



**NOTICE OF A REGULAR MEETING
THE BRENHAM CITY COUNCIL
THURSDAY, NOVEMBER 18, 2021 AT 01:00 PM
SECOND FLOOR CITY HALL
COUNCIL CHAMBERS
200 W. VULCAN STREET
BRENHAM, TEXAS**

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags - Councilmember Atwood Kenjura**
- 3. Special Recognitions**
 - ♦ Brenham Police Department Promotion - Jimmy Ha, Corporal**
- 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. Approve the Minutes from the October 21, 2021 Regular City Council Meeting**
 - 5-b. Approve a License Agreement Between the City of Brenham and Country Sunshine and Authorize the Mayor to Execute Any Necessary Documentation**
 - 5-c. Approve a License Agreement Between the City of Brenham and HSF Market and Authorize the Mayor to Execute Any Necessary Documentation**

- 5-d. Approve Ordinance No. O-21-032 on Its Second Reading Authorizing and Allowing, Under the Act Governing the Texas Municipal Retirement System, 'Updated Service Credits' in Said System on an Annual Basis for Service Performed by Qualifying Members of Such System Who at the Effective Date of the Allowance Are Members of the City of Brenham; and Providing for Increased Prior and Current Service Annuities for Retirees and Beneficiaries of Deceased Retirees of the City**
- 5-e. Approve the Painting of Seventeen (17) Carousel Horses and the Exterior of the Antique Carousel in Fireman's Park by CR Systems, Inc., Through The Interlocal Purchasing System (TIPS) Contract No. 18110 in the Amount of \$57,950.00 and Authorize the Mayor to Execute Any Necessary Documentation**
- 5-f. Approve the Appointment of Delbert Boeker to the Brazos Valley Council of Governments (BVCOG) Solid Waste Advisory Committee and Authorize the Mayor to Execute Any Necessary Documentation**
- 5-g. Award Bid No. 22-001 for Caustic Soda to Univar Solutions in the Amount of \$345.00 per Liquid Ton and Authorize the Mayor to Execute Any Necessary Documentation**

WORK SESSION

- 6. Presentation and Discussion Concerning A Potential Skydiving Operation, Known as Skydive Freedom, at the Brenham Municipal Airport**

REGULAR SESSION

- 7. Discuss and Possibly Act Upon a License Agreement Between the City of Brenham and 100 Alamo Investments, LLC. and Authorize the Mayor to Execute Any Necessary Documentation**
- 8. Discuss and Possibly Act Upon a Lease Agreement with Canion Kountry Bakery & Restaurant, Inc. to Lease and Occupy the Restaurant Located Within the Terminal Building at the Brenham Municipal Airport and Authorize the Mayor to Execute Any Necessary Documentation**
- 9. Discuss and Possibly Act Upon a Professional Services Agreement with Strand Associates, Inc. for Engineering Services Related to the Blue Bell Aquatic Center Therapy Pool Parking Lot and Authorize the Mayor to Execute Any Necessary Documentation**

10. **Discuss and Possibly Act Upon the Temporary Resale Amendment to the System Water Availability Agreement Between Brazos River Authority (BRA) and the City of Brenham and Authorize the Mayor to Execute Any Necessary Documentation**
11. **Discuss and Possibly Act Upon Resolution No. R-21-032 Related to the Award of RFP No. 21-012 for Professional Grant Administration and/or Planning Services for the American Rescue Plan (ARP) Act**
12. **Administrative/Elected Officials Report**
 - **Community Services Update - Crystal Locke**

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

13. **Section 551.071 Texas Government Code - Consultation with Attorney - Consultation with City Attorney Regarding City of Brenham v. WTG Gas Marketing, Inc.; Cause No. 37573; 335th Judicial District Court, Washington County, Texas**

Adjourn

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

CERTIFICATION

I certify that a copy of the November 18, 2021 agenda of items to be considered by the City of Brenham City Council was posted to the City Hall bulletin board at 200 W. Vulcan St., Brenham, TX on Monday, November 15, 2021 at 12:00 p.m.

Jeana Bellinger, TRMC, CMC
City Secretary

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

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

Signature

Title

Brenham City Council Minutes

A regular meeting of the Brenham City Council was held on October 21, 2021 beginning at 1:00 p.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

Members Present:

Mayor Milton Y. Tate, Jr.
Mayor Pro Tem Clint Kolby
Councilmember Shannan Canales
Councilmember Leah Cook
Councilmember Adonna Saunders
Councilmember Albert Wright

Members Absent:

Councilmember Atwood Kenjura

City of Brenham Staff present:

Interim City Manager – Chief Financial Officer Carolyn Miller, Assistant City Manager – Public Services/Utilities Donald Reese, City Attorney Cary Bovey, City Secretary Jeana Bellinger, Human Resources Director Susan Nienstedt, Strategic Budget Officer Debbie Gaffey, Tourism and Marketing Director Jennifer Eckermann, Kevin Boggus, Interim Chief Rhea Cooper, Interim Fire Chief – Fire Marshal Roger Williams, Assistant Fire Chief Brian Scheffer, Administrative Secretary Carrie Derkowski, Police Chief Ron Parker, Captain Dant Lange, Sgt. Todd Ashorn, Captain Lloyd Powell, Lt. Kelvin Raven Sgt. Ashley Burns, Sgt. Todd Ashorn, Director of Public Works Dane Rau, Director of Development Services Stephanie Doland, David Doelitsch, Shauna Laauwe, Allen Jacobs, Mark Pierce, Director of Public Utilities Alton Sommerfield and Director of Economic Development Susan Cates

Citizens/Others Present:

Melinda Faubion

Media Present:

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

1. Call Meeting to Order

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

3. Special Recognitions

- Citizen's Commendation - Jason Zapalac
- Life Saving Award - Brenham Police Department
- Citizen's Commendation - Maynor Mendoza
- Police Department Promotion - Ashley Burns, Sergeant
- Fire Department - Interim Fire Chief Rhea Cooper

4. Proclamations

- Paint the Town Pink

5. Citizens Comments

No citizen comments were heard.

CONSENT AGENDA

6. Statutory Consent Agenda

- 6-a. Approve Ordinance No. O-21-028 on Its Second Reading Amending Appendix A - 'Zoning' of the Code of Ordinances of the City of Brenham Granting a Specific Use Permit to Allow for an Enlargement of Floor Area Occupied by a Legally Existing Nonconforming Use (Automobile Repair Shop) in a B-1, Local Business/Residential Mixed Use Zoning District, on Property Addressed as 1006 N. Park Street and Further Described as Lot S, PT 19 and N PR 21 of the William Schomburg Subdivision in Brenham, Washington County, Texas (Case No. P-21 022)**
- 6-b. Approve Ordinance No. O-21-029 on Its Second Reading Amending Chapter 6, Buildings and Structures, Article II, Building Code, of the Code of Ordinances of the City of Brenham, Texas to Provide for the Adoption of the 2018 Editions of the International Building Code, International Fuel Code, International Mechanical Code, International Property Maintenance Code, International Plumbing Code, International Energy Conservation Code, International Residential Code, International Existing Building Code, International Swimming Pool and Spa Code, International Fire Code and the 2017 Edition of the National Electric Code, with Local Amendments, and to Add Article XII Providing for the Regulation of Substandard Buildings and Structures; and Amending Chapter 8, Fire Protection and Prevention, of the Code of Ordinances of the City of Brenham, Texas by Adopting Various Revisions and Repealing Article IV - Substandard Buildings and Structures**

A motion was made by Mayor Pro Tem Kolby and seconded by Councilmember Wright to approve the Statutory Consent Agenda Items 6.a. thru 6.b. as presented.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Yes
Councilmember Atwood Kenjura	Absent
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

WORK SESSION

7. **Presentation and Discussion on Possible Park Street Improvements and Various Food Establishment Fees and Other Related Items**

Director of Development Services Stephanie Doland presented this item to Council. Doland explained early in the year City Staff was directed by Council to review and draft new standards pertaining to mobile food establishments (mobile kitchens). The request originated due to concerns from existing mobile kitchens about permitting procedures and costs as well as permitted locations to operate. A Task Force was created to help work through all of the issues related to mobile food establishments and to help staff write an ordinance to address mobile food kitchens.

Doland then presented the following to Council:

- Food Truck Task Force Follow-Up
- License to Encroach – Grandfathering
- Two Agreements
- Current MFE vs. Fixed Est. Permit Cost
- Proposed MFE vs Fixed Est Permit Cost
- South Park Street Improvements
- South Saint Charles Station

Doland advised that the ordinance amendments will be brought to Council on October 21st and November 4th. The Resolution to adopt the new fees will be brought back on November 4th.

PUBLIC HEARING AND ASSOCIATED ACTION ITEM

8. **Public Hearing, Discussion and Possibly Act Upon an Ordinance on Its First Reading Amending the City of Brenham Code of Ordinances, Appendix A: Zoning, Part I, Section 5.02 – Definitions, to Add a Definition for Food Truck Park, Food Truck Site, and Mobile Kitchen, and Amending Appendix A, Part II, Division 1, Section 18 – Food Truck Park to Establish Standards Related to the Development of Such Uses and Amending Appendix A, Part 2, Division 2 – Zoning District Regulations, to Allow the Use of A Food Truck Park by Specific Use Permit in the B-1, B-2, B-3 and B-4 Zoning Districts**

A motion was made by Mayor Pro Tem Kolby and seconded by Councilmember Canales to approve an Ordinance on its first reading amending the City of Brenham Code of Ordinances, Appendix A: Zoning, Part I, Section 5.02 – Definitions, to Add a Definition for Food Truck Park, Food Truck Site, and Mobile Kitchen, and Amending Appendix A, Part II, Division 1, Section 18 – Food Truck Park to establish standards related to the development of such uses and amending Appendix A, Part 2, Division 2 – Zoning District Regulations, to allow the use of a Food Truck Park by Specific Use Permit in the B-1, B-2, B-3 and B-4 Zoning Districts.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Yes
Councilmember Atwood Kenjura	Absent
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

REGULAR SESSION

9. **Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending the City of Brenham Code of Ordinances, Chapter 9 – Food and Food Establishments, Providing For Standards For The Operation of Fixed, Mobile, and Temporary Food Establishments; and Amending Chapter 16 – Occupational Licenses and Business Regulations to Amend Standards Pertaining to the Application and Issuance of Licenses for Solicitors, Peddlers and Itinerant Vendors**

Director of Development Services Stephanie Doland presented this item to Council. Doland explained that early in the year Staff was directed by Council to review and draft new standards pertaining to mobile food establishments (mobile kitchens). The request originated due to concerns from existing mobile kitchens about permitting procedures and costs as well as permitted locations to operate. A Task Force was created to help work through all of the issues related to mobile food establishments and to help staff write an ordinance to address mobile food kitchens.

Doland explained that the work of the Task Force included the review and update to multiple City ordinances including:

- Chapter 9 – Food and Food Establishments
- Chapter 16 – Occupational Licenses and Business Regulations
- Appendix A – Zoning

Doland advised Council that the Task Force did a very good job reviewing all the various issues and worked well with staff to prepare an ordinance that will clarify and simplify the permitting and procedural requirements to obtain a permit and to operate as a food establishment or vendor/solicitor in the City and that staff recommends approval of the ordinance as presented.

A motion was made by Councilmember Canales and seconded by Councilmember Saunders to approve an Ordinance on its first reading amending the City of Brenham Code of Ordinances, Chapter 9 – Food and Food Establishments, providing for standards for the operation of fixed, mobile, and temporary food establishments; and amending Chapter 16 – Occupational Licenses and Business Regulations to amend standards pertaining to the application and issuance of licenses for solicitors, peddlers and itinerant vendors.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Yes
Councilmember Atwood Kenjura	Absent
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

10. Discuss and Possibly Act Upon the Purchase of a 2021 Taser 7 Certification Bundle from Axon Enterprise, Inc. Through the BuyBoard Local Government Purchasing Cooperative Contract No. 603-20 and Authorize the Mayor to Execute Any Necessary Documentation

Captain Dant Lange presented this item to Council. Lange explained Council authorized \$28,290 for the purchase of new tasers for Brenham police officers for the FY2021-22. The tasers currently in use run on outdated firmware that is no longer supported by the manufacturer. Axon Enterprise, Inc. has provided a quote coming in under budget at \$26,737.49 for the first year, with a total 5-year contract price of \$133,687.54. Axon will provide 41 tasers, accessories, associated hardware, and firmware licenses.

A motion was made by Councilmember Wright and seconded by Councilmember Cook to authorize the purchase of a 2021 Taser 7 Certification Bundle from Axon Enterprise, Inc. using BuyBoard Contract No. 603-20 in the amount of \$133,687.54, for a 5-year contract, 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 Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Yes
Councilmember Atwood Kenjura	Absent
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

11. Discuss and Possibly Act Upon a Professional Services Agreement Between the City of Brenham and Strand Associates, Inc. for FY2021-22 On-Call Engineering Services, In An Amount Not to Exceed \$120,000.00 and Authorize the Mayor to Execute Any Necessary Documentation

Assistant City Manager – Public Services/Utilities Donald Reese presented this item to Council. Reese explained the City wishes to obtain engineering services from Strand Associates, Inc. to provide 'On-Call' engineering support services to the City. These services would include, but are not limited to, General Engineering Services, Development Review Services, Floodplain Administration Services, and Part-Time Resident Project Representative Services for Developments. The City will pay Engineer only for actual services performed. The cost to provide those services is not to exceed \$120,000.00. The total amount invoiced from Strand Associates, Inc. in FY 2021 was \$119,815.00.

A motion was made by Councilmember Saunders and seconded by Councilmember Canales to approve a Professional Services Agreement between the City of Brenham and Strand Associates, Inc. for FY2021-22 On-Call Engineering Services, in an amount not to exceed \$120,000.00 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 Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Yes
Councilmember Atwood Kenjura	Absent
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

Council adjourned into Executive Session at 2:30 p.m.

EXECUTIVE SESSION

12. **Section 551.074 – Texas Government Code – Utility Competitive Matters - City of Brenham Gas Utility System - Gas Supply and Transportation Arrangements and Agreements, and Associated Matters**
13. **Section 551.071 – Texas Government Code – Consultation with Attorney - Consultation with City Attorney Regarding Claims Alleged Against the City of Brenham by Former Fire Chief, and Associated Legal Matters**
14. **Section 551.087 – Texas Government Code – Economic Development Negotiations - Deliberation Regarding Incentives for Economic Development Purposes and the Possible Offer of a Financial or Other Incentive to Project Black Spot, a Business Seeking to Locate, Stay or Expand in the City of Brenham, Texas**

Executive Session adjourned at 4:45 p.m.

RE-OPEN REGULAR SESSION

15. **Discuss and Possibly Act Upon Incentives for Economic Development Purposes and the Possible Offer of a Financial or Other Incentive to Project Black Spot, a Business Seeking to Locate, Stay or Expand in the City of Brenham, Texas and Authorize the Mayor to Execute Any Necessary Documentation**

A motion was made by Councilmember Saunders and seconded by Councilmember Wright to authorize Economic Development Director Susan Cates to negotiate an incentive for Project Black Spot in an amount as discussed in Executive Session and authorize the Mayor to execute any necessary documentation.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Yes
Councilmember Atwood Kenjura	Absent
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

16. Administrative/Elected Officials Report

- Interim City Manager Carolyn Miller reported on the following:
 - Vacation Next Week
 - New Organization Chart
- Economic Development Director Susan Cates reported on the following:
 - Project Black Stamp has chosen Brenham to expand their business. They will be purchasing land in the area and once their facility is operational, they will bring 120+ jobs to Washington County.
 - Working with six existing businesses for expansions
 - Upcoming Job Fair at Blinn College on November 4th
- Police Department Captain Dant Lange reported on the following:
 - Open positions at the Police Department and one open position at the Animal Shelter.
 - The officers that were injured last week during an arrest are doing well. The Texas Rangers are doing the investigation into the incident.
 - The Animal Control position at the Shelter has been filled.
 - Right now there are 36 cats in the Shelter and staff has been working to mitigate cases of ringworm and toxicity among the cats.

The meeting was adjourned.

Milton Y. Tate, Jr.
Mayor

Jeana Bellinger, TRMC, CMC
City Secretary



Regular City Council
AGENDA ITEM 5-B.

Agenda Item: **Approve a License Agreement Between the City of Brenham and Country Sunshine and Authorize the Mayor to Execute Any Necessary Documentation**

Meeting Type: Regular Meeting-November 18, 2021

Department: Development Services

Staff Contact: Stephanie Doland

SUMMARY STATEMENT:

Early in the year City Staff was directed by Council to review and draft new standards pertaining to mobile food establishments (mobile kitchens). The request originated due to concerns from existing mobile kitchens about permitting procedures and costs as well as permitted locations to operate. Following a Workshop Discussion on February 24, 2021 a Food Truck Task Force was formed to review and recommend changes to Chapter 9 – Food and Food Establishments, Chapter 16 – Occupational Licenses and Business Regulations, and Appendix A – Zoning. Additionally, the Task Force reviewed items pertaining to mobile kitchens parked in the right-of-way, fees for both fixed and mobile food establishments, itinerant vendor permit criteria and fees, the use of a Food Truck Park as a primary use on non-residential property, among other related topics.

Following the review and recommendation by the Task Force, amendments to Chapter 9, 16 and Appendix A of the Brenham Code of Ordinances were approved by Council during the October 21, 2021 meeting. Additionally, during the November 4, 2021 Council Meeting a new fee resolution for Food Establishments and Itinerant Vendors/Solicitors was approved.

One of the final items relating to the year-long discussion concerning Mobile Kitchens pertain to license agreements for the two existing Mobile Kitchens Country Sunshine and HSF Market who wish to operate from the City right-of-way.

Based on conversations with owners, Cullen and Danielle Holle of Country Sunshine, the intent of this Mobile Kitchen is to one day transition into a more traditional restaurant environment with a traditional on-site commercial kitchen. The Holle's have stated the license to encroach agreement will allow them additional time to make this transition and following the three-year term they plan to have arrangements such that the mobile kitchen would not be needed on a regular basis.

Following the Work Session held by Council on November 4th, 2021 a license agreement between Country Sunshine and the City of Brenham has been drafted, reviewed and is ready for approval by the City Council. A summary of the agreement particulars is included below.

- Country Sunshine (CS) encroachment shall be located in the parallel parking space adjacent to N Douglas Street (about 420 SF).
- CS may locate the Mobile Kitchen beginning Wednesday at 10:00 AM through 4:00 PM on Sunday.
- The term of the agreement is for two years with an automatic one year renewal term.
- The City may tow the Mobile Kitchen at the expense of CS if found in violation of the agreement.
- CS shall move the trailer upon request by the City for special events or emergency reasons.
- CS shall provide proof of liability insurance, workmen's compensation and automobile insurance.
- The agreement shall be terminated if the business or property (110 W Main) is sold.
- All applicable building codes, health and sanitation codes, and permit requirements shall be maintained by CS.

Staff recommends approval of the License Agreement as presented.

ATTACHMENTS:

(1) License Agreement Country Sunshine
--

RECOMMENDED ACTION:

Approve a License Agreement between the City of Brenham and Country Sunshine and authorize the Mayor to execute any necessary documentation.
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LICENSE AGREEMENT

This License Agreement ("**Agreement**") is made this 18th day of November, 2021 ("**Effective Date**") by and between the **CITY OF BRENHAM ("City")**, and **COUNTRY SUNSHINE** a Texas limited liability company with its address at 110 W Main Street, Brenham, Texas 77833 ("**Licensee**").

Definitions

- A. Mobile food establishment means a vehicle-mounted food establishment designed to be readily moveable that is equipped with food preparation equipment and includes vehicles in which food is prepared on site. Mobile food establishments include mobile kitchens, mobile ice-cream/frozen dessert vehicle and non-motorized food vending carts. Mobile food establishments do not include restaurant delivery and catering vehicles.
- B. Mobile kitchen means a motorized vehicle or tow-behind trailer equipped with kitchen facilities such as plumbing, hot water supply, mechanical refrigeration, cooking equipment, and dry goods storage used for the preparation and sale or service of food and beverages. Customer service is provided at a counter or window in the vehicle. Mobile kitchens may include, but are not limited to, mobile food trucks and mobile food trailers. Mobile kitchens shall not include individual non-motorized vending carts or mobile ice cream/frozen dessert vehicles.
- C. Mobile food trailer means a mobile kitchen that serves food or beverages from an enclosed, self-contained, non-motorized vehicle that is normally pulled behind a motorized vehicle.

Background

A. The City hereby establishes Standards and Requirements to temporarily place a Mobile Food Trailer in the City of Brenham right-of-way adjacent to 110 West Main Street and in accordance with all standards adopted within the Brenham Code of Ordinances and incorporated herein for all purposes pertinent.

B. Licensee desires to operate and maintain a Mobile Kitchen located at the site approved by the City Manager or the City Manager's designee ("**Mobile Kitchen Site Location**") in accordance with the terms of this Agreement and further depicted and attached to this Agreement as **Attachment "A"**. All references to the Mobile Kitchen shall include the Mobile Kitchen Site Location).

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement, the City and Licensee, intending to be legally bound by this Agreement, agree as follows:

1. License; Conditions.

A. License. Subject to the terms of this Agreement, the City grants a temporary, nonexclusive, revocable and nonassignable license to Licensee to enter the Mobile Kitchen Site Location to

operate and serve Country Sunshine customers and patrons of the general public food and beverage service from the Mobile Kitchen in accordance with all Applicable Laws, including Chapter 9 – Food and Food Establishments and Chapter 16 – Occupational Licenses and Business Regulations and the terms and conditions of this Agreement.

B. Timeframe for Encroachment. The City hereby grants the Licensee the right to operate a Mobile Kitchen in the City of Brenham right-of-way and within the Mobile Kitchen Site Location (see Attachment) each week from 10:00 AM on Wednesday through 4:00 PM on Sunday. The Mobile Kitchen is not permitted to be located within the Mobile Kitchen Site Location on Mondays or Tuesdays unless approved in writing. Failure to remove the Mobile Kitchen from the right-of-way in accordance with the terms specified herein, shall result in towing of the Mobile Kitchen by the City at the expense of the Licensee.

