

THENCE, IN A SOUTHWESTERLY DIRECTION AS FOLLOWS: SOUTH 25 DEGREES, 50 MINUTES, 43 SECONDS WEST 37.82 FEET TO A 1/2 INCH IRON ROD FOUND ON THE SOUTHEAST EDGE OF A CONCRETE WALL, SOUTH 15 DEGREES, 08 MINUTES, 23 SECONDS WEST 42.11 FEET TO A 1/2 INCH IRON ROD FOUND ON THE SOUTHEAST EDGE OF SAID WALL, AND SOUTH 00 DEGREES, 45 MINUTES, 23 SECONDS WEST 62.12 FEET TO A 1/2 INCH IRON ROD FOUND FOR THE SOUTHWEST CORNER OF SAID TRACT OF 18,604 SQUARE FEET, BEING ON THE EAST LINE OF THE ORIGINAL WASHINGTON COUNTY STATE BANK TRACT DESCRIBED AS 31,095.5 SQUARE FEET, BEING AN INTERIOR CORNER OF THIS TRACT AND THE APPARENT NORTHWEST CORNER OF THE NORTH PARK PROFESSIONAL BUILDING PARTNERSHIP TRACT, (FROM WHICH A 1/2 INCH IRON ROD FOUND BEARS SOUTH 44 DEGREES, 05 MINUTES, 00 SECONDS EAST 1.15 FEET);

THENCE ALONG THE EAST LINE OF SAID ORIGINAL TRACTS OF 31,095.5 SQUARE FEET AND 41,738 SQUARE FEET, COMMON WITH THE WEST LINES OF SAID PARTNERSHIP TRACT AND THE FLOYD C. REED TRACT, SOUTH 13 DEGREES, 02 MINUTES, 00 SECONDS EAST 231.62 FEET TO A "X" MARK FOUND IN ASPHALT ON THE NORTH MARGIN OF WEST VULCAN STREET FOR THE MOST SOUTHERN SOUTHEAST CORNER HEREOF AND THE SOUTHEAST CORNER OF SAID ORIGINAL 41,738 SQUARE FEET TRACT, BEING THE SOUTHEAST CORNER OF SAID REED TRACT, (FROM WHICH A 1/2 INCH IRON ROD FOUND BEARS SOUTH 66 DEGREES, 00 MINUTES, 00 SECONDS EAST 1.85 FEET);

THENCE ALONG THE NORTH LINE OF WEST VULCAN STREET, COMMON WITH THE ORIGINAL 41,738 SQUARE FEET AND THE ORIGINAL 23,685.9 SQUARE FEET TRACTS SOUTH LINES, SOUTH 76 DEGREES, 58 MINUTES, 00 SECONDS WEST 362.54 FEET TO A 1/2 INCH IRON ROD FOUND ON SAID STREET LINE WHERE SAME INTERSECTS AN OFFSET LINE IN THE EAST MARGIN OF NORTH AUSTIN PARKWAY FOR THE SOUTHWEST CORNER OF SAID ORIGINAL 23,685.9 SQUARE FEET (BANNER PLACE) TRACT, BEING THE SOUTHWEST CORNER OF THIS TRACT;

THENCE ALONG THE EAST MARGIN OF NORTH AUSTIN PARKWAY, NORTH 36 DEGREES, 27 MINUTES 00 SECONDS WEST 15.76 FEET TO BEGINNING OF A CURVE TO THE RIGHT;

THENCE IN A NORTHEASTERLY DIRECTION ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 31 DEGREES, 08 MINUTES, 59 SECONDS, HAVING A CHORD OF NORTH 17 DEGREES, 15 MINUTES, 28 SECONDS EAST 244.60 FEET, A RADIUS OF 455.50 FEET, FOR AN ARC DISTANCE OF 247.64 FEET TO A "X" MARK FOUND IN CONCRETE ON SAID STREET MARGIN, THE NORTHWEST CORNER OF SAID ORIGINAL BANNER PRESS TRACT AND THE SOUTHWEST CORNER OF SAID ORIGINAL 31,095.5 SQUARE FEET TRACT BEARS SOUTH 30 DEGREES, 31 MINUTES, 35 SECONDS WEST 36.60 FEET, SAID "X" BEING AT THE END OF SAID CURVE;

THENCE ALONG A STRAIGHT PORTION OF A SOUTHEAST LINE OF NORTH AUSTIN PARKWAY, NORTH 32 DEGREES, 50 MINUTES, 00 SECONDS EAST 178.79 FEET TO A 1/2 INCH IRON ROD FOUND AT A CORNER OF A CONCRETE WALL FOR AN INTERIOR CORNER HEREOF AND AN EXTERIOR CORNER IN THE SOUTHEAST MARGIN OF SAID PARKWAY;

THENCE, NORTH 08 DEGREES, 14 MINUTES, 00 SECONDS WEST 9.06 FEET TO THE PLACE OF BEGINNING AND CONTAINING 2.8254 ACRES (123,074 SQUARE FEET) OF LAND.

[illegible]

36

Exhibit C

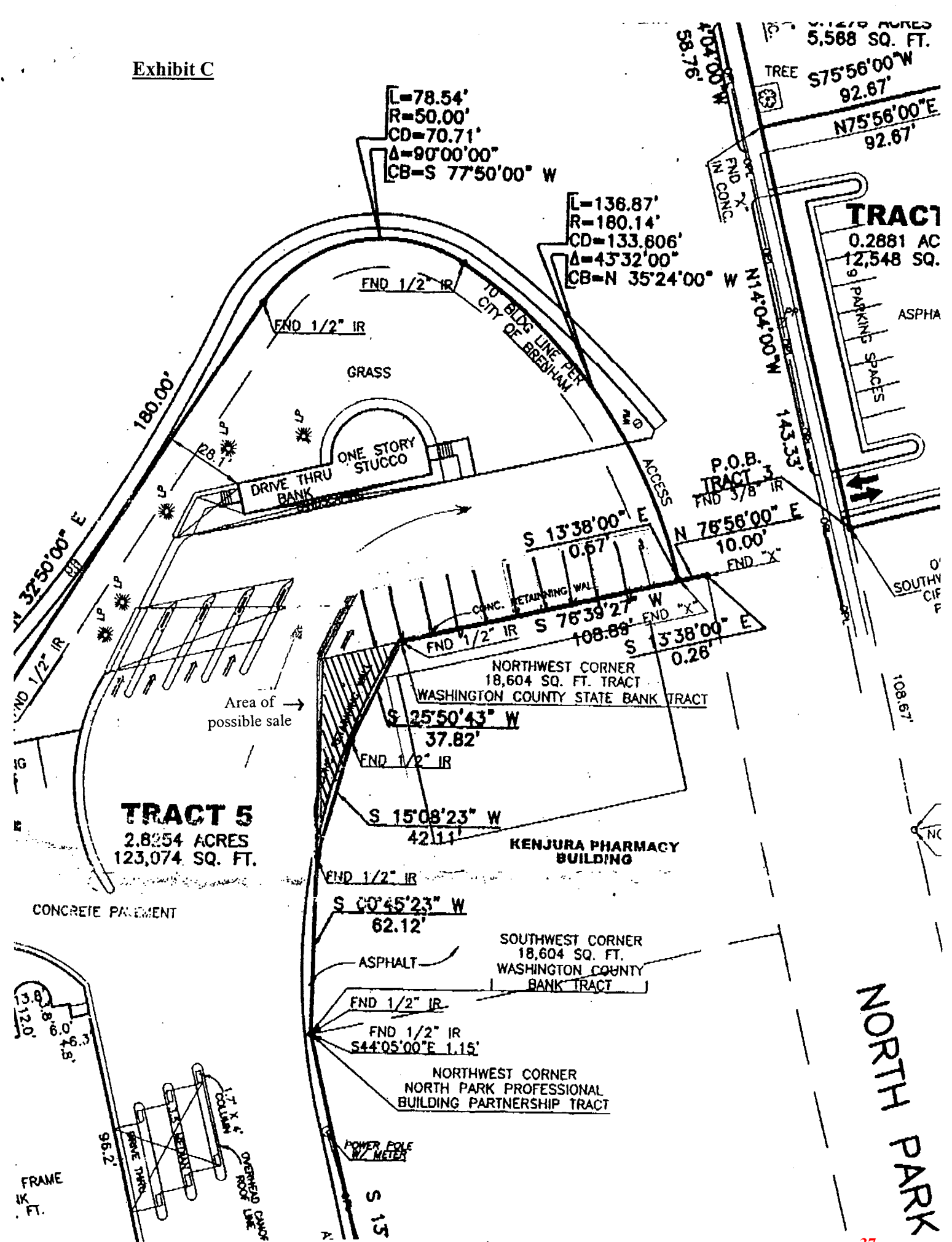
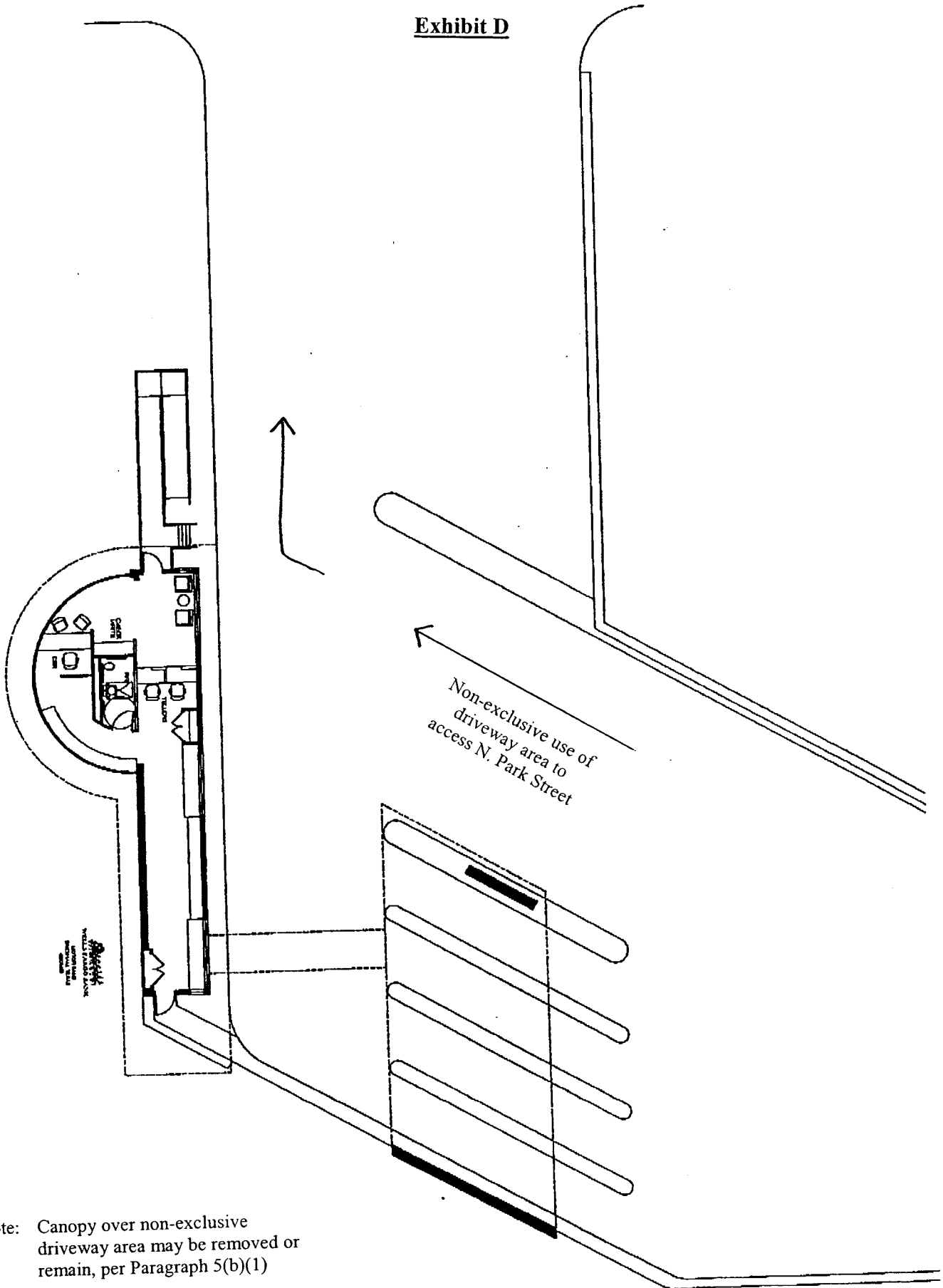


Exhibit D



Note: Canopy over non-exclusive driveway area may be removed or remain, per Paragraph 5(b)(1)

FIRST AMENDMENT TO LEASE
[Brenham Texas – 110 W. Vulcan] (BE #120497)

THIS FIRST AMENDMENT TO LEASE is entered into by **THE CITY OF BRENHAM**, a home-rule municipality ("**Landlord**"), and **WELLS FARGO BANK, N.A.**, a national banking association, formerly Wells Fargo Bank Texas, National Association ("**Tenant**"), as of the date this Amendment is executed by the last to sign of Landlord and Tenant as shown on the signature page(s) attached hereto, with reference to the following recitals of facts.

A. Landlord and Tenant are parties to that certain Lease Agreement dated April 3, 2002 (the "**Lease**"), with respect to certain premises consisting of (i) a free standing motorbank building with a street address of 110 W. Vulcan (the "**Motorbank**"), (ii) the four west covered drive-through lanes with canopy associated with the Motorbank (the "**Motorbank Lanes**"), (iii) the concrete island on which sits the automatic teller machine ("**ATM**") located in the outermost lane of the Motorbank Facility attached to the Building, and (iv) the lane where the ATM is located ("**ATM Lane**"), together with any and all improvements, fixtures, personal property and equipment thereon, as more fully described in the Lease (the "**Leased Premises**").

B. Subject to the terms of this Amendment, the parties desire to terminate the Lease with respect to the Motorbank and Motorbank Lanes, and to otherwise modify the Lease as set forth below.

The parties agree as follows:

1. **Capitalized Terms.** Capitalized terms used in this Amendment that are not specifically defined herein have the meanings given such terms in the Lease.

2. **Reduction of Premises.** Effective April 2, 2017 (the "**Reduced Premises Effective Date**"), the Motorbank (except for the room in the Motorbank building housing the ATM switch and the electrical controls, approximately 8' by 8' in size, and having an exterior entrance directly accessing said room) and Motorbank Lanes shall be removed from the definition of the term "Leased Premises," and the Lease shall terminate with respect to the Motorbank and Motorbank Lanes. The room in the Motorbank building housing the ATM switch and the electrical controls, approximately 8' by 8' in size, and having an exterior entrance directly accessing said room ("**ATM Switch Room**"), shall be part of the Leased Premises pursuant to this Amendment. Tenant shall provide Landlord access to the ATM Switch Room upon forty-eight (48) hours verbal or written notice from the Landlord.

3. **Term.** Beginning on the Reduced Premises Effective Date, the Term of the Lease shall be extended to continue on a month-to-month basis, and either party may terminate the Lease upon thirty (30) days prior written notice to the other party. All Extension Options are hereby terminated, and Tenant's right to terminate the Lease pursuant to Section 2(d) of thereof is hereby terminated.

4. **Rent.** As of the Reduced Premises Effective Date, Section 3 of the Lease shall be amended and restated as follows:

Beginning on the Reduced Premises Effective Date, Tenant shall pay to Landlord monthly minimum rent ("**Minimum Rent**") in the amount of Six Hundred and No/100 Dollars (\$600.00), payable to Landlord on the first day of every month at the address provided in the Lease.

5. **Signage.** Within thirty (30) days after the Reduced Premises Effective Date, Tenant shall remove its pylon sign adjacent to the westernmost West Vulcan Street entrance to the Project and its sign (if any) on the canopy above the Motorbank Lanes. Subject to Landlord's written consent, which shall not be unreasonably withheld, conditioned or delayed, Tenant may install directional signage within the Project indicating the location of the ATM.

6. **Alterations.** The parties hereby agree that Tenant shall have no further obligations to perform the alterations described in Section 5(b)(1) of the Lease. Notwithstanding anything in Section 5(b)(2) of the Lease to the contrary, Tenant may remove the night deposit located in the Motorbank any time after the effective date hereof. As of the Reduced Premises Effective Date, Tenant shall have no further rights to make alterations to the Motorbank Facility under Section 5(b)(2) of the Lease.

7. **Repairs.** As of the Reduced Premises Effective Date, Tenant shall have no repair or maintenance obligations under Section 5(c) of the Lease with respect to the portions of the premises that are not part of the Leased Premises.

8. **Utilities.** Notwithstanding anything in Section 6(a) of the Lease to the contrary, in the event utilities to the ATM are not separately metered, Tenant shall pay landlord for providing such utilities to the ATM in an amount equal to One Hundred and Fifty and No/100 Dollars (\$150.00) per month. The last sentence of Section 6(a) of the Lease is hereby deleted.

9. **Lighting.** As of the Reduced Premises Effective Date, the reference to "Motorbank Facilities" in Section 6(c) of the Lease shall be deleted.

10. **Parking.** Tenant's exclusive right to use five (5) parking spaces across from the Motorbank pursuant to Section 7(a) of the Lease is hereby terminated. Further, in the last sentence of Section 7(a), the references to "Motorbank," "Motorbank Lanes," and the phrase "or any parking" are hereby deleted.

11. **Tenant's Use.** As of the Reduced Premises Effective Date, Section 8(a) of the Lease shall be amended and restated as follows:

- (a) **Tenant's Use.** Tenant may use the Leased Premises for the operation of one automated teller machine and/or related equipment.

12. **Insurance.** Section 9(b) of the Lease is hereby deleted in its entirety and replaced with the following:

Insurance. Tenant shall maintain commercial General Liability insurance ("**CGL Insurance**") with limits of liability not less than \$1,000,000 per occurrence with a general aggregate of not less than \$2,000,000 covering liability arising from each party's operations at the Project or Leased Premises, as applicable, independent contractors, product-completed operations, personal injury, and advertising injury, and contractual liability that includes this Lease as an insured contract. With respect to CGL Insurance, Tenant shall name Landlord as an additional insured. In addition, the CGL Insurance (i) must be issued by insurance companies having an "A" rating or better by Standard and Poor's, and if not rated by Standard & Poor's, then a rating of "A" by A.M. Best Company, and (ii) may be satisfied by a primary policy or combination of primary, excess, or umbrella policies. Tenant may satisfy any or all of the above insurance requirements by use of self-insurance, deductible, and/or a captive insurance company (and the rating requirements

set forth above are not applicable to Tenant's self-insurance or to policies issued by a captive insurance company).

13. Resolution & Recovery. Tenant, as a national financial services company, is required by applicable federal requirements, including the Dodd-Frank Act, to restate federal insolvency law in this Lease and to ensure that Tenant has the continuing right to use the Leased Premises during an insolvency related event (e.g., the appointment of a receiver pursuant to federal law) (a "**Resolution Event**"). Therefore, notwithstanding anything set forth in this Lease or applicable law to the contrary, if a Resolution Event occurs, and Tenant or an Affiliate (defined below) continues to pay all rent and other charges under this Lease timely and continues to maintain and repair the Leased Premises, Landlord shall not terminate, modify, or prevent renewal of this Lease, suspend any services provided to Tenant, an Affiliate, or the Leased Premises under this Lease, or otherwise exercise remedies under or in respect of this Lease arising from any default by Tenant or any Affiliate occurring as a result of a Resolution Event that is cured within a reasonable period following the commencement of such Resolution Event. In addition, but only in connection with a Resolution Event, Landlord hereby irrevocably and unconditionally consents to (i) any change of control of Tenant or any Affiliate in connection with a Resolution Event and (ii) to the assignment, delegation, novation, or transfer of any or all of Tenant's rights and obligations under this Lease, in whole or in part, to any entity that is or becomes (or, as of immediately prior to the Resolution Event, was) an Affiliate or a successor to the whole or a part of the business of Tenant or an Affiliate. Notwithstanding anything set forth in this Section to the contrary, Landlord is not required, even during a Resolution Event, to allow Tenant or an Affiliate to occupy the Leased Premises after the final expiration date of this Lease. "**Affiliate**" has the meaning given such term in Section 2(k) of the Bank Holding Company Act of 1956, as amended from time to time (12 U.S.C. § 1841(k)) (i.e., "any company that controls, is controlled by, or is under common control with another company.").

14. Tenant's Notice Address. For purposes of the Lease, Tenant's sole notice address is set forth below. Notices may not be sent to the Leased Premises. Any notice sent to the Leased Premises is deemed ineffective. Notices are effective upon receipt. If Tenant rejects or otherwise refuses to accept the notice, or if the notice cannot be delivered because of a change in address for which no notice has been given, then notice is deemed effective upon such rejection, refusal, or inability to deliver. Notice may be sent to Tenant by facsimile or e-mail as provided below, but facsimile or e-mail notice is not effective unless Landlord also sends a copy of such notice to Tenant by certified mail/return receipt requested or by nationally recognized overnight courier.

Wells Fargo CPG
Attn: Lease Admin (BE #120497)
MAC D1116-L10
1525 West W.T. Harris Blvd.
Charlotte, NC 28262
F: 704.590.0436
E: PropertyAdmin@WellsFargo.com

15. Brokers. Each party represents to the other that it has had no dealings with any real estate broker, agent, or finder in connection with the negotiation of this Amendment and that it knows of no real estate broker or agent entitled to any commission or finder's fee in connection with this Amendment. Each party shall indemnify and hold harmless the other party from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs, and expenses (including attorneys' fees and costs) with respect to any leasing commission, finder's fee, or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker, agent, or finder.

16. **Confirmation of Lease.** Except as otherwise set forth in this Amendment, the Lease remains in full force and effect in accordance with its original terms and is binding on Landlord and Tenant, their respective heirs, executors, administrators, successors, and assigns.

