



**NOTICE OF A REGULAR MEETING
THE BRENHAM CITY COUNCIL
THURSDAY, MARCH 25, 2021 AT 01:00 PM
SECOND FLOOR CITY HALL
COUNCIL CHAMBERS
200 W. VULCAN STREET
BRENHAM, TEXAS**

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags - Councilmember Albert Wright**
- 3. Citizens Comments**
- 4. Service Recognitions**
 - ♦ **Jason Derrick - Police Department, 25 Years**
- 5. Special Recognition**
 - ♦ **Detective Kejan Mehlhorn-Hock, Brenham Police Department**

CONSENT AGENDA

- 6. Statutory Consent Agenda**

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

 - 6-a. Approve the Minutes from the February 25, 2021 and March 11, 2021 Regular City Council Meetings and the March 18, 2021 Emergency Special Meeting of Council**

- 6-b. Approve a Joint Election Services Agreement Between the City of Brenham, Washington County, and Brenham Independent School District (BISD) Related to Election Responsibilities for the Washington County, City of Brenham, and BISD's May 1, 2021 Elections and Authorize the Mayor to Execute Any Necessary Documentation**
- 6-c. Approve a Noise Variance for the City of Brenham for a Pop-Up Play Day to be Held on March 27, 2021 from 10:00 a.m. - 12:00 p.m. at Jerry Wilson Park and Authorize the Mayor to Execute Any Necessary Documentation**

WORK SESSION

- 7. Discuss and Review the FY2019-20 Fourth Quarter Financial Report**

REGULAR SESSION

- 8. Discuss and Possibly Act Upon Approval of An Assignment of Lease and Memorandum of Understanding Regarding the Simon Theater Facility from Simon Theater Master Tenant, LLC to Brenham Main Street Historical Preservation, Inc. and Authorize the Mayor to Execute Any Necessary Documentation**
- 9. Discuss and Possibly Act Upon a Fitness Center Services Agreement Between the City of Brenham and American Specialty Health Fitness, Inc. Related to the Silver and Fit Program at the Blue Bell Aquatic Center and Authorize the Mayor to Execute Any Necessary Documentation**
- 10. Discuss and Possibly Act Upon a Professional Services Agreement Between the City of Brenham and Sledge Engineering, LLC Related to a Strategic Facility Plan and Authorize the Mayor to Execute Any Necessary Documentation**
- 11. Discuss and Possibly Act Upon an Ordinance on Its First Reading Authorizing the Placement of A Stop Sign on Vineyard Pass at Its Intersection with State Highway 36 North and Authorize the Mayor to Execute Any Necessary Documentation**
- 12. Discuss and Possibly Act Upon an Ordinance on Its First Reading Authorizing the Placement of A Stop Sign on Ava Drive at Its Intersection with Old Masonic Road and Authorize the Mayor to Execute Any Necessary Documentation**
- 13. Discuss and Possibly Act Upon the Acceptance of the Audit from Seidel Schroeder for Fiscal Year 2020**
- 14. 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

- 15. Section 551.071 - Texas Government Code - Consultation with Attorney - Consultation with City Attorney Regarding Lease Agreement with Aviators Plus, LLC to Lease and Occupy the Terminal Building Located at the Brenham Municipal Airport**
- 16. 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**

RE-OPEN REGULAR SESSION

- 17. 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**
- 18. 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**

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 March 25, 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 March 22, 2021 at 11:00 a.m.

Karen Stack

Deputy City Secretary

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

I certify that the attached notice and agenda of items to be considered by the City Council was removed by me from the City Hall bulletin board on the _____ day of _____, 2021 at _____ AM PM.

Signature

Title

Brenham City Council Minutes

A regular meeting of the Brenham City Council was held on February 25, 2021 beginning at 1:00 p.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

Members present:

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

Members absent:

None

Others present:

City Manager James Fisher, City Attorney Cary Bovey, Assistant City Manager – Public Services/Utilities Donald Reese, Assistant City Manager – Chief Financial Officer Carolyn Miller, City Secretary Jeana Bellinger, Fire Chief Ricky Boeker, Police Chief Ron Parker, Captain Lloyd Powell, Captain Dant Lange, Public Works Director Dane Rau, Development Services Director Stephanie Doland, Economic Development Director Susan Cates, Shauna Laauwe, Michelle Glenz, and Stephen Ehlert.

Citizens present:

Ran Newman, Evelyn Newman, Lindi Braddock, Yvette Kirkland, Peggy Sefcik, Kerry Neden, Mary Neden, Emanuel Glockzen, Kathy Blum, Craig Blum, John Pledger, Steve Duncan, Mandy Allen, Lauren Cox, Ronnie Fathauer, Michael Appling, Danny Ross, Barbara Ross, Brian Ross, Cole Klussman, Kristin Klussman, Kevin Nguyen, Vinh Nguyen, Long Ha, Jimmy Ha, Kyle Mardry, Alicia Mardry, Shannon Kana, Dale Stoupton, Crystal Hinds, Joan Robilio, Craig Robilio, Paul Gela, Bryan Rothsins, J. R. Allen, Sarah, Neutzler, Katy Pugh, Deborah Muckleroy, Leigh Linden, Florence Smith, Marcie Schulze, Mark Thiel, David Roberson, Debra Roberson, Pat Kohring, Russell Kohring, Kevin Rue, Roxanne Maxwell, Lee Bryant, Tressie Bryant, Robert Klingsporn, Carrie Lynch, Sherrie Winkelmann, Lorie Boer, Kyle Boer, John Trost, Brian Siemsglusz, Carl Clover, Larry Sulak, and Alisa Harris.

Media Present:

Alyssa Faykus, Brenham Banner Press; and Josh Blaschke, KWHI

1. **Call Meeting to Order**
2. **Invocation and Pledges to the US and Texas Flags – Mayor Pro Tem Andrew Ebel**
3. **Citizens Comments**

There were no citizen comments.

CONSENT AGENDA

4. **Statutory Consent Agenda**
 - 4-a. **Approve the Minutes from the January 21, 2021 Regular City Council Meeting**
 - 4-b. **Approve Resolution No. R-21-005 Amending Resolution No. R-21-003 Providing Support for Sandy Point Housing, Ltd.'s Submission of an Application to the Texas Department of Housing and Community Affairs Requesting 2021 Competitive 9% Housing Tax Credits for a Single-Family Development in Brenham, Washington County, Texas**

Mayor Tate advised that Consent Agenda Item 4-b would be moved to the Regular Agenda for discussion.

A motion was made by Councilmember Cantey and seconded by Mayor Pro Tem Ebel to approve the Statutory Consent Agenda Item 4-a. as presented.

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

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

WORK SESSION

5. **Presentation and Update on the COVID-19 Regional Vaccination SubHUB**

City Manager James Fisher asked the Council to postpone this item.

REGULAR SESSION

4-b. Approve Resolution No. R-21-005 Amending Resolution No. R-21-003 Providing Support for Sandy Point Housing, Ltd.'s Submission of an Application to the Texas Department of Housing and Community Affairs Requesting 2021 Competitive 9% Housing Tax Credits for a Single-Family Development in Brenham, Washington County, Texas

City Manager James Fisher advised the Council that Resolution No. R-21-003 was unanimously approved on February 4, 2021, granting full support for the proposed Sandy Point Housing, LTD's development of 27 single-family homes for affordable rental housing located on approximately 9.01 acres of land on Pecan Street and described as Arrabella Harrington Tract 255, to be named Sandy Point Housing.

Fisher explained that Sandy Point Housing, LTD has made an application to the Texas Department of Housing and Community Affairs requesting competitive 9% housing tax credits for the development; however, the Resolution that was approved by Council on February 4th did not include the required support clause language and would therefore not meet the application requirements for the Texas Department of Housing and Community Affairs competitive 9% housing tax credits for the development. Fisher explained that the Resolution was required to include the language "*pursuant to Texas Government Code, §2306.6703(a)(4).*"

Fisher explained that this Resolution (R-21-005) amending Resolution No. R-21-003 would correct the oversight and include the required wording. Fisher reminded the City Council that the proposed Sandy Point Development is comprised of 27 single-family detached homes on individual lots to be built in compliance with the R-1 zoning and building regulations. The proposed homes would be approximately 2,000 square feet and consist of a minimum of three (3) bedrooms and two (2) baths. Fisher stated that the housing units would not be for individual sale but will be retained for rental use and of the approximately 27 single family homes, 24 will be for low-moderate income tenants at an approximate rental rate of \$1,000 per month.

Fishers stated that several citizens have reached out to express their concerns about this development and many citizens are wanting to address the Council. Fisher asked if any members of the City Council would like to speak before the citizens present were invited to address them.

Councilmember Herring advised that he voted in support of the previous Resolution because affordable housing is needed. Herring advised that he has spoken with members from the Chamber Board and Brenham Independent School District, and they all expressed support for affordable rental property.

Councilmember Susan Cantey stated that due to the overwhelming opposition by the citizens to the project she thinks Council should regroup and revisit this subject.

Councilmember Kolby stated that he is in support of the development due to the need for affordable rental property in Brenham.

Mayor ProTem Ebel stated that he is in support of affordable housing, but that government housing should only be a stepping-stone, not long-term housing.

Councilmember Saunders noted the developer's statement at the prior meeting, in which he reported that many tenants from a similar development in College Station have lived in the units for more than ten years. Saunders expressed concern that the housing was being used as permanent housing rather than for its intended use as a temporary solution.

Councilmember Wright stated that all the negative comments in the media are discouraging. Wright stated that he believes neighbors have a right to know what is being built in their neighborhood.

Mayor Tate stated that affordable rental housing is needed.

The following citizens addressed City Council: Peggy Sefcik, Kerry Neden, Craig Blum, Lauren Cox, Brian Fathauer, Amanda Fathauer for Lauren Burge, Rob Winklemann, Pat Jaeger Ehlert, Mark Thiel, and Kevin Rue.

Citizens that spoke in opposition to the development addressed the following primary concerns:

- The addition of rental properties may lower the values of their homes.
- Rental properties were inconsistent with the current feel of the neighborhood.
- The additional residences would increase traffic and create safety hazards for pedestrians and children in the neighborhood.
- The residents in the area were not provided notice from the developer or the City of the plan to add rental homes.
- The developer provided projected home values that were not consistent with the values of similar homes he had built in College Station.
- The amount of property taxes, to be paid by the developer, did not seem accurate in light of the projected value and rent of approximately \$1,000 per month, per house.

There were no citizens that spoke in support of the development.

The developer of the Sandy Point Housing project, Emanuel Glockzen, provided the Council with the following information in support of the development:

- As requested by the City, he provided notices to all the neighboring property owners of the development. Addresses were provided by the City.
- Sandy Point Housing Development will be an asset to the City. The houses will be 2,000 square foot with 2-car garages. Most of the homes will be 4 bedrooms with 2 bathrooms. The homes will rent for approximately \$1,000.00 per month. These homes will provide affordable, nice, rental housing for families that is not an apartment.
- The development will have on-site management and maintenance. All landscaping will be provided and cared for by on-site maintenance.

A motion was made by Councilmember Cantey and seconded by Mayor Pro Tem Ebel to deny Resolution No. R-21-005 amending Resolution No. R-21-003 and direct that Resolution No. R-21-005 be revised to repeal Resolution No. R-21-003 and authorize Mayor Tate to sign Resolution No. R-21-005 repealing Resolution No. R-21-003.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Keith Herring	Yes
Councilmember Clint Kolby	No
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

6. Discuss and Possibly Act Upon Resolution No. R-21-006 Providing for the Continuation of the Mayoral Declaration of Local Disaster Due to a Severe Winter Weather Emergency

City Manager James Fisher presented this item. Fisher explained that on Tuesday, February 16, 2021 Mayor Tate signed a Declaration of Local Disaster related to severe winter weather and in response to Governor Greg Abbott's Emergency Declaration signed on February 12, 2021.

Fisher stated that this Declaration is needed if the City should file for any Federal funding due to damages from the winter storm. Fisher explained that pursuant to Section 418.018(b) of the Texas Government code, the Mayor can only designate a local disaster for a period of seven (7) days; therefore, the Council will need to extend it. Fisher advised that the Declaration would stay in effect until rescinded by Council.

A motion was made by Councilmember Herring and seconded by Councilmember Wright to approve Resolution R-21-006 providing for the continuation of the Mayoral Declaration of Local Disaster due to a severe winter weather emergency.

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

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

7. Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending the FY2020-21 Adopted Budget

Assistant City Manager – Chief Financial Officer Carolyn Miller presented this item. Miller explained that the FY20-21 Budget is being amended as follows:

- Fund 101 General Fund – Net Impact \$0
 - Carryover from FY20 of grant revenues and related expenditures for the Airport PAPI runway light system.
- Fund 102 Electric Fund – Net Impact (\$648,000) out of bond proceeds
 - Carryover from FY20 budget of copper conductor project with expenditures coming from 2016 bond proceeds. This phase of the project will be completed in FY21.
- Fund 104 Water Fund – Net Impact (\$87,300)
 - Carryover from FY20 of water main extension for Baker Katz project. The project was delayed due to COVID from FY20 to FY21.
- Fund 237 Streets Fund – Net Impact (\$117,113) out of bond proceeds
 - Carryover from FY20 for street rehabilitation projects paid out of 2020 bond proceeds.
- Fund 250 – Net Impact \$0
 - ILA with Washington County for economic development creates FY21 expenditure budget for use of \$75,000 contribution received from the County.
- Fund 220 Central Fleet Fund – Net Impact (\$49,524)
 - Carryover from FY20 of a dump body truck not received until FY21 because of delays related to COVID.
- Fund 260 Brenham Community Projects Fund – Net Impact (\$983) out of reserves
 - Created a FY21 budget for donations received in FY21.

A motion was made by Councilmember Kolby and seconded by Councilmember Saunders to approve an ordinance on its first reading amending the FY2020-21 adopted budget.

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

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

8. Discuss and Possibly Act Upon Resolution No. R-21-007 Authorizing the Submission of a Grant Application Through the Office of the Governor, Public Safety Office, Homeland Security Grants Division for the 2021 State Homeland Security Program - Law Enforcement Terrorism Prevention Activities (LETPA) Projects

Sgt. Steven Eilert presented this item to Council. Eilert advised that the Brenham Police Department (BPD) is seeking approval for submission of a grant application to the Office of the Governor for two (2) Automatic License Plate Recognition (ALPR) trailers. Eilert explained that if awarded, this grant will be in the amount of \$73,395.00 and that there would be no matching funds; however, the City will be responsible for maintenance of the trailers and an annual subscription fee of approximately \$6,350.00 after the first year, with an annual increase of approximately 4%. Eilert explained that the subscription fee covers access for every officer in the department and will allow them to receive notifications when a license plate of interest is detected whether they are at their desks or in their vehicles.

Eilert stated that if the grant application is successful, BPD will join a network of law enforcement agencies in the state that will alert them when a license plate that is flagged in a national or state database drives past an ALPR trailer in Brenham. The BPD will also be able to create its own local hotlist of license plates, which will assist in clearing local warrants and locating persons of interest here in the City.

A motion was made by Councilmember Cantey and seconded by Councilmember Saunders to approve Resolution No. R-21-007 authorizing the submission of a grant application through the Office of the Governor, Public Safety Office, Homeland Security Grants Division for the 2021 State Homeland Security Program - Law Enforcement Terrorism Prevention Activities (LETPA) Projects.

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

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

9. Discuss and Possibly Act Upon an Agreement Between the City of Brenham and Brycer, LLC for Software and Services Related to The Compliance Engine and Authorize the Mayor to Execute Any Necessary Documentation

Fire Marshal Roger Williams presented this item to Council. Williams explained that The Compliance Engine (TCE) is a simple, web-based service for code officials to track and drive inspection, testing and maintenance code compliance for fire protection systems, reduce false alarm activity, and provide safer communities through third party inspection reporting and maintenance.

Williams stated that TCE works by collecting, organizing and categorizing the third-party inspection reports; tracking all building critical safety systems; knowing who is compliant and who is deficient; and will help his office make more informed decisions that keep City staff, residents and visitors safe.

A motion was made by Councilmember Herring and seconded by Councilmember Wright to approve an agreement between the City of Brenham and Brycer, LLC. for software and services related to The Compliance Engine and authorize the Mayor to execute any necessary documentation.

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

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

10. Discuss and Possibly Act Upon a Consulting Services Agreement Between the City of Brenham and NewGen Strategies and Solutions, LLC to Evaluate the City's Water, Sanitary Sewer, Electric and Gas Utility Rates and Authorize the Mayor to Execute Any Necessary Documentation

Assistant City Manager Donald Reese presented this item. Reese advised Council that the City would like to evaluate our current electric, water, wastewater and gas rates by entering into an agreement with NewGen Strategies and Solutions, LLC to provide the following services:

- Date collection and review of financial, operating and billing information.
- Updating financial and rate models previously prepared for the City.
- Benchmarking of City's current rate structure compared to other similar municipal utility providers.
- Conduct meetings with City staff to present analysis and results and discuss potential rate adjustments over the next six (6) years.
- Finalize six (6) year plan and supporting rate model for each utility.
- Prepare presentation and supporting material to present to City Council for consideration.

Reese explained that the cost to provide these services will not to exceed \$58,000.00 and that draft results will be presented to staff for discussion within 90 to 120 days from the notice to proceed.

A motion was made by Mayor Pro Tem Ebel and seconded by Councilmember Cantey to approve a Consulting Services Agreement between the City of Brenham and NewGen Strategies and Solutions, LLC to evaluate the City's water, sanitary sewer, electric and gas utility rates and authorize the Mayor to execute any necessary documentation.

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

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

11. Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending the City of Brenham Code of Ordinances, Chapter 26 - Utilities, Article II - Industrial Wastewater and Discharge Standards and Pretreatment Program

Assistant City Manager Donald Reese presented this item. Reese explained that in 2005 the Environmental Protection Agency (EPA) revised 40 CFR Part 403 called the “Pretreatment Streamlining Rule” and due to the revision, it was made mandatory that all pretreatment programs implement and modify their Pretreatment Program to include these changes.

Reese stated that the City’s process of implementing and revising the Pretreatment Program started in 2008 with help of Jones and Carter Inc and in 2010, TCEQ acknowledged that all changes to the program including the ordinance were technically complete and that City staff could move forward with the City Council’s approval of the ordinance and program. Reese advised that City Council approved the revised Pretreatment Program on April 8, 2010.

Reese further explained that on January 8, 2020, the Texas Commission on Environmental Quality (TCEQ) contacted the City and stated that the Streamlining Modification has been approved but based on how the current Pretreatment team/personnel is conducting the Streamlining reviews, some of the required elements for the Streamlining Rule seemed to be incomplete or missing. Then on June 4, 2020, the City received from the TCEQ the criteria of what changes needed to be incorporated within the Pretreatment Program. Those changes were done with the assistance of Bleyl Engineering and on January 5, 2021 TCEQ acknowledged that all changes to the program including the ordinance were technically complete and that City staff could move forward with the City Council’s approval of the Ordinance and Program.

Reese advised that the ordinance being presented for first reading includes revisions as recommended by the TCEQ.

A motion was made by Councilmember Kolby and seconded by Councilmember Saunders to approve an Ordinance on its first reading amending the City of Brenham Code of Ordinances, Chapter 26 - Utilities, Article II - Industrial Wastewater and Discharge Standards and Pretreatment Program, including the changes as recommended by the City Attorney.

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

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

12. Discuss and Possibly Act Upon Act Upon an Ordinance on Its First Reading Amending the Rate Tariff Schedules for the City of Brenham Water Services

Assistant City Manager Donald Reese presented this item. Reese explained that City staff has conducted a review and cost study of the various water services that are provided by City staff and found that a majority of these services are being provided either free of charge or at a fee that is considerably less than the actual cost of the service.

Reese stated that the results of this study were presented to Council during a work session in November 2020 and at that time staff was instructed to meet with the Utilities Subcommittee of Council to come up with a plan to implement the increases while minimizing the impact on our citizens and developers.

Reese advised that staff met with the Subcommittee and it was determined that the best approach would be to phase the increase in equally over three (3) years. Reese explained that if the new rates are approved, they would not go into effect until October 1, 2021.

A motion was made by Mayor Pro Tem Ebel and seconded by Councilmember Herring to approve an Ordinance on its first reading amending the Rate Tariff Schedules for the City of Brenham water services.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Keith Herring	Yes
Councilmember Clint Kolby	No
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

13. Discuss and Possibly Act Upon Act Upon an Ordinance on Its First Reading Amending the Rate Tariff Schedule for the City of Brenham Sanitary Sewer System

Assistant City Manager Donald Reese presented this item. Reese explained that City staff has conducted a review and cost study of the various wastewater services that are provided by City staff and found that a majority of these services are being provided either free of charge or at a fee that is considerably less than the actual cost of the service.

Reese stated that the results of this study were presented to Council during a work session in November 2020 and at that time staff was instructed to meet with the Utilities Subcommittee of Council to come up with a plan to implement the increases while minimizing the impact on our citizens and developers.

Reese advised that staff met with the Subcommittee and it was determined that the best approach would be to phase the increase in equally over three (3) years. Reese explained that if the new rates are approved, they would not go into effect until October 1, 2021.

A motion was made by Councilmember Cantey and seconded by Mayor Pro Tem Ebel to approve an Ordinance on its first reading amending the Rate Tariff Schedule for the City of Brenham sanitary sewer system.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Keith Herring	Yes
Councilmember Clint Kolby	No
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

Council adjourned into Executive Session at 3:02 p.m.

EXECUTIVE SESSION

14. Section 551.071 - Texas Government Code – Consultation with Attorney – Consultation with City Attorney Regarding Pending Litigation: D. Guyton v. City of Brenham, Texas, et al., Cause No. 1:20-CV-00412-RP, United States District Court, Western District of Texas, Austin Division

Executive Session adjourned at 3:45 p.m.

RE-OPEN REGULAR SESSION

15. Discuss and Possibly Act Upon Pending Litigation: **D. Guyton v. City of Brenham, Texas, et al., Cause No. 1:20-CV-00412-RP, United States District Court, Western District of Texas, Austin Division**

A motion was made by Councilmember Herring and seconded by Councilmember Cantey to designate the City Manager James Fisher as the authorized representative for the City of Brenham and authorize James Fisher to approve a settlement, if any, on behalf of the City of Brenham.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Keith Herring	Yes
Councilmember Clint Kolby	No
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

16. Administrative/Elected Officials Report

- **City Council Meeting Schedule for March 2021**

City Manager James Fisher requested that the Council consider changing the March meeting dates due to Spring Break. The Council agreed to move the March City Council meeting dates to March 11 and March 25.

City Manager James Fisher reported on the following:

- The new Baker Katz retail development project will hold their groundbreaking ceremony on Monday, March 8th at 10:00 a.m.

The meeting was adjourned.

Milton Y. Tate, Jr.
Mayor

Jeana Bellinger, TRMC, CMC
City Secretary

Brenham City Council Minutes

A regular meeting of the Brenham City Council was held on March 11, 2021 beginning at 1:00 p.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

Members present:

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

Members absent:

None

Others present:

City Manager James Fisher, City Attorney Cary Bovey, Assistant City Manager – Public Services/Utilities Donald Reese, Assistant City Manager – Chief Financial Officer Carolyn Miller, City Secretary Jeana Bellinger, Fire Chief Ricky Boeker, Police Chief Ron Parker, Captain Lloyd Powell, Captain Dant Lange, Public Works Director Dane Rau, Public Utilities Director Alton Sommerfield, Development Services Director Stephanie Doland, Economic Development Director Susan Cates, Director of Tourism Jennifer Eckermann, Shauna Laauwe, Casey Redman, Kyle Branham, and Stephen Ehlert.

Citizens present:

No citizens were present.

Media Present:

Alyssa Faykus, Brenham Banner Press; and Josh Blaschke, KWHI

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags – Councilmember Adonna Saunders**

3. Citizens Comments

There were no citizen comments heard.

4. Service Recognitions

- **Larry Moreno, Jr. – Parks Department, 25 years**

5. Special Recognitions

- **Washington County Chamber of Commerce 2020 Woman of the Year – Jennifer Eckermann**
- **2020 Economic Excellence Award from the Texas Economic Development Council**

CONSENT AGENDA

6. Statutory Consent Agenda

- 6-a. Approve the Minutes from the February 4, 2021 Regular City Council Meeting and the February 17, 2021 Emergency Special City Council Meeting**
- 6-b. Approve Ordinance No. O-21-004 on Its Second Reading Amending the FY2020-21 Adopted Budget**
- 6-c. Approve Ordinance No. O-21-005 on Its Second Reading Amending the City of Brenham Code of Ordinances, Chapter 26 -Utilities, Article II - Industrial Wastewater and Discharge Standards and Pretreatment Program**
- 6-d. Approve Ordinance No. O-21-006 on Its Second Reading Amending the Rate Tariff Schedules for the City of Brenham Water Services**
- 6-e. Approve Ordinance No. O-21-007 on Its Second Reading Amending the Rate Tariff Schedule for the City of Brenham Sanitary Sewer System**
- 6-f. Approve an Electrical Distribution Construction Agreement Between the City of Brenham and Techline Construction LLC. Through the Lower Colorado River Authority (LCRA), In An Amount Not to Exceed \$53,585.00, for the Annual Pole Changeout Program and Authorize the Mayor to Execute Any Necessary Documents**

A motion was made by Councilmember Cantey and seconded by Councilmember Wright to approve the Statutory Consent Agenda Items 6-a thru 6-f as presented.

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

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

WORK SESSION

7. Discussion and Presentation of the City of Brenham Police Department's: a. 2020 Annual Report b. 2020 Racial Profiling Report

Police Chief Ron Parker presented these items to Council. Parker explained that the Police Department had its share of challenges in 2020 with the most significant being COVID-19 and its impact on the department, the officers, and the community. Parker explained that 2020 was also the year that created growing concern over reforms for policing strategies and practices, nationwide. Parker explained that in response to the nationwide concerns, the department created a Citizens Advisory Board to assist with community input and interaction, updated their policies on use of force strategies and vehicular pursuits, began requiring mandatory reporting when officers witness inappropriate actions by fellow officers, initiated steps to certify several officers as mental health officers, and pursued additional training for all officers in crisis intervention and de-escalation techniques.

Parker presented the following highlights from the 2020 Annual Report:

- Overall crime rate is down 15%. Violent crimes are down 45%; while property crimes are down 14%.
- Answered 35,219 calls for service – increase of 1% from last year.
- Made over 600 arrests and over 6,600 traffic stops
- Processed 2,511 cases or offense reports.
- Reported no racial profiling complaints in 2020.

Chief Parker also advised the Council that he has suspended the K-9 Officer Program until he can properly evaluate the program's benefits to the department and the community. Parker stated that he added a Chief of Staff position in his office to assist him with various executive/confidential tasks and promoted Officer Marley Mayo to the position of Community Resource Officer.

Police Chief Ron Parker presented the following highlights from the 2020 Racial Profiling Report:

- Total traffic stops were 6,660
- Race or ethnicity was unknown in 96% of the stops
- Males are the higher gender at 60% of the stops involving males.
- Caucasians/whites were stopped the greatest number of times (48%) for law violations, moving traffic violations (55%), and vehicle traffic violations (39%).
- Searches were conducted on African Americans (48%) more than any other race; however, arrest incidents were the greatest with Caucasians/whites (67%).

City Manager James Fisher thanked Chief Parker for his leadership to the Police Department.

REGULAR SESSION

8. Discuss and Possibly Act Upon Resolution No. R-21-001 Related to the Mayoral Declaration of Local Disaster Due to A Public Health Emergency Related to the COVID-19 (Coronavirus) Pandemic

City Manager James Fisher advised Council that the City's current emergency declaration approved under Resolution No. R-21-001 is still accurate; however, Section 7 of the Resolution should be amended to now reference the new Executive Order (GA-34) issued by Governor Abbott on March 2, 2021.

Fisher advised that even though the mask mandate was lifted by the Governor, he feels it is still imperative to protect employees; therefore, masks will still be required within all city facilities. Fisher stated that hopefully in a few months as vaccines become more available, masks will not be required in city facilities.

City Attorney Cary Bovey advised Council that he agreed with Fisher's request to update the Executive Order information; Bovey also recommended a new Resolution number of R-21-010 be used.

A motion was made by Councilmember Kolby and seconded by Councilmember Saunders to approve Item 8 as presented with Section 7 of Resolution No. R-21-001 related to the Mayoral Declaration of Local Disaster due to a Public Health Emergency related to the COVID-19 (Coronavirus) Pandemic being amended to replace "*Executive Order GA-32 issued by Governor Greg Abbott on October 7, 2020*" with "*Executive Order GA-34 issued by Governor Greg Abbott on March 2, 2021*" and to change the Resolution number to R-021-010.

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

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

9. Discuss and Possibly Act Upon Bid No. 21-004 Related to the Annual Generator Maintenance and Inspection Contract for Various City Facilities and Authorize the Mayor to Execute Any Necessary Documentation

Purchasing and Fleet Supervisor Kyle Branham advised Council that on February 12, 2021, the Purchasing Department opened bids related to the annual generator maintenance and inspection contract for various City facilities. Branham explained that the previous contract was with Loftin Equipment and expired February 14, 2021.

Branham advised that there were nine (9) bids received. Branham explained that the bid submitted by Loftin Equipment in the amount of \$11,620 was not the lowest but is considered the best value due to Loftin not assessing a trip charge and having a lower labor rate of \$85.00 per hour on additional trips. Branham advised that if awarded to Loftin the term of the contract would be for three (3) years with the option to renew for an additional two (2) years. if both parties agree.

A motion was made by Councilmember Herring and seconded by Councilmember Cantey to award Bid No. 21.004 related to the annual generator maintenance and inspection contract to Loftin Equipment in the amount of \$11,620.00 per year with an \$85.00 per hour labor rate and no trip charges.

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

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

10. Discuss and Possibly Act Upon Resolution No. R-21-008 Related to the Award of RFQ No. 21-005 for Grant Administration and/or Planning Services for Qualified Projects for the Community Development Block Grant (TxCDBG) Program for Rural Texas Through the Texas Department of Agriculture

Public Works Director Dane Rau presented this item to Council. Rau advised that the Community Development Block Grant (TxCDBG) for Rural Texas's primary objective is to develop viable communities by providing housing and suitable living environments and expanding economic opportunities for low-to-moderate income persons.

Rau explained that the Community Development Fund is the largest fund category in the TxCDBG Program. This fund is available through competition in each of the 24 state planning regions. Although most funds are used for Public Facilities (water/wastewater infrastructure, street, and drainage improvements, and housing activities), there are numerous other activities for which these funds may be used. Rau stated that the Max Award is \$350,000.00 and the application deadline is May 3, 2021.

Rau advised Council that staff requested proposals from qualified grant administration and/or planning service provider(s) to assist the City in preparing applications for and the overall administration or implementation of the proposed TxCDBG program project(s). A selection committee consisted of three members: Councilmember Andrew Ebel, Assistant City Manager Donald Reese, and Director of Public Works Dane Rau. The Committee reviewed and rated the four (4) proposals received. After evaluating and scoring the proposals it was decided that the Committee would recommend awarding RFQ No. 21-005 for grant administration services to Public Management.

A motion was made by Councilmember Cantey and seconded by Mayor Pro Tem Ebel to approve Resolution No. R-21-008 related to the award of RFQ No. 21-005 for grant administration and/or planning services for qualified projects for the Community Development Block Grant (TxCDBG) Program for Rural Texas through the Texas Department of Agriculture and naming Public Management as the service provider.

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

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

11. Discuss and Possibly Act Upon Resolution No. R-21-009 Related to the Award of RFP No. 21-006 for Engineering/Architecture/Surveying Services for Qualified Projects for the Community Development Block Grant (TxCDBG) Program for Rural Texas Through the Texas Department of Agriculture

Public Works Director Dane Rau presented this item to Council. Rau advised Council that staff requested proposals from qualified engineering, architecture, and surveying service provider(s) to assist the City in preparing applications for and the overall administration or implementation of the proposed TxCDBG program project(s). A selection committee consisted of three members: Councilmember Andrew Ebel, Assistant City Manager Donald Reese, and Director of Public Works Dane Rau. The Committee reviewed and rated the five (5) proposals received. After evaluating and scoring the proposals it was decided that the Committee would recommend awarding RFP No. 21-006 for engineering, architecture, and surveying services to Strand Associates, Inc.

A motion was made by Councilmember Cantey and seconded by Mayor Pro Tem Ebel to approve Resolution No. R-21-009 related to the award of RFP No. 21-006 for engineering/architecture/surveying services for qualified projects for the Community Development Block Grant (TxCDBG) Program for Rural Texas through the Texas Department of Agriculture and naming Strand Associated, Inc. as the service provider.

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

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

12. Discuss and Possibly Act Upon an Electronic Payment Processing Agreement Between the City of Brenham and VeriCheck, Inc. for Services Related to the Electronic Payment and Collection of Hotel Occupancy Taxes and Authorize the Mayor to Execute Any Necessary Documentation

City Secretary Jeana Bellinger presented this item to Council. Bellinger explained that this agreement is the final step in the electronic collection of hotel occupancy taxes. Bellinger stated that the agreement with VeriCheck will allow for hotel occupancy tax payments to be automatically deposited into the City's bank account. Bellinger advised that this on-line payment method would allow hoteliers and B&B owners to pay their city HOT taxes from the comfort of their office – they would no longer be required to come to City Hall and make the payment in person.

Bellinger stated that Washington County is also a partner in this on-line payment program and both entities are looking forward to going live in May, 2021.

A motion was made by Councilmember Kolby and seconded by Councilmember Herring to approve an Electronic Payment Processing Agreement between the City of Brenham and VeriCheck, Inc. for services related to the electronic payment and collection of hotel occupancy taxes and authorize the Mayor to execute any necessary documentation.

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

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

13. Administrative/Elected Officials Report

City Manager James Fisher reported on the following:

- Advised Council that the COVID set-up of Council Chambers will remain the same; however, more seating has been added.
- Employee picnic will be in April.

Council convened into Executive Session at 2:05 p.m.

EXECUTIVE SESSION

14. 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

Executive Session adjourned at 2:33 p.m.

REGULAR SESSION

The meeting was adjourned.

Milton Y. Tate, Jr.
Mayor

Jeana Bellinger, TRMC, CMC
City Secretary

Brenham City Council Minutes

An emergency meeting of the Brenham City Council was held on March 18, 2021 beginning at 11:30 a.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

Members present:

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

Members absent:

None

Others present:

City Manager James Fisher, City Attorney Cary Bovey, Deputy City Secretary Karen Stack, Assistant City Manager-Chief Financial Officer Carolyn Miller, Assistant City Manager – Public Services and Utilities Donald Reese, Police Chief Ron Parker, Alton Sommerfield, and Debbie Gaffey

Citizens present:

Leigh Linden

Media Present:

Josh Blaschke, KWHI

1. Call Meeting to Order

Council adjourned into Executive Session at 11:37 a.m.

EXECUTIVE SESSION

2. **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**

Executive Session adjourned at 12:36 p.m.

REGULAR SESSION

3. **Discuss and Possibly Act Upon the City of Brenham Gas Utility System - Gas Sales Contract Between WTG Gas Marketing, Inc. and City of Brenham, Texas and Associated Issues and Authorize the Mayor to Execute Any Necessary Documentation**

A motion was made by Councilmember Herring and seconded by Councilmember Cantey to authorize the City Manager and/or the City Attorney to retain legal counsel to take the necessary legal steps and/or action to protect the City's financial interests and City's gas customers with regard to the City's contract with West Texas Gas Marketing, Inc. and associated matters, and authorize the City Manager to execute and sign any necessary documentation.

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

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

The meeting was adjourned.

Milton Y. Tate, Jr.
Mayor

Karen Stack
Deputy City Secretary



Regular City Council
AGENDA ITEM 6-B.

Agenda Item: Approve a Joint Election Services Agreement Between the City of Brenham, Washington County, and Brenham Independent School District (BISD) Related to Election Responsibilities for the Washington County, City of Brenham, and BISD's May 1, 2021 Elections and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-March 25, 2021

Department: Administration

Staff Contact: Jeana Bellinger

Classification: Consent

SUMMARY STATEMENT:

This Joint Election Services Agreement is for election services related to the bond election for the Pecan Glen Road District in Washington County. Since the County is running this election in conjunction with the City's General Election and the BISD Trustee election, the County requested we enter into an agreement with them that outlines the County's responsibilities in relation to the bond election. This agreement is almost identical to the joint agreement we have with BISD and has been approved by the City Attorney. Staff recommends approving this agreement.

ATTACHMENTS:

(1) Joint Election Services Agreement

RELEVANCE TO COMPREHENSIVE PLAN:

RECOMMENDED ACTION:

Approve a Joint Election Services Agreement between the City of Brenham, Washington County, and Brenham Independent School District (BISD) related to election responsibilities for Washington County, City of Brenham, and BISD's May 1, 2021 Elections and authorize the Mayor to execute any necessary documentation.

**JOINT ELECTION AGREEMENT BETWEEN
WASHINGTON COUNTY, THE CITY OF BRENHAM, AND
BRENHAM INDEPENDENT SCHOOL DISTRICT
FOR THE MAY 1, 2021 ELECTIONS**

THIS AGREEMENT made this _____ day of _____, 20____, by and between Washington County, hereinafter referred to as “County”, the City of Brenham, hereinafter referred to as “City,” and the Brenham Independent School District, hereinafter referred to as “BISD” is for the conduct of early voting by personal appearance to be held at a common location, the conduct of election day, and all other election related functions for the May 1, 2021 elections for County Special Election for the proposed Pecan Glen Road District, the City of Brenham, Texas General Election and the Brenham Independent School District Board of Trustees Election.

THIS AGREEMENT is effective upon the approval by the governing bodies of all parties and the execution of this Agreement by all parties.

IN CONSIDERATION of the premises and mutual promises and obligations herein set forth, it is agreed:

1. With regard to conducting the City’s election, the City Secretary, or designee, will be responsible for the preparation, translation, adoption and publication of all required election orders, resolutions, notices, ballots and any other pertinent documents as required by applicable law, including without limitation the City of Brenham Charter and the Texas Election Code.
2. With regard to conducting BISD’s election, the BISD Superintendent, or designee, will be responsible for the preparation, translation, adoption and publication of all required election orders, resolutions, notices, ballots and any other pertinent documents as required by applicable law, including without limitation the Texas Education Code and the Texas Election Code.
3. With regard to conducting the County’s election held for the proposed Pecan Glen Road District, the County will be responsible for the preparation of ballots, orders, notices and publications as required by application law.
4. Early voting by personal appearance for the County, City and BISD shall be held at a common location in the Washington County Annex Building located at 100 S. Park Street, Brenham, Washington County, Texas.

5. Early voting by personal appearance shall begin on Monday, April 19, 2021 and shall end on Tuesday, April 27, 2021, from 8:00 a.m. to 5:00 p.m. each weekday, provided however, that early voting by personal appearance be conducted from 8:00 a.m. to 8:00 p.m. on Monday, April 26, 2021 and Tuesday, April 27, 2021, as required by Section §85.005 of the Texas Election Code.
6. It shall be the responsibility of each party to provide its own deputy early voting clerk to conduct or assist with Early Voting as required for their respective election and as provided in each party's Election Services Contract with Washington County.
7. All applications for mail ballots shall be delivered to the Washington County Chief Deputy Elections Clerk at 100 E. Main St., Suite 105, Brenham, TX 77833 for processing in accordance with applicable election laws.
8. All ballots and ballot related supplies for early voting and Election Day will be provided by Washington County, as provided in each party's Election Services Contract with Washington County.
9. All election equipment will be provided for each party by Washington County, as outlined in each party's respective Election Services Contract with Washington County. Washington County will also arrange for and publish in the local newspaper timely notice of the public test of all electronic voting equipment.
10. Each party shall be responsible for its own expenses related to any electronic voting equipment leased from Washington County.
11. All election judges and clerks will be provided for each party by Washington County, as outlined in each party's respective Election Services Contract with Washington County. Washington County will also provide the necessary training for all election personnel.
12. This Agreement is binding on a party hereto only if the party holds an election on May 1, 2021. Should a party cancel its election, then this Agreement will automatically terminate with respect to the cancelling party and cease to be enforceable against or binding on said cancelling party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered as of the _____ day of _____, 20____.

WASHINGTON COUNTY



John Durrenberger, County Judge

ATTEST:

Beth Rothermel, County Clerk

CITY OF BRENHAM, TEXAS

Milton Y. Tate, Jr., Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary

BRENHAM INDEPENDENT SCHOOL DISTRICT

Dr. Tylor Chaplin, Superintendent

ATTEST:

Debbie Gaskamp, Administrative Assistant



Regular City Council
AGENDA ITEM 6-C.

Agenda Item: Approve a Noise Variance for the City of Brenham for a Pop-Up Play Day to be Held on March 27, 2021 from 10:00 a.m. - 12:00 p.m. at Jerry Wilson Park and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-March 25, 2021

Department: Administration

Staff Contact: Crystal Locke

Classification: Consent

SUMMARY STATEMENT:

The City of Brenham, in conjunction with the Boys & Girls Club of Washington County, will be hosting a free Pop-Up Play Day in Jerry Wilson Park. The event will be held on Saturday, March 27th, from 10:00 am - 12:00 pm. The event will feature basketball games, story time, lawn games, and an open play area with jump ropes, hula hoops, balls, etc. The event will also feature music on a portable PA system; therefore, a noise variance is required. Property owners who live within 200 feet of the park have already been notified of the upcoming event by mail.

ATTACHMENTS:

- (1) Noise Variance Request
- (2) Flyer
- (3) Notification Letter

RELEVANCE TO COMPREHENSIVE PLAN:

Guiding Principle Five: Brenham will be collaborative by pursuing and maintaining partnerships in all areas, including housing, transportation, infrastructure, economic development, emergency response, and arts and culture.

RECOMMENDED ACTION:

Approve a Noise Variance for the City of Brenham for a Pop-Up Play Day to be held on March 27, 2021 from 10:00 a.m. - 12:00 p.m. at Jerry Wilson Park and authorize the Mayor to execute any necessary documentation

NOISE VARIANCE REQUEST

Application Fee \$10.00

1. Name of sponsoring organization:
City of Brenham and Boys & Girls Club of Washington County
2. Name and address of individual making application on behalf of sponsoring organization: _____
Crystal Locke - 200 W. Vulcan Street Brenham, Texas 77833
Angelica Gamboa - 1710 E. Tom Green Street Brenham, Texas 77833
3. Purpose of the Event: Pop-up Play Day - bringing free outdoor play for all ages
4. Location of Event: Jerry Wilson Park - 900 E. Alamo Street
5. Date of the event: Saturday, March 27, 2021
6. Time of Event: 10:00am-noon
7. Event Set-up: From: 8:30am To: 10:00am
Event Clean-up: From: 12:00pm To: 1:00pm
8. You are required to describe the following:
 - a) Types of Activities Planned and any additional information specific to this event: _____
Basketball games, story time, lawn games, open play area with jump ropes, hula hoops, balls, etc., and music
 - b) Bands/Musical Instruments: No band
 - c) Sound amplification equipment:
Portable PA system
 - d) Cleanup provisions: _____

Crystal Locke
Name of Applicant (Printed or Typed)
C Locke
Applicant or Authorized Person's Signature

Date: 03/5/2021
Phone: 979-337-7254

Have you ever been found guilty of a criminal offense involving crimes against property, moral turpitude, and/or a felony by any Court? Yes X No. If "Yes", please identify the offense, State of conviction and penalty imposed (attach additional sheets if necessary):



POP-UP PLAY DAY

MEET US AT THE PARK

March 27| 10am-12pm
Jerry Wilson Park
900 E. Alamo Street

Basketball, Open Play,
Story time, Lawn Games,
and More

cityofbrenham.org/popup

designed by  freepik.com



March 5, 2021

Dear Resident,

Pop-up Play Day is coming to Jerry Wilson Park on Saturday, March 27 from 10:00am-noon. The Boys & Girls Club of Washington County and City of Brenham Parks and Recreation are collaborating to offer a new program in our park system to meet our park users, highlight park amenities, and foster play by providing additional activities for children.