C. Permits Required. Prior to entering the Mobile Kitchen Site Location to commence operations of the Mobile Kitchen, Licensee shall secure all necessary permits, licenses, and approvals from all appropriate departments, agencies, boards, or commissions of the City or other governmental entities that may be required by Applicable Law.

2. Title; AS-IS Condition of Mobile Kitchen Site Location

A. At all times, but subject to the terms of this Agreement, the Mobile Kitchen Site Location shall remain a public right-of-way. No legal title or any other interest in real estate shall be deemed or construed to have been created by anything contained in this Agreement; the License granted by this Agreement authorizes the Licensee to enter upon the Mobile Kitchen Site Location for the purposes stated herein.

B. Licensee acknowledges and agrees that they accept this license to enter the Mobile Kitchen Site Location in its "AS-IS, WHERE-IS, AND WITH ALL FAULTS" condition, including all defects known or unknown, and the City makes no representation or warranty, express or implied, as to (a) any encumbrances, restrictions and conditions which may affect the Mobile Kitchen Site Location, (b) the nature or condition of the Mobile Kitchen Site Location for installation and operation of the Food Trailer, and (c) compliance of the Food Trailer with Applicable Laws (defined below). Licensee is relying on its own independent investigation of the condition of the Mobile Kitchen Site Location in entering this Agreement.

3. Term

3.1 The term ("Initial **Term**") of this Agreement shall be for two (2) years commencing on the Effective Date and shall terminate on the 18th day of November, 2023, unless terminated earlier pursuant to the provisions of this Agreement.

3.2 If neither party provides notice of termination prior to the end of the Initial Term in accordance with Paragraph 11, this Agreement shall automatically renew for an additional one (1)

year term (“Renewal Term”). This Agreement shall be terminated following the initial Renewal Term which would end on the 18th day of November, 2024.

4. Maintenance Obligations; Use Restrictions; Approvals.

A. Licensee’s Maintenance Obligations. Licensee hereby covenants and agrees, for itself, its successors, and assigns to be fully responsible for the costs of designing, constructing, installing, repairing, operating and maintaining the Mobile Kitchen Site Location as set forth in this Agreement; provided, however, Licensee shall have no responsibility for City’s subsurface improvements or property (except where Licensee causes damage to City’s subsurface improvements or property, in which case Licensee shall be liable to the City for all costs necessary to repair such damage) and Licensee’s responsibility for repairs and maintenance of the street surface shall be limited to damages beyond reasonable wear and tear. Licensee shall use and maintain the Mobile Kitchen Site Location in a wholly safe condition, in a clean and sanitary fashion, free of all waste, rubbish, accumulation of garbage, papers, and debris; shall provide and maintain adequate and proper drainage utilizing the existing courses of flow for storm water runoff; shall permit free and unobstructed ingress and egress to, from, and around the Mobile Kitchen Site Location for the protection or facilitation of pedestrian traffic; shall properly store and dispose of all waste matter and trash in accordance with the City’s regulations and keep the Mobile Kitchen Site Location and adjacent sidewalk free and clear of rubbish, trash and waste materials; and, except as approved in accordance with this Agreement or Applicable Law, shall not permit encroachments upon or obstructions of the streets.

B. City’s Maintenance Obligations. The City shall not be required to furnish any services or facilities to the Mobile Kitchen Site Location, or to make any repairs or alterations to the Mobile Kitchen Site Location. The City shall not be responsible for any loss or damage to personal property on the Mobile Kitchen Site Location. Licensee assumes sole responsibility for the operation, maintenance, and management of the Mobile Kitchen Site Location. The provisions of this paragraph do not apply to any City improvements installed or located below the surface of the Mobile Kitchen Site Location.

C. Licensee’s Use; Use Restrictions. Licensee is hereby authorized to use the Mobile Kitchen Site only in association with the operation of its restaurant business located at 110 West Main Street, Brenham, Texas (“Restaurant”), said operations shall be limited to food and beverage storage, preparation, service, and consumption. Licensee is further hereby authorized to limit the hours of operation of the Food Trailer within the Mobile Kitchen Site Location for patrons only during the Restaurant’s hours of operation (“**Exclusivity Period**”). At all other times, specifically, on any given Monday and Tuesday within the Term of this agreement the general public’s use of the Mobile Kitchen Site Location shall not be limited by Licensee. Licensee agrees that during the Exclusivity Period it shall not: permit any use of the Mobile Kitchen Site Location except as specified in this Agreement; permit anything unlawful on the Mobile Kitchen Site Location; permit a public or private nuisance on the Mobile Kitchen Site Location; permit any Hazardous

Substances (defined below) on the Mobile Kitchen Site Location; permit an implied dedication of the Mobile Kitchen Site Location; permit anything that disturbs or damages the surrounding properties; prohibit vehicle parking on the Mobile Kitchen Site Location; permit smoking of any substance on the Mobile Kitchen Site Location; permit any commercial or for-profit activity of any kind on the Mobile Kitchen Site Location except as specified in this Agreement; permit commercial advertising of any kind, or non-commercial advertising of any kind without the advance written approval of the City; permit any structures on the Mobile Kitchen Site Location unless specifically permitted by this Agreement; permit alcoholic beverages or illegal drugs on the Mobile Kitchen Site Location, except for alcoholic beverages served to Licensee's customers as authorized by a license/permit validly issued by the Texas Alcoholic Beverage Commission; permit personal property to be displayed, stored or sold on the Mobile Kitchen Site Location unless specifically permitted by this Agreement; or permit standing water to accumulate on the Mobile Kitchen Site Location except as may occur naturally on the street over which the Food Trailer is placed.

D. Approvals by City. Unless otherwise stated in this Agreement or in accordance with Applicable Law, any review, approval, permission, or consent that Licensee is required to obtain from the City under this Agreement shall not be valid or effective unless obtained from the City Manager or the City Manager's designee (the "City Manager"). The review, approval, or consent by the City Manager of any plans, specifications, work, or materials submitted or performed by Licensee under this Agreement does not constitute any representation, warranty, or guarantee by the City as to the quality or substance of the matter reviewed or approved or its compliance with Applicable Laws. Licensee must use its own independent judgment as to the accuracy and quality of all such matters and its compliance with Applicable Laws. Review, approval, or consent by the City Manager under this Agreement does not constitute any review, approval, consent, license or permit otherwise required under Applicable Laws by any City department, board, commission, or official. Licensee agrees that the Mobile Kitchen Site Location, unless approved by the City, shall not be expanded, enlarged, or altered in any way without the prior written approval of the City.

5. **Compliance with Applicable Laws; Hazardous Substances.**

A. Applicable Laws. "**Applicable Laws**" shall mean all applicable present Federal, State and City laws, ordinances, orders, rules, regulations, guidelines and requirements.

B. Hazardous Substances. "**Hazardous Substance**" shall mean: (a) asbestos, flammables, volatile hydrocarbons, industrial solvents, explosives, chemicals, radioactive material, petroleum, petroleum products and by-products, natural gas, synthetic gas, and shall include but not be limited to, substances defined as "hazardous substances", "hazardous wastes", "toxic substances", "pollutants" or "contaminants" as those terms are defined in any of the Applicable Laws; and (b) any and all other materials or substances that any government entity shall determine from time to time are harmful, toxic, or dangerous.

6. **Entry on Mobile Kitchen Site Location By City; City Inspection.** The City may enter the Mobile Kitchen Site Location at any time, for any reason, including inspecting the Food Trailer and/or Mobile Kitchen Site Location; provided, City's entry, if any, shall be in a manner that causes the least interference or interruption with Licensee's operations. Nothing contained in this Section shall create a duty on the City to make any repairs or do any work on the Mobile Kitchen Site Location. City inspections shall not be a representation, guaranty, or warranty by the City to Licensee, as to Licensee's compliance with the terms of this Agreement or Applicable Laws.

7. **Non-exclusive:** The License granted by this Agreement is nonexclusive and is subject to any existing utility, drainage or communications facilities located in, on, under or upon the City's streets or other rights-of-way, any utility or communication company, public or private, to all vested rights presently owned by any utility or communication company, public or private for the use of the Mobile Kitchen Site Location for facilities presently located within the boundaries of the right-of-way and to any easement, lease, license, or other interest in the Mobile Kitchen Site Location granted by City to any individual, corporation or other entity, public or private.

8. **Environmental Protection:** Licensee shall not use or permit the use of the Food Trailer for any purpose that may be in violation of any environmental laws or regulations, and any amendments thereto, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Resource Conservation and Recovery Act of 1976 ("RCRA"), the Texas Water Code and the Texas Solid Waste Disposal Act. Licensee warrants that the permitted use of the Food Trailer will not result in the disposal or other release of any hazardous substance or solid waste in, on, upon, under or to the Mobile Kitchen Site Location, and that it will take all steps necessary to ensure that no such hazardous substance or solid waste will ever be discharged in, on, upon, under or onto the Mobile Kitchen Site Location or property adjoining the Mobile Kitchen Site Location by Licensee. The terms "hazardous substance and waste" shall have the meaning specified in CERCLA and the term solid waste and disposal (or dispose) shall have the meaning specified in the RCRA; provided, however, that in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and provided further, at the extent that the laws of the State of Texas establish a meaning for hazardous substance, release, solid waste, or disposal which is broader than that specified in the CERCLA or RCRA, such broader meaning shall apply. **Licensee shall indemnify and hold City harmless against all costs, expenses, fines and fees related to environmental cleanup of the Food Trailer and surrounding the Mobile Kitchen Site Location resulting, directly or indirectly, from Licensee's use of the Food Trailer under this Agreement.**

9. **Insurance:** At all times during the Term of this Agreement, the Licensee shall procure and maintain insurance in the types and amounts as specified below.

Licensee shall, at its sole cost and expense, procure and maintain in full force and effect, for the Term of the License Agreement, covering its obligations under this Agreement, the types and

minimum limits of insurance specified below. All insurance shall be procured from insurers authorized to do business in the State of Texas and acceptable to the City. All insurance required herein shall be written on an “occurrence” basis and not a “claims-made” basis.

(i) WORKERS COMPENSATION AND EMPLOYERS LIABILITY

(a) Workers Compensation: Statutory limits

(b) Employers Liability: \$100,000 each Accident - Bodily Injury by Accident; \$100,000 Each Employee - Bodily Injury by Disease; and \$500,000 Policy Limit -Bodily Injury by Disease.

(c) Automobile liability policy.

(d) All States coverage and Texas Endorsement.

(ii) GENERAL LIABILITY INSURANCE

(a) Limit of liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability;

(b) Coverage: Premises operations; blanket contractual liability; personal injury liability (employee exclusion deleted); products and completed operations; independent contractors; employees and volunteers as insureds; cross liability; and broad form property damage (including loss of use) liability.

The City of Brenham, its officers, employees, and agents, shall be named as additional insureds on the General Liability Insurance Policy. Also, an endorsement is required stating that the coverage afforded the City and its officers, employees and agents as additional insureds will be primary to any coverage available to them. The City reserves the right to require Licensee to furnish certified copies of the original policies of all insurance required hereunder at any time upon ten (10) days prior written notice to Licensee. All such policies shall include an endorsement stating that the coverage afforded to these parties as additional insureds will be primary to any other coverage available to them.

Certificates of insurance evidencing the required coverage shall be submitted to the City Secretary, City of Brenham, 200 W. Vulcan Street, Brenham, Texas 77833 within ten (10) days after the Effective Date of this Agreement. Licensee shall furnish certified copies of the original policies of all insurance required under this Agreement, at any time, within ten (10) days after written request by the City.

All insurance policies shall provide for a least thirty (30) days prior written notice to be given to the City in the event coverage is materially changed, cancelled, or not renewed. At least ten (10) days prior to the expiration of each policy, Licensee shall deliver to the City a Certificate of

Insurance evidencing a replacement policy to become effective immediately upon the termination of the previous policy.

The insurance requirements set forth herein shall in no way be intended to modify, limit or reduce the indemnifications made in this Agreement by Licensee to City, its officers, employees, and agents, or to limit Licensee's liability under this Agreement to the limits of the policies of insurance required to be maintained by Licensee hereunder.

10. Indemnification; Release.

A. Licensee agrees to defend, indemnify, and hold harmless the City, its departments, commissions, boards, officers, employees or agents, from and against all actions, causes, suits, demands, losses, and liabilities, including the cost of litigation and attorney's fees, by reason of injury (including death) to persons and damage to property in any way arising in connection with this Agreement or rights granted to Licensee hereunder; provided that nothing herein contained shall be deemed to confer upon any third person any right against City, or to vest in said third person any cause of action against City, or to authorize any such person to institute any such suit or suits against City, its departments, commissions, boards, officers, employees or agents. Licensee is not obligated to indemnify, defend, and hold harmless the City against losses, costs, claims, suits, actions, damages, liabilities, and expenses that arise exclusively from the negligence or willful misconduct of the City, its departments, commissions, boards, officers, employees or agents. This Section 10 shall survive the expiration or earlier termination of this Agreement.

B. In consideration of the license extended to Licensee by this Agreement, Licensee, and for Licensee's contractors, and invitees and all persons claiming through any of them (collectively, including Licensee the "Releasing Parties") do hereby remise, quitclaim, release and forever discharge, the City, its departments, commissions, boards, officers, employees or agents, from any and all, and all manner of, actions and causes of action, suits, claims, and demands whatsoever in law or in equity which the Releasing Parties may have against the City its departments, commissions, boards, officers, employees or agents, relating in any way whatsoever to any condition on the Mobile Kitchen Site Location, or relating in any way to Licensee's entry onto the Mobile Kitchen Site Location, or Licensee's use of the Mobile Kitchen Site Location; save and except those actions and causes of action, suits, claims and demands whatsoever in law or equity that arise exclusively from the negligence or willful misconduct of the City, its departments, commissions, boards, officers, employees or agents. Licensee voluntarily assumes all risk of loss, damage, or injury, including death, that may be sustained by the Licensee, its contractors, or invitees, while in, on or about the Licensed Property; save and except any loss, damage, or injury, including death that arises exclusively

from the City, its departments commissions, boards, officers, employees, or agents. This Section 10 shall survive the expiration or earlier termination of this Agreement.

11. Relocation; Termination of this Agreement.

A. Relocation.

- a. Licensee understands and agrees that it shall, upon request of the City, and in conjunction with a special event located within proximity of the Mobile Kitchen Site Location, on not less than ten (10) days notice, relocate the Food Trailer.
- b. Licensee understands and agrees that it shall, upon request of the City, and except in the case of an emergency, on not less than twenty-one (21) days notice, relocate the Food Trailer, and terminate the use of the Mobile Kitchen Site Location and that Licensee will pay all costs and expenses necessary for the performance of such relocation work.

B. Termination: This Agreement may be terminated in any of the following ways:

- a. Sale of the Business Country Sunshine by its current owners, Cullen and Danielle Holle of Brenham, Texas;
- b. Sale of the property currently addressed as 110 West Main Street Street Brenham, Texas;
- c. Written agreement of both parties;
- d. By either party giving the other party thirty (30) days prior written notice; or
- e. By City upon failure of Licensee to perform its obligations as set forth in this Agreement; provided, however, Licensee shall be provided written notice of its failure to perform and twenty-one (21) days after receipt of such notice to cure such failure.

Licensee shall further agree that upon termination of this Agreement, Licensee shall vacate the Mobile Kitchen Site Location and leave it in a clean condition, clear of all property and debris and restore the Mobile Kitchen Site Location to the satisfaction and approval of the City, reasonable wear and tear excepted, within thirty (30) days after receiving such notice, all at Licensee's sole cost and expense. The City shall not be liable to Licensee for any compensation, reimbursement or other expenses related to this Agreement.

Licensee agrees that in the event the Food Trailer is not removed from the Mobile Kitchen Site Location and/or if the Mobile Kitchen Site Location is not restored to its original condition, reasonable wear and tear excepted, the City shall have the right and privilege, at its option, of removing said Food Trailer, and restoring the City right-of-way to its original condition and in

event of the City so doing, Licensee shall pay to the City, within thirty (30) days written notice or demand, the costs expended by the City in such removal and/or restoration.

12. Notice.

All notices, requests, and other communications under this Agreement shall be in writing and shall be sent by United States registered or certified mail, return receipt requested, postage prepaid, or by overnight or hand delivery service with receipt requested, and addressed to Licensee as provided on the first page of this Agreement, or at such other address as Licensee may specify, and to the City as follows:

City Manager
City of Brenham
200 W. Vulcan Street
Brenham, Texas 77833

13. Governing law: This Agreement is governed by the laws of the State of Texas; and exclusive venue for any action shall be in a court of competent jurisdiction in Washington County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

14. Attachments. Any and all attachments to this Agreement are incorporated herein by reference.

15. Binding effect: This Agreement shall be binding upon and inure to the benefit of the executing parties and their respective successors and assigns.

16. Entire Agreement: This Agreement embodies the entire agreement between the parties and supersedes all prior agreements, understandings, if any, relating to the Licensed Premises and the matters addressed herein and may be amended or supplemented only by written instrument executed by the party against whom enforcement is sought.

LICENSOR: CITY OF BRENHAM

Date: _____

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

ATTEST:

Jeana Bellinger, TRMC, City Secretary

City of Brenham, Texas

LICENSEE: Country Sunshine

Date: _____

Danielle Holle
Co-Owner, Country Sunshine

ATTEST:

By:
Title:

ATTACHMENT "A"



Country Sunshine - Mobile Kitchen Site Location

1 inch = 21 feet





Regular City Council
AGENDA ITEM 5-C.

Agenda Item: **Approve a License Agreement Between the City of Brenham and HSF Market and Authorize the Mayor to Execute Any Necessary Documentation**

Meeting Type: Regular Meeting-November 18, 2021

Department: Development Services

Staff Contact: Stephanie Doland

SUMMARY STATEMENT:

Early in the year City Staff was directed by Council to review and draft new standards pertaining to mobile food establishments (mobile kitchens). The request originated due to concerns from existing mobile kitchens about permitting procedures and costs as well as permitted locations to operate. Following a Workshop Discussion on February 24, 2021 a Food Truck Task Force was formed to review and recommend changes to Chapter 9 – Food and Food Establishments, Chapter 16 – Occupational Licenses and Business Regulations, and Appendix A – Zoning. Additionally, the Task Force reviewed items pertaining to mobile kitchens parked in the right-of-way, fees for both fixed and mobile food establishments, itinerant vendor permit criteria and fees, the use of a Food Truck Park as a primary use on non-residential property, among other related topics.

Following the review and recommendation by the Task Force, amendments to Chapter 9, 16 and Appendix A of the Brenham Code of Ordinances were approved by Council during the October 21, 2021 meeting. Additionally, during the November 4, 2021 Council Meeting a new fee resolution for Food Establishments and Itinerant Vendors/Solicitors was approved.

One of the final items relating to the year-long discussion concerning Mobile Kitchens pertain to license agreements for the two existing Mobile Kitchens Country Sunshine and HSF Market who wish to operate from the City right-of-way.

Based on conversations with owners, Cameron and Julia Crawford of HSF Market, the business was purchased from Brad Stufflebeam with the incorrect understanding that the mobile kitchen had received a variance from the City and was permitted to operate within the City street. No such variance was ever granted by City Staff or City Council. When the Crawford's originally approached the City about the mobile kitchen placement their request was to locate the trailer in the right-of-way not only while in operation but also overnight. The Crawford's do not have an on-site commercial kitchen to prepare food for customers and as such the mobile kitchen serves their patrons' culinary needs. At this time there is no interest by the Crawford's in improvements to the property to include an on-site commercial kitchen within the private property lines.

Staff finds that locating the trailer in the right-of-way during hours of operation and overnight creates an adverse impact to adjacent property owners and properties in the general vicinity (Historic Downtown Brenham). Staff understands the constraints of the HSF Market business and the reliance of patrons on the mobile kitchen. Staff also understands that adjacent businesses are opposed to the mobile kitchen becoming a fixture in Downtown and recognizes that in response to this concern municipalities have adopted separation requirements between mobile kitchens and fixed food establishments. Therefore, staff recommends placing the mobile kitchen in the Commerce Street parking lot rather than the South Park Street right-of-way until the Downtown Food Truck Park is developed or for three years (whichever happens first).

Following the Work Session held by Council on November 4th, 2021 a license agreement between HSF Market and the City of Brenham has been drafted, reviewed and is ready for approval by the City Council. A summary of the agreement particulars is included below.

- HSF Market (HSF) encroachment shall be located in the angled parking space within the Commerce Street parking lot (about 300 SF).
- HSF may locate the Mobile Kitchen beginning Wednesday at 10:00 AM through 10:00 PM on Sunday.
- The term of the agreement is for two years with an automatic one year renewal term.
- The City may tow the Mobile Kitchen at the expense of HSF if found in violation of the agreement.
- HSF shall move the trailer upon request by the City for special events or emergency reasons.
- HSF shall provide proof of liability insurance, workmen's compensation and automobile insurance.
- The agreement shall be terminated if the business or property (307 S Park St) is sold.
- All applicable building codes, health and sanitation codes, and permit requirements shall be maintained by HSF.

On Tuesday, November 9th City Staff met with Cameron Crawford to discuss the placement of the mobile kitchen in the parking lot as well as to determine the associated tap fees and utility connections associated with locating in the parking lot rather than continuing to operate from the street. Since new water, sanitary sewer and electric service is needed the estimated costs incurred by HSF are estimated at \$3,572.50. The expense is largely related to the electric service materials to extend line from across S Park Street.

Staff recommends approval of the License Agreement as presented.

ATTACHMENTS:

(1) HSF Market License Agreement

RECOMMENDED ACTION:

Approve a License Agreement between the City of Brenham and HSF Market and authorize the Mayor to execute any necessary documentation.
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LICENSE AGREEMENT

This License Agreement ("**Agreement**") is made this 18th day of November, 2021 ("**Effective Date**") by and between the **CITY OF BRENHAM** ("**City**"), and **HSF Market** a Texas limited liability company with its address at 307 South Park Street, Brenham, Texas 77833 ("**Licensee**").