17. **Counterparts.** The parties may execute this Amendment in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile (e.g., Telecopier, scanned PDF by e-mail, etc.) is as effective as executing and delivering this Amendment in the presence of the other parties to this Amendment. This Amendment is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Amendment, a party must produce or account only for the executed counterpart of the party to be charged. Any party delivering an executed counterpart of this Amendment by facsimile also shall deliver a manually executed counterpart of this Amendment, but the failure to do so does not affect the validity, enforceability, or binding effect of this Amendment.

18. **Authority & Consent.** Each party represents to the other that this Amendment has been duly authorized, executed, and delivered by and on behalf of such party and constitutes the valid, binding, and enforceable agreement of such party in accordance with the terms of this Amendment. In addition, Landlord represents to Tenant that no consent of any third party (e.g., any lender) is required for Landlord to execute this Amendment.

19. **No Construction Against Drafting Party.** Landlord and Tenant acknowledge that each of them and their respective counsel have had an opportunity to review this Amendment and that this Amendment will not be construed for or against either party merely because such party prepared or drafted this Amendment or any particular provision thereof.

20. **Confidentiality.** The Landlord, as a Texas home-rule municipality, is subject to the Texas Public Information Act ("Act"). Generally, the Act requires the release of requested information by the Landlord, but there are exceptions. If the requested information meets the criteria outlined in the exceptions, the Landlord may decline to release the information for the purpose of requesting a decision from the Texas Attorney General's Office. The Act excepts from public disclosure trade secrets and certain commercial or financial information. The Act states the Landlord may withhold: 1) a trade secret obtained from a person and privileged or confidential by statute or judicial decision; or 2) commercial or financial information for which it is determined based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained. Pursuant to Section 552.305 of the Act, the Landlord is obligated to make a good faith attempt to contact third parties who have a trade secret interest or a commercial financial interest in the information that has been requested so that the third party has an opportunity to submit reasons to the Texas Attorney General's Office reasons why the information should be withheld or released. The Landlord will comply with Section 552.305 of the Act with regard to any requests for records concerning Tenant, including this Lease and any amendments thereto, that invoke Section 552.305.

21. **Anti-Money Laundering and Sanctions Certification.**

21.1. Each party ("**Representing Party**") hereby certifies and covenants to the other party that any entity or individual that constitutes, owns, controls, or is owned or controlled by Representing Party (other than through the passive ownership of interests traded on a recognized securities exchange) is not, and at no time during the term of this Lease will be a target of any economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes, and anti-terrorism laws imposed, administered, and enforced from time to time by the United States of America, including those administered

by the U.S. Department of Treasury's Office of Foreign Assets Control ("**OFAC**"), the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future Executive Order ("**Sanctions**"), including without limitation an entity or individual (a) listed on OFAC's Specially Designated Nationals and Blocked Persons List; (b) listed on OFAC's Consolidated Non-Specially Designated Nationals List; (c) deemed by OFAC to be the target of Sanctions based on 50% or more ownership or control by a target of Sanctions; or, (d) an entity or individual that is the target of Sanctions pursuant to any territorial or country-based Sanctions program (collectively, "**Blocked Parties**").

21.2. Tenant is a regulated financial institution, duly organized and operating under the laws of the United States, and is subject to: (a) U.S. anti-money laundering and anti-terrorist financing laws and regulations ("**AML**"), including the Bank Secrecy Act ("**BSA**") and the regulations promulgated thereunder and (b) the regulations promulgated by OFAC to implement U.S. economic and trade sanctions. Tenant certifies to Landlord that Tenant has adopted and implemented and will continuously maintain during the Term of the Lease an AML/BSA/OFAC compliance program that is approved annually by the Tenant's Board of Directors and complies with the requirements of the BSA and its implementing regulations.

21.3. Notwithstanding anything set forth in this Lease to the contrary, Tenant's failure to comply with the foregoing laws and regulations referenced in Subsection 21.2 is not a breach of this Lease by Tenant except to the extent that such failure results in it being unlawful for Landlord to transact the business contemplated under this Lease with Tenant. Tenant shall not: (i) transfer or permit the transfer of any interest in Tenant to any Blocked Party or (ii) assign or sublet this Lease to any Blocked Party. Landlord shall not: (i) transfer or permit the transfer of any interest in Landlord to any Blocked Party or (ii) assign this Lease to any Blocked Party.

22. **Amendment Date.** The date this Amendment is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the date of this Amendment. If a party signs but fails to date a signature the date that the other party receives the signing party's signature will be deemed to be the date that the signing party signed this Amendment and the other party may inscribe that date as the date associated with the signing party's signature; provided, however, if only one party dated this Amendment, then such date is the date of this Amendment.

23. **Merger/Prior Agreements.** **THIS AMENDMENT CONSTITUTES THE FINAL AGREEMENT BETWEEN THE PARTIES. IT IS THE COMPLETE AND EXCLUSIVE EXPRESSION OF THE PARTIES' AGREEMENT ON THE MATTERS CONTAINED IN THIS AMENDMENT. ALL PRIOR AND CONTEMPORANEOUS NEGOTIATIONS AND AGREEMENTS BETWEEN THE PARTIES ON THE MATTERS CONTAINED IN THIS AMENDMENT ARE EXPRESSLY MERGED INTO AND SUPERSEDED BY THIS AMENDMENT. THE PROVISIONS OF THIS AMENDMENT MAY NOT BE EXPLAINED, SUPPLEMENTED, OR QUALIFIED THROUGH EVIDENCE OF TRADE USAGE OR A PRIOR COURSE OF DEALINGS. IN ENTERING INTO THIS AMENDMENT, THE PARTIES HAVE NOT RELIED UPON ANY STATEMENT, REPRESENTATION, WARRANTY, OR AGREEMENT OF THE OTHER PARTY EXCEPT FOR THOSE EXPRESSLY CONTAINED IN THIS AMENDMENT. THERE IS NO CONDITION PRECEDENT TO THE EFFECTIVENESS OF THIS AMENDMENT OTHER THAN THOSE EXPRESSLY STATED IN THIS AMENDMENT.**

[SIGNATURES ON FOLLOWING PAGE]

The parties hereby execute this Amendment as of the dates set forth below.

Landlord:

THE CITY OF BRENHAM,
a home-rule municipality

By: Milton Y. Tate Jr

Print Name: Milton Y. Tate Jr

Title: Mayor

Date: April 17, 2017



[SIGNATURES CONTINUE]

Tenant:

WELLS FARGO BANK, N.A.,
a national banking association

By: 

Print Name: Clark Tabbert

Title: Vice president

Date: 4/13/17

[SIGNATURES CONTINUE]

WELLS FARGO BANK, N.A.,
a national banking association

By: 

Print Name: Charles L. Fields
Vice President

Title: _____

Date: 4-12-17



Mayor
Milton Y. Tate, Jr.

Council Members
Gloria Nix, Mayor Pro Tem
Mary E. Barnes-Tilley
Andrew Ebel
Danny Goss
Keith Herring
Weldon C. Williams, Jr.

March 19, 2017

Mr. Clark Tabbert, Vice President
Wells Fargo – Corporate Properties Group
MAC T7067-041
609 Castle Ridge Road, Suite 224
Austin, Texas 78746

RE: First Amendment to Lease

Dear Mr. Tabbert,

Enclosed please find an executed original of the First Amendment to Lease Agreement with the City of Brenham. Please note that I retained the other signed originals for the city's files.

If you have any questions, please don't hesitate to contact me at 979-337-7567 or via e-mail at jbelling@cityofbrenham.org.

Sincerely,

Jeana Bellinger, TRMC, CMC
City Secretary

Enclosures



Wells Fargo Bank, N.A.

Clark Tabbert
Vice President
Lease Negotiator

Corporate Properties Group
MAC T7067-041
609 Castle Ridge Road
Suite 224
Austin, TX 78746
Tel: 512 314 8470
Fax: 512 314 8472
Cell: 512 202 2053
clarktabbert@wellsfargo.com

SECOND AMENDMENT TO LEASE
Brenham, TX (110 W Vulcan St.) (BE 120497)

THIS SECOND AMENDMENT TO LEASE (“**Amendment**”) is entered into by **THE CITY OF BRENHAM**, a home-rule municipality (“**Landlord**”), and **WELLS FARGO BANK, N.A.** (“**Tenant**”), as of the date this Amendment is executed by the last to sign of Landlord and Tenant as shown on the signature page(s) attached hereto, with reference to the following recitals of facts.

A. Landlord and Tenant are parties to that certain Lease Agreement dated April 3, 2002, as amended by First Amendment to Lease dated April 17, 2017 (collectively, the “**Lease**”), with respect to certain premises located at 110 W Vulcan St., Brenham, Texas, as more fully described in the Lease (the “**Premises**”).

B. Subject to the terms of this Amendment, the parties desire to otherwise modify the Lease as set forth below.

The parties agree as follows:

1. **Capitalized Terms.** Capitalized terms used in this Amendment that are not specifically defined herein have the meanings given such terms in the Lease.

2. **Renewal Term.** The current term of the Lease is on a month-to-month basis and expires February 28, 2021. The term of the Lease is hereby renewed for an additional term beginning March 1, 2021, and expiring at midnight at the end of February 28, 2026. During the renewal term, Tenant shall pay to Landlord rent in equal monthly installments of \$500.00 in accordance with the terms of the Lease.

3. **Further Renewal Option(s).** Tenant may renew the Lease for two (2) additional term(s) of five (5) year(s) each (i.e., March 1, 2026 to February 28, 2031 and March 1, 2031 to February 29, 2036) by giving written notice of renewal to Landlord at least ninety (90) days prior to expiration of the then current term of the Lease. If Tenant so renews, during the additional renewal term(s) Tenant shall pay to Landlord annual rent in equal monthly installments in accordance with the terms of the Lease in the amounts set forth in the table below.

Lease Period (Dates)	Monthly Rent
March 1, 2026 to February 28, 2031	\$600.00
March 1, 2031 to February 29, 2036	\$700.00

4. **Option to Terminate.** At any time after March 1, 2022, either party may terminate the Lease by sending 120 days’ prior written notice of termination to the other party.

5. **ATM Switch Room.** As of the date of this Amendment, the room in the Motorbank building housing the ATM switch and the electrical controls, approximately 8’ by 8’ in size, and having an exterior entrance directly accessing said room (the “ATM Switch Room”), shall be removed from the Leased Premises.

6. **Brokers.** Each party represents to the other that it has had no dealings with any real estate broker, agent, or finder in connection with the negotiation of this Amendment and that it knows of no real estate broker or agent entitled to any commission or finder’s fee in connection with this Amendment. Each party shall indemnify and hold harmless the other party from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs, and expenses (including attorneys’ fees and costs) with respect

to any leasing commission, finder's fee, or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker, agent, or finder.

7. **Confirmation of Lease.** Except as otherwise set forth in this Amendment, the Lease remains in full force and effect in accordance with its original terms and is binding on Landlord and Tenant, their respective heirs, executors, administrators, successors, and assigns. If there is a conflict between this Amendment and the Lease, this Amendment will control.

8. **Authority & Consent.** Each party represents to the other party that this Amendment: (i) resulted from an arm's-length negotiation; (ii) has been duly authorized, executed, and delivered by and on behalf of such party; and (iii) constitutes the valid, binding, and enforceable agreement of such party in accordance with the terms of this Amendment. In addition, Landlord represents to Tenant that no consent of any third party (e.g., any lender) is required for Landlord to execute this Amendment.

9. **Counterparts & Digital Signatures.** The parties may execute this Amendment in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all parties need not appear on the same counterpart. This Amendment is valid, binding, and enforceable against a party only when executed by an authorized individual on behalf of a party by means of (i) an electronic signature that complies with the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, or any other relevant and applicable electronic signatures law; (ii) an original manual signature; or (iii) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature has for all purposes the same validity, legal effect, and admissibility in evidence as an original manual signature. This Amendment is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Amendment, a party must produce or account only for the executed counterpart of the party to be charged.

10. **Amendment Date.** The date this Amendment is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the date of this Amendment. If a party signs but fails to date a signature the date that the other party receives the signing party's signature will be deemed to be the date that the signing party signed this Amendment and the other party may inscribe that date as the date associated with the signing party's signature; provided, however, if only one party dated this Amendment, then such date is the date of this Amendment.

11. **Merger/Prior Agreements.** **THIS AMENDMENT CONSTITUTES THE FINAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE LEASE AS AMENDED BY THIS AMENDMENT. IT IS THE COMPLETE AND EXCLUSIVE EXPRESSION OF THE PARTIES' AGREEMENT ON THE MATTERS CONTAINED IN THIS AMENDMENT. ALL PRIOR AND CONTEMPORANEOUS NEGOTIATIONS AND AGREEMENTS BETWEEN THE PARTIES ON THE MATTERS CONTAINED IN THIS AMENDMENT ARE EXPRESSLY MERGED INTO AND SUPERSEDED BY THIS AMENDMENT. THE PROVISIONS OF THIS AMENDMENT MAY NOT BE EXPLAINED, SUPPLEMENTED, OR QUALIFIED THROUGH EVIDENCE OF TRADE USAGE OR A PRIOR COURSE OF DEALINGS. IN ENTERING INTO THIS AMENDMENT, THE PARTIES HAVE NOT RELIED UPON ANY STATEMENT, REPRESENTATION, WARRANTY, OR AGREEMENT OF THE OTHER PARTY EXCEPT FOR THOSE EXPRESSLY CONTAINED IN THIS AMENDMENT AND IN THE LEASE. THERE IS NO CONDITION PRECEDENT TO THE EFFECTIVENESS OF THIS AMENDMENT OTHER THAN THOSE EXPRESSLY STATED IN THIS AMENDMENT.**

[Remainder of Page Left Blank Intentionally – Signatures on Following Page(s)]

The parties hereby execute this Amendment as of the dates set forth below.

Landlord:

THE CITY OF BRENHAM

By: _____

Print Name: _____

Title: _____

Date: _____

Tenant:

WELLS FARGO BANK, N.A.

By: _____

Print Name: _____

Title: _____

Date: _____

By: _____

Print Name: _____

Title: _____

Date: _____



Regular City Council
AGENDA ITEM 6.

Agenda Item: Discussion and Presentation of the Nancy Carol Roberts Memorial Library Annual Report

Meeting Type: Regular Meeting-April 01, 2021

Department: Library-146

Staff Contact: Andria Heiges

Classification: Work Session

SUMMARY STATEMENT:

The Nancy Carol Roberts Memorial Library submits an annual report to the Texas State Library and Archives Commission (TSLAC). Today I am presenting an overview of those Library statistics from the report with a summary of Library community service offerings for the past year. I will highlight the work carried out by staff and discuss community needs we met in 2020.

ATTACHMENTS:

None

RELEVANCE TO COMPREHENSIVE PLAN:

Recognize community needs and impact of city services on citizens.

RECOMMENDED ACTION:

None



Regular City Council **AGENDA ITEM 7.**

Agenda Item: Discussion and Presentation on the City of Brenham's Little Free Library Program

Meeting Type: Regular Meeting-April 01, 2021

Department: Parks and Recreation

Staff Contact: Crystal Locke, Community Services Specialist

Classification: Work Session

SUMMARY STATEMENT:

Little Free Library (LFL) is the world's largest book-sharing movement. The goal is to build community, inspire readers, and expand book access for all.

At the June 2020 Parks and Recreation Advisory Board (PARB) meeting Suzy Hankins, Fortnightly Club member and Owner/Manager of Ant Street Inn, proposed to partner with the Parks and Recreation Department to house Little Free Libraries (LFL) in Brenham parks to promote literacy in the community.

Since then, three new Little Free Libraries have been added to three of our local parks:

- Jerry Wilson
- Hattie Mae Flowers
- Jackson Street

These parks will join the movement to share books, bring people together, and create a community of readers. The LFL is for all ages - there are books for adults and children, fiction and non-fiction, and books in other languages. The City has partnered with the Fortnightly Club, responsible for the monies raised for the LFL grant fund, purchase materials required for installation, provide books for the LFL, and maintain the books at each library, checking them a minimum of one time per month.

The City will be responsible for site selection of the LFL, working with the LFL grant fund manager to select the library style, install the LFL, and physical maintenance of the libraries.

The Little Free Libraries don't just belong to us; it belongs to the entire community. We hope that these Little Free Libraries will bring joy, connection, and a whole lot more books to our community.

ATTACHMENTS:

(1) Little Free Library at Hattie Mae Flowers Park

RELEVANCE TO COMPREHENSIVE PLAN:

A continued provision of high-quality park space and recreational programming to meet the needs of residents and visitors. Evaluate additional passive recreational enhancements for particular demographics that may not be engaged in organized, team-oriented, active recreational programming, including young people not involved in team sports, adults, and elderly citizens.

RECOMMENDED ACTION:

No action required.



Photo of Little Free Library at Hattie Mae Flowers Park.



Regular City Council **AGENDA ITEM 8.**

Agenda Item: Discuss and Possibly Act Upon a Lease Agreement with Aviators Plus, LLC to Lease and Occupy the Terminal Building located at the Brenham Municipal Airport and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-April 01, 2021

Department: Development Services

Staff Contact: Stephanie Doland

Classification: Regular

SUMMARY STATEMENT:

This item was tabled at the March 25, 2021 City Council meeting.

In 2001 the City of Brenham received funding support through TXDOT Aviation for the construction of a terminal building on the public RAMP at the Brenham Municipal Airport. Since the construction was completed Jack and Janet Hess of Southern Flyer have occupied the space as an FBO and Diner. In August of 2020 Southern Flyer terminated their contract with the City and later vacated the building.

For consideration by Council is a new lease agreement with Aviators Plus, LLC to occupy the terminal building. Included in the terminal building are the following requirements and terms of the lease:

- Initial term of the lease shall be ten years;
- Lessee shall be pay rent of \$2,500 annually for the first five years with an increase of \$300 automatically at the five-year mark. Additionally, lessee agrees to donate \$2,000 annually to the City of Brenham for landscaping/ entrance improvements, and airside maintenance such as pavement markings;
- Lessee shall be responsible for all utilities;
- Lessee shall maintain all interior portions of the building and the City shall be responsible for any exterior portions of the building;
- Lessee shall open and operate a restaurant no later than 270 days from the date of contractual execution. Restaurant may be subleased, with the City's written approval, and shall be open at least four days a week for eight hours each day;
- Terminal building and restaurant may be remodeled at the Lessee's expense; however, the building shall remain available to the public, maintain a pilot's lounge and sleeping room, public restrooms and FBO office;
- Additional lease terms include mandatory insurance requirements, compliance with applicable adopted local, state and FAA restrictions.

The Facilities Subcommittee of the Brenham City Council met on Monday, March 8th to discuss the lease agreement. Due to the ongoing interest by the Aviation and overall community in the restaurant facility much of the discussion centered around the urgency of opening the restaurant to the public in a timely manner. Additional performance measures were requested by the Facilities Subcommittee.

Additional performance measures were recommended to be included in the proposed lease by the Airport Advisory Board during their meeting on March 16, 2021 and include:

- Building permit application for renovations to the restaurant received within 3 months of contract execution.
- Building permit issued for renovations to the restaurant within 5 months of contract execution.
- Performance Evaluation at the 1-year anniversary date of the restaurant grand opening with Aviators Plus, LLC and sublessor (if applicable) to be held by the Facilities Subcommittee of Council and Chair of the Airport Advisory Board Chair.

Further revisions were recommended by the Airport Advisory Board to the proposed lease, including:

- Recommendation to change wording throughout from “City Approval” to “City Manager Approval” for clarification purposes.
- Request to remove from the contract: “If the Lessee does not assist in aircraft parking, restaurant employees will be allowed to do so.” (Section 5, Page 4)

Attached please find the red-line version of the lease agreement with changes to the lease as requested by the Airport Advisory Board. Council may choose to uphold the recommendations of the Airport Advisory Board and/or motion for additional revisions to the proposed lease.

In addition to the proposed lease agreement, Council is scheduled to consider an amendment to the existing FBO Agreement with Aviators Plus, LLC during the March 25, 2021 Council Meeting.

ATTACHMENTS:

(1) Airport Terminal Building Lease Aviators Plus LLC with AAB Revisions Red Lined

RELEVANCE TO COMPREHENSIVE PLAN:

Continued focus and improvements to the Brenham Municipal Airport are in line with the Economic Opportunity Goal E03 of the City of Brenham’s Comprehensive Plan.

RECOMMENDED ACTION:

Approve a Lease Agreement with Aviators Plus, LLC to lease and occupy the terminal building located at the Brenham Municipal Airport and authorize the Mayor to execute any necessary documentation.

AIRPORT TERMINAL BUILDING
LEASE AGREEMENT
By and Between
City of Brenham and Aviators Plus, LLC

WHEREAS, the City of Brenham, Texas owns the real property and improvements thereon (commonly referred to as the restaurant and airport terminal building) ("Premises") located at 3001 Aviation Way in Brenham, Washington County, Texas; and

WHEREAS, Aviators Plus, LLC desires to lease from the City of Brenham the Premises for the purpose of operating a public restaurant and as a Fixed Based Operator as defined in the Minimum Standards of the Brenham Municipal Airport ;

This Lease Agreement, hereinafter also referred to as "this lease," is made and entered into by and between Aviators Plus, LLC, a Texas limited liability company (hereinafter referred to as "Lessee") and the City of Brenham, a Texas home-rule municipal corporation, as Lessor (hereinafter also referred to as "City").

WITNESSETH:

I.

City, in consideration of the covenants and agreements to be performed by Lessee and upon terms and conditions hereinafter stated, does hereby lease Lessee the Premises located at 3001 Aviation Way, Brenham, Texas, said Premises further depicted in Exhibit "A" attached hereto and incorporated herein for all purposes. The term of this lease shall be for a period of ten (10) years ("Term"), commencing upon the ___ day of _____, 20__ and ending on the ___ day of _____, 20__, provided, however, that City and Lessee shall have the right to terminate this lease as provide elsewhere herein.

II.

