



**NOTICE OF A REGULAR MEETING
THE BRENHAM CITY COUNCIL
THURSDAY, FEBRUARY 7, 2019 AT 1:00 P.M.
SECOND FLOOR CITY HALL
COUNCIL CHAMBERS
200 W. VULCAN ST.
BRENHAM, TEXAS**

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags – Councilmember Cantey**
- 3. Service Recognitions**
 - **Jared Campbell, Police** **5 Years**
 - **Lance Weiss, Police** **10 Years**
 - **John Snowden, Police** **15 Years**
 - **Becky Squyres, Public Utilities** **20 Years**
 - **Dant Lange, Police** **25 Years**
 - **Michele Glenz, Public Utilities** **30 Years**
- 4. Citizens Comments**

CONSENT AGENDA

5. Statutory Consent Agenda

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

- 5-a. Minutes from the December 20, 2018 and January 10, 2019 Regular City Council Meetings** **Pages 1-22**
- 5-b. Ordinance No. O-19-006 on Its Second Reading Amending Chapter 23, Subdivisions, of the Code of Ordinances of the City of Brenham, Section 23-22(1) to Remove the Twenty-Five (25) Foot Minimum Building Setback for Lots that Abut Arterial or Collector Streets in Brenham, Washington County, Texas (Case No. P-18-026)** **Pages 23-24**

- 5-c. Ordinance No. O-19-007 on Its Second Reading Amending Appendix A - “Zoning” of the Code of Ordinances of the City of Brenham by Amending Part II, Division 1, Section 17, Height and Area Exceptions of General Applicability, to Establish a Twenty-Five (25) Foot Minimum Building Setback for Property Adjacent to Arterial Roadways in Brenham, Washington County, Texas (Case No. P-18-026)**

Pages 25-26

PUBLIC HEARING

- 6. Public Hearing to Consider Amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas by Amending Part 1, Sec. 5.02 Definitions, to Redefine Accessory Building or Use, Garage Apartment and Establish a New Definition for Accessory Dwelling Units (ADU); Part II, Division 1, Section 10 – Accessory Structures and Uses to Establish Standards Related to the Development of Such Uses; Part II, Division 1, Section 17 – Height and Area Exceptions of General Applicability; and Part II, Division 2 – Zoning District Regulations, to Allow Accessory Dwelling Units by Specific Use Permit in the Residential (R-1), Mixed Residential (R-2), and Manufactured Home Residential (R-3) Zoning Districts and By-Right in the Local Business/Residential Mixed Use (B-1) Zoning District (Case No. P-18-025)**
- Pages 27-71**
- 7. Public Hearing to Consider an Amendment to the Official Zoning Map of the City of Brenham, to Change the Zoning District of a 51.119 Acre Tract of Land, Described as R20290 (WCAD), John Long Survey, A156, in Brenham, Washington County, Texas from a Mixed Residential Use (R-2) District to a Commercial Research and Technology Use (B-2) District (Case No. P-19-005)**
- Pages 72-92**

REGULAR SESSION

- 8. Discuss and Possibly Act Upon Resolution No. R-19-003 Amending the City of Brenham Human Resources Policy Manual**
- Pages 93-218**
- 9. Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending Chapter 5, Animal and Fowl, of the Code of Ordinances of the City of Brenham**
- Pages 219-252**
- 10. Discuss and Possibly Act Upon Resolution No. R-19-007 Authorizing the City of Brenham’s Participation in the U. S. Department of Justice and the U.S. Department of the Treasury Asset Forfeiture and Equitable Sharing Programs**
- Pages 253-256**

11. **Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas by Amending Part 1, Sec. 5.02 Definitions, to Redefine Accessory Building or Use, Garage Apartment and Establish a New Definition for Accessory Dwelling Units (ADU); Part II, Division 1, Section 10 – Accessory Structures and Uses to Establish Standards Related to the Development of Such Uses; Part II, Division 1, Section 17 – Height and Area Exceptions of General Applicability; and Part II, Division 2 – Zoning District Regulations, to Allow Accessory Dwelling Units by Specific Use Permit in the Residential (R-1), Mixed Residential (R-2), and Manufactured Home Residential (R-3) Zoning Districts and By-Right in the Local Business/Residential Mixed Use (B-1) Zoning District (Case No. P-18-025)**
Pages 257-264
12. **Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending the Official Zoning Map of the City of Brenham, to Change the Zoning District of a 51.119 Acre Tract of Land, Described as R20290 (WCAD), John Long Survey, A156, in Brenham, Washington County, Texas from a Mixed Residential Use (R-2) District to a Commercial Research and Technology Use (B-2) District (Case No. P-19-005)**
Pages 265-269
13. **Discuss and Possibly Act Upon a Bid for City of Brenham Project No. 2017-02 Related to the 2017 Wastewater Treatment Plant Storm Damage Repairs and Authorize the Mayor to Execute Any Necessary Documentation**
Pages 270-285
14. **Discuss and Possibly Act Upon Resolution No. R-19-008 Authorizing the Acceptance of Infrastructure Improvements in the Vintage Farms Phase I Subdivision**
Pages 286-300
15. **Discuss and Possibly Act Upon an Ordinance on Its First Reading Providing for the Abandonment of a 1,517 Square Foot Portion and a 137 Square Foot Portion of a 12-Foot Wide Alley in Block 6 of Hurt’s Addition, Bounded on the North by West First Street, Bounded on the East by the Brenham Wholesale Grocery Co., Inc. Called 10, 999 Square Foot Tract, Bounded on the South by the Remainder of the 12-Foot Alley, and Being Bounded on the West by the Brenham Wholesale Grocery Co., Inc. Called 0.4726 Acre Tract and the Susan Crawford Called 0.37 Acre Tract, Situated in Brenham, Washington County, Texas, Out of the A. Harrington Survey, Abstract No. 55 and Authorize the Mayor to Execute Any Necessary Documentation**
Pages 301-310
16. **Discuss and Possibly Act Upon the Purchase of a Trackhoe for the Sanitation Department and Authorize the Mayor to Execute Any Necessary Documentation**
Pages 311-318
17. **Discuss and Possibly Act Upon Bid No. 10-2018 Related to the Henderson Park Improvements, Phase 1, and Authorize the Mayor to Execute Any Necessary Documentation**
Pages 319-327

18. **Discuss and Possibly Act to Rescind the December 15, 2016 Approval by the City Council of a Lease Agreement Between the City of Brenham and Simon Theater Master Tenant, LLC for the Management and Operation of the Barnhill Center at the Historic Simon Theater and Authorize the Mayor to Execute Any Necessary Documentation** **Pages 328-352**
19. **Discuss and Possibly Act Upon a Memorandum of Understanding Between the City of Brenham and Simon Theater Master Tenant, LLC for the Management and Operation of the Barnhill Center at the Historic Simon Theater and Authorize the Mayor to Execute Any Necessary Documentation** **Pages 353-368**
20. **Discuss and Possibly Act Upon the Acceptance of the 2018 Audit of the Washington County Appraisal District by Seidel, Schroeder & Company** **Pages 369-370**
21. **Discuss and Possibly Act Upon a Professional Services Agreement Between the City of Brenham and Strand Associates, Inc. for Services Related to the Baker Katz Development Project and Authorize the Mayor to Execute Any Necessary Documentation** **Pages 371-383**
22. **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 salutory 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

23. **Section 551.071 – Texas Government Code – Consultation with Attorney – Consultation with the City Attorney for the Purpose of Seeking Legal Counsel Regarding Brenham Police Department Matters, Personnel, and Associated Issues**

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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

RE-OPEN REGULAR SESSION

Adjourn

CERTIFICATION

I certify that a copy of the February 7, 2019 agenda of items to be considered by the City of Brenham City Council was posted to the City Hall bulletin board at 200 W. Vulcan, Brenham, Texas on February 4, 2019 at **12:20 PM**.

Kacey A. Weiss, TRMC

Deputy City Secretary I

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

I certify that the attached notice and agenda of items to be considered by the City Council was removed by me from the City Hall bulletin board on the _____ day of _____, 2019 at _____ AM PM.

Signature

Title

Brenham City Council Minutes

A regular meeting of the Brenham City Council was held on December 20, 2018 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 Danny Goss
Councilmember Keith Herring
Councilmember Albert Wright
Councilmember Clint Kolby

Members absent:

None

Others present:

City Manager James Fisher, Assistant City Manager – Chief Financial Officer Carolyn Miller, Assistant City Manager of Public Utilities Lowell Ogle, City Attorney Cary Bovey, City Secretary Jeana Bellinger, Deputy City Secretary I Kacey Weiss, Deputy City Secretary II Karen Stack, Fire Chief Ricky Boeker, Police Chief Allwin Barrow, Development Services Director Lori Sanguedolce, Public Works Director Dane Rau, Sara Parker, Kevin Schmidt, Tammy Jaster and Kevin Boggus

Citizens present:

None

Media Present:

Arthur Hahn, 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 Ebel**

3. Citizens Comments

There were no citizen comments.

CONSENT AGENDA

4. Statutory Consent Agenda

- 4-a. Minutes from the November 29, 2018 Regular City Council Meeting
- 4-b. Ordinance No. O-18-019 for the Creation of a Tax Increment Reinvestment Zone Containing Approximately 2,201 Acres of Land Generally Located Along U.S. Highway 290, South Market Street, and West Main Street Corridors within the City Limits of the City of Brenham, Texas
- 4-c. Ordinance No. O-18-020 Amending the Official Zoning Map of the City of Brenham, to Change the Zoning District from an Industrial Use (I) District to a Mixed Residential Use (R-2) District on a Tract of Land Described as 0.4884 Acres, Being a Part of Tract 337 of the Arrabella Harrington Survey, A-55, Located at 1008 Burleson Street in Brenham, Washington County, Texas (Case No. P-18-027)
- 4-d. Ordinance No. O-18-021 Amending the Official Zoning Map of the City of Brenham to Change the Zoning District from an Industrial Use (I) District to a Manufactured Home Residential Use (R-3) District on a Tract of Land Described as 15.36 Acres, Being a Part of Tract 447 of the Phillip Coe Survey, A-31, Located at 2834 Industrial Boulevard, in Brenham, Washington County, Texas (Case No. P-18-028)
- 4-e. Ordinance No. O-18-022 Amending the FY2017-18 Adopted Budget
- 4-f. Ordinance No. O-18-023 Amending the FY2018-19 Adopted Budget

A motion was made by Councilmember Cantey and seconded by Councilmember Kolby to approve the Statutory Consent Agenda Items 4-a. through 4-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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

WORK SESSION

5. Discussion and Presentation Regarding Changes to Bagged Garbage Disposal and Associated Charges at the City of Brenham Recycling Center

Public Works Director Dane Rau presented this item. Rau explained that the Sanitation Department is reviewing possible strategies to improve operations and efficiency at the Recycling Center. Rau stated that the City currently collects bagged trash at the downtown Recycle Center and the Collection Center. Rau advised that at each location, the fee has been \$1.00 per bag for over 15 years. Rau noted that dumpsters at the Recycle Center are emptied by residential trash workers, who are being pulled from residential service sometimes several times per day and sometimes this interferes with timely residential service.

Rau explained that he has discussed operations with Strategic Budget Officer Debbie Gaffey and Assistant City Manager Lowell Ogle. Rau advised that they are in agreement that services, efficiency, and accountability will be improved by moving the trash portion of the services from the Recycle Center to the Collection Center only. Rau stated that staff plans to make the transition effective February 1, 2019. Rau noted that in January, staff plans to ask Council to increase the disposal fee from \$1.00 per bag to \$2.00 per bag.

REGULAR SESSION

6. Discuss and Possibly Act Upon an Ordinance on Its First Reading Authorizing the Placement of a Stop Sign on Center Street at Its Intersection with Crockett Street

Public Works Director Dane Rau presented this item. Rau explained that in order to remain consistent in this area, staff believes there should be a stop sign on the end of Center Street where it intersects with Crockett Street. Rau stated that Alma and Ross Streets both have stop signs when intersecting with Crockett Street, but Center Street does not. Rau noted that there would only be one stop sign added going northbound on Center Street.

A motion was made by Councilmember Cantey and seconded by Councilmember Herring to approve an ordinance on its first reading authorizing the placement of a stop sign on Center Street at its intersection with Crockett Street.

Mayor Pro Tem Ebel called for a vote. The motion passed with Council voting as follows:

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

7. Discuss and Possibly Act Upon an Ordinance on Its First Reading Authorizing the Placement of a Stop Sign on Duprie Drive at Its Intersection with Stephanie Street

Public Works Director Dane Rau presented this item. Rau explained that in order to remain consistent in this area, staff is asking Council to authorize the placement of a stop sign on the end of Duprie Drive where it intersects with Stephanie Street. Rau noted that Stephanie Street has the right of way and without a stop sign on Duprie, it allows traffic to freely enter Stephanie. Rau advised that this has been brought to staff's attention and staff would like to address it and keep this area consistent. Rau stated there would only be one stop sign added going eastbound on Duprie Drive as it intersects with Stephanie Street. Rau noted that staff would place a temporary stop sign there to let the citizens know before installing the permanent sign.

A motion was made by Councilmember Cantey and seconded by Councilmember Kolby to approve an ordinance on its first reading authorizing the placement of a stop sign on Duprie Drive at its intersection with Stephanie Street.

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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

8. Discuss and Possibly Act Upon an Ordinance on Its First Reading Authorizing the Placement of a Stop Sign on Hosea Street at Its Intersection with Riggs Street

Public Works Director Dane Rau presented this item. Rau explained that due to the new housing development on the end of Hosea Street, staff would like to place a stop sign on the north corner of Hosea Street where it intersects with Riggs Street. Rau stated that the south side of the intersection already has a stop sign but with the additional traffic, staff needs to complete the 2-way stop so that traffic on Hosea Street stops to traffic on Riggs Street. Rau noted that this was noticed by staff, as well as brought to Rau's attention by a citizen.

A motion was made by Councilmember Herring and seconded by Councilmember Cantey to approve an ordinance on its first reading authorizing the placement of a stop sign on Hosea Street at its intersection with Riggs Street.

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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

9. Discuss and Possibly Act Upon the Purchase of Playground Equipment for the Blue Bell Aquatic Center Through the BuyBoard Local Government Purchasing Cooperative Contract Number 512-16 and Authorize the Mayor to Execute Any Necessary Documentation

Public Works Director Dane Rau presented this item. Rau stated BCDC has approved funds to replace playground equipment at the Blue Bell Aquatic Center, which is 17 years old. Rau advised that the footprint of the new equipment is different from the old equipment, and vendors have recommended a new pour-n-play surface be installed. Rau noted that BCDC allocated \$60,000 to replace the structure. City Attorney Cary Bovey stated that his office had requested changes to the terms and conditions of the purchase contract. Purchasing Manager Sara Parker stated that she had not yet received a response from the vendor, but based on staff's previous experience with the vendor, staff did not think there would be a problem.

A motion was made by Councilmember Herring and seconded by Councilmember Cantey to approve the purchase of playground equipment for the Blue Bell Aquatic Center from Kraftsman Commercial Playgrounds and Water Parks in the amount of \$98,136.16 for the Blue Bell Aquatic Center, subject to approval of terms and conditions by the City Attorney, 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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

10. Discuss and Possibly Act Upon an Ordinance on Its First Reading for the Abandonment of a Portion of Salley Street

Development Services Director Lori Sanguedolce presented this item. Sanguedolce explained that Corey Harmon has requested that a portion of the unimproved Salley Street right-of-way be abandoned. Sanguedolce stated that he submitted an abandonment application on November 28th and the adjacent property owners have agreed to the abandonment and that it should remain with Mr. Harmon's property. Sanguedolce noted that the abandonment would not create an undue burden on traffic.

A motion was made by Councilmember Kolby and seconded by Mayor Pro Tem Ebel to approve an ordinance on its first reading for the abandonment of a portion of Salley Street.

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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

11. Discuss and Possibly Act Upon an Ordinance on Its First Reading Authorizing a Variance to Residential Lot Requirements, as Outlined in Section 23-22(5)(a) of the City of Brenham's Code of Ordinances, to Remove the Requirement to have Property Frontage on Public Right-of-Way for Property Located on Selma Lane, Specifically Described as Tract 195 (2.412 acres) and Part of Tract 197 (4.257 acres) of the Elizabeth Gordon Survey, A-49, Being a Total of 6.669 Acres, in Brenham, Washington County, Texas

This item was withdrawn by the requestor.

12. Discuss and Possibly Act Upon a Multi-Year Maintenance Contract with Presidio Networked Solutions Group, LLC and a Payment Agreement with Presidio Technology Capital, for the City of Brenham's Cisco SmartNet Phone System and Critical Network Hardware and Authorize the Mayor to Execute Any Necessary Documentation

A motion was made by Mayor Pro Tem Ebel and seconded by Councilmember Cantey to remove Item 12 from the table.

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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

Information Technology Manager Kevin Schmidt presented this item. Schmidt explained that this item was tabled at December 13, 2018 meeting due to a request for more information about the original cost of the City's phone system purchased in 2003. Schmidt stated the original cost was \$290,212.51 after the financing costs.

Schmidt explained that the City of Brenham entered into a three-year contract for Cisco SmartNet Maintenance in 2015. Schmidt stated that this maintenance contract is essential for operating, supporting, and maintaining all critical network communications systems including BVWACS radio system transport, public safety MDTs, and City-wide voice and email communications. Schmidt advised that the contract provides access to technical support, access to software upgrades, and replacement parts for hardware failures. Schmidt noted that a multi-year contract is beneficial because Cisco raises the SmartNet costs between 3% and 10% annually. Schmidt explained that a three year renewal locks in the 2018 pricing and includes an additional discount for multi-year customers. Schmidt stated that this is estimated to save the City \$7,000.00 to \$17,000.00 over the course of the contract period.

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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

A motion was made by Councilmember Herring and seconded by Councilmember Wright to approve a multi-year maintenance contract with Presidio Networked Solutions Group, LLC and a payment agreement with Presidio Technology Capital, for the City of Brenham's Cisco SmartNet Phone System and critical network hardware 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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

13. Administrative/Elected Officials Report

City Manager James Fisher reported on the following:

- Baylor Scott and White Hospital reported today that their Labor and Delivery department will remain open.
- City offices will be closed Christmas Eve, Christmas Day, and New Year's Day.
- The next City Council meeting will be January 10th.

Development Services Director Lori Sanguedolce reported on the following:

- A Comprehensive Plan Town Hall Meeting will be held on January 10th, at 5:15 p.m. at the Library. The meeting is open to the public.

Police Chief Allwin Barrow reported on the following:

- Santa in Blue gifts will be distributed at the Police Station from 4:00 p.m. to 6:30 p.m. on December 21st.

Council adjourned into Executive Session at 1:35 p.m.

EXECUTIVE SESSION

14. Section 551.072 – Texas Government Code – Deliberation Regarding Real Property – Discussion Regarding the Possible Acquisition of Real Property Located in the Downtown Area

Executive Session adjourned at 1:45 p.m.

RE-OPEN REGULAR AGENDA

15. Discuss and Possibly Act Upon Authorization of the Mayor and City Manager to Identify Real Property in the Downtown Area for Possible Acquisition and to Enter Into Contract Negotiations with the Owner(s) for the Acquisition of Said Real Property

A motion was made by Councilmember Herring and seconded by Councilmember Cantey to authorize the Mayor and City Manager to identify real property in the downtown area for possible acquisition and to enter into contract negotiations with the owner(s) for the acquisition of said real property.

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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

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 January 10, 2019 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 Danny Goss
Councilmember Keith Herring
Councilmember Albert Wright
Councilmember Clint Kolby

Members absent:

None

Others present:

City Manager James Fisher, City Attorney Cary Bovey, City Secretary Jeana Bellinger, Deputy City Secretary I Kacey Weiss, Assistant City Manager – Chief Financial Officer Carolyn Miller, Comptroller Stacy Hardy, Human Resources Director Susan Nienstedt, Sara Parker, Strategic Budget Officer Debbie Gaffey, Director of Tourism and Marketing Jennifer Eckermann, Crystal Locke, Tammy Jaster, Fire Chief Ricky Boeker, Public Works Director Dane Rau, Assistant City Manager of Public Utilities Lowell Ogle, Development Services Director Lori Sanguedolce, Stephanie Doland, Kim Hodde, Economic Development Director Susan Cates, Lloyd Powell, Kevin Boggus, Kyle Moudry, Eliborio Villarreal, Gary Marburger, Johnny Randermann, Ande Bostain, Brian Smith, Dane Bybee, Chris Bugaj, Vincent Estrada and Joe Moore

Citizens present:

Perry Thomas, Jim Kruse, John Mabie and Dorothy Morgan

Media Present:

Arthur Hahn, Brenham Banner Press; and Josh Blaschke, KWHI

1. Call Meeting to Order

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

3. Service Recognitions

- | | |
|--------------------------------------|----------|
| ➤ Kyle Moudry, Water Treatment | 5 Years |
| ➤ Eliborio Villarreal, Street | 15 Years |
| ➤ Gary Marburger, Gas | 20 Years |
| ➤ Johnny Randermann, Water Treatment | 30 Years |

4. Citizens Comments

There were no citizen comments.

CONSENT AGENDA

5. Statutory Consent Agenda

- 5-a. Minutes from the December 6, 2018 Special City Council Meeting
- 5-b. Ordinance No. O-19-001 on Its Second Reading Authorizing the Placement of a Stop Sign on Center Street at Its Intersection with Crockett Street
- 5-c. Ordinance No. O-19-002 on Its Second Reading Authorizing the Placement of a Stop Sign on Duprie Drive at Its Intersection with Stephanie Street
- 5-d. Ordinance No. O-19-003 on Its Second Reading Authorizing the Placement of a Stop Sign on Hosea Street at Its Intersection with Riggs Street
- 5-e. Ordinance No. O-19-004 on Its Second Reading for the Abandonment of a Portion of Salley Street
- 5-f. Acceptance of a Donation from The Andrus Foundation in the Amount of \$25,000.00 for the City of Brenham Police Department
- 5-g. Approve an Addendum to and Modification of the Visitors Center Lease Agreement Between the City of Brenham and Simon Theater Master Tenant, LLC and Authorize the Mayor to Execute Any Necessary Documentation

A motion was made by Councilmember Herring and seconded by Councilmember Wright to approve the Statutory Consent Agenda Items 5-a. through 5-f. as presented and that Item 5-g. be moved to the Regular Session for discussion.

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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

WORK SESSION

6. Presentation and Discussion on the City of Brenham's Sign Ordinance

Assistant Director of Development Services Stephanie Doland presented this item. Doland explained that during the workshop portion of the City Council meeting on September 20, 2018, staff presented an update on the current sign ordinance and asked for feedback concerning an update to the ordinance. Doland stated that staff was directed to draft revisions to the sign ordinance and to meet with citizens, property owners, the Main Street Board and the Planning and Zoning Commission to discuss said revisions.

Doland advised that since September 20th staff has facilitated two public meetings, one specific to Downtown and one at-large signage meeting with the public to discuss signage needs. Doland noted that based on public feedback received, sign laws and rulings, and the existing sign ordinance staff has begun to assemble a draft to amend the sign ordinance. Doland stated that staff intends to provide an update on the status of the sign ordinance amendment process, including:

- Feedback received from citizens and business owners
- Proposed sign ordinance language
- Timeline for citizen and business owner feedback
- Timeline for Main Street Board and Planning and Zoning Commission feedback

7. Presentation and Discussion Regarding Revisions to the City of Brenham Human Resources Policy Manual

Human Resources Director Susan Nienstedt presented this item. Nienstedt explained that the Human Resource policy was last updated in full in 2015. Nienstedt stated that revisions and changes of the policy have been reviewed and discussed by our Employee Committee, Leadership Team, and the City Attorney. Nienstedt presented a summary of the proposed changes.

REGULAR SESSION

5-g. Approve an Addendum to and Modification of the Visitors Center Lease Agreement Between the City of Brenham and Simon Theater Master Tenant, LLC and Authorize the Mayor to Execute Any Necessary Documentation

Assistant City Manager – Chief Financial Officer Carolyn Miller presented this item. Miller stated that when the lease agreement was presented in October this section of building was inadvertently omitted from the agreement. Miller stated that the city is using this space for a conference room so it needs to be added to the lease.

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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

8. Discuss and Possibly Act Upon Resolution No. R-19-001 Authorizing the Giving of Notice of Intention to Issue City of Brenham, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2019; and Declaring an Effective Date

Assistant City Manager – Chief Financial Officer Carolyn Miller presented this item. Miller explained that during the Council budget workshops and in the adoption of the FY18-19 budget, staff discussed issuing certificates of obligation (COs) for general government and water utility projects. Miller stated the general government projects of \$1.5 million include covering the costs to construct street and drainage improvements for Burleson at Higgins Branch, Jefferson at Higgins Branch and Industrial Boulevard. Miller advised that the water utility improvements of \$1.5 million include replacement of over 2.7 miles of cast iron (CI) and asbestos cement (AC) pipe in the water distribution system. Miller noted that this agenda item is giving notice of the City's intent to issue Certificates of Obligation, Series 2019 not to exceed \$3.1 million for these purposes including bond issuance costs.

Miller explained that the initial step in the financing process is to give notice of the City's intent to issue the certificates of obligation, and upon Council's approval, the notice itself will be published in the Brenham Banner Press. Miller stated that Garry Kimball, the City's financial adviser, would handle securing the pricing and bring it back to Council for action at the February 21, 2019 meeting.

A motion was made by Councilmember Goss and seconded by Councilmember Wright to approve Resolution No. R-19-001 authorizing the giving of notice of intention to issue City of Brenham, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2019.

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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

9. Discuss and Possibly Act Upon Change Order No. 1 to the Contract with Kraftsman Commercial Playgrounds & Water Parks for Playground Equipment at the Blue Bell Aquatic Center and Authorize the Mayor to Execute Any Necessary Documentation

Purchasing Manager Sara Parker presented this item. Parker explained that the original quote from Kraftsman Commercial Playgrounds and Water Parks did not include the waiver of subrogation on Workman's Compensation insurance, which is required by the City of Brenham. Parker stated that the revised quote was received too late to make the change on the agenda item for the December 20th meeting. Parker noted that due to the time sensitivity of the project, staff moved forward with issuing the purchase order as originally approved and now request the change order for the additional charges.

A motion was made by Mayor Pro Tem Ebel and seconded by Councilmember Kolby to approve Change Order No. 1 in the amount of \$824.75 to the contract with Kraftsman Commercial Playgrounds & Water Parks for playground equipment at the Blue Bell Aquatic Center 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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

10. Discuss and Possibly Act Upon Resolution No. R-19-002 Adopting a New Fee Schedule for the City of Brenham Parks and Recreation Department

Public Works Director Dane Rau presented this item. Rau explained that over the last year, staff has evaluated the rates that are charged for facilities and services within the Parks and Recreation Division. Rau stated that at the most recent Parks and Recreation Advisory Board meeting in December, staff presented proposed rates to the board. Rau noted that these proposed rates were discussed in length and evaluated in depth compared to many factors including private facilities in Brenham, public facilities in Brenham, surrounding cities rental rates, along with looking at added expenses of the Parks and Recreation assets since the last evaluation. Rau added that at the meeting, it was approved unanimously that these rates should be adjusted to reflect a closer comparison to similar assets in the community and public facilities in surrounding areas.

John Mabie, president of the Washington County Little League, addressed Council. Mabie stated that he would like to see the usage fees increased for the select teams that use Brenham fields.

A motion was made by Councilmember Herring and seconded by Councilmember Cantey to approve Resolution No. R-19-002 adopting a new fee schedule for the City of Brenham Parks and Recreation Department with the revision that select team rates be increased from \$200 to \$250.

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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

11. Discuss and Possibly Act Upon the Fitness Passport Service Agreement between the City of Brenham and United Healthcare Optum Health Care Solutions, LLC Related to a Fitness Program and Facility Partnership at the Blue Bell Aquatic Center and Authorize the Mayor to Execute Any Necessary Documentation

Aquatic Center Supervisor Tammy Jaster presented this item. Jaster explained that this Fitness Passport Service Agreement between United Healthcare Optum Health Care Solutions, LLC and the Blue Bell Aquatic Center, is a Fitness Program – Facility Partnership. Jaster stated that this program is offered to certain individual policy plan holders of United Healthcare Medicare Advantage Plan. Jaster advised that Optum Health Care Solutions, LLC would pay the Blue Bell Aquatic Center based on usage of eligible members at a rate of \$4 per day up to \$32.00 per month (8 visits).

A motion was made by Councilmember Kolby and seconded by Councilmember Herring to approve the Fitness Passport Service Agreement between the City of Brenham and United Healthcare Optum Health Care Solutions, LLC related to a fitness program and facility partnership at the Blue Bell Aquatic Center 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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

12. Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending the Rate Tariff Schedule(s) for the City of Brenham Recycling Center and Collection Station Rates

Public Works Director Dane Rau presented this item. Rau explained that as discussed at the December 20, 2018 meeting during Work Session, it is in the best interest to make adjustments to bagged garbage accepted at the Recycling Center and Collection Station. Rau stated that it was decided that all bagged garbage would be transitioned to one location, being the Citizens Collection Station on Old Chappell Hill Road. Rau advised that at the same time, the rate would increase from \$1.00 per bag to \$2.00 per bag. Rau noted that the new rate would be effective February 4th.

A motion was made by Councilmember Herring and seconded by Councilmember Cantey to approve an Ordinance on its first reading amending the Rate Tariff Schedule(s) for the City of Brenham Recycling Center and Collection Station rates.

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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

13. Discuss and Possibly Act Upon the Purchase of a Bucket Truck for the Electric Department Using Sourcewell Cooperative Contract Number 042815-TER and Authorize the Mayor to Execute Any Necessary Documentation

Assistant City Manager of Public Utilities Lowell Ogle presented this item. Ogle explained that during the budget process, Council approved the purchase of a new bucket truck. Ogle stated that this unit would replace a 1999 model that has begun to have many maintenance issues. Ogle noted that the old unit would be sold on GovDeals.

A motion was made by Mayor Pro Tem Ebel and seconded by Councilmember Wright to approve the purchase of a bucket truck for the electric department in the amount of \$196,211 using Sourcewell Cooperative Number 042815-TER 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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

14. Discuss and Possibly Act Upon the Purchase of a Brush Chipper for the Electric Department Through Buyboard Local Government Purchasing Cooperative Contract Number 515-16 and Authorize the Mayor to Execute Any Necessary Documentation

Assistant City Manager Lowell Ogle presented this item. Ogle explained that during the budget process, Council approved the purchase of a new brush chipper. Ogle advised that this unit would replace a 1995 model that has begun to have many maintenance issues. Ogle stated that the old unit would be sold on GOVdeals.

A motion was made by Councilmember Cantey and seconded by Councilmember Herring to approve the purchase of a brush chipper for the electric department in the amount of \$64,693.64 through Buyboard Local Government Purchasing Cooperative Contract Number 515-16 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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

15. Discuss and Possibly Act Upon an Order Calling a General Election on May 4, 2019 for the Purpose of Electing One Mayor; One Council Member for Place 2 – Ward 2; and One Council Member for Place 4 – Ward 4, Each for Four (4) Year Terms

Discutir y posiblemente actuar por una orden exigiendo Elecciones Generales el 4 de mayo de 2019 con el propósito de la elección de un alcalde, un miembro de consejo para Lugar 2 – Distrito Electoral 2, y un miembro de consejo para Lugar 4 – Distrito Electoral 4, cada uno para términos de cuatro (4) años.

City Secretary Jeana Bellinger presented this item. Bellinger explained that in accordance with the Texas Election Law and the City's election schedule, the city must hold a General Election on Saturday, May 4, 2019 to elect a Mayor, one Councilmember for Ward 2 and one Councilmember for Ward 4. Bellinger stated that each position would be for a four (4) year term.

A motion was made by Councilmember Cantey and seconded by Councilmember Kolby to approve an Order calling a General Election on May 4, 2019 for the purpose of electing one Mayor; one Council Member for Place 2 – Ward 2; and one Council Member for Place 4 – Ward 4, each for four (4) year terms.

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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

16. Discuss and Possibly Act Upon an Election Services Contract Between the City of Brenham and Washington County Related to Election Responsibilities for the May 4, 2019 General Election and Authorize the Mayor to Execute Any Necessary Documentation

City Secretary Jeana Bellinger presented this item. Bellinger stated that the City will be contracting with Washington County to provide various election services and election equipment for the May 4, 2019 General Election. Bellinger advised that this Election Services Agreement defines what each entity will be responsible for during the Election. Bellinger advised the Council that the County Clerk contacted her and expressed some concerns about having the new election equipment in time for the election. Bellinger said the contract needs to be amended to not name a specific type of equipment since it is unknown which equipment will be used. Bellinger requested that the agreement be approved with the stipulation that any wording changes be approved by the City Attorney.

A motion was made by Councilmember Cantey and seconded by Mayor Pro Tem Ebel to approve an Election Services Contract between the City of Brenham and Washington County related to election responsibilities for the May 4, 2019 General Election and that any changes to the agreement related to the type of election equipment be approved by the City Attorney, 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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

17. Discuss and Possibly Act Upon an Interlocal Agreement Between the City of Brenham, Brenham Independent School District (BISD) and Blinn College for the May 4, 2019 General Election and Authorize the Mayor to Execute Any Necessary Documentation

City Secretary Jeana Bellinger presented this item. Bellinger explained that as in previous years, the City, BISD and Blinn all contract with Washington County for election services and equipment. Bellinger noted that this Interlocal Agreement addresses various issues related to the election and outlines what each entity will be responsible for during the May 4, 2019 General Election.

A motion was made by Councilmember Herring and seconded by Councilmember Cantey to approve an Interlocal Agreement between the City of Brenham, Brenham Independent School District (BISD) and Blinn College for the May 4, 2019 General Election 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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

Council adjourned into Executive Session at 2:58 p.m.

EXECUTIVE SESSION

- 18. Section 551.087 – Texas Government Code – Economic Development Negotiations – Discuss and Deliberate Project BK Regarding Commercial or Financial Information that the City Has Received from a Business Prospect and the Offer of Financial or Other Incentives to a Business Prospect that the City Seeks to Have Locate In or Near the City of Brenham and With Which the City is Conducting Economic Development Negotiations**
- 19. Section 551.072 – Texas Government Code – Real Property – Discuss and Deliberate the Purchase of Real Property in the Downtown Area for Future Municipal Improvements**
- 20. Section 551.074 – Texas Government Code – Personnel Matters – Discuss and Deliberate City Manager’s Employment Agreement and Related Issues**

Executive Session adjourned at 4:22 p.m.

RE-OPEN REGULAR AGENDA

- 21. Discuss and Possibly Act Upon a Chapter 380 Development Agreement Regarding Project BK and Authorize the Mayor to Execute Any Necessary Documentation**

This item was passed.

22. Discuss and Possibly Act Upon the Purchase of Real Property in the Downtown Area for Future Municipal Improvements and Authorize the Mayor to Negotiate and Execute Any Necessary Documentation

A motion was made by Councilmember Kolby and seconded by Councilmember Wright to approve the purchase of real property in the downtown area as identified by the Mayor and authorize the Mayor to negotiate and 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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

23. Discuss and Possibly Act Upon the City Manager's Employment Agreement and Related Issues and Authorize the Mayor to Execute Any Necessary Documentation

A motion was made by Councilmember Kolby and seconded by Councilmember Cantey to extend the city manager's employment agreement for the period of January 11, 2019 to January 10, 2020 (one year) and change the City Manager's mailing address listed in the agreement to the new Brenham address 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 Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	Yes
Councilmember Clint Kolby	Yes

24. Administrative/Elected Officials Report

City Manager James Fisher reported on the following:

- Town Hall Meeting tonight to discuss the Comprehensive Plan
- Bat remediation near Toubin Park will begin next week

The meeting was adjourned.

Milton Y. Tate, Jr.
Mayor

Jeana Bellinger, TRMC, CMC
City Secretary

ORDINANCE NO. O-19-006

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS, AMENDING CHAPTER 23 – “SUBDIVISIONS” OF THE CODE OF ORDINANCES BY AMENDING SECTION 23-22(1) – LOTS ON ARTERIAL AND COLLECTOR STREETS

WHEREAS, the City of Brenham Code of Ordinances, Chapter 23, Subdivisions, provides for standards and regulations regarding subdivisions within the corporate boundaries of the City of Brenham; and

WHEREAS, this amendment was recommended for approval by the City of Brenham Planning & Zoning Commission in its final report during its regular meeting November 26, 2018; and

WHEREAS, the City Council deems it appropriate to grant the amendments to Chapter 23 – “Subdivisions” of the Code of Ordinances.

BE IT ORDAINED BY THE CITY OF BRENHAM, TEXAS THAT CHAPTER 23 – “SUBDIVISIONS” OF THE CODE OF ORDINANCE OF THE CITY OF BRENHAM, TEXAS BE AMENDED IN THE FOLLOWING MANNER:

SECTION 1

That Chapter 23 – “Subdivisions” of the Code of Ordinances of the City of Brenham, Texas Section 23-22 – Design Principles for Lots, is hereby amended to read as follows:

Section 23-22. – Design Principles for Lots.

All residential lots within the city and its extraterritorial jurisdiction shall conform to the general provisions provided below:

- (1) *Lots on arterial and collector streets.* Building setback lines for property located within the City of Brenham are established in Appendix A – Zoning. For property located in the City of Brenham extraterritorial jurisdiction (ETJ) the building setback line shall not be closer than twenty-five (25) feet from the side of a lot which abuts an arterial street and not closer than fifteen (15) feet from the side of a lot which abuts a collector street.
- (2) *Lot width.* The lot width is the average of the front and rear lot dimensions.
- (3) *Lot shape.* Lots should be rectangular insofar as practicable, except as permitted for cluster housing. Sharp angles between lot lines should be avoided. The ratio of depth to width should not ordinarily exceed two and one-half (2½) to one, except as provided for townhome lots and cluster housing.

- (4) *Lot lines.* Side lot lines should be perpendicular or radial to street frontage and the following note may be used in lieu of bearings: "All side lot lines are either perpendicular or radial to street frontage unless otherwise noted."
- (5) *Lot facing:*
- a. *Street frontage.* Each lot shall be provided with adequate access to an existing or proposed public street by frontage on such street.
 - b. *Double frontage.* Double front lots are prohibited except when backing on arterial streets.
 - c. *Front facing.* Wherever feasible, each lot should face the front of a similar lot across the street. In general, an arrangement placing adjacent lots at right angles to each other should be avoided.
- (6) *Lot numbering.* All lots are to be numbered consecutively within each block. Lot numbering may be cumulative throughout the subdivision if the numbering continues from block to block in a uniform manner that has been approved on an overall preliminary plat.
- (7) *Driveway restrictions.* Rear and side driveway access to arterial streets shall be prohibited.

SECTION 2.

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

PASSED and **APPROVED** on its first reading this the 17th day of January 2019.

PASSED and **APPROVED** on its second reading this the 7th day of February 2019.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary

ORDINANCE NO. O-19-007

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS, AMENDING APPENDIX A – “ZONING” OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM BY AMENDING PART II, DIVISION 1, SECTION 17, HEIGHT AND AREA EXCEPTIONS OF GENERAL APPLICABILITY, TO ESTABLISH A TWENTY-FIVE (25) FOOT MINIMUM BUILDING SETBACK FOR PROPERTY ADJACENT TO ARTERIAL ROADWAYS IN BRENHAM, WASHINGTON COUNTY, TEXAS

WHEREAS, the City of Brenham has requested that Appendix A – “Zoning” of the Code of Ordinances be amended; and

WHEREAS, the Planning & Zoning Commission and the City Council of the City of Brenham, Texas, have published notice and conducted public hearings regarding the request to amend Appendix A – “Zoning” of the Code of Ordinances; and

WHEREAS, all persons desiring to comment on the proposal were given a full and complete opportunity to be heard; and

WHEREAS, this amendment was recommended for approval by the City of Brenham Planning & Zoning Commission in its final report during its regular meeting November 26, 2018; and

WHEREAS, the City Council deems it appropriate to grant the amendments to Appendix A – “Zoning” of the Code of Ordinances.

BE IT ORDAINED BY THE CITY OF BRENHAM, TEXAS THAT APPENDIX A – “ZONING” OF THE CODE OF ORDINANCE OF THE CITY OF BRENHAM, TEXAS BE AMENDED IN THE FOLLOWING MANNER:

SECTION 1

That Appendix A – “Zoning” of the Code of Ordnnances of the City of Brenham, Texas Part II, Division 1, Sec. 17 – Height and Area Exceptions of General Applicability, is hereby amended to read as follows:

Section 17.05. – Lots on arterial streets. The building setback line shall not be closer than twenty-five (25) feet from the side of a lot which abuts an arterial street.

SECTION 2.

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

PASSED and **APPROVED** on its first reading the 17th day of January 2019.

PASSED and **APPROVED** on its second reading the 7th day of February 2019.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary



AGENDA ITEM 6

DATE OF MEETING: February 7, 2019	DATE SUBMITTED: February 1, 2019															
DEPT. OF ORIGIN: Development Services	SUBMITTED BY: Stephanie Doland															
<table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top;">MEETING TYPE:</td> <td style="width: 33%; vertical-align: top;">CLASSIFICATION:</td> <td style="width: 33%; vertical-align: top;">ORDINANCE:</td> </tr> <tr> <td>☒ REGULAR</td> <td>☒ PUBLIC HEARING</td> <td>☐ 1ST READING</td> </tr> <tr> <td>☐ SPECIAL</td> <td>☐ CONSENT</td> <td>☐ 2ND READING</td> </tr> <tr> <td>☐ EXECUTIVE SESSION</td> <td>☐ REGULAR</td> <td>☐ RESOLUTION</td> </tr> <tr> <td></td> <td>☐ WORK SESSION</td> <td></td> </tr> </table>		MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	☒ REGULAR	☒ PUBLIC HEARING	☐ 1 ST READING	☐ SPECIAL	☐ CONSENT	☐ 2 ND READING	☐ EXECUTIVE SESSION	☐ REGULAR	☐ RESOLUTION		☐ WORK SESSION	
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	☐ WORK SESSION															
AGENDA ITEM DESCRIPTION: Public Hearing to Consider Amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas by Amending Part 1, Sec. 5.02 Definitions, to Redefine Accessory Building or Use, Garage Apartment and Establish a New Definition for Accessory Dwelling Units (ADU); Part II, Division 1, Section 10 – Accessory Structures and Uses to Establish Standards Related to the Development of Such Uses; Part II, Division 1, Section 17 – Height and Area Exceptions of General Applicability; and Part II, Division 2 – Zoning District Regulations, to Allow Accessory Dwelling Units by Specific Use Permit in the Residential (R-1), Mixed Residential (R-2), and Manufactured Home Residential (R-3) Zoning Districts and By-Right in the Local Business/Residential Mixed Use (B-1) Zoning District (Case No. P-18-025)																
SUMMARY STATEMENT: This is the Public Hearing for a request initiated by Mary Thornhill to amend the zoning ordinance to allow accessory dwelling units (ADUs) uses within various residential zoning districts and to establish use specific standards for such uses. In August 2018 City Staff met with Ms. Thornhill of 311 East Main Street. Ms. Thornhill wishes to construct an ADU on her property and requested the City to consider an amendment to allow ADUs in Brenham. Ms. Thornhill submitted a proposed text amendment which included defining ADUs and allowing said use by-right in the R-1, Residential District. City staff researched the proposed text amendment and recommends a revised text amendment. The proposed amendment includes: • Revise the definition of Accessory Building or Use; • Adopt a definition of Accessory Dwelling Unit; • Revise the definition of Garage Apartment; • Delete the definition of Servants’ Quarters; • Revise use-specific standards for Accessory Structures and Uses; • Adopt use-specific standards for ADUs; • Allow ADUs by Specific Use Permit in R-1, R-2, and R-3; and, • Allow ADUs by-right in B-1.																

During the Public Hearing portion of the Planning and Zoning Commission one person spoke in favor of the proposed text amendment, specifically in favor of the proposed use-specific standards.

On Monday, January 28, 2019, after conducting a Public Hearing, the Planning and Zoning Commission voted unanimously to recommend approval of the proposed text amendment with the following conditions:

- That all detached accessory structures in residential districts shall be located in the rear yard (which is to the rear of a lot line connecting the midpoints of the two (2) opposite side lot lines) and shall have a side and rear yard of not less than (5) feet; and
- To remove height restrictions pertaining to Accessory Dwelling Units.

A more detailed analysis of the proposed amendment as recommended by the Planning and Zoning Commission is provided in the attached Staff Report.

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. PROS:

B. CONS:

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

ATTACHMENTS: (1) Staff Report for Case No. P-18-025

FUNDING SOURCE (Where Applicable): N/A

RECOMMENDED ACTION: Discussion only

APPROVALS: James Fisher



CASE NUMBER P-18-025
TEXT AMENDMENT – Accessory Dwelling Units (ADU's)

REQUEST:

The applicant, Mary Thornhill, is requesting the City of Brenham consider an amendment to Brenham's Code of Ordinances, Appendix A: Zoning, Part II, Division 2, Section 1.02 Permitted Uses – to allow accessory dwelling units (ADU) as a permitted use in the R-1, R-2, and B-1 Zoning Districts and to define accessory dwelling unit (ADU) in Appendix A, Part I, Section 5.02.

BACKGROUND:

In August of 2018, staff met with Ms. Thornhill to discuss the construction of an accessory dwelling unit on her property at 311 E Main Street currently zoned B-1, Local Business Mixed Use District. At that time it was identified that the current zoning ordinance allows garage apartments by-right but does not allow accessory dwelling units to be constructed that are not attached a garage.

Staff provided Ms. Thornhill with the option of applying for a zoning text amendment which would allow the applicant to request the ordinance be amended to include the use of accessory dwelling units. On October 30th, 2018 Ms. Thornhill submitted a zoning text amendment application asking staff to bring forward an amendment to allow accessory dwelling units within different zoning districts. The request was originally scheduled for consideration during the November 26th, 2018 Planning and Zoning Commission meeting and with the applicants' approval was rescheduled for consideration during the January 28th, 2019 meeting.

APPLICANT REQUESTED AMENDMENTS:

Part I, (Sec. 5.02) - Definitions

- (2)* *Accessory Dwelling Unit (ADU):* An ADU is a room or suite of rooms that is an accessory building for a single-family dwelling that is designed, built, rented, or let for occupancy as a home or a place of residence by a family or individual occupying the single-family dwelling unit to which it is an accessory building.

Part II, Division 2, (Sec. 1.02) – Permitted uses

- (d.) Accessory dwelling unit (ADU).

*Addition of a definition would require renumbering of subsequent definitions in Appendix A of the zoning ordinance.

PLANNING AND ZONING COMMISSION RECOMMENDED AMENDMENTS:

During the Planning and Zoning Commission meeting on January 28th, 2019, the Commission unanimously voted to recommend approval of the proposed text amendment, as presented by staff, with the exception that no height restrictions be established.

The currently adopted Brenham Zoning Ordinance includes the following height restrictions language:

No accessory structure or use shall exceed the height of the principal structure to which it is accessory or the height of an existing accessory structure or use on property immediately adjacent thereto. Whichever of the two is the greater height shall control the maximum allowable height of the subject accessory structure. Notwithstanding the provisions of this section an amateur radio tower designed in conformance with FCC regulations shall be permitted as an accessory use to a maximum height of sixty (60) feet.

The Staff recommendation includes the following height restrictions language:

No accessory structure or use shall exceed the height of the principal structure to which it is an accessory. Notwithstanding the provisions of this section an amateur radio tower designed in conformance with FCC regulations shall be permitted as an accessory use to a maximum height of sixty (60) feet.

In summary, staff reviewed the existing Zoning Ordinance and determined that maintaining the restriction that no accessory structure or use could exceed the height of the principal structure was a favorable practice that would help preserve neighborhood integrity.

The Planning and Zoning Commission expressed that accessory dwelling units (ADUs), specifically garage apartments, in most cases exceed the height of the primary structure if the primary structure were a single-story home and the ADU were a two-story garage apartment. With their motion, the Commission stated in this particular situation an ADU exceeding the height of the primary structure was not harmful and should be permitted. Therefore, if Council were interested in upholding the Commission's recommendation two options exist:

1. Approve the proposed text amendment with the complete removal of height restrictions on accessory structures and uses (including ADUs and garage apartments); or
2. Approve the proposed text amendment with the provision that accessory dwelling units attached to a garage may exceed the height of the principal structure if the principal structure is a single-story dwelling.

STAFF ANALYSIS AND FINDINGS:

The City of Brenham currently allows accessory structures and garage apartments by-right in the R-2, R-3, and B-1 zoning districts. A garage with living space or servants' quarters is allowed by-right in R-1, R-2, R-3, and B-1 zoning districts. Such uses are currently subject to certain restrictions based on if the accessory structure is attached or detached to the main dwelling. Attached accessory structures, such as a carport structure, are subject to the same setback standards as the main dwelling unit. Detached accessory structures are subject to the following:

- Be located in the rear of the lot
- Be 3-feet from any side interior property line, alley or easement
- Be 5-feet from any rear interior property line
- Be 10-feet from the main building if larger than 100 square feet
- Adhere to the required side yard requirements for the principal building and rear yards of not less than ten feet that have living space

- Adhere to impervious coverage requirements (55% maximum)

The aforementioned development standards concerning garage apartments and accessory dwelling uses are referenced and cross referenced in four locations throughout the zoning ordinance. While considering the requested text amendment, staff identified a need to amend the ordinance such that all standards relating to the same land use type be referenced in a more concise manner for clarity and enforcement purposes. A more detailed analysis of the proposed housekeeping amendments are detailed below.

As stated by the applicant in the application, the current language is uncommon, limiting, and outdated. While garage apartments are currently permitted by-right with development requirements, accessory dwelling units that are not attached to a garage are not currently permitted by-right or by specific use permit in the City of Brenham. In simpler terms, in order to obtain a building permit for an accessory dwelling unit in Brenham, the unit is required to be attached to a garage.

Staff finds that an amendment to the zoning ordinance to allow ADU's could be favorable to the community. Accessory dwelling units are commonly viewed as beneficial to communities and neighborhoods for many reasons, including:

- Provide a wider variety of housing options
- Allow a more efficient use of existing infrastructure
- Offer additional housing units at a lower cost of development
- Offer young adults and aging populations ability to live near family with added privacy
- Provide homeowners extra income

Accessory dwelling units can be beneficial to the community, tenants, and landlords alike, however factors such as size, location, parking, appearance, and compatibility should be considered. Some best practices adopted by other jurisdictions include adopting specific use standards related to:

- Architectural design
- Additional parking requirements
- Size restrictions (by square feet or bedroom)
- Owner occupancy
- Maximum unit occupancy
- Number of units per lot and/or impervious coverage restrictions
- Location of unit in relation to main dwelling unit and/or lot lines (setbacks)
- Water and sewer connections

PROPOSED AMENDMENTS (as supported by Staff):

Staff recommends **approval** of an amendment to the zoning ordinance to define and conditionally allow the use of ADU's (based on zoning district) with the establishment of additional use-specific standards.

Approval of a Specific Use Permit is an existing procedure which identifies uses which may be appropriate within a given zoning district, but due to their location, function or operation, could have a potentially harmful impact on adjacent properties. Staff suggests allowing ADUs in residential zoning districts (R-1, R-2, and R-3) with prior approval of a Specific Use Permit. Specific Use Permits are considered by the Planning and Zoning Commission and City Council. Additionally, staff recommends allowing ADUs by-right in the B-1 Local Business/Residential Mixed Use District.

The following amendments are proposed to the definitions portion of the Zoning ordinance:

- Revise accessory building to:

- *Accessory Structure or Use*: A subordinate structure located on the same lot as the main structure or a portion of the main structure, where the use of such structure is incidental and subordinate to the principal use.
- Establish accessory dwelling unit (ADU):
 - *Accessory Dwelling Unit*: A room or suite of rooms or secondary dwelling unit within an accessory structure that is clearly incidental to a principal use, excluding two-family and multifamily dwellings and is permitted only in conjunction with the main structure. A guest house, mother-in-law quarters or garage apartment are examples of accessory dwelling units.
- Revise garage apartment to:
 - *Garage Apartment*: See “accessory dwelling unit (ADU)”.
- Remove Servants’ Quarters:
 - ~~*Servants’ Quarters: A servants’ quarters is an accessory building or portion of a main building located on the same lot as the principal building, occupied by such persons and their families as are employed full time in the home by the occupants of the principle residence.*~~

The following amendments are proposed to adopt use-specific standards for accessory dwelling units and structures:

- (1) All detached accessory structures in any residential district shall be located in the rear yard (which is to the rear of a lot line connecting the midpoints of the two (2) opposite side lot lines) and shall have a side and rear yard of not less than five (5) feet.
- (2) No accessory structure or use shall exceed the height of the principal structure to which it is an accessory. Notwithstanding the provisions of this section an amateur radio tower designed in conformance with FCC regulations shall be permitted as an accessory use to a maximum height of sixty (60) feet.
- (3) All accessory structures or uses shall be subordinate to and supportive of the primary use and structure.
- (4) Additional standards pertaining to Accessory Dwelling Units (ADUs):
 - a) Should the primary use be a single-family dwelling, the property owner’s primary residence shall be the single-family dwelling or accessory dwelling unit.
 - b) An ADU must be designed and constructed keeping with the general architecture and building material of the principal structure.
 - c) An attached ADU shall be subject to the regulations affecting the principal structure. A detached ADU shall have side yards of not less than the required side yard for the principal structure and rear yards of not less than ten feet.
 - d) One on-site parking space shall be provided for each ADU in addition to the required parking for the primary structure.
 - e) The maximum habitable area of an ADU is limited to either one half (1/2) of the habitable area of the principal structure, or one thousand (1,000) square feet, whichever is smaller.
 - f) ADUs shall not be a HUD-Code manufactured home or mobile home.

PUBLIC COMMENTS:

The Notice of Public Hearing was originally published in the paper on November 15, 2018 for the November 26th Planning and Zoning Commission meeting. Due to the item being postponed for later consideration, an additional Notice of Public Hearing was republished on January 17th, 2019 for the January 28th, 2019 Planning and Zoning Commission meeting. Since the public notices were published, staff has received a citizen request for more information about the proposed amendments. Upon

providing additional information the citizen stated that they were also interested in building an ADU and expressed support to adopt standards to allow ADUs.

During the Public Hearing portion of the Planning and Zoning Commission one person spoke in favor of the proposed text amendment, specifically in favor of the proposed use-specific standards.

STAFF RECOMMENDATION:

Staff recommends **approval** of the proposed text amendments as presented to the Planning and Zoning Commission on January 28, 2019, which includes height limitations on accessory structures and uses, and an ordinance to:

- Revise the existing definition and development standards concerning garage apartments;
- Adopt a definition for accessory dwelling unit (ADU);
- Delete the definition of servants' quarters;
- Establish use-specific standards for the construction of an accessory dwelling unit (ADU); and
- Allow ADU's by-specific use permit in the R-1, R-2, and R-3 districts, and by-right in the B-1 district.

EXHIBITS:

- A. Draft Ordinance – with redline markup
- B. Application
- C. Application Attachment – R Street Policy Study No. 89
- D. Application Attachment – Accessory Dwelling Units: Case Study, U.S. Department of Housing and Urban Development Office of Policy and Research
- E. Application Attachment – Understanding Accessory Dwelling Units and Their Importance, UC Berkeley

Exhibit "A"
Draft Ordinance

Part 1, (Sec. 5.02) – Definitions

~~(1) Accessory building-Structure or Use: A subordinate structure located on the same lot as the main structure or a portion of the main structure, where the use of such structure is incidental and subordinate to the principal use. An accessory building or use is one which:~~

- ~~(a) Is subordinate to and serves a principal building or principal use; and~~
- ~~(b) Is subordinate in area, extent, or purpose to the principal building or principal use served; and~~
- ~~(c) Contributes to the comfort, convenience and necessity of occupants of the principal building or principal use served; and~~
- ~~(d) Is located on the same building lot as the principal building or principal use served.~~

~~"Accessory," when used in the text, shall have the same meaning as accessory use. An accessory building may be a part of the principal building. Servants' quarters, as defined, are an accessory building or use.~~

~~(2) Accessory Dwelling Unit (ADU): A room or suite of rooms or secondary dwelling unit within an accessory structure that is clearly incidental to a principal use, excluding two-family and multifamily dwellings and is permitted only in conjunction with the main structure. A guest house, mother-in-law quarters or garage apartment are examples of accessory dwelling units.~~

~~(65) Garage, apartment: See "Accessory dwelling unit (ADU)". A garage apartment is a room or suite of rooms that occupy a portion of a private garage that is accessory to a single family dwelling unit and is designed, built, rented, leased or let for occupancy as a home or place of residence by a family or individual living independently from the family or individual occupying the single family dwelling unit to which said garage is an accessory building.~~

~~*(116) Servants' quarters: A servants' quarters is an accessory building or portion of a main building located on the same lot as the principal building, occupied only by such persons and their families as are employed full time in the home by the occupants of the principal residence.~~

Appendix A, Part 2, Division 1, Section 10 – Accessory Uses and Structures:

(Sec. 10.01) Authorization. Accessory structures and uses are permitted in any zoning district in connection with any principal use lawfully existing within such district, provided that all accessory structures or uses shall meet the development regulations for the zoning district in which the structure or use is located.

(Sec. 10.02) Accessory structures, location and regulation:

- (1) All detached accessory structures ~~and uses~~ in any residential district shall be located in the rear yard (which is to the rear of a lot line connecting the midpoints of the two (2) opposite side lot lines) and shall have a side and rear yard of not less than five (5) feet.
- (2) No accessory structure or use shall exceed the height of the principal structure to which it is an accessory. ~~or the height of an existing accessory structure or use on property immediately adjacent thereto. Whichever of the two is the greater height shall control the maximum allowable height of the subject accessory structure.~~ Notwithstanding the provisions of this section an amateur radio tower designed in conformance with FCC regulations shall be permitted as an accessory use to a maximum height of sixty (60) feet.
- (3) All accessory structures or uses shall be subordinate to and supportive of the ~~primary~~ principal use and structure.

(4) Additional standards pertaining to Accessory Dwelling Units (ADUs):

- a) Should the primary use be a single-family dwelling, the property owner's primary residence shall be the single-family dwelling or accessory dwelling unit.
- b) An ADU must be designed and constructed keeping with the general architecture and building material of the principal structure.
- c) An attached ADU shall be subject to the regulations affecting the principal structure. A detached ADU shall have side yards of not less than the required side yard for the principal structure and rear yards of not less than ten feet.
- d) One on-site parking space shall be provided for each ADU in addition to the required parking for the principal structure.
- b)e) The maximum habitable area of an ADU is limited to either one half (1/2) of the habitable area of the principal structure, or one thousand (1000) square feet, whichever is smaller.
- f) ADUs shall not be a HUD-code manufactured home or mobile home.

Appendix A, Part 2, Division 1, Section 17.03 – Side yards.

~~*(2) No accessory building shall project beyond a required yard line along any street.~~

Appendix A, Part 2, Division 1, Section 17.04 – Rear yards.

~~In residential districts, an accessory building not exceeding twenty (20) feet in height may occupy a maximum of twenty-five (25) percent of the rear yard, and unenclosed parking spaces may occupy a maximum of eighty (80) percent of the area of a required rear yard provided that the total lot coverage shall not exceed the maximum allowable for the district in which the subject property is located. No accessory building shall be closer to any rear or side lot line than applicable zoning district regulations allow and no accessory building that contains more than one hundred (100) square feet of gross floor area shall be closer than ten (10) feet to the main building.~~

Appendix A, Part 2, Division 2, Section 1.02 – Permitted uses (R-1 Residential District)

~~(c.) A detached private garage with or without storeroom and/or utility room shall be permitted as an accessory building, provided that such garage shall be located in the rear of the lot (which is to the rear of a line connecting the midpoints of the two opposite side lot lines). Side yards of not less than three (3) feet from any interior lot line shall be maintained, and rear yards shall be maintained of not less than three (3) feet from any alley or easement and not less than five feet where there is not alley or easement. A garage or servants' quarters constructed as an integral part of the main building shall be subject to the regulations affecting the main building. Detached garages that are in a portion of a building that also contain servants' quarters, recreation rooms or any other accessory living space shall be located in the rear one-half of the lot and shall have side yards of not less than the required side yard for the principal building and rear yards of not less than ten feet.~~

Appendix A, Part 2, Division 2, Section 1.03 – Specific uses (R-1 Residential District)

~~*(1) Accessory Dwelling Unit~~

Appendix A, Part 2, Division 2, Section 2.02 – Permitted uses (R-2 Mixed Residential District)

~~(4) Garage apartments~~

Appendix A, Part 2, Division 2, Section 2.03 – Specific uses in the (R-2 Mixed Residential District)

~~*(1) Accessory Dwelling Unit~~

Appendix A, Part 2, Division 2, Section 2.1.03 – Specific uses (R-3 Manufactured Home Residential)

~~*(1) Accessory Dwelling Unit~~

Appendix A, Part 2, Division 2, Section 3.02 – Permitted uses (B-1 Local Business/Residential Mixed Use District)

~~*(1) Accessory Dwelling Unit~~

*Change would require renumbering of subsequent definitions or removal of unused numbers from Appendix A of the zoning ordinance.

Exhibit "B" Application

Thornhill Application

Page 1 of 2

Statement of Purpose – Identify the existing section(s) of the Zoning Ordinance for which the Text Amendment is proposed, the proposed revised language and the reason(s) for the requested Text Amendment :

Proposed text amendments and revised language:

Sec 5.02

Add Accessory Dwelling Unit – an accessory dwelling unit is a room or suite of rooms that is an accessory building for a single family dwelling that designed, built, rented, or let for occupancy as a home or a place of residence by a family or individual occupying the single-family dwelling unit to which it is an accessory building.

Sec. 1.02

Add (d) Accessory dwelling unit

Reason for requested Text Amendment

Currently, the zoning ordinance allows for Garage Apartments in R-2, but not accessory dwelling units that are not attached to a garage. This is limiting for homeowners who do not already have a garage or who don't have enough space or funds to accommodate both a garage and an apartment. In R-1, servants quarters are allowed, a rather uncommon arrangement at this time.

We are asking the City to amend the Zoning Ordinance to allow Accessory Dwelling units at R-1, R-2, and B-1 areas. Many properties in Brenham and in the B-1 area already include accessory structures that have been converted to or were built as dwelling units.

General Description of Property Affected by Amendment :

The proposed amendment will affect single family dwelling units in the City of Brenham. This includes single family homes in R-1, R-2, and B-1 zones.

Statement of Facts which the Applicant believes Justify the Amendment:

We have looked at municipalities similar to Brenham for precedent. These are towns with growing populations, near larger cities, with vibrant downtowns, places people want to visit and live. Each allow accessory dwelling units in some fashion, each with their own local twist. Georgetown has a very liberal policy that allows for units as permanent residences as well as short term rentals. This is logical with their large retiree population. Fredericksburg focuses on accessory dwelling units as short term rental units for visitors. This a logical step, especially for their very vibrant downtown. It allows full time residences as well as short term, supplementing the income of the homeowners.

Accessory dwelling units, attached to or on the lots of larger homes, allow for homeowners to rent space for supplemental income, accommodate changing family needs, provide more diverse housing options for local residents, and ensure the enforcement of the local codes. ADUs increase the housing supply and tax base. They provide affordable housing for lower income residents, ensuring that they are not priced out of the housing market.

General arguments opposed to ADUs include increases in parking and density. Neither holds up over the long term as communities evaluate the addition of ADUs. Rather, the benefits far outweigh these concerns as homeowners regulate those living in close proximity rather well and property value increases benefit the community at large.

Copies of ordinances from other jurisdictions, with similar rural populations and historic town centers are attached.

Research attached includes:

Accessory Dwelling Units: A Flexible Free Market Housing Solution, R Street, a public policy research organization on the political right.

Accessory Dwelling Units: Case Study, US Department of Housing and Urban Development.

Understanding Accessory Dwelling Units and Their Importance, University of California Berkley

Links to Additional Research:

<https://accessorydwellings.org/2014/09/17/summing-up-adu-research-are-accessory-dwelling-units-as-great-or-as-horrible-as-people-say/>

<https://www.planning.org/knowledgebase/accessorydwellings/>



Free markets. Real solutions.

R STREET POLICY STUDY NO. 89
March 2017

ACCESSORY DWELLING UNITS: A FLEXIBLE FREE-MARKET HOUSING SOLUTION

Jonathan Copping

INTRODUCTION

Much of the American built environment was constructed in the post-World War II era, when government policy and planning fashion favored a highly dispersed development model centered on the primacy of the single-family detached home. Subsequent developments in zoning law tended to further privilege and protect the single-family detached home from any neighboring diversity of land use or building form.

As a pattern popularized at the peak of American nuclear family formation, such models initially met consumer preferences and served the needs of many. As the 20th century progressed, however, American demographic patterns and housing needs dramatically changed. The built environment was, by this point, too calcified by accumulated land-use regulations to adapt to these changes, producing significant distortion in high-demand housing markets and unresponsive legal environments across the country.

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As housing supply constraints choke productivity in hot economic regions, and household structure and demographics continue to shift nationally, significant public-policy debates have been opened about the appropriate responses to these developments. These range from debates over national entitlement programs like Social Security and Medicare to battles over gentrification in urban centers. The political disputes often are characterized by high tempers and little perceptible progress.

While these important, high-intensity debates continue, there is opportunity simultaneously to pursue lower-profile solutions that could alleviate pressure on the market, even if they cannot provide complete resolution to all of its problems. One supplemental policy priority would be to ease significantly existing obstacles to the construction and permitting of accessory dwelling units in single-family residential zones.

ACCESSORY DWELLING UNITS

An accessory dwelling unit (ADU) is defined as “a secondary dwelling unit with complete independent living facilities for one or more persons” on a single-family lot, whether attached to the primary structure, detached from it or contained within it.¹ ADUs commonly are referred to by a wide variety of less formal names, including “granny flat,” “mother-in-law suite,” “carriage house,” “secondary unit” and “backyard cottage.”

ADUs, then, are dependent apartments built onto otherwise typical single-family homes. They are often created by means of garage conversion, basement finishing, wing addition or even as free-standing construction behind a house. A fully independent ADU will contain its own entrance and full kitchen and bathroom facilities; it may even have separate

1. California Department Housing and Community Development, “Accessory Dwelling Unit Memorandum,” December 2016. <http://www.hcd.ca.gov/policy-research/docs/2016-12-12-ADU-TA-Memo.docx.pdf>

and independent utility metering. While there was significant scholarly interest in ADUs in the 1980s, it waned until recent years, leaving a relative shortage of studies of and data on the current state of secondary units. Filling the informational gap could prove especially difficult, given the large proportion of secondary units that exist as illegal conversions, without permits or official recognition in government databases. One 2001 study estimated that fully one in five San Francisco residential buildings included an illegal secondary unit² and that supply-constrained coastal cities could expect 2 to 10 percent of their housing stock to be illegal secondary units.

The ADU is starting to recover attention, as demographic shifts also lead many groups to revisit accessory dwelling units as an option for the increasing number of multigenerational households. There are any number of causes of this trend, including the aging of the baby boomer generation, a persistent “boomerang” young adult cohort, and growth in the Hispanic and Asian populations. Moreover, housing shortages in hot urban markets have raised interest in creative means to expand supply.

Before accessory dwelling units can be brought to bear on those challenges, however, there is a need to popularize and pass significant reforms to accommodate this flexible, free-market solution.

BRIEF HISTORY OF ZONING

The basic tenets of American zoning were set by the mid-1930s, which is also when the federal government began to provide assistance to the detached single-family house as an ideal base for American life.³ In the postwar period, the relatively simple and compact single-family zoning pattern—originally designed to protect residential neighborhoods from noxious industrial activity—was expanded and complicated, with explicit federal housing policies that reinforced single-family housing on ever larger lots with rapidly diminishing tolerance of diversity. Zoning shifted from prohibiting industrial and commercial development in residential zones to prescribing the shape and structure that residential housing could take within those already protected neighborhoods.

As University of Chicago’s Emily Talen wrote in her book *City Rules*: “The zoning changes of one small town in central Illinois, Urbana, home of the University of Illinois, illustrate

the traditional progression.”⁴ As she recounts, Urbana’s first zoning ordinance was passed in 1936, but there were no minimum lot widths and no lot areas were required per unit until 1950. In 1950, six zones were introduced, two each for residential, commercial and industrial uses. By 1979, however, 16 districts and two overlay zones had been introduced, apartments in single-family areas were banned, and minimum lot sizes and floor-area ratio rules were brought into effect.

The introduction of a few zoning regulations metastasized into a narrowly prescriptive regime that, as Sonia Hirt described in *Zoned in the USA*, “has exceeded historic and international precedent to build what may well be the lowest-density settlements in the history of the world [emphasis original].”⁵

America’s hyperdispersed, land-use-segregated settlement pattern is functional for adults who drive cars but the carless are significantly inhibited from accessing any activities or areas other than the ones in their immediate neighborhood. Functionally, this prevents nondriving children from contributing to the household by running errands to a corner store, for instance, in addition to placing severe limits on the independence of elderly adults who no longer drive.⁶

The recently observed recovery of multigenerational households and parallel decline of intact nuclear families takes place, then, in a regulatory environment rigidly designed for a very different population. As Reihan Salam has written:

Since the initial rise of the suburbs, families have changed. Married couples with children have fallen from 42.9 percent of all households in 1940 to 20.2 percent of all households in 2010, while married couples without children have fallen from 33.4 to 28.2 percent of all households. Single-parent families have also increased, of course, from 4.3 percent to 9.6 percent. The most dramatic change has been the steep increase in one-person households, from 7.8 to 26.7 percent of the total. Families have also been transformed by rising female labor force participation, with women now serving as the sole or primary wage earner in four in 10 U.S. households with children. ...

Viewed through this lens, the problem we face is clear: Much of our built environment still bears the imprint of the postwar era, despite the fact that the families that were characteristic of that era are no longer dominant.⁷

2. George Williams, “Secondary Units: A Painless Way to Increase the Supply of Housing,” San Francisco Planning and Urban Research Association, August 2001. <https://sfpa.org/0110williams.html>

3. Sonia Hirt, *Zoned in the USA: The Origins and Implications of American Land-Use Regulation*, Cornell University Press, p. 32, 2014.

4. Emily Talen, *City Rules*, Island Press, pp. 120–2, 2012.

5. Hirt, p. 28.

6. Andres Duany, Elizabeth Plater-Zyberk, and Jeff Speck, *Suburban Nation: The Rise of sprawl and the Decline of the American Dream*, North Point Press, p. 115, 2000.

7. Reihan Salam, “How the Suburbs Got Poor,” *Slate*, Sept. 4, 2014. http://www.slate.com/articles/news_and_politics/politics/2014/09/poverty_in_the_suburbs_places_that_thrived_in_the_era_of_two_parent_families.html

BENEFITS OF ADUS

Rental income

According to a recent Oregon study of Portland ADUs, the largest primary motivation among ADU developers was additional income.⁸ By converting part of a house, building an addition or constructing a free-standing unit, homeowners were able to create a supplementary stream of income for themselves, while adding housing to the constrained market.

The great majority of this additional income comes via long-term rentals: Atlanta architect Eric Kronberg estimates that, when he constructs ADUs for his market under current regulatory conditions, they can reasonably command rents of \$950 to \$1400 a month. By contrast, “you have an all-in cost of \$550-\$715 a month. The two bedroom unit would range \$700-\$900 all-in,” both of which are estimated very conservatively assuming entirely home equity financed, no cash projects. This means Atlanta ADUs could pay for their own financing while providing a homeowner with hundreds of dollars in additional income per month. Most impressively, Kronberg’s projections are for detached ADU prototypes, which are much more expensive to produce than attached ADUs that come from conversions or additions on an existing building.⁹

In the Portland study, 80 percent of ADUs rented for market rates comparable to those in multifamily development. However, between 13 and 18 percent of Portland ADUs go for zero or very low rents. In a separate study, University of California researchers Jake Wegmann and Karen Chapple likewise found 17 percent of San Francisco Bay Area ADUs were occupied for zero rent.¹⁰ As Martin J. Brown and Jordan Palmeri note in the Portland study, this pattern “suggests some unique phenomenon is occurring in ADU developments.” Indeed, in that same survey, “owners reported that 26 percent of ADU tenants were family or friends when they moved in.” This would indicate that a small but significant fraction of ADU development is, indeed, intended for personal relationships, as planners and advocates have traditionally assumed.

The Portland study also marked an interesting departure from earlier studies when it came to its findings on affordability. According to Brown and Palmeri, Portland ADU rents were market competitive with comparable rental apartments

only if zero-rent units were included; they actually rented for a premium if those outliers were excluded. Previous studies had indicated that ADUs were cheaper than comparable rentals. Brown and Palmieri tried to adjust market comparables by unit size via the number of bedrooms. In their report on the Bay Area, Wegman and Chapman did not attempt to adjust for unit sizes, but noted that the ADUs were smaller than their market comparables, as well as often being unpermitted.

Taken at face value, the Portland results could undermine the perception of ADUs as an inherently affordable housing solution. Although the results certainly indicate a need for further study, such reasoning should be tempered by a robust understanding of the ADU context. ADUs are more expensive to build per-square-foot, which could partially explain why owners would demand higher rents per-square-foot.

In general, due to their smaller unit sizes, ADUs should occupy the lower end of the rental spectrum. As an NYU Furman Center working paper noted: “Micro-units [ADUs and compact apartments] in many cities frequently rent at rather high rates per square foot, but at lower total monthly rent levels, than larger apartments.”¹¹ In this sense, ADUs remain a source of affordable housing. In supply-constrained housing markets, any production of additional dwelling space will help ease rental market pressure, and production of low total rent units is all the more welcome.

Further, as Brown and Palmieri note, the zero and below-market rents that are presumably charged to family members or friends should not be dismissed. Voluntarily discounting rent to those with whom the property owner has pre-existing relationships is still a provision of affordable housing. Where the housing is provided to elderly relations who might otherwise require costly personal care, it also represents a potentially large government savings. Rejoining multiple generations in close living arrangements allows for child care or eldercare to be provided by the family, instead of relying on expensive market services. Such arrangements can benefit the whole family by strengthening their relationships and shared experiences. Anecdotally, children can benefit from the experience of elders in quilting, crafting or carpentry. Elders, meanwhile, sometimes can benefit from younger generations’ greater familiarity with maintaining and navigating each new wave of domestic technology.

Further study of ADU rents would bring welcome clarity. For the great majority of homeowners who plan to rent their ADU at market-competitive rents, ADUs can provide a

8. Martin J. Brown and Jordan Palmeri, “Accessory Dwelling Units in Portland, Oregon: Evaluation and Interpretation of a Survey of ADU Owners,” Oregon Department of Environmental Quality, June 1, 2014. <https://accessorydwellings.files.wordpress.com/2014/06/adusurveyinterpret.pdf>

9. Eric Kronberg, “ADU Math,” Kronberg Wall, Feb. 24, 2017. <http://kronbergwall.com/adu-math/>

10. Jake Wegmann and Karen Chapple, “Understanding the Market for Secondary Units in the East Bay,” IURD Working Paper Series, October 2012. <http://escholarship.org/uc/item/9932417c>

11. Vicki Been, Benjamin Gross, and John Infranca, “Responding to Changing Households: Regulatory Challenges for Micro-Units and Accessory Dwelling Units,” NYU Furman Center, January 2014. http://furmancenter.org/files/NYUFurmanCenter_RespondingtoChangingHouseholds_2014_1.pdf

reliable stream of additional income which should, in most circumstances, pay for itself.

Multigenerational housing

Almost one-in-five Americans now live in a multigenerational household, according to a recent Pew analysis of U.S. Census Bureau data.¹² That is a record absolute number and the highest proportion of the American population since 1950. Once a near-universal feature of the American lifecycle in the mid-19th century, the proportion of households living with multiple adult generations had been declining since 1860, with more than half the collapse in multigenerational living occurring between 1940 and 1980.¹³

ADUs are often preferred for multigenerational living arrangements because they allow family members to share a residence, assist each other in day-to-day tasks and share a life without erasing all boundaries between the primary household and the additional generation. When equipped with independent entrances and kitchen units, residents of ADUs are able to maintain a modicum of independence, coming and going as they please and entertaining their own guests, while still remaining tightly bound to their family.

The AARP has advocated for relaxation of rules around accessory dwelling units in order to accommodate a desire among its members (current and prospective) to “age in place” whenever possible. Expanded ADU capability allows older Americans either to move into their children’s homes or to construct a more modest apartment that suits their needs. Toward that end, the AARP in 2000 commissioned the American Planning Association to draft an ADU “model state act and local ordinance.”¹⁴

Older Americans are not, however, the largest consumer of multigenerational housing today. In 2014, more 18-to-34-year-olds lived with their parents than in other arrangements for the first time in 130 years,¹⁵ and 31 percent of 25-to-29-year-olds lived in multigenerational households. The persistence of the millennial generation living at home, even as the economy emerged from the Great Recession, has been a topic of great concern and headlines. For the pur-

poses of this paper, it is enough to note simply that the trend exists and seems likely to continue, thus further adding to the number of multigenerational homes and potential demand for ADUs.

Finally, ethnic demographic patterns also suggest that multigenerational housing will continue to grow in the United States. As Pew found, Asian and Hispanic households both are significantly more likely to be multigenerational than non-Hispanic white households. Both of those subgroups are experiencing significant population growth.