Definitions

- A. Mobile food establishment means a vehicle-mounted food establishment designed to be readily moveable that is equipped with food preparation equipment and includes vehicles in which food is prepared on site. Mobile food establishments include mobile kitchens, mobile ice-cream/frozen dessert vehicle and non-motorized food vending carts. Mobile food establishments do not include restaurant delivery and catering vehicles.
- B. Mobile kitchen means a motorized vehicle or tow-behind trailer equipped with kitchen facilities such as plumbing, hot water supply, mechanical refrigeration, cooking equipment, and dry goods storage used for the preparation and sale or service of food and beverages. Customer service is provided at a counter or window in the vehicle. Mobile kitchens may include, but are not limited to, mobile food trucks and mobile food trailers. Mobile kitchens shall not include individual non-motorized vending carts or mobile ice cream/frozen dessert vehicles.
- C. Mobile food trailer means a mobile kitchen that serves food or beverages from an enclosed, self-contained, non-motorized vehicle that is normally pulled behind a motorized vehicle.

Background

A. The City hereby establishes Standards and Requirements to temporarily place a Mobile Food Trailer in the City of Brenham public parking lot located southeast of the intersection of South Park Street and East commerce Street and in accordance with all standards adopted within the Brenham Code of Ordinances and incorporated herein for all purposes pertinent.

B. Licensee desires to operate and maintain a Mobile Kitchen located at the site approved by the City Manager or the City Manager's designee ("**Mobile Kitchen Site Location**") in accordance with the terms of this Agreement and further depicted and attached to this Agreement as **Attachment "A"**. All references to the Mobile Kitchen shall include the Mobile Kitchen Site Location).

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement, the City and Licensee, intending to be legally bound by this Agreement, agree as follows:

1. License; Conditions.

A. License. Subject to the terms of this Agreement, the City grants a temporary, nonexclusive, revocable and nonassignable license to Licensee to enter the Mobile Kitchen Site Location to operate and serve HSF Market customers and patrons of the general public food and beverage

service from the Mobile Kitchen in accordance with all Applicable Laws, including Chapter 9 – Food and Food Establishments and Chapter 16 – Occupational Licenses and Business Regulations and the terms and conditions of this Agreement.

B. Timeframe for Encroachment. The City hereby grants the Licensee the right to operate a Mobile Kitchen in the City of Brenham parking lot and within the Mobile Kitchen Site Location (see Attachment) each week from 10:00 AM on Wednesday through 10:00 PM on Sunday. The Mobile Kitchen is not permitted to be located within the Mobile Kitchen Site Location on Mondays or Tuesdays unless approved in writing. Failure to remove the Mobile Kitchen from the designated Mobile Kitchen Site Location and in accordance with the terms specified herein, shall result in towing of the Mobile Kitchen by the City at the expense of the Licensee.

C. Permits Required. Prior to entering the Mobile Kitchen Site Location to commence operations of the Mobile Kitchen, Licensee shall secure all necessary permits, licenses, and approvals from all appropriate departments, agencies, boards, or commissions of the City or other governmental entities that may be required by Applicable Law.

2. Title; AS-IS Condition of Mobile Kitchen Site Location

A. At all times, but subject to the terms of this Agreement, the Mobile Kitchen Site Location shall remain a public parking lot. No legal title or any other interest in real estate shall be deemed or construed to have been created by anything contained in this Agreement; the License granted by this Agreement authorizes the Licensee to enter upon the Mobile Kitchen Site Location for the purposes stated herein.

B. City agrees to install signage at licensee's expense denoting the Mobile Kitchen Site Location is reserved for HSF Market during the timeframe specified in Section 1(B) above. In the event the Mobile Kitchen Site Location is in use by others at the time the Mobile Kitchen is to be utilized by HSF Market then the licensee shall work with the City of Brenham Code Enforcement department to remedy the parking violation. In the event the vehicle cannot be reasonably moved from the Mobile Kitchen Site Location, then the licensee may tow the vehicle at the expense of the vehicle owner.

C. Licensee acknowledges and agrees that they accept this license to enter the Mobile Kitchen Site Location in its "AS-IS, WHERE-IS, AND WITH ALL FAULTS" condition, including all defects known or unknown, and the City makes no representation or warranty, express or implied, as to (a) any encumbrances, restrictions and conditions which may affect the Mobile Kitchen Site Location, (b) the nature or condition of the Mobile Kitchen Site Location for installation and operation of the Food Trailer, and (c) compliance of the Food Trailer with Applicable Laws (defined below). Licensee is relying on its own independent investigation of the condition of the Mobile Kitchen Site Location in entering this Agreement.

3. Term.

3.1 The term ("Initial **Term**") of this Agreement shall be for two (2) years commencing on the Effective Date and shall terminate on the 18th day of November, 2023, unless terminated earlier pursuant to the provisions of this Agreement.

3.2 If neither party provides notice of termination prior to the end of the Initial Term in accordance with Paragraph 11, this Agreement shall automatically renew for an additional one (1) year term ("Renewal Term"). This Agreement shall be terminated following the initial Renewal Term which would end on the 18th day of November, 2024.

4. Maintenance Obligations; Use Restrictions; Approvals.

A. Licensee's Maintenance Obligations. Licensee hereby covenants and agrees, for itself, its successors, and assigns to be fully responsible for the costs of designing, constructing, installing, repairing, operating and maintaining the Mobile Kitchen Site Location as set forth in this Agreement; provided, however, Licensee shall have no responsibility for City's subsurface improvements or property (except where Licensee causes damage to City's subsurface improvements or property, in which case Licensee shall be liable to the City for all costs necessary to repair such damage) and Licensee's responsibility for repairs and maintenance of the street surface shall be limited to damages beyond reasonable wear and tear. Licensee shall use and maintain the Mobile Kitchen Site Location in a wholly safe condition, in a clean and sanitary fashion, free of all waste, rubbish, accumulation of garbage, papers, and debris; shall provide and maintain adequate and proper drainage utilizing the existing courses of flow for storm water runoff; shall permit free and unobstructed ingress and egress to, from, and around the Mobile Kitchen Site Location for the protection or facilitation of pedestrian traffic; shall properly store and dispose of all waste matter and trash in accordance with the City's regulations and keep the Mobile Kitchen Site Location and adjacent sidewalk free and clear of rubbish, trash and waste materials; and, except as approved in accordance with this Agreement or Applicable Law, shall not permit encroachments upon or obstructions of the streets.

B. City's Maintenance Obligations. The City shall not be required to furnish any services or facilities to the Mobile Kitchen Site Location, or to make any repairs or alterations to the Mobile Kitchen Site Location. The City shall not be responsible for any loss or damage to personal property on the Mobile Kitchen Site Location. Licensee assumes sole responsibility for the operation, maintenance, and management of the Mobile Kitchen Site Location. The provisions of this paragraph do not apply to any City improvements installed or located below the surface of the Mobile Kitchen Site Location.

C. Licensee's Use; Use Restrictions. Licensee is hereby authorized to use the Mobile Kitchen Site only in association with the operation of its restaurant business located at 307 South Park Street, Brenham, Texas ("Restaurant"), said operations shall be limited to food and beverage storage, preparation, service, and consumption. Licensee is further hereby authorized to limit the hours of operation of the Food Trailer within the Mobile Kitchen Site Location for patrons only

during the Restaurant's hours of operation ("**Exclusivity Period**"). At all other times, specifically, on any given Monday and Tuesday within the Term of this agreement the general public's use of the Mobile Kitchen Site Location shall not be limited by Licensee. Licensee agrees that during the Exclusivity Period it shall not: permit any use of the Mobile Kitchen Site Location except as specified in this Agreement; permit anything unlawful on the Mobile Kitchen Site Location; permit a public or private nuisance on the Mobile Kitchen Site Location; permit any Hazardous Substances (defined below) on the Mobile Kitchen Site Location; permit an implied dedication of the Mobile Kitchen Site Location; permit anything that disturbs or damages the surrounding properties; prohibit vehicle parking on the Mobile Kitchen Site Location; permit smoking of any substance on the Mobile Kitchen Site Location; permit any commercial or for-profit activity of any kind on the Mobile Kitchen Site Location except as specified in this Agreement; permit commercial advertising of any kind, or non-commercial advertising of any kind without the advance written approval of the City; permit any structures on the Mobile Kitchen Site Location unless specifically permitted by this Agreement; permit alcoholic beverages or illegal drugs on the Mobile Kitchen Site Location, except for alcoholic beverages served to Licensee's customers as authorized by a license/permit validly issued by the Texas Alcoholic Beverage Commission; permit personal property to be displayed, stored or sold on the Mobile Kitchen Site Location unless specifically permitted by this Agreement; or permit standing water to accumulate on the Mobile Kitchen Site Location except as may occur naturally on the street over which the Food Trailer is placed.

D. Approvals by City. Unless otherwise stated in this Agreement or in accordance with Applicable Law, any review, approval, permission, or consent that Licensee is required to obtain from the City under this Agreement shall not be valid or effective unless obtained from the City Manager or the City Manager's designee (the "City Manager"). The review, approval, or consent by the City Manager of any plans, specifications, work, or materials submitted or performed by Licensee under this Agreement does not constitute any representation, warranty, or guarantee by the City as to the quality or substance of the matter reviewed or approved or its compliance with Applicable Laws. Licensee must use its own independent judgment as to the accuracy and quality of all such matters and its compliance with Applicable Laws. Review, approval, or consent by the City Manager under this Agreement does not constitute any review, approval, consent, license or permit otherwise required under Applicable Laws by any City department, board, commission, or official. Licensee agrees that the Mobile Kitchen Site Location, unless approved by the City, shall not be expanded, enlarged, or altered in any way without the prior written approval of the City.

5. Compliance with Applicable Laws; Hazardous Substances.

A. Applicable Laws. "**Applicable Laws**" shall mean all applicable present Federal, State and City laws, ordinances, orders, rules, regulations, guidelines and requirements.

B. Hazardous Substances. "**Hazardous Substance**" shall mean: (a) asbestos, flammables, volatile hydrocarbons, industrial solvents, explosives, chemicals, radioactive material, petroleum,

petroleum products and by-products, natural gas, synthetic gas, and shall include but not be limited to, substances defined as "hazardous substances", "hazardous wastes", "toxic substances", "pollutants" or "contaminants" as those terms are defined in any of the Applicable Laws; and (b) any and all other materials or substances that any government entity shall determine from time to time are harmful, toxic, or dangerous.

6. **Entry on Mobile Kitchen Site Location By City; City Inspection.** The City may enter the Mobile Kitchen Site Location at any time, for any reason, including inspecting the Food Trailer and/or Mobile Kitchen Site Location; provided, City's entry, if any, shall be in a manner that causes the least interference or interruption with Licensee's operations. Nothing contained in this Section shall create a duty on the City to make any repairs or do any work on the Mobile Kitchen Site Location. City inspections shall not be a representation, guaranty, or warranty by the City to Licensee, as to Licensee's compliance with the terms of this Agreement or Applicable Laws.

7. **Non-exclusive:** The License granted by this Agreement is nonexclusive and is subject to any existing utility, drainage or communications facilities located in, on, under or upon the City's streets, rights-of-way or any other City-owned property, any utility or communication company, public or private, to all vested rights presently owned by any utility or communication company, public or private for the use of the Mobile Kitchen Site Location for facilities presently located within the boundaries of the City's property and to any easement, lease, license, or other interest in the Mobile Kitchen Site Location granted by City to any individual, corporation or other entity, public or private.

8. **Environmental Protection:** Licensee shall not use or permit the use of the Food Trailer for any purpose that may be in violation of any environmental laws or regulations, and any amendments thereto, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Resource Conservation and Recovery Act of 1976 ("RCRA"), the Texas Water Code and the Texas Solid Waste Disposal Act. Licensee warrants that the permitted use of the Food Trailer will not result in the disposal or other release of any hazardous substance or solid waste in, on, upon, under or to the Mobile Kitchen Site Location, and that it will take all steps necessary to ensure that no such hazardous substance or solid waste will ever be discharged in, on, upon, under or onto the Mobile Kitchen Site Location or property adjoining the Mobile Kitchen Site Location by Licensee. The terms "hazardous substance and waste" shall have the meaning specified in CERCLA and the term solid waste and disposal (or dispose) shall have the meaning specified in the RCRA; provided, however, that in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and provided further, at the extent that the laws of the State of Texas establish a meaning for hazardous substance, release, solid waste, or disposal which is broader than that specified in the CERCLA or RCRA, such broader meaning shall apply. **Licensee shall indemnify and hold City harmless against all costs, expenses, fines and fees related to environmental cleanup of**

the Food Trailer and surrounding the Mobile Kitchen Site Location resulting, directly or indirectly, from Licensee's use of the Food Trailer under this Agreement.

9. Insurance: At all times during the Term of this Agreement, the Licensee shall procure and maintain insurance in the types and amounts as specified below.

Licensee shall, at its sole cost and expense, procure and maintain in full force and effect, for the Term of the License Agreement, covering its obligations under this Agreement, the types and minimum limits of insurance specified below. All insurance shall be procured from insurers authorized to do business in the State of Texas and acceptable to the City. All insurance required herein shall be written on an "occurrence" basis and not a "claims-made" basis.

(i) WORKERS COMPENSATION AND EMPLOYERS LIABILITY

(a) Workers Compensation: Statutory limits

(b) Employers Liability: \$100,000 each Accident - Bodily Injury by Accident; \$100,000 Each Employee - Bodily Injury by Disease; and \$500,000 Policy Limit -Bodily Injury by Disease.

(c) Automobile liability policy.

(d) All States coverage and Texas Endorsement.

(ii) GENERAL LIABILITY INSURANCE

(a) Limit of liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability;

(b) Coverage: Premises operations; blanket contractual liability; personal injury liability (employee exclusion deleted); products and completed operations; independent contractors; employees and volunteers as insureds; cross liability; and broad form property damage (including loss of use) liability.

The City of Brenham, its officers, employees, and agents, shall be named as additional insureds on the General Liability Insurance Policy. Also, an endorsement is required stating that the coverage afforded the City and its officers, employees and agents as additional insureds will be primary to any coverage available to them. The City reserves the right to require Licensee to furnish certified copies of the original policies of all insurance required hereunder at any time upon ten (10) days prior written notice to Licensee. All such policies shall include an endorsement stating that the coverage afforded to these parties as additional insureds will be primary to any other coverage available to them.

Certificates of insurance evidencing the required coverage shall be submitted to the City Secretary, City of Brenham, 200 W. Vulcan Street, Brenham, Texas 77833 within ten (10) days after the Effective Date of this Agreement. Licensee shall furnish certified copies of the original policies of all insurance required under this Agreement, at any time, within ten (10) days after written request by the City.

All insurance policies shall provide for a least thirty (30) days prior written notice to be given to the City in the event coverage is materially changed, cancelled, or not renewed. At least ten (10) days prior to the expiration of each policy, Licensee shall deliver to the City a Certificate of Insurance evidencing a replacement policy to become effective immediately upon the termination of the previous policy.

The insurance requirements set forth herein shall in no way be intended to modify, limit or reduce the indemnifications made in this Agreement by Licensee to City, its officers, employees, and agents, or to limit Licensee's liability under this Agreement to the limits of the policies of insurance required to be maintained by Licensee hereunder.

10. Indemnification; Release.

A. Licensee agrees to defend, indemnify, and hold harmless the City, its departments, commissions, boards, officers, employees or agents, from and against all actions, causes, suits, demands, losses, and liabilities, including the cost of litigation and attorney's fees, by reason of injury (including death) to persons and damage to property in any way arising in connection with this Agreement or rights granted to Licensee hereunder; provided that nothing herein contained shall be deemed to confer upon any third person any right against City, or to vest in said third person any cause of action against City, or to authorize any such person to institute any such suit or suits against City, its departments, commissions, boards, officers, employees or agents. Licensee is not obligated to indemnify, defend, and hold harmless the City against losses, costs, claims, suits, actions, damages, liabilities, and expenses that arise exclusively from the negligence or willful misconduct of the City, its departments, commissions, boards, officers, employees or agents. This Section 10 shall survive the expiration or earlier termination of this Agreement.

B. In consideration of the license extended to Licensee by this Agreement, Licensee, and for Licensee's contractors, and invitees and all persons claiming through any of them (collectively, including Licensee the "Releasing Parties") do hereby remise, quitclaim, release and forever discharge, the City, its departments, commissions, boards, officers, employees or agents, from any and all, and all manner of, actions and causes of action, suits, claims, and demands whatsoever in law or in equity which the Releasing Parties may have against the City its departments, commissions, boards, officers, employees or agents, relating in any way whatsoever to any condition on the Mobile Kitchen Site Location, or relating in any way to

Licensee's entry onto the Mobile Kitchen Site Location, or Licensee's use of the Mobile Kitchen Site Location; save and except those actions and causes of action, suits, claims and demands whatsoever in law or equity that arise exclusively from the negligence or willful misconduct of the City, its departments, commissions, boards, officers, employees or agents. Licensee voluntarily assumes all risk of loss, damage, or injury, including death, that may be sustained by the Licensee, its contractors, or invitees, while in, on or about the Licensed Property; save and except any loss, damage, or injury, including death that arises exclusively from the City, its departments commissions, boards, officers, employees, or agents. This Section 10 shall survive the expiration or earlier termination of this Agreement.

11. Relocation; Termination of this Agreement.

A. Relocation.

- a. Licensee understands and agrees that it shall, upon request of the City, and in conjunction with a special event located within proximity of the Mobile Kitchen Site Location, on not less than ten (10) days notice, relocate the Food Trailer.
- b. Licensee understands and agrees that it shall, upon request of the City, and except in the case of an emergency, on not less than twenty-one (21) days notice, relocate the Food Trailer, and terminate the use of the Mobile Kitchen Site Location and that Licensee will pay all costs and expenses necessary for the performance of such relocation work.

B. Termination: This Agreement may be terminated in any of the following ways:

- a. Sale of the Business HSF Market by its current owners, Julia and Cameron Crawford of Brenham, Texas;
- b. Sale of the property currently addressed as 307 South Park Street Brenham, Texas;
- c. Written agreement of both parties;
- d. By either party giving the other party thirty (30) days prior written notice; or
- e. By City upon failure of Licensee to perform its obligations as set forth in this Agreement; provided, however, Licensee shall be provided written notice of its failure to perform and twenty-one (21) days after receipt of such notice to cure such failure.

Licensee shall further agree that upon termination of this Agreement, Licensee shall vacate the Mobile Kitchen Site Location and leave it in a clean condition, clear of all property and debris and restore the Mobile Kitchen Site Location to the satisfaction and approval of the City, reasonable wear and tear excepted, within thirty (30) days after receiving such notice, all at Licensee's sole

cost and expense. The City shall not be liable to Licensee for any compensation, reimbursement or other expenses related to this Agreement.

Licensee agrees that in the event the Food Trailer is not removed from the Mobile Kitchen Site Location and/or if the Mobile Kitchen Site Location is not restored to its original condition, reasonable wear and tear excepted, the City shall have the right and privilege, at its option, of removing said Food Trailer, and restoring the City right-of-way to its original condition and in event of the City so doing, Licensee shall pay to the City, within thirty (30) days written notice or demand, the costs expended by the City in such removal and/or restoration.

12. Notice.

All notices, requests, and other communications under this Agreement shall be in writing and shall be sent by United States registered or certified mail, return receipt requested, postage prepaid, or by overnight or hand delivery service with receipt requested, and addressed to Licensee as provided on the first page of this Agreement, or at such other address as Licensee may specify, and to the City as follows:

City Manager
City of Brenham
200 W. Vulcan Street
Brenham, Texas 77833

13. Governing law: This Agreement is governed by the laws of the State of Texas; and exclusive venue for any action shall be in a court of competent jurisdiction in Washington County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

14. Attachments. Any and all attachments to this Agreement are incorporated herein by reference.

15. Binding effect: This Agreement shall be binding upon and inure to the benefit of the executing parties and their respective successors and assigns.

16. Entire Agreement: This Agreement embodies the entire agreement between the parties and supersedes all prior agreements, understandings, if any, relating to the Licensed Premises and the matters addressed herein and may be amended or supplemented only by written instrument executed by the party against whom enforcement is sought.

LICENSOR: CITY OF BRENHAM

Date: _____

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

ATTEST:

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

LICENSEE: HSF Market

Date: _____

Julia Crawford
Co-Owner, HSF Market

ATTEST:

By:
Title:

ATTACHMENT "A"



Mobile Kitchen Site Location - HSF Market

1 inch = 33 feet





ORDINANCE NO. O-21-032

TMRS-USC T CPI R

TEXAS MUNICIPAL RETIREMENT SYSTEM

AN ORDINANCE AUTHORIZING AND ALLOWING, UNDER THE ACT GOVERNING THE TEXAS MUNICIPAL RETIREMENT SYSTEM, "UPDATED SERVICE CREDITS" IN SAID SYSTEM ON AN ANNUAL BASIS FOR SERVICE PERFORMED BY QUALIFYING MEMBERS OF SUCH SYSTEM WHO AT THE EFFECTIVE DATE OF THE ALLOWANCE ARE MEMBERS OF THE CITY OF BRENHAM; PROVIDING FOR INCREASED PRIOR AND CURRENT SERVICE ANNUITIES FOR RETIREES AND BENEFICIARIES OF DECEASED RETIREES OF THE CITY; AND ESTABLISHING AN EFFECTIVE DATE FOR THE ORDINANCE.

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

Authorization of Updated Service Credits.

(a) On the terms and conditions set out in Sections 853.401 through 853.404 of Subtitle G of Title 8, Government Code, as amended (hereinafter referred to as the "TMRS Act"), each member of the Texas Municipal Retirement System (hereinafter referred to as the "System") who has current service credit or prior service credit in the System in force and effect on the 1st day of January of the calendar year preceding such allowance, by reason of service in the employment of the City, and on such date had at least 36 months of credited service with the System, shall be and is hereby allowed "Updated Service Credit" (as that term is defined in subsection (d) of Section 853.402 of the TMRS Act).

