



**NOTICE OF A REGULAR MEETING
THE BRENHAM CITY COUNCIL
THURSDAY, OCTOBER 18, 2018 AT 1:00 P.M.
SECOND FLOOR CITY HALL
COUNCIL CHAMBERS
200 W. VULCAN ST.
BRENHAM, TEXAS**

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags – Councilmember Cantey**
- 3. Service Recognition**
 - **Ethel Randle, Library** **45 Years**
- 4. Proclamations**
 - **Texas Chamber of Commerce Week**
 - **Think Pink Thursday**
- 5. Citizens Comments**

Pages 1-2

CONSENT AGENDA

6. Statutory Consent Agenda

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

6-a. Minutes from the September 20, 2018 Regular City Council Meeting

Pages 3-17

REGULAR SESSION

7. **City Secretary's Certification of Unopposed Candidate for the City of Brenham's December 8, 2018 Special Election** **Pages 18-20**

Certificación de Candidatos Sin Oposición por la Secretaria de la Ciudad de el Municipio de Brenham para la Elección Especial que se efectuara el 8 de diciembre, 2018.

8. **Discuss and Possibly Act Upon an Order Declaring an Unopposed Candidate for the Position of Councilmember Place 5 – At Large Elected to Office and Canceling the City of Brenham December 8, 2018 Special Election** **Pages 21-26**

Considerar y en consecuencia actuar sobre una Orden Declarando Candidatos Sin Oposición Para el Puesto de Concejal Lugar 5 – Distrito Abierto Elegido a su Puesto y Cancelando la Elección Especial de la Ciudad de Brenham para el 8 de diciembre, 2018.

9. **Discuss and Possibly Act Upon a Master License and Services Agreement Between the City of Brenham and Ion Wave Technologies for Electronic Bidding and Contract Management Software and Authorize the Mayor to Execute Any Necessary Documentation** **Pages 27-45**

10. **Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending Chapter 18, Oil and Gas Production, of the Code of Ordinances for the City of Brenham** **Pages 46-85**

11. **Discuss and Possibly Act Upon a Development Agreement Between the City of Brenham and CTX Development Company (Stylecraft) Regarding the City's Participation in the Construction Costs of Oversizing Water Facility Extensions Along Vintage Farms Way and Wild Vine Circle (Future Roadway) Within Vintage Farms Subdivision and Authorize the Mayor to Execute Any Necessary Documentation** **Pages 86-106**

12. **Discuss and Possibly Act Upon Authorizing the Acceptance of a Grant from Lower Colorado River Authority (LCRA) Through Their Community Development Partnership Program (CDPP) for a Removable Bollard Traffic System in Downtown Brenham and Authorize the Mayor to Execute Any Necessary Documentation** **Pages 107-116**

13. **Discuss and Possibly Act Upon a One Year Contract Extension, in Accordance with Bid No. 17-011, for Janitorial Services for Various City Facilities and Authorize the Mayor to Execute Any Necessary Documentation** **Page 117**

14. **Discuss and Possibly Act Upon Resolution No. R-18-017 Adopting a Commercial Tax Phase-In Agreement Between the City of Brenham and Blue Bell Creameries, L.P.** **Pages 118-149**

15. Administrative/Elected Officials Report

EXECUTIVE SESSION

16. **Section 551.087 – Texas Government Code – Economic Development Negotiations – Discuss and Deliberate Project Cardinal and Project BK Regarding Commercial or Financial Information that the City Has Received from Business Prospects and the Offer of Financial or Other Incentives to Business Prospects that the City Seeks to Have Locate In or Near the City of Brenham and With Which the City is Conducting Economic Development Negotiations** Page 150

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.

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 October 18, 2018 agenda of items to be considered by the City of Brenham City Council was posted to the City Hall bulletin board at 200 W. Vulcan, Brenham, Texas on October 15, 2018 at **12:50 PM**.

Kacey A. Weiss, TRMC

Deputy City Secretary

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

I certify that the attached notice and agenda of items to be considered by the City Council was removed by me from the City Hall bulletin board on the _____ day of _____, 2018 at _____ AM PM.

Signature

Title

PROCLAMATION

- WHEREAS,** Each year, a week in October is dedicated to celebrating the achievements of local chambers of commerce in Texas who distinguish themselves as the voice of business in our state; and
- WHEREAS,** Local business is integral to the growth and longevity of a community; and
- WHEREAS,** The local chamber of commerce unceasingly promotes the community for quality growth and development; and
- WHEREAS,** The business community, represented through the chamber of commerce, has been a driving force in fostering enhanced educational opportunities, the creation of jobs, leadership development, and a positive vision of the future; and
- WHEREAS,** The Washington County Chamber of Commerce has proudly represented the business community in Washington County for over one hundred years, and currently has over 830 members;

NOW, THEREFORE I, Milton Y. Tate Jr., Mayor of the City of Brenham, do hereby proclaim the week of October 15-19, 2018 as

TEXAS CHAMBER OF COMMERCE WEEK

Milton Y. Tate Jr., Mayor
City of Brenham

PROCLAMATION

- WHEREAS,** One in eight women will be diagnosed with breast cancer in their lifetime; and
- WHEREAS,** 2,550 new cases of invasive breast cancer will be diagnosed in men in 2018; and
- WHEREAS,** Breast cancer is the 2nd leading cause of cancer death in women, exceeded only by lung cancer; and
- WHEREAS,** The risk of developing breast cancer doubles for women whose parent, sibling or child have had the disease; and
- WHEREAS,** 85% of all breast cancer diagnosed have no family history; and
- WHEREAS,** In 2018 there are over 2.8 million breast cancer survivors living in the U.S.; and
- WHEREAS,** One in thirty-five women will lose their life to breast cancer. The risk of breast cancer increases as women grow older; and
- WHEREAS,** 80% of all breast tumors are benign; and
- WHEREAS,** The best available method to detect breast cancer early to increase survival rates is a mammography screening. The color pink elevates the awareness that *“the best protection is early detection”*; and
- WHEREAS,** Baylor Scott & White - The Brenham Clinic calls upon all citizens to observe this day by wearing the color pink along with participating in appropriate programs, activities and ceremonies;

NOW, THEREFORE, I, Milton Y. Tate Jr., Mayor of The City of Brenham, do hereby proclaim Thursday, October 25, 2018, as

THINK PINK THURSDAY

Milton Y. Tate Jr., Mayor
City of Brenham

Brenham City Council Minutes

A regular meeting of the Brenham City Council was held on September 20, 2018 beginning at 1:00 p.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

Members present:

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

Members absent:

Position 5 - Vacant

Others present:

City Manager James Fisher, City Attorney Cary Bovey, City Secretary Jeana Bellinger, Deputy City Secretary I Kacey Weiss, Deputy City Secretary II Karen Stack, Assistant City Manager – Chief Financial Officer Carolyn Miller, Comptroller Stacy Hardy, Human Resources Director Susan Nienstedt, Debbie Gaffey, Director of Tourism and Marketing Jennifer Eckermann, Crystal Locke, Fire Chief Ricky Boeker, Police Chief Allwin Barrow, Public Works Director Dane Rau, Assistant City Manager of Public Utilities Lowell Ogle, Development Services Director Lori Lakatos, Stephanie Doland, Kim Hodde, Kevin Boggus and Todd Ashorn

Citizens present:

Tiffany Morisak, Luis Nunez and Hal Moorman

Media Present:

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

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

3. **Proclamation**
 - **Constitution Week**
4. **Citizens Comments**

There were no citizen comments.

CONSENT AGENDA

5. Statutory Consent Agenda

- 5-a. **Minutes from the August 2, 2018 Regular City Council Meeting and August 6, 2018 Special City Council Meeting**
- 5-b. **Ordinance No. O-18-009 on Its Second Reading for the Creation of Reinvestment Zone Number 43 Requested by Stanpac USA/Brenham Bartons, Inc. for Commercial Tax Phase-In Incentive on a Certain 3.687 Acre Tract or Parcel of Land out of the A. Harrington Survey, A-55, Lying Within Wilson's Addition and Being a Portion of Tracts 3 and 4 Called 9.152 Acres and Tract 10 Called 10,360 sq. ft., Being Located at 801 Mangrum St., Brenham, Texas, with Boundaries Further Described in Exhibit "A" of the Ordinance Creating Reinvestment Zone 43, and Designating This Property as Qualifying for Tax Phase-In**
- 5-c. **Ordinance No. O-18-010 on Its Second Reading for the Creation of Reinvestment Zone Number 44 Requested by MIC Group, LLC for Commercial Tax Phase-In Incentive on a Certain 16.291 Acre Tract or Parcel of Land Being Comprised of Lot 1, Industrial Park of Brenham as Recorded in Plat Slide 190-A and B of the Plat Records of Washington County (P.R.W.C.) and Lot 5, Brenham Business Center, Phase I, as Shown on the Boundary Line Adjustment Plat Recorded in Plat Slide 425-A (P.R.W.C.), Being Located at 3140 S. Blue Bell Rd., Brenham, Texas, with Boundaries Further Described in Exhibit "A" of the Ordinance Creating Reinvestment Zone 44, and Designating This Property as Qualifying for Tax Phase-In**
- 5-d. **Ordinance No. O-18-011 on its Second Reading for the Creation of Reinvestment Zone Number 45 Requested by MIC, Group, LLC for Commercial Tax Phase-In Incentive on a Certain 7.170 Acre Tract or Parcel of Land Being Situated in the City of Brenham, Washington County, Texas, part of the Phillip Coe Survey, A-31, Being Located at 1801 Industrial Blvd., Brenham, Texas, with Boundaries Further Described in Exhibit "A" of the Ordinance Creating Reinvestment Zone 45, and Designating This Property as Qualifying for Tax Phase-In**

A motion was made by Councilmember Goss and seconded by Councilmember Cantey to approve the Statutory Consent Agenda Items 5-a. through 5-d. as presented.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	Yes
Councilmember Albert Wright	Yes
At Large, Position 5	Vacant

WORK SESSION

6. Presentation and Discussion Regarding Updates to Chapter 21, Signs, of the Code of Ordinances for the City of Brenham

Development Services Director Lori Lakatos presented this item. Lakatos presented a PowerPoint presentation to discuss revisions to the sign ordinance. The presentation included the types of signage and history of signage discussion.

Lakatos also addressed Council's direction to staff. Lakatos explained that if Council were amenable, staff would like to discuss the signage for the B3 and B4 Zoning Districts with the Main Street Board for a recommendation. Lakatos stated that once the draft sign ordinance is ready, staff would present it to the Planning and Zoning Commission for a recommendation prior to bringing it to Council for consideration.

Councilmember Goss stated that he would like the draft sign ordinance to be reviewed by a Council sub-committee before it goes to the Planning and Zoning Commission.

PUBLIC HEARING

7. Discussion and Receipt of Input Related to a Possible Grant Application to Texas Parks and Wildlife for the Local Parks Non-Urban Outdoor Grant Program for the Proposed Brenham Family Park (Phase I(a)) as Outlined in the City of Brenham's 2015-2025 Parks, Recreation and Open Spaces Master Plan

Mayor Tate opened the Public Hearing.

Public Works Director Dane Rau presented this item. Rau explained that the Texas Parks and Wildlife Department (TPWD) offers the Local Park Grant Program that consists of five individual programs that assist local government with the acquisition and/or development of public recreation areas and facilities throughout the State of Texas. Rau stated that all grant assisted sites must be dedicated as parkland in perpetuity, properly maintained and open to the public. Rau advised that this grant, if awarded, would align with the City's goals and objectives outlined in our 2015-2025 Parks, Recreation, and Open Spaces Master Plan for the construction of Phase I(a) of the Brenham Family Park.

Rau noted that in accordance with Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands), this Public Hearing to receive citizen input regarding the possible environmental impact of building within the floodplain is required since a portion of the proposed Brenham Family Park is located within the 100-year floodplain.

Councilmember Cantey stated that some nearby property owners are concerned about the wildlife in that area.

There were no citizen comments.

Mayor Tate closed the Public Hearing.

REGULAR SESSION

8. Discuss and Possibly Act Upon Resolution No. R-18-011 Authorizing the Submission of a Grant Application to Texas Parks and Wildlife for the Local Parks Non-Urban Outdoor Recreation Grant Program for Phase I(a) of the Brenham Family Park as Outlined in the City of Brenham's 2015-2025 Parks, Recreation and Open Spaces Master Plan and Authorize the Mayor to Execute Any Necessary Documentation

Public Works Director Dane Rau presented this item. Rau stated that the Local Parks Non-Urban Outdoor Recreation Grant program provides fifty (50) percent matching grants on a reimbursement basis to eligible applicants. Rau noted the grant ceiling is \$500,000.

Rau explained that Jones Carter has provided staff with preliminary construction cost estimates of \$1.7M for Phase I (a) in project costs and engineering services. Rau advised that Brenham Community Development Corporation (BCDC) allocated \$500,000 to Brenham Family Park in their FY18-19 budget, which will be used for the 50/50 match. Rau noted in addition, BCDC has \$172,500 remaining from funds set aside in previous years for items included in Phase I (a). Rau stated that if the City is awarded the TPWD grant, additional funding to complete Phase I (a) will be requested in the FY19-20 BCDC budget process.

A motion was made by Councilmember Herring and seconded by Councilmember Wright to Approve Resolution No. R-18-011 authorizing the submission of a grant application to Texas Parks and Wildlife for the Local Parks Non-Urban Outdoor Grant Program for Phase 1(a) of the Brenham Family Park as outlined in the City of Brenham's 2015-2025 Parks, Recreation and Open Spaces Master Plan and authorize the Mayor to execute any necessary documentation.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	Yes
Councilmember Albert Wright	Yes
At Large, Position 5	Vacant

9. Discuss and Possibly Act Upon an Ordinance on Its First Reading Providing for No Parking Zones On Certain Portions of W. Fifth Street, Old Mill Creek Rd. and Saeger St.

Public Works Director Dane Rau presented this item. Rau explained that with the number of students that Blinn College has gained along with the new housing complex located on S. Saeger St and Old Mill Creek, both Blinn and the City of Brenham will need to react by establishing an ordinance prohibiting parking along several streets around the Blinn College area. Rau advised these "No Parking" areas have been an issue, which impedes emergency vehicular traffic and are in areas where designated parking is allowed by the college. Rau advised that this has been noticed specifically this year, which is mainly brought on by the addition of the new housing complex and on W. Fifth St. related to additional students.

Police Chief Allwin Barrow stated there would be a short grace period or warning time for the students before citations are issued.

City Manager James Fisher explained that there would be verbiage added to the ordinance stating that students cannot park in the grass areas where there is no curb and gutter. City Attorney Cary Bovey stated he would add the wording for the second reading of the ordinance.

A motion was made by Councilmember Cantey and seconded by Councilmember Goss to approve an Ordinance on its first reading providing for No Parking Zones on Certain Portions of W. Fifth Street, Old Mill Creek Rd. and Saeger St.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	Yes
Councilmember Albert Wright	Yes
At Large, Position 5	Vacant

10. Discuss and Possibly Act Upon Ordinance No. O-18-012 on Its Second Reading Adopting the Budget for Fiscal Year Beginning October 1, 2018 and Ending September 30, 2019

Assistant City Manager – Chief Financial Officer Carolyn Miller presented this item. Miller explained that the Fiscal Year 2017-18 Proposed Budget has been developed in compliance with the Property Tax Code, Local Government Code and the City Charter.

A motion was made by Councilmember Cantey and seconded by Mayor Pro Tem Ebel to approve Ordinance No. O-18-012 on its second reading adopting the budget for fiscal year beginning October 1, 2018 and ending September 30, 2019.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	Yes
Councilmember Albert Wright	Yes
At Large, Position 5	Vacant

11. Discuss and Possibly Act Upon Ordinance No. O-18-013 on Its Second Reading Levying Taxes for the Tax Year 2018 for the City of Brenham at \$0.5170 per \$100 Valuation

Assistant City Manager – Chief Financial Officer Carolyn Miller presented this item. Miller advised the FY2018-19 Proposed Budget includes a tax rate of \$0.5170 per \$100 valuation which has two components: maintenance and operations (M&O) and interest and sinking (I&S).

Miller explained that the proposed tax rate of \$0.5170 will allocate \$0.3200 to the General Fund for M&O expenditures and the balance of \$0.1970 will be allocated to the Debt Service Fund for principal and interest obligations. The proposed tax rate of \$0.5170 is above the effective rate of \$0.5018, but below the rollback rate of \$0.5364.

A motion was made by Councilmember Goss and seconded by Councilmember Herring that the property tax rate be increased by the adoption of a tax rate of \$0.5170 per \$100 valuation, which is effectively a 3.06% increase in the tax rate.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	Yes
Councilmember Albert Wright	Yes
At Large, Position 5	Vacant

12. Discuss and Possibly Act Upon Resolution No. R-18-012 Adopting a Commercial Tax Phase-In Agreement Between the City of Brenham and Stanpac USA, LLC

Assistant City Manager – Chief Financial Officer Carolyn Miller presented this item. Miller explained that Stanpac USA would be adding \$3.1M in additional equipment at their Brenham plant. Miller stated this equipment would require the hiring of at least twenty (20) additional employees. Miller advised that after the approval of the tax phase-in agreement, Stanpac plans to have the equipment installed and in full operation within 12 months.

A motion was made by Councilmember Herring and seconded by Mayor Pro Tem Ebel to approve Resolution No. R-18-012 adopting a Commercial Tax Phase-In Agreement between the City of Brenham and Stanpac USA, LLC.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	Yes
Councilmember Albert Wright	Yes
At Large, Position 5	Vacant

13. Discuss and Possibly Act Upon Resolution No. R-18-013 Adopting a Commercial Tax Phase-In Agreement Between the City of Brenham and MIC Group, LLC (East)

Assistant City Manager – Chief Financial Officer Carolyn Miller presented this item. Miller explained that MIC Group, LLC will be adding \$1.M in additional equipment at their Brenham-East location. Miller stated this equipment would require the hiring of at least ten (10) additional machinist with an average wage of \$60,000 each per year. Miller advised that after the approval of the tax phase-in agreement, MIC plans to have the equipment installed and in full operation within 18 months.

A motion was made by Councilmember Herring and seconded by Mayor Pro Tem Ebel to approve Resolution No. R-18-013 adopting a Commercial Tax Phase-In Agreement between the City of Brenham and MIC Group, LLC.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	Yes
Councilmember Albert Wright	Yes
At Large, Position 5	Vacant

14. Discuss and Possibly Act Upon Resolution No. R-18-014 Adopting a Commercial Tax Phase-In Agreement Between the City of Brenham and MIC Group, LLC (West)

Assistant City Manager – Chief Financial Officer Carolyn Miller presented this item. Miller explained that MIC Group, LLC would be adding \$1.5M in additional equipment at their Brenham-West location. Miller stated this equipment would require the hiring of at least ten (10) additional machinist with an average wage of \$60,000 each per year. Miller advised that after the approval of the tax phase-in agreement, MIC plans to have the equipment installed and in full operation within 18 months.

A motion was made by Councilmember Goss and seconded by Councilmember Cantey to approve Resolution No. R-18-014 adopting a Commercial Tax Phase-In Agreement between the City of Brenham and MIC Group, LLC.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	Yes
Councilmember Albert Wright	Yes
At Large, Position 5	Vacant

15. Discuss and Possibly Act Upon the Selection of Candidates to be Voted for on the Texas Municipal League Intergovernmental Risk Pool Board of Trustees, Places 11-14 and Authorize the Mayor to Execute Any Necessary Documentation

City Manager James Fisher presented this item. Fisher explained that as a member of the Texas Municipal League Intergovernmental Risk Pool (TML IRP), the City of Brenham is eligible to participate in the election of members to the Board of Trustees. Fisher advised the votes cast on the ballot for the Trustee election must be certified as being the will of the majority of the City Council and thus, the vote must occur during the Regular session of the City Council Meeting.

It was suggested that votes be cast for six-year terms for the following nominees:

Place 11	Randy Criswell	Region 2, City of Canyon
Place 12	Jana Traxler	Region 13, City of Murphy
Place 13	Byron Black	Region 8, Johnson County Appraisal District
Place 14	David Harris	Region 7, City of Balcones Heights

A motion was made by Councilmember Goss and seconded by Councilmember Cantey to approve the selection of candidates for the Texas Municipal League Intergovernmental Risk Pool Board of Trustees Places 11-14, as presented, and authorize the Mayor to execute any necessary documentation.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	Yes
Councilmember Albert Wright	Yes
At Large, Position 5	Vacant

16. Discuss and Possibly Act Upon the Approval of the Routine Airport Maintenance Program (RAMP) Grant Agreement No. M1917BREN with TxDOT for FY2019 and Authorize the Mayor to Execute Any Necessary Documentation

Planning Technician Kim Hodde presented this item. Hodde explained that this grant agreement with TxDOT for participation in the Routine Airport Maintenance Program (RAMP) for September 1, 2018 through August 31, 2019. Hodde advised that as in the prior year, this agreement allows staff to be reimbursed for 50% of the cost of the monthly AWOS monitoring (AviMet Data Link connection fees and continued scheduled maintenance), annual AWOS maintenance contract, as well as 50% of the replacement lamps for the airport lighting system, herbicides, general maintenance, and a contingency for emergency repairs. Hodde noted the maximum for the grant is \$100,000 total (50/50 match); however, staff has budgeted funds of \$50,000. Hodde explained that with TxDOT's \$50,000 match, this would enable staff to do \$100,000 worth of maintenance at half the cost to the City of Brenham.

A motion was made by Mayor Pro Tem Ebel and seconded by Councilmember Cantey to approve the Routine Airport Maintenance Program (RAMP) Grant Agreement No. M1917BREN with TxDOT for FY2019 and authorize the Mayor to execute any necessary documentation.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	Yes
Councilmember Albert Wright	Yes
At Large, Position 5	Vacant

17. Discuss and Possibly Act Upon Renewal with Texas Municipal League Intergovernmental Risk Pool for General Liability, Law Enforcement Liability, Public Officials Liability, Mobile Equipment, Airport Liability, Property, Auto Liability and Physical Damage, Crime, Animal Mortality and Theft and Workers' Compensation Coverage for the City of Brenham for Fiscal Year 2018-19 and Authorize the Mayor to Execute Any Necessary Documentation

Human Resources Director Susan Nienstedt presented this item. Nienstedt explained the renewal of property and liability coverages with TML Intergovernmental Risk Pool for FY2018-19.

Nienstedt stated that based on our renewal, the City will experience the following changes per coverage:

- Liability – increase of \$17,921 dollars, or 12.15%
- Property – increase of \$37,329 or 36.13%
- Workers' Compensation – decrease of \$2,465 or 1.52%

A motion was made by Councilmember Cantey and seconded by Mayor Pro Tem Ebel to approve the renewal with Texas Municipal League Intergovernmental Risk Pool for General Liability, Law Enforcement Liability, Public Officials Liability, Mobile Equipment, Airport Liability, Property, Auto Liability and Physical Damage, Crime, Animal Mortality and Theft and Workers' Compensation coverage for the City of Brenham for Fiscal Year 2018-19 and authorize the Mayor to execute any necessary documentation.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	Yes
Councilmember Albert Wright	Yes
At Large, Position 5	Vacant

18. Discuss and Possibly Act Upon a Professional Services Agreement Between the City of Brenham and Kendig Keast Collaborative for the Development of a Comprehensive Plan for the City of Brenham and Authorize the Mayor to Execute Any Necessary Documentation

Development Services Director Lori Lakatos presented this item. Lakatos explained that the Comprehensive Plan would address and determine the City's priorities and develop a detailed work plan. Lakatos stated that the plan would examine the needs of the community holistically to ensure that land uses are supported by infrastructure and facilities. Lakatos noted the City's comprehensive plan was last updated by the Lower Colorado River Authority in 2009. Lakatos stated that part of the plan is to have a Comprehensive Plan Advisory Committee (CPAC).

A motion was made by Councilmember Herring and seconded by Mayor Pro Tem Ebel to approve a Professional Services Agreement between the City of Brenham and Kendig Keast Collaborative, in an amount not to exceed \$259,825.00, for the Development of a Comprehensive Plan for the City of Brenham and authorize the Mayor to execute any necessary documentation.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	Yes
Councilmember Albert Wright	Yes
At Large, Position 5	Vacant

19. Discuss and Possibly Act Upon Bid No. IFB 18-010 Related to Bulk Water Treatment Chemicals and Authorize the Mayor to Execute Any Necessary Documentation

Assistant City Manager of Public Utilities Lowell Ogle presented this item. Ogle stated that the City solicited bids for a one (1) year supply of Caustic Soda for delivery to the Brenham Water Treatment Plant. Ogle stated that the contract will be for one (1) year with firm bid pricing allowing two (2) one-year renewals.

Ogle explained that on August 30, 2018 his department received and opened three bids. Ogle noted that staff is recommending Council award the bid to Brenntag Southwest, Inc.

A motion was made by Mayor Pro Tem Ebel and seconded by Councilmember Cantey to approve Bid No. IFB 18-010 for bulk water treatment chemicals and award an annual contract with the option of two one-year renewals to Brenntag Southwest, Inc in the amount of \$344.00 per liquid ton and authorize the Mayor to execute any necessary documentation.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	Yes
Councilmember Albert Wright	Yes
At Large, Position 5	Vacant

20. Discuss and Possibly Act Upon a Request for a Noise Variance from St. Mary's Immaculate Conception Catholic Church for a Fundraiser to be Held on September 30, 2018 from 8:00 a.m. – 5:00 p.m. at 701 Church Street and Authorize the Mayor to Execute Any Necessary Documentation

Deputy City Secretary Kacey Weiss presented this item. Weiss explained that they would be using sound amplification equipment at the event.

A motion was made by Councilmember Cantey and seconded by Councilmember Herring to approve a noise variance from St. Mary's Immaculate Conception Catholic Church for a fundraiser to be held on September 30, 2018 from 8:00 a.m. – 5:00 p.m. at 701 Church Street and authorize the Mayor to execute any necessary documentation.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	Yes
Councilmember Albert Wright	Yes
At Large, Position 5	Vacant

21. Discuss and Possibly Act Upon a Request for a Noise Variance from St. Mary's Immaculate Conception Catholic Church for a Street Dance to be Held on October 6, 2018 from 7:00 p.m. – 10:00 p.m. and a Fundraiser to be Held on October 7, 2018 from 8:00 a.m. to 5:00 p.m. at 701 Church Street and Authorize the Mayor to Execute Any Necessary Documentation

Deputy City Secretary Kacey Weiss presented this item. Weiss explained that they would be using sound amplification equipment for the band at the street dance and for the auctions at the fundraiser.

A motion was made by Councilmember Cantey and seconded by Mayor Pro Tem Ebel to approve a request for a noise variance from St. Mary's Immaculate Conception Catholic Church for a street dance to be held on October 6, 2018 from 7:00 p.m. – 10:00 p.m. and a fundraiser to be held on October 7, 2018 from 8:00 a.m. – 5:00 p.m. at 701 Church Street and authorize the Mayor to execute any necessary documentation.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	Yes
Councilmember Albert Wright	Yes
At Large, Position 5	Vacant

22. Discuss and Possibly Act Upon a Lease Agreement Between the City of Brenham and Simon Theater Master Tenant, LLC for the Visitor's Center and Authorize the Mayor to Execute Any Necessary Documentation

City Manager James Fisher presented this item. Fisher stated that the purpose of this lease is to allow the City to utilize the current space at the Barnhill Center as the Visitors Center and pay the market rate for the square footage occupied. Fisher noted that this Lease is for a five (5) year period and, if approved by the City Council, will commence October 1, 2018.

A motion was made by Councilmember Wright and seconded by Councilmember Cantey to approve a Lease Agreement, with amendments from the City Attorney, between the City of Brenham and Simon Theater Master Tenant, LLC for the Visitor's Center and authorize the Mayor to execute any necessary documentation.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	Yes
Councilmember Albert Wright	Yes
At Large, Position 5	Vacant

23. Administrative/Elected Officials Report

Police Chief Allwin Barrow reported on the following:

- National Night Out is October 2nd from 6:00 p.m. to 8:30 p.m.

Public Works Director Dane Rau reported on the following:

- FM 389 project should be completed in summer 2019

Council adjourned into Executive Session at 2:27 p.m.

EXECUTIVE SESSION

- 24. Section 551.071 – Texas Government Code – Consultation with Attorney – Consultation with the City Attorney for the Purpose of Seeking Legal Counsel Regarding a Facility/Land Development Matter and Associated Issues**
- 25. Section 551.087 – Texas Government Code – Economic Development Negotiations – Discuss and Deliberate Project Cardinal and Project BK Regarding Commercial or Financial Information that the City Has Received from Business Prospects and the Offer of Financial or Other Incentives to Business Prospects that the City Seeks to Have Locate In or Near the City of Brenham and With Which the City is Conducting Economic Development Negotiations**

Executive Session adjourned at 3:58 p.m.

The meeting was adjourned.

Milton Y. Tate, Jr.
Mayor

Jeana Bellinger, TRMC, CMC
City Secretary



AGENDA ITEM 7

DATE OF MEETING: October 18, 2018		DATE SUBMITTED: October 12, 2018	
DEPT. OF ORIGIN: Administration		SUBMITTED BY: Jeana Bellinger	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	
☒ REGULAR	☐ PUBLIC HEARING	☐ 1 ST READING	
☐ SPECIAL	☐ CONSENT	☐ 2 ND READING	
☐ EXECUTIVE SESSION	☒ REGULAR	☐ RESOLUTION	
	☐ WORK SESSION		
AGENDA ITEM DESCRIPTION: City Secretary's Certification of Unopposed Candidate for the City of Brenham's December 8, 2018 Special Election			
SUMMARY STATEMENT: As outlined in Section 2.052 of the Election Code, the authority responsible for having the official ballot prepared shall certify in writing that a candidate is unopposed. This certification shall be delivered to the governing body as soon as possible after the filing deadline.			
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: B. CONS:			
ALTERNATIVES (In Suggested Order of Staff Preference):			
ATTACHMENTS: (1) Certification of Unopposed Candidate			
FUNDING SOURCE (Where Applicable):			
RECOMMENDED ACTION: Accept the City Secretary's Certification of Unopposed Candidate for the City of Brenham's December 8, 2018 Special Election			
APPROVALS: James Fisher			



FORMULARIO DE AGENDA _____

FECHA DE REUNION: 18 de octubre, 2018	FECHA DE PRESENTACIÓN: 12 de octubre, 2018
DEPT. DE ORIGEN: Administracion	PRESENTADA POR: Jeana Bellinger
TIPO DE REUNION: ☒ REGULAR ☐ ESPECIAL ☐ SESSION EJECUTIVA	CLASIFICACIÓN: ☐ AUDIENCIA PUBLICA ☐ CONSENTIMIENTO ☒ REGULAR ☐ SESSION DE TRABAJO
ORDENANZA: ☐ 1^{RA} LECTURA ☐ 2^{DA} LECTURA ☐ RESOLUCIÓN	
DESCRIPCIÓN DE ASUNTO EN LA AGENDA: Certificación de Candidatos Sin Oposición por la Secretaria de la Ciudad de el Municipio de Brenham para la Eleccion Especial de el 8 de diciembre, 2018	
DECLARACIÓN DE RESUMEN: Como se indica en la Sección 2.052 del Código Electoral, la autoridad responsable de preparar la boleta electoral deberá certificar por escrito que los candidatos están sin oposición. Esta certificación será entregada al cuerpo gobernante lo más pronto posible después de la fecha límite para solicitar lugar en la boleta.	
ANALISIS DE PERSONAL (Para Ordenanzas o Asuntos regulares de la Agenda): A. PROS B. CONTRAS	
ALTERNATIVAS (EN ORDEN DE PREFERENCIA SUGERIDA POR EL PERSONAL):	
ADJUNTAMIENTOS: (1) Certificación de Candidatos Sin Oposición.	
PROCEDENCIA DE FONDOS (CUANDO APLICABLE):	
ACCIÓN RECOMENDADA: Aceptar la Certificación de Candidatos Sin Oposición de la secretaria de la Ciudad para la Elección Especial de la Ciudad de Brenham que se efectuara el 8 de diciembre, 2018	
APROBACIONES: James Fisher	



**Certification of Unopposed Candidate
By the City Secretary**

I, Jeana Bellinger, certify that I am the City Secretary of the City of Brenham and the authority responsible for preparing the ballot for the December 8, 2018 Special Election. I further certify that no person has made a declaration of write-in candidacy, and that the following candidate is unopposed:

Candidate

Clint Kolby

Office Sought

Councilmember Place Five (5), At Large

City Secretary, City of Brenham

Date this 18th day of October, 2018.

**Certificación de Candidato Sin Oposición
Por la Secretaria de la Ciudad**

Yo, Jeana Bellinger, certifico que yo soy la secretaria de la ciudad de el municipio de Brenham y la autoridad responsable de preparar la boleta electoral para le elección de esta ciudad. Además certifico que ninguna persona ha hecho una declaración de candidatura por escrito, y que el siguiente candidato está sin oposición:

Candidato

Clint Kolby

Cargo Solicitado

Concejal Lugar Cinco (5), Distrito Abierto

Secretaria de la Ciudad de Brenham

Fecha esta dia 18 de Octubre, 2018.