Flexibility

In Brown and Palmeri’s study, only about 80 percent of Portland ADUs were occupied as independent housing. The rest served as some combination of extra space, home offices or other nonresidential use: 11 percent of units were used as a work or living space, while 5 percent were used for short-term rentals.¹⁶

Short-term rentals are one of the most interesting alternative uses for ADUs going forward, as the recent explosion of room and homesharing services like Airbnb and VRBO make it easier for homeowners to find short-term tenants for their properties, and the independence of ADUs make them particularly well-suited for such service. The Portland study was conducted in 2013, relatively early in the growth of such services. It would be interesting to update the survey to see how short-term-rental use has grown.

OBSTACLES TO ADU DEVELOPMENT

The single biggest obstacle to ADU development is their widespread illegality. Burdensome regulatory requirements often will depress ADU production, even where zoning codes theoretically allow them. In order to allow ADUs to serve as a flexible, free-market solution to ease pressures in supply-constrained housing markets, such regulatory burdens need to be lifted. Such regulations fall into two broad categories: structural and occupancy.

Structural regulations

Structural regulations regulate the size, shape and facilities of an ADU, as well as its connection to the broader city utility networks.

As with many other forms of housing production, minimum parking requirements can be a significant obstacle to ADU production. While competition for on-street parking is one of the most frequently cited concerns and complaints about

12. D’Vera Cohn and Jeffrey S. Passel, “A Record 60.6 Americans Live in Multigenerational Households,” Pew Research Center, Aug. 11, 2016. <http://www.pewresearch.org/fact-tank/2016/08/11/a-record-60-6-million-americans-live-in-multigenerational-households/>

13. Steven Ruggles, “Multigenerational Families in Nineteenth Century America,” *Continuity and Change*, 18: 139-165, 2003. <http://users.hist.umn.edu/~ruggles/multigenerational.pdf>

14. Rodney L. Cobb and Scott Dvorak, “Accessory Dwelling Units: Model State Act and Local Ordinance,” AARP, April 2000. http://www.aarp.org/home-garden/housing/info-2000/accessory_dwelling_units_model_state_act_and_local_ordinance.html

15. Richard Fry, “For First Time in Modern Era, Living With Parents Edges out Other Living Arrangements for 18- to 34-Year-Olds,” Pew Research Center, May 24, 2016. <http://www.pewsocialtrends.org/2016/05/24/for-first-time-in-modern-era-living-with-parents-edges-out-other-living-arrangements-for-18-to-34-year-olds/>

16. Brown and Palmeri, 2014.

ADUs, imposed off-street requirements are often excessive and counterproductive.

Until 2015, for instance, Austin, Texas combined onerous parking requirements (two spots each for both the main dwelling and the accessory unit) and an impervious surface cap. If the main dwelling was built before off-street parking requirements, the construction of an ADU would cost the property its grandfathered status, meaning four parking spots would have to be built for one accessory unit to be constructed. As the Furman Center noted, “built structures may not cover more than 40 percent of a lot, and the combination of structures and any other impervious surfaces may not exceed 45 percent of the lot.” Since any parking space is counted as impervious surface regardless of its construction material, Austin homeowners could easily have a hard time fitting everything onto their lots even if they were willing to comply.¹⁷ Encouragingly, the Austin City Council adopted a much liberalized ADU system in November 2015, with very light parking requirements, a standard minimum lot size and nearly citywide applicability.¹⁸

Portland does not require any off-street parking for ADUs, so it should be most vulnerable to street parking overcrowding. Yet the city’s 2013 survey found that one in five ADUs had no cars associated with it whatsoever, and 63 percent had no cars parked on the street. The mean number of cars parked on the street associated with ADUs was a mere 0.46. These findings are similar to results of the Bay Area study in 2012. While these are necessarily limited results, they should encourage cities to loosen or relieve their own parking requirements in the service of ADU production.

ADUs are also subject to a variety of size regulations: minimum and maximum unit sizes; minimum and maximum ratio of unit-to-main-dwellings; minimum and maximum ratio of unit-to-lot-size. All of these can vary by whether the ADU is attached or detached. Attempts to build ADUs can be subject to regulations that bar the construction of kitchen facilities in secondary units, as well as restrictions on independent entrances. Some governments restrict where ADUs can be placed on a lot, whether it or its entrance can be visible from the street and whether the unit’s architectural design is required to match the main dwelling. While reasonable regulations can be inoffensive, cities should take care to set their minimum or maximum levels within the bounds of normal ADU production, and to give homeowners as much flexibility as possible.¹⁹

17. Been, Gross and Infranca, 2014.

18. Jennifer Curington, “Austin City Council lessens restrictions on accessory dwelling units,” *Community Impact*, Nov. 19, 2015. <https://communityimpact.com/austin/city-county/2015/11/19/city-council-lessens-restrictions-on-accessory-dwelling-units/>

19. California Department of Housing and Community Development, 2016.

Finally, city services fees and regulations can pose an overwhelming and unreasonable burden to the development of accessory units where they are not tailored appropriately. Portland chose to give financial relief to ADU construction by waiving the systems development charges (SDCs) usually imposed to pay for utility and other public-service impacts. Such charges average around \$8,000 for ADUs, which explains why the city’s reprieve began a significant ADU boom. Ultimately, the waiver was extended. Even without opting for a full waiver, cities can adjust their SDCs for the true impact of accessory units, which will be dramatically less than other new construction.

Under normal conditions, extending utility services like water, sewer, electricity and gas should be relatively painless for accessory unit construction, as most of the fixed costs have already been built for the main dwelling. Cities that require separate utility metering can quickly undermine this advantage and even make ADUs outright uneconomical. *Architects Newspaper* reports that, in Austin, separate water metering alone can cost a builder \$20,000.²⁰

Local governments often discourage ADU production by prohibiting qualities that would make them attractive and usable as an independent dwelling unit. This can include restrictions on independent entrances and the visibility of those entrances from the street. Often, they will include prohibitions on kitchen facilities. In Atlanta, for instance, ADUs are permitted but they cannot possess a stove, oven or similar cooking appliance. The most cooking capability occupants can hope for under code is a hot plate they can plug in. These barriers are best removed whenever possible, as they give homeowners more flexibility in how they can use their ADU over its life span, and so will make their production more attractive.

Occupancy restrictions

Occupancy regulations regulate who may stay in ADUs and what their relationship to the property’s owner may be.

A frequent and significant ADU regulation requires owner occupancy of the property. ADU construction is, in fact, usually undertaken by homeowners occupying the property, so this requirement often is presented as bearing limited negative consequences. According to the NYU Furman Center report, owner occupancy is seen by advocates as a shortcut to prevent more detailed and onerous restrictions and inspections from being imposed on ADU development. In this reasoning, an owner-occupant’s presence assures against ADU tenants inflicting nuisances on the surrounding neighborhood. Because the owner-occupant is a neighbor, he or she

20. Jack Murphy, “As housing costs and economic segregation increase, Austin’s granny flats proliferate,” *The Architects Newspaper*, Sept. 12, 2016. <https://archpaper.com/2016/09/austin-granny-flats-affordability/#gallery-0-slide-0>

would be more likely to supervise and head off any nuisances than an absentee landlord would. Those building ADUs in order to accommodate family or friends would seem to have even less reason to object to such laws.

But owner-occupancy restrictions have the potential to impede ADU financing and homeowner flexibility significantly. As the NYU Furman Center report notes: “Lenders may fear that, if they foreclose on the property, they will be unable to rent both the primary residence and the ADU,” resulting in less favorable financing or outright opposition. Homeowners may also face difficulty selling their own home, as the house and ADU bear restrictions lacked by competitive properties, such as duplexes. They would thus be unable to recoup the full value of their property should a nonresidential buyer be interested. This comes on top of what Brown and Watkins identify as an already significant gap in appraisal practices that often prevents ADUs from being measured appropriately in home valuation.²¹

Furthermore, while ADUs are usually constructed by owner-occupants with owner occupancy in mind, they are most attractive when they can accommodate a variety of contingencies. Young retirees who build an ADU intending to live with family or move into the smaller unit and rent out the bigger house may find themselves in need of more professionalized care than is available in most home settings. The family they were planning to live with may need to move. In any of these conditions, the house would shift from an asset to a liability, as the property owner would be precluded by the owner-occupancy restrictions from renting out both the main house and the accessory unit. They would be forced to either leave the house vacant and unattended, or to sell it.

Furthermore, as the NYU Furman Center roundtable participants noted, ADU owner-occupancy would, in many cases, introduce a unique restriction to properties. There generally are no such restrictions banning owners of a single-family home from renting it to others, and duplex units rarely come so bound either.²² Portland, Oregon, has one of the strongest ADU development markets in the country, and notably lacks an owner-occupancy requirement. Such liberalization is fairly rare, however, as owner-occupant requirements are widespread.

In some cases, governments considering ADU legalization want to go even further, and restrict to whom the property can be rented, or whether it can be rented at all. Most often, these restrictions come in the form of requiring ADU occupants to be related to the homeowner for the unit to be used

as a residence. Total or near-total rental bans are likely to chill the construction of ADUs significantly and foreclose any of the benefits they provide.

SHORT-TERM RENTALS

ADUs are interesting platforms to evaluate with regard to short-term rentals, both because of their natural suitability to the use and because even ADU advocates sometimes are made uncomfortable by the use. Because ADUs are independent dwelling units, they have the potential to be more appealing to some renters and homeowners who prefer not to live quite as intimately with visiting strangers. Because ADUs are dependent, they share any neighborhood attractiveness equally with their primary dwellings. ADUs equipped with kitchens allow renters to cook for themselves, which may be a particular advantage in the eyes of short-term renters, who are more likely than hotel guests to stay for multiple days.²³

For advocates who see ADU growth as a provision of affordable housing and a relief valve on constrained regional supply, the seeming diversion of ADU stock into short-term rentals is feared to be a distraction, or even counterproductive. In tourism-heavy cities, some voice concerns about residential neighborhoods hollowing out in community and character as owner-occupied residences convert into short-term rental pads with a constantly rotating cast of characters.²⁴ Santa Cruz, California, which has been one of the most aggressive cities in liberalizing its ADU regulations and promoting ADU production recently revised its laws specifically to outlaw ADU short-term rentals going forward.²⁵ Austin’s new, more liberal ADU law restricts short-term rental of ADUs to 30 nights a year, and prohibits it on properties that aren’t occupied by the owners.²⁶

Survey respondents have said that one of the central appeals of ADU construction is their flexibility.²⁷ Though the upfront costs are considerable for a homeowner, they can justify that investment by the ADU’s potential to bring in additional income; to use as a home office or extra living space for a growing family; or to be used by adult family members as needed. Short-term rental services can expand that flexibility further by not requiring homeowners to lock their ADU

21. Martin John Brown and Taylor Watkins, “Understanding and Appraising Properties with Accessory Dwelling Units,” *The Appraisal Journal*, Fall 2012. <https://accessory-dwellings.files.wordpress.com/2012/12/appraisingpropertieswithadusbrownwatkins-nov2012.pdf>

22. Been, Gross and Infranca, 2014.

23. Andrew Moylan, “Roomscore 2016: Short-term-rental regulation in U.S. cities,” R Street Institute, March 16, 2016. <http://www.rstreet.org/policy-study/roomscore-2016-short-term-rental-regulation-in-u-s-cities/>

24. Martin John Brown provides one of the best detailed considerations of these claims: <https://accessorydwellings.org/2016/04/04/adustr/>

25. City of Santa Cruz, Ordinance No. 2015-15, Nov. 10, 2015. <http://www.cityofsanta-cruz.com/home/showdocument?id=46552>

26. Jennifer Curington, 2015.

27. Brown and Palmeri, 2014.

into a long-term lease, but rather to use it for income purposes on an as-needed basis.

SPECIAL CHALLENGES

In contrast to almost all other housing production and construction, ADUs are primarily built by homeowners, not professional developers. While professionals generally regard regulatory compliance costs to be expected, if often frustrating, homeowners trying to build accessory units are unlikely to have much familiarity with the permitting and compliance process. Cities looking to take advantage of accessory dwelling unit production will need to make their process as transparent and easily navigable as possible.

Toward this end, Santa Cruz, California produced an “ADU Manual” that offers step-by-step instructions to complete the ADU permitting and construction process successfully. Santa Cruz also maintains a set of draft architectural plans to get interested homeowners started, and even goes so far as to offer financing assistance for those willing to commit to renting the unit at affordable rates for 15 to 20 years.

Portland, Oregon, meanwhile, has maintained a relatively libertarian regulatory environment, relieving homeowners from having to forecast for and navigate parking requirements, owner occupancy rules, or many other often-imposed constraints. It allows widespread building of ADUs by right, so homeowners are not required to convene public hearings on the subject of planned construction on their property.

Local governments that desire to take advantage of accessory dwelling units should take care to write their codes and policies into as easily accessible a format as possible, and make that information widely available.

CONCLUSION

At a time when many housing markets are experiencing severe supply constraints and housing affordability is under stress nationwide, accessory dwelling unit legalization represents a low-profile free-market solution that requires little from government actors beyond getting out of the way. Production is undertaken by private actors on their own property, and diversifies a local housing stock without introducing large potentially contentious or character-transforming multifamily buildings to a single family neighborhood. This incremental infill further empowers homeowners by allowing them to increase the value of their property and receive an additional income stream. It offers renters more neighborhood options and cheaper rents.

While there are federal-level financing reforms that could further ease ADU development, local governments usually have all the tools they need to take advantage of ADU con-

struction without asking permission or seeking assistance from any higher bureaucracy. Reforming outdated zoning systems to accommodate the changing needs of American households, including the return of multigenerational living arrangements, should be an urgent priority. Such reforms should take care not to introduce new and unnecessary regulations, such as owner-occupancy requirements and short-term rental bans. These could chill the market’s response to ADU legalization.

Accessory dwelling units will not solve housing affordability crises by themselves, nor will they be suited to widespread adoption in every market. But there is little reason for towns and cities to persist in outlawing a flexible housing form that was widespread in the first half of the 20th century, just because it fell afoul of trendy regulations in the second half. The American built environment was notably adaptable throughout the growing country’s many changes up until the postwar land use codes were imposed and accumulated. Given the significant national changes still unfolding, land-use and building regulations need to provide as much adaptability and flexibility as cities can provide. Legalizing accessory dwelling units should be a simple way to engage that process.

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Accessory Dwelling Units: Case Study



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Accessory Dwelling Units: Case Study

Introduction

Accessory dwelling units (ADUs) — also referred to as accessory apartments, second units, or granny flats — are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities, and can be either attached or detached from the main residence.¹ This case study explores how the adoption of ordinances, with reduced regulatory restrictions to encourage ADUs, can be advantageous for communities. Following an explanation of the various types of ADUs and their benefits, this case study provides examples of municipalities with successful ADU legislation and programs.

History of ADUs

Development of accessory dwelling units can be traced back to the early twentieth century, when they were a common feature in single-family housing.² After World War II, an increased demand for housing led to a booming suburban population. Characterized by large lots and an emphasis on the nuclear family, suburban development conformed to Euclidean-type zoning codes, a system of land-use regulations that segregate districts according to use.³

Suburbs continued to be a prevalent form of housing development throughout the 1950s and 1960s. The rapid growth of suburbs reinforced the high demand for lower-density development, and ultimately led most local jurisdictions to prohibit ADU construction. In spite of zoning restrictions, illegal construction of ADUs continued in communities where the existing housing stock was not meeting demand; San Francisco was one such community. During World War II, the Bay Area experienced a defense boom that created a high demand for workforce housing, resulting in a large number of illegally constructed second units. By 1960, San Francisco

housed between 20,000 to 30,000 secondary units, 90 percent of which were built illegally.⁴

In response to suburban sprawl, increased traffic congestion, restrictive zoning, and the affordable housing shortage, community leaders began advocating a change from the sprawling development pattern of suburban design to a more traditional style of planning. Urban design movements, such as Smart Growth and New Urbanism, emerged in the 1990s to limit automobile dependency and improve the quality of life by creating inclusive communities that provide a wide range of housing choices. Both design theories focus on reforming planning practices to create housing development that is high density, transit-oriented, mixed-use, and mixed-income through redevelopment and infill efforts.⁵

In the late 1970s to the 1990s, some municipalities adopted ADU programs to permit the use and construction of accessory units. Many of these programs were not very successful, as they lacked flexibility and scope. Although a number of communities still restrict development of accessory dwelling units, there is a growing awareness and acceptance of ADUs as an inexpensive way to increase the affordable housing supply and address illegal units already in existence.



Interior ADU — located in attic space
Photo credit: Town of Barnstable, Massachusetts

¹ Municipal Research and Services Center of Washington, *Accessory Dwelling Units*, October 1995, <http://www.mrsc.org/Publications/textadu.aspx#tenant>.

² Transportation and Land Use Coalition, *Accessory Dwelling Units*, <http://www.transcoalition.org/ia/acssdwel/01.html#body>.

³ Transportation Research Board, *The Costs of Sprawl Revisited*, 1998, http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rpt_39-a.pdf.

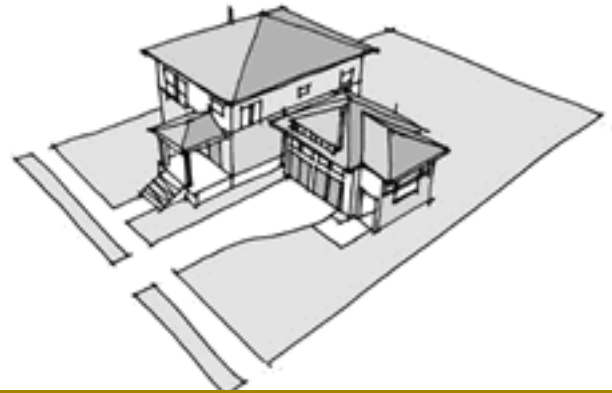
⁴ San Francisco Planning and Urban Research Association, *Secondary Units: A Painless Way to Increase the Supply of Housing*, August 2001, <http://www.spur.org/newsletters/0801.pdf>.

⁵ New Urban News, *The New Urbanism — An alternative to modern, automobile-oriented planning and development*, July 2004, <http://www.newurbannews.com/AboutNewUrbanism.html>.

Types of Accessory Dwelling Units

Depending on their location relative to the primary dwelling unit, ADUs can be classified into three categories: interior, attached, and detached.⁶ Interior ADUs are located within the primary dwelling, and are typically built through conversion of existing space, such as an attic or basement.

Attached ADUs are living spaces that are added on to the primary dwelling. The additional unit can be located to the side or rear of the primary structure, but can also be constructed on top of an attached garage. Detached ADUs are structurally separate from the primary dwelling. They can be constructed over existing accessory structures, such as a detached garage, or they can be built as units that are separate from accessory and residential structures.



ADU attached to the side of a garage addition
Illustration: RACESTUDIO and city of Santa Cruz

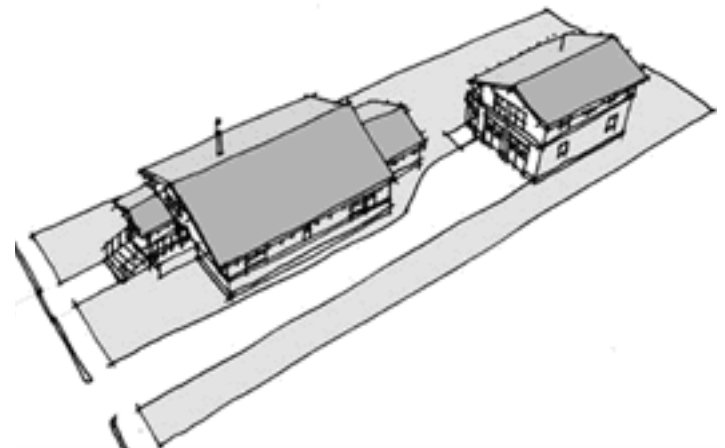
Benefits of Accessory Dwelling Units

Accessory dwelling units offer a variety of benefits to communities. They help increase a community's housing supply, and since they cost less than a new single-family home on a separate lot, they are an affordable housing option for many low- and moderate-income residents.⁷ Elderly and/or disabled persons who may want to live close to family members or caregivers, empty nesters, and young adults just entering the workforce find ADUs convenient and affordable.⁸ In addition to increasing the supply of affordable housing, ADUs benefit homeowners by providing extra income that can assist in mitigating increases in the cost of living.



Attached ADU
Photo credit: <http://mass.gov>

Accessory dwelling units have other advantages as well. They can be designed to blend in with the surrounding architecture, maintaining compatibility with established neighborhoods and preserving community character. Furthermore, there is no need to develop new infrastructure, since ADUs can be connected to the existing utilities of a primary dwelling. Allowing ADUs facilitates efficient use of existing housing stock, helps meet the demand for housing, and offers an alternative to major zoning changes that can significantly alter neighborhoods.⁹



Detached two-story ADU over garage
Illustration: RACESTUDIO and city of Santa Cruz

⁶ Transportation and Land Use Coalition.

⁷ Atlanta Regional Commission, *Accessory Dwelling Units*, August 2007, http://www.atlantaregional.com/documents/Accessory_Dwelling_Units_.pdf.

⁸ Ibid.

⁹ Municipal Research and Services Center of Washington.

Examples of ADU Ordinances and Programs

The following section of the case study provides an overview of ADU ordinances that have been adopted by five communities from across the nation. To gain a wider understanding of ADU programs in practice, the five communities have been chosen to represent a diverse range of geographic, demographic, and socioeconomic characteristics with different land use and growth control policies.

Lexington, Massachusetts

Lexington, Massachusetts is an affluent historic town, located 11 miles northwest of Boston, with a population of 30,355.¹⁰ According to the town's 2002 Comprehensive Plan, Lexington has largely exhausted its vacant unprotected land supply and is a highly built-out suburb with less than 1,000 acres of land available for new development.¹¹ Approximately 18 percent of the households in Lexington are eligible for affordable housing of some sort, and with a median home sales price of over \$600,000, many residents are being priced out of the housing market.¹² This limited growth potential and strong demand for affordable housing has led to the adoption of accessory apartment programs. The town implemented its first accessory unit bylaw in 1983, resulting in the construction of 60 units. In February of 2005, Lexington amended its bylaws to improve the clarity and flexibility of its ADU program.¹³ The town affirmed that the purpose of promoting ADUs is to increase the range of housing choices, encourage population diversity, and promote efficient use of the housing supply while maintaining the town's character.

The amended bylaws reduce or eliminate minimum lot size requirements, allow ADUs 'by-right' in homes built as recently as five years ago, and allow second units by special permit in new construction, or as apartments in accessory structures. The Lexington Zoning Code allows two ADUs per lot, provided the primary dwelling is connected to public water and sewer systems.¹⁴ Provisions allow absentee ownership for two years under special circumstances. In addition, a minimum of one off-street parking space

must be provided for every accessory unit. The by-right accessory apartments must be located within the primary dwelling and are allowed on lots that are at least 10,000 square feet. The maximum gross floor area of a by-right accessory apartment is 1,000 square feet and the unit cannot have more than two bedrooms.¹⁵

Increased flexibility in the program has proven beneficial to Lexington in the development of ADUs. According to Aaron Henry, Senior Planner for Lexington, the town's Housing Partnership Board is launching an education and outreach campaign for their ADU program to raise public interest.

Santa Cruz, California

Santa Cruz, California is a seaside city with a population of 54,600; it is one of the most expensive cities in the country in which to live. In 2006, the median price for a single-family home in Santa Cruz was \$746,000, which only 6.9 percent of the city residents could easily afford.¹⁶ In spite of the high cost of living, the city continues to be a desirable destination on account of its scenic location and proximity to San Francisco and the Silicon Valley. The location of a campus of the University of California — the area's largest employer — also adds to the demand for housing in Santa Cruz.¹⁷ Another contributing factor is the limited amount of land allowed for development within the city's



Detached ADU over garage — design by Boone/Low Architects and Planners

Illustration: RACESTUDIO and city of Santa Cruz

¹⁰ U.S. Census 2000, www.census.gov.

¹¹ Town of Lexington, *Comprehensive Plan*, 2002, <http://ci.lexington.ma.us/Planning/CompPlan.htm>.

¹² Town of Lexington, *Lexington Housing Strategy*, October 2007, [http://ci.lexington.ma.us/Planning/Documents/Housing%20Strategy%20\(Oct%202007\).pdf](http://ci.lexington.ma.us/Planning/Documents/Housing%20Strategy%20(Oct%202007).pdf).

¹³ The Massachusetts Smart Growth/Smart Energy Toolkit, *Accessory Dwelling Units (ADU) Suburban Case Study*, http://www.mass.gov/envir/smart_growth_toolkit/pages/CS-adu-lexington.html.

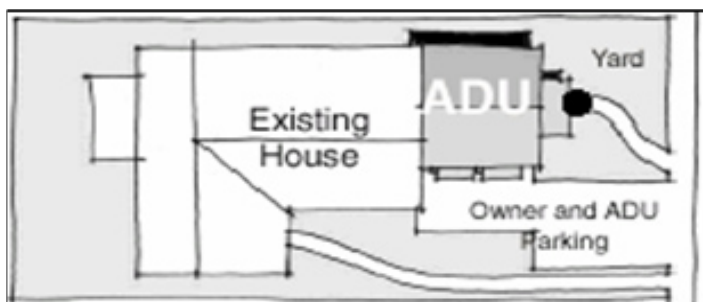
¹⁴ See Appendix A.

¹⁵ Town of Lexington, <http://ci.lexington.ma.us>.

¹⁶ City of Santa Cruz, <http://www.ci.santa-cruz.ca.us>.

¹⁷ Fred Bernstein, *Granny Flats for Cool Grannies*, February 2005, <http://www.fredbernstein.com/articles/display.asp?id=91>.

greenbelt. In order to preserve the greenbelt while accommodating new growth, promoting public transportation, and increasing the supply of affordable housing, the city adopted a new ADU ordinance in 2003.



Prototype site layout for attached ADU – ADU Manual
Illustration: RACESTUDIO and city of Santa Cruz

This ordinance sets forth regulations for the location, permit process, deed restrictions, zoning incentives, and design and development standards for ADUs. Accessory dwelling units are permitted in designated residential zones on lots that are at least 5,000 square feet in area. No more than one ADU per lot is allowed and the property owner must occupy the primary or accessory dwelling unit. ADUs that do not meet the permitting requirements stipulated in the ordinance must undergo a public hearing process. Development fees are waived for ADUs made available for low- and very-low-income households.¹⁸

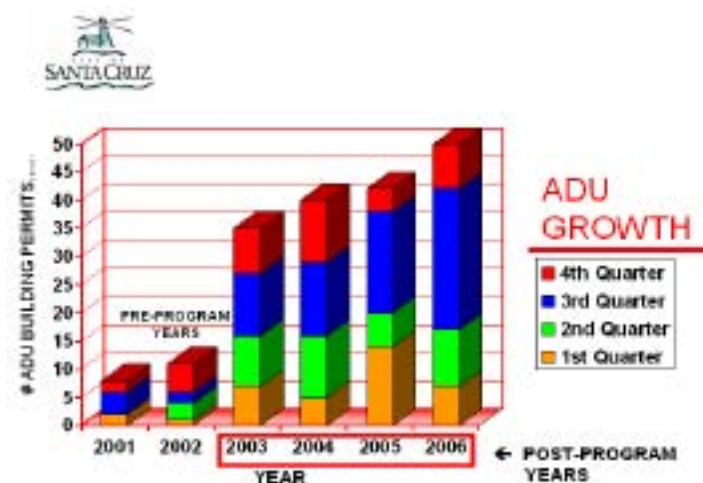
In addition to the ordinance that regulates the development of ADUs, Santa Cruz has established an ADU development program with three major components: technical assistance, a wage subsidy and apprentice program, and an ADU loan program.¹⁹ As part of the technical assistance program, the city published an ADU Plan Sets Book that contains design concepts developed by local and regional architects. Homeowners can select one of these designs and receive permits in an expedited manner. In addition, the city offers an ADU Manual, which provides homeowners with information on making their ADU architecturally compatible with their neighborhood, zoning regulations relevant to ADUs, and the permitting process.

Santa Cruz's ADU Development Program has won numerous awards and has been used as a model by other communities. According to Carol Berg, who is the housing and community development manager for the city, an average of 40 to 50 ADU permits have been approved every year since the start of the program. She attributes the program's success primarily to zoning changes that were adopted to facilitate development of ADUs, such as the elimination of covered parking requirements.

Portland, Oregon

With a population of approximately 530,000, Portland is the most populous city in the state of Oregon, and is noted for its strong land use control and growth management policies. Although Portland has had an ADU program in place for several years, ADU development was not effectively promoted until 1998, when the city amended its laws to relax the regulations governing ADUs.²⁰ The amendments eliminated the minimum square footage and owner-occupancy requirements. ADUs are now allowed in all residential zones with relaxed development standards.

Portland's regulations permit the construction of ADUs on lots with a single-family home, as long as they are smaller, supplementary to the primary residence, and no more than 800 square feet.²¹ They can be created by conversion of an existing structure or by construction of a new building. An early assistance process is available to help with project development for ADUs created through the conversion of an existing structure. ADUs that meet all the standards are permitted by right and do not require a land use review. No additional parking is required for accessory



ADU Permits approved for the city of Santa Cruz
Source: City of Santa Cruz

¹⁸ See Appendix B.

¹⁹ City of Santa Cruz, *Accessory Dwelling Unit Development Program*, <http://www.ci.santa-cruz.ca.us>.

²⁰ Barbara Sack, city of Portland.

²¹ See Appendix C.

units. Portland's ADU program guide outlines ways to bring existing nonconforming units into compliance.

The city considers ADUs to be more affordable than other housing types because of the efficiency of the units in using fewer resources and reducing housing costs. City planner Mark Bello notes that allowing more ADUs did increase the housing supply, and that city residents viewed ADUs positively and were satisfied with the changes made. He also added, "There were no significant negative issues that arose from liberalizing Portland's code."

Barnstable, Massachusetts

With seven villages within its boundaries and a total population of 47,821, the town of Barnstable is the largest community in both land area and population on Cape Cod.²² Approved in November 2000, Barnstable's Accessory Affordable Apartment or Amnesty Program is a component of its Affordable Housing Plan.²³ The program guides creation of affordable units within existing detached structures or new affordable units within attached structures. Eligibility for the program is limited to single-family properties that are owner-occupied and multifamily properties that are legally permitted.

Barnstable's amnesty program is seen as a way to bring the high number of existing illegal ADUs into compliance with current requirements. In order to bring a unit into compliance, the property owner must agree to rent to low-income tenants — those earning 80 percent or less



ADU over detached garage
Photo credit: Town of Barnstable



ADU on lower level of primary dwelling
Photo credit: Town of Barnstable

of the area median income — with a minimum lease term of one year. The amnesty program offers fee waivers for inspection and monitoring of units and designates town staff to assist homeowners through the program's administrative process. The town can access Community Development Block Grant funds to reimburse homeowners for eligible costs associated with the rehabilitation or upgrade of an affordable ADU. Homeowners are also offered tax relief to offset the negative effects of deed restrictions that preserve the affordability of the units.²⁴

Through its Amnesty Program, the town of Barnstable has successfully brought many of its illegal accessory units into compliance, with the added benefit of increasing the supply of affordable housing. Since the start of the program, Barnstable has approved 160 affordable ADUs. Beth Dillen, Special Projects Coordinator for the town's Growth Management Department, noted that "the ADU program has been very well received and there has been no neighborhood opposition." The program has been successful in converting existing illegal accessory apartments into code-compliant ADUs. According to Building Commissioner Tom Perry, "The benefit to this program is twofold. It is increasing the affordable housing supply and it also makes units, that before were unsafe and illegal, safe and legal."

Wellfleet, Massachusetts — Home of Oysters...and ADUs

Wellfleet is located in Barnstable County, Massachusetts. Located on Cape Cod, Wellfleet is a tourist town with a

²² U.S. Census 2000, www.census.gov.

²³ See Appendix D.

²⁴ Town of Barnstable, *Accessory Affordable Apartment Program*, http://www.town.barnstable.ma.us/GrowthManagement/CommunityDevelopment/AssessoryHousing/AAAP-BROCHURE_rev041206.pdf.

year-round population of 3,500, which increases to 17,000 in the summer months. Sixty-one percent of the land area in Wellfleet is part of the Cape Cod National Seashore and about 70 percent of the entire land area is protected from development.²⁵ Wellfleet also has a growing concentration of elderly residents 65 years and older. A housing needs assessment study conducted by the town in 2006 recommended the adoption of an affordable ADU program to meet elderly housing needs and to increase the supply of affordable multifamily rental units.²⁶



Interior ADU – Town of Wellfleet
Photo credit: Town of Wellfleet

The affordable ADU bylaw for Wellfleet allows up to three ADUs per lot in any district, but requires approval of a special permit from the Zoning Board of Appeals. Secondary units may be within, attached to, or detached from a



Detached ADU – Town of Wellfleet
Photo credit: Town of Wellfleet

primary structure, and may not be larger than 1,200 square feet. Homeowners with pre-existing attached and nonconforming accessory apartments may only make changes that increase the conformity of the structures.²⁷

Unless the provisions are specifically waived, the construction of new ADUs must conform to all zoning bylaw provisions and the owner of the property must occupy either the ADU or the primary dwelling. Detached units must comply with all setback requirements. Owners are required to rent to low- or moderate-income households. Maximum rents follow the Fair Market Rental Guidelines published by HUD and the property owners must submit annual information on rents to be charged.

To encourage participation in the ADU program, Wellfleet has instituted a new affordable accessory dwelling unit loan program.²⁸ The program offers interest-free loans for homeowners to develop affordable accessory units. The funds can also be used by homeowners to bring their ADU up to code. Wellfleet offers tax exemptions to homeowners on the portion of the property that is rented as an affordable unit. According to Nancy Vail, Assessor for the Town of Wellfleet, the combined tax savings for all ADU property owners totaled \$7,971.17 for fiscal year 2008. Sixteen units have been approved since the start of the program in November 2006.

Fauquier County, Virginia

Fauquier County is a largely rural county located about 50 miles outside of Washington, D. C. Beginning in 1967, Fauquier County adopted strict zoning regulations to limit growth to nine defined areas as a means of preserving farmland and open space; in effect, establishing growth boundaries.²⁹ However, the county population is rapidly increasing. The 2006 U.S. Census population estimate for Fauquier County was 66,170, a 20 percent increase from 2000. A needs assessment study by the Fauquier County Affordable Housing Task Force found that between 2000 and 2006, the median housing price in Fauquier County increased 127 percent, while the median household income increased 21 percent. To accommodate its growing population, especially the need for workforce housing, the county encourages infill development within the nine defined areas, and is active in reducing barriers to affordable housing.

²⁵ Town of Wellfleet, <http://www.wellfleetma.org>

²⁶ Town of Wellfleet, *Housing Needs Assessment*, 2006, http://www.wellfleetma.org/Public_Documents/WellfleetMA_LocalCompPlan/Appendix8.pdf.

²⁷ See Appendix E.

²⁸ Town of Wellfleet, *Affordable Accessory Dwelling Unit Program*, http://www.wellfleetma.org/Public_Documents/WellfleetMA_WebDocs/AADU.pdf.

²⁹ Keith Schneider, *New Approaches to Shaping Community Futures*, March 1997, Michigan Land Use Institute, <http://www.mlui.org/growthmanagement/fullarticle.asp?fileid=3862>.

Fauquier County recognizes three different types of accessory units: family dwellings, efficiency apartments, and tenant houses.³⁰ Family dwelling units are detached accessory units constructed for use by the homeowner's family member(s); they must be occupied by no more than five people, at least one of them related to the owner. Family dwelling units may be as large as 1,400 square feet in size and are permitted in both rural and many residentially zoned areas. Efficiency apartments are alternatives to family dwelling units and are attached to either the primary residence or to an accessory structure, such as a garage. The size is limited to 600 square feet or 25 percent of the gross floor area of the main dwelling, whichever is greater. Efficiencies may not be occupied by more than two unrelated people and are allowed in rural and residential-zoned areas. Tenant houses are detached dwellings built on the property for the purpose of supporting agricultural land uses. At least one person occupying the tenant house must work on the property. Tenant houses have no size limits. They are allowed only on rurally zoned areas or properties of at least 50 acres, with one tenant house for every 50 acres of a property.

Development of ADUs in Fauquier County depends on the zoning, the size of the property, and availability of septic/sewer and water services. Each of the unit types is approved by the Fauquier Office of Zoning Permitting and Inspections, with a building permit, provided that the units meet zoning requirements. According to the county's zoning office, 155 accessory dwelling units and 37 efficiency apartments were permitted from 1997 to 2007.

Conclusion

At the height of the suburbanization of the United States in the 1950s and 1960s, high-density development became undesirable. Instead, communities favored low-density development defined by large-lot single-family homes. Accessory apartments that were once a common feature in many homes were excluded from zoning ordinances. However, growing demand for affordable housing (coupled with the limited amount of land available for development in many communities) has led to changing attitudes about the use and development of accessory apartments. An

increasing number of communities across the nation are adopting flexible zoning codes within low-density areas in order to increase their affordable housing supply.

Communities find that allowing accessory dwelling units is advantageous in many ways. In addition to providing practical housing options for the elderly, disabled, empty nesters, and young workers, ADUs can provide additional rental income for homeowners. ADUs are smaller in size, do not require the extra expense of purchasing land, can be developed by converting existing structures, and do not require additional infrastructure. They are an inexpensive way for municipalities to increase their housing supply, while also increasing their property tax base. By providing affordable housing options for low- and moderate-income residents, communities can retain population groups that might otherwise be priced out of the housing market.

The examples provided in the previous section involve communities that have to rely on existing housing stock to meet rising demand, either due to lack of developable land or strict growth management regulations. Portland and Fauquier County have adopted ADU ordinances to increase housing supply within their growth boundaries. Communities that are built out or have limited available land benefit from allowing the development of accessory units, as in Lexington and Wellfleet. Barnstable's amnesty program shows how to successfully bring a large number of existing illegal accessory units into compliance. In addition to allowing ADUs in all residential zones, Santa Cruz has attracted interest in ADU development by publishing an ADU Manual and Plan Sets Book with seven prototype designs for accessory units.

A community can tailor ADU ordinances to suit its demographic, geographic, and socioeconomic characteristics. The communities discussed in this case study provide loan programs, tax incentives, streamlined permitting, and reduced development fees as part of their ADU programs. In order for an ADU program to succeed, it has to be flexible, uncomplicated, include fiscal incentives, and be supported by a public education campaign that increases awareness and generates community support.

³⁰ See Appendix F.

Appendix A — Town of Lexington, Massachusetts, Article V, 135-19, Accessory Apartments

§ 135-19. Accessory apartments. [Amended 5-2-1988 ATM by Art. 41; 4-10-1989 ATM by Art. 41; 4-4-1990 ATM by Art. 36; 4-4-2005 ATM by Art. 10]

An accessory apartment is a second dwelling subordinate in size to the principal dwelling unit on an owner-occupied lot, located in either the principal dwelling or an existing accessory structure. The apartment is constructed so as to maintain the appearance and essential character of a one-family dwelling and any existing accessory structures. Three categories of accessory apartments are permitted: by-right accessory apartments, which are permitted as of right, and special permit accessory apartments and accessory structure apartments, which may be allowed by a special permit.

A. General objectives. The provision of accessory dwelling units in owner-occupied dwellings is intended to:

- (1) Increase the number of small dwelling units available for rent in the Town;
- (2) Increase the range of choice of housing accommodations;
- (3) Encourage greater diversity of population with particular attention to young adults and senior citizens; and
- (4) Encourage a more economic and energy-efficient use of the Town's housing supply while maintaining the appearance and character of the Town's single-family neighborhoods.

B. Conditions and requirements applicable to all accessory apartments.

(1) General.

- (a) There shall be no more than two dwelling units in a structure, and no more than two dwelling units on a lot.
- (b) There shall be no boarders or lodgers within either dwelling unit.
- (c) No structure that is not connected to the public water and sanitary sewer systems shall have an accessory apartment.
- (d) The owner of the property on which the accessory apartment is to be created shall occupy one or the other of the dwelling units, except for temporary absences as provided in Subsection B (1) (e). For the purposes of this section, the "owner" shall be one or more individuals who constitute a family, who hold title directly or indirectly to the dwelling, and for whom the dwelling is the primary residence...

(2) Exterior appearance of a dwelling with an accessory apartment. The accessory apartment shall be designed so that the appearance of the structure maintains that of a one-family dwelling....

(3) Off-street parking. There shall be provided at least two off-street parking spaces for the principal dwelling unit and at least one off-street parking space for the accessory apartment....

C. By-right accessory apartments shall be permitted so long as the requirements set forth in the §135-19B are satisfied and the following criteria in this section are met:

- (1) The lot area shall be at least 10,000 square feet.
 - (2) The apartment shall be located in the principal structure.
 - (3) The maximum gross floor area of the by-right accessory apartment shall not exceed 1,000 square feet.
 - (4) There shall not be more than two bedrooms in a by-right accessory apartment.
 - (5) There shall be no enlargements or extensions of the dwelling in connection with any by-right accessory apartment except for minimal additions necessary to comply with building, safety or health codes, or for enclosure of an entryway, or for enclosure of a stairway to a second or third story.
 - (6) The entire structure containing the by-right accessory apartment must have been in legal existence for a minimum of five years at the time of application for a by-right accessory apartment.
- D. Special permit accessory apartments. If a property owner cannot satisfy the criteria for by-right accessory apartments that are set forth in § 135-19C above, the property owner may apply for a special permit from the Board of Appeals....
- E. Accessory structure apartments. Notwithstanding any provisions of this Zoning By-Law that state an accessory apartment shall be located in a structure constructed as a detached one-family dwelling and the prohibition in § 135-35D against having more than one dwelling on a lot, the Board of Appeals may grant a special permit as provided in § 135-16, Table I, line 1.22C, to allow the construction of an accessory apartment in an existing accessory structure which is on the same lot in the RS, RT, KO, RM or CN District as an existing one-family dwelling provided:
- (1) Lot area is at least 18,000 square feet if in the RS, RT, or CN District, at least 33,000 square feet if in the RO District, and at least 125,000 square feet if in the RM District;
 - (2) The structure containing the accessory structure apartment was in legal existence for a minimum of five years and had a minimum of 500 square feet of gross floor area as of five years prior to the time of application;
 - (3) The maximum gross floor area of the accessory structure apartment does not exceed 1,000 square feet. An addition to an accessory structure may be permitted, but no addition shall be allowed which increases the gross floor area of the structure to more than 1,000 square feet. The gross floor area for the accessory apartment shall not include floor area used for any other permitted accessory use. The accessory apartment cannot contain floor area that has been designed, intended or used for required off-street parking to serve the principal dwelling;...

Appendix B — City of Santa Cruz, California, Title 24, Zoning Ordinance, Chapter 24.16, Part 2: ADU Zoning Regulations

24.16.100 Purpose.

The ordinance codified in this part provides for accessory dwelling units in certain areas and on lots developed or proposed to be developed with single-family dwellings. Such accessory dwellings are allowed because they can contribute needed housing to the community's housing stock. Thus, it is found that accessory units are a residential use which is consistent with the General Plan objectives and zoning regulations and which enhances housing opportunities that are compatible with single-family development...

24.16.120 Locations Permitted.

Accessory dwelling units are permitted in the following zones on lots of 5000 square feet or more...

24.16.130 Permit Procedures.

The following accessory dwelling units shall be principally permitted uses within the zoning districts specified in Section 24.16.120 and subject to the development standards in Section 24.16.160.

1. Any accessory dwelling unit meeting the same development standards as permitted for the main building in the zoning district, whether attached or detached from the main dwelling.
2. Any single story accessory dwelling unit.

Any accessory dwelling unit not meeting the requirements above shall be conditionally permitted uses within the zoning districts specified in Section 24.16.120 and shall be permitted by administrative use permit at a public hearing before the zoning administrator, subject to the findings per Section 24.16.150 and the development standards in Section 24.16.160...

24.16.160 Design and Development Standards.

All accessory dwelling units must conform to the following standards:

1. **Parking.** One parking space shall be provided on-site for each studio and one bedroom accessory unit. Two parking spaces shall be provided on site for each two bedroom accessory unit. Parking for the accessory unit is in addition to the required parking for the primary residence. (See Section 24.16.180 for parking incentives.)
2. **Unit Size.** The floor area for accessory units shall not exceed five hundred square feet for lots between 5000 and 7500 square feet. If a lot exceeds 7500 square feet, an accessory unit may be up to 640 square feet and, for lots in excess of 10,000 square feet, a unit may be up to 800 square feet. In no case may any combination of buildings occupy more than thirty percent of the required rear yard for the district in which it is located, except for units which face an alley, as noted below. Accessory units that utilize alternative green construction methods that cause the exterior wall thickness to be greater than normal shall have the unit square footage size measured similar to the interior square footage of a traditional frame house.
3. **Existing Development on Lot.** A single-family dwelling exists on the lot or will be constructed in conjunction with the accessory unit.
4. **Number of Accessory Units Per Parcel.** Only one accessory dwelling unit shall be allowed for each parcel...

24.16.170 Deed Restrictions.

Before obtaining a building permit for an accessory dwelling unit the property owner shall file with the county recorder a declaration of restrictions containing a reference to the deed under which the property was acquired by the present owner and stating that:

1. The accessory unit shall not be sold separately.
2. The unit is restricted to the approved size.
3. The use permit for the accessory unit shall be in effect only so long as either the main residence, or the accessory unit, is occupied by the owner of record as the principal residence...

26.16.180 Zoning Incentives.

The following incentives are to encourage construction of accessory dwelling units.

1. **Affordability Requirements for Fee Waivers.** Accessory units proposed to be rented at affordable rents as established by the city, may have development fees waived per Part 4 of Chapter 24.16 of the Zoning Ordinance...
2. **Covered Parking.** The covered parking requirement for the primary residence shall not apply if an accessory dwelling unit is provided...

24.16.300 Units Eligible for Fee Waivers.

Developments involving residential units affordable to low or very-low income households may apply for a waiver of the following development fees:

1. Sewer and water connection fees for units affordable to low and very low income households.
2. Planning application and planning plan check fees for projects that are one hundred percent affordable to low and very-low income households.
3. Building permit and plan check fees for units affordable to very-low income households.
4. Park land and open space dedication in-lieu fee for units affordable to very low income households.
5. Parking deficiency fee for units affordable to very-low income households.
6. Fire fees for those units affordable to very-low income households.
(Ord. 93-51 § 6, 1993).

24.16.310 Procedure for Waiver of Fees.

A fee waiver supplemental application shall be submitted at the time an application for a project with affordable units is submitted to the city.
(Ord. 93-51 § 6, 1993)

Appendix C — City of Portland, Oregon, Title 33, Chapter 33.205: Accessory Dwelling Units

33.205.010 Purpose

Accessory dwelling units are allowed in certain situations to:

- Create new housing units while respecting the look and scale of single-dwelling development;
- Increase the housing stock of existing neighborhoods in a manner that is less intense than alternatives;
- Allow more efficient use of existing housing stock and infrastructure;
- Provide a mix of housing that responds to changing family needs and smaller households;
- Provide a means for residents, particularly seniors, single parents, and families with grown children, to remain in their homes and neighborhoods, and obtain extra income, security, companionship and services; and
- Provide a broader range of accessible and more affordable housing.

33.205.020 Where These Regulations Apply

An accessory dwelling unit may be added to a house, attached house, or manufactured home in an R zone, except for attached houses in the R20 through R5 zones that were built using the regulations of 33.110.240.E, Duplexes and Attached Houses on Corners.

33.205.030 Design Standards...

C. Requirements for all accessory dwelling units. All accessory dwelling units must meet the following:

- I. Creation. An accessory dwelling unit may only be created through the following methods:
 - a. Converting existing living area, attic, basement or garage;
 - b. Adding floor area;
 - c. Constructing a detached accessory dwelling unit on a site with an existing house, attached house, or manufactured home; or
 - d. Constructing a new house, attached house, or manufactured home with an internal or detached accessory dwelling unit.
2. Number of residents. The total number of individuals that reside in both units may not exceed the number that is allowed for a household...
5. Parking. No additional parking is required for the accessory dwelling unit. Existing required parking for the house, attached house, or manufactured home must be maintained or replaced on-site.
6. Maximum size. The size of the accessory dwelling unit may be no more than 33% of the living area of the house, attached house, or manufactured home or 800 square feet, whichever is less...

D. Additional requirements for detached accessory dwelling units. Detached accessory dwelling units must meet the following.

- I. Setbacks. The accessory dwelling unit must be at least:

- a. 60 feet from the front lot line; or
 - b. 6 feet behind the house, attached house, or manufactured home.
2. Height. The maximum height allowed for a detached accessory dwelling unit is 18 feet.
3. Bulk limitation. The building coverage for the detached accessory dwelling unit may not be larger than the building coverage of the house, attached house, or manufactured home. The combined building coverage of all detached accessory structures may not exceed 15 percent of the total area of the site...

33.205.040 Density

In the single-dwelling zones, accessory dwelling units are not included in the minimum or maximum density calculations for a site. In all other zones, accessory dwelling units are included in the minimum density calculations, but are not included in the maximum density calculations.

Appendix D — Town of Barnstable, Massachusetts, Chapter 9, Article II - Accessory Apartments and Apartment Units

§ 9-12. Intent and purpose.

- A. The intent of this article is to provide an opportunity to bring into compliance many of the currently unpermitted accessory apartments and apartment units in the Town of Barnstable, as well as to allow the construction of new dwelling units accessory to existing single-family homes to create additional affordable housing.
- B. This article recognizes that although unpermitted and unlawfully occupied, these dwelling units are filling a market demand for housing at rental costs typically below that of units which are and have been lawfully constructed and occupied.
- C. It is in the public interest and in concert with its obligations under state law, for the Town of Barnstable to offer a means by which so-called unpermitted and illegal dwelling units can achieve lawful status, but only in the manner described below.
- D. It is the position of the Town of Barnstable that the most appropriate mechanism for allowing for the conversion of unlawful dwelling units to lawful units is found in MGL c. 40B, §§ 20 to 23, the so-called “Comprehensive Permit” program. This provision of state law encourages the development of low- and moderate-income rental and owner-occupied housing and provides a means for the Board of Appeals to remove local barriers to the creation of affordable housing units. These barriers include any local regulation such as zoning and general ordinances that may be an impediment to affordable housing development.
- E. The Local Comprehensive Plan states that the Town should commit appropriate resources to support affordable housing initiatives. Under this article, the Town commits the following resources to support this affordable housing initiative:
 - (1) Waiver of fees for the inspection and monitoring of the properties identified under this article;
 - (2) Designation of Town staff to assist the property owner in navigating through the process established under this article;
 - (3) To the extent allowable by law, the negative effect entailed by the deed restriction involved will be reflected in the property tax assessment; and
 - (4) To assist property owners in locating available municipal, state and federal funds for rehabilitating and upgrading the properties identified under this article.
- F. The Local Comprehensive Plan supports, in conjunction with a variety of other strategies, the conversion of existing structures for use as affordable housing...

§ 9-14. Amnesty program.

Recognizing that the success of this article depends, in part, on the admission by real property owners that their property may be in violation of the Zoning Ordinances of the Town, Editor’s Note: See Ch. 240, Zoning. the Town hereby establishes the following amnesty program:

- A. The threshold criteria for units being considered as units potentially eligible for the amnesty program are:
 - (1) Real property containing a dwelling unit or dwelling units for which there does not exist a validly issued variance, special permit or building permit, does not qualify as a lawful, nonconforming use or structure, for any or all the units, and that was in existence on a lot of record within the Town as of January 1, 2000; or

- (2) Real property containing a dwelling unit or dwelling units which were in existence as of January 1, 2000, and which have been cited by the Building Department as being in violation of the Zoning Ordinance; and...
- B. The procedure for qualifying units that meet the threshold criteria for the amnesty program is as follows:
- (1) The unit or units must either be a single unit accessory to an owner occupied single-family dwelling or one or more units in a multifamily dwelling where there exists a legal multifamily use but one or more units are currently unpermitted;
 - (2) The unit(s) must receive a site approval letter under the Town's local Chapter 40B program;
 - (3) The property owner must agree that if s/he receives a comprehensive permit, the unit or units for which amnesty is sought will be rented to a person or family whose income is 80% or less of the area median income (AMI) of Barnstable-Yarmouth Metropolitan Statistical Area (MSA) and shall further agree that rent (including utilities) shall not exceed the rents established by the Department of Housing and Urban Development (HUD) for a household whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area. In the event that utilities are separately metered, the utility allowance established by the Barnstable Housing Authority shall be deducted from HUD's rent level.
 - (4) The property owner must agree, that if s/he receives a comprehensive permit, that s/he will execute a deed restriction for the unit or units for which amnesty is sought, prepared by the Town of Barnstable, which runs with the property so as to be binding on and enforceable against any person claiming an interest in the property and which restricts the use of one or more units as rental units to a person or family whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area (MSA)...

§ 9-15. New units accessory to single-family owner-occupied dwellings.

For a proposed new unit to be eligible for consideration under the local chapter 40B program, it must be a single unit, accessory to an owner-occupied single-family dwelling, to be located within or attached to an existing residential structure or within an existing building located on the same lot as said residential structure and comply with the following:

- A. The unit(s) must receive a site approval letter under the Town's local Chapter 40B program;
- B. The property owner must agree that if s/he receives a comprehensive permit, the accessory dwelling unit will be rented to a person or family whose income is 80% or less of the area median income (AMI) of Barnstable-Yarmouth Metropolitan Statistical Area (MSA) and shall further agrees that rent (including utilities) shall not exceed the rents established by the Department of Housing and Urban Development (HUD) for a household whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area. In the event that utilities are separately metered, the utility allowance established by the Barnstable Housing Authority shall be deducted from HUD's rent level.
- C. The property owner must agree, that if s/he receives a comprehensive permit, that s/he will execute a deed restriction for the unit, prepared by the Town of Barnstable, which runs with the property so as to be binding on and enforceable against any person claiming an interest in the property and which restricts the use of the one unit as a rental unit to a person or family whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area (MSA)...

Appendix E — Town of Wellfleet, Massachusetts, 6.21 Affordable Accessory Dwelling Units

Purpose: For the purpose of promoting the development of affordable rental housing in Wellfleet for year-round residents, a maximum of three affordable accessory dwelling units per lot may be allowed subject to the requirements, standards and conditions listed below:

6.21.1 Up to three affordable accessory dwelling units per lot may be allowed in any district by Special Permit from the Zoning Board of Appeals.

6.21.2 Affordable accessory dwelling units created under this by-law shall be occupied exclusively by income-eligible households, as defined by the guidelines in numbers 6.21.4 and 6.21.5 below. The affordability requirements of this by-law shall be imposed through conditions attached to the Special Permit issued by the Zoning Board of Appeals. No accessory apartment shall be constructed or occupied until proof of recording is provided to the Inspector of Buildings.

6.21.3 Requirements and Standards

- A. Affordable accessory dwelling units may be located within or attached to a principal dwelling, principal structure, a garage or constructed as a detached unit.
- B. Affordable accessory dwelling units shall not be larger than one thousand two hundred (1,200) square feet of Livable Floor Area as that term is defined in Section II of this Zoning By-law.
- C. Affordable accessory dwelling units within or attached to a principal dwelling, principal structure or garage that is pre-existing nonconforming shall not increase the nonconforming nature of that structure, except that any pre-existing accessory building may be eligible for conversion to an affordable accessory dwelling unit.
- D. Newly constructed detached accessory units shall comply with all applicable provisions of the Zoning By-law unless they are specifically waived by this by-law. Newly constructed detached accessory units shall comply with all setback requirements listed in Sections 5.4.2 of this Zoning By-law.
- E. Owners of residential property may occupy as a primary residence either the principal or accessory dwelling. For the purposes of this section, the “owner” shall mean one who holds legal or beneficial title.
- F. Septic systems are required to meet current Title 5 standards and shall be reviewed and approved by the Health Agent.
- G. The Inspector of Buildings and Health Agent shall inspect the premises for compliance with public safety and public health codes.
- H. No affordable accessory dwelling unit shall be separated by ownership from the principal dwelling unit or principal structure. Any lot containing an affordable accessory dwelling unit shall be subject to a recorded restriction that shall restrict the lot owner’s ability to convey interest in the affordable accessory dwelling unit, except leasehold estates, for the term of the restriction.

6.21.4 All occupants of the affordable accessory dwelling unit shall upon initial application and annually thereafter on the first of September, submit to the Town or its agent necessary documentation to confirm their eligibility for the dwelling unit. Specifically, all dwelling units must be rented to those meeting the guidelines for a low or moderate-income

family. For the purpose of this section, low income families shall have an income less than eighty (80) percent of the Town of Wellfleet median family income, and moderate income families shall have an income between eighty (80) and one hundred twenty (120) percent of the Town of Wellfleet median family income, as determined by the United States Department of Housing and Urban Development (HUD) Published Income Guidelines, and as may from time to time be amended.

6.21.5 Maximum rents shall be established in accordance with HUD published Fair Market Rental Guidelines. Property owners are required to submit to the Town or its agent information on the rents to be charged. Each year thereafter on the first of September, they shall submit information on annual rents charged to the Town or its agent. Forms for this purpose shall be provided. Rents may be adjusted annually in accordance with amendments to the Fair Market Rental Guidelines.

6.21.6 Procedure

- A. The property owner shall complete and submit an application for a Special Permit to the Zoning Board of Appeals in accordance with the Wellfleet Zoning Board of Appeals Rules and Procedures.
- B. The Zoning Board of Appeals shall hold a public hearing in accordance with the procedures and requirements set forth in Section 9 of Massachusetts General Law, Chapter 40A and the Wellfleet Zoning By-law, Section 8.4.2 .
- C. Appeal under this section shall be taken in accordance with Section 17 of Massachusetts General Law, Chapter 40A.
- D. The property owner shall complete and submit to the Inspector of Buildings an application for a Building Permit to allow a change in use.
- E. The property owner shall obtain a Certificate of Occupancy from the Inspector of Buildings prior to the affordable accessory dwelling unit being occupied.

Penalty – Failure to comply with any provision of this section may result in fines established in Section 8.3 of the Wellfleet Zoning By-laws.

Appendix F — Fauquier County, Virginia Zoning Ordinance

ARTICLE 5 — ADMINISTRATIVE PERMITS, SPECIAL PERMITS AND SPECIAL EXCEPTIONS

5-104 Standards for an administrative permit for an Efficiency Apartment

1. Such a unit shall not be occupied by more than two persons.
2. Not more than one such unit shall be located on a lot.
3. Such a unit shall contain no more than 600 square feet of gross floor area or 25% of the total gross floor of the dwelling, whichever is greater.
4. Such a unit shall be located only on the same lot as the residence of the owner of the lot.
5. Architectural features of such a unit shall conform with the single family character of the neighborhood (e.g., no additional front doors).

5-105 Standards for an administrative permit for a Family Dwelling Unit

1. Such a unit shall not be occupied by more than five (5) persons, at least one of whom must be the natural or adopted parent, grandparent, child, grandchild, brother or sister of the owner and occupant of the single family residence on the same lot. Or, the lot owner may live in the family dwelling unit and allow such family members to reside in the main house. In either case, the lot owner must reside on the property.
2. Such a unit may be 1,400 square feet of gross floor area.
3. No dwelling units other than the principal structure (a single family dwelling) and one such family dwelling unit shall be located on one lot...

ARTICLE 6 - ACCESSORY USES, ACCESSORY SERVICE USES AND HOME OCCUPATIONS

6-102 Permitted Accessory Uses

Accessory uses and structures shall include, but are not limited to, the following uses and structures, provided that such uses or structure shall be in accordance with the definition of Accessory Use contained in Article 15...

9. Guest house or rooms for guests in an accessory structure, but only on lots of at least two (2) acres and provided such house is without kitchen facilities, is used for the occasional housing of guests of the occupants of the principal structure and not as rental units or for permanent occupancy as housekeeping units...
14. Quarters of a caretaker, watchman or tenant farmer, and his family, but only in the Rural Districts at a density not to exceed one (1) unit per fifty (50) acres...
31. The letting for hire of not more than two rooms to not more than two persons for periods no shorter than one month...

Understanding Accessory Dwelling Units and Their Importance



Courtesy of Karen Chapple, UC Berkeley

California's housing production is not keeping pace with demand. In the last decade less than half of the needed housing was built. This lack of housing is impacting affordability with average housing costs in California exceeding the rest of the nation. As affordability becomes more problematic, people drive longer distances between a home that is affordable and where they work, or double up to share space, both of which reduces quality of life and produces negative environmental impacts.

Beyond traditional market-rate construction and government subsidized production and preservation there are alternative housing models and emerging trends that can contribute to addressing home supply and affordability in California.

One such example gaining popularity are Accessory Dwelling Units (ADUs) (also referred to as second units, in-law units, or granny flats).

What is an ADU

An ADU is a secondary dwelling unit with complete independent living facilities for one or more persons and generally takes three forms:

- *Detached*: The unit is separated from the primary structure
- *Attached*: The unit is attached to the primary structure
- *Repurposed Existing Space*: Space (e.g., master bedroom) within the primary residence is converted into an independent living unit
- *Junior Accessory Dwelling Units*: Similar to repurposed space with various streamlining measures

ADUs offer benefits that address common development barriers such as affordability and environmental quality. ADUs are an affordable type of home to construct in California because they do not require paying for land, major new infrastructure, structured parking, or elevators. ADUs are built with cost-effective one- or two-story wood frame construction, which is significantly less costly than homes in new multifamily infill buildings. ADUs can provide as much living space as the new apartments and condominiums being built in new infill buildings and serve very well for couples, small families, friends, young people, and seniors.

ADUs are a different form of housing that can help California meet its diverse housing needs. Young professionals and students desire to live in areas close to jobs, amenities, and schools. The problem with high-opportunity areas is that space is limited. There is a shortage of affordable units and the units that are available can be out of reach for many people. To address the needs of individuals or small families seeking living quarters in high opportunity areas, homeowners can construct an ADU on their lot or convert an underutilized part of their home like a garage

into a junior ADU. This flexibility benefits not just people renting the space, but the homeowner as well, who can receive an extra monthly rent income.

ADUs give homeowners the flexibility to share independent living areas with family members and others, allowing seniors to age in place as they require more care and helping extended families to be near one another while maintaining privacy.

Relaxed regulations and the cost to build an ADU make it a very feasible affordable housing option. A UC Berkeley study noted that one unit of affordable housing in the Bay Area costs about \$500,000 to develop whereas an ADU can range anywhere up to \$200,000 on the expensive end in high housing cost areas.

ADUs are a critical form of infill-development that can be affordable and offer important housing choices within existing neighborhoods. ADUs are a powerful type of housing unit because they allow for different uses, and serve different populations ranging from students and young professionals to young families, people with disabilities and senior citizens. By design, ADUs are more affordable and can provide additional income to homeowners. Local governments can encourage the development of ADUs and improve access to jobs, education and services for many Californians.



AGENDA ITEM 7

DATE OF MEETING: February 7, 2019	DATE SUBMITTED: February 1, 2019	
DEPT. OF ORIGIN: Development Services	SUBMITTED BY: Stephanie Doland	
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☒ PUBLIC HEARING ☐ CONSENT ☐ REGULAR ☐ WORK SESSION	ORDINANCE: ☐ 1ST READING ☐ 2ND READING ☐ RESOLUTION
AGENDA DESCRIPTION: Public Hearing to Consider an Amendment to the Official Zoning Map of the City of Brenham, to Change the Zoning District of a 51.119 Acre Tract of Land, Described as R20290 (WCAD), John Long Survey, A156, in Brenham, Washington County, Texas from a Mixed Residential Use (R-2) District to a Commercial Research and Technology Use (B-2) District (Case No. P-19-005)		
SUMMARY STATEMENT: Brenham Market Square, LP is the property owner of a primarily vacant 51.119-acre tract of land located west of the intersections of South Market Street, Cantey Street and US Highway 290 E. The applicant is requesting the property be rezoned from a combination of Mixed Residential Use District (R-2) and Commercial Research and Technology Use District (B-2) to Commercial Research and Technology Use District (B-2) for a mixed use development proposed to include multiple-family, office, and retail uses. The proposed rezoning request is in accordance with land use policies adopted in Envision 2020, the City of Brenham Comprehensive Plan which recommends the City consider multiple-family uses near major arterials as well as commercial and retail uses along highly traveled roadways such as State Highway 290. Six public comments were received prior to the Planning and Zoning Commission meeting. Six of them are opposed to the rezoning and one was neither for nor against. During the Public Hearing one person spoke in opposition of the proposed rezoning, stating she purchased her property with the understanding that the subject property was planned for development of a Church. On Monday, November 26, 2018, after conducting a Public Hearing, the Planning and Zoning Commission voted unanimously to recommended approval of the rezoning request.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference): N/A		

ATTACHMENTS: (1) Staff Report for Case No. P-19-005; and (2) Brenham Market Square Land Plan
FUNDING SOURCE (Where Applicable): N/A
RECOMMENDED ACTION: Discussion only
APPROVALS: James Fisher



CASE NUMBER P-19-005
ZONE CHANGE REQUEST – 2604/2610 S. Market Street

STAFF CONTACT:	Stephanie Doland, Assistant Director of Development Services
OWNERS/APPLICANTS:	Brenham Market Square, LP
ADDRESS/LOCATION:	2604 and 2610 S. Market Street. Located west of the intersections of South Market Street, Cantey Street and US Highway 290 E (Exhibit A).
LEGAL DESCRIPTION:	38.799 acres of land being Lot 1, Section 4 of the T&L Business Park and the remaining 12.32 acres being part of the John Long Survey, A -156
LOT AREA:	Approximately 51.119 acres
ZONING DISTRICT/USE:	Mixed Residential Use District (R-2) and B-2 Commercial Research and Technology District / Vacant (Exhibit B)
FUTURE LAND USE:	Multiple-Family
REQUEST:	A request to change the zoning classification from a combination of Mixed Residential Use District (R-2) and Commercial Research and Technology Use District (B-2) to Commercial Research and Technology Use District (B-2) (Exhibit C).

BACKGROUND:

The subject property is currently zoned as a combination of R-2, Mixed Residential Use District and B-2, Commercial Research and Technology District. The property owners/applicants, Brenham Market Square, LP, would like to develop the property with a mixture of land uses including multiple-family housing, retail, and office uses. The applicants have requested that the portion of the property currently zoned R-2 be rezoned such that the entire property be zoned B-2.

ANALYSIS OF CITY OF BRENHAM ZONING POLICIES:

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

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

The subject property is currently under-developed, primarily vacant land. The subject property is adjacent to S. Market Street to the north, Cantey Street to the east, US Highway 290 E to south. To

the west of the subject property is land zoned a combination of R-1 and R-2 and developed with single-family housing. Also located to the west of the subject property is land zoned B-2 and developed with Dairy Bar restaurant and City Electric Supply. The applicant proposes to construct a mixed-use development including, multiple-family, office, retail, and commercial uses. Allowing the proposed rezoning request would allow the approximately 51 acres to develop as a mixed use development and would be in keeping with the development pattern in the general vicinity.

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

The future land use map portion of the Envision 2020 Comprehensive Plan suggests the subject property may be appropriate for multiple-family uses. However, the Comprehensive Plan also includes land use policies to help guide land use decisions. Specifically the Plan recommends that the City consider permitting commercial and retail uses along highly traveled roadways such as State Highway 290. Additionally, the land use policies include the recommendation that multiple-family housing shall be located near major arterials "towards the periphery of the community." If the requested zone change were approved, the subject property would allow for the development of both multiple-family housing developments two acres or greater in size in addition to office, retail and commercial uses. Staff believes that the proposed request is aligned with the goals and land use policies established in the Comprehensive Plan.

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

The subject property is vacant, however existing utility services are located along the right-of-ways for S. Market Street, Cantey Street and the access road of US 290 East and can be extended to serve the proposed development on the property.

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

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

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

Property owners within 200 feet of the project site were mailed notifications of this request on January 17, 2019. The Notice of Public Hearing was published in the Brenham Banner on January 17, 2019. Any public comments submitted to staff will be provided in the Planning & Zoning Commission and City Council packets or during the public hearing.

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

If approved, the property will be required to adhere to minimum building setbacks and maximum impervious coverage requirements for property zoned B-2, Commercial Research and Technology. Staff finds that the aforementioned requirements will ensure that adequate open spaces is preserved on the subject property.

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

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

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

Rezoning the subject property to B-2 will allow the subject property to develop in accordance with property in the general vicinity. The subject 51+ acres of land is located between a freeway and arterial roadway which are both capable of handling traffic associated with uses allowed in the B-2 district. Adjacent property to the west is zoned a combination of R-1 and R-2 and developed with single-family dwellings. The applicant, Brenham Market Square, LP will be required to adhere to minimum buffer yard requirements. Buffer yard requirements are established to preserve existing neighborhoods and ensure adjacent property develops in a manner compatible to nearby land uses.

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

Staff finds that rezoning the property will protect adjacent existing and future residential neighborhoods due to the City adopted development standards including requirements related to buffer yards, screening, setbacks, drainage and landscaping.

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

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

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

If approved, the proposed rezoning will allow construction of a mixture of land uses, including multiple-family, retail, office, and commercial uses. Vacant commercial property surrounds the subject tract to the north, east and south of US Highway 290E. Staff believes that the proposed zoning change, if approved, will not negatively affect vacant land classified for commercial uses.

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

The property is vacant, and staff is not aware of any hindrances on the property created by legally existing incompatible uses. The applicants request will allow the subject property to develop with a mixture of land uses and if approved, will allow for compatible, legally conforming development.

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

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

STAFF RECOMMENDATION:

Staff recommends **approving** the proposed rezoning to the B-2, Commercial Research and Technology zoning use district for the subject 51.119 acre tract.

EXHIBITS:

- A. Aerial Map
- B. Zoning Map
- C. Zone Change Application
- D. Site photos
- E. Public Notice and Comment Forms

EXHIBIT "A"
AERIAL MAP



EXHIBIT "B"
ZONING MAP

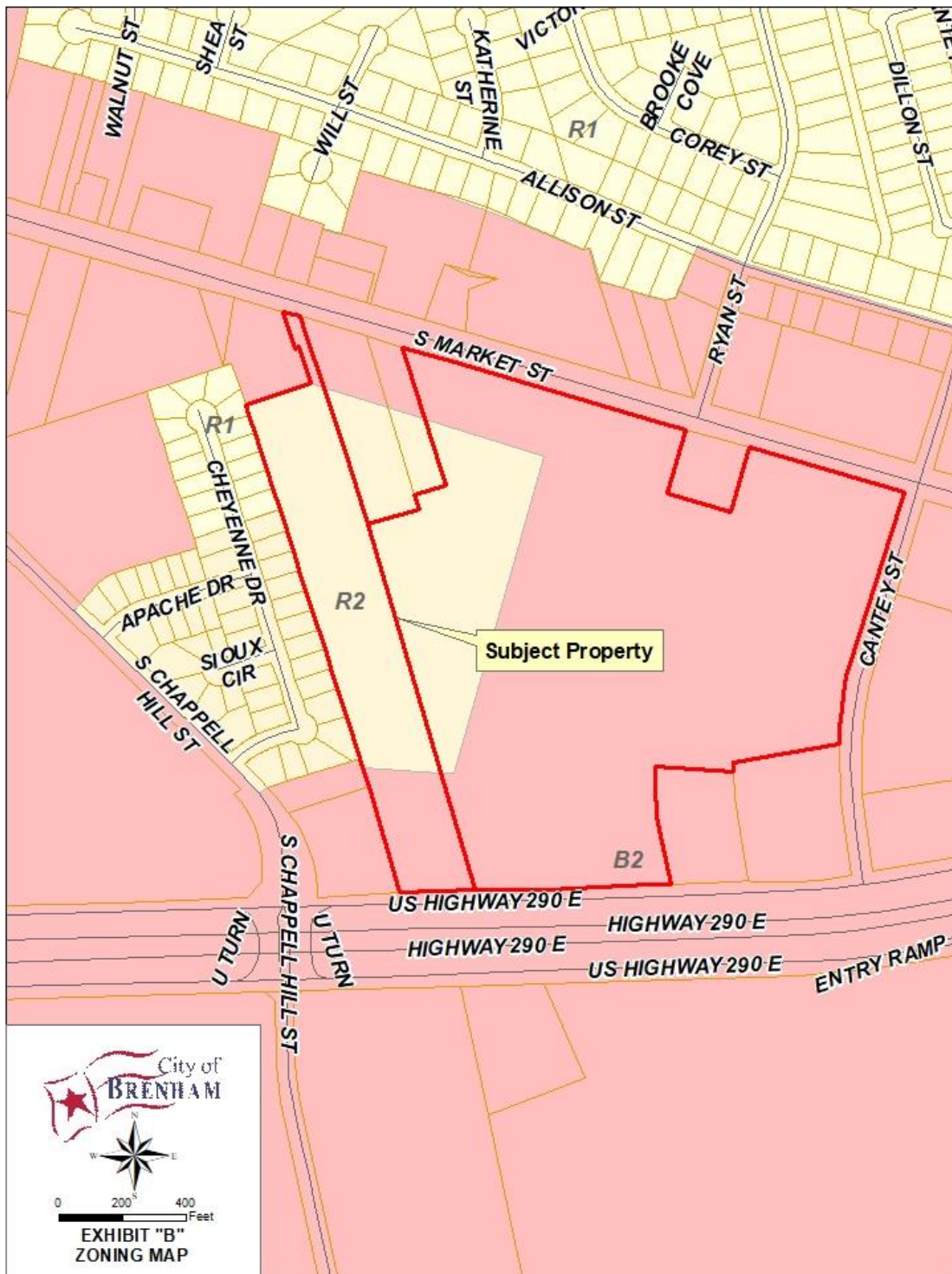


EXHIBIT "C"
ZONE CHANGE APPLICATION



For office use only

APPLICATION NO. _____
MEETING DATE: 2-25-19
DATE SUBMITTED: 1-4-19

CITY OF BRENHAM
GENERAL APPLICATION



Type of Application

- | | |
|---|--|
| ☐ Variance from Appendix A: Zoning | ☒ Zone Change |
| ☐ Specific Use Permit | ☐ Plan Review |
| ☐ Preliminary Plat | ☐ Final Plat/Replat/Amending Plat |
| ☐ Variance from Chapter 21: Signs | ☐ Other: _____ |

Property Owners Information

Name Brenham Market Square, LP
Principal Officers (If Corporation) President Paul Leventis, John Bleyl, Gregory Ricks
Secretary n/a
Address 1722 Broadmoor Drive, Suite 212, Bryan, TX 77802
Telephone Number (979) 774-2900 E-mail Address paull@brazostrace.com

Applicant Information

Name Paul Leventis
Address 1722 Broadmoor Drive, Suite 212, Bryan, TX 77802
Telephone Number (979) 774-2900 E-mail Address paull@brazostrace.com

Agent or Engineer Information

Name Austin Love
Address 100 Nugent Street, Conroe, TX 77301
Telephone Number 936-445-0136 E-mail Address ALOVE@bleylengineering.com

Location of Property

Street Address: 2604 S. Market Street, Brenham, TX 77834

Legal Description (attach metes and bounds description if not subdivided):

51.119 Acres, John Long Survey, A-156, Washington County, Texas

Zoning Information

Existing Zoning: R2 - Mixed Residential District

Proposed Zoning: B2 - Commercial, Research and Technology District

Reasons for requesting zone change:* The majority of the property is currently zoned B2. We are seeking to change the zoning of the remainder of the property to match and have it entirely zoned as B2. This would provide flexibility for commercial and multifamily development.

Variance Information

Section of Code from which variance is described:* n/a

Describe variance requested:* _____

Reasons for requesting variance:* _____

Proposed Property Use

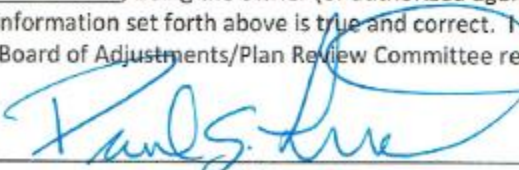
Describe in detail the proposed operation at this location:*

A mixed use development is planned with possible uses being multifamily, commercial, retail, office space, restaurants, etc.

Construction Value \$ TBD

Site plans are required for variance, special use, and plan review requests; please see Ordinance No. 0-05-007 for minimum site plan requirements.

I, Austin Love, being the owner (or authorized agent) of the above described property, do hereby certify the information set forth above is true and correct. I further request that the Planning & Zoning Commission/Board of Adjustments/Plan Review Committee review this matter and take appropriate action.



Owner



Agent

EXHIBIT "D"
SITE PHOTOS



View from Cantey Street



View from US Highway 290 E

**City of Brenham
Development Services Department
NOTICE OF PUBLIC HEARING**



City of Brenham
Development Services Department



PUBLIC COMMENT FORM

All submitted forms will become a part of the public record.

Please return to:

City of Brenham
Attn: Development Services Dept., Case P-9-005
P.O. Box 1059
Brenham, Texas 77834-1059

Name:
(please print)
Address:

Billy G. Brown, Leila Brown
2599 Cheyenne Dr

Signature:

Leila W. Brown

Date:

1-24-2019

I am FOR the requested REZONING REQUEST as explained on the attached public notice for P&Z Case P-19-005. (Please state reasons below)

✓

I am AGAINST the requested REZONING REQUEST as explained on the attached public notice for P&Z Case P-19-005. (Please state reasons below)

Date, Location, & Time of **Planning and Zoning Commission** meeting:

Monday, January 28, 2019, 5:15 PM

City Council Chambers, 2nd Floor, City of Brenham City Hall
200 West Vulcan Street, Brenham, Texas 77833

Date, Location, & Time of **City Council** meeting:

Thursday, February 7, 2019, 1:00 PM

City Council Chambers, 2nd Floor, City of Brenham City Hall
200 West Vulcan Street, Brenham, Texas 77833

COMMENTS/REASONS:

You may also submit comments via email to khodde@cityofbrenham.org. Please reference the case number in the subject line.
For questions regarding this proposal, please call the Development Services Department at (979) 337-7220.