(b) On the terms and conditions set out in Section 853.601 of the TMRS Act, any member of the System who is eligible for Updated Service Credits on the basis of service with this City, who has unforfeited credit for prior service and/or current service with another participating municipality or municipalities by reason of previous service, and was a contributing member on the 1st day of January of the calendar year preceding such allowance, shall be credited with Updated Service Credits pursuant to, calculated in accordance with, and subject to adjustment as set forth in said Section 853.601, both as to the initial grant hereunder and all future grants under this ordinance.

(c) The Updated Service Credit hereby allowed and provided for shall be **100%** of the "base Updated Service Credit" of the member (calculated as provided in subsection (c) of Section 853.402 of the TMRS Act).

(d) Each Updated Service Credit allowed hereunder shall replace any Updated Service Credit, prior service credit, special prior service credit, or antecedent service credit previously authorized for part of the same service.

(e) In accordance with the provisions of subsection (d) of Section 853.401 of the TMRS Act, the deposits required to be made to the System by employees of the several participating departments on account of current service shall be calculated from and after the effective date of this ordinance on the full amount of such person's compensation as an employee of the City.

Increase in Retirement Annuities.

(a) On terms and conditions set out in Section 854.203 of the TMRS Act, the City hereby elects to allow and to provide for payment of the increases below stated in monthly benefits payable by the System to retired employees and to beneficiaries of deceased employees of the City under current service annuities and prior service annuities arising from service by such employees to the City. An annuity increased under this Section replaces any annuity or increased annuity previously granted to the same person.

(b) The amount of the annuity increase under this Section is computed as the sum of the prior service and current service annuities on the effective date of retirement of the person on whose service the annuities are based, multiplied by **70%** of the percentage change in Consumer Price Index for All Urban Consumers, from December of the year immediately preceding the effective date of the person's retirement to the December that is 13 months before the effective date of this Section.

(c) An increase in an annuity that was reduced because of an option selection is reducible in the same proportion and in the same manner that the original annuity was reduced.

(d) If a computation hereunder does not result in an increase in the amount of an annuity, the amount of the annuity will not be changed hereunder.

(e) The amount by which an increase under this Section exceeds all previously granted increases to an annuitant is an obligation of the City and of its account in the Benefit Accumulation Fund of the System.

Dates of Allowances and Increases. The initial allowance of Updated Service Credit and increase in retirement annuities hereunder shall be effective on **January 1, 2022**, subject to approval by the Board of Trustees of the System. An allowance of Updated Service Credits and an increase in retirement annuities shall be made hereunder on January 1 of each subsequent year until this ordinance ceases to be in effect under subsection (e) of Section 853.404 of the TMRS Act, provided that, as to such subsequent year, the actuary for the System has made the determination set forth in subsection (d) of Section 853.404 of the TMRS Act.

Effective Date. Subject to approval by the Board of Trustees of the System, this ordinance shall be and become effective on the **1st day of January 2022**.

Passed and approved this the _____ day of _____, _____.

ATTEST:

APPROVED:

City Secretary or Clerk

Mayor



Regular City Council
AGENDA ITEM 5-E.

Agenda Item: Approve the Painting of Seventeen (17) Carousel Horses and the Exterior of the Antique Carousel in Fireman's Park by CR Systems, Inc., Through The Interlocal Purchasing System (TIPS) Contract No. 18110 in the Amount of \$57,950.00 and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-November 18, 2021

Department: Public Works

Staff Contact: Dane Rau

SUMMARY STATEMENT:

During the 2021-22 BCDC funding meeting, \$92,700 was allocated for improvements to the Antique Carousel. Improvements needed were Phase II of the painting of the remaining horses and gondolas, exterior painting of the carousel, and mechanical work to the gears. We have obtained a TIPS quote through CR Systems Inc. for the detailed painting of 17 horses/gondolas along with exterior painting work. CR Systems conducted the work on Phase I in 2019 and did a great job. We looked at other companies who had to remove the horses and gondolas to take them off site to paint and we wanted to avoid that. Prices were only \$2,000 less and we definitely did not want to risk damage to these old amenities. CR Systems will also re-paint and stain the outside of the Carousel to complete the rehabilitation process that BCDC allocated funds to keep this great structure operating and looking fantastic for the future. We are working with local welding shops to rebuild the circular gears that the carousel runs on as some gears are broken and have sags in the existing metal track.

We ask that Council allow staff to move forward with CR Systems who are based in Bryan, Texas and have done great work like this in the past.

ATTACHMENTS:

(1) Brenham carousel horse paint proposal

RECOMMENDED ACTION:

Approve the painting of seventeen (17) carousel horses and the exterior of the antique carousel in Fireman's Park by CR Systems, Inc., through The Interlocal Purchasing System (TIPS) Contract No. 18110 in the amount of \$57,950.00 and authorize the Mayor to execute any necessary documentation.



To: City of Brenham
Address:

Job Name: Carosel Building
Attention: TIPS Contract#18110
Date: 10/29/2021

WE HEREBY SUBMIT SPECIFICATIONS AND ESTIMATES FOR

Scope of Work:

Provide all fall protection and safety equipment as necessary to complete job
Clean and prepare surface for painting
Paint horses to match existing colors
Clean and remove all paint debris

Painting to be done onsite without moving horses total of 17 \$ 47,600.00

Pressure wash and clean exterior of carosel building to prepare for new stain
Stain entire carosel building
Paint windows and concrete associated with building
Clean and remove all staining debris \$ 10,350.00

**Total Base Bid:
Plus Applicable Taxes**

**** This price does not include raising of curbs****

Exclusions: Mechanical, electrical, and plumbing work

****If a Tax Resale or a Tax Exempt Certificate can be furnished to CR Systems, Inc, the tax may be deducted from the total bid amount.**

PAYABLE AS FOLLOWS:

Balance Due Upon Completion

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alterations or deviation from above specifications involving extra cost will be executed upon written order, and will become an extra charge over and above the estimate, all agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Authorized Signature Rayne Knight

Note: This proposal may be withdrawn by us if not accepted within 30 days.

ACCEPTANCE OF PROPOSAL-----

The prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature: _____

Date: _____



Regular City Council
AGENDA ITEM 5-F.

Agenda Item: Approve the Appointment of Delbert Boeker to the Brazos Valley Council of Governments (BVCOG) Solid Waste Advisory Committee and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-November 18, 2021

Department: Public Works

Staff Contact: Dane Rau

SUMMARY STATEMENT:

After serving on the BVCOG SWAC Board for 17 yrs., Dane Rau Director of Public Works asked to step down in order to focus on other items related to his divisions. The BVCOG SWAC Board asked for a replacement that could serve and represent Brenham and the surrounding area. Currently Mark Marzahn is representing Washington County. With the recent outsourcing of Sanitation Services both City representatives and several County Commissioners recommend Delbert Boecker from the Brannon Industrial Group. Delbert has agreed to serve and assist the BVCOG SWAC with decisions related to Solid Waste for the 7 county area. Meetings are held quarterly in College Station and updates regarding the Solid Waste Management Plan as well as regulations and interactions with Texas Commission on Environmental Quality are discussed. The City will still be eligible to apply for grants as desired which happens annually.

We feel that Delbert will represent us well and bring back important information to benefit our community.

ATTACHMENTS:

None

RECOMMENDED ACTION:

Approve the appointment of Delbert Boeker to the Brazos Valley Council of Governments (BVCOG) Solid Waste Advisory Committee and authorize the Mayor to execute any necessary documentation.



Regular City Council
AGENDA ITEM 5-G.

Agenda Item: Award Bid No. 22-001 for Caustic Soda to Univar Solutions in the Amount of \$345.00 per Liquid Ton and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-November 18, 2021

Department: Water Treatment

Staff Contact: Jerry Saldivar

SUMMARY STATEMENT:

The city's current contract for Caustic Soda expired at the end of October. In October 2021, The City of Brenham solicited bids for a (1) one year supply of Caustic Soda to be delivered to the Brenham Water Treatment Plant. The contract will be for one (1) year with firm bid pricing allowing two (2) one-year renewals. The contract would be effective beginning the date of award by council. On October 25, 2021, we received and opened seven (7) bids. Staff recommends awarding the bid to Univar Solutions in the amount of \$345.00 per liquid ton. Estimated total annual amount is 300 liquid tons or \$103,500. Previous supplier was Brenntag at \$390.00 per liquid ton.

ATTACHMENTS:

(1) Bid Tabulation

RECOMMENDED ACTION:

Approved the award of Bid No. 22-001 for Caustic Soda to Univar Solutions in the amount of \$345.00 per liquid ton and authorize the Mayor to execute any necessary documentation.



Contract for Caustic Soda

ITB 22-001 Monday, October 25, 2021 @ 2PM

BIDDERS	Bid Received Date/Time	UNIT PRICE PER TON	EXTENDED PRICE	NOTES
Univar Solutions	10/22/21 10:35AM	\$ 345.00	\$ 103,500.00	
DXI	10/25/21 1:48PM	\$ 485.30	\$ 145,590.00	
Skyhawk	10/25/21 1:40PM	\$ 447.00	\$ 134,100.00	
Pencoco	10/19/21 11:26AM	\$ N/B	\$ N/B	
Brenntag	10/25/21 11:19AM	\$ 600.00	\$ 180,000.00	(Electronic Submittal)
Lhoist	10/25/21 10:44AM	\$ 259.44	\$ 77,832.00	Quoting SLS45 45% Caustic Soda (Electronic Submittal)
TriChemicals	10/22/21 12:35PM	\$ 438.00	\$ 131,400.00	(Electronic Submittal)



Regular City Council
AGENDA ITEM 6.

Agenda Item: **Presentation and Discussion Concerning A Potential Skydiving Operation, Known as Skydive Freedom, at the Brenham Municipal Airport**

Meeting Type: Regular Meeting-November 18, 2021

Department: Development Services

Staff Contact: Stephanie Doland

SUMMARY STATEMENT:

Recently Anthony (Tony) Cascino and Austin Ely of Egidio Sky, LLC dba as Skydive Freedom contacted City Staff about opening a Skydiving business at the Brenham Municipal Airport (11R). Since that time City Staff has worked with TXDOT Aviation, the United States Parachute Association (USPA), and additional Airport Managers at similarly sized Airports to research the industry standards, best practices and procedures to ensure a safe and business-friendly operation at the Airport.

Staff presented the request by Skydive Freedom during a facilities subcommittee meeting held on November 2nd. The subcommittee discussed the proposed Parachute Landing Zones, FAA requirements, the reporting procedures, and all required notices in conjunction with safe tandem jump operations.

Included in the packet and for review by City Council are various operation and emergency procedures, flight protocols, and the USPA certification for Skydive Freedom. A copy of the Primary Parachute Landing Zone is included in the packet. Staff is preparing a lease agreement with Skydive Freedom for the Primary Parachute Landing Zone to the east of Aviation Way and in the undevelopable FEMA Floodplain. The terms of the ground space lease agreement would include a one-year initial term with a automatic option to renew for a period of five years. The lease agreement would require Skydive Freedom to maintain the 3.59 acre land lease in a clean and orderly manner (shredding/ mowing).

During the Council Work Session, a presentation will be given about the prospective business and a detailed outline of their planned operations at 11R. In addition to research by City Staff, the presentation will include information from the following individuals:

- Tony Cascino, Managing Partner – Skydive Freedom
- Austin Ely, Managing Partner – Skydive Freedom
- Brandon Green, Director of Flight Operations – Skydive Freedom
- Chuck Akers, President and Regional Director – United States Parachute Association

ATTACHMENTS:

- | |
|---|
| (1) Skydive Freedom Flight Operations Handbook
(2) Skydive Freedom Emergency Event Plan
(3) Skydive Freedom Standard Operating Procedures
(4) USPA Certification
(5) Skydive Freedom Primary Parachute Landing Zone |
|---|

RECOMMENDED ACTION:

Workshop Item Only. No Action Will Be Taken.
--

Skydive Freedom 3549U

Flight Operations Handbook

Skydive Freedom
Flight Operations Handbook

Section: Table of Contents
Effective: 10/12/2021
Table of Contents

Revised: 10/12/2021
Revision #:0

<u>Section</u>	<u>Page</u>
Table of Contents	1
A Acknowledgments	
I- Preface	2
II- Record of Revision	2
III- Company Organization	3
IV- Company Policy	4
V- Currency	6
VI- General Operation	7
VII- Radio Communications	8
VIII- Flight Profiles	9
IX- C-182 Jump Procedures	10
X- C-182 Work Sheet	12
XI- Letters of Agreements, Waivers	
XII- Forms	

(Skydive Freedom)
Flight Operations Handbook

Section I: Preface
Effective: 10/12/2021

Revised: 10/12/2021
Revision #:0

General

This Handbook has been prepared to set forth the basic procedures and policies of Skydive Freedom herein after referred to as SF. These procedures and policies are designed to supplement the regulations and are considered essential to good operating practices and safety. The contents of this handbook shall not be construed to be contrary to any Federal Aviation Regulation or any applicable state or local regulations.

Flight Personnel of SF shall use this handbook for guidance during the operation of its aircraft. Within this handbook are specific instructions, information and facts necessary for all personnel to carry out their duties and responsibilities with the utmost safety and continuity.

This handbook is intended to provide the most practical, efficient and effective operating procedures commensurate with the highest degree of safety. However, it does not provide a substitute for sound judgment. If there is a problem or if anyone involved with the operation of SF aircraft have any suggestions for improving this handbook or adding to the safety of operations, please submit those suggestions in writing to the Director of Flight operations.

Distribution

A copy of portions of this handbook, changes and additions to it will be furnished to (SF) pilots. A copy of this handbook will be available at the drop zone at all times when aircraft operations are being conducted.

Section II: Record of Revision
Effective: 10/12/2021

Revised: 10/12/2021
Revision #:0

Handbook Revisions

The Chief Pilot will provide revisions as necessary. Each revision page will have a revision number and date in the upper right hand corner.

Each person to whom a handbook has been furnished shall keep it up to date with changes and additions furnished to them. The revisions record sheet shall be used to record each revision to the handbook.

When a revision to this handbook is created it will be distributed in the following manner:

The Chief Pilot will distribute the revision sheets to each active pilot assigned to fly SF aircraft. Each pilot will then add and delete the appropriate pages in the handbook. The Chief Pilot will keep a control sheet to assure that each manual is updated to the current revision. In addition the Chief Pilot will be responsible for updating the handbooks located at the Drop Zone.

Skydive Freedom
Flight Operations Handbook

Section III: Company Organization
Effective: 10/12/2021

Revised: 10/12/2021
Revision #:0

The following is a list of the names and responsibilities of persons authorized to have control over SF aircraft. This will also serve as a distribution list for those persons that will be issued a copy of this handbook.

- Corporate Officers: Anthony Cascino & Austin Ely
- Director of Flight Operations: Brandon Green
- Check Airman: Brandon Green
- Chief Pilot: Orlando Ramos aircraft checked out in, Cessna 182F 3549U
- Director of Maintenance: Brent Nedbalek

Chief Pilot - Duties and Responsibilities

1. Scheduling of flight crewmembers and aircraft.
2. Coordinate scheduling of aircraft maintenance.
3. Assures that aircraft and equipment are available for training and coordinates all training and testing activities of flight crewmembers.
4. Creates and distributes the Flight Operations Handbook and revisions thereto to those listed on page 4 of this handbook. Ensures that revisions have been made to each copy of the handbook via a control sheet.
5. Prepares and maintains pilot records, training records, flight schedules, and correspondence pertaining to operation activities.
6. Maintains current aircraft checklists.
7. Quality control the Fuel Facility - maintains appropriate fuel quantities.
8. Insures that all pilots conform to standard procedures as outlined in applicable FAA Regulation and this handbook and insures that all pilots maintain currency and receive proficiency checks as required by the FAA and this handbook.
9. Maintains proficiency as pilot in command.
10. Must be thoroughly versed on the contents of this handbook, FAA regulations, flight manuals and other instructions pertinent to his duties.
11. Must always comply with part 61, 91 & 105 regulations.

Director of Flight Operations - Duties & Responsibilities

1. Direct supervisor for Chief Pilot and Director of Maintenance
2. Hires and dismisses flight operations personnel

Pilot in Command - Duties & Responsibilities

The pilot in command reports directly to the Chief Pilot and is responsible for the safe and efficient conduct of the flight assignment. Specific duties are as follows:

1. Determines themselves and their crew (if applicable) are qualified, adequately rested and properly dressed for the flight assignment.
2. Plans flight assignments and obtain briefing information regarding purpose of the flight, weather, operating procedures and special instruction.

Skydive Freedom
Flight Operations Handbook

Pilot in Command – Duties & Responsibilities (Continued)

3. Supervises preparation of flight plans, considering such factors as altitude, terrain, weather, fuel requirements, performance, airport facilities, navigational aids, and weight and balance.
 4. Supervises all crewmembers to insure proper planning and flight preparation.
 5. Insures the aircraft is preflight inspected including a cleaned windscreen to afford maximum visibility, loaded, equipped and manned for the flight assignment.
 6. Inspects or supervises inspection of engines, fuselage and control surfaces for mechanical and structural soundness and proper operation of communication and navigational equipment.
 7. Performs or supervises loading and distribution of passengers and materials and computes that the weight and balance is within prescribed limitations per information and graphs contained in the aircraft flight manual.
 8. Insures the passengers are properly seated and any other materials are properly secured in the aircraft.
 9. Operates the aircraft smoothly and professionally, keeping in mind the comfort and safety of the passengers.
 10. At the end of the day parks and secures the aircraft and removes whatever garbage may have accumulated in the aircraft throughout the day.
 11. Must be highly knowledgeable of the contents of this handbook, FAA regulations, flight manuals and other instructions pertinent to his duties.
 12. Must always comply with part 61, 91, & 105 regulations.
-

Section IV: Company Policy
Effective: 10/12/2021

Revised: 10/12/2021
Revision #:0

General

All operations of SF aircraft & Flight Crews shall be conducted in accordance with Federal Aviation Regulations, State and local Laws and Regulation, Airport rules and the company policies and procedures outlined in this handbook.

Safety

SF operating policy is based on the concept that safety comes first. Calculated risk taking in flight operations will not be condoned or tolerated. Essential elements of safety include quality condition of equipment, meticulously inspected before flight, thorough training and motivation of pilots and other personnel, devoted attention to duty, good judgment, sound operational planning and efficient use of resources available. All Personnel shall endeavor to perform all operations with the highest degree of safety.

Reliability

Reliability is very important to our customers and especially to SF. Every effort shall be made to provide prompt service to our customers, however, safety shall not be sacrificed in any operation. The Pilot in Command is the **FINAL AUTHORITY** to the operation of that aircraft. There will be no pressure placed on the Pilot in Command to make a flight. The pilot's decision to make a flight will be final and in the interest of safety.

Skydive Freedom
Flight Operations Handbook

Section IV: Company Policy (Cont.)

Personal Appearance & Conduct

As a parachute drop zone, the atmosphere around, SF, is generally very informal, however all flight personnel of SF, are expected to present a neat and proper appearance and conduct themselves in a manner to reflect favorably upon themselves and SF. This will include clean, tidy clothes, clean- or neatly trimmed beard, fresh breath, and an overall bright-eyed bushy-tailed appearance.

A SF shirt with a logo on it will be worn on days when you are flying. These shirts will be available for you to buy at SF's cost.

SF flight personnel will not extend their relationships with students further than that required during the course of their duties.

Leave the Drop Zone wild tales, personal wild tales, and "hangar flying" for the end of the day. When students are present please maintain a professional image. No one shall use loud, offensive, boisterous or profane language in the presence or hearing of customers. Your activities, both on and off the drop zone can reflect on SF's public image.

Smoking

Smoking is prohibited inside any SF aircraft. Additionally smoking will not be permitted within 25 feet of any aircraft. The pilot in command will be responsible for enforcement of this rule while that pilot is responsible for their aircraft.

Pilots

All pilots are responsible to notify the Chief Pilot of any change in their legal flying status. Further, pilots are cautioned not to accept flight assignments when their physical or mental conditions would be a detriment to the safety of operations. Pilots known to be suffering from mental anguish, anxieties or other problems that would prevent their full concentration and attention to the flight will not be allowed to accept a flight assignment

Alcoholic Beverages

Any person that appears to be intoxicated shall not be permitted to board a SF aircraft. The use of intoxicants including beer and wine by pilots while on duty or within eight hours prior to duty is prohibited. No pilot may be intoxicated or suffering from the after effects of drinking when reporting for or when on duty.

Use of Drugs

Certain drugs have a marked effect on the nervous system, which are detrimental to a flight crew members' flying ability. Flight crewmembers should ask their doctor if any drug that has been prescribed or any non-prescription medications they are taking would have any effect on their judgment or flying ability. Recreational drugs are prohibited. This is a zero tolerance issue.

Carriage of Drugs

No person shall knowingly be allowed to carry narcotic drugs, marijuana or depressant or stimulant drugs aboard any aircraft operated by SF.

Skydive Freedom
Flight Operations Handbook

Section IV: Company Policy (Cont.)

Blood Donations

In no case will a flight crewmember perform pilot duties within 72 hours after a blood donation. Pilots giving blood donations or who have experienced a substantial loss of blood, will report this fact to the Chief Pilot.

General Operations

No pilot may leave an aircraft unattended while the engines are running.

No pilot will operate an SE aircraft in less than Part 91 VFR minimums or forecast weather conditions which will exceed aircraft limitations as stipulated in the appropriate flight manual. IFR flight is allowed only if the aircraft is IFR certified.

No aerobatics are tolerated in company aircraft. This is a zero tolerance Issue.

All pilots will cooperate fully with the ATC instructions in accordance with all applicable FAR's. Any problem or conflict with ATC or other aircraft should be reported to the Chief Pilot. Under no circumstances will conflicts be allowed to escalate on the air.

In the event of any incident, NASA form ARC 277 is to be filled out and sent in via certified mail. See Chief Pilot for forms.

All pilots will cooperate fully with FAA officials during any FAA inspections and or tests.