Staff is requesting a noise variance for Saturday, March 27 from 9:30am-12:30pm that will be presented to City Council on Thursday, March 25 at 1:00pm. Staff would like to set-up a portable PA system near the restrooms to play music and make announcements throughout the event. We are notifying you of the event because your residence is located within a 200 ft. buffer of the park.

Meet us at the park Saturday, March 27 from 10am-12pm for basketball, story time, lawn game, and fun. Event flyer on the back.

For more information visit cityofbrenham.org/popup.

Sincerely,

Crystal Locke
City of Brenham
979-337-7254

Angelica Gamboa
Boys & Girls Club of Washington County
979-277-9383



Regular City Council
AGENDA ITEM 7.

Agenda Item: Discuss and Review the FY2019-20 Fourth Quarter Financial Report

Meeting Type: Regular Meeting-March 25, 2021

Department: Finance

Staff Contact: Carolyn Miller

Classification: Work Session

SUMMARY STATEMENT:

See attached Financial Reports for General Fund (excluding sub-funds) and six major utility funds.

ATTACHMENTS:

- (1) Memo 4th Quarter Financial Report
- (2) 4th Quarter Financial Statements

RELEVANCE TO COMPREHENSIVE PLAN:

Plan 2040 implementation if made possible by the City's adherence to the annual budget which identifies how essential capital projects and annual priorities will be funded and maintained.

RECOMMENDED ACTION:

Discussion only.



MEMORANDUM

To: Mayor, Council and City Manager

From: Carolyn D. Miller, Assistant City Manager – Chief Financial Officer
Debbie Gaffey, Strategic Budget Officer

Subject: FY2019-20 Fourth Quarter Financial Report

Date: March 12, 2021

The Finance Division is pleased to provide financial performance reports for the quarter and year ending September 30, 2020. The General Fund (excluding sub-funds) and the six major utility funds are presented. All financials include comparisons of year-end results versus prior year-end results. In addition, year-end results are compared to the original and amended annual budget. Electric and Gas Funds are presented without the impact of wholesale power and gas commodity costs which are recovered through pass-thru revenue.

Actual to Budget Comparison

The General Fund, the Electric Fund, the Water Fund and the Drainage Fund experienced favorable actual to budget net revenues for the fiscal year. The Gas Fund, the Wastewater Fund and the Sanitation Fund experienced unfavorable actual to budget net revenues.

FINANCIAL PERFORMANCE SUMMARY

Fund	For Period Ending September 30, 2020				
	YTD Revenues & Other Sources	YTD Expenditures & Other Uses	Actual Net Revenues (Loss)	Budgeted Net Revenues (Loss)	Actual to Budget Comparison Fav/(Unfav)
General	\$18,073,083	\$17,538,136	\$534,947	(\$40,000)	\$574,947
Electric Distribution	\$7,435,247	\$7,034,648	\$400,598	(\$186,560)	\$587,158
Gas Distribution	\$1,414,785	\$1,541,048	(\$126,262)	(\$95,357)	(\$30,905)
Water	\$5,029,510	\$4,291,701	\$737,809	\$570,087	\$167,722
Wastewater	\$3,698,465	\$4,120,910	(\$422,445)	(\$361,321)	(\$61,164)
Sanitation	\$3,208,407	\$3,733,146	(\$524,738)	(\$471,473)	(\$53,265)
Drainage	\$551,680	\$143,049	\$408,631	\$168,259	\$240,372

GENERAL FUND

The General Fund posted actual net year-end surplus of \$534,947, compared to a budgeted net fiscal year deficit of (\$40,000). Final revenues and other sources were less than budget projections by \$693,829. Contributing to this revenue shortfall were:

- Lower than budget sales tax revenue of (\$243,109) associated with COVID-19;
- Lower than budget projected utility franchise fee revenue of (\$239,610) due to lower electric and gas (pass-through) prices; and
- Lower than budget charges for services revenue of (\$181,337) associated with closure and partial openings of parks, library and aquatic center.

The budget revenue shortfall for FY2020 of nearly \$700,000 is better than the (\$1.4) million shortfall anticipated last April. Sales tax revenue during COVID-19 has been stronger than expected because of more in-town consumer spending, higher sales taxes from on-line shopping and commercial spending for COVID modifications. In addition, City facilities have been reopened with modifications to hours and services and are generating some revenue, albeit not at the levels pre-COVID-19.

Year-end operating expenditures and other financing uses were favorable (lower) than budget appropriations by \$1,268,776.

- Personnel costs were \$787,968 favorable (lower) than budget due to normal turnover and vacancies; one-week furloughs taken by full-time staff to mitigate potential COVID-19 related revenue shortfalls; and medical insurance savings;
- Supplies were \$188,629 favorable to budget with savings on lower fuel costs, library, parks and animal shelter supplies, IT supplies, and clothing/PPE;
- Maintenance expenses were \$51,552 unfavorable (higher) than budget primarily due to pool repairs and repairs at the Police and Fire Stations;
- Service expenses were \$151,940 favorable (lower), with a reduction in consultants and service contracts;
- Non-capital costs were \$47,581 favorable (lower) due to deferral of wireless access points and savings from Aquatic Center projects funded by BCDC;
- Capital costs tracked closely to budget; and
- Sundries were under budget by \$93,195 due to a curtailment in travel to seminars and training brought on by COVID-19.

The budget expenditure savings of \$1,268,776 offset the revenue shortfall of \$693,829, creating a budget surplus of \$574,947.

At the end of the fiscal year, we have 125 days of reserves in the consolidated General Fund, which is an increase of 8 days over FY19. This exceeds our financial goal of 90 days reserve and 5 days for renovations and repairs.

ELECTRIC FUND

The Electric Distribution Fund posted an actual net year-end profit of \$400,598 which was \$587,158 favorable to the budgeted fiscal year loss of (\$186,560). Highlights for the fiscal year include:

- Revenues from charges for services were lower than budget by \$239,558 due to lower than budget kWh consumption;
- Department operating expenditures were favorable (lower) to budget by \$652,336 with savings realized in personnel, supplies, maintenance, contractual services, capital outlay and franchise fees;
- Debt service for the Copper Replacement Project closely tracked budget; and
- Transfers to the General Fund were slightly lower than budget due to lower spending in General Fund shared service departments.

Key Electric Fund infrastructure projects for the fiscal year included:

- Annual pole change-outs
- Installation of auto protection devices
- Improvements to system automation
- Copper conductor replacement
- Blinn new Ag building
- Gay Hill Street feeder upgrade
- Annual service installs and replacements (lines, meters and transformers)

GAS FUND

For the 2019-2020 fiscal year, the Gas Distribution Fund posted actual net loss of (\$126,262), which was unfavorable by \$30,905 to a budgeted net loss of (\$95,357). Highlights for the fiscal year include:

- Revenues from charges for services were lower than budget by \$121,219 as mcf consumption was lower than budget because of mild winter weather;
- Department operating expenditures were favorable (lower) to budget by \$58,108. Higher capital cost from the Burleson Street Extension were offset by lower franchise fees on lower gas consumption and smaller savings in other expenditure categories;
- The Gas Fund has no debt service; and
- Transfers to the General Fund and Electric Fund were lower than budget because of shared service department savings.

Key Gas Fund infrastructure projects for the fiscal year included:

- Poly valve additions to enhance system reliability and safety
- Main extension to 290 East
- Vintage Farms Phase II
- Gas main along Blue Bell Road
- Burleson Street gas main extension
- Annual service installs and replacements (lines, meters and regulators)

WATER FUND

The Water Fund posted fiscal year actual net revenues of \$737,809 which was favorable to budget net revenue of \$570,087 by \$167,722. Highlights for the fiscal year include:

- Revenues from charges for services were \$126,280 lower than budget because water consumption was lower than budget estimates;
- Department operating expenditures were favorable (lower) to budget by \$72,505 with savings from supplies, maintenance, services, capital outlay, and franchise fees offsetting overages in personnel costs and water supply costs;
- Debt service was higher than budget because of unbudgeted bond issuance costs; and
- Transfers-out to the General Fund and the Electric Fund for shared service cost reimbursements were favorable to budget by \$33,689.

Key Water Fund infrastructure projects for the fiscal year included:

- AC/CI water line replacements (contractor)
- Lake line lowering
- Raw water intake/Gabions (FEMA)
- Protective coating project Phase II
- Baker-Katz water line
- Industrial Blvd water line lowering
- Zippy J's water line
- Annual new services (lines and meters)

WASTEWATER FUND

FY19-20 net loss for the Wastewater Fund was (\$421,445) and was \$61,164 unfavorable to year-end budget net loss of (\$361,321). Highlights for the fiscal year include:

- Revenues from charges for services were \$178,575 lower than budget estimates;
- Operating expenditures were favorable to budget by \$123,973, driven by lower franchise fees on lower revenues and savings in all categories except personnel;
- Debt service came in over budget by \$19,576; and
- Transfers-out to the General Fund and the Electric Fund for shared service cost reimbursements were favorable to budget by \$20,347.

Key Wastewater Fund infrastructure projects for the fiscal year included:

- Baker-Katz
- Limit Street sewer main relocation
- Burleson Street sewer main extension

SANITATION FUND

The combined operations of the Sanitation Fund posted actual year-end net loss of (\$524,738), compared to budget net loss of (\$471,473), an unfavorable variance of \$53,265. The Sanitation Fund has strong working capital reserves of over \$1.8 million. Capital assets (vehicles and equipment) were sold during the transition period of outsourcing services to BIG. Highlights for the fiscal year include:

- Takeover of the Transfer Station and Collection Station business lines by BIG reflected in unfavorable charges for services of \$625,187 compared to budget;
- Contractual outsourcing of residential and commercial collection services (including curbside recycling) to BIG reflected in favorable budget variances for all expenditure categories except contractual services;
- Early payoff of outstanding debt (unfavorable to budget) and sale of assets (favorable to budget); and
- Transfers-out to the General Fund and the Electric Fund for shared service cost reimbursements that were favorable to budget.

DRAINAGE FUND

The Drainage Fund posted actual fiscal year net revenues of \$408,631, compared to budget net revenues of \$168,259, a favorable variance of \$240,372. Highlights for the fiscal year include:

- Revenues running slightly higher than budget estimates;
- Savings over budgeted costs in personnel, supplies, maintenance expenditures and contracted services; and
- Savings in debt service with deferral on first payment for a street sweeper into next fiscal year and deferral of the purchase of a gradall into next fiscal year.

CONCLUSION

As noted in the financial report, the City experienced favorable performance in the General, Electric, Water and Drainage funds relative to budget. From a financial perspective, the City is weathered the impact of COVID-19 better than expected.

After you have reviewed this financial performance report, should you have any questions or comments prior to the council meeting, please do not hesitate to contact us directly.

GENERAL FUND FINANCIAL PERFORMANCE SUMMARY

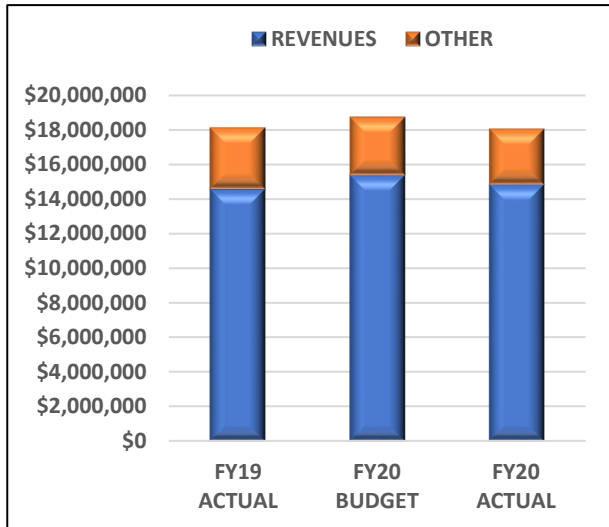
Fiscal Year Ending September 30, 2020									
General Fund	YTD Revenues	YTD Expenditures	YTD Financing Sources (Uses)	Actual Net Revenues (Loss)	Amended Budgeted Net Revenues (Loss)	Actual to Budget Comparison	Beginning Fund Balance (Deficit)	Ending Fund Balance (Deficit)	Days of Reserves (Deficit) *
General	\$ 14,830,666	\$ 17,174,625	\$ 2,878,906	\$ 534,947	\$ (40,000)	Favorable	\$ 4,430,169	\$ 4,965,116	106
FEMA	\$ 2,511,782	\$ 2,804,001	\$ 701,186	\$ 408,967	\$ (106,895)	Favorable	\$ 135,140	\$ 544,107	12
Equipment	\$ -	\$ 5,375	\$ -	\$ (5,375)	\$ 15,147	Unfavorable	\$ 109,726	\$ 104,351	2
Donations	\$ 217,140	\$ 161,170	\$ -	\$ 55,970	\$ 218,737	Unfavorable	\$ 228,237	\$ 284,207	6
General Fund Combined									125

* Based on unassigned fund balance.

Fiscal Year Ending September 30, 2019									
General Fund	YTD Revenues	YTD Expenditures	YTD Financing Sources (Uses)	Actual Net Revenues (Loss)	Amended Budgeted Net Revenues (Loss)	Actual to Budget Comparison	Beginning Fund Balance (Deficit)	Ending Fund Balance (Deficit)	Days of Reserves (Deficit) *
General	\$ 14,577,199	\$ 17,958,554	\$ 3,111,780	\$ (269,575)	\$ (405,861)	Favorable	\$ 4,699,744	\$ 4,430,169	106
FEMA	\$ 63,417	\$ 273,367	\$ 1,115,678	\$ 905,728	\$ 533,413	Favorable	\$ (875,445)	\$ 30,283	1
Equipment	\$ -	\$ 633,488	\$ 425,000	\$ (208,488)	\$ (211,014)	Favorable	\$ 318,213	\$ 109,725	3
Donations	\$ 103,022	\$ 133,604	\$ -	\$ (30,582)	\$ (38,371)	Favorable	\$ 258,819	\$ 228,237	5
General Fund Combined									115

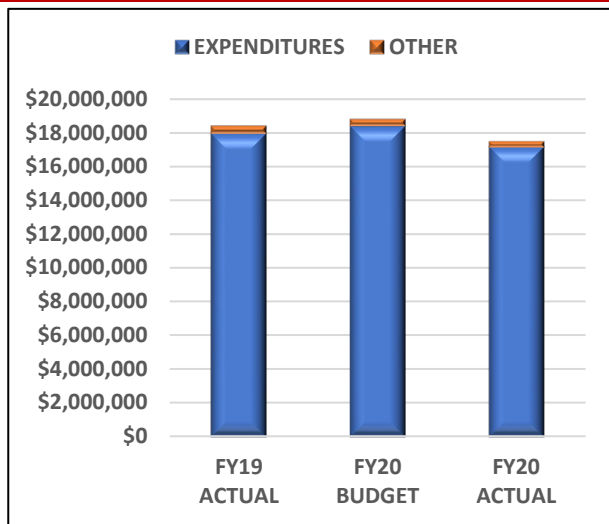
* Based on unassigned fund balance.

REVENUES AND OTHER FINANCING SOURCES



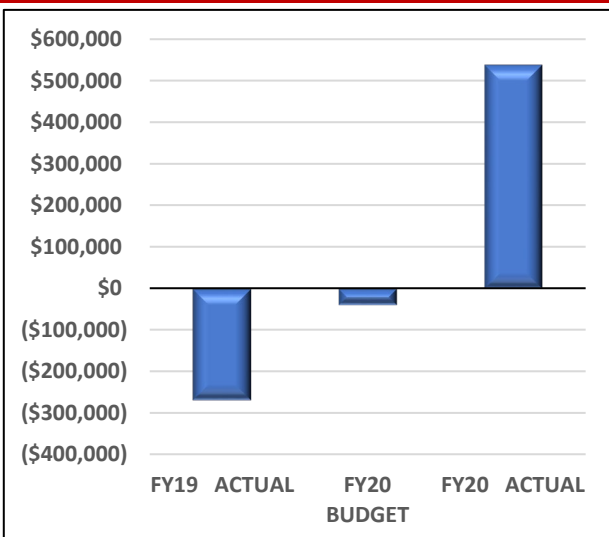
For Fiscal Year 2019-20, actual revenues and other financing sources were within 96.3% of the budget projection of \$18.8 million and were lower than prior year results by \$83,453, or 0.46%. Revenues generated from taxes and other charges for services were \$541,975 lower than budget projections due to COVID-19. Licenses and permits, intergovernmental revenue, and miscellaneous revenues were higher than budget and helped to offset shortfalls in taxes, services revenues, investment income, fines and forfeitures, and contributions from BCDC. Other financing sources were under budget projections for transfers-in from the utility funds (lower cost of services).

EXPENDITURES AND OTHER USES OF FINANCING SOURCES



For Fiscal Year 2019-20, actual expenditures and uses of other financing sources were \$1.3 million or 6.7 percent favorable (lower) than budget and \$899,598 or 4.9 percent favorable (lower) than prior year. Nearly 65 percent of budget savings was in personnel due to turnover, one-week furloughs and vacancies. Medical insurance premiums were lower than prior year due to savings obtained at re-bid. City facility closures and reduction in operating hours due to COVID-19 helped contribute to budget savings in all categories except for maintenance, where we came in 6.5% over budget.

INCREASE/(DECREASE) OF FUND BALANCE



For Fiscal Year 2019-20, there was an increase in reserves of \$538,372, which was favorable to budgeted decrease of (\$40,000) and a prior year decrease of (\$269,575). The pre-audit estimate days in reserves is 125 days for the consolidated General Fund. This is an increase of 10 days over FY19.

CITY OF BRENHAM
FY20 4TH QUARTER RESULTS (BUDGETARY BASIS)

FUND 101 - GENERAL FUND FINANCIAL STATEMENT

IN \$	YTD			FY20 ACT FAV/(UNFAV) TO		ANNUAL FY20 BUDGET		FY20 YTD ACT AS % OF	
	FY19 ACT	FY20 BUD	FY20 ACT	FY19ACT	FY20 BUD	ORIGINAL	AMENDED	BUDGET (O)	BUDGET (A)
REVENUES									
TAXES (2)	12,303,086	12,936,484	12,507,907	204,821	(428,577)	12,936,484	12,936,484	96.7%	96.7%
LICENSES AND PERMITS	151,393	147,328	298,706	147,313	151,378	147,328	147,328	202.7%	202.7%
INTERGOVERNMENTAL	399,894	374,426	380,564	(19,330)	6,138	374,426	374,426	101.6%	101.6%
CHARGES FOR SERVICES	644,411	604,851	423,514	(220,896)	(181,337)	604,851	604,851	70.0%	70.0%
FINES AND FORFEITURES	624,913	659,846	583,573	(41,340)	(76,273)	659,846	659,846	88.4%	88.4%
INVESTMENT INCOME	153,981	135,000	97,253	(56,728)	(37,747)	135,000	135,000	72.0%	72.0%
PAYMENT FROM COMPONENT UNIT	45,009	186,500	171,050	126,040	(15,450)	186,500	186,500	91.7%	91.7%
CONTRIBUTIONS AND DONATIONS	-	-	-	-	-	-	-	0.0%	0.0%
MISCELLANEOUS	254,512	328,206	368,099	113,586	39,893	328,206	328,206	112.2%	112.2%
TOTAL REVENUES	14,577,199	15,372,641	14,830,666	253,467	(541,975)	15,372,641	15,372,641	96.5%	96.5%
EXPENDITURES									
CURRENT:									
CULTURE AND RECREATION	3,413,888	3,518,926	2,994,540	419,348	524,386	3,518,926	3,518,926	85.1%	85.1%
GENERAL GOVERNMENT	6,237,315	5,967,719	5,735,823	501,491	231,896	5,969,790	5,967,719	96.1%	96.1%
HEALTH AND WELFARE	608,927	615,228	539,171	69,756	76,057	615,228	615,228	87.6%	87.6%
HIGHWAYS AND STREETS	1,162,045	1,086,052	1,133,228	28,816	(47,176)	1,086,052	1,086,052	104.3%	104.3%
PUBLIC SAFETY	6,293,346	7,155,903	6,723,305	(429,959)	432,598	7,157,432	7,155,903	93.9%	94.0%
DEBT SERVICE:									
INTEREST & FISCAL CHARGES	-	-	-	-	-	-	-	0.0%	0.0%
PRINCIPAL RETIREMENT	-	-	-	-	-	-	-	0.0%	0.0%
ISSUANCE COSTS	-	-	-	-	-	-	-	0.0%	0.0%
CAPITAL OUTLAY	241,922	48,600	48,558	193,365	42	45,000	48,600	107.9%	99.9%
TOTAL EXPENDITURES	17,957,443	18,392,428	17,174,625	782,818	1,217,803	18,392,428	18,392,428	93.4%	93.4%
EXCESS (DEFICIENCY) OF REVENUES OVER (UNDER) EXPENDITURES									
	(3,380,244)	(3,019,787)	(2,343,959)	1,036,285	675,828	(3,019,787)	(3,019,787)	77.6%	77.6%
OTHER FINANCING SOURCES (USES)									
TRANSFERS IN	3,579,338	3,384,271	3,206,323	(373,014)	(177,948)	3,384,271	3,384,271	94.7%	94.7%
TRANSFERS OUT	(480,292)	(414,484)	(363,511)	116,780	50,973	(1,374,484)	(414,484)	26.4%	87.7%
ISSUANCE OF DEBT	-	-	-	-	-	1,000,000	-	0.0%	0.0%
ISSUANCE OF CAPITAL LEASES	-	-	-	-	-	-	-	0.0%	0.0%
PREMIUM ON DEBT ISSUED	-	-	-	-	-	-	-	0.0%	0.0%
INSURANCE PROCEEDS	12,734	10,000	36,094	23,360	26,094	10,000	10,000	360.9%	360.9%
TOTAL OTHER SOURCES/(USES)	3,111,780	2,979,787	2,878,906	(232,874)	(100,881)	3,019,787	2,979,787	95.3%	96.6%
NET CHANGE IN FUND BALANCE	(268,464)	(40,000)	534,947	803,411	574,947	-	(40,000)	0.0%	100.0%
FUND BALANCES - BEGINNING	4,699,744	4,430,169	4,430,169	(269,575)	-	4,430,169	4,430,169	100.0%	100.0%
FUND BAL - ENDING (INCLUDES ACCRUAL ADJ)	4,430,169	4,390,169	4,968,542	538,372	578,372	4,430,169	4,390,169	112.2%	113.2%
(1) ACTUALS EXCLUDE ACCRUED COMP TIM	(1,111)	-	3,425	(4,536)	-	-	-	0.0%	0.0%
NET CHANGE IN FUND BALANCE ADJUST	(269,575)	(40,000)	538,372	807,947	574,947	-	(40,000)	0.0%	-1345.9%
(2) TAXES DETAIL									
TAX RECEIPTS-GENERAL FUND	4,217,141	4,518,348	4,584,798	367,657	66,450	4,518,348	4,518,348	101.5%	101.5%
DEFERRAL - SPREAD EVEN FOR YEAR	-	-	-	-	-	-	-	-	-
PENALTY AND INTEREST/TAX	40,761	34,255	41,124	363	6,869	34,255	34,255	120.1%	120.1%
PENALTY FOR LATE RENDITION	3,548	3,648	3,652	104	4	3,648	3,648	100.1%	100.1%
CITY SALES TAX	5,217,475	5,509,316	5,266,207	48,732	(243,109)	5,509,316	5,509,316	95.6%	95.6%
ACCRUAL FOR JUL AND AUG	-	-	-	-	-	-	-	-	-
UTIL FRANCHISE TAXES	2,386,756	2,448,743	2,209,133	(177,623)	(239,610)	2,448,743	2,448,743	90.2%	90.2%
GROSS RECPTS/FRANCHISE TAX	265,722	255,149	239,977	(25,746)	(15,172)	255,149	255,149	94.1%	94.1%
SANITATION FRANCHISE TAX	28,063	29,745	35,932	7,869	6,187	29,745	29,745	120.8%	120.8%
MIXED BEVERAGES TAX RECPT	66,945	51,266	55,708	(11,237)	4,442	51,266	51,266	108.7%	108.7%
PHONE ACCESS LINE FEES	76,674	86,014	71,376	(5,298)	(14,638)	86,014	86,014	83.0%	83.0%
TOTAL	12,303,086	12,936,484	12,507,907	204,821	(428,577)	12,936,484	12,936,484	96.7%	96.7%

CITY OF BRENHAM

FY20 4TH QUARTER RESULTS (BUDGETARY BASIS)

GENERAL FUND EXPENDITURES BY DEPARTMENT

IN \$	YTD		FY20 ACT FAV/(UNFAV) TO		ANNUAL FY20 BUDGET		FY20 YTD ACT AS % OF		
	FY19 ACT	FY20 BUD	FY20 ACT	FY19ACT	FY20 BUD	ORIGINAL	AMENDED	BUDGET (O)	BUDGET (A)
CULTURE AND RECREATION (INCLUDES CAPITAL)									
049 MRKTING & PUBLIC RELATIONS	500,766	504,499	428,625	72,141	75,874	504,221	504,499	85.0%	85.0%
144 PARKS	1,376,365	1,466,527	1,211,293	165,073	255,234	1,466,527	1,466,527	82.6%	82.6%
146 LIBRARY	577,288	593,836	524,685	52,603	69,151	593,836	593,836	88.4%	88.4%
149 AQUATIC CENTER	993,385	954,064	829,937	163,448	124,127	954,064	954,064	87.0%	87.0%
SUBTOTAL	3,447,804	3,518,926	2,994,540	453,264	524,386	3,518,648	3,518,926	85.1%	85.1%
GENERAL GOVERNMENT (INCLUDES CAPITAL)									
100 NON-DEPT DIRECT EXPEND	473,746	428,760	455,052	18,694	(26,292)	428,760	428,760	106.1%	106.1%
110 NON-DEPT MISC EXPEND	58,725	103,072	84,389	(25,664)	18,683	142,050	103,072	59.4%	81.9%
121 ADMINISTRATION	1,061,003	878,453	874,929	186,074	3,524	878,453	878,453	99.6%	99.6%
122 DEVELOPMENT SERVICES	643,395	657,398	671,368	(27,973)	(13,970)	631,268	657,398	106.4%	102.1%
123 HUMAN RESOURCES	258,622	236,469	207,665	50,956	28,804	236,469	236,469	87.8%	87.8%
131 FACILITY/FLEET MAINT	820,965	809,812	785,565	35,400	24,247	809,812	809,812	97.0%	97.0%
133 FINANCE & ADMIN SERVICES	1,111,722	1,154,375	1,140,466	(28,743)	13,909	1,154,375	1,154,375	98.8%	98.8%
135 PURCHASING/CENTRAL WRHSE	305,398	288,822	305,592	(194)	(16,770)	278,045	288,822	109.9%	105.8%
155 MUNICIPAL COURT	512,279	511,115	476,427	35,852	34,688	511,115	511,115	93.2%	93.2%
167 GENERAL GOVT SERVICES	316,909	177,127	146,951	169,958	30,176	177,127	177,127	83.0%	83.0%
172 INFORMATION TECHNOLOGY	674,549	722,316	587,419	87,130	134,897	722,316	722,316	81.3%	81.3%
SUBTOTAL	6,237,315	5,967,719	5,735,823	501,491	231,896	5,969,790	5,967,719	96.1%	96.1%
HEALTH AND WELFARE (INCLUDES CAPITAL)									
154 ANIMAL CONTROL/SHELTER	608,927	615,228	539,171	69,756	76,057	615,228	615,228	87.6%	87.6%
HIGHWAYS AND STREETS (INCLUDES CAPITAL)									
141 STREETS	1,231,864	954,312	995,068	236,796	(40,756)	954,312	954,312	104.3%	104.3%
148 AIRPORT	138,187	131,740	138,160	27	(6,420)	131,740	131,740	104.9%	104.9%
SUBTOTAL	1,370,051	1,086,052	1,133,228	236,823	(47,176)	1,086,052	1,086,052	104.3%	104.3%
PUBLIC SAFETY (INCLUDES CAPITAL OUTLAY)									
050 CITY COMMUNICATIONS	182,778	241,262	253,655	(70,876)	(12,393)	239,191	241,262	106.0%	105.1%
151 POLICE	4,126,757	4,679,732	4,351,261	(224,504)	328,471	4,679,732	4,679,732	93.0%	93.0%
152 FIRE	1,983,811	2,283,509	2,166,947	(183,135)	116,562	2,283,509	2,283,509	94.9%	94.9%
SUBTOTAL	6,293,346	7,204,503	6,771,863	(478,516)	432,640	7,202,432	7,204,503	94.0%	94.0%
TOTAL (BUDGET BASIS)	17,957,443	18,392,428	17,174,625	782,818	1,217,803	18,392,150	18,392,428	93.4%	93.4%
ACCRUED COMP TIME	1,111	-	(3,425)	4,536	-	-	-	0.0%	0.0%
TOTAL (CAFR BASIS)	17,958,554	18,392,428	17,171,200	787,354	1,217,803	18,392,150	18,392,428	93.4%	93.4%

CITY OF BRENHAM

FY20 4TH QUARTER RESULTS (BUDGETARY BASIS)

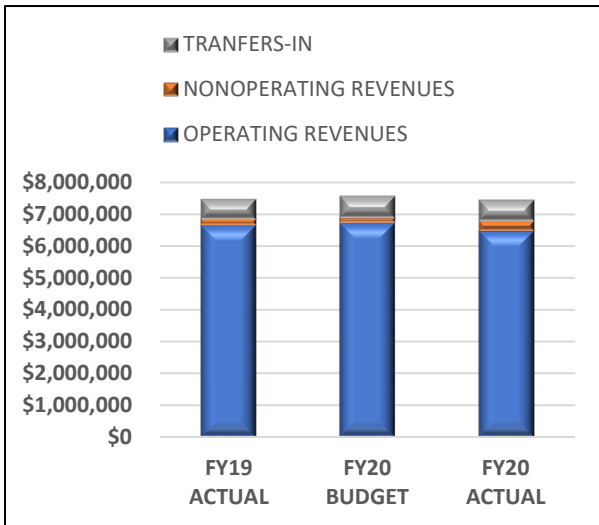
GENERAL FUND EXPENDITURES BY CATEGORY

IN \$	YTD		FY20 ACT FAV/(UNFAV) TO		ANNUAL FY20 BUDGET		FY20 YTD ACT AS % OF		
	FY19 ACT	FY20 BUD	FY20 ACT	FY19ACT	FY20 BUD	ORIGINAL	AMENDED	BUDGET (O)	BUDGET (A)
PERSONNEL	11,863,740	12,496,285	11,708,317	155,423	787,968	12,647,086	12,496,285	92.6%	93.7%
SUPPLIES	985,044	1,062,467	873,838	111,206	188,629	1,030,086	1,062,467	84.8%	82.2%
MAINTENANCE	953,020	794,604	846,156	106,864	(51,552)	738,737	794,604	114.5%	106.5%
SERVICES	2,763,790	2,728,600	2,576,660	187,131	151,940	2,588,209	2,728,600	99.6%	94.4%
NON-CAPITAL	256,856	321,556	273,975	(17,120)	47,581	274,195	321,556	99.9%	85.2%
CAPITAL	241,922	48,600	48,558	193,365	42	45,000	48,600	107.9%	99.9%
SUNDRIES	893,070	940,316	847,121	45,949	93,195	1,069,115	940,316	79.2%	90.1%
TOTAL (BUDGET BASIS)	17,957,443	18,392,428	17,174,625	782,818	1,217,803	18,392,428	18,392,428	93.4%	93.4%
ACCRUED COMP TIME	1,111	-	(3,425)	4,536	-	-	-	0.0%	0.0%
TOTAL (CAFR BASIS)	17,958,554	18,392,428	17,171,200	787,354	1,221,228	18,392,428	18,392,428	93.4%	93.4%

REVENUES AND OTHER FINANCING SOURCES

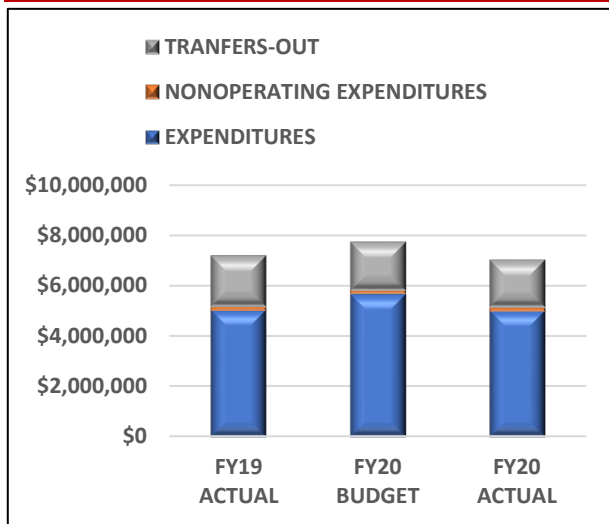
YTD
9/30/20

ELECTRIC FUND - FINANCIAL RESULTS - DISTRIBUTION



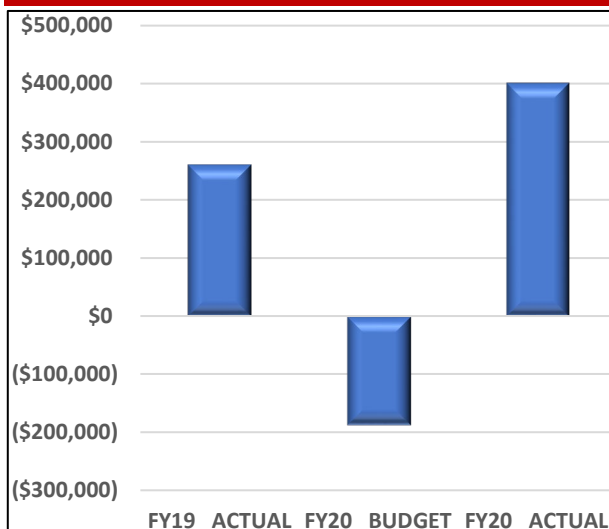
For Fiscal Year 2019-20, actual distribution revenues, other financing sources, and transfers-in of \$7.4 million were lower than budget projections by \$112,509 and prior year results by \$22,427. For revenues, actual kWh consumption at 272.2 million was lower than the 276.0 million kWh budgeted and lower than FY19 kWh consumption of 273.9 million. As a result, billed consumption revenues were lower than budget and prior year. A FEMA grant and a gain on sale of an asset pushed nonoperating revenues above budget estimates while transfers-in from the other utility funds were under budget by \$24,227 on lower shared service expenditures.

EXPENDITURES AND OTHER USES OF FINANCING SOURCES



For Fiscal Year 2019-20, actual distribution operating expenditures, uses of other financing sources, and transfers-out were \$699,668 or 9.0 percent favorable (lower) than budget and \$162,469 or 2.3 percent favorable (lower) than prior year. Budgetary expenditure savings were realized across all operating expenditure categories, except for miscellaneous expenditures. Transfers-out to the General Fund were lower on shared service department savings.

INCREASE/(DECREASE) OF FUND BALANCE



For Fiscal Year 2019-20, fund balance for distribution operations increased \$400,598. Net distribution operating revenues were favorable to budget by \$587,158 and exceed prior year by \$140,041.

For purchased power pass-through accounted for in Fund 122, an over collection of \$446,428 was recognized in Fiscal Year 2019-20. This was exceeded budget and was lower than prior year.

FUND 102

CITY OF BRENHAM
FY20 4TH QUARTER RESULTS (BUDGETARY BASIS)

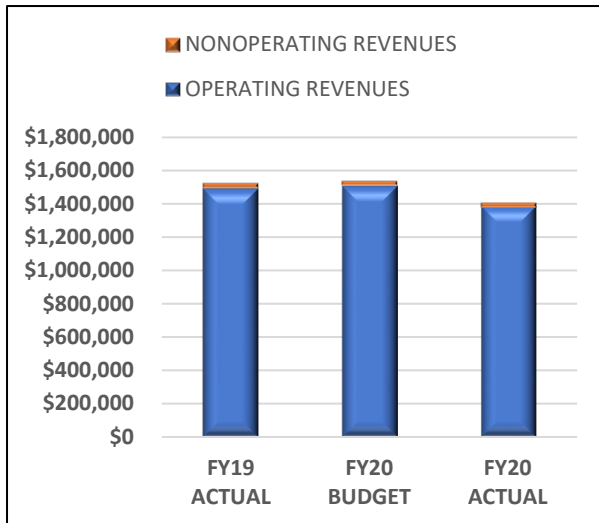
FUND 102 - ELECTRIC DISTRIBUTION FUND FINANCIAL STATEMENT

IN \$	YTD		FY20 ACT FAV/(UNFAV) TO		ANNUAL FY20 BUDGET		FY20 YTD ACT AS % OF	
	FY19 ACT	FY20 BUD	FY20 ACT	FY19ACT	FY20 BUD	ORIGINAL	AMENDED	BUDGET (O) BUDGET (A)
OPERATING REVENUES								
CHARGES FOR SERVICES	6,658,429	6,731,110	6,491,552	(166,878)	(239,558)	6,731,110	6,731,110	96.4% 96.4%
TOTAL REVENUES	6,658,429	6,731,110	6,491,552	(166,878)	(239,558)	6,731,110	6,731,110	96.4% 96.4%
OPERATING EXPENDITURES								
SALARIES	1,996,045	2,187,878	1,948,646	47,399	239,232	2,192,334	2,187,878	88.9% 89.1%
SUPPLIES	203,462	235,091	194,735	8,727	40,356	206,405	235,091	94.3% 82.8%
MAINTENANCE	101,252	91,826	74,301	26,951	17,525	111,750	91,826	66.5% 80.9%
CONTRACTUAL SERVICES	457,068	416,418	388,178	68,890	28,240	400,272	416,418	97.0% 93.2%
CAPITAL OUTLAY (INSTEAD OF DEP)	649,646	1,015,551	738,143	(88,498)	277,408	1,031,165	1,015,551	71.6% 72.7%
GROSS REVENUE TAX	1,488,870	1,531,140	1,371,424	117,446	159,716	1,531,140	1,531,140	89.6% 89.6%
MISCELLANEOUS	148,540	186,437	296,577	(148,037)	(110,140)	191,275	186,437	155.1% 159.1%
TOTAL OPERATING EXP	5,044,884	5,664,341	5,012,005	32,878	652,336	5,664,341	5,664,341	88.5% 88.5%
OPERATING INCOME (LOSS)	1,613,546	1,066,769	1,479,546	(134,000)	412,777	1,066,769	1,066,769	138.7% 138.7%
NONOPERATING REV (EXP)								
DEBT SERVICE:								
INTEREST & FISCAL CHARGES	(67,328)	(65,162)	(65,162)	(2,166)	0	(65,162)	(65,162)	100.0% 100.0%
PRINCIPAL RETIREMENT	(72,194)	(72,194)	(72,194)	-	(1)	(72,194)	(72,194)	100.0% 100.0%
ISSUANCE COSTS	-	-	-	-	-	-	-	0.0% 0.0%
INTERGOVERNMENTAL	11,144	-	115,148	104,004	115,148	-	-	0.0% 0.0%
INVESTMENT INCOME	156,504	142,278	145,071	(11,434)	2,793	142,278	142,278	102.0% 102.0%
GAIN ON SALE OF CAPITAL ASSETS	5,100	-	22,450	17,350	22,450	-	-	0.0% 0.0%
MISCELLANEOUS, NET	23,565	23,688	34,574	11,008	10,886	23,688	23,688	146.0% 146.0%
TOTAL NONOP REV (EXP)	56,792	28,610	179,886	123,094	151,276	28,610	28,610	628.8% 628.8%
INCOME (LOSS) BEFORE CONTRIBUTIONS & TRFS	1,670,338	1,095,379	1,659,432	(10,906)	564,053	1,095,379	1,095,379	151.5% 151.5%
TRANSFERS IN	602,931	650,680	626,453	23,522	(24,227)	650,680	650,680	96.3% 96.3%
TRANSFERS OUT	(2,012,712)	(1,932,619)	(1,885,287)	127,425	47,332	(1,922,619)	(1,932,619)	98.1% 97.6%
TOTAL TRANSFERS IN/(OUT)	(1,409,781)	(1,281,939)	(1,258,834)	150,947	23,105	(1,271,939)	(1,281,939)	99.0% 98.2%
CHANGE IN NET POSITION	260,557	(186,560)	400,598	140,041	587,158	(176,560)	(186,560)	-226.9% -214.7%

FUND 122 - ELECTRIC POWER FUND FINANCIAL STATEMENT

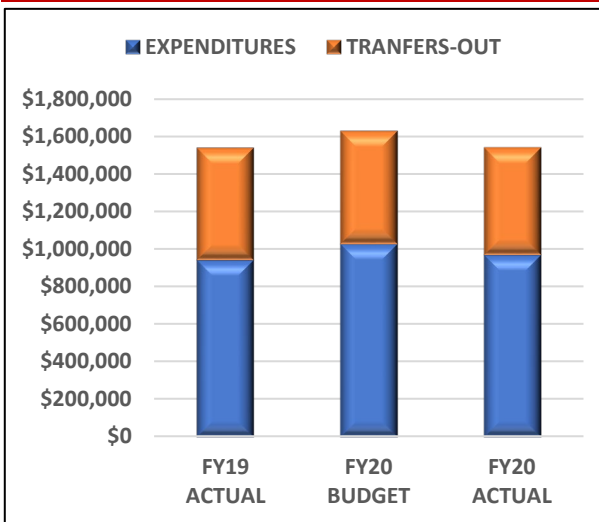
IN \$	YTD		FY20 ACT FAV/(UNFAV) TO		ANNUAL FY20 BUDGET		FY20 YTD ACT AS % OF	
	FY19 ACT	FY20 BUD	FY20 ACT	FY19ACT	FY20BUD	ORIGINAL	AMENDED	BUDGET (O) BUDGET (A)
OPERATING REVENUES								
CHARGES FOR SERVICES	15,153,588	15,669,007	13,655,404	(1,498,184)	(2,013,603)	15,669,007	15,669,007	87.1% 87.1%
TOTAL REVENUES	15,153,588	15,669,007	13,655,404	(1,498,184)	(2,013,603)	15,669,007	15,669,007	87.1% 87.1%
OPERATING EXPENDITURES								
COST OF SALES AND SERVICES	14,358,387	15,669,007	13,208,976	(1,149,411)	(2,460,031)	15,669,007	15,669,007	84.3% 84.3%
TOTAL OPERATING EXP	14,358,387	15,669,007	13,208,976	(1,149,411)	(2,460,031)	15,669,007	15,669,007	84.3% 84.3%
OPERATING INCOME (LOSS)	795,201	-	446,428	(348,772)	446,428	-	-	100.0% 100.0%
CHANGE IN NET POSITION	795,201	-	446,428	(348,772)	446,428	-	-	100.0% 100.0%

REVENUES AND OTHER FINANCING SOURCES



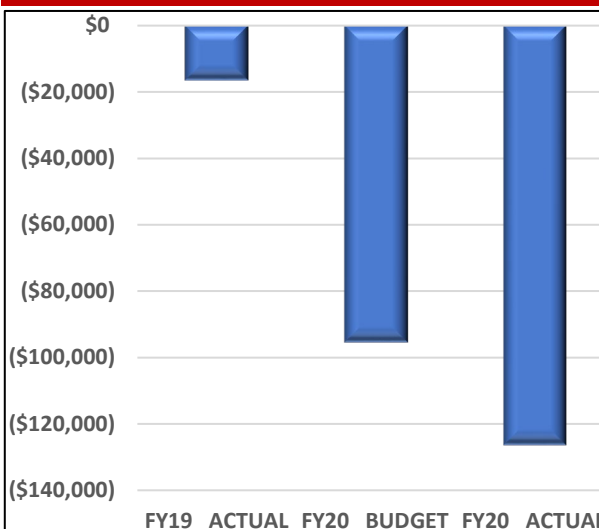
For Fiscal Year 2019-20, actual distribution revenues and other financing sources of \$1.4 million, trailed the budget forecast of \$1.5 million and prior year actuals of \$1.5 million. Mild winter weather lowered natural gas heating consumption. Actual mcf consumption at 407,255 was lower than the 473,688 mcf budgeted and lower than FY18-19 mcf consumption of 463,286.