City of Brenham
Development Services Department



PUBLIC COMMENT FORM

All submitted forms will become a part of the public record.

Please return to:

City of Brenham
Attn: Development Services Dept., Case P-9-005
P.O. Box 1059
Brenham, Texas 77834-1059

RECEIVED
1-25-19

Name:
(please print)
Address:

Luchious J. & Petra V. Collins (LE) Debra A. Clay ETAL
2411 Cheyenne DR.
Brenham, Tx. 77833

Signature:

Petra V. Collins 979.251.7356

Date:

Jan. 25, 2019

☐ I am FOR the requested REZONING REQUEST as explained on the attached public notice for P&Z Case P-19-005. (Please state reasons below)

☒ I am AGAINST the requested REZONING REQUEST as explained on the attached public notice for P&Z Case P-19-005. (Please state reasons below)

Date, Location, & Time of **Planning and Zoning Commission** meeting:

Monday, January 28, 2019, 5:15 PM

City Council Chambers, 2nd Floor, City of Brenham City Hall
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Date, Location, & Time of **City Council** meeting:

Thursday, February 7, 2019, 1:00 PM

City Council Chambers, 2nd Floor, City of Brenham City Hall
200 West Vulcan Street, Brenham, Texas 77833

COMMENTS/REASONS:

I am **against** changing the Zoning from a mixed Residential Use District R-2 to a Commercial Research and Technology Use District B-2. I don't want shopping strips or stores built right in my back yard, due to all the traffic & noise. Will see you at the meetings!!

You may also submit comments via email to khodde@cityofbrenham.org. Please reference the case number in the subject line.

For questions regarding this proposal, please call the Development Services Department at (979) 337-7220.

City of Brenham
Development Services Department



PUBLIC COMMENT FORM

All submitted forms will become a part of the public record.

Please return to:

City of Brenham

Attn: Development Services Dept., Case P-9-005

P.O. Box 1059

Brenham, Texas 77834-1059

Name:

(please print)

Address:

WILLIAM HIELSCHER

2597 CHEYENNE DRIVE

Signature:

Wm. Hiel

Date:

1-21-2019

I am FOR the requested REZONING REQUEST as explained on the attached public notice for P&Z Case P-19-005. (Please state reasons below)

☒

I am AGAINST the requested REZONING REQUEST as explained on the attached public notice for P&Z Case P-19-005. (Please state reasons below)

Date, Location, & Time of Planning and Zoning Commission meeting:

Monday, January 28, 2019, 5:15 PM

City Council Chambers, 2nd Floor, City of Brenham City Hall

200 West Vulcan Street, Brenham, Texas 77833

Date, Location, & Time of City Council meeting:

Thursday, February 7, 2019, 1:00 PM

City Council Chambers, 2nd Floor, City of Brenham City Hall

200 West Vulcan Street, Brenham, Texas 77833

COMMENTS/REASONS:

SEE ATTACHMENT.

You may also submit comments via email to khodde@cityofbrenham.org. Please reference the case number in the subject line.
For questions regarding this proposal, please call the Development Services Department at (979) 337-7220.

Comments: Changing the current zoning from R2 to B2 zoning will have the potential to change the homes bordering the R2 zoned area from a tranquil location to a location of high noise and high illuminated conditions. Within the nonresidential uses there are several business that are permitted which could emitted fugitive emissions (Paint & Body shops, Research & Development, etc) along with storage lots for miscellaneous uses, I personally do not want to look out my back door and see such conditions on a daily basis. I purchased this home with the knowledge that the land behind my property was zone for Mixed Residential Use. This I believed would provide me with a peace full place to live in my retirement. If the zoning is changed from R2 to B2 zone I believe I will see unwanted changes.

Wm. H. H. H.

City of Brenham
Development Services Department



PUBLIC COMMENT FORM

All submitted forms will become a part of the public record.

Please return to:

City of Brenham
Attn: Development Services Dept., Case P-9-005
P.O. Box 1059
Brenham, Texas 77834-1059

Name:
(please print)
Address:

BARBARA J. KENNEDY
2609 CHEYENNE DR (PROPERTY ADDRESS)

BRENHAM TX 77833

Signature:

Barbara Kennedy

Date:

1/24/19

☐ I am FOR the requested REZONING REQUEST as explained on the attached public notice for P&Z Case P-19-005. (Please state reasons below)

☒ I am AGAINST the requested REZONING REQUEST as explained on the attached public notice for P&Z Case P-19-005. (Please state reasons below)

Date, Location, & Time of **Planning and Zoning Commission** meeting:

Monday, January 28, 2019, 5:15 PM

City Council Chambers, 2nd Floor, City of Brenham City Hall
200 West Vulcan Street, Brenham, Texas 77833

Date, Location, & Time of **City Council** meeting:

Thursday, February 7, 2019, 1:00 PM

City Council Chambers, 2nd Floor, City of Brenham City Hall
200 West Vulcan Street, Brenham, Texas 77833

COMMENTS/REASONS:

COMMERCIAL DEVELOPMENT WILL LESSEN VALUE
OF NEARBY RESIDENTIAL PROPERTY →

NO TO COMMERCIAL USE!!

You may also submit comments via email to khodde@cityofbrenham.org. Please reference the case number in the subject line.
For questions regarding this proposal, please call the Development Services Department at (979) 337-7220.

**MIKE KILPATRICK
2400 COREY STREET
BRENHAM, TEXAS 77833**

January 27, 2019

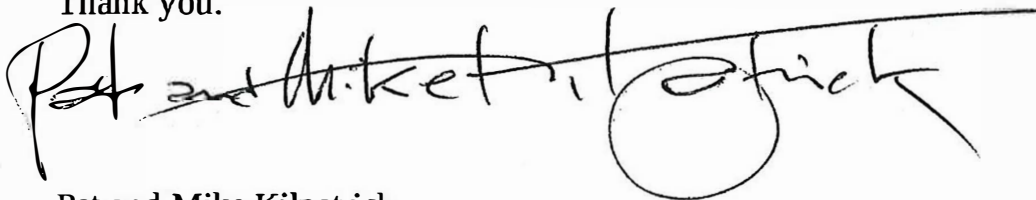
City of Brenham Planning and Zoning Commission
200 W. Vulcan
Brenham, Texas 77833

Dear Ladies and Gentlemen:

This letter is in regards to the rezoning you are about to consider for property in Brenham described as 51 acres west of the intersections of South Market Street, Cantey Street, and Highway 290 East as requested by Brenham Market Square, LP. We are neither for or against the rezoning request but ask that you and the City of Brenham keep in mind the neighborhood to the north known as Highland Meadows.

Highland Meadows is at a lower elevation than the property you are considering and already receives storm water runoff from it by way of drainage easements. Please exercise all care and engineering due diligence throughout your process to avoid future potential flooding of our neighborhood and request the same of the City of Brenham.

Thank you.

A handwritten signature in black ink that reads "Pat and Mike Kilpatrick". The signature is stylized, with the first letters of the first and last names being large and prominent. There is a large circular flourish at the end of the signature.

Pat and Mike Kilpatrick

Copy to: Councilman Andrew Ebel
Ms. Lori Sanguedolce

City of Brenham
Development Services Department



PUBLIC COMMENT FORM

All submitted forms will become a part of the public record.

Please return to:

City of Brenham
Attn: Development Services Dept., Case P-9-005
P.O. Box 1059
Brenham, Texas 77834-1059

Name:

(please print)

Address:

Tam and Marlene Thai
2550 Jamie Lane
Brenham, Tx 77833

Signature:

Date:

01-22-19

I am FOR the requested REZONING REQUEST as explained on the attached public notice for P&Z Case P-19-005. (Please state reasons below)

I am AGAINST the requested REZONING REQUEST as explained on the attached public notice for P&Z Case P-19-005. (Please state reasons below)

Date, Location, & Time of **Planning and Zoning Commission** meeting:

Monday, January 28, 2019, 5:15 PM

City Council Chambers, 2nd Floor, City of Brenham City Hall
200 West Vulcan Street, Brenham, Texas 77833

Date, Location, & Time of **City Council** meeting:

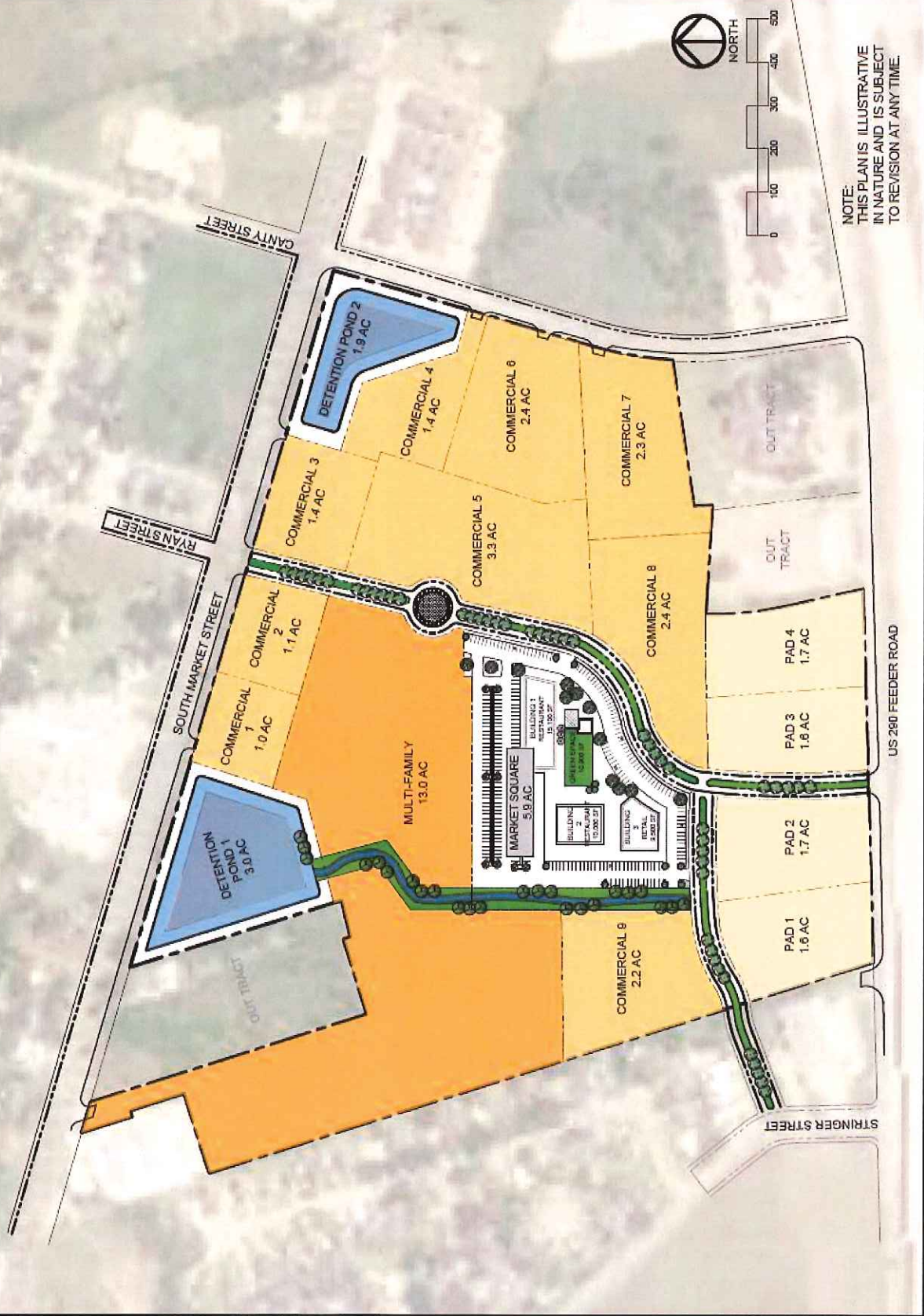
Thursday, February 7, 2019, 1:00 PM

City Council Chambers, 2nd Floor, City of Brenham City Hall
200 West Vulcan Street, Brenham, Texas 77833

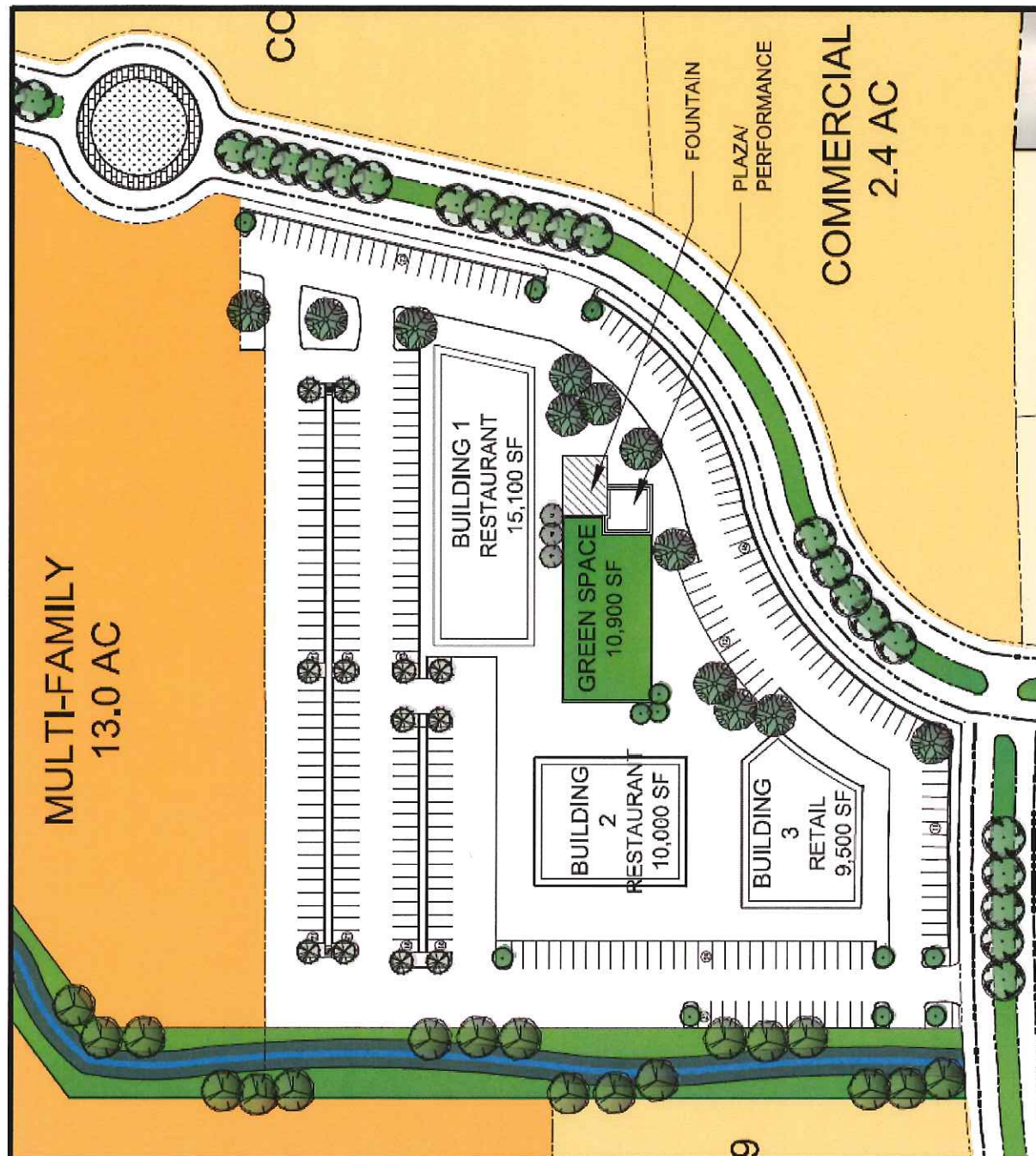
COMMENTS/REASONS:

You may also submit comments via email to khodde@cityofbrenham.org. Please reference the case number in the subject line.
For questions regarding this proposal, please call the Development Services Department at (979) 337-7220.

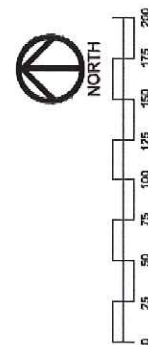
BREHAM MARKET SQUARE LANDPLAN JANUARY 8, 2019



BRENHAM MARKET SQUARE LANDPLAN
MARKET SQUARE
JANUARY 8, 2019



NOTE:
THIS PLAN IS ILLUSTRATIVE IN NATURE AND
IS SUBJECT TO REVISION AT ANY TIME.





AGENDA ITEM 8

DATE OF MEETING: February 7, 2019	DATE SUBMITTED: January 31, 2019	
DEPT. OF ORIGIN: Human Resources	SUBMITTED BY: Susan Nienstedt	
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION	ORDINANCE: ☐ 1 ST READING ☐ 2 ND READING ☒ RESOLUTION
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon Resolution No. R-19-003 Amending the City of Brenham Human Resources Policy Manual		
SUMMARY STATEMENT: This item was tabled at the January 17, 2019 meeting so that it could a few final revisions could be reviewed by the City Attorney. Our current policy manual was last revised in September 2015. Several revisions and additions are necessary to be consistent with regulations and city procedures and practices. This final version has been reviewed by the City Attorney and is presented today for approval by Resolution on February 7, 2019.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: (1) Memo to City Council; (2) Resolution No. R-19-003; and (3) City of Brenham Human Resources Policy Manual		
FUNDING SOURCE (Where Applicable):		
RECOMMENDED ACTION: Approve Resolution No. R 19-003 amending the City of Brenham Human Resources Policy Manual effective February 7, 2019		
APPROVALS: James Fisher		



MEMORANDUM

To: Mayor and Council

From: Susan Nienstedt
Human Resources Director

Subject: Human Resources Policy Update

Date: January 11, 2019

The current City of Brenham Human Resources Policy Manual was last updated in September 2015. We strive to keep our policies consistent with regulation and other municipalities by revising our policy manual continuously.

The updates and revisions in this version of the HR Policy Manual were discussed during the work session on January 10, 2019. Several revisions were made to correct wording to be consistent with health care regulations, as well as changes to match the City's current procedures and practices. I am including the list of revisions discussed in the work session last week. In addition, we have added a Nursing Mothers Policy in accordance with State and Federal regulations.

- Education Reimbursement Assistance Program
- Travel Expense Reimbursement Policy
- Attendance and Work Hours (defined actively at work)
- Confidential Information (use of personal devices for City business)
- Outside or Self-Employment
- Sexual and Other Unlawful Harassment
- Social Media Policy
- Residency Requirement
- Long Term Absence
- Sick Leave (donations of sick leave)
- Vacation (carryover deadline and compensation of a portion of vacation time)
- Nursing Mothers Policy

The policy revisions and additions were reviewed and revised by City Attorney, Cary Bovey, our leadership team, and our employee committee.

RESOLUTION NO. R-19-003

A RESOLUTION APPROVING AMENDMENTS TO THE CITY OF BRENHAM HUMAN RESOURCES POLICY MANUAL

WHEREAS, the Brenham City Council desires to establish certain policies and provide direction for certain matters affecting employment, employees, and related benefits; and

WHEREAS, the City of Brenham Human Resources Policy Manual was adopted by City Council on September 3, 2015 with the passage of Resolution No. R-15-022; and

WHEREAS, since that time, the need to adopt or amend several policies has arisen, new laws affecting personnel matters have been enacted and the current Human Resources Policy Manual is in need of updating and revision; and

WHEREAS, City staff has prepared revisions to the Human Resources Policy Manual which update the policies to reflect current law and practices; and

WHEREAS, it is in the best interest of the City of Brenham to adopt such revisions and amendments to the Human Resources Policy Manual; and

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Brenham, Texas as follows:

Section 1: That the recitals set forth above are incorporated herein for all purposes as if fully set forth in the body of this Resolution.

Section 2: That the City Council of the City of Brenham hereby adopts the revisions and amendments as set for the in the revised Human Resources Policy Manual for the City of Brenham attached hereto as “Exhibit A” and incorporated herein for all purposes.

Section 3: That this Resolution shall be in full force and effect after its passage and approval according to law.

PASSED and APPROVED this the 7th day of February 2019.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary



City of Brenham
Human Resources
Policy Manual

Revised
February 7, 2019

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INTRODUCTION

OBJECTIVES

The objectives of the human resources policies are as follows:

To promote good and uniform personnel practices and administration in the management of the City's human resources.

To maintain recruitment, advancement, and tenure practices enhancing the attractiveness of a City career and encouraging each employee to give his or her best effort to the City and to the community.

To maintain consistent, up-to-date position classification and compensation plans based on the relative duties and responsibilities of jobs in the City service area.

To promote high morale by the consistent administration of this chapter, and through consideration of the rights and interests of all employees.

To provide that tenure of employees covered by this chapter shall be subject to good behavior, satisfactory performance, necessity for the position, and availability of funds.

EQUAL EMPLOYMENT OPPORTUNITY POLICY

It is the policy of the City of Brenham not to allow discrimination against any person in job structuring, recruitment, examination, selection, appointment, placement, training, upward mobility, discipline, or any other aspect of personnel administration based on a person's race, age, religion, color, disability, national origin, sex, political affiliation or belief.

AFFIRMATIVE ACTION

The City of Brenham will take affirmative action to see that applicants are employed, and employees are treated during their employment, without discrimination based on race, color, disability, religion, sex, national origin, age, political affiliation or belief. In addition, the City will actively seek to include qualified members of minority groups, disabled persons, and disabled Vietnam-era veteran groups in applicant pools.

AMERICANS WITH DISABILITIES ACT

To ensure compliance with the Americans with Disabilities Act as amended, the City offers equal employment opportunity to qualified individuals and strictly prohibits discrimination against qualified individuals on the basis of disability.

The City will provide reasonable accommodation to the known physical or mental impairments of an otherwise qualified individual with a disability if such reasonable accommodation will enable the individual to perform the essential functions of the position at issue. The City's obligation under this policy is limited to providing reasonable accommodations that will not result in undue hardship to the City.

Any employee seeking a reasonable accommodation for a disability that affects the employee's ability to perform the essential functions of the position shall make a written request to the Human Resources department.

Employees who have a complaint involving potential violations of the Americans with Disabilities Act as amended, including but not limited to harassment, discrimination, or failure to provide a reasonable accommodation, must immediately contact their immediate Supervisor, Human Resources, and/or the City Manager or designee.

MANAGEMENT AUTHORITY

General and final authority for personnel administration rests with the City Manager, with the exception of matters reserved to the City Council by State law or the City Charter. The City Manager is authorized to make exceptions to this policy.

Management Authority. The City may modify, revoke, suspend, interpret, terminate, or change any or all of its policies and procedures, in whole or in part, at any time. The issuance of these policies and procedures does not constitute a contract between the City and its employees for any duration of employment. There is no specified length of employment, and either the City or the employee can terminate the employment relationship at any time, for any reason.

Policy administration rests with City management and City management reserves sole authority to administer City operations.

Departmental Policy and Procedural Requirements. Individual City Department Directors may develop policies and procedures that are consistent with City policies and procedures subject to the review and written approval of the City Manager. A copy of all supplemental personnel policies shall be maintained in the policy library of the City Municipal Building under the custody and control of the City Secretary. Department policies and procedures that are operational and that do not relate to those in this handbook, or other approved operational manuals, do not need to be reviewed and approved by the Human Resource Director or other appropriate departments. Department Directors are responsible for obtaining the necessary review and approval prior to issuing such departmental policies and procedures. Departmental policies and procedures will not become effective unless they have been reviewed and approved in accordance with this policy.

Miscellaneous. Policies and procedures apply to all employees of the City, both on and off duty where applicable, unless otherwise indicated, restricted by proper authority, or prohibited by State and/or Federal law.

Only the City Council has the authority to enter into an employment agreement, promise, or commitment contrary to these policies and procedures, and all such agreements, promises, and/or commitments entered into by the City Council must be contained in an express written employment contract signed by both the Mayor and the affected employee.

Any statement in a policy and/or procedure found to be illegal, incorrect, and/or inapplicable will not affect the validity and intent of the remaining content of such policy or procedure.

Titles utilized do not govern, limit, modify, or affect the scope of meaning or intent of any provision.

Any conflicts, questions, or ambiguities in City or departmental policies and procedures will be decided by the City Manager.

The City Manager may delegate rights and powers granted under these policies and procedures to the Assistant City Manager or to others as deemed appropriate in the City Manager's sole discretion.

BENEFITS

EDUCATION REIMBURSEMENT ASSISTANCE PROGRAM

The City of Brenham encourages and supports efforts by its employees to pursue additional education to enhance their professional development consistent with the needs of the City and its constituents. The City will participate in the cost of education expenses for employees applicable to their positions, provided the necessary funds are available and have been budgeted.

Eligibility. To be considered for the participation in the Education Reimbursement Assistance Program, an individual must be a regular full-time employee and have completed at least 12 months service with the City prior to application approval.

Course Qualifications. Courses qualifying for reimbursement must be completed in a state or nationally accredited, recognized educational institution and must be related to the employee's job with the City or which will enhance the employee's potential for advancement to a directly related position within the City. Courses in self-improvement, continuing education programs or not related to City employment as outlined above will not qualify for reimbursement.

Reimbursement. Employees may request reimbursement up to the amount established each fiscal year during the budget process per course for tuition, books, and fees at the resident tuition rate established by the state or local college or educational institution attended. The maximum reimbursement allowed will be set by average local university rates. All other costs are the responsibility of the employee.

The City will not reimburse for ordinary supplies such as paper, notebooks, pens, copy fees etc. or transportation, mileage, parking and the like. Seminars, CPA or other review courses, testing fees for certifications and licensure and requests for CEU credits are not eligible for reimbursement under this program.

Employees are required to submit documentation of any other financial assistance received such as GI benefits, federal or state grants, scholarships etc. Reimbursement in conjunction with any other financial assistance will not exceed 100% of the course cost.

Employees must achieve a grade of "C" or better in undergraduate courses and a grade of "B" or better in college graduate work.

Application Process. To begin participation in the Education Reimbursement Assistance Program, employees must meet with Department Head and/or Director to discuss and agree upon an approved reimbursement program. Following this meeting, employees must complete an Education Reimbursement Agreement and Education Reimbursement Registration Form and submit to the Department Head/Director by May 1 of each year.

Reimbursement. Employees must present an itemized statement of tuition, fees and books; proof of payment, official grade report or transcript and documentation of other financial support within 30 days of the end of the course/semester.

EMPLOYEE ASSISTANCE PROGRAM (EAP)

The City's Employee Assistance Program (EAP) is available to provide assistance to employees and dependent family members who may be experiencing personal or family problems with alcohol or drug abuse, financial burdens, marital or other family problems.

All employees who feel they may have an alcohol or drug problem are encouraged to utilize the program's resources before the problem adversely affects their job performance or employment status. Participation in this program is typically voluntary and confidential. However, a supervisor may make a mandatory referral when some aspect of an employee's personal life negatively affects his or her performance on the job.

A mandatory supervisory referral may also be made when an employee's behavior in the workplace indicates such referral is warranted. The EAP provides case management for mandatory referrals for workplace substance abuse and alcohol problems.

GROUP HEALTH CONTINUATION COVERAGE

COBRA is a federal law that requires most employers who sponsor group health plans to offer employees and their families the opportunity to temporarily extend their group coverage at group rates in certain instances where coverage under the employer's group health plan would otherwise terminate. The employee is responsible for paying for the cost of any such continuation coverage, plus a small administration fee.

Under COBRA, employees may elect COBRA continuation coverage for up to 18 months after termination of employment (unless the employee is terminated due to gross misconduct), or if an employee's hours are reduced to such an extent that the employee no longer qualifies for participation in the group health plan. COBRA continuation coverage is also available to employees, spouses and/or dependents in other circumstances described in the current health plan documentation and federal law.

Detailed COBRA notices are given to employees when an employee becomes eligible for participation in the City's group health plan and again when a qualifying event occurs (concerning which the employee, if required, has timely notified the City). For more complete information on COBRA and your health plan, you should review your summary plan description or review a copy of the full health plan in the Human Resource Department or on the plan administrator's website.

In addition, employees who retire from City service in good standing under the provisions of the Texas Municipal Retirement System whose sum of age and years of service is equal to or greater than seventy-five (75) are eligible to purchase continuing group coverage under provisions established by the City of Brenham for such continuation of coverage as provided in the group health plan.

INSURANCE

The City normally provides group medical, long term disability and life insurance for each regular full-time employee. For purposes solely limited to the provision of group medical benefits as may be required under the Affordable Care Act (“ACA”), an employee is considered to be a full-time employee for purposes of the ACA if the employee works an average of at least thirty (30) hours per week. Regular full-time employees are eligible to participate in a Cafeteria Benefit Plan. Details of coverage are provided in the plan booklet for each benefit. These benefits are effective so long as the employee remains in the eligible participation class.

Additional supplemental insurance coverage for employees and members of their families, beyond those amounts provided by the City is available at the employee’s expense through the Cafeteria Plan.

The City also carries workers’ compensation coverage. In cases of job related injuries, provisions and benefits available under workers’ compensation are activated.

Employees who retire from City service in good standing under the provisions of the Texas Municipal Retirement System whose sum of age and years of service is equal to or greater than seventy-five (75) are eligible to purchase continuing coverage of the group health plan under provisions established by the City of Brenham for such continuation of coverage.

COMPENSATION

CERTIFICATION PAY

In addition to the regular base pay, certification pay is available to all certified police and fire personnel as authorized by the City Council. Rates are determined annually during the budget approval process.

It is the responsibility of the employee to notify their supervisor of received certification(s) and/or changes in certification status. Authorized certification pay is effective the pay period following the certification date. Back-pay for certification and/or certification changes will not exceed sixty (60) days.

COMPENSATION ADMINISTRATION

Basis

The City Manager shall administer the Compensation Plan for City employees subject to funds and positions approval by the City Council in the annual budgeting process. City employees shall be paid salaries or wages in accordance with the Compensation Plan, which shall include one (1) or more salary schedules. In positioning classes on salary schedules, consideration shall be given to prevailing rates of pay among public and private employers; the duties, responsibilities, and qualifications required of employees in the classes; and other relevant factors.

The Compensation Plan may be amended, as circumstances require, through submission of suggested changes to the Human Resources Director for review and with approval by the City Manager.

Administration Of Salary Schedules

All of the following procedures are subject to availability of funds approved in the budget by the City Council. Salary schedules shall be administered by the Human Resources Department in accordance with the following rules:

General Administrative Procedures

- a. All compensation for classified positions shall be at a Pay Grade and Step on the approved current pay schedule. Certain unclassified positions such as City Manager, Municipal Court judges and the like are approved by City Council.
- b. The Director, or Department Head with the approval of the Director, may recommend at the time of employment that a new employee be compensated at 5% below the base salary offered with an increase to the minimum step of the pay grade after successful completion of the probationary period.
- c. At the request of the Department Head and with approval of the Director, the City Manager may authorize a temporary promotion to ensure the proper performance of City functions if a position is vacant or its regular incumbent is absent for an extended period of time. Employees so promoted may be additionally compensated for the duration of the temporary assignments and the amount of compensation, if any, is determined at the sole discretion of the City Manager. Temporary promotions shall not be used to circumvent normal selection procedures. The employees involved shall not acquire any status or rights in the pay grades to which temporarily promoted. If promoted to a vacant position, the anniversary date will be the date of the temporary promotion. The temporary promotion shall be reviewed every 90 days and can be extended up to 12 months.
- d. A lateral transfer is the movement of an employee between positions in the same pay range within the city. An employee being laterally transferred shall ordinarily continue to receive the same salary and shall retain the same anniversary date for future pay increases.

- e. A promotion is a change in the duty assignment of an employee from a position in one classification to a position in another classification in a higher pay range. A promotion recognizes advancement to a higher position requiring higher qualifications and involving greater responsibility. A newly-promoted employee shall ordinarily be compensated with a salary increase based upon a percentage of current base salary or the minimum of the new pay grade, whichever is higher, at the time of promotion. A typical promotional increase is either approximately 5% or movement to the minimum step of the new pay range, whichever is higher.
- f. A demotion is a change in duty assignment of an employee from a position in one classification to a position in another classification in a lower pay range. Demotions may be made for the purpose of voluntary assumption of a less responsible position, as a result of a reclassification of the employee's position, or as a disciplinary measure. An employee voluntarily or involuntarily demoted for any reason shall be compensated on a step of the new range as administratively determined. Normally in the event an employee is demoted to a lower pay grade, the employee's salary will be reduced five percent (5%) of base pay or to the maximum of the new classification, whichever is the lower salary.
- g. No employee shall be paid more than the rate established in the approved compensation plan, except that an employee whose job was down-graded by reclassification or changes in the labor market, through no fault of the employee, may continue to receive his or her former rate of pay until a rate on the new salary range equals or surpasses the old rate or the employee's job changes.
- h. Other than pay schedule adjustments, increases to a higher step in the pay grade will be made in the first full pay period following the employee's anniversary date.
- i. An employee's initial anniversary date is the date (month and day) of placement on a step in an approved pay grade, normally on the date of hire for a full time position. A new anniversary date is established upon promotion, demotion, or any other occasion in which an employee's pay grade changes for reasons other than reclassification through a compensation study.

General Government Pay Schedule

- a. A new employee shall normally be compensated at the minimum step of the approved pay grade. With approval of the City Manager, a new employee may be placed at a step higher than step 6 in the approved pay grade based on experience and qualifications or if approved at the time of hire. An employee may be placed at a higher step upon satisfactory evaluation after completion of the 6 month probationary period.
- b. Providing that funds have been made available in the annual budget, an employee's compensation will be moved to the next step in the pay grade on the anniversary date upon recommendation of the department head following a satisfactory performance evaluation.

- c. Employees whose compensation falls within steps one through seven in the pay grade shall be eligible for movement to the next step on an annual basis. Employees whose compensation falls within steps eight through fourteen shall be eligible for movement to the next step on a biennial basis, i.e., the employee will be compensated at the same step for two years.

Public Safety Pay Schedule

- a. A new employee shall normally be compensated at the minimum step of the approved pay grade for the position. With approval of the City Manager, a new employee may be placed at a higher step in the approved pay grade based on experience and qualifications.
- b. Employees who meet the departmental requirements for promotion to the next higher pay grade shall be compensated at the minimum step in the new pay grade.
- c. Other than pay schedule adjustments, movement to the next higher step in the pay grade shall be in the first full pay period following the anniversary date according to time in grade and certification requirements of the pay grade.

Establishment Of New Positions Or Changes In Existing Positions

Department Heads who wish to establish a new position or alter the tasks in an existing classified position, will prepare a detailed job description for such new position, or an amended job description for an existing position, and submit the proposed changes to the Human Resources Department for job evaluation and pay grade allocation.

A revised job description includes additions to, deletions from or amendments to current duties and responsibilities but does not change the job so substantially as to require a reclassification or creation of a new job title and job description.

A reclassification is a reassignment of a position to a lower, higher or different class (job grouping) based on current duties and responsibilities of the position. An employee whose position is reclassified upward does not automatically receive a pay increase unless an increase occurs to place the employee at the entry level of the new pay range. Downward reclassifications will not result in a decrease in pay unless the reclassification is the result of a demotion for disciplinary reasons.

Reclassifications must be reviewed by the Human Resources Director and approved by the City Manager.

An entire class of positions may be reallocated to a new pay range based on market data. Reallocation may be to a lower or higher pay range and require review and recommendation by the Human Resources Director. The City Manager must approve all reallocations.

LONGEVITY PAY

The City provides regular full-time employees longevity pay, at the rate of \$5.00 per month for each year of service, up to a maximum of 25 years (\$1,500 maximum per year), paid in twenty-four (24) payments in a calendar year.

Longevity pay begins after a regular full-time employee has completed one (1) year of service.

Non-exempt employees designated on the Fire or Police pay schedule will be paid longevity as a part of their regular rate of pay.

OVERTIME, COMP TIME AND TIME MANAGEMENT

Overtime. Overtime compensation is paid to all non-exempt employees in accordance with federal and state wage and hour requirements. Exempt employees are not paid overtime compensation.

Non-Exempt Employees. When the City's operating requirements or other needs cannot be met during regular working hours, non-exempt employees may be scheduled to work overtime, at the request of their supervisor. When possible, advance notification of mandatory overtime assignments will be provided. Overtime assignments will be distributed as equitably as practical to all non-exempt employees qualified to perform the required work. Refusal or other failure to work mandatory overtime may result in disciplinary action up to and including termination of employment. Overtime work is otherwise subject to the same attendance policies as straight time work.

All non-exempt employees must receive their supervisor's and Department Director's prior authorization before performing any overtime work. This means employees may not begin work prior to their scheduled work day, and may not continue working beyond the end of their scheduled workday, without prior authorization from the appropriate supervisor. Similarly, employees may not work through their lunch break without prior authorization from the appropriate supervisor. On the employee's time sheet, the appropriate supervisor must also approve any overtime before the time sheet is submitted for processing and payment. Non-exempt employees shall not remain on the work premises without authorization unless they are on duty or are scheduled to begin work within a short period of time. Non-exempt employees who work overtime without receiving proper authorization will likely be subject to disciplinary action, up to and including possible termination of employment.

Generally, except for Fire and Police Department shift employees, overtime pay for non-exempt employees is at the rate of 1-1/2 times the employee's regular hourly rate of pay for hours actually worked in excess of 40 in the City's workweek. (The City's workweek begins at 12.01 a.m. on Monday and ends at 12:00 midnight the following Sunday.) An employee's regular hourly rate includes all pay incentives, such as longevity, certification pay, stipends and other pay which the employee receives each pay period. Fire and Police personnel are paid overtime based on the work

cycle adopted by their Department under Section 207(k) of the Fair Labor Standards Act and applicable sections of the Texas Local Government Code.

Paid holiday leave is normally included as hours worked for purposes of determining eligibility for overtime pay. However, time off on account of sick leave, jury duty leave, witness duty leave, bereavement leave, injury leave, or any other leave of absence is not considered time worked for purposes of performing overtime calculations.

Compensatory Time. Non-exempt employees may accrue compensatory time (comp time) in lieu of being paid overtime compensation. All employees are subject to a cap of 80 hours. Overtime hours worked beyond the applicable cap must be paid or flexed, as described below. Compensatory time accrues at a rate of 1-1/2 hours for every hour of overtime worked by non-exempt employees. Comp time accruals are to be monitored at the department level and maximum hours accrued will be restricted based on the requirements of this policy. All compensatory time earned must be documented on the employee's compensatory time log.

An employee who has accrued compensatory time and requests use of such time must be permitted to use the time off within a "reasonable period" after making the request, if it does not "unduly disrupt" the work of the department. If use of requested comp time would be disruptive, the department may elect to pay the employee in lieu of approving the requested time off. The City may, at any time, elect to pay a non-exempt employee for any or all of the employee's accrued comp time. The City may also require employees to take time off in order to reduce their accrued comp time. Otherwise, compensatory time off may be used the same as leave time. Employees may request payment for accumulated comp time.

Payment of Compensatory Time. All employees who are reclassified from a non-exempt position to an exempt position will be paid all accrued comp time upon approval of the reclassification and will cease to be eligible for any additional overtime and /or comp time. Likewise, an employee who is either promoted or demoted to another non-exempt position will be paid in full for any comp time accrued before the promotion or demotion becomes effective. Upon leaving employment with the City, a non-exempt employee will be paid for unused comp time at the employee's current hourly rate.

NOTE: Exempt employees are not eligible to accrue compensatory time.

Flex-time Work Schedule. In situations where overtime payment is not feasible due to budgetary constraints, the Department Director or supervisor must consider flexing the employee's work schedule in an effort to minimize the need for overtime compensation. Flexing must be completed within the same workweek or work cycle that the overtime was worked and must be accurately reflected on the affected employee's time record.

Exempt Employees. Exempt employees are those who are not covered by the overtime requirements of the FLSA. Accordingly, exempt employees are not entitled to overtime compensation for work performed beyond 40 hours in a workweek. Exempt employees are expected to put in the hours necessary to complete their assignments with an acceptable level of quality in a timely manner.

Absent accrued paid leave time, an exempt employee need not be paid for any workweek in which he or she performs no work.

It is the policy of the City not to make improper deductions from an exempt employee's pay. Any exempt employee who believes he/she has been, or likely will be, subject to an improper pay deduction, must immediately notify the Human Resource Director. The City will promptly reimburse an exempt employee for any improper deduction(s) and will make a good faith commitment to comply in the future.

PAYROLL DEDUCTIONS

The following deductions are authorized for payroll deductions:

- Social security contributions;
- Income withholding taxes;
- Contributions to the Texas Municipal Retirement System;
- Presently authorized medical insurance premiums;
- Presently authorized “other insurance” premiums;
- Contributions to a deferred compensation plan;
- Association or Union dues;
- Deductions authorized through the Cafeteria Plan;
- Deductions mandated by State or Federal agencies, such as IRS garnishment, child support and the like; or
- Other deductions authorized by the employee;
- No other payroll deduction privileges are authorized at this time and no future payroll deduction privilege will be granted without the approval of the City Manager, except as otherwise provided by law.

STANDBY & CALL BACK COMPENSATION

(Nonexempt Employees)

The City provides for after-hour service needs by allowing some departmental operations to designate certain nonexempt employees to be on-call. Employees designated to be on-call are expected to respond to departmental after-hour service needs as required by procedures established by their Department.

An employee scheduled for weekly standby duty will be paid the regular hourly rate for a full eight (8) hours for each assigned standby period in the month and an additional four (4) hours for any holiday periods during the standby period.

Return to work provisions. After regularly scheduled working hours, standby employees are free to pursue personal activities but must respond to a call back (via paging, phone, or radio) within designated guidelines set by their Department. Employees designated as standby must be fit, both mentally and physically, to accomplish standby services needed within the time frame required. An employee is considered officially scheduled and designated as standby only when approved by his/her supervisor in accordance with procedures established by his/her Department.

Compensation. Standby status is not considered time worked and is not compensable except as provided above unless the employee actually responds to a call back. Standby employees called back to the workplace will be paid at their overtime rate of pay for actual hours worked and guaranteed a minimum of **one (1) hour of overtime** pay for each call-back within the same 24 hours after their regularly scheduled working hours or on a regular day off. Time worked immediately after regularly scheduled working hours at the request or approval of the supervisor will not be considered call-back and is paid at the employee's regular rate of pay until overtime requirements are met. Continuing work on a call-back that extends beyond the one (1) hour minimum and into a day off does not entitle the employee to additional premium pay. Travel time to and from a call-back is compensable under this policy, in accordance with departmental policy. Standby employees who do not return to the workplace but who handle a workplace issue by phone will be paid for actual time spent on the phone. In all cases, employees must report their actual hours worked on their time sheets.

Employees exempt from overtime are not eligible for compensation under the provisions of this policy.

Departmental Policies. Each Department has its own internal procedures for handling standby services. Departments may establish guidelines for varying levels of response to call-back situations depending upon the nature and importance of the services to be completed.

TRAVEL EXPENSE REIMBURSEMENT POLICY

I. GENERAL STATEMENT

- A. The City of Brenham will reimburse employees for business expenses paid by the employee which would otherwise be deductible in accordance with Section 162 of the Internal Revenue Code (“I.R.C.”). In order for such expenses to qualify for reimbursement, they must:
 - 1. Be necessary in the conduct of City business and be directly attributable to it;
 - 2. Demonstrate good judgment by the employee;
 - 3. Represent reasonable cost to the City; and
 - 4. Comply with the provisions of this policy.
- B. This policy extends to all levels of employees receiving expense reimbursement.

II. POLICY

A. Travel Expenses

- 1. Transportation – The most efficient and economical mode of travel should be used. Air travel arrangements are to be made by each department. Air travel must be booked at the most discounted fare basis whenever possible. The cost of the airline ticket may be charged to an employee’s procurement card (“P-card”) or may be charged to an employee’s personal credit card. When the airline ticket is charged to a P-card or personal credit card, the employee must print a copy of the Itinerary/Invoice document. That copy should be used as documentation to attach to the Travel and Expense Report. If the airline ticket is charged to an employee’s personal credit card, refer to section II.E.6. of this policy for reimbursement information. Discount fares must be purchased when available. The employee should also use the most economical form of ground transportation available except where such would result in unreasonable inconvenience or costly loss of time. The cost of a rental car will not be reimbursed unless it is the most economical form of transportation or is required to serve a necessary business purpose. Personal automobiles should be used for travel where other modes of transportation would be more costly and involve a loss of time. The City will reimburse employees for the use of their personal automobile based on the current I.R.C. per mile expense rate and the actual miles driven for City business purposes.
- 2. Lodging – When traveling, employees are expected to live comfortably but with reasonable prudence. Accommodations will be reimbursed at the seminar/convention rate of the facility at which the seminar/convention is held. Expenses for lodging are to be at the single room rate, unless an employee is approved in advance for double occupancy. Extra charges for room service will not be paid by the City. When overnight accommodations are required, other than a seminar/convention, a good commercial hotel with a reasonable rate for that community should be used. Normal and reasonable gratuities to hotel employees are acceptable. As outlined in section II.E.2., all overnight travel will require approval by the City Manager or Assistant City Manager.

3. Meals – The cost of meals while traveling will be reimbursed at a per diem rate (Section II.E.9.) for each day while out of town. The per diem rate is an adjusted amount for the first day of travel and the last day of travel, and for single day travel not requiring an overnight stay. Where a trip would ordinarily necessitate an overnight stay but circumstances require returning on the same day, reimbursement will be allowed for a full day of travel.
 4. Other Expenses – The City will reimburse employees for other expenses related to business travel as follows:
 - a. Travel to and from airports using personal automobiles, taxis, buses, or similar services;
 - b. Reasonable parking fees for airport parking during days when traveling for business purposes;
 - c. Reasonable laundry and cleaning expenses incurred during an extended stay of more than one (1) week out of town;
 - d. Personal long distance telephone calls for a safe arrival call and other reasonable or necessary calls. City owned cell phones may be available for use when an employee travels on City business; and
 - e. Computer related expenses for city business reasons.
 5. Travel Expenses Reimbursed by Others – It is not permissible for any travel expenses to be paid by a vendor or prospective vendor. This includes site visits or other travel to inspect a vendor's product. Subject to prior approval by the City Manager, travel expenses incurred by a City employee may be paid by a professional association or other group when the employee is performing a service for that group (i.e. teaching, speaking, etc.).
 6. Travel Advances – All travel and cash advances must be approved ten (10) days in advance by the employee's Department Director (or designee). Any out of state travel or overnight travel must be approved by the City Manager or Assistant City Manager.
 7. Combination of Business and Personal Travel – If an employee combines personal activities with a City business trip, then all additional expenses incurred due to the personal activities (hotel room days, airport parking days, additional meals, additional airfare, etc.) must be excluded from the employee's request for reimbursement.
 8. Authorization – Authorization for travel expenses are based on the established "Levels of Authority." All travel-related business expenses should be approved in advance in order to avoid situations where an employee incurs travel-related expenses that will eventually not be approved by the employee's supervisor. As outlined in section II.E.1., a Travel Request and Authorization form must be submitted ten (10) days prior to travel date.
- B. Business Meals and Entertainment
1. The City will reimburse employees for the cost of business meals and entertainment expenses when a valid business purpose exists for the expenditure and appropriate authorizations are obtained.
 2. Meal and entertainments expenses which may qualify for reimbursement include:

- a. Business meals with representatives of outside entities where necessary City business is transacted;
 - b. Meals and entertainment for employees and/or Active Staff members with no outside individuals present where a specific business purpose exists and such expenditure is approved by the Department Director, Assistant City Manager, or City Manager; and
 - c. Meals and entertainment for persons associated with various City boards where the purpose is to fulfill the City's obligation to participate officially as a citizen of the community in improving its economic, social, and cultural well-being.
 - 3. Drinking of alcoholic beverages while conducting official City business is contrary to City policy, and is not allowed.
 - 4. Approvals for business meals and entertainment expenses are based on the "Levels of Authority." When possible, advanced approval should be obtained for meal/entertainment expense reimbursement in order to avoid situations where it is determined retrospectively that a particular meal/entertainment is not for a proper business, purpose, and therefore reimbursement is denied.
- C. Other Expenses
- 1. The City will reimburse the following expenses incurred by employees on local assignments:
 - a. Necessary parking fees incurred while away from the employee's usual place of work on City business; and
 - b. Cost associated with the business use of a personal automobile as outlined in this policy.
 - 2. Other expenses will be considered for reimbursement if made for the clear benefit of the City and if the employee is required to make the expenditure in order to properly carry out his/her job responsibilities. Reimbursement of expenses will include sales taxes which the employee is required to pay.
- D. Spouse Travel/ Business Expenses
- 1. Generally, the City will not reimburse employees for any portion of expenses related to an employee's spouse or other family member on a business trip. In such cases, the employee must separately itemize expenses related to spouse travel/business expense (airline fare, double occupancy cost of a hotel room, etc.) so that the City does not reimburse an employee for such costs.
- E. Reporting Travel Expenses
- 1. When an employee is scheduled to travel according to the criteria in section I, a Travel Request and Authorization form should be completed and submitted ten (10) days prior to travel date. The form is available on the City's internal website. All estimated and predetermined costs should be included on the form, as well as any cash advances requested. Advances are also addressed in section II.A.6.
 - 2. The Travel Request and Authorization form must have appropriate approvals and signatures before any reimbursement will be paid. The City Manager or Assistant City Manager must approve all overnight travel or travel out of state.

3. Actual expenses must be reported using the City of Brenham Travel and Expense Report form available on the City's internal website. The form allows for accounting of reimbursable expenses by category. It must be completed and submitted to the Finance Department within five (5) business days after travel completion and return to work. All applicable receipts, in their original form should be attached to the Expense Report as described in section II.E.8. Original receipts for items paid using a City P-card should be attached to the P-card statement. Actual expenses paid by the City directly to vendors should not be included on the Travel and Expense Report.
4. Employees who must use their personal vehicles to travel to a training destination further than their designated work location or other City locations and/or facilities will be reimbursed at the current IRS rate. Reimbursement will be made only for the difference in miles from the normal work location to the further training location (see vehicle use policy on pages 38-40). To compute the amount to be reimbursed multiply the number of business-related miles driven by the per mile allowance rate established by the Internal Revenue Service as indicated on the Travel and Expense Report form.
5. Employees receiving an auto allowance will be reimbursed for mileage traveled for City business exceeding a 25 mile radius of their normal work location. Mileage reimbursement for miles exceeding the 25 mile radius MUST be submitted on a monthly basis within 30 days of the travel.
6. When an employee charges airline tickets to his/her personal credit card, the original passenger coupon showing the credit card number must be submitted for reimbursement. If an employee purchases an airline ticket and later changes plans because of scheduling conflicts resulting in a penalty, such penalty will be reimbursable to the employee by the City if a written explanation from the employee's supervisor concerning the employee's schedule conflict is provided. Airline tickets purchased directly by the City should not be recorded on the City Travel and Expense Report.
7. The original rental contract must be submitted when an employee rents an automobile. The employee must also explain, on the Travel and Expense Report, why the rental of an automobile is the most cost-effective mode of ground travel or is necessary for business purposes. Additional insurance coverages provided by car rental companies are not reimbursable.
8. Receipts documenting all travel-related expenditures should be submitted with the Travel and Expense Report. Reimbursement for expenses will be denied if appropriate documentation is not submitted. Acceptable forms of documentation include: itemized credit card receipt, a copy of the cancelled check (front and back), or official receipt including date of service, name of the vendor, and total cost.
9. Itemized hotel bills must be submitted with the Travel and Expense Report. Only amounts related to hotel room costs (including applicable taxes) should be reported under "Lodging." Other costs on the itemized hotel bill (e.g. meals, parking, telephone, etc.) should be separately itemized and reported under other expense with any necessary justification. Personal entertainment expenses (e.g. in-room movies, pay television, dry cleaning and laundry,

health club and spas, etc.) not incurred for necessary business purposes are not reimbursable to an employee.

10. Expenditures for meals during out-of-town travel shall be reimbursed at the following per diem rates: a) First day of travel - \$30.00; b) Full day of travel - \$50.00; c) Last day of travel - \$30.00; Single day travel (no overnight stay) - \$30.00.
11. Business meals, as defined under section II.B.2., will be reimbursed at the actual cost of the meal. The employee is required to demonstrate good judgment and represent reasonable cost to the City.
12. When an employee travels to a foreign country and pays expenses in a foreign currency, the expenses must be converted and reported in U.S. dollars on the Travel and Expense Report.

F. Reporting Business Meals and Entertainment Expenses

1. Reimbursement of business meals and entertainment expenses must be requested on the City of Brenham Travel and Expense Report form. For business meals or entertainment, the information must be completed in sufficient detail to clearly document:
 - a. The specific business purpose of the meal/entertainment;
 - b. The names of all persons attending the meal/entertainment;
 - c. The names or organizations represented by persons attending the meal/entertainment;
 - d. Date of the meal/entertainment;
 - e. Place of the meal/entertainment;
 - f. Type of meal (e.g. breakfast, lunch or dinner) or entertainment; and
 - g. The amount of reimbursement due to the employee.

G. Business Expense Report Submission

1. Reimbursement of all expenses will be based on actual cost to the employee requesting reimbursement. A valid itemized receipt clearly showing the date of service, vendor name, and total cost must be provided for all expenditures. All receipts must be taped, in an orderly fashion, to one or more blank white, 8 1/2 by 11 sheet(s) of paper and stapled behind the Travel and Expense Report.
2. If an employee received an approved advance then such advance must be reported on the City of Brenham Travel and Expense Report form and included in determining the amount of reimbursement due to the employee. If the employee did not spend the full amount of the advance, the employee must remit the excess funds and attach to the Travel and Expense Report form. All advances must be settled before an employee receives reimbursement for additional travel or business expenses. Authorized expenses in excess of advanced funds received will be reimbursed with proper approval. Excess advance funds which are not returned will be considered taxable income to the employee and included in their W-2 wages.
3. An employee should complete the City of Brenham Travel and Expense Report form for which the employee incurred reimbursable expenses. Such form must be submitted within five (5) business days after return to work.

Any expenses submitted more than ninety (90) days after the incurred expense must be approved by the Assistant City Manager/CFO.

4. Approval of the City of Brenham Travel and Expense Report must be in accordance with the established “Levels of Authority.” As such, in no instance may an employee approve his/her own Travel and Expense Report.
5. Once the Travel and Expense Report is properly approved, the form should be forwarded directly to the Accounts Payable Department. An approved form should never be returned to the employee requesting reimbursement because of the potential for subsequent modification after approval is obtained.
6. The Accounting Department will process expense reimbursement checks to an employee in a timely manner. When a Travel and Expense Report is received by the Accounts Payable Department with proper documentation and approvals, a check will be issued with the next payable processing cycle. The employee or the employee’s supervisor will be notified that the check is ready to be picked up.
7. The Accounts Payable Department, which is responsible for processing payments under this policy, may request specific authorization for reimbursement of expenditures which are not addressed by the policy.

H. Expenses Not Covered in Policy

1. The City Manager’s or Assistant City Manager’s approval must be obtained prior to any expenditure of funds for items or charges that are not specifically addressed in this policy.

I. Compliance

1. Abuse of this policy, including falsifying expense reports or submitting false claims, will result in disciplinary action, up to and including termination of employment.

DISCIPLINE / SEPARATION OF SERVICE

EMPLOYEE APPEALS OF DISCIPLINARY ACTIONS

The City provides employees with a process for appealing certain disciplinary actions to the City Manager's office to ensure that a final resolution is reached in a timely and equitable manner.

Appealable Matters. The following types of disciplinary actions are appealable to the City Manager under this policy:

Unpaid suspension of 1 day or 1 shift or more;
Demotion; or
Discharge.

These are the only disciplinary actions subject to appeal. Appeals of any other types of disciplinary actions must be resolved at the department level.

Appeals Process. All disciplinary appeals subject to this Appeal Process must be in writing and submitted to the Human Resource Department. The appropriate portion of the Appeal form must be fully completed by the employee before the appeal will be considered. Any documentation that supports the appeal must be attached to the appeal documentation, including: a copy of the disciplinary action; copies of relevant policies, rules or regulations allegedly violated; who was involved in the action and when it occurred; the adverse disciplinary action taken; the remedy sought; and any other information or documentation relevant to the appeal.

Employees appealing a disciplinary action to the City Manager or his designee may elect either an informal hearing or a formal appeal hearing. This choice must be indicated in the appeal documentation when the employee submits it.

Informal Hearing The City Manager or his designee will review the employee's appeal and meet with the employee and supervisor and/or Department Head in an informal setting without attorneys or representatives. The employee and the Department Supervisor must submit a written statement of relevant issues and any additional supporting documentation to the City Manager or his designee 3 days prior to the scheduled hearing.

Formal Hearing The City Manager or his designee will convene a formal hearing for the purpose of considering documentary evidence, as well as testimony from the employee and other involved personnel, including relevant witnesses. The employee and the Department Head must submit a written statement of relevant issues along with a list of witnesses and any additional supporting documentation seven (7) calendar days prior to the scheduled hearing. The City Manager or his designee will determine if any of the listed witnesses will be permitted to testify, based upon their relevance to the issue at hand. Both the employee and the Department Head may be represented by an attorney or advisor during the proceedings. The formal rules of evidence will not apply to the appeal hearing. All

hearings will normally be scheduled to convene and end within two consecutive business days. All involved parties should schedule accordingly to insure that the hearing will end within the two-day timeframe. The City Manager or his designee's decision is final.

Time Limit for Filing Appeals. The employee must file his/her appeal within 5 business days of receipt of the disciplinary action. An employee's failure to appeal within the 5-business day deadline results in the decision becoming final.

Scheduling Appeal Meetings/Hearings. The Human Resource Department will attempt to schedule disciplinary appeals with the City Manager within 10 business days of receipt of the appeal.

Where to file an appeal. All appeals of discipline permitted under this Appeals Policy, shall be filed with the Human Resource Department.

Witnesses. Requests for other employees to participate in an appeal hearing must be included in the written Statement of Relevant Issues that is submitted to the City Manager. The Human Resource Department will coordinate attendance of witnesses who are employees of the City. Employee witnesses who participate in an appeal hearing will be limited to those whose participation takes place during their regular work schedule. The City Manager or his designee has the discretion to require employees, who are not scheduled to work at the time of the hearing, to participate in the hearing.

Written Decision. The City Manager or his designee will provide the appealing employee with a written decision within 10 business days of the conclusion of the appeal meeting or hearing. The Human Resource Director may extend this time limit. The written decision will be attached to the employee's original appeal documentation. The decision will normally include the following:

- (a) Recap of details of the incident(s) giving rise to the appeal;
- (b) Reference to any applicable rules, regulations, policies, procedures, laws, etc., relevant to the appeal; and
- (c) The decision along with the appropriate action to be taken, if any.

Time Limitations Time limits outlined in this policy shall be considered a maximum with every effort made to expedite the process. The limits may be redefined at any step if both parties agree in writing. If either party cannot agree, the Human Resource Director shall have the discretion to change the time limits.

EMPLOYEE CONDUCT AND WORK RULES/DISCIPLINARY ACTION

To ensure orderly and productive operations and provide the best possible work environment, the City requires employees to follow rules of conduct that will protect the interests and safety of the City, its citizens and employees.

Progressive Discipline. In certain instances, the City will use a progressive disciplinary system. The City is not obligated to use all of the progressive disciplinary steps available to it, and may begin the disciplinary process at any level, up to and including immediate discharge, depending upon the severity of the conduct, the employee's work performance and prior disciplinary history, the employee's length of service, and any mitigating circumstances. Depending on the circumstances of each individual case, disciplinary action may consist of one or more of the following:

- Oral warning
- Letter of counseling
- Written reprimand
- Probation
- Suspension (without pay)
- Demotion
- Discharge

Documentation. All forms of discipline, other than oral warnings, must be documented and will be placed in the employee's personnel file. In the event an employee is discharged, the supervisor shall forward a copy of the dismissal to the Human Resource Department, who shall forward a copy of the dismissal to the City Manager. The Supervisor will also make a recommendation concerning the possible rehiring (or not rehiring) of the person in the future.

An exempt employee may be charged with the use of vacation or sick leave when disciplinary action of less than one full day is given. Additionally, deductions from an exempt employee's pay may be made for unpaid disciplinary suspensions of one or more full days for infractions of workplace conduct rules, safety rules of major significance, and as additionally authorized by applicable law. "Docking" an exempt employee's pay for a partial day's absence will be permitted only as authorized by law and approved by the City Manager.

Supervisory Responsibility. All employees with the responsibility and authority to supervise and direct employees under their control shall administer departmental and City of Brenham policies and procedures within their scope of authority; document their subordinates' job performance, conduct, and behavior as appropriate; properly conduct evaluations of subordinates in a timely manner; discipline their subordinates as required under their departmental and/or City policies and procedures as well as address performance appeals submitted to them as provided by policy in a professional manner, in an attempt to resolve such issues at the lowest possible supervisory level.

Review by Human Resource Director. Any proposed disciplinary action in excess of a written reprimand must be reviewed by the Human Resource Director prior to being given to the employee. This applies to both probationary and non-probationary employees.

Appeal Rights. Where a disciplinary action involves a suspension of 1 day (or 1 shift) or more, demotion and/or termination, the employee will normally be given an opportunity to respond to the allegations prior to disciplinary action being taken. (See Employee Appeals of Disciplinary Actions) Positions classified as Director level and above are employed at the will and pleasure of the City Manager and may appeal any type of disciplinary action only to the City Council. Probationary employees likewise have no right of appeal for disciplinary action taken against them.

Prohibited Activities. Disciplinary action will be imposed for violations of City or departmental policies and procedures, codes of conduct, rules and regulations, either written or verbal. In addition, acts which are not specifically addressed in policies and procedures, codes of conduct, and rules and regulations, yet may adversely affect the City or put the health and safety of fellow employees, citizens or other third parties, at risk, may also result in disciplinary action. It is impossible to list all the forms of behavior that are considered unacceptable in the workplace. The following are some examples of conduct that will likely result in disciplinary action, up to and including termination of employment:

Theft or inappropriate removal or use of City property or other property not belonging to the employee

Falsification of timekeeping or other records, including employment application

Working under the influence of alcohol or illegal drugs or legal drugs with adverse side effects

Possession, distribution, sale, transfer, or use of alcohol or illegal drugs in the workplace, while on duty, or while operating City-owned equipment

Violation of City's policy regarding sexual or other unlawful harassment

Interfering with work schedules or another employee's ability to work

Misuse of City telephones, including cell phones, computers, mail systems, etc.

Excessive or unscheduled absenteeism, tardiness in reporting for work or returning from lunch and breaks or absence without notice and/or approval

Violation of smoking/tobacco use policy

Violation of safety or health rules and failure to immediately report an on-the-job injury/accident

Profanity, abusive language, or racial slurs

Unauthorized disclosure of confidential information

Violation of any provision of the City Charter

Violation of City or departmental policies, codes of conduct, rules and procedures

Coercion, intimidation, or threats against citizens, supervisors, co-workers, City officials, or others

Making or publishing false, vicious, or malicious statements about the City, or a City employee or citizen, or others

Violation of City's social media policy

Unsatisfactory performance or conduct

Inefficiency, incompetence or neglect of duty

Fighting, provoking or instigating a fight, or threatening violence

Disruptive activity in the workplace

Engaging in a work stoppage

Conduct which results in waste or damage of a co-worker's, City, or citizen-owned property

Failure to follow prescribed safety rules and operating procedures

Insubordination or other disrespectful or unprofessional conduct

Discourteous treatment of the public

The CITY OF BRENHAM STRICTLY PROHIBITS THE POSSESSION OF ANY WEAPONS, INCLUDING BUT NOT LIMITED TO HANDGUNS, BY ANY EMPLOYEE, EXCEPT BY A LICENSED PEACE OFFICER OR ANIMAL CONTROL OFFICER, WHILE IN CITY BUILDINGS OR ON ANY CITY-OWNED OR CONTROLLED PREMISES. Employees, other than licensed Peace Officers and City of Brenham Animal Control Officers are prohibited from carrying a weapon while performing City-related business. Possession of a concealed or an openly carried handgun inside designated City-owned or controlled premises, by any employee other than licensed Peace Officers, or animal control officers are forbidden and the City will take reasonable and necessary steps with regard to appropriate disciplinary action, up to and including termination of employment.

Employees who are licensed to carry and lawfully possess a firearm and/or ammunition in accordance with Chapter 411 of the Texas Government Code, may leave such firearm/ammunition in his/her locked, privately owned vehicle in the parking lot the City provides for employees. Additionally, if an employee chooses to store a firearm or ammunition that is legal to carry without a permit (e.g. hunting rifle, shotgun, etc.) in his/her personal vehicle, it must be stored out of sight

and the vehicle must be locked. This does not extend to City owned or leased vehicles provided to employees for City-related business.

Violation of local, state or federal law

Conviction of a felony, including reasonable belief employee has committed a crime under Texas Penal Code or Class A or B misdemeanor, or repeated conviction of Class C misdemeanor charges

Failure to timely return to work upon conclusion of authorized leave or disciplinary suspension

Outside employment that conflicts with, or potentially conflicts with, City interests

Acceptance of payment of any kind for activities related to City Employment except as provided in Gift policy

Failure or refusal to follow lawful orders

Sleeping on the job (except for Fire Department personnel who are governed by applicable Fire Department Rules and Regulations)

Dishonesty, including misrepresentation during the hiring process

Failure to follow policies and procedures described in other sections of the Policies Handbook, departmental policies or other policies and procedures issued by the City Manager or his designee

An accumulation of minor infractions

Felonies and Misdemeanors. Employees must immediately notify their supervisor and/or Department Director if they are arrested, charged, indicted, convicted, receive deferred adjudication, or plead nolo contendere to any misdemeanor or felony. Employees who do not drive as a part of their job duties with the City are not required to report minor traffic violations. In most instances, the City will conduct its own investigation and take appropriate action. An employee arrested, charged, or indicted for a felony or misdemeanor, or accused by information of official misconduct or other serious criminal violation may be placed on administrative leave (with or without pay) until the charge, indictment or information is dismissed or fully adjudicated without trial, and if tried, until the trial and appeal (if any) are completed and all related administrative matters are concluded but such leave will be limited to not longer than six months. Such a determination will typically be made by the Department Director and the Human Resource Director. An employee on administrative leave may, in the City's sole discretion, be reinstated to the position held before being placed on administrative leave (if available), if the indictment or information is dismissed, the employee is acquitted, or the conviction is reversed on appeal.

Disciplinary Conference. A disciplinary conference will be scheduled prior to the imposition of a disciplinary suspension of 1 day (or 1 shift) or more, demotion or termination. The Department Director, the affected employee, the Human Resource Director and anyone else deemed necessary by the Department Director typically attend the disciplinary conference. During the conference,

the affected employee will be given an opportunity to present an explanation of the conduct leading up to the proposed disciplinary action. Employees will be given advance notice of the conference. Employees may, in the City's sole discretion, be placed on administrative leave prior to, during, or after the disciplinary conference. The employee will be notified of the City's determination following the conference.

Administrative Leave. During an investigation into alleged offenses or violations of City policies, the City may, in its sole discretion, place the employee on administrative leave. The leave may be with or without pay, and may be charged to available accrued leave if authorized by the City Manager.

EMPLOYEE CONDUCT

ATTENDANCE AND WORK HOURS

Regular Work Hours. Nonexempt employees of the City, except for Fire and Police Department Personnel, normally work 40 hours in a seven-day workweek. Exempt employees may be required to work in excess of 40 hours in certain weeks. The employee's work week begins at the beginning of the assigned shift on Monday and ends at the beginning of the assigned shift the following Monday

The regular workday for office-based personnel normally begins at 8:00 a.m. and ends at 5:00 p.m., although employees in some departments may have different work hours. In times of disaster or emergency, working hours shall be determined by the City Manager.

Adjustment to Work Hours. In order to assure the continuity of City services, it may be necessary for Department Heads to establish operating hours for their departments. Work hours and work shifts must be arranged to provide continuous service to the public. Employees are expected to cooperate when asked to work overtime or a different schedule. Acceptance of work with the City includes the employee's acknowledgement that changing shifts or work schedules may be required, and includes that he/she will be available to do such work.

Meal Periods. Full-time employees (excluding most Police, Fire, Water Treatment, and Wastewater Treatment Department employees) are normally provided a one-hour unpaid meal break near the middle of the workday. Meal periods may be staggered by the Department Head in order to minimize departmental interruption. Supervisors will provide employees with the starting and ending times for their specific meal periods. Employees will be relieved from work responsibilities during unpaid meal breaks. Employees may not extend meal breaks beyond their assigned period.

Attendance Records. Employees are expected to be at their workstations and ready to work at their scheduled start time. Nonexempt employees are required to record the number of hours worked each day

Attendance and Punctuality. To maintain a safe and productive work environment, the City expects employees to be reliable and punctual in reporting to work. Absenteeism and tardiness are disruptive and place a burden on the City and on co-workers. Either may lead to disciplinary action, up to and including termination of employment. In the rare instance when an employee cannot avoid being late to work or is unable to work as scheduled, the employee must personally notify his/her supervisor as soon as possible in advance of the anticipated tardiness or absence in accordance with Departmental procedures. The employee must disclose to his/her supervisor the reason for the absence or tardiness and the date and time of his/her anticipated arrival. For absences of a day or more the employee must personally notify his/her supervisor on each day of his/her absence unless the supervisor expressly waives this requirement or the employee has furnished a doctor's statement covering the period of absence.

In most instances, an employee who fails to properly notify his/her supervisor in advance of an absence or tardy will be subject to disciplinary action up to and including termination of employment. An employee who fails to notify the City of an absence of three days or more may be presumed to have voluntarily resigned his/her employment.

An active employee is defined as one who works and is paid by the City for at least twenty (20) hours per week OR is accessing vacation, sick, compensatory time, administrative leave, or paid/unpaid FMLA and is receiving the same benefits as all other employees. Persons who are receiving long term disability payments or workers' compensation income benefits from the City of Brenham workers' compensation provider, who are not on the payroll of the City are not Active Employees, nor do those benefits accrue toward the twenty (20) hour requirement.

CELL PHONE USE IN THE WORKPLACE

The City recognizes that many employees bring cell phones to work. Cell phones may belong to the employee or be provided for the employee's use by the City. The use of personal cell phones, including those with a texting, camera and/or video playing capability is not permitted during work time without a supervisor's approval. Employees who are permitted by a supervisor to use a personal cell phone while at work must not allow cell phone use to become disruptive or interfere with their own or a co-worker's ability to do their jobs. Employees who use cell phones to violate City policy, including the City's Sexual and Other Unlawful Harassment Policy, will be subject to disciplinary action, up to and including discharge.

Employees with City-issued cell phones are allowed to use City cell phones for limited personal phone calls.

Except in emergency circumstances, employees should not use a cell phone while operating a motor vehicle, machinery, tools and/or equipment, including without limitation making and receiving phone calls and texting. All employees must, when asked by the City, consent to a request to provide the City access to all cell phone and text message records used for City business purposes. Employees using City-issued cell phones have no expectation of privacy in cell phone calls, pictures, or text messages on these phones.

PUBLIC INFORMATION ACT

Employees are advised that records related to calls and text messages made and received on City owned cell phones or business calls made on personal cell phones are public information. Information related to telephone numbers called, length of call, and time and date of call as well as the text message itself may be obtainable through the Texas Public Information Act, except in narrowly defined circumstances.

As a City of Brenham employee, your work-related e-mails, texts, and social media posts may be considered public information. You should have no expectation of privacy with respect to any e-mails or texts sent from your city e-mail address or city-issued phone. Further, if you choose to use your own personal e-mail or phone to send and/or receive work-related messages, those messages may also be considered public information.

MONITORING OF CELL PHONE CALLS

Employees should be aware that cell phone calls are not secure and can be monitored. It is a crime for a third party to intentionally monitor cell phone conversations without the consent of one of the parties to the conversation.

Inadvertent monitoring of private cellular conversations is possible. Caution should be used whenever confidential or sensitive information must be discussed on a City-provided cell phone.

CITY PROPERTY/EQUIPMENT USE

The City attempts to provide employees with adequate tools, equipment, vehicles and facilities for the City job being performed, and the City requires all employees to observe safe work practices and lawful, careful and courteous operation of vehicles and equipment. Any City-provided safety equipment must be used at all times.

From time to time, the City may issue various equipment or other property to employees, e.g., credit cards, keys, tools, security passes, manuals, written materials, telephone cards, uniforms, mobile telephones, computers, and computer-related equipment. Employees have no expectation of privacy of information stored in City issued equipment, such as phone logs and text messages. Employees are responsible for items formally issued to them by the City, as well as for items otherwise in their possession or control or used by them in the performance of their duties. At the time of issuance, employees may be required to sign certain forms or other documentation evidencing their receipt of property and/or equipment and authorizing a payroll deduction for the cost of lost, damaged, or unreturned items and acknowledging no privacy expectation in electronically stored documents. In addition to payroll deductions, the City may take any other action it deems appropriate or necessary to recover and/or protect its property.

Employees must notify their supervisor immediately if any vehicle, equipment, machine, tool, etc. appears to be damaged or defective, or in need of repair. The appropriate supervisor can answer questions about an employee's responsibility for maintenance and care of equipment used on the job. The improper, careless, negligent, destructive, or unsafe use or operation of equipment will likely result in disciplinary action, up to and including termination of employment.

Personal Use Prohibited. City property, materials, supplies, tools, equipment or vehicles may not be removed from the premises or used for personal business without prior written approval by the Departmental Director or the Department Head.

Tobacco Use Prohibited. The use of all tobacco products (including smokeless) is prohibited while operating and/or being a passenger in City owned vehicles and/or equipment.

Vehicle Allowance. An employee may be given a monthly allowance for consistently using such employee's own vehicle for City business if the use is deemed necessary by the City Manager. The amount of the allowance shall be determined by the City Manager.

Take Home Vehicles. A City vehicle may be assigned to a position or employee when it is more economical than payment of a car allowance or mileage reimbursement. To be eligible for assignment of a take-home vehicle, an employee must be subject to emergency call back during off duty hours to locations other than the employee's normal work station. City-owned vehicles may be used only for City business, except as otherwise specifically authorized by department policy approved by the City Manager.

No alcoholic beverages are allowed in City vehicles

If approved by the City Manager, use of a City-owned vehicle may be included within a contract of employment and may be exempt from this policy.

The City's vehicles are classified as either "exempt" or "non-exempt" as prescribed by law. Employees to whom a "non-exempt" vehicle is assigned for take-home will likely incur a federal income tax liability for the fringe benefit of commuting to and from work. Most pickups, vans and automobiles are classified as "non-exempt" vehicles. Police and fire vehicles used by employees on call 24-hours are normally exempt from the fringe benefit tax liability.

Use of City Vehicles. City-owned or leased vehicles may only be used for official City business unless exceptions are provided elsewhere. City-owned or leased vehicles may only be driven by authorized City employees. If an employee drives his/her own, or a City-owned, rented or leased vehicle on the job or while carrying out City-related business, the employee must comply with the following:

- Drivers must have a valid State of Texas driver's license appropriate for the vehicle operated, must maintain a satisfactory driving record, and must inform their supervisor of any change in status.
- Always observe all posted laws and speed limits.
- Always wear seat belts when the vehicle is in operation.
- No passengers other than City employees or others on City business may ride in a City vehicle unless otherwise approved in advance by the Department Director.
- No personal use of City-provided vehicles is allowed without the prior, specific approval of the Department Director.
- All maintenance and use records for City vehicles must be completed as directed by the employee's supervisor.
- Report any broken, missing, or worn parts, tires, etc., or any needed maintenance of City vehicles to the appropriate supervisor immediately.
- All drivers must be eligible for coverage under the City's insurance policy.
- Drivers covered by Department of Transportation regulations must comply with them at all times.
- At no time may an employee under the influence of alcohol or drugs (illegal or legal with adverse effects) drive a city vehicle or a personal vehicle while conducting city business.
- Employees involved in an accident while operating a city vehicle, or while operating a personal vehicle on city business, must immediately notify the proper law enforcement agency (if applicable) and the appropriate supervisor, department head, director, and/or city manager.

- Accident reports, along with any law enforcement report, must be filed by the employee with the department head and Human Resource Director.

The City may, at any time, check the driving record of a City employee who drives as part of his/her job duties to determine that he/she maintains the necessary qualifications as a City driver. Employees agree that they will cooperate in giving the City whatever authorization is required for this purpose.

The above is not a complete and exhaustive list of vehicle use policies. Violations of any of the specific items listed, as well as the improper, careless, negligent, destructive, or unsafe use or operation of a vehicle, may result in disciplinary action, up to and including termination of employment.

Personal Property. All employees shall be solely responsible for their personal property at all times.

CONFIDENTIAL INFORMATION

Employees may use confidential information only in the normal course of city business.

Confidential information includes, but is not limited to, financial, personnel and personal information on customers, prospective customers, suppliers of goods and/or services, employees and applicants except as provided by the Public Information Act, an action of the City Council, reporting to a state or federal agency or an order of a court of law.

In no event may confidential information be changed or made available to individuals outside the City organization without the approval of the City Council. In all cases, there must be adherence to current laws.

As a City of Brenham employee, your work-related e-mails, texts, and social media posts may be considered public information. You should have no expectation of privacy with respect to any e-mails or texts sent from your city e-mail address or city-issued phone. Further, if you choose to use your own personal e-mail or phone to send and/or receive work-related messages, those messages may also be considered public information.

CONFIDENTIALITY OF MEDICAL INFORMATION

Federal law requires that the City maintain all employee medical information in separate, confidential files. Therefore, in addition to personnel files, the City maintains a separate medical file for each employee. The Human Resource Director maintains these confidential medical files.