No pilot may knowingly fly a SE aircraft if any airworthiness inspection interval will be exceeded prior to the return of that aircraft.

Section V: Currency Requirements
Effective: 10/12/2021

Revised: 10/12/2021
Revision #: 0

Pilot in Command

No pilot may act as pilot in command of any SE aircraft unless that person has:

1. Made at least 3 jump runs in the preceding 3 months for pilots with less than 50 hours of jump piloting experience in type; or
2. Made at least 3 jump runs in the preceding 6 months provided that the pilot has at least 50 hours of jump piloting experience in type; and
3. Successfully completed an SE Flight Competency / Proficiency Check within the previous 12 calendar months.

Skydive Freedom
Flight Operations Handbook

Section V: Currency Requirements Continued

A/C Documents

Before the first flight of the day the aircraft should be checked that all required documents are on board. This will include the standard "ARROW documents - Airworthiness Certificate, Registration, Operating Limitations (Flight Manual), and weight and balance information. In addition to these documents there should also be a waiver on board authorizing tandem jumps and a waiver must be on board the aircraft for any jump requiring a waiver, i.e.; an air show, demo jump or High alt. jump.

Section VI: General Operations
Effective: 10/12/2021

Revised: 10/12/2021
Revision #: 0

Preflight Inspection

The preflight inspection will be performed as depicted in the aircraft flight manual. As there are some differences in the modifications for the jump aircraft, particular attention will be paid to those modifications, i.e.; door latch, step, brake lines, fuel quantity, etc.

Company Paperwork

Aircraft status sheets are located on a clipboard on the wall of the Flight Department office. The Aircraft Status Sheet should be consulted to check on the maintenance status of the aircraft as well as squawks or notes from previous pilots.

The aircraft log sheets are contained in a binder kept in the aircraft. This should also be checked to make sure the last ending tach time agrees with the tach. Also in this binder should be the fuel card, a pen and all receipts from fueling.

During flight operations, an entry of the date, pilot's initials, number of jumpers, altitude, and tach / Hobbs time should be made in the aircraft log at the end of each flight. When fuel or oil is added a separate line should be used. Any time a discrepancy is found with the aircraft, the pilot noticing the discrepancy should write it down on the squawk area of the Aircraft Status Sheet.

Fueling Procedures

Fuel is available at the Aviators Plus Self-Serve Pumps. fuel facility via a computerized dispensing device located at the fuel islands. Fuel each aircraft as outlined in that aircraft's jump procedures guideline. **ABSOLUTELY NO HOT FUELING!**

Skydive Freedom
Flight Operations Handbook

Section VI: General Operations Continued

Check Lists

A checklist will be used for each flight and will be provided in the aircraft. One side of the checklist will contain the Originating Check, which will be conducted for the first flight of the day, or if any maintenance function has been performed.

The other side will contain a Turnaround Check, which will be used in subsequent flights of the day unless the pilot feels the need to use Originating Check.

Multiple Aircraft Operations

When a pilot knows there are other airborne company aircraft, he should be precise about the calls to ATC, include the altitude and express anything unusual about the type jump (I.E. Tandem jumpers, crew jumpers, etc.). All aircraft will be on ATC Frequency listening for each other's calls. Allow at least two minutes of actual elapsed time between your skydivers exit and the previous aircraft's exit. When following an aircraft dropping tandems, allow 4 minutes of elapsed time.

When dropping static line jumpers or hop and pops at 3000', absolutely maintain that altitude. The higher aircraft are counting on parachutes opening at that altitude, not 3500' or 4000'.

Being partially or wholly responsible for causing a canopy collision or a skydiver injury will be an indiscretion that will haunt a pilot throughout his aviation career. Do not get in a hurry, be patient and if at all in doubt go-around. Remember, you are the pilot in command. No one else, in or out of your aircraft has taken as many variables into consideration as you have while you are flying. No one is responsible for the passengers as much as you are. In this arena there will be multiple opportunities for a pilot to exercise his judgment. Make decisions that you can be proud of.

Section VII: Radio Communications
Effective: 10/12/2021

Revised: 10/12/2021
Revision #:0

Radio Communications

Make all appropriate announcements as follows:

- UNICOM: 123.075
- ATC: 134.3 (Houston Tracon)
- NOTAM will be filled by the city airport manager

The Take-off

Have the transponder on ALT during all operations. Announce: "Brenham Traffic, (your A/C call sign "Jump Plane 3549U"), is departing (Runway 16/34) (appropriate runway as wind dictates), skydiving will commence in X minutes from X feet".

Climbing out of the Traffic Pattern

Switch to Houston Tracon when climbing through 1000' AGL or when laterally exiting the traffic pattern after making an appropriate position call with intentions on CTAF. On the initial call announce "Houston Approach, Jump Plane 3549U" only. When they respond, say "Houston, Jump Plane 3549U, (current altitude) climbing (jump altitude) for skydiving." They will give you a squawk code and traffic advisories in the climb.

Skydive Freedom
Flight Operations Handbook

Section VII: Radio Communications Continued

Approaching the Exit Point

Approximately 5 minutes prior to drop, switch to UNICOM frequency and announce "Brenham traffic, skydiving commencing in 5 minutes from 10,000 ft and below. Use caution for parachutes at Brenham" Switch back to ATC. Make the same call 2 minutes prior to the jump. Then one minute before the exit announce to ATC"(your call sign) is 1 minute prior". If there is any doubt as to proximity to other planes, verify through ATC, prior to releasing jumpers.

It is incredibly important to maintain situational awareness of the jump airspace at all times. Brenham has a significant amount of corporate jet traffic. You are flying professional skydivers that will land next to the airfield. You may have to get in contact with arriving/departing traffic to let them know that they don't have to do anything differently because of your skydivers. In these cases, it is best to ask Tracon for permission to go off frequency momentarily to communicate with this traffic.

After Exit

Advise ATC "(your call sign), jumpers away, descending". After all jumpers away, and ATC releases you, switch to UNICOM frequency and announce "(#of jumpers) jumpers away at Brenham, use caution (altitude) feet and below for skydivers at Brenham". Make sure to make appropriate position calls on CTAF as you descend. DO NOT CUT ANYONE OFF. Enter the traffic pattern as normal and land. Ensure that you do not cause the corporate jets on long finals to have to go-around.

Traffic Pattern Announcements

Announce that you are on a 45 to the appropriate runway.

Announce your downwind.

Announce your base.

Announce your final.

Announce if you intend to land long.

Announce when clear of the runway.

Section VIII: Flight Profiles
Effective: 10/12/2021

Revised: 10/12/2021
Revision #:0

Flight Profile / Climbs

This is an extremely busy area. The issue of vigilance in search of traffic cannot be impressed enough. In general, and in a perfect world all turns should be made to the left for optimum pilot visibility.

Winds permitting, your take-off direction will be your jump run direction. Do your best to make as few turns as possible in the climb to minimize time to altitude.

Jump Run #1:

Jump runs should be discussed before the first flight of the day with Tandem Instructors. Make sure to climb in such a way as to have 1 minute of level flight with 15-18"MP and 2200-2300RPM before dropping the jumpers to start the cooling process on the engine and prevent shock cooling.

Skydive Freedom Flight Operations Handbook

Section VIII: Flight Profiles, Continued

Descents

After the exit, close the door. Set 18" MP and 2500RPM, then close the cowl flaps if they aren't already closed. MP can be progressively walked back to 15" after the first 2000 feet have been lost. DO NOT CLOSE THE THROTTLE, you will shock cool the engine. Maintain 15"MP until 2500AGL, then you are free power and can manipulate the engine controls as necessary for a safe pattern entry and landing. In the descent, speed is controlled exclusively by pitch. Aim for VNO in the descent, slower in rough air. The Tandem Instructors will let you know if you need to speed up or can slow down. You are expected to use your discretion in lateral navigation for the descent. Be vigilant with spotting traffic.

Traffic Patterns

Traffic pattern **manners are expected to be exemplary.** Enter the pattern at traffic pattern altitude on a 45-degree to downwind. If you are sure no other traffic exists in the pattern, a base leg entry is acceptable.

Make all appropriate announcements. Abide by all right of way rules as mandated by the airmen's information manual.

Section IX:
Effective: 10/12/2021

C-182 JUMP PROCEDURES

Revised: 10/12/2021
Revision #: 0

Preflight

1. Complete the preflight as prescribed in the A.F.M.
2. Fuel for apx. 2 loads or as told - Verify with the fuel measurement stick.

Starting

1. On the first start of the day, start at the five-minute call, give a few extra minutes in winter when cold.
2. Start the engine as prescribed in the A.F.M.
3. When the engines has sufficiently warmed up (noticeable movement of the oil temperature gauge) do the run up as per the A.F.M.

Taxi and Loading

1. Keep weight off the nose
2. Load jumpers at loading area.
3. Advise **jumpers to fasten seat belts**. It's your license on the line if the FAA catches them without a seatbelt, be proactive and make sure everyone is wearing one properly.
4. Fly what manifest dictates.

Take-off

1. Make your take-off announcement.
2. Feed the throttle progressively to full power. Smooth application, no sudden throttle inputs, treat it as your own airplane!
3. Rotate at 70 MPH. If plane comes off the ground earlier, keep it in ground effect until 70.
4. When climb has been established, reduce power to 24.5" MP and RPM's to 2450.

Climb

1. Climb at 90 MPH. Do not exceed 420 degrees CHT. If this temperature is reached, accelerate to trade climb performance for cooling.

2. Be alert for traffic.
3. Check engine instruments.
4. Contact Houston Tracon when clear of the traffic pattern.
5. As you gain altitude increase power maintaining 24.5" MP maximum.
6. Above 5000, climb at 80 - 85 MPH, if CHT will allow.
7. Monitor mixture control, fly slightly rich for cooling.
8. Be alert for traffic.

Jump Run

1. Anticipate arrival at altitude and stage the power reduction to 15" MP and 2200 RPM.
2. Make the radio announcements - ATC and Unicom.
3. When power reduction is complete close cowl flaps, if applicable.
4. Target jump run airspeed at 80 MPH, or as requested by jumpers.
5. Be alert for traffic.

Descent

1. After all jumpers are away, slip the airplane using left rudder to close the door gently and make announcement to ATC and CTAF.
2. Accumulate airspeed to the top speed of the green arc. **Be alert for traffic.**
3. On the descent maintain 15" MP and 2500 RPM.
4. Be full rich by 3000', or as needed before landing. Downwind at the LATEST. The engine WILL shut off if you forget to enrich the mixture.
5. Use carb. heat as necessary.

Pattern Work - Landing

1. Make all radio announcements: Entering the 45; Downwind; Base; Final: And landing long, if that is your intention.
2. Enter the pattern on a mid-field, downwind from level flight.
3. Spot your landing.
4. Land on the mains keeping weight off the nose.
5. Use Carb. heat as needed.
6. After landing re-configure the airplane for the next load.

Notes:

1. The airplane should always be ready to fly at least 2 consecutive loads. If you fly only one load and anticipate a shutdown period of more than 15 minutes, you should re-fuel to again be ready for 2 consecutive loads.
2. Unless you are the scheduled pilot for the next day; fuel the airplane, clean the windshield and the inside, if needed at the end of your day.

(Skydive Freedom)
Flight Operations Handbook

Section X:
Effective: (10-12-2021)

C-182 WORKSHEET

Revised: (10-12-2021)
Revision #: 0

Systems

1. Describe the engine type, horsepower, oil type and capacity, minimum fuel grade.
2. Describe the fuel system, capacity, usable and location of drain.
3. Describe the electrical system.
4. Describe the flap system.

V Speeds

Describe what the following speeds are and what they might be used for.

5. Va:	11. Normal Climb Speed:
6. Vfe:	12. Normal Descent Speed:
7. Vsi:	13. VY:
8. Vso:	14. Normal Approach Speed:
9. Vne:	15. VG (Best Angle of Glide Speed):
10. Vx:	

Weight and Balance

16. What is the max. gross weight of the A/C?
17. What is the empty weight?
18. What is the max. payload with full fuel?
19. What is the max. fuel with a full load of skydivers? (Assume 180 lbs. per Jumper)
20. What is the C.G. Range ?

Stalls

21. Describe the configuration for a power on (Take off) stall and the recovery technique:
22. Describe the configuration for a power off (landing) stall and the recovery technique:
23. Describe stall recovery and prevention (ways to bring nose down)

General

24. Describe the procedure for a go-around.
25. Describe the procedure for an engine failure, off airport landing.

(Skydive Freedom)
Flight Operations Handbook

Section XI: Federal Aviation Regulations and Advisory Circulars
(As a minimum, you should have the following documents)

- FAR Part 105
- FAA Advisory Circulars 105-2A
- FAA Advisory Circulars 90-66A

Section XIX: Fueling Operations
See Texaco Operations Manual in Flight Department Office.

Section XX: Letters of Agreements, FAA Waivers
This section is for storing and maintaining these items.

(Skydive Freedom)
Flight Operations Handbook

Section XXI: Forms
Effective: (10-12-2021)

Revised: (10-12-2021)
Revision #: 0

The following are a list of forms to be used by flight personnel to monitor aircraft maintenance and load status including fuel and oil. Pilot records for flight competency and proficiency checks and personnel files are also included.

- Pilot Records
- Deferred Maintenance Instruction Sheet
- Aircraft Status Sheet (Squawks & Maintenance Action)
- Currency Waivers
- Handbook Revision Control Sheet
- Pilot Status Sheet
- Flight Competency and Proficiency Checks

Pilot Records:

Create a file folder for each pilot to maintain records.

Deferred Maintenance Instruction Sheet

1. What to write up: What is a discrepancy?
 - a. Anything that needs to be repaired.
 - b. Anything that you would like to be fixed or changed.
 - c. Any questions you have concerning operation of the aircraft or its systems.
2. How to write up an item:
 - a. Clearly, completely, briefly.
 - b. You **must put your name or initials, the time and date.**
3. When to write in this book:
 - a. At the end of the day if they are not critical items (This requires use of your own judgement). As pilot in command, you decide if the aircraft is grounded or not.
 - b. At the time of the problem, immediately if it is a grounding item.
 - c. A conversation with the mechanic on duty will cover you for relating the details, but you must still write up the discrepancy and note with whom you spoke.
4. Where does the book belong?
 - a. In the maintenance office, never in the aircraft.
5. Other times you must read this book:
 - a. Before every preflight (pilot changes).
 - b. At least once in the morning, for each aircraft in which you are qualified. (I.E. Cessna pilots need not read the King Air books etc).
6. What may be deferred, and who may defer items.
 - a. Non-grounding items.
 - b. Normally the mechanic will defer items when necessary. The pilots may do so if they know why it must be deferred. And it is not a grounding item.
 - c. Any item that gets deferred must first be written up in the normal. The corrective action would then be listed as "see deferred list".

REMEMBER:

IF YOU DO NOT WRITE IT DOWN IT WILL NEVER BE FIXED

(Skydive Freedom)Flight Operations Handbook

Section XXII: Forms
Effective Date : 10-12-2021

Aircraft Status Sheet

Revised: (10-12-2021)
Revision # 0

N number: 3549U _____ **50 Hr. Due:** _____ **100/200 Hr. Due:** _____ **Annual Due:** _____

Date	Hobbs	Pilot	Turbine A/C		Squawks
			Starts*	Ldgs*	

Date	Hobbs	Name	Maintenance Action

(Skydive Freedom)Flight Operations Handbook

Section XXII: Forms **CURRENCY WAIVER**
Effective Date : 10-12-2021

Revised: (10-12-2021)
Revision # 0

(<u>Your Company</u>) Currency Waiver	Date:
Pilot's Name:	Cert. #:
Medical Type:	Medical Date:
Remarks:	Authorized Signature:

(Skydive Freedom)Flight Operations Handbook

Section XXII: Forms **Handbook Revision Control Sheet**
Effective Date : 10-12-2021

Revised: (10-12-2021)
Revision # 0

Hand Book #	Assigned to	1	2	3	4	5	6	7	8	9	10
1											
2											
3											
4											
5											
6											
7											
8											
9											
10											

(Skydive Freedom)
Flight Operations Handbook

Section XXII: Forms
Effective: (10-12-2021)

PILOT STATUS SHEET

Revised: (10-12-2021)
Revision #: 0

Pilot	Aircraft Assignme nt	Certificat e Type and	Medical Class/Due Date	Bi-annual Due Date	Proficiency Demonstrate d	Proficiency Demonstratio n

(Skydive Freedom)
Flight Operations Handbook

Section XXII: Forms
Effective: (10-12-2021)
2021)

FLIGHT COMPETENCY AND PROFICIENCY CHECKS

Revised: (10-12-

Revision #: 0

Pilot's Name: _____	Type of Check: () Initial () Recurrent
Pilot's Certificate #: _____	Date of Check: _____
Pilot's Certificate Grade: _____	Aircraft (Make & Model): _____
Date of Birth: _____	N Number: _____
Medical Class: _____	Flight Time: _____
Date of Issue: _____	Check Airman: _____

Flight Maneuvers & Grade (S-Satisfactory U-Unsatisfactory)

<u>FLIGHT PERFORMANCE</u>	<u>S</u>	<u>U</u>
A. PREFLIGHT OPERATIONS		
1. A/C (Oral or Written)		
2. A/C Documents		
3. Company Paperwork		
4. Preflight Inspection		
5. Fueling procedures		
6 Starting Procedures		
7. Taxing techniques		
8. Pre-Takeoff checks		
B. TAKEOFFS		
9. Normal		
10. Rejected		
11. Crosswind		
12. Simulated Engine Failure		
C. AIR WORK		
13. Climbs/ Descents/ Turns		
14. Slow Flight		
15. Approach to Stalls		
16. Steep Turns		
17. Power Settings		
18. Fuel Management		

<u>FLIGHT PERFORMANCE</u>	<u>S</u>	<u>U</u>
D. NAVIGATION		
19. Use of Nav/Com Radios		
20. Area Departure/ Arrivals		
21. Flight Profiles		
22. Jump Runs		
E. EMERGENCIES		
23. Engine Failure		
24. Systems & Equipment Mals.		
25. Emergency Landings		
F. LANDINGS		
26. Normal		
27. Go-Around		
28. Crosswind		
29. Simulated Power Failure		
30. Zero Flaps		
G. GENERAL		
31. Attitude		
32. Judgement		
33. Crew Co-ordination		
34. Use of Checklist		

Results of Check: () Approved () Disapproved

Remarks: _____

Check Airman's Signature: _____

Date: _____

EMERGENCY EVENT PLAN

INITIAL ACTIONS

FOLLOW THIS PLAN IN CASE OF AN INCIDENT OR ACCIDENT

In case of an Aircraft or parachute emergency/accident the following parties should be contacted:

Municipal Airport manages on-going operations, notifies FAA/NTSB if warranted and addresses the media.

Police Department makes initial assessment; if required secures the area, engages with Airport Staff
First Alarm supplements Police to keep on-lookers and spectators at safe distances.

Fire Department prevents or suppresses fires; keep area contained and safe for recovery.

Paramedics (may be with Fire Dept.) deal with injuries; medical is their responsibility.

If runway is affected: clearing and reopening the runway as soon as possible, upon FAA/NTSB release of the aircraft, is MANDATORY. On field FBOs may handle aircraft retrieval, but also accept potential liability.

WHEN EMERGENCY EVENT OCCURS:

1. Call 911; if position known report via Airport Grid Map (reverse) and GIVE GRID LOCATION
2. First deal with the emergency (injuries, rescue, fire, etc.)
3. Call Airport Manager/Airport Operations Supervisor (see numbers below)
4. Can't contact Airport Management? Call FAA Duty Officer (214) 277-8500. Explain the situation; request Duty Officer alert FSDO and NTSB.
5. Access the EMRG EVENT KIT (in Airport Vehicles and Unicom Room).
6. Be sure you have: Handheld Radio, Emergency Vest, Camera, Flashlight and Fire Extinguisher(s).
7. Divide initial response team effort into two (2) roles: On-Site and Unicom; see below.
8. On-Site Personnel (goes to accident site)
 - a. Use Skydive Freedom vehicle to reach the emergency.
 - b. Evaluate: Minor is non-life threatening, no injuries, no fire; MAJOR is injuries, potential fire.
 - c. Take notes for First Responders; brief them on arrival; assist as requested Unicom Personnel (stays in office)
 - d. CTAF announcement if appropriate (i.e. runway closure)
 - e. Contact FBOs, if appropriate, for potential recovery team
 - f. Ensure on-going operations continue as best as possible
 - g. Prepare for Media questions (refer them to web site for basic info) AIRCRAFT

RECOVERY GUIDELINES

- A. Five things must happen before aircraft removal:
 1. Call FAA ((214) 277-8500) to confirm removal of a damaged aircraft is approved.
 2. Fire Department must give OK to remove aircraft.
 3. On-Site Airport Personnel must take photos, before any aircraft is relocated.
 4. Owner/Operator must indicate when, how, and where the aircraft will be moved and stored.

5. If aircraft is going into a building on the field, fuel must be drained and verified as drained.

Only after FAA/NTSB clearance does aircraft move.

The aircraft operator responsible for aircraft removal and agreement with FBO moving aircraft.

Emergency Responders (Fire and Police) stay on site until released by Airport Management.

PHONE NUMBERS:

Madeline J. Thiebaud: (832) 267- 2747

Angela Casino: (713) 518- 8320

Lee McMillon: (832) 221- 4566

Brenham Airport Manager: (979) 836- 5462

SKYDIVE FREEDOM

Standard Operating Procedures (SOP)

Brenham, Tx

Effective November 01, 2021

OUR MISSION STATEMENT

Our mission is to create a safe, friendly, reliable and high quality skydiving experience to show people that skydiving is a fun and safe activity.

SERVICES

The related services offered by Skydive Freedom include, but are not limited to, Tandem Skydives with video and photos of the experience, skydive coaching, parachute packing and rigging services,

COMPANY POLICY

It is Skydive Freedom's policy to operate under the standards developed and adopted by the United States Parachute Association (USPA) in cooperation with the Federal Aviation Administration (FAA). These standards were developed based on best practices used widely in the skydiving community and, as such, reflect the high standards of operational safety that we wish to achieve at Skydive Freedom.