EXPENDITURES AND OTHER USES OF FINANCING SOURCES



For Fiscal Year 2019-20, actual distribution operating expenditures and transfers-out were \$87,292 or 5.4 percent favorable (lower) than budget but closely tracked prior year. Medical plan savings on re-bid created salaries (and benefits) savings, when comparing actual to budget results. There was significant savings in franchise fees due to lower pass-through costs for natural gas commodity. Natural gas prices are down from prior year's prices and lower than budgeted estimates. Transfers-out to the General Fund and the Electric Fund were lower than budget on shared service cost savings.

INCREASE/(DECREASE) OF FUND BALANCE



For Fiscal Year 2019-20, fund balance for distribution operations decreased \$126,262.

CITY OF BRENHAM

FY20 4TH QUARTER RESULTS (BUDGETARY BASIS)

FUND 103 - GAS DISTRIBUTION FUND FINANCIAL STATEMENT

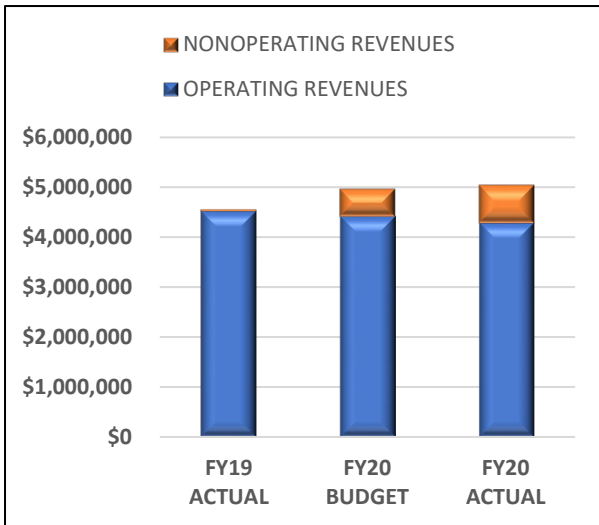
IN \$	YTD		FY20 ACT FAV/(UNFAV) TO		ANNUAL FY20 BUDGET		FY20 YTD ACT AS % OF	
	FY19 ACT	FY20 BUD	FY20 ACT	FY19 ACT	FY20 BUD	ORIGINAL	AMENDED	BUDGET (O) BUDGET (A)
OPERATING REVENUES								
CHARGES FOR SERVICES	1,493,520	1,508,483	1,387,264	(106,256)	(121,219)	1,508,483	1,508,483	92.0% 92.0%
TOTAL REVENUES	1,493,520	1,508,483	1,387,264	(106,256)	(121,219)	1,508,483	1,508,483	92.0% 92.0%
OPERATING EXPENDITURES								
SALARIES	410,077	410,011	410,938	(860)	(927)	410,926	410,011	100.0% 100.2%
SUPPLIES	56,065	73,422	61,152	(5,087)	12,270	73,357	73,422	83.4% 83.3%
MAINTENANCE	27,473	34,875	23,394	4,079	11,481	34,875	34,875	67.1% 67.1%
CONTRACTUAL SERVICES	42,717	38,989	30,587	12,130	8,402	38,400	38,989	79.7% 78.5%
CAPITAL OUTLAY (INSTEAD OF DEP)	156,937	223,013	256,813	(99,876)	(33,800)	133,829	223,013	191.9% 115.2%
GROSS REVENUE TAX	226,156	226,441	172,279	53,877	54,162	226,441	226,441	76.1% 76.1%
MISCELLANEOUS	21,231	18,761	12,240	8,991	6,521	18,500	18,761	66.2% 65.2%
TOTAL OPERATING EXP	940,657	1,025,512	967,404	(26,747)	58,108	936,328	1,025,512	103.3% 94.3%
OPERATING INCOME (LOSS)	552,863	482,971	419,861	(133,002)	(63,110)	572,155	482,971	73.4% 86.9%
NONOPERATING REV (EXP)								
DEBT SERVICE:								
INTEREST & FISCAL CHARGES	-	-	-	-	-	-	-	0.0% 0.0%
PRINCIPAL RETIREMENT	-	-	-	-	-	-	-	0.0% 0.0%
ISSUANCE COSTS	-	-	-	-	-	-	-	0.0% 0.0%
INTERGOVERNMENTAL	-	-	-	-	-	-	-	0.0% 0.0%
INVESTMENT INCOME	24,639	24,500	11,327	(13,311)	(13,173)	24,500	24,500	46.2% 46.2%
GAIN ON SALE OF CAPITAL ASSETS	3,752	-	12,233	8,481	12,233	-	-	0.0% 0.0%
MISCELLANEOUS, NET	460	-	3,960	3,500	3,960	-	-	100.0% 100.0%
TOTAL NONOP REV (EXP)	28,851	24,500	27,521	(1,330)	3,021	24,500	24,500	112.3% 112.3%
INCOME (LOSS) BEFORE CONTRIBUTIONS & TRFS	581,714	507,471	447,382	(134,332)	(60,089)	596,655	507,471	75.0% 88.2%
TRANSFERS IN	-	-	-	-	-	-	-	0.0% 0.0%
TRANSFERS OUT	(598,448)	(602,828)	(573,644)	24,804	29,184	(602,828)	(602,828)	95.2% 95.2%
TOTAL TRANSFERS IN/(OUT)	(598,448)	(602,828)	(573,644)	24,804	29,184	(602,828)	(602,828)	95.2% 95.2%
CHANGE IN NET POSITION	(16,734)	(95,357)	(126,262)	(109,528)	(30,905)	(6,173)	(95,357)	2045.4% 132.4%

FUND 123 - GAS COMMODITY FUND FINANCIAL STATEMENT

IN \$	YTD		FY20 ACT FAV/(UNFAV) TO		ANNUAL FY20 BUDGET		FY20 YTD ACT AS % OF	
	FY19 ACT	FY20 BUD	FY20 ACT	FY19 ACT	FY20 BUD	ORIGINAL	AMENDED	BUDGET (O) BUDGET (A)
OPERATING REVENUES								
CHARGES FOR SERVICES	1,751,254	1,742,869	1,090,337	(660,917)	(652,532)	1,712,480	1,742,869	63.7% 62.6%
TOTAL REVENUES	1,751,254	1,742,869	1,090,337	(660,917)	(652,532)	1,712,480	1,742,869	63.7% 62.6%
OPERATING EXPENDITURES								
COST OF SALES AND SERVICES	1,695,006	1,742,869	968,379	726,627	774,490	1,694,878	1,742,869	57.1% 55.6%
TOTAL OPERATING EXP	1,695,006	1,742,869	968,379	726,627	774,490	1,694,878	1,742,869	57.1% 55.6%
OPERATING INCOME (LOSS)	56,248	-	121,958	65,710	(121,958)	17,602	-	692.9% 100.0%
CHANGE IN NET POSITION	56,248	-	121,958	65,710	(121,958)	17,602	-	692.9% 100.0%

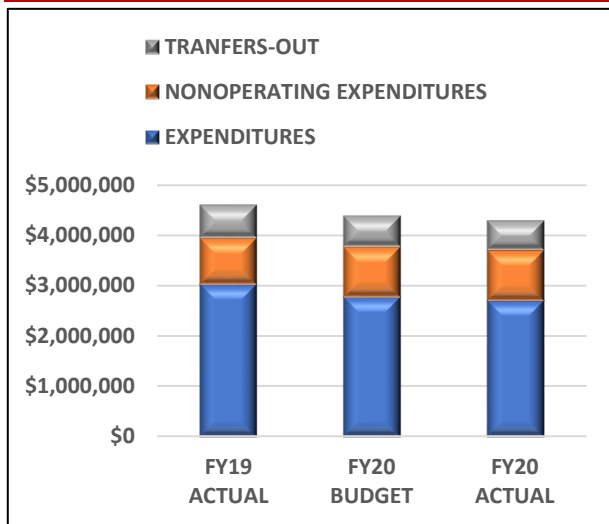
REVENUES AND OTHER FINANCING SOURCES

YTD
9/30/20



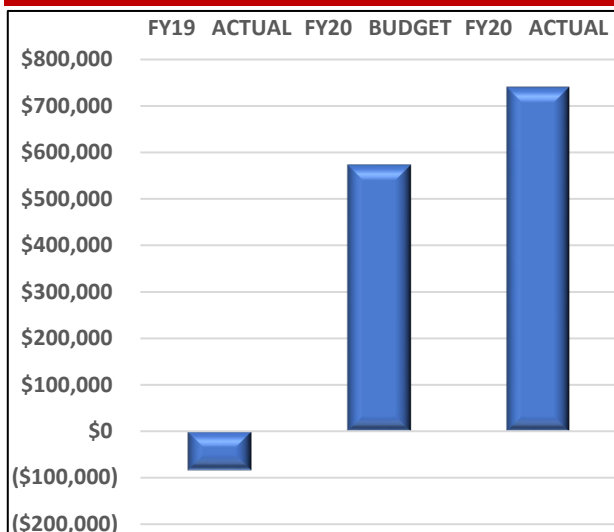
For Fiscal Year 2019-20, actual revenues and other financing sources of \$5.0 million were even with the \$5.0 million budget forecast and higher than prior year's results of \$4.6 million. Water consumption revenues were lower than budget on lower water usage. Customers consumed 773.3 million gallons for the year compared to 785.1 million budgeted and 738.8 million consumed in prior year. Unusually wet winter weather contributed to lower consumption in the prior year.

EXPENDITURES AND OTHER USES OF FINANCING SOURCES



For Fiscal Year 2019-20, actual operating expenditures, nonoperating expenditures, and transfers-out of \$4.3 million were \$117,111 or 2.7 percent favorable (lower) than budget and \$326,823 or 7.1 percent favorable (lower) than prior year. Transfers-out to the General Fund and Electric Fund were lower than budget due to budget savings in shared service costs..

INCREASE/(DECREASE) OF FUND BALANCE



For Fiscal Year 2019-20, net income increased reserves by \$740,632. Net income was favorable to budget by \$166,730 and favorable to prior year by \$824,578.

WATER FUND - FINANCIAL RESULTS

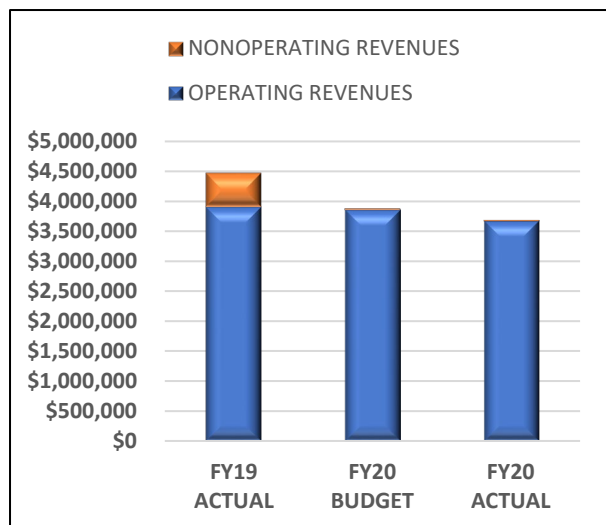
FUND 104

CITY OF BRENHAM
FY20 4TH QUARTER RESULTS (BUDGETARY BASIS)

FUND 104 - WATER FUND FINANCIAL STATEMENT

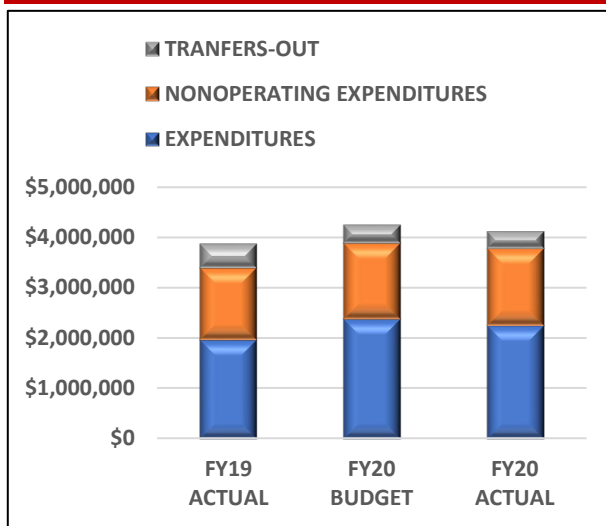
IN \$	YTD		FY19 ACT FAV/(UNFAV) TO			ANNUAL FY20 BUDGET		FY20 YTD ACT AS % OF	
	FY19 ACT	FY20 BUD	FY20 ACT	FY19 ACT	FY20 BUD	ORIGINAL	AMENDED	BUDGET (O)	BUDGET (A)
OPERATING REVENUES									
CHARGES FOR SERVICES	4,522,703	4,418,231	4,291,951	(230,751)	(126,280)	4,418,231	4,418,231	97.1%	97.1%
TOTAL REVENUES	4,522,703	4,418,231	4,291,951	(230,751)	(126,280)	4,418,231	4,418,231	97.1%	97.1%
OPERATING EXPENDITURES									
COST OF SALES AND SERVICES	322,225	333,096	398,042	(75,817)	(64,946)	333,096	333,096	119.5%	119.5%
SALARIES	741,949	774,152	789,324	(47,375)	(15,172)	774,938	774,152	101.9%	102.0%
SUPPLIES	510,224	539,155	465,617	44,607	73,538	514,441	539,155	90.5%	86.4%
MAINTENANCE	158,218	186,120	181,894	(23,677)	4,226	181,050	186,120	100.5%	97.7%
CONTRACTUAL SERVICES	328,405	328,307	289,706	38,699	38,600	346,674	328,307	83.6%	88.2%
CAPITAL OUTLAY (INSTEAD OF DEP)	659,529	279,735	261,289	398,240	18,446	290,120	279,735	90.1%	93.4%
GROSS REVENUE TAX	278,626	299,903	287,149	(8,523)	12,754	299,903	299,903	95.7%	95.7%
MISCELLANEOUS	26,105	34,255	29,196	(3,090)	5,059	34,500	34,255	84.6%	85.2%
TOTAL OPERATING EXPENDITURES	3,025,281	2,774,722	2,702,217	323,064	72,505	2,774,722	2,774,722	97.4%	97.4%
OPERATING INCOME (LOSS)	1,497,421	1,643,509	1,589,735	92,313	(53,775)	1,643,509	1,643,509	96.7%	96.7%
NONOPERATING REV (EXP)									
DEBT SERVICE:									
INTEREST & FISCAL CHARGES	(240,433)	(260,707)	(261,044)	(20,611)	(337)	(260,707)	(260,707)	100.1%	100.1%
PRINCIPAL RETIREMENT	(681,165)	(737,988)	(726,733)	(45,568)	11,255	(737,988)	(737,988)	98.5%	98.5%
ISSUANCE COSTS	(45,381)	-	(21,572)	23,809	(21,572)	-	-	100.0%	100.0%
INTERGOVERNMENTAL	-	522,097	703,551	703,551	181,454	1,517,849	522,097	46.4%	134.8%
INVESTMENT INCOME	29,159	20,814	11,731	(17,428)	(9,084)	20,814	20,814	56.4%	56.4%
GAIN ON SALE OF CAPITAL ASSETS	6,525	-	19,688	13,163	19,688	-	-	-	-
MISCELLANEOUS, NET	-	-	5,411	5,411	5,411	-	-	100.0%	100.0%
TOTAL NONOPERATING REV (EXP)	(931,295)	(455,784)	(268,968)	662,328	186,816	539,968	(455,784)	-49.8%	59.0%
INCOME (LOSS) BEFORE CONTRIBUTIONS AND TRANSFERS	566,126	1,187,726	1,320,767	754,641	133,041	2,183,477	1,187,726	60.5%	111.2%
TRANSFERS IN	-	-	-	-	-	-	-	-	-
TRANSFERS OUT	(650,072)	(613,824)	(580,135)	69,937	33,689	(613,824)	(613,824)	94.5%	94.5%
TOTAL TRANSFERS IN/(OUT)	(650,072)	(613,824)	(580,135)	69,937	33,689	(613,824)	(613,824)	94.5%	94.5%
CHANGE IN NET POSITION	(83,946)	573,902	740,632	824,578	166,730	1,569,653	573,902	47.2%	129.1%

REVENUES AND OTHER FINANCING SOURCES



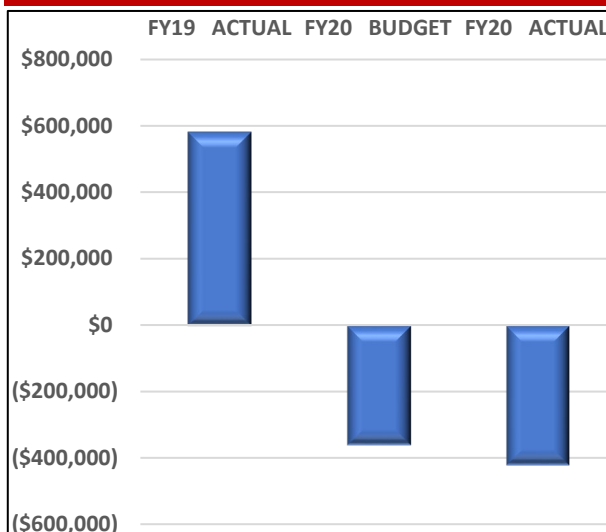
For Fiscal Year 2019-20, actual revenues and other financing sources of \$3.7 million were below the \$3.9 million budget forecast and prior year's results of \$4.5 million. Operating revenues of \$3.7 million were lower than budget by \$178,575, with industrial surcharges running \$19,000 higher than budget projections. Operating revenues were \$227,894 lower than prior year with industrial surcharges running \$19,529 lower.

EXPENDITURES AND OTHER USES OF FINANCING SOURCES



For Fiscal Year 2019-20, actual operating expenditures, nonoperating expenditures, and transfers-out of \$4.1 million were \$124,744 or 2.9 percent favorable (lower) than budget but \$243,381 unfavorable (higher) than prior year. Capital outlays were \$26,651 favorable to budget, but \$215,594 unfavorable to prior year due to the Hogg Branch Erosion Project. Budget savings were realized in plant maintenance, supplies, contractual services, franchise tax and miscellaneous costs. Transfers-out were favorable to budget and to prior year's.

INCREASE/(DECREASE) OF FUND BALANCE



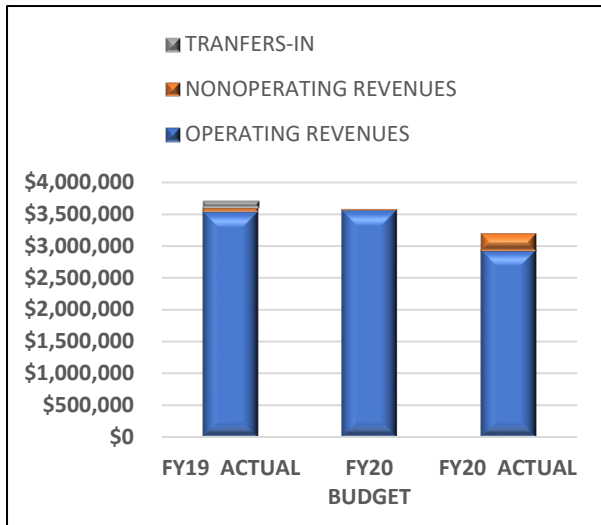
For Fiscal Year 2019-20, non-operating expenditures led to an overall loss of \$421,488, which was unfavorable to a budgeted loss of \$360,321.

CITY OF BRENHAM
FY20 4TH QUARTER RESULTS (BUDGETARY BASIS)

FUND 105 - WASTEWATER FUND FINANCIAL STATEMENT

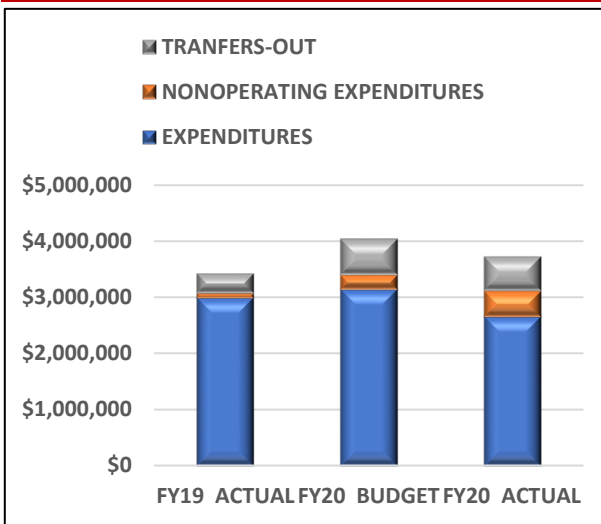
IN \$	1ST QTR YTD			FY20 ACT FAV/(UNFAV) TO		ANNUAL FY20 BUDGET		FY20 ACT AS % OF	
	FY19 ACT	FY20 BUD	FY20 ACT	FY19ACT	FY20 BUD	ORIGINAL	AMENDED	BUDGET (O)	BUDGET (A)
OPERATING REVENUES									
CHARGES FOR SERVICES	3,906,552	3,857,233	3,678,658	(227,894)	(178,575)	3,857,233	3,857,233	95.4%	95.4%
TOTAL REVENUES	3,906,552	3,857,233	3,678,658	(227,894)	(178,575)	3,857,233	3,857,233	95.4%	95.4%
OPERATING EXPENDITURES									
SALARIES	519,471	560,992	569,963	(50,492)	(8,971)	565,330	560,992	100.8%	101.6%
SUPPLIES	170,304	178,481	170,517	(213)	7,964	180,997	178,481	94.2%	95.5%
MAINTENANCE	173,602	294,020	270,762	(97,161)	23,258	288,900	294,020	93.7%	92.1%
CONTRACTUAL SERVICES	682,798	667,065	615,262	67,536	51,803	664,437	667,065	92.6%	92.2%
CAPITAL OUTLAY (INSTEAD OF DEP)	114,165	356,410	329,759	(215,594)	26,651	201,710	356,410	163.5%	92.5%
GROSS REVENUE TAX	260,748	260,716	243,765	16,983	16,951	260,716	260,716	93.5%	93.5%
MISCELLANEOUS	40,499	47,302	40,985	(486)	6,317	47,630	47,302	86.0%	86.6%
TOTAL OPERATING EXPENDITURES	1,961,586	2,364,986	2,241,013	(279,428)	123,973	2,209,720	2,364,986	101.4%	94.8%
OPERATING INCOME (LOSS)	1,944,967	1,492,247	1,437,645	(507,322)	(54,602)	1,647,513	1,492,247	87.3%	96.3%
NONOPERATING REV (EXP)									
DEBT SERVICE:									
INTEREST & FISCAL CHARGES (ACCRUAL)	(149,792)	(139,347)	(172,923)	(23,131)	(33,576)	(139,347)	(139,347)	124.1%	124.1%
PRINCIPAL RETIREMENT (ACCRUAL)	(1,281,638)	(1,374,975)	(1,360,975)	(79,337)	14,000	(1,374,975)	(1,374,975)	99.0%	99.0%
ISSUANCE COSTS	-	-	-	-	-	-	-	NA	NA
INTERGOVERNMENTAL	370,579	-	(10,293)	(380,871)	(10,293)	2,033,704	-	-0.5%	#DIV/0!
INVESTMENT INCOME	42,530	27,600	14,652	(27,878)	(12,948)	27,600	27,600	53.1%	53.1%
GAIN ON SALE OF CAPITAL ASSETS	37,025	-	8,812	(28,213)	8,812	-	-	NA	NA
MISCELLANEOUS, NET	102,201	500	7,592	(94,609)	7,092	500	500	1518.3%	1518.3%
TOTAL NONOPERATING REV (EXP)	(879,095)	(1,486,222)	(1,513,134)	(634,039)	(26,912)	547,482	(1,486,222)	-276.4%	101.8%
INCOME (LOSS) BEFORE CONTRIBUTIONS AND TRANSFERS									
	1,065,872	6,025	(75,489)	(1,141,361)	(81,514)	2,194,995	6,025	-3.4%	-1252.9%
TRANSFERS IN	-	-	-	-	-	-	-	NA	NA
TRANSFERS OUT	(484,514)	(366,346)	(345,999)	138,515	20,347	(366,346)	(366,346)	94.4%	94.4%
TOTAL TRANSFERS IN/(OUT)	(484,514)	(366,346)	(345,999)	138,515	20,347	(366,346)	(366,346)	94.4%	94.4%
CHANGE IN NET POSITION	581,358	(360,321)	(421,488)	(1,002,846)	(61,167)	1,828,649	(360,321)	-23.0%	117.0%

REVENUES AND OTHER FINANCING SOURCES



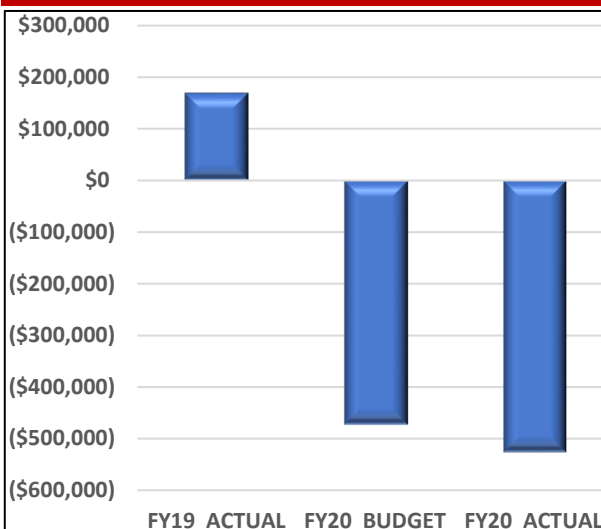
For Fiscal Year 2019-20, actual revenues, other financing sources, and transfers-in of \$3.2 million were \$368,685 lower than the budget forecast and \$483,104 lower than prior year's results. The partial sell-off of vehicles and equipment shown in nonoperating revenues offset the loss of revenue from the Transfer and Collection Stations and the Recycling Center which were outsourced to BVR Waste and Recycling during the third quarter.

EXPENDITURES AND OTHER USES OF FINANCING SOURCES



For Fiscal Year 2019-20, actual operating expenditures, nonoperating expenditures, and transfers-out of \$3.7 million were \$315,419 lower than budget and were higher than the \$3.4 million spent in prior year. Most operating costs, including personnel ended with the BVR transition. Contractual service costs between BVR and the City will continue for residential and commercial pickup.

INCREASE/(DECREASE) OF FUND BALANCE



For Fiscal Year 2019-20, a net loss of \$524,738 was realized, which was higher than the budgeted loss of \$471,473.

CITY OF BRENHAM
FY20 4TH QUARTER RESULTS (BUDGETARY BASIS)

FUND 106 - SANITATION FUND FINANCIAL STATEMENT

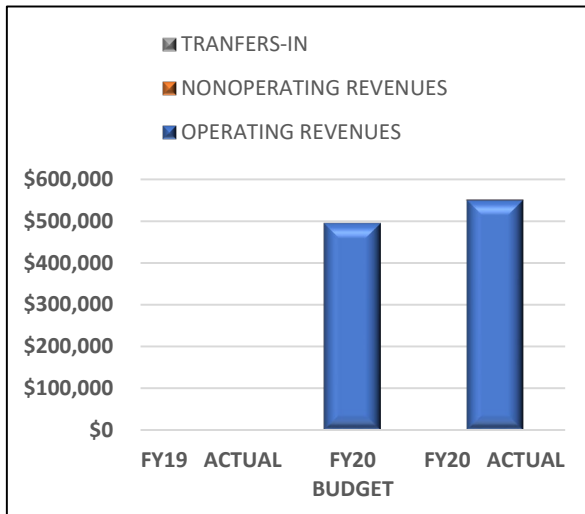
	YTD			FY20 ACT FAV/(UNFAV) TO		ANNUAL FY20 BUDGET		FY20 YTD ACT AS % OF	
IN \$	FY19 ACT	FY20 BUD	FY20 ACT	FY19 ACT	FY20 BUD	ORIGINAL	AMENDED	BUDGET (O)	BUDGET (A)
OPERATING REVENUES									
CHARGES FOR SERVICES	3,535,206	3,560,209	2,935,022	(600,184)	(625,187)	3,560,209	3,560,209	82.4%	82.4%
TOTAL REVENUES	3,535,206	3,560,209	2,935,022	(600,184)	(625,187)	3,560,209	3,560,209	82.4%	82.4%
OPERATING EXPENDITURES									
SALARIES	682,713	795,041	459,392	223,320	335,649	795,041	795,041	57.8%	57.8%
SUPPLIES	264,507	178,315	121,618	142,888	56,697	178,315	178,315	68.2%	68.2%
MAINTENANCE	132,942	141,500	88,776	44,166	52,724	141,500	141,500	62.7%	62.7%
CONTRACTUAL SERVICES	1,710,893	1,629,155	1,924,366	(213,473)	(295,211)	1,629,155	1,629,155	118.1%	118.1%
CAPITAL OUTLAY (INSTEAD OF DEP)	102,500	300,000	-	102,500	300,000	500,000	300,000	0.0%	0.0%
GROSS REVENUE TAX	63,140	60,974	36,246	26,895	24,728	60,974	60,974	59.4%	59.4%
MISCELLANEOUS	27,003	29,690	22,876	4,127	6,814	29,690	29,690	77.1%	77.1%
TOTAL OPERATING EXP	2,983,698	3,134,675	2,653,274	330,423	481,401	3,334,675	3,134,675	79.6%	84.6%
OPERATING INCOME (LOSS)	551,508	425,534	281,748	(269,760)	(143,786)	225,534	425,534	124.9%	66.2%
NONOPERATING REV (EXP)									
DEBT SERVICE:									
INTEREST & FISCAL CHARGES	(12,379)	(34,797)	(22,884)	(10,505)	11,913	(34,797)	(34,797)	65.8%	65.8%
PRINCIPAL RETIREMENT	(82,777)	(233,876)	(443,995)	(361,218)	(210,119)	(233,876)	(233,876)	189.8%	189.8%
ISSUANCE COSTS	-	-	-	-	-	-	-	0.0%	0.0%
INTERGOVERNMENTAL	-	-	-	-	-	-	-	0.0%	0.0%
INVESTMENT INCOME	14,482	13,000	11,221	(3,260)	(1,779)	13,000	13,000	86.3%	86.3%
GAIN ON SALE OF CAPITAL ASSETS	9,231	-	181,638	172,407	181,638	-	-	0.0%	0.0%
MISCELLANEOUS, NET	39,277	3,883	80,525	41,248	76,642	3,883	3,883	NA	NA
TOTAL NONOP REV (EXP)	(32,166)	(251,790)	(193,494)	(161,328)	58,296	(251,790)	(251,790)	76.8%	76.8%
INCOME (LOSS) BEFORE CONTRIBUTIONS & TRFS									
	519,342	173,744	88,254	(431,088)	(85,490)	(26,256)	173,744	-336.1%	50.8%
TRANSFERS IN	93,316	-	-	(93,316)	-	-	-	0.0%	0.0%
TRANSFERS OUT	(443,290)	(645,217)	(612,992)	(169,702)	32,225	(445,217)	(645,217)	137.7%	95.0%
TOTAL TRANSFERS IN/(OUT)	(349,974)	(645,217)	(612,992)	(263,018)	32,225	(445,217)	(645,217)	137.7%	95.0%
CHANGE IN NET POSITION	169,367	(471,473)	(524,738)	(694,106)	(53,265)	(471,473)	(471,473)	111.3%	111.3%

REVENUES AND OTHER FINANCING SOURCES

YTD
9/30/20

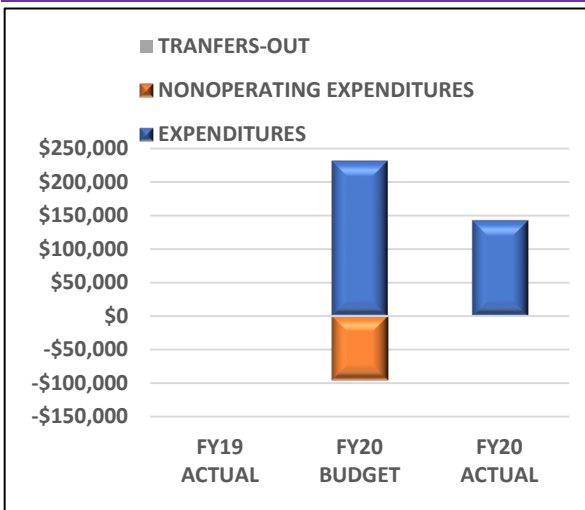
DRAINAGE FUND - FINANCIAL RESULTS

FUND 107



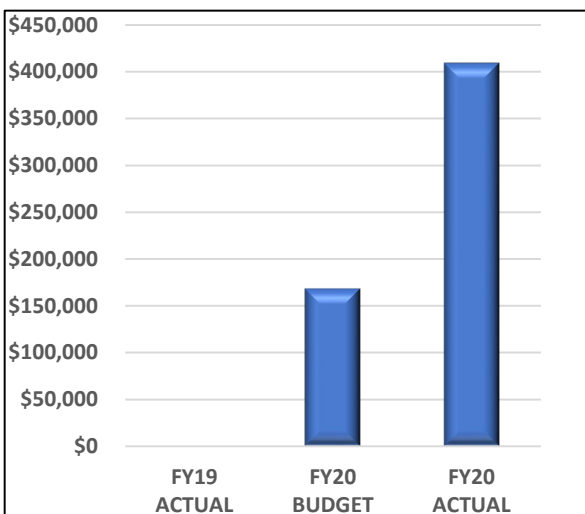
The Drainage Fund began operations January 1, 2020. For fiscal year 2019-20, revenues of \$551,680 exceeded budget estimates.

EXPENDITURES AND OTHER USES OF FINANCING SOURCES



For the fiscal year 2019-20, actual operating expenditures and nonoperating expenditures of \$143,049 were higher than budgeted amounts of \$135,041.

CHANGE IN NET POSITION OPERATIONS



Fiscal year net revenue in the fund is \$408,631 which exceeded the amended budget of \$168,259.

CITY OF BRENHAM
FY20 4TH QUARTER RESULTS (BUDGETARY BASIS)

FUND 107 - DRAINAGE FUND FINANCIAL STATEMENT

IN \$	YTD		FY20 ACT FAV/(UNFAV) TO			ANNUAL FY20 BUDGET		FY20 YTD ACT AS % OF	
	FY19 ACT	FY20 BUD	FY20 ACT	FY19 ACT	FY20 BUD	ORIGINAL	AMENDED	BUDGET (O)	BUDGET (A)
OPERATING REVENUES									
CHARGES FOR SERVICES	-	495,178	550,936	550,936	55,758	495,178	495,178	111.3%	111.3%
TOTAL REVENUES	-	495,178	550,936	550,936	55,758	495,178	495,178	111.3%	111.3%
OPERATING EXPENDITURES									
SALARIES	-	101,983	37,003	(37,003)	64,980	163,983	101,983	22.6%	36.3%
SUPPLIES	-	19,287	11,203	(11,203)	8,084	19,647	19,287	100.0%	58.1%
MAINTENANCE	-	106,190	94,440	(94,440)	11,750	43,450	106,190	100.0%	88.9%
CONTRACTUAL SERVICES	-	3,520	402	(402)	3,118	3,900	3,520	100.0%	11.4%
CAPITAL OUTLAY (INSTEAD OF DEP)	-	-	-	-	-	-	-	100.0%	100.0%
GROSS REVENUE TAX	-	-	-	-	-	-	-	0.0%	0.0%
MISCELLANEOUS	-	-	-	-	-	-	-	0.0%	0.0%
TOTAL OPERATING EXP	-	230,980	143,049	(143,049)	87,931	230,980	230,980	61.9%	61.9%
OPERATING INCOME (LOSS)	-	264,198	407,887	407,887	143,689	264,198	264,198	154.4%	154.4%
NONOPERATING REV (EXP)									
DEBT SERVICE:									
INTEREST & FISCAL CHARGES	-	(16,891)	-	-	16,891	(16,891)	(16,891)	0.0%	0.0%
PRINCIPAL RETIREMENT	-	(79,048)	-	-	79,048	(79,048)	(79,048)	0.0%	0.0%
ISSUANCE COSTS	-	-	-	-	-	-	-	0.0%	0.0%
INTERGOVERNMENTAL	-	-	-	-	-	-	-	0.0%	0.0%
INVESTMENT INCOME	-	-	744	744	744	-	-	100.0%	100.0%
GAIN ON SALE OF CAPITAL ASSETS	-	-	-	-	-	-	-	0.0%	0.0%
MISCELLANEOUS, NET	-	-	-	-	-	-	-	NA	NA
TOTAL NONOP REV (EXP)	-	(95,939)	744	744	96,683	(95,939)	(95,939)	-0.8%	-0.8%
INCOME (LOSS) BEFORE CONTRIBUTIONS & TRFS									
CONTRIBUTIONS & TRFS	-	168,259	408,631	408,631	240,372	168,259	168,259	242.9%	242.9%
TRANSFERS IN	-	-	-	-	-	-	-	0.0%	0.0%
TRANSFERS OUT	-	-	-	-	-	-	-	0.0%	0.0%
TOTAL TRANSFERS IN/(OUT)	-	-	-	-	-	-	-	0.0%	0.0%
CHANGE IN NET POSITION	-	168,259	408,631	408,631	240,372	168,259	168,259	242.9%	242.9%



Regular City Council
AGENDA ITEM 8.

Agenda Item: Discuss and Possibly Act Upon Approval of An Assignment of Lease and Memorandum of Understanding Regarding the Simon Theater Facility from Simon Theater Master Tenant, LLC to Brenham Main Street Historical Preservation, Inc. and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-March 25, 2021

Department: Finance

Staff Contact: Carolyn D. Miller

Classification: Regular

SUMMARY STATEMENT:

The City was notified of the dissolution of the tax credit entities related to the Simon Theater restoration project. Our City Attorney has reviewed the documents of the dissolution, and found everything to be in order. This agenda item is presented to Council for the City's acknowledgment of the assignment of the MOU and Lease Agreement (as amended) to the Brenham Main Street Historical Preservation, Inc.

ATTACHMENTS:

- (1) Simon Theater - Assignment of MOU & Lease to BMSHP, Inc.
- (2) EXHIBIT A.1 Lease Agreement
- (3) EXHIBIT A.2 Addendum to Lease Agreement
- (4) EXHIBIT B Memorandum of Understanding

RELEVANCE TO COMPREHENSIVE PLAN:

Goal PR2. An emphasis on Brenham's natural, historic, recreational, and cultural assets in marketing and economic development efforts.

RECOMMENDED ACTION:

Approve an Assignment of Lease and Memorandum of Understanding Regarding the Simon Theater Facility from Simon Theater Master Tenant, LLC to Brenham Main Street Historical Preservation, Inc, and authorize the Mayor to execute any necessary documentation.

CONSENT OF CITY OF BRENHAM, TEXAS
TO ASSIGNMENT OF LEASE AGREEMENT AND
MEMORANDUM OF UNDERSTANDING

**Simon Theater Master Tenant, LLC (“Assignor”) to
Brenham Main Street Historical Preservation, Inc. (“Assignee”)**

This Consent of City of Brenham, Texas to Assignment of Lease Agreement (as amended) and Memorandum of Understanding (this “**Consent**”) is executed by the **City of Brenham, Texas**, a Texas home-rule municipal corporation, of Washington County, Texas (“the “**City**”), **Simon Theater Master Tenant, LLC**, a Texas limited liability company (“**Assignor**”), and **Brenham Main Street Historical Preservation, Inc.**, a Texas corporation (“**Assignee**”) to be effective as of the 1st day of February, 2021 (the “**Effective Date**”).

WHEREAS, Assignor and the City entered into that certain Lease Agreement, dated September 25, 2018 to be effective on October 1, 2018, as amended by an Addendum to the Lease Agreement effective on October 1, 2018 (collectively the “**Lease Agreement**”), attached hereto as Exhibit “A” and incorporated herein for all purposes pertinent; and

WHEREAS, Assignor and the City entered into that certain Memorandum of Understanding, dated and effective on February 7, 2019 (the “**MOU**”), attached hereto as Exhibit “B” and incorporated herein for all purposes pertinent; and

WHEREAS, Assignor was created for the purpose of facilitating the use of historic tax credits to assist in financing improvements to the Simon Theater facility; and

WHEREAS, the requirements and obligations related to the Assignor’s facilitation of the historic tax credit program benefitting the Simon Theater facility have been satisfied, therefore the purpose for which the Assignor was created has ceased to exist, and accordingly Assignor has dissolved and terminated its existence; and

WHEREAS, Assignee, as owner of the Simon Theater facility, is now the appropriate entity to assume the rights and obligations of the Lease Agreement and MOU; and

WHEREAS, in this regard, Assignor, in winding up its existence, desires to assign to Assignee all right, title and interest in and to the Lease Agreement and MOU, and Assignee desires to accept such assignment and to assume all of the duties and obligations of Assignor under the Lease Agreement and MOU; and

WHEREAS, the City, by its signature below, desires to consent to such Assignment;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City, Assignor and Assignee agree as follows:

1. Assignment. As of the Effective Date, Assignor hereby assigns, sells, transfers, and conveys to Assignee all of Assignor's right, title and interest in and to the Lease Agreement and MOU, and Assignee does hereby accept such assignment.

2. Assumption. As of the Effective Date, Assignee expressly agrees to assume and does hereby assume all duties, liabilities and obligations of the Assignor in connection with the Lease Agreement and MOU arising from and after the Effective Date.

3. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, and both of which together shall constitute one and the same instrument.

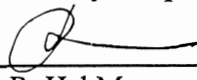
4. Applicable Law. This Assignment shall be governed by and interpreted in accordance with the laws of the State of Texas. All obligations of the parties created hereunder are performable in Washington County, Texas. In the event of litigation, or other claim or dispute arising out of or involving this Agreement, exclusive venue shall lie in a court of competent jurisdiction in Washington County, Texas.

5. Binding Effect. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective transferees, successors, and assigns.

EXECUTED to be effective as of the 1st day February, 2021.

ASSIGNOR:

Simon Theater Master Tenant, LLC, a Texas limited liability company

By: 
R. Hal Moorman, President

ASSIGNEE:

Brenham Main Street Historical Preservation, Inc., a Texas corporation

By: 
R. Hal Moorman, President

BY ITS EXECUTION BELOW, THE CITY HEREBY EVIDENCES ITS ACCEPTANCE OF, AND CONSENT TO, THE TERMS AND PROVISIONS OF THIS ASSIGNMENT AND ITS AGREEMENT TO BE BOUND BY SUCH ASSIGNMENT.