AGENDA ITEM 8

DATE OF MEETING: October 18, 2018	DATE SUBMITTED: October 12, 2018															
DEPT. OF ORIGIN: Administration	SUBMITTED BY: Jeana Bellinger															
<table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top;">MEETING TYPE:</td> <td style="width: 33%; vertical-align: top;">CLASSIFICATION:</td> <td style="width: 33%; vertical-align: top;">ORDINANCE:</td> </tr> <tr> <td>☒ REGULAR</td> <td>☐ PUBLIC HEARING</td> <td>☐ 1ST READING</td> </tr> <tr> <td>☐ SPECIAL</td> <td>☐ CONSENT</td> <td>☐ 2ND READING</td> </tr> <tr> <td>☐ EXECUTIVE SESSION</td> <td>☒ REGULAR</td> <td>☐ RESOLUTION</td> </tr> <tr> <td></td> <td>☐ WORK SESSION</td> <td></td> </tr> </table>		MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	☒ REGULAR	☐ PUBLIC HEARING	☐ 1 ST READING	☐ SPECIAL	☐ CONSENT	☐ 2 ND READING	☐ EXECUTIVE SESSION	☒ REGULAR	☐ RESOLUTION		☐ WORK SESSION	
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	☐ WORK SESSION															
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon an Order Declaring an Unopposed Candidate for the Position of Councilmember Place 5 - At Large Elected to Office and Canceling the City of Brenham December 8, 2018 Special Election																
SUMMARY STATEMENT: As outlined in the Election Code, upon receipt of the City Secretary's Certification of Unopposed Candidate, the City Council must by order or ordinance declare the unopposed candidate elected to office. The Elections Division of the Secretary of State's office interprets the unopposed candidate as being elected when they are issued the certificate of election after the prescribed election day (December 8, 2018). Unopposed candidates declared elected to office cannot take office until the regular canvassing of the election would have taken place. Therefore, the unopposed candidate will not take office and begin his official duty as Councilmember until he is sworn into office at the December 13, 2018 Council meeting.																
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: B. CONS:																
ALTERNATIVES (In Suggested Order of Staff Preference):																
ATTACHMENTS: (1) Election Order																
FUNDING SOURCE (Where Applicable):																
RECOMMENDED ACTION: Approve an Order Declaring an Unopposed Candidate for the Position of Councilmember Place 5 - At Large Elected to Office and Canceling the City of Brenham December 8, 2018 Special Election																
APPROVALS: James Fisher																



FORMULARIO DE AGENDA _____

FECHA DE REUNION: 18 de octubre, 2018	FECHA DE PRESENTACIÓN: 12 de octubre, 2018															
DEPT. DE ORIGIN: Administración	PRESENTADA POR: Jeana Bellinger															
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☐ SESSION EJECUTIVA	☒ REGULAR	☐ RESOLUCIÓN														
	☐ SESSION DE TRABAJO															
DESCRIPCIÓN DE ASUNTO EN AGENDA: Considerar y en consecuencia actuar una Orden Declarando Candidatos Sin Oposición Para el Puesto de Concejal Lugar 5 – Distrito Abierto Elegido a su Puesto y Cancelando la Elección Especial de la Ciudad de Brenham para el 8 de diciembre, 2018.																
DECLARACIÓN DE RESUMEN: Como se indica en el Código Electoral, sobre el recibo de la Certificación de Candidatos Sin Oposición por la Secretaria de la ciudad, el ayuntamiento debe, por orden o ordenanza, declarar cada candidato sin oposición elegido a su puesto. La División de Elecciones de la oficina de la Secretaria del Estado interpreta los candidatos sin oposición como elegidos cuando se le les emite el certificado de elección después de la fecha de elección prescrita (e 8 de diciembre, 2018). Los candidatos sin oposición que se les declara elegidos no pueden tomar su puesto hasta que el escrutinio de las elecciones había tenido lugar. Así que el candidato sin oposición no tomara su puesto y comenzara sus deberes oficiales como concejal hasta que sea jurado a su puesto en la junta del ayuntamiento que se efectuara el 13 de diciembre, 2018.																
ANÁLISIS POR EL PERSONAL (DE ORDENANZAS O ASUNTOS REGULARES DE AGENDA): A. PROS: B. CONTRAS:																
ALTERNATIVAS (EN ORDEN DE PREFERENCIA SUGERIDA POR EL PERSONAL):																
ADJUNTAMIENTOS: (1) Orden electoral																
PROCEDENCIA DE FONDOS (CUANDO APLICABLE):																
ACCIÓN RECOMENDADA: Aprobar la Orden Declarando a un Candidato Sin Oposición Para el Puesto de Concejal Lugar 5 – Distrito Abierto, Elegido a su Puesto y Cancelando la Elección General para el 8 de Diciembre, 2018.																
APROBACIONES: James Fisher																

ORDER

AN ORDER DECLARING THE UNOPPOSED CANDIDATE IN THE DECEMBER 8, 2018 CITY OF BRENHAM SPECIAL ELECTION, ELECTED TO OFFICE; CANCELING THE ELECTION; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Brenham, Texas is a home rule municipality located in Washington County, operating in accordance with the provisions of the Local Government Code and created pursuant to the enabling legislation of the State of Texas; and

WHEREAS, the City Secretary has certified in writing that no person has made a declaration of write-in candidacy, and that each candidate on the ballot is unopposed for election to office; and

WHEREAS, under these circumstances, Section 2.053, Subchapter C, Chapter 2, Texas Election Code, authorizes the City Council to declare the unopposed candidate elected to office and cancel the election;

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

Section 1: The following candidate, who was unopposed for the December 8, 2018 Special Election, is declared elected to office, and shall be issued a certificate of election following the time the election would have been canvassed:

Councilmember

Place Five – At Large

Clint Kolby

Section 2: The December 8, 2018 Special Election is canceled, and the City Secretary is directed to cause a copy of this Order to be posted on Election Day at each polling place that would have been used in the election.

Section 3: It is declared to be the intent of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Order are severable, and if any phrase, clause, sentence, paragraph, or section of this Order is declared invalid by the judgment or decree of a court of competent jurisdiction, the invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Order since the City Council would have enacted them without the invalid portion.

Section 4: This Order shall take effect upon its final passage, and it is so ordered.

Passed and approved on the 18th day of October, 2018

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary

ORDEN

UNA ORDEN DECLARANDO AL CANDIDATO SIN OPOSICIÓN PARA LA ELECCIÓN ESPECIAL DE LA CIUDAD PARA EL 8 DE DICIEMBRE, 2018, ELEGIDO A SU PUESTO; CANCELANDO LA ELECCIÓN; PROVEYENDO UNA CLÁUSULA DE DISTINCIÓN; Y PROVEYENDO UNA FECHA DE VIGENCIA

MIENTRAS QUE, la Ciudad de Brenham, Texas es una municipalidad gobernada por si, localizada en el Condado de Washington, operando en acuerdo con las provisiones de código Gubernamental Local y creado según la legislación que habilita el Estado de Tejas; y

MIENTRAS QUE, la secretaria de la ciudad ha certificado por escrito, que ninguna persona ha hecho una declaración de candidatura por escrito, y que cada candidato en la votación esta sin oposición para elección a cargo; y

MIENTRAS QUE, bajo estas circunstancias, Sección 2.053, Subcapítulo C, Capítulo 2, Código Electoral de Texas, autoriza el ayuntamiento para declarar a el candidato elegido a el puesto y cancelar la elección:

AHORA, POR LO TANTO, SEA ORDENADO POR EL AYUNTAMIENTO DE LA CIUDAD DE BRENHAM:

Sección 1: El candidato siguiente, que está sin oposición para la elección especial de la ciudad del 8 de diciembre, 2018, está declarado elegido a el puesto y se le suministrara certificado de elección después del tiempo que la elección se había terminado se solicitar votaciones:

Concejal

Lugar Cinco - Distrito Abierto

Clint Kolby

Sección 2: La elección especial de la ciudad del 8 de diciembre, 2018, esta cancelada y la secretaria de la ciudad está dirigida que una copia de esa orden este puesta en cada lugar de votación que se hubiera usado en el día de elección.

Sección 3: Esta declarado que es el intento del ayuntamiento que frases, cláusulas, acciones, párrafos, y secciones de esta orden son separables, y si cualquier frase, cláusula, oración, párrafo, o sección de esta orden es declarada invalida por el juicio de una corte de jurisdicción competente, la invalidez no afectara ninguna de las frases, cláusulas, oraciones, párrafos, o secciones que permanezcan porque el ayuntamiento podría haber promulgado esto sin la porción invalidada.

Sección 4: Esta orden tomara efecto sobre su pasaje final, y esta ordenado.

Aprobado el día 18 de octubre, 2018.

Milton Y. Tate, Jr.
Alcalde

ATESTAR:

Jeana Bellinger, TRMC, CMC
Secretaria de la Ciudad



AGENDA ITEM 9

DATE OF MEETING: October 18, 2018	DATE SUBMITTED: October 15, 2018
DEPT. OF ORIGIN: Purchasing	SUBMITTED BY: Sara Parker/Jeana Bellinger
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION
ORDINANCE: ☐ 1 ST READING ☐ 2 ND READING ☐ RESOLUTION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon a Master License and Services Agreement Between the City of Brenham and Ion Wave Technologies for Electronic Bidding and Contract Management Software and Authorize the Mayor to Execute Any Necessary Documentation	
SUMMARY STATEMENT: Over the past two years, it has become evident that the traditional bid system requiring delivery of hard copy bids for all of our formal bid purchases and contracts is no longer a viable solution. Late delivery by courier companies and the postal service have resulted in forced rejection of bids and in some cases, weather conditions have made even made direct submission by bidders impossible. IonWave will not only provide electronic bidding but supplier registration and management tools also. It will provide the City a way to track and communicate with all of our vendors as well as streamline the bidding process. Another product of IonWave that the City would be purchasing is the contract management piece. This module allows us to easily track all of our contracts and insurance certificates. It will consolidate all of our information and documents into one online repository/database to assist with vendor and contract reporting, contract expiration notifications, and public information requests. The City Secretary's Office and Purchasing staff began reviewing and evaluating IonWave's products in early 2017 and presented this purchase to Council during the FY2018-19 budget process. The cost is \$71,100, over five years, and will be shared between purchasing and administration's departmental budgets Implementation of the system will begin immediately after approval by the Council and is expected to be in place in early 2019.	
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: B. CONS:	

ALTERNATIVES (In Suggested Order of Staff Preference):
ATTACHMENTS: (1) Master License and Services Agreement; (2) Five-year pricing table; and (3) System Features
FUNDING SOURCE (Where Applicable): Purchasing Budget
RECOMMENDED ACTION: Approve a Master License and Services Agreement between the City of Brenham and Ion Wave Technologies for Electronic Bidding and Contract Management Software in the amount of \$71,700 over five years (expiring in 2023) and authorize the Mayor to execute any necessary documentation
APPROVALS: James Fisher



THIS MASTER LICENSE AND SERVICES AGREEMENT (the "Agreement"), is made and entered into as of this the 1st day of October, 2018 ("Effective Date"), by and between Ion Wave Technologies, Inc., a Missouri corporation having its principal offices located at 3653 South Avenue, Springfield, Missouri 65807 ("IWT") and the City of Brenham, a Texas home rule municipal corporation having its principal offices located at 315 West 2nd Street, Brenham, TX 77833 ("Client").

WHEREAS, IWT is engaged in the business of the development, marketing, and support of Internet based software of all types.

NOW THEREFORE, in consideration of the premises, covenants, and mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. Software Licensing and Use

- 1.1 License Grant. In accordance with and subject to the terms and conditions provided herein and in consideration of payment of the license fees set forth in any Exhibit A, IWT hereby grants to Client and Client accepts from IWT a non-exclusive, non-transferable license to use the IWT products specified in Exhibit A, collectively or individually referred to as the "Licensed Products", solely for its internal business purposes. Any rights not granted herein are reserved to IWT.
- 1.2 Access. Access to and usage of the Licensed Products shall be limited to Client's internal business purposes, specifically defined as the operation of Client's purchasing department. Access to the Licensed Products shall be limited to the Client end user community, as defined in Exhibit A. Unless specified in Exhibit A, Client will not permit others, including but not limited to subsidiaries, affiliates, and contractors, to access or use the Licensed Products, nor will Client use the Licensed Products on their behalf.
- 1.3 Use Limits. Client is prohibited from performing any load testing against IWT's hosted production environments, without the prior express written permission of IWT. Client is prohibited from reverse engineering, decompiling, and disassembling the Licensed Products.
- 1.4 Work Products. Any Work Products, as defined below, that are software, shall be subject to the same license limitations of this Agreement and any additional limitations as set forth in any Exhibit hereto.
- 1.5 Rent, Lease, and Sublicense Restrictions. Client shall not rent, lease, sublicense, grant a security interest in, or otherwise transfer the Client's right to use and possess the Licensed Products, in whole or part.
- 1.6 Copies and Proprietary Notices. Any Licensed Products, together with any accompanying technical or system documentation that is delivered to Client pursuant to this Agreement shall not be copied, except that one (1) copy may be made for backup or archival purposes, provided any such copy is clearly marked as proprietary to IWT, licensed to Client, and contains IWT's proprietary notices. Client shall be permitted to make additional copies of documentation specifically designated for training of end users. Client shall not remove any proprietary notices or labels on the Licensed Products or its documentation.
- 1.7 Violation. Violation of any provision of this Section 1 shall breach the Agreement and be the basis for immediate termination of this Agreement and the corresponding license grant to the Licensed Products with no refund to Client of fees paid to IWT.

2. Maintenance and Support

- 2.1 Support Services. Subject to the payment of the applicable licensing and support fees as set forth in Exhibit A, IWT shall provide Client with the maintenance and support services as set forth in Exhibit B of this Agreement ("Support Services") for the Licensed Products. Exhibit B may be updated from time to time at IWT's sole discretion, provided said updates do not materially diminish the Support Services provided to Client without Client's consent.
- 2.2 Payment and Term. Provided that this Agreement and the license for the applications which the Support Services are to be performed has not been terminated, IWT will provide Support Services as specified in Exhibit B of this Agreement for the support fees indicated in Exhibit A. In the event (i) IWT has not received payment for the next annual period's applicable license or support fees, prior to the last day of the current term; and/or (ii) this Agreement and/or the license is no longer in effect, Support Services shall be discontinued.
- 2.3 On-Site Services. Support Services do not include any on-site services. At Client's request, IWT may provide technical, operational or other assistance or consulting in excess of the standard Support Services at IWT's standard hourly rate then in effect.

3 Professional Services

- 3.1 Professional Services. IWT shall provide Client with professional consulting services as described in the Statements of Work ("SOW") to be attached as Exhibit C hereto ("Professional Services"), which SOW by its express terms shall amend this Agreement. Any additional services beyond those described in any Exhibit C shall be at the mutual, written agreement of the parties.
- 3.2 Client Obligations. In order to facilitate the provision of the Professional Services by IWT, Client shall have installed the recommended hardware and software and will have completed the required preparatory work described in the Exhibit(s) attached hereto.

- 3.3 Contact Person. Each party will appoint in writing, in the applicable Exhibit, an employee or agent of such party to act as the "Contact Person" for all communications between the parties related to the Professional Services. Each party may change its Contact Person upon written notice to the other.

4 Proprietary Rights

- 4.1 Ownership. Client acknowledges and agrees that, as between Client and IWT, IWT is the sole and exclusive owner of all right, title and interest in and to the Licensed Products, as well as all alterations, modifications, additions, and derivative works made with respect to the Licensed Products and all work products produced from the Professional Services performed under the SOW ("Work Products"). Except as expressly permitted or required hereby: (i) Client shall have no right or license to the Licensed Products or Work Products; and (ii) Client shall not use, reproduce, publish, or make available to others, modify, or create any derivative works of, all or any part of the Licensed Products or Work Products.
- 4.2 License Rights. Nothing in this Agreement or any Exhibit hereto shall in anyway enlarge or extend Client's license rights in the Licensed Products, with respect to the materials that IWT delivers to Client pursuant to any SOW.
- 4.3 Client Data. Any client data and any materials or equipment furnished to IWT by Client in connection with any of the Professional Services provided under an Exhibit shall be deemed proprietary to Client.
- 4.4 Trademarks. All trademarks, service marks, trade names and logos of IWT appearing on or within the Licensed Products or Work Products used in connection with the Support Services or the Professional Services provided by IWT are the property of IWT and Client shall not use them without IWT's prior written approval.

5 Fees and Payment Terms

- 5.1 Fees. Client will pay IWT the fees as set forth in the Exhibits. Except for initial payments, which payments, unless provided otherwise, shall be due and payable upon the execution of this Agreement and any Exhibit hereto, IWT will submit to Client an invoice for the amounts due. Unless provided otherwise, all invoices submitted by IWT shall be due and payable in full, without reduction for any offset, withholding or other claims, within thirty (30) days of the date thereof. Any amounts payable to IWT hereunder, which are not paid when due, shall thereafter bear interest at the rate of one and one-half percent (1.5%) per month or the maximum amount permitted by applicable law, whichever is less.
- 5.2 Taxes. Fees do not include any taxes. Client shall be responsible for all applicable taxes, including VAT and regulatory fees of any kind imposed by any government on any deliverable provided under this Agreement, provided, however that IWT shall be responsible for all taxes based solely upon IWT's income. If Client is exempt from the payment of any such taxes, upon execution of this Agreement, Client must provide IWT with a valid tax exemption certificate (or documentation proving exemption acceptable to the taxing jurisdiction); otherwise, absent proof of Client's direct payment of such tax amounts to the applicable taxing authority, IWT will invoice Client for and Client will pay to IWT all such tax amounts. Client shall indemnify and hold IWT harmless in the event any taxing authority seeks to collect any tax, required to be paid by Client pursuant to this section, from IWT.
- 5.3 Travel Expenses. Unless otherwise specified in the Exhibits, IWT shall be reimbursed by Client for all reasonable travel and living expenses and travel time. IWT shall invoice Client for such actual expenses monthly or on such other schedule at IWT's sole discretion.
- 5.4 Non-Payment. As opposed to exercising its right to terminate an Exhibit or this Agreement in its entirety, IWT may, at IWT's sole discretion, suspend performance of any obligations under the applicable Exhibit for nonpayment, but only until such time as payment is made.
- 5.5 Currency. All fees are stated in US dollars and are payable in US currency.
- 5.6 Invoices. All invoices to Client shall be mailed or emailed to the following address, which may be changed from time to time, provided Client provides IWT with written notice of such change:
City of Brenham
Attn: Accounts Payable c/o Sarah Parker
315 West 2nd Street
Brenham, TX, 77833
Email: sparker@cityofbrenham.org

6 Term and Termination

- 6.1 Term and Termination. The term of this Agreement shall commence on the Effective Date and will run for the periods as indicated in the Exhibits.
- 6.2 Termination for Breach. This Agreement may be terminated by either party upon a breach by the other party of any material term of the Agreement or its Exhibits, which breach is not cured (unless such breach is incapable of cure, such as breach of the restrictions on use and license grant described herein or of any confidentiality agreement between the parties hereto) within thirty (30) days of written notice of the breach. Upon termination for breach, all use and access to the Licensed Products shall cease and Client shall immediately return to IWT or destroy all copies of the Licensed Products, together with all documentation and any other IWT proprietary information in its possession. Furthermore, Client shall provide IWT a certification from an officer of Client that all Licensed Products, documentation, and all copies thereof, have been returned to IWT or destroyed in accordance with this Agreement.
- 6.3 Effects of Termination. Upon termination or expiration of this Agreement for reasons other than the breach of this Agreement: (i) all use and access to products licensed on a term basis shall cease and Client shall immediately return to IWT or destroy all copies of the term licensed products, together with all documentation and any other IWT proprietary information in its possession. Client shall provide IWT a certification from an officer of Client that all term licensed products and all associated documentation, have been returned to IWT or destroyed in accordance with this Agreement. (ii) all use and access to products licensed on a perpetual basis shall continue, subject to the terms of this Agreement and any

Exhibits, including but not limited to, the provisions for access and use of the Licensed Products (Section 1), Proprietary Rights (Section 4), Warranties and Indemnification (Section 7), and Confidentiality (Section 8). Upon termination or expiration of this Agreement, all Support Services and Professional Services as discussed in this Agreement or any Exhibits will cease.

7 Warranties, Indemnity, and Limitations

- 7.1 **Licensed Products Warranty.** IWT warrants that it is the owner of the Licensed Products or otherwise has the right and authority to grant the licenses to Client, which are provided for herein. IWT represents that for the entire term covered by the Support Services ("Warranty Period") that the Licensed Products will substantially perform in accordance with and as specified in the applicable documentation when operated in the designated environment. IWT does not represent that the functions contained in the Licensed Products will meet Client's requirements or that the Licensed Products will operate uninterrupted or error free. In the event that Client does not pay the required Support Services fees or this Agreement is terminated, Client agrees that all warranty provisions and associated remedies shall be terminated.
- 7.2 **Limitations of Warranty.** IWT's warranties in this Section 7 shall only apply to the IWT Products developed by IWT or its affiliates. All other Licensed Products shall be provided by IWT "AS IS." Notwithstanding anything to the contrary in this Section 7.2, IWT shall assign to Client any warranty granted by the supplying party for the Licensed Products, to the extent of IWT's right to do so.
- 7.3 **Remedy.** During the Warranty Period, IWT's entire liability and Client's sole remedy for any reproducible, substantive error(s) in the unmodified IWT Application as reported in writing by Client shall be that IWT, at its option, will use its reasonable good faith efforts to correct the error(s), or, upon return of the Licensed Product and accompanying documentation to IWT, terminate this Agreement or the applicable license to the Licensed Product, as the case may be, and refund to Client a sum equal to a portion of the license fees paid, prorated on a monthly basis for the period in which the application was rendered unusable, for the Licensed Product for which the license is terminated.
- 7.4 **Services Warranty.** IWT represents and warrants that it is experienced in providing the Professional Services and Support Services described herein and further warrants that it will perform the Professional Services and Support Services in a good, workmanlike, and professional manner. Client's remedy for breach of the foregoing warranties shall be the re-performance of the relevant Professional Services free of charge.
- 7.5 **Disclaimer.** In no event will IWT be liable for any loss of profits, loss of use, business interruption, loss of data, cost of cover, or indirect, special, incidental, or consequential damages of any kind in connection with or arising out of the furnishing, performance or use of the Licensed Products, Professional Services and/or Support Services provided to Client under this Agreement as applicable, whether arising in contract or tortious conduct, or any other legal theory, including negligence, or whether arising from mistakes, omissions, interruptions deletion of files, errors, defects, viruses or other malicious code, delays in operation of transmission, or the use or performances of a Work Product, or the delay or failure of performance the Professional and/or Support Services provided under this Agreement, even if IWT has been advised of the possibility of such damages.
- 7.6 **Client Responsibility.** Client acknowledges and agrees they bear all liability for their end users' activity on IWT's systems. Client represents and warrants that any data loaded into IWT's systems by Client's end users will not infringe the intellectual property rights of any third party. Client acknowledges that IWT may, in appropriate circumstances and at its discretion, disable Client's access or terminate this Agreement for violations of this provision. Client will be solely responsible for bearing any and all costs of obtaining any required third party licenses for data loaded into IWT's systems by Client's end users.
- 7.7 **Limited Warranty.** THE ABOVE IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY IWT. EXCEPT AS EXPRESSLY SET FORTH HEREIN, IWT MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT, AND IWT HEREBY DISCLAIMS THE SAME.
- 7.8 **Exception to Warranty.** IWT'S WARRANTY OBLIGATIONS SHALL NOT APPLY IF THE LICENSED PRODUCTS OR SOFTWARE WORK PRODUCT'S FAILURE TO PERFORM IN ACCORDANCE WITH ITS FUNCTIONAL SPECIFICATIONS IS CAUSED BY: (I) THIRD PARTY SOFTWARE LICENSED BY CLIENT; (II) CLIENT'S USE OF OR ACCESS TO THE LICENSED PRODUCTS OTHER THAN AS INTENDED OR IN VIOLATION OF THIS AGREEMENT; OR (III) UNAUTHORIZED MODIFICATIONS MADE TO THE IWT LICENSED PRODUCTS OR SOFTWARE WORK PRODUCT BY CLIENT.
- 7.9 **Indemnification.** (a) By IWT. IWT shall indemnify, defend and hold harmless Client against any loss, damage or expense incurred by Client as a result of claims, actions, or proceedings brought by any third party alleging infringement by a IWT Licensed Product or a Work Product, of copyright, trademark, patent, or other proprietary rights, and against its reasonable attorneys' fees and any money damages or costs awarded in respect of any such claim(s) and any suit arising from any such claim(s); provided, however, that (i) Client shall have given IWT prompt written notice of such claim, demand, suit or action; (ii) Client shall cooperate with said defense by complying with IWT's reasonable instructions and requests to Client in connection with said defense; and (iii) IWT shall have control of the defense of such claim, suit, demand, or action and the settlement or compromise thereof. Further, IWT shall have no liability for any infringement action or claim that is based upon or arising from the matters described in this paragraph if the applicable Licensed Product or Work Product is modified or altered by a party other than IWT or is used for a purpose other than that for which it is intended or as set forth in the appropriate documentation. If a temporary or permanent injunction is obtained against Client's use of the Licensed Product or Work Product as a result of the matters described in this paragraph, IWT shall, at its option and expense, either procure for Client the right to continue using the Licensed Product or Work Product or replace or modify the Licensed Product or Work Product or infringing portion thereof so that it no longer infringes the alleged proprietary right. In the event that IWT

concludes, in its sole discretion, that such procurement, replacement or modification is not reasonably practical, IWT may terminate the applicable Exhibit and/or this Agreement without penalty and refund that portion of the Fees attributable to the infringing product, prorated on a monthly basis. Client shall cease all use of a Licensed Product or Work Product for which a refund is given. This paragraph sets forth the exclusive remedy of Client against IWT, and IWT's exclusive obligation, with respect to any action or claim described herein. (b) By Client. To the extent allowed by law, Client shall indemnify, defend and hold harmless IWT against any loss, damage or expense incurred by IWT as a result of claims, actions, or proceedings arising from any bodily harm or injury suffered by IWT's employees or agents in the performance of Services or maintenance at any of the Client's facilities or the allegation of infringement or actual infringement by Client of any copyright, patent, trademark, trade secret, or other proprietary right of any third party. To the extent allowed by law, Client will indemnify IWT against its reasonable attorneys' fees incurred in connection with such claim(s), any money damages or costs awarded in respect of any such claim(s) and any suit arising from any such claim(s). Client shall be entitled to have sole control over the defense of such claim, unless the claim involves or relates to an intellectual property right of IWT in which case IWT may elect to have sole control over the defense of such claim as described in the preceding paragraph, and such election by IWT shall have no effect upon Client's obligations to indemnify and hold harmless hereunder. If Client does not assume sole control over the defense of such claim as provided in this section, IWT may participate in such defense and IWT shall have the right to defend the claim in such manner, as it may deem appropriate, at the cost and expense of Client.

- 7.10 **Limitation of Liability.** IN NO EVENT WILL IWT'S LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT EXCEED THE AGGREGATE AMOUNT OF PAYMENTS RECEIVED BY IWT FROM CLIENT UNDER THE EXHIBIT GIVING RISE TO THE CLAIM. ADDITIONALLY, IN NO EVENT WILL IWT BE LIABLE FOR ANY CLAIM BROUGHT BY CLIENT MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION AROSE OR REASONABLY SHOULD HAVE BEEN DISCOVERED.

8 Confidentiality

- 8.1 **Obligations.** "Confidential Information" shall mean any proprietary information which is specifically marked as proprietary or confidential and which is disclosed by either party to the other in any form in connection with this Agreement. During the term of this Agreement and for a period of five (5) years after the date of termination of this Agreement or for a period of five (5) years after the termination of use of the Licensed Products, whichever period is longer, each party: (i) shall treat as confidential all Confidential Information provided by the other party; (ii) shall not use such Confidential Information except as expressly permitted under the terms of this Agreement or otherwise previously authorized in writing by the disclosing party; (iii) shall implement reasonable procedures to prohibit the disclosure, unauthorized duplication, reverse engineering, disassembly, decompiling, misuse or removal of such Confidential Information; and (iv) shall not disclose such Confidential Information to any third party. Without limiting the foregoing, each of the parties shall use at least the same procedures and degree of care to prevent the disclosure of Confidential Information as it uses to prevent the disclosure of its own confidential information of like importance, and shall in any event use no less than reasonable procedures and a reasonable degree of care.
- 8.2 **Exceptions.** Notwithstanding the above, neither party shall have liability to the other with regard to any Confidential Information that: (i) was generally available to the public at the time it was disclosed, or becomes generally available to the public through no fault of the receiver; (ii) was known to the receiving party at the time of disclosure as shown by written records in existence at the time of disclosure; (iii) was developed independently by the receiving party prior to the disclosure, as shown by written records in existence prior to the disclosure; (iv) is disclosed with the prior written approval of the disclosing party; (v) becomes known to the receiving party from a source other than the disclosing party without breach of this Agreement by the receiving party and in a manner which is otherwise not in violation of the disclosing party's rights; or (vi) is disclosed pursuant to the requirements of the Texas Public Information Act f/k/a Open Records Act, Section 552.001 et. Seq. of the Texas Government Code, the order or requirement of a court, administrative agency, or other governmental body, provided that the receiving party shall provide reasonable advance notice to enable the disclosing party to seek a protective order or otherwise prevent such disclosure and further provided that any such disclosure shall not destroy or diminish the confidential status of such Confidential Information.

9 Miscellaneous

- 9.1 **Force Majeure.** Neither party shall be liable to the other by reason of any failure of performance hereunder (except failure to pay) if such failure arises out of causes beyond such party's reasonable control, despite the reasonable efforts and without the fault or negligence of such party. Without limiting the generality of the foregoing, IWT shall not be liable to Client in any way for any failure or delay in the performance of its obligations hereunder which failure is caused, directly or indirectly, by the failure of any matter for which Client is responsible under this Agreement or which is a suspension of services for Client's failure to pay.
- 9.2 **Assignment.** Neither party may assign this Agreement without the prior written consent of the other, which consent will not be unreasonably withheld. Notwithstanding the foregoing, IWT may assign this Agreement to any entity acquiring substantially all of its stock or assets or the assets to which this Agreement or any Exhibit relates.
- 9.3 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflicts of law principles.
- 9.4 **Exhibits.** Each Exhibit to this Agreement shall incorporate the terms of this Agreement. In the event of any conflict between the terms of this Agreement and the terms of any Exhibit, the terms of this Agreement shall control unless an Exhibit expressly provides otherwise. Additional Exhibits added to this Agreement from time to time by the mutual written agreement of the parties shall be numbered sequentially under the letters of the respective Exhibit title (e.g. Exhibit A Licensed Products shall be A-1, A-2, etc.) and each shall be in addition to the previous Exhibit.

- 9.5 **Records & Audits.** IWT, its agents or representatives, shall have the right to conduct a technical audit of Client's records, for the express purpose of determining whether Client is in compliance with the terms of this Agreement. Should IWT find that Client is not in compliance, Client shall pay the additional damages as may be due plus a five percent (5%) penalty.
- 9.6 **Independent Contractor.** IWT is an independent contractor and, except as specifically contemplated in any Exhibit to this Agreement, is not an agent or employee of, and has no authority to bind, Client by contract or otherwise. IWT will perform the Services under the general direction of Client, but IWT will determine, in IWT's sole discretion, the manner and means by which the Services are accomplished. Client has no right or authority to control the manner or means by which the Services are accomplished.
- 9.7 **Waiver.** No delay or omission by either party to exercise any right or power unless in writing and signed by the party waiving rights it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach shall not be construed to be a waiver of any succeeding breach or of any other covenant.
- 9.8 **Notices.** Any notice required to be sent to a party under this Agreement will be in writing, shall be sent by: facsimile; first-class mail return receipt requested; personal delivery; or overnight courier to the Address for Notices given for that party below, and shall be considered delivered upon proof of such delivery. Either party may change its notice address by giving written notice to the other party.

If to IWT:

Ion Wave Technologies, Inc.
3653 South Avenue
Springfield, Missouri 65807
Phone: 417-823-7773
Fax: 417-823-7778

If to Client:

City of Brenham
Attn: Purchasing
315 West 2nd Street
Brenham, TX 77833
Phone: 979-451-5181 Fax: 979-337-7554

- 9.9 **Severability.** If any provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent or, if that is not possible, by substituting another provision that is enforceable and achieves the same objective and economic result. It is expressly understood and agreed that each provision of this Agreement that provides for a limitation of liability, disclaimer of warranties, indemnification or exclusion or damages or other remedies are intended to be enforced as such. Further, it is expressly understood and agreed that in the event any remedy under this Agreement is determined to have failed its essential purpose, all limitations of liability and exclusions of damages or other remedies shall remain in effect.
- 9.10 **Non-Solicitation.** IWT and Client agree that the employees of IWT and Client may possess technical abilities that are in great demand and further agree that each party has incurred substantial expense in recruiting and training such employees and would incur even greater expense if required to replace any such employee. Therefore, IWT and Client each agree not to recruit, either directly or indirectly, a present employee of the other during the term of this Agreement or any other agreement between them, and for one year following termination of all such agreements, without the express written consent of the other party. Upon breach of this provision, the breaching party agrees to pay the other two times the yearly compensation of the affected employee. This remedy provided in this paragraph shall be the only monetary remedy for breach of the terms of this paragraph. Neither party is prevented from seeking equitable relief for breach of this paragraph.
- 9.11 **Survival.** Payment obligations and any other provisions, which by their terms or their nature are intended to survive, shall survive the expiration or termination of this Agreement.
- 9.12 **Entire Agreement and Amendment.** This Agreement, with all Exhibits, is the entire agreement between the parties with respect to its subject matter, and supersedes and replaces any prior agreement between the parties with respect to said subject matter and there are no other representations, understandings or agreements between the parties relative to such subject matter. Amendments or waivers of any provision of this Agreement or its Exhibits shall be valid only as clearly identified as such, in writing and signed by the parties. No purchase order submitted by Client, even if accepted by IWT, shall be deemed to modify any terms of this Agreement, unless IWT has expressly stated in writing its intent to do so.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed by its duly authorized representative.