For and in consideration of this lease, upon execution hereof by all parties, Lessee shall pay, as rent, Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) annually to City during the first five (5) years of the term. Annual Rent shall automatically increase at the five year anniversary of the lease execution at a rate

of Three Hundred Dollars (\$300) or Twenty Five Dollars (\$25.00) per month. Said Annual Rent shall be paid in equal monthly payments on or before the 5th day of each month. Additionally, Lessee agrees to donate One Thousand Dollars and No/100 to the City of Brenham annually for landscaping and entrance improvements. Similarly, Lessee agrees to donate and additional One Thousand Dollars and No/100 annually for airside maintenance such as pavement markings, lighting, herbicide, etc. The aforementioned annual donations shall be for the life of this agreement and shall be made in a single payment within three (3) months of the lease anniversary date.

Lessee hereby accepts the Premises in its "as is" condition. THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE. Further, Lessee shall be responsible for any and all improvements to or retrofitting of the Premises as may be required by law for compliance with the Americans with Disabilities Act or similar state or federal law, and any regulations promulgated thereunder.

It is also agreed by Lessee that violation of any covenant herein contained shall constitute forfeiture of Lessee's right to occupy the Premises, and City shall be entitled to immediate possession thereof without the necessity of legal proceedings.

City and City's agents and representatives shall have the right to enter upon and inspect the Premises at any reasonable time and after reasonable notice during Lessee's normal business hours, for the purpose of ascertaining compliance with the terms of this lease and/or the condition of the Premises.

III.

Lessee shall be responsible for obtaining any necessary utility services and agrees to assume all charges in connection therewith.

Lessee shall be responsible for the installation, maintenance and expense of its own telephone service and security system.

Lessee shall not permit any mechanic's lien to be placed upon the Land, Building or Premises, caused by or resulting from work performed, materials furnished or obligations incurred by or at the request of Lessee, and in the case of such filing of such lien, Lessee agrees to promptly pay the same or otherwise cause the immediate release of the same.

Lessee shall be responsible for all payment of taxes levied or assessed against the Premises and/or personal property located thereon, during the Term.

IV.

Lessee shall, at its own cost and expense and subject to approval by the City Manager or designee, make all improvements desired to use Premises as a restaurant and airport terminal building. Lessee shall maintain within the terminal building public access to the following uses within the terminal building, FBO office, restrooms, pilots lounge, sleeping room and restaurant. After hours the restrooms and pilots lounge shall remain accessible by keyless door lock with an aviation related code, all other uses, including the FBO office and restaurant, shall remain locked. The aforementioned uses, may be remodeled or reconfigured from the current configuration (Exhibit "A") at the Lessee's own cost and expense and subject to approval by the City Manager or designee. Lessee agrees to post a performance bond with the City in an amount equal to one hundred and ten percent (110%) of the estimated construction costs for all proposed improvements.

Lessee shall, at its own cost and expense, keep and maintain all interior parts of the Premises in good clean condition, promptly making all necessary repairs and replacements, including but not limited to, interior walls, finish work, floor covering, fixtures, pest extermination and regular removal of trash and debris. At Lessor's expense, maintenance shall be performed in a normal and routine manner as required to keep the interior plumbing, electrical, heating and air conditioning equipment serving the leased Premises in good operating condition during the term of this lease and any renewal term. Lessee shall notify Lessor in writing within twenty-four (24) hours of any identified maintenance concerns in need of repair or further evaluation. Lessee shall not be responsible for structural maintenance or repairs to exterior portions of the Building and Premises, including, but not limited to, plumbing service, electrical service, and heating and air conditioning equipment located to the exterior of the structure. Lessor will not be responsible for any repairs or maintenance of the Premises not associated with normal wear and tear of building nor will Lessor be responsible for maintenance of items added to the exterior of the building by the Lessee, such as, but not limited to signage and decorative attachments.

Lessee shall not make structural leasehold improvements to the Premises without the review and written approval of the City Manager, or his designee, which consent shall not be unreasonably withheld or delayed. All such leasehold improvements to be made by Lessee shall be in accordance with the City of Brenham adopted Building and Fire Codes, related Ordinances and in accordance with the plans approved by the Development Services Department of the City of Brenham.

Lessee shall maintain the Premises, including, but not limited to, the public parking areas, public ramp space, and areas adjacent to fueling areas and fuel service road in a cleaned and orderly manner, including but not limited to the maintenance of grass and vegetation. The aforementioned areas are further depicted in Exhibit "B" attached hereto and incorporated herein for all purposes.

Lessee shall be responsible for the cleanliness of the terminal building public restrooms and for restroom supplies for such restroom. Public restrooms located on the Premises in the terminal building may be available to airport patrons after hours via a keyless door lock with an aviation related code.

V.

Lessee agrees to open and operate a restaurant on the Premises no later than two hundred seventy (270) days from the commencement of the ten (10) year Term as shown in Section I above. Furthermore, Lessee shall apply for a building permit for desired improvements to the restaurant within three (3) months and shall be issued applicable building permit(s) within five (5) months from the commencement of the ten (10) year Term as shown in Section I above. Additionally, a Performance Evaluation shall be conducted with the Lessee by the Facilities Subcommittee of Council and the Chair of the Airport Advisory Board at the one (1) year anniversary date of the restaurant grand opening.

The restaurant shall be open and serve patrons no fewer than four (4) days each week for a minimum of eight (8) hours per day. Lessee shall have the option to sell beer and wine in the restaurant area provided that the Lessee, at Lessee's expense, obtain all appropriate permit(s) from the Texas Alcoholic Beverage Commission and comply with all applicable local and state laws and regulations.

Lessee shall have the option to sublease the restaurant space within the terminal building or to subcontract restaurant operations in accordance with this agreement. Lessee covenants and agrees that Lessee shall not transfer or assign this lease or sublease any portion of the Premises without City's prior written consent. Any attempt to transfer or assign or sublease this lease or sublease any portion of the Premises without the City's written consent shall be null and void and may cause this agreement to be terminated.

The Lessee/FBO or any other entity shall not impose or assess any additional fees, higher fuel prices or the requirement to buy fuel on those flying in to dine at the restaurant. In no way shall the Lessee discriminate or make it more difficult for persons to patronize the restaurant or enjoy the restaurant experience. ~~If the Lessee does not assist in aircraft parking, restaurant employees will be allowed to do so.~~ Additionally, the Lessee or restaurant operator (whichever is applicable) shall allow patrons of the restaurant to use the terminal deck located on the Premises for dining purposes.

VI.

Upon termination of this lease by City or Lessee, City and Lessee agree that Lessee may at Lessee's sole expense, remove its trade fixtures, including equipment, provided that such removal shall not impair the structural integrity of the Premises; such determination shall be made by the City Manager, or his

designee, and same shall be binding on the parties hereto: and Lessee shall repair any damages caused by such removal to the satisfaction of the City Manager, or his designee.

VII.

Lessee shall, at Lessee's expense, obtain all governmental licenses and permits necessary for the permitted uses of the Premises and shall comply with all governmental laws, ordinances and regulations applicable to the use of the Premises; also promptly comply with all governmental orders and directives for the correction, prevention and abatement of violations, nuisances and hazardous conditions in or upon, or connected with the Premises.

Lessee will comply with all laws, rules and regulations now existing or hereafter established by the United States of America, the State of Texas, the City of Brenham, and their respective agencies, including the Federal Aviation Administration, and the Texas Department of Transportation, Aviation Division (TxDOT Aviation). Lessee acknowledges receipt of a copy of the current Airport Minimum Standards of the Airport. The Airport Minimum Standards are incorporated by reference as if written verbatim herein, and Lessee agrees to comply fully at all times with the Airport Minimum Standards. Lessor shall have the right to amend, modify and alter the Airport Minimum Standards from time to time in a reasonable manner for the purpose of assuring the safety, welfare and convenience of Lessor, Lessee and all other Lessees and customers of the Airport.

Lessor and Lessee recognize and agree this Lease shall be subject to: such regulations and approvals as required by the FAA and TxDOT Aviation and in particular those FAA regulations which provide that the property subject to this Lease shall be used for Airport purposes and in such a manner so as not to materially and adversely affect the development and improvement, operation or maintenance of the Airport; and to the requirements of national emergency. Lessee agrees to cooperate and assist Lessor in complying with such regulations and conditions of approval. All runways and Airport facilities shall be open to the general traveling public for the landing and operation of aircraft therefrom without hindrance or interference on the part of Lessee.

VIII.

AS A CONDITION HEREOF, LESSEE AGREES TO INDEMNIFY AND DEFEND CITY AGAINST ANY AND ALL CLAIMS FOR INJURIES, DAMAGES, COSTS AND EXPENSE, TO PERSONS OR PROPERTY THAT MAY ARISE OUT OF, OR BE OCCASIONED BY THE USE, OCCUPANCY OR MAINTENANCE OF THE PREMISES BY LESSEE, OR FROM ANY NEGLIGENT OR WILLFUL ACT OR OMISSION OF ANY REPRESENTATIVE, AGENT, INVITEE AND /OR EMPLOYEE OF LESSEE. LESSEE HEREBY AGREES TO DEFEND ANY AND ALL

SUITS, CLAIMS, OR CAUSES OF ACTION BROUGHT AGAINST CITY ON ACCOUNT OF SAME, AND DISCHARGE ANY JUDGMENT OR JUDGMENTS THAT MAY BE RENDERED AGAINST CITY IN CONNECTION THEREWITH.

IX.

The Lessee shall procure and maintain at its sole cost and expense for the duration of this lease insurance against claims for injuries to persons or damages to property that may arise from or in connection with the use and occupancy of the Premises by the Lessee, and the Lessee's agents, representatives, volunteers, employees or subcontractors. The Lessee's insurance coverage shall be primary insurance with respect to the City, its officials, employees and volunteers. Any insurance or self- insurance maintained by the City, its officials, employees or volunteers shall be considered in excess of the Lessee's insurance and shall not contribute to it. Further, the Lessee shall include the City as an additional insured under its insurance policy. All coverage for subcontractors shall be subject to all of the requirements stated herein. Certificates of Insurance and endorsements shall be furnished to the City and approved by the City before occupancy of the Premises by the Lessee.

Standard Insurance Policies Required:

- (a) Commercial General Liability Policy
- (b) Automobile Liability Policy
- (c) Workers' Compensation Policy

General Requirements Applicable to All Policies:

- (a) General Liability and Automobile Liability insurance shall be written by a carrier with a A:VIII or better rating in accordance with the current Best Key Rating Guide.
- (b) Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.
- (c) Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
- (d) "Claims Made" policies will not be accepted.
- (e) The City of Brenham, its officials, employees and volunteers, are to be added as "Additional Insured" to the General Liability policy. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.

(f) A Waiver of Subrogation in favor of the City with respect to Workers' Compensation Insurance must be included.

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

(h) Upon request, certified copies of all insurance policies shall be furnished to the City of Brenham.

Commercial General liability

(a) Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

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

5. Automobile Liability

(a) Minimum Combined Single limit of \$500,000.00 per occurrence for bodily injury and property damage.

6. Worker's Compensation

(a) Employer's Liability limits of \$100,000.00 for each accident is required.

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

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

(b) The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Texas State Board of Insurance.

(c) All endorsements and insurance coverage according to requirements and instructions contained herein.

(d) The form of the notice of cancellation, termination, or change in coverage provisions to the City of Brenham.

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

X.

In the event the Premises are substantially or totally damaged or destroyed or rendered partially unfit for occupancy by natural disaster, or fire or water damage or other casualty, either party may elect to terminate this Lease.

XI.

City may, by written notice to Lessee, immediately terminate this lease, notwithstanding the provisions of Article XII herein, if Lessee fails to operate a restaurant in the Building in accordance with the provisions of Article V herein. Furthermore, lessee shall show substantial progress in the opening of a restaurant within ninety (90) days from the commencement of the 10 year Term as shown in Section 1. Substantial completion shall be defined as plan review submittal, building permit issuance or food permit issuance through the Development Services Department.

XII.

If either party defaults in the performance of any obligation or covenant herein, the non-defaulting party may enforce the performance of this lease in any manner provided by law. This lease may be terminated at the non-defaulting party's discretion if such default continues for a period of thirty (30) days after written notification of such default and of the intention of the non-defaulting party to declare this lease terminated, provided, however, if the default is not capable of being fully cured within thirty (30) days, the defaulting party shall be allowed the needed additional time to cure the default if (i) the defaulting party begins the cure within the thirty (30) days period, (ii) diligently pursues the cure thereafter until it is fully cured, and has been given advance written approval to proceed by the non-defaulting party. Such notice shall be sent by the non-defaulting party to the party in default. If Lessee, as the defaulting party, has not substantially cured the default within the time period referenced above, this lease shall terminate. Thereafter, City, if the non-defaulting party, or its agents, shall have the right, without further notice or demand, to enter the Premises and remove all persons and property there from without being deemed guilty of trespass and without waiving any other remedies for arrears of rent or breach of covenant. City or its agents may resume possession of the Premises and relet the same for the remainder of the Term, and/or exercise any other remedy available to the City by law or equity.

XIII.

CITY AND ITS AGENTS SHALL NOT BE LIABLE TO LESSEE OR TO LESSEE'S EMPLOYEES, PATRONS, VISITORS, INVITEES OR ANY

OTHER PERSONS FOR ANY INJURY TO ANY SUCH PERSONS OR ANY DAMAGE TO PERSONAL PROPERTY OCCURRING ON THE PREMISES CAUSED BY THE NEGLIGENCE OR MISCONDUCT OF LESSEE AND/OR ITS EMPLOYEES, AGENTS OR VOLUNTEERS.

XIV

Subject to prior written approval of the City Manager or his designee, Lessee shall have the right to erect signs on the Premises, provided that Lessee bears the expense of all signs it places on the Premises and the sign(s) conform to the ordinances and regulations of the City of Brenham Code of Ordinances.

XV.

Force Majeure. Neither party hereto shall be liable to the other for any failure, delay, or interruption in performing its obligations hereunder due to acts, events or conditions beyond its control, including acts of God, weather conditions, shortages of energy or materials, embargoes, riots, rebellions, sabotage, acts of a public enemy, war, terrorism, insurrection, strikes, boycotts, picketing, slow-downs, work stoppages or other labor actions affecting the rights or obligations of the parties hereunder, their respective contractors or subcontractors, except to the extent that such failure, delay or interruption directly or indirectly results from failure on the part of either party to use reasonable care to prevent, or make reasonable efforts to cure, such failure, delay or interruption. The party seeking to avail itself of any of the foregoing excuses must promptly, but no later than five (5) business days after the date of failure, delay or interruption in performance, notify the other party of the reasons for the failure or delay in connection with the performance hereunder and shall exert its best efforts to avoid further failure, delay or interruption.

XVI.

Any waiver by City or Lessee of any default or breach of any term, covenant, condition, agreement, provision or stipulation herein contained shall not constitute a waiver of any subsequent default or breach of the same or any other term, covenant, condition, agreement, provision or stipulation hereof.

XVII.

This lease agreement constitutes the full and final expression of the agreement between City and Lessee, through the entire Term and it may not be amended except by written instrument signed by both parties.

XVIII.

All notices required under this lease shall be written notices. Any notice or document required or permitted to be delivered herein shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties hereto at the addresses set out below, or at such other addresses as they may specify by notice delivered in accordance herewith:

_____	City of Brenham_____
_____	_____
_____	_____

XVIV.

This lease is expressly made subject to the ordinances of the City of Brenham, and all applicable state and federal laws. Should any legal action be instituted in connection with this lease, legal venue for all purposes shall lie exclusively in Washington County, Texas.

IN TESTIMONY WHEREOF, the parties have hereunto set their hands this the _____ day of _____, 20__.

LESSEE:

CITY OF BRENHAM

By: _____
President

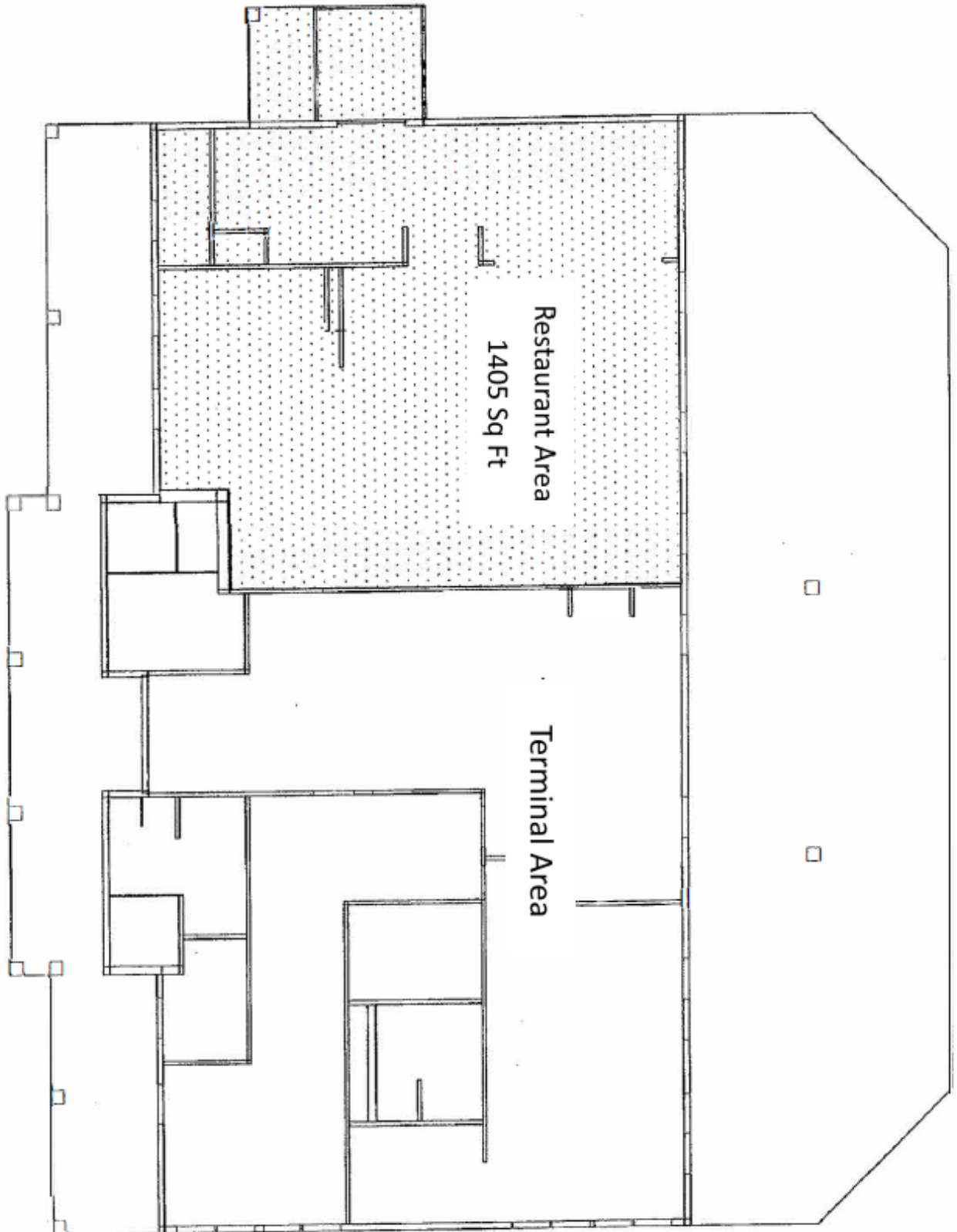
By: _____
Hon. Milton Tate, Mayor

ATTEST:

By: _____

By: _____
City Secretary

**Exhibit "A":
Existing Terminal Building Layout**



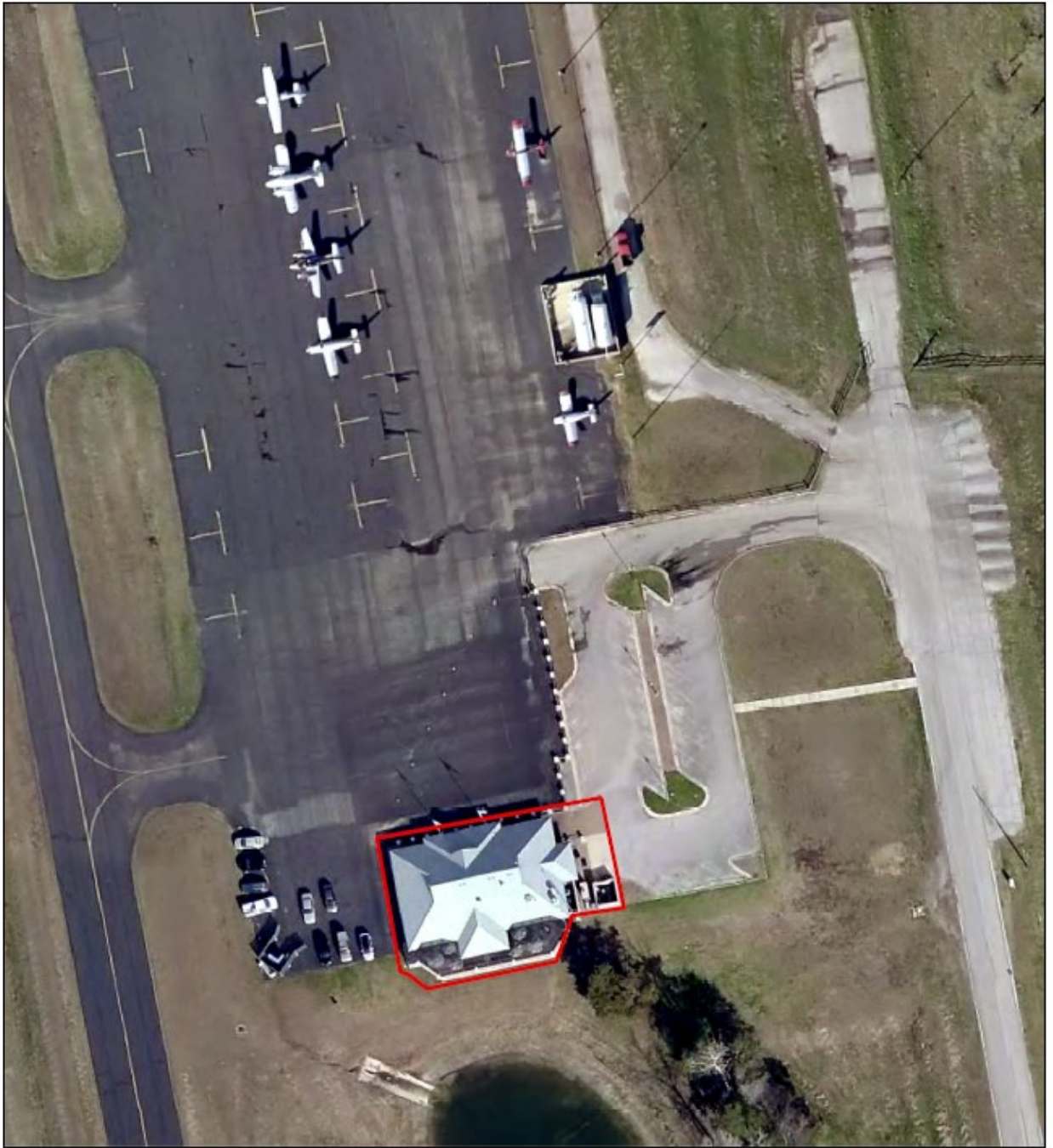


Exhibit "B"

Brenham Municipal Airport

Area to be maintained by Lessee

1 inch = 72 feet





Regular City Council
AGENDA ITEM 9.