CITY OF BRENHAM, TEXAS

By: _____
Name: Milton Y. Tate, Jr.
Title: Mayor
Date: _____

**EXHIBIT A.1 LEASE
AGREEMENT**

LEASE AGREEMENT

**SIMON THEATER MASTER TENANT, LLC, a Texas limited liability company
LANDLORD**

and

**CITY OF BRENHAM, a Texas home rule municipal corporation
TENANT**

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Exhibit “A” Diagram

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is entered into this 25 day of September, 2018, and is by and between SIMON THEATER MASTER TENANT, LLC, a Texas limited liability company as "Landlord," and CITY OF BRENHAM, a Texas home rule municipal corporation as "Tenant."

1. **Definitions and Basic Business Terms.** When used in this Lease, the following terms shall have the indicated meanings:

(a) "Leased Premises" - the office space in the City of Brenham, Texas, as located at 111 and 115 West Main Street and shown on the attached Exhibit "A". Certain areas marked "Common Area" will be shared by Tenant with other tenants of the premises.

(b) "Commencement Date" - October 1, 2018.

(c) "Termination Date" - September 30, 2023, except, however such lease may be terminated without cause by either by providing at least one hundred eighty (180) days written notice to the other party, at which time the Lease will terminate.

(d) "Rent" -

(i) Tenant will pay for utilities to serve the Leased Premises as set out in further detail elsewhere in this Lease; and

(ii) Tenant will pay to Landlord the sum of One Thousand Two Hundred Forty-Eight and No/100 Dollars (\$1,248.00) per month as rent for the Leased Premises.

(iii) **Additional amounts payable to Landlord. Upon execution of this Lease by both parties, Tenant shall pay to Landlord the additional lump sum amount of Twenty-Six Thousand Two Hundred Eight and No/100 Dollars (\$26,208.00) for accrued, unpaid rent payable to Landlord by Tenant for the time period beginning January 1, 2017 through September 30, 2018.**

(e) "Permitted Use" - the use of the facilities for Visitors Center and associated tourism and economic development activities of the City of Brenham, Texas.

(f) "Lease Term" - shall mean a period which commences with the Commencement Date and terminates sixty (60) full calendar months later.

(g) "Landlord's Address for Notice" - Simon Theater Master Tenant, LLC, Attention: R. Hal Moorman and Donna Cummins, P.O. Box 2006, Brenham, Texas 77834-2006, with a copy to R. Hal Moorman, Moorman, Tate, Urquhart, Haley, Upchurch & Yates, L.L.P., P.O. Box 1808, Brenham, Texas 77834-1808. For issues regarding the building, contact the administrator for Landlord, Donna Cummins at 979.251.7871, 979.251.4028, and southernroseranch@yahoo.com.

(h) "Tenant's Address for Notice" - City of Brenham, Attention: City Manager, P.O. Box 1059, Brenham, Texas 77834-1059.

2. **Leased Premises.** Landlord hereby leases the Leased Premises to Tenant, and Tenant hereby leases the Leased Premises from Landlord. Tenant may not construct any alterations or make any changes to the Leased Premises unless Tenant has received the prior written consent of Landlord. Tenant will have no authority to place any lien upon the Leased Premises, and any attempt to do so will be void and of no effect.

3. **Rent.** Beginning on the Commencement Date, Tenant agrees to pay to Landlord monthly the amounts set forth in Paragraph 1(d)(ii) of this Lease, without notice, demand, offset, or deduction, for every month in the term of this Lease. Tenant's payments will be made to Landlord at Landlord's address stated above, or at any other address that Landlord may specify.

4. **Delivery of Leased Premises.** **LESSEE HAS ACCEPTED THE LEASED PREMISES WITHOUT WARRANTY BY LANDLORD, EXPRESS OR IMPLIED, AS TO THE CONDITION, FITNESS, HABITABILITY, OR SUITABILITY FOR A PARTICULAR PURPOSE.**

5. **Utilities, Pest Control and Security System.**

(a) **Payments Directly to Providers.** Tenant will provide or contract for all telephone and other utilities, pest control, and custodial care used in the Leased Premises during the Lease term and pay all sums due under those contracts directly to the service providers. Tenant will provide proof of such payments to Landlord as requested by Landlord in writing.

(b) **Security System.** To protect Landlord's and Tenant's property, Tenant will use and maintain the installed fire alarm security system. Landlord will bill Tenant and Tenant will pay the monthly fee for the security and alarm system associated with the Leased Premises and keep such security and fire alarm system operational for the term of the Lease.

6. **Use.**

(a) **Permitted Use.** Tenant will use the Leased Premises solely for the Permitted Use.

(b) **Compliance with Laws.** Tenant will comply with all federal, state, municipal, and other laws, ordinances, rules, and regulations that apply to the Leased Premises and Tenant's business. Tenant will pay the cost of compliance with all such laws, ordinances, rules, and regulations.

(c) **Condition of Leased Premises.** Tenant agrees to keep the Leased Premises in a clean, sanitary, and orderly condition at all times during the Lease term, at Tenant's sole cost and expense. No hazardous, unsafe, dangerous, or unsanitary conditions shall be permitted to exist. Except for normal wear and tear, Tenant will maintain all furniture, furnishings and fixtures provided by Landlord in the same condition they are in at the inception of the lease.

7. **Signs.** All signs have been erected by Landlord and are Landlord's property. If Tenant desires additional signage, Tenant may erect a sign in conjunction with the approval of the Landlord and be responsible for all repair, maintenance, and electrical utility service provided to Tenant's sign. Upon termination of this Lease, at Landlord's request, Tenant shall remove Tenant's sign from the Leased Premises and repair any damage caused thereby.

8. **Taxes and Insurance.** Tenant shall directly pay the appropriate taxing authority for all taxes levied or assessed against Tenant's property or on its gross sales or income. If any taxes for which Tenant is liable are not separately assessed and are levied or assessed against Landlord, then Tenant shall pay to Landlord, on demand, the part of those taxes for which Tenant is liable. Tenant shall purchase liability insurance in such amounts as deemed appropriate by Tenant and shall furnish proof of insurance to Landlord.

9. **Repairs and Maintenance.**

(a) **Landlord's Obligations.** Landlord will maintain the roof; foundation; structure; structural soundness of the exterior and interior walls, doors, corridors, flooring and windows; and electrical. Landlord will maintain plumbing and electrical for portions outside the Leased Premises. Other than these items specifically enumerated, Landlord is not responsible for the maintenance of the Leased Premises.

(b) **Tenant's Obligations.** Tenant, at its expense, will provide or contract for all repair, maintenance (including plumbing and HVAC) and custodial services on all portions of the Leased Premises, other than those undertaken by Landlord, as necessary to maintain the Leased Premises in its present condition, normal wear and tear excepted including the common areas as provided in Paragraph 21. If Tenant fails to perform its repair, maintenance and custodian obligations under this Lease within ten (10) days following Landlord's written request that Tenant do so, then Landlord shall have the right to perform such work on Tenant's behalf. Tenant will reimburse Landlord for Landlord's costs, plus an additional ten percent (10%) for overhead upon demand.

(c) **Commission of Waste.** Tenant shall not cause or permit any waste or damage, disfigurement or injury to any of the Leased Premises or any part or parts thereof.

10. **Surrender of the Leased Premises.** Upon the termination of this Lease or upon the termination of Tenant's right to possession of the Leased Premises, Tenant will surrender and deliver up to Landlord the Leased Premises and all improvements thereon broom-clean and in the same condition in which the Leased Premises existed on the Commencement Date plus any additional improvements made by Tenant, excepting only normal wear and tear and acts of God. Prior to the end of the Lease term or upon the termination of Tenant's right to possession of the Leased Premises, Tenant will remove from the Leased Premises all of Tenant's signs (other than those existing at the inception of the lease) and "Removable Trade Fixtures" as defined below (excluding, however, ducts, conduits, wiring, pipes, paneling, or other wall covering or floor covering and, at Landlord's discretion, replacements and improvements made by Tenant with Landlord's written consent). The phrase "Removable Trade Fixtures" means the following: all of Tenant's furnished and paid for signs, telephones, computers, office equipment and furnishings. The removal must be made not later than 30 days following the date this Lease is terminated and be performed without damage to the Leased Premises, other than minor damage reasonably anticipated in such removal operations (or Tenant promptly repairs all damage caused by the removal), and Tenant shall pay all costs of clearing and removing debris caused by or resulting from the removal. Landlord shall not be responsible or liable for any damage to or other loss of such trade fixtures, signs and furnishings, notwithstanding Landlord's possession of the Leased Premises at the termination of this Lease. The expiration of the Lease Term or such earlier termination shall be effective to vest title in all improvements in Landlord notwithstanding any exercise of any Renewal Option. All fixtures, equipment, and personal property not removed by Tenant within 30 days following the termination of this Lease shall, at Landlord's election either (i) without compensation to Tenant, become the property of Landlord or (ii) be removed by Landlord at Tenant's expense and Tenant agrees to reimburse Landlord for the costs of such removal plus the costs of restoring the Leased Premises.

11. **Casualty Damage.** If the Leased Premises or any part thereof shall, during the term of this Lease or previous thereto, be damaged, and if the building is otherwise habitable and the damage repairable, the Landlord shall repair the same and the rental shall be abated during

such time as the Leased Premises are uninhabitable. If the premises are uninhabitable, and not repairable, Tenant shall not have the obligation to pay rent.

12. **Condemnation.**

(a) If there is any taking of the Leased Premises in condemnation proceedings or by any right of eminent domain (or "taking"), or a taking of so much of the Leased Premises that the remainder in Landlord's judgment cannot be restored to an economically viable whole, Landlord or Tenant shall have the option, to elect to terminate this Lease and, in such event, this Lease shall terminate on the date of such taking.

(b) If Landlord elects not to terminate this Lease in accordance with this Paragraph following a taking of the Leased Premises, this Lease shall terminate as to the portion of the Leased Premises so taken and Rent shall be abated proportionately. Landlord (to the extent of available condemnation proceeds) shall promptly restore, repair, replace, and rebuild the remaining portions of the Leased Premises to substantially their former condition or with such additions or alterations as Landlord deems necessary.

(c) Landlord and Tenant shall cooperate in the prosecution of any claim for damages arising by virtue of any proceeding described in this Paragraph. The entire award or awards for any such claim shall be prorated between Landlord and Tenant according to the remaining lease term left and the value of the land value of any improvements. Tenant shall have the right to participate in any condemnation proceeding to present its separate claim for moving expenses and any taking of its non-removable fixtures and equipment, and office furniture, provided the value of Landlord's award is not thereby diminished. Tenant shall in no event prosecute any claim or be entitled to any compensation with respect to its leasehold estate hereunder.

(d) If this Lease is terminated as a result of condemnation, Rent shall be payable through the date that possession is taken by the taking authority, and Landlord will refund to Tenant any prepaid unaccrued Rent, less any sums the Tenant owes the Landlord.

13. **Insurance and Indemnity.**

(a) **Casualty Insurance.** Tenant shall, at its own cost and expense, carry insurance for repair and replacement of its equipment and its other personal property located on the Leased Premises at replacement value or at such values as Tenant elects.

(b) **Liability Insurance.** Tenant will during the term hereof keep in force at its own expense commercial general and excess liability insurance, with contractual liability endorsement or its equivalent (including coverage for named peril or short term pollution events) with companies reasonably acceptable to Landlord and naming Tenant

as the named insured with Landlord added as an additional insured in an amount acceptable to Tenant. Tenant will promptly notify Landlord (at or before the time that Tenant provides notice to the relevant insurance carriers) of any circumstance or event which may exceed \$1,000.00 that occurs during the term of this Lease and which may lead to a claim against Tenant and/or Landlord. Said insurance is primary and any similar insurance of Landlord is excess thereof and not contributing. Such insurance policy or policies will contain a clause that the insurer will not cancel or change the insurance without first giving Landlord thirty (30) days prior written notice. Upon request, a copy of such policy or policies will be delivered to Landlord. A certificate of insurance will be delivered to the Landlord at or prior to the date of the commencement of the term of this Lease and thereafter on an annual basis.

(c) **Indemnity.** To the extent allowed by applicable law, Tenant shall defend, indemnify, and save harmless Landlord, its agents, officers, and employees, successors and assigns, from and against any and all liability, claims, demands, expenses, fees, fines, penalties, suits, proceedings, actions, and causes of action of any and every kind and nature arising or growing out of or in any way connected with (i) the negligence or misconduct of Tenant, its agents, servants, employees, and (ii) Tenant's use, occupancy, management, or control of the Leased Premises. To the extent allowed by applicable law, Landlord shall defend, indemnify, and save harmless Tenant, its agents, officers, and employees, successors and assigns, from and against any and all liability, claims, demands, expenses, fees, fines, penalties, suits, proceedings, actions, and causes of action of any and every kind and nature arising or growing out of or in any way connected with (i) the negligence or misconduct of Landlord, its agents, servants, employees, and (ii) Landlord's use, occupancy, management, or control of the Leased Premises.

14. **Assignment and Subletting.**

(a) **Prohibition.** Tenant shall not, without Landlord's prior written consent, which it may withhold in its sole discretion, sublet the Leased Premises or any part thereof, or assign, or otherwise convey the Tenant's estate or rights hereunder. Any attempted or purported assignment, subletting, or conveyance shall be void and of no force or effect. If Landlord does consent, Landlord's consent to any subletting or assignment, shall not constitute or be evidence of Landlord's consent to any other subletting or assignment by Tenant. It is understood and agreed that as a condition to any assignment, Landlord may require a guaranty from a creditworthy party or other security for performance of the assignee's obligations under this Lease.

(b) **Bankruptcy Provisions.** Notwithstanding the foregoing, if this Lease is assigned pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, the person or entity to whom it is assigned shall be deemed without further act or deed to have assumed all of the obligations arising hereunder on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming its assumption.

If this Lease is so assigned, any and all monies or other considerations payable or otherwise to be delivered in connection with the assignment shall be paid or delivered to Landlord, shall be and remain Landlord's exclusive property and shall not constitute property of Tenant or of Tenant's estate within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord.

(c) **Tenant Released.** The making of any assignment or subletting, in whole or in part, shall relieve Tenant from its obligations hereunder.

(d) **Transfer of Landlord's Rights.** Landlord may assign, convey or otherwise transfer its right, title, and interest hereunder and/or in the Leased Premises, or any portion thereof, without the consent of Tenant.

15. **Default by Tenant.**

(a) **Events of Default.** The happening of any of the following events shall constitute an event of default of Tenant:

(i) If Tenant

(1) fails to pay any portion of Rent when due and the default continues for ten (10) days after written notice thereof by Landlord to Tenant (provided that Landlord shall not be obligated to give notice and opportunity to cure more than three times in any consecutive twelve (12) month period - the failure to pay Rent at any time thereafter in such consecutive twelve (12) month period shall constitute an event of default without the necessity of notice and opportunity to cure);

(2) abandons the Leased Premises;

(3) leaves the Leased Premises substantially vacant or unoccupied for seven (7) consecutive business days or fails to maintain an operation required by this Lease for seven (7) consecutive business days (except periods of reconstruction due to casualty or condemnation and periods of remodeling, and provided Tenant diligently and continuously prosecutes the same); or

(4) fails to perform or observe any provision of another Article of this Lease and complete curative measures within twenty (20) days after Landlord's written notice to Tenant.

(ii) If

(1) Any voluntary petition or similar pleading under any bankruptcy act or under any law seeking reorganization or an arrangement with creditors or adjustment of debts, is filed by or against Tenant, or if any such petition or pleading is involuntary, and it is not adjudicated favorably to Tenant within sixty (60) days after its filing;

(2) Tenant admits its inability to pay its debts, or if a receiver, trustee, or other court appointee is appointed for all or a substantial part of Tenant's property;

(3) The leasehold of Tenant is levied upon or attached by process of law and Tenant does not vigorously contest the same by appropriate proceedings and remove or vacate the same within sixty (60) days from the date of its creation, service or filing;

(4) Tenant makes an assignment for the benefit of creditors, or if any proceedings are filed by or against Tenant to declare Tenant insolvent or unable to meet its debts; or

(5) A receiver or similar type of appointment or court appointee or nominee of any name or character is made for Tenant or its property and Tenant does not vigorously contest the same by appropriate proceedings and remove or vacate same within sixty (60) days from the date of appointment.

(b) **Landlord's Remedies.** Landlord may treat the occurrence of any of the foregoing defaults as a breach of this Lease, and, at its option, may have the following-described remedy:

(i) Landlord may terminate this Lease and forthwith repossess the Leased Premises by forcible entry and unlawful detainer suit and be entitled to recover forthwith as damages a sum of money equal to the total of

(1) the cost of recovering the Leased Premises;

(2) the unpaid Rent earned at the time of termination.

(c) **No Implied Waiver.** Neither acceptance of any sum paid by Tenant, nor failure by Landlord to complain of any action, inaction or Event of Default of Tenant will constitute a waiver by Landlord of any of Landlord's rights under the Lease or under the law. Landlord's waiver of any right for any Event of Default by Tenant will not constitute

a waiver any other right of Landlord for either a subsequent default of the same obligation or for any other default.

16. **Default by Landlord; Tenant's Remedies.** Defaults by Landlord are failing to comply with any provision of this Lease within ten (10) days after written notice. Tenant's remedies for Landlord's default are to sue for damages and terminate this Lease.

17. **Holdover.** If Tenant should remain in possession of the Leased Premises after the expiration or other termination of the Lease term, then Tenant will be deemed to be occupying the Leased Premises as a month-to-month tenant. The month-to-month tenancy will be under all of the terms and conditions of this Lease, and Tenant will remain subject to all of the covenants, duties and obligations of Tenant under this Lease. The rent payable during the holdover period will be equal to one hundred percent (100%) of the rent last applicable during the Lease term.

18. **Notice.** Except as otherwise provided herein, all notices, demands, requests, and other communications required or permitted hereunder shall be given in writing and sent by (i) personal delivery, or (ii) expedited delivery service with proof of delivery, or (iii) United States mail, postage prepaid, registered or certified mail, return receipt requested, or (iv) prepaid telegram, telex, or telecopy (provided that such telegram, telex or telecopy is confirmed by expedited delivery service or by United States mail in the manner previously described), addressed to the addressee at such party's address set forth herein, or to such other address as such party may specify by written notice, sent in accordance with this paragraph at least ten (10) days prior to the date of the giving of such notice. Any such notice or communication shall be deemed to have been given and received either at the time of personal delivery, or in the case of mail, as of the date of deposit in an official depository of the United States mail, or in the case of delivery service, telegram, telex, or telecopy, upon receipt. To the extent actual receipt is required, rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was received shall be deemed to be receipt of the notice, demand, request or other communication sent.

19. **Subordination.** Tenant agrees with Landlord and with any Landlord's Mortgagee, that any such Landlord's Mortgagee shall have the right at any time to elect, by notice, in writing given to Tenant, to make this Lease superior to such mortgage and/or deed of trust and, upon the giving of such notice to Tenant, this Lease shall be deemed prior and superior to such mortgage and/or deed of trust in respect of which said notice was given. Tenant shall attorn to any such Landlord's Mortgagee following a foreclosure, deed in lieu of foreclosure or other transfer of possession or title to the Leased Premises to Landlord's Mortgagee.

20. **Quiet Enjoyment.** Except as provided in Paragraphs 21, 22 and 23, the Landlord covenants that the Tenant on paying the Rent in performing the covenant hereunder may peaceably and quietly have, hold, and enjoy the Leased Premises for the term of this Lease subject to the provisions hereof.

21. **Use of Premises by Landlord.** Landlord may use the Common Areas of the Leased Premises for events such as fund raising, education, or tourism at such times as Tenant is not open for business at no charge to Landlord. Landlord will be responsible for cleaning up after any event. Landlord will give Tenant three (3) business days' notice of the desire to use the Common Areas of the Leased Premises. Tenant will cooperate with Landlord in Landlord's use of the Common Areas of the Leased Premises.

22. **Common Areas.** The Common Areas and their exterior sidewalks and windows outside of the Leased Premises shown on Exhibit "A" will be kept clean and neat by Tenant in the manner provided in Paragraph 9. The other Tenants will be using the Common Areas with Tenant. Tenant will cooperate with other Tenants in the use of Common Areas.

23. **Miscellaneous.** Landlord will have the right to enter the Leased Premises at all reasonable times, in order to inspect them and in order to evaluate Tenant's performance under this Lease, without any such action constituting an eviction of Tenant or authorizing a reduction in Rent. During the sixty (60) days prior to the expiration of the Lease term, Tenant will permit Landlord to exhibit the Leased Premises to prospective tenants and purchasers, and to place notices upon the Leased Premises advertising the Leased Premises "For Lease" or "For Sale." This Lease may not be changed or terminated orally, but only in writing executed by both parties hereto. This document will bind and inure to the benefit of the respective heirs, executors, administrators, successors and assigns of the parties (without altering the provisions of Paragraph 14 regarding assignment and subletting).

It is understood and agreed between the Parties that the Tenant operates an independent business. Nothing herein shall be construed as reserving or granting unto the Landlord the right to exercise any control over the Tenant's business or the manner in which its conducted but the control and direction of such business and operation shall be and remain with the Tenant subject only to the Tenant's obligation to perform the terms and conditions of this Lease. The Tenant is neither a partner nor a joint venturer with the Landlord.

The laws of the State of Texas shall govern the validity, enforcement, and interpretation of this Lease. The obligations of the Parties are performable and venue for any legal action arising out of this Lease shall lie in Washington County, Texas.

THIS LEASE CONTAINS THE ENTIRE AGREEMENT AND UNDERSTANDING BETWEEN THE LANDLORD AND THE TENANT PERTAINING TO THE SUBJECT MATTER OF THIS LEASE AND THERE ARE NO ORAL REPRESENTATIONS, STIPULATIONS, WARRANTIES, OR UNDERSTANDINGS RELATING THERETO WHICH ARE NOT FULLY SET FORTH HEREIN.

The following drawing and document is attached to this Lease and is a part of this Lease.

Exhibit "A" - Diagram of Leased Premises

EXECUTED in multiple counterparts, each having the force and effect of an original on
9/25, 2018, to be effective as of the Commencement Date set forth
herein.

LANDLORD:

SIMON THEATER MASTER TENANT, LLC, a
Texas limited liability company

By: 
Name: R. Hal Moorman
Title: President

TENANT:

CITY OF BRENHAM, a Texas home rule
municipal corporation

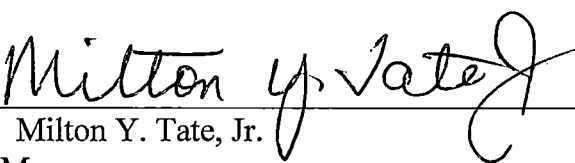
By: 
Name: Milton Y. Tate, Jr.
Title: Mayor

EXHIBIT A

— TERRAZZO FLOORING
— 2' X 2' CERAMIC TILE, TYPE 2
— 2' X 2' CERAMIC TILE, TYPE 1
— 2' X 2' CERAMIC TILE, TYPE 3

Pattern

—TERRAZZO
P. COORDINO

— 3" X 3" CERAMIC TILE TYPE 3
— 2" X 2" CERAMIC TILE TYPE 2
— 1" X 1" CERAMIC TILE TYPE 1

g Pattern

PROVIDE MAIL IN
POST, OFFICE AS
DIRECT FOR NEW

REPAIR DAMAGED
PLASTER AT
PERIMETER OF
ORIGINAL OPENING

Door 103A

LEASED PREMISES

**LEASED PREMISES - COMMON AREA
-OUTLINED IN GREEN**

First Floor Plan
Scale 3/8" = 1'-0"

Scale 1/8" = 1'-0"

EXHIBIT A.2
ADDENDUM TO LEASE AGREEMENT

**ADDENDUM TO AND MODIFICATION OF
LEASE AGREEMENT**

**SIMON THEATER MASTER TENANT, LLC, a Texas limited liability company
LANDLORD**

and

**CITY OF BRENHAM, a Texas home-rule municipal corporation
TENANT**

STATE OF TEXAS §
 §
COUNTY OF WASHINGTON §

This "Addendum to and Modification of Lease Agreement" (the "Addendum") between Simon Theater Master Tenant, LLC, a Texas limited liability company (the "LANDLORD") and the City of Brenham, a Texas home-rule municipal corporation (the "TENANT") amends the "Lease Agreement" between the LANDLORD and TENANT dated September 25, 2018 and commencing October 1, 2018 (the "Lease"), for the purpose of adding 446 square feet to the "Leased Premises" in consideration of the mutual undertakings and obligations expressed herein and in the Lease, as an addendum to and modification of the Lease.

1. Paragraph 1(a) of the Lease, definition of "Leased Premises," is modified to read as follows:

a) "Leased Premises" - the office and retail space in the City of Brenham, Texas, as located at 111 and 115 West Main Street and shown on the attached Exhibit "A". Certain areas marked "Common Area" will be shared by Tenant with other tenants of the premises.

2. Paragraph 1(d)(ii) of the Lease, "Rent," is modified to read as follows:

b) "Rent" -

...

(ii) Tenant will pay to Landlord the sum of One Thousand Six Hundred Ninety-Four and No/100 Dollars (\$1,694.00) per month as rent for the Leased Premises.

3. Exhibit "A" -- Diagram of the Leased Premises, referenced in Paragraph 23 of the Lease, is replaced in its entirety with the Exhibit "A" attached to this Addendum, and said Exhibit "A" attached hereto is incorporated herein for all pertinent purposes.

This Addendum shall be effective as of October 1, 2018, and shall prevail over any provision or term contained in the Lease dated September 25, 2018 (and commencing October 1, 2018), and any other agreement between the LANDLORD and TENANT, to the extent said instruments may be inconsistent with the terms of this Addendum. Except as expressly amended by this Addendum, all other terms and conditions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, LANDLORD and TENANT hereby enter into this Addendum to be effective on October 1, 2018.

LANDLORD:

SIMON THEATER MASTER TENANT, LLC, a
Texas limited liability company

By: _____

Name: R. Hal Moorman

Title: President

Date: _____

1/29/19

TENANT:

CITY OF BRENHAM, a Texas home rule
municipal corporation



By: _____

Name: Milton Y. Tate, Jr.

Title: Mayor

Date: _____

1-14-19

EXHIBIT "A"

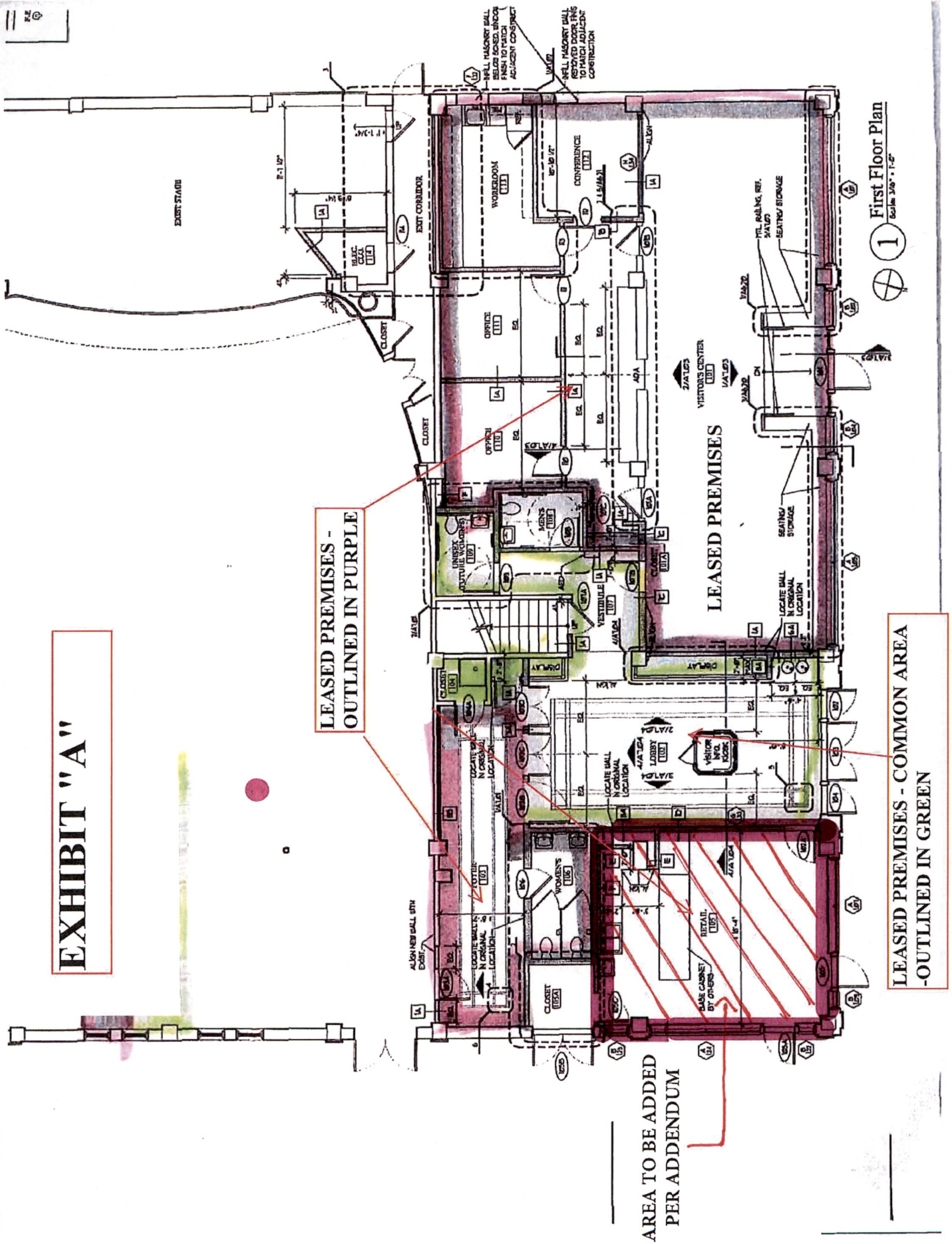


EXHIBIT B
MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING

THIS **MEMORANDUM OF UNDERSTANDING** ("**MOU**") is made and entered into between SIMON THEATER MASTER TENANT, LLC, a Texas limited liability company ("**Simon Theater**"), and the CITY OF BRENHAM, a Texas home-rule municipal corporation ("**City**"), effective as of this 7th day of February, 2019 (the "**Commencement Date**").

WHEREAS, Simon Theater is the leasehold owner of that certain building known as The Barnhill Center, located 111 West Main Street in Brenham, Texas (the "**Barnhill Center**"), being more fully described in Exhibit "A" attached hereto and incorporated herein for all purposes pertinent; and

WHEREAS, Simon Theater has agreed to allow the City to operate the Barnhill Center as a conference center event destination and for cultural arts programming; and

WHEREAS, the City has agreed to market, promote and operate the Barnhill Center and provide reimbursement of certain expenses, technology support services and facility repair and maintenance services;

NOW, THEREFORE, IN CONSIDERATION OF One Thousand Five Hundred and No/100 Dollars (\$1,500.00) per month and other good and valuable consideration set forth in this MOU, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** The above Recitals provisions are fully incorporated herein by this reference.

2. **City's Obligations.** The City agrees to:

(a) *Rental Policies.* The City shall have the authority, within its sole discretion, to establish the policies and rates for rental of the Barnhill Center and associated facilities, and all related charges and fees.

(b) *City Staff.* Have City staff present at all times during events at the Barnhill Center; however, this obligation of the City shall not apply to occasions when the Simon Theater is using the Barnhill Center, in compliance with subparagraph 5(b) herein below, for fundraising events and at other times for meetings of the Brenham Main Street Historical Preservation, Inc. Board of Directors and Development Committee, and to conduct small tours for fundraising. Except for events and meetings sponsored by or conducted by the City, event rentals must purchase event insurance online (through a third-party provider) at a minimum of three (3) days prior to an event.

(c) *Marketing and Promotion.* Promote and market the Barnhill Center as a conference center event destination and for cultural arts programming. The City will have the exclusive and final authority in determining the utilization and development of marketing materials and advertisements related to the promotion and marketing of the Barnhill Center/Simon Theater, including without limitation the exclusive administrative rights and control of all website and social media domains and content related to the Barnhill Center/Simon Theater. Accordingly, Simon Theater hereby grants to the City an

exclusive, nontransferable license, irrevocable during the period that this MOU is in effect, to all of the Barnhill Center/Simon Theater's website(s) and social media sites, further identified as follows: thebarnhillcenter.com; The Barnhill Center on Instagram and www.facebook.com/BarnhillCenter. Simon Theater may request that the City include additional content on the website and social media sites for BMSHP/Simon Theater fundraising events.

(d) *Concessions and alcohol.* Provide or contract to provide all alcohol concessions and other concessions at all events at the Barnhill Center. The City will receive all of the income from the alcohol concessions and other concessions from all conferences, cultural arts programing, concerts, weddings, and all other events and activities at the Barnhill Center. Further, at such time as the City, or an entity affiliated with the City, may obtain any necessary license(s) and/or permit(s) from the Texas Alcoholic Beverage Commission ("TABC") to provide alcohol concessions at the Barnhill Center, the City or such affiliated entity shall be the exclusive provider of all alcohol concessions at all events at the Barnhill Center, and the City/affiliated entity will continue to receive all of the income from the alcohol concessions. At such time as the City/affiliated entity may obtain any necessary license(s) and/or permit(s) from the Texas Alcoholic Beverage Commission to provide alcohol concessions at the Barnhill Center, Simon Theater shall immediately take all actions necessary to cancel Simon Theater's license(s) and/or permit(s) issued by the Texas Alcoholic Beverage Commission for providing alcohol concessions at the Barnhill Center. City staff that serve as Barnhill Center event coordinators and/or managers must obtain TABC server/seller certification and follow all applicable regulations of the TABC.

(e) *Maintenance.* Repair, replace, and maintain the (i) roof; (ii) foundation, (iii) exterior and interior walls, doors, corridors, light fixtures, flooring and windows; (iv) HVAC, plumbing and electrical systems; (v) other structures or equipment/machinery fixtures serving the Barnhill Center (excluding the elevator which shall remain the responsibility of the Simon Theater; however the City will reimburse Simon Theater for the annual cost of the Schindler Elevator Company Extended Warranty Agreement as part of the annual maintenance cost paid by the City pursuant to this subsection); and (vi) any property damaged as a result of a defect or malfunction of the aforementioned items, except to the extent that damage to the same is caused by the Simon Theater or the Simon Theater's employees, agents, or invitees. Unless otherwise agreed to in writing by the parties, the City shall not be required to expend more than \$12,000.00 each fiscal year (October 1 – September 30) in performing its obligations set forth in the previous sentence, and Simon Theater shall be responsible for said repair, replacement and maintenance costs in excess of \$12,000.00, except to the extent that damage to the premises is caused by the City or the City's employees, agents, or invitees. The City will keep all audio-visual and lighting equipment situated at the Barnhill Center in good and clean order and condition and will promptly make all necessary or appropriate repairs, replacements, and renewals of such equipment. To the extent the audio-visual or lighting equipment is damaged or rendered inoperable in any manner by a party to this MOU, the party causing such damage or inoperability shall be responsible for the costs necessary for the repair or replacement of the audio-visual or lighting equipment. Repairs, replacements, and other maintenance costs necessitated by damages resulting from fire or other casualty losses shall be funded in

accordance with the terms and conditions set forth in **Exhibit "B"** attached hereto and incorporated herein for all purposes pertinent.

(f) **Requests for Repairs.** Submit in writing to Simon Theater any request for repairs, replacement, and maintenance that are the obligations of Simon Theater.

(g) *Vacate.* Vacate the Barnhill Center and return all keys to the Barnhill Center on the last day of the Term.

(h) *Indemnification.* TO THE EXTENT ALLOWED BY LAW, INDEMNIFY, DEFEND, AND HOLD SIMON THEATER AND ANY HOLDER OF A MORTGAGE LIEN COVERING SIMON THEATER ("*LIENHOLDER*"), AND THEIR RESPECTIVE AGENTS, HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) OCCURRING IN ANY PORTION OF THE BARNHILL CENTER, BUT ONLY TO THE EXTENT SUCH INJURY IS CAUSED BY THE CITY'S NEGLIGENCE OR WILLFUL MISCONDUCT. THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF THE CITY'S INSURANCE, (ii) WILL SURVIVE THE END OF THE TERM, AND (iii) WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SIMON THEATER OR LIENHOLDER, AND THEIR RESPECTIVE AGENTS, OR ANY PERSON OR ENTITY OTHER THAN THE CITY.

(i) *Facility Usage Fee. Additional amounts payable to Simon Theater.* During the Term of this MOU, the City shall pay to Simon Theater a facility usage fee of One Thousand Five Hundred and No/100 Dollars (\$1,500.00) per month. Within ten (10) days after the execution of this MOU by both parties, City shall pay to Simon Theater the additional lump sum amount of Thirty-Seven Thousand Five Hundred and No/100 Dollars (\$37,500.00) for accrued, unpaid facility usage fees payable to Simon Theater by the City for the time period beginning January 1, 2017 through ~~September 30, 2018.~~

January 31, 2019 myt RHM

3. Negative Covenants: The City agrees not to:

(a) Use the Barnhill Center for any purpose other than general business and recreational use, including but not limited to operating, renting, subleasing, licensing and promoting the Barnhill Center as a facility for conferences, cultural arts programming, concerts, weddings, and other events.

(b) Create a nuisance.

(c) Use the Barnhill Center in any way that would void insurance on the Barnhill Center.

(d) Change Barnhill Center's lock system except as approved by Simon Theater. Simon Theater shall not issue any keys or other devices allowing access to the Barnhill

Center to any person other than members of the Brenham Main Street Historical Preservation, Inc. ("BMSHP") Board of Directors or BMSHP staff.

(e) Alter the Barnhill Center without written authorization from the Simon Theater.

(f) Allow a lien to be placed on the Barnhill Center.

(g) Assign this MOU without Simon Theater's written consent.

(h) Attach any permanent signage to the Barnhill Center without written permission of Simon Theater.

4. Simon Theater's Obligations: Simon Theater agrees to:

(a) *Repairs and Maintenance.* Repair, replace, and maintain the elevator and any other part of the Barnhill Center (normal wear excepted) that the City is not obligated to repair, replace, or maintain (e.g. casualty losses as described in Exhibit "B"). In the event the City and Simon Theater agree that the City will make any repairs or perform any maintenance for which Simon Theater is responsible under this subparagraph 4(a), Simon Theater shall promptly reimburse the City for such repairs and maintenance costs.

(b) *Telephone Service.* The Simon Theater further agrees that the published phone number - (979) 836-6980 - shall be ported to the City as soon as possible after the Commencement Date of this MOU.

(c) *Personnel.* Carry out and provide sufficient personnel for all events and meetings held pursuant to subparagraph 5(b) herein by, on behalf of, or for the benefit of Simon Theater and/or BMSHP. The City will provide event setup and cleaning of facilities before and after an event held pursuant to subparagraph 5(b) herein by, on behalf of, or for the benefit of Simon Theater and/or BMSHP.

(d) TO THE EXTENT ALLOWED BY LAW, INDEMNIFY, DEFEND, AND HOLD CITY HARMLESS FROM ANY INJURY AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS, OCCURRING IN ANY PORTION OF THE PREMISES, BUT ONLY TO THE EXTENT SUCH INJURY IS CAUSED BY SIMON THEATER'S OR LIENHOLDER'S NEGLIGENCE OR WILLFUL MISCONDUCT. **THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF SIMON THEATER'S INSURANCE, (ii) WILL SURVIVE THE END OF THE TERM, AND (iii) WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY.**

(e) Coordinate, control and schedule the breakout room construction work in consultation with the City so that the breakout room construction work does not interfere with, hamper, negatively affect or disturb in any manner (including but not limited to

excessive noise, foul odor, detectible vibration, impeding ingress/egress of event attendees and/or City staff, presence of rubbish and debris on the premises, or other similar conditions) the use of the Barnhill Center during an event or conference being held on the premises, or during activities in preparation for an event, meeting or conference to be held on the premises. The contractor performing the breakout room construction work shall be required to maintain the premises in a clean, orderly and sanitary manner. Simon Theater shall direct the architect/engineer designing the breakout room improvements to confer with the City regarding the design of said breakout room improvements, and shall also ensure that the audio-visual equipment is functionally compatible with, and operable with, the existing audio-visual equipment at the Barnhill Center. Simon Theater shall retain the final decision-making authority regarding the design of the breakout room improvements.

5. General Provisions: Simon Theater and the City agree to the following:

(a) *Alterations.* Any physical additions or improvements to the Barnhill Center made by the City will become the property of Simon Theater. Simon Theater may require that the City, at the end of the Term and at the City's expense, remove any physical additions and improvements, repair any alterations, and restore the Barnhill Center to the condition existing at the Commencement Date, normal wear excepted.

(b) *Simon Theater's Use of Barnhill Center.* Except as otherwise provided for in this MOU, the City shall have exclusive use of the Barnhill Center for general business and recreational use, including but not limited to operating, renting, subleasing, licensing and promoting the Barnhill Center as a facility for conferences, cultural arts programming, concerts, weddings, and other events. Subject to the scheduling approval of the City and availability of the Barnhill Center, the Board of Directors of the Brenham Main Street Historical Preservation, Inc. ("BMSHP") will be permitted to use the Barnhill Center up to six (6) times each year for any fundraising events and at other times for meetings of the BMSHP Board of Directors and Development Committee and to conduct small tours for fundraising. The City shall endeavor in good faith to accommodate the BMSHP's request to use the Barnhill Center pursuant to this subparagraph 5(b) on a particular date; however, the Barnhill Center will not be made available for the BMSHP's use on a particular date if another event has been booked on BMSHP's requested date, or the City has in any manner (e.g. via email, telephone, fax, in-person meeting, etc.) communicated with a potential user of the Barnhill Center, even though the potential user has not booked the Barnhill Center, about the use of the Barnhill Center on a particular date or dates that conflict with BMSHP's requested date.

(c) *Insurance.* The City and Simon Theater will maintain the respective insurance coverages described in the Insurance Addendum attached hereto as Exhibit "B" and incorporated herein for all purposes.

(d) *Release of Claims/Subrogation.* SIMON THEATER AND CITY RELEASE EACH OTHER AND LIENHOLDER, AND THEIR RESPECTIVE AGENTS, FROM ALL CLAIMS OR LIABILITIES FOR DAMAGE TO THE BARNHILL CENTER OR BUILDING, DAMAGE TO OR LOSS OF PERSONAL PROPERTY WITHIN THE BUILDING, AND LOSS OF BUSINESS OR REVENUES THAT ARE COVERED BY

THE RELEASING PARTY'S PROPERTY INSURANCE OR THAT WOULD HAVE BEEN COVERED BY THE REQUIRED INSURANCE IF THE PARTY FAILS TO MAINTAIN THE PROPERTY COVERAGES REQUIRED BY THIS MOU. IF APPLICABLE, THE PARTY CAUSING THE DAMAGE OR LOSS WILL BE RESPONSIBLE FOR ANY DEDUCTIBLE OR SELF-INSURED RETENTION UNDER THE PROPERTY INSURANCE POLICY PROVIDING COVERAGE FOR THE DAMAGE OR LOSS. SIMON THEATER AND CITY WILL NOTIFY THE ISSUING PROPERTY INSURANCE COMPANIES OF THE RELEASE SET FORTH IN THIS PARAGRAPH AND WILL HAVE THE PROPERTY INSURANCE POLICIES ENDORSED, IF NECESSARY, TO PREVENT INVALIDATION OF COVERAGE. THIS RELEASE WILL NOT APPLY IF IT INVALIDATES THE PROPERTY INSURANCE COVERAGE OF THE RELEASING PARTY. THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF THE RELEASED PARTY OR ITS AGENTS BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE RELEASED PARTY OR ITS AGENTS.