CUSTOMER AND GUEST ARRIVAL AND PROCESSING

Skydive Freedom is located on the Brenham Municipal Airport at 3001 Aviation Way Brenham, TX with convenient onsite parking, restrooms, phone, wifi services, and access to terminal building office reception area while remaining outside of the airport perimeter security fence and clear of all aircraft movement areas.

All customers and guests are greeted at the front reception area by our manifest staff member and informed about restricted areas of the airport along with safety procedures that must be followed during their visit at the facility. After so, they continue the process of check-in and processing.

MANIFEST

The function of Manifest is to thoroughly process each Tandem Student and Experienced Skydiver from start to finish. Each Skydive Participant will be given a Waiver of Liability Agreement to read and will be required to sign all parts in order to proceed further. This document gives the Tandem Student and Experienced Skydiver detailed description of the inherent risks involved with making a Tandem Skydive or any form of Skydive. It serves as a hold harmless agreement with the Skydive Freedom and City of Brenham, and provides contact information in the event of an accident.

Manifest Personnel will check that the waiver has been completed accurately and the mandatory safety videos have been viewed before escorting skydive participants further into the Skydive Training area.

GROUND TO AIR COMMUNICATION

Manifest role also includes communication of any important information with the Pilot, on the ground and after take off, before and/or after skydivers have left the plane. The Manifest personnel will have ground to air communication capabilities. The Pilot will be informed of the exact passenger manifest for each load and what type of skydivers will be present on each load.

Manifest will always be on the ground available for information and communication throughout the day. Manifest will also have direct communication capabilities to ground shuttle drivers and ground crew monitoring the PLA. Manifest is also the first point of contact should Airport Staff need to communicate applicable Airport Director directives.

PERIODS OF SKYDIVE OPERATIONS

The Skydiving operations at the Brenham Municipal Airport are conducted daily from sunrise to sunset. Appropriate radio calls will be made throughout the day for each parachute activity and all aircraft in the area should monitor and communicate on CTAF (Common Traffic Advisory Frequency)/Unicom 123.07

SAFETY AND SUPERVISION OF CUSTOMERS AND GUEST SPECTATORS

Manifest personnel will be the first and last point of contact for customers and their guests, ensuring that all are accounted for at all times during their skydiving experience and visit at the Skydive Freedom's facility.

Manifest will be in contact with each Tandem Student after their Tandem experience is complete when they return to the office to pick up and watch their video. Manifest will ensure that all Tandem Students, guests and spectators that are escorted inside the Airport security gate by Skydive Freedom personnel will be accounted for at all times during their skydiving experience and visit at the Skydive Freedom facility.

SAFETY AND SUPERVISION OF AIRCRAFT BOARDING

Tandem students will be under direct supervision of Tandem Instructors and or authorized Skydive Freedom Personnel when they are escorted through the Airport

security gate and to the aircraft boarding area. When it is time to board, a second safety gear check will be made and the Tandem instructors will physically guide their Tandem Students onto the plane.

Hot-loading (boarding the aircraft with running engine(s)) is an acceptable practice for Experienced Skydivers or Tandem Students that are supervised by Skydive Freedom Instructors.

GROUND TRANSPORTATION FOR PARACHUTE LANDING AREA

Manifest will dispatch Shuttle Drivers and Ground Crew to the Brenham Airport primary Parachute Landing Area. Skydive Freedom's Ground Crew will supervise the primary Parachute Landing Area during Skydive Freedom Parachute activities and have ground to air communication capabilities and monitor CTAF for situational awareness and safety.

Shuttle Drivers and Ground Crew report directly to Manifest. Upon Skydivers landing at the Brenham Airport PLA, Skydive Freedom's Ground Crew and Shuttle Drivers will account for all skydive participants and guest spectators before escorting them onto shuttle vehicles for their ground transportation back to the Skydive Freedom facility to check-in with Manifest.

In the unlikely event of a parachute landing off the primary landing area, the situation will be recognized immediately as the pilot will circle the area and communicate on ground with manifest via radio, to which manifest will take action to mobilize resources to pick up stranded parachute and take them to safe area.

TANDEM INSTRUCTOR

Parachutist Experience:

Per Part 105 (Sec105.45) each experienced parachutist in command of a tandem parachute System:

(I) Has a minimum of 3 years of experience in parachuting, and must provide documentation that the parachutist--

(ii) Has completed a minimum of 500 freefall parachute jumps using a ram-air parachute, and

(iii) Holds a master parachute license issued by an organization recognized by the FAA, and

(iv) Has successfully completed a tandem instructor course given by the manufacturer of the tandem parachute system used in the parachute operation or a course acceptable to the Administrator.

(v) Has been certified by the appropriate parachute manufacturer or tandem course provider as being properly trained on the use of the specific tandem parachute system to be used.

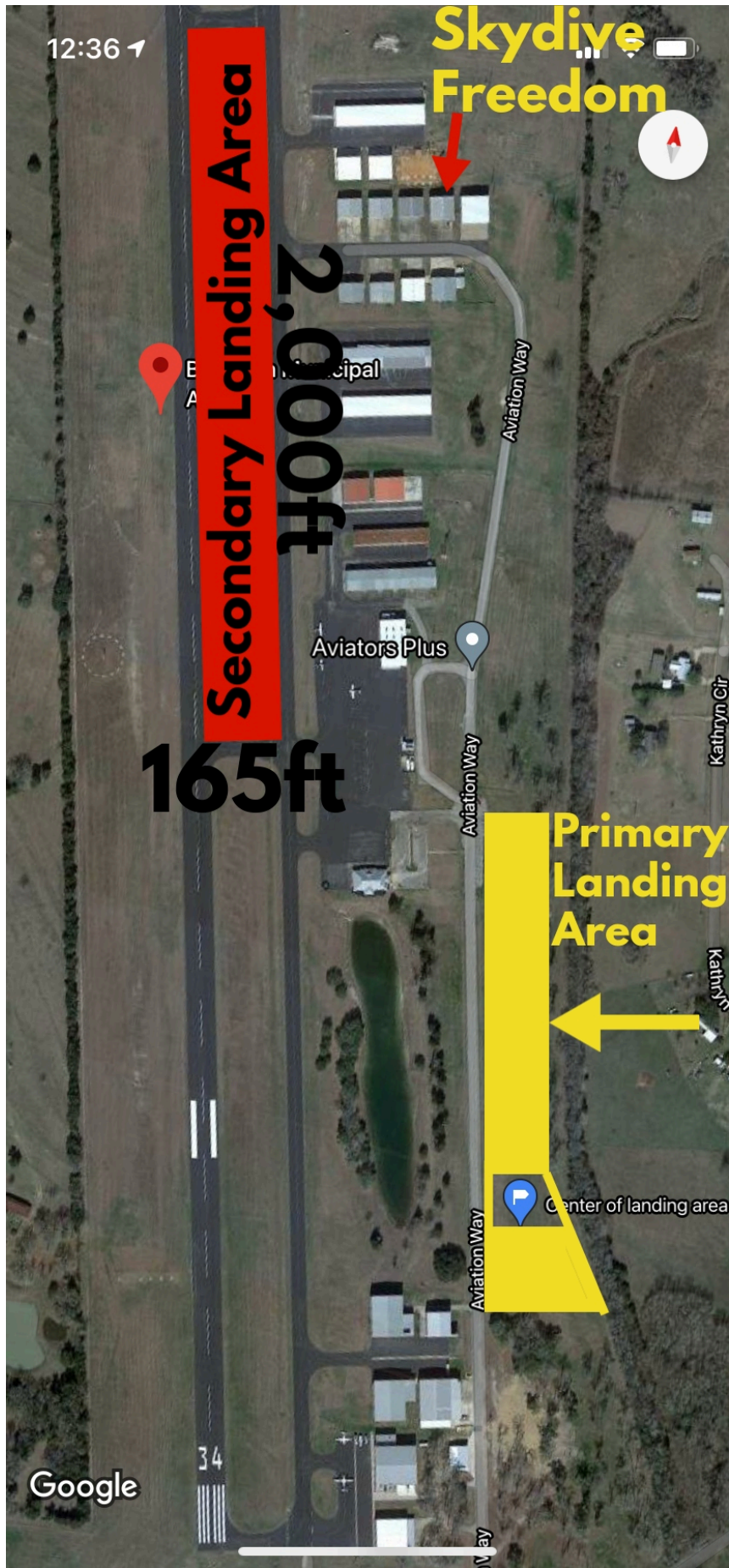
All of Skydive Freedom experienced Tandem Instructors, at a minimum meet and exceed all of the above FAA and/or USPA requirements. Currently, all tandem instructors have 6,000 plus freefall skydives.

SKYDIVE FREEDOM PARACHUTE LANDING AREA

The Brenham Municipal Airport has a suitable designated Parachute Landing Area and both Skydivers and Pilots have a shared responsibility to see and avoid each other as both maneuver in and around the Airport environment following the Federal Aviation Administration regulations. The PLA is located at the East side of the Brenham Municipal Airport. The alternate PLA is located on the North end of the Brenham Municipal Airport as shown in pictures.

SKYDIVE FREE FALL AND PARACHUTE LANDING PROFILE

Tandem Skydivers will typically exit the jump plane from 10,000'-10,500' above ground level (AGL) and open their parachutes between 5,000'- 5,500' AGL Tandem Skydivers will be in free fall for approximately 40-60 seconds, and descend under canopy for approximately 5-8 minutes. All skydiving parachutes are opened well above traffic pattern altitude and easy to visually acquire. Skydivers will navigate their parachutes back to the Parachute Landing Area during their parachute descend and should be inside the traffic pattern boundaries when descending below 2,000' AGL for the Parachute Landing Area.





In accordance with the Constitution and By-laws of the

UNITED STATES PARACHUTE ASSOCIATION®

Skydive Freedom

is hereby recognized as a

USPA GROUP MEMBER

As such, this member pledges to:

- ▶ Comply with USPA Basic Safety Requirements and applicable Federal Aviation Regulations
- ▶ Ensure that all employees and staff are appropriately qualified, trained, and certified
- ▶ Require USPA membership of all license-qualified U.S. skydivers

ATTEST:

EXECUTIVE DIRECTOR, UNITED STATES PARACHUTE ASSOCIATION

MEMBERSHIP EXPIRES MARCH 31, 2022

THE UNITED STATES PARACHUTE ASSOCIATION AND ITS FOREIGN AFFILIATES ARE DEDICATED TO THE DEVELOPMENT OF SAFE SKYDIVING

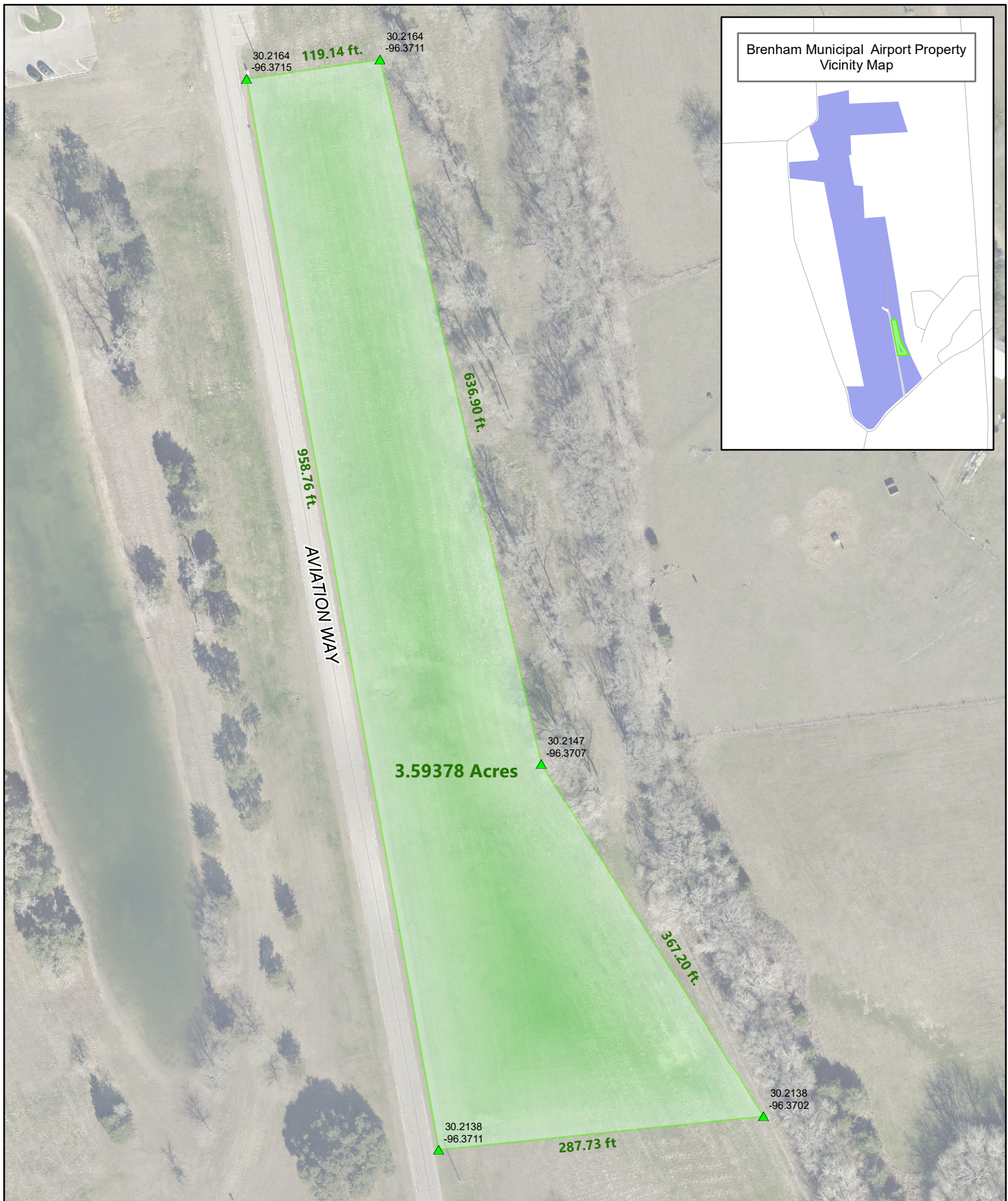


Exhibit A - Primary Parachute Landing Zone



Regular City Council
AGENDA ITEM 7.

Agenda Item: Discuss and Possibly Act Upon a License Agreement Between the City of Brenham and 100 Alamo Investments, LLC. and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-November 18, 2021

Department: Main Street/Historic Preservation

Staff Contact: Jennifer Eckermann

SUMMARY STATEMENT:

Miguel Ramos and Alix Fox are the owners of the Historic Grand Leader Building at 100 E. Alamo. A major project is underway to renovate the space to become the new home of Mescalito Coffee in the front, and Ballad of the Bird Dog in the back. The two businesses are planned to be connected by a ramp, compliant with accessibility standards, from the front of the store into the back to accommodate the change in floor elevation. New restrooms are planned to be located in the back part of the building.

Fire code requires a second egress for the dual spaces and the addition of a staircase on Commerce Street has been proposed. The Main Street Board voted October 4 to recommend approval of a License to Encroach for this project.

The design of the staircase uses the first parking space in front of the building on Commerce Street, allowing for continued pedestrian use of the sidewalk and office frontage for the rental property on the first floor.

An important selling point for Main Street is that creating the primary entrance for Ballad of the Bird Dog on Commerce will enliven the street and create a whole new retail energy that has been missing.

If you approve this License, it will be dependent on approval of a Certificate of Appropriateness by the Historic Preservation Board. Main Street recommends your approval of a License to Encroach for the staircase needed for egress as part of the 100 E. Alamo project.

ATTACHMENTS:

(1) Stair Concept Drawing

RECOMMENDED ACTION:

Approve a License Agreement between the City of Brenham and 100 Alamo Investments, LLC. for an encroachment at 100 E. Alamo Street, contingent upon the approval of a Certificate of Appropriateness by the Historic Preservation Board, and authorize the Mayor to execute the agreement, once approved in its final form by the City Attorney.

102 Alamo - Schematic Design

Commerce Street Stair Concept



Sept 23 2021

102 Alamo - Schematic Design

commerce stair concept

smithdish
ARCHITECTURE





Regular City Council
AGENDA ITEM 8.

Agenda Item: Discuss and Possibly Act Upon a Lease Agreement with Canion Kountry Bakery & Restaurant, Inc. to Lease and Occupy the Restaurant Located Within the Terminal Building at the Brenham Municipal Airport and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-November 18, 2021

Department: Development Services

Staff Contact: Stephanie Doland

SUMMARY STATEMENT:

In 2001 the City of Brenham received funding support through TXDOT Aviation for the construction of a terminal building on the public ramp at the Brenham Municipal Airport. Since the construction was completed Jack and Janet Hess of Southern Flyer have occupied the space as an FBO and Diner. In August of 2020 Southern Flyer terminated their contract with the City and later vacated the building. A lease agreement with Aviators Plus, LLC for the Terminal Building was also considered by Council on March 25, 2021 and was tabled by Council with stated concerns for the terms of the lease agreement, specifically the proposed lease amount. The request was later withdrawn by Brent Nedbalek.

On May 13, 2021 a Request For Proposals was issued for the Airport Terminal Building/ Restaurant and City-Owned Fuel Farm. When the bids were opened on July 9th no bids were received for the Terminal Building or Restaurant. Since that time City Staff has received interest from various parties in relation to the Restaurant space. On September 27th Mindy Canion of Canion Kountry Bakery submitted a Non-Binding Letter of Intent for the Restaurant space.

City Staff presented the Letter of Intent to the City Council Facilities Subcommittee on September 28th and again went before the Subcommittee on November 2nd to review a draft lease agreement with Mrs. Canion. The Facilities Subcommittee reviewed the proposal presented by Mrs. Canion and was in favor of proceeding with the agreement as presented.

For consideration by Council is a lease agreement with Mindy Canion of Canion Kountry Bakery & Restaurant, Inc. to occupy the restaurant and back patio of the terminal building. Included in the lease agreement are the following requirements and terms:

- Initial term of the lease shall be one year; with the option to renew in one year increments automatically for two years.
- Lessee shall be pay rent of \$6,000 annually for the first year.
- After the initial year the lessee shall pay in addition to annual rent 3% of the net income from all food and beverage sales.
- Lessee shall be responsible for all utilities;
- Lessee shall maintain all interior portions of the building and the City shall be responsible for any exterior portions of the building;
- Lessee shall open and operate a restaurant no later than sixty days from the date the contract is signed;
- Restaurant shall be open at least five days a week for eight hours each day;
- The restaurant may be remodeled at the Lessee's expense;
- The lease agreement may be terminated by the City upon entering into a lease agreement with a Fixed Based Operator for the Terminal Building provided the lessee be provided 30 days prior written notice;
- Additional lease terms include mandatory insurance requirements, compliance with applicable adopted local, state and FAA restrictions.

Staff recommends approval of the lease agreement as presented.

ATTACHMENTS:

(1) Lease Agreement Canion Kountry Bakery

RECOMMENDED ACTION:

Approve of a Lease Agreement with Canion Kountry Bakery & Restaurant, Inc. to lease and occupy the restaurant in the Terminal Building located at the Brenham Municipal Airport and authorize the Mayor to execute any necessary documentation.

AIRPORT TERMINAL BUILDING
LEASE AGREEMENT

By and Between
The City of Brenham and Canion Kountry Bakery &
Restaurant, Inc.

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

WHEREAS, Canion Kountry Bakery & Restaurant, Inc. desires to lease from the City of Brenham the Restaurant Area of this property, consisting of approximately 1405 square feet, in addition to the adjoining outdoor patio, ("Premises") for the purpose of operating a public restaurant; and

This Lease Agreement, hereinafter also referred to as "this lease," is made and entered into by and between Canion Kountry Bakery & Restaurant, Inc., a Texas corporation (hereinafter referred to as "Lessee") acting by and through its authorized representative, and the City of Brenham, a Texas home-rule municipal corporation, as Lessor (hereinafter also referred to as "City").

WITNESSETH:

I.

City, in consideration of the covenants and agreements to be performed by Lessee and upon terms and conditions hereinafter stated, does hereby lease Lessee the Premises located at 3001 Aviation Way, Brenham, Texas, said Premises further depicted in Exhibit "A" attached hereto and incorporated herein for all purposes. The term of this lease shall be for a period of one (1) year ("Initial Term"), commencing upon the ____ day of _____, 2021 and ending on the ____ day of _____, 2022, provided, however, that City and Lessee shall have the right to terminate this lease as provide elsewhere herein.

If neither party provides notice of termination prior to the end of the Initial Term in accordance with Paragraph XVIII of this lease, this lease will automatically renew for an additional one (1) year term ("Renewal Term"). This lease may be automatically renewed for an additional two (2) Renewal Terms, the last of which would end on the ____ day of _____, 2025.

II.

For and in consideration of this lease, upon execution hereof by all parties, Lessee shall pay, as rent, six thousand and No/100 Dollars (\$6,000.00) annually to City during the term ("Annual Rent"). Said Annual Rent shall be paid in equal monthly payments on or before the 5th day of each month.

After the Initial Term of one year, Lessee shall pay, in addition to Annual Rent, three percent (3%) of its net income from all food and beverage sales made by Lessee at the Premises ("Percentage Rent"). Said Percentage Rent shall be paid monthly, on or before the 5th day of each month, and shall be accompanied by an accounting showing the calculation of the Percentage Rent. The Percentage Rent for any given month shall be calculated using the prior calendar month's income.

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

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

City and City's agents and representatives shall have the right to enter upon and inspect the Premises at any reasonable time and after reasonable notice during Lessee's normal business hours, for the purpose of ascertaining compliance with the terms of this lease and/or the condition of the Premises. Lessee, upon request of the City, shall make available to City all records and bookkeeping records related to the income, expenses and operation of the restaurant on the Premises during the term of this lease.

III.

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

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

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

IV.