Examples of information that may be provided to the City by an employee's health care provider, and maintained in the confidential medical file, include:

- a note to justify an absence;
- a note to request a leave;
- a note to verify the employee's ability to return to work;
- medical records to support a claim for sick pay or disability benefits;
- insurance records; and
- workers' compensation records.

It is important that employees understand that the records are confidential but that the confidentiality may be waived when the employee provides medical information to his/her supervisor or the Human Resource Director. When an employee provides information to his/her supervisor, the supervisor is expected to share the information only on an "as needed" basis to other members of management.

In addition to protecting their own confidential medical information, employees must also respect the privacy and confidentiality of their coworkers' medical information. Employees are expected to use discretion and judgment when dealing with such information and are to refrain from passing along information, gossip, rumors or anything else that may constitute an invasion of a coworker's privacy or breach of confidence.

DRESS, APPEARANCE AND UNIFORMS

Employees must, at all times, dress appropriately and professionally and present a clean and neat appearance while at work and while representing the City or conducting City business. The City allows business casual dress in the work place year-round, in accordance with this policy. Department Heads and Directors are strongly encouraged to allow their employees to participate in business casual dress, as practical. Department Heads, Directors and supervisors are responsible for enforcing this policy in their respective departments in order to maintain acceptable dress and appearance.

Employees must remember that they are professionals 100% of the time and are dressing for business, not for pleasure. Attire must always reflect a professional business attitude and presence. Police and Fire Department employees may be covered under Departmental policies regarding appropriate dress and appearance.

Standards for Work Attire:

- Sweat-shirts, sweat pants, or shorts of any type are not acceptable unless approved as part of a uniform or a special casual wear or festive occasion is declared by City management.
- Footwear appropriate to the job should be worn.
- T-shirts are not acceptable unless considered as part of a uniform.
- No more than two (2) earrings in each ear may be worn provided the earrings are not unprofessional in appearance.
- Knit shirts with collar, banded collar shirts, short sleeve or dress shirts without a tie are acceptable. All shirts are to be tucked in unless specifically designed to be worn outside trousers.
- If caps or hats are worn, they should be City-issued or approved.

The following are inappropriate:

- Provocative or revealing attire including body-hugging, see-through, or excessively tight fabrics;
- Bare shoulders or tank tops;
- Clothing with unclear or obscene messages or that endorses alcohol, tobacco products, drugs, pornography, or offensive material of any kind;
- Wrinkled, ripped and tattered clothing;
- Visible tattoos which could be deemed offensive;
- Nose rings/studs, eyebrow rings/studs, tongue studs or similar type facial jewelry or teeth grills

Hair. Hair styles and hair colors must be appropriate to the employee's position and extremes of any type are unacceptable. Hair, including facial hair, must be clean and neatly groomed at all times.

Uniforms. The City supplies many departmental personnel with appropriate uniforms. Uniforms must be clean and neat. City-owned or authorized uniforms may not be used outside of work, for

personal use or by any third party. City uniforms may be used by City employees in connection with outside employment only with the Department Head's prior written authorization.

Employees who are provided with uniforms are required to wear their uniforms when on duty and keep them in good, clean and serviceable condition. An employee must wear the entire uniform when on duty. No part of the uniform shall be worn when off duty, except to and from work.

When an employee terminates, uniforms and any other City equipment which the employee has been issued must be returned in good condition before final pay will be authorized.

Enforcement. In all cases, the City will make the determination as to acceptable dress, appearance and grooming. Employees should direct questions about appropriate appearance or dress to the Department Head, Director, or the Human Resource Director.

Employees in violation of this policy may be sent home. Under such circumstances, nonexempt employees will not be paid for work time missed, and exempt employees will be required to make up the work time missed. Employees whose grooming or personal appearance violates this policy may be disciplined, up to and including termination of employment.

The Director, with approval of the City Manager's office, may make departmental exceptions to this policy when deemed necessary for business reasons or may implement a more restrictive dress and appearance policy.

DRIVER'S LICENSE

The City requires that every employee who operates a City owned [or leased] vehicle, or who drives a privately owned vehicle while carrying out job duties, must maintain a current valid Texas driver's license and an acceptable driving record as determined by the City.

Driving records will be checked prior to employment and periodically throughout the course of employment by the Human Resource Department. Applicants and employees are required to provide the City with any authorizations necessary for the City to perform such a check.

Driving records will be based on the following assignment of points:

- Two (2) points for a moving violation of the traffic laws of Texas or another state or political subdivision therein during the three (3) years prior to hire or current driving record evaluation.
- Three (3) points for a moving violation of the traffic laws of Texas or another state or political subdivision therein during the three (3) years prior to hire or current driving record evaluation that resulted in an accident.
- Ten (10) points for a violation of the traffic laws of Texas or another state or political subdivision therein during the seven (7) years prior to hire or current driving record evaluation for each occurrence resulting in a conviction of but not limited to:
 - Driving While Intoxicated or Under the Influence (DWI, DUI)
 - Aggravated Assault with a Motor Vehicle
 - Criminal Negligent Homicide
 - Involuntary Manslaughter
 - Refusal of Alcohol or Drug Test
 - Other Convictions listed on Tables IV and V of the Texas School Bus Driver's Driving Record Evaluation

Ten or more points is considered excessive and will result in failure to hire in the case of prospective employees and will likely result in disciplinary action, up to and including termination, of an active employee. In certain instances 3 or fewer moving traffic violations in an 18 month period may also be considered excessive.

Police and Fire Departments may have stricter standards imposed.

When a special classification of driver's license is required to operate City equipment, it is the employee's responsibility to maintain the required license.

DRUG AND ALCOHOL USE POLICY

It is the desire of the City to provide a drug-free, healthful, and safe workplace. To promote this goal, employees are required to report to work in appropriate mental and physical condition to perform their jobs in a satisfactory and safe manner.

Prohibition Against Alcohol and Illegal and Unauthorized Drugs. While on City premises, while on duty, while conducting City-related business or other activities off premises, while driving a City-owned or leased vehicle, or while operating or using other City-owned or leased property or equipment, no employee may use, possess, distribute, sell, or be under the influence of alcohol (except under the limited circumstances described below), inhalants, illegal drugs, including drugs which are legally obtainable but which were not legally obtained, and prescribed or over-the-counter drugs which are not being used as prescribed or as intended by the manufacturer.

Prohibition Against Illegal and Unauthorized Drug-Related Paraphernalia. This policy also prohibits the use, possession, distribution and sale of drug-related paraphernalia while on City premises, while on duty, while conducting City-related business or other activities off premises, while driving a City-owned or leased vehicle, or while operating or using other City-owned or leased property or equipment. Drug-related paraphernalia includes material and/or equipment designed for use in testing, packaging, storing, injecting, ingesting, inhaling or otherwise introducing illegal or unauthorized drugs into the body.

Permitted Use of Prescribed and Over-The-Counter Drugs. The legal use of prescribed and over-the-counter drugs is permitted while on City premises, while on duty, while conducting City-related business or other activities off premises, while driving a City-owned or leased vehicle, or while operating or using other City-owned or leased property or equipment only if it does not impair an employee's ability to perform the essential functions of the job (or operate the vehicle, property or other equipment) effectively and in a safe manner that does not endanger the employee, citizens or other individuals in the workplace. Examples of impairment include, but are not limited to, drowsiness, dizziness, confusion, or feeling shaky.

Prohibited Use of Alcohol. The use of alcohol by a City employee during a business lunch is prohibited even though the person with whom the employee is having lunch may be consuming alcohol. At no time may an employee under the influence of alcohol drive a City-owned or leased vehicle or operate or use other City-owned or leased property or equipment. Further, an employee on duty or conducting City business, including City-related business entertainment, may not drive his or her own personal vehicle while under the influence of alcohol. No employee in his or her work-related capacity should ever be impaired because of the excessive use of alcohol. Absent specific approval by the City Manager, City employees may not bring alcoholic beverages on City premises, including parking lots adjacent to City work areas, and may not store or transport alcohol in a City-owned or leased vehicle.

Fire and Police Department Employees. Certain City Fire and Police Department employees may be required to be in possession of alcohol and/or drugs in carrying out their job duties. Such employees will be exempted from certain portions of this policy under certain limited conditions.

Additional guidelines may be established by Police and Fire Department operating procedures.

Mandatory Disclosure by Employees. Employees taking prescription medication and/or over-the-counter medication must report such use to either their Department Head or to the Human Resource Director if there is a reasonable likelihood the medication will impair the employee's ability to perform the essential functions of his or her job (or operate a vehicle, property or other equipment, if applicable) effectively and in a safe manner that does not endanger the employee, citizens or other individuals in the workplace. Examples of impairment include, but are not limited to, drowsiness, dizziness, confusion, or feeling shaky.

On-Call Employees. Employees scheduled to be on call are expected to be fit for duty upon reporting to work. Any employee scheduled to be on call, who is called out, is governed by this policy. Sometimes, an employee who is not scheduled to be on call may nevertheless be called out. If this or any other situation occurs where the employee called out is under the influence of drugs and/or alcohol, such that reporting to work would result in a violation of this policy, the employee must so advise the appropriate supervisor on duty. The employee will not be required to report to work.

Mandatory Reporting of Arrests. Employees must notify their immediate supervisor and the Human Resource Director, in writing, of any criminal drug and/or alcohol-related arrest, for a violation occurring off duty and/or in the workplace no later than 24 hours after the arrest. Employees must notify their immediate supervisor or the Human Resource Director within 24 hours of the occurrence of any change in status of driver's license because of such arrest.

Mandatory Reporting of Convictions. Employees must notify their immediate supervisor and the Human Resource Director in writing, of any criminal drug and/or alcohol-related conviction (including a plea of nolo contendere) or deferred adjudication, for a violation occurring off duty and/or in the workplace no later than five calendar days after the conviction.

Off-Duty Conduct. The City may take disciplinary action, up to and including termination of employment, if an employee's off-duty use of or involvement with drugs or alcohol is damaging to the City's reputation or business, is inconsistent with the employee's job duties, or when such off-duty use or involvement adversely affects the employee's job performance.

Rehabilitation/Treatment.

1. It is the City's desire to assist employees who voluntarily request assistance with their alcohol or drug dependency. For City support and assistance, however, an employee must acknowledge his or her problem and seek and accept counseling and/or rehabilitation before it impairs his or her job performance and/or jeopardizes his/her employment.
2. Employees with drug or alcohol problems that have not resulted in, and are not the immediate subject of, disciplinary action may request approval to take a leave of absence to participate in a rehabilitation or treatment program. (An employee may not enroll in a rehabilitation or treatment program in lieu of disciplinary action.) The leave of absence

may be granted in the City's sole discretion. Factors considered by the City in deciding whether to grant leave include: the length of the employee's employment with the City; the employee's prior work and disciplinary history; the employee's agreement to abstain from the use of the problem substance and follow all other requirements of the rehabilitation/treatment program; the reputation of the program and the likelihood of a successful outcome; the employee's compliance with City policies, rules, and prohibitions relating to conduct in the workplace; and the resulting hardship on the City due to the employee's absence. Unless otherwise required by law, it is the City's policy to grant such a leave of absence only once during the course of an employee's employment with the City.

Note: Under certain conditions, treatment for substance abuse may be covered under the City's Family Medical Leave Act Policy.

3. The cost of any rehabilitation or treatment may be covered under the City's group health insurance policy. In any case, the employee is responsible for all costs associated with any rehabilitation or treatment program.
4. During time off for a City-approved rehabilitation or treatment program, the employee must use any available vacation leave, sick leave, compensatory time off, or other accrued paid leave time. If the employee has no paid time off available, the time away from work will be unpaid. Where applicable, any time off for rehabilitation or treatment under this policy will also be designated as leave under the City's Family and Medical Leave Act policy.
5. If the employee successfully completes his or her prescribed rehabilitation or treatment, the City will make reasonable efforts to return the employee to his or her prior position or one of similar pay and status. However, employment with the City following a City-approved leave for rehabilitation or treatment is conditioned on the following:

Initial negative test for drugs and/or alcohol before returning to work;

A written release to return to work from the City-approved rehabilitation or treatment facility/program;

Periodic and timely confirmation of the employee's on-going cooperation and successful participation in any follow-up or ongoing counseling, testing, or other treatment required in connection with the City-approved rehabilitation or treatment program, if applicable;

In addition to any testing required in connection with the employee's ongoing treatment or follow-up to treatment, all employees who participate in rehabilitation or treatment under this section will also be required to submit to periodic and/or random testing by the City during the two years following the employee's return to work following treatment;

The employee must sign a formal written agreement to abide by the above conditions, as well as any other conditions deemed appropriate by the Human Resource Director. The employee must meet with the Human Resource Director to discuss the terms of his or her continued employment and sign a formal agreement before returning to work.

6. This policy will be administered in accordance with the City's Family Medical Leave Act policy when applicable.

Policy Violations. Violations of this policy will generally lead to disciplinary action, up to and including immediate termination of employment and/or required participation in a substance abuse rehabilitation or treatment program. The Police and Fire Departments may have stricter disciplinary rules regarding violation of this policy. Employees with questions or concerns about substance dependency or abuse are encouraged to discuss these matters with their supervisor or the Human Resource Director to receive assistance or referrals to appropriate resources in the community.

TESTING

Types of Tests. Testing may include one or more of the following: urinalysis, breathalyzer, intoxilyzer, or other generally-accepted testing procedure.

Testing of Applicants. All applicants to whom a conditional offer of employment has been made will be required to submit to testing for illegal and unauthorized drugs. A positive test result, refusal to test, or attempts to alter or tamper with a sample or any other part of the test, will render the applicant ineligible for consideration of employment or future employment with the City.

Testing of Employees.

1. Employees may be tested for alcohol and/or illegal and unauthorized drugs after a workplace injury or accident or "near miss," when reasonable suspicion exists, or in connection with any required treatment or rehabilitation. The City will conduct random drug/alcohol testing on employees subject to Department of Transportation regulations and employees holding safety-sensitive positions, as identified below:
Employees (and certain volunteer personnel) of the City of Brenham performing safety sensitive or security sensitive functions are subject to random drug and/or alcohol testing, including but not limited to the following:
 - a) Any employee who is required to have a Commercial Driver's License (CDL) as part of their job description or job duties.
 - b) All employees that drive City vehicles or drive personal vehicles on City business, and who also make decisions or judgments in managerial/code enforcement capacity that might impact the health, safety or welfare of employees, residents, or public.
 - c) All Employees that operate heavy equipment and machinery.
 - d) All employees whose duties include, without limitation, inspecting, maintaining, repairing, constructing, testing, monitoring, operating and responding to emergencies involving the City's electric, gas, water and wastewater utility systems and associated facilities.
 - e) All police officers, including reserve police officers.
 - f) All firefighters, including volunteer firefighters.
 - g) All animal control officers.

- h) All employees that work in the proximity of motor vehicle powered equipment, machinery, or with potentially hazardous or dangerous tools and materials or areas (e.g. at heights or in confined spaces).
 - i) All employees who as part of their job description or job duties make decisions or judgments in a managerial or code enforcement capacity which might impact the health, safety or welfare of City employees, residents, or the general public.
 - j) Lifeguards.
2. Police and Fire Department employees are also subject to any applicable Departmental rules and regulations regarding illegal and unauthorized drug and alcohol testing.
 3. For purposes of this policy, reasonable suspicion is a belief based on articulable observations (e.g., observation of alcohol or drug use, apparent physical state of impairment, incoherent mental state, changes in personal behavior that are otherwise unexplainable, deteriorating work performance that is not attributable to other factors, a work-related accident or injury, evidence of possession of substances or objects which appear to be illegal or unauthorized drugs or drug paraphernalia) sufficient to lead a supervisor to suspect that the employee is under the influence of illegal or unauthorized drugs or alcohol. Supervisors who refer an employee for reasonable suspicion testing must document the specific factors that support reasonable suspicion testing (e.g., the who, what, when, where of the employee's behavior and other symptoms, statements from other employees or third parties, and other evidence supporting the reasonable suspicion testing).
 4. Tests will be paid for by the City. To the extent possible, testing will normally be done during the employee's normal work time.
 5. Any employee who refuses to be tested, or who attempts to alter or tamper with a sample or any other part of the testing process, will be subject to disciplinary action up to and including termination.
 6. An employee who is tested for reasonable suspicion will be placed on paid administrative leave until test results are received.
 7. A positive test result is a violation of the City's Drug and Alcohol Use Policy and may result in disciplinary action up to and including termination of employment. Any employee who is terminated for violation of the City's Drug and Alcohol Use Policy is ineligible for future employment with the City.
 - **Consequences of a Positive Alcohol Test.** An employee who is tested and has an alcohol concentration of 0.04 or greater will be removed from job functions and will be terminated. An employee who is tested and has an alcohol concentration of .02 to .039 will not be permitted to perform job functions for a minimum of 24 hours and will be disciplined, up to and including termination. If the employee is not terminated, then he/she will receive a mandatory referral to a substance abuse professional. Any non-compliance with the treatment recommendations of the substance abuse professional will result in disciplinary action, up to and including termination. (The

employee will be placed on administrative leave without pay during the treatment period. That employee may use accrued sick leave or other accrued leave during the treatment period as applicable.)

- **Consequences of a Positive Drug Test.** An employee will be removed from all job duties and placed on unpaid administrative leave if he/she tests positive for drugs. The removal cannot take place until the MRO has interviewed the employee and determined that the positive test resulted from the unauthorized use of a controlled substance. A confirmed positive drug result will result in termination of employment.

DOT AND GAS DEPARTMENT EMPLOYEES/APPLICANTS SUBJECT TO TESTING.

City employees who drive a commercial motor vehicle (CMV) requiring a Commercial Driver's License (CDL) as part of their job duties are subject to alcohol and drug testing as required by the U.S. Department of Transportation (DOT) and the Federal Motor Carrier Safety Administration and as outlined in this policy. The employee's supervisor or the Human Resources Director will advise the employee if he or she is subject to DOT testing and the terms of this policy. Employees who are not required by DOT to hold a CDL are not subject to this policy. Applicants for employment for a position requiring a CDL are also subject to testing under this policy.

Employees covered by this policy are also required to comply with the City's Drug and Alcohol Use Policy. In other words, this DOT Drug and Alcohol Policy is in addition to, not in lieu of, the provisions of the City's general Drug and Alcohol Use Policy. DOT tests will be completely separate from non-DOT tests in all respects. DOT tests take priority and will be conducted and completed before a non-DOT test is begun. All drug and alcohol testing performed under this DOT Policy will comply with applicable DOT procedures. If this policy conflicts with DOT regulations in any way, the DOT regulations will govern.

Employees subject to DOT Drug and Alcohol Testing Policies will receive a separate policy manual applicable to FMCSA and/or RSPA procedures.

Testing Procedures.

1. All testing must normally be authorized in advance by both the employee's Department Director and the Human Resource Director. If the Department Director is unavailable within a reasonable period of time, the Human Resource Director may, in her sole discretion, authorize the testing of an employee. If the Human Resource Director is unavailable within a reasonable period of time, the Department Director may, in his or her sole discretion, authorize the testing of an employee. For reasonable suspicion testing, testing may not be authorized without the supervisor's documentation of the articulable factors which led him or her to suspect that the employee is under the influence of illegal or unauthorized drugs or alcohol. Testing should be arranged as soon as possible after the supervisor's articulable observations but within 2 hours of observation for alcohol and within 32 hours of observation for drug abuse.

If an employee's conduct resulted in a work place accident, injury or "near miss," or reasonable suspicion exists to believe that the employee has violated the City's Drug and Alcohol Use Policy, the employee will be provided with transportation to the testing facility. A supervisor or other designated City representative may be required to stay with

the employee during the testing process. The City may, in its discretion, reassign the employee or put him or her on administrative leave until the test results are received.

The City will make arrangements to have the employee transported home after the testing.

3. All substance abuse testing will be performed by an approved laboratory or healthcare provider chosen by the City. All positive test results will be subject to confirmation testing.
4. Test results will be maintained in a confidential file separate and apart from the employee's personnel file. Any medical-related information will be confidential and accessible only by the Human Resource Director; supervisors and managers on a need to know basis, including those who have a need to know about:
 - necessary restrictions on the work or duties of an employee and any necessary accommodation;
 - first aid and safety personnel when appropriate;
 - government officials;
 - insurance companies as may be necessary to provide health or life insurance to employees;
 - by court order or
 - as otherwise legally mandated; and as necessary to protect the interests of the City.

ELECTRONIC MAIL (E-MAIL) POLICY

Intent

The purpose of this Policy is to establish management direction, guidelines, and requirements with regard to the use of, access to, and disclosure of, electronic mail messages sent or received by employees, vendors, consultants or other people who have access to the City of Brenham's Electronic Mail System.

Responsibility For Implementation

Every employee, vendor, consultant, or other person authorized to have access to the City of Brenham's Electronic Mail Systems, is personally responsible for compliance with this Policy.

Scope

This policy applies to all City of Brenham departments.

The security, control, and etiquette associated with the use of electronic mail is the responsibility of all mail users, regardless of their position within the city. In order to protect the assets of the City of Brenham and protect the rights of the individuals, please read and follow the following standards.

INTERNAL electronic mail is secure from access by most users. However, City of Brenham management reserves the right to monitor or access electronic mail messages at any time without notice for any purpose including protecting against theft.

EXTERNAL electronic mail (i.e., transmitted over the public Internet) is NOT a secure environment. Any messages transmitted over the Internet can potentially be intercepted, read, modified or destroyed by unauthorized or unintended recipients.

Policy

Under no circumstances should any employee expect any privacy while utilizing the City of Brenham's Electronic Mail System. Electronic Mail **ONLY**; use of groupware messaging systems, and instant messaging is strictly prohibited. City of Brenham-account Internet mail (e.g., cityofbrenham.org) are the property of the City of Brenham and are intended primarily for business purposes.

Using an Electronic Mail Account Assigned to Another Individual

Employees must not use an electronic mail account assigned to another individual to either send or receive messages. Employees must not attempt to access another's electronic mail account. Employees must not share passwords to their accounts.

Personal Use of Electronic Mail Systems

Electronic mail messages can be subpoenaed and introduced as evidence in court. Also, City of Brenham email accounts used by public employees and officials may be subject to the Texas Public Information Act requests by the public and as such, care should be taken when sending mail from these accounts. Electronic mail systems are intended to be used primarily for business purposes.

As a City of Brenham employee, your work-related e-mails, texts, and social media posts may be considered public information. You should have no expectation of privacy with respect to any e-

mails or texts sent from your City e-mail address or City-issued phone. Further, if you choose to use your own personal e-mail or phone to send and/or receive work-related messages, those messages may also be considered public information.

Misuse of the Electronic Mail Systems

Misuse of the electronic mail systems is a serious offense and can be grounds for disciplinary action up to, and including termination. Misuse includes any message content and attachments that violate the City of Brenham's Code of Conduct Policies including, but not limited to:

- Chain letters
- Betting pools
- Unauthorized employee solicitations
- Misrepresenting City of Brenham
- Copyrighted material
- Spam mail
- Offensive humor
- Ethnic, racial, religious or other slurs.
- Slanderous remarks about colleagues, clients, or vendors
- "Flaming" or other types of electronic mail harassment
- Unauthorized computer virus warnings
- Pornographic Material and/or Sexually Explicit Material

Suspicious Email

Any employee who receives a suspicious email must contact the Information Technology (IT) Department to check its validity. Do not forward suspicious emails to the IT Department or anyone else. Employees should not open attachments or links in suspicious emails. The Information Technology Department will notify employees of any suspicious email activity.

Monitoring

Employees should have no expectation of privacy when using the City of Brenham Electronic Mail Systems. The City of Brenham reserves the right to monitor or access all electronic mail systems belonging to the City of Brenham.

The appropriate Information Technology employee may monitor e-mail and Internet use. Suspected instances of excessive or inappropriate use will be reported to the appropriate Department Director, City of Brenham's Information Technology Manager, other management, or the Human Resource Department, as appropriate.

Enforcement

The employees and supervisors of the various City of Brenham departments are responsible for the enforcement of this policy. Violations of this Policy could result in adverse employment consequences, up to and including termination.

Related Policies

This policy supersedes any related policy or document previously in existence in any department.

EMPLOYEE SAFETY

The City is interested in your safety and well-being. Accordingly, the City has developed safety rules and regulations. Each and every employee is required to obey safety rules and to exercise caution in all work activities. From time to time you will be updated and reviewed on safety procedures in an effort to increase your awareness of the importance of safety on the job. You can do much to prevent accidents and injuries by obeying the safety rules of your job, by remaining alert, and by THINKING SAFETY at all times. If you see something that you believe is an unsafe act or an unsafe condition, you should immediately report it to your supervisor or to management at once.

The following safety rules apply at all times, and some departments may mandate and specific job descriptions may contain additional operational safety guidelines. Each employee must be familiar with such rules, and apply them at all times.

- Use prescribed protective equipment such as eye protection, hearing protection, hard hats, safety shoes, gloves, shields, etc. when those items are appropriate to the task being performed.
- Smoke only during designated times in authorized outside areas.
- Walk, do not run. Wipe spills and pick up fallen objects and debris. Keep floor surfaces clear of hazards and other obstacles, electric cords, etc.
- For your comfort and safety, wear shoes with non-slip soles, in good condition and with enclosed toes. Steel-toed shoes must be worn if assigned by supervisor. Do not wear sandals, sneakers, moccasins or tennis shoes on any job site where feet could be injured.
- Personal protective equipment (PPE) must be worn as directed by departmental procedures.
- To avoid back injuries, use correct lifting methods. Get someone to help you with heavy (or difficult to handle) items.
- Be aware of sharp tools. Use safety devices where provided, and do not alter or remove them in any way. Report hazards to management immediately.
- Know where Material Safety Data Sheets (MSDS Sheets) are located in your department and how to read and interpret them. - MSDS sheets provide valuable information about various chemicals and other agents that you may encounter in your work. They will explain possible reactions to exposure, and steps you should take if it occurs. Review this information from time to time.
- Fire - Be alert for causes and report smoke, heat or unusual odors immediately. Alert other people in the area to the possibility of danger in order to evacuate, if necessary.

- Try to verify the location and call 911. Use proper portable extinguishers for small fires.
- Follow all rules regarding operation of motor vehicles including wearing of seat belts at all times while operating vehicle.
- Comply with all traffic laws.
- Do not put fingers, hands, feet or clothing in moving machinery.
- Do not carry items in a manner that obscures your vision.
- Do not block access to fire extinguishers.
- Do not touch open or loose electrical circuits.
- Report unusual vibrations, smells, or noises coming from equipment.
- Do not wear rings or jewelry while operating machinery.
- Do not perform maintenance or repairs on running equipment.
- Do not remove or alter warning tags or safety devices.
- Never leave nails or spikes protruding from planks or boards.
- Perform routine maintenance at all scheduled intervals.
- Do not use compressed air for cleaning clothing or floors.

Accident Reporting

All accidents and injuries, however slight or seemingly inconsequential, **must immediately be reported** to the appropriate supervisor or the Human Resource Director. Failure to report any accident or injury within 24 hours of its occurrence may lead to disciplinary action, up to and including termination of employment. Such reports are necessary so that the City can remain in compliance with applicable laws and begin workers' compensation benefit procedures where appropriate.

Employees who violate safety standards, who cause or exacerbate hazardous or dangerous situations, or who fail to report or, where appropriate, correct such situations, will likely be subject to immediate disciplinary action, up to and including termination of employment.

ACCIDENTS INVOLVING CITY EQUIPMENT OR VEHICLES

Any employee involved in an accident while operating City equipment or vehicles **shall report the accident immediately to his/her supervisor and to the proper law enforcement agency**. The employee must immediately complete an accident report, no matter how minor the damage is to the vehicle, and submit to his/her supervisor and to the Human Resource Director.

Drivers must obey all traffic rules and regulations prescribed by law and use every reasonable safety measure to prevent accidents. No one under the age of 18 may operate a City vehicle. Wearing of seat belts is mandatory.

Any traffic fines imposed upon a City employee while operating a City vehicle will be the personal responsibility of the employee and not the City. Any employee involved in any type of accident involving City equipment may be disciplined if, upon investigation, it is determined that the employee was negligent or through carelessness or recklessness contributed to the cause of the accident.

GIFTS

The City strives to treat employees, citizens and individuals conducting business with the City in a fair and equitable manner. An employee (and his/her relatives and significant others) may not receive any income or other material gain from anyone outside the City for services provided by the employee in the performance of his or her job with the City. Individual City employees are prohibited from soliciting, accepting or agreeing to accept any gift, gratuity, favor, benefit or anything else of value from any person, organization, or other entity who has done business, is doing business, or seeks to do business, with the City. However, an employee who accepts the following will not be in violation of this policy:

- an award publicly presented in recognition of public service
- an occasional meal where public business is discussed
- tee-shirts, caps and other similar promotional material
- any gift which would have been offered or given to the employee even if the employee were not a City employee
- door prizes received through random drawings
- Tickets to sporting events, brief trips, golf tournaments and the like when accompanied by the donor.

Routine food coupons, frequent flier awards, discounts and other promotional items awarded to employees while carrying out City business may be accepted by employees and will not be considered a violation of this policy due to the administrative difficulty and cost involved in recapturing the discount or award for the City. If the item is non-routine, or of more than minimal value, the employee must check with his or her supervisor to see if the item should be returned, or in the alternative, turned over to the City.

Employees may not give their supervisor or anyone else in City management any gift or other item of more than a minimal value. If offered, supervisors may not accept such gifts or other items. Giving and accepting cards, food items (such as cakes and cookies) or token gifts for birthdays, Bosses' Day, holiday celebrations, bereavement or similar events is not a violation of this policy.

The City takes this policy very seriously and violations may result in disciplinary action up to and including termination of employment. Any questions regarding the prohibitions imposed by this policy generally, or in connection with a specific situation, should be directed to the Human Resource Director.

Minimal value is normally considered to be \$50 or less.

Solicitation of funds or anything of value for a designated purpose approved by the City of Brenham, such as funds raising for construction or renovation of City buildings or programs, shall not be considered a violation of this policy. No employee may be required to make any contribution nor may an employee be penalized in any way concerning his or her employment according to his or her response to such a solicitation.

INTERNET ACCESS POLICY

Intent

The purpose of this Policy is to:

1. Establish technology standards.
2. Enhance the effectiveness and productivity of the City of Brenham's personnel through coordinated, well-planned and efficient use of the Internet.
3. Secure microcomputer devices, mainframe platforms, network resources and confidential information and data, both stored and transmitted, against theft, misuse and unauthorized access.

Responsibility For Implementation

Every employee, vendor, consultant, or other person authorized to have access to the City of Brenham's internet connection, is personally responsible for compliance with this Policy. This Policy must be distributed to all contractors and agents of the City of Brenham and adherence to this Policy written into their contracts.

Scope

This Policy applies to all City of Brenham departments.

This Policy covers all usage of the Internet including, but not limited to; access to the World Wide Web (WWW), Internet e-mail, file transfers (uploading and downloading) and postings to USENET news groups, CHAT rooms or other message facilities.

Enforcement of this Policy is the responsibility of the employees and supervisors of the various departments within the City of Brenham.

Policy

Access to the Internet is provided for City of Brenham business use; however, any non-business activity may be conducted at the discretion of the Department Head.

As a City asset, responsible use of Internet access privileges is a basic condition of employment, and helps to ensure a secure and non-hostile work environment. Employees are expected to use Internet resources in pursuit of legitimate City of Brenham business interests directly related to their job responsibilities. This requires employees to exercise good judgment consistent with the City of Brenham's Code of Ethics.

Employee Use Guidelines

The following is prohibited by all users:

- Violations of copyright laws and licensing agreements.
- Accessing, downloading, uploading, viewing, e-mailing, storing, interacting, purchasing or printing material that could be considered inappropriate, offensive or violate the City of Brenham's Code of Ethics or other Human Resources policies. This includes but is not limited to:
 - Pornographic and/or sexually explicit material

- Terrorism
 - “Hate” groups
 - “Hacker” information
 - Illegal drugs
 - Offensive or threatening language
 - Tasteless and offensive material
 - Gambling sites
- Accessing Proxy sites or external VPN services will only be allowed on a case by case basis as these sites are typically used to circumvent security measures.
 - Disclosure of any information that is proprietary restricted, or company confidential is prohibited.
 - Use of any communication program that does not create an archive record is prohibited.
 - External instant messaging is prohibited.
 - This prohibition does not apply to organizations or service providers with message boards to receive and reply to business related queries. In the event that entities with which the City of Brenham conducts business or receives services that interact with their customers via a method prohibited by this policy, a special dispensation will be granted to the Department Head and an assistant to access the sites providing an archive record is created of the exchange.
 - Protect your workstation and other employees on the City of Brenham network environment while accessing the Internet by:
 - Downloading information only from reputable sources.
 - Verifying with the City of Brenham’s Information Technology Department any virus warnings or other suspicious information received from the Internet.
 - Streaming audio/video will be permitted based upon bandwidth availability which will be strictly monitored by the Information Technology Department and regulated accordingly.

Employee Accountability

Each Internet user is responsible for understanding and complying with this Policy. All Network Security procedures are applicable to employees accessing their City of Brenham account from non-City of Brenham locations.

Employees MUST NOT share passwords for their individual account.

City Of Brenham Management Responsibility

City of Brenham local management is responsible for ensuring all Internet users are aware of their responsibilities as described in this Policy. Managers must review this policy with their subordinates.

Internet Access

All Internet access from the City network will only be through authorized Internet gateways. The Information Technology Manager approves all authorized Internet gateways. Firewalls at these gateways will be managed and monitored by City of Brenham’s Information Technology Department.

Any access to the Internet from an official company location or on company assets, using facilities other than the approved gateways, is strictly prohibited.

Monitoring

Employees should have no expectation of privacy when using the City of Brenham Internet Systems.

The City of Brenham management reserves the right to monitor access and usage of the Internet for any reason and without warning. The City of Brenham's Information Technology Department currently tracks and logs all Internet traffic passing through the City of Brenham firewalls. Monitoring includes, but is not limited to:

- Name of employee accessing the Internet
- Name of PC accessing the Internet
- All web sites visited
- Time spent on the Internet
- Files transmitted to and from the Internet
- Source of incoming electronic mail
- Destination of outgoing electronic mail
- Full text of all e-mail messages

The Information Technology department may monitor Internet use. Suspected instances of excessive or inappropriate use will be reported to the appropriate Department Director, City of Brenham's Information Technology Manager or other management as appropriate.

Enforcement

Violations of this Policy could result in adverse employment consequences, up to and including termination.

Deviations

There may be exceptional needs where a deviation from the city standard is necessary to facilitate a critical business function. Deviations from a standard will require submission of a legitimate business case and require the approval of the department's senior management and the Assistant City Manager. The request to deviate from the standard is subject to review and approval by the City of Brenham Information Technology Department and Assistant City Manager. Any deviation from standards will be signed and retained by the Information Technology Manager. Deviations will be reviewed and renewed annually, at a minimum.

Related Policies

This policy supersedes any related policy or document previously in existence in the City of Brenham.

PRIVATE TELEPHONE

All supervisory personnel and service personnel must have a telephone number at which they can be reached during off-duty hours or emergency situations

OUTSIDE AND SELF-EMPLOYMENT

City employees may engage in outside or self-employment provided they receive prior written approval from their Department Director on the City's Outside Employment Form. Department Directors and "direct reports" to the City Manager must receive written approval from the City Manager prior to engaging in outside or self-employment.

Employees may not accept outside or self-employment that conflicts with the effective performance of the employee while on duty with the City, or conflict in any way with the best interests of the City. Other outside activities, such as volunteer activities, that might similarly distract from an employee's ability to perform his or her job with the City are also prohibited.

The City of Brenham is considered primary employment and the outside or self-employment is secondary employment. At no time should secondary employment interfere with primary employment or be performed during the course of primary employment. An employee who performs duties relating to his/her secondary employment while on duty with the City will be subject to discipline up to and including termination of employment.

Upon approval of outside or self-employment, the employee shall execute an Agreement that in the event such employee is unable to perform the duties as an employee of the City because of accident, injury, or illness resulting from performance on another job. The employee shall use all of their accrued compensatory time, fifty percent (50%) of their accrued vacation leave time, and fifty percent (50%) of their accrued sick leave time to remain actively employed until returning to work.

An employee will not be covered by the City's workers' compensation insurance while working for another employer or while self-employed unless the employee is required to perform official City employment activities while engaged in such outside or self-employment.

Approval for outside or self-employment as set out in this policy does not authorize an employee on FMLA leave, sick leave, disability leave, workers' compensation leave, or an unpaid leave of absence, to engage in any outside or self-employment. Under no circumstances may an employee on FMLA leave, sick leave, disability leave, workers' compensation leave, or an unpaid leave of absence, engage in outside or self-employment, as defined in this policy, unless expressly authorized in writing by the Department Director and the Human Resource Director.

For purposes of this policy, outside or self-employment includes a job, activity, or enterprise (including self-employment) which constitutes a form of employment or business outside the responsibilities of employment with the City. This policy is not intended to cover volunteer work with a non-profit organization, such as United Way, Girl Scouts, American Heart Association, faith based activities, athletic organizations or similar activities where compensation is neither expected nor paid in the ordinary course of operations.

SEARCHES

The City may conduct unannounced searches or inspections of the work site, including but not limited to City property used by employees such as vehicles, lockers, file cabinets, desks, and offices, computer and electronic files including cell phone logs and text messages (including personal cell phones which the employee is receiving reimbursement for using personal cell phone for City business, whether secured, unsecured or secured by a lock provided by the employee. Employees have no expectation of privacy in personal information stored on City-supplied equipment, such as cell phones and computers or in other personal items brought onto City property. If reasonable suspicion exists, the City may also conduct unannounced searches or inspections of the employee's personal property located on City premises, including vehicles parked on City parking lots. **NOTE:** The City's authority to conduct unannounced searches is not limited to situations involving reasonable suspicion of possession and/or use of drugs/alcohol.

All searches must be authorized and conducted under the direction of the Human Resource Director. Employees who refuse to cooperate with a search may be subject to disciplinary action up to and including termination.

SEXUAL AND OTHER UNLAWFUL HARASSMENT

The City is an equal opportunity employer. Employment discrimination on the basis of race, religion, color, sex, national origin, age, disability, marital status, veteran status, citizenship, or any other characteristic protected by law, is prohibited. All City employees are entitled to a workplace free of unlawful harassment by management, supervisors, co-workers, citizens, and vendors. City employees are also prohibited from harassing citizens, vendors, and all other third parties.

Sexual Harassment. One form of unlawful discrimination is sexual harassment. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or
- submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Sexual harassment may include a range of subtle and not so subtle behaviors and may involve individuals of the same or different gender. Conduct prohibited by this policy includes, but is not limited to sexual advances; requests for sexual favors; sexual jokes and innuendo; verbal abuse of a sexual nature; commentary about an individual's body, sexual prowess, sexual preference, or sexual deficiencies; leering, whistling, or touching; insulting or obscene comments or gestures; display in the workplace of sexually suggestive objects or pictures; and other physical, verbal, or visual conduct of a sexual nature.

Other Prohibited Harassment. In addition to the City's prohibition against sexual harassment, harassment on the basis of any other legally protected characteristic including stalking, bullying, and/or social media harassment is also strictly prohibited. This means that verbal or physical conduct that singles out, denigrates, or shows hostility or aversion toward someone because of race, religion, color, national origin, age, disability, veteran status, citizenship, or any other characteristic protected by law is also prohibited. Prohibited conduct includes, but is not limited to, epithets, slurs and negative stereotyping; threatening, intimidating, or hostile conduct; denigrating jokes and comments; and writings or pictures, that single out, denigrate, or show hostility or aversion toward someone on the basis of a protected characteristic. Conduct, comments, or innuendoes that may be perceived by others as offensive are wholly inappropriate and are strictly prohibited. This policy also prohibits sending, showing, sharing, or distributing in any form, inappropriate jokes, pictures, comics, stories, etc., including but not limited to via facsimile, e-mail, and/or the Internet. Harassment of any nature, when based on race, religion, color, sex, national origin, age or disability, will not be tolerated. This policy applies to City employees, citizens, vendors, and other visitors to the workplace.

Mandatory Reporting. The City requires that employees report all incidents of harassment, regardless of the offender's identity or position. Any employee who observes or otherwise learns of possible harassment in the workplace or who feels that he or she has been subjected to conduct prohibited by this policy must report it immediately to:

- the Human Resource Director; or
- the City Manager.

Any supervisor, manager, or Department Director who becomes aware of possible conduct prohibited by this policy must immediately advise the Human Resource Director. The complaint may be made in writing to the Human Resource Director.

Upon notification of any sexual harassment complaint, the City Attorney will be immediately notified.

Under this policy, an employee may report to and/or contact the Human Resource Director directly, without regard to the employee's normal chain of command and provide the following information:

Name
Title
Work address
Telephone number
Pager or cell phone
E-mail
Complaint

Voice messages or e-mails may be left at any time.

In addition, the City encourages employees who believe they are being subjected to conduct prohibited by this policy and who feel comfortable doing so, to promptly advise the offender that his or her behavior is unwelcome and request that it be discontinued. Often this action will resolve the problem.

Investigation. All reports of prohibited conduct will be investigated promptly by management in as confidential a manner as possible. The investigation may include individual interviews with the parties involved and, where necessary, with individuals who may have other relevant knowledge. All employees are required to cooperate with the investigation.

Retaliation Prohibited. Retaliation against employees who make a good faith charge or report of prohibited conduct or who assist in a complaint investigation is prohibited. Acts of retaliation must be reported immediately as set out above.

Responsive Action. Misconduct constituting harassment or retaliation will be dealt with appropriately. Discipline, up to and including dismissal, will be imposed upon any employee who is found to have engaged in conduct prohibited by this policy. Likewise, disciplinary action will be imposed in situations where claims of prohibited conduct were fabricated or exaggerated.

SOCIAL MEDIA

1. PURPOSE

The City of Brenham (“City”) has a vested interest in protecting its reputation and the community by ensuring that an employee’s communication on behalf of the City not only reflects positively on the employee, but also on the City.

This policy addresses the responsibility of all employees and volunteers with regard to their personal use of social media. This policy also outlines the protocol and procedure for employee and volunteer use of social media to disseminate public information and/or promote special events, programs, and services on behalf of the City of Brenham.

2. DEFINITION

For purposes of this policy, “social media” shall mean the use of technology in combination with electronic social networks or social media sites of any type. “Social media sites” are third party websites, software applications and similar computer programs which allow for the creation of and access to content and dialogue around a specific issue or area of interest and may include, but not be limited to, Facebook, Twitter, Instagram, Snapchat, LinkedIn, MySpace, YouTube, blogs, Wikis, chat rooms, on-line forums and any other form of social media.

“City social media sites” are those websites, pages, sections, or posting locations in social media that are established or maintained by an employee of the City who is authorized to do so as part of the employee’s job and that are used to conduct City business; disseminate public information and/or promote special events, programs, and services on behalf of the City; and/or communicate with or gather feedback from City residents and other interested persons.

“City social media sites” also include official City of Brenham websites and all forms of on-line community sites that are established and maintained by the City of Brenham. Social media activity includes but is not limited to texting, blogging, posting, and other actions involving technology and social media sites.

“City social media content” means information, images, or photographs posted or provided to a City social media site by a City employee or authorized representative when such activity is a part of the employee’s or authorized representative’s job duties.

For the purposes of this Social Media Policy only, the term “employee” shall mean a full-time, part-time, or temporary/seasonal employee, contract employee/entity, or volunteer for the City.

3. COVERAGE

This policy applies to all City departments and employees.

4. EMPLOYEE PERSONAL USE OF SOCIAL MEDIA

The lines between public and private, personal and professional can become blurred in social networks. With that in mind, below are the City's expectations regarding social media use by City employees while off duty.

- 4.1 When using social media for personal purposes, employees shall not post or discuss confidential information about the City's employees, citizens, vendors, issues, business, or legal matters without express consent to do so from the City Manager, department director and/or the Communications & Public Relations Manager. Additionally, in certain situations, disclosure or posting of confidential information may also violate state law and/or subject the employee to civil liability and/or criminal penalties.
- 4.2 Personal use of social media while off duty must not interfere with or conflict with the employee's duties or job performance, reflect negatively on the City or violate any City policy.
- 4.3 Employees are expected to act responsibly while off duty and to exercise good judgment when using social media. Employees shall comply with the following when engaging in personal use of social media:
 - Respect all employees and the City. Do not post any information and/or pictures on the Internet that may defame, embarrass, insult, demean or damage the reputation of the City or any of its employees. Recognize that postings, even if done off premises and while off duty could have an adverse effect on the City.
 - Do not post any information and/or pictures that may constitute a violation of any City policy.
 - Do not post pictures or other content containing images of City uniforms or insignia, City logos, City equipment or City work sites unless the employee obtains prior written permission from the Department Director.
 - Do not use City names or identifiers for your personal social media accounts or email accounts. The City may require removal of any material that violates this policy, is disruptive to the workplace or impairs the mission of the City.

5. USE OF SOCIAL MEDIA ON DUTY

The City of Brenham permits the use of social media while on duty for the purpose of promoting and conducting City business. All posts, generation of content and use of social media on behalf of the City require department director approval. However, the City prohibits all personal use of social media while on duty regardless of whether the personal use is on a personal device or City-owned equipment, public Wi-Fi or City-owned private network unless such use is expressly permitted by the Department Director.

5.1 All communication representing the City through social media sites shall be professional in nature. Incomplete, inaccurate, inappropriate, threatening, demeaning, harassing or poorly worded postings may be harmful to the City's reputation or violate City policy. Such

wording will be removed, or be directed to be removed, by the City Manager, City Secretary, Director of Human Resources, or the Communications & Public Relations Manager.

- 5.2 All employees bear full responsibility for the material they post on social media sites. Inappropriate usage of social media can be grounds for disciplinary action, up to and including termination.
- 5.3 Any employee who is tasked with generating content for a social media site must submit all content to their Department Director for prior approval before that content is made public.
- 5.4 Employees shall comply with copyright laws, and must accurately cite/reference the employee's sources. Plagiarism is prohibited.
- 5.5 All information published on social media sites must comply with City of Brenham's privacy and/or data policies. This requirement includes comments, pictures, video, audio, or any other multimedia content posted on social media sites.
- 5.7 Media inquiries generated on social media sites should be referred to the City Secretary, the Communications & Marketing Specialist or the City Manager.

6. CITY SOCIAL MEDIA SITES

- 6.1 City social media sites established by or on behalf of the City of Brenham are the property of the City of Brenham. All social media sites and email accounts shall be established by the Communications & Public Relations Manager or other person or entity designated by the City Manager, with input and assistance from the Information Technology Department.
- 6.2 The Communications & Public Relations Manager, in partnership with the Information Technology Department, shall be responsible for the technical oversight of the City of Brenham's social media sites to include:
 - a. Establishing City social media sites and related email accounts; and
 - b. Maintaining a list of City social media site domains, account logins and passwords, and changing passwords. Notification to the Communications & Public Relations Manager and the Information Technology Department is required if an employee is no longer designated to generate, publish and/or update content on a City social media site(s).
- 6.3 City social media sites must meet one or both of the following purposes:
 - a. Provide the public and residents of Brenham information about City events, activities and issues.
 - b. Promote the positive aspects of the City of Brenham to those in and outside the community.

- 6.4 The City's official website, www.cityofbrenham.org, will remain the primary location for internet content regarding City business, services and events. Whenever possible, links within City social media sites should direct users back to the City's website for more information, forms, documents or on-line services necessary to conduct business with the City of Brenham.
- 6.5 A request for the establishment of a City social media site must be submitted to the Communications & Public Relations Manager, and must also obtain approval by the City Manager, prior to the establishment of the City social media site. Requests must include:
- a. Purpose for the site and intended content to be posted/shared including the primary audience to be served;
 - b. Explanation of how often the site's content will be reviewed and updated to ensure material accuracy, timeliness and appropriateness; and
 - c. Identification of employee(s) responsible for managing/overseeing the site and corresponding with the public (employee's name and position must be included) as well as describing what provisions will be made for performance of these duties if the responsible employee(s) leaves the position or is absent from work.

7. CONTENT MANAGEMENT FOR CITY SOCIAL MEDIA SITES

- 7.1 Only designated department employees approved by the Department Director are authorized to publish content on City social media sites. City departments are required to maintain a list of all such authorized employees.
- 7.2 Department directors are responsible for monitoring City social media site activity and ensuring content is consistent with the goals and objectives of the City.
- 7.3 Departments are responsible for responding to public commentary, inquiries or complaints - pertaining to the City or partnering entities – which pertains to the message and intention of the original post. Additional responses may be made at the Department's discretion. Responses must be approved by the Department Director or his/her designee. Any inquiries or complaints regarding entities not affiliated with the City of Brenham shall be directed to the Communications & Public Relations Manager.
- 7.4 Communications utilizing City social media sites are public records. Posts and publication of content by City employees and any feedback and/or content posted by others are public records of the City of Brenham and will be subject to the Texas Public Information Act (Chapter 552 of the Texas Government Code).
- 7.5 Content posted by "friends," "followers," "fans" or others who are not employees of the City will not constitute a representation, agreement or endorsement on the part of the City of Brenham. The City of Brenham reserves the right to hide and/or delete any comment, content or posting that is deemed: inappropriate; an advertisement or commercial in nature; to imply, promote, or encourage illegal activity; contrary to the safety of City employees or the public; to oppose or support political candidates or propositions; violates the legal ownership of another party (such as copyrighted material); obscene; sexual; pornographic; malicious; offensive; threatening; profane; insulting; grossly inaccurate or unrelated to the purposes, content or scope of the City social media site.

Content that promotes, fosters or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, disability, national origin or sexual orientation will not be permitted, and the City reserves the right to hide and/or delete such content.

In the event that an individual repeatedly posts comments or other content in violation of this Section 7.5, the City of Brenham reserves the right to block the user from posting comments or other content to City social media sites/pages. The same will apply to commercial posting conducted by a spam account. Users may be permanently blocked after the third time a comment or other content is deemed in violation of this Section 7.5.

- 7.6 Any comments posted by external parties on City of Brenham social media sites are not official public testimony concerning any proposal, project or program. An opinion expressed on a City of Brenham social media site is posted for discussion only and is not a substitute for a formal statement in a public hearing process.
- 7.7 If a question arises regarding the use or posting of confidential information (e.g. litigation, investigations, etc.) on a City social media site, the matter shall be referred to the City Attorney for review. The information in question shall not be posted, or if already posted, shall be removed until an opinion is rendered by the City Attorney. The City Manager or designee reserves the right to restrict or remove City information from an official City social media site if the City Manager determines the information to be proprietary, copyrighted, protected by the attorney-client privilege, subject to state or federal confidentiality or privacy laws, or in violation of Section 7.5 herein above.

8. DISCLAIMER

- 8.1 Each City of Brenham Social Media Site/Page must include a Disclaimer that contains the following information:

“The City of Brenham does not warrant or make representations or endorsements as to the quality, content, suitability, accuracy, or completeness of the information, text, graphics, links, and other items contained on a City social media site’s server or any other server. Such materials have been compiled from a variety of sources, and are subject to change without notice from the City. The City’s primary and predominant internet presence shall remain the City’s official website at www.cityofbrenham.org and no other website or social media site can characterize itself as such. The City reserves the right to completely delete or hide, when appropriate and as soon as feasible, any posting or content unrelated to the purpose and topical scope of the City social media site/page.

Comments posted on this site by “friends,” “fans,” or “followers” or others will be monitored and any postings or comments that are deemed: inappropriate; an advertisement or commercial in nature; to imply, promote, or encourage illegal activity; contrary to the safety of City employees or the public; to oppose or support political candidates or propositions; violates the legal ownership of another party (such as copyrighted material); obscene; sexual; pornographic; malicious; offensive; threatening; profane; insulting; grossly inaccurate; proprietary; copyrighted; protected by the attorney-client privilege; or subject to state or federal confidentiality or privacy laws may be deleted without notice.

Except to the extent required by law, communications made through e-mail and comments posted shall in no way be deemed to constitute legal notice to the City of Brenham or any of its agencies, officers, employees, agents, or representatives with respect to any existing or potential claim or cause of action against the agencies, officers, employees, agents or representatives where notice to the City is required by any federal, state or local laws, rules or its regulations.

Further, comments on a social media site should not be utilized as a method of contacting the City in case of an emergency. Requests for City services or aid should be directed to (979) 337-7200. In cases of an emergency, please call 9-1-1.

9. ENFORCEMENT

Violations of this policy may result in immediate revocation of any or all electronic communications access and user privileges and may be grounds for disciplinary action up to and including termination. Certain violations could result in civil or criminal liabilities for the user. Individual supervisors do not have the authority to make exceptions to this policy.

No employee or volunteer should have any expectation of privacy or confidentiality when using any City resource, including the city's public and private networks. The City reserves the right to access, intercept, monitor and review all information accessed, posted, sent, stored, printed, or received through its communications systems or equipment at any time.

10. CONTENT RESTRICTIONS

In keeping with the goals and objectives of the City of Brenham to provide educational and governmental information, certain types of content are not allowed. These include, but are not limited to the following:

1. Political Use of Any City Website or City Social Media Site: City Websites/City social media sites may not be utilized for the promotion or "use" of any elected official, candidate, or measure. Specific advertising messages on behalf of or opposing any political candidate or measure on any ballot shall not be permitted.
2. Position Advocacy: Any direct advocacy messages, including specific promotional messages on behalf of or opposing any ballot initiative, measure proposals, or items under consideration of the City Council, its commissions, or advisory bodies shall not be permitted.
3. Commercialism: There shall be no commercial advertising or other information which promotes the sale of any product or service offered, except for promotional announcements of City sponsored or sanctioned events, or approved sponsorship acknowledgments.
4. Lotteries: Advertising of other information concerning any lottery, gift enterprise, or similar promotion is prohibited.
5. Promotion of Religion: Programming which directly promotes religious beliefs or religious philosophies shall not be presented on any City website/City social media site.

6. Promotions: Promotional announcement for City sponsored or sanctioned events will be permitted on the City of Brenham's websites/social media sites. However, promotional announcements for events, charities, or outside organizations in which the City has no official interest or sponsorship shall not be permitted.
7. Defamatory Material: Subject matter which is defamatory in nature (i.e. slander) shall not be presented on the City's websites.
8. Indecent or Obscene Content: There shall be no presentation of programming content which, in the opinion of the City Manager or his/her designee, is indecent, obscene, illegal or in violation of Section 7.5 herein above.
9. Copyright Restrictions: Programs containing copyrighted materials will not be posted on any City website/City social media site without proper copyright authorization. Outside agencies submitting content for posting are responsible for obtaining all necessary copyright clearance and shall hold the City, its officers and agents, harmless in any case of copyright infringement.
10. Liability: The City of Brenham will not be responsible for the accuracy of any information posted on any City website/City social media site that was provided by outside sources.

11. USE BY CITY COUNCIL, BOARDS OR COMMISSIONS

Due to the requirements of the Texas Open Meetings Act, individual members of the City Council must refrain from participating in postings or discussion threads on City Social Media Sites.

Additionally, due to the requirements of the Texas Open Meetings Act, individual members of a board or commission of the City must refrain from participating in postings or discussion threads on City Social Media Sites created and maintained by the department or group of which they advise.

With permission of the City Manager, the City or a department may set up an online message board or similar Internet application that complies with Texas Government Code Section 551.006. If such an online message board or similar Internet application is created, and after training of the City Council and/or the applicable board and commission on use of the site, members of the City Council and/or the applicable board or commission may post on that site in compliance with Texas Government Code Section 551.006.

12. REPORTING VIOLATIONS

The City urges employees to report any violations of this policy, or possible perceived violations of this policy, to their supervisor, department director, Communications & Public Relations Manager or the Human Resources Department.

TOBACCO PRODUCTS

The use of any tobacco products, e.g., cigarettes, cigars, pipes, smokeless tobacco, vapor, e-cigs etc., by employees is prohibited in City of Brenham owned facilities and vehicles.

WEAPONS BAN AND VIOLENCE PREVENTION POLICY

The City strives to provide a safe and secure working environment for its employees. This policy is designed to help prevent incidents of violence from occurring in the workplace and to provide for the appropriate response when and if such incidents do occur.

Zero Tolerance. Harassment, intimidation, threats, threatening behavior, violent behavior or acts of violence between employees or such action between an employee and another person that arises from or is in any manner connected to the employee's employment with the City, whether the conduct occurs on duty or off duty, is prohibited.

City's Response to Threats or Acts of Violence. The City will attempt to respond appropriately to any person who threatens use of force or violence or threatens an unlawful act, exhibits threatening behavior, or engages in violent acts. The City's response will normally be coordinated by the Human Resource Director, and where applicable, the City's Police Department or other appropriate law enforcement agency. The Human Resource Director will evaluate the severity of the situation and the need for additional resources (*e.g.*, law enforcement, Emergency Medical Services) to minimize risk and further violence, and will work with the appropriate Department Director(s) in an effort to ensure that appropriate administrative actions are taken. If such conduct occurs on City property, the offending person will typically be removed from the premises pending the outcome of an investigation. The City may also suspend and /or terminate the employment relationship, reassign job duties, mandate counseling with a psychologist or other mental health care provider of the City's choosing, initiate criminal prosecution of the person or persons involved, and/or other actions as determined by the City to be appropriate under the circumstances.

No existing City policy, practice, or procedure will be interpreted to prohibit decisions designed to prevent a threat from being carried out, a violent act from occurring or a life-threatening situation from developing.

All Weapons Banned. Unless specifically authorized by the City Manager, no employee, other than a City licensed peace officer or animal control officer, shall carry or possess a firearm or other weapon on City property (except however, an employee who holds a license to carry a handgun under Subchapter H, Chapter 411, Texas Government Code, who otherwise lawfully possesses a firearm, or who lawfully possesses ammunition, may transport or store a firearm or ammunition the employee is authorized by law to possess in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area the City of Brenham provides for employees). The City prohibits employees from carrying or using any weapons, concealed or otherwise. Employees are also prohibited from carrying a weapon while on duty or at any time while engaging in City-related business unless expressly allowed for the position, *i.e.*, police officer, animal control officer, etc. Prohibited weapons include firearms, clubs, explosive devices, knives with blades exceeding 5 ½ inches, switchblades, etc.

Mandatory Reporting. Each City employee must immediately notify his/her supervisor, Department Director, the Human Resource Director and /or the Police Department of any act of violence or of any threat involving a City employee that the employee has witnessed, received, or has been told that another person has witnessed or received. Even without an actual threat, each

City employee must also report any behavior that the employee regards as threatening or violent when that behavior is job-related or might be carried out on City property, a City-controlled site or City job site, or when that behavior is in any manner connected to City employment or activity. Each employee is responsible for making this report regardless of the relationship between the individual who initiated the threat or threatening behavior and the person or persons threatened or the target of the threatening behavior. A supervisor who is made aware of such a threat or other conduct must immediately notify his/her Department Director and the Human Resource Director.

Protective Orders. Employees who apply for or obtain a protective or restraining order which lists City locations as being protected areas must immediately provide to the Human Resource Director and the City's Police Department a copy of the petition and declarations used to seek the order, a copy of any temporary protective or restraining order which is granted, and a copy of any protective or restraining order which is made permanent. City employees must immediately advise their Department Director and the Human Resource Director of any protective or restraining order issued against them.

Confidentiality. To the extent possible, while accomplishing the purposes of this policy, the City will respect the privacy of reporting employees and will treat information and reports confidentially. Such information will be released or distributed only to appropriate law enforcement personnel, City management, and others on a need-to-know basis and as may otherwise be required by law.

City Property. For purposes of this policy, City property includes but is not limited to owned or leased vehicles, buildings and facilities, entrances, exits, break areas, parking lots and surrounding areas, recreation centers, swimming pools, and parks (except however, an employee who holds a license to carry a handgun under Subchapter H, Chapter 411, Texas Government Code, who otherwise lawfully possesses a firearm, or who lawfully possesses ammunition, may transport or store a firearm or ammunition the employee is authorized by law to possess in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area the City of Brenham provides for employees).

Documentation. When appropriate, threats and incidents of violence will be documented. Documentation will be maintained by the Human Resource Director and/or the Police Department.

Policy Violations. Violations of this policy may lead to disciplinary action, up to and including termination of employment. Policy violations may also result in arrest and prosecution.

OPEN CARRY AND CONCEALED HANDGUN POLICY

It is the intent of the City of Brenham to comply with current state regulations (HB910 and SB273) relating to ***open carry*** and ***concealed handguns***. Effective January 1, 2016 a person with a valid license to carry a handgun issued by the Texas Department of Public Safety may ***conceal*** or ***openly carry*** a handgun in a belt or shoulder holster in public including the premises of any governmental property, with limited exceptions as set forth herein.

FACILITIES:

The City has very limited authority to prohibit firearms in city-owned facilities. The City Secretary's Office will provide the appropriate signage and other such notices, as needed, in accordance with Section 30.06 and 30.07 of the Texas Penal Code (the Criminal Trespass Law) for all city facilities.

All persons, except a licensed Peace Officer or City of Brenham Animal Control Officer, are restricted from carrying a firearm in the following City facilities:

- **City Hall – Municipal Court:**
 - In the courtroom, when court is in session;
 - In the first floor municipal court lobby area, when the person is doing business with court staff at the customer service window; and
 - In the municipal court offices located on the first floor behind the customer service window.
- **Blue Bell Aquatic Center:** In the area or areas where school-sponsored activities such as games, competitions, or practices are being held. Prohibition can only be in the designated area(s) (i.e. competition pool, therapy pool, etc.), can only be during the time the school-sponsored activity is taking place, and cannot encompass the whole facility.
- **City Parks:** In the designated area or areas where school-sponsored activities such as games, competitions, or practices are being held. Prohibition can only be in the designated area (i.e. baseball field, soccer field, softball field, etc.), can only be during the time the school-sponsored activity is taking place, and cannot encompass the whole park.

EMPLOYEES:

As provided for in Section 411.205 of the Texas Government Code, if a license holder is carrying a handgun on or about the license holder's person when a Peace Officer demands that the license holder display identification, the license holder shall display both the license holder's driver's license or identification certificate and the license holder's handgun license. If an employee who is not a peace officer observes a person openly carrying a handgun that is not properly holstered, or that person is causing a disturbance or behavior that raises concern for safety:

1. Move to a safe location;
2. Dial 911 to alert police so they may dispatch assistance to your location; and
3. Notify a supervisor immediately.

Regardless of the legislation discussed above, the CITY OF BRENHAM STRICTLY PROHIBITS THE POSSESSION OF ANY WEAPONS, INCLUDING BUT NOT LIMITED TO HANDGUNS, BY ANY EMPLOYEE, EXCEPT BY A LICENSED PEACE OFFICER OR ANIMAL CONTROL OFFICER, WHILE IN CITY BUILDINGS OR ON ANY CITY-OWNED OR CONTROLLED PREMISES. Employees, other than licensed Peace Officers and City of Brenham Animal Control Officers are prohibited from carrying a weapon while performing City-related business. Possession of a concealed or an openly carried handgun inside designated City-owned or controlled premises, by any employee other than licensed Peace Officers, or Animal Control Officers are forbidden and the City will take reasonable and necessary steps with regard to appropriate disciplinary action, up to and including termination of employment.

Employees who are licensed to carry and lawfully possess a firearm and/or ammunition in accordance with Chapter 411 of the Texas Government Code, may leave such firearm/ammunition in his/her locked, privately owned vehicle in the parking lot the City provides for employees. Additionally, if an employee chooses to store a firearm or ammunition that is legal to carry without a permit (e.g. hunting rifle, shotgun, etc.) in his/her personal vehicle, it must be stored out of sight and the vehicle must be locked. This does not extend to City owned or leased vehicles provided to employees for City-related business.

Department Directors, or their designee, are responsible for ensuring that employees comply with provisions of this policy and to manage issues that arise relating to ***open carry*** and ***concealed handguns***. Appropriate disciplinary action, up to and including termination, will be taken against an employee who violates this policy.

EMPLOYMENT

EMPLOYMENT STATUS

The City classifies City employees for the purpose of employment status and benefit eligibility as follows:

Performance Probationary. A full-time or part-time employee during the performance probation period of initial employment, promotion, or transfer. Newly hired probationary employees are not entitled to progressive levels of discipline and are not eligible to use the City's Employee Appeals Policy.

Regular Full-time. An employee in a budgeted position with an officially scheduled work week of forty (40) hours or more each workweek (except for certain Fire and Police shift personnel who have different work cycles) who has successfully completed his/her initial performance probationary period. Generally, regular full-time employees are eligible for the City's full benefits package, subject to the terms, conditions, and waiting periods of each benefit program. Regular full-time employees are required to participate in the Texas Municipal Retirement System (TMRS).

Regular Part-time. An employee in a budgeted position with an officially scheduled work week of less than an average of twenty (20) hours per week, less than 1000 hours annually, who has successfully completed 6 months of active service with the City.

Temporary/Seasonal. An employee who is employed for only a specific time period, for a special assignment, less than 120 consecutive days per year, or a period of six (6) months. Employment assignments in this category are of a limited duration. Employment beyond any initially stated period does not in any way imply a change in employment status. Temporary and seasonal employees retain that status unless and until notified of a change in writing by the Human Resource Director. Temporary and seasonal employees receive all legally mandated benefits (such as workers' compensation insurance coverage), but are not eligible for the City's other employment benefits.

Temporary employees who are placed with the City but who are actually employed by a temporary staffing agency must look to the temporary staffing agency to determine what benefits they are provided. Such employees are not eligible for benefits from the City and are not eligible for participation in TMRS.

Volunteers. Volunteers are not employed by the City in any capacity. Volunteers elect to donate their time and services as a volunteer for the City without any expectation of compensation. Volunteers are generally not paid and are generally not entitled to any benefits except workers' compensation benefits provided for volunteers according to the City of Brenham's coverage. Supervisors are required to record volunteer hours worked each month and forward that information to the Human Resource Department.

In addition to being in one of the above categories, each employee is also designated as either exempt or nonexempt from federal and state wage and hour laws. Employees are informed of their status as exempt or nonexempt at the time of their initial employment, or subsequently if their classification changes for any reason. An employee's exempt or nonexempt classification may be changed only upon written notification by the Human Resource Director.

HEALTH/MEDICAL EXAMINATIONS/FITNESS FOR DUTY

The City endeavors to provide a safe work environment for all employees. It is the responsibility of each employee to maintain the standards of physical and mental health fitness required for performing the essential functions of his or her position, either with or without reasonable accommodation.

Serious Health Condition/Disabilities. The City recognizes that employees with a potentially life-threatening and/or infectious illness or physical and/or mental disabilities may wish to continue to engage in as many of their normal pursuits as their condition allows, including their employment. As long as these employees are able to perform the essential functions of their job, with or without a reasonable accommodation, without creating an undue hardship, and medical evidence indicates that their condition is not a direct threat to themselves or others, the City will treat them consistently with other employees.

Medical Exams for Current Employees. In the interest of safety, for transfer or promotion to job classification designated as having physical requirements, or for any reasonable cause for concern as to an employee's ability to perform job-related functions, the City may require, at the City's expense, an employee to report to a physician for a physical or mental examination to determine physical or mental fitness for continued employment, or to provide a reasonable accommodation; following an injury or accident; and as otherwise permitted in accordance with the Americans with Disabilities Act as amended. All departmental requests for evaluations will be coordinated by the department Director and Human Resource Director.

Time Off From Work. Time away from work under this policy will normally be coded to paid administrative leave, but may be retroactively changed to sick leave, Family Medical Leave Act leave, and/or other leave as circumstances warrant.

Return to Work. Before returning to work following a medical and/or psychological examination under this policy, the employee must coordinate his/her return through the Human Resource Director.

LIGHT DUTY ASSIGNMENTS

The City may make light duty assignments available to ill or injured employees who are unable to perform their regular job duties. The decision to offer an employee a light duty assignment is made in the City's sole discretion. A light duty assignment may be in the employee's own or another department in the City. Factors considered by the City in making its decision include, but are not limited to: the nature of the employee's illness or injury; the medical release provided in support of light duty; the risk that a light duty assignment may result in aggravation of the employee's injury or illness; the type of light duty work available; the length of the employee's employment with the City; the employee's performance and disciplinary history; and whether the illness or injury occurred on or off duty. In making light duty assignments, the City will normally give priority to employees whose injury or illness is work-related.

Employees who are released for and given a light duty assignment may not perform work duties in violation of their medical release. An employee who violates the terms of his/her medical release while on a light duty assignment may lose the light duty assignment and, in addition, may be disciplined up to and including termination of employment.

Light duty will not extend beyond sixty (60) calendar days from the date of release to return to duty without an evaluation by the employee's treating physician and a recommendation from the Department Director and Human Resource Director to the City Manager. Only the City Manager may approve an extension of a light duty assignment. Employees still unable to return to regular duty within sixty (60) calendar days from the date of release to duty must re-qualify for limited duty through evaluation by their treating physician or revert to workers' compensation indemnity payment, accumulated sick leave, Family Medical Leave Act (FMLA) or vacation benefits, if available.

An employee who is released for and offered light duty by the City, but who elects not to accept such an assignment, will be ineligible for paid sick leave benefits under the City's Sick Leave policy and salary continuation benefits under workers' compensation, but may still be entitled to unpaid leave under the City's FMLA policy.

During a light duty assignment, employees will typically work an 8-hour workday, Monday through Friday. This means that 24-hour shift employees, as well as other employees who work a non-traditional schedule, will usually be temporarily reassigned to an 8-hour workday, Monday through Friday, for the duration of their light duty assignment.

An employee's salary during any light duty assignment shall be at the same rate as the salary received prior to the injury.

All light duty requests and assignments will be reviewed by and coordinated through the Human Resource Director. The Human Resource Director will work with the employee's department in making its decision whether light duty work will be offered. Before returning to regular job duties following a light duty assignment, the employee must coordinate his/her return through the Human Resource Director and Department Head.

METHOD OF FILLING VACANCIES

Vacancy Identification

Directors and/or Department Heads shall notify the Human Resources Department immediately when job vacancies occur or are imminent.

Announcement of Vacancies

The Human Resources Department shall publicly announce by appropriate means all job vacancies to be filled with the City other than administrative transfer, temporary promotion, or reinstatement and shall maintain a list of announced vacancies for public inspection. Each announcement, insofar as practical, shall specify the title, salary, and nature of the job; the required qualifications; whether competition is open to the general public or restricted to City employees; the type of selection procedure to be utilized; and the deadline for a method of application and the policy of the City regarding equal employment opportunity.

The City has four methods of recruiting and selecting persons to fill vacancies: (1) promotion from within; (2) lateral transfer from within; (3) public announcement and competitive consideration of applications for employment; and (4) hiring of qualified applicants by the City Manager or City Manager's designee.

Referral And Selection The referral of applicants to departments for selection shall be in accordance with procedures developed by the Human Resources Department.

When a vacancy occurs in any department, the following procedure should be followed unless directed otherwise by the City Manager:

1. The Director and/or Department Head should notify the Human Resources Department of the vacancy by furnishing necessary information regarding the vacancy by using the form "Notification of Vacancy".
2. The Human Resources Department will announce the vacancy to present City employees by posting the notice on internal websites. Those employees interested in being considered for the vacancy shall notify the Human Resources Department of their intent.
3. The vacancy may also be announced to the general public through newspaper ads and/or other appropriate means unless a sufficient pool of qualified applicants exists.
4. Applications for the position will be received by the Human Resources Department electronically and evaluated against job requirements.
5. Those applicants who best meet the qualification requirements for the position will be referred to the Department Head and/or Director for selection. All applications for the position will be available to the Department Head and/or Director, if requested.
6. The Director and/or Department Head shall recommend their selection for employment and report the selection to the Human Resources Department. All final employment decisions are at the sole discretion of the City Manager and/or City Commission.

Promotion Policy A promotion is the assignment of an employee from a position in one pay grade to a position in another pay grade having a higher maximum salary. It shall be City policy to provide promotional opportunities whenever possible. A selection process may be limited to qualified City employees or such employees may be given preference in application and/or consideration. Approval from the City Manager, Director and/or Department Heads involved is required prior to any such promotion.

Temporary Promotion The City Manager may authorize a temporary promotion to ensure the proper performance of City functions if a position is vacant or its regular incumbent is absent for an extended period of time. Employees so promoted may be additionally compensated for the duration of the temporary assignments and the amount of compensation, if any, is determined at the sole discretion of the City Manager. Temporary promotions shall not be used to circumvent normal selection procedures. The employees involved shall not acquire any status or rights in the pay grades to which temporarily promoted.

Nothing herein shall be construed to prevent the assignment of higher level duties to an employee without additional compensation. Authorized additional compensation shall be paid only in cases of formal temporary promotion effected in accordance with these rules.

Transfers A transfer is the reassignment of an employee from one position to another. A transfer not involving promotion or demotion may be effected at any time for administrative convenience or upon request of the employee to the Director and/or Department Head, or if interdepartmental, to the City Manager, provided that the employee is qualified to perform the duties of the position to which transfer is contemplated. Transfers may be made administratively or in conjunction with an announced selection process. Transfers between Pay Grades or between departments shall become effective following approval of the City Manager.

An employee reassigned by transfer will be evaluated within ninety (90) days following the transfer in accordance with procedures established in the Compensation Administration Plan.

Non-Disciplinary Demotions A demotion is the assignment of an employee from a position in one Pay Grade to a position in another Pay Grade having a lower maximum salary. Neither reduction in salary nor a change in the Pay Grade system shall be considered a demotion. With the approval of the City Manager and if qualified to perform the duties of the lower level position, an employee may be administratively demoted at his or her own request or as an alternative to layoff. Such demotions shall not be considered disciplinary actions or disqualify the employees involved from consideration for later advancement. Demotions effected as alternatives to layoffs may be fully or partially rescinded at any time.

In the event of a demotion to a lower pay grade, the employee's salary will be reduced by five percent (5%) of base pay or to the maximum of the new classification, whichever is the lower salary.

Applications Applications for initial employment, promotion, or other type of transfer, and reinstatement shall be submitted as prescribed by the Human Resource Department. Only

applications officially received in the prescribed manner shall be considered. All information submitted in connection with applying for City positions is subject to verification.

Evaluation The Human Resource Department shall determine the most appropriate means of evaluating applicants against job requirements to identify the best qualified. Reference checks, interviews, medical examinations, background checks, performance tests, written tests, and/or other screening procedures may be used as appropriate. Applicants shall be required to provide any information and undergo any examinations necessary to demonstrate compliance with prescribed qualification requirements for the positions involved.

Testing Except for drug and psychological tests for certified police and fire employees and any other tests that may be required by state law, the only performance tests administered for employment or promotion will be specifically job-related ("piece-of-the-job") tests (e.g., typing, operating a computer, operating a piece of equipment, lifting something heavy required in the job, tabulating columns of numbers, writing samples, etc.

Physical Standards Knowledge of physical conditions and existing health problems of employees is necessary to avoid occupational injuries and to ensure that it will be possible to differentiate any future job-related injuries from existing medical problems. For these reasons, a person is required to pass a physical examination prior to employment and will not be placed on the City payroll until he or she has passed the physical exam. Back x-rays and/or back evaluations are required for persons who will perform physical labor.

Drug Testing In addition to the physical examination required by the City, prospective employees for any position are required to be tested by a licensed physician and declared in writing by the physician to show no trace of drug dependency or illegal drug usage. In addition, prospective new employees for active or police officer certification must undergo an examination by a licensed psychologist or psychiatrist and be declared in writing by the psychologist or psychiatrist to be in satisfactory psychological and emotional health. The required examinations will be made by a physician and psychologist or psychiatrist of the City's choice and will be paid for by the City.

All records relating to the medical condition, medical testing, or drug testing of an employee or prospective employee are maintained separately from employee personnel files. These medical files are confidential, and are not released to anyone unless a "need to know" has been clearly established.

Disqualification An applicant shall be disqualified from consideration if he or she:

- a. Does not meet the qualifications necessary for performance of the duties involved, including physical requirements regarding the essential duties of the position where a reasonable accommodation for any disability cannot be made, and licensing requirements, including driver's license;
- b. Has made a false statement of material fact on the application form or supplements thereto;
- c. Has committed or attempted to commit a fraudulent act at any stage of the selection process;

- d. Is not legally permitted to work in the United States;
- e. Has failed to successfully pass physical, oral or written testing related to job requirements, including drug screen driving record check;
- f. Does not meet residency requirements established for the position.
- g. Is prohibited from employment under nepotism restrictions;
- h. Is not at least 18 years of age, unless specific exceptions are noted; for example, students employed on a seasonal basis during the summer.

An applicant may be disqualified from consideration upon other reasonable grounds relating to job requirements.

NEPOTISM

In order to prevent conflicts of interest, to avoid accusations and perceptions of biased conduct, and to maintain the confidentiality of restricted information, it is the policy of the City that:

Applicants

- An applicant related to the City Manager or Department Directors by blood within the third degree or marriage within the second degree according to the Texas Government Code shall not be employed by the City.
- An applicant related within the third degree by blood or within the second degree by marriage to any member of the City Council shall not be employed by the City.
- Under no circumstances will an applicant be employed in a department in which he or she may directly or indirectly supervise or be supervised by a member of his or her immediate family. Immediate family includes spouse, parents, children, brother or sister and in-laws of immediate family as noted.