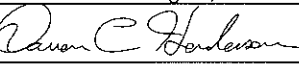
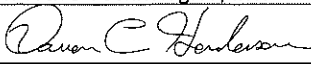
IWT - Ion Wave Technologies, Inc.	Client – City of Brenham, Texas
Signed: 	Signed:
Printed Name: Darren C Henderson	Printed Name:
Printed Title: CEO	Printed Title:
Date: 08/28/2018	Date:

Exhibit A Licensed Products

1. **License Grant.** IWT Grants to Client, in accordance with and subject to the terms and conditions set forth in this Agreement, a license to the IWT products as specified below:
 - (i) IWT Sourcing subject to the following terms and restrictions:
 - The license grant shall be for a five (5) year and one (1) month period starting upon the execution of this Agreement, with usage limited to Client employees.
 - The IWT Sourcing license shall include the Electronic Bidding (eRFx) and Supplier Management / Registration Modules. The Reverse Auction module, the Bid Evaluation Scoring module, the Bid Workflow module, and any future modules released by IWT are specifically excluded. Client may purchase additional modules and incorporate an additional Exhibit into this agreement.
 - The cost of the license shall be paid annually as outlined in the payment section below.
 - (ii) IWT Contract Management subject to the following terms and restrictions:
 - The license grant shall be for a five (5) year and one (1) month period starting upon the execution of this Agreement, with usage limited to Client employees.
 - The Contract Management license shall include the Contract and Insurance Certificate Tracking modules. Any future modules are specifically excluded. Client may purchase additional modules and incorporate an additional Exhibit into this agreement.
 - The cost of the license shall be paid annually as outlined in the payment section below when bundled with IWT Sourcing.
2. **Support Services.** IWT will provide Support Services to the Client, in accordance with and subject to the terms and conditions set forth in this Agreement, as specified below:
 - (i) Support and Maintenance:
 - IWT will provide Support Services as detailed in Exhibit B for the products listed above for a five (5) year and one (1) month period beginning upon the execution of this Agreement at no additional cost to Client.
3. **Payment.** Payment for the license fees shall be due as follows:
 - (i) \$13,600 Initial License Fee due November 1, 2018 for the service period 10/01/2018 to 10/31/2019.
 - (ii) \$13,900 Annual License Fees due November 1, 2019 for the service period 11/01/2019 to 10/31/2020.
 - (iii) \$14,200 Annual License Fees due November 1, 2020 for the service period 11/01/2020 to 10/31/2021.
 - (iv) \$14,500 Annual License Fees due November 1, 2021 for the service period 11/01/2021 to 10/31/2022.
 - (v) \$14,900 Annual License Fees due November 1, 2022 for the service period 11/01/2022 to 10/31/2023.
4. **Non Appropriation.** Client intends to remit to IWT all payments for the full term if funds are legally available. In the event Client is not granted an appropriation of funds at any time during the term for the funds and are not, otherwise available to Client to pay IWT payments due and to become due under this Agreement, and there is no other available funds by which payment can be made to IWT, and the non-appropriation did not result from an act or omission by Client, Client shall have the right to terminate this Agreement on the last day of the fiscal period for which appropriations were received without penalty or expense to Client, except as to the portion of the payments for which funds shall have been previously appropriated and budgeted. At least thirty (30) days prior to the end of Client's fiscal period, or if non-appropriation has not occurred by such date, immediately upon non-appropriation, Client's Business Services Executive Director shall certify in writing that (1) funds have not been appropriated for the next fiscal period, (b) such non-appropriation did not result from any act or failure to act by Client, and (c) Client has exhausted all funds legally available to pay IWT. If Client terminates this Agreement because of non-appropriation of funds, Client may not purchase or lease during the subsequent fiscal period, software and/or service performing the same function as, or functions taking the place of those performed by the software and/or service provided by IWT; however, that these restrictions shall not be applicable if or to the extent that the application of these restrictions would affect the validity of this Agreement.
5. **Cooperative Contract.** This purchase is made in accordance with TIPS cooperative contract number 180503.

IN WITNESS WHEREOF, each party hereto has caused this Exhibit to be executed and amended to the Agreement by its duly authorized representative.

IWT - Ion Wave Technologies, Inc.	Client – City of Brenham, Texas
Signed: 	Signed:
Printed Name: Darren C Henderson	Printed Name:
Printed Title: CEO	Printed Title:
Date: 08/28/2018	Date:

[Remainder of page left intentionally blank – Exhibit B and Exhibit C follow]

Exhibit B Support Services

1. IWT shall (a) use commercially reasonable efforts to provide Client with maintenance and support services ("Support Services") via telephone, facsimile, electronic mail, or other electronic means, at IWT's discretion, from the hours of 8:00 a.m. to 6:00 p.m. Central Time Monday through Friday (excluding IWT Holidays, which typically consist of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the Friday immediately following Thanksgiving, Christmas Eve, and Christmas Day), and 24x7 access for reporting Level 1 (as defined below) situations, to a designated, authorized, qualified, and trained user of the IWT Products ("Client Contact") and to one (1) designated, authorized, qualified, and trained user of the IWT Products designated as Client Contact's backup ("Backup Client Contact") (collectively referred to as "Client Support Contact"); and (b) use commercially reasonable efforts to correct reproducible errors or malfunctions to enable the IWT Products to substantially perform in accordance with and as specified in the accompanying documentation.
2. IWT shall use commercially reasonable efforts to deliver a solution or action plan to correct reported errors that IWT categorizes as: (i) "Level 1 Catastrophic" within eight (8) business hours of receipt of the reported error. "Level 1 Catastrophic" is defined as a condition in which the IWT Products are partially or totally inoperative, including but not limited to, total system failure, data loss, data corruption, or a processing of functions and processes so slow as to render the application unusable, or any Level 2 error where a reasonable alternative work process cannot be established; (ii) "Level 2 High Impact" within the next scheduled production release of the IWT Products or within one hundred-twenty (120) days from the date error was logged with IWT, whichever shall first occur. "Level 2 High Impact" is defined as any error that results in the usability of the product being restricted and for which a reasonable alternative work process can be established; (iii) "Level 3 Non-Critical," which errors IWT shall use commercially reasonable efforts to correct within the next scheduled production release of the IWT Products. "Level 3 Non-Critical" is defined as any error wherein one or more functions do not operate optimally, but where impact on functionality and/or usability is agreed by Client and IWT to be minor and result in a mutually acceptable disruption to Client's workflow process; and (iv) "Level 4 Cosmetic," which errors IWT shall use commercially reasonable efforts to correct within the next scheduled production release of the IWT Application, at IWT's sole discretion. "Level 4 Cosmetic" is defined as any error that cannot be categorized as belonging to any higher severity level, including but not limited to a cosmetic or documentation error.
3. IWT shall provide all extensions, enhancements, and other changes, which are logical improvements to a IWT Product and to which IWT makes generally available on a commercial basis, without charge, to any other licensee of the IWT Product ("Updates"). Updates do not include any new software products that are then made generally available on a commercial basis as separate, price-listed options or additions to an IWT Product nor do they include any Professional Services Fees that may be required for implementation.
4. IWT shall have no obligation to provide Support Services except to Client Support Contact and only with respect to the unmodified Supported Releases. When an IWT Product is deployed in conjunction with other software products, including but not limited to web servers, browsers, databases, and operating systems, IWT is not responsible for providing Support Services for these other products, or for ensuring correct interoperability with these products.
5. Client shall use commercially reasonable efforts to assist IWT in reproducing the specific situation in which a IWT Product, standing alone, demonstrates a failure to substantially conform in all material respects to the functional specifications set forth in its accompanying documentation ("Defect"). Client Support Contact shall conduct reasonable and adequate research with respect to a Defect or related issue prior to contacting IWT for assistance.

Hosting Services

1. IWT shall use commercially reasonable efforts to make all hosted IWT Products available to Client for at least ninety-nine percent (99%) of the time (determined monthly), seven (7) days a week, twenty-four (24) hours per day, not including any unavailability that: (i) lasts less than fifteen (15) minutes; (ii) results from regularly scheduled IWT maintenance; (iii) results from failure of Client's hardware or software; (iv) results from the failure of a communication service or other outside service or equipment not within the control of IWT; or (v) is beyond the reasonable control of IWT ("Service Availability").
2. Data Backup. In recognition that IWT's provision of the hosted IWT Products may be interrupted as a result of an act of God, events beyond the reasonable control of IWT, errors by IWT's staff, or a defect in the IWT Products, IWT agrees to maintain a commercially reasonable backup plan for the IWT Hosted Products and Client's data, whereby IWT can execute a recovery of the hosted IWT Products and Client's data as a result of such interruption.

IN WITNESS WHEREOF, each party hereto has caused this Exhibit to be executed and amended to the Agreement by its duly authorized representative.

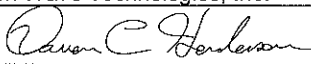
IWT - Ion Wave Technologies, Inc.	Client - City of Brenham, Texas
Signed: 	Signed:
Printed Name: Darren C Henderson	Printed Name:
Printed Title: CEO	Printed Title:
Date: 08/28/2018	Date:

Exhibit C

Statement of Work ("SOW")

1. Introduction

Client seeks to implement the IWT Sourcing and Contract Management applications (the "Solution"). The primary objective of the project is to configure and implement the Solution for the Client. This will be done in a way that utilizes the standard features of the Solution and is based on the Solution standard configurations.

This SOW describes the scope of services and the services investment necessary to complete the Solution implementation project. IWT Professional Services will use commercially reasonable efforts in a manner consistent with software industry standard guidelines and as outlined in this SOW to provide the guidance and expertise necessary to help Client successfully implement the Solution.

2. Summary of IWT Responsibilities

The following major activities are included in the scope of this project and will be performed by IWT:

- (i) Coordinate and lead all meetings, workshops, and training sessions.
- (ii) Provide up to three web-based training sessions to Client's full-time employees.
- (iii) Provide project management, including coordination and management activities, issue tracking, and weekly status reporting to Client.
- (iv) Coordinate Client acceptance testing.
- (v) Provide configuration guides to the Client offering configuration choices, including IWT's standard commodity code structure.
- (vi) After initial training is completed, prepare the Solution for go-live.
- (vii) Provide issue resolution according to the severity levels and response times as outlined in the Agreement.

3. Summary of Client Responsibilities

Client agrees to undertake at its sole expense, the following responsibilities:

- (i) Assignment of an internal dedicated project manager to manage the Solution and its implementation.
- (ii) Coordinate internal participation in project related meetings.
- (iii) Provide materials and facilities for project related activities, including Internet-capable machines for training sessions.
- (iv) Purchase, install, and validate any third-party software required.
- (v) Develop and implement test scripts for acceptance of the Solution.
- (vi) Plan, coordinate, and participate in training sessions and complete all training assignments.
- (vii) Plan and direct the production deployment (Go-live).

4. Technical Requirements

Client will be responsible for procurement, installation, and operational verification of all software, software licenses, equipment, and hardware required to support the Solution in the production deployment. This includes:

- (i) Web Browsers. Client will be responsible for procurement, installation, and operational verification of all web browser licenses. IWT will provide its minimum browser requirements during the Workshops.
- (ii) Commodity Code. Client will be responsible for procurement and licensing of any desired proprietary commodity code structure(s).
- (iii) Network Performance. Client is responsible for maintaining the satisfactory network performance needed to conduct the deployment of the production system.
- (iv) IWT may modify any of the above hardware and software requirements from time to time, upon ninety (90) days written notice to Client.

5. Project Organization and Operating Procedures

- (i) Project Organization. Client and IWT agree to assign dedicated staff to perform their respective project activities.
- (ii) Change Control Process. IWT projects follow a standard change control process. If during the course of a project, a scope change is identified, then the IWT project manager will document the change and associated cost or schedule impacts on a change authorization form. Once documented, the IWT project manager reviews the change with the Client project manager. Scope changes are defined as any modification to the agreed scope of a project, including but not limited to requirements, software modules, configuration changes, project delays and enhancements or modifications to the product. Scope changes can require modification to cost, schedule, quality or other project deliverables and therefore require sign-off from the Client project manager. No work on scope changes will be

conducted until sign off is obtained. Changes that impact scope require approval from the IWT project manager and the Client project manager.

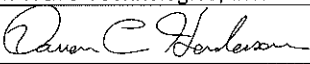
- (iii) Acceptance Process. Client will review any Work Product requiring explicit acceptance within five (5) business days of delivery and will document required adjustments. If IWT does not receive notice within the defined five-day period, each Work Product will be considered accepted. Within five (5) days, IWT will provide a revised Work Product that incorporates the agreed adjustments. In the event that Client does not accept the revised Work Product, the parties may agree to repeat this review and acceptance process one additional time. If disputes remain after repeating the acceptance process, the project team will refer these to IWT's and the Client's executive teams for resolution.
- (iv) Work Location. Unless otherwise specified, Client and IWT will perform all work at their respective locations.

6. Project Investment

Project Payment Schedule

Payment Item	Amount	Payment Schedule
Mobilization Fee	\$0	Remitted to IWT upon the start of the project.
Go-Live Fee	\$0	Remitted to IWT upon the preparation of the system for Go-Live following training and configuration.
Total Services	\$0	
Travel and Administrative Expenses Estimate	-0-	No travel is expected for this engagement.

IN WITNESS WHEREOF, each party hereto has caused this Exhibit to be executed and amended to the Agreement by its duly authorized representative.

IWT - Ion Wave Technologies, Inc.	Client - City of Brenham, Texas
Signed: 	Signed:
Printed Name: Darren C Henderson	Printed Name:
Printed Title: CEO	Printed Title:
Date: 08/28/2018	Date:

Ion Wave Technologies

5 Year Agreement

Year 1	\$13,600
Year 2	\$13,900
Year 3	\$14,200
Year 4	\$14,500
Year 5	\$14,900

Other Entities in Brazos Valley Group:

Brazos County
Bryan Texas Utilities
City of Bryan
City of College Station
San Jacinto River Authority



SUPPLIER REGISTRATION & MANAGEMENT

YOUR SUPPLIER SUCCESS CENTER

Ion Wave's Supplier Management module allows you to easily track and communicate with your suppliers. Suppliers can easily register and manage their profiles through a self-service portal.



SUPPLIER PORTAL

Suppliers easily register with the system using a step-by-step wizard. Once registered, they can easily maintain their profile, search for events, and view their past activity.



INSTANT NOTIFICATIONS

Suppliers are automatically notified about matching opportunities based on their commodity profile. Buyers can also send messages to suppliers based on a variety of criteria.



SUPPLIER ACTIVITY LOGS

Easily monitor supplier activity in the system, including login history, messages, and bidding activity.

EASILY NOTIFY AND COMMUNICATE WITH SUPPLIERS

Our system brings you closer than ever to suppliers. Buyers can easily notify groups of suppliers based on multiple commodity codes, diversity classes, or through a custom supplier list. Whether it's a notification, invitation, or reminder, your suppliers will always be up to date.

- ✓ Customizable Registration Process
- ✓ Easily Search & Export Supplier Data
- ✓ Audit Supplier Activity



TAKE A FREE TOUR OF OUR SYSTEM

If you like what you see so far, head over to our website where you can find even more information as well as some free resources to help get you started.

www.ionwave.net



ELECTRONIC BIDDING & SOURCING AUTOMATION

FAST. ACCURATE. COMPLIANT.

Ion Wave's Electronic Bidding platform streamlines the bidding process. Easily create, invite, receive, summarize, compare, and award solicitations in our user-friendly system.



INSTANT BID TABULATION

By leveraging the ability to collect information in specific format types (currency, multiple choice, text boxes, etc...) you are able to instantly collect, tabulate, and compare all bid responses.



PROACTIVE ERROR CHECKING

Comprehensive validation ensures your system has quality data, including automatic error checking of supplier responses prior to submission.



AIR TIGHT COMPLIANCE

Conduct both sealed and informal bidding events with fully featured supplier activity tracking and auditing. Sealed bid data is encrypted and only authorized users can unseal an event.

DESIGNED FOR PUBLIC PROCUREMENT

Ion Wave's Sourcing is built to tackle even the most complicated solicitations, including RFPs and construction bids. Buyers dictate the form and format of the information bidders will provide. This amount of customization ensures that you get consistent results across all suppliers, allowing for streamlined comparison and faster award decisions.

- ☒ Error Checking
- ☒ All or Nothing Options
- ☒ Attachment Management

Number	Description	Alvin Supply Company	Baker Brothers Inc.	Surplus Supply
1	8.5x11 Paper (White) 500 count pack Quantity: 200 UOM: Each Item Notes:	\$14,500	\$15,000	\$16,250
2	3x3 Sticky Notes - 100 count pack Quantity: 15 UOM: Each Item Notes: They are yellow,	\$4,000	\$3,750	\$4,000
3	Cardstock 8.5x11 500 count pack Quantity: 300 UOM: Each Item Notes:	\$6,300	\$8,000	\$7,200
4	5.25x7.25 Envelope (White) 50 count pack Quantity: 800 UOM: Each Item Notes:	\$6,300	\$8,000	\$7,200

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CONTRACT MANAGEMENT

AUTOMATE YOUR CONTRACT PROCESS

Ion Wave's Contract Management module allows you to easily track contracts and insurance certificates. Consolidate your contract information and documents in one online repository. If desired, contract information can also be published for public information purposes.



AUTOMATIC NOTIFICATIONS

The system generates email reminders of upcoming contract dates and certificate expirations. Both internal and external users (including suppliers) can receive reminders.



ATTACH & STORE DOCUMENTS

Upload an unlimited number of related files for each contract. Easily select and transfer documents from a linked bid event in Ion Wave's Electronic Bidding module.



EXCEPTIONS REPORTING

Easily view reports of contracts and insurance certificates that are past their end dates. Reports can be easily exported for use outside of the system.

TAKE CONTROL OF YOUR CONTRACTS

Ion Wave's Contract Management software lets you easily manage contracts and insurance certificates. Reminder emails, dashboards, and reports help your staff stay on top of the complex task of tracking multiple of contracts.

- ✓ Fully Customizable Fields
- ✓ Easily Search and Export Contract Data
- ✓ Integration With Bidding Module
- ✓ Centralized Repository

Expiring Insurance Certificates		
Vendor	Coverage	Date
Mike's Consulting	Professional	3 days
Logistics Supply Inc.	Auto Liability	4 days
SpeedTrack	General Liability	5 days
INT	General Liability	5 days
Furniture Co.	Auto Liability	1 Week
Flightline Ther	Workers Comp	2 Weeks
Real Line Plumbing	Workers Comp	1 Month

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AGENDA ITEM 10

DATE OF MEETING: October 18, 2018	DATE SUBMITTED: October 15 2018	
DEPT. OF ORIGIN: Administration	SUBMITTED BY: Jeana Bellinger	
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION	ORDINANCE: ☒ 1 ST READING ☐ 2 ND READING ☐ RESOLUTION
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending Chapter 18, Oil and Gas Production, of the Code of Ordinances for the City of Brenham		
SUMMARY STATEMENT: At the October 4, 2018 council meeting, an updated oil and gas production ordinance was presented to the City Council in work session. During the work session, the City Attorney advised Council that he would like to make a few minor revisions to the ordinance before presenting it for 1 st reading but felt that overall it was a good ordinance that would protect the rights of the City while complying with State law. A redline version of the City Attorney's suggested revisions since the October 4, 2018 work session discussion with Council are included in this packet for your review.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: (1) Redline version of the Oil and Gas Production Ordinance showing recommended text changes since work session discussion with Council on October 4, 2018.		
FUNDING SOURCE (Where Applicable): N/A		
RECOMMENDED ACTION: Approve an Ordinance, as presented, on its first reading amending Chapter 18, Oil and Gas Production, of the Code of Ordinances for the City of Brenham		
APPROVALS: James Fisher		

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING CHAPTER 18, OIL AND GAS PRODUCTION, OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS PROVIDING FOR THE REGULATION OF SURFACE ACTIVITY RELATED TO OIL AND GAS OPERATIONS; PROVIDING FOR A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PROPER NOTICE AND MEETINGS

WHEREAS, The City of Brenham ("City") is a Texas home-rule municipality; and

WHEREAS, as a home-rule municipality, Texas Local Government Code, Section 51.072 confirms that the City has the full power of local self-government; and

WHEREAS, the City Council of the City of Brenham is aware ~~that~~ oil and gas deposits may exist under portions of the City; and

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WHEREAS, the City desires any development of these natural resources to be done in a manner that protects the health, safety, and welfare of the public; and

WHEREAS, § 81.0523 of the Texas Natural Resources Code expressly authorizes the City to enact, amend, or enforce an ordinance or other measure that regulates above ground activity related to oil and gas operations so long as the regulations are: commercially reasonable; do not effectively prohibit an oil and gas operation conducted by a reasonably prudent operator; and are not otherwise preempted by state or federal law; and

WHEREAS, the City Council finds the following regulations governing above ground activity related to oil and gas operations within the City to be reasonable and beneficial to the general health, safety and welfare of the citizens of Brenham;

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

SECTION 1.

Chapter 18, Oil and Gas Production, of the Code of Ordinances of the City of Brenham, Texas, is hereby amended in its entirety to read as follows:

Sec. 18-1. Purpose

The exploration, development, and production of oil and gas deposits in the city necessitate reasonable regulation to ensure that all property owners, mineral and otherwise, have the right to

peaceably enjoy their property and its benefits and revenues. It is hereby declared to be the purpose of this chapter to establish reasonable and uniform limitations, safeguards and regulations for present and future above ground activity related to oil and gas operations including the exploring, drilling, developing, producing, transporting and storing of oil and gas and other substances produced in association with oil and gas operations within the city to protect the health, safety and general welfare of the public.

Sec. 18-2. Definitions

All technical industry words or phrases related to the drilling and production of oil and gas wells not specifically defined in this chapter shall have the meanings customarily attributable thereto by prudent and reasonable oil and gas industry operators. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandonment: As defined by the Railroad Commission of Texas and includes the plugging of the well and the restoration of any drill site as required by this chapter.

Above ground activity: Oil and gas operations that occur at or above the surface of the ground.

Agent: A person designated or appointed by an operator to sign the application for a permit and other documents on behalf of the operator.

Ambient noise level: The all-encompassing noise level associated with a given environment, being a composite of sounds from all sources at the location, constituting the normal or existing level of environment noise at a given location.

Building or habitable building: Any structure used or intended for supporting or sheltering any use or occupancy. The term "building" shall be construed as if followed by the words "or portions thereof."

City: The City of Brenham.

City code: The Code of Ordinances of the City of Brenham.

City attorney: The city attorney of the City of Brenham.

Closed loop mud system: A system utilized while drilling so that reserve pits are not used and instead steel bins are used to collect all drilling waste.

Commission: The Railroad Commission of Texas.

Daylight: The period from sunup to sundown as established for the city area by the NOAA Solar Calculator, adjusted for daylight savings as necessary.

Decible (dB): A unit of measuring the intensity of a sound/noise and is equal to 10 times the logarithm to the base 10 of the ratio of the measured sound pressure squared to a reference pressure, which is 20 micropascals.

Derrick: Any portable framework, tower, mast and/or structure, which is required or used in connection with drilling or re-working a well for the production of oil and gas.

Drilling: Digging or boring a new well for the purpose of exploring for, developing or producing oil, gas or other hydrocarbons, or for the purpose of injecting gas, water or any other fluid or substance into the earth.

Drilling operations: Drilling with drill pipe and pit, running casing, circulating mud and fluids, tripping tools and setting production casing/tubing.

Drill site: The premises used during the drilling or reworking of a well or wells located there and subsequent life of a well or wells or any associated operation.

Drought contingency plan: The City of Brenham drought contingency plan.

Exploration: Geologic or geophysical activities, including seismic surveys, related to the search for oil, gas or other subsurface hydrocarbons.

Extraterritorial jurisdiction (ETJ): The extraterritorial jurisdiction of the city as defined by state law.

Fee schedule: The list of fees **referenced** in Section 18-21 of this **Code of Ordinances**.

Federal Motor Carrier Safety Administration (FMCSA): An agency within the United States Department of Transportation (USDOT), established pursuant to the Motor Carrier Safety Improvement Act of 1999, dedicated to improving the safety of commercial motor vehicles (CMV) and saving lives.

Fire department: The fire department of the city.

Firewall, berm and/or secondary containment: The rules and regulations of the commission and other state or federal agencies describing the methods used to contain spills from storage tanks.

Flowback: The process of flowing a completed/fractured well for the purpose of recovering water and residual sand from the gas stream prior to sending gas down a sales line.

Fracture or fracturing: The process of breaking up/fracture stimulation fracture of a rock formation.

Gas: Any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure

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conditions and/or the gaseous components or vapors occurring in or derived from petroleum or natural gas.

Inspector: The city inspector or inspectors designated by the city manager of the city, including city staff or technical advisory consultants.

Nighttime: The period between sundown to sunup as established for the city area by the NOAA Solar Calendar, adjusted for daylight savings as necessary.

Oil and gas well: Any well drilled, to be drilled, or used for the intended or actual production of oil or natural gas. The terms "oil" or "gas" used in this chapter shall be interchangeable and shall mean either an oil well or gas well operation.

Operation site: The area used for development and production and all operational activities associated with oil or gas after drilling activities are complete.

Operator: For each well, the person listed on the railroad commission form W-1 or form P-4 for an oil or gas well that is, or will be, actually in charge and in control of drilling, maintaining, operating, pumping or controlling any well, including, without limitation, a unit operator. If the operator, as herein defined, is not the lessee under an oil or gas lease of any premises affected by the provisions of this chapter, then such lessee shall also be deemed to be an operator. In the event that there is no oil or gas lease relating to any premises affected by this chapter, the owner of the fee mineral estate in the premises shall be deemed an operator.

Pad site: The operations area containing the well or wells and accessory building and equipment.

Permit: The surface permit required by the city for any proposed drill site.

Person: Both the singular and the plural and means a natural person, a corporation, association, guardian, partnership, receiver, trustee, administrator, executor, and fiduciary or representative of any kind.

Protected use: A habitable building, including but not limited to: a residence, religious institution, public building, hospital building, or school; and a public park. Structures such as equipment buildings, pump houses and agricultural barns that are occupied on a daily basis for less than four (4) hours each day shall not be considered a protected use.

Public building: All buildings used or designed to and intended to be used for the purpose of assembly of persons for such purposes as deliberation, entertainment, business and commercial activities, amusement, or health care. Public buildings include, but shall not be limited to, churches, schools, theaters, assembly halls, malls, shopping centers, office buildings, auditoriums, armories, mortuary chapels, dance halls, exhibition halls, museums, gymnasiums, bowling lanes, libraries, skating rinks, courtrooms, restaurants, hospitals, medical clinics and offices, or any other building to which the public has access.

Public park: Any land area dedicated to and/or maintained by the city for traditional parklike recreational purposes.

Religious institution: Any building in which persons regularly assemble for religious worship and activities intended primarily for purposes connected with such worship or for propagating a particular form of religious belief.

Residence: A house, duplex, apartment, townhouse, condominium, manufactured home or other building designed for dwelling purposes, including those for which a building permit has been issued on the date the application for a surface permit is filed with the city secretary.

Rights-of-way: Public rights-of-way including streets, easements and other property within the city and which is dedicated to the use and benefit of the public.

Safety data sheet (SDS): Formerly known as MSDS or material safety data sheets to communicate the hazards of hazardous chemical products.

School: Any public or private, primary and secondary educational facilities providing education up through and including the twelfth grade level; any public or private technical institute, junior college, senior college or university, medical or dental unit, public state college, or other agency of higher education; and any licensed day care centers, meaning a facility licensed by the state or by the city that provides care, training, education, custody, treatment or supervision for more than six children under 14 years of age, and for less than 24 hours per day.

Street: Any street, highway, sidewalk, alley, avenue, recessed parking area or other public right-of-way, including the entire right-of-way.

Surface permit: The permit required by the city signifying the city regulation of the above ground activity related to an approved commission permit to drill an oil or gas well.

Tank: A container, covered or uncovered, used in conjunction with the drilling or production of oil, gas or other hydrocarbons for holding or storing fluids.

Technical advisor: Such person(s) familiar with and educated in the oil or gas industry or the law as it relates to oil or gas matters who may be retained from time to time by the city.

Well: A hole or holes, bore or bores, to any horizon, formation, or strata for the purpose of producing gas, liquid hydrocarbon, brine water or sulphur water, or for use as an injection well for secondary recovery, disposal or production of gas, or other hydrocarbons from the earth.

Sec. 18-3. City inspector

(a) **Authority to issue orders.** The city inspector shall have the authority to issue any orders or directives required to carry out the intent and purpose of this chapter and its particular provisions. Failure of any person to comply with any such order or directive shall constitute a violation of this

chapter. The city inspector may be a city staff member or may be a third-party consultant retained by the city.

(b) Authority to enter and inspect. The city inspector shall have the authority to enter and inspect any premises covered by the provisions of this chapter to determine compliance with the provisions of this chapter and all applicable laws, rules, regulations, standards or directives of the state. Failure of any person to permit access to the city inspector shall constitute a violation of this chapter. The city inspector shall conduct periodic inspections at least once a year of all permitted drill sites in the city to determine that the drill sites are operating in accordance with proper safety parameters as set out in this chapter and all regulations of the commission.

(c) Authority to request records. The city inspector shall have the authority to request and receive any records, including any records sent to the commission, logs, reports and the like, relating to the status or condition of any permitted well necessary to establish and determine compliance with the applicable surface permit. Failure of any person to provide any such requested material shall be deemed a violation of this chapter.

(d) Report violations. The city inspector will report any perceived violation of commission rules and regulations (i.e. spillage) to the commission within twenty-four (24) hours after observation or after confirming a report from a citizen.

Sec. 18-4. Operator's agent

Every operator of any well shall designate an agent, who is a resident of the state, upon whom all orders and notices provided in this chapter may be served in person or by registered or certified mail. Every operator so designating such agent shall within ~~ten (10) days~~ notify the city inspector in writing of any change in such agent or such mailing address unless operations within the city are discontinued.

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Sec. 18-5. Surface permit required

(a) Permit required. A person wanting to engage in and operate in oil or gas production activities shall apply for and obtain a surface permit from the city after receiving the approved commission permit to drill. The city permit shall be for all above ground activity related to oil and gas operations. It shall be unlawful for any person acting either for himself or acting as agent, employee, independent contractor, or servant for any person to drill any well, assist in any way in the site preparation, reworking, fracturing or operation of any such well or to conduct any activity related to the production of oil or gas without first obtaining a surface permit issued by the city in accordance with this chapter. Such activities include, but are not limited to reworking, initial site preparation, drilling, operation, construction of rigs or tank batteries, fracturing and pressurizing.

(b) No blanket permits. The operator must apply for and obtain a surface permit for each drill site. Each proposed drill site shall require a separate permit and shall not be permitted on a "blanket" basis.

(c) Permit required to re-enter abandoned well. A surface permit shall not constitute authority for the re-entering and drilling of an abandoned well. An operator shall obtain a new surface permit in accordance with the provisions of this chapter if the operator is re-entering and/or drilling an abandoned well.

(d) Permit expiration date. A surface permit shall automatically terminate, unless extended by the city inspector, if drilling is not commenced within one hundred eighty (180) calendar days from the date of the issuance of the surface permit. The city inspector may extend a surface permit for an additional one hundred eighty (180) calendar days upon request by the operator and proof that the engineering site plan for the requested surface permit for such location has not changed.

(e) Other permits may be necessary. The surface permits required by this chapter are in addition to and are not in lieu of any permit, which may be required by any other provision of this code or by any other governmental agency.

(f) No additional permits or fees. No additional surface permit or filing fees shall be required for:

(1) Existing wells. Any wells, existing, previously permitted or approved by the city, within the corporate limits of the city on the effective date of this chapter;

(2) Drilling commenced on effective date of chapter. Any wells which drilling has commenced on the effective date of this chapter;

(3) Land annexed after effective date of chapter. Any wells in existence or on any wells on which drilling has commenced on land annexed into the city after the effective date of this chapter; or

(1) Application filed prior to annexation. Any well that was planned for the land before the ninetieth (90th) calendar day before the effective date of its annexation and one or more licenses, certificates, permits, approvals, or other forms of authorization by a governmental entity were required by law for such well and the completed application for the initial authorization was filed before the date the annexation proceedings were instituted.

(g) No permit issued in floodway. No surface permit shall be issued for any well to be drilled within any floodway as defined by the most current FEMA map.

(h) Permits in floodplains. Surface permits may be issued on property located in a floodplain, provided that all water and drilling materials must be in steel containers except for the concrete pad. An engineer's certificate shall be provided showing no negative impact on water flow in the floodplain.

(i) City-owned property. No surface permit shall be issued for any well to be drilled on city-owned property without the prior consent of the city council.

(j) Operator agrees to comply with chapter. By acceptance of any surface permit issued pursuant to this chapter, the operator expressly stipulates and agrees to be bound by and comply with the provisions of this chapter. The terms of this chapter shall be deemed to be incorporated in any surface permit issued pursuant to this chapter with the same force and effect as if this chapter was set forth verbatim in such surface permit.