Agenda Item: Discuss and Possibly Act Upon Amendment of the Existing Agreement Between Aviators Plus, LLC and the City of Brenham to Authorize Aviators Plus, LLC to Operate as a Fixed Base Operator at the Brenham Municipal Airport, and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-April 01, 2021

Department: Development Services

Staff Contact: Stephanie Doland

Classification: Regular

SUMMARY STATEMENT:

This item was tabled at the March 25, 2021 City Council meeting.

In October 2019, the City of Brenham entered into an agreement with Aviators Plus, LLC to allow operations as a second Fixed Based Operator (FBO) at the Brenham Municipal Airport (Airport). Included in the original Aviators Plus, LLC FBO agreement is the first opportunity to occupy the City-owned terminal building located at the Airport in the event the existing tenant vacates. On August 18th, 2020, the City of Brenham accepted a termination request from Southern Flyer the original FBO since 2000. With the termination of Southern Flyer, the terminal building at the Airport became vacant. Aviators Plus was offered the lease opportunity first, in accordance with the existing FBO Agreement, and an interest was expressed in occupying the terminal building as an extension of the FBO business already in operation as well as for the continued use of a restaurant.

Aviators Plus wishes to expand their operations at the Airport and in doing so revisions to the existing FBO Agreement are necessary. The items required of the FBO in the original agreement and the Minimum Standards will remain in the proposed amended FBO Agreement. Items that have been added include:

- Ability for the FBO to collect transient tie down and blocking fees.
- Ability for the FBO to assess a Service Fee on aircraft exceeding 12,000 lbs. for services rendered such as ramp parking, extended stays, quick turns, and towing without a minimum fuel purchase.
- Requirement for FBO to maintain the ramp adjacent to the terminal building in a clean and orderly manner.
- Opportunity for FBO to vary hours of operation based on seasonal business and holidays.
- Requirement for FBO to maintain a list of parties interested in renting the City T-Hangars.
- Requirement for FBO to host at least two public Airport promotion events annually.
- Requirement for FBO to maintain and operate the UNICOM system and post NOTAMs.
- Agreement for monthly meetings to be held between the FBO and City Staff to discuss and review issues, tasks and priorities of the Airport.
- Requirement that the FBO provide a monthly report to the City to include, service fees assessed, fuel sales, and general activity at the airport.

The proposed agreement is in accordance with the Airport Minimum Standards. The Airport Advisory Board met on Tuesday March 16, 2021 to consider the FBO contract and recommends approval with the condition that the tie down fees not be assessed for tie downs less than 30 days.

In addition to the proposed amended FBO Agreement, Council is scheduled to consider the Terminal Building Lease Agreement with Aviators Plus, LLC during the March 25, 2021 Council Meeting.

ATTACHMENTS:

-
- (1) Red Line Version - Aviators Plus LLC FBO Agreement
 - (2) Clean Version Aviators Plus LLC FBO Agreement

RELEVANCE TO COMPREHENSIVE PLAN:

Continued focus and improvements to the Brenham Municipal Airport are in line with the Economic Opportunity Goal E03 of the City of Brenham's Comprehensive Plan.

RECOMMENDED ACTION:

Approve an amendment to the existing agreement between Aviators Plus, LLC and the City of Brenham to authorize Aviators Plus, LLC to operate as a Fixed Base Operator at the Brenham Municipal Airport and authorize the Mayor to execute any necessary documentation.

**CITY OF BRENHAM
FIXED BASE OPERATOR AGREEMENT**

STATE OF TEXAS }
 }
COUNTY OF WASHINGTON }

This Fixed Base Operator Agreement, hereinafter referred to as "Agreement," is entered into this _____ day of _____, 2021~~19~~ between the City of Brenham, a Texas home-rule municipal corporation, hereinafter referred to as "City" and as the owner of the Brenham Municipal Airport, hereinafter referred to as "Airport" and Aviators Plus, LLC, a Texas limited liability company, hereinafter referred to as "FBO," and both City and FBO covenant and agree as follows:

WHEREAS, City deems it advantageous to itself and to its operation of the Brenham Municipal Airport to grant unto FBO certain privileges, rights, uses and interests, as herein set out; and

WHEREAS, City and FBO are committed to improving the Brenham Municipal Airport and promoting economic development at the Brenham Municipal Airport, in the City of Brenham, and in the Washington County area; and

WHEREAS, City and FBO desire to enter into a contractual agreement allowing the FBO to operate as a fixed base operator ("FBO") at the Brenham Municipal Airport;

NOW THEREFORE, in consideration of the terms and conditions listed herein, City and FBO agree as follows:

1. TERM

The initial term of this Agreement shall be for a period of ten (10) years, commencing on the ____ day of _____, 2021~~19~~ and expiring on the ____ day of _____, 2031~~29~~. Unless otherwise terminated as provided herein, this Agreement shall automatically renew for one (1) subsequent five (5) year renewal term unless either party sends the other party written notice of its intention to not renew this Agreement. Said written notice of intent to not renew this Agreement shall be sent at least sixty (60) days prior to the expiration of the initial term of this Agreement.

2. PREMISES

The City and FBO have entered into a separate Lease Agreement effective on January 1, 2019 regarding the real property and improvements located at 2901 Aviation Way, Brenham Municipal Airport, with respect to which the FBO shall have the right to engage in commercial aviation activities and fixed base operations during such time as this FBO Agreement remains in effect, said premises being shown in Exhibit "A," attached hereto and incorporated herein for all purposes, hereinafter referred to as the "Property." The City and FBO entered in to an additional lease agreement on May 7, 2020 for the FBO to construct a Fuel Farm Operation on 0.0177 acres of land for the public sale of av-gas. Subsequently, the Fuel Farm lease agreement was further amended on September 3, 2020 to allow for the sale of Jet-A on the original 0.0177 acres of land. The City and FBO further anticipate entering into an additional lease agreement(s) approved by the City and FBO for the FBO to ~~construct a new fuel farm at a location approved by the City, and to construct~~

additional improvements at a location approved by the City from which location the FBO may operate its business on the ramp during such time as this FBO Agreement remains in effect.

Any additions or improvements to the Property may not be made unless the City expressly approves the additions or improvements in writing. Any additions or improvements shall be made solely at the expense of FBO and, unless the City expressly agrees otherwise in writing, and such additions and improvements to existing structures or facilities shall be subject to all terms and conditions of this instrument. All improvements to the Property must be made in compliance with the Airport Master Plan and Airport Layout Plan applicable to the Brenham Municipal Airport. In making improvements to the Property, FBO shall be responsible for preparing, obtaining approval of (if needed), implementing and complying with any Stormwater Pollution Prevention Plan requirements made applicable by federal, state or local laws or regulations.

FBO shall timely pay the City all fees and charges as set forth in other provisions of this Agreement.

For the term of the Agreement, FBO will be responsible for payment of all costs and charges for any utilities servicing the Property. FBO shall assume and pay for all costs or charges associated with any utility facilities or services that are provided to or extended to the Property after the date of execution of this Agreement.

FBO agrees that except as may be otherwise provided in other agreements entered into between FBO and City, it will not engage in nor permit the engagement by any persons on the Property in any business other than that which is expressly authorized herein.

3. GENERAL PRIVILEGES, USES AND RIGHTS

City grants to FBO the following general privileges, uses and rights, in common with others, all of which shall be subject to the terms, conditions and covenants set forth and all of which shall be nonexclusive on the Airport. Notwithstanding anything herein contained that may be or appears to be contrary, it is expressly understood and agreed that the rights granted under this Agreement are non-exclusive and the City herein reserves the right to grant similar privileges to another operator or other operators on other parts of the Airport, and nothing contained herein is to be construed as granting to the FBO an exclusive right as defined in Section 308 (a) of the Federal Aviation Act of 1958, or any successor law, as may be amended, or any other applicable regulation.

(A) The use in common with the public generally of all public airport facilities and improvements that are now or may afterwards be connected with or appurtenant to the airport, except as herein provided, to be used by FBO for commercial or noncommercial aviation activities and fixed base operations, and all activities in connection with or, incidental to the business or operation, as herein defined, so long as any use of the public airport facilities by FBO does not interfere with other operations at the airport.

For the purpose of this Agreement, “public airport facilities” shall include all necessary landing area appurtenances, including, but not limited to, approach areas, runways, taxiways, public ramp and aprons, public automobile parking areas, public roadways, public sidewalks, navigational and navigational aids, lighting facilities, public terminal facilities or other public facilities appurtenant to the airport.

(B) The right of ingress to and egress from the premises over and across public roadways serving the airport for FBO, its agents, employees, servants, patrons, invitees, suppliers of service and furnishers of material.

(C) The rights above shall be subject to the City's ordinances, rules and regulations as now or may afterwards have application at the Airport.

4. **SPECIFIC PRIVILEGES, USES AND RIGHTS**

(A) In addition to the general privileges, uses and rights above described and without limiting the generality of them, City grants to FBO the right to engage in commercial aviation activities and fixed base operations, as defined below, subject to the conditions and covenants set out herein. Further, FBO shall comply with the "Minimum Standards ~~for Fixed Base Operators~~" as approved and adopted by the City Council on July 2, 2020. FBO covenants and agrees to observe and comply with all provisions in the City's Minimum Standards ~~for Fixed Base Operators~~, as may be amended from time to time, and with all rules and regulations of City which may hereinafter be promulgated from time to time governing safe conduct on and operations at the Airport and the safe use of its facilities.

"Commercial aviation activities and fixed base Operations" are defined as those activities which involve the sale of aviation services for profit to the general public and other entities. The aviation services shall include: fuel sales; aircraft maintenance and restoration; aircraft sales and brokerage, and aircraft rentals; airframe, engine and accessory maintenance and repair services; sales of aircraft parts, supplies and accessories; flight instruction; pilot supply sales; automobile rentals; and other services as approved by the City Manager in writing.

(B) FBO shall have the right to build or construct any new aircraft storage or repair facilities or any other type buildings or structures normally found on public use airports, at FBO's expense, subject to the express written approval of the City, provided that the location of such facilities is in agreement with the Airport Master Plan and Airport Layout Plan for the Brenham Municipal Airport, and is approved by the City through execution of a separate ground lease with FBO if said buildings or structures are not to be located on the Property.

(C) ~~Additionally, the FBO is hereby granted the right to agree with users of the Airport to perform transient tie downs and collect fees for such service. to the City Except upon further contractual authorization from the City, FBO shall make no charge to any aircraft for using the ramp. FBO is hereby granted the right to agree with users of the Airport to perform transient tie downs or blocking for operators flying into the Brenham Municipal Airport and collect fees for such service. Additionally, the FBO is hereby permitted to assess a service fee in exchange for services rendered for aircraft exceeding 12,000 pounds MGTOW (Maximum Gross Take Off Weight) without a minimum fuel purchase. Service fees, as outlined below, shall be limited to one fee per landing and shall include, ramp parking, extended stays, quick turns, towing and any additional services as approved in writing by the City of Brenham. FBO agrees that in return for such privilege Lessee shall sweep, clean and keep ramp areas presentable at all times without charge to the City. All fees may be collected by the FBO and the FBO shall provide a monthly report to the City of all fees assessed. Prior to the first tie-down or service fee charged, a separate standard operating procedure (SOP) document detailing the services offered for charge shall be provided to the City by the FBO. Except upon further contractual authorization from the City, FBO shall make no charge to any aircraft for using the ramp.~~

- Light Turbine Aircraft (>12,000 lbs. MGTOW) \$ 50.00 or waived with a minimum fuel purchase of 100 gallons.
- Mid-Size Cabin Turbine Aircraft (12,500 – 30,000 lbs. MGTOW)..... \$ 85.00 or waived with a minimum fuel purchase of 150 gallons.
- Large Cabin Turbine Aircraft (> 30,000 lbs. MGTOW) \$ 150.00 or waived with a minimum fuel purchase of 250 gallons.

5. **CONDITIONS OF GRANTING RIGHTS CONTAINED HEREIN**

The granting of the rights contained herein is conditioned upon the following covenants:

- (A) That the right to use the public airport facilities as well as all of FBO's rights shall be exercised subject to and in accordance with the laws of the United States of America, the State of Texas, and the City of Brenham; the rules and regulations promulgated by their authority with reference to aviation and air navigation; and all applicable rules and regulations and ordinances of City now in force or afterwards ordained or promulgated.
- (B) That FBO will not, on the grounds of religion, race, color, national origin, disability, or gender discriminate or permit discrimination against any person or group of persons in any manner prohibited by state or federal law or regulation.
- (C) City reserves the right to enter upon the Property at any reasonable time for the purpose of making any inspection it may deem expedient to the proper enforcement of any of the covenants or conditions of this Agreement.
- (D) City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent FBO from erecting, or permitting to be erected, any building or other structure on the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft.
- (E) During any period when the Airport shall be closed by any lawful authority restricting the use of the Airport in such a manner as to interfere with the use of the same by FBO for its business operations, the period of such closure shall be added to the term of this Agreement, at FBO's option, so as to extend and postpone the expiration thereof. There shall be no obligation on the City to furnish an auxiliary field in case free use of the Airport is curtailed to the FBO.
- (F) City reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or views of FBO, and without interference or hindrance.
- (G) All unpaid monies due to the City hereunder shall bear interest of one and one-half percent per month if same is not paid and received by City when due. FBO shall pay and discharge all costs, expenses, including attorney's fees, incurred or expended by City in collection of said delinquent amounts due.
- (H) City reserves the right to review all rental rates, fuel charges, tie down fees and charges for other services to determine whether the fees are unjustly discriminatory, excessive, or unreasonable

and/or if the rates, charges and fees are comparable to rates, charges and fees for like facilities or services at other airports. FBO agrees to submit a schedule of its rates, charges and fees to the City for review sixty (60) days prior to their implementation, except that fuel charges shall not be subject to the 60-day review period. Fuel charges will be expeditiously reviewed and approved/disapproved by the City each time an increase is proposed. Additionally, FBO agrees to provide the City with a quarterly fuel comparison report which provides fuel prices for at least three (3) additional area public airports and evidence fuel prices charged by FBO at the Brenham Municipal Airport are reasonable and not unjustly discriminatory. City shall provide a response concerning approval/disapproval regarding all other non-fuel fee schedules within forty-five (45) days from date of City's receipt of the proposed fee schedule.

6. OPERATION AS A PUBLIC AIRPORT

City covenants and agrees that during the term of this Agreement it will operate and maintain the Airport and its public airport facilities, as defined above, as a public airport consistent with and pursuant to the assurances given by City to the United States Government through applicable federal and state laws and regulations.

7. CONDITIONS OF PREMISES

Upon execution of this Agreement, City shall assume no further responsibility or liability as to the condition of all the premises allowed to be used and occupied by FBO.

8. OBLIGATIONS OF FBO

(A) FBO shall furnish from its leased Property first class, full service operations serving the needs of the users of the Airport and shall, at all times, conduct its business and activities in a safe and professional manner consistent with all Federal Aviation Administration (FAA) standards and applicable laws and regulations. FBO shall conduct business on the Airport in such a manner as to maintain a friendly and cooperative, though competitive, relationship with airport operators engaged in similar business, airport patrons, and the City of Brenham. FBO will not engage in open public disputes, disagreements, or conflicts, in-person or online, which would tend to deteriorate the quality of service of either party involved, or which would be incompatible with the best interest of the public or for the Airport, or would slander, or defame or reflect negatively on the City of Brenham in any way. FBO shall select and appoint a manager for its operation at the Airport. Such manager shall be highly qualified and experienced, and be vested with full power and authority to act in the name of the FBO with respect to the method, manner, and conduct of the services to be performed hereunder. Such manager shall be available at the Airport during regular business hours. During the manager's absence, a duly authorized and qualified subordinate shall be in charge of the FBO and on Premises at the Airport. FBO shall provide, at its sole expense, a sufficient number of, and properly trained, employees who are pleasant, neat, clean, and courteous in order to effectively and efficiently provide the commercial aeronautical activities as herein authorized. Employees are to wear appropriate uniforms and badges to indicate the fact and nature of their employment. FBO shall control the conduct, demeanor, and appearance of its employees and representatives. Such employees shall be trained and possess technical qualifications and hold certificates of qualifications, as may be required for such employee to carry out assigned duties. All aircraft Fuel Handling personnel are to be trained in the safe and proper handling, dispensing, and storage of Aircraft Fuel. Acceptable training shall be an FAA approved safety training course in accordance with FAA Advisory Circular 150/5230-4B (and any related addenda and/or errata sheets issued by the FAA) and the National Air Transportation Association (NATA) "Safety First"

Program or equivalent training program acceptable to the City. All training records and qualifications shall be provided to the City upon request in accordance with 14 CFR Part 139.321.

(B) FBO shall be continually open for business and provide services for twelve (12) hours a day, seven days a week, except as when necessitated by unforeseen business or emergency conditions. ~~The FBO Operator shall be allowed to vary the hours of operation to adjust for winter, summer, and Holidays while still providing within a reasonable period of time (not greater than one hour) staffing on a call-back basis to address after-hour requests for service from customers. FBO shall notify City in writing 72 hours in advance of varied operating hours. and When open for business FBO shall provide aircraft line service including but not limited to the sale and into-plane delivery of recognized brands of aviation fuels and other petroleum products. FBO shall provide and maintain an adequate supply at all times of av-gas and Jet-A fuel for sale to airport users. Exceptions to the required FBO minimum operating hours may be granted by the City for certain holidays, or when special circumstances, conditions, or events warrant a reduction in operating hours. FBO shall further provide within a reasonable period of time (not greater than one hour) staffing on a call-back basis to address after hour requests for service from customers.~~

(C) FBO shall procure and keep in force during the term of the Agreement all necessary licenses and permits as are required by law for all the operations conducted by FBO on Property.

(D) FBO shall, at its sole cost and expense, maintain all the buildings, structures on the Property in compliance with this Agreement, and the improvements and appurtenances in a presentable condition consistent with good business practice in a safe, neat, and good physical condition. FBO shall promptly repair all damages to the premises and the improvements thereon. FBO shall be responsible for all structural maintenance and repair of buildings and structures on the leased Property. FBO shall further be responsible for general maintenance of the buildings, structures, and Property, which shall include without limitation duties such as cleaning floors, cleaning windows, painting interior/exterior of hangar and other improvements, replacement of electric light bulbs and similar maintenance activities.

(E) FBO shall host, fully participate in, and assist in coordinating a minimum of two (2) airport promotions annually such as fly-ins, airshows, pancake breakfasts, etc. as well as be a resource for community events.

(F) FBO shall provide at least one (1) clean courtesy car in excellent condition with air conditioning.

(G) ~~In the event the entity currently operating and maintaining the UNICOM radio system at the Brenham Municipal Airport ceases to provide such service, the FBO in this Agreement shall:~~

~~1) FBO shall:~~ 1) Procure any necessary license or permit to operate the UNICOM radio system; 2) Operate and maintain the UNICOM radio system at the Airport during the effective period of this Agreement; and 3) Be responsible for issuing any NOTAMs related to the Brenham Municipal Airport. The City will determine the UNICOM operating frequency and location of the UNICOM equipment in consultation with the FBO.

(H) ~~FBO further agrees to keep active written record of private parties, airport patrons and customers interested in occupying the City owned T-Hangars. FBO shall provide written record to the City at the City's request.~~

(H) FBO agrees that any commercial aviation operations on the premises shall be conducted in a legal, proper, efficient and courteous manner. FBO agrees to promote aviation activity on the airport. FBO agrees to maintain, operate and provide a pilots' lounge and public restrooms on the Property.

(I) FBO further agrees: 1) that all service shall be furnished on a reasonable, and not unjustly discriminatory, basis to all users thereof; and 2) to charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the FBO shall be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

(J) FBO shall provide a complete and proper arrangement for the adequate sanitary handling and disposal away from the Airport of all trash, garbage, and other refuse caused as a result of the operation of its business. FBO shall provide and use suitable covered receptacles for all such garbage, trash and other refuse. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe, manner on or about the premises shall not be permitted. FBO shall also provide and maintain in proper condition readily accessible fire extinguishers in a number and of a type required in accordance with applicable fire codes.

(K) FBO shall not maintain upon the outside of any improvements or elsewhere on the Property any billboards, however, FBO may maintain on the outside of buildings its name and advertising on signs, the size, location and design of which shall be subject to the prior written approval of the City Manager or his designee.

(L) Nothing here shall be deemed to relieve FBO and its patrons, invitees, and others from such field use charges, including fuel flowage fees, as are levied generally by City directly or indirectly at the Airport.