CONSANGUINITY (By Blood)

First Degree	Second Degree	Third Degree
Father	Sister	Uncle
Mother	Brother	Aunt
Daughter	Grandson	Niece
Son	Grandfather	Nephew
	Grandmother	Great-grandson
	Granddaughter	Great-granddaughter
		Great-grandfather
		Great-grandmother

AFFINITY (By Marriage)

First Degree	Second Degree
Spouse	Spouse's Sister
Son-in-Law	Spouse's Brother
Daughter-in-law	Spouse's Grandson
Mother-in-law	Spouse's Granddaughter
Father-in-Law	Spouse's Grandfather
	Spouse's Grandmother
	Sister's Spouse
	Brother's Spouse

Restrictions

The following restrictions apply on the employment, promotion, transfer, marriage or change in reporting relationships because of reorganization of any relatives, including those defined as family members under this policy:

- No employee in the relationship will supervise, review or process the work of the other;
- The employees' relationship must not create a conflict between an employee's/City interests; and
- There must be no interdependence or relationship between the jobs of the individuals concerned which could be potentially detrimental to the interests of the City.

Relatives will not normally be permitted to work in the same department with each other without prior written authorization from the City Manager (or designee). In addition, written authorization must also be obtained from the City Manager (or designee) to employ any relative of a current City employee.

Resolution of Nepotism Conflicts

If it is determined that a nepotism violation exists, the Human Resources Director will work with the employee, Department Director and, where necessary, the City Manager to resolve the situation. A decision will be made to remedy the reporting relationship through such means as transfer of one employee or changing the reporting relationship. When no remedy is available, it may be necessary to dismiss one or both of the employees, usually the subordinate. The City Manager may apply the nepotism prohibition in other organization relationships when failure to do so would be detrimental to the City.

In any event, resolution of the nepotism conflict is to be completed within sixty (60) days of the date of occurrence.

Grandfather Clause

The City is aware that, as of the effective date of this policy, a number of City employees are related, by blood or by marriage, to other City employees. These employees will be "grandfathered" under this policy, meaning they will be permitted to continue their employment with the City. Please be informed that the above "grandfathered" provision is for family relationships as they exist as of the revision date of this policy. Any future changes to the family relationship and/or the employment status of the affected employee(s) will be governed by the requirements of this policy.

Periodic Review

The Human Resources Director will periodically review the organizational chart and job descriptions to determine that reporting relationships meet the nepotism policy requirements. Any conflicts with policy are to be reported to the City Manager and Department Director for resolution.

Application of Policy

This policy applies to all full-time, part-time and temporary seasonal employees of the City.

PROBATIONARY PERIOD

All new employees hired to fill regular full-time or part-time positions must satisfactorily complete a performance probationary period of six (6) months. Additionally, all current employees who are transferred, promoted, or reclassified to a supervisory position, as well as former City employees who are rehired, must satisfactorily complete a performance probationary period of six (6) months. The existence of a probationary period for new hires or for promoted employees does not change their at-will status.

The probationary period assists the City in maintaining an effective, productive, and efficient workforce to provide quality services to the citizens. Only those employees who meet acceptable performance and other standards during their probationary period will be retained as employees. An extended orientation and/or training time may be added to the probationary period. Employees are considered probationary employees until they have actually performed their regular job duties for at least 6 months to assure their ability to meet acceptable standards of work performance and behavior for the employee's position.

Each probationary employee is responsible for knowing, understanding, and meeting the expectations and standards for his/her position. In addition, each employee is also responsible for performing his/her job in a safe, productive, and effective manner within the instructions and established standards for the position. Furthermore, employees are expected to maintain acceptable standards of conduct in their employment. During the probationary period, it is the responsibility of the employee to correct any deficiencies or inadequacies in job performance, attitude, or conduct.

Seasonal/Temporary Employees. Seasonal and temporary employees do not serve a performance probationary period and have no right of appeal when terminated at any time.

Change In Assignment of Probationary Employee. Probationary employees may not request or make application for reassignment, promotion, or voluntary transfer during the probationary period without written approval from the City Manager, as requested by their Department Director. If the reassignment, promotion, or transfer is approved, the employee will serve a six-month performance probationary period in the new position beginning with the date of the position change.

Absences During Performance Probationary Period. During the performance probationary period, an employee is eligible to use sick leave for qualifying absences, but may use vacation leave for an absence due to illness or injury only if all sick leave has been exhausted, if authorized by the employee's Department Director and the Human Resource Director. Compensatory time off or recognized holidays during the performance probationary period may be used as approved per established City/departmental policy or practice. Transferred or promoted employees serving probationary periods retain their eligibility for all types of leave established by City policy.

Probationary Performance Evaluations. All probationary employees shall be constantly evaluated and will receive a performance evaluation(s) in accordance with the "Performance Evaluation System" policy. These reviews are designed to evaluate each employee's performance

and to communicate that performance to the employee. The written reviews should include a supervisory recommendation to retain or terminate the employee.

Extensions to Probationary Period. The performance probationary period may be extended under the following circumstances:

At the end of the six (6) month probationary period, performance probation may be extended for up to an additional three (3) months when a probationary employee's performance has been marginal due to extenuating circumstances, additional training is warranted, or an employee's absence from work for an extended period of time did not permit an opportunity for adequate assessment of performance. The decision to extend or not to extend an employee's probationary period may not be appealed. If an extension is granted, the employee will be advised in writing and given the date on which the extended probation period will be completed. Such extension will be at the sole discretion of the Department Director and the Human Resource Director.

A probationary period may be extended for time spent on an approved Leave of Absence including leaves of absences due to injury or illness or approved Military Leave. The approved extension will normally equal the length of time away from work. Accordingly, each full-day absence incurred by an employee during the probationary period will normally extend the 6-month probationary period by an additional day.

Successful Completion of Probation/"Regular" Status Granted. An employee is granted "regular" status in the new position if the employee satisfactorily completes the performance probationary period.

Failure of Probation. An employee is considered to have failed probation when it is determined that the employee's fitness, job performance, quality or quantity of work, attendance, or combination thereof, does not meet minimum job performance standards and expectations for the position. Failure of probation may occur at any time within the probationary period. An employee who fails probation will normally be terminated from the City's employment. If desirable and feasible, the employee may be administratively transferred to a more suitable position at the sole discretion of the City. A transferred or promoted employee who fails probation may, at the sole discretion of the City, be reinstated to his/her former position provided there is a vacancy and if approved by the affected Department Director(s). Department Directors are responsible for ensuring the thorough written documentation of all cases of failure of probation, including counseling, training, and other efforts to help employees during their probationary period. All such documentation must be reviewed by the Human Resource Director before a probationary employee can be terminated.

Termination of Probationary Employment. Probationary employees are at-will employees and may be terminated at any time during the probationary period, with or without notice or cause. A probationary employee who is terminated has no right of appeal. Probationary employees are not entitled to progressive levels of discipline. Probationary employees are otherwise subject to all policies and procedures of the City.

Sexual and Other Unlawful Harassment. Probationary employees are subject in all respects to the City's Sexual and Other Unlawful Harassment Policy. While probationary employees have no right of appeal, if they believe they have been subjected to unlawful harassment or discrimination, they must immediately report such conduct as set out in City's Sexual and Other Unlawful Harassment Policy.

RESIDENCY REQUIREMENT

Except for positions designated in the City Charter or Code of Ordinances, there is no absolute residency requirement for City employment.

Employees who are likely to be called to work in cases of emergency may be required to reside within reasonable response commuting ranges of their places of work.

A reasonable response time to an emergency is twenty (20) minutes. The City Manager has the authority to revise the residency requirement for individual employees on a case-by-case basis.

REDUCTION IN FORCE

General

The City of Brenham endeavors to provide stable employment; however, situation, including but not limited to, a lack of funds, lack of work, reorganization or changes in staffing needs may require a reduction in the work force to ensure the continued quality and efficiency of the operations of the City.

A reduction in force (RIF) may take the form of elimination of jobs, separation from service, involuntary demotion, reassignment, and reduction in the hours worked in a position or a reduction in salary.

The provisions of this section are not to be used to dismiss an employee if the sole cause for dismissal is either misconduct or lack of satisfactory performance.

RIF decisions will be made without regard to the employee's race, color, gender, religion, national origin, age or disability.

Retention of employees in classes affected shall be based on systematic consideration of all the following factors:

Special skills, certifications, education, and/or training that are necessary to a particular function; Ability to adjust to the necessary changes in the organizations' operation and to contribute to ongoing programs; Effectiveness on the job, including performance and past achievement; Versatility (whether the individual has the ability to move into another area of operations); Length of service with the City.

An employee that has demonstrated superior job performance or has more relevant training or who demonstrates other characteristics of value may be retained over an employee that has more years of service to the City.

Temporary, probationary, and trainee employees in their initial six months of training/employment shall not be retained in classes/positions where full time regular employees (those who have completed a probationary or equivalent trial period) must be separated in the same or related positions.

The City shall endeavor to first transfer and retain employees in the service of the City prior to being dismissed.

Procedures

The recommendations for RIF are to be made by the Department Head(s) and/or Director(s).

The Department Head and/or Director shall determine; what areas and/or services of the department are to be impacted by the reduction in force; and what positions within the department are to be affected.

The City Manager approves services/positions to be cut back or eliminated. Those positions will be declared by the City Manager or his designee to be vacated/abolished (vacated to mean the position remains active but will be unfilled.) Abolished positions will be approved by City Council.

Affected incumbents will be notified by the appropriate Department Head and/or Director and Human Resources Director

Appeals

An appeals panel consisting of the City Manager, Assistant City Managers and Human Resources Director will hear individual appeals regarding the validity of evaluations or other factors bearing on an individual's dismissal or reduction in hours worked or salary due to a RIF.

Matters brought before the appeals panel will be limited to appeals by employees regarding dismissals or reductions in time or salary. A RIF decision can be appealed only on the grounds that the RIF procedures were unfairly or improperly applied. This appeal process is the exclusive internal means of appealing an action under the RIF regulation. RIF dismissals under this regulation are not subject to the grievance process.

Appeals hearing will be requested and conducted as follows:

An employee will have five working days to initiate an appeal after receiving written notice of dismissal, reduction in salary, or reduction in hours worked. The request for hearing must be presented in writing to the Human Resource Director, specifying why the employee believes the procedures were unfairly or improperly applied. An employee who fails to meet this deadline will forfeit the right to appeal.

The Human Resource Director will review all written requests to determine that the appeal is timely and covered by this policy. Requests that meet the criteria will be forwarded to the appeals panel or administrator in the order of receipt.

An employee who appeals under this procedure may be represented by a person of his/her own choice as long as that person is not a representative or a labor union or any other organization that claims the right to strike or bargain collectively. The city representatives also have the right to representation. If the employee is to be represented by an attorney, the employee will so notify the Human Resources Director at least five working days before the appeal is to be heard.

The appealing employee has the burden of proof to establish that the procedures were unfairly or improperly applied. The appealing employee and City representative(s) will be allowed a reasonable time in which to present their cases. If the appeals format is a review of written material, the appealing employee and City representative(s) will each provide a written summary of his or her position and supporting documentation.

The written recommendation of the appeals panel shall be limited to determining if the procedures have been unfairly or improperly applied. The written recommendation must be presented to the employee within five working days of the hearing. Copies of the

decision will be provided to the Human Resources Director and the employee's department head.

The entire appeal process must be completed prior to the employee's last scheduled day of work. If the process is not complete by that time, the employee will remain on the payroll until notified of the final decision.

Reinstatement And Recall

Employees who are involuntarily separated from service during a RIF shall be placed on a reinstatement/recall list if requested in writing by the employee; otherwise it will be presumed that they do not seek reinstatement.

Employees who are transferred due to a RIF may also be on a reinstatement list for their original position at the same time they are holding a position to which they were transferred.

Employees on the reinstatement list shall have priority in being considered for vacancies provided that job requirements are met.

Severance

Severance pay may be paid to a regular full time employee who is separated as a result of a RIF.

Severance pay is based on the following schedule:

Years of Service	Payment
Less than 10 years	4 weeks
Ten through 19 years	8 weeks
20 or more years	12 weeks

If an employee is offered and declines a position equal to or greater than the same appointment type, pay grade and salary rate after officially being notified of separation by a RIF, eligibility to receive severance pay will be lost.

If an employee declines to execute the release agreement and waiver of claims, severance pay will be limited to not more than two weeks.

SEPARATIONS

The City designates all employee separations as one of the following types:

Resignation. An employee who intends to resign is requested to notify his/her supervisor and/or the Human Resource Director in writing at least 2 weeks prior to the last day of work. Employees who fail to give a two-week notice are typically not eligible for rehire. Directors are requested to give notice in writing at least 30 days prior to last day of work. The supervisor is responsible for immediately notifying the Human Resource Director.

Retirement. An employee who intends to retire must notify his/her Department Director, supervisor and the Human Resource Director, in writing, 30 days prior to the date of retirement. This 30 day requirement is necessary to ensure that the required paperwork is timely submitted to Texas Municipal Retirement System (TMRS).

Retiree Health Coverage. An employee who retires from City employment and who is entitled to receive retirement benefits from TMRS and whose sum of age and years of service is equal to or greater than 75, is entitled to purchase continued health benefits coverage for himself/herself and eligible dependents. To receive continued coverage under the plan, the employee must so inform the Human Resource Director on or before the date he/she retires. If the employee elects to continue coverage for himself/herself and/or any eligible dependents and later elects to discontinue such coverage, the retiree and/or dependent is no longer eligible for coverage. An employee can elect retiree coverage only if he/she were covered under the plan at the time of retirement. Similarly, a retiree may elect to cover only those eligible dependents who were covered under the plan at the time the employee retired. A person who was not covered under the plan at the time of the employee's retirement is not eligible for retiree coverage. The level of retiree coverage will be the same as provided to the City's current employees, although the retiree may elect to continue coverage at a reduced level if offered by the City. The City may provide for a different monthly premium rate(s) for retirees who elect to continue health benefits coverage. A person who is entitled to retiree group health coverage must make payments for the coverage at the same time and in the same manner as current City employees. Retiree coverage is automatically dropped when the person become eligible for Medicare benefits.

Discharge The City may terminate an employee's employment as a result of unsatisfactory performance or conduct and/or violation of City policies or procedures, including a new hire who fails probation. City employees who are terminated, or who resign in lieu of termination, due to unsatisfactory performance or conduct and /or violation of City policies or procedures, are not eligible for rehire.

Dismissal may also occur for the following:

Job Abandonment. If an employee fails to properly notify the City of his/her absence from work or if an employee is absent without authorization and/or

notification for three or more consecutive days, the City will normally consider the employee to have abandoned his/her employment, and he/she will be terminated.

Long-Term Absence. Any employee who is absent from work for more than 180 calendar days, for whatever reason, may be terminated. The City Manager has the authority to extend the amount of leave time allowed. Brief appearances at work during an overall absence of 180 days will not prevent the City from terminating an employee if determined to be in the City's best interest. Likewise, any employee who reports to work (e.g., in a light duty capacity) but is unable to perform the duties of his or her actual position after a period of 180 days may be terminated. The City may elect to end the employee's employment before the expiration of 180 days. An employee who has a paid leave balance remaining at the end of 180 days may, at the City's option, extend his/her leave using any available paid leave balance, or be terminated and paid for accrued leave balances.

This policy will be administered consistently with the City's obligations under the Americans with Disabilities Act.

Reductions-in-Force/Reorganization. An employee may be separated from City service when it is deemed necessary by reason of shortage of funds or work, the abolition of the position, or other material change in the duties of the organization, or for other reasons which are outside the employee's control and which do not reflect discredit upon the service of the employee.

Death. If a City employee dies, his/her designated beneficiary or estate will be paid all earned pay and payable benefits.

Payment upon Termination The Director and/or Department Head shall verify that all City equipment, vehicles, building keys, and other items issued to the employee have been returned in good condition prior to the completion of the employee's final working day.

Upon termination, all regular employees who resign in good standing will be paid for unused accrued vacation leave based on the employee's rate of pay immediately prior to termination.

Any vacation taken in excess of that accrual shall be deducted from any final payment due the employee.

No payment shall be allowed for accrued sick leave.

LEAVE

ADMINISTRATIVE LEAVE

The City may grant Administrative Leave with pay to an employee, as a matter of discretion by the City Manager (or designee), when no other paid leave category is available or applicable and leave without pay would not be appropriate. The City Manager may also authorize Administrative Leave without Pay.

Directors may grant Administrative Leave with pay not to exceed three (3) working days only when a disciplinary decision is pending. Any Administrative Leave greater than three working days must be approved by the City Manager.

Administrative Leave granted to an employee will be put in writing and forwarded to the Human Resource Director for proper payroll processing and placement in the employee's personnel file.

FMLA POLICY

General Provisions

In accordance with the Family and Medical Leave Act, the City of Brenham will grant job-protected unpaid family and medical leave to eligible employees for up to 12 weeks per 12-month period for any one or more of the following reasons:

- A. In order to care for a child following the child's birth, adoption, or placement in foster care with the employee;
 - 1. Leave must be taken within the 12-month period following the child's birth or placement with the employee;
 - 2. If married spouses both work for the City of Brenham, their total leave in any 12-month period may be limited to an aggregate of 12 weeks if the leave is taken for the birth or placement of a child.
- B. In order to care for an immediate family member (spouse, child, or parent) of the employee if such immediate family member has a serious health condition;
- C. The employee's own serious health condition that makes the employee unable to perform the functions of his/her position; or
- D. The employee must attend to a qualifying exigency arising out of the fact that the employee's spouse, child, or parent is on federal call or impending federal call to active Reserves, National Guard, or Retired Armed Forces or Retired Reserve, in support of a contingency operation.

Servicemember Family Leave

Eligible employees who are the spouse, child, parent, or next of kin of a covered Servicemember are entitled to up to 26 weeks of leave during a single 12-Month Servicemember Period (for a total of 26 weeks if combined with other FMLA leave), to care for such Servicemember who incurred a serious injury or illness in the line of duty in the Armed Forces. Available leave not taken during the 12-Month Servicemember Period, which begins on the first day of leave is taken, will be forfeited. No more than 26 weeks of leave may be taken in a single 12-Month Servicemember Period, and no additional extended leaves may be taken in other years for the same injury or illness. If married spouses both work for the Company, their total Servicemember Family Leave may be limited to an aggregate of 26 weeks.

Definitions

- A. "12-Month Period" means the 12-month period measured forward from the date of the first FMLA leave usage.

- B. “12-Month Servicemember Period” means a single 12-month period measured forward from the first day Servicemember Family Leave is taken.
- C. “Spouse” means a husband or wife as recognized under Texas law for purposes of marriage, including common law marriage, but does not include unmarried domestic partners.
- D. “Child” means a child either under 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability. An employee's "child" is one for whom the employee has actual day-to-day responsibility for care and includes a biological, adopted, foster or step-child.
- E. “Parent” means a biological parent of an employee or an individual who stood in place of a parent to an employee when the employee was a child.
- F. “Next of Kin” means the nearest blood relative of a Covered Servicemember.
- G. “Active Duty” means duty under a call or order to active duty during a contingency operation.
- H. “Contingency Operation” means a military operation designated by the U.S. Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force, or which results in the call or order to active duty of members of the uniformed services during a war or national emergency declared by the President or Congress.
- I. “Covered Servicemember” means a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, or is on the temporary disability retired list for a serious injury or illness incurred in the line of active duty and which may render the member medically unfit to perform the duties of the member's military position.
- J. “Qualifying Exigency” includes:
 - 1. Short-notice deployment: notification of a call to active duty in support of a contingency operation seven or fewer days from date of deployment;
 - 2. Military events and related activities:
 - (a) To attend an official ceremony, program or event sponsored by the military that is related to active duty or call to active duty;
 - (b) To attend family support programs and briefings sponsored or promoted by the military, military service organization, or American Red Cross that are related to active duty or call to active duty.
 - 3. Childcare and School Activities: Leave may be taken for a child in order to:

- (a) Arrange for alternate childcare;
- (b) Provide childcare on an urgent, immediate need basis;
- (c) Enroll or transfer the child to a new school or daycare facility;
- (d) Attend meetings with staff at school or daycare facility.

4. Financial and Legal Arrangements:

- (a) To make or update financial or legal arrangements to address the covered military members' absence while on active duty or call to active duty status;
- (b) To act as the covered military member's representative to obtain, arrange, or appeal military service benefits while the member is on active duty or call to active duty status, and for 90 days following termination of active duty status.

5. Counseling: To attend counseling for oneself, the military member, or child when the need for such counseling arises from the active duty or call to active duty status of the covered military member.

6. Rest and recuperation: To spend up to five days with a military member who is on short-term, temporary rest and recuperation leave during the period of deployment.

7. Post-deployment activities: To attend arrival ceremonies, reintegration events, and any other official ceremony or program sponsored by the military for the approximately 90-day period following termination of active duty or death of the Servicemember while on active duty.

8. Additional activities related to the call to active duty otherwise agreed to by the employer and employee.

K. "Serious Health Condition" means an illness, injury, impairment, or a physical or mental condition that involves

- 1. inpatient care (overnight stay);
- 2. incapacity requiring absence from work for more than three calendar days and that involves continuing treatment by a health care provider;
- 3. continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or which, if left untreated, would likely result in a period of incapacity of more than three calendar days; or
- 4. prenatal care by a health care provider.

L. "Continuing Treatment" means

- 1. Two or more visits to a health care provider within 30 days of the commencement of the incapacity; or

2. Two or more treatments by a health care practitioner on referral from, or under the direction of, a health care provider within 30 days of the commencement of the incapacity; or
3. A single visit to a health care provider within seven days of the commencement of the incapacity that results in a regimen of continuing treatment.

Coverage and Eligibility

To be eligible for family/medical leave an employee must have worked for the City of Brenham for at least 12 months total and have worked at least 1250 hours over the previous 12-month period.

Intermittent or Reduced Leave

An employee may take leave intermittently (a few days or a few hours at a time) or on a reduced leave schedule. The employee may be required to transfer temporarily to a position with equivalent pay and benefits that better accommodates recurring periods of leave. An employee may not take intermittent leave following the birth or placement of a child except at the discretion of the City of Brenham

Use of Paid Leave

An employee will be required to use accrued paid leave (including paid vacation, sick leave, and compensatory time) for any part of a family/medical leave. When an employee has used all of his or her accrued paid leave, the employee may request an additional period of unpaid leave so that the total paid and unpaid leave provided equals 12 weeks (or 26 weeks if combined with Servicemember Family Leave time).

Employee Notice Requirement

- A. An employee must give 30 days notice in the event of a foreseeable leave. A "**Request for Family/Medical Leave**" form should be completed by the employee and returned to the City of Brenham Human Resources Department. In unexpected or unforeseeable situations, an employee should provide as much notice as is practicable, followed by the completed form. The notice must indicate that (1) the employee is unable to perform the functions of the job or that a covered family member is unable to participate in regular daily activities; (2) the anticipated duration of the absence; and (3) whether the employee intends to visit a health care provider or is receiving continuing treatment.
- B. If an employee fails to give 30 days notice of foreseeable leave with no reasonable excuse, leave may be denied until 30 days after the employee provides notice.
- C. When planning medical treatment, an employee must make a reasonable effort to schedule the leave so as not to unduly disrupt the City of Brenham's operations.

- D. In the event of leave to attend to a qualifying exigency, the employee shall provide as much notice as is reasonable and practical under the circumstances.

Employer Notice Requirements

- A. Notice of Eligibility Rights: Within five days after the employee requests leave or after the City of Brenham learns the leave may be for an FMLA-qualifying reason, the City of Brenham Human Resources Department will provide written notice stating whether the employee is eligible for FMLA leave, and if not eligible, at least one reason why.
- B. Notice of Designation of Leave: Within five days after the employee requests leave or after the City of Brenham learns the leave may be for an FMLA-qualifying reason, the City of Brenham Human Resources Department will provide a written notice stating whether leave is available, and notifying the employee how much leave has been designated as FMLA leave, and how much leave remains. For an unspecified leave, the City of Brenham Human Resources Department will update the notification every 30 days as to how much leave was designated in the prior month, how much was rejected, and how much leave remains. If any part of the requested leave is not designated as FMLA leave, the City of Brenham Human Resources Department will provide written notice of and reason for denial.

Medical Certification

- A. Certification of Serious Health Condition: For leaves taken because of the employee's or a covered family member's serious health condition, the employee, upon request, must submit a completed "**Physician or Practitioner Certification**" form and return the certification to the City of Brenham Human Resources Department. Medical certification must be provided by the employee within 15 days after requested. If the employee fails to provide adequate certification within this time period, then the City of Brenham will inform the employee, in writing, what additional information is necessary and will allow the employee at least seven days to correct the certification. The City of Brenham may delay leave until such certification is produced. In the case of medical emergency, the employee must submit certification as soon as is reasonably possible.
- B. City of Brenham May Require Second Opinion: The City of Brenham may require a second or third opinion (at its own expense), periodic reports on status and intent to return to work, and a fitness-for-duty report to return to work.
- C. Certification Related to Active Duty or Call to Active Duty: The employee requesting leave related to a family member's active duty or call to active duty shall provide supporting documentation of such status issued by the applicable Armed Services branch.
- D. Certification for Extended Servicemember Family Leave: Employees requesting extended Servicemember Family Leave must provide documentation of the injury, recovery or need for care, such as the military medical information, orders for treatment, or other official Armed Forces communication showing that the injury or illness was incurred on active military duty and renders the member medically unfit to perform military duties.

- E. Confidentiality of Medical Records: Documentation related to the employee's or family member's medical condition will be held in strict confidence and maintained in the employee's medical records file.

Effect on Benefits

- A. An employee granted a leave under this policy will continue to be covered under the City of Brenham's group health insurance plan with the same conditions as if the employee had been continuously employed during the leave period.
- B. Employee contributions will be required either through payroll deduction or by direct payment to the City of Brenham. The employee will be advised in writing at the beginning of the leave period as to the amount and method of payment. Employee contribution amounts are subject to any change in rates that occurs while the employee is on leave.
- C. If an employee's contribution is more than 30 days late, the City of Brenham may terminate the employee's insurance coverage.
- D. If the City of Brenham pays the employee contributions missed by the employee while on leave, the employee will be required to reimburse the City of Brenham for delinquent payments (on a payroll deduction schedule) upon return from leave. The employee will be required to sign a written statement at the beginning of the leave period authorizing the payroll deduction for delinquent payments.
- E. If the employee fails to return from unpaid leave for reasons other than (1) the continuation of a serious health condition of the employee or a covered family member or (2) circumstances beyond the employee's control (certification required within 30 days of failure to return for either reason), the City of Brenham may seek reimbursement from the employee for the portion of the premiums paid by the City of Brenham on behalf of that employee (employer contribution) during the period of leave.
- F. An employee is not entitled to seniority or benefit accrual during periods of unpaid leave, but will not lose benefits already accrued prior to the start of the leave. Paid time off does not accrue while on unpaid leave.

Job Protection

- A. If the employee returns to work within 12 weeks following a family/medical leave (or 26 weeks if combined with Service member Family Leave), he/she will be reinstated to his/her former position or an equivalent position in terms of pay, benefits, status, and authority.
- B. The employee's restoration rights are the same as they would have been had the employee not been on leave. If the position would have been eliminated or the employee would have been terminated but for the leave, the employee does not have the right to reinstatement upon return from leave.

- C. If the employee fails to return to work by the previously agreed upon date, in absence of further communication, he/she will be considered to have abandoned the job.

Unlawful Actions and Enforcement of FMLA Rights

It is unlawful for the City of Brenham to interfere with, restrain, or deny the exercise of FMLA rights, or to discharge or discriminate against anyone for opposing such unlawful practices or for participating in a proceeding relating to FMLA. An employee may file a complaint with the U.S. Department of Labor's Wage and Hour Division or may bring a private lawsuit against an employer for violating his/her rights under the FMLA.

FUNERAL LEAVE

The City provides probationary and regular full-time employees paid time off, up to a maximum of three (3) work days in the event of a death in the family, for the purpose of attending the funeral. For the purpose of authorizing bereavement leave "family" is defined as current spouse, child, brother, sister, mother, father, mother-, father-, brother-, sister-, son-, daughter, or grandparent-in-law, grandparent, or grandchild, or person residing with the employee at the time of death. Up to three (3) days additional leave charged to sick leave may be approved by the City Manager at the employee's request. Employees may take additional time off as vacation, comp time or, if no vacation or comp time is available, as authorized leave without pay upon approval of the City Manager. All bereavement leave time taken must be requested on the City's automated payroll and benefits system.

An employee may be required to provide proof of death/funeral/family relationship in support of bereavement leave. Bereavement leave pay is paid at the employee's base rate at the time of absence. It does not include overtime or any special forms of compensation. Paid time off for bereavement leave is not counted as hours worked for purposes of determining overtime.

Employees who wish to take bereavement leave must notify their supervisor immediately.

Employees who wish to attend funerals for other than immediate family may be granted absence with pay for up to two hours and must use vacation, compensatory time or unpaid leave for additional time off with approval of Department Head.

Any exceptions to the funeral leave described in this section require the approval of the City Manager and shall be documented in the employee's personnel records with the City Manager's signature.

HOLIDAYS

The City provides paid holidays to probationary, and regular full-time employees. Every other employee is extended the official holiday, but without pay.

Official holidays are approved each year by action of the City Council.

Holidays. A holiday is a period of 8 hours, paid at the employee's regular rate

Scheduling of Holiday. Holidays occurring on Saturday normally will be observed on the preceding Friday and holidays occurring on Sunday will normally be observed on the following Monday for employees working a Monday-Friday, 40 hour workweek schedule. Employees working a 24 hour/7 days a week schedule (Police, Fire, Water Production,) will observe the holiday on the actual holiday.

Part-time, Temporary and Seasonal Employees. Part-time, temporary and seasonal employees will be paid their regular hourly rates for a holiday only if required to work on a holiday. No holiday pay is authorized for part-time, seasonal or temporary employees who do not work on a holiday.

Employees required to work on a Holiday. Nonexempt employees required to work on a holiday will be paid overtime for the hours worked.

Nonexempt Emergency Personnel Called Back on a Holiday. Non-exempt employees called in on an emergency basis to work a holiday for which they are not scheduled to work will be paid for all hours worked on the holiday at the overtime rate.

Holiday Occurring During Vacation Leave. A holiday that falls within an employee's vacation period will be counted as holiday in lieu of a day of vacation.

Separating Employees. Except in extraordinary situations, separating employees will not be allowed to use a holiday as their final day of employment. Exceptions must be scheduled and authorized in advance by the Department Director.

Paid Leave Status. An employee on a paid leave status will normally be paid holiday pay in lieu of the leave status pay they would ordinarily receive at the time of the holiday.

Other Religious Holidays. Employees may request an approved absence to celebrate a religious holiday that is not a scheduled City holiday. If approved, the employee must charge the time to vacation, compensatory time, or an excused absence without pay.

Holiday Pay During Workers' Compensation Leave. An employee on worker's compensation leave will not receive holiday pay.

Holidays are considered hours worked for computation of overtime unless otherwise provided in City policies.

INCLEMENT WEATHER/EMERGENCY SITUATIONS

Except for extraordinary circumstances, City offices DO NOT CLOSE. All City employees, whether exempt or nonexempt, are expected to make a sincere effort to report to work during inclement weather conditions or other emergency situations.

If an employee determines that the weather conditions constitute a danger to life and/or property, the employee must notify his/her immediate supervisor and/or Department Director and make arrangements to report to work if weather conditions improve. Any leave taken due to inclement weather can be flexed or charged to vacation or comp time. Regular full-time and part-time nonexempt employees who are unable to flex their time and who have no accrued vacation or compensatory time available will not be paid for the time missed.

The Department Director/immediate supervisor is responsible for seeing that City services are staffed while City offices are open for business during inclement weather or emergency conditions. Any City service that cannot be provided during inclement weather or other emergency conditions must be immediately reported to the City Manager's Office.

When weather or other conditions are such that the City Manager declares certain City offices/departments officially closed, all affected personnel, i.e., those non-essential employees who were scheduled to work during the time of closure, will be granted “administrative leave” with pay for the time the office/department is closed. Essential personnel must report to work even when other City departments are officially closed due to weather or other type of extraordinary circumstances. Essential personnel required to be on the job regardless of adverse weather or other conditions are designated by the Department Director and/or the City Manager. Essential personnel who are required to work may be given equivalent time off at a later time if possible. Essential personnel who fail to report to work may be subject to disciplinary action up to and including termination of employment.

With the approval of the City Manager, exempt employees may be granted additional pay if required to work during inclement weather conditions or other emergency situations. Notwithstanding the preceding sentence, an exempt employee that works additional hours during a local, state or national declared state of emergency in excess of the employee’s normal working hours shall be paid overtime and/or given compensatory time off for the additional hours worked during said state of emergency. The overtime pay (using the exempt employee’s hourly rate of pay) or compensatory time off shall be calculated at the rate of 1.5 times the additional hours worked; that is, each additional hour worked shall earn 1.5 hours of overtime pay or 1.5 hours of compensatory time. Nothing herein shall be construed to affect the exempt status of such employees.

JURY DUTY

The City provides paid leave to regular full-time employees and regular part-time employees required to serve on jury duty or requested to testify as a witness by the City in a City-related civil, criminal, legislative, or administrative proceeding. Court appearances for testimony, investigation, and court preparation as a result of official duties as a City employee (e.g., police, fire, inspections, animal control, etc.) are compensated as actual hours worked and are not classified as paid leave. In all other cases, employees are required to schedule accrued vacation, holiday or compensatory leave; otherwise a nonexempt employee's time off will be considered a leave without pay.

The employee must provide documentation of the requirement for jury duty, subpoena compliance, etc., with his/her leave request. Employees must submit supporting documentation to their supervisor as soon as possible so that arrangements can be made to accommodate the absence.

Employees on jury duty leave should keep up with their job responsibilities if possible. An employee who is on jury duty typically must report for City duty for the remainder of the day upon completion of court or jury service, or request prior approval for use of other available paid time off. Any payment for jury duty received by the employee may be retained by the employee.

Jury duty leave is paid at the employee's base rate at the time of leave and does not include overtime or any other special forms of compensation.

NURSING MOTHERS POLICY

The City of Brenham is committed to providing a mother-friendly workplace in accordance with all state and federal laws as they relate to workplace breastfeeding. The City of Brenham recognizes a mother's responsibility to both her job and her child and acknowledges a woman's choice to breastfeed benefits the family, the City, and society. The City provides a work environment that is supportive of lactating mothers and encourages breastfeeding of their children for up to one year or beyond following their birth.

For breastfeeding employees, lactation times shall be established based on the individual's work schedule. The City will provide a private, accessible area, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, for the purpose of expressing breast milk each time such employee needs to express milk. Employees are to inform their supervisor of their lactation schedule and needs prior to or immediately upon returning to work. It is the employee's responsibility to contact the Human Resources department for assistance finding a lactation room.

Department Directors and supervisors will ensure this policy is fully implemented and adapted to the needs of their department and work location and ensure the requirements of this policy are enforced

MILITARY LEAVE

The City complies with all state and federal laws relating to employees in reserve or active military service and does not discriminate against employees who serve in the military. Temporary employees who have brief or non-recurrent positions with the City and who have no reasonable expectation that their employment with the City will continue indefinitely or for a significant period of time are generally ineligible for extended paid military leave in excess of 15 days, reemployment rights, or any other military leave benefits under this policy.

This policy covers employees who serve in the uniformed services in a voluntary or involuntary basis, including active duty, active duty for training, initial active duty for training, inactive duty training, and full-time National Guard duty.

Notice to City of Need for Leave. Employees must provide as much advance written or verbal notice to the City as possible for all military duty (unless giving notice is impossible, unreasonable, or precluded by military necessity). Absent unusual circumstances, such notice must be given to the City no later than 24 hours after the employee receives the military orders. To be eligible for paid military leave, employees must complete and submit a Leave Request Form along with the official documents setting forth the purpose of the leave and, if known, its duration. The Leave Request Form must be turned into the Department Director and the Human Resource Director as far in advance of the leave as possible.

Paid Leave for Training and Duty.

Full Pay For Up to 15 Days. Employees will be paid for military absences of up to a maximum of 15 work days per fiscal year. Shift employees will be transitioned to a 5 day -40 hour work week during military absences of one workweek or more. This leave may be used when an employee is engaged in National Guard or U.S. armed forces reserve training or duty ordered or approved by proper military authority. The paid leave days may be consecutive or scattered throughout the year.

Other Paid Leave. Employees who have exhausted all available paid military leave may, at their option, use any other available paid leave time (i.e., vacation leave, holiday leave and compensatory time) to cover their absence from work.

Unpaid Leave. After an employee has exhausted all available paid military leave (including any other paid leave time that the employee chooses to use to cover a military absence), the employee will be placed on leave without pay.

Benefits. The City will continue to provide employees on paid military leave with applicable City benefits.

Medical and Dental. While an employee is on paid military leave (or any military leave of less than 31 days), the City will continue to pay its portion of the monthly premium for group health benefits. When military leave is unpaid, the employee may elect to continue group health coverage for up to 24 months following separation of employment or until his/her reemployment rights expire, whichever event occurs first, for him/herself and eligible dependents. Employees must pay 102% of the applicable

premium to cover the cost of elective continuation coverage under the City's group health plan.

Upon an employee's return to employment following military service, the City will provide health insurance coverage immediately, even if a waiting period is normally required for new or returning employees. In addition, a returning employee will not be subjected to exclusions from coverage unless the exclusions apply to injuries or conditions that were incurred as a result of military service.

Other Benefits. While on *paid* military leave, employees continue to accrue vacation, sick leave and other benefits provided to other employees on paid leave. The City will also continue to pay the premium for any City-provided life insurance while the employee is on *paid* military leave. While on unpaid military leave, employees are generally ineligible for most City-provided benefits. Benefits, such as vacation and sick leave, do not accrue while an employee is on unpaid leave, including unpaid military leave. While on unpaid military leave, benefit accruals will be suspended and will resume upon the employee's return to active employment. Once an employee returns to work following an unpaid leave, he/she will be treated as though he/she was continuously employed for purposes of determining benefits based on length of service, such as vacation accrual and longevity pay.

TMRS. Typically, an employee's period of uniformed service is deemed to constitute service for purposes of vesting and benefit accrual. Thus, employees earn service credit for time spent on active duty military leave. Service time is credited when an employee returns to work. To qualify for service credit, an employee must: return to work for the City within 90 days after discharge; receive an honorable discharge; and timely complete the necessary application.

Returning from Leave.

Reemployment Rights. Employees who complete their military service will be re-employed in accordance with federal law.

Deadline to Notify City of Intent to Return to Work. The deadline for an employee to return to work and/or notify the City that he/she intends to return to work following military leave depends upon how long the employee's military service lasted:

- A) For service of less than 31 days, employees have 8 hours following their return home from service to report for their next scheduled work period.
- B) For service between 31 days and 180 days, employees have 14 days following their release from service to apply for reemployment.
- C) For service of more than 180 days, employees have 90 days following their release from service to apply for reemployment.

These deadlines may be extended for 2 years or more when an employee suffers service-related injuries that prevent him/her from applying for reemployment or when circumstances beyond the employee's control make reporting within the time limits

impossible or unreasonable.

Required Documentation. To qualify to return to work, an employee returning from leave must provide documentation of the length and character of his/her military service. Also, evidence of discharge or release under honorable conditions must be submitted to the City if the military leave lasted more than 31 calendar days.

SICK LEAVE

Sick leave is paid time away from work due to an employee's bona fide illness or injury that prevents him/her from working, for visits to the doctor or dentist, or to care for certain family members who are ill or injured. Employees who are unable to work due to illness or injury or other situations covered by this policy must immediately notify the appropriate supervisor in accordance with the procedures adopted by their Department.

Eligibility. All full-time employees begin accruing paid sick leave on first day of hire. Part-time, temporary and seasonal employees do not accrue sick leave. Full-time employees who are in their initial probationary status may use accrued sick leave if approved by their supervisor and/or Department Director. An employee who is released for and offered light duty by the City, but who elects not to accept such assignment, will generally be ineligible for paid sick leave benefits.

Accrual Rate. Sick leave accrual, except for the Fire Department, is based upon an 8-hour work day, 40 hours per week.

Sick leave for employees other than Fire Department shall be computed on the basis of one (1) 8 hour working day for each full month employed in a calendar year, so as to total twelve (12) working days or 96 hours per year, to a maximum accrual of eighty-seven (87) 8 hour days (696 hours). Fire Department employees working shift schedules will accrue up to six (6) 24-hour days (144 hours) per year up to a maximum accrual of forty-one (41) 24-hour days (984 hours). Sick leave accrues only during pay periods in which the employee works or is otherwise on an approved paid leave status for 80 hours, or 106 hours for firefighters working shift schedules.

Maximum Accrual. The maximum sick leave time which may be accumulated by any employee shall be 600 hours (75 8-hour days) except that Fire Department employees working shift schedules shall be allowed to accrue up to 840 hours (35, 24-hour days). All days in excess of the maximum accrual are lost at the beginning of each calendar year. Employees will not be paid for sick leave in excess of the maximum accrual.

Donation of Sick Leave Time. Sick leave time may be donated to employees that meet the qualifications to receive donations. An employee may elect to donate a maximum of 40 hours of sick leave time in a calendar year, provided that the donation does not deplete the donating employee's accrued sick leave time balance existing at the time of the donation by more than fifty percent (50%). Sick leave donations will be credited to a qualified employee's sick leave time balance on an as-needed basis, and any unused donated sick time will be returned to the donor if no longer needed.

Reinstatement of Employment. Employees returning to employment in good standing within one (1) year of resignation or reduction in force, will have the sick leave balance reinstated to amount as it existed upon the date of separation from employment with the City, and longevity reinstated to previous date of hire.

Authorized Use of Sick Leave.

For the employee. Accrued sick leave may be used for absences due to the employee's bona fide personal illness, accident, injury that prevents him/her from working, or birth of a child (if the employee physically gave birth; otherwise use of sick leave for childbirth falls under the section below).

For the employee's immediate family. A specified amount of sick leave may also be used for absences when the employee is needed to care for a member of his or her immediate family who is ill or injured. (Immediate family is defined as spouse, child/stepchildren, parent, spouse's parent or other person who resides with the employee.) Other persons who may be dependent on the employee for medical care may be considered to meet the definition of "immediate family" under special circumstances approved in advance by the Departmental Director.

In the event of a life-threatening illness or injury of the employee's family member who does not meet the definition of "immediate family," the Department Director (and in the case of Department Directors, the City Manager) may allow the employee to use accrued sick leave with approval by the City Manager.

An employee can use up to five (5) days of accrued sick leave to care for immediate family members. Thereafter, employees must use accrued paid leave (vacation and/or comp time) if more than 5 days are needed for immediate family members.

Qualification to Receive Donations for injury or illness:

In the event of a life-threatening illness or injury of the employee or employee's immediate family member, and the employee has exhausted all paid leave to a minimum of 40 hours of paid vacation and compensatory time, (5 eight hour days, or 120 hours (5 – 24 hour days) for the Fire Department, the employee can ask for donations of vacation or sick time to be placed in their sick leave.

Sick leave may also be used by employees for their own and /or their immediate family's scheduled doctor and dentist appointments.

Minimum Increments. Sick leave must be taken in minimum increments of one-half hour. Sick leave taken in increments of less than one hour should be made up within the same work week.

Notification. Unless otherwise established by the department, employees shall notify the supervisor within one hour of the time set for beginning work the same day that the employee is absent where such time is chargeable to sick leave. The employee is expected to notify the supervisor each day during the absence unless such absence is documented by proof of illness/injury.

Failure to Report Absence/Abuse of Sick Leave. Supervisors are to closely monitor use of sick leave. It is anticipated that employees using paid City sick time for their own illness/injury or that of a family member will use their sick leave time to recuperate or care for their family member. Trips to the doctor or hospital stays/visits, which take the employee away from the home, are

acceptable, but other personal pursuits during paid sick leave will be considered an abuse of this policy. Abuse of sick leave, including use of sick leave for anything other than an illness, injury, or doctor/dentist appointment as provided for in this policy, may result in immediate disciplinary action, up to and including termination of employment, and may also render the employee ineligible for paid sick leave benefits. Similarly, employees who fail to timely report an absence or tardiness due to illness, injury, or doctor/dentist appointment may be disqualified from using sick leave for their absence.

Other Employment During Sick Leave. Employees on sick leave, whether paid or unpaid, may not work a second job, including self-employment or participate in volunteer work, during the period of leave, even if they have written authorization from their Department Director to work a second job. Exceptions to this policy must be obtained in writing from the Department Director and the Human Resource Director. See Outside Employment Policy.

Use of Other Leave. If approved by the Department Director (and in the case of Department Directors, by the City Manager), employees who have successfully completed their initial probationary period may use accrued vacation leave, compensatory time, other accrued paid leave, or leave of absence without pay, but only if an employee has no accrued sick leave time. Official holidays observed by the City while an employee is on approved paid sick leave will be treated as a paid holiday, rather than a day of sick leave, if the employee is eligible for the paid holiday. Under certain circumstances and with the approval of the Department Director/supervisor, the employee may flex his /her work schedule (“time management”) to attend to medical or dental appointments. This is acceptable provided that work time is accurately recorded on the time sheet for the week or work cycle in which time management was approved. Under no circumstances can time management extend beyond the affected workweek, or work cycle.

Documentation. Employees requesting paid sick leave for more than 3 days must notify their supervisor for approval. An employee must present satisfactory proof of illness/injury that prevents him/her from working whenever the employee uses sick leave for 3 or more consecutive work days, and at any other time if requested by the City. An employee may also be required to present satisfactory proof of family relationship and/or satisfactory proof of a family member’s illness, injury, and/or doctor/dentist appointment if the employee wishes to use accrued sick leave to care for a family member. If the employee fails to present such proof in a timely manner, use of sick leave will be disallowed and no other paid leave may be used for the absence. Abuse of sick leave may result in discipline up to and including termination of employment.

Family and Medical Leave Act Leave. Any absence that qualifies for both Family and Medical Leave Act leave and sick leave will follow the guidelines set out in this policy, and will typically be counted as both.

Assistance for Long Term Illness. In order to assist an employee who has exhausted all personal leave because of a long term illness, employees may donate a portion of their accumulated sick and or vacation leave to that employee. The donated leave will be on an hour-for-hour basis. Donations will be credited to a qualified employee’s sick leave time balance on an as-needed basis, and any unused donated time will be returned to the donor if no longer needed. An employee may elect to donate a maximum of 40 hours of sick leave time in a calendar year, provided that the donation does not deplete the donating employee’s accrued sick leave time balance existing at the time of the donation by more than fifty percent (50%).The employee receiving the donated leave

must have a medically verifiable long-term illness and have exhausted all available personal leave (vacation, sick, compensatory) before becoming eligible to receive donated leave. If the employee becomes eligible for long term disability benefits, use of donated leave may continue but the sum of donated leave and long term disability benefits shall not equal more than 100 percent of base salary at the time absence commenced.

UNPAID LEAVE OF ABSENCE

In extraordinary circumstances, the City may grant employees an unpaid leave of absence (LOA). All requests for LOA must be submitted to the Human Resources department. Department Directors are authorized to grant an unpaid LOA for up to 5 working days. Any LOA beyond the 5 working days must be authorized by the City Manager. The employee may seek extensions of leave, up to a maximum of 90 calendar days away from work. A LOA will not be authorized unless there is a reasonable expectation that the employee will return to employment with the City at the end of the approved leave period.

Use of All Other Available Leave. All vacation, compensatory time, holiday time and/or leave authorized under FMLA must be used prior to authorizing a LOA to an employee. If the LOA is due to illness or injury, all sick leave must also be used prior to authorizing a LOA.

Criteria. Factors considered by the City in granting a LOA include the reason for the leave; departmental work requirements; the employee's length of service, work performance and disciplinary history.

Documentation. Requests for LOA without pay must be made in writing to the employee's Department Director as far in advance as possible prior to the requested leave date. Requests for an extension of leave must also be in writing and submitted to the Department Director, who will forward the request to the City Manager's office and the Human Resource Director. The need for a medical LOA must be supported by documentation acceptable to the City, including but not limited to a doctor's explanation of why the employee cannot perform his/her duties, when he/she is expected to return to work, and periodic updates regarding the employee's ability or inability to return to work. The Department Director and/or City Manager may require that the employee on leave periodically contact a designated supervisor to report on his/her condition or status. Before returning to work from a medical LOA, the employee may be required to submit a letter from his or her doctor stating that the employee is able to resume his or her normal job duties. The City may also impose additional return to work requirements as set out in the City's Health/Fitness policy.

Other Employment During Leave. Under no circumstances may an employee on an authorized LOA without pay work another job, whether for pay, as a volunteer or as self-employment, unless expressly authorized in writing by the Department Director and the City Manager.

Reinstatement. Employees returning from a LOA will be reinstated to their same position or one of similar pay and status, provided the City's circumstances have not changed to the extent that it would be impossible or unreasonable to provide reinstatement. If the same job or one of similar pay and status is not available, reinstatement may, at the City's discretion, be deferred until a position is available. Usually, an employee who fails to return to work at the conclusion of an approved LOA will be considered to have voluntarily resigned his or her employment with the City.

Benefits/Premium Payments. All LOA'S are unpaid. Vacation, sick leave, holiday pay, and other benefits do not accrue during an unpaid LOA. Any benefit continuation during a LOA must be approved in advance by the Human Resource Director and the City Manager.

Any insurance premiums, or partial premiums, normally paid on behalf of the employee by the City will be paid by the City beginning the first day of the month following the starting date of a LOA. Employees who have group health or any other kind of insurance through the City continue to be responsible for paying their portion of the premiums while on a LOA. An employee's failure to pay his or her portion of insurance premiums during a LOA may result in cancellation of coverage.

Revocation. The City Manager may revoke authorized leave without pay at any time. Failure to return to work after the expiration of an authorized LOA or failure to provide required medical status reports, physician's statements, or to contact the City per the required schedule will likely result in revocation of the LOA and/or disciplinary action up to and including dismissal.

Termination. Employees who are absent from work for a period exceeding six consecutive months shall be considered as having abandoned their position and shall be automatically terminated as an employee regardless of the reason for the absence.

VACATION LEAVE

Regular full-time employees accrue vacation leave each pay period.

Vacation leave accrues at the following rate according to number of years of service (see schedule). Regular full-time employees of the City, except for the Fire Department, shall earn paid vacation leave based on an 8-hour work day, 40 hours per week. Vacation accrual begins with the first day of employment; however vacation leave may not be taken until after six months of employment.

General Government and Police Vacation Leave Accrual Schedule:

0-5 years of employment	80 hours per year
6 th year of service and thereafter	additional 8 hours per year up to the maximum accrual of 160 hours

Fire Department Vacation Leave Accrual Schedule:

0-5 years of employment	144 hours per year
6 th year of service and thereafter	additional 14.4 hours per year up to the maximum accrual of 288 hours

Directors, as designated by the City Manager, will be entitled to an additional five (5) days of vacation leave each year.

An employee may not use any accrued vacation leave until he/she has successfully completed his/her initial employment probationary period. Employees may not “borrow” unearned vacation time; employees shall not receive payment of vacation in lieu of taking time off, except as provided below.

Regular part-time, temporary, and seasonal employees do not earn vacation leave.

Official City-observed holidays occurring while an employee is on approved paid leave are considered paid holidays and do not affect vacation leave balances. Paid vacation leave is not considered hours worked for purposes of performing overtime calculations. Only scheduled working days taken off shall be counted as vacation days.

An exempt employee may be charged with the use of vacation or sick leave when disciplinary action of less than one full day is given. Additionally, deductions from an exempt employee’s pay may be made for unpaid disciplinary suspensions of one or more full days for infractions of workplace conduct rules, safety rules of major significance, and as additionally authorized by applicable law. “Docking” an exempt employee’s pay for a partial day’s absence will be permitted only as authorized by law and approved by the City Manager.

Use and Scheduling of Vacation Leave. Vacation leave is an earned benefit intended to provide employees with paid time away from the work environment to pursue activities that will promote the well-being of the individual. Vacation leave may also be used for purposes of attending to personal business, extension of sick leave when sick leave is exhausted, inability to get to work because of inclement weather, or for other purposes, and may be taken in hourly increments. Employees must schedule their annual vacation leave in accordance with their Department's guidelines governing vacation scheduling. Whenever possible, vacation time will be scheduled at the convenience of employees. However, Department Directors must be certain that vacations do not interfere with the normal functions and activities of department operations. Whenever possible, employees are encouraged to submit their preferred vacation schedule to the appropriate supervisor as far in advance as possible to relieve any scheduling problems that may develop. To ensure proper payment of vacation pay, employees must make sure they have an approved vacation request on file before leaving for vacation.

Maximum Accrual Carryover.

- Employees with less than 10 years of service will be eligible to carryover not more than two weeks (80 hours or 240 hours for Fire Dept.) accrued vacation at the end of each calendar year.
- Employees with 10 or more years of service will be eligible to carryover not more than three weeks (120 hours or 360 hours for Fire Dept.) accrued vacation at the end of each calendar year.

All days in excess of the maximum allowed carryover are lost at the beginning of each calendar year. Employees will not be paid for vacation in excess of the maximum accrual.

Directors and/or Department Head shall schedule vacation so that the City work load is not adversely affected. Employees may not elect to receive pay in lieu of vacation leave except in cases where City demands prevented the employee from taking vacation leave. Payment for vacation leave must have the written approval of the City Manager.

Compensation for Vacation Leave. Vacation is paid at the employee's base rate at the time of vacation. It does not include overtime or any special forms of compensation. Vacation time is paid only for hours the employee would ordinarily have worked. Employees will be allowed to receive payment for up to 5 days of vacation (40 hours, or 120 hours for Fire Department) at any time per calendar year. Requests must be in writing and submitted to the Human Resource Department for processing.

Upon termination, retirement, resignation, or death, an employee shall be paid for accrued vacation leave at the rate of pay the employee was receiving at the time of separation. Only employees who have successfully completed their initial probationary period of employment with the City are entitled to this payout provision upon separation.

Definitions

Compensable Hours - The hours worked or taken in a biweekly pay period must equal 80 for full-time employees, and 106 for 24-hour fire department employees before vacation hours will be accrued.

Vacation Day – A “vacation day” is defined as an 8-hour period for all employees, other than 24-hour fire shift employees. A “vacation day” for Fire Department shift personnel is defined as a 24-hour period. Although discouraged, employees are not required to take a full day of vacation; they may take vacation in one hour increments.



AGENDA ITEM 9

DATE OF MEETING: February 7, 2019	DATE SUBMITTED: February 1, 2019
DEPT. OF ORIGIN: Administration/Police Dept.	SUBMITTED BY: Jeana Bellinger/Allwin Barrow
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION
ORDINANCE: ☒ 1 ST READING ☐ 2 ND READING ☐ RESOLUTION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending Chapter 5, Animal and Fowl, of the Code of Ordinances of the City of Brenham	
SUMMARY STATEMENT: This item was tabled at the January 17, 2019 meeting. As discussed in Work Session at the January 17, 2019 meeting, this new ordinance addresses things such as animals left in hot vehicles; private animal sales; head per acre limitations for livestock, revised requirements for multi-animal permits; clarification of rabies quarantine period; the addition of dangerous dog provisions; and the regulation of community cat colonies.	
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: B. CONS:	
ALTERNATIVES (In Suggested Order of Staff Preference):	
ATTACHMENTS: (1) Ordinance for first reading of Chapter 5, Animal & Fowl	
FUNDING SOURCE (Where Applicable):	
RECOMMENDED ACTION: Approve an Ordinance on its first reading amending Chapter 5, Animal and Fowl, of the Code of Ordinances of the City of Brenham	
APPROVALS: James Fisher	

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING CHAPTER 5, ANIMAL AND FOWL, OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS PROVIDING FOR THE REGULATION OF ANIMALS AND FOWL WITHIN THE CITY LIMITS; PROVIDING FOR THE REGULATION OF LIVESTOCK; PROVIDING FOR THE REGULATION OF BIRDS AND FOWL; PROVIDING FOR THE REGULATION OF THE KEEPING OF DOMESTIC BEES; PROVIDING FOR THE REGULATION OF DOGS AND CATS; PROVIDING FOR THE REGULATION OF RABIES ENFORCEMENT; PROVIDING FOR THE REGULATION OF IMPOUNDMENT AND DISPOSITION; PROVIDING FOR THE REGULATION OF DANGEROUS DOGS; PROVIDING FOR A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PROPER NOTICE AND MEETINGS

WHEREAS, the City Council of the City of Brenham is authorized to adopt animal control regulations pursuant to Chapter 826 of the Texas Health and Safety Code, and is authorized to define and abate nuisances pursuant to Chapter 217 of the Texas Local Government Code; and

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

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

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

SECTION 1.

Chapter 11, Article VI, Keeping of Domestic Bees, of the Code of Ordinances of the City of Brenham, Texas, is hereby repealed and rescinded in its entirety.

SECTION 2.

Chapter 5, Animal and Fowl, of the Code of Ordinances of the City of Brenham, Texas, is hereby repealed and rescinded in its entirety.

SECTION 3.

Chapter 5, Animals and Fowl, of the Code of Ordinances of the City of Brenham, Texas, shall read as follows:

ARTICLE I. IN GENERAL

Sec. 5-1. Definitions.

For the purpose of this chapter, the following terms are defined as follows:

Abandonment: To desert or leave without care.

Africanized bees: "Wild" bees that are overly aggressive and are more likely to sting in greater numbers.

Animal: Any living creature, except human, being classified as a member of the Kingdom Animalia and including, but not limited to, mammals, birds, reptiles and fish.

Animal Control Authority: Any employee or contractor appointed by the City Manager for the purpose of the enforcement of this Chapter or any other law or ordinance relating to the licensure of animals, control of animals, or seizure and impoundment of animals. These individuals are given the authority to issue citations for any violation of this Chapter.

Animal establishment: Any facility or business that has custody or control of any animal within the city, including, but not limited to, pet shops, grooming and boarding facilities, animal auction facilities or kennels. This term does not include veterinary or medical facilities, research or other facilities licensed by government agencies.

Animal shelter: Facility operated by the City of Brenham for the temporary confinement, safekeeping and control of animals that come into the custody of the City of Brenham.

Apiary: A place where one (1) or more bee colonies are kept.

At large: Means an animal that meets at least one (1) of the following criteria:

- (1) An animal that is not confined to the premises of the owner by substantial physical means of restraint of sufficient height, strength, and/or manner of construction to preclude the animal from leaving the premises of the owner or being able to come within six (6) feet of any public area;
- (2) An animal that is not under direct physical control of a person by means of a tether of sufficient strength and of a length of not more than six (6) feet.

Bee: Any stage of the common domestic honey bee, *Apis Mellifera* species.

Beekeeper: A person who owns or has charge of one (1) or more colonies of bees.

Cat: Any member of the family *Felis domestica*.

City: The City of Brenham, Texas, an incorporated municipality located in Washington County, Texas.

Colony: A hive and its equipment and appurtenances, including bees, comb, honey, pollen and brood.

Community cat: A feral cat that has been ear-tipped, vaccinated and sterilized through trap-neuter-return.

Community cat caregiver: A person who participates in trap-neuter-return and/or provides care, including food, shelter, and/or medical care to community cats. A community cat caregiver shall not be considered the owner, caretaker, custodian, harbor, or keeper of a community cat.

Community cat colony: A group of community cats that congregate, more or less, together as a unit and may share a common food source.

Currently vaccinated: An animal that is considered to have a current anti-rabies vaccination according to the Texas State Rabies Control Act, as amended, and the minimum standards established by the appropriate state agency or rule-making board.

Dangerous animal means:

- (1) An animal that makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than the enclosure in which the animal was being kept and that was reasonably certain to prevent the animal from leaving the enclosure on its own; or
- (2) An animal that commits unprovoked acts in a place other than an enclosure in which the animal was being kept and that was reasonably certain to prevent the animal from leaving the enclosure on its own and those acts cause a person to reasonably believe that the animal will attack and cause bodily injury to that person; or
- (3) An animal that commits an unprovoked attack on human being that causes serious bodily injury or death and occurs in an enclosure for which the animal was being kept and that was reasonably certain to prevent the animal from leaving the enclosure on its own unless the person who was attacked was trespassing or otherwise violating the law by being within the enclosure; or
- (4) An animal that is at large and commits an unprovoked attack on a domestic animal that causes the death of the attacked animal; or
- (5) An animal that is at large and commits an unprovoked attack on a domestic animal that causes serious bodily injury to the attacked animal and the attacking animal has already committed at least one (1) unprovoked attack on a previous occasion against a human being or domestic animal.

The term dangerous animal does not include an animal that commits an unprovoked attack on a human being in an enclosure in which the animal was being kept and that was reasonably certain to prevent the animal from leaving the enclosure where the person who was attacked was trespassing or otherwise violating the law by entering the enclosure.

Dog: Any member of the family Canis familiaris.

Domestic animal: Any animal whose physiology has been determined or manipulated through selective breeding and which does not occur naturally in the wild and which may be vaccinated against rabies with an approved rabies vaccine and which has an established rabies quarantine observation period.

Ear-tipping: The removal of the 3/8 inch tip of a cat's ear, performed by a licensed veterinarian while the cat is under anesthesia, to identify the cat as being a community cat that has been sterilized and lawfully vaccinated for rabies.

Enclosure shall mean pens, hutches, cages or some other physical means of sufficient height, strength, length, or manner of construction to preclude an animal from escaping. Such enclosure shall be securely enclosed and designed with secure sides, top and bottom.

Exotic animal shall mean the same as a wild animal.

Feral cat: Any member of the species felis domestica that is undomesticated, wild, homeless, untamed, or otherwise unaccustomed to human interaction. Other common names include stray cat or barn cat.

Fowl or birds: All animals belonging to the class of Avies, including all game birds such as, but not limited to: doves, quail, ducks, geese, pigeons, cardinals, blue jays, sparrows, crows.

Hive: A structure intended for the housing of a bee colony. Tract means a contiguous parcel of land under common ownership.

Horse: Any member of the family Equidae domestica.

Humane manner: Care of an animal to include, but not be limited to, ventilation and sanitary shelter, wholesome food and water, consistent veterinarian care, and normal feeding habit in relation to the animal's size, species and breed.

Inhumane treatment of animals: Includes tortured, seriously overworked, unreasonably abandoned, unreasonably deprived of necessary food, veterinarian care, shelter, cruelly confined, or caused to fight with another animal.

Impound(ing) shall mean the placing of an animal in the city's animal shelter, or, the taking into custody of any animal for the purposes of transporting to the city's animal shelter.

Kennel: An establishment where a person, partnership, or corporation keeps dogs and/or cats for the purposes of breeding, buying, selling, trading, showing, training or boarding such animals for profit.

Local rabies control authority: The person designated by the Texas Department of Health as the official in charge of rabies control investigations and enforcement for the City of Brenham.

Licensing authority: The agency or department of the City of Brenham or any designated representative, charged with administering the issuance and/or revocation of permits and licenses under the provisions of this chapter as designated by the city manager.

Livestock: Domestic animals generally used or raised on a farm for profit or use, including, but not limited to: cattle, cows, bulls, sheep, goats, pigs, hogs, sows, horses, stallions, mares and jacks.

Multi-animal permit: License required to house, own, harbor, control, or have custody of four (4) dogs and/or cats over the age of four (4) months.

Neutered: Permanently incapable of reproduction.

Owner: Any person or persons, association, or entity, including any member of owner's immediate family, employee or agent, having the right of property, care, custody, or control of an animal, who possesses, harbors, or maintains an animal, or who knowingly permits an animal to remain on or about any premises occupied by such person or persons, firm, association, or corporation for a period of three (3) days or more.

Pedestrian: A person who is walking on a street, alley, sidewalk, or other developed area.

Person: Any individual, corporation, partnership, organization, or any institute commonly recognized by law as a legally accountable unit.

Public nuisance shall mean the conduct of any owner in allowing an animal to:

- (1) Engage in conduct which establishes such animal as a "dangerous animal";
- (2) Damage, soil, defile or defecate on private property other than the owner's or on public property unless such waste is immediately removed and properly disposed of by the owner of the animal;
- (3) Be "at large";
- (4) Cause a disturbance by excessive barking or noise making, near the private residence of another or to the extent that the barking or noise disturbs the peace or quiet of any neighborhood or can be heard from within the neighboring residence of another;
- (5) Produce odors or unclean conditions sufficient to offend a person of normal sensibilities or which creates a condition conducive to the breeding of flies or other pests;

- (6) Chase vehicles or molest, attack or interfere with other animals or persons, or is at large on public or private property; or
- (7) Create a condition that is dangerous to human life or health, renders the ground, the water, the air or food a hazard or injurious to human life or health or that is offensive to the senses or that is detrimental to public health.

Restrain shall mean to control an animal by means of a chain, rope, tether, leash, cable, or other device that attaches an animal to a stationary object or trolley system.

Sanitary conditions: Space free from health hazards including excessive animal waste, overcrowding or animals, or other conditions that endanger the animal's health.

Service Animal: Any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.

Severe weather event: Weather conditions in which (a) the actual or effective outdoor temperature is below 32 degrees Fahrenheit; (b) a heat advisory has been issued by a local or state authority or jurisdiction; or (c) a hurricane, tropical storm or tornado warning has been issued for Washington County by the National Weather Service.

Shelter: A Structure that is capable of adequately providing cover and protection from heat, cold, and other environmental conditions. At minimum, a shelter must have three (3) sides, a top, and a bottom and be adequately ventilated. It must have bedding material. It must be large enough so that the animal can enter, stand, turn around, and lie down but small enough to prevent the loss of body heat during cold weather.

Sterilized: Animal is rendered incapable of reproduction.

Structure: Any man-made object having a stationary location on or in land, whether or not affixed to the land, including, but not limited to: residential buildings, detached garages, temporary/out buildings, workshops, gazebos, pergolas, and swimming pools.

Trap-neuter-return: A nonlethal approach to feral cat population control where feral cats are humanely trapped, sterilized and vaccinated, ear-tipped, and then returned to the location where they were originally trapped or to another community cat colony.

Undeveloped property: Any land that is not improved or actually in the process of being improved with residential, commercial, industrial, church, park, school, or governmental facilities or other structures or improvements intended for human use [or] occupancy and the grounds maintained in association therewith. The term shall be deemed to include property developed exclusively as a street or highway or property used for commercial agricultural purposes.

Vaccination: Inoculation of an animal with a rabies vaccine that is licensed by the United States Department of Agriculture for use in that species and which is administered by a state-licensed veterinarian for the purpose of immunizing the animal against rabies.

Veterinary hospital: Any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis and treatment of diseases and injuries in animals.

Wild animals: Any animal not normally considered domesticated which, because of its size, vicious nature or other natural characteristics would constitute a dangerous threat to human life, property or domestic animals including but not limited to:

- (a) reptiles venomous reptiles, crocodile or alligator;
- (b) birds, eagles, owl or any species illegal to own under federal or state law;
- (c) mammals including ocelots, lions, tigers, jaguars, leopards, cougars, wolves, dingoes, coyotes, jackals, weasels, martins, minks, badgers, raccoons, pandas, bears, kangaroos, opossums, sloth, anteaters, armadillos, monkeys, chimpanzee, gorillas, orangutans, porcupines, antelope, deer, bison and camels.

Sec. 5-2. Interference.

It shall be unlawful for any person to interfere with, hinder, or molest the City's animal control authority in the performance of any duty delegated under this chapter, or seek to release any animal taken and held in custody under the provisions of this chapter. Additionally, it shall be unlawful to tamper with or release an animal from any trap or device set by the animal control authority or a police officer.

Sec. 5-3. Fees.

All fees required under this Chapter shall be set by the City Council. A schedule of fees shall be kept on file for public inspection in the City Secretary's office and the office of the animal control authority.

Sec. 5-4. Relation to land development and zoning.

The keeping of any animal in accordance with this Chapter shall not be construed to authorize the keeping of the animal in violation of any rules or restrictions set forth in the City's land development or zoning ordinances.

Sec. 5-5. Running at large prohibited.

A person commits an offense if he allows or permits an animal owned by him, other than a cat, to run at large. Animals, other than cats, running at large are subject to impoundment by the animal control authority. It shall be the duty of the city's animal control authority to apprehend any animal found running at large and make every attempt to return said animal to its owner. If the owner cannot be located, the animal shall be impounded at the city's animal shelter.

Sec. 5-6. Restraining of animals.

It shall be unlawful for any person to restrain, tie or tether any animal to a stationary object for a period of time or in a location so as to create an unhealthy situation for the animal, unreasonably limit the animal's movement or create a potentially dangerous situation for a pedestrian as determined by the animal control authority. The terms "unhealthy situation" and "potentially dangerous situation" shall include, but not be limited to the following:

1. To restrain any animal in such a manner as to permit the animal access upon any public right-of-way;
2. To restrain any animal in such a manner as to cause the animal injury or pain or not to permit the animal to reach shelter, food or water;
3. To restrain any animal in such a manner as to permit the animal to leave the owner's property;
4. To restrain any animal between the hours of 10:00 p.m. and 6:00 a.m. CST (Central Standard Time)
5. To restrain any animal within five hundred (500) feet of the premises of a school;
6. To restrain any animal in a manner whereby the animal is subject to harassment, stings or bites from outdoor insects, or attacks by other animals;
7. To restrain any animal with a rope, chain or leash that is shorter than the greater of ten (10) feet or five (5) times the length of the dog, as measured from the tip of the dog's nose to the base of the dog's tail;
8. To restrain any animal with a rope, chain or leash that is not equipped with swivel ends;
9. To restrain any animal in such a manner that does not prevent the animal from becoming entangled with any object, from partially or totally jumping any fence, or from leaving any part of its owner's property;
10. To fail to remove waste, on a daily bases, from the area in which an animal is restrained;
11. To restrain any animal without using a properly fitted collar or harness;
12. To use choke-type collars to restrain any animal;
13. To use a restraint that weighs more than one-fifth (1/5) of the animal's total body weight;
or
14. To allow an animal to remain restrained during a extreme weather conditions in which:
 - a. The actual or effective outdoor temperature is below 32 degrees Fahrenheit;
 - b. A heat advisory has been issued by a local or state authority or jurisdiction; or
 - c. A hurricane, tropical storm or tornado warning has been issued for the jurisdiction by the National Weather Service.

Sec. 5-7. Special exemptions for youth projects.

Animals which are part of a youth project, such as FFA, 4-H or the Washington County Fair, may be considered an exception to the provisions listed in this chapter, as approved by and under the direction of the animal control authority.

Sec. 5-8. Unabated nuisances.

- (a) A “continuing public nuisance” is defined as a public nuisance that, after notice as described in subsection (c) to the owner of an animal(s) or person in control of an animal(s), continues unabated as determined by the animal control authority.
- (b) The animal control authority may determine that a public nuisance exists through an investigation of any reported or perceived public nuisance, and may interview witnesses or conduct such hearings as he may determine are necessary, formally or informally. He shall make a determination based on the necessity to preserve the public health, safety and welfare of the community.
- (c) Upon such determination, the animal control authority shall notify the animal owner or the person in control of the animal(s). This notice shall be in writing and shall contain a statement that such person has a right to appeal. The notice shall set forth the noncompliance and order the owner to abate the public nuisance described in such notice within seven (7) days. Notice of a public nuisance shall include, but not be limited to, written notice of the existence of a public nuisance delivered by personal service, certified mail, return receipt requested, or left at the entrance to the premises where the animal(s) is harbored. A notice that is mailed is deemed received five (5) days after it is placed in a mail receptacle of the United States Postal Service.
- (d) If such owner fails or refuses to comply with the demand for compliance in the notice within seven (7) days of such notice or publication the animal control authority may order the abatement of the public nuisance by one of the following means:
 - (1) Impoundment of the animal(s) that is the source of the continuing public nuisance and the adoption of the animal(s) as provided in this chapter, except that the owner, his agents or representatives, or family members may not adopt the animal(s) adjudged a continuing public nuisance;
 - (2) Impoundment and humane destruction of the animal(s) that is the source of the continuing public nuisance; or
 - (3) Exclusion from the city limits of any animal(s) determined to be a continuing public nuisance.
- (e) An owner or person in control of the animal(s), not later than seven (7) days after the date such person is notified that an animal is a continuing public nuisance, may appeal the determination of the animal control authority to the city’s municipal court. Upon receiving an appeal, the municipal court shall hold a hearing. Based upon the record evidence of such hearing, the court shall make a final finding.
- (f) The owner or person in control of the animal(s) determined to be a continuing public nuisance shall remove such animal(s) from the city within forty-eight (48) hours of an unsuccessful appeal. The failure to remove such animal(s) shall be an offense and each day thereafter that such person fails to remove such animal(s) shall constitute a separate offense. If the owner or person in control of such animal(s) fails to remove such animal(s) as provided for by order of the municipal court, such animal(s) may, as outlined in this Chapter, be impounded, put up for adoption, or humanely destroyed.

- (g) The owner or person in control of such animal(s) must report the disposition and exact address or relocation of such animal(s) to the animal control authority in writing within ten (10) days after the expiration date for removal of such animal(s) from the city. Failure to report the disposition and address of such animal is an offense, and each day thereafter that such information is not provided shall constitute a separate offense.
- (h) The animal control authority shall be authorized, after due process, to obtain a search and seizure warrant for the purposes of enforcing this section.

Sec. 5-9. Animals in hot vehicle or trailer.

It shall be unlawful for a person to confine an animal in a parked or standing vehicle or enclosed trailer in such a way as to endanger the animal's health, safety or welfare due to heat, lack of food or water, or other such circumstances that may cause injury or death to the animal. It is presumed that an animal's health, safety or welfare is endangered when the animal is confined in a parked or standing vehicle or enclosed trailer for a period of five (5) minutes when the ambient outside air temperature measures at or above seventy (70) degrees Fahrenheit or below thirty-two (32) degrees Fahrenheit.

The city's animal control authority or any licensed peace officer, finding an animal being held in violation of this provision may cite the owner for violating this chapter, obtain a search warrant pursuant to state or federal law, or use reasonable force to remove an animal from a vehicle whenever it appears the animal's health or safety is, or soon will be, endangered. Said neglected or endangered animal shall be impounded. It shall be the responsibility of the animal's owner to repair any damage caused by the removal of the animal from the dangerous situation by the animal control authority or peace officer.

Sec. 5-10. Transporting animals in open bed trucks or trailers.

It shall be unlawful for a person to transport an animal on a public street or highway while the animal occupies the open bed of a truck, the open bed of a flatbed truck, or an open flatbed trailer unless the animal is: 1) secured in a kennel or other secured, vented enclosure; 2) restrained by a harness manufactured for the purpose of restraining animals; or 3) restrained using a chain, rope or other device cross-tied to prevent the animal from falling or jumping from the motor vehicle or from strangling on a single leash.

Sec. 5-11. Inhumane treatment of animals.

Animals shall be cared for, treated, maintained, and transported in a humane manner and not in violation of any provisions of law, including federal and state.

If the city's animal control authority has reason to believe that an animal has been, or is being cruelly treated, the animal control authority may apply to a justice court or magistrate in Washington County or to the City of Brenham Municipal Court for a warrant to seize the animal, pending a hearing before any justice of the peace or municipal court judge of the City of Brenham Municipal Court on the issue of cruelty and disposition of the animal.

A person commits an offense if with reckless intent:

1. A person, other than a licensed veterinarian, docks an animal's tail, removes the dew claws of a puppy, or crops an animal's ears;
2. A person physically removes from its mother by selling, giving away, delivering, trading, or bartering any dog, cat, ferret, rabbit less than six (6) weeks old or any other animal that is not yet weaned, except as advised by a licensed veterinarian;
3. A person dyes or colors chicks, ducks or rabbits;
4. A person sells, gives away, delivers, trades or barter, chickens, ducks or rabbits within two weeks prior to Christmas or Easter;
5. A person abandons or dumps any animal, or leaves an animal in a dwelling that has had no running water or electricity for a period of 24 hours or more;
6. A person overdrives, overloads, drives when overloaded, or overworks any animal;
7. A person tortures, cruelly beats, mutilates, clubs, shoots or attempts to shoot with any air rifle, bow and arrow, slingshot, or firearm, or by any other means needlessly kills or injures any animal, wild or owned, within the city limits;
8. A person forces, allows or permits any animal to remain in its own filth;
9. A person keeps, shelters or harbors any animal having a potentially life threatening infestation of ticks, fleas, or other parasites, any other obvious life threatening illness, or injury, or any other communicable illness transmissible to animal or human without having sought and obtained proper treatment from a licensed veterinarian for such infestation or illness;
10. A person causes an animal to fight another animal or person;
11. A person fails to provide at all times, their animal with adequate food and potable water, proper shelter and protection from inclement weather, and veterinary care when needed to prevent suffering;
12. A person raises and kills a doe or cat for the skin or fur;
13. A person mutilates any animal, whether such animal is dead or alive (medical or veterinary medical research, medical or veterinary medical necropsy, and biology class use of animals shall not be considered mutilation);
14. A person attaches a collar or harness to an animal that is of an inadequate size so that it restricts the animal's growth or causes damage to the animal's skin; or
15. A person engages or allows another to engage in any sexual act with an animal;

This section shall not be interpreted to restrict the extermination of rats, mice, insects, other vermin, or any such animal deemed a nuisance by state law, through the use of traps, poisons, or other commercially available means when used in accordance with the manufacturer's directions as long as reasonable precautions are taken to ensure that no human, pet, or wild animal, other than the targeted species comes into contact with the traps, poisons, or other means and that such use does not violate any other section of this chapter.

Sec. 5-12. Private animal sales.

It shall be a violation for any person to offer, sell, trade, barter, lease, rent, or give away any live animal, on any roadside, public right-of-way, or commercial parking lot. This provision does not prohibit the sale or purchase of animals from inside a person's private residence.

Sec. 5-13. Prohibited animals.