Sec. 18-6. Surface permit application and filing fees

(a) The surface permit may only be issued subsequent to a commission approved permit associated with exploration, drilling, production and transportation.

(b) Application in writing. Every application for a surface permit issued pursuant to this chapter shall be in writing signed by the operator, or an appointed agent duly authorized to sign on his behalf, and filed with the city secretary of the city. As soon as practical, the city secretary shall have the application delivered to the city inspector.

(c) Application accompanied by permit fee. Every application shall be accompanied by a permit fee for each drill site as set forth in the fee schedule referenced in Section 18-21.

(d) Application shall include. An application for a surface permit shall include all the requirements of this section of this chapter as well as impacted vegetation, creeks and other topographic features, adjacent building and other structures and the measured distance from the well site to these buildings and structures, temporary and permanent fencing and landscaping. The application shall include the following information:

(1) Date. The date of the application for a surface permit.

(2) Legal description. An accurate legal description of the tract or parcel of real property, leased or owned, to be used for the oil or gas operation. Property recorded by plat should reference subdivision, block and lot numbers.

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(3) Map. Map showing proposed transportation route and road for equipment, chemicals or waste products used or produced by the oil or gas operation and the number of truck trips, truck types and weight, loaded and unloaded, turning movements associated with truck and vehicle traffic, proposed access points and proposed traffic-control devices.

(4) Well name. Proposed well name.

(5) Surface owner name. Surface owner names(s) and address(es) of the lease property.

(6) Name mineral owner/lessee. Mineral owner/lessee name and address.

- (7) Name operator. Operator/applicant name and address and if the operator is a corporation, the state of incorporation, and if the operator is a partnership, the names and addresses of the general partners.
- (8) Person to receive reports. Name and address of individual designated to receive notice.
- (9) Supervisory authority. Name of representative with supervisory authority over all oil or gas operation site activities and a 24-hour phone number.
- (10) Location of improvements. Location and description of all improvements and structures within six hundred (600') feet of the proposed well.
- (11) Owners. Owner and address of each parcel of property within six hundred (600') feet of the proposed drill site.
- (12) Site plan. A site plan of the proposed operation site showing the location of all improvements and equipment, including the location of the proposed well(s) and other facilities, including, but not limited to, tanks, pipelines, compressors, separators and storage sheds. The site plan shall include all existing utilities, public roadways, driveways, alleys, all public access points, floodways and floodplains.
- (13) Emergency contact person. The name, address and 24-hour phone number of the person to be notified in case of an emergency.
- (14) Road maintenance agreement. An original executed citywide road maintenance agreement signed and approved by city must be filed with the city secretary that provides that the operator shall repair, at his own expense, damage to roads or streets caused by the use of heavy vehicles for any activity associated with the preparation, drilling, production, transportation and operation of oil and or gas wells, in accordance with the rights of the city to regulate above ground activity. City shall determine degree of damage and dollar amount owed. Failure of operator to reimburse city within thirty (30) days of billing may result in forfeiture of security bond.
- (15) Public utilities. A description of public utilities required during drilling and operation.
- (16) Water source. A description of the water source to be used during drilling.
- (17) Fees. All required application and surface permit fees.
- (18) Noise management plan. A noise management plan complying with all requirements of the city. The noise management plan shall address the following:

- (A) Description of proposed equipment and potential noise impacts. This analysis must include a comparison of the potential noise generation with the applicable noise standards;
 - (B) Identify all noise mitigation techniques that will be implemented on the site including blankets/curtains, sound walls, and mufflers for generators and motors, if any;
 - (C) Best management practices used to reduce the impact of noisier operations such as pipe deliveries and use of horns for communication; and
 - (D) Maximum noise levels anticipated at the drill site.
- (19) Screening. A screening, fencing and landscape plan detailing compliance with all landscape and screening requirements required by this chapter, including a proposed schedule detailing the timing of all landscaping, screening and fencing to be installed.
- (20) Irrigation plan. A landscape irrigation plan as designed by a state-licensed professional detailing the appropriate type of irrigation for the site; measures to be taken to adequately irrigate all landscaping, including indicating the water source for irrigation and the proposed efforts to replace dead or dying screening vegetation. All trees on site shall be irrigated by a bubbler system.
- (21) Encroachment agreements. A copy of all applicable right-of-way encroachment agreements.
- (22) Dust mitigation plan. A dust mitigation plan detailing measures to be implemented to mitigate and suppress dust generated at the drill site and the private vehicle access route, including a mud shaker for vehicles exiting the site.
- (23) Waste. A waste management plan that addresses human, solid and drilling production waste.
- (24) Third-party contracts. Copies of all third-party contracts related to:
- (A) Emergency services, including firefighting and control of well;
 - (B) Site operations and maintenance; and
 - (C) Well monitoring and testing.
- (25) Commission permit required. A copy of the approved commission permit to drill together with attachments and survey plats which are applicable to the drill and operation sites.

(26) Stormwater pollution. A copy of the stormwater pollution prevention plan as required by the environmental protection agency. A copy of the notice of intent shall be submitted to the city five (5) calendar days prior to the commencement of any onsite activity.

(27) Depth of usable water. A copy of the determination by the Texas Commission on Environmental Quality (TCEQ) of the depth of useable quality groundwater.

(28) Insurance and security. Evidence of insurance and security requirements under this chapter.

(29) Sworn statement. A statement, under oath, signed by the operator, or designated representative, that the information submitted with the application is, to the best knowledge and belief of the operator or designated representative, true and correct.

Sec. 18-7. Surface permits; procedure

(a) Permit required. A surface permit shall be required for all proposed drill sites.

(b) Setback. Any application that has proposed a drill site that is six hundred feet (600') or less from a protected use shall be rejected. This provision applies to any existing building, including but not limited to, a residence, religious institution, public building, hospital building, school or public park or any building for which a building permit has been issued on the date the application for a permit is filed with the city secretary. Drill sites located more than six hundred (600') feet from a protected use, may be approved by the city inspector. For the purpose of such surface permit, the measurement of the six hundred (600') foot distance shall be made from the well bore, in a straight line, without regard to intervening structures or objects, to the closest exterior point of the building.

(c) Notice and sign. Upon notification by the city inspector that the permit application is complete, within ten (10) days, operator/applicant shall publish notice in a local newspaper for two consecutive weeks that a permit application has been submitted to the city. Notice shall contain the location of proposed well, name of operator/applicant, mineral owner/lessee name and contact information for operator/applicant and city inspector. Notice shall direct questions to operator/applicant and concerns to city inspector. In addition, within the ten (10) days, a sign will be erected on the drill site or the nearest public right-of-way, if the sign would not be visible from the drill site. The sign shall indicate that an oil or gas well is proposed for the site, name of operator/applicant and contact information for operator/applicant and the city inspector.

(d) Permitting procedure. After a complete permit application is submitted, the city inspector shall evaluate the public impact of the proposed activity. The city inspector shall consider the proposed site and the proposed above ground activity related to oil and gas operation or drilling program and shall identify restrictions or conditions, including minimum separation distance for drilling or other operations, special safety equipment and procedures, noise reduction levels, screening and any other requirements the city inspector deems appropriate. If the proposed drill site are located more than six hundred (600') feet from a protected use for which a building permit

has been issued on the date the application for a permit is filed with the city secretary, the Inspector may, consistent with state law, accept or reject the application in the interest of securing compliance with this chapter, this code and/or to protect the health, safety and welfare of the community. An applicant may appeal a decision of the city inspector through the city manager to the city council.

(e) Well and tank battery setbacks for surface permit.

(1) Setback from parks. Tank batteries, storage tanks, facilities and equipment, other than the well itself, shall be located at least six hundred (600') feet from any public park or from any protected use (unless prior consent is obtained through the city manager). The distance shall be calculated from the closest tank batteries, facilities and/or equipment, in a straight line, without regard to intervening structures or objects, to the closest exterior point of the building, or to the closest property line of the park.

(2) Landscape buffer. There will be a minimum twenty-five (25') feet landscape buffer on all sides of the area adjacent to and outside of the fencing on any pad site.

(f) Fencing for surface permit.

(1) Fences. Fences shall not be required on drill sites during initial drilling, completion or re-working operations as long as 24-hour on-site supervision is provided. Within thirty (30) calendar days after production has been established, the operation site shall be completely enclosed by an opaque fence or separate opaque fences may be installed to enclose individual facilities on drill site, such as pump jack, storage tanks or other production related facilities. The fences shall be a minimum height of five (5') feet and not higher than eight (8') feet. All shall be built in a manner that is safe enough to protect children in accordance with the attractive nuisance doctrine. In addition to fences, a secured entrance gate shall be required. All gates are to be kept locked when the operator or operator's employees are not within the enclosure.

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(2) Gate specifications. The gate shall meet the following specifications:

(A) Each gate shall be not less than twelve feet (12') wide and the height of the fence and be composed of two (2) gates, each of which is not less than six feet (6') wide, or one sliding gate not less than twelve feet (12') wide. If two gates are used, gates shall latch and lock in the center of the span. If fencing is intended to protect pump jack, storage tanks or other production related facilities and no trucks will be inside enclosure, city inspector may specify a reasonable sized walk through gate;

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(B) The gates shall be of metal frame construction that meets the applicable city specifications, or of other approved material;

(C) The gates shall be provided with a combination catch and locking attachment device for a combination padlock, and shall be kept locked, except when being used for access to the site;

(D) Operator must provide the fire department chief and the city inspector with a "Knox Padlock" or "Knox Box with a key" to access the drill site to be used only in case of an emergency. The fire chief shall determine the type. In the event a key is not provided or the lock is inoperable, the fire department shall be authorized to cut a lock or chain to gain access.

(g) Landscaping. A plan for landscaping and irrigation shall be provided with the surface permit application. Landscaping and irrigation shall be required as determined by city manager or designee along all sides of the drill site with suitable screening done via a combination of trees and shrubs that complement the natural character of the surrounding neighborhood. A three foot (3') separation should be maintained between the fence and vegetative screening. Care should be taken when selecting trees and shrubs to anticipate the ultimate size of the plant so that the tree or shrub maintains a three foot (3') separation from the fence at maturity. The landscaping within ten years should characterize a natural screening of the pad site within one hundred feet (100') from all sides. The site should be well kept and mowed at all times. The following tree preservation and planting measures are required:

(1) Tree spacing. A minimum twenty-five foot (25') landscape buffer outside the operation site shall contain a tree for every forty linear feet (40'). Existing trees within the buffer may be counted as part of the required plantings. The following requirements apply to all surface permits.

(A) A minimum retention of twenty-five percent (25%) of the existing trees will be required unless removal is necessary for location of equipment as determined by the city inspector.

(B) No more than twenty-five percent (25%) of the same species may be planted at one (1) site.

(C) A minimum of twenty-five percent (25%) of the planted trees must be an evergreen species.

(D) The minimum size of tree planted will be three (3") inches in diameter measured one foot above ground level. If the tree is multi trunk, the main stem will be given full credit for its diameter and all other stems will receive one-half (1/2) credit. The total of all must be three (3") inches or greater.

(E) All trees that die within two (2) years of the date of project completion will be replaced with a new tree. The replacement tree carries the same two-year replacement requirement. A replacement tree that dies within two (2) years of planting will be replaced by the operator or agent, and a new two-year guarantee will begin at the time of replacement.

(F) All other interpretations of the regulations will be made by the city.

(2) Clear cut prohibition. The clear cutting of trees is prohibited within the city. Cutting of trees, grading, and land clearing may be done for an oil or gas well drilling pad site in accordance with the approved site plan. The remainder of the site beyond the pad and the landscape buffer shall not be disturbed without approval in the permit.

(h) Vehicle routes for surface permit.

(1) Routes. Vehicles associated with drilling and/or production in excess of three tons shall be restricted to such streets designated as either State Highway, Farm to Market, or truck routes or commercial delivery routes by the city wherever capable of being used. The vehicles shall be operated on a commercial delivery route only when it is not possible to use a State Highway, Farm to Market, or truck route to fulfill the purpose for which such vehicle is then being operated. Commercial delivery route means any street or highway so designated by the city council for the use by any commercial motor vehicle, truck-tractor, trailer, semitrailer, or any combination thereof. All vehicles shall comply with Federal Motor Carrier Safety Administration (FMCSA) regulations.

(2) Road maintenance agreement. A citywide road maintenance agreement will be required for the above ground activity associated with any gas or oil well drilling operation that uses city maintained streets for access to their well site, whether the wells are within the city limits or outside the city limits. City shall determine degree of damage, the amount owed and shall bill the operator annually. Failure of the operator to pay the amount owed within thirty (30) days may result in forfeiture of ~~or draw upon~~ the fiscal security provided to the city.

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(3) Streets free from debris. The operator shall keep thoroughfares throughout the city free from dirt, dust, mud or other debris deposited by vehicles involved in the well drilling or servicing or pipeline installation process. The operator shall eliminate dirt, dust, mud or other debris accumulations within two (2) hours of notification by the city. If for safety or other reasons, the city elects to perform the removal, the cost of such removal shall be paid by the operator.

(i) Work hours for surface permit. Site development, other than drilling, shall be conducted only during daylight hours. Truck deliveries of equipment and materials associated with drilling and/or production, well servicing, site preparation and other related work conducted on the drill site shall be limited to daylight hours except in cases of fires, blowouts, explosions and any other emergencies or where the delivery of equipment is necessary to prevent the cessation of drilling or production. All formation fracture stimulation operations shall be conducted during daylight hours as defined by this chapter. "Flowback" operations to recover fluids used during fracture stimulation shall be exempt from work hour restrictions, subject to compliance with noise restrictions contained in this chapter. All workover operations shall be restricted to daylight hours.

(j) Noise restrictions for surface permit. In no case shall any drilling, producing or other operations produce a sound level greater than 78 decibels (dB) when measured at a distance of three hundred feet (300') from the production equipment in question. If ambient noise level exceeds 78 dB, that ambient level will be the maximum allowable noise level under all circumstances.

(1) Noise management plan. Prior to the issuance of a surface permit and the commencement of operations, the operator shall submit a noise management plan, approved by the city, detailing how the equipment used in the drilling, completion, transportation, or production of a well complies with the maximum permissible noise levels of this section. The noise management plan must:

- (A) Identify operation noise impacts;
- (B) Provide documentation establishing the ambient noise level prior to construction of any wellhead, compressor or compression facility; and
- (C) Detail how the impacts will be mitigated. In determining noise mitigation, specific site characteristics shall be considered, including but not limited to the following:
 - (i) Nature and proximity of adjacent development, location, and type;
 - (ii) Seasonal and prevailing weather patterns, including wind directions;
 - (iii) Vegetative cover on or adjacent to the site; and
 - (iv) Topography.

The operator shall be responsible for verifying compliance with this section and the noise management plan after the installation of the noise generation equipment.

(2) Noise level. No well shall be drilled, re-drilled or any equipment operated at any location within the city in such a manner so as to create any noise which causes the exterior noise level when measured at the protected use receiver's/receptor's property line or from the closest exterior point of the protected use structure or inside the protected use structure if access to the property is granted by the receiver/receptor, that:

- (A) Exceeds the ambient noise level by more than five (5) dB during daytime hours and more than three (3) dB during nighttime hours;
- (B) Exceeds the ambient noise level by more than ten (10) dB over the daytime average ambient noise level during fracturing operations during daytime hours. No fracturing shall be allowed during nighttime hours except for flowback operations related to fracturing as provided in subsection (C) below;

(C) Exceeds the ambient noise level by more than three (3) dB during flowback operations during nighttime hours.

(3) Predrilling noise level. Prior to the issuance of a surface permit the operator shall hire an independent third party to take ambient noise readings over a seventy-two (72) hour period, including at least one (1) twenty-four (24) hour reading during a Saturday or Sunday. The operator shall use the seventy-two (72) hour predrilling ambient noise level as the base for the installation of any new noise generation equipment unless the operator can demonstrate that the increase in the ambient noise level is not associated with drilling and production activities located either on or off-site.

(4) Citation for violation. A citation may be issued immediately for failure to comply with the provisions of this section. However, if the operator is in compliance with an approved noise management plan, and a violation occurs, the operator will be given twenty-four (24) hours from notice of noncompliance to correct the violation from an identified source before a citation is issued or other enforcement action is taken. Additional extensions of twenty-four (24) hour periods may be granted in the event that the source of the violation cannot be identified after reasonable diligence by the operator.

(k) Tank specifications for a surface permit. The construction and installation of all tanks and permanent structures shall conform to the requirements of the commission and any other local, state or federal agency. The top of the tanks shall be no higher than fifteen feet (15'). All tanks shall be set back pursuant to the standards of the commission and the National Fire Protection Association, but in all cases, shall be at least twenty-five feet (25') from any public right-of-way or property line. All transport trucks shall be filled on site, not on public rights-of-way or streets.

(l) Inclusive of all provisions. All other provisions outlined in this chapter shall be required.

Sec. 18-8. Issuance of surface permits

(a) Permit approval or denial. It is the responsibility of the city inspector to review and approve or disapprove based on the criteria established by this chapter all applications for surface permits for drill sites located more than six hundred feet (600') from a protected use for which a building permit has been issued on the date the application for a permit is filed with the city inspector. City inspector, within thirty (30) calendar days of the receipt of a complete application demonstrating compliance with all applicable requirements of this chapter, and remittance of all fees, insurance and security per the requirements of this chapter for a surface permit, shall issue a surface permit for the drill site, including the installation of the facilities.

(b) Building permits issued on date of filing application. The provisions of this chapter shall apply to any dwellings or buildings for which an application for a building permit has been submitted on the date the application for a surface permit is filed with the city inspector.

(c) Notice of denial. If the city inspector denies a surface permit application, he/she shall notify the operator in writing of such denial stating the reasons for the denial. Within thirty (30) calendar

days of the date of the written decision of the city inspector to deny the surface permit, the operator may:

- (1) Cure the reason(s) for denial. Cure those conditions that caused the denial and resubmit the application to the city inspector for approval and issuance of the surface permit; or
- (2) Appeal. File an appeal through the city manager to the city council under the provisions outlined in this chapter.

Sec. 18-9. Amended surface permits

An operator may request to amend a surface permit, to relocate a drill site or operation site that was shown on the application, provided the distance from a protected use is not less than six hundred feet (600').

Sec. 18-10. Transfer of surface permit

(a) Written request. A surface permit may be transferred upon written request by the operator with the consent of the city:

- (1) Transferee agreement. If the transferee agrees to be bound by the terms and conditions of the current surface permit and citywide road maintenance agreement;
- (2) Update information. If all information previously provided to the city as part of the current surface permit application is updated to reflect any changes; and
- (3) Insurance and security. If the transferee provides the insurance and security required by this chapter.

(b) Insurance and security. The insurance and security provided by the transferor shall be released if a copy of the written transfer is provided to the city. The transfer shall not relieve the transferor from any liability to the city arising out of any activities conducted prior to the transfer.

(c) Transfer fee. Applications for the transfer of surface permits shall be filed with the city inspector. The application fee for the transfer as set forth in the fee schedule referenced in Section 18-21 and shall accompany each surface permit transfer application.

Sec. 18-11. Suspension or revocation of surface permit; effect

(a) Suspension or revocation. If an operator (or its officers, employees, agents, contractors, or representatives) fails to comply with any requirement of a surface permit (including any requirement incorporated by reference as part of the surface permit), the city inspector shall give written notice to the operator specifying the nature of the failure and giving the operator a reasonable time to cure, taking into consideration the nature and extent of the failure, the extent of the efforts required to cure, and the potential impact on the health, safety, and welfare of the

community. In no event, however, shall the cure period be less than thirty (30) calendar days unless the failure presents a risk of imminent destruction of property or injury to persons or unless the failure involves the operator's failure to provide periodic reports as required by this chapter.

(b) Failure to correct. If the operator fails to correct the noncompliance within thirty (30) calendar days from the date of the notice, the city inspector may suspend or revoke the surface permit pursuant to the provisions of this chapter.

(c) Appeal. Operator may, within thirty (30) calendar days of the date of the decision of the city inspector in writing to suspend or revoke a surface permit, file an appeal through the city manager to the city council under the provisions outlined in this chapter.

(d) No work performed during suspension or revocation. No person shall carry on any operations performed under the terms of the surface permit issued under this chapter during any period of any surface permit suspension or revocation or pending a review of the decision or order of the city in suspending or revoking the surface permit. Nothing contained herein shall be construed to prevent the necessary, diligent and bona fide efforts to cure and remedy the default or violation for which the suspension or revocation of the surface permit was ordered for the safety of persons or as required by the city council.

Sec. 18-12. Periodic reports

(a) Report timing. The operator shall notify the city inspector of any changes to the following information within one business week after the change occurs:

(1) Name. The name, address, and phone number of the operator;

(2) Name of person to receive notice. The name, address, and phone number of the person designated to receive notices from the city (which person must be a resident of the state that can be served in person or by registered or certified mail); and

(3) Emergency action response plan. The operator's emergency action response plan (including "drive-to-maps" from public rights-of-way to each drill site).

(b) Contact information for person with supervisory authority. The operator shall notify the city inspector of any change to the name, address, and 24-hour phone number of the person(s) with supervisory authority over drilling or operations activities within one (1) business day.

(c) Incident reports. The operator shall provide a copy to the city of any "incident reports" or written complaints submitted to the commission within thirty (30) calendar days after the operator has notice of the existence of such reports or complaints.

(d) Annual report. Beginning on December 31st after each well is completed, and continuing on each December 31st thereafter, until the operator notifies the city inspector that the well has been abandoned and the site restored, the operator shall submit a written report to the city inspector

identifying any changes to the information that was included in the application for the applicable surface permit that have not been previously reported to the city.

(e) Annual site inspection. The city inspector shall perform an annual site inspection to insure that the operator is conducting operations in compliance with the surface permit and the provisions of this chapter and to verify the accuracy of the information reported pursuant to this section. The operator shall pay an annual inspection fee in an amount that as set forth in the fee schedule referenced in Section 18-21. The annual inspection fee shall be paid no later than May 30th of each year.

(f) Follow up inspection. Incidents requiring notification to the commission shall require a follow up inspection by the city inspector. The fee for said follow up inspection as set forth in the fee schedule referenced in Section 18-21. Said fee shall be paid within thirty (30) calendar days of being notified of the need for a follow up inspection.

Sec. 18-13. Bond, irrevocable letter of credit, indemnity, insurance

(a) General requirements. The operator shall be required to perform the items listed below:

(1) Comply with terms of chapter. Comply with the terms and conditions of this chapter and the surface permit issued hereunder.

(2) Restore to conditions existing prior to operation. Promptly clear drill and operation sites of all litter, trash, waste and other substances used, allowed, or occurring during operations; and after abandonment or completion grade, level, and restore such property to the same surface conditions as nearly as possible as existed before operations.

(3) Indemnify and hold harmless. Indemnify and hold harmless the city, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person or for damage to any property arising out of or in connection with the work done by operator under a surface permit:

(A) Where such injuries, death or damages are caused by operator's sole negligence or the joint negligence of operator and any other person or entity; and

(B) Regardless of whether such injuries, death or damages are caused in whole or in part by the negligence of operator.

(4) Pay fines. Promptly pay all fines, penalties and other assessments, including but not limited to road damage, imposed due to breach of any terms of the surface permit; and

(5) Restore to former condition. Promptly restore to its former condition any public property damaged by the oil or gas operation.

(b) **Bond.** Prior to the issuance of a surface permit the operator shall provide the city inspector with a security instrument in the form of a bond. The bond shall be executed by a reliable surety company appearing the in the U.S. Department of the Treasury Circular 570 list of approved sureties, authorized to do business in the state of Texas, acceptable to the city. The bond shall become effective on or before the date the surface permit is issued and shall remain in force and effect for at least a period of six (6) months after the expiration of the surface permit term or until the well is plugged and abandoned and the site is restored, whichever occurs first. The operator shall be listed as principal and the instrument shall be for the benefit of the city, as obligee, and shall be conditioned that the operator will comply with the terms and regulations of this chapter and the city. The city shall be authorized to draw upon such bond to recover any fines, penalties or road damages assessed under this chapter. The original bond shall be submitted to the city secretary with a copy of the same provided to the city inspector.

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(c) **Letter of credit.** In lieu of a bond, the operator may choose to provide an irrevocable letter of credit which shall be issued by a reliable bank authorized to do business in the state of Texas and shall become effective on or before the date the surface permit is issued. The letter of credit shall remain in force and effect for at least a period of six (6) months after the expiration of the surface permit term. The city shall be authorized to draw upon such letter of credit to recover any fines or penalties or road damages assessed under this chapter. Evidence of the execution of a letter of credit shall be submitted to the city secretary by submitting an original signed letter of credit from the banking institution, with a copy of the same provided to the inspector.

(d) **Security amount.** The principal amount of any security instrument shall be fifty thousand dollars (\$50,000.00) for any single well. If, after completion of a well, the applicant/operator, who initially posted a fifty thousand dollar (\$50,000.00) bond or irrevocable letter of credit has complied with all of the provisions of this chapter and whose well is in the producing stage and all drilling operations have ceased, may submit a request to the city inspector to reduce the existing bond or irrevocable letter of credit to ten thousand dollars (\$10,000.00) for the remainder of the time the well produces without reworking. During reworking operations, the amount of the bond or irrevocable letter of credit shall be maintained at fifty thousand dollars (\$50,000.00). An operator drilling or reworking between one (1) and five (5) wells at any given time may elect to provide a blanket bond or irrevocable letter of credit in the principal minimum amount of one hundred fifty thousand dollars (\$150,000.00). If the operator drills or reworks more than five wells at a time, the blanket bond or irrevocable letter of credit shall be increased in increments of fifty thousand dollars (\$50,000.00) per each additional well. Once the wells are in the producing stage and all drilling operations have ceased, the operator may elect to provide a blanket bond or irrevocable letter of credit for the remainder of the time the wells produce, without reworking, as follows:

Number of Producing Wells	Blanket Bond or Irrevocable Letter of Credit Amount Required
Up to 10 wells	\$100,000.00
10 to 50 wells	\$150,000.00
More than 50 wells	\$200,000.00

(e) City council to determine sufficiency of security. If at any time after no less than a fifteen (15) day written notice to the operator and a public hearing, the city council shall deem any operator's bond or irrevocable letter of credit to be insufficient, it may require the operator to increase the amount of the bond or irrevocable letter of credit up to a maximum of two hundred fifty thousand dollars (\$250,000.00) per well.

(f) Written notice of default. Whenever the city inspector finds that a default has occurred in the performance of any requirement or condition imposed by this chapter, a written notice shall be given to the operator. Such notice shall specify the work to be done and the period of time deemed by the city inspector to be reasonably necessary for the completion of such work. After receipt of such notice, the operator shall provide the estimated cost and, within the time therein specified, either cause or require the work to be performed, or failing to do so, shall pay over to the city one hundred twenty-five (125%) percent of the estimated cost of doing the work. In no event, however, shall the cure period be less than thirty (30) calendar days, unless the failure presents a risk of imminent destruction of property or injury to persons or unless the failure involves the operator's failure to provide periodic reports as required by this chapter. The city shall be authorized to draw against any bond or irrevocable letter of credit to recover such amount due from the operator. Upon receipt of such monies, the city shall proceed by such mode as deemed convenient to cause the required work to be performed and completed, but no liability shall be incurred other than for the expenditure of said sum in hand. In the event that the well has not been properly abandoned under the regulations of the commission and/or this chapter, such additional money may be demanded from the operator as is necessary to properly plug and abandon the well and restore the drill site in conformity with the regulations of this chapter.

(g) Other legal action. In the event the operator does not cause the work to be performed and fails or refuses to pay over to the city the estimated cost of the work to be done, or the issuer of the security instrument refuses to honor any draft by the city against the bond or irrevocable letter of credit, the city may proceed to obtain compliance and abate the default by way of civil action against the operator, or by criminal action against the operator, or by both such methods.

(h) Termination of securities. When the well or wells covered by said bond or irrevocable letter of credit have been properly abandoned in conformity with all regulations of this chapter, and in conformity with all regulations of the commission and notice to that effect has been received by the city, or upon receipt of a satisfactory substitute, the bond or irrevocable letter of credit issued in compliance with these regulations shall be terminated and cancelled.

(i) Insurance. In addition to the bond or irrevocable letter of credit required pursuant to this chapter, the operator shall carry a policy or policies of insurance issued by an insurance company or companies authorized to do business in the state of Texas. In the event such insurance policy or policies are cancelled, the surface permit shall be suspended on such date of cancellation and the operator's right to operate under such surface permit shall immediately cease until the operator files additional insurance as provided herein.

(1) General requirements applicable to all policies.

- (A) The city, its officials, employees, agents and officers shall be endorsed as an "additional insured" to all policies except employer's liability coverage under the operator's workers compensation policy.
- (B) All policies shall be written on an occurrence basis except for environmental pollution liability (seepage and pollution coverage) and excess or umbrella liability, which may be on a claims-made basis.
- (C) All policies shall be written by an insurer with an A-: VIII or better rating by the most current version of the A. M. Best Key Rating Guide or with such other financially sound insurance carriers acceptable to the city.
- (D) Deductibles shall be listed on the certificate of insurance and shall be on a "per occurrence" basis unless otherwise stipulated herein.
- (E) Certificates of insurance shall be delivered to the City of Brenham, City Manager, P.O. Box 1059, Brenham, Texas 77834, evidencing all the required coverage's, including endorsements, prior to the issuance of a surface permit.
- (F) All policies shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the city.
- (G) Any failure on part of the city to request required insurance documentation shall not constitute a waiver of the insurance requirement specified herein.
- (H) Each policy shall be endorsed to provide the city a minimum thirty (30) calendar day notice of cancellation, nonrenewal, and/or material change in policy terms or coverage. A ten (10) calendar days' notice shall be acceptable in the event of nonpayment of premium.
- (I) During the term of the surface permit, the operator shall report, in a timely manner, to the city inspector any known loss occurrence which could give rise to a liability claim or lawsuit or which could result in a property loss.
- (J) Upon request, certified copies of all insurance policies shall be furnished to the city.
- (2) Standard commercial general liability policy. This coverage must include premises, operations, blowout or explosion, products, completed operations, sudden and accidental pollution, blanket contractual liability, underground resources damage, broad form property damage, independent contractors' protective liability and personal injury. This coverage shall be a minimum combined single limit of one million dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.
- (3) Excess or umbrella liability.

(A) Five million dollars (\$5,000,000.00) excess, if the operator has a standalone environmental pollution liability (EPL) policy. Ten million dollars (\$10,000,000.00) excess, if the operator does not have a standalone EPL policy.

(B) Coverage must include an endorsement for sudden or accidental pollution. If Seepage and pollution coverage is written on a "claims made" basis, the operator must maintain continuous coverage and purchase extended coverage period insurance when necessary.

(4) Environmental pollution liability coverage.

(A) Operator shall purchase and maintain in force for the duration of the surface permit, insurance for environmental pollution liability applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense or settlement of claims; all in connection with any loss arising from the insured site. Coverage shall be maintained in an amount of at least one million dollars (\$1,000,000.00) per loss, with an annual aggregate of at least five million dollars (\$5,000,000).

(B) Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste material or other irritants, contaminants or pollutants.

(C) The operator shall maintain continuous coverage and shall purchase extended coverage period insurance when necessary. The extended coverage period insurance must provide that any retroactive date applicable to coverage under the policy precedes the effective date of the issuance of the permit by the city.

(5) Control of well.

(A) The policy shall cover the cost of controlling a well that is out of control, re-drilling or restoration expenses, seepage and pollution damage as first party recovery for the operator and related expenses, including, but not limited to, loss of equipment, experts and evacuation of residents.

(B) One million dollars (\$1,000,000.00) per occurrence/no aggregate, if available, otherwise an aggregate of five million dollars (\$5,000,000.00). Five hundred thousand dollars (\$500,000.00) sub-limit endorsement may be added for damage to property for which the operator has care, custody and control.

(6) Workers compensation and employers liability insurance.

(A) Workers compensation benefits shall be state statutory limits.

(B) Employers liability shall be a minimum of five hundred thousand dollars (\$500,000.00) per accident.

(C) Such coverage shall include a waiver of subrogation in favor of the city and provide coverage in accordance with applicable state and federal laws.

(7) Automobile liability insurance.

(A) Combined single limit of one million dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.

(B) Coverage must include all owned, hired and not-owned automobiles.

(8) Certificates of insurance.

(A) The company must be admitted or approved to do business in the state of Texas, unless a surplus lines insurer writes the coverage.

(B) The insurance set forth by the insurance company must be underwritten on forms that have been approved by the Texas ~~Department~~ of Insurance, or an equivalent policy form acceptable to the city, with the exception of environmental pollution liability and control of well coverage.

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(C) Sets forth all endorsements and insurance coverage according to requirements and instructions contained herein.

(D) Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the city. All policies shall be endorsed to read:

“THIS POLICY WILL NOT BE CANCELLED OR NONRENEWED WITHOUT THIRTY (30) CALENDAR DAYS ADVANCED WRITTEN NOTICE TO THE OWNER AND THE CITY EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE TEN (10) DAYS ADVANCE WRITTEN NOTICE IS REQUIRED.”