6. Miscellaneous.

(a) *Term.* The Term of this MOU shall begin on the Commencement Date and shall terminate on September 30, 2019 unless this MOU is otherwise terminated earlier as provided herein. Thereafter, this MOU shall automatically renew each year on October 1 for successive twelve (12) month terms unless either party provides written notice of non-renewal at least sixty (60) days prior to the termination of the then current term, or unless this MOU is otherwise terminated as provided herein.

(b) *Successors and Assigns.* This MOU is binding on, and inures to, the benefit of the parties and their respective successors and assigns.

(c) *Governing Law; Venue.* This MOU shall be governed by the laws of the State of Texas. Exclusive venue for any claim, dispute, lawsuit or other legal proceeding arising out of or involving this MOU shall lie in Washington County, Texas.

(d) *Default.* The failure of either party to comply with the terms and conditions of this MOU shall constitute a default of this MOU. If either party commits a default in the performance of any obligation or covenant herein, the non-defaulting party may enforce the performance of this MOU in any manner provided by law. This MOU 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 MOU 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) day period, (ii) the defaulting party diligently pursues the cure thereafter until it is fully cured, and (iii) the defaulting party 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 the defaulting party has not substantially cured

the default within the time period referenced above, this MOU may be terminated by the non-defaulting party, and the non-defaulting party may pursue any other remedies available in law or equity.

(e) *Notice.* All notices sent pursuant to this MOU shall be in writing and may be hand delivered, or sent by registered or certified mail, postage prepaid, return receipt requested. Notices sent pursuant to this MOU shall be delivered or sent to the City at the following address:

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

With a copy to:

Cary L. Bovey
Law Office of Cary L. Bovey, PLLC
2251 Double Creek Dr., Suite 204
Round Rock, TX 78664

Notices sent pursuant to this MOU shall be delivered or sent to the Simon Theater at the following address:

Attention: R. Hal Moorman and Donna Cummins
P.O. Box 2006
Brenham, Texas 77834-2006

With a copy to:

R. Hal Moorman
P.O. Box 1808
Brenham, TX 77834-1808

When notices sent are hand-delivered, notice shall be deemed effective upon delivery. When notices are mailed by registered or certified mail, notice shall be deemed effective three (3) days after deposit in a U.S. mail box or at a U.S. post office. Either party may change its address for notice under this MOU by providing a notice of the change in compliance with this paragraph to all other parties.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Understanding to be made effective as of the date first written above.

SIMON THEATER:

SIMON THEATER MASTER TENANT, LLC,
a Texas limited liability company

By: 
Name: R. Hal Moorman
Title: President

CITY:

THE CITY OF BRENHAM TEXAS

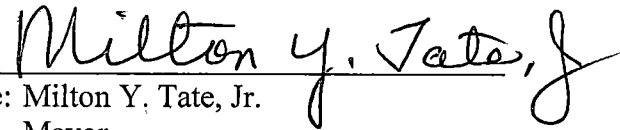
By: 
Name: Milton Y. Tate, Jr.
Title: Mayor

EXHIBIT A
Property Description

TRACT 1:

All that certain tract or parcel of land, lying and being situated in the City of Brenham, Washington County, Texas, and being designated in the Official City Map of Brenham, Texas as all of Lots 1, 2 and 3, Original Town Lot Number 21, Washington County, Texas, containing 8100 square feet of land, more or less, and being more fully described by metes and bounds on page 2 of this Exhibit "A" attached hereto and made a part hereof for all purposes pertinent.

Being the same property described in Deed dated June 25, 2003, executed by Hai Van Tran, by and through his Attorney-in-Fact, Tim Q. Tran, and Muoi Huynh Tran, by and through her Attorney-in-Fact, Tim Q. Tran, to Brenham Main Street Historical Preservation, Inc., a Texas Non-Profit Corporation, recorded in Volume 1082, Page 454, Official Records of Washington County, Texas.

TRACT 2:

All that certain tract or parcel of land, lying and being situated in the City of Brenham, Washington County, Texas, being all of Lot 1 and Lot 2 in the Division of Original Town Lot 22, containing 5348 square feet of land, more or less, and being more fully described by metes and bounds on page 3 of this Exhibit "A" attached hereto and made a part hereof for all purposes pertinent.

Being the same property described in Deed dated December 19, 2012, executed by Elisabeth Behrend Bennett, et al to Brenham Main Street Historical Preservation, Inc., a Texas Non-Profit Corporation, recorded in Volume 1422, Page 0071, Official Records of Washington County, Texas.

LICENSE AGREEMENT PARCEL:

Together with all of the rights and subject to all obligations created under a License Agreement between the City of Brenham, Texas (the "City") and Brenham Main Street Historical Preservation, Inc. ("BMSHP"), dated January 13, 2014, and recorded in Book 1474, page 1011, Official Records of Washington County, Texas, and an Amendment to License Agreement between the City and BMSHP dated June 26, 2014, and recorded in Book 1474, Page 1017, Official Records of Washington County, Texas; reference to both of which said instruments being hereby made for all pertinent purposes.

RCHTBT "A"

Blakey Land Surveying

4650 Wilhelm Lane
Burton, Texas 77835-5794

Telephone/Fax 979-289-3900

BRENHAM MAIN STREET HISTORICAL PRESERVATION, INC.
8100 SQ. FT. TRACT

ALL THAT TRACT OR PARCEL OF LAND containing 8100 Sq.Ft., situated in Washington County, Texas, being out of the A. Harrington Survey, Abstract No. 55, in the City of Brenham, being all of Lots 1, 2 and 3 of the Original Town Lot 21, and being the same tract described in that deed from Hai Van Tran, by and through his Attorney-In-Fact, Tim Q. Tran, and Mai Huynh Tran, by and through her Attorney-In-Fact, Tim Q. Tran to Brenham Main Street Historical Preservation, Inc. dated June 25, 2003, and recorded in Volume 1082, Page 454 of the Official Records of Washington County, Texas, said 8100 Sq.Ft. tract being more particularly described as follows:

BEGINNING at a point at building corner, lying at the intersection of the South margin of Main Street (public right-of-way) with the West margin of Douglas Street (public right-of-way), marking the Northeast corner of Lot 1 of Original Town Lot 21, and the Northeast corner of the herein described tract;

THENCE along the West margin of Douglas Street, with the East line of Original Town Lot 21, S 13deg 00min 00sec E, 90.00 ft., to a point at building corner, marking the Northeast corner of the Brenham Main Street Historical Preservation, Inc. tract (called Lot 1 and Lot 2 in the Division of Original Town Lot 22, Volume 1422, Page 0071, Official Records of Washington County, Texas), the Northeast corner of Lot 1 of Original Town Lot 22, the Southeast corner of Lot 3 of Original Town Lot 21, and the Southeast corner of the herein described tract;

THENCE departing the West margin of Douglas Street, along the North line of Lot 1 of Original Town Lot 22, with the South line of the herein described tract, S 77deg 00min 00sec W, 90.00 ft., to a point at building corner, lying in the East margin of a called 30 ft. alley ("Alamo Alley"), marking the Northwest corner of Lot 1 of Original Town Lot 22, the Northwest corner of the Brenham Main Street Historical Preservation, Inc. tract (called Lot 1 and Lot 2 in the Division of Original Town Lot 22), the Southwest corner of Lot 3 of Original Town Lot 21, and the Southwest corner of the herein described tract;

THENCE along the East margin of said 30 ft. alley, with the West line of Original Town Lot 21, N 13deg 00min 00sec W, 90.00 ft., to a point at building corner, lying in the South margin of the aforementioned Main Street, marking the Northeast corner of said 30 ft. alley, the Northwest corner of Lot 1 of Original Town Lot 21, and the Northwest corner of the herein described tract;

THENCE along the South margin of Main Street, with the North line of Original Town Lot 21, N 77deg 00min 00sec E, 90.00 ft., to the PLACE OF BEGINNING and containing 8100 Sq.Ft. of land.

June 24, 2014
W.O.#2014-2104


Michael J. Blakey
Registered Professional Land Surveyor No. 5935

Plat prepared and made a part of this description.

EXHIBIT "A"

Blakely Land Surveying

4630 Wilhelm Lane
Burton, Texas 77835-3794

Telephone/Fax 979-289-3900

BRENNHAM MAIN STREET HISTORICAL PRESERVATION, INC.
5348 SQ. FT. TRACT

ALL THAT TRACT OR PARCEL OF LAND containing 5348 Sq.Ft., situated in Washington County, Texas, being out of the A. Harrington Survey, Abstract No. 33, in the City of Brenham, being all of Lots 1 and 2 of the Original Town Lot 22, and being the same tract described in that deed from Elizabeth Reinold Bennett, et al to Brenham Main Street Historical Preservation, Inc. dated December 19, 2012, and recorded in Volume 1422, Page 0071 of the Official Records of Washington County, Texas, said 5348 Sq.Ft. tract being more particularly described as follows:

BEGINNING at a point at building corner, lying in the West margin of Douglas Street (public right-of-way), marking the Southeast corner of the Brenham Main Street Historical Preservation, Inc. tract (called Lots 1, 2 and 3 of the Original Town Lot 21, Volume 1482, Page 454, Official Records of Washington County, Texas), the Southeast corner of Lot 3 of Original Town Lot 21, the Northeast corner of Lot 1 of Original Town Lot 22, and the Northeast corner of the herein described tract;

THENCE along the West margin of Douglas Street, with a portion of the East line of Original Town Lot 22, S 13 deg 14 min 03 sec E, 59.53 ft., to a point at building corner, marking the Northeast corner of the Frederick C. F. Kugel called 2763 Sq.Ft. tract (Volume 260, Page 116, Deed Records of Washington County, Texas), the Northeast corner of Lot 3 of Original Town Lot 22, the Southeast corner of Lot 2 of Original Town Lot 22, and the Southeast corner of the herein described tract;

THENCE departing the West margin of Douglas Street, along the North line of said Kugel tract, with the South line of the herein described tract, S 77 deg 08 min 41 sec W, 90.03 ft., to a point at concrete wall, lying in the East margin of a called 30 ft. alley ("Alamo Alley"), marking the Northwest corner of said Kugel tract, the Northwest corner of Lot 3 of Original Town Lot 22, the Southwest corner of Lot 2 of Original Town Lot 22, and the Southwest corner of the herein described tract;

THENCE along the East margin of said 30 ft. alley, with a portion of the West line of Original Town Lot 22, N 13 deg 14 min 23 sec W, 59.34 ft., to a point at building corner, marking the Southwest corner of the aforementioned Brenham Main Street Historical Preservation, Inc. tract (called Lots 1, 2 and 3 of the Original Town Lot 21), the Southwest corner of Lot 2 of Original Town Lot 21, the Northwest corner of Lot 1 of Original Town Lot 22, and the Northwest corner of the herein described tract;

THENCE departing said alley, with the South line of Lot 3 of Original Town Lot 21, and with the North line of Lot 1 of Original Town Lot 22, N 77 deg 00 min 00 sec E, 90.00 ft., to the **PLACE OF BEGINNING** and containing 5348 Sq.Ft. of land.

June 24, 2014
W.O.#2014-2104


Michael J. Blakely
Registered Professional Land Surveyor No. 5935

That prepared and made a part of this description.

Exhibit "B"

Insurance Addendum to MOU

This insurance addendum is part of the MOU. Notwithstanding any other provision of this MOU or any exhibit thereto, the City's insurance coverage requirements may be satisfied by the City's participation in a risk pool comprised of political subdivisions.

A. At all times during the Term, the City agrees to -

1. Maintain the following coverages:
 - a. Commercial property insurance written on a causes of loss - special form (known as "all risks" form) covering the City's personal property, fixtures, and leasehold improvements in the Barnhill Center, and naming Simon Theater as "Building Owner Loss Payable."
 - b. If the City is utilizing the Barnhill Center for commercial purposes and Improvements are present on the Barnhill Center, the City will, at its sole cost and expense, maintain boiler and machinery/equipment breakdown insurance as may be required by law.
 - c. Commercial general liability insurance written on an occurrence basis, including contractual liability, covering the City's operations within the Barnhill Center, naming Simon Theater, Simon Theater's Investor Member, and Simon Theater's Lienholder, if any, as "additional insured" or, in the alternative providing an EL 217 – Indemnification Under Contract endorsement in favor of the Simon Theater, Simon Theater's Investor Member, and Simon Theater's Lienholder, if any, and having limits of not less than \$3,000,000 each occurrence and \$3,000,000 general aggregate.
 - d. Worker's compensation insurance in the statutory amount and employer's liability insurance having limits of not less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 bodily injury by disease for entire policy.

B. At all times during the Term, Simon Theater agrees to maintain -

1. *Current Insurance.* Simon Theater will each year that this MOU is in effect maintain and pay for the insurance policy and coverages described in **Exhibit "C"** attached to this MOU and made a part hereof for all purposes pertinent.

C. Simon Theater and the City agree that -

1. The commercial general liability insurance will be primary to the maintaining party and not contributory to any similar insurance carried by the other party and will contain a severability-of-interest clause.

2. Any insurance proceeds received on account of casualty loss to or of the Improvements will be used for the purpose of defraying the cost of rebuilding or repairing the Improvements or erecting new improvements in replacement equal to the total fair market value of the repaired or replaced Improvements immediately before the casualty loss, and for the purpose of paying to Simon Theater any excess remaining after the work of building, rebuilding, or repairing is substantially completed. However, Simon Theater's duty to repair, restore, and replace the Improvements will be waived if Simon Theater and the City mutually agree in writing to waive Simon Theater's restoration duty.

All proceeds from the Simon Theater's property insurance received by Simon Theater will be made available to Simon Theater for the construction, reconstruction, or repair, as the case may be, of the Improvements or any part of them damaged or destroyed by fire or other casualty. The holder of the insurance proceeds will pay out, from time to time, on the estimates of Simon Theater's architect or other advisor, all reasonable amounts incurred or paid by Simon Theater for the construction, reconstruction, or repair. Restoration or replacement of the Improvements will be such that the constructed, reconstructed, or repaired Improvements will have a fair market value at least equal to the fair market value of the Improvements as they existed immediately before the casualty. If restoration of the Improvements is required under this MOU, Simon Theater must begin the construction, reconstruction, or repair of the Improvements within thirty (30) days after receipt of the property insurance proceeds, and Simon Theater will prosecute the work with diligence to completion at the earliest practicable date, taking into account the nature and extent of the work to be performed. If Simon Theater does not begin repairs or complete the work within thirty (30) days after receipt of the property insurance proceeds, the City may (a) terminate this MOU and retain as liquidated damages, and not as a penalty, all insurance money not previously disbursed as provided above or (b) undertake the work in Simon Theater's stead.

If the proceeds from the property insurance are insufficient to cover the cost of the construction, reconstruction, or repair of the Improvements, Simon Theater will, at Simon Theater's election, either (a) rebuild the Improvements with Simon Theater's funds or (b) restore the Barnhill Center to the condition the Barnhill Center was in as of the Commencement Date. However, Simon Theater's duty to repair, restore, and replace the Improvements will be waived if Simon Theater and the City mutually agree in writing to waive Simon Theater's restoration duty.

3. Simon Theater and the City's obligations to maintain insurance under this MOU may be satisfied by appropriate amendment, rider, or endorsement on any blanket policy or policies carried by Simon Theater and the City. Simon Theater and the City will obtain the type and limits of coverage provided in this MOU by companies licensed to do business in Texas and having a Best's Insurance Guide rating of at least "A+". Insurance policies of the City, except for workers' compensation coverage, will name Simon Theater, Simon Theater's Investor Member, and Simon Theater's Lienholder, if any, as an additional insured via additional insured

endorsements that are acceptable to Simon Theater, or, in the alternative the City shall provide an EL 217 – Indemnification Under Contract endorsement in favor of the Simon Theater, and Simon Theater's Lienholder, if any. The insurance policies will also contain endorsements that the insurance may not be canceled or the limits of coverage reduced except on ten (10) days' written notice to Simon Theater and the City. Each party will annually deliver to the other party policies of insurance evidencing the party's compliance with its obligations to maintain insurance under this MOU before the expiration of the insurance policies.

4. All insurance policies obtained by Simon Theater and the City under this MOU will provide for waiver of subrogation for any loss or damage insured against unless it is demonstrated that the waiver cannot be obtained.

5. If Simon Theater or the City does not maintain the insurance required under this MOU or fails to carry any insurance required by law, Simon Theater or the City, as applicable, may, but will not be obligated to, at any time and from time to time, procure the required insurance and pay the premiums. If Simon Theater or the City procures and pays the premiums on the required insurance the other party will, immediately on demand by Simon Theater or the City for payment, repay to the Simon Theater or the City all premiums paid by Simon Theater or the City together with interest at the per annum rate of ten percent (10%) from the date Simon Theater or the City makes payment to the date of other party's reimbursement.

Exhibit "C"

Simon Theater – Required Insurance Policies and Coverage

At all times during the Term, Simon Theater agrees to maintain the following coverages, and the City of Brenham, its officials, employees and volunteers are to be added as "Additional Insured":

- a. Property insurance written on a historic replacement cost basis, with the additional provisions/endorsements as follows:

Property Coverage

Limits, Deductibles, Coverage Features:

Building: \$4,131,250

Contents: \$400,000

Business Income: \$250,000

Deductibles:

All Other Perils - \$1,000 (including Wind/Hail)

Business Income – 72 Hours

Coverage Features:

Valuation – Historic Replacement Cost

Perils – Special Form

Co-Insurance – Waived / Agreed Value Applies

Terrorism – Included

Equipment Breakdown – Included

Flood – Excluded

Earthquake – Excluded

Data Breach Sublimit - Included

- b. Commercial general liability insurance written on an occurrence basis, with the additional provisions/enforcements as follows:

Commercial General Liability – Occurrence Form

Limits:

\$ 2,000,000 General Aggregate Including Products and Completed Operations - Aggregate

\$ 1,000,000 Personal & Advertising Injury

\$ 1,000,000 Each Occurrence

\$ 100,000 Damage to Rented Premises

\$ 10,000 Medical Expense

Liquor Liability Endorsement

\$ 50,000 Cyber Liability sublimit (\$5,000 deductible)

Rating Basis:

- Theatre Admissions – 10,000 per year

- LRO Square Footage (retail, visitors center, etc.) – 2,200
- Concession Sales - \$25,000 per year

- c. Worker's compensation insurance in the statutory amount and employer's liability insurance having limits of not less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 bodily injury by disease for entire policy.
- d. Automobile Liability

Limits:

\$ 1,000,000 Bodily Injury and Property Damage

Terms, Conditions and Exclusions include but are not limited to:
Non-Owned & Hired Auto Liability Only

- e. Umbrella Liability

Provides excess over:

Commercial General Liability
Host Liquor Liability
Automobile Liability
Employers Liability
Directors & Officers Liability
Employee Practices Liability

Limits:

\$ 3,000,000 Each Occurrence Limit
\$ 3,000,000 General Aggregate Limit (where applicable)
\$ 3,000,000 Products/Completed Operations Limit

Self-Insured Retention:

\$ 0

- f. Volunteer Accident

Coverage, Benefits & Limits:

Accident Medical Expense:	\$75,000 (per Participant, per accident)
Accident Medical Expense Aggregate:	No Aggregate
Benefit Amount:	100% of usual and customary charge
Accidental Dental Expense:	Included in Medical
Deductible:	\$0
Benefit Period:	52 Weeks
Plan Type:	Full Excess

Accidental Death, Dismemberment & Paralysis:	\$60,000
AD&D and Paralysis Aggregate:	\$500,000 per accident

Eligible Persons:

All volunteers of the Policyholder

Covered Activities:

Participation in and attendance at the following Policyholder Supervised and Sponsored Activities: All Volunteering activities.

g. Directors and Officers Liability

Directors & Officers Liability

Limits:

\$ 1,000,000 Aggregate Limit of Liability

\$ 1,000,000 Directors & Officers Liability

\$ 1,000,000 Employment Practices Liability

Retentions:

\$ 2,500 Directors & Officers

\$ 2,500 Employment Practices Liability



Regular City Council
AGENDA ITEM 9.

Agenda Item: Discuss and Possibly Act Upon a Fitness Center Services Agreement Between the City of Brenham and American Specialty Health Fitness, Inc. Related to the Silver and Fit Program at the Blue Bell Aquatic Center and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-March 25, 2021

Department: Aquatic

Staff Contact: Tammy Jaster

Classification: Regular

SUMMARY STATEMENT:

This American Specialty Health Fitness, Inc. Agreement between Silver and Fit and the Blue Bell Aquatic Center, is a Fitness Program – Facility Partnership. This program is offered to certain individual policy plan holders of American Specialty Health Fitness. American Specialty Health Fitness (Silver and Fit) members receive access to fitness centers at no cost to the individuals. American Specialty Health Fitness (Silver and Fit) will pay the Blue Bell Aquatic Center based on usage of eligible members at a rate of \$3.50/day up to \$35.00 per month for Basic and Full Fitness Members.

Members will receive a confirmation code from American Specialty Health Fitness (Silver and Fit). Once member brings in that designated code, BBAC staff will input into the American Specialty Health Fitness (Silver and Fit) and enroll the members. BBAC will submit attendance records for all enrolled members on a monthly basis so that payment can then be made to BBAC.

The initial term of this agreement shall continue for a period of 12 months, thereafter shall automatically renew for successive one-year terms unless terminated by either party. Either Party may terminate this agreement at any time by giving a minimum 120 written notice to the other party.

City Staff as well as City Attorney has reviewed the document making changes where needed. This is the final approved copy.

ATTACHMENTS:

(1) Silver & Fit

RELEVANCE TO COMPREHENSIVE PLAN:

To bring additional Patrons to the Blue Bell Aquatic Center assisting with a Healthier Lifestyle

RECOMMENDED ACTION:

Approve a Fitness Center Services Agreement between the City of Brenham and American Specialty Health Fitness, Inc. related to the Silver and Fit Program at the Blue Bell Aquatic Center and authorize the Mayor to execute any necessary documentation.

AMERICAN SPECIALTY HEALTH FITNESS, INC.

FITNESS CENTER SERVICES AGREEMENT

BLUEBELL AQUATIC CENTER, TX

ASH CONFIDENTIAL
Not To Be Reproduced Or
Disclosed
Without Written Permission

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**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS CENTER SERVICES AGREEMENT**

THIS FITNESS CENTER SERVICES AGREEMENT, (“this Agreement”) is entered into between American Specialty Health Fitness, Inc., a Delaware corporation (“ASH Fitness”), and the City of Brenham, Texas, as owner and operator of the Bluebell Aquatic Center (“Fitness Center”). This Agreement will not become effective until both Fitness Center and ASH Fitness have signed it, as further outlined in Article 28. After Fitness Center and ASH Fitness have both signed this Agreement, Fitness Center will automatically become a Contracted Facility as of the Effective Date specified in Article 28 of this Agreement. Please read this Agreement carefully. This Agreement requires the use of arbitration on an individual basis to resolve disputes, rather than jury trials or class actions.

This Agreement supersedes and replaces any prior Fitness Center Services Agreements entered into between ASH Fitness and Fitness Center.

RECITALS

WHEREAS, insurers, trust funds, health care service plans, health maintenance organizations, employer groups and other groups (collectively referred to as “ASH Clients” and further defined below) have entered into arrangements with ASH Fitness for the provision of Services to their Members (as defined below in Section 1.09);

WHEREAS, ASH Fitness wishes to arrange for and facilitate the provision of Services to Members;

WHEREAS, Fitness Center has all necessary licenses and authorizations to operate in its location(s) in the State(s) in which it operates and wishes to contract with ASH Fitness for the provision of Services to Members;

NOW, THEREFORE, ASH Fitness and Fitness Center agree as follows:

ARTICLE 1 DEFINITIONS.

For purposes of this Agreement and in addition to the terms elsewhere defined herein, the following terms shall have the meanings indicated:

- 1.01 Agreement.** Agreement is this Fitness Center Services Agreement between Fitness Center and ASH Fitness, the attachments and exhibits listed below, the Program Manual and any amendments to such documents.

Attachment A: Silver&Fit® Basic Attachment

Attachment B: Silver&Fit Full Attachment

Exhibit 1: Silver&Fit Full Fitness Center Election

Attachment C: FitnessCoach® Attachment

Exhibit 1: FitnessCoach Member Caregiver Access Election

Attachment D: Active&Fit® Attachment

Attachment E: Intentionally Left Blank

Attachment F: ExerciseRewards™ Network Attachment

Attachment G: ASH Client List

Attachment H: Personal Trainer Attachment

Exhibit 1: Personal Trainer - ASH Client List

Attachment I: Health and Safety Guidelines and Code of Conduct

Attachment J: Medicare Addendum

Attachment K: Guidelines for Trademark Use by Third Parties

Attachment L: Program Compensation Attachment

The attachments and exhibits listed above and the Program Manual are hereby incorporated by reference. However, Fitness Center’s obligations will be dependent upon its agreement to participate in the programs described in Attachment A through Attachment F and Attachment H as indicated on the signatory page of this Agreement.

- 1.02 **ASH Client.** ASH Client is a health care service plan, health maintenance organization, insurer, employer group, trust fund, third party administrator, or other person or entity who contracts with ASH Fitness or an ASH Fitness' affiliate to arrange for the provision of Services. ASH Clients will be listed on the ASH Client List which is provided to Fitness Center by ASH Fitness. A sample of the ASH Client List is attached to this Agreement as Attachment G.
- 1.03 **ASHLink.** The ASHLink® system is a proprietary software system developed by an ASH Fitness affiliate and utilized by ASH Fitness to support the secure and confidential electronic distribution of information with Fitness Center via the Internet. ASHLink provides Fitness Center and its staff the ability to verify Member eligibility for an applicable program, submit billing reports and to verify status of reimbursements of submitted billing reports. Additionally, Fitness Center or its staff shall utilize ASHLink to access information relevant to this Agreement (i.e. Program Manual, renewal/termination reports, and Client Lists).
- 1.04 **Benefit Year.** Benefit Year is the twelve (12) month period specified in Attachment G.
- 1.05 **Contracted Center.** Contracted Center is a fitness center that has contracted with ASH Fitness.
- 1.06 **Effective Date.** The Effective Date is the date this Agreement becomes operative, as specified in Article 28 of this Agreement.
- 1.07 **Fitness Center Fitness Advisor.** The Fitness Center Fitness Advisor is an individual employed or contracted by Fitness Center that will support Services, as that term is defined in Section 1.16, by acting as the primary contact on behalf of the Fitness Center that Member will contact at the Fitness Center Participating Location and fulfills the requirements detailed in Section 3.09.3.
- 1.08 **Fitness Center Participating Location.** A Fitness Center Participating Location is the Fitness Center location where Services will actually be performed. For ease of reference, Fitness Center and Fitness Center Participating Location shall be used interchangeably for a Fitness Center with only one participating location.
- 1.09 **Member(s).** Member(s) is/are individual(s) who is/are eligible to receive Services by meeting all the eligibility requirements for participation in a program.
- 1.10 **Member Eligibility/Benefits.** Member Eligibility/Benefits is information maintained by ASH Fitness or one of its affiliates pertaining to each Member regarding his or her eligibility, including initial date of eligibility, term of membership and benefits.
- 1.11 **Member Payments.** Member Payments are charges which are the direct financial responsibility of the Member and are paid directly to Fitness Center for any service which is a Non-Covered Service under this Agreement.
- 1.12 **Member Termination Report.** Member Termination Report is a report compiled by ASH Fitness and posted on ASHLink which lists Members who have terminated their Membership at the Fitness Center and/or are no longer eligible for participation under the program. Terminated Members shall be listed on the Member Termination Report for at least thirty (30) days from their termination date.
- 1.13 **Non-Covered Services.** Non-Covered Services are all services other than a Standard Fitness Center Membership and any other program components as clearly laid out in each attachment and as applicable to the Member's benefit. All Non-Covered Services are ineligible for compensation by ASH Fitness and are the direct responsibility of the Member.
- 1.14 **Party(ies).** Party(ies) is/are the individual(s) or entity(ies) that execute this Agreement.
- 1.15 **Program Compensation Rate.** The Program Compensation Rate is the amount ASH Fitness will pay Fitness Center for each Member who has signed a membership agreement with Fitness Center and has had at least one (1) Visit in the month that Fitness Center is seeking compensation for. The Program Compensation Rate is set forth in Attachment L for each program that applies to this Agreement.

- 1.16 **Services.** Services are those collective services which fall under this Agreement and its Attachments A through Attachment F and Attachment H.
- 1.17 **Standard Fitness Center Membership.** A Standard Fitness Center Membership provides Member with at least the following services: access to a Fitness Center Participating Location during normal facility hours of operation for the use of cardiovascular exercise equipment (e.g. treadmills, exercise bicycles, “elliptical machines”, etc.), strength or resistance training equipment (e.g. selectorized equipment, free weights, etc.), and use of locker room and shower facilities. It also includes instructor-led classes (such as group fitness classes, Pilates, group cycling, yoga, etc.) which do not require a separate fee to be paid to Fitness Center for an individual class or set of classes, but are routinely included for the general membership as part of the general monthly fee. The Standard Fitness Center Membership does not include instructor-led classes, personal training and other amenities for which the Fitness Center routinely charges a separate fee.
- 1.18 **Quality Management Program.** The Quality Management Program, as set forth in the program manual, is the set of policies, processes, procedures and standards established, determined and utilized by ASH Fitness under this Agreement to evaluate and determine whether a Contracted Facility has satisfied all ASH Fitness’ Health and Safety Guidelines and Code of Conduct requirements, available on ASHLink, adopted by ASH Fitness and to approve a Contracted Facility’s participation in ASH Fitness and/or ASH Client’s networks.
- 1.19 **Visit.** Unless otherwise specified in a program attachment, a Visit is where a Member utilizes the Fitness Center Participating Location for exercise.

ARTICLE 2 ASH FITNESS’ RESPONSIBILITIES.

- 2.01 **Prepare and Maintain Program Manual.** ASH Fitness shall prepare and maintain a program manual setting forth ASH Fitness’ policies, processes, standards and procedures regarding Fitness Center’s participation in any ASH Fitness’ fitness network (“Program Manual”).
- 2.02 **Distribution of Revised Agreement, Attachments, Amendments, and Program Manual.** ASH Fitness shall prepare and distribute any updated Agreements, attachments and exhibits, Member Termination Reports, ASH Client Lists, amendments and/or Program Manual, which may be revised by ASH Fitness in accordance with Article 25 of this Agreement. ASH Fitness may distribute all materials directly to Fitness Center and to each Fitness Center Participating Location, where such information pertains to the Fitness Center Participating Location.
- 2.03 **Records Management.** ASH Fitness and its affiliates shall develop, update and maintain policies and procedures that comply with applicable statutory and regulatory requirements for the secure and confidential storage, retention, retrieval and destruction of all records pertaining to its business operations, whether these records are in paper or electronic form.
- 2.04 **Maintain Eligibility.** ASH Fitness or its affiliates shall provide Fitness Center with services related to Member Eligibility verification for Services to be provided by Fitness Center. ASH Fitness makes no representation or guarantees concerning the number of Members, if any, that will access Fitness Center under this Agreement.
- 2.05 **Communication Regarding Participation of Fitness Center.** ASH Fitness and its affiliates shall communicate the participation of Fitness Center in ASH Fitness or its affiliates’ programs to existing and prospective ASH Clients in various forms, including but not limited to ASH Client proposals, ASH Fitness or ASH Client network directories and the applicable websites accessed by Members. Such communication may include information such as Fitness Center’s name and logo, address, telephone number, and available services. ASH Fitness shall assist Members to select a Contracted Facility under the Member’s program. In addition, ASH Fitness shall, within sixty (60) days of the effective date of a location, notify ASH Clients of the addition of a Fitness Center Participating Location where that location may perform Services for ASH Client.
- 2.06 **Deletion of Fitness Center Participating Location from Network Directories.** ASH Fitness will notify all ASH Clients, no later than thirty (30) days after the effective date of Fitness Center Participating

Location's resignation or termination of this Agreement, or of the need to delete the location's information from network directories and/or other such sources of Fitness Center information.

- 2.07 **ASH Fitness' Payment to Fitness Center.** ASH Fitness shall compensate Fitness Center in accordance with the Program Compensation Rates specified in Attachment L under which Fitness Center is participating within thirty (30) days of receipt of a billing report for Services provided to Members.

Fitness Center and ASH Fitness agree that a program of equal to best pricing and equal to best reimbursement model supports fair and competitive pricing and that fair and competitive pricing fosters program competition, enhancement and innovation, and reduces costs. The parties agree that Fitness Center will offer to ASH Fitness Equal To Or Best Pricing and an Equal To Or Best Reimbursement model for Subsidized Fitness Programs. For the purposes of this Agreement and any Attachments, Subsidized Fitness Benefit Programs means any of programs by which an eligible individual receives membership with and/or access to Fitness Center in connection with Silver&Fit, Active&Fit and FitnessCoach (collectively "Fitness Benefit Programs"). Any ASH Fitness consumer-direct purchase program is not included in this definition. "Equal To Or Best Pricing" means that Fitness Center agrees that for each contract it enters with any third party(s) offering Subsidized Fitness Benefit Programs, the rates that Fitness Center will charge such third party(s) will not be less than the rate that Fitness Center charges ASH Fitness under this contract. Equal To Or Best Reimbursement Model means that Fitness Center will not utilize any reimbursement model that permits a third party offering Subsidized Fitness Benefit Programs to reimburse Fitness Center for fitness services at a lower rate than the rate that Fitness Center is charging ASH Fitness under this contract, regardless of the reimbursement model.

Nothing herein shall prevent Fitness Center and a third party offering Subsidized Fitness Benefit Programs from agreeing to a rate lower than the rate Fitness Center charges ASH Fitness pursuant to this contract at the time of the agreement, or from agreeing to a reimbursement model that permits the third party to reimburse Fitness Center for fitness services at a rate lower than the rate Fitness Center is charging ASH Fitness under this contract at the time of the agreement, regardless of reimbursement model. If Fitness Center contracts with a third party to offer lower pricing or a better reimbursement model than which it has with ASH Fitness, Fitness Center will provide notice to ASH Fitness in advance of the effective date of such third party agreement and, upon ASH Fitness' written notice stating that ASH Fitness wishes to have the rates that Fitness Center charges ASH Fitness reduced to reflect the better pricing/reimbursement model offered to the third party ("Pricing Notice"), Fitness Center shall automatically provide the same lower pricing and/or the better reimbursement model to ASH Fitness as of the effective date of the third party contract. Upon ASH Fitness' delivery to Fitness Center of the Pricing Notice, this agreement will be deemed automatically amended to incorporate the lower rates and/or better reimbursement model with all other contract terms remaining unchanged. The parties agree that the existence of Equal To Or Best Pricing and Reimbursement Models will be subject to audits by an independent third party agreed upon by ASH Fitness and Fitness Center. If Fitness Center does not provide the advance notice required by this paragraph, ASH Fitness shall have the right to recover the difference between the lower price and/or reimbursement model and ASH Fitness' current pricing and reimbursement model as of the effective date of the lower price and/or reimbursement model by offsetting future payments to Fitness Center until such time the recovery is complete. Such remedy does not exclude ASH Fitness from seeking other remedies to which it may be entitled.

ARTICLE 3 FITNESS CENTER'S RESPONSIBILITIES.

- 3.01 **Business License(s) and Comply with Federal and State Law.** Fitness Center shall maintain and demonstrate upon request by ASH Fitness that Fitness Center has appropriate business licenses for its operations at each of the Fitness Center Participating Locations and meets all federal and state regulations applicable to such operations.
- 3.02 **Comply with Program Manual.** Fitness Center shall comply fully with the Program Manual as described in Section 2.01.
- 3.03 **Comply with Quality Management Program.** Fitness Center shall comply with the Quality Management Program and shall cooperate with ASH Fitness in ASH Fitness' administration of its grievance procedures,

which can be found in the Program Manual, including procedures to resolve complaints or grievances filed by Members with ASH Fitness as they pertain to Fitness Center and its responsibilities under this Agreement.

- 3.04 **Compliance with Medicare and/or Medicaid Requirements.** Where Fitness Center is providing Services to Members enrolled in an ASH Client's Medicare Advantage plan and/or Medicaid Managed Care plans, Fitness Center shall comply with the provisions outlined in Attachment J to this Agreement.
- 3.05 **Immediate Notification by Fitness Center of Certain Occurrences.** Fitness Center shall notify ASH Fitness in writing by overnight mail service, email, facsimile or other means of notification made available to Fitness Center by ASH Fitness within forty-eight (48) hours of the occurrence of: i) the commencement of any voluntary or involuntary bankruptcy proceedings by or against Fitness Center or any similar proceedings; ii) any lapse of general and/or professional liability insurance maintained by Fitness Center; iii) the filing of criminal charges against Fitness Center's owners, directors, management or staff that directly interact with Members (this includes personal trainers contracted or employed with Fitness Center if the Fitness Center is participating in the Personal trainer Benefit as set forth in Attachment H) that Fitness Center's owner(s) or manager(s) know(s), or reasonably should have known; iv) a change in Fitness Center's ownership and/or management; (v) any change to, including but not limited to the loss or potential loss of, its business license; and (vi) any potential non-compliance or suspected non-compliance with applicable federal or state law or regulation relevant to this Agreement.
- 3.06 **Notification of Change in Any Information.** Fitness Center shall notify ASH Fitness at least sixty (60) days prior to any change in Fitness Center or Fitness Center Participating Location's physical address, Fitness Center or Fitness Center Participating Location's mailing address, telephone number, email address, office hours, taxpayer identification number, or any other information listed in the Network Application. Where sixty (60) days prior notice is not possible, Fitness Center shall notify ASH Fitness as soon as possible of such changes.
- 3.07 **Non-Interference with Property and Contract Rights.** During the term of this Agreement and for one (1) year following the date of its termination, Fitness Center agrees that Fitness Center shall not interfere with ASH Fitness or an ASH Fitness affiliate's property or contract rights with any ASH Client or Member. This includes, but is not limited to, advising any Member to dis-enroll from any Services, advising any party who has contracted with ASH Fitness or an ASH Fitness Affiliate to terminate, cancel or decline renewal of its contract, and/or solicit any Member to enroll for the provision of similar services offered by any other firm administering fitness benefit programs, health care service plan, health maintenance organization, health insurer, preferred provider organization or any other similar organization.
- If Fitness Center violates this Section, Fitness Center acknowledges that it will be responsible for paying any and all actual damages incurred by ASH Fitness or any ASH Client as a result of that violation and may be liable for other costs, expenses, damages, claims or liabilities; and, if money damages are insufficient to compensate ASH Fitness or ASH Client for the violation of this Section, Fitness Center may be subject to an injunction prohibiting the activity which constitutes a violation of this Section and/or other equitable relief. Nothing in this Section shall affect any of ASH Fitness' other rights under this Agreement, at law or in equity. Nothing in this Section shall prohibit Fitness Center from maintaining a direct relationship with Member that is no longer enrolled in a program with ASH Fitness or its affiliates due to Member dis-enrollment or termination of this Agreement.
- 3.08 **Election to Participate in all Product Offerings.** Fitness Center may elect to participate in any program specified in Attachment A through Attachment F and Attachment H and indicates in Article 28 which programs it wishes to participate in. Fitness Center is not obligated to participate in all programs but must participate in at least one program at all times while this Agreement is in effect. Any time after the Effective Date of the Agreement Fitness Center may choose to expand the programs it participates in. However, after the Effective Date Fitness Center may only terminate participation in a specific program, pursuant to Article 6.
- 3.09 **Provision of Member Services.** Fitness Center responsibilities for the provision of Member Services are outlined in this Section 3.09.

- 3.09.1 Standard Fitness Center Membership.** Fitness Center shall provide Members with a Standard Fitness Center Membership and any other services as required by the applicable program attachments. The Standard Fitness Center Membership shall include, at no cost to the Member, an orientation session to familiarize Members with the Fitness Center and its equipment.
- 3.09.2 Conversion of Pre-Established Membership.** Fitness Center agrees to assist any Member that has a previously established membership with Fitness Center and the Member becomes eligible for a program under this Agreement. Fitness Center will freeze the Member's previously established Fitness Center membership, or terminate the membership without any penalty to the member and accept the Program Compensation rate as payment in full for the Standard Fitness Center Membership on behalf of the Member while they are eligible for ASH Program Services. Where a Member is no longer eligible for ASH Program Services and the membership was frozen, Fitness Center shall re-activate the Member's frozen membership subject to the original terms and conditions of the previously established membership. Fitness Center shall not charge Member any activation fees or penalties for the re-activation and such membership shall be reinstated for the period of time that was remaining on the membership at the time it was frozen.
- 3.09.3 Fitness Center Fitness Advisor.** Fitness Center agrees to support Services by training one or more Fitness Center employee(s) as a Fitness Center Advisor available to Members during normal business hours to support Member questions and enrollment into the applicable Services as described in this Agreement and its Attachments.
- 3.09.4 Offering of non-Covered Services and Notification to Members of Financial Responsibility for Member Payments for Non-Covered Services.** Fitness Center may upgrade or sell Members additional products or services not covered under this Agreement or any applicable program attachment but only if Fitness Center informs Members in advance and in writing that such products and services are Non-Covered Services, are the Member's financial responsibility, and are completely voluntary on the part of the Member. Fitness Center shall collect appropriate Member Payments as that term is defined in Section 1.11, at the time of service and shall bill Members according to the procedures described in the Program Manual. Where a Member upgrades their Standard Fitness Center Membership, Fitness Center agrees that the upgraded membership will be equal to or less than the pricing offered to the general public ("Upgraded Membership Price") and the cost to the Member shall be the Upgraded Membership Price minus the Fitness Center's standard fee for a basic membership (this is not the Program Compensation Rate but the standard fee charged by the Fitness Center). Fitness Center agrees to refund any amounts paid by a Member that the Fitness Center collects in a manner not consistent with this Section.
- 3.09.5 Member Billing.** Nothing in this Agreement shall preclude Fitness Center from charging Member for Services rendered, where Member is determined to not be eligible, including retroactive determinations, for a program under this Agreement and where Fitness Center complied with Section 3.10. Any such charges shall be consistent with Fitness Center's lowest standard membership dues. In addition, as Section 3.09.4 details, Fitness Center may charge a Member for Non-Covered Services where Member has been informed, in writing, prior to the provision of the Non-Covered Services.
- 3.09.6 Non Discrimination.** Fitness Center shall not illegally discriminate against Member for any reason, including but not limited to race, ethnicity, national origin, religion, gender, age, mental or physical disability, health status, payment experience, medical history, genetic information, gender identity, veteran status, evidence of insurability or geographic location within the service area or source or amount of compensation. Fitness Center shall offer Services to a Member covered by ASH Fitness or one of its affiliates in the same manner, in accordance with the same standards, and within the same time availability as services offered to members who are not covered by ASH Fitness or its affiliates.
- 3.10 Verification of Member Eligibility and Services.** Unless otherwise specified in a program attachment, Fitness Center shall verify Member Eligibility and applicable Services with ASH Fitness at the time of a Member's first attempt to utilize Fitness Center Participating Location within a Benefit Year. Fitness Center

shall verify that Member's health plan is on the ASH Client list as participating in the applicable program as well as verify Member Eligibility in the applicable Services by requesting Member to show their current fitness card/welcome letter if applicable, and by verifying the Member's eligibility with ASH Fitness. Fitness Center may contact ASH Fitness via ASHLink or call customer service to verify eligibility. Member's current fitness card/welcome letter is not a guarantee of current eligibility and Fitness Center must verify the Member's eligibility with ASH Fitness upon the Member's first visit to the Fitness Center Participating Location.