Prohibited animals in the city limits shall include any animal not normally born and raised in captivity, including but not limited to the following:

1. Class Reptilia: Family Helodermatidae (venomous lizards) and Family Hydophiidae (venomous marine snakes); Family Viperidae (rattlesnakes, pit vipers and true vipers); Family Elapidae (coral snakes, cobras, and mambas); Family Columbridae-Dispholidus Typus (boomslang); Bioga Dendrophilia (mangrove snake) and Kirklandii (twig snake only); and Order Crocodilia (such as crocodiles and alligators);
2. Class Mammalia: Order Carnivores.
 - a. Family Felidea (such as lions, tigers, bobcats, jaguars, leopards and cougars), except commonly domesticated cats;
 - b. Family Canidae (such as wolves, dingos, coyotes, foxes and jackals), and any hybrid of an animal listed in this section except commonly domesticated dogs;
 - c. Family Mustelida (such as weasels, skunks, martins, minks, badgers, ferrets, and otters);
 - d. Family Procyonidae (such as raccoons and coati);
 - e. Family Ursidae (such as bears);
 - f. Marsupialia (such as kangaroos, opossums, koala bears, wallabies, bandicoots, and wombats);
 - g. Chiroptera (bats);
 - h. Edentata (such as sloths, anteaters, and armadillo);
 - i. Proboscidea (elephant);
 - j. Primata (such as monkeys, chimpanzees, orangutans, baboons, and gorillas)
 - k. Rodentia (such as beavers and porcupines)
3. Class Amphibi: Poisonous frogs. Does not include non-poisonous reptiles or non-poisonous snakes.

Sec. 5-14. Animals Prohibited in City Facilities.

It shall be unlawful for any person to bring an animal, of any kind, into a city owned or operated facility other than the animal shelter. The only other exception to this section is an animal designated as a service animal in accordance with the Americans with Disabilities Act (ADA). If admitting a service animal would fundamentally alter the nature of the service or program at a city owned or operated facility then the service animal may be prohibited.

A service animal must be harnessed, leashed, or tethered while in a city owned or operated facility unless these devices interfere with the service animal's work or the handler's disability prevents use of these devices. In that case, the handler must use voice, signal, or other effective means to maintain control of the animal. A service animal that is not housebroken or that is out of control and whose handler does not take effective action to control it may be excluded from a city owned or operated facility and staff may request that the animal be removed from the premises.

Sec. 5-15. Penalty.

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

Sec. 5-15 – 5-19. RESERVED.

ARTICLE II. LIVESTOCK

Sec. 5-20. Number of head per acre.

It shall be unlawful for any person, firm or corporation to own, have, keep, maintain, feed, house, stable or permit or cause to be owned, kept, maintained, fed, housed or stabled any livestock, except sheep and/or goats, as provided herein upon any premise or property within the city, unless such premise allows for at least one (1) acre of land for grazing. The maximum heads of livestock, except for sheep and/or goats, to be kept upon any such premise inside the city shall not exceed one (1) head or one (1) animal per one and one-half (1½) acres of land.

It shall be unlawful for any person, firm or corporation to own, have, keep, maintain, feed, house, stable or permit or cause to be owned, kept, maintained, fed, housed or stabled any sheep or goat upon any premise or property within the city, unless such premise allows for at least one (1) acre for grazing. The number of sheep and/or goats to be kept upon any such premise inside the city shall not exceed two (2) sheep and/or goats per one and one-half (1½) acres of land.

Land which has been designated as agricultural use by the Washington County Appraisal District shall be exempt from the requirements of this section.

Sec. 5-21. Proximity to church, school or public building.

It shall be unlawful for any person, firm or corporation to own, have, keep, maintain, feed, house, stable or permit or cause to be owned, kept, maintained, fed, housed or stabled any livestock, including rabbits, within a distance of two hundred (200) feet from any church, school, or public building. The measurement of the distance between the livestock and any church, school, or public building shall be from the point of the livestock enclosure closest to the church, school, or public building to the property line of the church, school, or public building closest to the livestock enclosure.

Sec. 5-22. Cleanliness of enclosures.

It shall be unlawful for any person who may own or control any premises, lots, yards, stables, barn or pens where any livestock are kept, to maintain, keep or conduct such premises or cause or permit the same to be maintained or kept in such an unclean and unsanitary condition as to be a public nuisance. If upon inspection or examination by the animal control authority or the city's code enforcement officer any such premises are found to be in such an unclean and unsanitary condition as to be a public nuisance, written notice shall be given to the property owner, lessee or any other person in charge or control of such premises to cause such premise to be cleaned and placed in a sanitary condition and abate such nuisance within a three (3) business days from the date of said notice. A failure to do so shall be unlawful and in violation of this chapter.

Sec. 5-23. Impounding livestock at large.

It shall be the duty of the animal control authority and or any licensed peace officer to impound any livestock found to be running at large.

If any livestock are found upon private property, the owner or occupant of said private property shall have the right to confine such animal until the city's animal control authority can be notified and said animal is impounded as outlined in this chapter.

Sec. 5-24. Notice of sale of impounded livestock.

It shall be the duty of the animal control authority, upon the impoundment, care and control of any livestock, to post written notice, within seventy-two (72) hours, at three (3) public places in the city; one of which shall be City Hall. Notice shall describe said livestock and state that if it is not claimed within ten (10) business days it will become the property of the city and will be disposed of as provided for in this chapter.

Sec. 5-25. Reclaim of impounded livestock.

The owner of any impounded livestock may reclaim the livestock by showing proof of ownership and paying all fees associated with the impounding and boarding of the livestock.

Sec. 5-26. Sale or disposition of livestock if not reclaimed.

If the owner of the impounded livestock in the care and control of the city's animal control authority does not claim said livestock within ten (10) business days of posting notice, the livestock shall become the property of the city. The city's animal control authority may sell, place for adoption, donate or humanely destroy the livestock.

Sec. 5-27. Local restriction for rabbits.

It shall be unlawful for any person to keep, possess or maintain in the city more than four (4) rabbits. It shall also be unlawful for any pens, enclosure, hutches, cages or other structure in which any such rabbits are kept, possessed or maintained to be within fifty (50) feet of any neighboring structure. The residence of the owner or person possessing such rabbits is exempt from this section.

The owner or person possessing such rabbits shall:

- (a) Keep all pens, enclosures, hutches, cages and other structures where rabbits are kept in a clean and sanitary condition at all times.
- (b) Collect all litter and droppings daily and stored in a fly-tight container and hauled away at intervals not to exceed ten (10) days.

Sec. 5-28. Hogs prohibited.

It shall be unlawful for any person to have, keep, raise, breed, feed or maintain upon any premise situated within the city, any hog, pig or swine of any kind, including pot-bellied pigs.

An exception to this section shall be animal shelters, veterinary establishments, government agencies, exhibitions at county facilities, or other animal establishments located on property zoned for those purposes. However, such establishments must meet sanitation requirements and all hogs, pigs, or swine must be kept in secure cages or pens.

Sec. 5-29 – 5-34. RESERVED.

ARTICLE III. BIRDS AND FOWL

Sec. 5-35. Running at large.

It shall be the duty of the person owning or having within his management or control any chickens, turkeys, geese, ducks, or other domestic fowl to maintain upon his own property an enclosure that prohibits the same from going upon the public streets, highways, alleys or parkways of the city or upon the private property of others.

Sec. 5-36. Limitation of number to be kept.

It shall be unlawful for any person, firm or corporation to own, have, keep, maintain, feed, house, stable or permit or cause to be owned, kept, maintained, fed, housed, or stabled in the city more than ten (10) chickens, turkeys, geese, ducks, or any combination of such or other fowl. It shall be unlawful for any enclosures in which chickens, turkeys, geese, ducks or other fowl are kept, maintained, fed, housed, or stabled to be within fifty (50) feet of any neighboring structure. The residence of the keeper, possessor or owner of such fowl shall be exempt from this provision.

Sec. 5-37. Proximity to church, school or public building.

It shall be unlawful for any person, firm or corporation to own, have, keep, maintain, feed, house, stable or permit or cause to be owned, kept, maintained, fed, housed or stabled any chickens, turkeys, geese, ducks, or any combination of such or other fowl, within a distance of two hundred (200) feet from any church, school or public building.

Sec. 5-38. Maintenance of premises where kept.

The owner or keeper of such chickens, turkeys, geese, ducks, or any combination of such or other fowl shall:

- (a) Keep all pens, enclosures, hutches, cages, houses or any structure in which said fowl are kept in a clean and sanitary condition at all times.
- (b) Lime all pens, enclosures, hutches, cages, houses and other structures every two (2) days.
- (c) All litter and droppings must be collected daily and stored in a fly-tight container and hauled away at intervals not to exceed ten (10) days.

Sec. 5-39 – 5-45. RESERVED.

ARTICLE IV. KEEPING OF DOMESTIC BEES

Sec. 5-46. Certain conduct declared unlawful.

- (a) The purpose of this article is to establish certain requirements of sound beekeeping practices, which are intended to avoid problems that may otherwise be associated with the keeping of bees in populated areas.
- (b) In addition to the requirements set forth in this article, all beekeepers shall maintain their bee colonies in a manner that complies with the provisions of state law codified in the Texas Agriculture Code, Title 6, Subtitle A, Chapter 131 - Bees and Honey.
- (c) Notwithstanding compliance with the various requirements of this article, it shall be unlawful for any beekeeper to keep any colony or colonies in such a manner or of such disposition as to cause any unhealthy condition, interfere with the normal use and enjoyment of human or animal life of others, or interfere with the normal use and enjoyment of any public property or property of others.

Sec. 5-47. Hives.

All bee colonies shall be kept in Langstroth-type hives with removable frames, which shall be kept in sound and usable condition.

Sec. 5-48. Fencing of flyways.

In each instance in which any colony is situated within twenty-five (25) feet of a public or private property line of the tract upon which the apiary is situated, as measured from the nearest point on the hive to the property line, the beekeeper shall establish and maintain a flyway barrier at least six (6) feet in height, consisting of a solid wall, fence, dense vegetation, or combination thereof, that is parallel to the property line and extends ten (10) feet beyond the colony in each direction so that all bees are forced to fly at an elevation of at least six (6) feet above ground level over the property lines in vicinity of the apiary. It is a defense to prosecution under this section that the property adjoining the apiary tract in the vicinity of the apiary is undeveloped property for a distance of at least twenty-five (25) feet from the property line of the apiary tract.

Sec. 5-49. Water.

Each beekeeper shall ensure that a convenient source of water is available at all times to the bees so that the bees will not congregate at swimming pools, bibcocks, pet watering bowls, bird baths, or other water sources where they may cause human, bird or domestic pet contact.

Sec. 5-50. General maintenance.

Each beekeeper shall ensure that no bee comb or other materials that might encourage robbing are left upon the grounds of the apiary site. Upon their removal from the hive, all such materials shall promptly be disposed from the hive and all such materials shall promptly be disposed of in a sealed container or placed within a building or other bee-proof enclosure.

Sec. 5-51. Queens.

Each beekeeper must re-queen a colony at least once every two (2) years; however, a beekeeper must immediately re-queen a colony in any instance in which a colony exhibits unusually aggressive characteristics by stinging or attempting to sting without due provocation, or exhibits an unusual disposition towards swarming. Queens shall be clipped and marked so they are unable to swarm and can be easily located by a state beekeeping inspector upon inspection, and each beekeeper shall retain a record of the purchase of queen bees.

Sec. 5-52. Colony densities.

- (a) It shall be unlawful to keep more than the following number of colonies on any tract within the city, based upon the size or configuration of the tract on which the apiary is situated:
 - (1) One-quarter ($\frac{1}{4}$) acre or less tract size—Two (2) colonies;
 - (2) More than one-quarter ($\frac{1}{4}$) acre but less than one-half ($\frac{1}{2}$) acre tract size—Four (4) colonies;
 - (3) More than one-half ($\frac{1}{2}$) acre but less than one (1) acre tract size—Six (6) colonies;
 - (4) One (1) acre or larger tract size—Eight (8) colonies;
 - (5) Regardless of tract size, where all hives are situated at least two hundred (200) feet in any direction from all property lines of the tract on which the apiary is situated, there shall be no limit to the number of colonies;
 - (6) Regardless of tract size, so long as all property other than the tract upon which the hives are situated, that is within a radius of at least two hundred (200) feet from any hive remains undeveloped property there shall be no limit to the number of colonies.
- (b) For each two (2) colonies authorized under the colony densities set out above, there may be maintained upon the same tract one (1) nucleus colony in a hive structure not exceeding one (1) standard nine and five-eighths ($9 \frac{5}{8}$) inch-deep ten-frame hive body with no supers attached as required from time to time for management of swarms. Each such nucleus colony shall be disposed of or combined with an authorized colony within thirty (30) days after the date it is acquired.

Sec. 5-53. Marking hives; presumption of beekeeping.

- (a) In each apiary the name and telephone number of the beekeeper shall be branded, painted or otherwise clearly marked upon the structure of at least two (2) hives and placed at opposite ends of the apiary. Instead of marking the hives, the beekeeper may conspicuously post a sign setting forth the name and telephone number of the beekeeper.
- (b) Unless marked in accordance with subsection (a), it shall be presumed for purposes of this article that the beekeeper is the person or persons who own or otherwise have the present right of possession and control of the tract upon which a hive or hives are situated. The presumption may be rebutted by a written agreement authorizing another person to maintain the colony or colonies upon the tract, setting forth the name, address and telephone number of the other person who is acting as the beekeeper.

Sec. 5-54. Authorization and right of entry of state beekeeping inspector; violation of article.

- (a) For the purpose of enforcing the provisions of this article, the city health officer may at all reasonable times enter in and upon any premises within his jurisdiction. The director of public works is hereby authorized to designate a state beekeeping inspector to exercise the powers and duties of the city health officer to enforce the provisions of this article and to investigate the condition of the bees and/or hives and, if necessary, collect samples of bees to determine if the bees are diseased and/or Africanized. All expenses of the state beekeeping inspector's services will be charged to the owner of the property on which the hives are located and a copy of the inspection report will be retained by the city.
- (b) Any person or persons charged with any of the duties imposed by this article failing within the time designated by this article or within the time stated in the notice of the health officer, as the case may be, to perform such duties, or to carry out the necessary measures to the satisfaction of the health officer, shall be deemed guilty of a misdemeanor and upon conviction in the municipal court of the city shall be subject to a fine of not less than one dollar (\$1.00) and not to exceed one thousand dollars (\$1,000.00) for each offense, and each and every day a violation continues, it shall constitute a separate offense.

Sec. 5-55 – 5-59. RESERVED.

ARTICLE V. DOGS AND CATS

Sec. 5-60. Animal licensing.

It shall be unlawful for any person, firm or corporation to own, have, keep maintain, feed, house, stable or permit to be kept, maintained, fed, housed or stabled any dog or cat, over four (4) months of age, within the city limits unless such animal is licensed by the city's animal control authority.

The following shall apply to the licensing of dogs and cats within the city limits:

- a) All dogs and cats over four (4) months of age must be licensed;
- b) Licenses issued shall be of durable material and must be attached to the collar of the animal and must be worn at all times.
- c) All city animal licenses are valid for one (1) year and shall expire on the same date as the animals' rabies vaccination.
- d) City animal licenses are not transferrable.

The city shall offer two (2) licenses for dogs and cats:

- 1) **Unaltered Pet License:** If said animal has not been spayed or neutered, this license must be renewed annually. This license can be obtained: (1) from a state licensed veterinarian, doing business within the city, upon the animal being vaccinated for rabies; or (2) by providing proof of rabies vaccination to the City's animal shelter director. All fees associated with this license must be paid annually at time of renewal.
- 2) **Altered Pet License:** If said animal has been spayed or neutered, this license must be renewed annually. This license can be obtained: (1) from a state licensed veterinarian, doing business within the city, upon the animal being vaccinated for rabies; or (2) by providing proof of rabies vaccination to the City's animal shelter director. All fees associated with this license shall be paid upon the initial issuance of the license; renewals of this license will be free of charge.

Sec. 5-61. Exceptions

The following are exempt from the licensing provisions of this article:

- a) Licensed animal research facilities or shelters;
- b) An animal residing in the city for no longer than fourteen (14) days. New residents must apply for a license within thirty (30) days of establishing residency in the city;
- c) A feral cat;
- d) An animal being housed in the city temporarily following a severe weather event or man-made disaster occurring at the animal's permanent home. This exception is in effect for up to six (6) months, at which time the animal becomes a permanent resident of the city and is subject to the licensing provisions of this chapter; or
- e) Any registered service animal or animal kept, maintained, fed, housed or stabled by any state or federal law enforcement agency.

Sec. 5-62. Multi-Animal permit.

(1) Limits.

It shall be unlawful for any person to own, have, keep, maintain, feed, or house more than four (4) dogs and cats, or any combination thereof, over the age of four (4) months old.

It shall be unlawful for any person to own, have, keep, maintain, feed, or house more than fifteen (15) dogs and cats, or any combination thereof, under the age of four (4) months old.

(2) Permit.

In addition to meeting all other requirements of this chapter, a person who wants to own, have, keep, maintain, feed, or house more dogs and cats than is lawful under subsection (1) must apply for and be granted a multiple-animal permit from the city's animal control authority as set forth herein.

a. Multi-Animal Permit Application.

The application for a multiple-animal permit must be made on a form prescribed by the City and shall include, but not be limited to, the following information:

- i. The name, telephone number, and physical address of the applicant;
- ii. The total number of animals sought to be included under the permit and the species, breed, gender, and age of each animal;
- iii. The current City license number for each animal listed in the application;
- iv. A statement affirming that the applicant is familiar with the provisions of this chapter and a promise to maintain all animals in accordance with applicable legal requirements; and
- v. Any other information the City reasonably determines is necessary to issue a multi-animal permit.

b. Fee.

The City may require payment of a multi-animal fee when submitting an application under this section.

c. Consideration of multi-animal permit application.

A multi-animal permit shall be granted upon meeting the following criteria:

- i. Submittal of a complete and accurate application, including payment of any fees, and submittal of any required documentation;
- ii. Applicant has not been convicted of one (1) or more violations of this chapter or of any law relating to the care and humane treatment of animals nor has failed to appear in court in response to such a charge within the past twelve (12) months from date of application;
- iii. Applicant has not had a multi-animal permit under this section previously revoked within the past twelve (12) months from date of application; and
- iv. The address to which the multi-animal permit relates is not the same as one (1) for which a multi-animal permit has been revoked within the past twelve (12) months.

d. Revocation of a multi-animal permit.

A multi-animal permit may be revoked in the event one (1) or more of the following occur:

- i. The permit holder is convicted, receives deferred adjudication, or pleads guilty or no contest with respect to one (1) or more sections of this chapter or any law relating to the care and humane treatment of animals or fails to appear in court to respond to such a charge; or
- ii. The animal control authority determines that specific circumstances exist indicating that it is in the best interests of the animals or for the health and safety of the public to revoke the multi-animal permit.

e. Revocation process.

The process for revoking a multi-animal permit granted under this section is as follows:

- i. The animal control authority shall send written notice by certified mail to the current mailing address provided by the multi-animal permit holder in its application identifying the reason for revocation; and
- ii. The multi-animal permit holder shall have thirty (30) days to appeal such determination in writing to the municipal court judge. A hearing shall be held before the judge. If the judge determines that the multi-animal permit holder meets the criteria for revocation the judge shall order the revocation. The decision by the municipal court judge shall be in writing and shall be final.

Sec. 5-63. Guard dogs.

The following requirements shall apply to guard dogs located in the city:

(1) Posting sign.

It shall be unlawful for any person to leave a guard dog unattended in any place in or out of a building unless a clearly visible warning sign is placed advising others of the presence of a guard dog before entering the place to which the dog has access.

(2) Unattended guard dog.

No guard dog shall be left unattended in any place except inside a building or other structure that will not allow the dog to exit such building on its own volition.

(3) Required fencing.

No guard dog shall be let out of doors unless it is in a fenced yard with a fence adequate to prevent the dog from leaving the premises.

Sec. 5-64 – 5-69. RESERVED.

ARTICLE VI. RABIES ENFORCEMENT

Sec. 5-70. State regulations adopted.

The City hereby adopts by reference the Texas State Rabies Control Act, as amended, and the standards established by the appropriate state agency or rule-making board as minimum standards for rabies control and quarantine provisions within the City.

Sec. 5-71. Designation of local rabies control authority.

The Animal Services Supervisor is hereby designated as the local rabies control authority as authorized under Chapter 826 of the Texas Health and Safety Code.

Sec. 5-72. Vaccinations.

- (a) Every dog or cat over four (4) months of age must be vaccinated once every twelve (12) months against rabies by a state licensed veterinarian and wear evidence of said vaccination.
- (b) A person commits an offense if he intentionally or knowingly owns or possesses a dog or cat, older than four (4) months, that has not been vaccinated for rabies.
- (c) It shall be a defense to any prosecution under this section if the person accused of the offense presents a certificate of vaccination, issued by a state licensed veterinarian, with a date of not more than twelve (12) months prior to date of the offense.
- (e) It shall be an affirmative defense to any prosecution under this section if:
 - (1) The animal was less than four (4) months old on the date of the offense; or
 - (2) The animal is of a species not susceptible to rabies.

Sec. 5-73. Report of bite cases.

It shall be the duty of every person, physician or other practitioner to report to the local rabies control authority the names and addresses of any persons treated for bites or scratches inflicted by animals. Any other information that may help in locating the victim or the animal shall also be reported.

Sec. 5-74. Report of rabies.

It shall be the duty of every licensed veterinarian to report to the local rabies control authority his diagnosis of rabies or of any animal observed by him as a rabies suspect.

Sec. 5-75. Quarantine of animals.

Any animal believed or reported to be rabid, may have been exposed to rabies or has bitten, clawed or scratched a person shall be quarantined for two hundred forty (240) hours at a state licensed animal hospital or veterinarian office for medical evaluation and rabies testing. The owner of such animal shall immediately notify the city's animal control authority and fully cooperate with all required precautionary procedures.

A person commits an offense if the person fails or refuses to present for quarantine or testing, an animal that is suspected of rabies as defined in this article. A person may be issued a citation for non-compliance for violating this provision. The animal control authority shall be authorized to obtain a search and seizure warrant if there is reason to believe any requirements of this article are violated.

Sec. 5-76. Release or disposition of quarantined animals.

Any animal, after the required two hundred forty (240) hour quarantine period, deemed free of rabies by a state licensed veterinarian may be reclaimed by the owner upon payment of all applicable fees related to the period of the quarantine and the appropriate animal licensing requirements have been met. If the owner does not reclaim the animal within four (4) days of notification, the veterinarian or local rabies control authority may sell the animal and retain the proceeds.

When an animal under quarantine is diagnosed by a state licensed veterinarian as being rabid, the veterinarian or the local rabies control authority shall humanely destroy the animal, at the owner's expense.

If an animal dies while under quarantine, the animal control authority shall send the head of such animal to the nearest state health department laboratory for testing. Any costs associated with such testing shall be at the owner's expense.

Sec. 5-77 – 5-79. RESERVED.

ARTICLE VII. IMPOUNDMENT AND DISPOSITION

Sec. 5-80. Impoundment.

The City shall maintain an animal shelter to house impounded or surrendered animals. The City Manager, or his designee, shall be designated as the caretaker of every impounded or surrendered animal immediately upon their intake at the animal shelter. The designated caretaker is authorized to provide protective vaccinations, by a state licensed veterinarian or by a person under the veterinarian's supervision, and any other medical care needed to help prevent the spread of disease in the shelter.

Upon impounding an animal, the animal control authority shall make a reasonable effort to notify the owner and inform that person of the conditions whereby custody of the animal may be regained pursuant to this article.

If an impounded unlicensed animal is not claimed by the owners within three (3) business days after notification of impoundment by the animal control authority the animal shall be subject to disposal by adoption, transfer, or humane euthanasia. The City may deviate from this timeframe when dealing with a sick, injured, diseased, dangerous, and/or feral animal or when acting pursuant to a mutual agreement between the city's animal control authority and owner of the impounded animal.

Impounded licensed animals not claimed by the owners within five (5) business days from the date notification was provided, shall be subject to disposal by adoption, transfer, or humane euthanasia. The City may deviate from this timeframe when dealing with a sick, injured, diseased, dangerous, and/or feral animal and when acting pursuant to a mutual agreement between the city's animal control authority and said owner of impounded animal.

If an animal has been impounded and has an identification tag, a microchip or other identification the animal control authority shall notify the owner by posting written notice at the address of the registered location of the animal, by telephone, by email, by regular mail or by whatever reasonable method is determined appropriate by the animal control authority. Notice shall be deemed sufficient if it is given pursuant to the information provided to the city for said license or as indicated on the identifying tag or microchip.

If an impounded animal has no identification tag, microchip or other identification the animal control authority may dispose of the animal by adoption, transfer, or humane euthanasia after three (3) business days.

Community cats may be held longer, as space is available. Community cats that bite or scratch a person shall undergo rabies observation or testing and be euthanized. Community cats that are impounded for biting or scratching a person may not be released to a community cat caregiver, returned to their original location or relocated to another community cat colony.

If at any time during impoundment, the animal control authority determines an animal is in a state of disease, malnutrition, pain, suffering, or the like, the animal control authority may choose to euthanize such animal or have such animal assessed by a state licensed veterinarian. When having the animal assessed by a veterinarian, the animal control authority may make a determination as to the disposition of the animal after consideration of whether the owner of the animal can be located, the cost of medical treatment, whether the owner is willing or able to pay for such medical treatment, and whether euthanasia should be recommended to prevent further suffering by the animal.

Sec. 5-81. Redemption of impounded animals.

As outlined in this article, any impounded animal may be redeemed by the registered owner. Prior to redemption of any animal the owner shall pay all applicable fees as determined by the animal control authority and sign any citations which are to be issued. Payment of outstanding shelter fees are not considered to be in lieu of a fine, penalty, or city license fees.

No animal may be redeemed until such animal is properly licensed and vaccinated, pursuant to this chapter.

Sec. 5-82. Responsibility of animal's owner.

Disposal or redemption of an animal by any method specified herein does not relieve the animal's owner of liability for violations and/or any accrued charges.

Sec. 5-83. Disposition of animals.

The animal control authority may dispose of impounded animals after the expiration of any required impoundment and notification period by any of the following methods:

(1) Adoption:

- a. The animal control authority shall place for adoption dogs or cats impounded by the city under the following conditions:
 - (i) The animal control authority shall determine whether a dog or cat is healthy enough for adoption and if its health and age are adequate for the required rabies vaccination.
 - (ii) There will be an adoption fee for all dogs and cats at an amount set by the City Council. The fee shall include, but not be limited to, the cost of sterilization, rabies vaccination, microchip and city licensing.
 - (iii) All animals adopted from the city's animal shelter shall be vaccinated against rabies, and sterilized within thirty (30) days of adoption. If, in the opinion of a state licensed veterinarian, there is a legitimate health risk justifying the delay of the sterilization, the adopter shall immediately notify the animal control authority so that another sterilization date can be selected. An adopter commits an offense if he fails to have the animal sterilized. For the purposes of this section, a legitimate health risk cannot be based solely on the animal's age.
- b. If an adopted animal dies on or before the sterilization completion date, the adopter must notify the animal control authority that the animal is deceased.
- c. If an adopted animal is lost, stolen, or transferred to another owner before the sterilization date, the adopter must provide documentation to the animal control authority stating, that the animal is lost or stolen and a police report verifying the report of theft, or the identity of the new owner if transferred. The letter shall be delivered not later than seven (7) days after the date of the animal's disappearance and shall describe the circumstances surrounding the disappearance and the date of disappearance.
- d. The animal control authority may reclaim an adopted animal if confirmation of the sterilization is not received.

(2) The animal control authority may offer the animal to an animal welfare group provided that the group sterilizes and microchips the animal prior to placing it into an adoptive home; and

(3) The animal control authority may humanely euthanize the animal by methods approved by the American Veterinary Medical Association or the Texas Department of State Health Services.

(b) The choice of which of these options to use shall be made at the sole discretion of the animal control authority unless otherwise mandated by a court order.

- (c) Any impounded, licensed or unlicensed, animal which appears to be suffering from serious injury or disease and which is in immediate pain and suffering and probably will not recover or which appears to have an infectious disease which is a danger to humans or to other animals in the opinion of the animal control authority or which, due to its extremely violent nature, poses a substantial risk of bodily harm to the safety of the animal control authority, may be humanely euthanized at any time during its holding period by the animal control authority. In the event such an animal is wearing an identification tag on its collar or harness, the animal control authority shall attempt to notify the owner by telephone before taking any action.
- (d) It shall be an affirmative defense to prosecution of the owner if he or she can show that, at the time of its impoundment, the animal that was at large due to a major natural disaster, fire, criminal or negligent acts of a third party who was not residing at the animal owner's residence.

In such event, the owner shall be subject only to the provisions of this chapter that require a current rabies vaccination and city license. An owner's claim of a fire or the criminal or negligent acts of a third party must be proven in one or more of the following manners:

- (1) A certified copy of a city police or fire report verifying the incident: or
 - (2) The affidavit of city police or fire personnel with direct knowledge of the incident.
- (e) It shall be unlawful for a person to fail or refuse to deliver an unlicensed or unvaccinated animal to the city animal control authority or police officer upon demand for impounding.

Sec. 5-84 – 5-89. RESERVED.

ARTICLE VIII. DANGEROUS DOGS

Sec. 5-90. Nuisance declared.

- (a) It is hereby declared to be a public nuisance that an owner or other person harbors, keeps, or maintains a dangerous dog in the City unless the owner complies with the requirements of this article.
- (b) It is hereby declared to be a public nuisance that an owner or other person harbors, keeps, maintains in the City, or brings to the City, a dog that has been declared dangerous outside of the City under one or more of the following:
 - (1) Chapter 822 of the Texas Health and Safety Code;
 - (2) A local law or ordinance adopted in accordance with Chapter 822; or
 - (3) A statute or ordinance that is substantially similar to Chapter 822 and that was adopted by another political subdivision outside of the City.

Sec. 5-91. Dangerous dog.

A dangerous dog means a dog that:

- (1) makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than the enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own; or
- (2) commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person; or
- (3) commits an unprovoked attack on a person that causes serious bodily injury or death and occurs in an enclosure for which the dog was being kept and that was reasonably certain to prevent the animal from leaving the enclosure on its own unless the person who was attacked was trespassing or otherwise violating the law by being within the enclosure; or
- (4) is at large and commits an unprovoked attack on a domestic animal that causes the death of the attacked animal; or
- (5) is at large and commits an unprovoked attack on a domestic animal that causes serious bodily injury to the attacked animal and the dog has already committed at least one unprovoked attack on a previous occasion against a human being or domestic animal.

Sec. 5-92. Dangerous dog determination.

- (a) The Animal Services Supervisor (“supervisor”) or his or her designee may investigate all reports of incidents as described in the definition of a dangerous dog in Sec. 5-92. The supervisor may accept sworn statements from all victims and witnesses to the attack. If the supervisor determines that the dog is a dangerous dog, the supervisor shall notify the owner in writing of the determination.
- (b) Notwithstanding any other ordinance, an owner, not later than the 15th day after the date the owner is notified that a dog owned by the owner is a dangerous dog, may appeal the determination of the supervisor to municipal court.
- (c) To file an appeal under subsection (b), the owner must:
 - (1) File a notice of appeal of the supervisor's dangerous dog determination with the municipal court;
 - (2) Attach a copy of the determination from the supervisor; and
 - (3) Serve a copy of the notice of appeal on the supervisor by mailing the notice through the United States Postal Service.
- (d) An owner may appeal the decision of the municipal court under subsection (c) in the manner described by Texas Health & Safety Code § 822.0424.

Sec. 5-93. Requirements for owners of dangerous dog.

- (a) Not later than the 30th day after a person learns that the person is the owner of a dangerous dog, the person shall:

- (1) Register the dangerous dog with the animal control authority and pay an annual registration fee as determined by the City Council.
 - (2) Obtain and maintain liability insurance coverage or show financial responsibility in an amount of at least one hundred thousand dollars (\$100,000.00) to cover damages resulting from an attack by the dangerous dog causing bodily injury to a person and provide proof of the required liability insurance coverage or financial responsibility to the animal control authority.
 - (3) Implant and maintain a microchip on the dangerous dog.
 - (4) Restrain the dangerous dog on a leash and collar to ensure the overall safety of the general public.
 - (5) Be in physical control of the dangerous dog when restrained on a leash and the person in physical control of the leash must be at least eighteen (18) years of age.
 - (6) When the dangerous dog is not restrained, as outlined in this section, it shall be in a secure enclosure. The enclosure shall be posted with signs on all sides in four-inch letters warning of the presence of a dangerous dog and shall include a symbol of dangerous dogs understandable by young children.
 - (7) Surgically spay or neuter the dangerous dog and show proof of such to the animal control authority.
 - (8) Maintain current rabies vaccinations and proper licenses on the dangerous dog.
 - (9) Notify any boarding facility, caretaker, veterinary clinic or animal trainer that the dog is a dangerous dog prior to going to such location. Notify the owner of the property upon which the dangerous dog's enclosure is located that the dog is a dangerous dog if the owner of the dangerous dog is leasing the property.
- (b) If the supervisor determines that the owner of a dangerous dog has not complied with subsection (a) within the required time after learning that he or she is the owner of a dangerous dog, the supervisor shall provide written notice of such determination to the owner. Said owner shall, within 15 days of notice, deliver the dog to the animal control authority which shall refer the case to the municipal court for notice and hearing.
- (c) The animal control authority may request the owner of a dangerous dog to show proof of compliance with subsection (a) above. If proof is requested, after the expiration of three days, if the animal control authority determines that the owner of a dangerous dog has not sufficiently presented proof that he or she is in compliance with subsection (a) above, the supervisor shall provide written notice of such determination to the owner. Said owner shall, within 15 days of notice, deliver the dog to the animal control authority which shall refer the case to the municipal court for notice and hearing.
- (d) If, after notice and hearing as provided by Sec. 5-95, the court finds that the owner of a dangerous dog has failed to comply with the requirements of subsection (a) above, the court shall order the animal control authority to seize the dog and shall issue a warrant authorizing the seizure. The animal control authority shall seize the dog or order its seizure and shall provide for the impoundment of the dog in secure and humane conditions until the court orders the disposition of the dog.

Sec. 5-94. Compliance hearing.

- (a) The court, on appeal of the animal control authority's dangerous dog determination under Sec. 5-93(a) or application by any person, including the animal control authority, and upon finding that the owner of a dangerous dog has failed to comply with Sec. 5-94(a), shall set a time for a hearing. The hearing must be held not later than the tenth day after the date on which the dog is seized or delivered.
- (b) The court shall give written notice of the time and place of the hearing to:
 - (1) The owner of the dog or the person from whom the dog was seized; and
 - (2) The person who made the complaint.
- (c) Any interested party, including the county or city attorney, is entitled to present evidence at the hearing.
- (d) The court shall determine the estimated costs to house and care for the impounded dog during the appeal process and shall set the amount of bond for an appeal adequate to cover those estimated costs. An owner or person filing the action may appeal the decision of the municipal court in the manner described by Texas Health & Safety Code § 822.0424.
- (e) The court shall order the animal control authority to humanely destroy the dog if the owner has not complied with Sec. 5-94(a) before the 11th day after the date on which the dog is seized or delivered to the animal control authority, except that, notwithstanding any other law or local regulation, the court may not order the destruction of a dog during the pendency of an appeal under Texas Health & Safety Code § 822.0424. If, based on the recommendation of the animal control authority, the court determines, either after a hearing or without a hearing, that the owner has complied with Sec. 5-94(a) before the 11th day after the date on which the dog is seized or delivered to the animal control authority, the court shall order the animal control authority to return the dog to the owner.
- (f) An owner or person filing the action may appeal the decision of the municipal court in the manner described by Texas Health & Safety Code § 822.0424. During the appeal period, the dog shall remain in the custody, care and control of the animal control authority. If the appeal is ultimately unsuccessful, the owner of the dog shall be responsible for the dog's impoundment fees during the period the case was being appealed.
- (g) The owner shall pay all costs and or fees assessed by the City related to the seizure and impoundment of the dog, including, but not limited to, boarding fees, microchip procedure and rabies vaccination, and the cost of euthanasia of the dog if ordered by the court.

Sec. 5-95. Dangerous dog registration.

- (a) The owner of a dangerous dog shall notify the animal control authority within 24 hours if the dangerous dog is at large, unconfined, has attacked a human being or another animal, has died or has been sold or given away.

- (b) If an owner of a registered dangerous dog sells or moves the dog to a new address, that owner, not later than the 14th day after the date of the sale or move, shall notify the animal control authority for the area in which the new address is located. Upon selling or moving the registered dangerous dog, that owner must notify the new owner or person who has care and control of the dog that he or she is keeping or taking ownership of a dog that has been declared dangerous.
- (c) The owner of a registered dangerous dog shall notify the office in which the dangerous dog was registered of any attacks the dangerous dog makes on people or other animals.

Sec. 5-96. Defenses.

- (a) It is a defense to prosecution under this article that the person is a veterinarian, a peace officer, a person employed by a recognized animal shelter or person employed by the state or a political subdivision of the state to deal with stray animals and has temporary ownership, custody or control of the dog; provided, however, that for any person to claim a defense under this section, that person must be acting within the course and scope of his or her official duties with regard to the dangerous dog.
- (b) It is a defense to prosecution under this article that the person is an employee of the institutional division of the Texas Department of Criminal Justice or of a law enforcement agency and trains or uses dogs for law enforcement or corrections purposes; provided, however, that for any person to claim a defense under this section, that person must be acting within the course and scope of his or her official duties with regard to the dangerous dog.
- (c) It is a defense to prosecution under this article that the dog at issue is a trained guard dog in the performance of official duties while confined or under the control of its handler.

Sec. 5-97. Violations.

- (a) A person who owns or keeps custody or control of a dangerous dog commits an offense if the person fails to comply with any section of this article.
- (b) It shall be a separate violation of this article for any person to refuse or fail to surrender a dog subject to this article, or harbor, hide or secret, transport or secure the transport of a dog subject to this article, for the purpose of preventing its impoundment.
- (c) An offense under this section is punishable by a fine not to exceed \$2,000.

Sec. 5-98 – 5-99. RESERVED.

ARTICLE IX. COMMUNITY CAT COLONIES

Sec. 5-100. Establishment of Community Cat Colony.

- (a) A community cat colony may be established within the city limits of Brenham provided that the citizen wishing to establish the colony agrees to become the community cat colony caregiver and obtains a no cost permit each year from the animal control supervisor.

(b) Community cat colonies within the city limits of Brenham must meet the following requirements:

- (1) No community cat colony can be established on public or private property without first obtaining written permission from the property owner; and
- (2) No feral cats shall be brought into a community cat colony from outside the city limits of Brenham.

Sec. 5-101. Requirements for feral cats.

(a) The community cat colony caregiver is responsible for ensuring that every cat within the community cat colony participates in the City's trap, neuter, and return program and meets each of the following requirements:

- (1) Sterilization by a licensed veterinarian resulting in a tipped ear for recognition purposes; and
- (2) Vaccination by a licensed veterinarian against communicable diseases, particularly rabies, in accordance with best practice for feral cats.

Sec. 5-102. Record Keeping.

(a) The community cat colony caregiver must maintain accurate records of the community cat colonies trap, neuter, and return program. The records must include:

- (1) The location and size of each community cat colony;
- (2) The date and veterinary clinic location for each feral cat's spay/neuter; and
- (3) The date of rabies vaccination for each feral cat.

(b) The animal control authority may request copies of the records at any time. Failure to provide the records may result in revocation of the community cat colony caregiver's permit to operate a community cat colony.

Sec. 5-103. Enforcement.

(a) Any community cat impounded by animal control shall be identified by its left ear tip and released to the appropriate community cat colony unless one of the following exceptions is made:

- (1) The animal control authority has determined the community cat requires immediate veterinary care. If the community cat is to receive care and be released, the community cat colony caregiver is responsible for paying all accrued medical expenses prior to the community cat being released.
- (2) The community cat has bitten any human and the cat is required to be immediately quarantined for rabies observation. If the community cat is to be released, the community cat colony caregiver is responsible for paying all quarantine expenses prior to the community cat being released.

- (b) If a community cat colony is the source for a substantial number of nuisance complaints from multiple sources, the community cat colony must be relocated, or the cats claimed by owners and re-homed. A substantial number of nuisance complaints means three (3) or more complaints within the past twelve (12) months. Multiple sources mean that there are two (2) or more reporting parties that do not reside at the same address.
- (c) The City reserves the right to immediately seize and remove any and all community cats from a community cat colony if:
 - (1) A community cat colony violates a section contained in this Article;
 - (2) The community cat colony poses a risk to public health or safety due to a suspected exposure to the rabies virus or any other zoonotic or epizootic diseases;
 - (3) A community cat colony is declared a nuisance under subsection (b) of this section and the cats are not relocated or rehomed; or
 - (4) If the animal control supervisor, in his or her sole discretion, determines it is in the best interest of the City to remove the cats.

Sec. 5-104 – 5-109. RESERVED.

SECTION 4. **SAVINGS CLAUSE**

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

SECTION 5. **SEVERABILITY**

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

SECTION 6. **REPEALER**

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

SECTION 7.
EFFECTIVE DATE

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

SECTION 8.
PROPER NOTICE AND MEETINGS

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

PASSED and APPROVED on its first reading this the ____ day of January 2019.

PASSED and APPROVED on its second reading this the ____ day of January 2019.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary



AGENDA ITEM 10

DATE OF MEETING: February 7, 2019	DATE SUBMITTED: January 29, 2019
DEPT. OF ORIGIN: Police	SUBMITTED BY: Chief Allwin Barrow
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION
ORDINANCE: ☐ 1 ST READING ☐ 2 ND READING ☒ RESOLUTION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon Resolution No. R-19-007 Authorizing the City of Brenham's Participation in the U.S. Department of Justice and the U.S. Department of the Treasury Asset Forfeiture and Equitable Sharing Programs	
SUMMARY STATEMENT: In October of 2018, the Brenham Police Department conducted a joint task force operation with the assistance of the DEA and ATF. The outcome of this operation resulted in seizure money. In order for the Brenham Police Department to receive this money, we have to become a part of an Equitable Sharing Program with the Department of Justice.	
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: B. CONS:	
ALTERNATIVES (In Suggested Order of Staff Preference):	
ATTACHMENTS: (1) Resolution No. R-19-007; and (2) Asset Forfeiture and Equitable Sharing Overview	
FUNDING SOURCE (Where Applicable): Department of Justice	
RECOMMENDED ACTION: Approve Resolution No. R-19-007 authorizing the City of Brenham's participation in the U. S. Department of Justice and the U. S. Department of the Treasury Asset Forfeiture and Equitable Sharing Programs	
APPROVALS: James Fisher	

RESOLUTION NO. R-19-007

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS, AUTHORIZING THE CITY OF BRENHAM POLICE DEPARTMENT'S PARTICIPATION IN THE U.S. DEPARTMENT OF JUSTICE AND THE U.S. DEPARTMENT OF THE TREASURY ASSET FORFEITURE AND EQUITABLE SHARING PROGRAMS FOR THE PURPOSE OF RECEIVING FEDERAL AND STATE FORFEITURE PROCEEDS TO SUPPLEMENT AND ENHANCE THE BRENHAM POLICE DEPARTMENT'S RESOURCES; AUTHORIZING THE CITY MANAGER TO ACT ON BEHALF OF THE CITY ALL MATTERS RELATED TO THE BRENHAM POLICE DEPARTMENT'S PARTICIPATION IN AND FINANCIAL REPORTING REQUIREMENTS FOR THESE PROGRAMS

WHEREAS, the City Council of the City of Brenham, Texas ("City") desires to have the City of Brenham Police Department participate in the U.S. Department of Justice and the U.S. Department of the Treasury Asset Forfeiture and Equitable Sharing Programs (collectively herein referred to as "Program"); and

WHEREAS, the Program was designed to enhance cooperation amongst federal, state, local and tribal law enforcement by providing valuable additional resources to state and local law enforcement agencies; and

WHEREAS, when money from federal or state criminal activities and/or organizations are recovered by local law enforcement agencies, participants in the Program will be eligible to receive a portion of any monies seized; and

WHEREAS, the City of Brenham Police Department is qualified to participate in the Program;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS, AS FOLLOWS:

Section 1: That the City Council hereby designates the City Manager as the City's authorized representative for the Asset Forfeiture and Equitable Sharing Program, and further hereby authorizes and directs the City Manager to act on behalf of the City in all matters related to the Program referenced herein above.

Section 2: That the City hereby certifies that it is eligible to participate in this Program and that notice of the City's participation will be submitted to the United States Marshals Service (USMS) and to the Department of the Treasury as outlined in the Program requirements.

Section 3: That any shared funds will only be used to increase or directly supplement the resources of the Brenham Police Department's annual budget.

RESOLVED this the 7th day of February, 2019.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary

I. Asset Forfeiture and Equitable Sharing Overview

A. Asset Forfeiture Programs

The Department of Justice and the Department of the Treasury Asset Forfeiture Programs are, first and foremost, law enforcement programs. They remove the tools of crime from criminal organizations, deprive wrongdoers of the proceeds of their crimes, recover property that may be used to compensate victims, and deter crime. The Department of Justice and the Department of the Treasury emphasize these law enforcement purposes to their own law enforcement agencies and all federal, state, local, and tribal partner agencies.

B. Civil Rights Compliance

Agencies must comply with the applicable nondiscrimination requirements of the following laws and their implementing regulations: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), which prohibit discrimination on the basis of race, color, national origin, disability, or age in any federally assisted program or activity, or on the basis of sex in any federally assisted education program or activity. Agencies must take reasonable steps to provide meaningful access to their programs and activities for persons with limited English proficiency, consistent with Department of Justice and Department of the Treasury requirements. Agencies also must agree to comply with all federal statutes and regulations permitting federal investigators access to records and any other sources of information as may be necessary to determine compliance with civil rights and other applicable statutes and regulations.

C. Equitable Sharing Program

One of the ancillary benefits of asset forfeiture is the potential to share federal forfeiture proceeds with cooperating state and local law enforcement agencies through equitable sharing. The Department of Justice and the Department of the Treasury Equitable Sharing Programs (Program)¹ enhance cooperation amongst federal, state, local, and tribal law enforcement by providing valuable additional resources to state and local law enforcement agencies. However, the Program is designed to supplement and enhance, not supplant, appropriated agency resources.

Not all law enforcement efforts will result in equitable sharing. Specifically, compensating victims remains a top priority of the Asset Forfeiture Program. Pursuant to the Crime Victims' Rights Act, the Mandatory Victims Restitution Act, and Department of Justice and Department of the Treasury policies, victim compensation always takes priority over equitable sharing. Government agencies are at times victims entitled to compensation prior to equitable sharing.

The Department of Justice and the Department of the Treasury are two separate federal agencies with two separate forfeiture funds. However, this *Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies (Guide)* applies to both Programs. The Department of Justice and the Department of the Treasury may make further decisions and issue guidance independent of this *Guide* to ensure the integrity of the Program.

¹ Hereafter, the Department of Justice and the Department of the Treasury Equitable Sharing Programs will be collectively referred to as "Program" unless otherwise noted.



AGENDA ITEM 11

DATE OF MEETING: February 7, 2019	DATE SUBMITTED: February 1, 2019
DEPT. OF ORIGIN: Development Services	SUBMITTED BY: Stephanie Doland
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION
ORDINANCE: ☒ 1ST READING ☐ 2ND READING ☐ RESOLUTION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas by Amending Part 1, Sec. 5.02 Definitions, to Redefine Accessory Building or Use, Garage Apartment and Establish a New Definition for Accessory Dwelling Units (ADU); Part II, Division 1, Section 10 – Accessory Structures and Uses to Establish Standards Related to the Development of Such Uses; Part II, Division 1, Section 17 – Height and Area Exceptions of General Applicability; and Part II, Division 2 – Zoning District Regulations, to Allow Accessory Dwelling Units by Specific Use Permit in the Residential (R-1), Mixed Residential (R-2), and Manufactured Home Residential (R-3) Zoning Districts and By-Right in the Local Business/Residential Mixed Use (B-1) Zoning District (Case No. P-18-025)	
SUMMARY STATEMENT: This is a request initiated by Mary Thornhill to amend the zoning ordinance to allow accessory dwelling units (ADUs) uses within various residential zoning districts and to establish use specific standards for such uses. In August 2018 City Staff met with Ms. Thornhill of 311 East Main Street. Ms. Thornhill wishes to construct an ADU on her property and requested the City to consider an amendment to allow ADUs in Brenham. Ms. Thornhill submitted a proposed text amendment which included defining ADUs and allowing said use by-right in the R-1, Residential District. City staff researched the proposed text amendment and recommends a revised text amendment. The proposed amendment includes: • Revise the definition of Accessory Building or Use; • Adopt a definition of Accessory Dwelling Unit; • Revise the definition of Garage Apartment; • Delete the definition of Servants’ Quarters; • Revise use-specific standards for Accessory Structures and Uses; • Adopt use-specific standards for ADUs; • Allow ADUs by Specific Use Permit in R-1, R-2, and R-3; and, • Allow ADUs by-right in B-1.	

During the Public Hearing portion of the Planning and Zoning Commission, one person spoke in favor of the proposed text amendment, specifically in favor of the proposed use-specific standards. On Monday, January 28, 2019, after conducting a Public Hearing, the Planning and Zoning Commission voted unanimously to recommend approval of the proposed text amendment with the following conditions: • That all detached accessory structures in residential districts shall be located in the rear yard (which is to the rear of a lot line connecting the midpoints of the two (2) opposite side lot lines) and shall have a side and rear yard of not less than (5) feet; and • To remove height restrictions pertaining to Accessory Dwelling Units.
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): Staff recommends amending, Appendix A – Zoning of the Brenham Code of Ordinances to refine language related to Accessory Structures and Uses, adopt a definition for Accessory Dwelling Units and establish use specific standards for such uses. A. PROS: • Approving the proposed amendment will eliminate inconsistencies in the Zoning Ordinance pertaining to the definition, use, location, and regulation of garage apartments and accessory structures and uses. • Defining “Accessory Dwelling Unit” will make it possible to regulate the development of this type of housing through the proposed use-specific standards. • Approving the proposed amendment will allow Accessory Dwelling Units with prior approval of a Specific Use Permit in residential zoning districts and by-right in the B-1, Local Business Mixed District. • Allowing “Accessory Dwelling Units” with prior approval of a Specific Use Permit in residential zoning districts will allow the City to apply standards intended to encourage neighborhood compatibility and preserve established Brenham neighborhoods. B. CONS: • Approval of the proposed amendment may increase the number of Specific Use Permit cases considered by the Planning and Zoning Commission and City Council.
ALTERNATIVES (In Suggested Order of Staff Preference): 1. Approve the proposed amendment, as recommended by City Staff; 2. Approve the proposed amendment, as recommended by the Planning and Zoning Commission; 3. Deny the proposed text amendment.
ATTACHMENTS: (1) Ordinance for first reading
FUNDING SOURCE (Where Applicable): N/A
RECOMMENDED ACTION: Approve an Ordinance on its first reading amending Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas by Amending Part 1, Sec. 5.02 Definitions, to Redefine Accessory Building or Use, Garage Apartment and Establish a New Definition for Accessory Dwelling Units (ADU); Part II, Division 1, Section 10 – Accessory Structures and Uses to Establish Standards Related to the Development of Such Uses; Part II, Division 1, Section 17 – Height and Area Exceptions of General Applicability; and Part II, Division 2 – Zoning District Regulations, to Allow Accessory Dwelling Units by Specific Use Permit in the Residential (R-1), Mixed Residential (R-2), and Manufactured Home Residential (R-3) Zoning Districts and By-Right in the Local Business/Residential Mixed Use (B-1) Zoning District (Case No. P-18-025)
APPROVALS: James Fisher

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS, AMENDING APPENDIX A – “ZONING” OF THE CODE OF ORDINANCES BY AMENDING PART I, SECTION 5.02, DEFINITIONS TO REFINE ACCESSORY BUILDING OR USE, GARAGE APARTMENT AND TO ADD DEFINITIONS FOR “ACCESSORY DWELLING UNIT (ADU)”, AND TO AMEND PART 2, DIVISION 1, SECTION 10 – ACCESSORY STRUCTURES AND USES TO ESTABLISH STANDARDS RELATED TO THE DEVELOPMENT OF SUCH USES, AND TO AMEND PART 2 DIVISION 1, SECTION 17 – HEIGHT AND AREA EXCEPTIONS OF GENERAL APPLICABILITY, AND PART 2 DIVISION 2 – ZONING DISTRICT REGULATIONS, TO ALLOW ACCESSORY DWELLING UNITS BY SPECIFIC USE PERMIT IN THE R-1, R-2, AND R-3 ZONING DISTRICTS AND BY-RIGHT IN THE B-1 ZONING DISTRICT.

WHEREAS, the City of Brenham has requested that Appendix A – “Zoning” of the Code of Ordinances be amended; and

WHEREAS, the Planning & Zoning Commission and the City Council of the City of Brenham, Texas, have published notice and conducted public hearings regarding the request to amend Appendix A – “Zoning” of the Code of Ordinances; and

WHEREAS, all persons desiring to comment on the proposal were given a full and complete opportunity to be heard; and

WHEREAS, this amendment was recommended for approval by the City of Brenham Planning & Zoning Commission in its final report during its regular meeting January 28, 2019; and

WHEREAS, the City Council deems it appropriate to approve the requested amendments to Appendix A – “Zoning” of the Code of Ordinances; Now Therefore,

BE IT ORDAINED BY THE CITY OF BRENHAM, TEXAS THAT APPENDIX A – “ZONING” OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS BE AMENDED IN THE FOLLOWING MANNER:

SECTION 1

That Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas Part I, Section 5.02, Definitions, is hereby amended by removing all numbering and removing the existing definition for Servants’ quarters (116).

SECTION 2

That Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas Part I, Section 5.02, Definitions, is hereby amended by adding or revising the following:

Accessory Structure or Use: A subordinate structure located on the same lot as the main structure or a portion of the main structure, where the use of such structure is incidental and subordinate to the principal use.

Accessory Dwelling Unit (ADU): A room or suite of rooms or secondary dwelling unit within an accessory structure that is clearly incidental to a principal use, excluding two-family and multifamily dwellings and is permitted only in conjunction with the main structure. A guest house, mother-in-law quarters or garage apartment are examples of accessory dwelling units.

Garage, apartment: See “Accessory dwelling unit (ADU)”.

SECTION 3

That Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas Part II, Division 1, Section 10, Accessory Uses and Structures, is hereby amended to read as follows:

(Sec. 10.01) Authorization. Accessory structures and uses are permitted in any zoning district in connection with any principal use lawfully existing within such district, provided that all accessory structures or uses shall meet the development regulations for the zoning district in which the structure or use is located.

(Sec. 10.02) Accessory structures, location and regulation:

- (1) All detached accessory structures in any residential district shall be located in the rear yard (which is to the rear of a lot line connecting the midpoints of the two (2) opposite side lot lines) and shall have a side and rear yard of not less than five (5) feet.
- (2) No accessory structure or use shall exceed the height of the principal structure to which it is an accessory. Notwithstanding the provisions of this section an amateur radio tower designed in conformance with FCC regulations shall be permitted as an accessory use to a maximum height of sixty (60) feet.
- (3) All accessory structures or uses shall be subordinate to and supportive of the principal use and structure.
- (4) Additional standards pertaining to Accessory Dwelling Units (ADUs):
 - a) Should the primary use be a single-family dwelling, the property owner’s primary residence shall be the single-family dwelling or accessory dwelling unit.
 - b) An ADU must be designed and constructed keeping with the general architecture and building material of the principal structure.

- c) An attached ADU shall be subject to the regulations affecting the principal structure. A detached ADU shall have side yards of not less than the required side yard for the principal structure and rear yards of not less than ten feet.
- d) One on-site parking space shall be provided for each ADU in addition to the required parking for the principal structure.
- e) The maximum habitable area of an ADU is limited to either one-half (1/2) of the habitable area of the principal structure, or one thousand (1000) square feet, whichever is smaller.
- f) ADUs shall not be a HUD-code manufactured home or mobile home.

SECTION 4

That Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas Part II, Division 1, Section 17, Height and Area Exceptions of General Applicability, is hereby amended to read as follows:

(17.03) Side Yards:

- (1) On a reverse frontage interior or corner lot, the width of the yard along the side street shall not be less than any required front yard on the same side of such street between intersecting streets; provided, however, that the buildable width of a lot of record shall not be reduced to less than thirty (30) feet.
- (2) For the purpose of side yard regulations, a two-family dwelling or multifamily dwelling shall be considered as one building occupying one lot.
- (3) Where a lot of record at the time of the effective date of this ordinance is less than fifty (50) feet in width the required side yard may be reduced to provide a minimum buildable width of thirty (30) feet, provided, however, that no side yard shall be less than five (5) feet.
- (4) The area required in a yard shall be open to the sky, unobstructed except for the ordinary projections of window sills, belt courses, cornices or other ornamental features.
- (5) A roof overhang, an open fire escape or an outside stairway may project not more than three (3) feet into a required side yard, but no closer than three (3) feet to a property line.

(Sec.17.04) Reserved.

SECTION 5

That Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas Part II, Division 2, Section 1 – R-1, Residential District, is hereby amended by removing subsection 1.02(c).

SECTION 6

That Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas Part II, Division 2, Section 1 – R-1, Residential District, is hereby amended to read as follows:

(1.03) Specific Uses:

- (1) Accessory Dwelling Unit
- (2) Churches and related auxiliary uses, including educational or philanthropic uses.
- (3) Country clubs or golf courses, but not including miniature golf courses, driving ranges or similar forms of commercial amusement.
- (4) Private and accredited elementary and secondary schools.
- (5) Farms, nurseries or truck gardens, limited to the propagation and cultivation of plants, provided no retail or wholesale business is conducted on the premises, and provided further that no poultry or livestock other than normal household pets shall be housed within one hundred (100) feet of any property line.

SECTION 7

That Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas Part II, Division 2, Section 2 – R-2, Mixed Residential District, is hereby amended to read as follows:

(1.02) Permitted Uses:

- (1) Any permitted use in district "R-1."
- (2) Cluster housing in accordance with cluster housing development provisions of the subdivision ordinance of the City of Brenham.
- (3) Group residential uses as provided by state law, such as "family homes."
- (4) Multifamily dwellings, including dormitories for students and fraternity or sorority houses, on sites of less than two (2) acres.
- (5) Two-family dwellings or duplexes, but not including mobile homes or manufactured homes.
- (6) Single-family attached dwellings, (townhouses) in accordance with townhouse development provisions of the subdivision ordinance of the City of Brenham.
- (7) Zero lot line housing development, in accordance with zero lot line development provisions of the Subdivision Ordinance of the City of Brenham.
- (8) Accessory buildings and uses, customarily incidental to the above uses and located on the same lot therewith, but not involving the conduct of a retail business.

(Sec.2.03) Specific uses:

- (1) Accessory Dwelling Unit
- (2) Bed and breakfast house.
- (3) Churches and related auxiliary uses, including educational or philanthropic uses.
- (4) Country clubs or golf courses, but not including miniature golf courses, driving ranges or similar forms of commercial amusement.
- (5) Multifamily development, including dormitories for students and fraternity or sorority houses, that meets the standard density requirements for the R-2 District, and that is proposed for a development site of two (2) acres or more.
- (6) Private and accredited elementary and secondary schools.
- (7) Retirement villages with site areas of two (2) acres or more.

SECTION 8

That Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas Part II, Division 2, Section 2.1 – R-3, Manufactured Home Residential, is hereby amended to read as follows:

(2.1.03) Specific Uses:

- (1) Accessory Dwelling Unit
- (2) Bed and breakfast house.
- (3) Churches and related auxiliary uses including educational and philanthropic uses.
- (4) Country clubs or golf courses, but not including miniature golf courses, driving ranges or similar forms of commercial amusement.
- (5) Multifamily development, including dormitories for students and fraternity and sorority houses that meet the standard density requirement for the R-3 District and that is proposed for a development site of two (2) acres or more.
- (6) Private and accredited elementary and secondary schools.
- (7) Retirement villages with sites of two (2) acres or more.

SECTION 9

That Appendix A – “Zoning” of the Code of Ordinances of the City of Brenham, Texas Part II, Division 2, Section 3 – B-1, Local Business/Residential Mixed Use, is hereby amended to read as follows:

(Sec. 3.02) Permitted uses:

(Residential uses)

- (1) Accessory Dwelling Units
- (2) Any permitted use in R-2.
- (3) Bed and breakfast house.
- (4) Boarding and lodging houses.
- (5) Multifamily development, including dormitories for students and fraternity or sorority houses on a development site of two (2) acres or more.

SECTION 10

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

PASSED and **APPROVED** on its first reading this ____ day of February 2019.

PASSED and **APPROVED** on its second reading this ____ day of February 2019.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary



AGENDA ITEM 12

DATE OF MEETING: February 7, 2019	DATE SUBMITTED: February 1, 2019
DEPT. OF ORIGIN: Development Services	SUBMITTED BY: Stephanie Doland

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

AGENDA DESCRIPTION: Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending the Official Zoning Map of the City of Brenham, to Change the Zoning District of a 51.119 Acre Tract of Land, Described as R20290 (WCAD), John Long Survey, A156, in Brenham, Washington County, Texas from a Mixed Residential Use (R-2) District to a Commercial Research and Technology Use (B-2) District (Case No. P-19-005)

SUMMARY STATEMENT: Brenham Market Square, LP is the property owner of a primarily vacant 51.119-acre tract of land located west of the intersections of South Market Street, Cantey Street and US Highway 290 E. The applicant is requesting the property be rezoned from a combination of Mixed Residential Use District (R-2) and Commercial Research and Technology Use District (B-2) to Commercial Research and Technology Use District (B-2) for a mixed use development proposed to include multiple-family, office, and retail uses.

The proposed rezoning request is in accordance with land use policies adopted in Envision 2020, the City of Brenham Comprehensive Plan which recommends the City consider multiple-family uses near major arterials as well as commercial and retail uses along highly traveled roadways such as State Highway 290.

Six public comments were received prior to the Planning and Zoning Commission meeting. Six of them are opposed to the rezoning and one was neither for nor against. During the Public Hearing one person spoke in opposition of the proposed rezoning, stating she purchased her property with the understanding that the subject property was planned for development of a Church.

On Monday, November 26, 2018, after conducting a Public Hearing, the Planning and Zoning Commission voted unanimously to recommended approval of the rezoning request.

STAFF ANALYSIS (For Ordinances or Regular Agenda Items): On November 28, 2019, the Planning and Zoning Commission unanimously voted to recommend approving this rezoning request to Commercial Research and Technology Use District (B-2).

A. PROS: Allowing the proposed rezoning request would be in keeping with the development pattern in the general vicinity of the subject 51.119 acres.

B. CONS:

ALTERNATIVES (In Suggested Order of Staff Preference): 1. Approve the requested zoning change, as recommended by the Planning and Zoning Commission; 2. Deny the requested zoning change.
ATTACHMENTS: (1) Ordinance for first reading
FUNDING SOURCE (Where Applicable): N/A
RECOMMENDED ACTION: Approve an Ordinance on its first reading amending the Official Zoning Map of the City of Brenham, to Change the Zoning District of a 51.119 Acre Tract of Land, Described as R20290 (WCAD), John Long Survey, A156, in Brenham, Washington County, Texas from a Mixed Residential Use (R-2) District to a Commercial Research and Technology Use (B-2) District (Case No. P-19-005)
APPROVALS: James Fisher

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS, AMENDING APPENDIX A - "ZONING" OF THE CODE OF ORDINANCES, AND THE OFFICIAL ZONING MAP OF THE CITY OF BRENHAM, BY CHANGING THE ZONING DISTRICT CLASSIFICATION FROM A COMBINATION OF MIXED RESIDENTIAL USE DISTRICT (R-2) AND COMMERCIAL RESEARCH AND TECHNOLOGY USE DISTRICT (B-2) TO COMMERCIAL RESEARCH AND TECHNOLOGY USE DISTRICT (B2) ON 51.119 ACRES OF LAND BEING LOT 1, SECTION 4 OF THE T&L BUSINESS PARK AND PART OF THE JOHN LONG SURVEY, ABSTRACT 156, IN BRENHAM, WASHINGTON COUNTY, TEXAS.

WHEREAS, the owner(s) of approximately 51.119 acres of land generally located west of the intersections of South Market Street, Cantey Street and US 290 E, Being Lot 1, Section 4 of the T&L Business Park and part of the John Long Survey, Abstract 156 in Brenham, Washington County, Texas (the "property"), have requested that the Property be rezoned; and

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

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

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

WHEREAS, this amendment was recommended for approval by the City of Brenham Planning and Zoning Commission in its final report during its regular meeting on January 28, 2019; and

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

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

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

SECTION 1. That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas, and the Official Zoning Map of the City of Brenham is hereby amended by changing the zoning district classification from a Combination of Mixed Residential Use District (R-2) and Commercial Research and Technology Use District (B-2) to Commercial Research and Technology Use District (B-2) on 51.119 acres of land Being Lot 1, Section 4 of the T&L Business Park and Part of the John Long Survey, Abstract 156, in Brenham, Washington County, Texas, said area of land being more particularly described and depicted on Exhibit "A" attached hereto and incorporated herein for all purposes.

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

PASSED and APPROVED on its first reading the ____ day of February 2019.

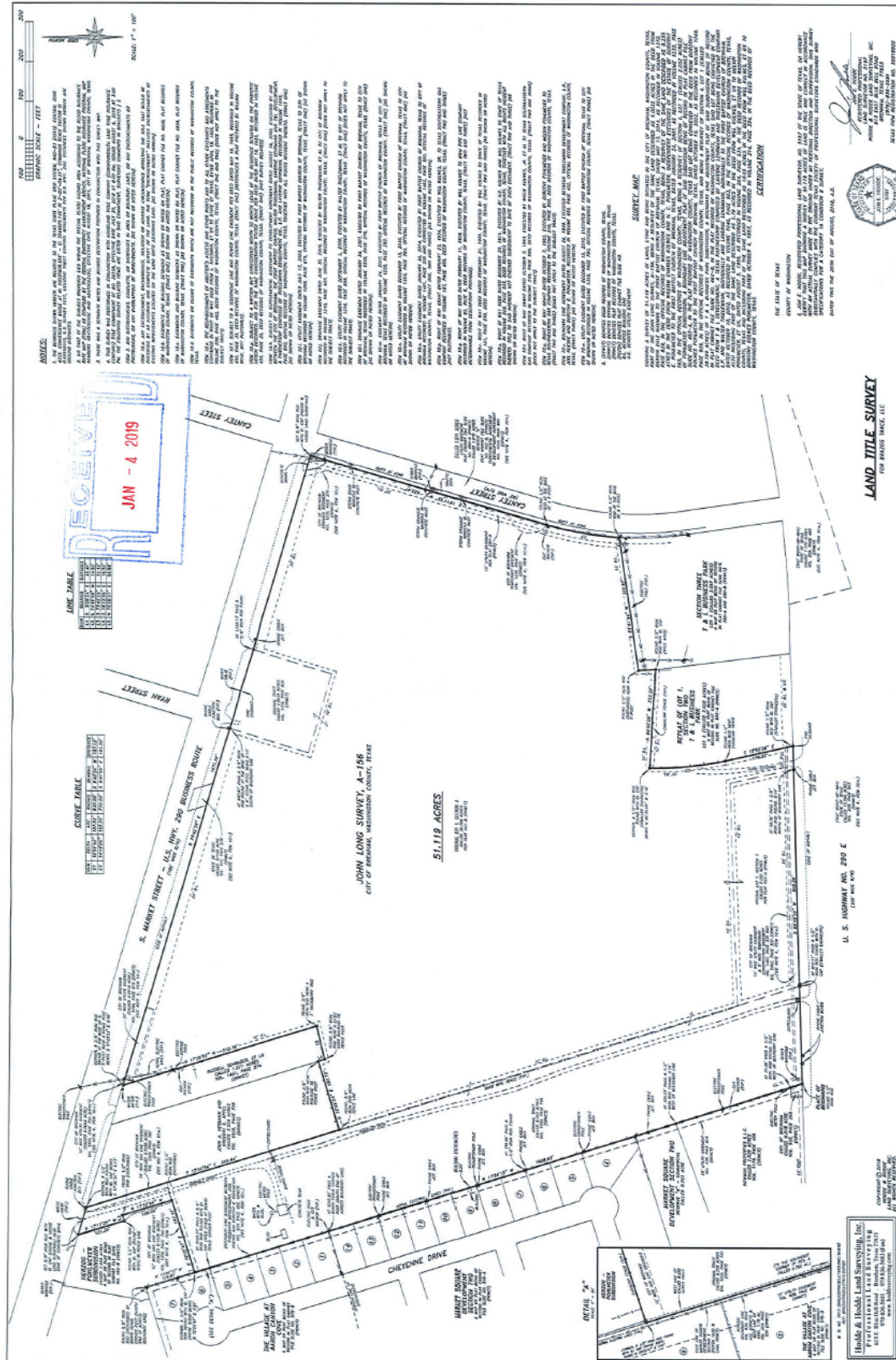
PASSED and APPROVED on its second reading the ____ day of February 2019.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary

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AGENDA ITEM 13

DATE OF MEETING: February 7, 2019		DATE SUBMITTED: January 31, 2019	
DEPT. OF ORIGIN: Dev.Services/Engineering		SUBMITTED BY: Lori Sanguedolce	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	
☒ REGULAR	☐ PUBLIC HEARING	☐ 1 ST READING	
☐ SPECIAL	☐ CONSENT	☐ 2 ND READING	
☐ EXECUTIVE SESSION	☒ REGULAR	☐ RESOLUTION	
	☐ WORK SESSION		
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon a Bid for City of Brenham Project No. 2017-02 Related to the 2017 Wastewater Treatment Plant Storm Damage Repairs and Authorize the Mayor to Execute Any Necessary Documentation			
SUMMARY STATEMENT: During the May 2016 flood event, DR-4272 the City of Brenham's Wastewater Treatment Plant experienced severe erosion along Hog Branch. The erosion undermined the security fence, outfall structure, chemical and water lines, and is encroaching on structures. This project was submitted to FEMA as part of the damage inventory and is considered an eligible project under the disaster declaration DR-4272. This project is funded at a 75/25 cost share. The notice to bidders for this project was published December 13, 2018 and December 20, 2018. The submittals were due on January 8, 2019 at 2:00 PM. Two contractors submitted bids ranging from \$1.38 million to \$1.45 million for the base bid. Based on discussions with the consultant and City staff the lowest qualified contractor for this project is Solid Bridge Construction, LLC. The base bid is \$1,380,120.00 and the alternate bid is \$107,790.00 for a total \$1,487,910.00.			
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):			
A. PROS:			
B. CONS:			
ALTERNATIVES (In Suggested Order of Staff Preference):			
ATTACHMENTS: (1) Notice to Bidders – WWTP Storm Damage Repairs; (2) Consultant's Recommendation Letter with Bid Tab – WWTP Storm Damage Repairs; and (3) WWTP Storm Damage Repairs Construction Agreement			

FUNDING SOURCE (Where Applicable): 75% FEMA Reimbursement. 25% City Match Wastewater Fund Reserves

RECOMMENDED ACTION: Award a bid for City of Brenham Project No. 2017-02 related to the 2017 Wastewater Treatment Plant Storm Damage Repairs, with Alternate Bid, to Solid Bridge Construction, LLC in the amount of \$1,487,910.00 and authorize the Mayor to execute any necessary documentation

APPROVALS: James Fisher

NOTICE TO BIDDERS

The City of Brenham, Texas shall accept sealed bids to provide all labor, materials, services, and equipment necessary for, or reasonably incidental to, construction of the Work shown in the Drawings and Project Manual for City of Brenham Project No. 2017-02 “2017 Wastewater Treatment Plant Storm Damage Repairs.”

Sealed bids shall be addressed to the Office of the City Secretary, City of Brenham, 200 West Vulcan Street, Suite 206, Brenham, Texas 77833, and shall be labeled City of Brenham Project No. 2017-02 “**2017 Wastewater Treatment Plant Storm Damage Repairs, DO NOT OPEN.**” Mailed bids, by USPS, must be addressed to P.O. Box 1059, Brenham, Texas 77834-1059. Bids shall be submitted no later than **2:00 p.m., Local Time on January 8, 2019.** Bids may be submitted in person, by mail, or delivery service. Responses will NOT be accepted by email or fax.

A pre-bid conference will be held on January 3, 2019, at 9:00 a.m. at the City of Brenham, City Hall, 200 West Vulcan Street, Brenham, Texas 77833, to familiarize the Bidders with the goals for this project. The pre-bid conference is not mandatory.

The Bid Documents, including DRAWINGS and SPECIFICATIONS may be obtained, at no charge at:

- Civcastusa.com (Account setup required)

Cashier’s Check, Certified Check, or Bid Bond in an amount equal to five percent (5%) of the total amount bid must accompany the BID. The Owner reserves the right to reject any or all bids or to accept any bid deemed advantageous to it and waive informalities in bidding. All bids received after the closing time designated will be returned unopened.

Upon consideration of the bids, the City of Brenham reserves the right to accept or to reject any and all bids, to waive technicalities and to make any investigation deemed necessary concerning the bidder's ability to provide the services as covered by the specifications, and to accept what in their judgment is the most advantageous bid.

1st Publication: December 13, 2018
2nd Publication: December 20, 2018



Strand Associates, Inc.®

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

January 15, 2019

Mrs. Lori Sanguedolce, City Engineer
City of Brenham
200 West Vulcan
Brenham, TX 77833

Re: 2017 Wastewater Treatment Plant Storm Damage Repairs
City of Brenham Project No. 2017-02
City of Brenham, Texas

Dear Lori,

Bids for the above-referenced project were opened on January 8, 2019. Two bids were received with the resulting bid tabulation enclosed. The low bid is \$1,380,120.00.

Solid Bridge Construction, LLC was the apparent low bidder at \$1,380,120.00. The bid included a bid bond for 5 percent and Addendum No. 1 was acknowledged.

Strand Associates, Inc.® has not had previous experience with Solid Bridge Construction, LLC. After receiving several reviews from engineers who previously work with Solid Bridge Construction, LLC, no issues were found. Based on the information received from outside sources, Strand offer no objection to awarding the contract to Solid Bridge Construction, LLC for this project.

We suggest that you consider evaluating Solid Bridge Construction, LLC's financial status prior to award and other information.

Sincerely,

STRAND ASSOCIATES, INC.®

Roddy Williams, P.E.