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

(j) Indemnification and express negligence provisions. Each surface permit issued by the city Inspector shall include the following language:

“Operator does hereby expressly release and discharge, all claims, demands, actions, judgments, and executions which it ever had, or now has or may have, or assigns may have, or claim to have, against the City of Brenham, Texas, and/or its departments, agents, officers, servants, successors, assigns, sponsors, volunteers, or employees,

created by, or arising out of personal injuries, known or unknown, and injuries to property, real or personal, or in any way incidental to or in connection with the performance of the work performed by the operator under a surface permit. The operator shall fully defend, protect, indemnify, and hold harmless the City of Brenham, Texas, its departments, agents, officers, servants, employees, successors, assigns, sponsors, or volunteers from and against each and every claim, demand, or cause of action and any and all liability, damages, obligations, judgments, losses, fines, penalties, costs, fees, and expenses incurred in defense of the City of Brenham, Texas, its departments, agents, officers, servants, or employees, including, without limitation, personal injuries and death in connection therewith which may be made or asserted by operator, its agents, assigns, or any third parties on account of, arising out of, or in any way incidental to or in connection with the performance of the work performed by the operator under a surface permit. The operator agrees to indemnify and hold harmless the City of Brenham, Texas, its departments, its officers, agents, servants, employees, successors, assigns, sponsors, or volunteers from any liabilities or damages suffered as a result of claims, demands, costs, or judgments against the city, its departments, its officers, agents, servants, or employees, created by, or arising out of the acts or omissions of the City of Brenham occurring on the drill site or operation site in the course and scope of inspecting and permitting the surface of the oil or gas wells INCLUDING, BUT NOT LIMITED TO, CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY OF BRENHAM OCCURRING ON THE DRILL SITE OR OPERATION SITE IN THE COURSE AND SCOPE OF INSPECTING AND PERMITTING THE ABOVE GROUND ACTIVITY RELATED TO OPERATIONS OF THE OIL OR GAS WELLS. IT IS UNDERSTOOD AND AGREED THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION IS AN INDEMNITY EXTENDED BY THE OPERATOR TO INDEMNIFY AND PROTECT THE CITY OF BRENHAM, TEXAS AND/OR ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, OR EMPLOYEES FROM THE CONSEQUENCES OF THE NEGLIGENCE OF THE CITY OF BRENHAM, TEXAS AND/OR ITS DEPARTMENTS, AGENTS, OFFICERS, SERVANTS, OR EMPLOYEES, WHETHER THAT NEGLIGENCE IS THE SOLE OR CONTRIBUTING CAUSE OF THE RESULTANT INJURY, DEATH, AND/OR DAMAGE.”

(k) Notice. The individual designated to receive notice shall be a resident of the state of Texas upon whom all orders and notices provided in this chapter may be served in person or by registered or certified mail. Every operator shall within one business week notify the city inspector in writing of any change in such agent or mailing address unless operations in the city are discontinued and abandonment is complete.

Sec. 18-14. Technical regulations

(a) Onsite requirements.

(1) Abandoned wells. All wells shall be abandoned in accordance with the rules of the commission. No structures shall be built over an abandoned well.

(2) Compliance. Operator shall comply at all times with all applicable federal, state and city requirements.

(3) Discharge. No person shall place, deposit, discharge, or cause or permit to be placed, deposited or discharged, any oil, naphtha, petroleum, asphalt, tar, hydrocarbon substances or any refuse including wastewater or brine from any oil or gas operation or the contents of any container used in connection with any oil or gas operation in, into, or upon any public right-of-way, alleys, streets, lots, storm drain, pit, ditch or sewer, sanitary drain or any body of water or watercourse that may ultimately enter into waters of the city, state or United States.

(4) Dust, vibration, odors. All drilling and production operations shall be conducted in such a manner as to minimize, so far as practicable, dust, vibration, or noxious odors, and shall be in accordance with the best accepted practices incident to drilling for the production of oil, gas and other hydrocarbon substances in urban areas. All equipment used shall be constructed and operated so that, vibrations, dust, odor or other harmful or annoying substances or effect will be minimized by the operations carried on at any drilling or production site or from anything incident thereto, to the injury or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in industry standards of drilling and production in this area shall be adopted as they become available if capable of reducing factors of dust, vibration and odor.

(5) Electric lines. All electric lines to production facilities shall be located underground. When electric utility lines are located within three hundred feet (300') of the pad site and are determined to be sufficient for operations, the operator may use fuel-powered generators only as a backup in the event of a power failure.

(6) Emergency response plan. Prior to the commencement of any oil, gas or other hydrocarbons production activities, operator shall submit to the city inspector an emergency response plan establishing written procedures to minimize any hazard resulting from drilling, completion or producing of oil or gas wells. Said plan shall use existing guidelines established by the commission, and any other local, state or federal agency.

(7) Fire prevention; sources of ignition. Firefighting apparatus and supplies as approved by the fire department and required by any applicable federal, state, or local law shall be provided by the operator, at the operator's cost, and shall be maintained on the drilling site at all times during drilling and production operations. Operators must identify sites with hydrogen sulfide (H₂S) producing wells and provide wind direction socks for those sites at the operator's sole cost. The operator shall be responsible for the maintenance and upkeep of equipment required herein. Each well shall be equipped with an automated valve that closes the well in the event of an abnormal change in operating pressure. All wellheads shall contain an emergency shut off valve to the well distribution line as required by the commission.

(8) Freshwater wells. It shall be unlawful to drill any oil or gas well, the center of which, at the surface of the ground, is located within one thousand feet (1,000') to any freshwater well, except for freshwater wells used solely for the oil or gas well operation. The measurement shall be in a direct line from the closest well bore to the freshwater well bore.

(9) Oil or gas emission or burning restricted. At no time shall the well be allowed to flow or vent directly to the atmosphere without first directing the flow through separation equipment or into a portable tank. Venting operations shall be required to comply with the noise regulations contained in this chapter.

(10) Grass, weeds, trash. All drill and operation sites shall be kept clear of high grass, weeds, and trash. All landscaping shall be continuously maintained in an acceptable manner.

(11) Hazardous plan. Hazardous materials management plan shall be on file with the fire marshal and the city inspector. A safety data sheet (SDS) will be maintained at each location and shall be readily available for fire personnel to review in the event of an emergency. Additionally, any hazardous materials protected as "trade secret" shall be disclosed to fire personnel in the event of an emergency, in accordance with commission rules.

(12) Lights. No person shall permit any lights located on any drill or operation site to be directed in such a manner so that they shine directly on public roads, adjacent property or property in the general vicinity of the drill or operation site. To the extent practicable, and taking into account safety considerations, site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred feet (300').

(13) Closed loop mud systems. A closed loop mud system shall be used in conjunction with all drilling and reworking operations for all surface permits, unless specifically waived by the city council.

(14) Private roads and drill sites. Prior to the commencement of any drilling operations, all private roads used for access to the drill site and the operation site itself shall be at least ten (10') feet wide, have an overhead clearance of fourteen (14') feet and shall be surfaced with crushed rock, gravel or ore and maintained to prevent dust and mud. Further, an ample supply of dust suppressant shall be maintained on any private road used for access to the drill site so as to prevent dust during the lifetime use of the road. In particular cases these requirements governing surfacing of private roads may be altered at the discretion of the city inspector after consideration of all circumstances including, but not limited to, the following: distances from public streets and highways; distances from adjoining and nearby property owners whose surface rights are not leased by the operation; the purpose for which the property of such owners is or may be used; topographical features; nature of the soil; and exposure to wind.

(15) Signs.

(A) A sign shall be immediately and prominently displayed adjacent to the public right-of-way at the gate on the temporary and permanent site fencing erected pursuant to this chapter. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the commission, shall have a surface area of not less than two (2) square feet nor more than four (4) square feet and shall be lettered with the following:

- (i) Well name and number;
- (ii) Name of operator;
- (iii) The emergency 911 number; and
- (iv) Telephone numbers of two (2) persons responsible for the well who may be contacted in case of emergency.

(B) Permanent weatherproof signs reading "danger no smoking allowed" shall be posted immediately upon completion of the drill site fencing at the entrance of each drill site and tank battery or in any other location approved or designated by the fire marshal of the city. Sign lettering shall be four (4") inches in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the fire department and the operator, well and lease designations required by the commission.

(16) Storage of equipment.

(A) Onsite storage is prohibited on the operation site. No equipment shall be stored on the drilling or production operation site, unless it is necessary to the everyday operation of the well. Lumber, pipes, tubing and casing shall not be left on the operation site except when drilling or well servicing operations are being conducted on the site.

(B) No vehicle or item of machinery shall be parked or stored on any street, right-of-way or in any driveway, alley or upon any operation site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for drilling or production operations on the site. The fire department shall be the entity that determines whether equipment on the site shall constitute a fire hazard. Vehicles containing hazardous materials shall be placarded according to National Fire Protection Association requirements.

(17) Storage tanks.

(A) All storage tanks shall be equipped with firewalls, berms or secondary containment system including lining with an impervious material. The firewall, berms or secondary containment system shall be in accordance with the rules of the commission and any other local, state or federal agency. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tank.

(B) All tanks shall be set back pursuant to the standards of the commission and the National Fire Protection Association, but in all cases, shall be at least twenty-five feet (25') from any public right-of-way or property line. Each storage tank shall be equipped with a level control device that will automatically activate a valve to close the well in the event of excess liquid accumulation in the tank.

(C) No meters, storage tanks, separation facilities, or other above ground facilities, other than the wellhead and flow lines, shall be placed within any floodway as defined by the most current FEMA map, without the prior consent of the city council.

(D) To the extent that it is technically feasible, all storage tanks, separators and compressors serving multiple wells shall be kept as a group on a single site.

(18) Tank battery facilities. Tank battery facilities and/or storage tanks shall be equipped with a remote foam line and a lightning arrestor system.

(19) Valves. Each well must have a shutoff valve to terminate the well's production. The fire department shall have access to the drill site to enable it to close the shut-off valve in an emergency.

(20) Waste disposal. Unless otherwise directed by the commission, all tanks used for storage shall conform to the following:

(A) Operator must use portable closed steel storage tanks for storing liquid hydrocarbons. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, flame arrester and pressure relief valve. A fence applicable to the issued permit classification must enclose all tanks. No tank battery/storage tank shall be within three hundred feet (300') of any dwelling or other combustible structure.

(B) Drilling mud, cuttings, liquid hydrocarbons and all other field waste derived or resulting from or connected with the drilling, reworking or deepening of any well shall be processed through a closed loop mud system. All disposals must be in accordance with the rules of the commission and any other appropriate local, state or federal agency.

(C) Unless otherwise directed by the commission, waste materials shall be removed from the site and transported to an offsite disposal facility not less often

than every thirty (30) calendar days. Water stored in onsite tanks shall be removed as necessary.

(D) All waste shall be disposed of in such a manner as to comply with the air and water pollution control regulations of the state, and any other appropriate local, state or federal agency.

(21) Watchman. The operator must keep a watchman or security personnel on-site during the drilling or reworking of a well when other workmen are not on the premises.

(22) Painting. All production equipment shall be painted and maintained at all times, including wellheads, pumping units, tanks and secondary containment. When requiring painting of such facilities, the city inspector shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance. Paint shall be of a neutral color, compatible with surrounding uses. Neutral colors shall include sand, gray and unobtrusive shades of green, blue, black and brown, or other neutral colors approved by the city inspector. The color of all tanks, fixed equipment and painted surfaces, including fences, shall be the same throughout the pad site.

(23) Hydrogen sulfide. If a gas or oil field is identified as a hydrogen sulfide (H₂S) field under RRC, TCEQ, or EPA regulations, or if a well is producing hydrogen sulfide (H₂S) gas over applicable commission, and any other appropriate, state or federal agency standards, the operator shall immediately stabilize and cease any additional oil or gas operations of that well or facility.

(24) Saltwater wells. No saltwater wells, or disposal wells shall be located within the city.

(b) Well setbacks. Except as otherwise provided in this section, it shall be unlawful to drill any well, the center of which, at the surface of the ground, is located:

(1) Boundary of drill site. Within ~~seventy-five feet (75')~~ from the boundary of the drill/operation site;

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Deleted: 25

(2) Storage tank. Within ~~seventy-five feet (75')~~ from any storage tank, or source of ignition;

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(3) Public street. Within ~~six hundred feet (600')~~ of any public street, road, highway or future street, right-of-way or property line, or railroad right-of-way;

Deleted: seventy-five

Deleted: 75

(4) Protected use. Within six hundred feet (600') from any protected use;

(5) Accessory building. Within one hundred feet (100') of any building accessory to, but not necessary to the operation of the well; or

(6) Freshwater well. Within one thousand feet (1,000') to any freshwater well. The measurement shall be in a direct line from the closest well bore to the freshwater well bore.

(7) Outer boundary line. Within ~~three hundred feet (300')~~ from an outer boundary surface property line or a distance minus the required zoning setback of the adjacent property at the time of permitting the first oil or gas well unless one of the following conditions exist:

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i. The oil, gas and mineral lease precedes the formation of an outer boundary surface property line; or

ii. The adjacent property is owned or under lease by the operator.

(c) General information. The distance shall be calculated from the well bore, in a straight line, without regard to intervening structures or objects, to the closest exterior point of any object listed in subsections (b)(1) through (6) above.

(1) There will be a minimum twenty-five foot (25') landscape buffer on all sides of the area adjacent to and outside of the fence of the operation site.

(2) The distances set out in subsection (b)(1), (3) or (6) of this section may be reduced at the discretion of the city council. The reduction of the distance requirement for freshwater wells is subject to the commission regulations and any other appropriate local, state or federal agency.

(3) The distance set out in subsection (b)(4) of this section may be reduced to three hundred feet (300') from any protected use, with a:

(A) waiver granted by the city council; or

(B) written notarized waivers granted by all the protected use property owners within a six hundred foot (600') radius around the proposed well.

(d) Installation of pipelines on, under or across public property.

(1) Franchise. The operator shall apply to the city for a franchise agreement on, over, under, along or across the city streets, sidewalks, alleys and other city property for the purpose of constructing, laying, maintaining, operating, repairing, replacing and removing pipelines so long as production or operations may be continued under a surface permit issued pursuant to this chapter. Operator shall:

(A) Not interfere with or damage existing water, sewer or gas lines or the facilities of public utilities located on, under or across the course of such rights-of-way.

(B) Furnish to the city inspector of the city a plat showing the location of such pipelines.

(C) Construct such lines out of pipe in accordance with the city codes and regulations properly cased and vented if under a street.

(D) Grade, level and restore such property to the same surface condition, as nearly as practicable, as existed when operations for the drilling of the well were first commenced.

(2) Drilling in streets prohibited. No surface permit shall be issued for any well to be drilled within any of the streets or alleys of the city and/or projected streets or alleys shown by the current master/thoroughfare plan of the city, and no street or alley shall be blocked or encumbered or closed due to any exploration, drilling or production operations unless prior consent is obtained from the city council. Any consent shall be temporary in nature and state the number of hours and/or days that any street or alley may be blocked, encumbered or closed. The decision to authorize a license agreement in accordance with this section shall be in the sole discretion of the city council.

Sec. 18-15. Cleanup and maintenance

This section applies to new surface permits as well as oil and gas wells that are in existence at the time of adoption of this chapter. All drill sites shall be maintained to this cleanup and maintenance standard.

(1) Cleanup after well servicing. After the well has been completed or plugged and abandoned, the operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within sixty (60) calendar days.

(2) Cleanup after spills, leaks and malfunctions. After any spill, leak or malfunction, the operator shall remove or cause to be removed to the satisfaction of the city inspector all waste materials from any public or private property affected by such spill, leak or malfunction. Cleanup operations must begin immediately. If the owner fails to begin site cleanup within twenty-four (24) hours, the city shall have the right to contact the commission in order to facilitate the removal of all waste materials from the property affected by such spill, leak or malfunction.

(3) Free from debris. The property on which a drill site is located shall at all times be kept free of debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other waste material.

(4) Painting. All production equipment shall be painted and maintained at all times, including wellheads, pumping units, tanks, and buildings or structures. When requiring painting of such facilities, the city inspector shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of

rust, and its appearance. Paint shall be of a neutral color, compatible with surrounding uses. Neutral colors shall include sand, gray and unobtrusive shades of green, blue, black and brown, or other neutral colors approved by the city inspector.

(5) Blowouts. In the event of the loss of control of any well, operator shall immediately take all reasonable steps to regain control regardless of any other provision of this chapter and shall notify the city inspector as soon as practicable. The city inspector shall certify in writing, briefly describing the same, to the city manager. If the city inspector, in his opinion, believes that danger to persons and property exists because of such loss of well control and that the operator is not taking or is unable to take all reasonable and necessary steps to regain control of such well, the city inspector may then employ any well control expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the city inspector deems necessary to regain control of such well. The city shall then have a valid lien against the interest in the well of all working interest owners to secure payment of any expenditure made by the city pursuant to such action of the city inspector in gaining control of said well.

(6) Secondary containment. All storage tanks shall be equipped with a firewall, berm or secondary containment system including lining with an impervious material. The firewall, berm or secondary containment system shall be in accordance with the rules of the commission and any other local, state or federal agency. Drip pots shall be provided at the pump out connection to contain liquids from the storage tank.

Sec. 18-16. Plugged and abandoned wells

(a) Surface requirements for plugged and abandoned well. Whenever abandonment occurs pursuant to the requirements of the commission, the operator so abandoning shall be responsible for the restoration of the drill site to its original condition as nearly as practicable, in conformity with the regulations of this chapter.

(b) Abandonment. Abandonment shall be approved by the city inspector after restoration of the drill site has been accomplished in conformity with the following requirements at the discretion of the city inspector:

(1) Derrick. The derrick and all appurtenant equipment thereto shall be removed from drill site;

(2) Tanks. All tanks, towers, and other surface installations shall be removed from the drill site;

(3) Concrete foundations. All concrete foundations, piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the commission;

(4) Holes and depressions. All holes and depressions shall be filled with clean, compactable soil;

(5) Waste. All waste, refuse or waste material shall be removed from the drill site; and

(6) Compliance. During abandonment, operator shall comply with all applicable sections in this chapter.

(7) Permanent marker. A permanent abandonment marker pipe, with well identity and location permanently inscribed shall be welded to casing and shall be at least four inches (4") in diameter with a length of four feet (4') visible above ground level.

(c) Abandoned well requirement. The operator shall furnish the following at the discretion of the city inspector:

(1) Commission approval. A copy of the approval of the commission confirming compliance with all abandonment proceedings under the state law; and

(2) Notice. A notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

(d) Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

Sec. 18-17. Technical advisor

The city may from time to time employ a technical advisor or advisors who are experienced and educated in the oil or gas industry or the law as it pertains to oil or gas matters. The function of such advisor(s) shall be to advise, counsel or represent the city on such matters relating to oil or gas operations within the city as the city may want or require and the effect thereof, both present and future, on the health, welfare, comfort and safety of the citizens of the city. In the event such technical advisor(s) is employed for the purpose of advising, counseling or representing the city relative to an operator's unique and particular set of circumstances, case or request relating to this chapter, then the cost the services of the technical advisor(s) shall be assessed against and paid for by the operator in addition to any fees or charges assessed pursuant to this chapter. Prior to the employment of a technical advisor, the city shall inform the operator of the intended scope of work and the estimated costs and expenses. The employment of a technical advisor shall be approved by the city manager.

Sec. 18-18. Extraterritorial jurisdiction (ETJ)

(a) Site plan required. All wells drilled, redrilled/reworked after the passage of this chapter that are located within the ETJ of the city shall file a site plan with the city secretary showing the property boundaries and location of said well and associated equipment. No fee shall be charged by the city for said filing.

(b) Road maintenance agreement. Any oil or gas well to be drilled or being drilled in the ETJ on the effective date of this chapter, using trucks larger than 3 tons, that will be traveling on city maintained streets during drilling, production, transportation or any other related activity must sign a citywide road maintenance agreement. The agreement shall provide that the operator shall repair, at his own expense, damage to roads or streets caused by the use of heavy vehicles for any activity associated with the preparation, drilling, production, transportation and operation of oil and or gas wells. City shall determine degree of damage, dollar amount owed and bill annually. Operator shall provide the number of truck trips, truck types and weights, loaded and unloaded. Agreement may also contain provisions to protect the health, welfare and safety of the citizens along the streets being used, such as, speed limits, other traffic-control devices, days and times of usage, turning movements, noise limitations, etc. Failure to sign and abide by the citywide road maintenance agreement will result in the loss of the privilege to use city streets.

Sec. 18-19. Appeals

(a) Failure to cure. If the operator does not cure any noncompliance within the time specified in this chapter, the inspector, upon written notice to the operator, may suspend or revoke the surface permit.

(b) File appeal. Operator may, within thirty (30) calendar days of the date of the decision of the inspector in writing to suspend or revoke a surface use permit, file an appeal through the city manager to the city council under the provisions outlined in this section.

(c) Council appeal. The city council shall have and exercise the power to hear and determine appeals where it is alleged there is error or abuse of discretion regarding the revocation or suspension of any surface use permit issued by the inspector as provided by this chapter. Any person or entity whose permit is suspended or revoked or whose well or equipment is deemed by the inspector to be abandoned may, within thirty (30) calendar days of the date of the written decision of the inspector file an appeal to the city council in accordance with the following procedure.

(1) Appeal in writing. An appeal shall be in writing and shall be filed in triplicate with the city secretary. The grounds for appeal must be set forth specifically, and the error described, by the appellant.

(2) City council agenda. Within forty-five (45) calendar days of receipt of the records, the city secretary shall transmit all papers involved in the proceeding, place the matter on the city council agenda for hearing and give notice by mail of the time, place and purpose thereof to appellant and any other party who has requested in writing to be so notified. No other notice need to be given.

(d) Fee. Appeal fees shall be required for every appeal and as set forth in the fee schedule referenced in Section 18-21.

Deleted: to this code.

(e) Decision final. The decision of the city council shall be final.

Sec. 18-20. Takings determination

(a) Taking application. Any aggrieved person who believes that an action taken pursuant to this chapter by the city council or any officer, employee or agent of the city would legally constitute a taking of property without just compensation under the state or United States Constitution, must file an application with the city council to request a takings determination.

(b) File with city secretary. The applicant seeking a takings determination from the city council shall file its application with the office of the city secretary at least thirty (30) days prior to the next regularly scheduled city council meeting. The city secretary shall then forward the takings determination application to the city council for consideration. The application fee as set forth in the fee schedule referenced in Section 18-21 shall accompany each filing.

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(c) Evidence of takings. The application shall state the reasons the applicant believes would support a finding that the city's application of the provisions of this chapter to the applicant's property would legally constitute a taking under the state or United States Constitution and shall include evidence substantiating the purported diminution in value of the applicant's property.

(d) Burden of proof. At the takings determination hearing conducted by the city council, the applicant must present detailed economic information and other evidence necessary to establish that the city's application of the provisions of this chapter to the applicant's property would legally constitute a taking of the property without just compensation. The applicant has the burden of proof in establishing that the city's application of the provisions of this chapter to the applicant's property legally constitutes a taking of property without just compensation under the state or United States Constitution.

(e) Council powers. The city council may administer oaths, compel the attendance of witnesses and require the disclosure of financial information from the applicant that the city council determines is necessary to make a determination regarding whether the city's application of the provisions of this chapter to the applicant's property legally constitutes a taking of property without just compensation under the state or United States Constitution.

(f) Council finding.

(1) If the council finds in favor of the applicant it may:

(A) Grant the relief requested;

(B) Direct the city manager to rescind action taken by city staff or agent that formed the basis of the takings determination application; or

(C) Direct the city manager to reconsider action taken by city staff or agent that formed the basis of the takings determination application.

(2) If the council denies the application, or after a favorable determination the city council fails to take action as specified above, the applicant may appeal the decision or inaction of the city council to the county or district court of the county in which the affected real property is located within thirty (30) calendar days of the date that the council issues its final decision.

Sec. 18-21. Fee Schedule

Oil and gas well drilling and production activities are subject to the following fees which amounts shall be established by resolution adopted by the City Council, and said resolution shall be available in the city secretary's office:

(1) Surface permit fee.	Deleted: : \$2,000.00
(2) Extended permit fee.	Deleted: : \$250.00
(3) Annual inspection fee.	Deleted: : \$100.00
(4) Follow-up inspection fee.	Deleted: : \$100.00
(5) Amended permit fee.	Deleted: : \$500.00
(6) Transfer permit fee.	Deleted: : \$700.00
(7) Appeal fee.	Deleted: : \$2,300.00
(8) "Taking" application fee.	Deleted: : \$3,320.00

Sec. 18-22. Penalty

(a) Unlawful. It shall be unlawful and an offense for any person to do the following:

- (1) Activities not permitted. Engage in any activity not permitted by the terms of a surface permit issued under this chapter;
- (2) Failure to comply. Fail to comply with any condition set forth in a surface permit issued under this chapter; or
- (3) Violate provision. Violate any provision or requirement set forth under this chapter.

(b) Punishment. Any violation of this chapter shall be punished by a fine of not more than two thousand dollars (\$2,000.00) per day, subject to applicable state law. Each day that a violation

exists shall constitute a separate offense. No notice of default required by this chapter shall be a precondition to immediate criminal enforcement due to a violation of this chapter.

**SECTION 2.
SAVINGS CLAUSE**

All provisions of any ordinance, resolution or other action of the City in conflict with this Ordinance are hereby repealed to the extent they are in conflict. Any remaining portions of said ordinances, resolutions or other actions shall remain in full force and effect.

**SECTION 3.
SEVERABILITY**

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentences and clauses and phrases remaining should any provision be declared unconstitutional or invalid.

**SECTION 4.
REPEALER**

Any other ordinance or parts of ordinances in conflict with this Ordinance are hereby expressly repealed.

**SECTION 5.
EFFECTIVE DATE**

This Ordinance shall become effective upon adoption and publication as required by law.

**SECTION 6.
PROPER NOTICE AND MEETINGS**

It is hereby officially found and determined that the meetings at which this Ordinance was passed were open to the public as required and that public notice of the time, place and purpose of said meetings were given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED and APPROVED on its first reading this the ____ day of _____, 2018.

PASSED and APPROVED on its second reading this the ____ day of _____, 2018.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary

DRAFT



AGENDA ITEM 11

DATE OF MEETING: October 18, 2018	DATE SUBMITTED: October 9, 2018
DEPT. OF ORIGIN: Development Services	SUBMITTED BY: Lori Lakatos
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION
ORDINANCE: ☐ 1 ST READING ☐ 2 ND READING ☐ RESOLUTION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon a Development Agreement Between the City of Brenham and CTX Development Company (Stylecraft) Regarding the City's Participation in the Construction Costs of Oversizing Water Facility Extensions Along Vintage Farms Way and Wild Vine Circle (Future Roadway) Within Vintage Farms Subdivision and Authorize the Mayor to Execute Any Necessary Documentation	
SUMMARY STATEMENT: CTX Development Company (Stylecraft) has requested a Development Agreement with the City of Brenham for the oversizing of the water facilities. The request is in accordance to Chapter 23, titled "Subdivisions", and under Section 23-31, titled "Costs-payment for installation of improvements by subdivider". Stylecraft is required to provided plans for the proposed water facility extensions. The plans were designed in accordance with the City of Brenham's Construction Standards. The development agreement is not to exceed \$30,000.00 based on the cost estimate. The developers cost estimate is attached and exceeds the agreed upon amount for oversizing. The eligible costs under this agreement is for the over-sizing of the lines Vintage Farms Way and Wild Vine Circle (Future Roadway).	
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: B. CONS:	
ALTERNATIVES (In Suggested Order of Staff Preference):	
ATTACHMENTS: (1) Request for Reimbursement; and (2) Developer Agreement with Exhibits	
FUNDING SOURCE (Where Applicable):	

RECOMMENDED ACTION: Approve a Development Agreement between the City of Brenham and CTX Development Company (Stylecraft) regarding the City's participation in the construction costs of oversizing water facility extensions Along Vintage Farms Way and Wild Vine Circle (Future Roadway) within Vintage Farms Subdivision in the amount not to exceed \$30,000.00 and authorize the Mayor to execute any necessary documentation

APPROVALS: James Fisher



October 9, 2018

TO: Lori Lakatos

FROM: Chris Burnett

SUBJECT: Oversized Water Line Improvements- Vintage Farms

We are requesting acceptance of the attached development agreement for the oversizing of the water line as described in the attached Exhibit A and Exhibit B.

Feel free to contact me if you have any questions.

Best Regards,

Chris Burnett
Land Development and Acquisition Manager
979-690-1222 X135

**AGREEMENT WITH DEVELOPER FOR CONSTRUCTION OF
PUBLIC IMPROVEMENT**

(Current template as of 02-24-17, subject to site specifics & City Attorney Review, prior to City Council consideration)

THE STATE OF TEXAS §
 §
COUNTY OF WASHINGTON §

This Development Agreement executed as of the ____ day of _____, 20____ between the City of Brenham, Texas, ("City") and CTX Development Company, Owner and developer of certain hereinafter described property located within the City, ("Developer") all collectively referred to as "Parties."

WHEREAS, Developer wishes to develop certain property located within the City limits, which is described as Lots 1-22 of Block 1, Lots 1-69 of Block 2, and Lots 1-11 of Block 3 of the Vintage Farms Subdivision, situated in the City of Brenham, Washington County, Texas, as depicted on a plat thereof recorded in Volume 1240, Page 504, of the real property records of Washington County, Texas (the "Property"); and

WHEREAS, the Property lies within an area of the City which has limited water facilities; and

WHEREAS, during the development planning stage for the Property, the Developer submitted to the City a request to install the required water facilities which will have regional benefits to a portion of the City; and

WHEREAS, the City has no immediate plans to construct the required water facilities, but is willing to share in the cost of the construction of such facilities, and has funds appropriated and available to do so; and

WHEREAS, Developer has requested that it be allowed to construct the required water facilities to serve the Property, and share the costs with the City; and

WHEREAS, Section 212.071, et.seq. of the Texas Local Government Code authorizes municipalities to enter into a contract with a developer of a subdivision or land in the municipality to construct public improvements related to the development without complying with the competitive sealed bidding procedures of Chapter 252 of the Texas Local Government Code;

NOW THEREFORE, for and in consideration of the premises and mutual obligations, covenants, and benefits hereinafter set forth, the Parties agree as follows:

ARTICLE I

Definitions

The following terms and phrases used in this Agreement shall have the meanings ascribed hereto:

- 1.01 “Agreement” means this agreement, including any amendments hereto, between the City and Developer.
- 1.02 “Contractor” shall mean the person, firm, corporation, partnership, association, or other entity awarded the contact by Developer for the construction and installation of the Improvements.
- 1.03 “Improvements” shall mean up sizing 2,735 lineal feet of proposed 8-inch water line to 12-inch water line including fittings and appurtnances. The 12-inch water line to be constructed from the existing 12-inch water line along State Highway 36, parallel to State Highway 36, through a public utility easement to Wild Vine Circle and then west along Vintage Farms Way to its intersection with Trellis Pass.

ARTICLE II

Construction of Improvements

- 2.01 Construction of Improvements. Developer agrees to construct the Improvements in accordance with the plans and specifications approved by the City Engineer, and as fully set forth in Exhibit “A” hereto. No change in the construction plans shall be made by Developer without the prior written consent of the City Engineer. The entire cost of the construction of the Improvements shall be the responsibility and obligation of Developer, except as herein provided.
- 2.02 Contracts for Construction. Developer shall contract with a qualified Contractor to construct the Improvements in accordance with the approved plans and specifications. The City Engineer shall review all contract documents and costs estimates, and shall approve the Contractor prior to the award of the contract. Developer shall be solely responsible for payment of the work as it is completed, and shall make all payments in a timely manner to the Contractor, sub-contractors, and other parties involved in the construction of the Improvements.
- 2.03 Performance, Payment and Maintenance Bonds. Developer shall post within the City faithful performance, payment, and maintenance bonds for construction of the Improvements to ensure completion of the project. The bond must be executed by a corporate surety in accordance with Chapter 2253, Texas Government Code.
- 2.04 Inspection. The City Engineer shall periodically inspect the construction of the Improvements in the same manner, and shall possess the same authority, as is provided during the construction of subdivision improvements pursuant to the City of Brenham Subdivision Ordinance, as amended.
- 2.05 Insurance. The Contractor awarded the contract to construct the Improvements shall be

required to carry Worker's Compensation Insurance on his employees and public liability and property damage insurance on his equipment and employees. The public liability insurance shall be not less than five hundred thousand dollars (\$500,000.00) per person and one million dollars (\$1,000,000.00) per occurrence, with property damage insurance of not less than five hundred thousand dollars (\$500,000.00). In addition, City shall be furnished with Certificates of Insurance and shall be named an additional named insured on such Certificates, and City shall be notified within ten calendar days of any cancellation of such insurance.

- 2.06 Accounting. Developer shall submit to City a complete accounting of all costs incurred by Developer in the construction of the Improvements. City will not contribute or pay for any costs incurred by Developer which was not approved by City prior to it being incurred. Developer shall maintain the accounting on this project for a period of two years from the date of acceptance by the City, and the City may inspect the Developer's books and records related to the project at any time with reasonable notice.
- 2.07 Indemnity. Developer agrees to protect, indemnify and save City harmless from and against all claims, demands and causes of action of every kind and character arising in favor of any third party on account of, or resulting from, the performance of this Agreement by Developer or Developer's agents, representatives, employees, contractors, or subcontractors.