3.11 Program Compensation. Fitness Center shall accept Program Compensation Rates, as specified in Attachment L as payment in full for the Services provided pursuant to this Agreement. Fitness Center shall not charge the Member an initiation fee, enrollment fees, processing fee, monthly membership fees and/or any other administrative fees for the Standard Fitness Center Membership. Fitness Center shall be responsible for any and all sales, use or other taxes which may be imposed on the compensation paid to Fitness Center by ASH Fitness or any fees collected from a Member.

3.12 Billing Report Submission. Unless otherwise specified in a program attachment, Fitness Center will submit a billing report each month and shall provide supporting information to ASH Fitness that identifies each Visit at a Fitness Center Participating Location, the Member name, Member's Fitness Identification number program abbreviation, Member month and day of birth and the dates of the Visit. Total number of visits will not be accepted for reimbursement. Such information should be submitted electronically via ASHLink or email. Any reports not received via ASHLink or emailed with the required format will not be accepted for payment. ASH Fitness will reject any reports that are not submitted in the required format and/or do not include the required fields listed in this section. Only actual Visits to the Fitness Center Participating Location should be submitted. Virtual or streamed video workout sessions or individual video exercises by eligible Members are not permitted to be billed for reimbursement and should not be submitted in the billing report. Including such activities on the billing report may be considered by ASH Fitness as fraudulent billing. ASH Fitness reserves the right to perform random audits to verify accuracy of billing reports and may also contact members to confirm Visits made to a Fitness Center Participating Location.

Billing reports received over ninety (90) days after the date of service will not be approved for payment due to late submission. Fitness Center shall waive all charges against Member, ASH Fitness and/or ASH Client related to a billing report received by ASH Fitness more than ninety (90) days after the date of service.

3.13 Reimbursement Adjustments. ASH Fitness may be required to make an adjustment to a reimbursement previously paid by ASH Fitness in order to correct an over or under payment as a result of (1) corrected information received by ASH Fitness, or (2) incorrect determination of benefit or (3) an incorrect calculation of payment amounts. The process for any reimbursement adjustment shall be set forth in the Program Manual.

3.14 Fitness Center's Participating Locations. Where Fitness Center has more than one location operating under the terms of this Agreement, Fitness Center shall have additional obligations, including but not limited to: Agreement notification, informing participating locations, and members' use of multiple locations. These additional obligations shall be described in the Program Manual. Fitness Center shall require each Fitness Center Participating Location to comply with the requirements of this Agreement and any applicable state or federal law or regulations, including but not limited to, the federal False Claims Act (31 U.S.C. §§ 3729–3733). Any incidents of non-compliance should be reported immediately to ASH Fitness upon discovery.

3.15 Liability Insurance Limits. Fitness Center shall maintain professional liability insurance, comprehensive general liability insurance and/or any other insurance policies, including but not limited to Workers' Compensation, in accordance with ASH Fitness' liability insurance requirements in this Agreement. Fitness Center shall notify ASH Fitness within five (5) days of any material change to any or all insurance policies, which shall include, but not be limited to, a reduction in a policy amount or cancellation or non-renewal of a policy. **All such policies required under this section shall be primary to any insurance available to ASH Fitness.** This insurance requirement will be required for each of the Fitness Center Participating Locations. Fitness Center shall maintain general and/or professional liability insurance in the amount of one million

dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate per year for each Fitness Center Participating Location.

- 3.16 **Fitness Center Removal from Provision of Program Services to Members by ASH Clients.** Fitness Center acknowledges that an ASH Client may, in its sole discretion, request ASH Fitness to remove or restrict Fitness Center from providing Member Services to ASH Client's Members and if necessary impose sanctions on Fitness Center.

ARTICLE 4 CORRECTIVE ACTION PLANS

Corrective Action Plans. ASH Fitness shall have the ability to evaluate Fitness Center's participation and performance in accordance with the terms of this Agreement and fitness industry business practices. If ASH Fitness finds that Fitness Center is not performing in accordance with the terms of this agreement, ASH Fitness may issue a Corrective Action Plan (CAP) to Fitness Center. ASH Fitness will deliver all CAPs in writing to Fitness Center. Fitness Center agrees to comply with ASH Fitness' CAPs within the timelines specified and to respond to the CAP in writing or as otherwise requested. Fitness Center may submit information to ASH Fitness in response to the CAP which explains Fitness Center's position including, but not limited to, any information demonstrating that Fitness Center is in compliance with the Agreement or Program Manual. Fitness Center acknowledges that a frequent or repeated lack of compliance with a program requirement may be considered a pattern of performance that is unacceptable to ASH Fitness and may consider this a material breach of the Agreement giving rise to the right to terminate the Agreement for cause pursuant to Section 6.02.

ARTICLE 5 TERM.

The initial term of this Agreement shall be from the Effective Date specified in Article 28 of this Agreement through and including December 31st of the current year subject to the termination provisions set forth in Article 6. After the initial term, this Agreement shall automatically renew for one (1) year on each successive January 1st, unless a) either Party provides the other Party with written notice at least one hundred twenty (120) days prior to the renewal date of its intention not to renew this Agreement, or b) prior to such renewal, the Agreement is terminated pursuant to Article 6.

ARTICLE 6 TERMINATION.

- 6.01 **Termination of This Agreement with Cause with Notice.** Notwithstanding any other provision in this Agreement, either Party may terminate this Agreement with cause for the other Party's breach of any material term, covenant or condition and subsequent failure to cure such breach. The Party asserting cause for termination of this Agreement ("Terminating Party") shall provide written notice of termination to the other Party ("Receiving Party"). The notice of termination shall specify the breach or deficiency underlying the cause for termination. Receiving Party shall have thirty (30) calendar days from the receipt of such notice to cure the breach or deficiency to the satisfaction of the Terminating Party. If Receiving Party fails to cure the breach or deficiency, this Agreement shall terminate upon written notice from the Terminating Party. The termination date shall be the date the Receiving Party receives such notice or such other date as may be specified in the notice.
- 6.02 **ASH Fitness Immediate Termination of This Agreement for Cause with Notice.** ASH Fitness may terminate this Agreement, or a Fitness Center Participating Location(s) participation, immediately upon written notice by ASH Fitness to Fitness Center upon any of the following occurrences:
- a) A determination that services rendered to a Member by Fitness Center in conjunction with this Agreement do not meet the recognized fitness industry standards adopted by ASH Fitness and/or potentially place a Member at risk;
 - b) Any material misrepresentation, falsification or failure to provide accurate information to ASH Fitness, ASH Client, or a Member by Fitness Center or Fitness Center's staff, agent or representative in connection with this Agreement;
 - c) The filing and/or conviction of any criminal charges against Fitness Center's directors, officers, owners or employees;

- d) The termination of any contractual relationship other than this Agreement between Fitness Center and ASH Fitness, or an ASH Fitness' affiliate;
- e) Fitness Center is not participating in at least one program pursuant to this Agreement;
- f) Fitness Center has no Fitness Center Participating Locations; or
- g) Any occurrence or condition which materially impairs the ability of Fitness Center or a Fitness Center Participating Location to perform responsibilities under this Agreement.

- 6.03 Fitness Center Program Participation Termination.** Fitness Center may terminate participation in a program by providing at least one hundred twenty (120) days' notice prior to the expiration of the current term. Such termination of participation will be effective on January 1st immediately preceding the notice.
- 6.04 Fitness Center Appeal of Termination.** Fitness Center may appeal ASH Fitness' termination for cause by providing a written request to ASH Fitness within thirty (30) days from the date of the termination notice by ASH Fitness. Such appeal rights may occur before and/or after the effective date of termination. If a termination appeal results in a reinstatement, ASH Fitness may provide Fitness Center with a new Effective Date for this Agreement
- 6.05 Effect of Termination.** Except as otherwise provided herein, this Agreement shall be of no further force or effect following the date of termination, except that each Party shall remain liable for any obligations or liabilities arising from the activities carried on by it hereunder prior to the date of termination.
- 6.06 Survival of Certain Contractual Provisions after Termination.** Notwithstanding any other provision of this Agreement, the following provisions of this Agreement shall survive any termination of this Agreement: Sections 2.02, 2.04, 3.01, 3.07, 3.09.2, 6.05, 6.06, and 6.07, in addition to, Article 7, Article 8, Article 9, Article 10, Article 15, Article 16, Article 18, Article 19, and Article 20.
- 6.07 Fitness Center Responsibility during Termination Notice Period.** Where Fitness Center or ASH Fitness provides notice of non-renewal pursuant to Article 5 or termination pursuant to Section 6.01 Fitness Center shall continue to provide Services pursuant to this Agreement up to and including the effective date of termination or non-renewal.
- 6.08 Fitness Center Responsibilities after Termination of Program, Location or Agreement.** Fitness Center understands that materials such as network directories provided to Members by ASH Fitness or ASH Clients may continue to reflect that a location is participating in the ASH Fitness and/or ASH Client's network for some period of time following the termination of a location's participation. Therefore, to avoid Member confusion regarding the location's status with ASH Fitness, regardless of which Party terminates this Agreement or a location's participation, Fitness Center shall inform any Member who seeks Services that the location is no longer contracted with ASH Fitness. If a Member wishes to continue to receive services from Fitness Center the process for continuing their membership is set forth in the Program Manual.

ARTICLE 7 HOLD HARMLESS.

To the extent not covered by insurance and to the extent allowed by law, Fitness Center shall be solely responsible for and shall hold ASH Fitness free and harmless from any claims, losses, damages, liabilities, costs, expenses, attorneys' fees and costs or obligations arising from or relating to any act or omission of Fitness Center, Fitness Center's agents, partners, associates, employees or representatives in providing or failing to provide Services in conjunction with this Agreement to Members or arising from or relating to any act or responsibility of Fitness Club. To the extent not covered by insurance, ASH Fitness shall be solely responsible for and shall hold Fitness Center free and harmless from any claims, losses, damages, liabilities, costs, expenses, attorneys' fees and costs or obligations arising from or relating to any act or omission of ASH Fitness, its agents, employees or representatives in connection with ASH Fitness' responsibilities under this Agreement.

ARTICLE 8 COMMUNICATION OF RELATIONSHIP WITH ASH FITNESS AND ASH CLIENTS.

Fitness Center shall not initiate any written communication, solicitation or advertisement of any type referencing the relationship with ASH Fitness and/or ASH Client without the prior written approval of the communication by ASH Fitness. This includes, but is not limited to, Internet web pages, social networking, newspapers, yellow pages,

billboards, mass mailings, telemarketing, location posters or business cards. Only where ASH Fitness reviews and gives prior written approval may Fitness Center display and/or distribute materials to promote programs associated with this Agreement.

ARTICLE 9 RECORDS AND DATA COLLECTION.

9.01 Maintenance of Records. Fitness Center shall maintain and provide ASH Fitness, and upon the request of ASH Clients, U.S. Department of Health and Human Services, U.S. Department of Justice, Office of Inspector General, Center for Medicare and Medicaid Services and/or other federal and state agencies, with all records relating to Services provided to each Member by Fitness Center, in such form and containing such information as is required by applicable federal and state law, and such other information as ASH Fitness, ASH Clients, or other such agencies may require. For Members enrolled in an ASH Client's Medicare Advantage plan, records shall be retained in accordance with Section 8 of Attachment J. For all other Members, such records shall be retained by Fitness Center the greater of seven years or in accordance with applicable state laws.

9.02 Access to Facility and Records. Fitness Center shall provide access to ASH Fitness, at reasonable times upon request by ASH Fitness ASH Client, and/or regulatory agencies with oversight of ASH Fitness or ASH Client operations, to monitor program compliance and inspect Fitness Center's facilities, equipment, books, papers, and records relating to Fitness Center's performance under this Agreement.

9.03 Confidential Member Information.

9.03.1 ASH Fitness and its affiliates shall protect access to, and distribution of, information and/or records that are subject to regulatory requirements for protection of member information and privacy including, but not limited to protection for non-public personal health information. Therefore, ASH Fitness and Fitness Center shall abide by all Federal and State laws and regulations, including the Health Insurance Portability and Accountability Act (HIPAA) of 1996, regarding privacy, security and disclosure of Member personal information. Fitness Center agrees to maintain records and other information with respect to Members in an accurate and timely manner, to provide timely access by Members to the records and information that pertain to them and to safeguard the privacy of any non-public information that can be used to identify a particular Member. Fitness Center shall limit uses and disclosures of personal information obtained in connection with this Agreement (including any information received from ASH Fitness or through ASHLink) solely for payment and related operational purposes permitted or required by this Agreement or as required by law. Fitness Center shall use such personal information only to the extent minimally necessary to satisfy those obligations. Any other use of personal information obtained in connection with this Agreement is strictly prohibited unless required by law or as otherwise permitted in writing by ASH Fitness. This specifically includes using Member's personal information obtained or created in fulfillment of obligations under this Agreement for marketing and fundraising purposes. Fitness Center shall not directly or indirectly receive remuneration in exchange for any personal information of a Member obtained or created pursuant to fulfillment of obligations under this Agreement.

9.03.2 Upon discovering an incident where the personal information of a Member could have been acquired, used or disclosed in a manner not permitted under this Agreement, including situations where such personal information could have been viewed by persons other than Fitness Center employees authorized by the Fitness Center to perform duties under this Agreement, Fitness Center shall immediately, but in no case later than one business day, report the incident to ASH Fitness' Privacy Office. Fitness Center will expediently supply all information reasonably requested by ASH Fitness regarding the investigation of suspected privacy incidents referenced above.

9.03.3 Fitness Center shall advise members of its workforce of their obligations to protect and safeguard Members' personal information obtained or created in the fulfillment of Fitness Center's obligations under this Agreement. Fitness Center will develop, implement, maintain and use appropriate administrative, technical and physical safeguards, in compliance with Social Security Act §1173(d), 45 C.F.R. §164.530(c)(1) and any other implementing regulations issued by the U.S. Department of

Health and Human Services, to preserve the integrity and confidentiality of and to prevent non-permitted or violating use or disclosure of Member's personal information.

- 9.03.4** Fitness Center shall notify ASH Fitness Privacy Office immediately of any requests for restrictions on uses and disclosure of personal information by a Member.
- 9.03.5** ASH Fitness is the exclusive owner of information, including personal information, generated or used by Fitness Center for fulfillment of its obligations under the terms of this Agreement.
- 9.03.6** To the extent allowed by law, Fitness Center will indemnify and hold harmless ASH Fitness, its officers, directors, employees or agents from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and costs and court or proceeding costs, arising out of or in connection with any non-permitted or violating use or disclosure of Members' personal information by Fitness Center or any subcontractor, agent, person or entity under Fitness Center's control.
- 9.03.7** Upon termination, cancellation, expiration or other conclusion of the services provided by Fitness Center, Fitness Center will if feasible, return to ASH Fitness or destroy all Confidential Member Information in whatever form or medium including any electronic medium under Fitness Center's custody or control that Fitness Center created or received for or from ASH Fitness. Fitness Center will complete such return or destruction as promptly as possible, but no later than thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the services provided by Fitness Center. If return or destruction of Confidential Member Information is infeasible, Fitness Center will extend the protections of this Article 9 to such information and limit its further use or disclosure to those purposes that make return or destruction of Confidential Member Information infeasible.
- 9.03.8** Notices to the ASH Fitness Privacy Office may be sent by overnight mail, first class mail, fax, email or hand delivery to:

American Specialty Health Fitness, Inc.
Attn: Privacy Officer
10221 Wateridge Circle
San Diego, CA 92121
E-mail: HIPAA@ashn.com
Tel: (800) 848-3555
Fax: (858) 237-3839

ARTICLE 10 PROPRIETARY INFORMATION.

All information, documents, software and other materials of any sort furnished to Fitness Center by ASH Fitness including, without limitation, this Agreement and any rates included in this Agreement, the Program Manual, any Client Lists, and any copyrighted or trademarked materials, shall be the property of ASH Fitness and shall be treated as confidential. Such proprietary information shall not be disclosed to anyone who does not have a need to know such information and is only to be used by Fitness Center in connection with the performance of Fitness Center's obligations under this Agreement and only in the manner provided for in this Agreement. Fitness Center shall not disclose or use any proprietary information or trade secrets for Fitness Center's own benefit during the term of this Agreement or after termination of this Agreement, except as authorized in writing by ASH Fitness. Fitness Center shall have no ownership rights in said proprietary information including, but not limited to, copying, use or distribution of said proprietary information. ASH Fitness acknowledges that Fitness Center is subject to the requirements of the Texas Public Information Act and that some information which ASH Fitness deems confidential may be disclosed under this Act. In the event that any such proprietary information of ASH Fitness is required to be disclosed by Fitness Center by law or valid order of a court or other governmental authority, Fitness Center shall, to the extent legally permitted, give notice to ASH Fitness. ASH Fitness shall be responsible for objecting to such disclosure or for obtaining a protective order requiring that the proprietary information so disclosed be used only for the purposes for which the order was issued.

Upon termination of this Agreement, Fitness Center shall return to ASH Fitness all proprietary information in Fitness Center's possession, if requested, and in a manner to be specified by ASH Fitness. Fitness Center shall cooperate with ASH Fitness in maintaining the confidentiality of such proprietary information at all times during and after termination of this Agreement.

Fitness Center acknowledges that a breach of the terms and conditions of this Article shall cause immediate and irreparable harm to ASH Fitness, and as such, ASH Fitness shall be entitled to seek any monetary and equitable relief allowed by law. Notwithstanding the foregoing, in the event a breach of confidentiality involves any rates set forth in this Agreement, ASH Fitness may, in its discretion, immediately reduce the compensation rates paid to Fitness Center.

ARTICLE 11 TRADEMARKS

11.01 Use of Names and Marks. This Agreement does not grant Fitness Center a license or sublicense, except as provided in this Article 11, to use the names, trademarks, service marks, corporate names, trade names, domain names, or logos owned by ASH Fitness or its parent company American Specialty Health Incorporated ("ASH Marks"). During the term of this Agreement Fitness Center may use ASH Fitness' name or ASH Marks solely in connection with identifying the relationship as contemplated in this Agreement or as specified in Section 11.02 below. Any other use of ASH Marks is subject to the prior review and written approval of ASH Fitness.

11.02 Identification of Marks and Form of Use. Subject to the terms of this section, ASH Fitness grants Fitness Center a non-exclusive, non-transferable, royalty-free license to use the trademarks Silver&Fit®, Silver&Fit Signature Series Classes®, Active&Fit®, FitnessCoach™ and/or ExerciseRewards™ on its web sites and print media for the promotion of Fitness Center's participation in the applicable programs for which Fitness Center is a Contracted Facility¹. Fitness Center shall be allowed to use the ASH Marks as described above, as long as such use complies with this Article and the "Guidelines for Trademark Use by Third Parties" issued by ASH Fitness from time to time, a current version of which is attached hereto as Attachment K. In addition, Fitness Center shall mark the ASH Marks with the symbol "™" or "®" as appropriate, and include the following trademark attribution in reasonably close proximity to the first use of the ASH Marks in any document or on a screen display, or in a location to which users are directed for statements concerning the Fitness Center's ownership of intellectual property rights.

"Silver&Fit®, Silver&Fit Signature Series Classes®, Active&Fit® and/or ExerciseRewards™ are trademarks of American Specialty Health Incorporated and are licensed by Fitness Center for use herein."

Fitness Center shall not alter the ASH Marks in any way, including but not limited to, skewing, changing the color, rotating, separating logo elements or changing the typeface.

11.03 Approval for Use of Marks. Approval in Section 11.02 above shall be deemed automatically withdrawn upon the effective date of expiration or termination of this Agreement, unless sooner withdrawn by written notice from ASH Fitness.

11.04 Injunctive Relief. The Parties agree that a breach of the terms and conditions of this Article shall cause immediate and irreparable harm. Therefore, in addition to any other rights or remedies available at law or in equity, ASH Fitness is entitled to seek injunctive relief to restrain or enjoin the breach, without any requirement of bond or security.

ARTICLE 12 ASSIGNMENT AND CHANGE OF OWNERSHIP.

ASH Fitness may, in its discretion, assign all or a portion of its rights or responsibilities under this Agreement to any party at any time without approval of Fitness Center. All provisions of this Agreement and obligations arising

¹ Silver&Fit, Silver&Fit Signature Series Classes, Active&Fit, FitnessCoach and ASHLink are registered trademarks of American Specialty Health, Incorporated. All rights are hereby reserved.

hereunder shall extend to and be binding upon the Parties hereto and their respective successors and assignees and shall inure to the benefit, and be enforceable by the Parties hereto and their respective legal representatives, successors and assignees.

ARTICLE 13 SUBCONTRACTS

Fitness Center shall not subcontract any of its obligations under this Agreement to any third party without the prior written approval of ASH Fitness, which may be withheld or withdrawn in its sole discretion. Where ASH Fitness allows Fitness Center to subcontract any of its obligations to another party, Fitness Center shall remain ultimately responsible to ASH Fitness for the Services performed hereunder.

ARTICLE 14 FORCE MAJEURE.

In the event that Fitness Center's operations are substantially interrupted by acts of war, fire, insurrection, labor disputes, riots, epidemics, pandemics, earthquakes or any other acts of nature, Fitness Center shall be relieved of Fitness Center's obligations as to those affected operations for the duration of such interruption. In the event that Fitness Center's ability to render Services is substantially interrupted because of an event described above, ASH Fitness shall have the right to terminate this Agreement in accordance with Article 6 of this Agreement. Such notice of termination may be withdrawn if ASH Fitness determines that Services can be performed despite the event or because the interruption has ended.

ARTICLE 15 INDEPENDENT CONTRACTORS.

- 15.01** None of the provisions of this Agreement shall be construed to create a relationship of agency, representation, joint venture, ownership, control or employment between the Parties, other than that of independent parties contracting solely for the purpose of effectuating this Agreement.
- 15.02** Fitness Center shall be responsible solely to eligible Members for Services. Fitness Center is an independent contractor and ASH Fitness shall have no dominion or control over Fitness Center, Fitness Center-Member relationship, Fitness Center's personnel or Fitness Center's services. Fitness Center and Fitness Center's employees and agents shall not have any claim, under this Agreement or otherwise, against ASH Fitness for vacation pay, sick leave or retirement or other benefits of any kind. During the term of this Agreement or any renewals hereof, Fitness Center shall be fully responsible and liable for all state and federal income taxes or other taxes to which payments made by ASH Fitness to Fitness Center may become subject. Fitness Center is responsible to maintain all necessary insurance policies, such as workers' compensation, errors and omissions, and general business liability insurance in amounts necessary to provide adequate coverage for all liabilities and in accordance with Section 3.16 of this Agreement. Where Fitness Center has independent contractors, Fitness Center will require its independent contractors to carry the required insurance amounts specified in Section 3.16 if not covered under Fitness Center's insurance.

ARTICLE 16 GOVERNING LAW.

This Agreement shall be interpreted and governed by the laws of the State in which the Fitness Center is located, except to the extent that law is contrary to or preempted by federal law. Any provisions required to be in this Agreement by any law shall bind the Parties hereto, whether or not expressly provided in this Agreement.

ARTICLE 17 SEVERABILITY.

In the event any provision of this Agreement is rendered invalid or unenforceable by state or federal law or declared null and void by any court of competent jurisdiction, the remainder of the provisions of this Agreement shall remain in full force and effect unless otherwise specified in this Agreement. In the event that a provision of this Agreement is rendered invalid or unenforceable or declared null and void as provided herein, and its removal has the effect of materially altering the obligations of either Party in such manner as, in the judgment of the Party affected, will cause serious financial hardship to such Party or will cause such Party to act in violation of its corporate articles or bylaws, the Party so affected shall have the right to terminate this Agreement by providing the other Party with at least fifteen (15) days prior written notice.

ARTICLE 18 DISPUTES BETWEEN FITNESS CENTER AND MEMBERS.

Where ASH Fitness and/or an ASH Client determine that a dispute between Fitness Center and Member is subject to the provisions of this Agreement and ASH Fitness and/or ASH Client's appeals and grievance processes, policies, procedures and standards, Fitness Center agrees to assist ASH Fitness and provide any information necessary, at no cost to ASH Fitness, for ASH Fitness to review and evaluate a Member grievance or appeal presented for resolution. ASH Fitness' grievance and appeal process is described in the Program Manual. This section does not preclude Fitness Center and Member from seeking any appropriate legal action to resolve any controversy, dispute or claim which is not governed by the terms of this Agreement.

ARTICLE 19 DISPUTES BETWEEN FITNESS CENTER AND ASH FITNESS.

In the event of any dispute between Fitness Center and ASH Fitness (or their respective affiliates, owners, employees, agents, predecessors, or successors) arising out of or relating to this Agreement, Fitness Center and ASH Fitness shall first attempt in good faith to resolve the dispute mutually between themselves. If Fitness Center and ASH Fitness are unable to resolve the dispute by mutual agreement then all matters in controversy shall be submitted, upon the motion of either party, to binding arbitration pursuant to the requirements of the Federal Arbitration Act, 9 U.S.C. §§ 1-16. Arbitration proceedings shall be administered by the American Arbitration Association ("AAA") in accordance with the AAA. The arbitrator shall be bound by applicable state and federal law, subject to Article 16, and shall issue a written opinion setting forth findings of fact and conclusions of law. Fitness Center and ASH Fitness agree to share equally the AAA administrative fee as well as the arbitrator's fees and expenses, if any, unless otherwise assessed by the arbitrator. The administrative fees shall be advanced by the initiating Party, subject to final apportionment by the arbitrator. In addition, except as provided below, in any arbitration commenced by the Fitness Center, if the amount of the Fitness Center's claims is less than \$10,000, the Fitness Center's share of the AAA administrative fees and the arbitrator's fees and expenses shall be capped at \$25. And if the amount of the Fitness Center's claims is between \$10,000 and \$50,000, the Fitness Center's share of the AAA administrative fees and the arbitrator's fees and expenses shall be capped at \$500. However, if the arbitrator concludes that the Fitness Center's claims are frivolous or brought for an improper purpose (as measured by the standards of Federal Rule of Civil Procedure 11(b)), then all such fees and expenses shall be allocated by the arbitrator in accordance with the AAA Commercial Arbitration Rules, and Fitness Center agrees to reimburse ASH Fitness for any monies paid on Fitness Center's behalf that would be Fitness Center's responsibility under those rules.

Fitness Center and ASH Fitness agree that the arbitrator's award may be enforced in any court having jurisdiction thereof by the filing of a petition to enforce said award. Costs of filing to have an award enforced may be recovered by the Party which brings such action.

Any arbitration proceedings shall occur in the state in which Fitness Center is providing Services to Members pursuant to this Agreement.

Unless forbidden by applicable law, Fitness Center and ASH Fitness agree that if they become involved in a claim or dispute under the arbitration process outlined herein, neither Party will disclose to any other person not directly involved in the arbitration process: (i) the substance of, or basis for, the claim; (ii) the content of any testimony or other evidence presented at the arbitration hearing or obtained through discovery; or (iii) the terms or amount of any agreement reached pursuant to arbitration.

The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim without affecting other contracted Fitness Facilities. THE CONTRACTED FITNESS CENTER AND ASH FITNESS AGREE THAT THEY MAY BRING CLAIMS AGAINST THE OTHER ONLY IN THEIR RESPECTIVE INDIVIDUAL CAPACITIES, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL PROCEEDING. Further, unless all parties agree otherwise, the arbitrator may not consolidate more than one contracted Fitness Center's claims, and may not otherwise preside over any form of a class, representative, or private attorney general proceeding. If a court decides that applicable law precludes enforcement of any of this subsection's limitations as to a particular claim for relief, then that claim (and only that claim) must be severed from the arbitration and may be brought in court.

ARTICLE 20 DISPUTES BETWEEN FITNESS CENTER AND ASH CLIENT.

In the event of any dispute between Fitness Center and an ASH Client (or their respective affiliates, owners, employees, agents, predecessors, or successors) arising out of or relating to this Agreement, at the request of ASH Fitness, Fitness Center shall first attempt in good faith to resolve the dispute mutually with the ASH Client through ASH Fitness, including but not limited to, utilizing all available levels of ASH Fitness' grievance and appeals processes, unless otherwise prohibited by state law. Fitness Center may seek ASH Fitness' assistance with regard to any dispute by contacting ASH Fitness in writing or by telephone at the address and telephone referenced in Article 21.

ARTICLE 21 NOTICES.

Any notice required or permitted to be given under this Agreement to ASH Fitness or Fitness Center, shall be in writing and shall be (a) delivered by electronic means (i.e. ASHLink, sent via an inalterable email document (such as PDF), or facsimile with confirmation) , (b) delivered in person, (c) sent by certified, registered mail, or "overnight express" by the United States Postal Service with return receipt requested and postage prepaid, or (d) sent "express mail," "two day delivery," "3-5 day ground" or any similar service offered by private, prepaid courier such as Federal Express, United Parcel Service or any similar organization. ASH Fitness shall send all notices to Fitness Center's ASHLink account, email, facsimile number or mailing address on file with ASH Fitness. Fitness Center shall provide at least thirty (30) day notice to any change in its email, facsimile number or mailing address to ASH Fitness via ASHLink, or to the email, or address provided below.

NOTICES TO ASH FITNESS:

American Specialty Health Fitness, Inc.
P.O. Box 509117
San Diego, CA 92150-9117

For specific email addresses, call ASH Fitness at (877) 329-2746. The appropriate email address will be provided depending on the nature of the Notice.

Notice shall be effective on the earlier of the date received or the date deemed received.

- Notices given by electronic means (i.e. ASHLink, sent via an inalterable email document (such as PDF), or facsimile with confirmation) shall be deemed received one (1) business day after being sent.
- Notices delivered personally shall be deemed received upon actual receipt.
- Notices given by certified or registered mail shall be deemed received two (2) United States Postal Service business days after the date mailed.
- Notices given by "3-5 day ground" will be deemed received five (5) business days after the date delivered to the United States Postal Service, Federal Express, United Parcel Service or any similar organization.
- Notices sent for delivery by any other means specified in this first paragraph of this Article shall be deemed received two (2) business days after delivery to the United States Postal Service, Federal Express, United Parcel Service or any similar organization.

ARTICLE 22 ATTORNEYS' FEES; COSTS.

In the event that either Party brings legal action relating to this Agreement, including an arbitration or court action brought pursuant to Article 18, Article 19 or Article 20 herein, the prevailing Party shall be entitled to payment by the other of all reasonable attorneys' fees, costs and expenses incurred in such action.

ARTICLE 23 CAPTIONS.

Captions in this Agreement are descriptive only and shall not affect the intent or interpretation of this Agreement.

ARTICLE 24 NO THIRD PARTY BENEFICIARIES.

Except as otherwise expressly provided in this Agreement, nothing in this Agreement shall create or be deemed to create any rights or remedies in any third party, including but not limited to a Member or a Fitness Center other than Fitness Center, subject only to Article 26.

ARTICLE 25 AMENDMENTS.

Any amendments to this Agreement, including but not limited to revised or newly issued attachments, ASH Client Lists or revisions to the Program Manual shall be issued by ASH Fitness and shall be automatically effective and incorporated into this Agreement on the date received or deemed received pursuant to Article 21 of this Agreement, unless otherwise specified in such notice or required by applicable state law.

ARTICLE 26 INSOLVENCY OF ASH FITNESS; PROTECTION OF INTERESTS OF FITNESS CENTER, MEMBERS, AND ASH CLIENTS.

ASH Fitness and Fitness Center each expressly agrees to the inclusion of this Article in this Agreement to provide a means to protect the interests of Fitness Center, Members, and ASH Clients in the event of the insolvency of ASH Fitness. This Article shall apply only in the event of the insolvency of ASH Fitness and only if, as a result of the insolvency, ASH Fitness is unable to discharge its duties under this Agreement. This Article shall not apply in any other circumstances.

For purposes of this Article, the insolvency of ASH Fitness means the filing of a voluntary petition by ASH Fitness, or the filing of an involuntary petition by ASH Fitness' creditors, under Chapter 7 of the Bankruptcy Code (Liquidation), and the date of the insolvency shall be the date on which any such petition is filed. The insolvency of ASH Fitness shall not include the filing of a voluntary petition by ASH Fitness, or the filing of an involuntary petition by ASH Fitness' creditors, under Chapter 11 of the Bankruptcy Code (Reorganization). Notwithstanding anything in this Article, this Article shall not apply to the extent its application would violate any provision of the Bankruptcy Code or any other applicable federal or state statute or regulation, any automatic or other stay issued pursuant to the Bankruptcy Code, any order issued by the court with jurisdiction over the bankruptcy proceeding, or any other court order.

If, within sixty (60) days after the date of the insolvency of ASH Fitness, an ASH Client provides written notice to Fitness Center stating that, with regard to any Member who is a beneficiary, employee, member, or insured of that ASH Client, (a) ASH Client shall pay Fitness Center, in accordance with the provisions of this Agreement, for any billing reports submitted for Services rendered by Fitness Center to any such Member on or after the date of the insolvency, to the extent ASH Fitness has not paid such reimbursements, and (b) ASH Client otherwise shall use its best efforts to discharge the duties of ASH Fitness under this Agreement, or to cause ASH Fitness to discharge those duties, with regard to any such Member, then Fitness Center shall continue to be available to render Services to those Members and shall continue to render Services to those Members in accordance with the provisions of this Agreement for up to six (6) months after the date of the insolvency, as specified by ASH Client.

To the extent this Article grants any rights to any ASH Client, Fitness Center hereby expressly agrees and acknowledges that ASH Client is a third-party beneficiary of the provisions of this Article and shall have all rights granted under law by a third-party beneficiary to enforce the provisions of this Article.

ARTICLE 27 ENTIRE AGREEMENT.

This Agreement includes all attachments, the Program Manual, and all amendments thereto. Each Party acknowledges that no representation, inducement, promise or agreement, orally or otherwise, has been made by any Party or anyone acting on behalf of any Party, which is not embodied herein. In the event of an inconsistency between this Agreement and any ASH Client Summary or this Agreement and attachments, the ASH Client List or attachments, respectively, shall control the rights and duties of the Parties. In the event of any inconsistency between the Program Manual and this Agreement, this Agreement, together with any attachments, exhibits and amendments, including any current ASH Client List, shall control the rights and duties of the Parties.

ARTICLE 28 EFFECTIVE DATE OF AGREEMENT.

ASH Fitness will provide Fitness Center with notice of the Effective Date after Fitness Center returns one original copy of this Agreement to ASH Fitness, and all pre-contractual requirements are fulfilled based upon a determination by ASH Fitness. Fitness Center agrees to be bound by this Agreement as of the Effective Date as determined by ASH Fitness and indicated immediately below.

The Effective Date of this Agreement is _____.
[To be completed by ASH Fitness Only]

Fitness Center agrees to participate in the following attachments, as indicated with a check in the attachment(s) box:

- ☐ Attachment A: Silver&Fit Basic Attachment
- ☐ Attachment B: Silver&Fit Full Attachment²
- ☐ Attachment C: FitnessCoach Attachment²
- ☐ Attachment D: Active&Fit Attachment
- ☐ Attachment F: ExerciseRewards Network Attachment³
- ☐ Attachment H: Personal Trainer Attachment

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the dates set forth below.

FITNESS CENTER
(type or print clearly)

AMERICAN SPECIALTY HEALTH FITNESS, INC.
(To be filled out by ASH Fitness only)

Fitness Center Legal Name

Name Signed

d/b/a (if applicable)

Name Printed

Name Signed

Title

Name Printed

Date of Signature

Title

Mailing Address:
American Specialty Health Fitness, Inc.
P.O. Box 509117
San Diego, CA 92150-9001

Date of Signature

Mailing Address:

Office Address:
American Specialty Health Fitness, Inc.
10221 Wateridge Circle
San Diego, CA 92121

Office Name

Address

City, State, Zip

² If Attachment B or Attachment C has been selected, Exhibit 1 to the attachment must be completed.

**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS CENTER SERVICES AGREEMENT**

ATTACHMENT A - SILVER&FIT® BASIC ATTACHMENT

1.0 DEFINITIONS.

For purposes of this attachment and in addition to the terms defined in the Agreement, the following terms shall have the meanings indicated:

- 1.01** Silver&Fit Program. The Silver&Fit Program is an exercise and healthy aging program offered to Members that are health plan enrollees eligible for Medicare coverage or are group retirees.
- 1.02** Silver&Fit Basic Fitness Center. As a Silver&Fit Basic Fitness Center shall provide Members the Standard Fitness Center Membership as set forth in Section 3.09.1 of the Agreement.

2.0 FITNESS CENTER OBLIGATIONS

In addition to the obligations in Article 3 of the Agreement, Fitness Center shall have the following obligations for this program:

- 2.01** Free Trial Obligation. Fitness Center shall offer and honor a one-time free trial (guest pass) for each Member to try out the fitness center prior to joining if the member requests one.
- 2.02** Fitness Center Listing Information. Fitness Center must maintain current and accurate listing information with ASH Fitness. Fitness Center shall notify ASH Fitness with a change to listing information in accordance with Section 3.06 of the Agreement.

3.0 PROGRAM COMPENSATION.

Fitness Center hereby agrees to participate in the Silver&Fit Program as a Silver&Fit Basic Facility, subject to the compensation schedule listed in Attachment L. The number of visits compensated in a month shall not limit the number of visits a Member may make to Fitness Center in a month. Members must have unlimited access and their visits may exceed the visits compensated per month as specified in Attachment L. A Member may make multiple visits to Fitness Center over the course of one day, however, Fitness Center is only entitled to receive compensation for one (1) of those visits. Silver&Fit services will be compensated by ASH Fitness up to the maximum number of sessions and the maximum amount specified in Attachment L.

**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS CLUB SERVICES AGREEMENT**

ATTACHMENT B – SILVER&FIT® FULL ATTACHMENT

1.0 DEFINITIONS.

For purposes of this attachment and in addition to the terms defined in the Agreement, the following terms shall have the meanings indicated:

1.01 Designated Silver&Fit Exercise Classes. Designated Silver&Fit Exercise Classes are older adult oriented exercise classes that Fitness Center agrees to allow ASH Fitness to approve as a Silver&Fit exercise class in its directory for ASH Clients and Members. The Fitness Center may choose to offer one or more classes from the following categories:

- Silver&Fit Signature Series Classes® (these classes as designed by ASH Fitness and are available to Fitness Center to offer as a Designated Silver&Fit Exercise Class. Any equipment required for these classes may either be provided by Fitness Center itself or to Fitness Center by ASH Fitness for an additional fee.)
- Senior Dance
- Senior Yoga
- Strength/Cardio Training for older adults
- Tai Chi
- Aqua
- Fall Prevention

Fitness Center shall elect how many classes it wishes to designate as a Silver&Fit Exercise Class each week in the Fitness Center Election Section of this Attachment, attached hereto as Exhibit 1. Fitness Center may not designate an older adult exercise class sponsored by or provided by any organization which is a competitor of ASH Fitness.

1.02 Silver&Fit Program. The Silver&Fit Program is an exercise and healthy aging program offered to Members that are health plan enrollees eligible for Medicare coverage or are group retirees.

1.03 Silver&Fit Full Fitness Center. As a Silver&Fit Full Fitness Center, Fitness Center shall provide Members with a Standard Fitness Center Membership as set forth in Section 3.09.1 of the Agreement, Designated Silver&Fit Exercise Classes and/or Quarterly Social Activities.

1.04 Quarterly Social Activities. Quarterly Social Activities are quarterly events sponsored by Fitness Center. Examples of these social events may consist of, but is not limited to, bagels and coffee, off-site walking clubs, and potlucks. Such events may be coordinated with Fitness Center by a Silver&Fit Program Manager.

2.0 FITNESS CENTER OBLIGATIONS.

In addition to the obligations in Article 3 of the Agreement, Fitness Center shall have the following obligations for this program:

2.01 Silver&Fit Full Fitness Center Levels

- **Level 1 Silver&Fit Full Fitness Center.** A level 1 Silver&Fit Full Fitness Center shall provide Members with a Standard Fitness Center Membership and at least two (2) Designated Silver&Fit Exercise Classes each week (may be the same class twice per week).

Fitness Center shall also offer as part of this level, Quarterly Social Activities at the facility for Members.

- Level 2 Silver&Fit Full Fitness Center. A level 2 Silver&Fit Full Fitness Center shall provide Members with a Standard Fitness Center Membership and at least one (1) Designated Silver&Fit Exercise Class each week.
- 2.02** Designated Silver&Fit Exercise Classes. Fitness Center agrees that it shall have at least one (1) instructor who has obtained proper credentials (e.g. certifications, teaching licenses, certificates of completion) to teach the particular Designated Silver&Fit Exercise Class. Fitness Center shall arrange for any required payment for the exercise programs or training classes required, either by (a) Fitness Center on behalf of the instructor or (b) the instructor directly.
- 2.03** Free Trial Obligation. Fitness Center shall offer and honor a one-time free trial (guest pass) for each Member to try out the fitness center prior to joining if the member requests one..
- 2.04** Silver&Fit Exercise Classes Health and Safety Guidelines. Fitness Center shall comply with ASH Fitness' Health & Safety Guidelines for Designated Silver&Fit Exercise Classes. These guidelines are in addition to the Health and Safety Guidelines in Attachment I of this Agreement and shall be distributed to Fitness Center upon notifying ASH Fitness of its election to offer Designated Silver&Fit Exercise Classes. Upon Fitness Center's acceptance of these guidelines, the elected classes shall be listed in ASH Fitness' Fitness Center listing as Designated Silver&Fit Exercise Classes.
- 2.05** Fitness Center Listing Information. Fitness Center must maintain current and accurate listing information with ASH Fitness. Fitness Center shall notify ASH Fitness with a change to listing information in accordance with Section 3.06 of the Agreement.

3.0 ASH FITNESS OBLIGATIONS.

- 3.01** FitnessEngagement.com. Fitness Center shall have access to a web site that will provide tools to help assist Fitness Center in providing the Silver&Fit Program to Members. The website shall include training materials to help assist with the Designated Silver&Fit Exercise Classes, as well as promotional fliers for Fitness Center to use to promote the Silver&Fit Program and Designated Silver&Fit Exercise Classes.
- 3.02** Silver&Fit Online Fitness Center Listing. ASH Fitness shall provide ASH Clients and Members with an online Fitness Center listing of participating Fitness Centers. The online listing shall list the Designated Silver&Fit Exercise Classes offered by Fitness Center and if Fitness Center holds Quarterly Social Activities. Fitness Center's priority in the listing shall be dependent upon what level of Silver&Fit Full Fitness Center is. If Fitness Center participates as a Level 1 Silver&Fit Full Facility, Fitness Center shall be listed above all other levels in the ASH Fitness Silver&Fit Fitness Center listing. If Fitness Center participates as a Level 2 Silver&Fit Full Facility, Fitness Center shall be listed above all Silver&Fit Basic Centers.

4.0 PROGRAM COMPENSATION.

- 4.01** Program Compensation. Fitness Center hereby agrees to participate in the Silver&Fit Program subject to the compensation schedule listed in Attachment L. The number of visits compensated in a month shall not limit the number of visits a Member may make to Fitness Center in a month. Members must have unlimited access and their visits may exceed the visits compensated per month as specified in Attachment L. A Member may make multiple visits to Fitness Center over the course of one day, however, Fitness Center is only entitled to receive compensation for one (1) of those visits. Silver&Fit services will be compensated by ASH Fitness up to the maximum number of sessions and the maximum amount specified in Attachment L.