(M) FBO shall comply with any and all applicable Environmental Laws and Permits (whether obtained by FBO or the City) related to FBO's occupancy and use of the Airport. Without limiting the generality of the foregoing, FBO shall comply with the requirements as set forth below:

1. Duty to Notify. In the event of any release or discharge, or threatened release or discharge of Hazardous Materials at, on, under, or about the Airport, or any portion thereof, that is caused by FBO, its agents, invitees, servants or employees, and which is required by applicable Environmental Laws, Environmental Permits, or Airport rules and regulations to be reported by FBO, whether as a result of negligent conduct or otherwise, or in the event any written claim, demand, complaint or action is made or taken against FBO that pertains to FBO's release, failure to comply with any Environmental Laws or Environmental Permits at the Airport, FBO shall notify the City ~~as soon as reasonably practical~~ immediately upon such release and follow up within 24 hours of all known facts pertinent to such release or discharge, or threatened release or discharge, claim, demand, complaint, action, or notice, and shall provide the City with copies of any and all such claims, demands, complaints, notices, or actions so made. If FBO is required, by any Environmental Laws, Environmental Permits, or governmental agency, to file any written notice or report of a release or discharge, or threatened release or discharge at, on, under or about the Airport, or any part thereof, FBO shall simultaneously provide a copy of such notice or report to the City.

2. Remediation. FBO shall undertake all necessary steps required under applicable Environmental Laws and Environmental Permits, or as directed by a governmental agency,

to remedy and remove any Hazardous Material or environmental condition or damage to the extent caused by, or resulting from, the activities, conduct or presence of FBO, its agents, invitees, servants or employees, whether resulting from negligent conduct or otherwise (“Remediation Work”). Such Remediation Work shall be performed at FBO’s expense.

Except in the event of an emergency, such Remediation Work shall be performed after FBO submits to the City a written plan for completing such Remediation Work and receives the prior written approval from the City, which approval shall not be unreasonably withheld or delayed. Specific cleanup levels for any Remediation Work by FBO shall be designed to return the property to conditions suitable for redevelopment by the City and meet and satisfy the requirements of all applicable Environmental Laws and Environmental Permits, as determined by the governmental agency responsible for enforcing Environmental Laws or Environmental Permits. Neither an ongoing Remediation Work, including any testing or monitoring, shall either unreasonably or materially impair or interfere with the use of the Airport as an airport. The City shall have the right to conduct a reasonable review and inspect all such Remediation Work at any time using consultants and representatives of its choice. FBO’s obligations hereunder shall survive the expiration or early termination of this Agreement.

3. Definitions. For purposes of this Section, the following words and phrases shall have the following meaning:

i. “Environmental Laws” means all applicable federal, state, and local statutes, ordinances, regulations, rules, laws, permits, permit conditions, and orders relating to the generation, use, storage, transportation, or disposal of Hazardous Materials.

ii. “Environmental Permits” means any and all permits, licenses, approvals, authorizations, consents, or registrations required by Environmental Laws, whether federal, state or local, which pertain to the production, use, treatment, generation, transportation, processing, handling, disposal, or storage of Hazardous Materials.

iii. “Hazardous Materials” means friable asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs), petroleum, or crude oil or any fraction thereof, natural gas, source material, special nuclear material, and byproduct materials regulated under Environmental Laws, pesticides regulated under Environmental Laws, and any hazardous waste, toxic, or dangerous substance or related material, including any material defined or treated as a hazardous substance, hazardous waste, toxic substance, or contaminant (or comparable term) under any of the Environmental Laws

(NO) FBO shall have available the equipment necessary to safely and efficiently move aircraft frequenting the airport.

(OP) FBO shall not use or allow property under its control or that of the Airport to be used for any illegal or unauthorized purpose and shall notify the City of any suspected illegal activity at the Airport. FBO, its officers, directors, employees, agents, and contractors shall comply with the following, the same may be amended from time to time: (i) all applicable federal, state, and local laws and ordinances, including directives of the FAA and TSA applicable to FBO’s presence and operations at the Airport; and (ii) the Airport Rules and Regulations. Notwithstanding anything to the contrary, references in this Agreement to a law or regulation shall be deemed to be a reference to: (i) such law or regulation as it may be amended from time to time, and (ii) all ordinances, rules, executive orders, policies, and instructions pertaining, and lawfully promulgated pursuant, to such law or regulation as they now exist or may be amended from time to time.

(PQ) FBO shall, at its own expense and at all times during their term of this Agreement, pay all lawful taxes and assessments levied against the Property as well as all taxes and assessments levied against the personal property used by FBO in its operation on the Property. None of the terms, covenants or conditions of this Agreement shall be construed as a release of waiver on the part of City, of the right to assess, levy or collect any license, personal, intangible, or other tax which shall be lawfully imposed on the business or property of FBO

(QR) FBO shall use the Property only for uses and purposes hereinbefore described.

(RS) FBO shall permit City free access to the Property at all reasonable times for the purposes of examining the same and seeing that all of the obligations of FBO hereunder are being met and performed, and to permit City to enter any building or structure on the Premises at any time in the event of an emergency (the determination of an emergency being at the sole discretion of City).

(ST) FBO shall be solely responsible for securing all federal, state, county or municipal approvals of an environmental or other nature required for any construction or alteration of leasehold improvements on the Property, or for any of FBO's operations thereon; provided that City will join in the execution of any such permits or other applications if so required by applicable law.

(TU) ~~FBO may, at FBO's sole expense, construct a new fuel farm at the airport, at a location approved by the City and pursuant to a separate lease agreement approved by the City and FBO, with tank(s), facilities and associated equipment properly installed, and all associated delivery, pumping and safety equipment in good operating order. If~~ While engaged in selling fuel at the Airport, FBO agrees to provide, maintain and operate a Jet-A Fuel and an av-gas truck or trailer system of adequate size and in good condition for safe and efficient operation. FBO must use the aircraft fueling systems in a careful and proper manner. FBO agrees that the aircraft fueling systems will be operated and used in accordance with any applicable vendor's or manufacturer's manuals or instructions, by competent and fully qualified personnel only. FBO shall not permit the aircraft fueling systems to be operated or used in violation of any applicable federal, state, or local statute, law, ordinance, rule, or regulation relating to the possession, use, or maintenance of the aircraft fueling systems.

FBO shall keep accurate and detailed records of all fuel sales. FBO shall keep all records necessary for government reporting and for calculating flowage fees due to the City. FBO is liable for and shall pay, on or before their due dates, all sales taxes, use taxes, personal property taxes, and any other taxes or governmental charges imposed on the aircraft fueling systems or in connection with the use or operation of the aircraft fueling systems.

FBO will pay City a fuel flowage fee of \$0.04 (4 cents) per gallon for av-gas, and \$0.08 (8 cents) per gallon for Jet-A fuel, for all gallons of fuel delivered to and accepted by FBO at the Airport. The City reserves the right to adjust the fuel flowage fee(s) at any time during the term of this Agreement by modifying the Airport Minimum Standards ~~for Fixed Base Operators~~; however, the fuel flowage fee(s) may not be increased by more than 25% during the term of this Agreement, nor shall fuel flowage fees charged to FBO be higher than any fuel flowage fees charged to any other FBO at the Airport.

FBO agrees to provide the City with a monthly report of fuel purchased during the month by the tenth (10th) day of the following month. Fuel flowage fees are to be paid by the FBO not later than the tenth (10th) day of the month. Monthly fuel flowage fees are to be based on all gallons of fuel delivered to and accepted by FBO. Payment shall be mailed to the City of Brenham, P.O.

Box 1059, Attn: Development Services Department, Brenham, Texas 77834-1059, or hand-delivered. Additionally, FBO agrees to provide the City with a quarterly fuel comparison report which provides fuel prices for at least three (3) additional area airports and evidence fuel prices at the Brenham Municipal Airport are within fair market value.

~~(U) In the event the existing FBO (Southern Flyer, Inc.) currently operating in the City-owned building located on the ramp ceases its fixed-base operator operations and vacates the City-owned building, and the FBO that is the subject of this Agreement has not completed construction of its building to operate as an FBO on the ramp, then the FBO that is the subject of this Agreement shall, pursuant to a separate lease agreement approved by the City and FBO, occupy the City-owned building and operate as an FBO on the ramp beginning no later than thirty (30) days after the existing FBO vacates the City-owned building on the ramp.~~

9. OBLIGATIONS OF CITY

(A) City hereby designates its City Manager or his designee as its official representative, with the full power to represent City in all dealings with FBO in connection with this Agreement.

(B) City covenants and agrees to permit FBO, its businesses, business invitees and other Airport users access to landing areas, runways, taxiways, terminal areas, automobile and aircraft parking areas, aprons, ramps, and the use of navigational aids, and the general use of all public airport facilities and improvements of a public nature which are now, or may hereafter be connected with or pertinent to the Airport.

(C) City covenants and agrees to operate Brenham Municipal Airport as a public airport and to provide FBO and airport users with the normal and customary services pertinent thereto.

~~(D) City covenants and agrees to a monthly meeting with the FBO to discuss any identified issues regarding airport safety or operations and any future airport needs including, but not limited to possible improvements or other development at the Brenham Municipal Airport.~~

10. INSURANCE AND INDEMNIFICATION

(A) Insurance shall be procured from a company authorized to do business in the state of Texas and satisfactory to City, and FBO shall provide evidence satisfactory to City that such coverage has been procured and is being maintained at all times during the term of this Agreement.

The proceeds of any such insurance paid on account of any of the perils as required to be insured as stated herein shall be used to defray the cost of repairing, restoring or reconstructing the improvements, as necessary, in the opinion of City.

Property insurance policies required by this paragraph shall contain waiver of subrogation endorsements and shall contain a provision that no change, cancellation or renewal of such insurance shall take effect until at least thirty (30) days after notice in writing has been delivered to City.

(B) FBO is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and City shall in no way be responsible. **FBO COVENANTS AND AGREES TO INDEMNIFY AND DEFEND, AT ITS EXPENSE, CITY, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR DAMAGES OR INJURY, INCLUDING DEATH, TO**

ANY AND ALL PERSONS OR PROPERTY, OF ANY CHARACTER, ARISING OUT OF OR INCIDENT TO THE USE, OCCUPANCY, OR MAINTENANCE OF THE PREMISES BY FBO, ITS OFFICERS, AGENTS, EMPLOYEES, PATRONS, CONTRACTORS, SUBCONTRACTORS, LICENSES OR INVITEES. FBO ASSUMES ALL LIABILITY AND RESPONSIBILITY OF CITY, ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FOR ANY AND ALL CLAIMS OR SUITS FOR DAMAGES OR INJURIES, INCLUDING DEATH, TO ANY AND ALL PERSONS OR PROPERTY, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED, IN CONNECTION WITH THE USE, OCCUPANCY OR MAINTENANCE OF THE PREMISES BY FBO, ITS OFFICERS, AGENTS, EMPLOYEES, PATRONS, CONTRACTORS, SUBCONTRACTORS, LICENSEES OR INVITEES, DESTRUCTION TO CITY'S PROPERTY ARISING OUT OF THE ACTS OR OMISSIONS OF FBO, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, OR PATRONS. FBO SHALL INDEMNIFY CITY AGAINST ANY AND ALL MECHANIC'S AND MATERIAL MEN'S LIENS OR ANY OTHER TYPE OF CLAIMS OR LIENS IMPOSED UPON THE DEMISED PREMISES ARISING AS A RESULT OF FBO'S CONDUCT OR INACTIVITY.

(C) FBO shall secure public liability and hangar keeper's liability insurance, in which City shall be named an additional insured. Such policies of insurance shall protect City and FBO against any and all liability for death, injury, loss or damage against which FBO has elsewhere in this agreement undertaken to save and hold the City, and its authorized agents, officers, representatives and employees harmless from and against any and all penalties, liability and annoyance of loss resulting from claims or court action of any nature and arising directly or indirectly out of the acts of FBO, its agents, servants, guests, employees, business visitors or others under this agreement or by result of any act or omission or such persons. Such policies shall be placed with a company authorized to do business in the State of Texas and shall have not less than the following limits:

1. \$1,000,000 Comprehensive General Liability
2. Medical Expense Limit (Any one Person) \$5,000
3. Personal & Advertising Injury Aggregate Limit \$1,000,000
4. Products/Completed Operations Aggregate Limit \$1,000,000
5. Pollution Liability -- \$1,000,000 per loss
6. Hangar Keeper's Liability -- \$1,000,000 (any one aircraft)/\$2,000,000 (any one occurrence)

FBO shall provide the above referenced coverage and also procure and maintain Worker's Compensation insurance, including employer's liability, in the amounts required by the State of Texas.

The amounts of said insurance shall not be deemed a limitation of FBO's agreement to save and hold City harmless, and if FBO becomes liable for an amount in excess of the insurance FBO will save and hold the City harmless as the holder thereof. FBO shall furnish to the City certificates of insurance for the insurance coverage required herein.

FBO shall maintain the insurance with an insurance company authorized to do business in the State of Texas and approved by City. FBO shall furnish City with a certificate from the insurance carrier showing the insurance to be in full force during the entire term of this Agreement or shall deposit with the City copies of the policies.

The policies or certificates shall contain a provision that written notice of cancellation or of any material change in the policy by the insurer shall be delivered to City thirty (30) days in advance of the effective date of the cancellation or change.

11. ASSIGNMENT OR SALE

The FBO may assign, sell, or transfer this Agreement or any right hereunder to any person, corporation, association, or any other entity with the written consent of the City. Any assignment, sale, or transfer not consented to in writing by the City shall be null and void, and shall be grounds, at the option of the City, for the City to immediately terminate this Agreement.

12. DEFAULT AND TERMINATION

(A) This Agreement may be terminated at any time by the City if FBO fails to abide by the terms and conditions expressed herein and any exhibits hereto, including but not limited to the Airport Minimum Standards ~~for Fixed-Base Operators~~[adopted July 2, 2020, as may be amended from time to time](#). This Agreement may also be terminated at any time by mutual agreement and consent of both parties in writing. Should the FBO be declared bankrupt, incompetent, or ceases operations, this Agreement shall immediately terminate and shall not be considered as part of the FBO's estate and shall not become an asset of any appointed or assigned guardian, trustee, or receiver. In the event FBO fails to make timely payments of all taxes or fees, fails to provide proof of required insurance, uses the Airport property or permits the Airport property to be used for any illegal or unauthorized purpose, files bankruptcy, abandons or leaves the property vacant or unoccupied for thirty (30) consecutive days, or violates any of the terms and conditions of this Agreement, the City has the right to terminate this Agreement and retake possession of any Airport property used, occupied, or under the control of the FBO.

(B) If either party defaults in the performance of any obligation or covenant in this Agreement, the non-defaulting party may enforce the performance of this Agreement in any manner provided by law. This Agreement may be terminated at the non-defaulting party's discretion if such default continues for a period of sixty (60) days after written notification of such default and of the intention of the non-defaulting party to declare this Agreement terminated, provided, however, if the default is not reasonably capable of being fully cured within sixty (60) days, the defaulting party shall be allowed the needed additional time to cure the default if: (i) the defaulting party begins the cure within the sixty (60) day period; and (ii) diligently pursues the cure thereafter until it is fully cured. If the defaulting party has not substantially cured the default within the time period referenced above, this Agreement may be terminated by the non-defaulting party, and the non-defaulting party may pursue any other remedies available in law or equity.

(C) In the event of a breach by the FBO of any of the provisions of this Agreement in any manner that, in the sole opinion of the City, presents a danger to the City's equipment, property, or surrounding property, the City shall have the right to terminate this Agreement immediately.

(D) Upon the termination of this Agreement by expiration of a term not renewed, mutual agreement, or any other reason for termination, the FBO shall peaceably vacate the premises and any other property entrusted to the FBO shall be returned to the City in the same condition as it was when issued, normal wear excluded. Should FBO be in default of any monies owed to the City, the City may take possession of any personal property seized, subject to the disposition of a court of competent jurisdiction. The FBO shall be liable for any and all expenses incurred by the City in such action.

13. SUSPENSION OF AGREEMENT

(A) During the time of war or national emergency, City shall have the right to lease the landing area or any part of the airport to the United States government for military use. If any such lease is executed, any provisions of this Agreement which are inconsistent with the provisions of the lease to the government shall be suspended. Nothing contained in this Agreement shall prevent FBO from pursuing any rights which FBO may have for reimbursement from the United States government for the taking of any right conferred under this Agreement or for any loss or damage caused to FBO by the United States government.

14. MISCELLANEOUS

(A) This Agreement embraces the entire Fixed Base Operator Agreement between the parties hereto and no statement, remark, representation, agreement, or understanding, either oral or written, not contained herein shall be recognized or enforced, except that this Agreement may be modified by written addendum hereto attached and signed by all of the parties. The parties expressly agree and acknowledge that they have not been induced to enter into this Agreement by any representation or statements, oral or written, not expressly contained or expressly incorporated by reference in this Agreement.

(B) For the purposes of this Agreement, the singular number shall include the plural and the masculine shall include the feminine and vice-versa, whenever the context so admits or requires.

(C) The captions and headings are inserted solely for the convenience of reference and are not part of or intended to govern, limit, or aid in the construction of any provision hereof.

(D) The parties to this Agreement hereby acknowledge and agree that they are the principals to the Agreement and have the power, right and authority to enter into this Agreement and are not acting as an agent for the benefit of any third party.

(E) This Agreement shall be governed by the laws of the State of Texas and construed thereunder, and exclusive venue of any action brought under this Agreement shall be in Washington County, Texas.

(F) If any section, paragraph, sentence, or phrase entered in this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, such illegality, invalidity, or unenforceability shall not affect the remainder of this Agreement which can be given effect without the illegal, invalid, or unenforceable section, paragraph, sentence or phrase and to this end, the provisions of this Agreement are declared to be severable.

(G) All notices regarding this Agreement must be sent to each party at the following address:

City:

City of Brenham
Att: City Manager
P.O. Box 1059
Brenham, Texas 77834-1059

FBO:

Aviators Plus, LLC
2901 Aviation Way
Brenham, TX 77833

Any written notice under this Agreement shall become effective as of the date of mailing by registered or certified mail and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may hereafter be specified by notice in writing.

(H) The waiver by either party of a breach of this Agreement shall not constitute a continuing waiver of such breach or of a subsequent breach of the same or a different provision, unless so stipulated by the party not in breach of this Agreement. The payment or acceptance of fees, compensation or charges for any period after breach shall not be deemed a waiver of any right or acceptance of defective performance.

(I) Each party shall operate under this Agreement as an independent contractor, and not as an agent, representative or employee of the other. Subject to the terms of this Agreement, each party shall have the right to control the details of its performance hereunder.

(J) This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respects to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matter. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party or anyone acting on behalf of any parties which are not embodied herein and that no other agreements, statement, or promise not contained in this Agreement shall be valid or binding.

No modification concerning this instrument shall be of any force or effect, excepting a subsequent amendment in writing signed by the parties. No official, representative, agent or employee of the City, has any authority to modify this Agreement except pursuant to express written authority to do so granted by the City Council of the City of Brenham, Texas.

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

(L) The parties acknowledge that each party and, if it so chooses, its counsel, have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party must not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

(M) Each party agrees that both parties shall have the right to audit the financial and business records of the other party that relate to the subject matter of this Agreement ("Records") at any time during the term of this Agreement, and for three (3) years thereafter, in order to determine compliance with this Agreement. Throughout the term of this Agreement and for three (3) years thereafter, each party shall make all Records available to the other party as it relates to the subject matter of this Agreement.

EXECUTED this the _____ day of _____, 20~~21~~¹⁹.

CITY OF BRENHAM

FBO - FIXED BASE OPERATOR

Hon. Milton Y. Tate, Jr., Mayor
City of Brenham, Texas

FBO: _____, LLC
By: Brent Nedbalek
Title:

ATTEST:

ATTEST:

Jeana Bellinger, TRMC, CMC, City Secretary
City of Brenham, Texas

By:
Title:

CITY OF BRENHAM
CALLED 31.125 ACRES
VOLUME 251, PAGE 559
(DRWCT)

SCALE: 1" = 40'

CITY OF BRENHAM
CALLED 46.622 ACRES
VOLUME 251, PAGE 470
(DRWCT)

POINT	NORTHING	EASTING
1	10,063,532.658	3,547,884.407
2	10,063,532.893	3,547,941.187
3	10,063,532.997	3,547,934.983
4	10,063,521.196	3,547,872.731
5	10,063,201.352	3,547,873.494
6	10,063,179.477	3,547,843.260
7	10,063,170.861	3,547,825.310
8	10,063,165.900	3,547,803.586
9	10,063,329.369	3,547,772.684
10	10,063,329.148	3,547,771.515
11	10,063,475.049	3,547,743.880
12	10,063,491.339	3,547,829.882
13	10,063,521.266	3,547,824.213

NUM	BEARING	DISTANCE
L1	S 53°43'00" W	20.10'
L2	S 72°27'17" W	23.34'
L3	S 66°40'08" W	31.84'
L4	S 54°06'53" W	37.32'
L5	S 64°21'33" W	19.91'
L6	S 77°08'11" W	22.28'
L7	S 79°16'29" W	1.19'

1. THE BEARINGS AND COORDINATES SHOWN HEREON ARE RELATIVE TO THE TEXAS STATE PLANE GRID SYSTEM, NAD-83 [2011], CENTRAL ZONE 4203. CONVERGENCE ANGLE AT N: 10063157.87" - E: 3547344.52" IS 2"-02"-23.7", COMBINED SCALE FACTOR IS 0.99996823, U.S. SURVEY FEET, UTILIZING NATIONAL GEODETIC SURVEY (NGS) MONUMENT BM1073 LOCATED ON THE AIRPORT PROPERTY. DISTANCES SHOWN HEREON ARE GROUND DISTANCES.

2. NO PART OF THE SUBJECT PROPERTY LIES WITHIN THE SPECIAL FLOOD HAZARD AREA ACCORDING TO THE FLOOD INSURANCE RATE MAP (FIRM) AS COMPILED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, NATIONAL FLOOD INSURANCE PROGRAM, MAP NUMBER 48477C0325C, EFFECTIVE DATE AUGUST 16, 2011, WASHINGTON COUNTY, TEXAS.

3.  - DENOTES A 5/8" IRON ROD SET WITH ID. CAP STAMPED "HODDE & HODDE LAND SURVEYING" UNLESS OTHERWISE NOTED ON THE PLAT.