Lessee shall, at its own cost and expense and subject to City approval, make all improvements desired to use Premises as a restaurant. Lessee shall maintain public access to the Premises. The Premises may be remodeled or reconfigured from the current configuration at the Lessee's own cost and expense and subject to City approval. Lessee agrees to post a performance bond with the City in an amount equal to one hundred and ten percent (110%) of the estimated construction costs for all proposed improvements.

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

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

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

V.

Lessee agrees to open and operate a restaurant on the Premises no later than sixty (60) days from the commencement of the Initial Term as shown in Section I above. The restaurant shall be open and serve patrons no fewer than five (5) days each

week for a minimum of eight (8) hours per day. Lessee shall have the option to sell beer and wine in the restaurant area provided that the Lessee, at Lessee's expense, obtain all appropriate permit(s) from the Texas Alcoholic Beverage Commission and comply with all applicable local and state laws and regulations.

Lessee covenants and agrees that Lessee shall not transfer or assign this lease or sublease any portion of the Premises without City's prior written consent. Any attempt to transfer or assign or sublease this lease or sublease any portion of the Premises without the City's written consent shall be null and void and may cause this agreement to be terminated.

The Lessee shall not impose or assess any additional fees on those flying in to dine at the restaurant. In no way shall the Lessee discriminate or make it more difficult for persons to patronize the restaurant or enjoy the restaurant experience. Lessee shall allow patrons of the restaurant to use the terminal deck located on the Premises for dining purposes.

Lessee shall have access to use for storage of restaurant equipment and food preparation goods the storage closet located in the City-owned T-Hangar building nearest to unit D-2 (currently addressed as 3209 Aviation Way). Lessee shall maintain the storage unit in a clean and orderly condition so as to prevent attracting pests or varmints. City and City's agents and representatives shall have the right to enter upon and inspect the storage unit at any reasonable time and after reasonable notice during Lessee's normal business hours, for the purpose of ascertaining compliance with the terms of this lease and/or the condition of the Premises.

VI.

Upon termination of this lease by City or Lessee, City and Lessee agree that Lessee may at Lessee's sole expense, remove its trade fixtures, including equipment, provided that such removal shall not impair the structural integrity of the Premises; such determination shall be made by the City Manager, or his designee, and same shall be binding on the parties hereto; and Lessee shall repair any damages caused by such removal to the satisfaction of the City Manager, or his designee. Lessee acknowledges the City is the owner of the kitchen equipment listed in "Exhibit B" attached hereto and incorporated herein for all purposes. Lessee shall not remove any of the equipment listed in Exhibit B from the Premises unless approved in writing by the City. Lessee shall be responsible for repair or replacement of any items in Exhibit B that are damaged by Lessee, normal wear and tear excepted.

VII.

Lessee shall, at Lessee's expense, obtain all governmental licenses and permits necessary for the permitted uses of the Premises and shall comply with all governmental laws, ordinances and regulations applicable to the use of the Premises; also promptly comply with all governmental orders and directives for the

correction, prevention and abatement of violations, nuisances and hazardous conditions in or upon, or connected with the Premises.

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

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

VIII.

AS A CONDITION HEREOF, LESSEE AGREES TO INDEMNIFY AND DEFEND CITY AGAINST ANY AND ALL CLAIMS FOR INJURIES, DAMAGES, COSTS AND EXPENSE, TO PERSONS OR PROPERTY THAT MAY ARISE OUT OF, OR BE OCCASIONED BY THE USE, OCCUPANCY OR MAINTENANCE OF THE PREMISES BY LESSEE, OR FROM ANY NEGLIGENT OR WILLFUL ACT OR OMISSION OF ANY REPRESENTATIVE, AGENT, INVITEE AND /OR EMPLOYEE OF LESSEE. LESSEE HEREBY AGREES TO DEFEND ANY AND ALL SUITS, CLAIMS, OR CAUSES OF ACTION BROUGHT AGAINST CITY ON ACCOUNT OF SAME, AND DISCHARGE ANY JUDGMENT OR JUDGMENTS THAT MAY BE RENDERED AGAINST CITY IN CONNECTION THEREWITH.

IX.

The Lessee shall procure and maintain at its sole cost and expense for the duration of this lease insurance against claims for injuries to persons or damages to property that may arise from or in connection with the use and occupancy of the Premises

by the Lessee, and the Lessee's agents, representatives, volunteers, employees or subcontractors. The Lessee's insurance coverage shall be primary insurance with respect to the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be considered in excess of the Lessee's insurance and shall not contribute to it. Further, the Lessee shall include the City as an additional insured under its insurance policy. All coverage for subcontractors shall be subject to all of the requirements stated herein. Certificates of Insurance and endorsements shall be furnished to the City and approved by the City before occupancy of the Premises by the Lessee.

Standard Insurance Policies Required:

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

General Requirements Applicable to All Policies:

- (a) General Liability insurance shall be written by a carrier with a A:VIII or better rating in accordance with the current Best Key Rating Guide.
- (b) Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.
- (c) Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
- (d) "Claims Made" policies will not be accepted.
- (e) The City of Brenham, its officials, employees and volunteers, are to be added as "Additional Insured" to the General Liability policy. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.
- (f) A Waiver of Subrogation in favor of the City with respect to Workers' Compensation Insurance must be included.
- (g) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City of Brenham.
- (h) Upon request, certified copies of all insurance policies shall be furnished to the City of Brenham.

Commercial General liability

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

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

Worker's Compensation

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

Certificates of Insurance

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

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

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

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

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

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

X.

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

XI.

City may, by written notice to Lessee, immediately terminate this lease, notwithstanding the provisions of Article XII herein, if Lessee fails to operate a restaurant in the Building in accordance with the provisions of Article V herein. Furthermore, lessee shall show substantial progress in the opening of a restaurant within thirty (30) days from the commencement of the Initial Term as shown in Section 1. Substantial completion shall be defined as plan review submittal,

building permit issuance or food permit issuance through the Development Services Department.

XII.

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

XIII.

CITY AND ITS AGENTS SHALL NOT BE LIABLE TO LESSEE OR TO LESSEE'S EMPLOYEES, PATRONS, VISITORS, INVITEES OR ANY OTHER PERSONS FOR ANY INJURY TO ANY SUCH PERSONS OR ANY DAMAGE TO PERSONAL PROPERTY OCCURRING ON THE PREMISES CAUSED BY THE NEGLIGENCE OR MISCONDUCT OF LESSEE AND/OR ITS EMPLOYEES, AGENTS OR VOLUNTEERS.

XIV

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

XV.

Force Majeure. Neither party hereto shall be liable to the other for any failure, delay, or interruption in performing its obligations hereunder due to acts, events or

conditions beyond its control, including acts of God, weather conditions, shortages of energy or materials, embargoes, riots, rebellions, sabotage, acts of a public enemy, war, terrorism, insurrection, strikes, boycotts, picketing, slow-downs, work stoppages or other labor actions affecting the rights or obligations of the parties hereunder, their respective contractors or subcontractors, except to the extent that such failure, delay or interruption directly or indirectly results from failure on the part of either party to use reasonable care to prevent, or make reasonable efforts to cure, such failure, delay or interruption. The party seeking to avail itself of any of the foregoing excuses must promptly, but no later than five (5) business days after the date of failure, delay or interruption in performance, notify the other party of the reasons for the failure or delay in connection with the performance hereunder and shall exert its best efforts to avoid further failure, delay or interruption.

XVI.

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

XVII.

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

XVIII

This lease may be terminated prior to the end of the final Renewal Term in any of the following ways:

- a) By written agreement of both parties at any time;
- b) By either party giving the other party thirty (30) days prior written notice that it does not intend to exercise the option for an additional Renewal Term;
- c) By either party upon failure of the other party to perform its obligations as set forth in this lease; provided, however, the defaulting party shall be provided written notice of its failure to perform and thirty (30) days after receipt of such notice to cure such failure in accordance with Paragraph XII of this lease, or
- d) By the City upon entering into a lease agreement with a new Fixed Base Operator (FBO) for lease of Premises; provided, however, Lessee shall be provided thirty (30) days prior written notice by the City. If this lease agreement is terminated pursuant to this Subsection, the new FBO may, at its discretion and subject to approval by the City, enter into a sublease agreement with Lessee.

Lessee shall further agree that upon termination of this lease agreement, Lessee shall vacate the Premises and leave it in a clean condition, clear of all property and debris at Lessee's sole cost and expense.

XVIV.

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

Mindy Canion
Canion Kountry Bakery & Restaurant Inc.
PO Box 417
Brenham, TX 77833

City of Brenham
City Manager
200 W. Vulcan St.
Brenham, Texas 77833

XVV.

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

IN TESTIMONY WHEREOF, the parties have hereunto set their hands this the 11 day of November, 2021.

LESSEE:

Canion Kountry Bakery

CITY OF BRENHAM

By: Mindy Canion
Vice- President

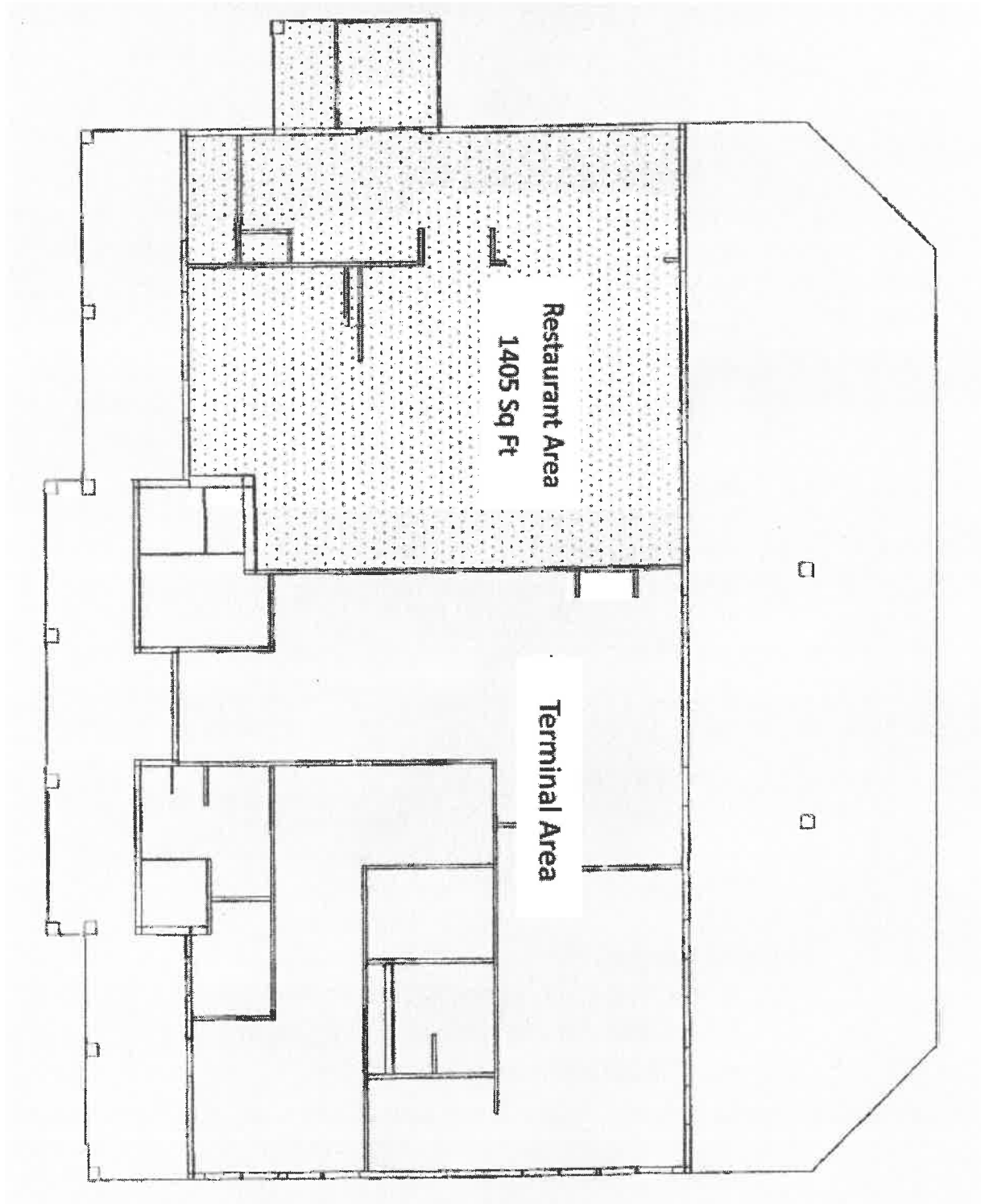
By: _____
Hon. Milton Y. Tate, Jr.
Mayor

ATTEST:

By: Berthelot
ALAIN P. BERTHELOT

By: _____
Jeana Bellinger
City Secretary

**Exhibit "A":
Premises**



 Area to be Leased

**Exhibit “B”:
Schedule of Items Owned by City**

Kitchen:

- Vulcan 6 Burner Restaurant Range with Double Oven,
Raised Griddle & Broiler - Including Dormont Gas Connection
- Star Manual Control Gas Griddle - Including Dormont Gas
Connection
- True Bottom Refrigerator
- 2 Frymaster Gas Fryers - Including Dormont Gas Connection
- True Double Door Freezer
- True Sandwich / Salad Prep Station
- 2 Advance Tabco Hand Sink - 1 in Kitchen & 1 in Drink
Station
- Advance Tabco - Countertop Prep Table
- Advance Tabco - 3 Compartment Regaline Sink - Next to
Dishwasher
- True Direct Draw Draft Beer Dispenser
- True Glass & Plate Chiller
- Hobart Dishwasher
- Global Ice Cream Cooler
- Manitowoc Ice Machine
- Kolpak Walk-in Cooler
- Venting Exhaust & Fire Exhaust System
- All Kitchen Equipment Required for Operating Items Listed
Above

Restaurant Area:

- All Seating - Including Tables, Chairs & Booths
- Wooden Cabinet Storage in Wait station
- All Patio furniture and Umbrellas



Regular City Council
AGENDA ITEM 9.

Agenda Item: Discuss and Possibly Act Upon a Professional Services Agreement with Strand Associates, Inc. for Engineering Services Related to the Blue Bell Aquatic Center Therapy Pool Parking Lot and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-November 18, 2021

Department: Public Works

Staff Contact: Dane Rau

SUMMARY STATEMENT:

During the 2021-22 BCDC funding meeting it was decided that funds would be allocated to add an additional parking lot on the southeast side of the Aquatic Center for patrons that utilize the Therapy Pool. This project has been discussed numerous times within the last few years as part of Aquatic Center Phase II Improvements. Both BCDC and the Brenham Parks Board have supported the addition of this parking lot that will assist elderly clients along with post-care patients who utilize the therapy pool for rehabilitation and will provide for easier access to the pool areas. BCDC has allocated \$250,000 for the parking lot and door access from this side of the facility.

We have received a Phase II rendering from Progressive Aquatics and have asked Strand and Associates to design, plan, and bid this project according to state and local specifications. City of Brenham staff along with TXDOT and BISD will work in conjunction to provide a safe entrance off of Blue Bell Rd. Strand has provided a Professional Services Agreement in the amount of \$56,500 for services such as preliminary design, final design, bidding related services and construction related services. Expected additional work totaling \$8,000 includes construction and staking services for the contractor that is chosen along with Part Time project representative inspections to make sure work is performed to the design and local codes. The total Professional Services Agreement will be \$64,500. Staff has discussed this at length with Strand and was able to lessen the costs by limiting certain tasks to help with budgeting and yet maintain the integrity of the project related to professional services.

This parking lot will have 12 designated spaces with 6 of those being ADA spaces. BISD has indicated that they will work with the City of Brenham to allow a shared access off of the old middle school entrance on Blue Bell Rd. This entrance has not been utilized in 5-7 yrs. by BISD and we will relocate the two yellow swing gates farther back. The total construction cost is estimated at \$201,000. Once the design is complete, we will bid the project out and present for council approval. All funds will be allocated through BCDC which funds Parks and Recreation projects through the 401B Sales Tax.

ATTACHMENTS:

- | |
|--|
| (1) Bluebell Aquatic Improvements
(2) PSA parking lot |
|--|

RECOMMENDED ACTION:

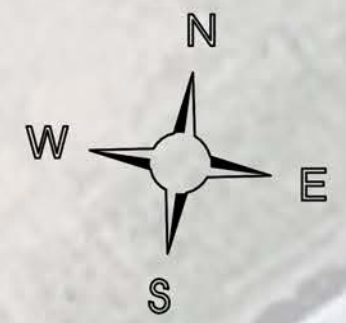
Approve a Professional Services Agreement with Strand Associates, Inc. for engineering services related to the Blue Bell Aquatic Center Therapy Pool Parking Lot , in an amount not to exceed \$56,500.00 and authorize the Mayor to execute any necessary documentation.



LEGEND

- 01 EXISTING FACILITY
- 02 EXISTING BACK OF HOUSE DRIVE
- 03 EXISTING ARRIVAL AREA
- 04 EXISTING FACILITY CAR PARK
- 05 NEW SIDEWALK & LANDSCAPE CURB
- 06 REWORK DRAINAGE SWELL
- 07 NEW DRAINAGE HEADWALL
- 08 REWORKED DRIVEWAY ENTRANCE
- 09 NEW CAR PARK DRIVEWAY
- 10 EXISTING STREET
- 11 NEW CAR PARK WITH (5) HANDICAP STALLS
- 12 AUTO HAMMERHEAD FOR BACKING OUT
- 13 SUGGESTED LANDSCAPE SCREENING
- 14 NEW SIDEWALK TO CONNECTING NEW AND EXISTING
- 15 NEW 6FT DOUBLE GATE ENTRANCE
- 16 NEW REVERSED ROLL-UP COMMERCIAL DOORS
- 17 NEW DECK AND LOUNGING AREA
- 18 NEW TENSILE SHADE STRUCTURE OPTION
- 19 NEW 6 FT HIGH STEEL FENCING AND FENCE CURB
- 20 NEW 6FT HIGH STEEL FENCING AND FENCE CURB
- 21 NEW 3 FT SINGLE GATE
- 22 SUGGESTED LANDSCAPE GRASS AREAS
- 23 NEW AUTOMATIC HYDRAULIC ELECT IN PAVEMENT BOLLARDS
- 24 SUGGESTED LANDSCAPE AREAS

PRELIMINARY SCHEMATIC PROGRESS
DRAWING NOT TO BE USED FOR
CONSTRUCTION



2510 FARRELL RD.
HOUSTON, TX 77073
PHONE 281-982-0212



3120 W. CAREFREE HWY
SUITE 1-349
PHOENIX, AZ 85086
PHONE: 602-625-9180

AQUATIC CENTER IMPROVEMENTS
OPTION #1
PRELIMINARY CONCEPTUAL WORKSHEET
SITE PLAN

AQUATIC CENTER IMPROVEMENTS
OPTION #1
PRELIMINARY CONCEPTUAL WORKSHEET
SITE PLAN



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APRIL 15TH, 2021

**PROFESSIONAL SERVICES AGREEMENT
FOR
ENGINEERING SERVICES
RELATED TO
CITY OF BRENHAM
PROJECT NO. _____
BLUE BELL AQUATIC CENTER ADDITIONAL PARKING**

**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 provide a topographic survey, preliminary and final design, permitting-related, bidding-related, and construction-related services for the Blue Bell Aquatic Center Additional Parking Project, 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 will begin upon the execution of this agreement and will be complete by October 1, 2022. Upon written request of Engineer, the City Manager may grant time extensions to the extent of any delays caused by the City or other agencies with which the services must be coordinated and over which Engineer has no control.

SECTION V COMPLIANCE AND STANDARDS

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

SECTION VI INDEMNIFICATION

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

SECTION VII ENGINEER'S COMPENSATION

For and in consideration of the services rendered by Engineer pursuant to this Agreement, the City shall pay Engineer only for the actual services performed under the Scope of Services, on the basis set forth in Attachment "A," up to an amount not to exceed \$56,500, 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, TX 77833
Attn: Dwayne Gajewski

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
P.O. Box 1059
Brenham, TX 77834
Attn: City Manager

SECTION X LIMIT OF APPROPRIATION

Prior to the execution of this Agreement, Engineer has been advised by the City and Engineer clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the City shall have available only those

sums as expressly provided for under this Agreement to discharge any and all liabilities which may be incurred by the City and that the total compensation that Engineer may become entitled to hereunder and the total sum that the City shall become liable to pay to Engineer hereunder shall not under any conditions, circumstances, or interpretations hereof exceed the amounts as provided for in this Agreement.

SECTION XI SUCCESSORS AND ASSIGNS

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

SECTION XII MODIFICATIONS

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

SECTION XIII ADDITIONAL SERVICES OF ENGINEER

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

{Remainder of this page intentionally left blank.}

ATTACHMENT "A"

PART A--SCOPE OF SERVICES

CITY OF BRENHAM PROJECT NO. _____ BLUE BELL AQUATIC CENTER ADDITIONAL PARKING

Description of Project

The scope of services is to provide a topographic survey, preliminary and final design, permitting-related, bidding-related, and construction-related services for the Blue Bell Aquatic Center Additional Parking Project. The project will include a shared reinforced concrete driveway with the Brenham Middle School that will allow access to approximately 12 parking spaces, six of which will be accessible in accordance with the Americans with Disabilities Act of 1990. A concrete sidewalk will allow access from the parking lot to the south side of the Aquatic Center building for the therapy pool area. Stormwater detention storage requirements will be evaluated for the additions included in this phase along with analyzing Option 1 prepared by H2O Design for the City of Brenham. Option 1 includes a new deck and lounge area on the south side of the Aquatic Center as shown by a Preliminary Conceptual Worksheet Site Plan provided to Engineer by the City.

The project site is located on the south side of the Blue Bell Aquatic Center which is located at the intersection of Tom Green Street and FM 577/Blue Bell Road.