**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS CENTER SERVICES AGREEMENT**

ATTACHMENT B – EXHIBIT 1 SILVER&FIT® FULL – FITNESS CENTER ELECTION³

Fitness Center elects to designate one (1) or more older adult oriented exercise classes listed in Section 1.01 of Attachment B as a Designated Silver&Fit Exercise Class:

☐ One (1) class per week

OR

☐ Two (2) classes per week

Fitness Center elects to offer:

☐ Quarterly Social Activities

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³ Any election in this exhibit shall be for all Fitness Center Participating Locations unless Fitness Center notifies ASH Fitness otherwise.

**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS CENTER SERVICES AGREEMENT**

ATTACHMENT C - FITNESSCOACH® ATTACHMENT

1.0 DEFINITIONS.

For purposes of this attachment and in addition to the terms defined in the Agreement, the following terms shall have the meanings indicated:

- 1.01** FitnessCoach Program. The FitnessCoach Program is an exercise and fitness program offered to Members that are enrolled in a health plan's Medicare or Medicaid program.
- 1.02** Special Needs: Refers to conditions that Members may have involving disabilities or chronic conditions the result of which may necessitate them having limited mobility or accessibility or require assistance from a Member Caregiver.
- 1.03** FitnessCoach Fitness Center. As a FitnessCoach location, Fitness Center shall provide Members the Standard Fitness Center Membership as set forth in Section 3.09.1 of the Agreement.
- 1.04** Member Caregiver. A Member Caregiver is the person identified by the Member to ASH Fitness and the Fitness Center as the person who will be providing assistance to the Member while using the Fitness Center.

2.0 FITNESS CENTER OBLIGATIONS

In addition to the obligations in Article 3 of the Agreement, Fitness Center shall have the following obligations for this program:

- 2.01** Free Trial Obligation. Fitness Center shall offer and honor a one-time free trial (guest pass) for each Member to try out the fitness center prior to joining if the member requests one..
- 2.02** Member Caregiver Access. Fitness Center shall provide Member Caregiver access to the facility so that they may assist the Member with their workout. This may include, but is not limited to, assistance with using equipment, equipment setting adjustments and general assistance in Fitness Center. Member Caregiver shall not be allowed to personally workout at the center and are on the premises with the Member solely to assist the Member with their workout and navigating through the center. Member Caregivers are not considered Members of ASH Fitness or ASH Fitness Clients and therefore, will not count toward Fitness Center's program compensation and should not be listed on Fitness Center's monthly billing report. Fitness Center shall not charge a Member Caregiver any monthly dues or guest fees for being at the center to assist a Member. If Fitness Center requires that guests or patrons of the center sign a waiver for being on the premises, Fitness Center may request and require the Member Caregiver to sign such waiver.

3.0 PROGRAM COMPENSATION.

Fitness Center hereby agrees to participate in the FitnessCoach Program as a FitnessCoach location, subject to the compensation schedule listed in Attachment L. The number of visits compensated in a month shall not limit the number of visits a Member may make to Fitness Center in a month. Members must have unlimited access and their visits may exceed the visits compensated per month as specified in Attachment L. A Member may make multiple visits to Fitness Center over the course of one day, however, Fitness Center is only entitled to receive compensation for one (1) of those visits. FitnessCoach services will be compensated by ASH Fitness up to the maximum number of sessions and the maximum amount specified in Attachment L.

**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS CENTER SERVICES AGREEMENT**

ATTACHMENT D - ACTIVE&FIT® ATTACHMENT

1.0 DEFINITIONS.

For purposes of this Agreement and in addition to the terms elsewhere defined herein, the following terms shall have the meanings indicated:

- 1.01** Active&Fit Program. The Active&Fit Program is a fitness program whereby ASH Fitness or its affiliates arrange for the provision of Services to Members. This program provides Member with a Standard Fitness Center Membership.

2.0 **FITNESS CENTER OBLIGATIONS**

- 2.01** Free Trial Obligation. Fitness Center shall offer and honor a one-time free trial (guest pass) for each Member to try out the fitness center prior to joining if the member requests one.

3.0 PROGRAM COMPENSATION.

Fitness Center hereby agrees to participate in the Active&Fit Program subject to the compensation schedule listed in Attachment L. The number of visits compensated in a month shall not limit the number of visits a Member may make to Fitness Center in a month. Members must have unlimited access and their visits may exceed the visits compensated per month as specified in Attachment L. A Member may make multiple visits to Fitness Center over the course of one day, however, Fitness Center is only entitled to receive compensation for one (1) of those visits. Active&Fit services will be compensated by ASH Fitness up to the maximum number of sessions and the maximum amount specified in Attachment L.

**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS CENTER SERVICES AGREEMENT**

ATTACHMENT E - INTENTIONALLY LEFT BLANK

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**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS CENTER SERVICES AGREEMENT**

ATTACHMENT F – EXERCISEREWARDS™ NETWORK ATTACHMENT

1.0 DEFINITIONS.

For purposes of this Agreement and in addition to the terms elsewhere defined herein, the following terms shall have the meanings indicated:

- 1.01** ExerciseRewards Network. ExerciseRewards Network (“ERN”) is the network of Fitness Centers and exercise centers which are contracted with ASH Fitness to provide Program Services, as defined below in Section 1.04, offered to Members at a specific discounted rate.
- 1.02** Member. For the purpose of this attachment a Member is solely an individual eligible to receive Services. Members will not need to complete member enrollment prior to signing a membership agreement with a Fitness Center.
- 1.03** Member Utilization Report. Member Utilization Reports are monthly reports submitted to ASH Fitness by Fitness Center that track Members’ utilization each month. Each monthly report shall contain the Member first and last name, Member’s fitness identification number, program abbreviation, Member month and day of birth or employer group name, if applicable, and the dates of each Visit in the month. Utilization reports for members who have not been identified as participating in the program should not be submitted.
- 1.04** Program Services. Program Services (referred to by some ASH Clients and Members as “Exercise Rewards or ERP”) are the services set forth in this Attachment provided to Members eligible for such services. Fitness Center is paid directly by the Member for Program Services, in accordance with the applicable discount offered by Fitness Center as specified in this Agreement. Fitness Center shall not be eligible for any compensation by ASH Fitness under this Agreement.

2.0 FITNESS CENTER’S RESPONSIBILITIES.

In addition to the obligations in Article 3 of the Agreement, and with the exception of the provisions identified in Section 3.0 of this Attachment, Fitness Center shall have the following obligations for this program:

- 2.01** ExerciseRewards Network. As part of the ExerciseRewards Network, Fitness Center shall offer a Member a ten percent (10%) or higher discount off the regular membership fees/dues and/or enrollment fees. Fitness Center will be made available to those Members eligible for Program Services. Promotion of Program Services may include, but is not limited to, customized ASH Client web site directory listing, customized search criteria featuring the agreed upon discount with Fitness Center, and Member open enrollment materials. No program compensation rate applies to this Agreement and Fitness Center shall look to Member for compensation in accordance with the Members applicable discount.
- 2.02** Verification of Member Eligibility. Fitness Center shall verify Member eligibility at the time of Member’s first attempt to utilize Fitness Center Participating Location by requesting Member to show their fitness card or welcome letter and then verifying the Member’s eligibility on ASHLink or by calling customer service.
- 2.03** Conversion of Pre-Established Membership. Fitness Center agrees to assist any Member that has a previously established membership with Fitness Center and the Member becomes eligible for the Program Services under this Agreement. Fitness Center agrees to allow Member’s previously

established membership to become discounted to Fitness Center's agreed upon discount for Program Services where the discounted rate is lower than the Member's previously established membership rate.

2.04 Member Utilization Reports. Fitness Center shall submit Member Utilization Reports as defined in Section 1.03 of this Attachment to ASH Fitness on a monthly basis no later than the 10th of each month for the previous month's Member utilization. Member Utilization Reports may be submitted through ASHLink or electronically by email. Member Utilization Reports are required to be submitted each month for the previous month's utilization and must contain all required information for Members that utilized Fitness Center for Program Services during the month for which the Member Utilization Report is being submitted. Member Utilization Reports missing the required information in Section 1.03 will be returned to Fitness Center for correction and re-submission.

2.05 Member Payments. Fitness Center shall notify Member of Member's financial responsibility for amounts Member may owe Fitness Center for Program Services prior to the provision of such Services. Fitness Center shall set up a payment process with Member and shall not seek payment for Program Services from ASH Fitness or ASH Clients.

2.06 One Week Trial Obligation. Fitness Center shall offer and honor a one-time one-week trial membership for each Member.

3.0 CORE AGREEMENT MODIFICATION

3.01 Provisions not Applicable to this Attachment. The following provisions of the main body of the Agreement are not applicable to this attachment: Sections 2.07, 3.10, 3.11, and 3.12.

4.0 DISCOUNTS.

No Program Compensation Rate applies to this attachment.

Fitness Center agrees to provide the following discounts for Members

Please indicate below minimum discount of at least 10% where applicable:

	ExerciseRewards Network Fitness Center discount on monthly or annual membership)	OR	ExerciseRewards Network (Fitness Center discount) (No monthly membership or annual dues)
Initiation/Enrollment Fee	_____ %		
Monthly Dues	_____ %		
Personal Trainer Fees	_____ %		
		Fitness Session Fees	_____ %

**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS CENTER SERVICES AGREEMENT
ATTACHMENT G - ASH CLIENT LIST**

Client offers national access unless otherwise specified.							
The following ASH Fitness Clients are currently eligible as noted below:							
	Client Name	Effective Date	S&F	A&F	ERN	FitnessCoach	
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

SAMPLE

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**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS CENTER SERVICES AGREEMENT**

ATTACHMENT H - PERSONAL TRAINER ATTACHMENT

1.0 DEFINITIONS.

For purposes of this Agreement and in addition to the terms elsewhere defined herein, the following terms shall have the meanings indicated:

- 1.01** Amount. Co-payment Amount is a payment made directly to the Fitness Center by the Member for each Personal Trainer Service. Co-payment Amounts are specified in the ASH Client Summaries attached via Exhibit 1 to this attachment.
- 1.02** Personal Trainer. An individual employed by Fitness Center who provides Personal Training Services to Members and meets the requirements of Section 2.02 of this Attachment.
- 1.03** Personal Trainer Benefit Program. Personal Trainer Benefit Program means an arrangement pursuant to which Fitness Center arranges for the provision of personal training sessions to Member.
- 1.04** Personal Trainer Services. Personal Trainer Services refers to training provided by a certified personal trainer employed or contracted by a Fitness Center to assist Member in reaching desired health status such as weight loss or gain, or appropriate/effective exercise programs. A training session is of a duration not less than forty-five (45) minutes which assist Members in reaching their desired health status by focusing on subjects such as weight loss/gain, nutritional coaching, appropriate effective exercise program implementation and enhancing a Member's fitness level.

2.0 FITNESS CENTER'S RESPONSIBILITIES.

In addition to the obligations in Article 3 of the Agreement, Fitness Center shall have the following obligations for this program:

- 2.01** Provision of Personal Trainer Program. Fitness Center shall provide Services when ASH Client elects to participate in the Personal Trainer Benefit Program. Personal Trainer Benefit Program is offered only if the Member's health plan and/or employer group has elected to include them and shall be noted through Exhibit 1 to this attachment.
- 2.02** Personal Trainers. Fitness Center agrees to comply with ASH Fitness Quality Management Program criteria when employing a personal trainer who will provide services to a Member. Fitness Center agrees:
 - a) Personal trainer shall be actively certified and in good standing with a certification body that is accredited through the National Commission of Certifying Agencies "NCCA".
 - b) Personal Trainer must not have been convicted of a felony or a crime of moral turpitude. Personal trainer must sign an attestation upon hire and no less than annually thereafter, and Fitness Center must hold on file such attestation, that personal trainer has never been convicted of a felony. In lieu of the attestation, a Fitness Center may elect to perform upon hire and no less than annually thereafter a criminal background check searching for any felony or crime of moral turpitude convictions, using Choicepoint or other similar databases, and shall hold appropriate documentation on file that no felony convictions were discovered.
 - c) Personal trainer must not have been convicted of a misdemeanor directly related to the provision of Personal Trainer Services. Personal trainer must sign an attestation and Fitness Center must hold on file such attestation that personal trainer has never been convicted of a misdemeanor directly related to the provision of Personal Trainer Benefit Program or Fitness

Center must perform a criminal background check searching for any misdemeanor convictions, using Choicepoint or other similar databases, and shall hold appropriate documentation on file that no misdemeanor convictions were discovered.

- d) Personal trainer must not have any negligence related cases where the cause of action was directly related to the provision of personal training services and the result was unfavorable to the Personal Trainer. Personal trainer must sign an attestation upon hire and no less than annually thereafter, and Fitness Center must hold on file such attestation, that personal trainer has never had a settlement or judgment against him or her due to his or her negligence.
- e) Personal Trainer must not have any sanctions or actions by a state or federal regulatory agency. Personal Trainer must sign an attestation upon hire and no less than annually thereafter, and club must hold on file such attestation, that Personal Trainer has never had a sanction or action against him or her due to his or her negligence.
- f) Personal trainer must follow all appropriate assessment and risk management guidelines of the Fitness Center and one of the NCCA organizations.
- g) Personal trainer must question Member (using at a minimum the physical activity readiness questionnaire (PARQ) or a comparable pre-activity assessment tool) to assess the Member's health status and interaction with the Member's medical physician related to the fitness program.
- h) Personal trainer must question the Member about the Member's interaction with the Member's medical physician related to the fitness program.
- i) Personal trainer must maintain appropriate documentation and records related to the training interaction, Member progress and adverse events including, but not limited to, those required by subsections (g) and (h) above.
- j) Personal trainer will store any confidential health information or related confidential information in a secure location away from public access

2.03 Personal Trainer Benefit Program.

- a) Fitness Center agrees to only provide personal training sessions to Member's eligible under the Personal Trainer Benefit Program as verified by ASH Fitness.
- b) Personal Training Session shall last a minimum of forty-five (45) minutes and shall be used to assist Members in reaching their desired health status.
- c) Personal training sessions provided under the Personal Trainer Benefit Program are eligible for compensation at compensation rate as specified in Exhibit 1 to this attachment for each ASH Client.

3.0 PROGRAM ELECTIONS AND COMPENSATION.

Fitness Center hereby agrees to participate in the Personal Training Benefit Program subject to the compensation schedule listed in Attachment L. Personal Trainer Services will only be compensated by ASH Fitness up to the maximum number of sessions and the maximum amount per session established for the Personal Trainer Benefit Program, less any Co-payment Amount paid to Fitness Center by a Member as further specified in Exhibit 1 to this attachment. Co-payment Amounts are made upon each Visit.

**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS CENTER SERVICES AGREEMENT**

ATTACHMENT H – EXHIBIT 1 PERSONAL TRAINER - ASH CLIENT LIST

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**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS CENTER SERVICES AGREEMENT**

ATTACHMENT I - HEALTH AND SAFETY GUIDELINES AND CODE OF CONDUCT

Fitness Center warrants and represents that each Fitness Center Participating Location, subject to this Agreement, shall maintain and abide by the ASH Code of Conduct & Ethics Program posted on ASHLink. In addition Fitness Center warrants and represents that each Fitness Center Participation Location, subject to this Agreement, shall maintain and abide by ASH Fitness' Health & Safety Guidelines and Code of Conduct, as follows:

- Fitness Center is able to respond in a timely manner to any reasonably foreseeable emergency event that threatens the health and safety of Fitness Center users. Toward this end the Fitness Center has an appropriate emergency plan that can be executed by qualified personnel in a timely manner.
- Fitness Center offers each adult Member a pre-activity screening that is appropriate to the physical activities to be performed by the Member. Based on pre-activity screening, the Fitness Center may, at its discretion, offer to provide supervisory oversight, or an aide to the Member.
- Each person who has supervisory responsibility for a physical activity program or area at Fitness Center has demonstrable professional competence in that physical activity program or area upon hire and on-going thereafter.
- Fitness Center posts appropriate signage alerting users to the risks involved in their use of those areas of Fitness Center that present potential increased risk(s).
- If Fitness Center offers youth services or programs, it provides appropriate supervision.
- Fitness Center shall not discriminate against Members for any reason, including but not limited to age, sex, marital status, religion, ethnic background, national origin, political affiliation, ancestry, race, color, sexual orientation, veteran status, gender identity, health disability status or source or amount of compensation.
- Fitness Center shall abide by all local, state, or federal consumer protection legislation and all other applicable laws.
- Fitness Center responds to and endeavors to resolve, within sixty (60) days, any consumer complaints made to the Better Business Bureau or state or local consumer protection agencies (or other such agencies).
- Fitness Center will not sell a prepaid, lifetime membership to a Member during the term of this Agreement.

ASH Fitness' Health & Safety Guidelines and Code of Conduct has been adapted from the following sources:

- Peterson, James A, and Tharrett, Stephen J, editors 2nd ed. *ACSM's Health/Fitness Facility Standards and Guidelines*, second edition. Champaign, IL: Human Kinetics, 1997.
- International Health, Racquet and Sportsclub Association, 2005.
http://download.ihrsa.org/pubs/club_membership_conduct.pdf

**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS CENTER SERVICES AGREEMENT**

ATTACHMENT J – MEDICARE ADVANTAGE AND MEDICAID ADDENDUM

This exhibit is entered into by American Specialty Health Fitness, Inc. (“ASH Fitness”) and the Fitness Center listed on the signature page of the Agreement (“Fitness Center”) and is intended to add certain provisions to the Agreement in order to comply with requirements of the Centers for Medicare and Medicaid Services (“CMS”). If any provision in the Agreement is inconsistent with the terms of this attachment, the provisions of this attachment shall be controlling and supersede the provisions of the Agreement for Medicare Advantage and Medicaid Members.

WHEREAS, ASH Fitness has entered into contracts with ASH Clients who offer fitness benefits as part of its Medicare Advantage and/or Medicaid Managed Care plans which require ASH Fitness to include specific contract language in its contract with Fitness Center;

WHEREAS, Fitness Center will be providing Services on behalf of ASH Fitness for certain Medicare Advantage and/or Medicaid members of ASH Clients;

NOW, THEREFORE, the Parties agree to add the following provisions to the Agreement with respect to Medicare Advantage and/or Medicaid members of ASH Clients:

- 1 Member Non-Liability.** Fitness Center shall in no event, including insolvency of ASH Fitness, hold any member liable for payment of any fees that are the legal obligation of ASH Fitness. This provision does not prohibit Fitness Center from charging the member for services not covered under this Agreement, provided the member was informed in advance and in writing of the fees to be charged. This provision shall survive termination of the Agreement. [42 C.F.R. 422.504(g)(1)(i) and 42 C.F.R. 422.504(i)(3)(i)]
- 2 Excluded Individuals.** Fitness Center represents and warrants that Fitness Center or any person who owns more than five percent (5%) of Fitness Center are not excluded from participation in a federal or state healthcare program, including but not limited to, Medicare and Medicaid. Also, Fitness Center represents that it does not now employ or contract with, and shall not in the future employ or contract with any individual excluded from participation in such federal or state programs to provide Services to Members. Fitness Center shall check key employees and persons employed, contracted or otherwise affiliated with Fitness Center and any person owning more than five percent (5%) of Fitness Center against the appropriate lists upon hire or contract and monthly thereafter to determine if the persons have been excluded from participation in a federal or state program or has been terminated for cause or default on public transactions and public programs as well as non-reinstatement. Such lists (commonly referred to as Exclusion Lists) include, but are not limited to, the U.S. Department of Health and Human Services Office of Inspector General List of Excluded Individuals/Entities, the General Service Administration Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs, and state published Medicaid exclusion lists). For the purpose of this agreement the term “key employee” refers to all employees/contractors who are (i) involved with the receipt of funds from Members or submit claims/bills to ASH concerning services provided to Members, and (ii) individuals who lead/teach exercise classes that are specifically tailored to Members. Fitness Center shall maintain records relating to its checks of these lists in accordance with Section 8 of this addendum. Fitness Center agrees to indemnify ASH Fitness or ASH Clients, as applicable, for any civil monetary penalties levied against an ASH Client or ASH Fitness as a result of (a) Fitness Center’s failure to properly screen all employed, affiliated or contracted persons who provide Services to Members and/or hold or held more than a five percent (5%) interest in Fitness Center against the Exclusions Lists or (b) Fitness Center’s permitting an individual or entity found on the Exclusions Lists to provide Services to any Medicare Advantage Members, or otherwise be affiliated with those services, under this Agreement. Payments received by Fitness Center in circumstances where (a) or (b) above apply are also subject to recoupment by ASH Fitness upon request and Fitness Center agrees to comply with any such requests. [42 C.F.R. 422.752(a)(8)]
- 3 Compliance with Federal and State Law.** Fitness Center acknowledges that payments for Services hereunder are, in whole or in part, derived from federal funds and receipt of such payment is subject to all laws and regulations applicable to recipients of such funds. Therefore, Fitness Center shall comply with all laws and regulations applicable

to individuals and entities receiving federal funds and all other applicable federal and state laws and regulations, including, but not limited to, those laws and regulation governing participating in the Medicare Advantage or Special Needs Plan Programs, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, as well as their implementing regulations. [42 C.F.R. 422.504(h)]

- 4 **Quality Review and Improvement.** Fitness Center shall cooperate with all independent quality review and improvement activities relating to Services being provided by Fitness Center required by ASH Fitness and/or ASH Client's or CMS pertaining to the provision of Services. [42.C.F.R. 422.204(b)(4)]
- 5 **Member Appeals and Grievances.** Fitness Center shall cooperate and comply with all ASH Fitness, ASH Clients, and CMS requirements regarding appeals of members, including the obligation to provide information to ASH Fitness within the timeframe reasonably requested for such purpose. [42 C.F.R. 422.562(a)]
- 6 **Collection of Data.** When requested by ASH Fitness, Fitness Center shall participate in the collection and submission of data to CMS. Where applicable, Fitness Center shall certify the accuracy of the data collected and submitted under this section. [42 C.F.R. 422.504(c)]
- 7 **Member Records.** In addition to the requirements set forth in Section 9.03 of the Agreement, to the extent any ASH Client member records or other health and enrollment information is maintained by Fitness Center, Fitness Center shall: 1) safeguard the privacy of any information that identifies a particular member and abide by all federal and state laws and regulations regarding confidentiality and disclosure of all protected health information; 2) maintain member records and information in an accurate and timely manner; and 3) ensure timely access by members to their own records and information in accordance with federal and State laws and regulations. Information from or copies of records may be released only in accordance with federal and state laws and regulations governing such records and the information contained therein. [42 C.F.R. 422.118]
- 8 **Records and Inspections.**
 - (a) ASH Fitness and Fitness Center recognize and agree that the United States Department of Health and Human Services (DHHS), the Comptroller General, or their designees may audit, evaluate or inspect any books, contracts, and other records of ASH Fitness and Fitness Center that pertain to any aspect of services performed under this Agreement for purposes of a Medicare product, or as the Secretary of DHHS may deem necessary. ASH Fitness and Fitness Center shall retain all records related to the provision Services for a period of ten (10) years after the final date of the contract period and shall make available their premises, physical facilities and equipment, records related to the provision of Services or any additional relevant information that DHHS may require. [42 C.F.R. 422.504(e)(3)]
 - (b) CMS, the Comptroller General, or their designees have the right to inspect, evaluate and audit ASH Fitness and Fitness Center for a period of ten (10) years after the final date of the contract period or the completion of an audit, whichever is later, unless: (a) CMS determines that there is a special need to retain a particular record or group of records for a longer period and notifies ASH Fitness or Fitness Center at least thirty (30) days before the normal disposition date; (b) there has been a termination, dispute or fraud or similar fault by ASH Fitness or Fitness Center in which case retention may be extended to ten (10) years from the date of any final resolution of the termination or fraud or similar fault; or (c) CMS determines that there is a reasonable possibility of fraud, in which case it may inspect, evaluate and audit ASH Fitness and Fitness Center at any time. [42 C.F.R. 422.504(e)(4)]
9. **ASH Client Accountability.** Notwithstanding anything set forth in the Agreement, Fitness Center and ASH Fitness acknowledge and agree that, with respect to Services furnished under this Agreement for ASH Client's, ASH Clients oversee and are ultimately accountable to CMS for any functions and responsibilities performed by Fitness Center. Fitness Center shall comply with ASH Fitness's policies and procedures as set forth in the Fitness Center Program Manual. Such policies and procedures have been reviewed and approved by ASH Clients. Fitness Center shall

furnish Services to members consistent with the requirements of CMS and, including but not limited to, ASH Fitness's contractual obligations to ASH Clients. [42 C.F.R. 422.504(i)(4)(iii) and 42 C.F.R. 422.112]

10. **Compliance Training.** Fitness Center will provide its employees and any contractors directly involved in providing Services under this Agreement the CMS Medicare Parts C & D Fraud, Waste, and Abuse Training and General Compliance Training module posted on ASHLink within ninety (90) days of hire or contracting and annually thereafter and allow ASH Fitness access to Fitness Center's records upon request to ensure Fitness Center is providing the required trainings. [42 C.F.R. 422.504(h)(1)]
11. **Amendment and Severability of Contracts.** Notwithstanding any provision in the Agreement, this Exhibit may be amended upon request or mandate by CMS to comply with all relevant federal and State laws and regulations and government pronouncements. Additionally, this Exhibit shall be amended to exclude any Medicare product or State-licensed entity specified by CMS. A separate agreement for any such excluded product or entity will be deemed to be in place when such request is made. [42 C.F.R. 422.504(k)(1) and (2)]

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**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS CENTER SERVICES AGREEMENT**

ATTACHMENT K –GUIDELINES FOR TRADEMARK USE BY THIRD PARTIES

American Specialty Health Incorporated (“ASH”) counts among its most valuable assets the company’s trademarks and the goodwill they represent. Protection of these marks is a priority for ASH. These guidelines on the proper use of ASH trademarks have been developed for Licensees and other third parties. The status of ASH trademarks is continually changing, and it may be necessary to revise these guidelines from time to time. These guidelines are designed to ensure proper legal usage of ASH trademarks, and to prevent consumer confusion that can result from improper or illegal usage.

1. Never vary the spelling, add or delete hyphens (even for normal hyphenation at the end of a line of text), make one word two, or use a possessive or plural form of the trademark. ASH trademarks are always used as adjectives followed by a generic term (such as “HMO”) and never as nouns or verbs.
2. When using an ASH trademark on any materials that will be distributed or presented to the public, use the registered symbol ® on the most prominent (or if none is prominent, the first) appearance of a trademark registered with the U.S. Patent and Trademark Office. For any ASH trademark that is not registered, the ™ symbol should be used in place of the registered trademark symbol. Once marked, it is not normally necessary to mark subsequent appearances of the trademark in the same publication.
3. Every appearance of ASH logos and product names in stylized form should always appear with the appropriate ® or ™ symbol, and may be used only under license with ASH. Unauthorized use is strictly prohibited.
4. A logo is a graphical design that may include text and other design elements. ASH product signatures are logos created to identify products that are licensed or owned by ASH. Stylized trademarks or “logotypes” are those that appear in word form in a particular style of type by ASH. An example includes the following:



ASH logos, product signatures, or trademarks in stylized form may be used only if you have obtained a prior written license from ASH and your use complies with the terms and conditions of the license. Under no circumstance may you modify, distort or add to ASH logos, product signatures, or stylized trademarks.

The term “American Specialty Health”, when used to refer to products, is a trademark, and its use is governed by the guidelines above. However, when “American Specialty Health Incorporated” is used only to refer to ASH as a corporate name, no trademark marking or attribution is necessary. Therefore, do not use the ® or ™ symbols.

**AMERICAN SPECIALTY HEALTH FITNESS, INC.
FITNESS CENTER SERVICES AGREEMENT**

ATTACHMENT L – PROGRAM COMPENSATION

BLUEBELL AQUATIC CENTER, TX

SILVER&FIT BASIC FITNESS CENTER:

The following compensation rate is for a Silver&Fit Basic Fitness Center in the Silver&Fit Program:

Benefit Program	Standard Compensation Rate	Maximum Number of Visits Compensated Per Month	Monthly Compensation Maximum
Silver&Fit Basic	\$3.50	10	\$35.00

SILVER&FIT FULL FITNESS CENTER:

The following compensation rate is for a Silver&Fit Full Fitness Center in the Silver&Fit Program:

Benefit Program	Standard Compensation Rate	Maximum Number of Visits Compensated Per Month	Monthly Compensation Maximum
Silver&Fit Full	\$3.50	10	\$35.00

FITNESSCOACH FITNESS CENTER:

The following compensation rate is for the FitnessCoach Program:

Benefit Program	Standard Compensation Rate	Maximum Number of Visits Compensated Per Month	Monthly Compensation Maximum
FitnessCoach	TBD	10	TBD

ACTIVE&FIT FITNESS CENTER:

The following compensation rate is for the Active&Fit Program:

Benefit Program	Standard Compensation Rate	Maximum Number of Visits Compensated Per Month	Monthly Compensation Maximum
Active&Fit	\$4.00	8	\$32.00

PERSONAL TRAINER PROGRAM:

The following compensation rate is for the Personal Trainer Program:

Benefit Program	Description	Compensation
Personal Trainer Program	1 session of Personal Trainer Services (Limited to 1 session per day)	TBD (Includes Co-Payment)

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Regular City Council
AGENDA ITEM 10.

Agenda Item: Discuss and Possibly Act Upon a Professional Services Agreement Between the City of Brenham and Sledge Engineering, LLC Related to a Strategic Facility Plan and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-March 25, 2021

Department: Public Works

Staff Contact: Dane Rau

Classification: Regular

SUMMARY STATEMENT:

When evaluating the city's infrastructure and facilities it is important to know all the details that are related to each building that the city owns. In the past the City has done its best to react to issues that have either arose due to failure or could be physically noticed which would cause a failure in facility operations. We have done our best to plan for the future by budgeting for aging infrastructure or mechanical components related to facilities. We have also looked at upgrades to facilities that were built in the past that may not meet today's codes such as ADA accessibility. We have also considered efficiency related to older structures and the possibility of consolidation of city facilities. All of this planning has been conducted based off of staff's best knowledge of the facilities and past history of each facility related to maintenance. Often times this has caused a reactive approach rather than a proactive approach and has been hard to accurately budget for when it came to long range planning.

In order to accurately plan and budget for our facilities long term we are looking at conducting a Strategic Facility Plan through Sledge Engineering LLC. This plan will provide recommendations for improvements including short term (5 yr. CIP) and long term (20 yr. CIP) objectives. The plan will look at 38 facilities which consists of approximately 250,000 sq/ft. The plan will evaluate many aspects of each facility so we can get a better understanding of issues and concerns and accurately budget for these needs. Items such as accessibility, grounds, drainage, parking, structural concerns, mechanical components, electrical, plumbing, safety/security, and energy efficiency are the top items that will be evaluated. Many other items will be assessed while on site and a detail of the Scope of Work performed is listed in Attachment "A" of the agreement. This work will take approximately 6 months and will require staff to assist with walkthroughs, provide blueprints of facilities, and provide master plans of facilities if applicable.

The total amount of the agreement is \$47,000. Sledge Engineering LLC has a great reputation of providing site assessment plans and working with governmental agencies. We feel that by having a professional company perform this study it will allow the budget team to proactively budget for these facility costs rather than be surprised in the middle of a budget year that sometimes cannot be foreseen. It will also allow our Maintenance Division to be more aware of the structures that we maintain and will allow them to become more proactive rather than reactive which will be less down time for the facility users.

This particular item was not budgeted in the 2020-21 budget but in order to prepare for next year's budget and have a prepared capital improvement program we will need to get started soon. This will come from ABNR in the 2020-21 budget which is Above Budget Net Revenue which derives from savings or vacancies throughout the year.

ATTACHMENTS:

(1) Professional Services Agreement

RELEVANCE TO COMPREHENSIVE PLAN:

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

RECOMMENDED ACTION:

Approve a Professional Services Agreement with Sledge Engineering, LLC in the amount of \$47,000 related to a Strategic Facility Plan and authorize the Mayor to execute any necessary documentation.

**PROFESSIONAL SERVICES AGREEMENT
FOR
ENGINEERING SERVICES
RELATED TO
2021 STRATEGIC FACILITY PLAN**

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

THIS AGREEMENT made on the _____ day of _____, 2021 entered into, and executed by and between the City of Brenham, Texas (the "City"), a municipal corporation of the State of Texas, and Sledge Engineering, LLC ("Engineer").

WITNESSETH:

WHEREAS, the City desires to perform a Strategic Facility Plan to evaluate the City's facilities, as further described in Attachment "A" (the PROJECT); and

WHEREAS, the services of a professional engineering firm are necessary to manage and complete the project as described in Attachment "A", and

WHEREAS, the Engineer represents that it is fully capable and qualified to provide professional engineering services to the City;

NOW, THEREFORE, the City and Engineer, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

**SECTION I
SCOPE OF AGREEMENT**

Engineer agrees to perform certain professional engineering services as defined in Attachment "A" attached hereto and made a part hereof for all purposes, hereinafter sometimes referred to as "Scope of Services," and for having rendered such services, the City agrees to pay Engineer compensation as stated in Section VII.

**SECTION II
CHARACTER AND EXTENT OF SERVICES**

Engineer shall do all things necessary to render the engineering services and perform the Scope of Services with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license. It is expressly understood and agreed that Engineer is an Independent Contractor in the performance of the services agreed to herein. It is further understood and agreed that Engineer shall not have the authority to obligate or bind the City, or make representations or commitments on behalf of the City or its officers or employees without the express

prior written approval of the City Manager. The City shall be under no obligation to pay for services rendered not identified in Attachment "A" without prior written authorization from the City Manager.

SECTION III OWNERSHIP OF WORK PRODUCT

Engineer agrees that the City shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by Engineer pursuant to this Agreement. The City shall be the absolute and unqualified owner of all studies, exhibits, maps, reports, analyses, determinations, recommendations, computer files, and other documents prepared or acquired pursuant to this Agreement with the same force and effect as if the City had prepared or acquired the same.

SECTION IV TIME FOR PERFORMANCE

The time for performance of the Scope of Services is 180 calendar days beginning from the execution date of this Agreement. Upon written request of Engineer, the City Manager may grant time extensions to the extent of any delays caused by the City or other agencies with which the services must be coordinated and over which Engineer has no control.

SECTION V COMPLIANCE AND STANDARDS

Engineer agrees to perform the services hereunder in accordance with generally accepted standards applicable thereto and shall use that degree of care and skill commensurate with the applicable profession to comply with all applicable state, federal, and local laws, ordinances, rules, and regulations relating to the services to be performed hereunder and Engineer's performance.

SECTION VI INDEMNIFICATION

To the fullest extent permitted by Texas Local Government Code Section 271.904, Engineer shall and does hereby agree to indemnify, hold harmless and defend the City, its officers, agents, and employees against liability for damage caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Engineer, the Engineer's agent, consultant under contract, or another entity over which the Engineer exercises control.

SECTION VII ENGINEER'S COMPENSATION

For and in consideration of the services rendered by Engineer pursuant to this Agreement, the City shall pay Engineer only for the actual services performed under the Scope of Services, on the basis set forth in Attachment "A," up to an amount not to exceed \$47,000.00.

SECTION VIII TERMINATION

The City may terminate this Agreement at any time by giving written notice to Engineer. Upon receipt of such notice, Engineer shall discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to the Agreement. As soon as practicable after receipt of notice of termination, Engineer shall submit a sworn statement, showing in detail the services performed under this Agreement to the date of termination. The City shall then pay Engineer for such services performed under this Agreement as those services bear to the total services called for under this Agreement, less such payments on account of the charges as have been previously made. Copies of all completed or partially completed designs, maps, studies, documents and other work product prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated.

SECTION IX ADDRESSES, NOTICES AND COMMUNICATIONS

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to Engineer at the following address:

Sledge Engineering, LLC
481 Tucek Road
Taylor, TX 76574

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, to the City at the following address:

City of Brenham
200 W. Vulcan St.
Brenham, TX 77833
Attn: Donald Reese

SECTION X LIMIT OF APPROPRIATION

Prior to the execution of this Agreement, Engineer has been advised by the City and Engineer clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the City shall have available only those sums as expressly provided for under this Agreement to discharge any and all liabilities which may be incurred by the City and that the total compensation that Engineer may become entitled to hereunder and the total sum that the City shall become liable to pay to Engineer hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

SECTION XI SUCCESSORS AND ASSIGNS

The City and Engineer bind themselves and their successors and assigns to the other party of this Agreement and to the successors and assigns of such other party, in respect to all covenants of this Agreement. Engineer shall not assign, sublet, or transfer its interest in this Agreement without the written consent of the City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City or any public body which may be a party hereto.

SECTION XII MODIFICATIONS

This instrument, including Attachment "A," contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. To the extent there is a conflict between the provisions of this Agreement and the provisions of Attachment "A," this Agreement shall control. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing signed by both parties hereto.

SECTION XIII ADDITIONAL SERVICES OF ENGINEER

If authorized in writing by the City Manager, Engineer shall furnish, or obtain from others, Additional Services that may be required because of significant changes in the scope, extent or character of the portions of the Project designed or specified by the Engineer, as defined in Attachment "A." These Additional Services, plus reimbursable expenses, will be paid for by the Owner on the basis set forth in Attachment "A," up to the amount authorized in writing by the City Manager.

SECTION XIV CONFLICTS OF INTEREST

Pursuant to the requirements of the Chapter 176 of the Texas Local Government Code, Engineer shall fully complete and file with the City Secretary a Conflict of Interest Questionnaire.

SECTION XV PAYMENT TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

Invoices for Basic and Additional Services and reimbursable expenses will be prepared in accordance with Engineer's standard invoicing practices and will be submitted to the City by Engineer at least monthly. Invoices are due and payable thirty (30) days after receipt by the City.

SECTION XVI INSURANCE

Engineer shall procure and maintain insurance in accordance with the terms and conditions set forth in Attachment "B," for protection from workers' compensation

claims, claims for damages because of bodily injury, including personal injury, sickness or disease or death, claims or damages because of injury to or destruction of property including loss of use resulting therefrom, and claims of errors and omissions.

SECTION XVII MISCELLANEOUS PROVISIONS

A. This Agreement is subject to the provisions of the Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code. The approval or payment of any invoice shall not be considered to be evidence of performance by Engineer or of the receipt of or acceptance by the City of the services covered by such invoice.

B. Venue for any legal actions arising out of this Agreement shall lie exclusively in the federal and state courts of Washington County, Texas.

C. This Agreement is for sole benefit of the City and Engineer, and no provision of this Agreement shall be interpreted to grant or convey to any other person any benefits or rights.

D. Engineer further covenants and agrees that it does not and will not knowingly employ an undocumented worker. An "undocumented worker" shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States, or (b) authorized by law to be employed in that manner in the United States.

IN WITNESS WHEREOF, the City of Brenham has lawfully caused this Agreement to be executed by the Mayor of said City and attested by the City Secretary and Sledge Engineering, LLC, acting by and through its duly authorized officer/representative, does now sign, execute, and deliver this instrument.

EXECUTED on this _____ day of _____, 2021.

ENGINEER:

Sledge Engineering, LLC

By: Stephen P. Dorman

Name: Stephen P. Dorman, P.E.

Title: Vice-President

CITY OF BRENHAM, TEXAS

Milton Y. Tate Jr., Mayor

ATTEST:

Jeana Bellinger, City Secretary

ATTACHMENT “A”

City of Brenham 2021 Strategic Facility Plan

SCOPE OF SERVICES: The purpose of the Strategic Facility Plan is to evaluate the City of Brenham’s Facilities (i.e., buildings and related properties) and provide recommendations for improvements including short term (5-year CIP) and long-term (20-year) objectives:

- A. **Objective:** The purpose of this Strategic Facility Plan (SFP) is to evaluate the buildings and sites for a) building systems and components, b) safety and security, c) TDLR/ADA compliance, and d) operational adequacy. The assessment criteria are evaluated based on various federal and state agencies, associations, industry standards, including but not limited to:
1. ASHRAE Association of Heating, Refrigerating, and Air Conditioning Engineers
 2. IES Illumination Engineering Society
 3. NFPA National Fire Protection Association
 4. AEIS TEA Academic Excellence Indicator System report.
 5. ADAAG Americans with Disabilities Act Accessibility Guidelines.
 6. TAS Texas Accessibility Standards.
 7. BOMA Building Owners and Managers Association.
 8. IBC International Building Code.

The total estimated square footage of all existing buildings is **250,000 SF (see Attachment 2)**

- B. **Work Items** – The scope of work includes the following items:
1. Prepare project schedule with estimated timeline to complete scope of work (anticipated time of completion is 6 months – **see Attachment 1**). Schedule shall be adjusted based on data and staff availability for initial review and to meet anticipated Council meetings.
 2. Review data provided by City. Anticipated data required by City:
 - a. List of contacts (City Manager, Department Heads, and others)
 - b. Procedures for Sledge staff to visit all buildings (keys, badges, etc.)
 - c. Previous studies and reports that may be applicable (such as inventories, Demographic Studies, Master Plans, etc.).
 - d. Inventory list of facilities including building age, SF, additions

- by year
- e. Floor plans for each building with room numbers
- f. Construction plans showing floor plans (as available)
- g. Inventory list of HVAC, Roof, and other physical components with age and model numbers where applicable
- h. Surveys completed by key staff (survey to be provided by Sledge)
- i. Technology information including
 - i. Network diagrams
 - ii. Network inventory
 - iii. Network configurations
 - iv. Wireless inventory
 - v. Building plans (PDF or .dwg) - With Telecommunication Room, PA head-end, and Security System head-end locations
 - vi. Current ISP contract
- 3. Conduct site visits to assess the following system components:
 - i. Accessibility
 - ii. Grounds
 - iii. Outside break areas or rest areas
 - iv. Drainage
 - v. Parking
 - vi. Traffic
 - vii. Structural
 - viii. Mechanical
 - ix. Electrical
 - x. Plumbing
 - xi. Finishes
 - xii. Safety / Security
 - xiii. Office Spaces
 - xiv. Specialized Spaces
 - xv. Support Spaces
 - xvi. Technology
 - xvii. Energy Efficiency
- 4. Review newer buildings critical infrastructure scheduled replacements and include in cost estimates (such as HVAC replacements, schedule for new/replacement roofs, etc.)
- 5. Summarize all pertinent data for each site in table to be included in final report.
- 6. Review building capacity based on information provided by City to determine need for expansion for various departments (Demographic Study is ***not*** included in this scope of work).
- 7. Prepare an aerial site plan for use in illustrating the existing sites and planning future improvements as applicable (aerial images from Google Earth or other sources shall be used – new aerial photography is not included).
- 8. List deficiencies and general observations for each building in summary table

9. Identify capital improvement cost (including construction and non-construction costs) to correct identified deficiencies and to address future growth and instructional program.
10. Identify all property owned by the City on aerial maps. Future planning of new buildings on new property is not included in this scope.
11. Provide summary information on energy (HVAC, lighting, and controls)
12. Describe existing technology and plan for future improvements.
13. Summarize existing building information in graphs and tables as applicable (building age, square footage of buildings, weighted age, etc.)
14. Prioritize overall costs into three priority categories and summarize for budget planning for buildings and improvements. Alternatives for building rehabilitation shall be provided including options for new replacement buildings in similar or new locations where appropriate.
15. Coordinate with City during course of work including:
 - a. Report status to City on monthly basis for project (via written update with teleconference/videoconference attendance at monthly staff meetings)
 - b. Work with City's appointed staff
 - c. Support City's communication and dialogue with local community (Up to **2 public meetings** are included with City Council and/or Facility Committee)
 - d. Coordinate with other entities that may impact future improvements at the various sites such as TxDOT, County, etc.