4. A CURRENT TITLE COMMITMENT OR REPORT WAS NOT AVAILABLE OR PROVIDED TO THE UNDERSIGNED SURVEYOR AS OF THE DATE OF THIS SURVEY AND THE UNDERSIGNED SURVEYOR DID NOT ABSTRACT THE SUBJECT PROPERTY.

5. (DRWCT) DENOTES DEED RECORDS OF WASHINGTON COUNTY, TEXAS.

W.O. NO. 7473 (AVIATORSPLUS7473.DWG/MVIEW)
REF: AVIATORSPLUS7473.SURVEY

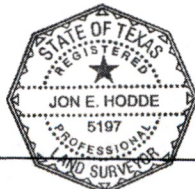
Hodde & Hodde Land Surveying, Inc.
Professional Land Surveying
613 E. Blue Bell Road • Brenham, Texas 77833
979-836-5681 • 979-836-5683 (Fax)
www.hoddesurveying.com

SHOWING A SURVEY OF 1.052 ACRES OF LAND (45,846 SQ. FT.) LEASE AREA, LYING AND BEING SITUATED IN WASHINGTON COUNTY, TEXAS, PART OF THE JOHN COLE SURVEY, A-32, BEING PART OF THE SAME LAND DESCRIBED AS 46.622 ACRES IN THE DEED FROM RAYMOND JESKE, ET UX TO THE CITY OF BRENHAM, DATED MARCH 6, 1964, AS RECORDED IN VOLUME 251, PAGE 470, IN THE DEED RECORDS OF WASHINGTON COUNTY, TEXAS.

THE STATE OF TEXAS
COUNTY OF WASHINGTON

I, JON E. HODDE, REGISTERED PROFESSIONAL LAND SURVEYOR, NO. 5197 OF THE STATE OF TEXAS, DO HEREBY CERTIFY THAT THIS MAP SHOWING A SURVEY OF 1.052 ACRES OF LAND (45,846 SQ. FT.) LEASE AREA, IS TRUE AND CORRECT IN ACCORDANCE WITH AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY PERSONAL DIRECTION AND SUPERVISION.

DATED THIS THE 17TH DAY OF JANUARY, 2019, A.D.



COPYRIGHT © 2019
HODDE & HODDE
LAND SURVEYING, INC.
ALL RIGHTS RESERVED.

JON E. HODDE
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 5197
HODDE & HODDE LAND SURVEYING, INC.
613 EAST BLUE BELL ROAD
BRENNHAM, TEXAS 77833
(979)-836-5681
TEXAS FIRM REGISTRATION NO. 10018800

**CITY OF BRENHAM
FIXED BASE OPERATOR AGREEMENT**

STATE OF TEXAS }
 }
COUNTY OF WASHINGTON }

This Fixed Base Operator Agreement, hereinafter referred to as “Agreement,” is entered into this _____ day of _____, 2021 between the City of Brenham, a Texas home-rule municipal corporation, hereinafter referred to as “City” and as the owner of the Brenham Municipal Airport, hereinafter referred to as “Airport” and Aviators Plus, LLC, a Texas limited liability company, hereinafter referred to as “FBO,” and both City and FBO covenant and agree as follows:

WHEREAS, City deems it advantageous to itself and to its operation of the Brenham Municipal Airport to grant unto FBO certain privileges, rights, uses and interests, as herein set out; and

WHEREAS, City and FBO are committed to improving the Brenham Municipal Airport and promoting economic development at the Brenham Municipal Airport, in the City of Brenham, and in the Washington County area; and

WHEREAS, City and FBO desire to enter into a contractual agreement allowing the FBO to operate as a fixed base operator (“FBO”) at the Brenham Municipal Airport;

NOW THEREFORE, in consideration of the terms and conditions listed herein, City and FBO agree as follows:

1. TERM

The initial term of this Agreement shall be for a period of ten (10) years, commencing on the ____ day of _____, 2021 and expiring on the ____ day of _____, 2031. Unless otherwise terminated as provided herein, this Agreement shall automatically renew for one (1) subsequent five (5) year renewal term unless either party sends the other party written notice of its intention to not renew this Agreement. Said written notice of intent to not renew this Agreement shall be sent at least sixty (60) days prior to the expiration of the initial term of this Agreement.

2. PREMISES

The City and FBO have entered into a separate Lease Agreement effective on January 1, 2019 regarding the real property and improvements located at 2901 Aviation Way, Brenham Municipal Airport, with respect to which the FBO shall have the right to engage in commercial aviation activities and fixed base operations during such time as this FBO Agreement remains in effect, said premises being shown in Exhibit “A,” attached hereto and incorporated herein for all purposes, hereinafter referred to as the “Property.” The City and FBO entered in to an additional lease agreement on May 7, 2020 for the FBO to construct a Fuel Farm Operation on 0.0177 acres of land for the public sale of av-gas. Subsequently, the Fuel Farm lease agreement was further amended on September 3, 2020 to allow for the sale of Jet-A on the original 0.0177 acres of land. The City and FBO further anticipate entering into an additional lease agreement(s) approved by the City and FBO for the FBO to construct additional improvements at a location approved by the City from

which location the FBO may operate its business on the ramp during such time as this FBO Agreement remains in effect.

Any additions or improvements to the Property may not be made unless the City expressly approves the additions or improvements in writing. Any additions or improvements shall be made solely at the expense of FBO and, unless the City expressly agrees otherwise in writing, and such additions and improvements to existing structures or facilities shall be subject to all terms and conditions of this instrument. All improvements to the Property must be made in compliance with the Airport Master Plan and Airport Layout Plan applicable to the Brenham Municipal Airport. In making improvements to the Property, FBO shall be responsible for preparing, obtaining approval of (if needed), implementing and complying with any Stormwater Pollution Prevention Plan requirements made applicable by federal, state or local laws or regulations.

FBO shall timely pay the City all fees and charges as set forth in other provisions of this Agreement.

For the term of the Agreement, FBO will be responsible for payment of all costs and charges for any utilities servicing the Property. FBO shall assume and pay for all costs or charges associated with any utility facilities or services that are provided to or extended to the Property after the date of execution of this Agreement.

FBO agrees that except as may be otherwise provided in other agreements entered into between FBO and City, it will not engage in nor permit the engagement by any persons on the Property in any business other than that which is expressly authorized herein.

3. GENERAL PRIVILEGES, USES AND RIGHTS

City grants to FBO the following general privileges, uses and rights, in common with others, all of which shall be subject to the terms, conditions and covenants set forth and all of which shall be nonexclusive on the Airport. Notwithstanding anything herein contained that may be or appears to be contrary, it is expressly understood and agreed that the rights granted under this Agreement are non-exclusive and the City herein reserves the right to grant similar privileges to another operator or other operators on other parts of the Airport, and nothing contained herein is to be construed as granting to the FBO an exclusive right as defined in Section 308 (a) of the Federal Aviation Act of 1958, or any successor law, as may be amended, or any other applicable regulation.

(A) The use in common with the public generally of all public airport facilities and improvements that are now or may afterwards be connected with or appurtenant to the airport, except as herein provided, to be used by FBO for commercial or noncommercial aviation activities and fixed base operations, and all activities in connection with or, incidental to the business or operation, as herein defined, so long as any use of the public airport facilities by FBO does not interfere with other operations at the airport.

For the purpose of this Agreement, “public airport facilities” shall include all necessary landing area appurtenances, including, but not limited to, approach areas, runways, taxiways, public ramp and aprons, public automobile parking areas, public roadways, public sidewalks, navigational and navigational aids, lighting facilities, public terminal facilities or other public facilities appurtenant to the airport.

(B) The right of ingress to and egress from the premises over and across public roadways serving the airport for FBO, its agents, employees, servants, patrons, invitees, suppliers of service and furnishers of material.

(C) The rights above shall be subject to the City’s ordinances, rules and regulations as now or may afterwards have application at the Airport.

4. SPECIFIC PRIVILEGES, USES AND RIGHTS

(A) In addition to the general privileges, uses and rights above described and without limiting the generality of them, City grants to FBO the right to engage in commercial aviation activities and fixed base operations, as defined below, subject to the conditions and covenants set out herein. Further, FBO shall comply with the “Minimum Standards” as approved and adopted by the City Council on July 2, 2020. FBO covenants and agrees to observe and comply with all provisions in the City’s Minimum Standards, as may be amended from time to time, and with all rules and regulations of City which may hereinafter be promulgated from time to time governing safe conduct on and operations at the Airport and the safe use of its facilities.

“Commercial aviation activities and fixed base Operations” are defined as those activities which involve the sale of aviation services for profit to the general public and other entities. The aviation services shall include: fuel sales; aircraft maintenance and restoration; aircraft sales and brokerage, and aircraft rentals; airframe, engine and accessory maintenance and repair services; sales of aircraft parts, supplies and accessories; flight instruction; pilot supply sales; automobile rentals; and other services as approved by the City Manager in writing.

(B) FBO shall have the right to build or construct any new aircraft storage or repair facilities or any other type buildings or structures normally found on public use airports, at FBO's expense, subject to the express written approval of the City, provided that the location of such facilities is in agreement with the Airport Master Plan and Airport Layout Plan for the Brenham Municipal Airport, and is approved by the City through execution of a separate ground lease with FBO if said buildings or structures are not to be located on the Property.

(C) FBO is hereby granted the right to agree with users of the Airport to perform transient tie downs or blocking for operators flying into the Brenham Municipal Airport and collect fees for such service. Additionally, the FBO is hereby permitted to assess a service fee in exchange for services rendered for aircraft exceeding 12,000 pounds MGTOW (Maximum Gross Take Off Weight) without a minimum fuel purchase. Service fees, as outlined below, shall be limited to one fee per landing and shall include, ramp parking, extended stays, quick turns, towing and any additional services as approved in writing by the City of Brenham. FBO agrees that in return for such privilege Lessee shall sweep, clean and keep ramp areas presentable at all times without charge to the City. All fees may be collected by the FBO and the FBO shall provide a monthly report to the City of all fees assessed. Prior to the first tie-down or service fee charged, a separate standard operating procedure (SOP) document detailing the services offered for charge shall be provided to the City by the FBO. Except upon further contractual authorization from the City, FBO shall make no charge to any aircraft for using the ramp.

- Light Turbine Aircraft (>12,000 lbs. MGTOW) \$ 50.00 or waived with a minimum fuel purchase of 100 gallons.

- Mid-Size Cabin Turbine Aircraft (12,500 – 30,000 lbs. MGTOW)..... \$ 85.00 or waived with a minimum fuel purchase of 150 gallons.
- Large Cabin Turbine Aircraft (> 30,000 lbs. MGTOW) \$ 150.00 or waived with a minimum fuel purchase of 250 gallons.

5. CONDITIONS OF GRANTING RIGHTS CONTAINED HEREIN

The granting of the rights contained herein is conditioned upon the following covenants:

(A) That the right to use the public airport facilities as well as all of FBO's rights shall be exercised subject to and in accordance with the laws of the United States of America, the State of Texas, and the City of Brenham; the rules and regulations promulgated by their authority with reference to aviation and air navigation; and all applicable rules and regulations and ordinances of City now in force or afterwards ordained or promulgated.

(B) That FBO will not, on the grounds of religion, race, color, national origin, disability, or gender discriminate or permit discrimination against any person or group of persons in any manner prohibited by state or federal law or regulation.

(C) City reserves the right to enter upon the Property at any reasonable time for the purpose of making any inspection it may deem expedient to the proper enforcement of any of the covenants or conditions of this Agreement.

(D) City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent FBO from erecting, or permitting to be erected, any building or other structure on the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft.

(E) During any period when the Airport shall be closed by any lawful authority restricting the use of the Airport in such a manner as to interfere with the use of the same by FBO for its business operations, the period of such closure shall be added to the term of this Agreement, at FBO's option, so as to extend and postpone the expiration thereof. There shall be no obligation on the City to furnish an auxiliary field in case free use of the Airport is curtailed to the FBO.

(F) City reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or views of FBO, and without interference or hindrance.

(G) All unpaid monies due to the City hereunder shall bear interest of one and one-half percent per month if same is not paid and received by City when due. FBO shall pay and discharge all costs, expenses, including attorney's fees, incurred or expended by City in collection of said delinquent amounts due.

(H) City reserves the right to review all rental rates, fuel charges, tie down fees and charges for other services to determine whether the fees are unjustly discriminatory, excessive, or unreasonable and/or if the rates, charges and fees are comparable to rates, charges and fees for like facilities or services at other airports. FBO agrees to submit a schedule of its rates, charges and fees to the City for review sixty (60) days prior to their implementation, except that fuel charges shall not be subject

to the 60-day review period. Fuel charges will be expeditiously reviewed and approved/disapproved by the City each time an increase is proposed. Additionally, FBO agrees to provide the City with a quarterly fuel comparison report which provides fuel prices for at least three (3) additional area public airports and evidence fuel prices charged by FBO at the Brenham Municipal Airport are reasonable and not unjustly discriminatory. City shall provide a response concerning approval/disapproval regarding all other non-fuel fee schedules within forty-five (45) days from date of City's receipt of the proposed fee schedule.

6. OPERATION AS A PUBLIC AIRPORT

City covenants and agrees that during the term of this Agreement it will operate and maintain the Airport and its public airport facilities, as defined above, as a public airport consistent with and pursuant to the assurances given by City to the United States Government through applicable federal and state laws and regulations.

7. CONDITIONS OF PREMISES

Upon execution of this Agreement, City shall assume no further responsibility or liability as to the condition of all the premises allowed to be used and occupied by FBO.

8. OBLIGATIONS OF FBO

(A) FBO shall furnish from its leased Property first class, full service operations serving the needs of the users of the Airport and shall, at all times, conduct its business and activities in a safe and professional manner consistent with all Federal Aviation Administration (FAA) standards and applicable laws and regulations. FBO shall conduct business on the Airport in such a manner as to maintain a friendly and cooperative, though competitive, relationship with airport operators engaged in similar business, airport patrons, and the City of Brenham. FBO will not engage in open public disputes, disagreements, or conflicts, in-person or online, which would tend to deteriorate the quality of service of either party involved, or which would be incompatible with the best interest of the public or the Airport, or would slander, defame or reflect negatively on the City of Brenham in any way. FBO shall select and appoint a manager for its operation at the Airport. Such manager shall be highly qualified and experienced, and be vested with full power and authority to act in the name of the FBO with respect to the method, manner, and conduct of the services to be performed hereunder. Such manager shall be available at the Airport during regular business hours. During the manager's absence, a duly authorized and qualified subordinate shall be in charge of the FBO and on Premises at the Airport. FBO shall provide, at its sole expense, a sufficient number of, and properly trained, employees who are pleasant, neat, clean, and courteous in order to effectively and efficiently provide the commercial aeronautical activities as herein authorized. Employees are to wear appropriate uniforms and badges to indicate the fact and nature of their employment. FBO shall control the conduct, demeanor, and appearance of its employees and representatives. Such employees shall be trained and possess technical qualifications and hold certificates of qualifications, as may be required for such employee to carry out assigned duties. All aircraft Fuel Handling personnel are to be trained in the safe and proper handling, dispensing, and storage of Aircraft Fuel. Acceptable training shall be an FAA approved safety training course in accordance with FAA Advisory Circular 150/5230-4B (and any related addenda and/or errata sheets issued by the FAA) and the National Air Transportation Association (NATA) "Safety First" Program or equivalent training program acceptable to the City. All training records and qualifications shall be provided to the City upon request in accordance with 14 CFR Part 139.321.

(B) FBO shall be continually open for business and provide services for twelve (12) hours a day, seven days a week, except as when necessitated by unforeseen business or emergency conditions. The FBO Operator shall be allowed to vary the hours of operation to adjust for winter, summer, and holidays while still providing within a reasonable period of time (not greater than one hour) staffing on a call-back basis to address after-hour requests for service from customers. FBO shall notify City in writing 72 hours in advance of varied operating hours. When open for business FBO shall provide aircraft line service including but not limited to the sale and into-plane delivery of recognized brands of aviation fuels and other petroleum products. FBO shall provide and maintain an adequate supply at all times of av-gas and Jet-A fuel for sale to airport users.

(C) FBO shall procure and keep in force during the term of the Agreement all necessary licenses and permits as are required by law for all the operations conducted by FBO on Property.

(D) FBO shall, at its sole cost and expense, maintain all the buildings, structures on the Property in compliance with this Agreement, and the improvements and appurtenances in a presentable condition consistent with good business practice in a safe, neat, and good physical condition. FBO shall promptly repair all damages to the premises and the improvements thereon. FBO shall be responsible for all structural maintenance and repair of buildings and structures on the leased Property. FBO shall further be responsible for general maintenance of the buildings, structures, and Property, which shall include without limitation duties such as cleaning floors, cleaning windows, painting interior/exterior of hangar and other improvements, replacement of electric light bulbs and similar maintenance activities.

(E) FBO shall host, fully participate in, and assist in coordinating a minimum of two (2) airport promotions annually such as fly-ins, airshows, pancake breakfasts, etc. as well as be a resource for community events.

(F) FBO shall provide at least one (1) clean courtesy car in excellent condition with air conditioning.

(G) FBO shall: 1) Procure any necessary license or permit to operate the UNICOM radio system; 2) Operate and maintain the UNICOM radio system at the Airport during the effective period of this Agreement; and 3) Be responsible for issuing any NOTAMs related to the Brenham Municipal Airport. The City will determine the UNICOM operating frequency and location of the UNICOM equipment in consultation with the FBO.

(H) FBO further agrees to keep active written record of private parties, airport patrons and customers interested in occupying the City owned T-Hangars. FBO shall provide written record to the City at the City's request.

(I) FBO agrees that any commercial aviation operations on the premises shall be conducted in a legal, proper, efficient and courteous manner. FBO agrees to promote aviation activity on the airport. FBO agrees to maintain, operate and provide a pilots' lounge and public restrooms on the Property.

(J) FBO further agrees: 1) that all service shall be furnished on a reasonable, and not unjustly discriminatory, basis to all users thereof; and 2) to charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the FBO shall be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

(K) FBO shall provide a complete and proper arrangement for the adequate sanitary handling and disposal away from the Airport of all trash, garbage, and other refuse caused as a result of the operation of its business. FBO shall provide and use suitable covered receptacles for all such garbage, trash and other refuse. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe, manner on or about the premises shall not be permitted. FBO shall also provide and maintain in proper condition readily accessible fire extinguishers in a number and of a type required in accordance with applicable fire codes.

(L) FBO shall not maintain upon the outside of any improvements or elsewhere on the Property any billboards, however, FBO may maintain on the outside of buildings its name and advertising on signs, the size, location and design of which shall be subject to the prior written approval of the City Manager or his designee.

(M) Nothing here shall be deemed to relieve FBO and its patrons, invitees, and others from such field use charges, including fuel flowage fees, as are levied generally by City directly or indirectly at the Airport.

(N) FBO shall comply with any and all applicable Environmental Laws and Permits (whether obtained by FBO or the City) related to FBO's occupancy and use of the Airport. Without limiting the generality of the foregoing, FBO shall comply with the requirements as set forth below:

1. Duty to Notify. In the event of any release or discharge, or threatened release or discharge of Hazardous Materials at, on, under, or about the Airport, or any portion thereof, that is caused by FBO, its agents, invitees, servants or employees, and which is required by applicable Environmental Laws, Environmental Permits, or Airport rules and regulations to be reported by FBO, whether as a result of negligent conduct or otherwise, or in the event any written claim, demand, complaint or action is made or taken against FBO that pertains to FBO's release, failure to comply with any Environmental Laws or Environmental Permits at the Airport, FBO shall notify the City immediately upon such release and follow up within 24 hours of all known facts pertinent to such release or discharge, or threatened release or discharge, claim, demand, complaint, action, or notice, and shall provide the City with copies of any and all such claims, demands, complaints, notices, or actions so made. If FBO is required, by any Environmental Laws, Environmental Permits, or governmental agency, to file any written notice or report of a release or discharge, or threatened release or discharge at, on, under or about the Airport, or any part thereof, FBO shall simultaneously provide a copy of such notice or report to the City.

2. Remediation. FBO shall undertake all necessary steps required under applicable Environmental Laws and Environmental Permits, or as directed by a governmental agency, to remedy and remove any Hazardous Material or environmental condition or damage to the extent caused by, or resulting from, the activities, conduct or presence of FBO, its agents, invitees, servants or employees, whether resulting from negligent conduct or otherwise ("Remediation Work"). Such Remediation Work shall be performed at FBO's expense.

Except in the event of an emergency, such Remediation Work shall be performed after FBO submits to the City a written plan for completing such Remediation Work and receives the prior written approval from the City, which approval shall not be unreasonably withheld or delayed. Specific cleanup levels for any Remediation Work by FBO shall be designed to return the property to conditions suitable for redevelopment by the City and

meet and satisfy the requirements of all applicable Environmental Laws and Environmental Permits, as determined by the governmental agency responsible for enforcing Environmental Laws or Environmental Permits. Neither an ongoing Remediation Work, including any testing or monitoring, shall either unreasonably or materially impair or interfere with the use of the Airport as an airport. The City shall have the right to conduct a reasonable review and inspect all such Remediation Work at any time using consultants and representatives of its choice. FBO's obligations hereunder shall survive the expiration or early termination of this Agreement.

3. Definitions. For purposes of this Section, the following words and phrases shall have the following meaning:

i. "Environmental Laws" means all applicable federal, state, and local statutes, ordinances, regulations, rules, laws, permits, permit conditions, and orders relating to the generation, use, storage, transportation, or disposal of Hazardous Materials.

ii. "Environmental Permits" means any and all permits, licenses, approvals, authorizations, consents, or registrations required by Environmental Laws, whether federal, state or local, which pertain to the production, use, treatment, generation, transportation, processing, handling, disposal, or storage of Hazardous Materials.

iii. "Hazardous Materials" means friable asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs), petroleum, or crude oil or any fraction thereof, natural gas, source material, special nuclear material, and byproduct materials regulated under Environmental Laws, pesticides regulated under Environmental Laws, and any hazardous waste, toxic, or dangerous substance or related material, including any material defined or treated as a hazardous substance, hazardous waste, toxic substance, or contaminant (or comparable term) under any of the Environmental Laws

(O) FBO shall have available the equipment necessary to safely and efficiently move aircraft frequenting the airport.