A. Preliminary Design Services

1. Attend kickoff meeting with City.
2. Provide topographic survey for the proposed parking lot site. Include applicable features such as paving limits; visible features including, power poles; telephone pedestals; water meters; sanitary sewer cleanouts; ditches; and marked underground utility lines provided by One-call. Correspond with One-call marking company to locate underground utilities prior to topographic survey.
3. Prepare a drainage area map to review pre- and post-development discharge rates.
4. Utilize exhibit presented to the City from H2O Design to review appropriate stormwater detention criteria for future phase that is anticipated to include outdoor seating and shade canopies on south side of Aquatic Center.
5. Meet with City to review up to two drainage alternatives and incorporate City's comments, as appropriate.

B. Final Design

1. Prepare 90 percent design drawings including:
 - a. Title sheet
 - b. Project location map, general notes, and drawing index
 - c. Topographic survey
 - d. Erosion control
 - e. Site and dimension plan
 - f. Drainage maps for pre- and post-development conditions
 - g. Detention storage calculations and layout
 - h. Traffic control
 - i. Miscellaneous details
2. Prepare 90 percent design opinion of probable construction cost.
3. Meet with City to review the 90 percent design documents and incorporate City's comments, as appropriate.
4. Prepare Bidding Documents using Engineers Joint Contract Documents Committee EJCDC C-700 Standard General Conditions of the Construction Contract, 2013 edition, City-approved EJCDC C-800 Supplementary Conditions, technical specifications, and engineering drawings.
5. Prepare and submit Form 1058 permit to construct access driveway facilities on highway right-of-way from Texas Department of Transportation. City shall be responsible for any permit or application fees.

C. Bidding-Related Services

1. Distribute Bidding Documents electronically through CivCast, available at www.civcastusa.com. Submit Advertisement to Bid to City for publishing.
2. Prepare addenda and answer questions during bidding.
3. Attend bid opening, analyze bid results, and assist the City in the award of the Construction Contract.
4. Prepare three sets of Contract Documents for signature.

D. 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 (one visit each week), and participation in project closeout. Engineer's review of payment requests from contractor(s) will not impose responsibility to determine that title to any

of the work has passed to City free and clear of any liens, claims, or other encumbrances. Any such service by Engineer will be provided through an amendment to this Agreement. Services are based on a 90-calendar 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 the contractor and City.

E. Additional If-Authorized Services

1. Provide one iteration of construction staking. Additional iterations required as a result of contractor negligence will be considered additional services.
2. Provide up to 28 hours of part-time resident project representative (RPR) services for observation of construction. In furnishing observation services, Engineer's efforts will be directed toward determining for the 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 90-calendar day construction schedule, which will need to be adjusted if the schedule is extended.

F. Services Not Provided

1. Hazardous material(s) soil testing/evaluation
2. Wetland delineation
3. Archeological
4. Land/easement procurement
5. Design revisions after approval
6. Services related to buried waste and contamination
7. Construction materials testing

PART B-BASIS OF COMPENSATION AND REIMBURSABLE EXPENSES

CITY OF BRENHAM
PROJECT NO. _____
BLUE BELL AQUATIC CENTER ADDITIONAL PARKING

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 Manager.

City shall compensate Engineer for basic services on an hourly rate basis at the rates shown in the Schedule of Charges, not to exceed the amount shown below.

Basic Services	Fee
A. Preliminary Design Services	\$22,500
B. Final Design Services	\$20,000
C. Bidding-Related Services	\$ 7,000
D. Construction-Related Services	\$ 7,000
Total	\$56,500

Additional if-authorized services will be performed on an hourly basis at the rates shown in the Schedule of Charges, not to exceed as follows:

Additional Services	Fee
Construction Staking and Cutsheets	\$ 4,500
Part-Time RPR	\$ 3,500
Total	\$ 8,000

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	\$310
Senior Associate	\$270
Senior Project Manager	\$230
Project Manager	\$185
Senior Project Engineer	\$165
Project Engineer	\$140
Graduate Engineer 2	\$135
Graduate Engineer 1	\$125
Senior Engineering Technician 2	\$140
Senior Engineering Technician 1	\$130
Engineering Technician	\$115
Junior Engineering Technician	\$ 70
Project Representative	\$110
Senior Computer-Aided Design and Drafting (CADD) Operator	\$105
CADD Operator	\$ 70
Administrative	\$ 90

* 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.

Subcontract costs shall be billed at invoice cost plus 10 percent for handling.

Surveying Services Classification	Hourly Billing Rates*
Registered Professional Land Surveyor	\$ 235
Surveying Technician	\$ 105
Three-Man Field Party	\$ 235
Two-Man Field Party	\$ 175
One-Man Field Party	\$ 105
Laser Scanner (Half Day)	\$1,000
Laser Scanner (Full Day)	\$1,800
Global Positioning System (GPS) Equipment (Half Day)	\$ 185
GPS Equipment (Full Day)	\$ 300
Robotic Total Station (Half Day)	\$ 135
Robotic Total Station (Full Day)	\$ 220

* Updated annually on July 1

ATTACHMENT "B"

INSURANCE

**CITY OF BRENHAM
PROJECT NO. _____
BLUE BELL AQUATIC CENTER ADDITIONAL PARKING**



Regular City Council
AGENDA ITEM 10.

Agenda Item: Discuss and Possibly Act Upon the Temporary Resale Amendment to the System Water Availability Agreement Between Brazos River Authority (BRA) and the City of Brenham and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-November 18, 2021

Department: Public Utilities

Staff Contact: Alton Sommerfield

SUMMARY STATEMENT:

On September 1, 2019, an agreement was entered into by and between Brazos River Authority (BRA), a river authority of the State of Texas, and the City of Brenham (Purchaser). BRA made available and Purchaser agreed to purchase 774 acre-feet of raw water per fiscal year for municipal purposes. The intent of this agreement was to secure additional water to sustain long-term future growth for the City of Brenham. The term of the Agreement began September 1, 2019 and shall end on August 31, 2045. Purchase price of the 774 acre-feet was \$83/acre-foot or \$64,242.00 annually. The 774 acre-feet of water is in addition to the City's primary water availability agreement for 4,200 acre-feet, of which, 2,761 (3-year average) acre-feet are used annually. While securing this water for future use is prudent, the additional water is not needed at this time.

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

This is the same amendment that was approved by Council on May 7th, 2020 and October 19, 2020. If approved, staff will come back to Council for consideration of an agreement between the City and Dow Chemical for the resale of the raw water.

ATTACHMENTS:

- (1) Memo-Background Info
- (2) Temporary Resale Amendment to System Water Availability Agreement

RECOMMENDED ACTION:

Approve the Temporary Resale Amendment to the System Water Availability Agreement between Brazos River Authority and City of Brenham and authorize the Mayor to execute any necessary documentation.

MEMORANDUM

DATE: November 12, 2021

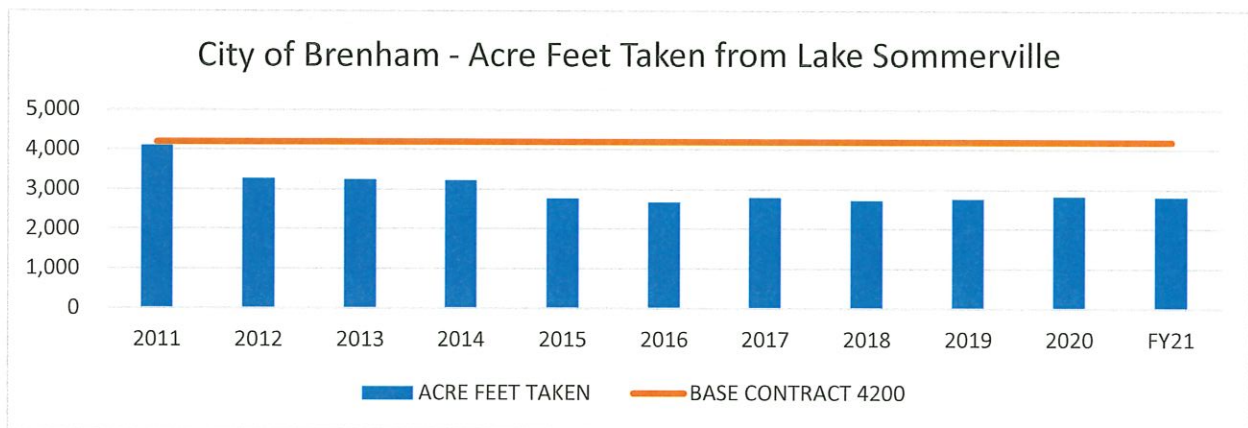
TO: Carolyn Miller, Interim City Manager

FROM: Debra Gaffey, Interim General Manager Public Utilities

SUBJECT: Resale – 774 Acre-Feet of Water to Dow Chemicals

Background

Brenham's drinking water comes from Lake Somerville. In September of 2019, the City of Brenham supplemented its base agreement with Brazos River Authority (BRA) for 4,200 acre-feet of water by securing, through a separate agreement, 774 acre-feet of water. The additional 774 acre-feet of water is purposed for future growth and is not needed to support current water demands, except in extreme drought conditions. For fiscal year 20-21, Brenham required 67% of the annual contract amount (4,200 acre-feet) with usage for the past five calendar years (2016 to 2020) ranging from 64% to 67%.



Resale Process

The System Availability Agreement for the 774 acre-feet allows the City to resale water on a temporary basis to a third party. Since 2020, the water has been sold to Dow Chemicals. Dow Chemicals would like to enter into a third agreement with the City of Brenham to purchase this excess water. This arrangement is a two-step process over two Council meetings:

- Step 1: Approve a Temporary Resale Amendment to the System Water Availability Agreement – BRA gives consent to the City to resale the water to Dow Chemical Company for industrial purposes and identifies access points and other relevant conditions.
- Step 2: Approve a Water Supply Resale Agreement between the City of Brenham and Dow Chemical Company – The agreement is effective upon BRA's approval of the Temporary Resale Amendment and terminates when Dow Chemicals has withdrawn 774 acre-feet of water or August 31, 2022, whichever occurs first.

Risks (Low)/Penalties

Given population growth, the City could exceed the 4,200 acre-feet contracted amount if extreme drought conditions, such as those encountered in 2011, occur. Based on forecasts from NOAA and National

Integrated Drought Information Systems, the probability of drought in Washington County, both short and long-term is low.

BRA must be notified 30 days in advance if the City needs to exceed the 4,200 acre-feet contracted amount and if the water is available, the City will be charged twice the current system rate for the additional water. If the City fails to give proper notification to BRA or incurs water overages not authorized by BRA, the charge will be three times the system rate for the overage and, BRA may, at its option, cancel the Agreement. The current system rate is \$83.00 per acre-foot.

Benefits

The main benefit from the resale is that the City would receive revenue of \$64,242.00 to offset total BRA contract costs of \$412,842.00. This revenue has been included in the Water Fund's FY21-22 Budget.

Agreement	Cost (\$83.00/Acre-Foot)
4,200 Acre-Feet	\$348,600.00
774 Acre-Feet	64,242.00
Total Costs	\$412,842.00

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

This Temporary Resale Amendment ("Amendment") is entered into to be effective as of the ____ day of _____, 2021 ("Effective Date"), by and between Brazos River Authority ("BRA"), a river authority of the State of Texas, City of Brenham ("Purchaser"), and The Dow Chemical Company ("Resale Purchaser"), (collectively, the "Parties").

RECITALS

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

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

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

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

AMENDMENTS

1. The BRA hereby consents to the temporary resale of 774 acre-feet of water under the Agreement to the Resale Purchaser. Unless terminated earlier consistent with the terms of this Amendment, this consent shall be effective from the Effective Date to August 31, 2022 (the "Termination Date").
2. Until the Termination Date, Resale Purchaser may divert raw water made available under the Agreement at the locations shown on Exhibit "A-1", attached hereto and incorporated by reference herein.
3. Resale Purchaser may utilize the water for industrial purposes.
4. Until the Termination Date, any reference to Exhibit "A" in the Agreement shall also be deemed a reference to Exhibit "A-1".
5. Resale Purchaser hereby agrees to abide by all of the terms and conditions contained in the Agreement and accepts any and all liability for any failure to do so.
6. Resale Purchaser shall be responsible for all coordination with BRA and the Brazos Watermaster related to ordering and stopping releases, coordinating run-of-river diversions if applicable, as well as reporting, metering, and notification requirements under the Agreement, and notwithstanding the foregoing, Resale Purchaser agrees to comply

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

7. This Amendment shall in no way relieve Purchaser from any of its obligations, including payment, under the Agreement, and Purchaser shall be responsible for ensuring that Resale Purchaser complies with all the terms and conditions contained therein and accepts any and all liability for any failure to do so.
8. BRA reserves the right to withdraw its consent of the resale at any time and for any cause without penalty or liability. Upon receipt of such written withdrawal of consent from BRA, Resale Purchaser shall immediately cease diverting BRA water made available under this Amendment.
9. In the event the amount of water made available to Purchaser under the Agreement is reduced for any reason, Resale Purchaser agrees that such reduction shall also result in a reduced amount available under this Amendment.
10. The address for Resale Purchaser, for the purposes of Section 28 of the Agreement, shall be as follows:

The Dow Chemical Company
2301 Brazosport Boulevard
B-3501
Freeport, Texas 77541
11. Capitalized terms used but not defined herein shall have the respective meanings given to them in the Agreement.
12. This Amendment shall commence on the Effective Date and shall continue until the Termination Date. This Amendment shall no longer be of any force or effect after the Termination Date, and the terms and conditions of the Agreement shall be as they were prior to the execution of this Amendment, and Exhibit "A-1" shall be deleted in its entirety. Following the Termination Date, BRA and Purchaser shall be the only parties to the Agreement.

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

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

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

BRAZOS RIVER AUTHORITY

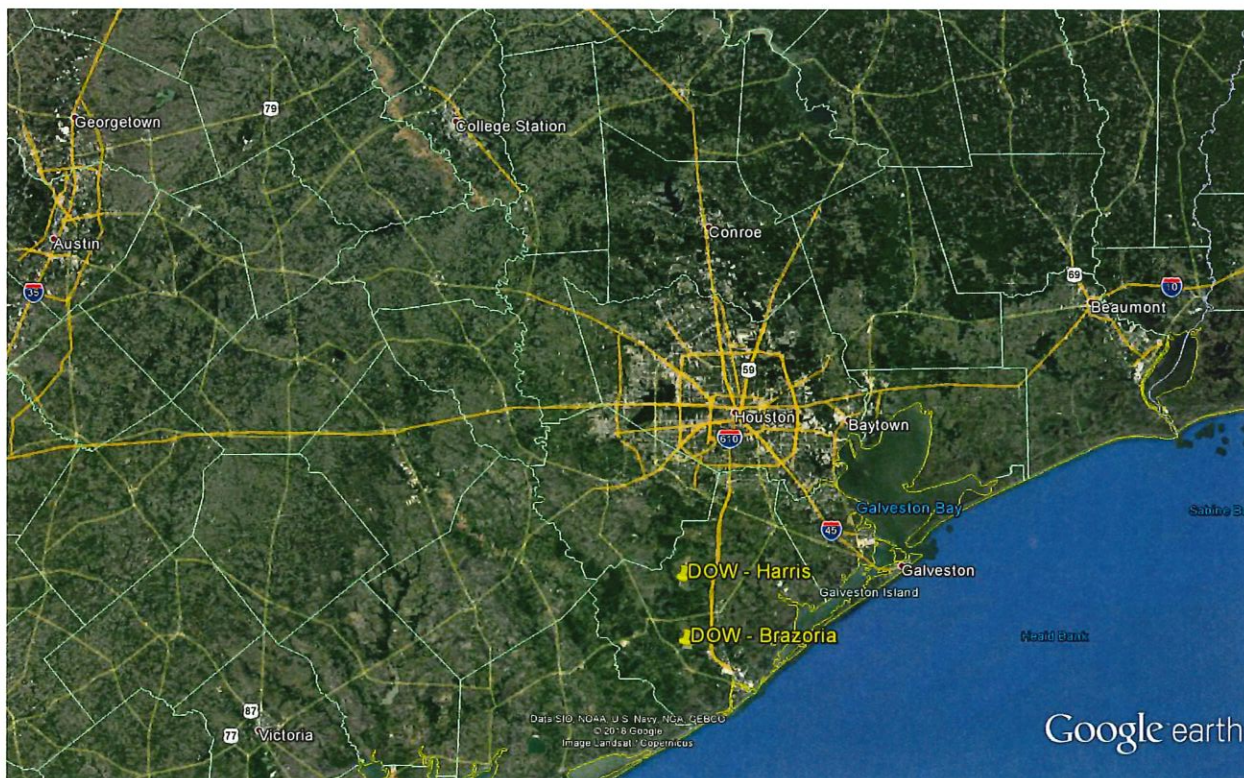
By: _____
DAVID COLLINSWORTH
Title: **GENERAL MANAGER/CEO**
Date: _____
Attest: _____

CITY OF BRENHAM

By: _____
Title: _____
Date: _____
Attest: _____

THE DOW CHEMICAL COMPANY

By: _____
Title: _____
Date: _____
Attest: _____



RESALE AGREEMENT with CITY OF BRENHAM

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

Contract ID: BRENHAM-DOW 22

Diversion ID: BRENHAM-DOW 22

BRENHAM – DOW - Brazoria

N29.052426 W95.552414, ROST2 ROST2 (1110), Main Stem Brazos River

Lower Basin, Brazoria County, WAP Reach: Richmond Gage to Gulf – Dow Brazoria

BRENHAM – DOW - Harris

N29.243325 W95.562173, ROST2 ROST2 (1110), Main Stem Brazos River

Lower Basin, Brazoria County, WAP Reach: Richmond Gage to Gulf – Dow Harris

Prepared by: Julie Andress, Water Accounting Specialist, 9/17/2021



Regular City Council
AGENDA ITEM 11.

Agenda Item: Discuss and Possibly Act Upon Resolution No. R-21-032 Related to the Award of RFP No. 21-012 for Professional Grant Administration and/or Planning Services for the American Rescue Plan (ARP) Act

Meeting Type: Regular Meeting-November 18, 2021

Department: Administration

Staff Contact: Jeana Bellinger

SUMMARY STATEMENT:

Back on July 21, 2021, the City Council approved the submission of documentation to receive funds from the American Rescue Act Plan (ARPA). The City's total allocation is \$4,426,200 (we have already received the first allocation of \$2,213,100). Then on September 16, 2021 the Council authorized staff to prepare, issue, advertise and review proposals from qualified grant administrators to help with the complexities and detailed reporting guidelines of this federal program.

The City issued RFP No. 21-032 on September 21, 2021 for professional administrative services related to ARPA; the submission deadline for the proposals responsive to the RFP was October 12th and we received 4 proposals:

- 7th Echelon, LLC. - Pearland
- GrantWorks - Austin
- Langford Community Management Services - Leander
- Traylor & Associates, Inc. - Tyler

As required by the Act, each proposal was scored individually on things such as experience, prior work performance, capacity to perform and cost. The proposals were scored by Councilmember Atwood Kenjura, City Secretary Jeana Bellinger and Community Services Specialist Crystal Locke. The final score sheet is an attachment to this item with the overall final scores being:

- 7th Echelon, LLC.: 59.8 points
- GrantWorks: 300 points
- Langford Community Management Services: 227.7 points
- Traylor & Associates, Inc: 270.3 points

Due to the total points received, it is staff's recommendation that GrantWorks be selected as the ARPA grant administrator for the City.

ATTACHMENTS:

-
- (1) Resolution No. R-21-032
 - (2) Scoring Sheet

RECOMMENDED ACTION:

Approve Resolution No. R-21-032 related to the award of RFP No. 21-012 for Professional Grant Administration and/or Planning Services for the American Rescue Plan (ARP) Act.

RESOLUTION NO. R-21-032

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS, AUTHORIZING PROFESSIONAL ADMINISTRATION SERVICE PROVIDER SELECTION FOR THE AMERICAN RESCUE PLAN ACT (ARPA) GRANT PROGRAM – 2021/2022 COMMUNITY DEVELOPMENT FUND THROUGH THE UNITED STATES DEPARTMENT OF THE TREASURY

WHEREAS, participation in the American Rescue Plan (ARP Act) program(s) requires implementation by professionals experienced in the administration of federally-funded projects; and

WHEREAS, in order to identify qualified and responsive providers for these services a Request for Proposals (RFP) process for administration services has been completed in accordance with federal requirements; and

WHEREAS, the proposals received by the due date have been reviewed to determine the most qualified and responsive provider for each professional service giving consideration to ability to perform successfully under the terms and conditions of the proposed procurement, integrity, compliance with public policy, record of past performance, and financial and technical resources; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS, AS FOLLOWS:

- Section 1: That Grantworks is selected to provide project-related administration services for the ARP Act program(s).
- Section 2: That any and all project-related service contracts or commitments made with the above-named service provider(s) are dependent on the successful negotiation of a contract with the service provider(s).
- Section 4: Upon the successful negotiation of a contract with the service provider(s), the Mayor is hereby authorized to execute any and all necessary documentation, including but not limited to a contract with the service provider(s).

RESOLVED this 18th day of November 2021.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary

**AMERICAN RESCUE PLAN RFP 21-012
SCORING SHEET**

Proposer	POINTS					Cost
	Experience	Prior-Work	Capacity	Cost Factor	Total Score	
7th Echelon, LLC	29	0	20	10.8	59.8	\$ 1,084,420
Grantworks, Inc.	90	60	90	60	300	\$ 198,800
Langford Community Management Services	58	41.3	69	59.4	227.7	\$ 200,000
Traylor & Associates, Inc.	90	51.6	75	53.7	270.3	\$ 221,310



Regular City Council
AGENDA ITEM 13.

Agenda Item: Section 551.071 Texas Government Code - Consultation with Attorney - Consultation with City Attorney Regarding City of Brenham v. WTG Gas Marketing, Inc.; Cause No. 37573; 335th Judicial District Court, Washington County, Texas

Meeting Type: Regular Meeting-November 18, 2021

Department: Administration

Staff Contact: Cary Bovey, City Attorney

SUMMARY STATEMENT:

To be discussed in Executive Session.

ATTACHMENTS:

None

RECOMMENDED ACTION:

No action.