ARTICLE III. City Obligations

- 3.01 Oversized Improvements. The City agrees to pay to Developer the construction costs of oversizing the Improvements, not to exceed Thirty-Thousand Dollars and No Cents (\$30,000.00), as identified and described in Exhibit "B" attached hereto and made a part hereof.
- 3.02 Payment to Developer. Exhibit "B" attached hereto designates the proportional split in costs for construction of the Improvements. City shall deliver to Developer full payment of the City's share of the costs of construction of the Improvements following submittal and review of documentation showing final, actual construction costs paid by the Developer. The City Engineer shall review the construction documents, conduct a final inspection on the Improvements, noting any required corrections or repairs, and make a recommendation to City Council on acceptance of the Improvements. Upon action by City Council accepting such Improvements, the City will pay to Developer the City's share of the costs. Any additional costs above those enumerated, or above the amounts described in Exhibit "B" must be approved by the City prior to being incurred.

ARTICLE IV Miscellaneous Provisions

- 4.01 Assignment. This Agreement shall bind and benefit the respective Parties and their legal successors and shall not be assignable, in whole or in part, by any party without first obtaining written consent of the other party.

- 4.02 Amendment or Modification. Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment or modification only in writing, and by the signatures and mutual consent of the Parties.
- 4.03 Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the Parties hereto and shall not be construed to confer any rights upon any third party.
- 4.04 Remedies Not Exclusive. The rights and remedies contained in this Agreement shall not be exclusive, but shall be cumulative of all rights and remedies now or hereinafter existing, by law or in equity.
- 4.05 Waiver. The failure of any party to insist in any one or more instances on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance.
- 4.06 Entire Agreement. This Agreement constitutes the entire agreement between the Parties related to the subject matter of this Agreement and supersedes any and all prior agreements, whether oral or written, dealing with the subject matter of this Agreement.
- 4.07 Venue. This Agreement shall be performable and enforceable in Washington County, Texas, and shall be construed in accordance with the laws of the State of Texas.
- 4.08 Severability. If any term or provision of this Agreement is held to be invalid, void or unenforceable by a court of competent jurisdiction, the remainder of the terms and provisions of this Agreement shall remain in full force and effect and shall not in any way be invalidated, impaired or affected.
- 4.09 Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by (i) depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, registered or certified mail, return receipt requested; or (ii) by delivering the same in person to such party; or (iii) by overnight or messenger delivery service that retains regular records of delivery and receipt; or (iv) by facsimile; provided a copy of such notice is sent within one (1) day thereafter by another method provided above. The initial addresses of the parties for the purpose of notice under this Agreement shall be as follows:

If to City:

City of Brenham
200 W. Vulcan Street
Brenham, Texas 77833
ATTN: City Engineer

If to Developer:

CTX Development Company
4090 State Highway 6, South
College Station, TX 77845
ATTN: Chris Burnett

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

CITY OF BRENHAM

Milton Y. Tate, Jr.
Mayor

ATTEST:

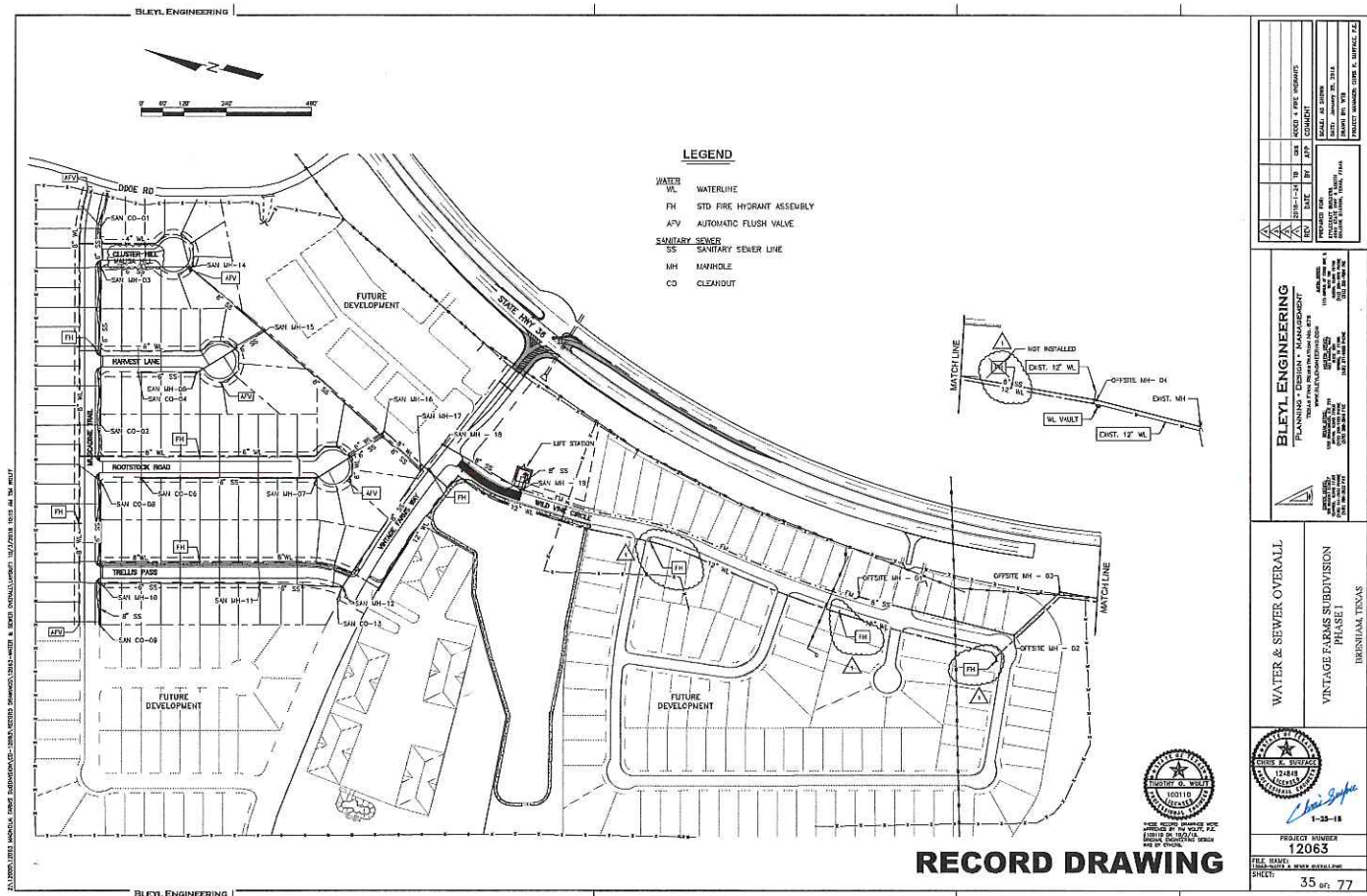
Jeana Bellinger
City Secretary

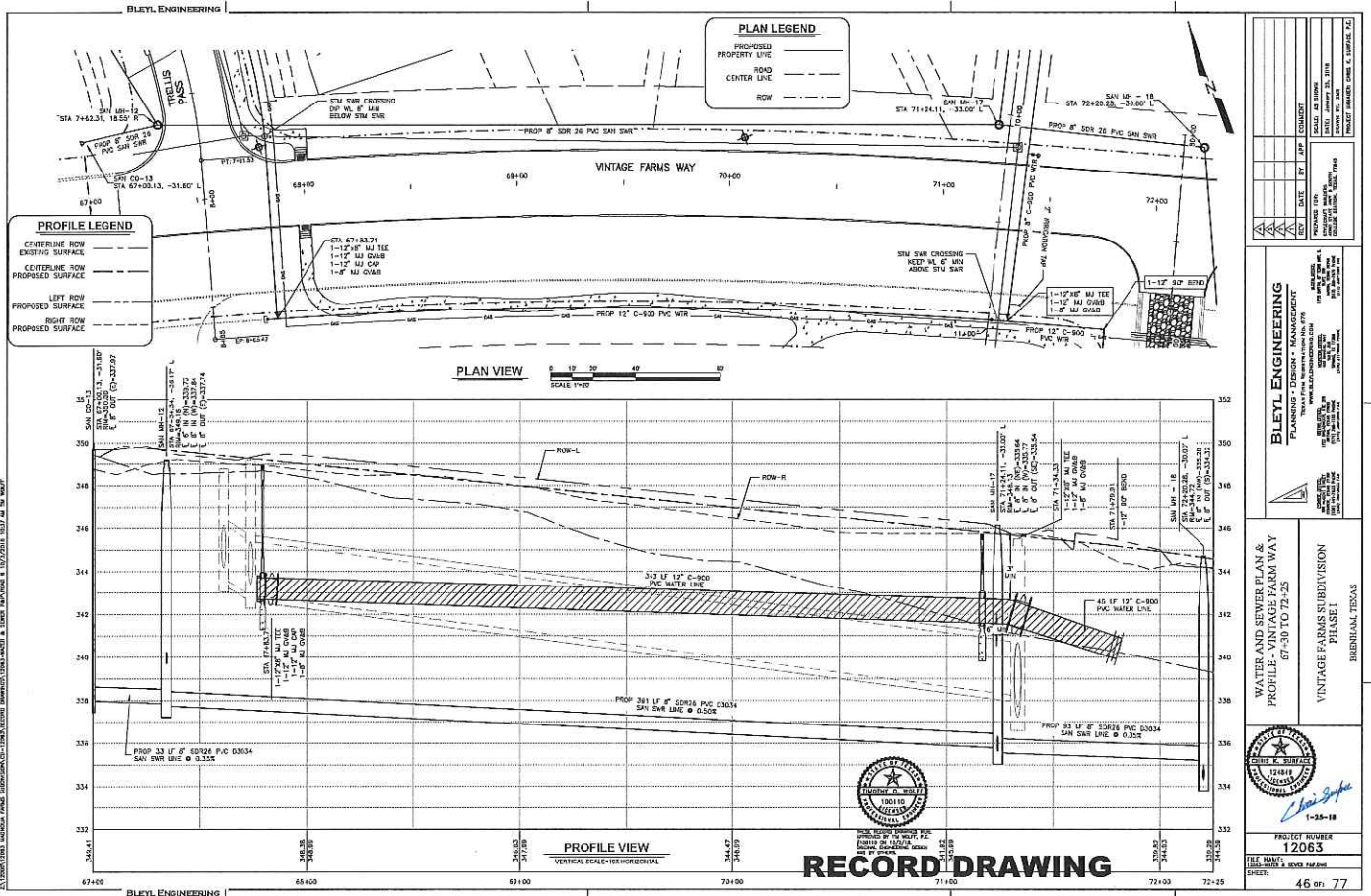
DEVELOPER:
CTX DEVELOPMENT COMPANY

Authorized Signature, Name, and Title:

EXHIBIT "A"

Vintage Farms Construction Plan





BLEYL ENGINEERING
PLANNING • DESIGN • MANAGEMENT

12418 W. 10TH STREET
SUITE 100
DALLAS, TEXAS 75243
TEL: 214.343.1111
FAX: 214.343.1112
WWW.BLEYL-ENGINEERING.COM

WATER AND SEWER PLAN & PROFILE VINTAGE FARMS WAY
STATION 10+75 TO 25

VINTAGE FARMS SUBDIVISION
PHASE 1

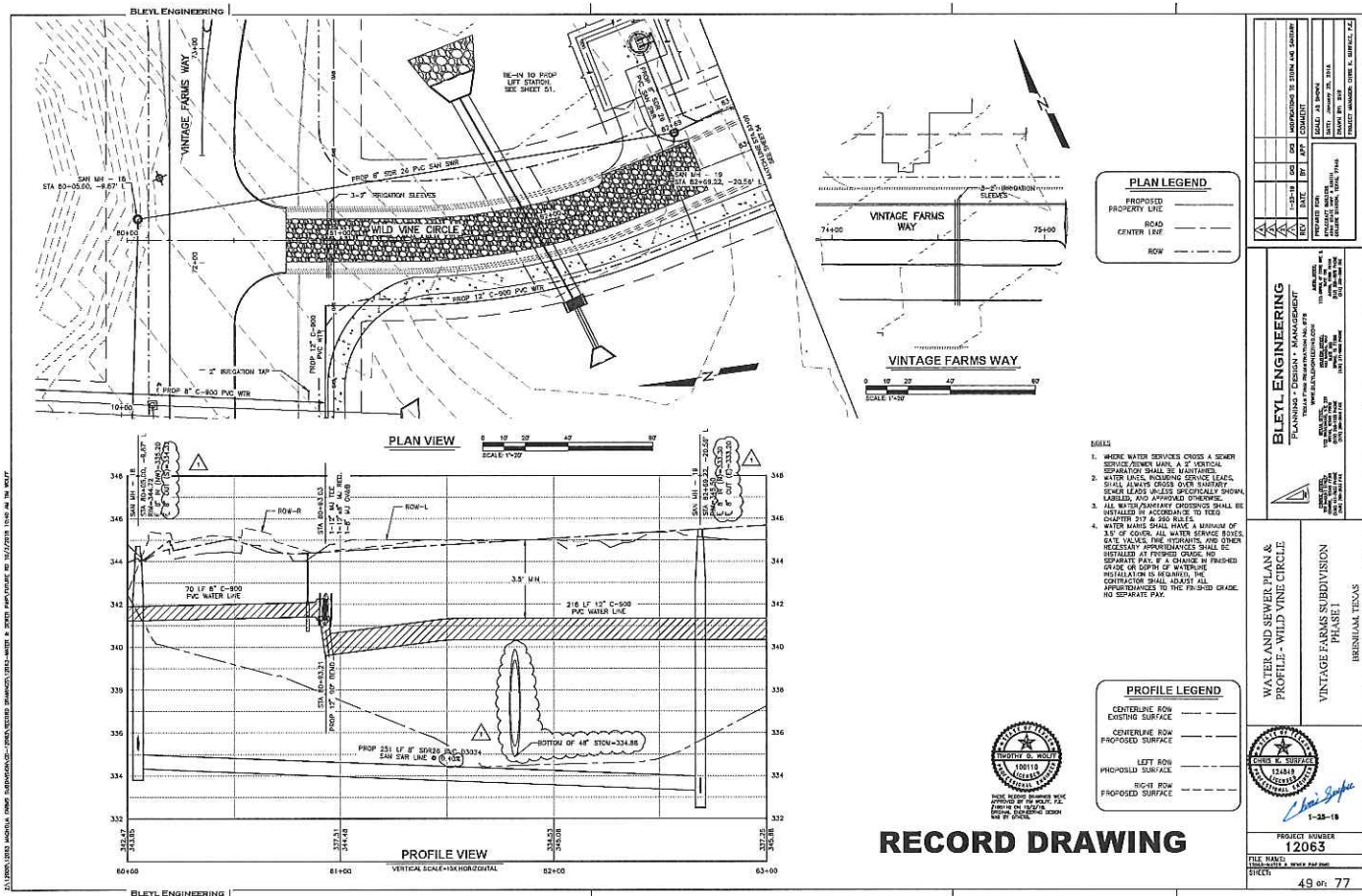
BIRMINGHAM, TEXAS

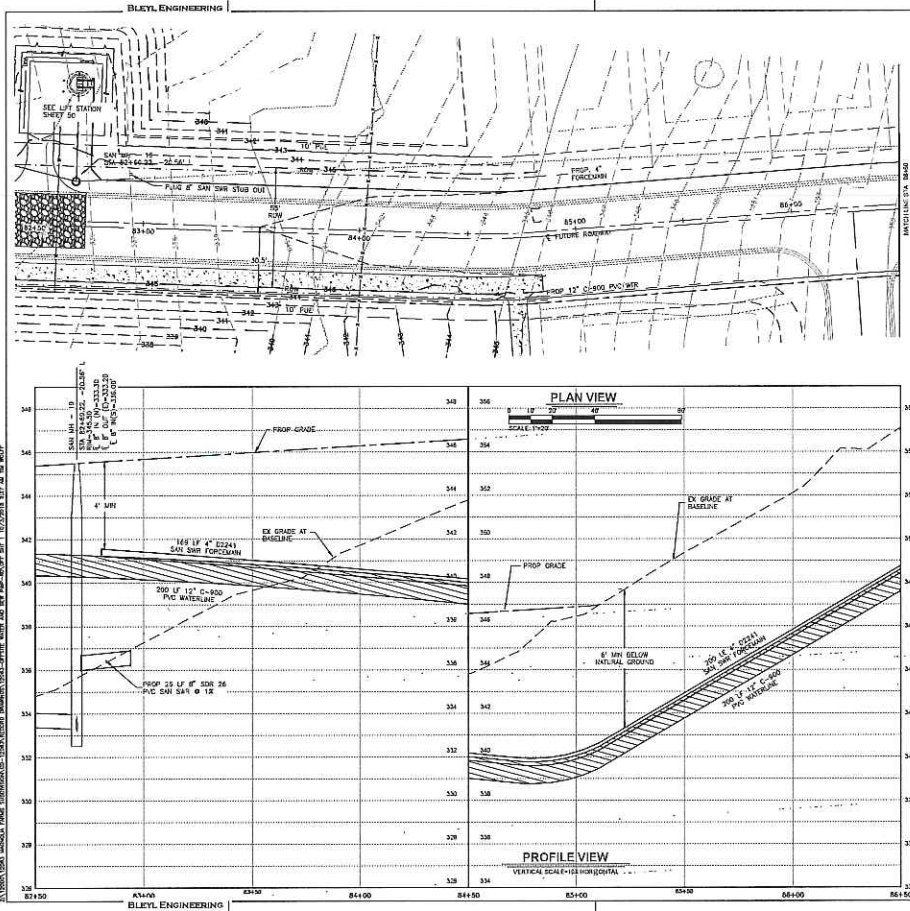
1-25-18

PROJECT NUMBER 12063

FILE NAME: VINTAGE FARMS SUBDIVISION PHASE 1

SHEET: 46 OF 77





PLAN LEGEND	
FUTURE PROPERTY LINE	---
FUTURE ROAD CENTER LINE	---
FUTURE ROW	---

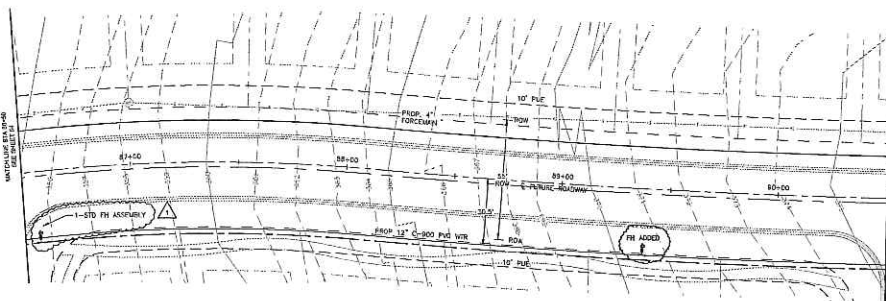
- THIS IS ONLY A SUMMARY OF THE TIES REGULATIONS CONCERNING A NEW WATERLINE CROSSING. IT IS THE CONTRACTOR'S RESPONSIBILITY TO INSTALL ALL CROSSINGS ACCORDING TO TIE IN RULES AND REGULATIONS. SEE TIE IN RULE 208.44(2)(b)(3) FOR DETAILS, INSTRUCTIONS, AND SPECIFICATIONS.
1. THE WATERLINE SHALL BE INSTALLED A FULL JOINT PERPENDICULAR TO THE WATERLINE AND SUCH THAT EACH END IS AT LEAST 8 FEET HORIZONTALLY FROM THE CENTERLINE OF THE CROSSING.
 2. THE WATERLINE SHALL BE AT LEAST 2' ABOVE THE WATERWAY LINE.
 3. WHERE POSSIBLE THE CROSSING SHALL ALSO BE CENTERED UNDER THE JOINTS OF WATERWAY LINE.
 4. THE WATERLINE LINE SHALL BE EXPOSED IN CEMENT STABILIZED SAND FOR THE ENTIRE TIE IN SPAN PLUS 12 BORES BEFORE EACH JOINT ONE.
 5. SHALL CONFORM TO EITHER OF THE FOLLOWING:
 - a. WHEN 6 FEET HORIZONTALLY THE WATERWAY MAIN SHALL BE PROTECTED BY 12" RIGID PIPE, 12" DIA. TO 12" DIA.
 - b. SECTION OF THE WATERWAY MAIN WITHIN 6 FEET HORIZONTALLY OF THE CROSSING SHALL BE EXPOSED IN A 12" DIA. ON LARGER PIPE SHALL BE EXPOSED WITH SPACERS, PAIRED TO THE EXPOSED LINE WITH SAND AND THE END SHALL BE WITHIN 6 FEET OF THE WATERLINE AND THE END SHALL BE WITHIN 6 FEET OF THE WATERLINE AND HAVE A MINIMUM EXPOSURE OF 6 FEET.

PROFILE LEGEND	
EXISTING SURFACE	---

RECORD DRAWING

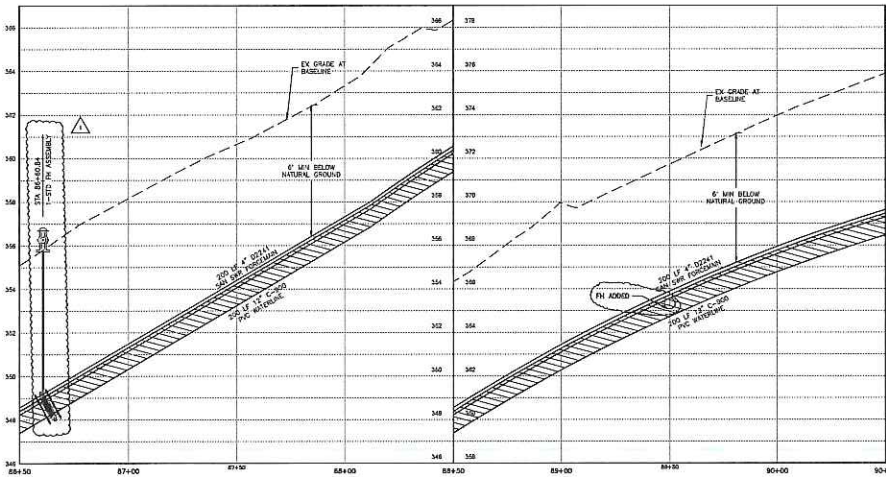
BLEY ENGINEERING PLANNING - DESIGN - MANAGEMENT 12409 S. VINTAGE BIRMINGHAM, AL 35244 (205) 991-1111 WWW.BLEYENGINEERING.COM	
OFFSITE WATER AND SEWER MAINS LIFT STATION TO 86+50	VINTAGE FARMS SUBDIVISION PHASE 1 BIRMINGHAM, TENNESSEE
PROJECT NUMBER 12063	
SHEET 54 OF 77	

BLEYL ENGINEERING



PLAN VIEW

SCALE 1"=40'



PROFILE VIEW

VERTICAL SCALE 1"=10' HORIZONTAL SCALE 1"=40'

PLAN LEGEND	
---	FUTURE PROPERTY LINE
---	FUTURE ROAD CENTER LINE
---	FUTURE ROW

1. THE WATER MAIN SHALL BE CONSIDERED A FULL JOINT PERPENDICULAR TO THE WATERMAIN LINE SUCH THAT EACH END IS AT LEAST 6 FEET HORIZONTALLY FROM THE CENTERLINE OF THE CROSSING.
2. THE WATERMAIN SHALL BE AT LEAST 2' ABOVE THE WATERMAIN LINE.
3. WHERE POSSIBLE, THE CROSSING SHALL ALSO BE CENTERED BETWEEN THE JOINTS OF WATERMAIN LINE.
4. THE WATERMAIN LINE SHALL BE EMBEDDED IN CONCRETE STANDARD CANS FOR THE EXPOSED PIPE SECTIONS PLUS 12 INCHES BEYOND EACH JOINT END.
5. SHALL CONFORM TO EITHER OF THE FOLLOWING:
- 5.1. WHEN 8 FEET HORIZONTALLY THE WATERMAIN MAIN SHALL BE EMBEDDED WITH PIPE AND JOINTS TO 12 INCHES.
- 5.2. SECTIONS OF THE WATERMAIN MAIN WITHIN 8 FEET HORIZONTALLY OF THE CROSSING SHALL BE ENCASED IN A 18-INCH OR LARGER PIPE. PIPE SHALL BE SUPPORTED WITH SPACERS, FILLED TO THE SPRINGING WITH SAND AND THE ENDS SEaled WITH HIGH-DENSITY GROUT. THE WATERMAIN LINE AND CANS SHALL BE BELOW THE WATERMAIN AND HAVE A MINIMUM SEPARATION OF 6 INCHES.
- THIS IS ONLY A SUMMARY OF THE RULES REGULATIONS CONCERNING A NEW WATERMAIN CROSSING HERE A NEW WATERMAIN LINE. IT IS THE CONTRACTOR'S RESPONSIBILITY TO INSTALL ALL CROSSINGS ACCORDING TO THE RULES AND REGULATIONS. SEE THE RULE 280.44(C)(3)(D) FOR DETAILS, INSTRUCTIONS, AND SPECIFICATIONS.



PROFILE LEGEND	
---	EXISTING SURFACE

RECORD DRAWING

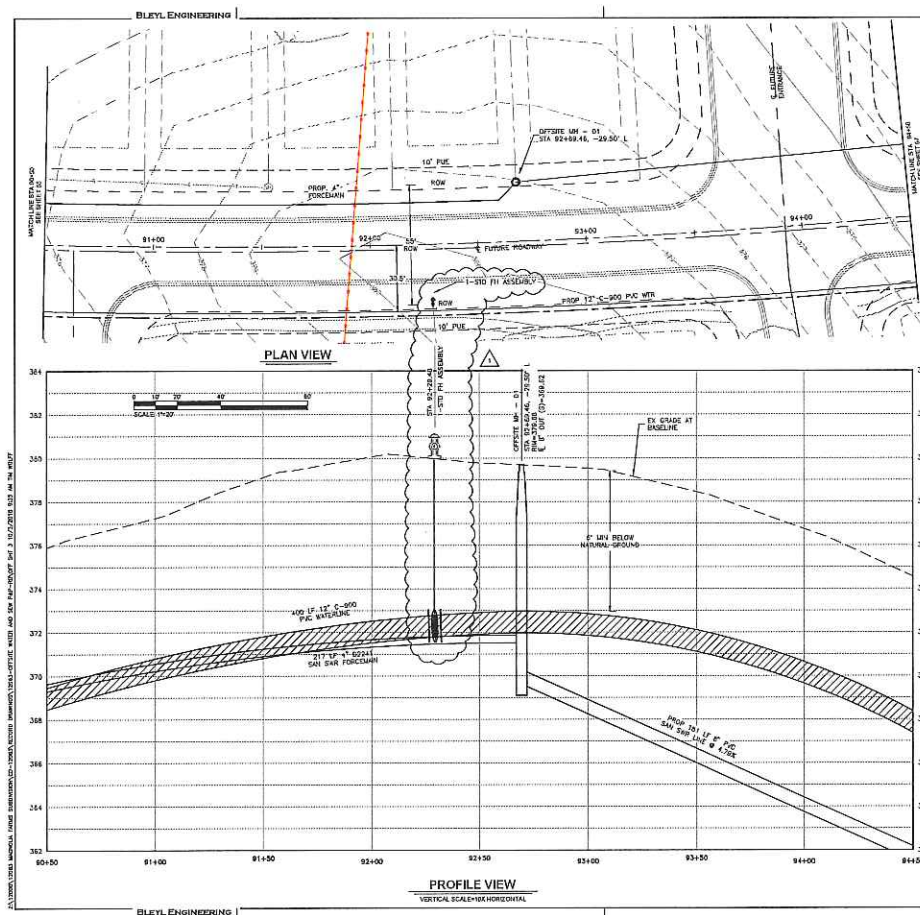
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BY	CHS
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PROJECT NAME	100115
PROJECT NUMBER	100115
PROJECT ADDRESS	100115
PROJECT CITY	100115
PROJECT STATE	100115
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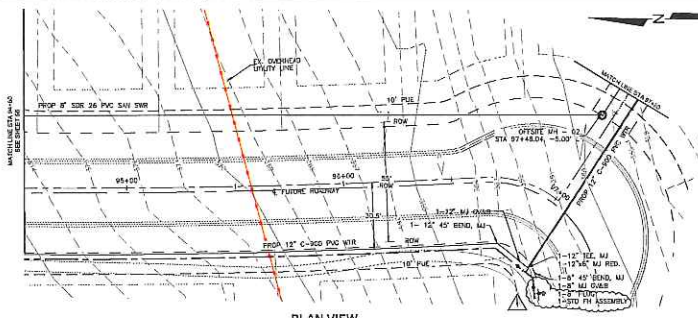
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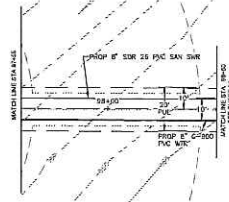
55 of 77



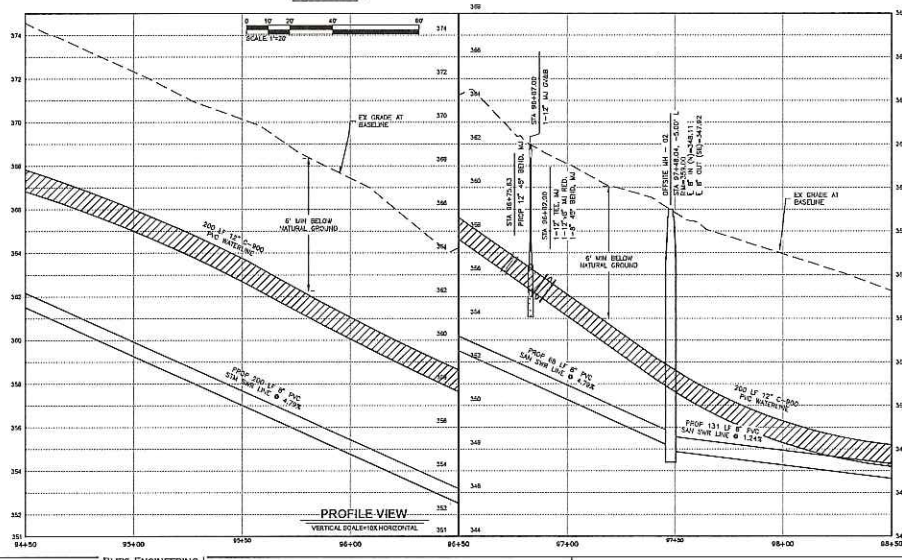
BLEYL ENGINEERING



PLAN VIEW



PLAN LEGEND



PROFILE VIEW

- TWO DAY 2004 AMMUNITION DRAWING**
1. THE WASTEWATER SHALL BE COVERED A FULL JOINT PERPENDICULAR TO THE WASTEWATER LINE SUCH THAT EACH END IS AT LEAST 1 FOOT HORIZONTALLY FROM THE CENTERLINE OF THE CROSSING.
 2. THE WASTEWATER SHALL BE AT LEAST 2' ABOVE THE WASTEWATER LINE.
 3. WHERE POSSIBLE THE CROSSING SHALL ALSO BE COVERED BETWEEN THE JOINTS OF WASTEWATER LINE.
 4. THE WASTEWATER LINE SHALL BE EMBEDDED IN CONCRETE EXPOSED TO SOIL FOR THE ENTIRE PIPE LENGTH PLUS 12" BEYOND EACH JOINT END.
 5. SHALL CONTAIN TO WITHIN OF THE FOLLOWING:
 - 5.1. WITHIN 8 FEET HORIZONTALLY THE WASTEWATER SHALL BE PERMANENTLY RATED WIRE AND GASKETS TO 300 PSI.
 - 5.2. SECTIONS OF THE WASTEWATER WITHIN 8 FEET HORIZONTALLY OF THE CROSSING SHALL BE ENCASED IN A 12" THICK CONCRETE PIPE. THIS SHALL BE EMBEDDED WITH SPACERS, FILLED TO THE SPACERS WITH GROUT AND THE LAKE SEALD WITH HIGH-STRENGTH GROUT. THE WASTEWATER LINE AND DRAINAGE SHALL BE ABOVE THE WASTEWATER LINE AND HAVE A MINIMUM SEPARATION OF 6" INCHES.
- THIS IS ONLY A SUMMARY OF THE TWO REGULATIONS CONCERNING A NEW WASTEWATER CROSSING ABOVE A NON WASTEWATER LINE. IT IS THE CONTRACTOR'S RESPONSIBILITY TO VERIFY ALL CROSSINGS ACCORDING TO THE RULES AND REGULATIONS. SEE THE RULE 2004 AMMUNITION FOR DETAILS, INSTRUCTIONS, AND SPECIFICATIONS.