Enclosure



3900.067RJW:mds\BREN\Documents\Specifications\Active\Brenham, City of\3900.067.2-2018 JSR\16) Specification Letters(a) Resulting Bid Tabulation\011419.docx

TBPE No. F-8405
TBPLS No. 10030000

Bids Received: 02:00 PM
January 8, 2019

STRAND ASSOCIATES, INC.®
203 South Jackson Street
Brenham, TX 77833

2017 WASTEWATER TREATMENT PLANT STORM DAMAGE REPAIRS
CONTRACT 2-2018
CITY OF BRENHAM, TEXAS

BID TABULATION SUMMARY

Bidder and Address	Bid Bond or Guarantee	Addenda Acknowledged (Bid Form, Part B Section 2.0)	Total Base Bid	Total Alternate Bid
Solid Bridge Construction, LLC 1204 Sam Houston Avenue Huntsville, Texas 77340	5%	Yes	\$1,380,120.00	\$107,790.00
Legion Development, LLC 2522A Shell Road Georgetown, Texas 78628	5%	Yes	\$1,447,280.00	\$100,776.00

Reviewed by:

Ray Williams
Wally Duff



2018/1/5/13

Bids Received: 2:00, January 8, 2019

STRAND ASSOCIATES, INC.®
203 South Jackson Street
Brenham, TX 77833

2017 WASTEWATER TREATMENT PLANT STORM DAMAGE REPAIRS

CONTRACT 2-2018

CITY OF BRENHAM, TEXAS

BID TABULATION BREAKDOWN

No.	Description	Quantity	Unit	Solid Bridge Construction, LLC 1204 Sam Houston Avenue Huntsville, TX 77340		Legion Development, LLC 2522A Shell Road Georgetown, TX 78628	
				Unit Price	Total Price	Unit Price	Total Price
1.	Mobilization	1	LS	\$ 60,000.00	\$ 60,000.00	\$ 10,000.00	\$ 10,000.00
2.	Rock filter dam (type 4)	35	LF	\$ 80.00	\$ 2,800.00	\$ 100.00	\$ 3,500.00
3.	Storm drain inlet protection	200	LF	\$ 15.00	\$ 3,000.00	\$ 8.00	\$ 1,600.00
4.	Silt fence	700	LF	\$ 1.50	\$ 1,050.00	\$ 4.00	\$ 2,800.00
5.	Cofferdam	1	LS	\$ 20,000.00	\$ 20,000.00	\$ 4,500.00	\$ 4,500.00
6.	Dewatering pump system	1	LS	\$ 25,000.00	\$ 25,000.00	\$ 15,000.00	\$ 15,000.00
7.	Remove and dispose of existing 24-inch CMP	160	LF	\$ 25.00	\$ 4,000.00	\$ 11.00	\$ 1,760.00
8.	Remove and dispose of existing 24-inch RCP	30	LF	\$ 60.00	\$ 1,800.00	\$ 20.00	\$ 600.00

				Solid Bridge Construction, LLC 1204 Sam Houston Avenue Huntsville, TX 77340		Legion Development, LLC 2522A Shell Road Georgetown, TX 78628	
No.	Description	Quantity	Unit	Unit Price	Total Price	Unit Price	Total Price
9.	Remove chain link fencing	280	LF	\$ 4.00	\$ 1,120.00	\$ 12.50	\$ 3,500.00
10.	Channel cleaning (includes debris removal)	700	LF	\$ 134.00	\$ 93,800.00	\$ 10.00	\$ 7,000.00
11.	Embankment (eroded/undermined areas within site)	100	CY	\$ 18.00	\$ 1,800.00	\$ 50.00	\$ 5,000.00
12.	Embankment (sheet pile)	275	CY	\$ 30.00	\$ 8,250.00	\$ 65.00	\$ 17,875.00
13.	Excavation (channel)	50	CY	\$ 15.00	\$ 750.00	\$ 30.00	\$ 1,500.00
14.	Sheet piling wall with concrete cap	13,815	SF	\$ 78.00	\$ 1,077,570.00	\$ 93.00	\$ 1,284,795.00
15.	18-inch reinforced concrete pipe	21	LF	\$ 125.00	\$ 2,625.00	\$ 90.00	\$ 1,890.00
16.	24-inch reinforced concrete pipe	18	LF	\$ 150.00	\$ 2,700.00	\$ 100.00	\$ 1,800.00
17.	Type X inlets (throat)	3	EA	\$ 4,750.00	\$ 14,250.00	\$ 4,500.00	\$ 13,500.00
18.	Repair WWTP headwall outlet pipe erosion	1	EA	\$ 7,500.00	\$ 7,500.00	\$ 6,500.00	\$ 6,500.00
19.	Broadcast seeding	2,300	SY	\$ 1.20	\$ 2,760.00	\$ 0.90	\$ 2,070.00

				Solid Bridge Construction, LLC 1204 Sam Houston Avenue Huntsville, TX 77340		Legion Development, LLC 2522A Shell Road Georgetown, TX 78628	
No.	Description	Quantity	Unit	Unit Price	Total Price	Unit Price	Total Price
20.	Block sodding	500	SY	\$ 7.00	\$ 3,500.00	\$ 20.00	\$ 10,000.00
21.	Riprap (concrete)(5-inch)	5	CY	\$ 150.00	\$ 750.00	\$ 100.00	\$ 500.00
22.	Riprap (stone type R) (gouted) (18-inch)	250	CY	\$ 150.00	\$ 37,500.00	\$ 175.00	\$ 43,750.00
23.	Chain link fencing (6-foot barbed wire top)	245	LF	\$ 31.00	\$ 7,595.00	\$ 32.00	\$ 7,840.00
ENGINEER'S COMPUTED TOTAL ITEMS NO. 1 THROUGH 23					\$ 1,380,120.00		\$ 1,447,280.00
CONTRACTOR'S COMPUTED TOTAL ITEMS NO. 1 THROUGH 23					\$ 1,380,120.00		\$ 1,447,280.00

Reviewed by

Ragwell
Melby Goff



Added
11.15.18

				Solid Bridge Construction, LLC 1204 Sam Houston Avenue Huntsville, TX 77340	Legion Development, LLC 2522A Shell Road Georgetown, TX 78628
No.	Description	Quantity	Unit	Unit Price	Total Price
9.	Broadcasting seeding	1,200	CY	\$ 2.00	\$ 2,400.00
ENGINEER'S COMPUTED TOTAL ITEMS NO. 1 THROUGH 9				\$ 107,790.00	\$ 100,776.00
CONTRACTOR'S COMPUTED TOTAL ITEMS NO. 1 THROUGH 9				\$ 107,790.00	\$ 100,776.00

Reviewed by

Roddy J. Williams
Molly Doff



Reddy J. Williams
11/15/18

Document 00520

AGREEMENT

Project: 2017 Wastewater Treatment Plant Storm Damage Repairs

Project Location: _____

Project Bid No: 2017-02

E&P Project No: _____

The City: The City of Brenham, County of Washington, Texas (the "City")

and

Contractor: Solid Bridge Construction, LLC

(Address for Written Notice) 1204 Sam Houston Avenue, Huntsville, Texas 77340

Fax Number: _____

City Engineer is: Strand Associates, Inc.®

(Address for Written Notice) 1906 Niebuhr Street, Brenham, TX 77833

Fax Number: _____

THE CITY AND CONTRACTOR AGREE AS FOLLOWS:

ARTICLE 1

THE WORK OF THE CONTRACT

1.1 Contractor shall perform the Work in accordance with the Contract.

ARTICLE 2

CONTRACT TIME

2.1 Contractor shall achieve Date of Substantial Completion within 180 days after Date of Commencement of the Work, subject to adjustments of Contract Time as provided in the Contract. The Parties acknowledge and agree that the Contract Time is a reasonable time to achieve Substantial Completion of the Work.

2.2 The Parties recognize that time is of the essence for this Agreement and that the City will suffer financial loss if the Work is not completed within the Contract Time. Parties also recognize delays, expense, and difficulties involved in proving in a legal or arbitration proceeding actual loss suffered by the City if the

Work is not completed on time. Accordingly, instead of requiring any such proof, the Parties agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay the City the amount of Two Hundred Fifty and No/100 Dollars (\$250.00) for each and every calendar day beyond Contract Time. The Parties further agree that the above-described amount is a reasonable determination of the damages that the City will sustain per calendar day upon the failure of the Contractor to complete Work within the Contract Time, and this amount should in no way be construed as a penalty.

ARTICLE 3

CONTRACT PRICE

3.1 Subject to terms of the Contract, the City will pay Contractor in current funds for Contractor's performance of the Contract, Contract Price of \$1,487,910.00, which includes Alternates, if any, accepted below.

3.2 The City accepts Bids as follows:

Base Bid \$1,380,120.00
Alternate No. 1 \$107,790.00

ARTICLE 4

PAYMENTS

4.1 The City will make progress payments to Contractor as provided below and in the General Conditions.

4.2 The Period covered by each progress payment is one calendar month ending on the [] 10th, [] 20th, or [X] last day of the month.

4.3 The Schedule of Values established as provided in paragraph 2.07.A of the General Conditions will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed. The City will make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as provided below in paragraphs 4.3.1 and 4.3.2.

4.3.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or City may withhold, in accordance with paragraph 14.02 of the General Conditions:

- a. For contracts under \$400,000.00, 90% of Work completed (with the balance being retainage). For contracts over \$400,000.00, 95% of Work completed (with the balance being retainage.)
- b. For contracts under \$400,000.00, 90% (with the balance being retainage) and for contracts over \$400,000.00, 95% (with the balance being retainage) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to the City as provided in paragraph 14.02 of the General Conditions).

4.3.2 Upon Substantial Completion, the City shall pay an amount sufficient to increase total payments to Contractor to 95% of the Work completed, less such amounts as Engineer shall determine in accordance with paragraph 14.02.B.5 of the General Conditions and less 100% of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the Certificate of Substantial Completion.

4.4 Final payment, constituting entire unpaid balance of Contract Price, will be made by the City to Contractor as provided in the General Conditions.

ARTICLE 5

CONTRACTOR REPRESENTATIONS

5.1 Contractor represents:

5.1.1 Contractor has examined and carefully studied Contract documents and other related data identified in Bid Documents.

5.1.2 Contractor has visited the site and become familiar with and is satisfied as to general, local, and site conditions that may affect cost, progress, and performance of the Work.

5.1.3 Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress, and performance of the Work.

5.1.4 Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in Contract documents and (2) reports and drawings of a hazardous environmental condition, if any, at the site which has been identified in Contract documents.

5.1.5 Contractor has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including applying specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract to be employed by Contractor, and safety precautions and programs incident thereto

5.1.6 Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for performance of the Work at Contract Price, within Contract Time, and in accordance with the Contract.

5.1.7 Contractor is aware of general nature of work to be performed by the City and others at the site that relates to the Work as indicated in Contract documents.

5.1.8 Contractor has correlated information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract.

5.1.9 Contractor has given City Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract, and written resolution thereof by City Engineer is acceptable to Contractor.

5.1.10 Contract documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 6

MISCELLANEOUS PROVISIONS

6.1 The Contract may be terminated by either Party as provided in Conditions of the Contract.

6.2 The Work may be suspended by the City as provided in Conditions of the Contract.

ARTICLE 7

ENUMERATION OF CONTRACT DOCUMENTS

7.1 The following documents are incorporated into this Agreement:

7.1.1 Document 00700 - General Conditions

7.1.2 Document 00800 - Supplementary Conditions

7.1.3 General Requirements.

7.1.4 Divisions 02 through 16 of Specifications attached hereto or incorporated by reference in Document 00010 - Table of Contents.

7.1.5 Drawings listed in Document 00015 - List of Drawings and bound separately.

7.1.6 Addenda which apply to the Contract, are as follows:

Addendum No. 1, Yes

Addendum No. 2, N/A

Addendum No. 3, N/A

7.1.7 Other documents:

<u>Document No.</u>	<u>Title</u>
[X] 00410B	Bid Form – Part B
[X] 00500	Form of Business
[X] 00501	Resolution of Corporation (if a corporation)
[X] 00610	Performance Bond
[X] 00611	Statutory Payment Bond
[X] 00612	One-year Maintenance Bond

- ☒ [X] 00620 Affidavit of Insurance (with the Certificate of Insurance attached)
- ☒ [X] 00800 Exhibit A, Wage Rates
- ☐ [] 00821 Wage Rate for Building Construction
- ☐ [] 00830 Trench Safety Geotechnical Information

ARTICLE 8
SIGNATURES

8.1 This Agreement is executed in three originals and is effective on _____.

CONTRACTOR:

(If Joint Venture)

By: _____
Name: _____
Title: _____
Date: _____
Tax Identification Number: _____

By: _____
Name: _____
Title: _____
Date: _____
Tax Identification Number: _____

ATTEST/SEAL:

[SEAL]

Attest: _____

Date: _____

CITY OF BRENHAM, TEXAS:

By: _____
Mayor

ATTEST/SEAL:

Date: _____

[SEAL]

Attest: _____
City Secretary

Date: _____

END OF DOCUMENT



AGENDA ITEM 14

DATE OF MEETING: February 7, 2019	DATE SUBMITTED: February 1, 2019
DEPT. OF ORIGIN: Development Services	SUBMITTED BY: Lori Sanguedolce
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION
ORDINANCE: ☐ 1 ST READING ☐ 2 ND READING ☒ RESOLUTION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon Resolution No. R-19-008 Authorizing the Acceptance of Infrastructure Improvements in the Vintage Farms Phase I Subdivision	
SUMMARY STATEMENT: CTX Development Company has completed infrastructure improvements (water, sanitary, storm, and streets) related to the development of Phase I of Vintage Farms, a 137 lot residential phase of the subdivision at the corner of Dixie Road and State Highway 36 North. The infrastructure improvements have been constructed and inspected according to the City of Brenham ordinances and regulations and are ready for acceptance by the City of Brenham.	
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: B. CONS:	
ALTERNATIVES (In Suggested Order of Staff Preference):	
ATTACHMENTS: (1) Resolution No. R-19-008 of Acceptance of Public Infrastructure; (2) Acceptance of Streets and Storm Sewer Lines – Vintage Farms, Phase I; (3) Acceptance of Water and Wastewater Lines – Vintage Farms, Phase I; (4) Final Plat Vintage Farms, Phase I; and (5) Maintenance Bond	
FUNDING SOURCE (Where Applicable): N/A	
RECOMMENDED ACTION: Approve Resolution No. R-19-008 authorizing the acceptance of infrastructure improvements in the Vintage Farms Phase I Subdivision	
APPROVALS: James Fisher	

RESOLUTION NO. R-19-008

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS, AUTHORIZING THE ACCEPTANCE OF INFRASTRUCTURE IMPROVEMENTS IN THE VINTAGE FARMS PHASE I SUBDIVISION; AND AUTHORIZING THE MAYOR TO EXECUTE THE NECESSARY DOCUMENTATION.

WHEREAS, Vintage Farms, Phase I Subdivision is an approximately 86.664 acres, 137 lot and six reserve subdivision developed by CTX Development Company;

WHEREAS, water, sewer, street, drainage improvements, and public infrastructure improvements were constructed by the developer;

WHEREAS, these public infrastructure improvements have been inspected by the City and found to be constructed in accordance with the City's Standards and Specifications;

WHEREAS, the City of Brenham desires to formally accept the water, sewer, street, drainage improvements, and public infrastructure improvements within Vintage Farms, Phase I Subdivision.

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

The City of Brenham hereby accepts the water, sewer, street and drainage improvements in Vintage Farms Phase I Subdivision and authorizes the Mayor to execute any necessary documentation.

RESOLVED this 7th day of February, 2019.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary



**City of Brenham
Engineering Division**

200 W. Vulcan St.
Brenham, Texas 77833

P.O. Box 1059
Brenham, Texas 77834-1059

February 7, 2019

CTX Development Company
4090 State Highway 6 South
College Station, Texas 77845

ATTN: Doug French

RE: ACCEPTANCE OF STREETS AND STORM SEWER LINES
Vintage Farms, Phase I

Dear Mr. French:

Please be advised that the streets and storm sewer in Vintage Farms, Phase I have been accepted by the City of Brenham as shown below:

Streets

Associated Street	Traveling Direction	Beginning		Ending		Length (ft.)	Pavement Width (ft.)	Pavement SF	Dollar Value
		Lat.	Long.	Lat.	Long.				
Muscadine Trail	SW	N030.178072	W096.423924	N030.177406	W096.427756	1237	31	36,080	\$182,805.25
Cluster Hill	SE	N030.177988	W096.424541	N030.177271	W096.424357	267	31	12,236	\$61,193.47
Harvest Lane	SE	N030.177809	W096.425468	N030.176743	W096.425194	397	31	15,998	\$80,531.10
Rootstock Road	SE	N030.177632	W096.426379	N030.175707	W096.425885	717	31	25,285	\$128,281.89
Trellis Pass	SE	N030.177456	W096.42729	N030.17549	W096.4269	731	31	21,649	\$111,465.52
Vintage Farms Way	SE	N030.175444	W096.427047	N030.174573	W096.424746	795	31	24,250	\$183,824.00

Storm Sewers

Associated Street	Side of Street (N/S/E/W)	Beginning		Ending		Length (ft.)	Pipe Size (in.)	Dollar Value
		Lat.	Long.	Lat.	Long.			
Cluster Hill	S	N030.177303	W096.424279	N030.177065	W096.424002	123	18	\$4,243.50
Harvest Lane	S	N030.17681	W096.425087	N030.176583	W096.424837	114	18	\$3,933.00
(Private DE/PUE)	N/A	N030.176583	W096.424837	N030.176572	W096.424844	5	18	\$172.50
Rootstock Road	Across	N030.176098	W096.426045	N030.17612	W096.425931	37	18	\$2,397.60
Rootstock Road	E	N030.17612	W096.425931	N030.175742	W096.425802	143	24	\$11,011.00
Rootstock Road	S	N030.175742	W096.425802	N030.175498	W096.425526	125	24	\$4,612.50
(Private DE/PUE)	N/A	N030.175512	W096.425518	N030.175498	W096.425526	5	24	\$184.50
(Private DE/PUE)	N/A	N030.175498	W096.425526	N030.175125	W096.425763	155	36	\$8,788.50
Trellis Pass	Across	N030.175673	W096.426913	N030.175667	W096.426809	33	24	\$2,541.00
Trellis Pass	E	N030.175667	W096.426809	N030.175509	W096.426824	58	30	\$2,871.00
Vintage Farms Way	N	N030.17554	W096.426987	N030.175509	W096.426824	53	24	\$4,081.00
Vintage Farms Way	N	N030.175509	W096.426824	N030.175125	W096.425763	363	30	\$17,968.50
Vintage Farms Way	Across	N030.175125	W096.425763	N030.174842	W096.425939	117	42	\$14,320.80
Vintage Farms Way	Across	N030.174711	W096.424497	N030.174373	W096.424673	135	36	\$17,280.00
Wild Vine Circle	W	N030.174579	W096.425979	N030.174578	W096.425914	20	30	\$990.00
Wild Vine Circle	Across	N030.174578	W096.425899	N030.174594	W096.42556	107	48	\$13,674.60
Wild Vine Circle	Across	N030.174578	W096.425899	N030.174594	W096.42556	107	48	\$13,674.60

Date of Acceptance: February 7, 2019

One year warranty period begins on **January 1, 2019** and ends on **December 31, 2019** for the infrastructure listed above. [One year surface correction warranty period begins on that end date and extends the warranty for surface corrections to streets one additional year.

Sincerely,

Lori Sanguedolce, P.E., CFM
City Engineer / Director of Development Services

c: Tim Wolff, P.E., Bleyl Engineering
File

P.O. Box 1059 ★ 200 W. Vulcan Street ★ Brenham, Texas 77834 ★ 979-337-7200 ★ www.cityofbrenham.org

An Equal Opportunity Employer



**City of Brenham
Engineering Division**

200 W. Vulcan St.
Brenham, Texas 77833

P.O. Box 1059
Brenham, Texas 77834-1059

February 7, 2019

CTX Development Company
4090 State Highway 6 South
College Station, Texas 77845

ATTN: Doug French

RE: ACCEPTANCE OF WATER AND WASTEWATER LINES
Vintage Farms, Phase I

Dear Mr. French:

Please be advised that the water and wastewater lines in Vintage Farms, Phase I have been accepted by the City of Brenham as shown below:

Water Lines

Associated Street	Side of Street (N/S/E/W)	Beginning		Ending		Length (ft.)	Pipe Size (in.)	Dollar Value
		Lat.	Long.	Lat.	Long.			
Muscadine Trail	N	N030.178159	W096.423983	N030.177488	W096.427777	1226	8	\$33,224.60
Cluster Hill	E	N030.178127	W096.424478	N030.177552	W096.42433	215	4	\$5,160.00
Cluster Hill	E	N030.177552	W096.42433	N030.177498	W096.424234	36	4	\$864.00
Cluster Hill	E	N030.177498	W096.424234	N030.177362	W096.424199	51	4	\$1,224.00
Cluster Hill	S	N030.177362	W096.424199	N030.177261	W096.424272	43	4	\$1,032.00
Cluster Hill	S	N030.177261	W096.424272	N030.177233	W096.424421	48	4	\$1,152.00
Cluster Hill	S	N030.177233	W096.424421	N030.177245	W096.4245	26	4	\$624.00
Harvest Lane	E	N030.177948	W096.425405	N030.177817	W096.425371	49	8	\$1,327.90
Harvest Lane	E	N030.177817	W096.425371	N030.177024	W096.425167	296	6	\$7,326.00
Harvest Lane	E	N030.177024	W096.425167	N030.176971	W096.425071	36	6	\$891.00
Harvest Lane	E	N030.176971	W096.425071	N030.176835	W096.425036	51	6	\$1,262.25
Harvest Lane	S	N030.176835	W096.425036	N030.176734	W096.42511	43	6	\$1,064.25
Harvest Lane	S	N030.176734	W096.42511	N030.176705	W096.425258	48	6	\$1,188.00
Harvest Lane	S	N030.176705	W096.425258	N030.176779	W096.425391	50	6	\$1,237.50

Water Lines, Cont.

Associated Street	Side of Street (N/S/E/W)	Beginning		Ending		Length (ft.)	Pipe Size (in.)	Dollar Value
		Lat.	Long.	Lat.	Long.			
Harvest Lane	W	N030.176779	W096.425391	N030.17683	W096.425404	19	6	\$470.25
Rootstock Road	E	N030.177771	W096.426316	N030.176858	W096.426081	341	8	\$9,241.10
Rootstock Road	E	N030.176858	W096.426081	N030.175986	W096.425858	325	6	\$8,043.75
Rootstock Road	E	N030.175986	W096.425858	N030.175931	W096.425758	37	6	\$915.75
Rootstock Road	E	N030.175931	W096.425758	N030.175804	W096.425725	47	6	\$1,163.25
Rootstock Road	S	N030.175804	W096.425725	N030.175737	W096.425774	29	6	\$717.75
Rootstock Road	S	N030.175737	W096.425774	N030.175699	W096.425801	16	4	\$384.00
Rootstock Road	S	N030.175699	W096.425801	N030.175671	W096.42595	48	4	\$1,152.00
Rootstock Road	S	N030.175671	W096.42595	N030.175701	W096.426005	21	4	\$504.00
(Rootstock Road to 25' PUE)	N/A	N030.175737	W096.425774	N030.175502	W096.425505	120	6	\$2,970.00
(25' PUE)	N/A	N030.175502	W096.425505	N030.174923	W096.425874	241	8	\$6,531.10
Trellis Pass	E	N030.177595	W096.427227	N030.175275	W096.426878	864	8	\$23,414.40
Vintage Farms Way	S	N030.175279	W096.426892	N030.174868	W096.425745	392	12	\$15,499.68
Wild Vine Circle	W	N030.174868	W096.425745	N030.170491	W096.42628	1,613	12	\$63,778.02
Wild Vine Circle	W	N030.170491	W096.42628	N030.17049	W096.426303	7	12	\$276.78
Wild Vine Circle	Across	N030.1705	W096.426272	N030.170112	W096.425627	248	12	\$9,805.92
SH 36	W	N030.170112	W096.425627	N030.168775	W096.425542	487	12	\$19,255.98

Wastewater Lines

Associated Street	Side of Street (N/S/E/W)	Beginning		Ending		Length (ft.)	Pipe Size (in.)	Dollar Value
		Lat.	Long.	Lat.	Long.			
Muscadine Trail	S	N030.177992	W096.424291	N030.177924	W096.424639	113	6	\$3,022.75
Muscadine Trail	S	N030.17766	W096.426005	N030.177924	W096.424639	442	6	\$11,823.50
Muscadine Trail	S	N030.177566	W096.426491	N030.177395	W096.427373	286	6	\$7,650.50
Muscadine Trail	S	N030.177323	W096.427743	N030.177395	W096.427373	120	6	\$3,210.00
Cluster Hill	W	N030.177924	W096.424639	N030.177255	W096.424467	249	6	\$6,660.75

Wastewater Lines, Cont.

Associated Street	Side of Street (N/S/E/W)	Beginning		Ending		Length (ft.)	Pipe Size (in.)	Dollar Value
		Lat.	Long.	Lat.	Long.			
Harvest Lane	W	N030.177465	W096.425478	N030.177024	W096.425365	164	6	\$4,387.00
Harvest Lane	Across	N030.177024	W096.425365	N030.176578	W096.424876	224	6	\$5,992.00
Rootstock Road	W	N030.177264	W096.426383	N030.175934	W096.426042	496	6	\$13,268.00
Rootstock Road	Across	N030.175934	W096.426042	N030.175506	W096.425557	218	6	\$5,831.50
Trellis Pass	W	N030.177395	W096.427373	N030.176188	W096.427064	450	6	\$12,037.50
Trellis Pass	W	N030.176188	W096.427064	N030.175563	W096.426937	231	6	\$6,179.25
Vintage Farms Way	N	N030.175578	W096.427047	N030.175563	W096.426937	35	8	\$1,023.75
Vintage Farms Way	N	N030.175563	W096.426937	N030.175161	W096.425777	395	8	\$11,553.75
Vintage Farms Way	N	N030.175161	W096.425777	N030.175036	W096.425507	97	8	\$2,837.25
(Private DE/PUE)	N/A	N030.177255	W096.424467	N030.176578	W096.424876	278	8	\$8,131.50
(Private DE/PUE)	N/A	N030.176578	W096.424876	N030.175506	W096.425557	445	8	\$13,016.25
(Private DE/PUE)	N/A	N030.175506	W096.425557	N030.175161	W096.425777	144	8	\$4,212.00
Wild Vine Circle	E	N030.175036	W096.425507	N030.174365	W096.425746	255	8	\$7,458.75
Wild Vine Circle	E	N030.174297	W096.425747	N030.174365	W096.425746	25	8	\$731.25
Wild Vine Circle	E	N030.174332	W096.425747	N030.171632	W096.426016	986	4	\$26,622.00
Wild Vine Circle	E	N030.171632	W096.426016	N030.170398	W096.426046	449	8	\$13,133.25
Wild Vine Circle	E	N030.170398	W096.426046	N030.170118	W096.425581	179	8	\$5,235.75
SH 36	W	N030.170118	W096.425581	N030.168757	W096.425505	495	8	\$14,478.75
SH 36	W	N030.168757	W096.425505	N030.167933	W096.425533	300	8	\$8,775.00

Lift Station:

Associated Street: Wild Vine Circle

Side of Street: East

Description: Sized at 370 gpm, includes chain link fence, concrete driveway, wetwell, Flygt pumps, piping, fittings, electrical and SCADA equipment, \$218,960.

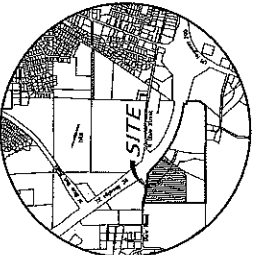
Date of Acceptance: February 7, 2019

One year warranty period begins on **January 1, 2019** and ends on **December 31, 2019** for the infrastructure listed above. [One year surface correction warranty period begins on that end date and extends the warranty for surface corrections to streets one additional year.

Sincerely,

Lori Sanguedolce, P.E., CFM
City Engineer / Director of Development Services

c: Tim Wolff, P.E., Bleyl Engineering
File



VICINITY MAP

PARCEL TABLE BLOCK 1		
LOT NO.	AC.	FRAC.
1	0.15	1/2
2	0.15	1/2
3	0.15	1/2
4	0.15	1/2
5	0.15	1/2
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100	0.15	1/2

PARCEL TABLE BLOCK 2		
LOT NO.	AC.	FRAC.
1	0.15	1/2
2	0.15	1/2
3	0.15	1/2
4	0.15	1/2
5	0.15	1/2
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PARCEL TABLE BLOCK 3		
LOT NO.	AC.	FRAC.
1	0.15	1/2
2	0.15	1/2
3	0.15	1/2
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100	0.15	1/2

FINAL PLAT

VINTAGE FARMS
SUBDIVISION
PHASE I

86.664 ACRES

PHILIP COE SURVEY, A-31

BRENNAN, WASHINGTON COUNTY, TEXAS

NOVEMBER, 2017

SCALE: 1" = 40'

DATE: 11/15/2017

BY: [Signature]

FOR: [Signature]

PREPARED BY: [Signature]

REVIEWED BY: [Signature]

APPROVED BY: [Signature]

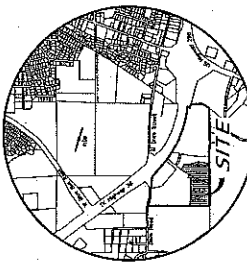
RECORDED BY: [Signature]

FILE NO. 118

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118

118



VICINITY MAP

FINAL PLAT

VINTAGE FARMS SUBDIVISION PHASE I

86.664 ACRES
PHILLIP COE SURVEY, A-31
BRENHAM, WASHINGTON COUNTY, TEXAS
NOVEMBER, 2017

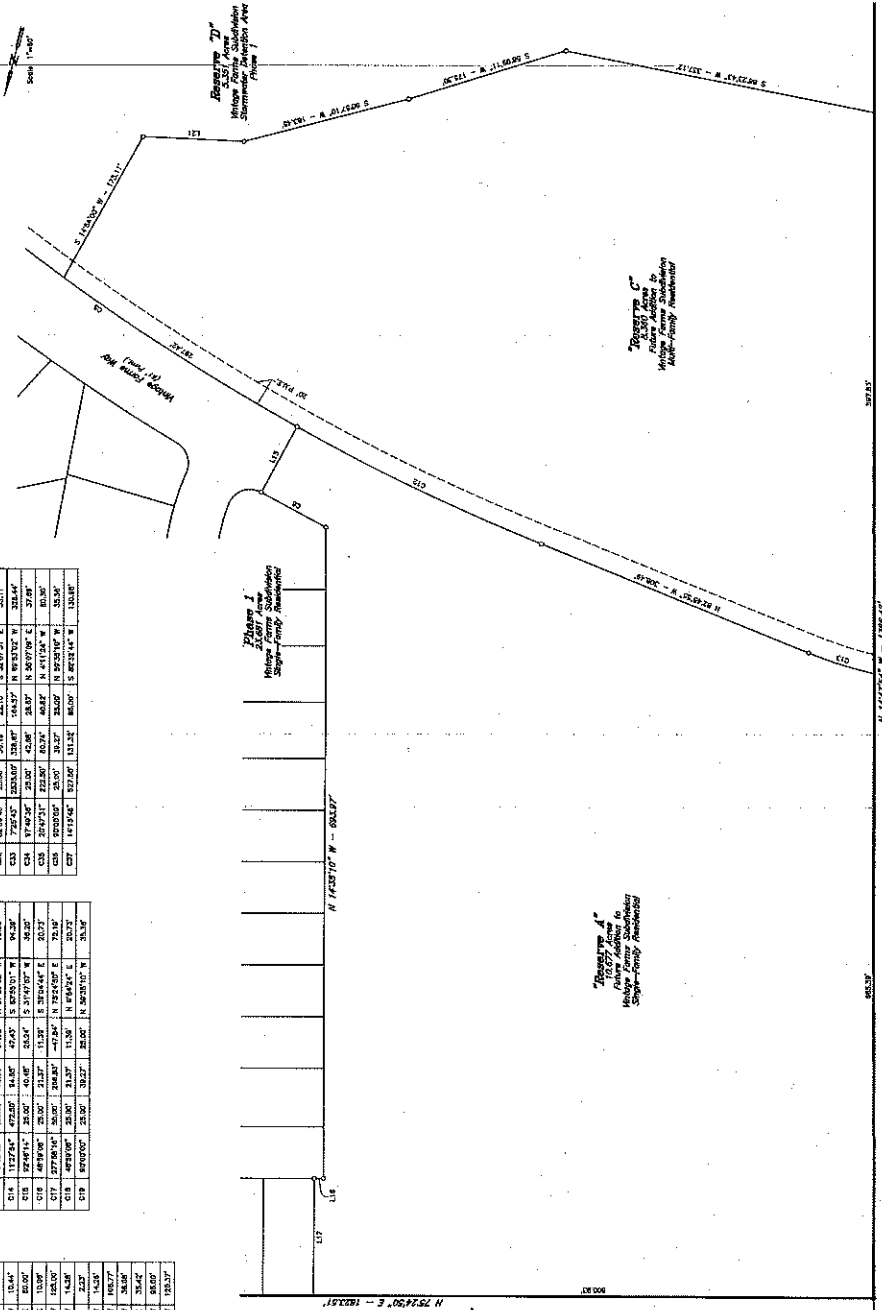
Surveyed by: Phillip Coe, Surveyor
Recorded by: Phillip Coe, Surveyor
Date of Survey: November 1, 2017
Date of Recording: November 1, 2017
Book: 10, Page: 10
Page: 10 of 10

3

CURVE	DELTA	RADIUS	LENGTH	CHORD BEG.	CHORD END
C01	80.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C02	48.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C03	27.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C04	16.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C05	05.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C06	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C07	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C08	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C09	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C10	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C11	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C12	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C13	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C14	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C15	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C16	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C17	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C18	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C19	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W

CURVE	DELTA	RADIUS	LENGTH	CHORD BEG.	CHORD END
C01	80.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C02	48.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C03	27.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C04	16.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C05	05.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C06	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C07	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C08	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C09	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C10	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C11	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C12	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C13	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C14	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C15	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C16	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C17	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C18	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W
C19	00.0000°	35.00'	21.37'	S 82°45'00" W	S 82°45'00" W

LINE	BEARING	DISTANCE
L1	S 82°45'00" W	21.37'
L2	S 82°45'00" W	21.37'
L3	S 82°45'00" W	21.37'
L4	S 82°45'00" W	21.37'
L5	S 82°45'00" W	21.37'
L6	S 82°45'00" W	21.37'
L7	S 82°45'00" W	21.37'
L8	S 82°45'00" W	21.37'
L9	S 82°45'00" W	21.37'
L10	S 82°45'00" W	21.37'
L11	S 82°45'00" W	21.37'
L12	S 82°45'00" W	21.37'
L13	S 82°45'00" W	21.37'
L14	S 82°45'00" W	21.37'
L15	S 82°45'00" W	21.37'
L16	S 82°45'00" W	21.37'
L17	S 82°45'00" W	21.37'
L18	S 82°45'00" W	21.37'
L19	S 82°45'00" W	21.37'
L20	S 82°45'00" W	21.37'
L21	S 82°45'00" W	21.37'
L22	S 82°45'00" W	21.37'
L23	S 82°45'00" W	21.37'
L24	S 82°45'00" W	21.37'
L25	S 82°45'00" W	21.37'





Witness my hand and of _____ BRADLEY County, Texas on this the 29
day of October 2018

Witness my hand and at _____ day of _____ 20__

5.18

Dr. P.D.E.

Stations
Substation
Riverside

L. Gregory Hopella, Registered Professional Land Surveyor No. 8047, in the State of Texas, hereby certifies that this plat is true and correct and was prepared from an actual survey of the property and that properly marked



ESMT LINE TABLE		
LINE	BEARING	DISTANCE
L25	N 3°36'11" W	540.14'
L26	N 87°19'33" W	142.88'
L27	N 57°16'33" W	60.90'
L28	N 57°11'33" W	235.11'
L29	N 53°51'11" W	142.37'

Figure 1. Schematic diagram of the experimental setup. The subjects were seated in a dimly lit room and viewed the screen through a mirror. The screen displayed the target and the starting position of the hand. The hand was moved from the starting position to the target position. The distance between the starting position and the target position was 10 cm. The hand was moved at a constant velocity. The time taken for the hand to reach the target position was recorded. The experiment was controlled using a personal computer.





MAINTENANCE BOND

Bond Number: US00088176SU19A

- ☒ **XL Specialty Insurance Company**
☐ **XL Reinsurance America Inc.**

XL Specialty Insurance Company	
505 Eagleview Blvd Exton, PA 19341	535 Springfield Ave, Ste 130 Summit, NJ 07901

KNOW ALL MEN BY THESE PRESENTS: That we CTX Development Company (hereinafter called the Principal), and XL Specialty Insurance Company, a corporation duly organized and existing under the laws of the State of Delaware, (hereinafter called the Surety), are held and firmly bound unto City of Brenham, TX (hereinafter called the Obligee) in the sum of Three Million Three Hundred Twenty Two Thousand Four Hundred Nineteen and 91/100 Dollars (\$ 3,322,419.91) for the project described as Vintage Farms Subdivision Phase 1, lawful money of the United States of America, for the payment of which, well and truly be made, we, the said Principal and the said Surety, bind ourselves, our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

Whereas, the Principal has entered into a certain contract with the Obligee dated April 25, 2017 which contract has been or is about to be completed and accepted.

And Whereas, specifications and contract provided that CTX Development Company should guarantee the project free from defects caused by faulty workmanship and materials for a period of One years, general wear and tear excepted.

Now, Therefore, If the said project shall be free from defects of workmanship and materials, general wear and tear excepted, for a period of 1 (One) year(s), with effective dates from the date of completion and acceptance of the work performed under the contract (effective date of January 16, 2019 to expiration date January 15, 2020), then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed, sealed and delivered this 16th day of January, 2019.



(Witness)

CTX Development Company
(Principal) _____ (Seal)
By  Doug French



(Witness)

XL Specialty Insurance Company
(Surety) _____ (Seal)
By  Kelly A. Gardner, Attorney-in-Fact



Power of Attorney
XL Specialty Insurance Company
XL Reinsurance America Inc.

THIS IS NOT A BOND NUMBER
LIMITED POWER OF ATTORNEY

XL-1600278

KNOW ALL MEN BY THESE PRESENTS: That XL Specialty Insurance Company, a Delaware insurance company with offices located at 505 Eagleview Blvd., Exton, PA 19341, and XL Reinsurance America Inc., a New York insurance company with offices located at 70 Seaview Avenue, Stamford, CT 06902, do hereby nominate, constitute, and appoint:

James I. Moore, Stephen T. Kazmer, Melissa Schmidt, Dawn L. Morgan, Kelly A. Gardner

each its true and lawful Attorney(s)-in-fact to make, execute, attest, seal and deliver for and on its behalf, as surety, and as its act and deed, where required, any and all bonds and undertakings in the nature thereof, for the penal sum of no one of which is in any event to exceed \$100,000,000.00.

Such bonds and undertakings, when duly executed by the aforesaid Attorney (s) - In - Fact shall be binding upon each said Company as fully and to the same extent as if such bonds and undertakings were signed by the President and Secretary of the Company and sealed with its corporate seal.

The Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Board of Directors of each of the Companies on the 26th day of July 2017.

RESOLVED, that Gary Kaplan, Daniel Riordan, Maria Duhart, Gregory Boal and Kevin Mirsch are hereby appointed by the Board as authorized to make, execute, seal and deliver for and on behalf of the Company, any and all bonds, undertakings, contracts or obligations in surety or co-surety with others and that the Secretary or any Assistant Secretary of the Company be and that each of them hereby is authorized to attest the execution of any such bonds, undertakings, contracts or obligations in surety or co-surety and attach thereto the corporate seal of the Company.

RESOLVED, FURTHER, that Gary Kaplan, Daniel Riordan, Maria Duhart, Gregory Boal and Kevin Mirsch each is hereby authorized to execute powers of attorney qualifying the attorney named in the given power of attorney to execute, on behalf of the Company, bonds and undertakings in surety or co-surety with others, and that the Secretary or any Assistant Secretary of the Company be, and that each of them is hereby authorized to attest the execution of any such power of attorney, and to attach thereto the corporate seal of the Company.

RESOLVED, FURTHER, that the signature of such officers named in the preceding resolutions and the corporate seal of the Company may be affixed to such powers of attorney or to any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be thereafter valid and binding upon the Company with respect to any bond, undertaking, contract or obligation in surety or co-surety with others to which it is attached.

IN WITNESS WHEREOF, the XL SPECIALTY INSURANCE COMPANY has caused its corporate seal to be hereunto affixed, and these presents to be signed by its duly authorized officers this April 18th, 2018.



STATE OF PENNSYLVANIA
COUNTY OF CHESTER

XL SPECIALTY INSURANCE COMPANY

by:

Gregory Boal, VICE PRESIDENT

Attest:

Kevin M. Mirsch, ASSISTANT SECRETARY

On this 18th day of April, 2018, before me personally came Gregory Boal to me known, who, being duly sworn, did depose and say that he is Vice President of XL SPECIALTY INSURANCE COMPANY, described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to the aforesaid instrument is such corporate seals and were affixed thereto by order and authority of the Boards of Directors of said Companies; and that he executed the said instrument by like order.



COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Rebecca C. Shalhoub, Notary Public
Uwchlan Twp., Chester County
My Commission Expires April 28, 2020
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

Rebecca C. Shalhoub, NOTARY PUBLIC

SB0042

STATE OF PENNSYLVANIA
COUNTY OF CHESTER

I, Kevin M. Mirsch, Assistant Secretary of XL SPECIALTY INSURANCE COMPANY, a corporation of the State of Delaware, do hereby certify that the above and foregoing is a full, true and correct copy of a Power of Attorney issued by said Companies, and that I have compared same with the original and that it is a correct transcript therefrom and of the whole of the original and that the said Power of Attorney is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation, at the City of Exton, this 16 day of January, 2019



Kevin M. Mirsch
Kevin M. Mirsch, ASSISTANT SECRETARY

IN WITNESS WHEREOF, XL REINSURANCE AMERICA INC. has caused its corporate seal to be hereunto affixed, and these presents to be signed by its duly authorized officers this 18th day of April, 2018.



XL REINSURANCE AMERICA INC.

by:

Gregory Boal
Gregory Boal, VICE PRESIDENT

Attest:

Kevin M. Mirsch
Kevin M. Mirsch, ASSISTANT SECRETARY

STATE OF PENNSYLVANIA
COUNTY OF CHESTER

On this 18th day of April, 2018, before me personally came Gregory Boal to me known, who, being duly sworn, did depose and say: that he is Vice President of XL REINSURANCE AMERICA INC., described in and which executed the above instrument; that he knows the seal of said Corporation; that the seal affixed to the aforesaid instrument is such corporate seal and was affixed thereto by order and authority of the Board of Directors of said Corporation, and that he executed the said instrument by like order.



COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Rebecca C. Shalhoub, Notary Public
Uwchlan Twp., Chester County
My Commission Expires April 28, 2020
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

Rebecca C. Shalhoub
Rebecca C. Shalhoub, NOTARY PUBLIC

STATE OF PENNSYLVANIA
COUNTY OF CHESTER

I, Kevin M. Mirsch, Assistant Secretary of XL REINSURANCE AMERICA INC., a corporation of the State of New York, do hereby certify that the person who executed this Power of Attorney, with the rights, respectively of XL REINSURANCE AMERICA INC., do hereby certify that the above and foregoing is a full, true and correct copy of a Power of Attorney issued by said Corporation, and that I have compared same with the original and that it is a correct transcript therefrom and of the whole original and that the said Power of Attorney is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation, at the City of Exton, this ___ day of ___



Kevin M. Mirsch
Kevin M. Mirsch, ASSISTANT SECRETARY

This Power of Attorney may not be used to execute any bond with an inception date

4/18/2023 12:00:00AM

THIS DOCUMENT IS PRINTED ON A BLUE BACKGROUND

SB0042

State of Illinois }
County of DuPage } ss.

} SS.

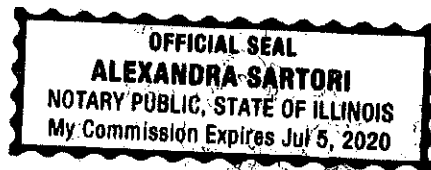
County of DuPage }

On January 16, 2019, before me, Alexandra Sartori, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Kelly A. Gardner known to me to be Attorney-in-Fact of XL Specialty Insurance Company the corporation described in and that executed the within and foregoing instrument, and known to me to be the person who executed the said instrument in behalf of the said corporation, and he duly acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year stated in this certificate above.

My Commission Expires July 5, 2020


Alexandra Sartori, Notary Public



Commission No. 840142



AGENDA ITEM 15

DATE OF MEETING: February 7, 2019	DATE SUBMITTED: February 1, 2019	
DEPT. OF ORIGIN: Development Services	SUBMITTED BY: Lori Sanguedolce	
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION	ORDINANCE: ☒ 1 ST READING ☐ 2 ND READING ☐ RESOLUTION
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon an Ordinance on Its First Reading Providing for the Abandonment of a 1,517 Square Foot Portion and a 137 Square Foot Portion of a 12-Foot Wide Alley in Block 6 of Hurt's Addition, Bounded on the North by West First Street, Bounded on the East by the Brenham Wholesale Grocery Co., Inc. Called 10,999 Square Foot Tract, Bounded on the South by the Remainder of the 12-Foot Alley, and Being Bounded on the West by the Brenham Wholesale Grocery Co., Inc. Called 0.4726 Acre Tract and the Susan Crawford Called 0.37 Acre Tract, Situated in Brenham, Washington County, Texas, Out of the A. Harrington Survey, Abstract No. 55 and Authorize the Mayor to Execute Any Necessary Documentation		
SUMMARY STATEMENT: Brenham Wholesale and Richard and Susan Crawford have requested that a portion of the unimproved alley, located off of West First Street be abandoned. Brenham Wholesale submitted the alley abandonment request on December 21, 2018 and the Crawford's submitted their request on January 9, 2019. Both requestors ask they get their respective portion of the alley. This ordinance is being presented to abandon the portion of the alley as shown in the exhibit by metes and bounds with exhibit. The abandonment of this alley does not create an undue burden on traffic or on utilities.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: (1) Ordinance for first reading; (2) Exhibit A to the Ordinance; and (3) Request for abandonment		
FUNDING SOURCE (Where Applicable):		

RECOMMENDED ACTION: Approve an Ordinance on its first reading providing for the abandonment of a 1,517 square foot portion and a 137 square foot portion of a 12-foot wide alley in Block 6 of Hurt's Addition, bounded on the north by West First Street, bounded on the east by the Brenham Wholesale Grocery Co., Inc. called 10,999 square foot tract, bounded on the south by the remainder of the 12-foot alley, and being bounded on the west by the Brenham Wholesale Grocery Co., Inc. called 0.4726 acre tract and the Susan Crawford called 0.37 acre tract, situated in Brenham, Washington County, Texas, out of the A. Harrington Survey, Abstract No. 55 and authorize the Mayor to execute any necessary documentation

APPROVALS: James Fisher

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE ABANDONMENT OF A 1,517 SQUARE FOOT PORTION AND A 137 SQUARE FOOT PORTION OF A 12-FOOT WIDE ALLEY IN BLOCK 6 OF HURT'S ADDITION, BOUNDED ON THE NORTH BY WEST FIRST STREET, BOUNDED ON THE EAST BY THE BRENHAM WHOLESALE GROCERY CALLED 10,999 SQUARE FOOT TRACT, BOUNDED ON THE SOUTH BY THE REMAINDER OF THE 12-FOOT ALLEY, AND BEING BOUNDED ON THE WEST BY THE BRENHAM WHOLESALE GROCERY CALLED 0.4726 ACRE TRACT AND THE SUSAN CRAWFORD CALLED 0.37 ACRE TRACT, SITUATED IN BRENHAM, WASHINGTON COUNTY, TEXAS, OUT OF THE A. HARRINGTON SURVEY, ABSTRACT NO. 55

WHEREAS, the City of Brenham has ownership of the 12-foot wide alley right-of-way in Block 6 of the Hurt's Addition, bounded on the north by West First Street, bounded on the East by the Brenham Wholesale Grocery called 10,999 square foot tract, bounded on the south by the remainder of the 12-foot alley, and being bounded on the West by the Brenham Wholesale Grocery called 0.4726 acre tract, situated in Brenham, Washington County, Texas, out of the A. Harrington Survey, Abstract No. 55; and

WHEREAS, the adjoining property owners have requested the abandonment and closing of a portion of this 12-foot alley right-of-way; and

WHEREAS, the adjoining property owners requesting the abandonment of a portion of 12-foot wide alley owns the adjoining tracts, more fully described in a deed to Brenham Wholesale Grocery Co. Inc. dated November 4, 1994, recorded in Volume 851, Page 524, Official Records of Washington County, Texas, a deed to Brenham Wholesale Grocery Co., Inc. dated February 11, 1986, recorded in Volume 529, Page 805, Official Records of Washington County, Texas, and a deed to Susan Crawford dated October 30, 2018, recorded in Volume 1653, Page 332, Official Records of Washington County.

WHEREAS, the abandonment and closing of the portion of the alley right-of-way as shown on Exhibit "A", attached hereto and incorporated herein for all purposes, will not create an undue burden on traffic; and

WHEREAS, the City of Brenham has no need or use for the portion of the alley right-of-way as shown on Exhibit "A" as a public thoroughfare, and said portion of the alley right-of-way remains undeveloped, unimproved and unused; and

WHEREAS, the City Council of the City of Brenham desires to abandon and close the portion of the alley right-of-way as shown on Exhibit "A" as a public thoroughfare, said closure and abandonment being in the best interest of the citizens of Brenham;

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

SECTION I.

That the portion of the 12-foot alley right-of-way as shown on Exhibit "A" is hereby abandoned and closed as a public thoroughfare.

SECTION II.

This alley right-of-way to be closed and abandoned is currently undeveloped and unimproved, and any existing or future maintenance by the City of Brenham will cease.

SECTION III.

The Mayor of the City of Brenham is hereby authorized to execute any documents necessary for the conveyance of the portions of the alley right-of-way as shown on Exhibit "A", attached hereto and incorporated herein for all purposes, to the adjoining property owners.

SECTION IV.

This Ordinance shall take full force and effect immediately from and after its passage and approval on second reading and approval by the Planning and Zoning Commission of a replat of the abandoned right-of-way parcels into conforming lots.

PASSED and **APPROVED** on its first reading the __ day of _____, 2019.

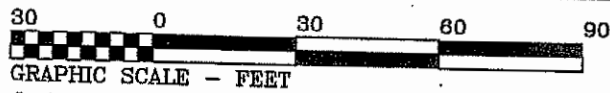
PASSED and **APPROVED** on its second reading the __ day of _____, 2019.

Milton Y. Tate
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary

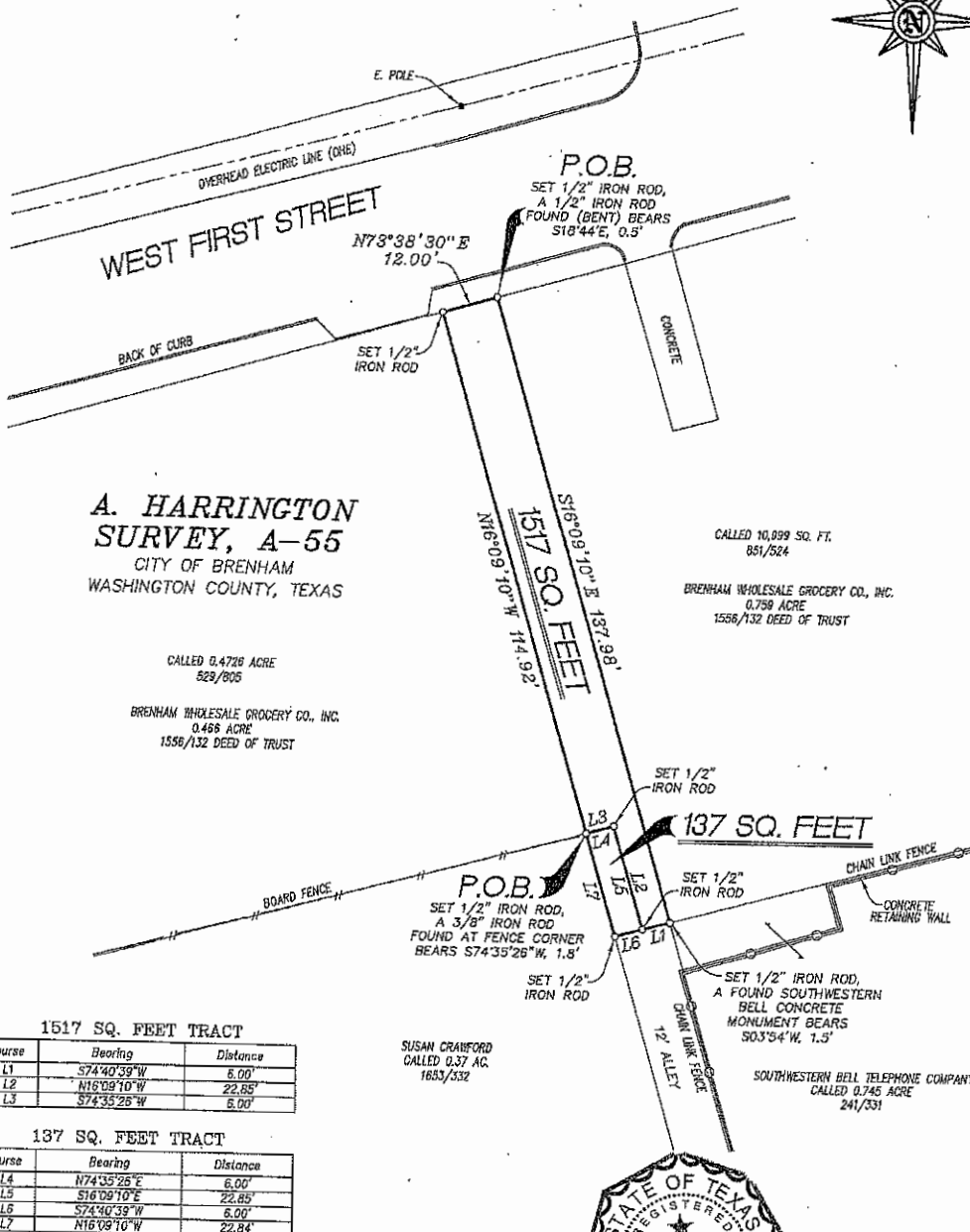
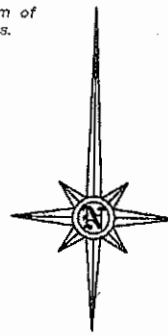
Exhibit A



Bearings are based on the Texas Coordinate System of 1983-Central Zone as obtained by GPS observations.

SURVEY PLAT OF

1517 SQUARE FEET AND 137 SQUARE FEET OF LAND, LYING AND BEING SITUATED IN THE CITY OF BRENHAM, WASHINGTON COUNTY, TEXAS IN THE A. HARRINGTON SURVEY, A-55, BEING PART OF A 12' WIDE ALLEY OF BLOCK 6 OF HURT'S ADDITION TO THE CITY OF BRENHAM, TEXAS.



1517 SQ. FEET TRACT

Course	Bearing	Distance
L1	S74°40'39"W	6.00'
L2	N16°09'10"W	22.85'
L3	S74°35'26"W	6.00'

137 SQ. FEET TRACT

Course	Bearing	Distance
L4	N74°35'26"E	6.00'
L5	S16°09'10"E	22.85'
L6	S74°40'39"W	6.00'
L7	N16°09'10"W	22.84'



NOTES:

- Reference is hereby made to separate descriptions of the subject tracts.
- Iron rods set are fitted with a plastic cap stamped Lampe Surveying.

I, Matt D. Lampe, Registered Professional Land Surveyor No. 5429 of the State of Texas, do hereby certify that this plat accurately represents the results of an on the ground survey made under my direction.

Dated this the 24th day of January, 2019.

Matt D. Lampe
R.P.L.S. No. 5429
Lampe Surveying, Inc

LAMPE SURVEYING, INC PROFESSIONAL LAND SURVEYORS

1408 WEST MAIN STREET
P. O. BOX 2037
BREHMAN, TEXAS 77834
(979) 836-6577 * FAX (979) 836-1177
TEXAS LICENSED SURVEYING FIRM NO. 10040700
W.C. 3088 3088510.DWG 30888WG.CWG

LAMPE SURVEYING, INC
PROFESSIONAL LAND SURVEYORS
Texas Licensed Surveying Firm No. 10040700
P. O. Box 2037 - 1408 West Main Street
Brenham, Texas 77833
(979) 836-6677 - Fax (979) 836-1177

3088-19

THE STATE OF TEXAS

SURVEYOR'S DESCRIPTION

BRENNHAM WHOLESALE
GROCERY COMPANY, INC.

COUNTY OF WASHINGTON

1,517 SQUARE FEET

All that certain tract or parcel of land, lying and being situated in the City of Brenham, Washington County, Texas in the A. Harrington Survey, A-55, being part of a 12' wide alley of Block 6 of Hurt's Addition to the City of Brenham, Texas, being bounded on the east by the same land described as 10,999 square feet of land in a deed from Winnie Nunn to Brenham Wholesale Grocery Co., Inc., dated March 7, 1997, recorded in Volume 851, Page 524, Official Records of Washington County, Texas (851/524, O.R.W.C., Tx.), and bounded on the north by West First Street, and being more fully described by metes and bounds as follows, to-wit:

BEGINNING at a 1/2" iron rod previously set at the intersection of the east line of said alley with the south margin of West First Street for the northeast corner hereof and for the northwest corner of said Brenham Wholesale Grocery Co., Inc. tract called 10,999 sq. ft. which now is included within a Brenham Wholesale Grocery Co., Inc. 0.759 acre tract (1556/132, O.R.W.C., Tx.), a 1/2" iron rod found (bent) bears South 18 degrees 44 minutes East, 0.5 feet;

THENCE along the east line of said alley, being the west line of said 0.759 acre tract, South 16 degrees 09 minutes 10 seconds East, 137.98 feet to a 1/2" iron rod previously set on the east line of said 12' wide alley for the southeast corner hereof and for the southwest corner of said 0.759 acre tract, being the northwest corner of a Southwestern Bell Telephone Company tract called 0.745 acre (241/331, D.R.W.C., Tx.), a Southwestern Bell concrete monument found bears South 03 degrees 54 minutes West, 1.5 feet;

THENCE, South 74 degrees 40 minutes 39 seconds West, 6.00 feet to a 1/2" iron rod set in said alley for the lower southwest corner hereof and for the southeast corner of a portion of said alley surveyed this date to contain 137 sq. ft.;

THENCE in said alley, as follows:

North 16 degrees 09 minutes 10 seconds West, 22.85 feet to a 1/2" iron rod set for an interior corner hereof and for the northeast corner of said 137 sq. ft. tract; and

South 74 degrees 35 minutes 26 seconds West, 6.00 feet to a 1/2" iron rod previously set on the west line of said alley and for the southeast corner of a Brenham Wholesale Grocery Co., Inc., 0.466 acre tract (1556/132, O.R.W.C., Tx.), being the northwest corner of said 137 sq. ft. tract and the northeast corner of a Susan Crawford tract called 0.37 acre (1653/332, O.R.W.C., Tx.);

THENCE along the west line of said alley, North 16 degrees 09 minutes 10 seconds West, 114.92 feet to a 1/2" iron rod previously set on the west line of said alley at its intersection with the south margin of West First Street for the northeast corner of said 0.466 acre tract, being the northwest corner hereof;

THENCE along the south margin of West First Street, North 73 degrees 38 minutes 30 seconds East, 12.00 feet to the PLACE OF BEGINNING and containing 1,517 Square Feet of land, more or less.

Prepared in conjunction with a separate survey plat.

Iron rods set are fitted with plastic cap stamped Lampe Surveying.

Bearings are based on the Texas Coordinate System of 1983-Central Zone, as obtained by GPS observations.

I, Matt D. Lampe, Registered Professional Land Surveyor No. 5429 of the State of Texas, do hereby certify that this description accurately represents the results of an on the ground survey made under my direction.

Dated this the 24th day of January, 2019.


Matt D. Lampe
R.P.L.S. No. 5429
Lampe Surveying, Inc



LAMPE SURVEYING, INC
PROFESSIONAL LAND SURVEYORS
Texas Licensed Surveying Firm No. 10040700
P. O. Box 2037 - 1408 West Main Street
Brenham, Texas 77833
(979) 836-6677 - Fax (979) 836-1177

3088-19

THE STATE OF TEXAS

SURVEYOR'S DESCRIPTION

SUSAN CRAWFORD

COUNTY OF WASHINGTON

137 SQUARE FEET

All that certain tract or parcel of land, lying and being situated in the City of Brenham, Washington County, Texas in the A. Harrington Survey, A-55, being part of a 12' wide alley in Block 6 of Hurt's Addition to the City of Brenham, Texas, and being bounded on the west by a Susan Crawford tract called 0.37 acre, deed recorded in Volume 1653, Page 332, Official Records of Washington County, Texas, (1653/332, O.R.W.C., Tx.), and being more fully described by metes and bounds as follows, to-wit:

BEGINNING at a 1/2" iron rod previously set on the west line of said alley for the southeast corner of a Brenham Wholesale Grocery Company, Inc 0.466 acre tract (1556/132, O.R.W.C., Tx.), being the northeast corner of the Susan Crawford tract (1653/332, O.R.W.C., Tx.) and the northwest corner of this tract, and being South 16 degrees 09 minutes 10 seconds East, 114.92 feet from a 1/2" iron rod previously set on the south margin of West First Street for the northeast corner of said 0.466 acre tract and for the northwest corner of said 12' wide alley and of the 1,517 sq. ft. tract of said alley surveyed this date;

THENCE through said alley, as follows:

North 74 degrees 35 minutes 26 seconds East, 6.00 feet to a 1/2" iron rod set for the northeast corner hereof and for an interior corner of said 1,517 sq. ft. tract;

South 16 degrees 09 minutes 10 seconds East, 22.85 feet to a 1/2" iron rod set for the southeast corner hereof and for the lower southwest corner of said 1,517 sq. ft. tract; and

South 74 degrees 40 minutes 39 seconds West, 6.00 feet to a 1/2" iron rod set on the west line of said alley for the southwest corner hereof, being on the east line of said Crawford tract;

THENCE along the west line of said alley, common with the east line of said Crawford tract, North 16 degrees 09 minutes 10 seconds West, 22.84 feet to the PLACE OF BEGINNING and containing 137 Square Feet of land, more or less.

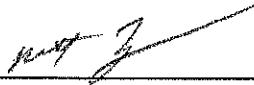
Prepared in conjunction with a separate survey plat.

Iron rods set are fitted with plastic cap stamped Lampe Surveying.

Bearings are based on the Texas Coordinate System of 1983-Central Zone, as obtained by GPS observations.

I, Matt D. Lampe, Registered Professional Land Surveyor No. 5429 of the State of Texas, do hereby certify that this description accurately represents the results of an on the ground survey made under my direction.

Dated this the 24th day of January, 2019.


Matt D. Lampe
R.P.L.S. No. 5429
Lampe Surveying, Inc



3088-19
3088BWG10C

December 21, 2018

ATTN: City Manager, City of Brenham, Texas, USA

From: Adam Griffin
Brenham Wholesale Grocery Company, Inc.
602 W First St
Brenham, TX 77833

RE: Request for abandonment of old alley

Dear Mr. Fisher

It has come to our attention that a piece of property that we own at the southeast corner of West First St and Jackson St has a 12' alley running through the middle of two tracts we own. We use these two tracts very heavily six days out of the week for employee parking and delivery truck storage.

This letter is a formal request to have the City Council consider an official abandonment of the alley with the entirety of it to remain included in our property (see attached survey).

Thank you for your consideration. Please feel free to reach out to me for any additional information that could be used to assist in your decision. I can be reached at 979-251-0507.

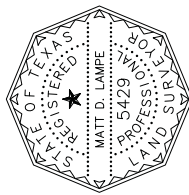
Warmest Regards,

Adam Griffin

A handwritten signature in black ink, appearing to read "Adam Griffin", with a stylized flourish at the end.

A horizontal graphic scale bar with alternating black and white segments. It is marked with the numbers 40, 0, 40, and 120. Below the bar, the text "GRAPHIC SCALE - FEET" is printed.

**A. HARRINGTON
SURVEY, A-55**
CITY OF BRENHAM
WASHINGTON COUNTY, TEXAS



This survey was performed in conjunction with the transaction described a title commitment issued by Washington County Abstract Company, File No. 160801, effective date of August 5, 2016.

USE OF THIS SURVEY FOR ANY OTHER PURPOSE OR BY OTHER PARTIES SHALL BE AT THEIR OWN RISK, AND THE UNDERSIGNED SURVEYOR IS NOT RESPONSIBLE FOR ANY LOSS RESULTING THEREFROM.

Dated this the 21st day of September, 2016.

Matt D. Lampe
R.P.L.S. No. 5429
Lampe Surveying, Inc

- Bearings are based on the Texas Coordinate System of 1983-Central Zone as obtained by GPS observations.
- Reference is hereby made to separate descriptions of the subject tracts.

- Iron rods set are fitted with a plastic cap stamped Lampe Surveying.

– According to Flood Insurance Rate Map (F.I.R.M.), compiled by the Federal Emergency Management Agency, Map No. 48477C0295C, Washington County, Texas, effective date of August 16, 2011, the subject property does not lie within the Special Flood Hazard Area.

—○—○— = Chain Link Fence

LAMPE SURVEYING, INC.
PROFESSIONAL LAND SURVEYORS

1408 WEST MAIN STREET
P. O. BOX 2037
BRENNHAM, TEXAS 77834
(979) 836-6677 * FAX (979) 836-1177
TAS LICENSED SURVEYING FIRM NO. 1004070
W.O. 3088 3088S5.DWG 3088BW.CGC

January 9, 2019

ATTN: City Manager, City of Brenham, Texas, USA

From: Richard and Susan Crawford
505 S Jackson St
Brenham, TX 77833

RE: Request for abandonment of old alley

Dear Mr. Fisher

It has come to our attention that a piece of property that we own at 505 S Jackson St has an old alley that runs along the back of our property.

This letter is a formal request to have the City Council consider an official abandonment of the alley with the entirety of it to remain included in our property.

Thank you for your consideration. Please feel free to reach out to me for any additional information that could be used to assist in your decision. I can be reached at 832-656-7593.

Warmest Regards,

Susan Crawford

A handwritten signature in black ink that reads "Susan Crawford". The signature is written in a cursive, flowing style with a large, stylized "S" at the beginning.



AGENDA ITEM 16

DATE OF MEETING: February 7, 2019	DATE SUBMITTED: February 1, 2019	
DEPT. OF ORIGIN: Public Works	SUBMITTED BY: Dane Rau	
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION	ORDINANCE: ☐ 1ST READING ☐ 2ND READING ☐ RESOLUTION
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon the Purchase of a Trackhoe for the Sanitation Department and Authorize the Mayor to Execute Any Necessary Documentation		
SUMMARY: On December 5, 2018, the Sanitation Department sustained a fire near the engine area of the 1994 trackhoe that is used for grinding mulch and brush. Workers along with Brenham FD responded quickly but due to hydraulic fluid and diesel, the fire got out of control within minutes. Once the fire was out, the machine was evaluated by TML within days and it was ruled that the machine would be totaled. This unit like all others was insured and TML has issued full coverage on the unit with one check already received at \$81,000+/- . We are currently renting a unit, which is also covered under insurance to maintain the brush grinding operations while looking for a permanent replacement. We have looked at several used units within our reimbursement range and found a 2014 John Deere 210GLC with a Solesbee grapple which is similar to our old unit. We have compared and received equivalent quotes on other units similar in age and size. We feel that this unit will serve our department well and be the best value for the City of Brenham. We would ask Council to approve this purchase which will be fully reimbursed by insurance and allow us to issue a purchase order so that we can return the rental and continue grinding. The 2014 John Deere 210GLC will be purchased from RDO Equipment Co. out of Pflugerville, TX. for \$103,850.00. We also are receiving an additional transmission and hydraulics warranty with this unit, which will allow us to get more comfortable with a used unit over the first year.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: Insured with full reimbursement B. CONS: Having to be without and going through replacement		
ALTERNATIVES (In Suggested Order of Staff Preference):		

ATTACHMENTS: (1) Retail Purchase Order
FUNDING SOURCE (Where Applicable): Insurance Proceeds
RECOMMENDED ACTION: Approve the purchase of a trackhoe from RDO Equipment Co., in the amount of \$103,850.00, for the Sanitation Department and authorize the Mayor to execute any necessary documentation
APPROVALS: James Fisher



JOHN DEERE

Retail Purchase Order

RDO Equipment Co.
16415 N IH-35
Pflugerville TX, 78660
Phone: (512) 272-4141 - Fax: (512) 272-9365

Bill To:
CITY OF BRENHAM
ATTN: ACCTS PAYABLE
PO BOX 1059
BRENHAM, TX, 778341059
Washington ()
(979) 337-7200

Ship To:
CITY OF BRENHAM
ATTN: ACCTS PAYABLE
PO BOX 1059
BRENHAM, TX, 778341059
(979) 337-7200

Purchase Order Date: 1/15/2019
Purchase Order #: 1151281
Purchaser Account #: 7200027
Customer Purchase Order #: 521746
Customer Sales Tax Exempt #: Exempt

Customer Purchaser Type: Governmental - County
Customer Market Use: Other - Parks
Location of First Working Use: BRENHAM, TX, 778341059
Dealer Account Number: 177420
Sales Professional: Aaron Schaefer
Phone: (512) 272-4141
Fax: (512) 272-9365
Email: ASchaefer@rdoequipment.com

Comments

NON-APPROPRIATIONS CLAUSE: Not withstanding any other provision of this "Retail Purchase Order," if this purchase is not approved by City of Brenham City Council, the purchase order shall be deemed null and void.

Equipment Information

Quantity	Serial Number Stock Number	Hours (approx.)	Status / Year / Make / Model Additional Items	Cash Price
1	1FF210GXCDE521746 X729924	4746	Used 2014 JOHN DEERE 210GLC After Sales Labor Grapple Install Warranty -John Deere Power Train & Hyd.-72 Months, 7500 Hours,Deductible: 0, Exp Date: 5/18/2020	\$87,150.00 \$1,800.00 \$1,350.00
1	TBD TBD	0	Attachment - New 2019 SOLESBEE'S EQUIPMENT 210 Grapple	\$13,550.00
Equipment Subtotal:				\$103,850.00

Purchase Order Totals

Balance: \$103,850.00
Tax Rate 3: (TXEG 0%): \$0.00
Sales Tax Total: \$0.00
Sub Total: \$103,850.00
Cash with Order: \$0.00
Balance Due: \$103,850.00

Legal Information

For the Construction Product(s)

ACKNOWLEDGMENTS - Purchaser offers to sell, transfer, and convey the item(s) listed as "Trade In" to the Dealer at or prior to the time of delivery of the above Product(s) as a "trade-in" to be applied against the cash price. Purchaser represents that each "trade-in" item shall be free and clear of all security interests, liens, and encumbrances at the time of transfer to the Dealer except to the extent shown below. The price to be allowed for each "trade-in" item is listed on this document. The Purchaser promises to pay the balance due shown hereon in cash, or to execute a Time Sale Agreement (Retail Installment Contract), or a Loan Agreement for the purchase price of the Product(s), plus additional charges shown thereon, or to execute a Lease Agreement, on or before delivery of the Product(s) ordered herein. Despite delivery of the Product(s) to the Purchaser, title shall remain with the Seller until one of the foregoing is accomplished. Except as provided herein and as necessary to protect RDO Equipment from the claims of a bankruptcy trustee or a buyer in the ordinary course of business, the Purchaser and the Dealer agree that this Purchase Order is not a security agreement and that delivery of the Product(s) to the Purchaser pursuant to this Purchase Order will not constitute possession of the Product(s) by the Purchaser, as a debtor, for the purposes of the purchase money security provisions in any statutes relating to personal property security or its equivalent. Purchaser understands that its rights in connection with this purchase are limited as set forth in this Purchase Order. I (we) hereby grant a security interest to RDO Equipment in the Product.

DISCLOSURE OF REGULATION APPLICABILITY - When operated in California, any off-road diesel vehicle may be subject to the California Air Resources Board In-Use Off-Road Diesel Vehicle Regulation. It therefore could be subject to retrofit or accelerated turnover requirements to reduce emissions of air pollutants. More information is available on the California Air Resources Board website at <http://www.arb.ca.gov/msprog/ordiesel/ordiesel.htm>.

IMPORTANT WARRANTY NOTICE - The Standard Warranty for new John Deere construction and forestry products is set forth in a separate document provided by the dealer. Please read the Standard Warranty carefully before signing. No express warranty is made unless specified in the Warranty Statement. PURCHASER'S RIGHTS AND REMEDIES PERTAINING TO THIS PURCHASE ARE LIMITED AS INDICATED IN THE STANDARD WARRANTY AND PURCHASE ORDER. WHERE PERMITTED BY LAW, NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS IS MADE.

TERMS & CONDITIONS VERIFICATION STATEMENT Use of John Deere Data Services ("Services"), if applicable, and all rights and obligations of John Deere and the Purchaser (or "Customer" as identified in the applicable agreement), are governed by the terms and conditions outlined in the Warranty Statement and the applicable John Deere Construction & Forestry Company Subscriptions & Data Services Dealer Agreement and/or Customer Data Services agreements available at www.JohnDeere.com/Agreements. Purchaser agrees to be bound by these terms and conditions if Purchaser activates or otherwise uses any of the Data Services. If Purchaser does not agree to these terms and conditions, Purchaser must not activate or otherwise use the Data Services.

The undersigned purchaser(s) (the "Purchaser") hereby orders the product (the "Product") described above from the Dealer. The Dealer shall not be liable for failure to provide the Product or for any delay in delivery if such failure or delay is due to the Dealer's inability to obtain such Product from the manufacturer or supplier or other cause beyond the Dealer's control. The cash price shown above is subject to the Dealer receiving the Product from the manufacturer or supplier prior to any change in price by the manufacturer or supplier and is also subject to any new or increased taxes being imposed upon the sale of the Product after the date of this Purchase Order.

Upon signature of delivery acknowledgment, customer is accepting the equipment, including attachments, in "AS IS" condition, agreeing to notify RDO Equipment Co. within 24 hours of any damages or discrepancies found upon receipt of equipment.

Signature Area

Purchase Order Accepted By:


(Customer's Signature)

Jan. 22, 2017
(Date Accepted)

(Authorized Signature of Dealer)

(Date Accepted)

Delivery of Equipment Acknowledgement:

(Customer's Signature)

Date Accepted

Standard Warranty Acknowledgement:

(Delivered On)

(Warranty Begins)

Extended Warranty Oil Sampling Acknowledgement:

(Customer's Initials)

(deal owner's title's initials)

Equipment Options

Qty	Serial Number	Year / Make / Model	Description
1	1FF210GXCD521746	2014 JOHN DEERE 210GLC	None
1	TBD	2019 SOLESBEE'S EQUIPMENT 210	Part# SEG-2.5 54" 210g Grapple

**STANDARD WARRANTY FOR NEW JOHN DEERE
CONSTRUCTION, UTILITY, AND FORESTRY PRODUCTS - US & Canada**

- **Construction, Forestry & Commercial Worksite Products***: 12 months Full Machine Standard Warranty
- ***Commercial Worksite Products** Delivered and settled on or after 01 June 2018: 24 months or 2000 hours (whichever comes first) Full Machine Standard Warranty
- **C&E Series Pull-Type Scrapers**: 6 months Full Machine Standard Warranty
- **DC & DE Series Pull-Type Scrapers**: 12 months of Full Machine Standard Warranty
- **Scraper Tractors**: 24 Months or 2000 Hours (whichever occurs first) Full Machine Standard Warranty
- **Forestry Attachments**: 12 Months or 2000 Hours (whichever occurs first) Full Machine Standard Warranty
- **Frontier Equipment**: 6 months Full Machine Standard Warranty (90 days in rental applications)

The "Standard Warranty" is part of the warranty protection package available from John Deere Construction & Forestry Company (John Deere Limited in Canada) ("John Deere") to purchasers of new John Deere products ("product"):

STANDARD Warranty is John Deere's standard new product warranty, described in this document, provided at no additional charge to the purchaser.

EXTENDED Warranty is a separate repair contract made available by John Deere for purchasers who wish to complement their Standard Warranty coverage. Complete Extended Warranty details, including coverage options and limitations, are set forth in the Application for Extended Warranty, which is available from authorized John Deere dealers.

STRUCTURAL Warranty applies to certain structural components as listed below and as described in this document.

FACTORY-INSTALLED UNDERCARRIAGE Warranty applies to certain undercarriage components as listed below and as described in this document.

A. STANDARD WARRANTY - GENERAL PROVISIONS

John Deere will repair or replace, at its option, any parts (except those specified below) of a new John Deere product that, as delivered to the original retail purchaser(s), are defective in material or workmanship. Performance of this warranty will be free of charge for parts and labor/labour, except as otherwise stated below. Standard Warranty applies only to purchases from John Deere and authorized John Deere dealers and, except as otherwise provided in the next sentence and section L below, is extended only to the original retail purchaser of the product. Remaining Standard Warranty applicable to a used John Deere product is transferred to a subsequent purchaser of the product only if the subsequent purchaser requests a transfer from an authorized John Deere dealer before the product's Standard Warranty expires. Coverage begins on the date of delivery of the product to the original retail purchaser. For purposes of this warranty, a product that has been rented, used for demonstration purposes for 150 or more hours, or otherwise used prior to its original retail purchase has been "used" for the total duration of such use. Warranty statements required by law covering engine emissions-related parts and components are found on a separate written warranty certificate provided to the purchaser at the time of the original retail purchase.

B. WHAT IS COVERED BY STANDARD WARRANTY -

All parts of a new John Deere product (except those noted in Sections D and E below) are covered during the Standard Warranty period set out above.

C. EXCLUSIVE REMEDY -

The repair or replacement of covered parts or components that are defective, as provided in Sections A, B, D.2 and D.3 herein, shall be the purchaser's exclusive remedy for any defect in the product. However, if after repeated attempts such repair or replacement fails to correct the performance problem caused by the defect, the purchaser's sole remedy shall be a refund of the amount paid for the product (in exchange for a return of the product), excluding any transportation charges, license fees, taxes and insurance premiums, and less a reasonable allowance for use of the product prior to its return. In no event will the dealer, John Deere or any company affiliated with John Deere be liable for any incidental or consequential damages, including but not limited to loss of profits, rental of substitute equipment or other commercial loss. Correction of defects in the manner provided above shall constitute fulfillment of all liabilities of the Dealer, John Deere, or any company affiliated with John Deere to the purchaser or any other person, whether based upon contract, tort, strict liability, or otherwise. This limitation does not apply to claims for personal injury.

D. ITEMS COVERED SEPARATELY -

1. Standard Warranty does not apply to batteries, radios, tires, cameras, or to Cummins, MTU or Detroit Diesel Engines installed in John Deere products, which are covered by separate written warranties.

2. **Factory-Installed Undercarriage Warranty** covers all non-rubberized factory-installed undercarriage wear components for 3 years or 4,000 hours from the date of delivery to the original retail purchaser, whichever occurs first (unless terminated earlier under Section F, below). For purposes of this warranty, a product that has been rented, used for demonstration purposes for 150 or more hours, or otherwise used prior to its original retail purchase has been "used" for the total duration of such use. In addition to the items listed in section E below, Factory-Installed Undercarriage Warranty does not cover: failures due to wear, machine application, maintenance practices, or improper machine configuration; removal and installation labor/labour; transportation or hauling costs; unapproved parts; non-wear items; and rubberized undercarriage components such as rubber tracks. Warranty claims will be pro-rated based upon wear of the failed component and whether track shoe width is approved by John Deere. Factory-Installed Undercarriage Warranty does not apply to Scraper Tractors.

3. **StructurALL Warranty** for new John Deere Products (except Compact Excavators & Loaders, Skid-Steer Loaders, Compact Track Loaders, Scraper Tractors, Pull-Type Scrapers, and Forestry Attachments, which are not eligible for StructurALL Warranty) begins at the date of delivery to the original retail purchaser and ends (unless terminated earlier under Section F, below) after three (3) years, or 10,000 hours (whichever occurs first). For purposes of this warranty, a product that has been rented, used for demonstration purposes for 150 or more hours, or otherwise used prior to its original retail purchase has been "used" for the total duration of such use. **StructurALL Warranty applies only to the following structural components listed below as installed on the product at the time of original manufacture.** If a particular component is not listed below it is not covered by StructurALL Warranty.