C. Deliverables – The deliverables to be provided include:

1. Facilities Assessment for each site (separate PDF files for each site with photos may be provided as separate documents or included as part of main report as applicable)
2. Strategic Facility Plan (report) including site layout plans, cost estimates, summary, and recommendations (digital copy of report to be provided in PDF format; **hardcopies are not included. Hardcopies to be made by City if desired.**)
3. Review report with staff
4. Review report with City Council (and any appointed Facility Committee if applicable)

D. Facilities Included – The following existing sites are included in this scope of work for facility planning:

See Attachment 2 – City of Brenham Property Schedule

All building properties owned by the City will be included. Other facilities not listed above as well as all offsite infrastructure (utilities, roads, etc.) are excluded from this scope of work.

E. Compensation – The lump sum compensation for this scope of work payable by City to Sledge shall be:

1. **Total Lump Sum**_____ **\$47,000**
2. Progress payments may be requested by SE based on the amount of services completed. Payment for the services of SE shall be due and payable upon receipt.

Attachment 1 – Anticipated Schedule

Kickoff Meeting	0 days
Owner Provided Information	30 days
Data Collection	60 days
Prioritized Cost Estimates	30 days
Draft Report and Review with Staff	30 days
Final Report and Present to Council	30 days
Total Estimated Timeline	6 months

Attachment 2 – City of Brenham – Existing Property Schedule

ID	Address Line 1	City	Zip	Num	Roof Type	Square Footage	Building Value	Contents Value	Year Built	Occupancy	Department	Construction Code
2	3001 Aviation Way	Brenham	77833	0		5993	289,218	-	1991	Hangar/Office	Airport	Non-Combustible
7	315 W 2nd St	Brenham	77833	0		15884	664,945	1,300,000	1980	Office/Warehouse	Purchasing	Non-Combustible
10	330 W Mansfield St	Brenham	77833	0		880	127,796	1,000	1980	Community Center	Parks & Recreation	Masonry Non-Combustible
11	600 N Market St	Brenham	77833	0		1562	137,799	1,000	1980	Community Center	Parks & Recreation	Masonry Non-Combustible
15	1005 N Park St	Brenham	77833	1		416	26,708	1,000	1980	Concession Stand	Parks & Recreation	Frame
16	300 N Park St	Brenham	77833	1		1272	116,730	1,500	1980	Concession Stand	Parks & Recreation	Joisted Masonry
17	Independence St	Brenham	77833	1		808	66,718	1,500	1980	Concession Stand/Restroom	Parks & Recreation	Frame
18	630 N Market St	Brenham	77833	1		630	68,101	1,500	1963	Concession Stand/Restroom	Parks & Recreation	Joisted Masonry
20	410 W 2nd St	Brenham	77833	1		7630	356,361	450,000	1980	Warehouse	Electric	Non-Combustible
21	101 N Chappel Hill St	Brenham	77833	1		14276	1,374,901	587,000	1978	Fire Station	Fire & EMS Services	Masonry Non-Combustible
27	909 Ewing St	Brenham	77833	1		3258	112,048	41,500	1972	Sign Shop	Street	Non-Combustible
31	Independence St	Brenham	77833	1		441	52,034	-	1980	Restroom #10	Parks & Recreation	Joisted Masonry
32	6000 Fireman's Park	Brenham	77833	1		378	48,416	-	1980	Restroom #2	Parks & Recreation	Joisted Masonry
34	Wilson Park	Brenham	77833	1		625	65,335	-	1980	Restroom #6	Parks & Recreation	Joisted Masonry
35	Flower Park	Brenham	77833	1		625	65,335	-	1980	Restroom #7	Parks & Recreation	Joisted Masonry
36	Jackson St Park	Brenham	77833	1		625	65,335	-	1980	Restroom #9	Parks & Recreation	Joisted Masonry
39	1502 E Blue Bell Blvd	Brenham	77833	1		5520	185,789	56,000	1974	Headquarters	Street	Masonry Non-Combustible
40	1011 S Austin St	Brenham	77833	1		7809	313,053	29,200	1976	Shop	Gas	Non-Combustible
46	301 W Jefferies St	Brenham	77833	1		8449	244,420	44,500	1970	Warehouse	Parks & Recreation	Non-Combustible
49	1105C S Austin St	Brenham	77833	2		3171	440,211	178,000	1986	Treatment Plant	Water Treatment	Masonry Non-Combustible
57	301 N Baylor St	Brenham	77833	1		3439	295,602	355,000	1947	Communications Building	Communications	Frame
59	506 S Austin St	Brenham	77833	2		12515	573,327	30,000	1960	Public Utility Bldg	Maintenance	Non-Combustible
60	City Park 36N	Brenham	77833	1		2220	469,579	5,000	2000	Concession/Restroom	Parks & Recreation	Masonry Non-Combustible
61	City Park 36N	Brenham	77833	1		3136	236,013	5,000	2000	Pavilion/RR/Storage	Parks & Recreation	Non-Combustible
62	City Park 36N	Brenham	77833	1		2174	454,150	5,000	2000	Concession/Restroom	Parks & Recreation	Masonry Non-Combustible
64	City Park 36N	Brenham	77833	1		504	97,364	-	2000	Restroom	Parks & Recreation	Masonry Non-Combustible
65	Blue Bell Rd/Tom Green St	Brenham	77834	1		21238	5,415,114	200,000	2001	Natorium	Aquatics	Masonry Non-Combustible
69	200 W Vulcan St	Brenham	77833	1		46209	7,007,407	1,063,700	1980	City Hall/Generator/(2) Flag Pole	Administration	Masonry Non-Combustible
89	1710 E Tom Green St	Brenham	77833	1		16629	2,008,987	-	2004	Boys & Girls Club/Flag Pole	Boys & Girls Club	Masonry Non-Combustible
91	2005 Old Chappel Hill Rd	Brenham	77833	1		2500	254,954	431,500	2005	Operations Building/(3) Flag Pole	Wastewater Treatment	Non-Combustible
107	105 S Market St	Brenham	77833	1		1887	256,231	5,000	2007	Firehouse Museum	Fire & EMS Services	Frame
113	1800 Longwood Dr	Brenham	77833	2	Normal/Asf	26958	5,507,051	538,675	2009	Police HQ/Light Poles/Fence/Flag Pole	Police	Masonry Non-Combustible
115	137 Lounge Rd	Brenham	77833	0		570	491,606	5,000	2011	All Sports Building	Parks & Recreation	Non-Combustible
116	200 AH Ehrig Dr	Brenham	77833	0			51,608	-	2002	Hasskarl Tennis Courts Restroom	Parks & Recreation	Non-Combustible
117	W Alamo St	Brenham	77833	0			303,263	-	2006	Downtown Public Restrooms	Parks & Recreation	Non-Combustible
120	1825 N Park St	Brenham	77833	1	Metal	1200	200,367	-	2012	Restrooms @ Amphitheatre	Parks & Recreation	Joisted Masonry
124	100 MLK Pkwy	Brenham	77833	1	Normal/Asf	14348	3,494,839	1,365,235	2016	NCRM Library	Library	Masonry Non-Combustible
125	1804 Longwood Drive	Brenham	77834	1	Metal	8904	2,871,873	88,400	2016	Animal Shelter	Animal Shelter	Joisted Masonry
					Total:	244683	34,810,588					

ATTACHMENT "B"

INSURANCE

1. The Engineer shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Engineer, its agents, representatives, employees or subcontractors. The Engineer's insurance coverage shall be primary insurance with respect to the City, its officials, and employees. Any insurance or self-insurance maintained by the City, its officials, or employees shall be considered in excess of the Engineer's insurance and shall not contribute to it. Further, the Engineer shall include the City as an additional insured under its policy(ies). 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 work commences.

2. Standard Insurance Policies Required:

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

3. 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, except for Professional Liability Insurance.

(e) The City of Brenham, its officials, employees and volunteers, are to be added as "Additional Insured" except as to the Worker's Compensation and Professional Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, or employees.

(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 has been given to the City.

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

4. 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. Professional Liability

(a) Minimum coverage of \$1,000,000.00 per claim.

8. 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.

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

ACORDTM**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

02/01/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USAA INSURANCE AGENCY, INC. 9800 FREDERICKSBURG RD. SAN ANTONIO, TX 78284-9836 800 531-8722		CONTACT NAME: PHONE (A/C, No, Ext): 800 531-8722 FAX (A/C, No): 888 900-5380 E-MAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A : Travelers Cas & Surety Co of America	
		INSURER B :	
		INSURER C :	
		INSURER D :	
		INSURER E :	
		INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC
	COMMERCIAL GENERAL LIABILITY						
	☐ CLAIMS-MADE ☐ OCCUR						
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS
	UMBRELLA LIAB						EACH OCCURRENCE \$
	EXCESS LIAB						AGGREGATE \$
	☐ OCCUR ☐ CLAIMS-MADE						
	DED ☐ RETENTION \$						
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATU-TORY LIMITS ☐ OTH-ER ☐ ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y / ☐ N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below
	PROFESSIONAL LIABILITY			105675300	08/30/2020	08/30/2021	E.I. EACH ACCIDENT \$ E.I. DISEASE - EA EMPLOYEE \$ E.I. DISEASE - POLICY LIMIT \$
A	PROFESSIONAL LIABILITY			105675300	08/30/2020	08/30/2021	\$1,000,000 EACH CLAIM 3,000,000 AGGREGATE

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER**CANCELLATION****PROOF OF COVERAGE**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

to be



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/12/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER PAYCHEX INSURANCE AGENCY INC 150 SAWGRASS DR ROCHESTER, NY 14620 (877) 362-6785	CONTACT NAME: PHONE (A/C, No, Ext): (877) 362-6785 FAX (A/C, No): (877) 677-0447 E-MAIL ADDRESS: paychex@travelers.com
INSURED SLEDGE ENGINEERING LLC 481 TUCEK RD TAYLOR, TX 76574	INSURER(S) AFFORDING COVERAGE INSURER A : TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** 116607836011170 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	☐ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR ☐ GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG \$ \$ \$ \$ \$ \$
	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) \$ \$ \$ \$
	☐ UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE AGGREGATE \$ \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		UB-3N490446-20	08/23/2020	08/23/2021	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER CITY OF BRENHAM 200 W VULCAN ST BRENHAM, TX 77833	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Michael J. Mulligan</i>
--	--



THE HARTFORD
BUSINESS SERVICE CENTER
3600 WISEMAN BLVD
SAN ANTONIO TX 78251

March 12, 2021

City of Brenham
200 W VULCAN ST
BRENHAM TX 77833

Account Information:

Policy Holder Details :	SLEDGE ENGINEERING LLC
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Contact Us

Business Service Center

Business Hours: Monday - Friday
(7AM - 7PM Central Standard Time)

Phone: (888) 242-1430

Fax: (888) 443-6112

Email: agency.services@thehartford.com

Website: <https://business.thehartford.com>

Enclosed please find a Certificate Of Insurance for the above referenced Policyholder. Please contact us if you have any questions or concerns.

Sincerely,

Your Hartford Service Team



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/12/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USAA INSURANCE AGENCY INC/PHS 65812846 The Hartford Business Service Center 3600 Wiseman Blvd San Antonio, TX 78251	CONTACT NAME: PHONE (888) 242-1430 FAX (888) 443-6112 (A/C, No, Ext): E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE NAIC#
INSURED SLEDGE ENGINEERING LLC 481 TUCEK RD TAYLOR TX 76574-5670	INSURER A : Sentinel Insurance Company Ltd. 11000 INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/Y YY)	LIMITS	
A	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ General Liability	X		65 SBA TB5157	08/27/2020	08/27/2021	EACH OCCURRENCE	\$2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
							MED EXP (Any one person)	\$10,000
							PERSONAL & ADV INJURY	\$2,000,000
							GENERAL AGGREGATE	\$4,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☒ LOC OTHER:						PRODUCTS - COMP/OP AGG	\$4,000,000
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS			65 SBA TB5157	08/27/2020	08/27/2021	COMBINED SINGLE LIMIT (Ea accident)	\$2,000,000
							BODILY INJURY (Per person)	
							BODILY INJURY (Per accident)	
							PROPERTY DAMAGE (Per accident)	
	UMBRELLA LIAB EXCESS LIAB ☐ OCCUR ☐ CLAIMS-MADE ☐ RETENTION \$						EACH OCCURRENCE	
							AGGREGATE	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE	OTH-ER
							E.L. EACH ACCIDENT	
							E.L. DISEASE - EA EMPLOYEE	
							E.L. DISEASE - POLICY LIMIT	
A	EMPLOYMENT PRACTICES LIABILITY			65 SBA TB5157	08/27/2020	08/27/2021	Each Claim Limit	\$10,000
							Aggregate Limit	\$10,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Those usual to the Insured's Operations. Certificate holder is an additional insured per the Business Liability Coverage Form SS0008 attached to this policy.

CERTIFICATE HOLDER

City of Brenham
 200 W VULCAN ST
 BRENHAM TX 77833

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Susan L. Castaneda

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Regular City Council
AGENDA ITEM 11.

Agenda Item: Discuss and Possibly Act Upon an Ordinance on Its First Reading Authorizing the Placement of A Stop Sign on Vineyard Pass at Its Intersection with State Highway 36 North and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-March 25, 2021

Department: Public Works

Staff Contact: Dane Rau

Classification: Regular

SUMMARY STATEMENT:

After conducting a final walk thru of the Vintage Farms Subdivision we noticed that it would be best to place a stop sign at the exit of Vineyard Pass as it connects to Highway 36 N. It is customary for vehicular traffic to stop before entering on Highway 36 N as it is exiting from the Vintage Farms Subdivision, but we would like to have a physical sign stating this. All other stop signs in the subdivision were adopted with the final acceptance but this one was noticed at the 1 yr. walk thru. We would like to install one at this location so that it represents a stopping point before entering the busy highway. By acting upon this approval through an ordinance it will give Brenham PD the authority to write a citation or support them during an accident investigation.

We would like to ask Council to approve on its first reading, the placement of stop sign on Vineyard Pass at its intersection with Highway 36 North. If approved this item will move to a second reading adopting the ordinance and then the stop sign can be placed.

ATTACHMENTS:

- (1) Ordinance
- (2) Map

RELEVANCE TO COMPREHENSIVE PLAN:

RECOMMENDED ACTION:

Approve an Ordinance on its first reading authorizing the placement of a stop sign on Vineyard Pass at its intersection with Highway 36 North and authorize the Mayor to execute any necessary documentation.

ORDINANCE NO. O-_____

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.

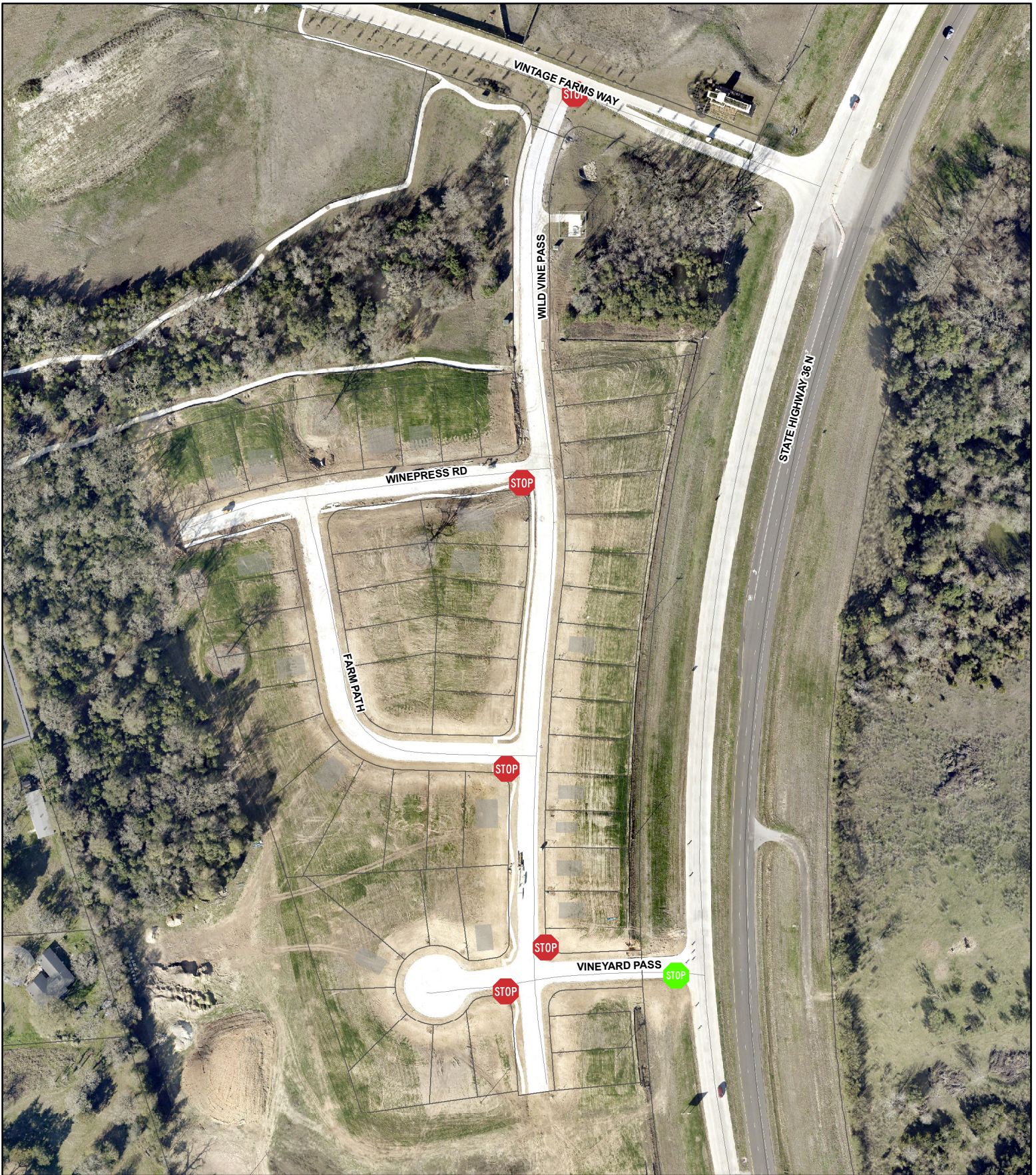
PASSED and APPROVED on its first reading this the ____ day of _____ 2021.

PASSED and APPROVED on its second reading this the ____ day of _____ 2021.

ATTEST:

Milton Y. Tate, Jr.
Mayor

Jeana Bellinger, TRMC, CMC
City Secretary



1 inch = 193 feet



Proposed Stop Sign



Existing Stop Sign





Regular City Council
AGENDA ITEM 12.

Agenda Item: Discuss and Possibly Act Upon an Ordinance on Its First Reading Authorizing the Placement of A Stop Sign on Ava Drive at Its Intersection with Old Masonic Road and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-March 25, 2021

Department: Public Works

Staff Contact: Dane Rau

Classification: Regular

SUMMARY STATEMENT:

Over the last year we have received several requests to place a stop sign on Ava Dr. at its intersection with Old Masonic Rd. Originally, we thought that a stop sign was just missing but after looking at past Google Earth imagery there was never a stop sign placed at this intersection when Ava Dr. was developed. After looking at the way Ava Dr. intersects with Old Masonic Rd., we feel that due to Old Masonic Rd being a non-residential street, Ava Dr. needs a stop sign prior to entering onto Old Masonic Rd. Most citizens realize that this is treated as a stopping point but without a physical sign some citizens are just yielding or rolling through the intersection. By acting upon this approval through an ordinance it will give Brenham PD the authority to write a citation or support them during an accident investigation.

We would like to ask Council to approve on its first reading, the placement of stop sign on Ava Dr. at its intersection with Old Masonic Rd. If approved this item will move to a second reading adopting the ordinance and then the stop sign can be placed.

ATTACHMENTS:

- (1) Ordinance
- (2) Map

RELEVANCE TO COMPREHENSIVE PLAN:

RECOMMENDED ACTION:

Approve an Ordinance on its first reading authorizing the placement of a stop sign on Ava Dr. at its intersection with Old Masonic Road and authorize the Mayor to execute any necessary documentation.

ORDINANCE NO. O-_____

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.

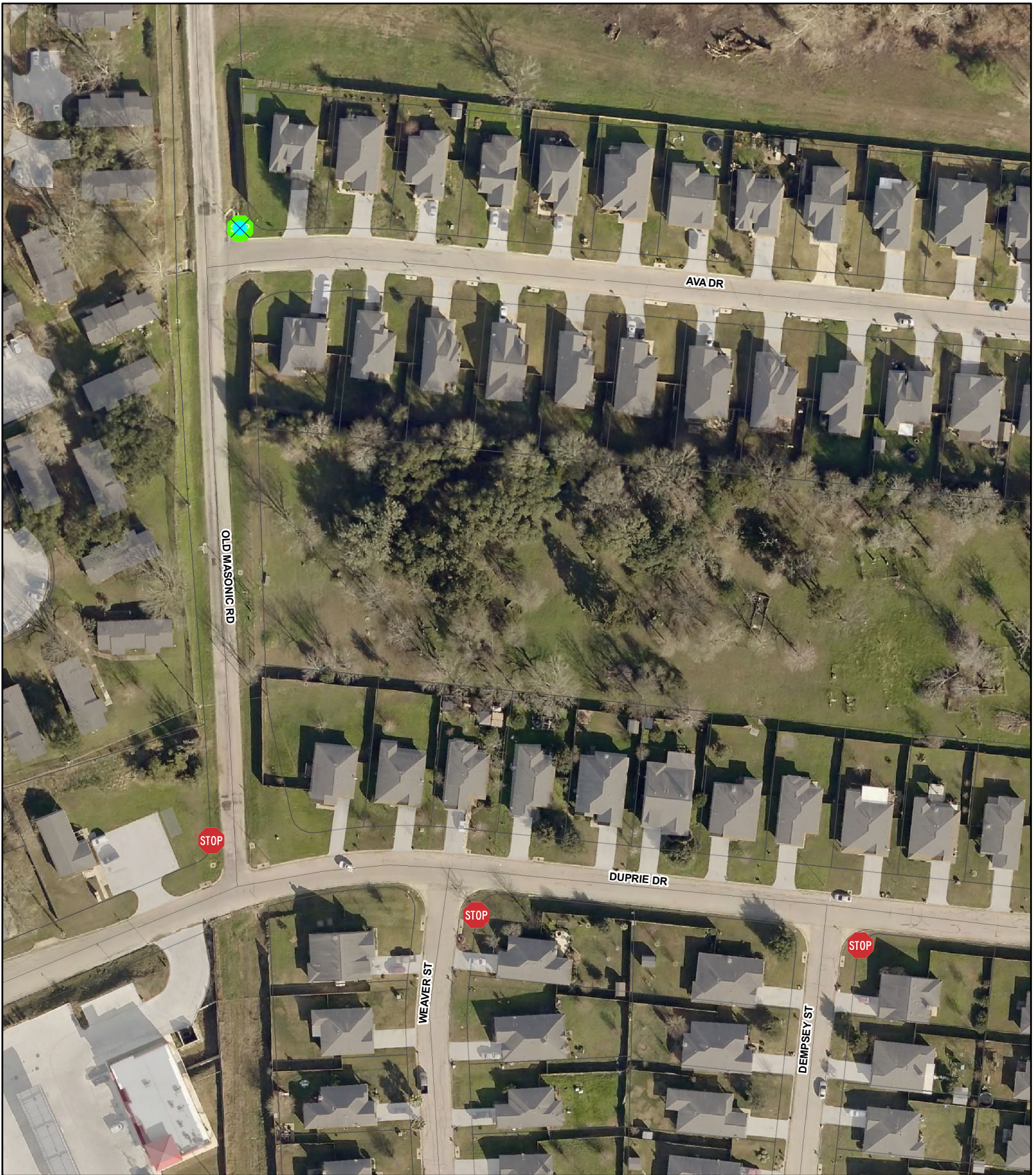
PASSED and APPROVED on its first reading this the ____ day of _____ 2021.

PASSED and APPROVED on its second reading this the ____ day of _____ 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 13.

Agenda Item: Discuss and Possibly Act Upon the Acceptance of the Audit from Seidel Schroeder for Fiscal Year 2020

Meeting Type: Regular Meeting-March 25, 2021

Department: Finance

Staff Contact: Carolyn Miller

Classification: Regular

SUMMARY STATEMENT:

State law requires that all general-purpose local governments publish, within six months of the close of the fiscal year, a complete set of financial statements presented in conformity with generally accepted accounting principles (GAAP) and audited in accordance with generally accepted auditing standards by a firm of licensed certified public accountants.

Pursuant to that requirement, and on behalf of the Finance Department, I am proud to issue the Comprehensive Annual Financial Report of the City of Brenham for the fiscal year ended September 30, 2020. At Thursday's council meeting, Michele Kwiatkowski, audit partner with Seidel Schroeder, will present the annual audit.

A bound copy of the Annual Report was distributed to Mayor and City Council Members. This report will be on file for review in the City Secretary's Office. A copy can also be downloaded from the City of Brenham's website at www.cityofbrenham.org

ATTACHMENTS:

None

RELEVANCE TO COMPREHENSIVE PLAN:

Plan 2040 implementation if made possible by the City's adherence to the annual budget which identifies how essential capital projects and annual priorities will be funded and maintained.

RECOMMENDED ACTION:

Accept the Audit from Seidel Schroeder for Fiscal Year 2020



Regular City Council
AGENDA ITEM 15.

Agenda Item: Section 551.071 - Texas Government Code - Consultation with Attorney - Consultation with City Attorney Regarding Lease Agreement with Aviators Plus, LLC to Lease and Occupy the Terminal Building Located at the Brenham Municipal Airport

Meeting Type: Regular Meeting-March 25, 2021

Department: Development Services

Staff Contact: Stephanie Doland

Classification: Executive Session

SUMMARY STATEMENT:

As discussed in Executive Session

ATTACHMENTS:

None

RELEVANCE TO COMPREHENSIVE PLAN:

RECOMMENDED ACTION:

None - discussion only



Regular City Council
AGENDA ITEM 16.

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-March 25, 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:

None - discussion only.



Regular City Council
AGENDA ITEM 17.

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-March 25, 2021

Department: Development Services

Staff Contact: Stephanie Doland

Classification: Regular

SUMMARY STATEMENT:

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

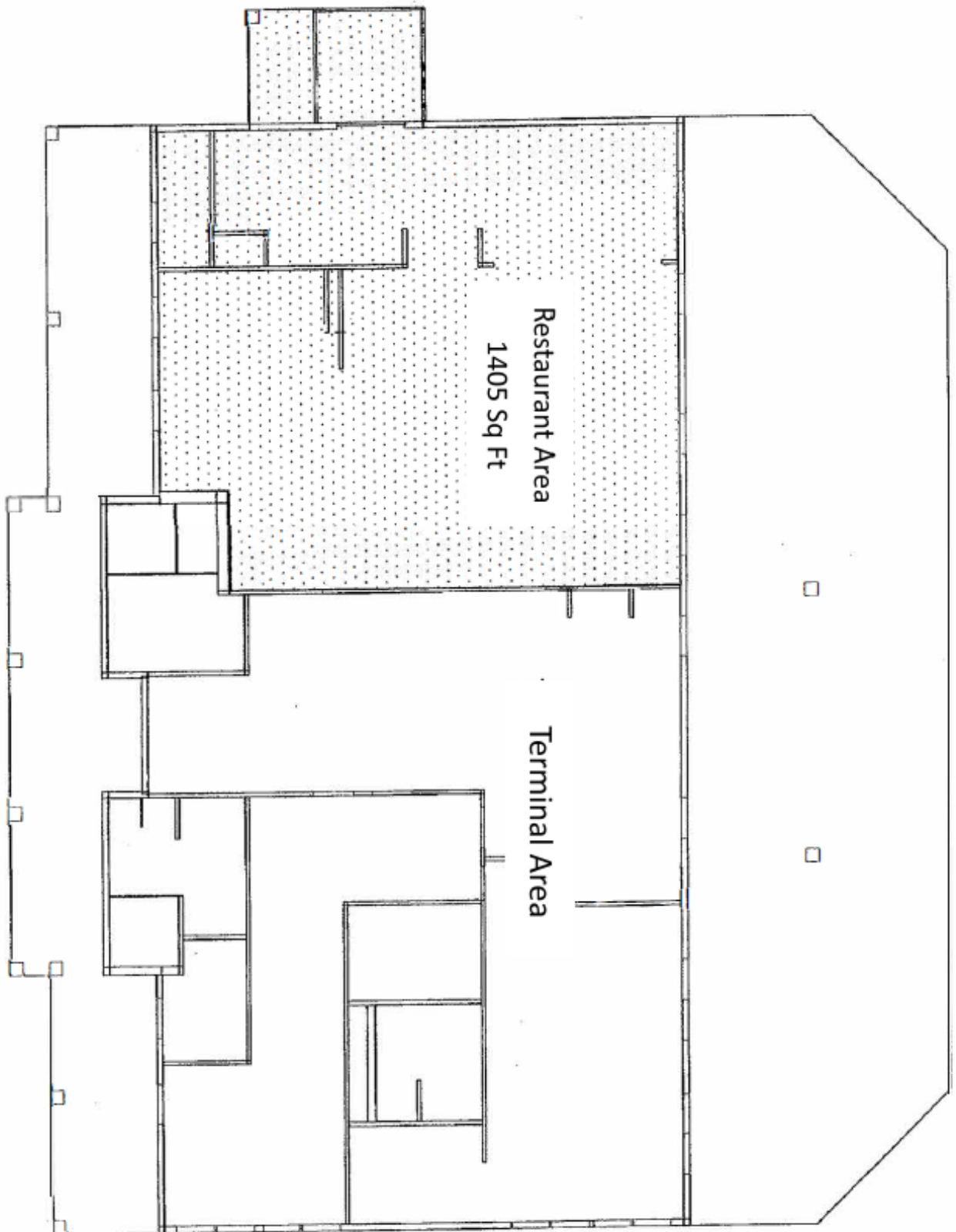
By: _____
Hon. Milton Tate, Mayor

ATTEST:

By: _____

By: _____
City Secretary

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



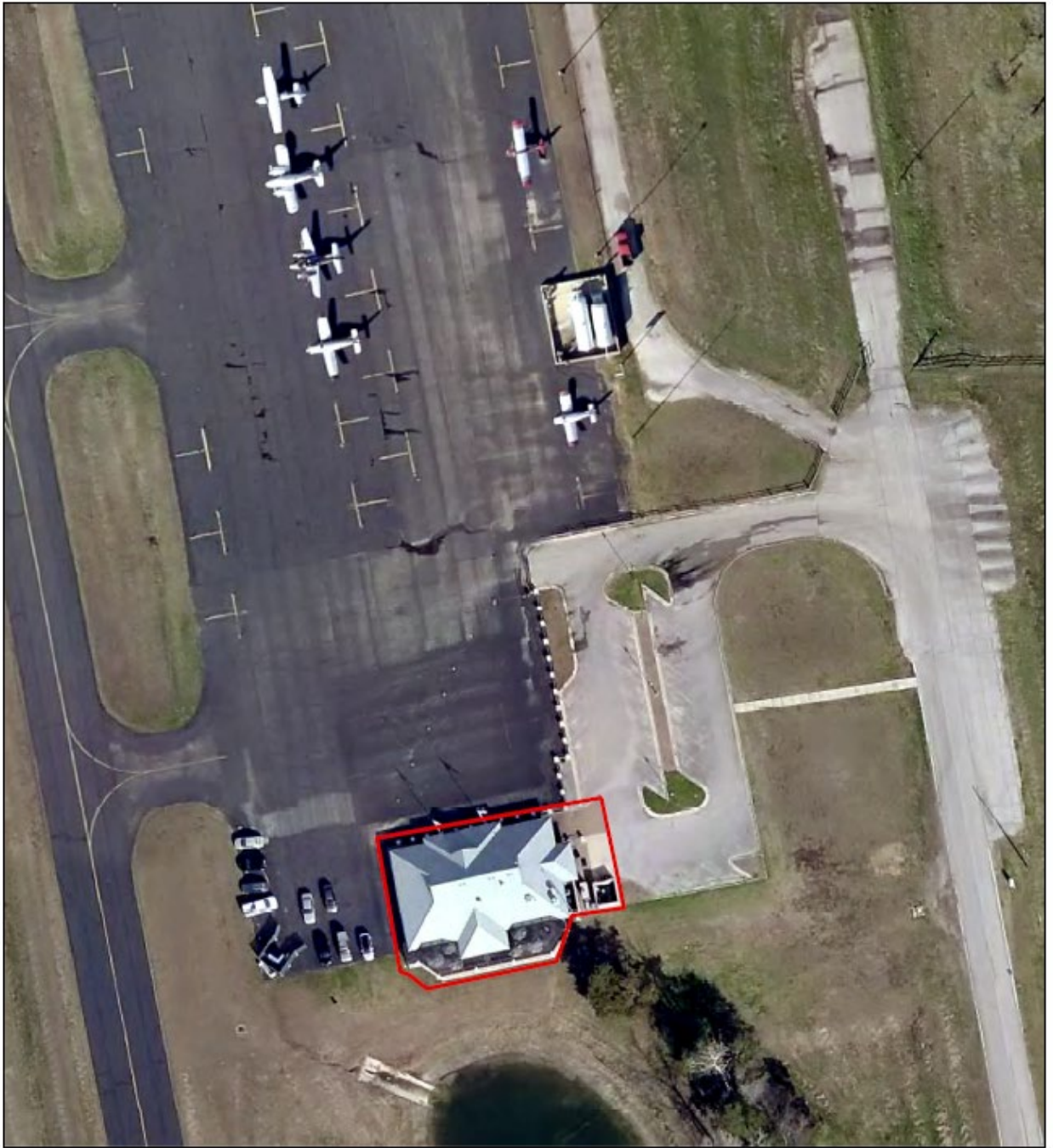


Exhibit "B"

Brenham Municipal Airport

Area to be maintained by Lessee

1 inch = 72 feet





Regular City Council
AGENDA ITEM 18.

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-March 25, 2021

Department: Development Services

Staff Contact: Stephanie Doland

Classification: Regular

SUMMARY STATEMENT:

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:

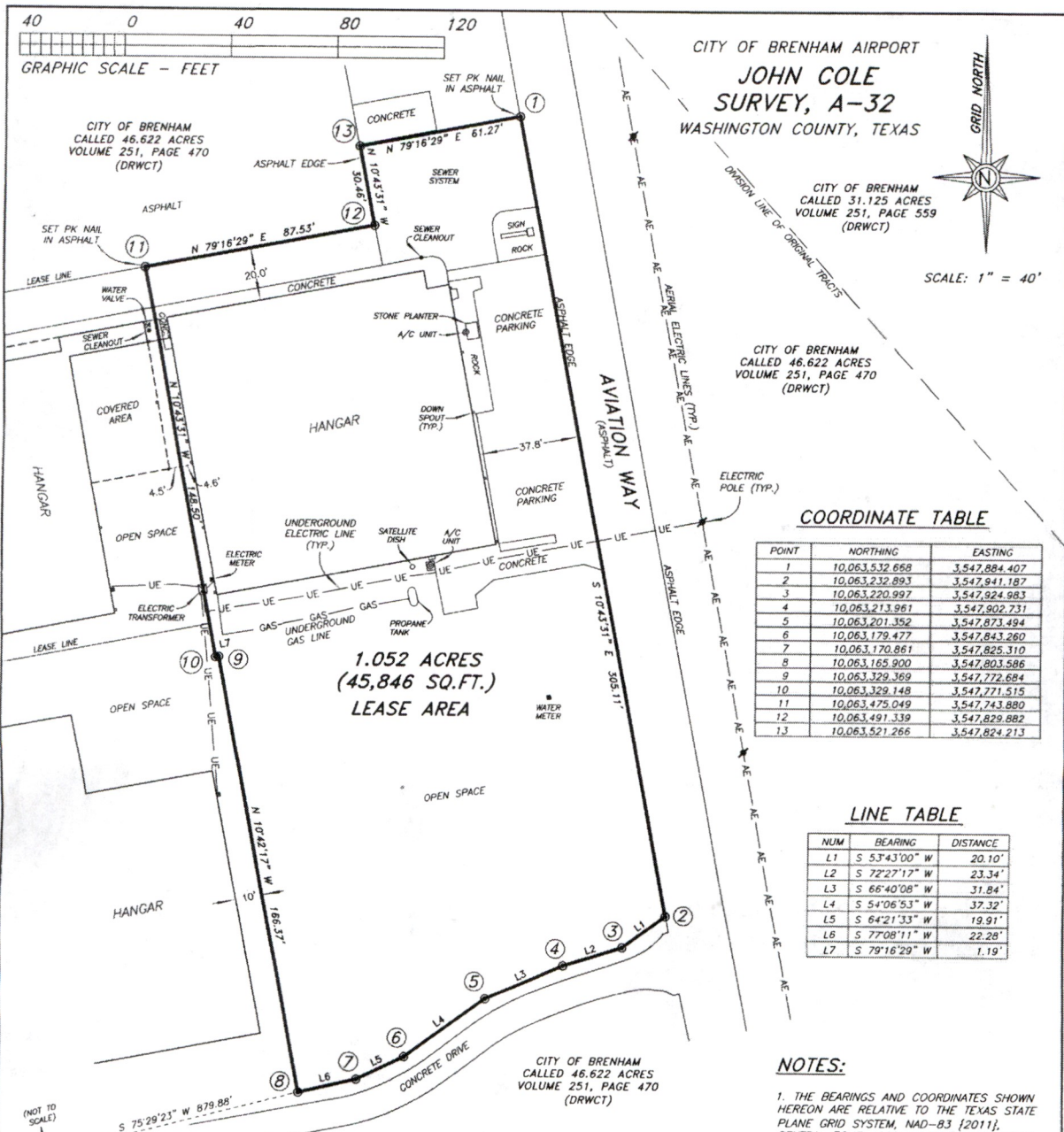
ATTEST:

ATTEST:

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

By:
Title:

EXHIBIT "A"



SURVEY MAP

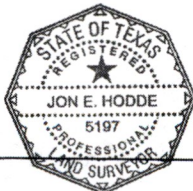
SHOWING A SURVEY OF 1.052 ACRES OF LAND (45,846 SQ. FT.) LEASE AREA, LYING AND BEING SITUATED IN WASHINGTON COUNTY, TEXAS, PART OF THE JOHN COLE SURVEY, A-32, BEING PART OF THE SAME LAND DESCRIBED AS 46.622 ACRES IN THE DEED FROM RAYMOND JESKE, ET UX TO THE CITY OF BRENHAM, DATED MARCH 6, 1964, AS RECORDED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

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

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LAND SURVEYING, INC.
ALL RIGHTS RESERVED.

**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:

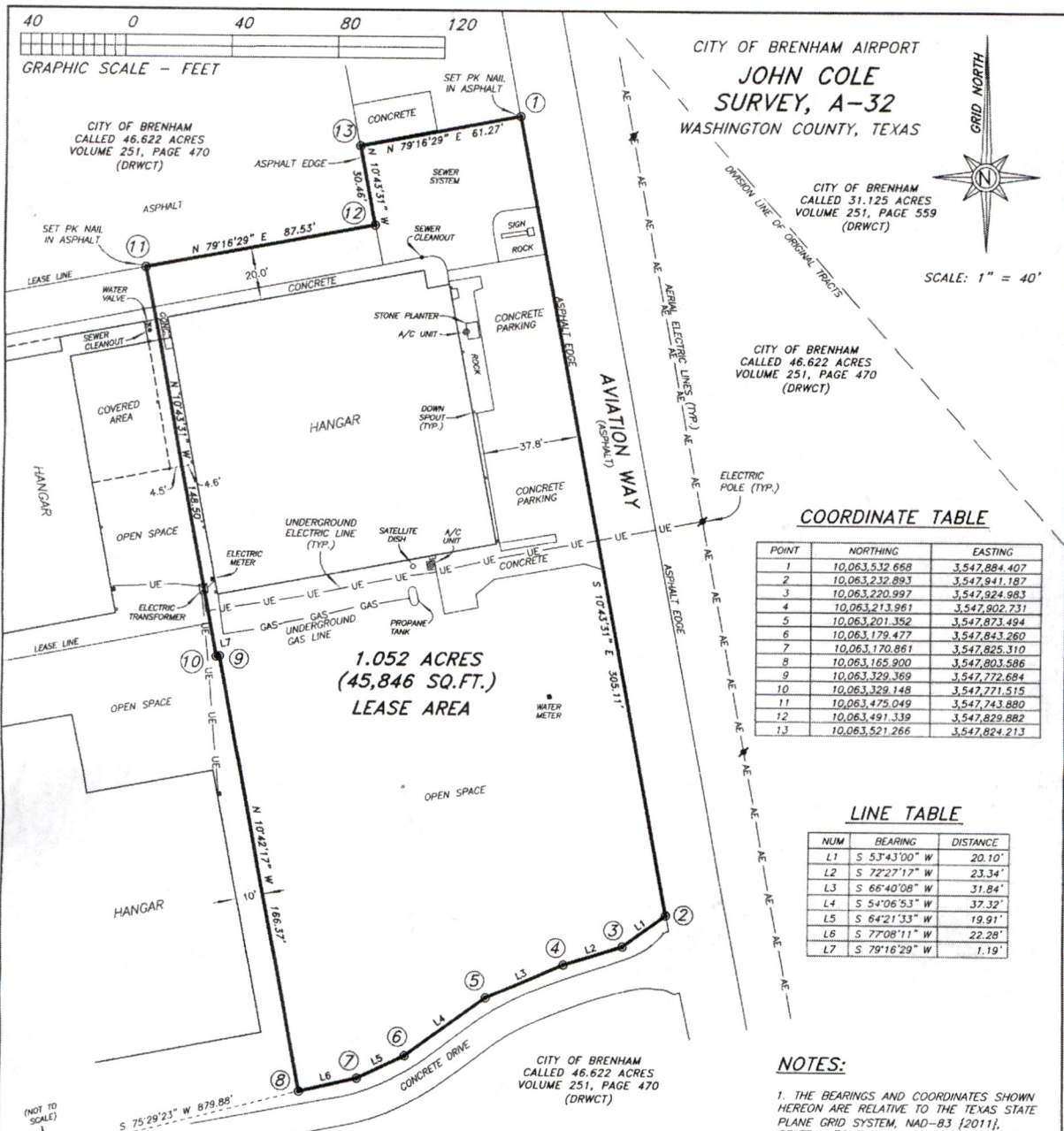
ATTEST:

ATTEST:

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

By:
Title:

EXHIBIT "A"



SURVEY MAP

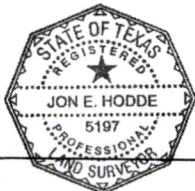
SHOWING A SURVEY OF 1.052 ACRES OF LAND (45,846 SQ. FT.) LEASE AREA, LYING AND BEING SITUATED IN WASHINGTON COUNTY, TEXAS, PART OF THE JOHN COLE SURVEY, A-32, BEING PART OF THE SAME LAND DESCRIBED AS 46.622 ACRES IN THE DEED FROM RAYMOND JESKE, ET UX TO THE CITY OF BRENHAM, DATED MARCH 6, 1964, AS RECORDED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

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

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