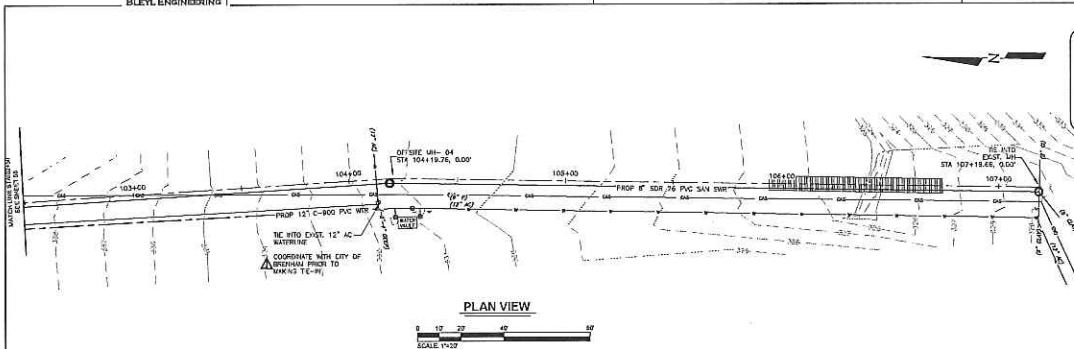
PROFILE LEGEND

EXISTING SURFACE - - - - -

RECORD DRAWING

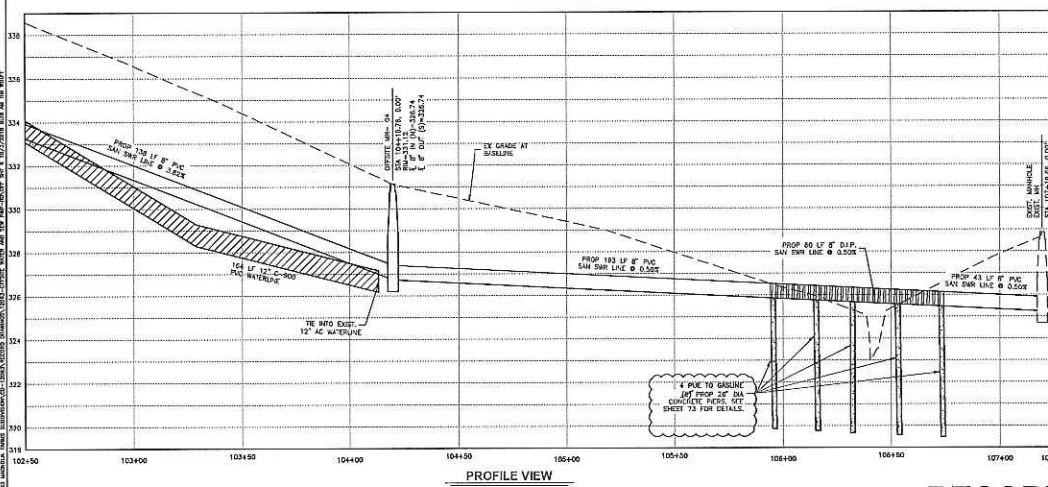
BLEYL ENGINEERING PLANNING • DESIGN • MANAGEMENT 10010 DALLAS, TEXAS 75243 (214) 343-1111 WWW.BLEYL.COM		PROJECT NUMBER 12063 SHEET 57 of 77
OFFSITE WATER AND SEWER PLAN & PROFILE - 54+50 TO 58+50 VINTAGE FARMS SUBDIVISION PHASE 1 BRENNAM, TEXAS		DATE 1-28-18 DRAWN BY CEB CHECKED BY CEB IN CHARGE CEB

BLEYL ENGINEERING



PLAN LEGEND

FUTURE PROPERTY LINE	---
FUTURE ROAD CENTER LINE	---
FUTURE ROW	---



THIS PLAN AND PROFILE DRAWING IS A PRELIMINARY DESIGN. IT IS NOT TO BE USED FOR CONSTRUCTION. THE ENGINEER SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE DATA AND THE DESIGN. THE ENGINEER SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE DATA AND THE DESIGN. THE ENGINEER SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE DATA AND THE DESIGN.

PROFILE LEGEND

EXISTING SURFACE	---
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BLEYL ENGINEERING PLANNING • DESIGN • MANAGEMENT 100115 CHRIS G. BEYER 100115 CHRIS G. BEYER 100115 CHRIS G. BEYER	
OFFSITE WATER AND SEWER PLAN & PROFILE - 102+50 TO 107+00 VINTAGE FARMS SUBDIVISION PHASE I BENHAM TEXAS	
PROJECT NUMBER 12063	
FILE NAME 102+50 TO 107+00 OFFSITE WATER AND SEWER PLAN SHEET 59 of 77	

RECORD DRAWING

EXHIBIT "B"

Vintage Farms Oversized Improvements

Vintage Farms Phase I
12" Water Line Upsizing Bid Tab
Bleyl Project No. 12063

ITEM	QTY	UNIT	DESCRIPTION	UNIT COST	TOTAL
12" Water Line Upsizing					
ADD-1	2,735	LF	ADD 12-inch PVC (C-900) water main, including all fittings, excavation, embedment, and trench backfill per the plans and specifications, complete and in place	\$39.54	\$108,141.90
ADD-2	3	EA	ADD 12" MJ gate valve and box per the plans and specifications, complete and in place	\$2,475.00	\$7,425.00
ADD-3	1	EA	ADD 12"X8" MJ reducer including all blocking and restraint per the plans and specifications, complete and in place	\$379.00	\$379.00
ADD-4	1	EA	ADD 12" MJ tee including all blocking and restraint per the plans and specifications, complete and in place	\$1,123.00	\$1,123.00
ADD-5	2	EA	ADD 12"X8" MJ tee including all blocking and restraint per the plans and specifications, complete and in place	\$941.40	\$1,882.80
ADD-6	1	EA	ADD 12" 90° MJ bend including all blocking and restraint per the plans and specifications, complete and in place	\$690.00	\$690.00
ADD-7	2	EA	ADD 12" 45° MJ bend including all blocking and restraint per the plans and specifications, complete and in place	\$660.00	\$1,320.00
ADD-8	1	EA	ADD 12" plug including all blocking and restraint per the plans and specifications, complete and in place	\$400.00	\$400.00
19	2,735	LF	<u>DEDUCT</u> 8-inch PVC (C-900) water main <u>(Item 19)</u> , including all fittings, excavation, embedment, and trench backfill per the plans and specifications, complete and in place	\$ (27.10)	-\$74,118.50
23	3	EA	<u>DEDUCT</u> 8" MJ gate valve and box <u>(Item 23)</u> per the plans and specifications, complete and in place	\$ (1,440.00)	-\$4,320.00
30	3	EA	<u>DEDUCT</u> 8" MJ tee <u>(Item 30)</u> including all blocking and restraint per the plans and specifications, complete and in place	\$ (525.00)	-\$1,575.00

Vintage Farms Phase I
12" Water Line Upsizing Bid Tab
Bleyl Project No. 12063

ITEM	QTY	UNIT	DESCRIPTION	UNIT COST	TOTAL
32	1	EA	<u>DEDUCT</u> 8" 90° MJ bend <u>(Item 32)</u> including all blocking and restraint per the plans and specifications, complete and in place	\$ (410.00)	-\$410.00
33	2	EA	<u>DEDUCT</u> 8" 45° MJ bend <u>(Item 33)</u> including all blocking and restraint per the plans and specifications, complete and in place	\$ (410.00)	-\$820.00
38	1	EA	<u>DEDUCT</u> 8" plug <u>(Item 38)</u> including all blocking and restraint per the plans and specifications, complete and in place	\$ (350.00)	-\$350.00
12" Water Line Upsizing Total				\$39,768.20	



AGENDA ITEM 12

DATE OF MEETING: October 18, 2018	DATE SUBMITTED: October 9, 2018	
DEPT. OF ORIGIN: Public Works	SUBMITTED BY: Dane Rau	
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION	ORDINANCE: ☐ 1ST READING ☐ 2ND READING ☐ RESOLUTION
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon Authorizing the Acceptance of a Grant from Lower Colorado River Authority (LCRA) Through Their Community Development Partnership Program (CDPP) for a Removable Bollard Traffic System in Downtown Brenham and Authorize the Mayor to Execute Any Necessary Documentation		
SUMMARY: During the FY18 calendar year, LCRA once again offered Community Development Partnership Program Grants to communities within its service area. The grant provides funding up to \$50,000 for capital improvement projects and must meet a need in one of the following areas: education, transportation, public safety, recreation, health care, training, and community training or employment. Grants of \$5,000 or more require a 20% match of the total project costs. The City of Brenham applied for the Downtown Bollard Project in which we had on our radar for a few years. This project enhances the public safety concerning the closure of roads during our numerous downtown events. We received notification on September 19th that we had received the grant in the amount of \$23,500. This project was identified by Brenham PD and Public Works as a much-needed enhancement to our current process of road closures during Hot Night, Cool Tunes, Parade Events, Christmas Stroll and other downtown activities in which protection of the citizens and visitors is the upmost priority. This project will allow flexibility on road closures as well as protecting pedestrians from accidental and intentional/terroristic vehicles entering into high-casualty pedestrian areas that intersect with Alamo and Main St. This first Phase will cover 4 intersections and one alley with those being St. Charles St, Baylor St., Park St., Douglas St., and W. Alamo St. Alley. Currently we are in the process of gaining two additional quotes and if Council approves the grant acceptance, we will move forward by the end of the year with the installation so that we can have these in place as soon as possible. Total project costs is estimated around \$30,000 in which our 20% has been budgeted. We would like to ask council to approve the acceptance of this grant from LCRA in the amount of \$23,500.		

STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: Interchangeable bollards that will provide additional safety to pedestrians and the public rather than using plastic barricades and cones. Will lessen staff time to operate intersections as well. B. CONS: None
ALTERNATIVES (In Suggested Order of Staff Preference):
ATTACHMENTS: (1) LCRA Grant Approval Letter; and (2) Bollard Scope of Work
FUNDING SOURCE (Where Applicable): Remaining funds will be from account 141-715.00 which was budgeted in the FY 18-19 budget.
RECOMMENDED ACTION: Approve the acceptance of a grant from Lower Colorado River Authority (LCRA) in the amount of \$23,500 through their Community Development Partnership Program (CDPP) for a Removable Bollard Traffic System in Downtown Brenham and authorize the Mayor to execute any necessary documentation
APPROVALS: James Fisher



September 19, 2018

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

Dear Mr. Fisher:

The customers, employees and Board of Directors of the Lower Colorado River Authority (LCRA) congratulate you on your Community Development Partnership Program grant in the amount of \$23,500. We are excited about your project and look forward to seeing the resulting benefits in your community.

Your project reflects strong leadership and a commitment to make a real difference in people's lives. LCRA is proud to be a part of these efforts, which fit so well with our mission to enhance the quality of life of the Texans we serve through water stewardship, energy and community service.

We are enclosing two copies of the letter agreement for the review and signature of the appropriate person within your organization. Please return one signed copy of the agreement in the enclosed envelope along with the direct deposit form. We will contact your organization to schedule your grant presentation upon receipt of the agreement and direct deposit form. We also are enclosing the final completion report guidelines and form to be completed within one year of funding.

Again, congratulations on your grant award. If you have any questions, please contact me at 512-578-3562 or 800-776-5272, ext. 3562, or Hondo Powell at 512-578-1549 or ext. 1549.

Sincerely,

A handwritten signature in blue ink, appearing to read "Phil Wilson", is written over a light blue horizontal line.

Phil Wilson
General Manager

cc: Mr. Dane Rau, Director of Public Works
City of Brenham

PROJECT SCOPE

February 21, 2017

OVERVIEW

1. Removable Bollard System – City of Brenham

The City of Brenham will upgrade its common event areas with a removable bollard system, allowing city personal to implement protective bollards for street closures (to protect pedestrians from accidental and intentional/terroristic vehicle entry into high-casualty pedestrian areas) during city events and easily remove post event.

2. Project Scope

Manufacture and install removable bollard system for downtown common street closure areas.

3. High-Level Requirements

Bollard system will include, but not be limited to the following basic requirements. Should installation be handled by the customer, Bollards Plus will provide initial training installation of one bollard.

The removable bollard system must include the following:

- Low profile sleeve to prevent trip hazard
- Weep line to prevent water buildup
- Lockable posts to prevent theft
- Schedule 40 steel posts
- Schedule 80+ steel sleeves
- ¼" top plate
- Heavy duty hinge and locking mechanism
- Set distance maximum not to exceed 48" apart.
- Installation insuring proper alignment and functionality
- Powder coated
- Caps for bollard posts

4. Affected Business Processes

- During installation, designated areas will need to be closed off for 24 hours to allow concrete to fully cure. Installation will be completed in two phases to allow for minimal impact.
- Access to area electrical and water sources required.
- Designated customer representative to approve locations

5. Specific Exclusions from Scope

- Optional exclusion of installation (see proposal number two)
- Locks for locking down bollards when in place

6. High-Level Timeline/Schedule

Manufacture/Order fulfillment

- 14 business days from project approval

Phase One Installation

- Alamo St Installations
- 1 day (to be scheduled upon order completion)
- 24 hour road closure to allow for setup

Phase Two Installation

- Main St Installations
- 1 day (to be scheduled upon order completion)
- 24 hour road closure to allow for setup
-

7. Scope

Alamo St (East & West South Intersections)

- S. St Charles St
 - o Area: 224"
 - o Bollards Required: 6 bollards, 40" apart
 - o Notes: Two light posts, more than 48" from bollard row start. Bollard placement south of concrete paver border.



- **S. Baylor St**

- Area: 177'
- Bollards Required: 5 bollards, 39.25' apart
- Notes: Two trees more than 48" from bollard row start. Bollard placement south of concrete paver border.



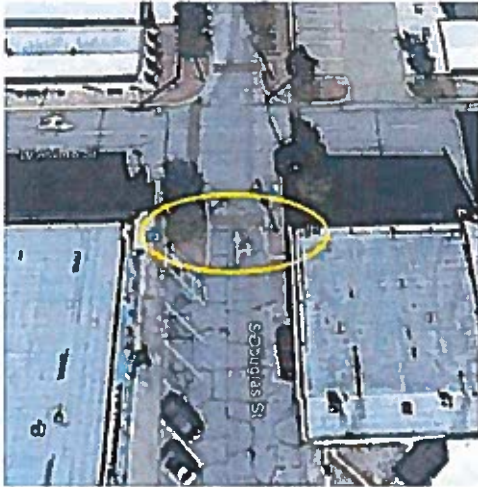
- **S. Park St**

- Area: 222'
- Bollards Required: 6 bollards, 39.6' apart
- Notes: One light post/trash can, one tree more than 48" from bollard row start. Bollard placement south of concrete paver border (not to interfere with parking)



- **S. Douglas St**

- Area: 216'
- Bollards Required: 6 bollards, 38.4" apart
- Notes: One light post, one tree more than 48" from bollard row start. Bollard placement south of concrete paver border



- **117/203 W. Alamo St Alley**

- Area: 233'
- Bollards Required: 4 bollards, 43.4" apart
- Notes: Wall on each side (no bollard at wall)". Bollard placement in concrete and paver (soil) south of sidewalk in alignment with wall.



Main St (East & West North Intersections)

- N. Douglas St
 - Area: 212
 - Bollards Required: 5 bollards, 48" apart
 - Notes: Two light post, one tree more than 48" from bollard row start. Bollard placement align with posts.



- N. Park St
 - Area: 212
 - Bollards Required: 5 bollards, 48" apart
 - Notes: One light post more than 48" from bollard row start. Bollard placement north of concrete paver border (not to interfere with parking)



- **N. Baylor St**

- Area: 197
- Bollards Required: 5 bollards, 44.25" apart
- One light post, one tree more than 48" from bollard row start. Bollard placement south of concrete paver border (not to interfere with parking)



- **N. St Charles St**

- Area: 213
- Bollards Required: 5 bollards, 48" apart
- One light post, one planter more than 48" from bollard row start. Bollard placement south of concrete paver border.



8. Affected Business Processes

- During installation, designated areas will need to be closed off for 24 hours to allow concrete to fully cure. Installation will be completed in two phases to allow for minimal impact.
- Access to area electrical and water sources required.
- Designated customer representative to approve locations

9. Specific Exclusions from Scope

- Optional exclusion of installation (see proposal number two)
- Locks for locking down bollards when in place

10. High-Level Timeline/Schedule

Manufacture/Order fulfillment

- 14 business days from project approval

Phase One Installation

- Alamo St Installations
- 1 day (to be scheduled upon order completion)
- 24 hour road closure to allow for setup

Phase Two Installation

- Main St Installations
- 1 day (to be scheduled upon order completion)
- 24 hour road closure to allow for setup

APPROVAL AND AUTHORITY TO PROCEED

We approve the project as described above, and authorize the team to proceed.

Approved By

Date

Approved By

Date



AGENDA ITEM 13

DATE OF MEETING: October 18, 2018	DATE SUBMITTED: October 8, 2018
DEPT. OF ORIGIN: Public Works	SUBMITTED BY: Sara Parker
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION
ORDINANCE: ☐ 1ST READING ☐ 2ND READING ☐ RESOLUTION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon a One Year Contract Extension, in Accordance with Bid No. 17-011, for Janitorial Services for Various City Facilities and Authorize the Mayor to Execute Any Necessary Documentation	
SUMMARY STATEMENT: On October 12, 2017 Council awarded this Contract, at an approximate value of \$107,448.24 to Kustom Klean Janitorial Services. Kustom Klean is a local company chosen on the basis of Best Value to the city due to the quality of the bidder's services, the extent to which the bidder's services met the City's needs and the bidder's past relationship with the City. In the year since, Kustom Klean has far outperformed the previous two contractors and provided a much more consistent and reliable service to the City. The Contract, as originally awarded, provides for extension for as many as two one-year terms beyond the year of the original contract. Council is requested to approve the first one-year extension of the contract at the pricing originally bid.	
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: Local Vendor, quality service, meets City's needs. B. CONS:	
ALTERNATIVES (In Suggested Order of Staff Preference):	
ATTACHMENTS: None	
FUNDING SOURCE (Where Applicable): Departmental Budgets.	
RECOMMENDED ACTION: Approve a One Year Contract Extension, in accordance with Bid No. 17-011, for Janitorial Services for Various City Facilities and authorize the Mayor to execute any necessary documentation	
APPROVALS: James Fisher	



AGENDA ITEM 14

DATE OF MEETING: October 18, 2018	DATE SUBMITTED: October 15, 2018	
DEPT. OF ORIGIN: Administration/Brenham EDF	SUBMITTED BY: Jeana Bellinger	
MEETING TYPE: ☒ REGULAR ☐ SPECIAL ☐ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION	ORDINANCE: ☐ 1 ST READING ☐ 2 ND READING ☒ RESOLUTION
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon Resolution No. R-18-017 of the City Council of the City of Brenham, Texas, Adopting a Commercial Tax Phase-In Agreement with Blue Bell Creameries, L.P.		
SUMMARY STATEMENT: Blue Bell Creameries, L.P. will be adding \$12.5M in property improvements at their Brenham location (fleet maintenance facility/office space building & central transfer station). These improvements will require the retention of 22 fleet department employees and the hiring of an estimated 5 additional fleet technician positions all with an average wage of \$30,000-\$50,000 per year, excluding benefits. Blue Bell plans to have the construction projects complete by August –September 2019.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: (1) Resolution No. R-18-017		
FUNDING SOURCE (Where Applicable):		
RECOMMENDED ACTION: Approve Resolution No. R-18-017 of the City Council of the City of Brenham, Texas, adopting a Commercial Tax Phase-In Agreement with Blue Bell Creameries, L.P.		
APPROVALS: James Fisher		

RESOLUTION NO. R-18-017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS ADOPTING A COMMERCIAL TAX PHASE-IN AGREEMENT WITH BLUE BELL CREAMERIES, L.P.; AUTHORIZING THE MAYOR TO EXECUTE THE TAX PHASE-IN AGREEMENT; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Chapter 312 of the Texas Tax Code authorizes the City of Brenham, Texas, to participate in tax phase-in incentives; and

WHEREAS, in accordance with Section 312.002 of the Texas Tax Code, the City of Brenham, Texas previously passed a resolution stating the City's intent to participate in tax phase-in incentives; and

WHEREAS, in accordance with Section 312.002 of the Texas Tax Code, the City of Brenham, Texas also previously adopted tax phase-in incentive guidelines and criteria; and

WHEREAS, the City Council of the City of Brenham, Texas, finds and determines that the terms of the Tax Phase-In Agreement and the subject property meet the applicable tax phase-in incentive guidelines and criteria, and entering into the Tax Phase-In Agreement will be to the benefit of the citizens of the City of Brenham; and

WHEREAS, the City Council desires to adopt the Tax Phase-In Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein for all purposes, by and between the City of Brenham, Texas, and Blue Bell Creameries, L.P., a Delaware limited partnership;

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

Section 1: That the foregoing recitals are hereby found to be true and correct legislative findings of the City of Brenham, Texas, and are fully incorporated into the body of this Resolution.

Section 2: That the City Council of the City of Brenham, Texas does hereby adopt the commercial Tax Phase-In Agreement, a copy of which is attached hereto as Exhibit "A", by and between the City of Brenham, Texas, and Blue Bell Creameries, L.P.

Section 3: That the Mayor is hereby authorized to execute the Tax Phase-In Agreement between the City of Brenham, Texas, and Blue Bell Creameries, L.P., a copy of which is attached hereto as Exhibit "A".

Section 4: This Resolution shall become effective immediately from and after its passage.

RESOLVED this _____ day of _____, 2018.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary

**AGREEMENT FOR DEVELOPMENT AND TAX PHASE-IN
IN ENTERPRISE ZONE NO. ONE DESIGNATED BY
ORDINANCE NO. 92-013,
CITY OF BRENHAM, TEXAS**

THE STATE OF TEXAS

COUNTY OF WASHINGTON

This Agreement is entered into by and between the CITY OF BRENHAM, TEXAS, a Texas home-rule municipal corporation, of Washington County, Texas, acting herein by and through its Mayor, hereinafter referred to as CITY, and BLUE BELL CREAMERIES, L. P., a Delaware limited partnership, hereinafter referred to as COMPANY.

WITNESSETH:

The City Council of the City of Brenham, Texas, ("COUNCIL") on February 20, 1992, adopted by resolution a policy for the creation of tax abatement zones in the City of Brenham ("POLICY"). Said POLICY was amended by COUNCIL on April 2, 1992, amended on June 4, 1992, and re-adopted on December 1, 1994, November 20, 1997, October 21, 1999, November 1, 2001, January 15, 2004, December 20, 2007, December 17, 2009, December 15, 2011, December 5, 2013, February 18, 2016 (as amended), and December 7, 2017 (entitled "City of Brenham Policy Statement on Property Tax Phase-In Incentive for Selected Commercial Enterprises"). Said POLICY is attached hereto as Exhibit "B" and incorporated herein for all purposes. Further, on June 18, 1992, the COUNCIL, by Ordinance No. 92-013, designated Enterprise Zone No. One ("ZONE") as authorized by the Texas Enterprise Zone Act, Article 5190.7, Texas Civil Statutes (now codified in Texas Government Code, Chapter 2303), and the designation of an area as an enterprise zone constitutes designation of the area as a reinvestment

zone under Texas Tax Code Chapter 312 without further hearing or other procedural requirements other than those provided by Chapter 2303, Texas Government Code. The ZONE designated by Ordinance No. 92-013 is still in effect, and the property that is the subject matter of this Agreement is situated within said ZONE.

WHEREAS, COMPANY has filed an application for the phase-in of ad valorem taxes, and

WHEREAS, COUNCIL finds that the application, this Agreement, and the property subject to this Agreement meet the applicable guidelines and criteria of said POLICY, and

WHEREAS, in order to provide for the proper development of such property and to aid in the conduct of the operation thereof to the best interest of the CITY in accordance with the above referenced ordinances, POLICY and statutes, the parties do mutually agree as follows:

1. **Location of Tax Phase-In.** The property that is the subject matter of this Agreement is the land and improvements located at 1101 S. Blue Bell Road and described more particularly as a certain tract of land containing 19.126 acres, more or less, out of the James Walker Survey, A-106, in Washington County, Texas, being a 5.133 acre tract, a 25.011 acre tract, less, however, a 10.018 acre tract and a 1.0 acre tract, all of which are the same property described in Deed dated September 28, 2006 from Alois Bilski, et al to Blue Bell Creameries, L. P. as recorded in Volume 1219, Page 356, Official Records of Washington County, Texas, and being further described in Exhibit "A", attached hereto and incorporated herein for all purposes, and which property is hereinafter referred to as "PREMISES."

2. **Improvements.** In consideration of COMPANY'S construction of at least Twelve Million, Five Hundred Thousand and No/100 Dollars (\$12,500,000.00) of real personal property improvements to said PREMISES, including fixed machinery, equipment and buildings, CITY agrees that, subject to the terms and conditions contained herein, eligible improvements and renovations to the above described PREMISES shall be entitled to tax phase-in incentives in accordance with the schedule as provided in "Table 1A – Property Improvements by an Existing Local Business", and tax phase-in incentives in accordance with the schedule as provided in "Table 2 – Jobs Created & Retained – by Existing Businesses or New/Relocating Businesses", said Tables being set out in the attached Exhibit "B" incorporated herein for all purposes, and that upon the expiration of such tax phase-in incentives this Agreement shall terminate.

"Improvements and renovations" as used herein shall be defined as including the building and all other associated improvements (personal and realty) and fixtures and equipment on the PREMISES added by the COMPANY within said ZONE. COMPANY will limit the uses of the property consistent with the general purpose of encouraging development or redevelopment of the ZONE during the period that property tax exemptions are in effect.

COMPANY acknowledges and agrees that the purpose of CITY in entering into this Agreement is to encourage development of the property in the ZONE and, therefore, COMPANY agrees to limit the use of the property to further said purpose.

3. **Submission of Plans.** COMPANY agrees that the site plan, interior and exterior design drawings and materials ("PLANS") for each improvement will be submitted to CITY

and/or its designated representative for its approval when available. An official set of PLANS will be designated by the COMPANY and will be kept on file with the CITY.

4. **Other Applicable Regulations.** COMPANY agrees to construct all improvements in accordance with all applicable laws, ordinances, codes, rules, requirements or regulations of the City of Brenham, Washington County, the State of Texas and the United States, and any subdivision, agency or authority thereof.

5. **Liability of City in Approving Plans.** CITY, by approving the PLANS or any revised PLANS, assumes no liability or responsibility therefore for any defect in any fixed machinery or equipment installed or any improvement or structure constructed, renovated, or repaired from the PLANS or approved revised PLANS. The relationship between CITY and COMPANY at all times shall not be deemed a partnership or joint venture for purposes of this Agreement or for any other purpose.

COMPANY AGREES TO HOLD HARMLESS, INDEMNIFY AND REIMBURSE CITY, ITS OFFICERS, AGENTS, AND/OR EMPLOYEES FOR ANY DAMAGES SUFFERED BY THEM DUE TO COMPANY'S NEGLIGENCE OR WILLFUL MISCONDUCT, SUCH DUTY AND LIABILITY NOT TO EXCEED WHAT COMPANY WOULD OWE TO ANY OF THEM UNDER COMMON LAW. CITY AGREES TO NOTIFY COMPANY AS SOON AS REASONABLY POSSIBLE AFTER CITY BECOMES AWARE OF ANY LEGAL ACTION (INCLUDING PRE-LITIGATION NOTICES, DEMAND LETTERS, ETC.) WHICH REASONABLY COULD THEN BE FORESEEN AS HAVING

THE PROSPECTIVE POTENTIAL OF ACTIVATING THE TERMS OF THE IMMEDIATELY PRECEDING SENTENCE.

6. **Rights of City to Inspect.** At all reasonable times during the construction and installation of improvements and renovations on the PREMISES and following completion, CITY and its respective designees may inspect PREMISES in order to verify the construction, workmanship, materials and installations involved in or incident to the project are performed in substantial compliance with the approved PLANS and compliance with the applicable building permits and governmental regulations.

7. **Payment of Taxes by Company.** COMPANY agrees to pay all ad valorem taxes and assessments that may be owed to CITY or any other taxing entity by it prior to such taxes and/or assessments becoming delinquent; provided, that COMPANY shall have the right to contest in good faith the validity or application of any such tax or assessment and shall not be considered in default hereunder so long as such contest is diligently pursued to completion. If COMPANY undertakes any such contest, COMPANY shall so notify in writing CITY and keep CITY apprised of the status of such contest. Should COMPANY be unsuccessful in such contest, COMPANY shall promptly pay the taxes, penalties, and/or interest, resulting therefrom.

COMPANY certifies that at the time of execution of this Agreement, there are no delinquent ad valorem taxes on the PREMISES, or fixed machinery, equipment and buildings located on the PREMISES, owed to any taxing jurisdiction. Subject to the foregoing paragraph, COMPANY shall pay all non-phased-in taxes subject to all requirements and due dates, as it would be required to pay in the absence of this Agreement.

8. **Tax Recapture.** In the event COMPANY (i) does not construct the improvements and renovations to the PREMISES as contemplated by this Agreement, (ii) fails to use the PREMISES for the purposes that are contemplated by this Agreement, (iii) fails to comply with the terms of the “City of Brenham Policy Statement on Property Tax Phase-In Incentive for Selected Commercial Enterprises”, or (iv) otherwise fails to comply with the terms of this Agreement, then the CITY shall have the right to terminate this Agreement and recapture the amount of all property taxes abated as a result of this Agreement in accordance with Texas Tax Code Sec. 312.205 and the POLICY after written notice of intended recapture by CITY to COMPANY and failure to cure by COMPANY within thirty (30) days of said notice.

9. **Default.** In the event COMPANY (i) allows the PREMISES to become vacant, (ii) fails to pay all non-abated ad valorem taxes as required by Section 7 hereof, (iii) fails to comply with the terms of the “City of Brenham Policy Statement on Property Tax Phase-In Incentive for Selected Commercial Enterprises”, or (iv) otherwise fails to comply with the terms of this Agreement, then COMPANY shall be in "default" in the performance of this Agreement. The CITY shall notify COMPANY in writing of said "default." Further, in accordance with Chapter 2264, Texas Government Code, COMPANY certifies that COMPANY, or a branch, division, or department of COMPANY does not and will not knowingly employ an undocumented worker. COMPANY further certifies that in the event that COMPANY, or a branch, division, or department of COMPANY, is convicted of a violation under 8 U.S.C. Section 1324a(f), COMPANY shall be repay the amounts of ad valorem taxes previously abated by the CITY pursuant to this Agreement, with interest, calculated at the rate ten percent (10%) annually. Such a conviction shall constitute a default under this Agreement.

If COMPANY does not comply with this Agreement within thirty (30) days of written notice of such "default", CITY reserves the right to terminate this Agreement and terminate the benefits of tax phase-in provided for in this Agreement, and all taxes previously abated pursuant to this Agreement shall be recaptured and paid to the City. In such event, the PREMISES and all improvements, fixed machinery and equipment installed thereon shall be deemed taxable and not entitled to tax phase-in as provided herein. If this Agreement is terminated, any taxes abated for the calendar year of the termination shall be paid within sixty (60) days of the date of such termination, and all taxes and all taxes previously abated pursuant to this Agreement shall be recaptured and paid to the City within sixty (60) days of the date of termination.

10. **Tax Phase-In Amount.** COMPANY shall receive tax phase-in incentives for eligible property improvements in accordance with the schedule as provided in “Table 1A – Property Improvements by an Existing Local Business”, and tax phase-in incentives for job creation in accordance with the schedule as provided in “Table 2 – Jobs Created & Retained – by Existing Businesses or New/Relocating Businesses” said Tables being set out in the attached Exhibit “B”, and that upon the expiration of such tax phase-in incentives this Agreement shall terminate. The total annual tax phase-in incentive amount received by the COMPANY, expressed on a percentage basis, shall be the sum of the respective percentages provided for in Table 1A and Table 2 for the applicable year of the tax phase-in.

COMPANY shall, on or before October 15 of each calendar year, submit a sworn statement to the CITY’S Compliance Review Committee that COMPANY is in compliance with this Agreement, including such information as may be necessary to verify compliance (e.g.

employment and payroll information), subject to verification by the City of Brenham and/or the Compliance Review Committee

During the term of this Agreement, the CITY, its officers and employees, and/or the Compliance Review Committee is entitled to review and verify the COMPANY'S employment records, payroll records, and such other information and documents as the CITY and/or the Compliance Review Committee deems reasonably necessary to verify compliance with this Agreement. The CITY, its officers and employees, and/or the Compliance Review Committee may conduct on-site inspections of the PREMISES and facilities located thereon during the term of this Agreement to verify compliance with this Agreement.

The estimated value of eligible property improvements for tax phase-in incentives is at least Twelve Million, Five Hundred Thousand and No/100 Dollars (\$12,500,000.00). Notwithstanding anything contained herein to the contrary, COMPANY and CITY agree that the amount of eligible property improvements and jobs created & retained as set forth herein are based on projected property improvement and personnel employed. Further, the estimated amount of tax phase-in incentives are described in the "Tax Phase-In Calculation" worksheet attached hereto as Exhibit "C" and incorporated herein for purposes; however, the actual amount of tax phase-in incentives shall be determined annually by Table 1A and Table 2 of the POLICY based on the actual eligible improvements and the actual number of employees. COMPANY agrees to reasonably cooperate with CITY to determine compliance with this Agreement and the applicable level of tax phase-in incentives.

11. **Certificate of Compliance.** Upon completion of the improvements and renovations to the PREMISES, COMPANY shall submit to CITY a sworn Certificate of Compliance certifying that all construction of the improvements and renovations to the PREMISES has been completed in accordance with the approved plans. After receipt of this Certificate of Compliance, CITY shall make a final inspection of PREMISES to determine whether the improvements and renovations have been constructed and installed in compliance with this Agreement. Upon so finding, CITY shall approve such a Certificate of Compliance and authorize tax phase-in to commence on January 1 of the year indicated in said certificate and terminate after the property has received the tax phase-in incentives as provided by this Agreement and Exhibit "B."

12. **Eligible and Ineligible Property.** "Eligible property" is defined to include all of the following items located on the PREMISES which were not so located prior to execution of this Agreement and whether or not they are so affixed as to become "real property": buildings, structures, fixed machinery and equipment, site improvements (including landscaping), office space and related fixed improvements necessary to the operation and administration of the facility.