Arm; Articulation Joint (incl. pins & bushings); Bin Frame; Boom; Carbody; C-Frame*; Circle Frame; Coupler (John Deere built ONLY); Dipperstick; Draft Frame; Engine Frame; Equipment Frame; Grapple Arch and Grapple Boom; Loader Arm; Loader Frame; Mainframe; Moldboard Lift Arm; NeverGrease™ Pin Joints [Includes steering pin and bushing joints (standard equipment), roller elements (roller bearings) in bucket to boom joints and sliding elements (bushing) for boom and linkage joints (optional equipment)]; Rollover Protection Structure (ROPS); Side Frame; Swing Frame; Track Frame; Undercarriage Frame; X-Frame; Z-bar loader linkage (including bell crank and bucket driver link); Specialty booms and arms marketed as "heavy duty" by John Deere.

Items Covered by StructurALL for Cut-to-Length Forestry Machines: Front frame (welded assembly); Rear frame (welded assembly); Crane king post with basement; Middle joint frame; Cabin swing frame; Main Boom

StructurALL Warranty does not apply to:

1. Any product used primarily in extreme duty or severe duty applications such as but not limited to: demolition and wrecking, chemical plant (including fertilizer plants), salt mines, steel mill, land fill and transfer stations, scrap handling, scarifying and other applications that are similarly destructive or similarly heavy duty except specialty booms and arms as stated in Section D.3 above.
2. C-Frames on H-Series & J-Series Crawlers equipped with root rakes or used in forestry applications unless equipped with an "extreme duty" reinforcement package.
3. Cut-to-Length Forestry Heads and Slash Bundler Units.
4. Crawlers equipped with optional side booms.
5. Cut-to-Length Forestry, Excavator, and Log Loader swing bearings.
6. Motor Graders equipped with front- or rear-mounted snowwings.

E. ITEMS NOT COVERED -

John Deere is NOT responsible for the following:

1. Freight
2. Adjustments to compensate for wear, for periodic maintenance or adjustments that result from normal wear and tear.
3. Damage caused by unapproved adjustments (electronic or mechanical) to machine or machine components outside of published specifications including but not limited to engine, hydraulic components and relief valves.
4. Program updates, calibrations, and pressure adjustments.
5. Diagnostic Time
6. Additional Labor/Labour Time - Above SPG/Labor/Labour Rate
7. Additional Cleaning - Above SPG/Labor/Labour Rate
8. Rental Fees
9. Depreciation or damage caused by normal wear or application, lack of reasonable and proper maintenance, failure to follow operating instructions, misuse, negligence, collision or other accidents.
10. Premiums charged for Overtime Labor/Labour
11. Transportation to and from the dealership.
12. Travel time, mileage or service calls by the dealer.

13. Non-John Deere components or modifications, Rotobec grapples, and attachments installed aftermarket.
14. Shop supplies and maintenance items such as, but not limited to: filters, fuels, oil, hydraulic fluid, lubricants, coolants, conditioners, shop towels, cleaners and degreasers. Note: Reimbursement for refills of oils/coolants lost due to a warrantable failure is covered when a system failure occurs outside the boundaries of a normal oil change (within 25% of specified change interval as provided in the Operator's Manual).
15. Torn, cut, or worn hoses.
16. Wear items, such as, but not limited to: body liner, belts, blades, bulbs, lubricated joints (including pins and bushings), dry brakes, brake linings, dry clutch linings, saw blades, chains, skidder grapple shocks, color marking nozzles, and articulation bumpers.
17. Items such as cutting edge parts, delimbing knives, bucket teeth and rubber track are not warranted for depreciation or damage caused by normal wear, lack of proper maintenance, misuse, failure to follow operating instructions, the elements or accident.
18. Any defect in a non-covered component, or damage to or failure of a covered component caused by a defect in a non-covered component.
19. Secondary damage which occurs from continued operation of a product after recognition of the occurrence of a failure.
20. Parts supplied or modifications done by third party suppliers.
21. Topping off fluids when fluid levels fall in the range between low and full
22. Parts/Kits not ordered on machine and installed aftermarket. These parts will be covered by any applicable parts warranty.
23. Attachments installed aftermarket - i.e. Winch not installed at factory.
24. Custom options installed outside the factory - i.e. G.R. Manufacturing option packages.
25. Used Products (except as otherwise provided in section L below).

F. TERMINATION OF WARRANTY

John Deere is relieved of its obligations under Standard Warranty, StructurALL Warranty, Factory-Installed Undercarriage Warranty and/or Extended Warranty if:

1. Service (other than normal maintenance and replacement of service items) is performed by someone other than an authorized John Deere dealer; or
2. The product is modified or altered in ways not approved by John Deere; or
3. Any unapproved or improperly sized attachment is installed on the product. Approval and attachment size shall be at John Deere's sole discretion. (Consult dealer prior to installing attachments or product modification).
4. The product is moved outside the US and/or Canada.

G. PARTS REPLACED UNDER WARRANTY -

Only new or remanufactured parts or components furnished or approved by John Deere, will be used if John Deere elects to repair the product. If any such part or component is defective in material or workmanship when installed in the product, John Deere will repair or replace, as it elects, such defective part or component, provided the defect is reported to an authorized John Deere dealer within 90 days of installation or before expiration of the applicable Standard Warranty, Factory-Installed Undercarriage Warranty and/or StructurALL Warranty whichever is later.

H. TELEMATICS

NOTICE: Products may be equipped with telematics hardware and software ("Telematics") that transmit data to John Deere/ Dealer. Purchaser may deactivate Telematics at www.jdlink.com.

Notwithstanding Purchaser's right, title or interest in the Products, Purchaser agrees that John Deere and Dealer (their affiliates, successors and assigns), without further notice to Purchaser have the right to:

1. Access, use, collect and disclose any data generated by, collected by, or stored in, Products or any hardware or devices interfacing with Products ("Machine Data");
2. Access Machine Data directly through data reporting devices integrated within, or attached to, Products, including Telematics ("Data Reporting Systems"); and
3. Update the Data Reporting Systems software from time to time. Machine Data will only be used in accordance with John Deere's Machine Data Policy, located at www.JohnDeere.com/MachineDataPolicy.

I. OBTAINING WARRANTY SERVICE -

To obtain warranty service, the purchaser must request warranty service from a John Deere dealer authorized to sell the product to be serviced. When making such a request, the purchaser must present evidence of the product's delivery date, make the product available at the dealer's place of business, and inform the dealer in what way the purchaser believes the

product to be defective. Standard Warranty, Factory-Installed Undercarriage Warranty and/or StructurALL Warranty repairs may be made in the field if the purchaser and servicing dealer so desire. However, John Deere will not be responsible for any charges (such as dealer travel time, mileage or extra labor/labour) that would not have been incurred had the product been repaired at the dealer's place of business.

J. NO IMPLIED WARRANTY, CONDITIONS OR OTHER REPRESENTATION -

Where permitted by law, neither John Deere nor any company affiliated with it makes any warranties, representations, conditions or promises, express or implied, as to the quality, performance, or freedom from defect of its products, other than those set forth in this document and **NO IMPLIED WARRANTY OF MERCHANTABILITY, CONDITIONS OR FITNESS IS MADE.**

K. NO DEALER WARRANTY -

The selling dealer makes no warranty of its own on any item covered by this warranty, and makes no warranty on other items unless the dealer delivers to the purchaser a separate written warranty certificate specifically warranting the item. **The dealer has no authority to make any representation or promise on behalf of John Deere, or to modify the terms or limitations of this warranty in any way.**

L. USED JOHN DEERE PRODUCTS ONLY -

John Deere will transfer remaining Standard Warranty, Factory-Installed Undercarriage Warranty and/or StructurALL Warranty to the purchaser of a used John Deere construction and/or forestry product that has been used for less than the full warranty period provided at the product's original retail purchase. This transfer is not effective until change of ownership is registered by a John Deere dealer. **ALL THE TERMS, INCLUDING LIMITATIONS AND EXCLUSIONS, OF THE JOHN DEERE STANDARD WARRANTY, FACTORY-INSTALLED UNDERCARRIAGE WARRANTY, AND/OR STRUCTURALL WARRANTY ORIGINALLY PROVIDED FOR THE PRODUCT REMAIN IN EFFECT AND APPLICABLE.**



AGENDA ITEM 17

DATE OF MEETING: February 7, 2019	DATE SUBMITTED: January 31, 2019
DEPT. OF ORIGIN: Public Works	SUBMITTED BY: Dane Rau

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

AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon Bid No. 10-2018 Related to the Henderson Park Improvements, Phase I, and Authorize the Mayor to Execute Any Necessary Documentation

SUMMARY: In June of 2017, BCDC approved \$294,500 for Phase I Improvements to Henderson Park. Since that time, we have made some improvements, which did not require engineering such as the addition of a new playscape and consolidation of electrical panels near the baseball field along with removing one old storage structure. Soon after funding, a mini-master plan was conducted outlying the needs of the park along with the proposed layout for the future. Design of these improvements soon followed in order to bid out. Once the final plans were agreed upon and completed, Strand and Associates prepared bid packets. The first bids pertaining to Phase I Improvements were opened on October 24, 2018 with only one bid received at a value four times our remaining budget. It was decided to reject bids based off the value of the bid and only one bid received.

On January 9, 2019, this project was re-bid with a more conservative breakdown considering alternates in the bid in which more flexibility would be given to staff on choosing how to move forward if bids came back high once again. This round of bids came back much better and three bids were received.

With the remaining allocated funds of \$144,110, we presented the options to BCDC. The total cost of the project this round came in at \$246,149.00. Items that were bid out include ADA accessible sidewalks connecting the parking lot, kitchen, and playscape, a new barbeque pit area (Alternate 2), ADA parking upgrades, improvements to the Kitchen area and restroom making them accessible and adding HVAC, and improvements to the concession and restroom area near the baseball field (Alternate 1).

When presented to BCDC it was recommended that the base bid be awarded along with Alternate 2, which is the barbeque pit area. The total amount with the base bid and Alternate 2 totals \$156,400.50. Alternate 1 which is the concession stand and restroom improvements by the ballfield would be left out and may be included in Phase 2 which BCDC also dedicated funds for enhancements to the large baseball field.

We would like to ask council to approve the base bid and Alternate 2 to Four Seasons Development Co. for \$156,400.50 for Phase I improvements to Henderson Park. BCDC has agreed to use savings from other projects to fund the remainder of Phase I or allocate funds from Phase II work.

Strand and Associates has helped evaluate Four Seasons Development and has had very good references. We are hopeful that this project can go smooth and be completed in a timely manner.

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. PROS: Kept as close to budget as possible and will improve accessibility around park and amenities

B. CONS: None at this point

ALTERNATIVES (In Suggested Order of Staff Preference):

ATTACHMENTS: (1) Recommendation Letter; (2) Bid Tabulation; and (3) Reference Forms

FUNDING SOURCE (Where Applicable): BCDC

RECOMMENDED ACTION: Award Bid No. 10-2018, related to the Henderson Park Phase I Improvements, for the base bid and Alternate No. 2 to Four Seasons Development Co. in the amount of \$156,400.50 and authorize the Mayor to execute any necessary documentation

APPROVALS: James Fisher



Strand Associates, Inc.®

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

January 30, 2019

Mr. Dane Rau, Director of Public Works
City of Brenham
200 West Vulcan
Brenham, TX 77833

Re: Henderson Park Phase I Improvements Rebid
Contract No. 10-2018
City of Brenham, Texas

Dear Dane,

Bids for the above-referenced project were opened on January 9, 2019. Three bids were received with the resulting bid tabulation enclosed.

Four Seasons Development Co., Inc. of Houston, Texas was the apparent low bidder at \$137,150.50. The bid included a bid bond for 5 percent and Addendum No. 1 was acknowledged.

We believe the bid submitted by the apparent low bidder is responsive and complete. Therefore, the City of Brenham may wish to award a contract to the apparent low bidder in the amount of \$137,150.50 plus either or both of the alternates desired.

Strand Associates, Inc.® has not had previous experience with Four Seasons Development Co., Inc. Therefore, we are not able to comment in regard to their performance on other projects.

We have contacted three references provided by the low bidder and have enclosed the information provided to us.

We suggest that you consider evaluating Four Seasons Development Co., Inc.'s financial status prior to award and other information submitted to you.

The information provided herein and in the enclosures is provided to you for reference and use in your decision to award the contract. Thank you for the opportunity to be of service to the City of Brenham. We look forward to the successful completion of this project with you.

Sincerely,

STRAND ASSOCIATES, INC.®

Robert C. Schmidt, P.E.

Enclosure

3900.219\RCS\mds\R\BRE\Documents\Specifications\Archive\2018\Brenham, City of\3900.219.10-2018.RCS\16) Specification Letters(a) Resulting Bid Tabulation\012919.docx

TBPE No. F-8405
TBPLS No. 10030000

Bids Received: 02:00 PM
January 9, 2019

STRAND ASSOCIATES, INC.®
203 South Jackson Street
Brenham, TX 77833

HENDERSON PARK PHASE I IMPROVEMENTS REBID
CONTRACT 10-2018
CITY OF BRENHAM, TEXAS

BID TABULATION SUMMARY

Bidder and Address	Bid Bond or Guarantee	Addenda Acknowledged	Total Stipulated Price	Alternate No. 1	Alternate No. 2
Four Seasons Development Co., Inc. 5825 West Sam Houston Parkway North Houston, TX 77041	5%	Yes	\$137,150.50	\$89,749.00	\$19,250.00
Aggieland Construction P.O. Box 271 Wellborn, TX 77881	5%	Yes	\$240,850.41 *\$240,848.00	\$117,645.00	\$19,483.00
Thielemann Construction Company, L.P. 2310 South Market Street Brenham, TX 77833	5%	Yes	\$284,000.25 *\$284,000.00	\$156,224.00	\$17,055.00

*Contractor's Computed Total

Reviewed by: Robert C. Schuler

Bids Received: 2:00 PM, January 9, 2019

STRAND ASSOCIATES, INC.®
203 South Jackson Street
Brenham, TX 77833

HENDERSON PARK PHASE I IMPROVEMENTS REBID
CONTRACT 10-2018
CITY OF BRENHAM, TEXAS
BID TABULATION BREAKDOWN

			Four Seasons Development Co., Inc. 5825 West Sam Houston Parkway North Houston, TX 77041			AggieLand Construction P.O. Box 271 Wellborn, TX 77881			Thielemann Construction Company, L.P. 2310 South Market Street Brenham, TX 77833		
No.	Description	Quantity	Unit	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price		
1.	Furnish and install 4-inch thick reinforced concrete sidewalk, complete in place for the unit price of	482	SY	\$ 52.25	\$ 25,184.50	\$ 44.76	\$ 21,574.32	\$ 53.30	\$ 25,690.60		
							*\$21,572.01				
2.	Furnish and install 6-inch thick reinforced concrete pavement, complete in place for the unit price of	245	SY	\$ 64.00	\$ 15,680.00	\$ 50.35	\$ 12,335.75	\$ 68.05	\$ 16,672.25		
							*\$12,335.65		*\$16,672.00		
3.	Construct all other Base Bid improvements shown on the plans, complete in place for the unit price of	1	LS	\$ 96,286.00	\$ 96,286.00	\$ 206,940.34	\$ 206,940.34	\$ 241,637.40	\$ 241,637.40		
ENGINEER'S COMPUTED TOTAL ITEMS NO. 1 THROUGH 3					\$ 137,150.50		\$ 240,850.41	\$	284,000.25		
CONTRACTOR'S COMPUTED TOTAL ITEMS NO. 1 THROUGH 3					\$ 137,150.50		\$ 240,848.00	\$	284,000.00		

* CONTRACTOR'S COMPUTED TOTAL

Reviewed by Robert C. Schuler

Bids Received: 2:00 PM, January 9, 2019

STRAND ASSOCIATES, INC.®
203 South Jackson Street
Brenham, TX 77833

HENDERSON PARK PHASE I IMPROVEMENTS REBID
CONTRACT 10-2018
CITY OF BRENHAM, TEXAS
ALTERNATE BID BREAKDOWN

		Four Seasons Development Co., Inc. 5825 West Sam Houston Parkway North Houston, TX 77041		Aggieland Construction P.O. Box 271 Wellborn, TX 77881		Thielemann Construction Company, L.P. 2310 South Market Street Brenham, TX 77833	
No.	Description	Quantity	Unit	Unit Price	Total Price	Unit Price	Total Price
1.	Add to the Base Bid for Constructing Additional Sidewalk and Concession Building Improvements	1	LS	\$ 89,749.00	\$ 89,749.00	\$ 117,645.00	\$ 117,645.00
2.	Add to the Base Bid for Constructing a BBQ Pit	1	LS	\$ 19,250.00	\$ 19,250.00	\$ 17,055.00	\$ 17,055.00

Reviewed by Robert C. Schuler

REFERENCE FORM
OWNER: CITY OF BRENHAM
PROJECT: HENDERSON PARK PHASE I IMPROVEMENTS REBID
STRAND JOB NO: 3900.219

CONTRACTOR: Four Seasons Development Co. Inc. _____

PROJECT: Steel, concrete, and interior renovations

OWNER: Exterran Corp.

ENGINEER: _____

PERSON INTERVIEWED: James Juarez

COMPANY/TITLE: Facilities Manager

PHONE NUMBER: 346-561-7811

NATURE/TYPE OF PROJECT: Steel, concrete, and interior renovations

APPROXIMATE CONTRACT AMOUNT: Multiple Projects

QUALITY OF CONTRACTOR'S WORK:

☒ Excellent ☐ Good ☐ Fair ☐ Poor ☐ Other _____

WAS CONTRACTOR RESPONSIVE AND COOPERATIVE?

☒ Excellent ☐ Good ☐ Fair ☐ Poor ☐ Other _____

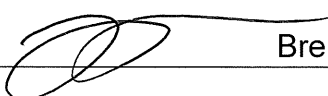
WAS CONTRACT COMPLETED ON TIME?

☒ YES ☐ NO ☐ Not Complete, On Schedule ☐ Not Complete, Behind Schedule

WOULD YOU RECOMMEND THIS CONTRACTOR TO YOUR CLIENT FOR WORK SIMILAR
IN NATURE TO THIS PROJECT?

☒ YES ☐ NO ☐ Other

REMARKS: James spoke very highly of Four Seasons response time.

SIGNED:  Brent Gaskamp

DATE: 01/16/19

REFERENCE FORM
OWNER: CITY OF BRENHAM
PROJECT: HENDERSON PARK PHASE I IMPROVEMENTS REBID
STRAND JOB NO: 3900.219

CONTRACTOR: Four Seasons Development Co. Inc. _____

PROJECT: New office and structural steel platform

OWNER: Montgomery County WC & I.D. No. 1

ENGINEER: AEI Engineers LLC

PERSON INTERVIEWED: Ross Crawford

COMPANY/TITLE: Project Manager

PHONE NUMBER: 281-350-7027

NATURE/TYPE OF PROJECT: New office and structural steel platform

APPROXIMATE CONTRACT AMOUNT: \$175,000

QUALITY OF CONTRACTOR'S WORK:

☒ Excellent ☐ Good ☐ Fair ☐ Poor ☐ Other _____

WAS CONTRACTOR RESPONSIVE AND COOPERATIVE?

☒ Excellent ☐ Good ☐ Fair ☐ Poor ☐ Other _____

WAS CONTRACT COMPLETED ON TIME?

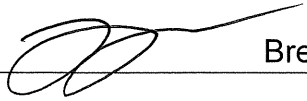
☒ YES ☐ NO ☐ Not Complete, On Schedule ☐ Not Complete, Behind Schedule

WOULD YOU RECOMMEND THIS CONTRACTOR TO YOUR CLIENT FOR WORK SIMILAR
IN NATURE TO THIS PROJECT?

☒ YES ☐ NO ☐ Other

REMARKS: AEI has an upcoming project with a budget of \$680,000 that

Four Seasons will construct.

SIGNED:  Brent Gaskamp

DATE: 01/16/19

REFERENCE FORM
OWNER: CITY OF BRENHAM
PROJECT: HENDERSON PARK PHASE I IMPROVEMENTS REBID
STRAND JOB NO: 3900.219

CONTRACTOR: Four Seasons Development Co. Inc. _____

PROJECT: Weslaco ISD Fencing

OWNER: Weslaco ISD

ENGINEER: _____

PERSON INTERVIEWED: Baldemar Garcia

COMPANY/TITLE: _____

PHONE NUMBER: 956-969-6569

NATURE/TYPE OF PROJECT: Fencing

APPROXIMATE CONTRACT AMOUNT: \$463,000

QUALITY OF CONTRACTOR'S WORK:

☒ Excellent ☐ Good ☐ Fair ☐ Poor ☐ Other _____

WAS CONTRACTOR RESPONSIVE AND COOPERATIVE?

☒ Excellent ☐ Good ☐ Fair ☐ Poor ☐ Other _____

WAS CONTRACT COMPLETED ON TIME?

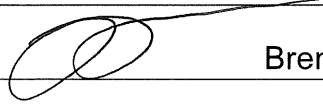
☒ YES ☐ NO ☐ Not Complete, On Schedule ☐ Not Complete, Behind Schedule

WOULD YOU RECOMMEND THIS CONTRACTOR TO YOUR CLIENT FOR WORK SIMILAR
IN NATURE TO THIS PROJECT?

☒ YES ☐ NO ☐ Other

REMARKS: Baldemar noted contractor works very well with other contractors

to get the job done quickly and efficiently.

SIGNED:  Brent Gaskamp

DATE: 01/28/19



AGENDA ITEM 18

DATE OF MEETING: February 7, 2019	DATE SUBMITTED: February 1, 2019
DEPT. OF ORIGIN: Finance	SUBMITTED BY: Carolyn D. Miller
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION
ORDINANCE: ☐ 1 ST READING ☐ 2 ND READING ☐ RESOLUTION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act to Rescind the December 15, 2016 Approval by the City Council of a Lease Agreement Between the City of Brenham and Simon Theater Master Tenant, LLC for the Management and Operation of the Barnhill Center at the Historic Simon Theater and Authorize the Mayor to Execute Any Necessary Documentation	
SUMMARY STATEMENT: In order for the City Council to consider the companion agenda item #19, we need to rescind the lease agreement that was approved by Council on December 15, 2016 between the City of Brenham and Simon Theater Master Tenant, LLC (Landlord). This lease agreement was not executed by the Landlord and thus needs to be rescinded by City Council. The companion agenda item #19 sets forth a more streamlined <i>Memorandum of Understanding</i> between the City and the Landlord for facility usage, maintenance and operations.	
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: B. CONS:	
ALTERNATIVES (In Suggested Order of Staff Preference):	
ATTACHMENTS: (1) Lease Agreement approved by City Council on December 15, 2016	
FUNDING SOURCE (Where Applicable):	
RECOMMENDED ACTION: Rescind the Lease Agreement that was approved by the City Council on December 15, 2016 between the City of Brenham and Simon Theater Master Tenant, LLC. and authorize the Mayor to execute any necessary documentation	
APPROVALS: James Fisher	

LEASE AGREEMENT

Date: _____, 2016

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

Landlord's 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

Tenant: CITY OF BRENHAM, a Texas home rule municipal corporation

Tenant's Address: Attention: City Manager
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

Premises: Improved property ("Property") known as The Barnhill Center, located at 111 West Main Street in Brenham, Texas, and more particularly described in **Exhibit "A"** attached hereto and incorporated herein for all purposes.

Term (months): "Initial Term" of nine (9) months commencing on January 1, 2017 and terminating on September 30, 2017 unless this Lease is otherwise terminated earlier as provided herein. Thereafter, this Lease shall automatically renew each year on October 1 each year 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 Lease is otherwise terminated as provided herein.

Commencement Date: January 1, 2017

Termination Date: September 30, 2017

Base Rent (annually): \$17,126.00 - The Base Rent paid by the Tenant shall be utilized by the Landlord to pay certain expenses related to the Premises, including but not limited to alarm system and monitoring services (\$438.00 – 12 month contract), pest control services (\$450.00 - 9 months of service), fire alarm monitoring(\$456.00 – 12 month contract), fire inspection fee (\$350.00 – annual inspection fee), elevator inspection and maintenance services (\$3,564.00 – 12 month contract), and telephone communication service provider charges (\$6,468.00 - 9 months of service). The Base Rent also includes Tenant’s payment of a facility use charge to the Landlord in the amount of \$5,400.00 for the term of this Lease. The Base Rent shall be reduced by the cost savings accruing to the Landlord associated with any maintenance agreement, service or other obligation of the Landlord that the Tenant assumes and begins paying for or providing directly to the Premises during the term of this Lease. The cost savings accruing to the Landlord shall be reimbursed and paid to the Tenant within thirty (30) after the date on which the maintenance agreement, service or other obligation of the Landlord is assumed by, paid for, or provided directly to the Premises by the Tenant.

Security Deposit: None

Permitted Use: During the Term, Tenant may use the Property, Building and any Improvements (collectively the “Premises”) constructed on the Property for general business and recreational use of the Premises, including but not limited to operating, renting, subleasing, licensing and promoting the Premises as a facility for conferences, concerts, weddings, and other events (“Permitted Use”).

Tenant's Insurance: As required by Insurance Addendum attached hereto as **Exhibit “B”** and incorporated herein for all purposes.

Landlord's Insurance: As required by Insurance Addendum attached hereto as **Exhibit “B”** and incorporated herein for all purposes.

A. Definitions

A.1. "Agent" means agents, contractors, employees, volunteers, licensees, and, to the extent under the control of the principal, invitees.

A.2. "Injury" means (a) harm to or impairment or loss of property or its use, (b) harm to or death of a person, or (c) "personal and advertising injury" as defined in the form of liability insurance Tenant is required to maintain.

A.3. "Lienholder" means the holder of a deed of trust covering the Premises.

A.4. "Operating Expenses" means certain expenses as expressly set forth in this section A.4, including real property taxes and insurance, that Landlord pays in connection with the ownership of the Premises, except principal and interest on any debt, expenditures classified as capital expenditures for federal income tax purposes, and expenses for which Tenant is required to reimburse Landlord. Operating Expenses shall consist of the following:

A.4.a. Any and all taxes levied or assessed by any governmental authority against any personal property in or on the Premises or arising from the use of the Premises by Tenant during the Term of this Lease, including without limitation license fees, sales and use taxes, income taxes, and franchise taxes.

A.4.b. All real estate taxes (as defined below) that are assessed or imposed on the Premises (including the land comprising the Premises and all improvements situated on it) or that arise from the use of it by Tenant during this Lease by any taxing authority having jurisdiction over the Premises. Real estate taxes, as referred to in this Lease, are all taxes, assessments (including without limitation all assessments for public improvements or benefits, whether or not commenced or completed before the date of this Lease, and whether or not to be completed within the Term of this Lease), excises, levies, license fees, permit fees, inspection fees, and other authorization fees and other charges, in every case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character (including all interest and penalties) that may be assessed at any time and applicable to the Lease terms or imposed in respect of any lien on all or any part of the Premises, and any estate, right, or interest in the Premises, excluding any income or excess profits tax of Landlord determined on the basis of Landlord's general income or revenues.

A.4.c. Property insurance and other insurance coverage as described in the Insurance Addendum attached hereto as **Exhibit "B"** and incorporated herein for all purposes.

A.5. "Rent" means Base Rent plus any other amounts of money payable by Tenant to Landlord.

B. Tenant's Obligations

B.1. Tenant agrees to -

B.1.a. Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

B.1.b. Accept the Premises in their present condition "AS IS," the Premises being currently suitable for the Permitted Use.

B.1.c. Obey (i) all laws relating to Tenant's use, maintenance of the condition, and occupancy of the Premises; and (ii) the rules and regulations for the Premises adopted by Landlord.

B.1.d. Pay annually, on or before the Commencement Date, and each anniversary thereof that this Lease is in effect, the Base Rent to Landlord at Landlord's Address.

B.1.e. Pay a late charge of five percent (5%) of any Rent not received by Landlord by the thirtieth (30th) day after it is due. Only one (1) late charge shall be due for each late payment. A late charge shall not be construed as limitation upon Landlord's other rights and remedies in the event of Tenant's failure to timely pay Rent.

B.1.f. Obtain and pay for all utility services used by Tenant. Tenant will pay or cause to be paid promptly when due all charges for water, electricity, gas, sanitary sewer, trash collection, or any other utility services furnished to the Premises, if any, and costs necessary to bring any utilities to the Premises. Tenant expressly agrees that Landlord is not, nor will be, required to furnish to Tenant any water, sewer, gas, heat, electricity, light, power, or any other utility services of any kind.

B.1.g. Pay (i) annually, in advance, the estimated Operating Expenses and (ii) annually, any amount by which the actual Operating Expenses exceed the estimated Operating Expenses, within thirty days of receiving notice of such difference from the Landlord.

B.1.h. Continue to use the same or more stringent event rental policies set up by Landlord which are attached as **Exhibit "C."** Any change in the policies set by Landlord must be approved by Landlord in writing.

B.1.i. Pay for and have an Event Manager present at all times during events at the Premises; however, this obligation of the Tenant shall not apply to occasions when the Landlord is using the Premises pursuant to section D.3 of this Lease. Event rentals must purchase event insurance online (through a third-party provider) at a minimum of three days prior to an event.

B.1.j. Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

B.1.k. Repair, replace, and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear excepted. Tenant will keep all audio-visual and lighting equipment situated on the Premises 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 Lease, 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. Landlord will maintain and pay for all maintenance agreements for elevator, pest control, fire alarm, fire and security monitoring, and fire and elevator inspection; the parties hereto acknowledge and agree that the amount of funds required by Landlord to pay said maintenance agreement expenses are included in the Base Rent payable to by Tenant to Landlord pursuant to this Lease.

B.1.l. Submit in writing to Landlord any request for repairs, replacement, and maintenance that are the obligations of Landlord.

B.1.m. If requested, deliver to Landlord a financing statement perfecting the security interest created by this lease.

B.1.n. Vacate the Premises and return all keys to the Premises on the last day of the Term.

B.1.o. On request, execute an estoppel certificate that states the Commencement Date and Termination Date of the lease, identifies any amendments to the lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested.

B.1.p. TO THE EXTENT ALLOWED BY LAW, INDEMNIFY, DEFEND, AND HOLD LANDLORD AND 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 PREMISES, BUT ONLY TO THE EXTENT SUCH INJURY IS CAUSED BY TENANT'S NEGLIGENCE OR WILLFUL MISCONDUCT. **THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF TENANT'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 LANDLORD OR LIENHOLDER, AND THEIR RESPECTIVE AGENTS.**

B.2. Tenant agrees not to -

B.2.a. Use the Premises for any purpose other than the Permitted Use.

B.2.b. Create a nuisance.

B.2.c. Permit any waste.

B.2.d. Use the Premises in any way that would void insurance on the Premises.

B.2.e. Change Landlord's lock system except as approved by Landlord.

B.2.f. Alter the Premises without written authorization from the Landlord.

B.2.g. Allow a lien to be placed on the Premises.

B.2.h. Assign this lease or sublease any portion of the Premises without Landlord's written consent.

B.2.i. Attach any permanent signage to the Premises without written permission of Landlord.

C. Landlord's Obligations

C.1. Landlord agrees to -

C.1.a. Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

C.1.b. Obey all laws relating to Landlord's operation of the Premises.

C.1.c. Repair, replace, and maintain the (i) roof, (ii) foundation, (iii) structural soundness of the exterior and interior walls, doors, corridors, flooring and windows, and (iv) other structures or equipment/machinery fixtures serving the Premises, except to the extent that damage to the same is caused by Tenant or Tenant's employees, agents, or invitees.

C.1.d. Provide Tenant promptly after receipt of a written request from Tenant with a reconciliation of the actual Operating Expenses incurred by Landlord during the preceding lease year and the estimated Operating Expenses paid by Tenant for the same period and reimburse Tenant for the amount of any estimated Operating Expenses paid by Tenant in excess of the actual Operating Expenses for the preceding lease year.

C.1.e. Continue with and pay for the current AT&T telephone accounts until September 30, 2017 while an evaluation can be conducted by Tenant to connect with the telephone communications system installed at the Premises. After the system evaluation by the Tenant, if the Tenant determines it is able to successfully connect its telephone communications system with the telephone communications system installed at the Premises, and the Landlord and Tenant mutually agree that the Tenant will assume and begin providing its own telephone communications services directly to the Premises prior to September 30, 2017, the Landlord shall terminate the appropriate AT&T telephone accounts no longer needed to provide telephone communications service to the Premises.

C.1.f. Contract to do the concessions at all events at the Premises. Debbie Genz Bartender Company (or one determined by Landlord) is the required vendor company. The Bullock Ballroom and private event rentals will pay for the bartender fees and will buy all wine and beer through Landlord. For public auditorium events, Landlord will provide bartenders, staff and/or volunteers to handle concessions. Landlord will receive all of the income from the concessions.

C.1.g. Carry out and provide sufficient personnel for all previous event contracts made by Landlord, including concerts and events.

C.1.h. TO THE EXTENT ALLOWED BY LAW, INDEMNIFY, DEFEND, AND HOLD TENANT 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 LANDLORD'S OR LIENHOLDER'S NEGLIGENCE OR WILLFUL MISCONDUCT. **THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF LANDLORD'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 TENANT.**

C.2. Landlord agrees not to -

C.2.a. Interfere with Tenant's possession of the Premises as long as Tenant is not in default.

D. General Provisions

Landlord and Tenant agree to the following:

D.1. Alterations. Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

D.2. Abatement. Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant will not be entitled to abate Rent for any reason.

D.3. Landlord's Occupancy. Subject to the scheduling approval of the Tenant and availability of the Premises, Landlord will be permitted to use the Premises up to six (6) times each year for any 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. The Tenant shall endeavor in good faith to accommodate the Landlord's request to use the Premises pursuant to this section D.3 on a particular date; however, the Premises will not be made available for the Landlord's use on a particular date if another event has been booked on the Landlord's requested date, or the Tenant has in any manner (e.g. email, telephone, fax, in-person meeting, etc.) communicated with a potential user, even though the potential user has not booked the Premises, about the use of the Premises on a particular date or dates that conflict with the Landlord's requested date. The third floor small storage room, the lobby elevator small storage closet, and the annex concession storeroom will be used exclusively by Landlord for supplies and storage.

D.4. Insurance. Tenant and Landlord will maintain the respective insurance coverages described in the Insurance Addendum attached hereto as **Exhibit "B"** and incorporated herein for all purposes.

D.5. Release of Claims/Subrogation. LANDLORD AND TENANT RELEASE EACH OTHER AND LIENHOLDER, AND THEIR RESPECTIVE AGENTS, FROM ALL CLAIMS OR LIABILITIES FOR DAMAGE TO THE PREMISES 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 LEASE. 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. LANDLORD AND TENANT 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.**

D.5. Casualty/Total or Partial Destruction

D.5.a. If the Premises shall be damaged by fire, unavoidable accident, or other casualty covered by fire and extended coverage insurance and such damage is not caused by the act, or failure to act, of Tenant, its employees, agents, licensees, permittees, or invitees, then Landlord shall cause such damage to be repaired. If the Premises shall be rendered wholly untenable by reason of such occurrence, Landlord shall cause such damage to be repaired; provided, however, if the Premises cannot be repaired within ninety days, Landlord may, at its election, made within fifteen days following the occurrence of such damage or destruction, elect to terminate this Lease. In the event of such termination, rent shall be abated from and after such date of the damage or destruction. If Landlord does not terminate this Lease following damage or destruction of the Premises, Landlord shall commence and complete a restoration of the Premises within a reasonable time after such damage or destruction. Tenant agrees to give Landlord immediate notice of any damage to the Premises by fire, the elements, or any other casualty.

Landlord shall not be liable to Tenant for any loss or damage to any property of Tenant or of others located on the Premises, by theft or otherwise.

D.5.b. In case of damage or destruction, and if this Lease is not terminated pursuant to D.5.a, the rent shall be abated wholly or proportionately, as the case may be, until the damage shall be repaired and the Premises restored; provided, however, that if such damage or destruction is caused by Tenant, its agents, representatives, or employees, there shall be no abatement of rent.

D.6. Condemnation/Substantial or Partial Taking

D.6.a. If the Premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, this lease will terminate.

D.6.b. If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

D.6.c. Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

D.7. Uniform Commercial Code. Tenant grants Landlord a security interest in Tenant's personal property now or subsequently located on the Premises. This lease is a security agreement under the Uniform Commercial Code. Landlord may file financing statements or continuation statements to perfect or continue the perfection of the security interest.

D.8. Default by Landlord/Events. Defaults by Landlord are failing to comply with any provision of this lease within ten days after written notice.

D.9. Default by Landlord/Tenant's Remedies. Tenant's remedies for Landlord's default are to sue for damages and terminate this lease.

D.10. Default by Tenant/Events. Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning the Premises or vacating a substantial portion of the Premises, and (c) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b).

D.11. Default by Tenant/Landlord's Remedies. Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises and sue for Rent as it accrues; (b) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the Rent directly by reason of the reletting, and Tenant agrees to reimburse Landlord for any expenditures made in order to relet; (c) enter the Premises and perform Tenant's obligations; and (d) terminate this lease by written notice and sue for damages. Landlord may enter and take possession of the Premises by self-help, by picking or changing locks if necessary, and may lock out Tenant or any other person who may be occupying the Premises, until the default is cured, without being liable for damages.

D.12. Default/Waiver/Mitigation. It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this lease does not preclude pursuit of other remedies in this lease or provided by applicable law. Landlord and Tenant have a duty to mitigate damages.

D.14. Holdover. If Tenant does not vacate the Premises following termination of this lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term.

D.16. Attorney's Fees. If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and other fees and court and other costs.

D.17. Venue. Exclusive venue is in Washington County, Texas.

D.18. Entire Agreement. This lease, its exhibits, addenda and riders, are the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant. There are no representations, warranties, agreements, or promises pertaining to the Premises or the lease of the Premises by Landlord to Tenant, and Tenant is not relying on any statements or representations of any agent of Landlord, that are not in this lease and any exhibits, addenda, and riders.

D.19. Amendment of Lease. This lease may be amended only by an instrument in writing signed by Landlord and Tenant.

D.20. Limitation of Warranties. 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.

D.21. Notices. Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

D.23. Abandoned Property. Landlord may retain, destroy, or dispose of any of Tenant's property left on the Premises at the end of the Term.

D.24. Subordination. Landlord subordinates its security interest and liens to purchase-money security interests in Tenant's personal property.

D.26. Advertisement of Premises. During the last sixty days of the Term, Landlord may place a sign on the Premises advertising the Premises for rent or sale.

EXECUTED as of _____, 20_____.

LANDLORD:

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

By: _____

Name: R. Hal Moorman

Title: President

TENANT:

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, age 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.

EXHIBIT "A"

Blakley Land Surveying

4650 Wilhelm Lane
Burton, Texas 77335-5794

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 Mui 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. Blakley
Registered Professional Land Surveyor No. 5935

Plat prepared and made a part of this description.

EXHIBIT "A"

Blakley Land Surveying

4650 Wilhelm Lane
Burton, Texas 77825-5794

Telephone/Fax 979-289-3900

BRENHAM 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. 53, 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 Elisabeth Bohrend 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 1082, 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 19 deg 14min 03sec E, 59.53 ft., to a point at building corner, marking the Northeast corner of the Frederick C. P. 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 77deg 08min 41sec 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 13deg 12min 23sec W, 59.30 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 3 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 77deg 00min 00sec 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. Blakley

Registered Professional Land Surveyor No. 5935

That prepared and made a part of this description.

EXHIBIT "B"

Insurance Addendum to Lease

Lease

Date: _____, 2016

Landlord: SIMON THEATER MASTER TENANT, LLC, a Texas limited liability company
Attention: R. Hal Moorman and Donna Cummins
P.O. Box 2006
Brenham, Texas 77834-2006

Tenant: CITY OF BRENHAM, a Texas home rule municipal corporation
Attention: City Manager
P.O. Box 1059
Brenham, Texas 77834-1059

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

A. At all times during the Term, Tenant 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 Tenant's personal property, fixtures, and leasehold improvements in the Premises, and naming Landlord as "Building Owner Loss Payable."
 - b. If Tenant is utilizing the Premises for commercial purposes and Improvements are present on the Premises, Tenant 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 Tenant's operations within the Premises, naming Landlord, and Landlord's Lienholder, if any, as "additional insured," 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, Landlord agrees to maintain -

1. Current Insurance. Landlord will maintain and pay for the insurance policy and coverages described in **Exhibit "D"** attached to this Lease and made a part hereof for all purposes. Tenant will reimburse Landlord for actual annual premium costs of the insurance coverages (including historic replacement cost coverage) described in **Exhibit "D"**, and such annual reimbursement amount to be paid by Tenant shall not exceed \$21,425.00.

C. Landlord and Tenant 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 Landlord any excess remaining after the work of building, rebuilding, or repairing is substantially completed. However, Landlord's duty to repair, restore, and replace the Improvements will be waived if Landlord and Tenant mutually agree in writing to waive Landlord's restoration duty.

All proceeds from the Landlord's property insurance received by Landlord will be made available to Landlord 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 Landlord's architect or other advisor, all reasonable amounts incurred or paid by Landlord 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 Lease, Landlord must begin the construction, reconstruction, or repair of the Improvements within thirty (30) days after receipt of the property insurance proceeds, and Landlord 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 Landlord does not begin repairs or complete the work within thirty (30) days after receipt of the property insurance proceeds, Tenant may (a) terminate this Lease 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 Landlord's stead.

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

3. Landlord and Tenant's obligations to maintain insurance under this Lease may be satisfied by appropriate amendment, rider, or endorsement on any blanket policy or policies carried by Landlord and Tenant. Landlord and Tenant will obtain the type and limits of coverage provided in this Lease by companies licensed to do business in Texas and having a Best's Insurance Guide rating of at least "A+". Insurance policies of Tenant will name Landlord as an additional insured via additional insured endorsements that are acceptable to Landlord. 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 Landlord. 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 Lease before the expiration of the insurance policies.

4. All insurance policies obtained by Landlord and Tenant under this Lease 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 Landlord or Tenant does not maintain the insurance required under this Lease or fails to carry any insurance required by law, Landlord or Tenant, 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 Landlord or Tenant procures and pays the premiums on the required insurance the other party will, immediately on demand by Landlord or Tenant for payment, repay to the Landlord or Tenant all premiums paid by Landlord or Tenant together with interest at the per annum rate of ten percent (10%) from the date Landlord or Tenant makes payment to the date of other party's reimbursement.

Exhibit C

THE BARNHILL CENTER AT THE HISTORIC SIMON THEATRE
111 West Main Street (Mail: P.O. Box 2006, 77834-2006) Brenham, Texas 77833
979-836-6980 TheBarnhillCenter@gmail.com

Policies & Procedures

The Barnhill Center may be referred to herein as **TBC** or the Center. Any Lessee who rents the **TBC**, or any portion thereof, shall initial receipt of these Policies and Procedures at the bottom of each page. **Failure to comply with any of the policies below will result in forfeiture of the Damage/Policy Compliance Deposit and cancellation of the reservation.**

ANIMALS

No animals other than service animals are permitted in the **TBC** without prior written authorization from the Center director. Service animals are defined by the Americans with Disabilities Act ("ADA"). Please be advised that dogs whose sole function is "the provision of emotional support, well-being, comfort, or companionship" are not considered service dogs under the ADA. Service animals must be harnessed, leashed, or tethered unless these devices interfere with the service animal's work or the individual's disability prevents using these devices.

RESERVATION POLICIES

All reservations for events to be held at the Center must be made during regular business hours Monday-Friday (8:00 am – 5:00 pm) by an individual 18 years or older. The Center is closed on Sundays unless the entire facility is rented for that day or the Center is booked for a three-day event. In addition, the Center is closed on Thanksgiving Day, Christmas Eve, Christmas Day, New Year's Eve and New Year's Day. Event rental hours are 8:00 am to 12 midnight.

1. Except under specific, limited circumstances, reservations for specific dates and times are made on a first-come, first-served basis. To hold a reservation for an event, the reservation must be accompanied by a signed Lease Agreement, executed by the responsible party and full payment. If the fee of the Room Rate and signed Contract are not provided to TBC "Director" at the time the reservation is made, the reservation is considered "tentative" and may be cancelled. Please be advised that under limited circumstances, multi-day events may take precedence over single day events. All fees owed to the **TBC** for an event must be paid in full to reserve the date of the event.
2. Please be advised that both an early opening and/or additional set-up time must be pre-approved by the **TBC**, discussed with the Director in advance, and are subject to room availability. Applicable fees apply.
3. Rental of the Center does not entitle the Lessee to use of Center staff in connection with an event. In addition, Center staff will stock and monitor the restrooms and attend to any emergency situation. **Lessee shall be solely responsible for employing a sufficient number of qualified personnel, in the Director's sole discretion, for the event to safely and successfully occur.** Lessee agrees that each person employed by Lessee to provide services in the **TBC** will be approved and authorized by TBC and shall, at all times, maintain an appearance and conduct himself/herself in a polite and professional manner. Lessee agrees to replace any employees failing to do so immediately upon notice by the Director.
4. Each room rental fee includes one room set-up, per event, which consists of the placement of tables and chairs. Each additional room set-up or change in a layout will be deducted from the Policy Compliance/Damage deposit and considered an additional fee. Minor adjustments to a set-up will be judged on a case-by-case basis.

CANCELLATION/REFUND POLICY

Reservations are non-refundable. If a reservation is cancelled, the Lessee shall be entitled to a refund of the following payment: \$500 Policy Compliance/damage deposit. **Any cancellation of a reservation must be received by the Center in writing within 10 days of the event in order to not forfeit the \$500 Policy Compliance/Damage Deposit.**

ALCOHOL POLICY

TBC is the sole retailer of sales and service of beer and wine during events **that are held in the TBC**. **BMSHP holds a Texas Alcohol Beverage Commission (TABC) License. Beer or Wine must be purchased through TBC.** Accordingly, to serve alcohol in the Bullock Ballroom, **the Lessee must contract with the TBC vendor of TABC License/Special Event Bartenders. Beer must be served in bottles or cans; no kegs or kegators. Drink machines are not permitted.** In addition, if you will be providing the liquor to your guests free of charge, you may not advertise that there will be alcohol at the event. **No alcohol may be brought in other than that sold by TBC and cash bar is operated by TBC. All Beer and Wine are distributed and sold by TBC. If hard alcohol is to be served; prior arrangements must be made with TBC and will require separate bartenders and a separate bar-no cash bar.**

BUILDING CONDITIONS / DECORATIONS

No event decorations or materials, including banners, flyers, posters or signs may be attached, nailed, stapled tacked or driven into any portion of the TBC, whether inside or out, or affixed to the Center. In addition, **tape** or other adhesives may not be applied to any wall, floor or surface in the Center.

1. No banners, flyers, posters or signs may be distributed on TBC property.
2. All decorative materials must be flame proof or **enclosed** on **all** sides in a flame proof container (e.g. votive, fish bowl, hurricane glass).
3. Fire exits, exit signs and air system inlets or outlets must remain accessible and visible at all times.
4. The following materials are prohibited inside the TBC; straw, hay, glitter, confetti, dirt, gravel/sand, birdseed, rose petals, rice, sequins, artificial snow or any similar items. Balloons are NOT allowed in Hasskarl Auditorium, and those used in the Bullock Ballroom cannot be filled with any of the above items. Only artificial flowers can be used in Hasskarl Auditorium. Real flowers can be used on the stage. Rice, birdseed, confetti and rose petals are permitted outside the Barnhill Center only and is included in the "Broom Clean" policy following the event. **TBC reserves the right to prohibit or remove from the Center any item not set forth herein if in his/her discretion the item may cause damage to the Center.** **If a Lessee has any questions about whether a particular item is permitted in the Center, please speak with the director prior to your scheduled event.** The Center is not liable for the cost of a prohibited item or decoration that was purchased for an event but may not be used.

CATERING

Any caterer for an event at the **TBC** must be on **TBC's** list of approved Caterers. Caterers shall provide the Center with all required licenses, health permits and insurance in advance of any catered event. Please be advised that the Caterer's List is for informational purposes only and should not be considered a recommendation or endorsement by the Center. Please confirm directly with your selected caterer that he or she has sufficient qualification and equipment to serve the anticipated number of guests and in conformity with your expected quality. In addition, please feel free to contact your caterer's references for additional information. **Caterer's MUST carry off all the trash associated with their event responsibilities including food and empties used for beverages. Caterer must not use TBC trash receptacles and must bring their own contractor size trash can liners.**

CLEANING

Lessee shall leave the Center in the **same condition** as when the Lessee took possession. **All trash shall be removed from the Center**, whether during or immediately following the event, and placed in the appropriate two trashcans located in the Alley at the end of the ramp. **This trash should not include any of the Caterer's food/bartending empties trash.** **Any Trash that does not fit in the trash cans with the lid closed must be carried off the premises.** Please be advised that the time it takes to clean the leased area is part of the event time. Clean-up of the facility by the Lessee needs to be completed between 8:00 am-12 noon the following day of the event. Facilities are to be left "broom clean" as well as no liquids/spills left on floors and **ALL TRASH (trash receptacles-bathrooms, kitchen, event areas** must be emptied and clean) and personal belongings removed. If additional time is required to clean the utilized area, the Lessee will be charged \$100/hour accordingly.

CONTROL OF BUILDING

The lease of the Center by a Lessee does not relinquish the right of Center staff to control the management and operation of the TBC and to enforce all rules and regulations regarding same. Center staff, police officers and fire fighters may enter the facility, including any or all leased premises, at any time and for any purpose arising out of our related to the operation of the Center.

EQUIPMENT RENTALS

All electrical equipment used on **TBC** property must be U.L. approved. Accessibility to equipment rooms and utility boxes is prohibited without authorization from a Center employee. (Special electrical requests, such as phone lines, must be given, in writing, forty-five (45) days in advance of an event, and additional fees will apply.)

FLAMMABLE LIQUIDS

Flammable liquids such as, but not limited to, gasoline, kerosene, bottle flammable gas and oil are not permitted inside the BC. An exception will be made for catering sterno when used by the caterer catering the event.

FLOOR PLANS (DIAGRAMS)

A diagram/floor plan must be discussed two weeks prior to the event. Service equipment brought in must be included as floor plan will need to include walkway/aisle widths. Failure to confirm the required diagram in advance of the event absolves the Center of the responsibility to have adequate personnel scheduled for set-up. Due to allocation of manpower,

only minor changes can be made to a floor plan once a diagram is received and approved by the Center. Requests for major changes to a floor plan after set-up may be subject to additional fees, as outlined in the Lease Agreement.

FREIGHT/SHIPMENTS/DELIVERIES

TBC staff will not sign, accept, store or ship freight or packages for any party, including Lessee, exhibitors, delegates or vendors, at any time. All deliveries (linens, flowers, catering items) must be made during business hours and at a mutually agreed time based on the lease period specified in the contract. Any items left in the TBC not picked up by the Lessee after more than three (3) days following an event may be disposed of by the Center staff. The Center is not responsible for items left at the facility or for damaged, lost or stolen items.

FORCE MAJEURE

If (a) the TBC or any portion thereof is destroyed or damaged by fire or other calamity so as to prevent the use of the leased premises for the purposes and during the periods specified in the lease, or (b) if the use of the leased premises by Lessee is prevented by act of God, strike, lockout, material or labor restrictions by any governmental authority, civil riot, flood or any other cause beyond the control of the Center, then the lease will terminate. The Center shall not be liable or responsible to Lessee for any damages caused thereby and Lessee waives any claim against the Center and or BMSHP for damages by reason of such termination except that any unearned portion of the rent due shall abate, or if previously paid, shall be refunded by the Center to the Lessee.

INDEMNITY

To the fullest extent permitted under the Constitution and the laws of the State of Texas, Lessee shall indemnify, hold harmless, and defend the TBC and BMSHP, and their affiliates, agents, officers and employees, from and against all claims, demands, costs or expenses for loss, damage, or injury, including attorney's fees, whether incurred during the investigation or defense of a claim, or for bodily or personal injury, sickness, disease, death, or injury to or destruction of personal property, including the loss of use, in whole or in part, which arises out of or is related to the Lessee's use of the Center, the performance of the Lessee, or Lessee's activities at the Center and Lessee's negligence, gross negligence, intentional acts, or omissions, or by anyone else's negligence, gross negligence, intentional acts, or omissions, who is directly or indirectly employed by or working at the direction of the Lessee, participating in an event of the Lessee or acting in concert with the Lessee. Such act include but are not limited to: 1) a failure of the Lessee, or any of its employees, participating, or agents to perform in accord with this Agreement and the Policies and Procedures; 2) any injury, loss or damage, whether to person or property, occurring as a result of, or arising out of, the Lessee's event; 3) a failure of the Lessee, or its employees, participants, or agents to comply with any law(s) of any governmental authority; 4) any third party agreement(s) or contract(s) to provide goods or services for the direct or indirect benefit of the Lessee or a customer of the Lessee; or 5) any other circumstance or condition that does not arise out of or result from the gross negligence and /or willfull misconduct of BMSHP or TBC, or their agents, servants or employees.

MULTIPLE BOOKINGS

The Center Director reserves the rights to book more than one event in the TBC at a time. Consideration will be given to avoid conflicts due to noise or traffic concerns. The Lessee may elect to rent the entire facility if sharing the facility, in the Director's sole discretion, is not possible.

OUTSIDE CONTRACTORS/VENDORS

The Lessee shall submit to the Director, a minimum of thirty (3) days prior to an event, a list of all contractors and employees the Lessee intends to use for the event. All contractors and employees must be properly licensed, permitted and insured before they may enter the Center.

PERFORMANCE QUALITY

No activity, performance, exhibition, or entertainment shall occur on TBC property which is potentially dangerous to the public, is illegal or could be considered indecent, obscene, lewd, immoral or offensive to a person of ordinary sensibilities. In the event it is determined by the Director, in his/her sole discretion that this section is or will be violated, the Director shall have the right to demand that Lessee immediately omit such attractions. If the Lessee fails to comply with the Director's request, the Center shall have the right to cancel the event, and Lessee will forfeit the rental fees and the Policy Compliance/Damage Deposit.

PHOTO/VIDEO RELEASE

Lessee authorizes The Barnhill Center, hereafter referred to as TBC to publish photographs and/or videos taken during the rental of the event venue for use in the The Barnhill Center's print, online and video-based marketing materials, as well as other Venue publications.

Lessee releases, indemnify and hold harmless TBC from any reasonable expectation of privacy or confidentiality associated with the images specified above.

Lessee acknowledges Lessee will not receive financial compensation of any type associated with the taking or publication of these photographs/video or participation in venue marketing materials or other venue publications. Lessee acknowledges and agree that publication of said photos confers no rights of ownership or royalties whatsoever. Lessee releases TBC, its contractors, its employees, and any third parties involved in the creation or publication of marketing materials, from liability for any claims by Lessee or any third party in connection with Lessee's participation.

SMOKING/TOBACCO USE

The TBC is a non-smoking facility. **Smokers are required to go outdoors and not remain near any of the doors or ramps. The Alley elevator tower steps, landing and ramps are strictly off limits for smoking.** Additionally, the use of all tobacco products is prohibited in the facility including but not limited to chew, cigarette, cigars, cigarillos, vaping, little cigars, e-cigarettes, pipe, smokeless tobacco and dip.

CHILDREN

No unattended children are permitted at any event and must be supervised at all times. "Unattended children" term includes TBC staff having to correct children from any "unacceptable" behavior even if the guardian or parent is present. The Policy Compliance/Damage deposit is forfeited in full from more than one warning of "unattended children". TBC reserves the right that if children continue with "unacceptable behavior, the guardian parent and the children will be asked to leave TBC.

EVENT MANAGER

An Event Manager is provided during the hours of your scheduled event. The Event Manager will handle all lighting, A/V needs, monitor/maintain restrooms and be available for any needs that may arise regarding the facility. **If the event is scheduled for a duration of more than 5 hours where a meal is provided for guests attending; the Event Manager should be provided a plate and included in the catering numbers.** The Event Manager is not responsible for greeting and directing invited guests and will not be responsible for unattended children.

GREETER

Lessee must provide someone to greet their guests upon arrival to direct them to the event-whether by the stairs or elevator. TBC staff is not available to do this and the Lessee is responsible for designating a "greeter" to direct the guests and who will remain at the front door during the arrival window of the event.

SUBLEASING

Subleasing of the Center is strictly prohibited. The named Lessee must be the individual or entity holding or sponsoring the event.

Responsible Alcohol Beverage Service On-Premise

TBC is committed to the responsible service of alcoholic beverages. In accordance to this commitment, all employees and Texas Alcohol Beverage Commission (TABC) licensed servers are required to follow the procedures listed below: No employee or TABC licensed server shall sell or serve an alcoholic beverage to anyone under the age of 21.

1. No one under the age of 21 may consume alcoholic beverages on the premises.
2. All employees and TABC licensed servers shall carefully check Identification of anyone who appears to be under 30 years of age.
3. Acceptable documentation to purchase an alcoholic beverage is a valid Texas driver's license with a photo or a photo ID issued by the state of Texas.
4. The employee and TABC licensed server shall carefully check all identification to determine its authenticity. The manager of the Center should be informed if there is any appearance of forgery or tampering.
5. In the absence of authentic identification, or in case of doubt, the employee or TABC licensed server shall refuse service of alcoholic beverages to the customer.
6. No employee or TABC licensed server shall serve alcoholic beverages to anyone who is intoxicated or appears to be intoxicated.
7. No employee or TABC licensed server shall serve alcoholic beverages to anyone to the point of intoxication or the appearance of intoxication.
8. It is the employee's or TABC licensed server's responsibility to notify a manager when a customer shows signs of intoxication or is requesting alcoholic beverages above the limits of responsible beverage service.
9. Any customer appearing intoxicated wishing to leave the establishment will be urged to use alternative transportation rather than drive an automobile.
10. All employees or TABC licensed servers are obligated to immediately inform law enforcement authorities when intervention attempts of an apparently intoxicated individual fails and the individual intends to drive an automobile.

11. No employee or TABC licensed server shall drink alcoholic beverages while working.
12. All employees or TABC licensed servers who serve/sell alcoholic beverages shall successfully complete a Texas Alcoholic Beverage Commission certified Seller/Server training course prior to beginning employment and their service shall comply with the requirements provided in training.
13. Violations of these rules could be grounds for termination of the employee or TABC licensed server.

THE MANAGEMENT OF THE CENTER FULLY SUPPORTS THESE POLICIES AND WILL STAND BEHIND OUR EMPLOYEES AND TABC LICENSED SERVERS IN THEIR DECISIONS TO PROMOTE RESPONSIBLE SERVICE.

The Barnhill Center Representative: _____ Date: _____

I have read, signed and initialed the Policies & Procedures Agreement:

Lessee Representative: _____ Date: _____

Exhibit D

Risk Management and Insurance Proposal

for

**Brenham Main Street Historic Preservation, Inc
Simon Theater Landlord, LLC
Simon Theater Master Tenant, LLC
Simon Theater Manager, LLC**

Policy Term: 9/16/2016-17

Presented By:

Kevin Sullivan, MBA, CIC

**National Trust Insurance Services
MDP Programs**

33 South Gay Street, 3rd Floor
Baltimore, MD. 21202
866.269.0944

www.nationaltrust-insurance.org



**National Trust
Insurance Services, LLC**
a subsidiary of
National Trust for Historic Preservation

MDP
Insurance Since 1875

Exhibit "C"



National Trust
Insurance Services, LLC
a subsidiary of
National Trust for Historic Preservation

Report Summary

Premium Summary

Coverage	Effective	Carrier	Premium
Property*	9/16/16-17	Hanover	16,096
General Liability	9/16/16-17	Hanover	1,341
Auto (Hired & Non-Owned)	9/16/16-17	Hanover	Included in GL
Workers' Compensation	9/16/16-17	Hanover	313
Umbrella Liability**	9/16/16-17	Great American	2,255
Volunteer Accident	9/16/16-17	US Fire (via Allen J Flood)	199
Directors & Officers Liability**	9/16/16-17	Great American	1,221
TOTAL			\$21,425

*Property written on an Historic Replacement Cost basis. See Definition in Appendix.

**Umbrella Liability extends over D&O Liability as well. Thus, your \$1m D&O limit is actually \$4m (\$1m D&O + \$3m Umbrella)



AGENDA ITEM 19

DATE OF MEETING: February 7, 2019	DATE SUBMITTED: February 1, 2019
DEPT. OF ORIGIN: Finance	SUBMITTED BY: Carolyn D. Miller
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION
ORDINANCE: ☐ 1ST READING ☐ 2ND READING ☐ RESOLUTION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon a Memorandum of Understanding Between the City of Brenham and Simon Theater Master Tenant, LLC for the Management and Operation of the Barnhill Center at the Historic Simon Theater and Authorize the Mayor to Execute Any Necessary Documentation	
SUMMARY STATEMENT: This agenda item sets forth a more streamlined <i>Memorandum of Understanding</i> (MOU) between the City and the Simon Theater Master Tenant, LLC (Simon Theater). 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 for conferences, cultural arts programming, concerts, wedding and other events. In exchange for this exclusivity, the City agrees to pay \$1,500 per month. Under this MOU, the City has the following rights: • Establish rental rates and all related charges and fees for the facility; • Exclusive administrative rights and control of all website and social media domains; • Final authority in development of marketing materials and advertisements; • Control over published telephone number; and • Control over concessions. The City will receive all income from conferences, cultural arts programs, concerts, weddings and all other events and activities held at the Barnhill Center where concessions are sold. Under this MOU, the City has the following responsibilities: • Have City staff present at all times during events at the facility; • Except for events and meeting sponsored or conducted by the City, ensure that outside parties (users of the facility) purchase event insurance through a third-party provider; • Keep all audio-visual and lighting equipment in good and clean order; • Responsible for building repairs, maintenance and elevator warranty up to \$12,000 per year; and • Maintain respective insurance coverages as described in Exhibit B.	

Under this MOU, Simon Theater has the following rights: • Will be permitted to use the Barnhill Center up to six (6) times each year for fundraising events and for meetings of the Board of Directors and Development Committee; and • Ability to conduct small tours for fundraising. Under this MOU, Simon Theater has the following responsibilities: • Coordinate, control, and schedule the breakout room construction in consultation with the City to minimize negative conditions during the use of the facility for scheduled events; and • Maintain respective insurance coverages as described in Exhibit B.
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: B. CONS:
ALTERNATIVES (In Suggested Order of Staff Preference):
ATTACHMENTS: (1) Memorandum of Understanding
FUNDING SOURCE (Where Applicable): Revenues from hotel occupancy taxes, concession sales, and event revenues
RECOMMENDED ACTION: Approve a Memorandum of Understanding between the City of Brenham and the Simon Theater Master Tenant, LLC for the management and operation of the Barnhill Center at the Historic Simon Theater and authorize the Mayor to execute any necessary documentation
APPROVALS: James Fisher

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 ____ day of _____, 20____ (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 programing. 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 programming, 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.

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, age 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.

EXHIBIT "A"

Blakley Land Surveying

4650 Wilhelm Lane
Burton, Texas 77335-5794

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 Mui 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. Blakley
Registered Professional Land Surveyor No. 5935

Plat prepared and made a part of this description.

EXHIBIT "A"

Blakley Land Surveying

4650 Wilhelm Lane
Burton, Texas 77825-5794

Telephone/Fax 979-289-3900

BRENHAM 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. 53, 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 Elisabeth Bohrend 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 1082, 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;

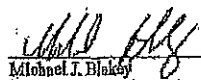
THENCE along the West margin of Douglas Street, with a portion of the East line of Original Town Lot 22, S 19 deg 14min 03sec E, 59.53 ft., to a point at building corner, marking the Northeast corner of the Frederick C. P. Kugel called 2763 Sq.Ft. tract (Volume 260, Page 116, Deed Records of Washington 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 77deg 08min 41sec 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 13deg 12min 23sec W, 59.30 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 3 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 77deg 00min 00sec 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. Blakley
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.



AGENDA ITEM 20

DATE OF MEETING: February 7, 2019	DATE SUBMITTED: January 25, 2019
DEPT. OF ORIGIN: Finance	SUBMITTED BY: Carolyn D. Miller
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION
ORDINANCE: ☐ 1 ST READING ☐ 2 ND READING ☐ RESOLUTION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon the Acceptance of the 2018 Audit of the Washington County Appraisal District by Seidel, Schroeder & Company	
SUMMARY STATEMENT: The City has received a copy of the Washington County Appraisal District's (WCAD) audited financial statement for the fiscal year ending August 31, 2018. A copy is in the CFO's office for your review. I have attached the transmittal letter from Mr. Willy Dilworth which explains that the WCAD audit was performed by Seidel and Schroeder and that no discrepancies were found. Mr. Dilworth reported that there were budget savings of \$39,275 for FY17-18. Once the best use of these excess funds has been determined, the appraisal district will return to council for approval before proceeding.	
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: B. CONS:	
ALTERNATIVES (In Suggested Order of Staff Preference):	
ATTACHMENTS: (1) Transmittal letter from Willy Dilworth, Chief Appraiser	
FUNDING SOURCE (Where Applicable):	
RECOMMENDED ACTION: Approve the acceptance of the 2018 audit of the Washington County Appraisal District by Seidel, Schroeder & Company	
APPROVALS: James Fisher	

WASHINGTON COUNTY APPRAISAL DISTRICT

1301 NIEBUHR
P. O. BOX 681
BRENHAM, TX 77834-0681
(979) 277-3740

December 18, 2018

City of Brenham
Mr. James Fisher
PO Box 1059
Brenham, TX 77834-1059

Dear Mr. Fisher,

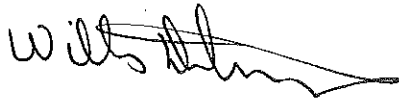
The audit for our fiscal year 2017-2018 has been completed by Seidel, Schroeder, & Co. A copy is attached for your review. There were no discrepancies found during this time period. The audit revealed that the appraisal district stayed \$39,275 under budget.

I am going to meet with the Budget Committee formed from representatives from the taxing entities to discuss the best way to use these taxpayer dollars. Once some ideas have been formulated we will request your permission to use it accordingly.

Please examine and accept this audit if you find it to be agreeable.

Thank you for your consideration in this matter. As always please feel free to contact me with any questions or input.

Sincerely;



Willy Dilworth
Chief Appraiser



AGENDA ITEM 21

DATE OF MEETING: February 7, 2019	DATE SUBMITTED: January 31, 2019	
DEPT. OF ORIGIN: Public Utilities	SUBMITTED BY: Lowell Ogle	
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☐ REGULAR ☐ WORK SESSION	ORDINANCE: ☐ 1ST READING ☐ 2ND READING ☐ RESOLUTION
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon a Professional Services Agreement Between the City of Brenham and Strand Associates, Inc. for Services Related to the Baker Katz Development Project and Authorize the Mayor to Execute Any Necessary Documentation		
SUMMARY STATEMENT: Attached is an agreement from Strand Associates, Inc. for engineering services related to the Baker Katz Development Project. This project will extend sanitary sewer service to several unserved tracts of land located near the intersection of the US Highway 290 South frontage road and Chappell Hill Street. The project will also provide service to the proposed Family Park and possibly provide an option to remove the current lift station at the State Supported Living Center. The sanitary sewer expansion includes approximately 3,900 linear feet of gravity sewer, 7,100 linear feet of force main, and a 200-gallon per minute lift station with an emergency generator. The services to be provided include, but are not limited to, submitting design drawings, specifications, bid form, and a final opinion of probable construction costs for this project, finalize documents for bidding purposes and distribute bidding documents, attend prebid meeting, attend bid opening, and provide contract administration services including review of contractor's drawing submittals, review of contractor's periodic pay request, and provide record drawings. Total cost of the engineering services is not to exceed \$117,000. Staff is recommending that Council approve the Agreement for Engineering Services with Strand Associates, Inc.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: Will extend utilities to currently unserved property located in the area of US Highway 290 South frontage road and Chappell Hill Street. B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: (1) Professional Services Agreement with Strand Associates, Inc.		
FUNDING SOURCE (Where Applicable): 105-5-165-804.10		

RECOMMENDED ACTION: Approve a Professional Services Agreement between the City of Brenham and Strand Associates, Inc. for services related to the Baker Katz Development Project and authorize the Mayor to execute any necessary documentation

APPROVALS: James Fisher

**PROFESSIONAL SERVICES AGREEMENT
FOR
ENGINEERING SERVICES
RELATED TO
CITY OF BRENHAM
PROJECT NO. { 65C-46 }**
**BAKER KATZ DEVELOPMENT-FINAL DESIGN, BIDDING-RELATED, AND
CONSTRUCTION-RELATED SERVICES**

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

THIS AGREEMENT made on the _____ day of _____, 20____, entered into, and executed by and between the City of Brenham, Texas (the "City"), a municipal corporation of the State of Texas, and Strand Associates, Inc.® ("Engineer").

WITNESSETH:

WHEREAS, the City desires to design and construct sanitary sewer infrastructure to serve a future park and a potential future commercial development at the intersection of the Highway 290 South Frontage Road and Chappell Hill Street, as further described in Part A of Attachment "A" (the "Project"); and

WHEREAS, the services of a professional engineering firm are necessary to provide land surveying, project planning, project design, and preparation of construction documents, 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. The City shall be under no obligation to pay for services rendered not identified in Attachment "A" without prior written authorization from the City.

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. The City's use of any work product prepared by the Engineer for purposes other than for the intended project shall be at the City's sole risk and without liability to the Engineer.

SECTION IV TIME FOR PERFORMANCE

The time for performance of the Scope of Services is 270 calendar days beginning from the execution date of this Agreement. Upon written request of Engineer, the City 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 \$117,000, as identified in Attachment "A."

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:

Strand Associates, Inc.®
1906 Niebuhr Street
Brenham, Texas 77833
Attn: Ryan D. Tinsley, P.E., ENV SP

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 Street
Brenham, TX 77833
Attn: City Engineer

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, 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 City on the basis set forth in Attachment "A," up to the amount authorized in writing by the City.

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. Non-payment within 45 days of receipt of invoice by the City, may at Engineers option, result in suspension of services upon 5 days written notice to the City. Upon receipt of payment in full Engineer will resume services without liability to City for such suspension.

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 Strand Associates, Inc.[®], acting by and through its duly authorized officer/representative, does now sign, execute, and deliver this instrument.

EXECUTED on this _____ day of _____, 20____.

ENGINEER:

STRAND ASSOCIATES, INC.[®]


Matthew S. Richards Date
Corporate Secretary

ATTEST:

CITY OF BRENHAM, TEXAS

Jeana Bellinger Date
City Secretary

Milton Y. Tate Jr. Date
Mayor

ATTACHMENT "A"

PART A-SCOPE OF SERVICES

CITY OF BRENHAM
PROJECT NO. { 65C-46 }
BAKER KATZ DEVELOPMENT-FINAL DESIGN, BIDDING-RELATED, AND
CONSTRUCTION-RELATED SERVICES

Description of Project

The scope of services is to provide final design, bidding-related, and construction-related services for the Baker Katz Development-Highway 290 Utility Expansion project where Engineer provided preliminary design services for the project. This project will extend sanitary sewer service to a currently unserved property located at the intersection of the Highway 290 South Frontage Road and Chappell Hill Street. The sanitary sewer extension includes approximately 3,900 linear feet (LF) of gravity sewer, 7,100 LF of force main, and a 200-gallon-per-minute (gpm) lift station with an emergency generator. Additional gravity sewer and force main lengths may be necessary based on the final placement of the proposed lift station.

A. Final Design Services

1. Develop and submit 60 percent design drawings, specifications, and an opinion of probable construction costs (OPCC) for the sanitary sewer extension to review with City.
2. Develop and submit 90 percent design drawings, specifications, bid form, and a final OPCC for the sanitary sewer extension to review with City.
3. Prepare Bidding Documents using Engineers Joint Contract Documents Committee C700 Standard General Conditions of the Construction Contract, 2013 edition, technical specifications, and engineering drawings.

B. Bidding-Related Services

1. Distribute Bidding Documents electronically through CivCast, available at www.civcastusa.com. Submit Advertisement to Bid to City for publishing.
2. Attend prebid meeting, prepare addenda, and answer questions during bidding.
3. Attend bid opening, tabulate and analyze bid results, and assist City in the award of the Construction Contract.
4. Prepare three sets of Contract Documents for signature.

C. Construction-Related Services

1. Provide contract administration Services, including attendance at preconstruction conference, review of contractor's shop drawing submittals, review of contractor's periodic pay requests, attendance at construction progress meetings, periodic site visits, and participation in project closeout. Services are based on a 180-day construction schedule.
2. Provide record drawings in paper format from information compiled from contractor's records. Engineer is providing drafting services only for record drawings based on the records presented to Engineer by contractor and City. Engineer will not be liable for the accuracy of the record drawing information provided by contractor and City.

D. Additional Services:

1. Prepare an easement exhibit and description for the sanitary sewer extension along the Highway 290 South Frontage Road.
2. Define preliminary regulatory permit requirements for the Texas Department of Transportation (TxDOT) and the Texas Commission on Environmental Quality (TCEQ) and meet with City to review. Prepare and submit TxDOT and TCEQ applications and assist with obtaining permits.
3. Perform one iteration of construction staking of the sanitary sewer extension. Construction stakes and other markings, as necessary, will be made every 100 feet along the alignments and at the proposed locations for lift station structures, manholes, fittings, bends, and other appurtenances.
4. Provide resident project representative (RPR) for part-time observation (eight hours per week) of construction. In furnishing observation services, Engineer's efforts will be directed toward determining for City that the completed project will, in general, conform to the Contract Documents; but Engineer will not supervise, direct, or have control over the contractor's work and will not be responsible for the contractor's construction means, methods, techniques, sequences, procedures, or health and safety precautions or programs, or for the contractor's failure to perform the construction work in accordance with the Contract Documents. Services are based on a 180-day construction schedule, which will need to be adjusted if the schedule is extended.

E. Services Not Provided

1. Hazmat soil testing/evaluation
2. Wetland delineation
3. Flood studies
4. Archeological
5. Design revisions after approval
6. Services related to buried waste and contamination
7. Geotechnical services for design and construction materials testing

PART B–BASIS OF COMPENSATION AND REIMBURSABLE EXPENSES

CITY OF BRENHAM PROJECT NO. { _____ } BAKER KATZ DEVELOPMENT–FINAL DESIGN, BIDDING-RELATED, AND CONSTRUCTION-RELATED SERVICES

The following represents the estimated maximum compensation for the scope of services documented in Attachment A, Part A of this Agreement. If services beyond those specifically identified are determined necessary during the Project, Engineer shall not proceed with those services until such time written approval of the scope and any additional fees are approved by the City.

City shall compensate Engineer for Basic Services a fee not to exceed the amounts shown below. Additional Services, if authorized by City, will be performed on an hourly basis at the rates shown in the Schedule of Charges, not to exceed the amount shown below.

Basic Services	Fee
A. Final Design Services	\$52,000
B. Bidding-Related Services	\$ 8,000
C. Construction-Related Services	\$21,000
Total	\$81,000

Additional Services	Fee
1. Easement Exhibit and Description	\$ 3,000
2. TxDOT and TCEQ Permitting	\$ 3,000
3. Construction Staking	\$ 8,000
4. Part-time RPR Services	\$22,000
Total	\$36,000

SCHEDULE OF CHARGES

Compensation for engineering services shall be on an hourly basis at the rates set forth below which are subject to change annually on July 1.

Engineering Services Classification	Hourly Billing Rates*
Principal Engineer	\$280
Senior Project Manager	\$210
Project Managers	\$165
Project Engineers	\$130
Engineering Technicians	\$118
Graduate Engineer	\$113
NACE Certified Project Representative (Tank Construction)	\$ 97
Project Representative	\$102
Computer-Aided Design and Drafting (CADD) Operator	\$ 91
Administrative	\$ 75

* Updated annually on July 1

Compensation for surveying services shall be on an hourly basis at the rates set forth below which are subject to change annually on July 1.

Surveying Services Classification	Hourly Billing Rates*
Registered Professional Land Surveyor	\$180
Surveying Technician	\$102
Three-Man Field Party	\$225
Two-Man Field Party	\$161
One-Man Field Party	\$102
Global Positioning System (GPS) Equipment	\$ 55
Robotic Total Station	\$ 35

* Updated annually on July 1

Subcontract costs shall be billed at invoice cost plus 10 percent for handling.

ATTACHMENT "B"

INSURANCE

CITY OF BRENHAM

PROJECT NO. { 65C-46 }

**BAKER KATZ DEVELOPMENT-FINAL DESIGN, BIDDING-RELATED, AND
CONSTRUCTION-RELATED SERVICES**



AGENDA ITEM 23

DATE OF MEETING: February 7, 2019	DATE SUBMITTED: January 31, 2019	
DEPT. OF ORIGIN: Administration	SUBMITTED BY: James Fisher	
MEETING TYPE: ☐ REGULAR ☐ SPECIAL ☒ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION	ORDINANCE: ☐ 1 ST READING ☐ 2 ND READING ☐ RESOLUTION
AGENDA ITEM DESCRIPTION: Section 551.071 – Texas Government Code – Consultation with Attorney – Consultation with the City Attorney for the Purpose of Seeking Legal Counsel Regarding Brenham Police Department Matters, Personnel, and Associated Issues		
SUMMARY STATEMENT: To be discussed in Executive Session.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: None		
FUNDING SOURCE (Where Applicable):		
RECOMMENDED ACTION: None		
APPROVALS: Milton Y. Tate, Jr.		