(P) FBO shall not use or allow property under its control or that of the Airport to be used for any illegal or unauthorized purpose and shall notify the City of any suspected illegal activity at the Airport. FBO, its officers, directors, employees, agents, and contractors shall comply with the following, the same may be amended from time to time: (i) all applicable federal, state, and local laws and ordinances, including directives of the FAA and TSA applicable to FBO's presence and operations at the Airport; and (ii) the Airport Rules and Regulations. Notwithstanding anything to the contrary, references in this Agreement to a law or regulation shall be deemed to be a reference to: (i) such law or regulation as it may be amended from time to time, and (ii) all ordinances, rules, executive orders, policies, and instructions pertaining, and lawfully promulgated pursuant, to such law or regulation as they now exist or may be amended from time to time.

(Q) FBO shall, at its own expense and at all times during their term of this Agreement, pay all lawful taxes and assessments levied against the Property as well as all taxes and assessments levied against the personal property used by FBO in its operation on the Property. None of the terms, covenants or conditions of this Agreement shall be construed as a release of waiver on the part of City, of the right to assess, levy or collect any license, personal, intangible, or other tax which shall be lawfully imposed on the business or property of FBO

(R) FBO shall use the Property only for uses and purposes hereinbefore described.

(S) FBO shall permit City free access to the Property at all reasonable times for the purposes of examining the same and seeing that all of the obligations of FBO hereunder are being met and

performed, and to permit City to enter any building or structure on the Premises at any time in the event of an emergency (the determination of an emergency being at the sole discretion of City).

(T) FBO shall be solely responsible for securing all federal, state, county or municipal approvals of an environmental or other nature required for any construction or alteration of leasehold improvements on the Property, or for any of FBO's operations thereon; provided that City will join in the execution of any such permits or other applications if so required by applicable law.

(U) While engaged in selling fuel at the Airport, FBO agrees to provide, maintain and operate a Jet-A Fuel and an av-gas truck or trailer system of adequate size and in good condition for safe and efficient operation. FBO must use the aircraft fueling systems in a careful and proper manner. FBO agrees that the aircraft fueling systems will be operated and used in accordance with any applicable vendor's or manufacturer's manuals or instructions, by competent and fully qualified personnel only. FBO shall not permit the aircraft fueling systems to be operated or used in violation of any applicable federal, state, or local statute, law, ordinance, rule, or regulation relating to the possession, use, or maintenance of the aircraft fueling systems.

FBO shall keep accurate and detailed records of all fuel sales. FBO shall keep all records necessary for government reporting and for calculating flowage fees due to the City. FBO is liable for and shall pay, on or before their due dates, all sales taxes, use taxes, personal property taxes, and any other taxes or governmental charges imposed on the aircraft fueling systems or in connection with the use or operation of the aircraft fueling systems.

FBO will pay City a fuel flowage fee of \$0.04 (4 cents) per gallon for av-gas, and \$0.08 (8 cents) per gallon for Jet-A fuel, for all gallons of fuel delivered to and accepted by FBO at the Airport. The City reserves the right to adjust the fuel flowage fee(s) at any time during the term of this Agreement by modifying the Airport Minimum Standards; however, the fuel flowage fee(s) may not be increased by more than 25% during the term of this Agreement, nor shall fuel flowage fees charged to FBO be higher than any fuel flowage fees charged to any other FBO at the Airport.

FBO agrees to provide the City with a monthly report of fuel purchased during the month by the tenth (10th) day of the following month. Fuel flowage fees are to be paid by the FBO not later than the tenth (10th) day of the month. Monthly fuel flowage fees are to be based on all gallons of fuel delivered to and accepted by FBO. Payment shall be mailed to the City of Brenham, P.O. Box 1059, Attn: Development Services Department, Brenham, Texas 77834-1059, or hand-delivered.

9. OBLIGATIONS OF CITY

(A) City hereby designates its City Manager or his designee as its official representative, with the full power to represent City in all dealings with FBO in connection with this Agreement.

(B) City covenants and agrees to permit FBO, its businesses, business invitees and other Airport users access to landing areas, runways, taxiways, terminal areas, automobile and aircraft parking areas, aprons, ramps, and the use of navigational aids, and the general use of all public airport facilities and improvements of a public nature which are now, or may hereafter be connected with or pertinent to the Airport.

- (C) City covenants and agrees to operate Brenham Municipal Airport as a public airport and to provide FBO and airport users with the normal and customary services pertinent thereto.
- (D) City covenants and agrees to a monthly meeting with the FBO to discuss any identified issues regarding airport safety or operations and any future airport needs including, but not limited to possible improvements or other development at the Brenham Municipal Airport.

10. INSURANCE AND INDEMNIFICATION

- (A) Insurance shall be procured from a company authorized to do business in the state of Texas and satisfactory to City, and FBO shall provide evidence satisfactory to City that such coverage has been procured and is being maintained at all times during the term of this Agreement.

The proceeds of any such insurance paid on account of any of the perils as required to be insured as stated herein shall be used to defray the cost of repairing, restoring or reconstructing the improvements, as necessary, in the opinion of City.

Property insurance policies required by this paragraph shall contain waiver of subrogation endorsements and shall contain a provision that no change, cancellation or renewal of such insurance shall take effect until at least thirty (30) days after notice in writing has been delivered to City.

- (B) FBO is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and City shall in no way be responsible. **FBO COVENANTS AND AGREES TO INDEMNIFY AND DEFEND, AT ITS EXPENSE, CITY, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR DAMAGES OR INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS OR PROPERTY, OF ANY CHARACTER, ARISING OUT OF OR INCIDENT TO THE USE, OCCUPANCY, OR MAINTENANCE OF THE PREMISES BY FBO, ITS OFFICERS, AGENTS, EMPLOYEES, PATRONS, CONTRACTORS, SUBCONTRACTORS, LICENSES OR INVITEES. FBO ASSUMES ALL LIABILITY AND RESPONSIBILITY OF CITY, ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FOR ANY AND ALL CLAIMS OR SUITS FOR DAMAGES OR INJURIES, INCLUDING DEATH, TO ANY AND ALL PERSONS OR PROPERTY, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED, IN CONNECTION WITH THE USE, OCCUPANCY OR MAINTENANCE OF THE PREMISES BY FBO, ITS OFFICERS, AGENTS, EMPLOYEES, PATRONS, CONTRACTORS, SUBCONTRACTORS, LICENSEES OR INVITEES, DESTRUCTION TO CITY'S PROPERTY ARISING OUT OF THE ACTS OR OMISSIONS OF FBO, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, OR PATRONS. FBO SHALL INDEMNIFY CITY AGAINST ANY AND ALL MECHANIC'S AND MATERIAL MEN'S LIENS OR ANY OTHER TYPE OF CLAIMS OR LIENS IMPOSED UPON THE DEMISED PREMISES ARISING AS A RESULT OF FBO'S CONDUCT OR INACTIVITY.**

- (C) FBO shall secure public liability and hangar keeper's liability insurance, in which City shall be named an additional insured. Such policies of insurance shall protect City and FBO against any and all liability for death, injury, loss or damage against which FBO has elsewhere in this agreement undertaken to save and hold the City, and its authorized agents, officers, representatives and employees harmless from and against any and all penalties, liability and annoyance of loss resulting from claims or court action of any nature and arising directly or indirectly out of the acts

of FBO, its agents, servants, guests, employees, business visitors or others under this agreement or by result of any act or omission or such persons. Such policies shall be placed with a company authorized to do business in the State of Texas and shall have not less than the following limits:

1. \$1,000,000 Comprehensive General Liability
2. Medical Expense Limit (Any one Person) \$5,000
3. Personal & Advertising Injury Aggregate Limit \$1,000,000
4. Products/Completed Operations Aggregate Limit \$1,000,000
5. Pollution Liability -- \$1,000,000 per loss
6. Hangar Keeper's Liability -- \$1,000,000 (any one aircraft)/\$2,000,000 (any one occurrence)

FBO shall provide the above referenced coverage and also procure and maintain Worker's Compensation insurance, including employer's liability, in the amounts required by the State of Texas.

The amounts of said insurance shall not be deemed a limitation of FBO's agreement to save and hold City harmless, and if FBO becomes liable for an amount in excess of the insurance FBO will save and hold the City harmless as the holder thereof. FBO shall furnish to the City certificates of insurance for the insurance coverage required herein.

FBO shall maintain the insurance with an insurance company authorized to do business in the State of Texas and approved by City. FBO shall furnish City with a certificate from the insurance carrier showing the insurance to be in full force during the entire term of this Agreement or shall deposit with the City copies of the policies.

The policies or certificates shall contain a provision that written notice of cancellation or of any material change in the policy by the insurer shall be delivered to City thirty (30) days in advance of the effective date of the cancellation or change.

11. ASSIGNMENT OR SALE

The FBO may assign, sell, or transfer this Agreement or any right hereunder to any person, corporation, association, or any other entity with the written consent of the City. Any assignment, sale, or transfer not consented to in writing by the City shall be null and void, and shall be grounds, at the option of the City, for the City to immediately terminate this Agreement.

12. DEFAULT AND TERMINATION

(A) This Agreement may be terminated at any time by the City if FBO fails to abide by the terms and conditions expressed herein and any exhibits hereto, including but not limited to the Airport Minimum Standards adopted July 2, 2020, as may be amended from time to time. This Agreement may also be terminated at any time by mutual agreement and consent of both parties in writing. Should the FBO be declared bankrupt, incompetent, or ceases operations, this Agreement shall immediately terminate and shall not be considered as part of the FBO's estate and shall not become an asset of any appointed or assigned guardian, trustee, or receiver. In the event FBO fails to make timely payments of all taxes or fees, fails to provide proof of required insurance, uses the Airport property or permits the Airport property to be used for any illegal or unauthorized purpose, files bankruptcy, abandons or leaves the property vacant or unoccupied for thirty (30) consecutive days, or violates any of the terms and conditions of this Agreement, the City has the right to

terminate this Agreement and retake possession of any Airport property used, occupied, or under the control of the FBO.

(B) If either party defaults in the performance of any obligation or covenant in this Agreement, the non-defaulting party may enforce the performance of this Agreement in any manner provided by law. This Agreement may be terminated at the non-defaulting party's discretion if such default continues for a period of sixty (60) days after written notification of such default and of the intention of the non-defaulting party to declare this Agreement terminated, provided, however, if the default is not reasonably capable of being fully cured within sixty (60) days, the defaulting party shall be allowed the needed additional time to cure the default if: (i) the defaulting party begins the cure within the sixty (60) day period; and (ii) diligently pursues the cure thereafter until it is fully cured. If the defaulting party has not substantially cured the default within the time period referenced above, this Agreement may be terminated by the non-defaulting party, and the non-defaulting party may pursue any other remedies available in law or equity.

(C) In the event of a breach by the FBO of any of the provisions of this Agreement in any manner that, in the sole opinion of the City, presents a danger to the City's equipment, property, or surrounding property, the City shall have the right to terminate this Agreement immediately.

(D) Upon the termination of this Agreement by expiration of a term not renewed, mutual agreement, or any other reason for termination, the FBO shall peaceably vacate the premises and any other property entrusted to the FBO shall be returned to the City in the same condition as it was when issued, normal wear excluded. Should FBO be in default of any monies owed to the City, the City may take possession of any personal property seized, subject to the disposition of a court of competent jurisdiction. The FBO shall be liable for any and all expenses incurred by the City in such action.

13. SUSPENSION OF AGREEMENT

(A) During the time of war or national emergency, City shall have the right to lease the landing area or any part of the airport to the United States government for military use. If any such lease is executed, any provisions of this Agreement which are inconsistent with the provisions of the lease to the government shall be suspended. Nothing contained in this Agreement shall prevent FBO from pursuing any rights which FBO may have for reimbursement from the United States government for the taking of any right conferred under this Agreement or for any loss or damage caused to FBO by the United States government.

14. MISCELLANEOUS

(A) This Agreement embraces the entire Fixed Base Operator Agreement between the parties hereto and no statement, remark, representation, agreement, or understanding, either oral or written, not contained herein shall be recognized or enforced, except that this Agreement may be modified by written addendum hereto attached and signed by all of the parties. The parties expressly agree and acknowledge that they have not been induced to enter into this Agreement by any representation or statements, oral or written, not expressly contained or expressly incorporated by reference in this Agreement.

(B) For the purposes of this Agreement, the singular number shall include the plural and the masculine shall include the feminine and vise-versa, whenever the context so admits or requires.

(C) The captions and headings are inserted solely for the convenience of reference and are not part of or intended to govern, limit, or aid in the construction of any provision hereof.

(D) The parties to this Agreement hereby acknowledge and agree that they are the principals to the Agreement and have the power, right and authority to enter into this Agreement and are not acting as an agent for the benefit of any third party.

(E) This Agreement shall be governed by the laws of the State of Texas and construed thereunder, and exclusive venue of any action brought under this Agreement shall be in Washington County, Texas.

(F) If any section, paragraph, sentence, or phrase entered in this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, such illegality, invalidity, or unenforceability shall not affect the remainder of this Agreement which can be given effect without the illegal, invalid, or unenforceable section, paragraph, sentence or phrase and to this end, the provisions of this Agreement are declared to be severable.

(G) All notices regarding this Agreement must be sent to each party at the following address:

City:

City of Brenham
Att: City Manager
P.O. Box 1059
Brenham, Texas 77834-1059

FBO:

Aviators Plus, LLC
2901 Aviation Way
Brenham, TX 77833

Any written notice under this Agreement shall become effective as of the date of mailing by registered or certified mail and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may hereafter be specified by notice in writing.

(H) The waiver by either party of a breach of this Agreement shall not constitute a continuing waiver of such breach or of a subsequent breach of the same or a different provision, unless so stipulated by the party not in breach of this Agreement. The payment or acceptance of fees, compensation or charges for any period after breach shall not be deemed a waiver of any right or acceptance of defective performance.

(I) Each party shall operate under this Agreement as an independent contractor, and not as an agent, representative or employee of the other. Subject to the terms of this Agreement, each party shall have the right to control the details of its performance hereunder.

(J) This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respects to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matter. Each party to this Agreement

acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party or anyone acting on behalf of any parties which are not embodied herein and that no other agreements, statement, or promise not contained in this Agreement shall be valid or binding.

No modification concerning this instrument shall be of any force or effect, excepting a subsequent amendment in writing signed by the parties. No official, representative, agent or employee of the City, has any authority to modify this Agreement except pursuant to express written authority to do so granted by the City Council of the City of Brenham, Texas.

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

(L) The parties acknowledge that each party and, if it so chooses, its counsel, have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party must not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

(M) Each party agrees that both parties shall have the right to audit the financial and business records of the other party that relate to the subject matter of this Agreement ("Records") at any time during the term of this Agreement, and for three (3) years thereafter, in order to determine compliance with this Agreement. Throughout the term of this Agreement and for three (3) years thereafter, each party shall make all Records available to the other party as it relates to the subject matter of this Agreement.

EXECUTED this the _____ day of _____, 2021.

CITY OF BRENHAM

FBO - FIXED BASE OPERATOR

Hon. Milton Y. Tate, Jr., Mayor
City of Brenham, Texas

FBO: _____, LLC
By: Brent Nedbalek
Title:

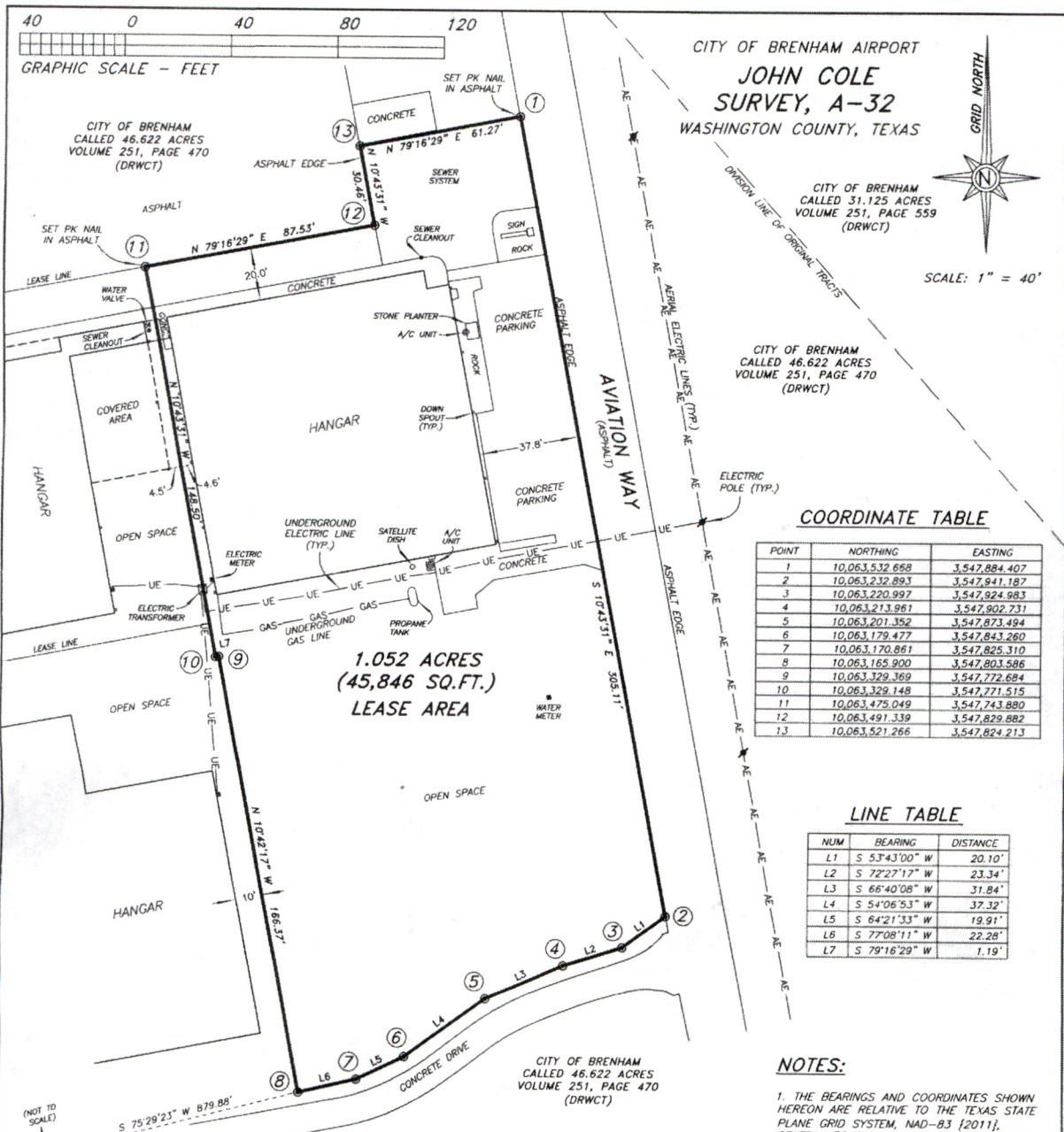
ATTEST:

ATTEST:

Jeana Bellinger, TRMC, CMC, City Secretary
City of Brenham, Texas

By:
Title:

EXHIBIT "A"



COORDINATE TABLE

POINT	NORTHING	EASTING
1	10,063,532.658	3,547,884.407
2	10,063,232.893	3,547,941.187
3	10,063,220.997	3,547,924.983
4	10,063,213.981	3,547,902.731
5	10,063,201.352	3,547,873.494
6	10,063,179.477	3,547,843.260
7	10,063,170.861	3,547,825.310
8	10,063,165.900	3,547,803.586
9	10,063,129.369	3,547,772.684
10	10,063,329.148	3,547,721.515
11	10,063,475.049	3,547,743.880
12	10,063,491.339	3,547,829.882
13	10,063,521.266	3,547,824.213

LINE TABLE

NUM	BEARING	DISTANCE
L1	S 53°43'00" W	20.10'
L2	S 72°27'17" W	23.34'
L3	S 66°40'08" W	31.84'
L4	S 54°06'53" W	37.32'
L5	S 64°21'33" W	19.91'
L6	S 77°08'11" W	22.28'
L7	S 79°16'29" W	1.19'

NOTES:

1. THE BEARINGS AND COORDINATES SHOWN HEREON ARE RELATIVE TO THE TEXAS STATE PLANE GRID SYSTEM, NAD-83 [2011], CENTRAL ZONE 4203. CONVERGENCE ANGLE AT N: 10063157.87' - E: 3547344.52' IS 2'-02"-23.7". COMBINED SCALE FACTOR IS 0.99996823, U.S. SURVEY FEET, UTILIZING NATIONAL GEODETIC SURVEY (NGS) MONUMENT BM1073 LOCATED ON THE AIRPORT PROPERTY. DISTANCES SHOWN HEREON ARE GROUND DISTANCES.

2. NO PART OF THE SUBJECT PROPERTY LIES WITHIN THE SPECIAL FLOOD HAZARD AREA ACCORDING TO THE FLOOD INSURANCE RATE MAP (FIRM) AS COMPILED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, NATIONAL FLOOD INSURANCE PROGRAM, MAP NUMBER 48477C0325C, EFFECTIVE DATE AUGUST 16, 2011, WASHINGTON COUNTY, TEXAS.

3. (●) - DENOTES A 5/8" IRON ROD SET WITH ID. CAP STAMPED "HODDE & HODDE LAND SURVEYING" UNLESS OTHERWISE NOTED ON THE PLAT.

4. A CURRENT TITLE COMMITMENT OR REPORT WAS NOT AVAILABLE OR PROVIDED TO THE UNDERSIGNED SURVEYOR AS OF THE DATE OF THIS SURVEY AND THE UNDERSIGNED SURVEYOR DID NOT ABSTRACT THE SUBJECT PROPERTY.