"Ineligible Property" shall be fully taxable and ineligible for abatement, defined as including:

- Land;
- Animals;
- Inventories;
- Supplies;
- Tools;
- Furnishings and other forms of movable personal property (except as described as "eligible property" above);
- Vehicles;

Vessels;
Aircraft;
Hotels/motels;
Housing or residential property;
Fauna;
Flora (excluding landscaping improvements);
Retail facilities;
Deferred maintenance investments;
Improvements for the generation or transmission of electrical energy not wholly consumed by a new facility or expansion;
Any improvements including those to produce, store or distribute natural gas or fluids that are not integral to the operation of the facility; or
Property owned or used by the State of Texas or its political subdivisions or by any organization owned operated or directed by a political subdivision of the State of Texas.

13. **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under the present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added automatically as part of this Agreement a provision that is similar in terms and substance to such deleted provision as may be possible and yet be legal, valid and enforceable under the Texas Tax Code and related state statutes.

14. **Texas Law to Apply.** This Agreement shall be construed under the POLICY adopted by the CITY, including the Glossary of Terms, in accordance with said POLICY in force at the date of execution hereof and in accordance with the laws of the State of Texas. All obligations of the parties created hereunder are performable in Washington County, Texas. In the event of litigation, or other claim or dispute arising out of or involving this Agreement, exclusive venue shall lie in a court of competent jurisdiction in Washington County, Texas.

15. **Prior Agreements Superseded.** This Agreement constitutes the sole agreement of the parties herein and supersedes any and all prior written or oral agreements, arrangements or understandings between the parties relating to the subject matter.

16. **Amendments.** No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing, dated subsequent to the date of this Agreement and duly executed by the parties hereto.

17. **Rights and Remedies Cumulative.** The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its rights to use all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

18. **No Waiver.** No waiver by CITY in any event of default, or breach of any covenant, condition or stipulation herein contained by COMPANY shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition or stipulation hereof.

19. **Assignment.** This Agreement may be assigned by COMPANY upon CITY'S written approval of said assignment by the adoption of a resolution by the COUNCIL, and assignee assumes any and all rights and obligations under this Agreement. Upon such assignment, the assignor shall be fully released from any and all obligations under this Agreement.

20. **Authority to Act.** The parties to this Agreement shall provide proof of authorization to execute this document.

21. **Notice.** Whenever notice or other communication is herein required to be given to COMPANY or to CITY, such notice will be sent, respectively, to the attention of COMPANY'S President or other designated officer at the address of Company's facility in the ZONE, or to the attention of the City Manager at the address of said City Manager's then-current office location, via certified or registered mail, return receipt requested. Such notice will be considered effectively delivered when sent if such is properly addressed and sent and the return receipt is received by the sender, or if addressee fails to receive or accept delivery and the undelivered item is returned to sender.

22. **Definitions.** Any definitions of words or phrases given in the currently effective tax phase-in guidelines entitled "City of Brenham Policy Statement on Property Tax Phase-in Incentive for Selected Commercial Enterprises" shall be controlling in this document as well, except as may be specifically modified herein

23. This Agreement has been approved by the governing body of the CITY.

24. Any aspect of this Agreement which may happen to conflict with the underlying jurisdiction's tax phase-in guidelines shall be considered as an approved modification or clarification of such guidelines as may be required to affect the intent of this Agreement.

25. For the duration of this Agreement and for additional consideration for this tax phase-in, COMPANY agrees to purchase the following utilities: water, electric, natural gas, and sewer, exclusively from the City of Brenham in its service area.

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

The parties hereto have executed or caused to be executed by its duly authorized officials this Agreement in multiple counterparts, each of equal dignity, on this the _____ day of _____, 2018.

BLUE BELL CREAMERIES, L. P.

CITY OF BRENHAM

BY: _____
Ricky Dickson
President
1101 S. Blue Bell Road
Brenham, TX 77833

BY: _____
Milton Y. Tate, Jr.
Mayor
P.O. Box 1059
Brenham, TX 77834-1059

ATTEST:

BY: _____
Jeana Bellinger, TRMC, CMC
City Secretary
P.O. Box 1059
Brenham, TX 77834-1059

THE STATE OF TEXAS

COUNTY OF WASHINGTON

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

Given under my hand and seal of office on this the ____ day of _____, 2018.

Notary Public in and for
The State of Texas

THE STATE OF TEXAS

COUNTY OF WASHINGTON

Before me, the undersigned authority, on this day personally appeared **RICKY DICKSON**, President of BLUE BELL CREAMERIES, L.P., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the ____ day of _____, 2018.

Notary Public in and for
The State of Texas

EXHIBIT “A”

19.126 acres, more or less, out of the James Walker Survey, A-106, in Washington County, Texas being a 5.133 acre tract, a 25.011 acre tract, LESS, however, a 10.018 acre tract and a 1.0 acre tract, all of which are the same property described in Deed dated September 28, 2006 from Alois Bilski, et al to Blue Bell Creameries, L. P. as recorded in Volume 1219, Page 356, Official Records of Washington County, Texas.

Exhibit B

CITY OF BRENHAM

POLICY STATEMENT ON PROPERTY TAX PHASE-IN INCENTIVE FOR SELECTED COMMERCIAL ENTERPRISES

Policy Adoption Date: December 7, 2017

I. PURPOSE

The City of Brenham, hereinafter referred to as "the City," is committed to the promotion of high quality development in all parts of the community and to improving the quality of life for its citizens. In order to help meet these goals and to stimulate economic development, the City will consider providing incentives that include, but are not limited to, the property Tax Phase-In incentive, in accordance with the procedures, criteria and guidelines set forth in this Policy and as provided by Chapter 312 of the Texas Tax Code. Nothing in this Policy shall imply or suggest that the City is under any obligation to provide any incentives to any applicant. Each application for the Tax Phase-In incentive under this Policy shall be considered on an individual basis.

II. DEFINITION OF TAX PHASE-IN INCENTIVE

Tax Phase-In incentive, as referred to in this Policy, means the partial, temporary exemption from ad valorem taxes on certain qualifying property in a Reinvestment Zone designated by the City or County for economic development purposes. Only ad valorem (property) taxes are eligible for the incentive. Brenham ISD and Blinn College taxes are required to be paid in full at all times.

The attached Glossary is a list of words with their definitions that are found in this document, and the Glossary is incorporated herein by reference.

III. GUIDELINES AND CRITERIA

In order to be eligible for property Tax Phase-In incentive, the planned improvement at a minimum must:

- (a) Be a facility used or to be used by a Primary Jobs Employer according to Exhibit A (except for a location in the Downtown Zone).
- (b) The project must add new value to the tax roll of eligible property: a minimum of \$300,000 for a business new to Brenham or \$150,000 for an existing local business. For development in the Downtown Zone, a National Register Historic District, the added value must be a minimum of \$50,000. This is to help maintain the economic viability of the central business district.
- (c) The applicant must maintain or create within the first year and throughout the Tax Phase-In incentive period a minimum of ten (10) jobs at an average salary of \$36,000/year or higher, including any benefits (except for a location in the Downtown Zone).

In consideration of the request for the Tax Phase-In incentive, the following factors will also be considered:

- (1) Jobs The projected new jobs created including the number of jobs, the type of jobs and the average salary per job class.
- (2) Fiscal Impact The amount of real and personal property value that will be added to the tax roll for both eligible and ineligible property, the amount of direct sales tax that may be generated, any infrastructure improvements by the City that will be required by the facility, the infrastructure improvements made by the facility, and the compatibility of the project with the City's master plan for development.
- (3) Valuation at Termination of Tax Phase-In Incentive Period The estimated fair market value, valued at the end of incentive period, of any equipment included in the Tax Phase-In incentive. The economic life of the added-value property must exceed the duration of the granted Tax Phase-In incentive period.

(4) Community Impact

The pollution, if any, as well as other negative environmental impacts affecting the health and safety of the community that will be created by the project;

The revitalization of a depressed area;

The business opportunities of existing local businesses;

The alternative development possibilities for proposed site;

The impact on other taxing entities;

Whether the improvement is expected to solely or primarily have the effect of transferring employment from one part of Washington County to another; and/or,

Whether the product manufactured or service provided by the business competes to a substantial degree with an existing business.

IV. TAX PHASE-IN INCENTIVE AUTHORIZED

- (a) Authorized Date A facility shall be eligible for the Tax Phase-In incentive if it has applied for the incentive prior to the commencement of construction and meets the guidelines and criteria under this Policy.
- (b) Creation of New Value Tax Phase-In incentive may only be granted for the additional value of eligible property improvements made subsequent to the filing of an application for the Tax Phase-In incentive and specified in the Tax Phase-In incentive agreement between the City and the property owner and/or lessee, subject to such limitations as the guidelines and criteria may require.

- (c) New and Existing Facilities Tax Phase-In incentive may be granted for new facilities and improvements and for the expansion or modernization of existing facilities and improvements. If the modernization project includes facility replacement, the Tax Phase-In incentive value shall be the tax-appraised value of the new unit(s) less the value of the old unit(s).
- (d) Eligible Property Except as otherwise provided in this policy, the Tax Phase-In incentive may be extended to the value of buildings, structures, fixed machinery and equipment, site improvements plus that office space and related fixed improvements necessary or convenient to the operation and administration of the facility.
- (e) Ineligible Property The following types of property shall be fully taxable and ineligible for property Tax Phase-In incentives:
- land,
 - animals,
 - inventories,
 - supplies,
 - tools,
 - furnishings and other forms of movable personal property,
 - vehicles,
 - vessels,
 - aircraft,
 - housing or residential property (except for property owners in the Downtown Zone),
 - hotels/motels,
 - fauna,
 - flora,
 - retail facilities (except for property owners in the Downtown Zone),
 - deferred maintenance investments,
 - property to be rented or leased except as provided in Part IV (f),
 - improvements for the generation or transmission of electrical energy not wholly consumed by a new facility or expansion,
 - any improvements including those to produce, store or distribute natural gas or fluids that are not integral to the operation of the facility, or
 - property owned or used by the State of Texas or its political subdivisions or by any organization owned, operated or directed by a political subdivision of the State of Texas.
- (f) Owned/Leased Facilities If a leased facility is granted the Tax Phase-In incentive, the agreement shall be executed with the lessor and the lessee and the new value investment shall be combined to calculate the total new value investment. If the lessee removes or reduces its new value investment to the detriment of the lessor, the lessor may annually elect to extend its Tax Phase-In incentive to obtain a replacement lessee. The lessor may obtain the full benefit of the remaining Tax Phase-In incentive period by resuming the Tax Phase-In incentive with the combined value of the replacement lessee by disregarding the Tax Phase-In incentive extension term. The lessor shall not receive any Tax Phase-In incentive during any year where a Tax Phase-In incentive extension has been elected. The Tax Phase-In incentive period, including any extensions, shall never exceed a total of ten years as provided by state law. The replacement lessee may apply for its own Tax Phase-In incentive based solely on its new value investment.

- (g) Value and Term of Tax Phase-In incentive Tax Phase-In incentives shall commence with the January 1 valuation date immediately following the occupancy of the property qualifying for the Tax Phase-In incentive unless otherwise specified by the City. The value of new eligible properties shall be abated according to the approved agreement between applicant and the City. The City, in its sole discretion, shall determine the amount of any Tax Phase-In incentive. The Table 1 and Table 2 Tax Phase-In incentive Schedules - Exhibit "B", Table 3 in a Downtown Zone (map Exhibit "C"), incorporated herein by reference, shall be the maximum Tax Phase-In incentive available based on total new value investment or added employment for each year during the Tax Phase-In incentive term, whichever is greater.

The total amount of eligible property improvements and jobs created and retained are based on projected property improvements and personnel employed. However, the actual amount of tax phase-in incentives shall be determined annually by Table 1 and Table 2 in Exhibit B based on the actual eligible improvements and the actual number of employees, unless located in a Downtown Zone, in which the total amount of abatement will be derived from Table 3.

If an Existing Local Business has ten to forty-nine (10-49) employees for their base year employment, then the total abatement levels shall be determined from Levels 1-4 in Table 2 of Exhibit B. If an Existing Local Business has fifty (50) or more employees for their base year employment, then the following abatement levels shall be determined from Table 2 in Exhibit B:

- Level 5 – if base year employment is at least 90% for that calendar year
- Level 4 – if base year employment is at least 80% for that calendar year
- Level 3 – if base year employment is at least 70% for that calendar year
- Level 2 – if base year employment is at least 60% for that calendar year
- Level 1 – if base year employment is at least 50% for that calendar year

- (h) Downtown Zone A Tax Phase-In incentive zone within the designated downtown area in the attached Exhibit C, incorporated herein by reference, and any tracts or parcels contiguous to a tract in Exhibit C under common ownership. Tax Phase-In incentive in a Downtown Zone shall receive approval for building plans and specifications by the Main Street Board as a condition of receiving the Tax Phase-In incentive.

- (i) Taxability From the execution of the Tax Phase-In incentive contract to the end of the agreement period, taxes shall be payable as follows:

- (1) The value of ineligible property as provided in Part IV (e) shall be fully taxable.
- (2) The base year value of existing eligible property as determined each year shall be fully taxable.
- (3) The additional value of new eligible property shall be taxable in the manner described in Part IV (g).

V. APPLICATION PROCESS

- (a) Any present or potential owner of taxable property in the City of Brenham may request the creation of a Reinvestment Zone and Tax Phase-In incentive by filing written request with the City Manager.
- (b) The application shall consist of a completed application form accompanied by:
 - (1) A general description of the proposed use and the general nature and extent of the modernization, expansion or new improvements to be undertaken;
 - (2) A descriptive list of the improvements which will be a part of the facility;
 - (3) A map and property description or a site plan, including a legal description of the area proposed for designation as a Reinvestment Zone, as applicable.
 - (4) A time schedule for undertaking and completing the planned improvements;
 - (5) In the case of modernizing or replacing existing facilities, a statement of the assessed value of the facility, separately stated for real and personal property, shall be given for the tax year immediately preceding the application;
 - (6) The application form may require such financial and other information as deemed appropriate for evaluating the financial capacity and other factors of the applicant;
 - (7) A schedule reflecting the proposed amount of abated taxes for which the applicant seeks, as well as the anticipated taxes to be paid by the applicant which will not be subject to the Tax Phase-In incentive; and
 - (8) A schedule of the proposed job creation or retention, including details of job type(s), wages and benefits, and the timing of creation of any job within the phase-in period.
- (c) Upon receipt of a completed application, the City Manager shall notify the Mayor and City Council. Before acting upon the application, the City may conduct an Economic Impact Study. Following this step, the City shall afford the applicant and any other interested persons the opportunity to speak and present evidence for or against the designation of the area as a Reinvestment Zone for the purpose of the Tax Phase-In incentive during a public hearing. Notice of the public hearing shall be clearly identified on an agenda of the City to be posted as required by law. At least seven (7) days before the date of the hearing, notice of the hearing must be 1) published in a newspaper having general circulation in the City; and 2) delivered in writing to the presiding officer of the governing body of each taxing entity having in its boundaries real property that is to be included in the proposed Reinvestment Zone.
- (d) The City shall approve or disapprove the application for designation of an area as a Reinvestment Zone for Tax Phase-In incentive within ninety (90) days after receipt of the application. The presiding officer of the legislative body of the City shall notify the applicant of the approval or disapproval promptly thereafter.

- (e) A request for designation of an area as a Reinvestment Zone for the purpose of receiving the Tax Phase-In incentive shall not be granted if the jurisdiction receiving the application finds that the request for the Tax Phase-In incentive was filed after the commencement of construction or installation of improvements related to a proposed modernization expansion or new facility began.

VI. PUBLIC HEARING

- (a) Should the City be able to show cause in the public hearing why the granting of a designation of an area as a Reinvestment Zone for the Tax Phase-In incentive will have a substantial adverse effect on its bonds, service capacity or the provision of service, that showing shall be reason for the City to deny the granting of the application.
- (b) Neither a Reinvestment Zone nor a property Tax Phase-In incentive agreement shall be authorized if it is determined that:
 - (1) There would be a substantial adverse effect on the provision of a government service or tax base of the City.
 - (2) The applicant has insufficient financial capacity
 - (3) Planned or potential use of the property would constitute a hazard to public safety, health or morals.
 - (4) Planned or potential use of the property violates governmental codes or laws.

VII. AGREEMENT

- (a) After approval of the application for the designation of an area as a Reinvestment Zone for the property Tax Phase-In incentive, the City shall formally pass a resolution and execute an agreement with the owner of the facility and the lessee involved, if any, which shall include:
 - (1) Estimated value to be abated and the base year value.
 - (2) Percent of value to be abated each year as provided in Part IV (g).
 - (3) The commencement date and the termination date of Tax Phase-In incentive.
 - (4) The proposed use of the facility, nature of construction, time schedule for undertaking and completing the planned improvements, map, property description and improvements list as provided in Application, Part V.
 - (5) Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided herein and other provisions that may be required for uniformity or by state law.
 - (6) Amount of investment and average number of jobs involved for the period of the Tax Phase-In incentive.
 - (7) Said contract shall meet all of the requirements of Texas Tax Code Chapter 312.

- (b) Such agreement shall be executed within ninety (90) days after the later of 1) the date applicant has forwarded all necessary information to the City or 2) the date of the approval of the application.
- (c) The City shall make its own determination of the property Tax Phase-In incentive which shall not bind any other jurisdiction.

VIII. ADMINISTRATION

Each Tax Phase-In incentive project will be monitored annually for compliance. The agreement will require the applicant to provide a sworn statement and documents verifying compliance each year. Failure to provide the required documents in the manner outlined herein shall result in termination of the Tax Phase-In incentive agreement.

The terms of the agreement shall include the right of the City to review and verify the applicant's employment records and payroll records in each year during the term of the agreement, and to conduct an on-site inspection of the project in each year during the duration of the Tax Phase-In incentive, and to review such other items as may be reasonable to verify compliance with the terms of the agreement.

The agreement shall stipulate that employees and/or designated representatives of the City will have access to the Reinvestment Zone during the term of the Tax Phase-In incentive to inspect the facility to determine compliance with the terms and conditions of the agreement. All inspections will be made only after the giving of twenty-four (24) hours prior notice and will be conducted in such manner as to not unreasonably interfere with the construction and/or operation the facility. All City inspections will be made with one or more representatives of the company or individual and in accordance with its safety standards.

All proprietary information acquired by any affected jurisdiction for purposes of monitoring compliance with the terms and conditions of a property Tax Phase-In incentive agreement shall be considered confidential to the extent allowed by law.

Compliance will be monitored in the following manner:

- (a) A Compliance Review Committee shall collect from the applicant a sworn statement of compliance and verifying documents and conduct any inspections on or before June 30 of each calendar year. The Committee shall be comprised of 5 representatives, with 2 appointed by the Mayor, 2 appointed by the County Judge and 1 by the Chief Appraiser. They will be appointed by January 30 of even numbered years for a two year term. Any vacancy on the committee will be filled by the designated official who appointed the vacating committee person. The designated official may remove an appointee at any time. The company/individual receiving the property Tax Phase-In incentive shall furnish the Committee with such information as may be necessary to verify compliance, including the number of new or retained employees associated with the facility and their salaries.
- (b) The Chief Appraiser of the County shall annually determine an assessment of the real and personal property in the Reinvestment Zone. This shall be done on or before October 1 of each calendar year.
- (c) The Committee shall provide a report on the status of all Tax Phase-In incentive agreements to the City Council on or before December 15 of each calendar year.

IX. DEFAULT

Should the City determine that a company or individual is in default according to the terms and conditions of its agreement, the City shall notify the company or individual in writing at the address stated in the agreement, and if such default is not cured within thirty (30) days or begun to be cured (in the case of a default that cannot reasonably be cured within 30 days) from the date of such notice ("Cure Period"), then the agreement shall be terminated.

In the event that the company or individual:

- (1) allows its ad valorem taxes owed the City to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest; or
- (2) does not create jobs as outlined in the agreement; or
- (3) if an Existing Local Business falls below fifty percent (50%) of their base year employment number; or
- (3) violates any of the terms and conditions of the Tax Phase-In incentive agreement and fails to cure same during the Cure Period; or
- (4) if the facility is completed and begins producing product or service, but subsequently discontinues producing product or service for any reason excepting fire, explosion or other casualty or accident or natural disaster, for a period of more than one (1) year during the Tax Phase-In incentive period;

then the agreement shall terminate and so shall the Tax Phase-In incentive of taxes for the calendar year during which the agreement is terminated. The taxes otherwise abated for that calendar year shall be paid to the City within sixty (60) days from the date of termination.

X. ASSIGNMENT

- (a) The Tax Phase-In incentive may be transferred and assigned by the holder to a new owner or lessee of the same facility upon the approval by resolution of the City, subject to the financial capacity of the assignee and provided that all conditions and obligations in the Tax Phase-In incentive agreement are guaranteed by the execution of a new contractual agreement with the City.
- (b) The contractual agreement with the new owner or lessee shall not exceed the termination date of the Tax Phase-In incentive agreement with the original owner and/or lessee.
- (c) No assignment or transfer shall be approved if the parties to the existing agreement, the new owner or new lessee are liable to the City for outstanding taxes or other obligations.
- (d) Approval shall not be unreasonably withheld.

XI. SUNSET PROVISION

- (a) This policy is effective upon the date of the adoption and will remain in force for two (2) years, at which time all Reinvestment Zones and Tax Phase-In incentive contracts created pursuant to its provisions may be reviewed by the City to determine whether the goals have been achieved. Based on that review, this policy may be modified, renewed or eliminated, providing that such actions shall not affect existing contracts.
- (b) This policy does not amend any existing Industrial District Contracts or agreements with the owners of real property in areas deserving of specific attention as agreed by the City.
- (c) Prior to the date for review, as defined above, this Policy Statement may be modified by a three fourths (3/4) vote of members each governing body, as provided for under the laws of the State of Texas.

XII. SEVERABILITY AND LIMITATIONS

- (a) In the event that any section, clause, sentence, paragraph or any part of this Policy Statement shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such invalidity shall not affect, impair, or invalidate the remainder of this Policy Statement.
- (b) Property that is owned or leased by the following is excluded from the property Tax Phase-In incentive:
 - (1) a member of the governing body of the City of Brenham or a member of a planning board or commission of the City; or
 - (2) a member of the Commissioners Court or a member of a planning board or commission of Washington County.
- (c) If this Policy Statement has omitted any mandatory requirements of the applicable Tax Phase-In incentive laws of the State of Texas, then such requirements are hereby incorporated as a part of this Policy Statement.

XIII. VARIANCE

Requests for any variances from this Policy may be made in written form to the City Manager. Such request shall include a complete description of the circumstances explaining why the applicant, company or individual should be granted a variance. Approval of a request for variance requires a three- fourths (3/4) majority vote of the governing body of the City.

GLOSSARY

- (a) "City" means the City of Brenham, Texas that levies ad valorem taxes upon and/or provides services to property located within the City limits.
- (b) "Agreement" means a contractual agreement between a property owner and/or lessee and the City for the purpose of the Tax Phase-In incentive.
- (c) "Base year employment" means the average number of employees for each quarter at an existing local business of the year prior to the execution of the agreement.
- (d) "Base year value" means the assessed value of eligible property on January 1 preceding the execution of the agreement plus the agreed upon value of eligible property improvements made after January 1 but before the filing of an application for the Tax Phase-In incentive.
- (e) "Committee" means the Compliance Review Committee, consisting of representatives appointed by the City, County and Chief Appraiser's office to annually review documents verifying compliance of all projects receiving the Tax Phase-In incentive.
- (f) "Deferred maintenance" means improvements necessary for continued operations which do not improve productivity or alter the process technology.
- (g) "Existing Local Business" means a business that has been located in the City of Brenham and has paid property taxes for at least one full year prior to submitting any application for the property Tax Phase-In incentive.
- (h) "Expansion" means the addition of buildings, employees, structures, machinery or equipment for purposes of increasing production capacity.
- (i) "Facility" means property improvements completed or in the process of construction which together comprise an integral whole.
- (j) "Job(s)" shall represent a newly created or a retained employment position on a full-time permanent basis at an average base salary of \$36,000 or higher, including any benefits, whether hired directly or leased through an employee leasing service.
- (k) "Modernization" means the upgrading and or replacement of existing facilities which increases the productive input or output, updates the technology or substantially lowers the unit cost of the operation. Modernization may result from the construction, alteration or installation of buildings, structures, fixed machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing or repairing.
- (l) "New Facility" means improvements to real estate previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.
- (m) "Productive Life" means the number of years a property improvement is expected to be in service in a facility.

EXHIBIT A
PRIMARY JOBS EMPLOYER DEFINITION

Sec. III (a)

Be a facility used or to be used by a Primary Jobs Employer.

"Primary job" means a job that is:

- (i) available at a company for which a majority of the products or services of that company are ultimately exported to regional, statewide, national, or international markets infusing new dollars into the local economy; and
- (ii) included in one of the following sectors of the North American Industry Classification System (NAICS):

NAICS Sector #	Description
111	Crop Production
112	Animal Production
113	Forestry and Logging
11411	Commercial Fishing
115	Support Activities for Agriculture and Forestry
211-213	Mining
221	Utilities
311-339	Manufacturing
42	Wholesale Trade
48-49	Transportation and Warehousing
51 (excluding 512131 and 512132)	Information (excluding motion picture theaters and drive-in motion picture theaters)
523-525	Securities, Commodity Contracts, and Other Financial Investments and Related Activities; Insurance Carriers and Related Activities; Funds, Trusts, and Other Financial Vehicles
5413, 5415, 5416, 5417, and 5419	Architectural, Engineering, and Related Services; Computer System Design and Related Services; Management, Scientific, and Technical Consulting Services; Scientific Research and Development Services; Other Professional, Scientific, and Technical Services
551	Management of Companies and Enterprises
56142	Telephone Call Centers
922140	Correctional Institutions

EXHIBIT B TAX PHASE-IN INCENTIVE SCHEDULES

Applicants may receive property Tax Phase-In incentive according to the schedules in Tables 1 and 2, depending on their combination of property value creation and job creation/retention.

TABLE 1 (earns 50% of incentive)

1A - Property Improvements by an Existing Local Business

Level	Amount of Valuation of Eligible Improvements as determined by the Tax Appraisal District:		Percent of property tax to be abated each year							
	From	To	1	2	3	4	5	6	7	8
1	\$ 150,000	\$1,000,000	45	40	30	20	0	0	0	0
2	\$1,000,001	\$2,500,000	45	45	40	30	20	0	0	0
3	\$2,500,001	\$4,000,000	45	45	45	40	30	20	0	0
4	\$4,000,001	\$5,500,000	45	45	45	45	40	30	20	0
5	More than	\$5,500,000	45	45	45	45	45	40	30	20

1B - Property Improvements by a New Business

Level	Amount of Valuation of Eligible Improvements as determined by the Tax Appraisal District:		Percent of property tax to be abated each year							
	From	To	1	2	3	4	5	6	7	8
1	\$ 300,000	\$1,000,000	45	40	30	20	0	0	0	0
2	\$1,000,001	\$2,500,000	45	45	40	30	20	0	0	0
3	\$2,500,001	\$4,000,000	45	45	45	40	30	20	0	0
4	\$4,000,001	\$5,500,000	45	45	45	45	40	30	20	0
5	More than	\$5,500,000	45	45	45	45	45	40	30	20

TABLE 2 (earns 50% of incentive)

2 - Jobs Created & Retained - by Existing Businesses or New/Relocating Businesses

Level	The number of new and/or retained full-time employees with an average salary level of \$36,000+/year including benefits averaged during the twelve calendar months prior to the tax assessment date of January 1:		Percent of property tax to be abated each year							
	From	To	1	2	3	4	5	6	7	8
1	10	19	45	40	30	20	0	0	0	0
2	20	29	45	45	40	30	20	0	0	0
3	30	39	45	45	45	40	30	20	0	0
4	40	49	45	45	45	45	40	30	20	0
5	50 and more		45	45	45	45	45	40	30	20

TABLE 3 Downtown Zone

Amount of valuation of
downtown reinvestment
determined by tax appraisal:

Percent of property tax to be abated each year

Valuation	1	2	3	4	5	6	7	8
\$ 50,000 to \$150,000	90	90	90	60	40	20	0	0
\$150,001 to \$250,000	90	90	90	90	60	40	20	0
\$250,001 and beyond	90	90	90	90	90	60	40	20

EXHIBIT C
MAP OF DOWNTOWN ZONE



TAX PHASE-IN CALCULATION

Exhibit C

PROJECT INFORMATION

Project: Fleet Maintenance Building & Central Transfer Center
 Business Name: Blue Bell Creameries
 Prepared for: Ricky Dickson, President
 Date Prepared: 10/12/2018

Jurisdiction	Tax Rate	Tax Value
City of Brenham*	0.5170	\$ 64,625.00
Washington County*	0.5171	\$ 64,637.50
Blinn College	0.0601	\$ 7,512.50
Brenham ISD	1.1250	\$ 140,625.00
Total Annual Tax	2.2192	\$ 277,400.00

*Only City and County tax are available for possible abatement

ESTIMATED ABATEMENT TOTAL	
City	\$ 319,893.75
County	\$ 319,955.63
Total	\$ 639,849.38

TAX ABATEMENT SUMMARY		VALUE	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	TOTAL
TABLE 1A											
Property Improvements by an Existing Local Business	Rate		45%	45%	45%	45%	45%	45%	30%	20%	
	City	0.5170	\$29,081.25	\$29,081.25	\$29,081.25	\$29,081.25	\$29,081.25	\$25,850.00	\$19,387.50	\$12,925.00	\$203,568.75
	County	0.5171	\$29,086.88	\$29,086.88	\$29,086.88	\$29,086.88	\$29,086.88	\$25,855.00	\$19,391.25	\$12,927.50	\$203,608.13
Table 1A Totals:		\$12,500,000.00	\$58,168.13	\$58,168.13	\$58,168.13	\$58,168.13	\$58,168.13	\$51,705.00	\$38,778.75	\$25,852.50	\$407,176.88
TABLE 2											
Jobs Created and/or Retained	Rate		45%	45%	40%	30%	20%				
	City	0.5170	\$29,081.25	\$29,081.25	\$25,850.00	\$19,387.50	\$12,925.00	\$ -	\$ -	\$ -	\$116,325.00
	County	0.5171	\$29,086.88	\$29,086.88	\$25,855.00	\$19,391.25	\$12,927.50	\$ -	\$ -	\$ -	\$116,347.50
Table 2 Totals:		27	\$58,168.13	\$58,168.13	\$51,705.00	\$38,778.75	\$25,852.50	\$ -	\$ -	\$ -	\$232,672.50
TAXES ABATED											
TOTALS	Rate		90%	90%	85%	75%	65%	40%	30%	20%	
	City	0.5170	\$58,162.50	\$58,162.50	\$54,931.25	\$48,468.75	\$42,006.25	\$25,850.00	\$19,387.50	\$12,925.00	\$319,893.75
	County	0.5171	\$58,173.75	\$58,173.75	\$54,941.88	\$48,478.13	\$42,014.38	\$25,855.00	\$19,391.25	\$12,927.50	\$319,955.63
TOTAL TAXES ABATED:			\$116,336.25	\$116,336.25	\$109,873.13	\$96,946.88	\$84,020.63	\$51,705.00	\$38,778.75	\$25,852.50	\$639,849.38

TAXES TO BE PAID SUMMARY		VALUE	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8	TOTAL
TAXES PAID											
TOTALS	City	0.5170	\$6,462.50	\$6,462.50	\$9,693.75	\$16,156.25	\$22,618.75	\$38,775.00	\$45,237.50	\$51,700.00	\$197,106.25
	County	0.5171	\$6,463.75	\$6,463.75	\$9,695.63	\$16,159.38	\$22,623.13	\$38,782.50	\$45,246.25	\$51,710.00	\$197,144.38
	Blinn	0.0601	\$7,512.50	\$7,512.50	\$7,512.50	\$7,512.50	\$7,512.50	\$7,512.50	\$7,512.50	\$7,512.50	\$60,100.00
Taxes Paid:	Brenham ISD	1.1250	\$140,625.00	\$140,625.00	\$140,625.00	\$140,625.00	\$140,625.00	\$140,625.00	\$140,625.00	\$140,625.00	\$1,125,000.00
		2.2192	\$161,063.75	\$161,063.75	\$167,526.88	\$180,453.13	\$193,379.38	\$225,695.00	\$238,621.25	\$251,547.50	\$1,579,350.63



AGENDA ITEM 16

DATE OF MEETING: October 18, 2018	DATE SUBMITTED: October 11, 2018	
DEPT. OF ORIGIN: Administration	SUBMITTED BY: James Fisher	
MEETING TYPE: ☐ REGULAR ☐ SPECIAL ☒ EXECUTIVE SESSION	CLASSIFICATION: ☐ PUBLIC HEARING ☐ CONSENT ☒ REGULAR ☐ WORK SESSION	ORDINANCE: ☐ 1 ST READING ☐ 2 ND READING ☐ RESOLUTION
AGENDA ITEM DESCRIPTION: Section 551.087 – Texas Government Code – Economic Development Negotiations – Discuss and Deliberate Project Cardinal and Project BK Regarding Commercial or Financial Information that the City Has Received from Business Prospects and the Offer of Financial or Other Incentives to Business Prospects that the City Seeks to Have Locate In or Near the City of Brenham and With Which the City is Conducting Economic Development Negotiations		
SUMMARY STATEMENT: To be discussed in Executive Session.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): A. PROS: B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: None		
FUNDING SOURCE (Where Applicable):		
RECOMMENDED ACTION: None		
APPROVALS: Milton Y. Tate, Jr.		