5. (DRWCT) DENOTES DEED RECORDS OF WASHINGTON COUNTY, TEXAS.

W.O. NO. 7473 (AVATORSPLUS7473.DWG/VIEW)
REF: AVATORSPLUS7473 SURVEY

Hodde & Hodde Land Surveying, Inc.
Professional Land Surveying
613 E. Blue Bell Road · Brenham, Texas 77833
979-836-5681 · 979-836-5683 (Fax)
www.hoddesurveying.com

SURVEY MAP

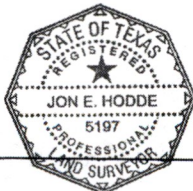
SHOWING A SURVEY OF 1.052 ACRES OF LAND (45,846 SQ. FT.) LEASE AREA, LYING AND BEING SITUATED IN WASHINGTON COUNTY, TEXAS, PART OF THE JOHN COLE SURVEY, A-32, BEING PART OF THE SAME LAND DESCRIBED AS 46.622 ACRES IN THE DEED FROM RAYMOND JESKE, ET UX TO THE CITY OF BRENHAM, DATED MARCH 6, 1964, AS RECORDED IN VOLUME 251, PAGE 470, IN THE DEED RECORDS OF WASHINGTON COUNTY, TEXAS.

CERTIFICATION

THE STATE OF TEXAS
COUNTY OF WASHINGTON

I, JON E. HODDE, REGISTERED PROFESSIONAL LAND SURVEYOR, NO. 5197 OF THE STATE OF TEXAS, DO HEREBY CERTIFY THAT THIS MAP SHOWING A SURVEY OF 1.052 ACRES OF LAND (45,846 SQ. FT.) LEASE AREA, IS TRUE AND CORRECT IN ACCORDANCE WITH AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY PERSONAL DIRECTION AND SUPERVISION.

DATED THIS THE 17TH DAY OF JANUARY, 2019, A.D.



JON E. HODDE
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 5197
HODDE & HODDE LAND SURVEYING, INC.
613 EAST BLUE BELL ROAD
BREHMAN, TEXAS 77833
(979)-836-5681
TEXAS FIRM REGISTRATION NO. 10018800

COPYRIGHT © 2019
HODDE & HODDE
LAND SURVEYING, INC.
ALL RIGHTS RESERVED.



Regular City Council
AGENDA ITEM 11.

Agenda Item: Section 551.086 Texas Government Code - Utility Competitive Matters - City of Brenham Gas Utility System - Gas Sales Contract Between WTG Gas Marketing, Inc. and City of Brenham, Texas and Associated Issues

Meeting Type: Regular Meeting-April 01, 2021

Department: Administration

Staff Contact: James Fisher

Classification: Executive Session

SUMMARY STATEMENT:

To be discussed in Executive Session

ATTACHMENTS:

None

RELEVANCE TO COMPREHENSIVE PLAN:

RECOMMENDED ACTION:

As discussed in Executive Session



Regular City Council
AGENDA ITEM 12.

Agenda Item: Section 551.071 - Texas Government Code - Consultation with City Attorney and Section 551.072 - Texas Government Code - Deliberation Regarding Real Property - Consultation with City Attorney and Deliberation Regarding the Possible Acquisition of the Barnhill Center at the Historic Simon Theater, and Associated Matters

Meeting Type: Regular Meeting-April 01, 2021

Department: Administration

Staff Contact: James Fisher

Classification: Executive Session

SUMMARY STATEMENT:

To be discussed in Executive Session.

ATTACHMENTS:

None

RELEVANCE TO COMPREHENSIVE PLAN:

RECOMMENDED ACTION:

As discussed in Executive Session



Regular City Council
AGENDA ITEM 13.

Agenda Item: Discuss and Possibly Act Upon an Amendment to the Existing Gas Sales Contract Between WTG Gas Marketing, Inc. and the City of Brenham Regarding Gas Delivery Points and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-April 01, 2021

Department: Public Utilities

Staff Contact: Donald Reese

Classification: Regular

SUMMARY STATEMENT:

The City of Brenham and WTG Gas Marketing, Inc. entered into a contract for gas supply on November 16, 2016. Article III of the existing agreement allows for delivery of gas to the City of Brenham through the City's existing gate station and measuring facilities that are located on the Oasis Pipeline.

This amendment will add the City's second gate station and metering facilities, which is nearing completion and is located on the Gold King Pipeline.

No other provisions of the existing gas supply contract are being changed.

ATTACHMENTS:

- (1) Original Brenham WTG Gas Supply Contract
- (2) Gate Station Locations Map

RELEVANCE TO COMPREHENSIVE PLAN:

RECOMMENDED ACTION:

Staff recommends approving the existing Gas Supply Contract between WTG Gas Marketing, Inc. and the City of Brenham as amended and Authorize the Mayor to Execute any Necessary Documentation.

GAS SALES CONTRACT
BETWEEN
WTG GAS MARKETING, INC.
"SELLER"
AND
CITY OF BRENHAM, TEXAS
"BUYER"

GAS SALES CONTRACT

This CONTRACT, made and entered into effective the first day of November, 2016, hereinafter referred to as "Effective Date", by and between **WTG GAS MARKETING, INC.**, a Texas Corporation, hereinafter referred to as "Seller", and the **CITY OF BRENHAM, TEXAS**, a political subdivision of the state of Texas, hereinafter referred to as "Buyer".

WITNESSETH

THAT WHEREAS, Buyer owns and operates a gas distribution system at or near the City of Brenham, Texas, and its adjoining environs, and requires a supply of gas in and for the operation of said Facilities; and WHEREAS, Seller, has a supply of gas which is available for sale to Buyer; and WHEREAS, Seller desires to sell to Buyer and Buyer desires to purchase from Seller such gas under the terms and conditions hereinafter set forth; Now, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties covenant and agree as follows:

ARTICLE I **DEFINITIONS**

As used herein, the following terms shall be construed to have the following scope and meaning:

1. "Day: shall mean the twenty-four (24) hour period commencing at 9:00 a.m. local time on any calendar day and ending at 9:00 a.m. local time on the following calendar day.
2. "Month" shall mean the period commencing at 9:00 a.m. local time on the first (1st) day of a calendar month and ending at 9:00 a.m. local time on the first (1st) day of the next succeeding calendar month.
3. "Year" shall mean a period of three hundred sixty-five (365) consecutive days commencing and ending at 9:00 a.m. local time; provided, however, that any such year which contains the date of February 29 shall consist of three hundred sixty-six (366) consecutive days.
4. "Gas" shall mean natural gas, including gas well gas, casinghead gas or the residue gas resulting from processing either casinghead gas or gas well gas.
5. "Cubic foot of gas" shall mean the volume of anhydrous gas contained in one (1) cubic foot of space at a standard pressure of fourteen and seventy-three hundredths (14.73) psia and a standard temperature of sixty (60) degrees Fahrenheit, hereinafter called "F".
6. "Mcf" shall mean one thousand (1,000) cubic feet.
7. "British Thermal Unit", hereinafter called "BTU", shall mean the amount of heat required to raise the temperature of one (1) avoirdupois pound of pure water, hereinafter called "H2O", one (1) degree F from fifty-eight and five-tenths (58.5) degrees F at a constant pressure of fourteen and seventy-three hundredths (14.73) psia.

8. "Gross Heating Value" shall mean the number of Btus produced by the complete combustion, at a constant pressure, of the amount of gas which would occupy a volume of one (1) cubic foot at a temperature of sixty (60) degrees F, if saturated with water vapor and at a constant pressure of fourteen and seventy-three hundredths (14.73) psia and under standard gravitational force (acceleration 980.655 centimeters per second) with air of the same temperature and pressure as the gas when the products of combustion are cooled to the initial temperature of the gas and air when the water formed by combustion is condensed to the liquid state. The gross heating value so determined shall be corrected from the conditions of testing to that of the actual condition of the gas as delivered expressed in Btu per cubic foot and reported at a pressure base of fourteen and seventy-three hundredths (14.73) psia; provided, however, if the gas delivered contains seven (7) pounds of water vapor or less per one million (1,000,000) cubic feet, such gas shall be deemed to be anhydrous.
9. "MMBtu" shall mean one million (1,000,000) Btus.
10. "Psi" shall mean pounds per square inch.
11. "Psia" shall mean pounds per square inch, absolute.
12. "Psig" shall mean pounds per square inch, gauge.
13. "MAOP" shall mean maximum allowed operating pressure.
14. "RRC" shall mean Railroad Commission of Texas.
15. "Facilities" shall mean Buyer's natural gas distribution system serving the City of Brenham, Texas, and its adjoining environs, as such system may be enlarged or extended.

ARTICLE II

QUANTITY

1. Subject to the terms and conditions hereof, commencing with the Effective Date and continuing throughout the term hereof, Seller agrees to deliver and sell, and Buyer agrees to accept, purchase and pay for the entire quantity of gas required by Buyer in and for the operation of the Facilities.
2. Buyer shall not resell any gas sold and purchased hereunder except solely in and for the operation of the Facilities.
3. Subject to Article IX of this Contract, if Seller interrupts, suspends or curtails delivery of gas pursuant to the laws, rules, regulations or orders of any governmental agency, court or authority having jurisdiction, such interruption, suspension or curtailment shall be without liability to Seller.

ARTICLE III

POINT(S) OF DELIVERY & DELIVERY PRESSURE

1. The Point(s) of Delivery for gas sold and purchased hereunder shall be at the outlet side of Oasis Pipeline, LP metering station (City of Brenham, Texas town border station), which is the existing measuring facilities located at Buyer's Facilities. Title

to all gas sold and delivered hereunder shall pass from Seller to Buyer at the Point(s) of Delivery.

2. The measuring and related facilities at the Point(s) of Delivery, that are existing and connected to Seller's, or Seller's designee's, system, shall be owned, maintained and operated by Seller, or Seller's designee.
3. The parties hereto, or their respective designee, shall at all reasonable times have access to the premises of each other insofar as such premises are directly connected with any matter or thing covered hereby, for inspection, operation, installation, removal, repair and testing of equipment, but the operation of measuring equipment and changing of charts shall be done only by the employees or agents of Seller or Seller's designee.
4. Buyer may, at its option, install check measurement equipment for checking Seller's, or its designee's, metering facilities at the Point(s) of Delivery, same to be so installed as not to interfere with the operation of Seller's or Seller's designee's, metering facilities at such Point(s) of Delivery.
5. The Pressure at which Seller, or Seller's designee, shall deliver gas hereunder at the Point(s) of Delivery shall be as may be necessary to enter Buyer's Facilities but not in excess of the pressure Seller, or its designee, may have existing and available from time to time in Seller's or Seller's designee's, pipeline at the Point(s) of Delivery.

ARTICLE IV **MEASUREMENT**

For purposes of billing hereunder, Buyer and Seller agree to rely upon the information submitted by Oasis Pipeline, LP as to the quantity of gas measured at the Delivery Point, provided that accepted industry standards relating to gas measurement are adhered to.

ARTICLE V **QUALITY**

All gas tendered for sale under this Contract shall meet the quality specifications of Oasis Pipeline, LP. All specifications, definitions, and terms of Oasis Pipeline, LP relating to the delivery of gas are incorporated herein by reference. If the gas fails to meet said standards of quality, then either party may suspend delivery immediately as its sole remedy, and shall provide written notice for such suspension to the other party as soon as practicable. Seller shall not be obligated to odorize the gas and Buyer shall hold Seller harmless from any and all claims, losses, damages and expense associated with adverse claims arising from the odorization or failure to odorize the gas delivered hereunder.

ARTICLE VI **PRICE**

Commencing on the Effective Date, Buyer shall pay Seller for volumes delivered by Seller hereunder under the terms and conditions and at a price per MMBtu as set forth on Exhibit "A" attached hereto.

ARTICLE VII
INVOICING, PAYMENT, INTEREST & AUDIT

1. **Invoicing** – On or before the twentieth (20th) day of each calendar month, Seller shall mail unto Buyer at Buyer's address, as reflected in Article XVI hereof, an invoice reflecting the quantity of gas sold and purchased during the preceding calendar month at the price as defined in Article VI.
2. **Payment** – Within thirty (30) days after the Buyer's receipt of an invoice from Seller, in accordance with Chapter 2251, Texas Government Code, Buyer shall pay to Seller, the amount due pursuant to this Contract for deliveries during the preceding calendar month. The remittance address for Seller shall be such address as reflected on Seller's invoice from time to time.
3. **Interest** – If Buyer shall fail to pay any amount due, then interest thereon shall accrue at the rate allowed by Chapter 2251, Texas Government Code, so long as such rate does not exceed the then legal usury rate, from the date due until the date of actual payment; provided, however, that if presentation of the invoice by Seller is delayed after the twentieth (20th) day of the month, then the time of payment shall be extended accordingly, unless Buyer is responsible for said delay. If Buyer shall fail to pay any amount due to Seller hereunder when the same is due and should said failure continue for twenty (20) days, Seller may, by giving Buyer seven (7) days written notice, suspend deliveries of gas hereunder and said suspension shall be in addition to any and all other remedies available hereunder; provided, however, if such overdue payment is received by Seller within such seven (7) day period, suspension of deliveries of gas will not be invoked.
4. **Adjustment of Errors** – In the event an error is discovered in any statement or payment hereunder, such error shall be adjusted within sixty (60) days of the determination thereof; provided, however, that the claim therefor shall have been made within two (2) years from the date of such statement or payment.
5. **Audit** – Each party hereto shall have, at its expense, the right at all reasonable times, to examine the books and records of the other party to the extent necessary to verify the accuracy of any statement, charge, computation or demand made under or pursuant to this Contract. Each party agrees to keep records and books of account in accordance with generally accepted accounting principles and practices in the industry. Any statement shall be final as to both parties unless questioned within two (2) years after the date of the statement.

ARTICLE VIII
TERM

1. This Contract shall become effective on the Effective Date hereof and shall continue in full force and effect for an initial period ending October 31, 2017. This Contract shall continue year to year thereafter with written notice of termination to the other which shall be received at least sixty (60) days prior to the expiration date of the initial term or any automatic extensions.
2. This Contract may otherwise terminate as provided in Paragraph 2. Of Article XV hereof.

ARTICLE IX
FORCE MAJEURE & LIABILITY

1. Seller and Buyer, as to each other, each assumes full responsibility and liability for the maintenance and operation of their, or their designee's, respective properties, if any.
2. Seller shall not be liable to Buyer for its failure to deliver gas, and Buyer shall not be liable to Seller for its failure to receive gas, when such failure on the part of either party shall be due to accident to or breakage of Seller's, or Seller's designee's, or Buyer's pipelines, machinery or equipment, or if caused by fire, floods, storms, weather conditions, strikes, riots, legal interference, failure of gas supply, interruption of transportation service, acts of God or public enemy, shutdowns for necessary repairs and maintenance, or without limitation by enumeration, any other cause beyond the reasonable control of the party failing to deliver or receive gas, as the case may be, provided such party shall promptly and diligently take such action as may be necessary and practicable under the then existing circumstances to remove the cause of failure and resume the delivery or receipt of gas, as the case may be.

ARTICLE X
NON-WAIVER OF FUTURE DEFAULT

No waiver by either Seller or Buyer of any one or more defaults by the other in performance of any of the provisions of this Contract shall operate or be construed as a waiver of any other existing or future default or defaults, whether of a like or of a different character.

ARTICLE XI
SUCCESSORS AND ASSIGNS

Any party which shall succeed Seller by purchase, merger, consolidation or other business requirement to the properties and obligations, substantially as an entirety, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Contract. No assignment of this Contract by Buyer or Seller, or any of the rights or obligations thereunder, shall be made unless there first shall have been obtained the express written consent thereto of the other, which consent shall not be unreasonably withheld. Seller or Buyer may pledge or assign their respective right, title and interest in and to and under this Contract to a trustee or trustees, individual or corporate, as security for bonds or other obligations or securities without the necessity of any such trustee or trustees becoming in any respect obligated to perform the obligations of the assignor under this Contract and if any such trustee be a corporation, without it being required to qualify to do business in any State in which performance of this Contract may occur.

ARTICLE XII
WARRANTY OF TITLE

Seller warrants the title to all gas delivered by Seller hereunder and agrees to indemnify Buyer from all suits, actions, debts, accounts, damages and losses arising from or out of adverse claims by any and all persons to said gas or to royalties, or to any charges against said gas.

ARTICLE XIII
RESPONSIBILITY

1. Seller shall be in control and/or possession of the gas sold hereunder and responsible for any damage or injury caused thereby until the same shall have been delivered to Buyer at the Point(s) of Delivery.
2. Buyer shall be in control and possession of the gas purchased hereunder and responsible for any damage or injury caused thereby after the same shall have been received by Buyer at the Point(s) of Delivery.

ARTICLE XIV
TAXES

Buyer shall provide Seller with the applicable state tax exemption certificate regarding purchases hereunder, if applicable, and shall be liable for payment of all applicable sales and use, excise, gross receipts or other transaction taxes, or taxes based upon heat content, including any applicable penalties and/or interest (regardless of when, how, or against which party such tax, penalty and/or interest is imposed) by any federal, state, or local government or instrumentality thereof, upon the sale, transfer, or delivery of all gas sold, transferred, or delivered by Seller pursuant to this Contract, or upon the Buyer's purchase, possession, storage, use, or consumption thereof. This provision shall survive termination of this Contract.

ARTICLE XV
REGULATORY BODIES

1. This Contract is subject to all valid orders, rules and regulations of any State, Federal or other regulatory body having jurisdiction over the purchase, sale or use of the gas sold hereunder and the parties agree to comply with such orders, rules and regulations. Should either of the parties, by law or regulation, be ordered or required to do any act inconsistent with the provisions of this Contract, this Contract shall be deemed to be modified to conform with such law or regulation.
2. Notwithstanding anything to the contrary contained herein, if at any time during the term hereof, any State, Federal or other regulatory body having jurisdiction shall take any action which is designed or otherwise subjects this Contract, or the transportation agreement(s) required to deliver gas hereunder, to any greater or different regulation or jurisdiction than that existing on the Effective Date (or thereafter as such regulation or jurisdiction may have change and been accepted by Seller), then upon written notice given to Buyer, and subject to Article IX, Seller may cancel and terminate this Contract on the effective date of such governmental action.
3. Each of the parties understands that should the RRC, or other governmental regulatory body, require approval of, or that certain actions be taken for the approval of, the sale, purchase or transportation of gas under this Contract, presently or in the future, then each of the parties will make any necessary applications or filings, will take other necessary actions, and will submit any records or data to the regulatory body so that requisite regulatory authorization may be obtained or granted. In the event that such authority is not obtained or granted, and subject to Article IX, then the parties understand that their mutual obligations under this Contract as expressed hereinafter will have no force or effect as to the sale and purchase of gas and there will be no liability on the part of either of the parties.

ARTICLE XVI
NOTICES

Any notice or request provided for in this Contract shall be mailed or delivered to the party to whom given at such party's address as follows:

BUYER:

City of Brenham, Texas
200 W. Vulcan
Brenham, Texas 77833
Telephone: (979) 337-7200
Facsimile:

SELLER:

WTG Gas Marketing, Inc.
211 North Colorado
Midland, Texas 79701
Telephone: (432) 682-6311
Facsimile: (432) 682-4024

Or at such other address as such party shall from time to time designate as the address for such purpose, by letter addressed to the other party. The mailing of notice by first-class mail shall constitute service of notice hereunder.

ARTICLE XVII
MISCELLANEOUS

1. This Contract constitutes the entire understanding of the parties relating to the sale and purchase of gas hereunder and there shall be no modification or waiver hereof except by writing, signed by the party claimed to be bound thereby.
2. The descriptive heading of the provisions of this Contract are formulated and used for convenience only and shall not be deemed to affect the meaning or construction of any such provision.
3. This Contract shall be construed and governed by the laws of the state of Texas, with exclusive venue fixed in Washington County, Texas.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed in multiple counterparts by their respective personnel thereunto duly authorized, as of the Effective Date.

BUYER:

CITY OF BRENHAM, TEXAS

By: Milton Y. Tate, Jr.
Print Name: Milton Y. Tate, Jr.
Title: Mayor

SELLER:

WTG GAS MARKETING, INC.

By: [Signature]
Print Name: D.J. KING
Title: VICE PRESIDENT - GAS MARKETING

EXHIBIT "A"

To the Gas Sales Contract
Dated
November 1, 2016
by and between

WTG GAS MARKETING, INC.
And
CITY OF BRENHAM, TEXAS

This Nomination Notice sets out the agreement of the parties for the purchase and sale of natural gas pursuant to that certain Gas Sales Contract between the parties, as stated above, and become a part of and subject to the terms and conditions of such Contract.

TERM OF DELIVERY: Beginning November 1, 2016 through October 31, 2017

MONTHLY
BASE LOAD
QUANTITY

Buyers Requirement

PRICE TO BUYER AT DELIVERY POINT

Equal to 101% of the first of the month East Texas – Houston Ship Channel index price, as published in Platts, S&P Global, Inside FERC's Gas Market Report, under the table entitled "Monthly Bidweek Spot Gas Prices", plus 52.5¢ per MMBtu.

Effective Date of this Exhibit A:

November 1, 2016

Supersedes Exhibit A Effective:

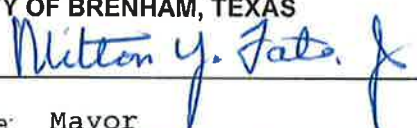
This is an original Exhibit A

WTG GAS MARKETING, INC.

By: 

Title: VICE PRESIDENT - Gas Marketing

CITY OF BRENHAM, TEXAS

By: 

Title: Mayor





Regular City Council
AGENDA ITEM 14.

Agenda Item: Discuss and Possibly Act Upon the Development, Operations, Funding and Possible Acquisition of the Barnhill Center at the Historic Simon Theater and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-April 01, 2021

Department: Administration

Staff Contact: James Fisher

Classification: Regular

SUMMARY STATEMENT:

To be discussed in Executive Session.

ATTACHMENTS:

None

RELEVANCE TO COMPREHENSIVE PLAN:

RECOMMENDED ACTION:

As discussed in Executive Session.