NOTICE OF A REGULAR MEETING
THE BRENHAM CITY COUNCIL
THURSDAY, OCTOBER 4, 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 Goss

3. Service Recognitions
- **Crystal Locke, Community Programs and Marketing 10 Years**
- **Shelley Addison, Utility Billing 30 Years**

4. Proclamation
- **Fire Prevention Week** **Page 1**

5. Citizens Comments

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 August 16, 2018 and September 6, 2018 Regular City Council Meetings and September 17, 2018 Special City Council Meeting **Pages 2-22**

6-b. Ordinance No. O-18-014 on Its Second Reading Providing for a No Parking Zone Along W. Fifth Street, Old Mill Creek Rd. and Saeger St. **Pages 23-25**

6-c. Resolution No. R-18-015 Reauthorizing an Investment Policy for the City of Brenham **Pages 26-40**

6-d. Resolution No. R-18-016 Appointing Karen Stack as Deputy City Secretary II **Page 41**

WORK SESSION

7. Presentation and Discussion Regarding Updates to and Revision of Chapter 18, Oil and Gas Production, of the Code of Ordinances for the City of Brenham
Pages 42-81

REGULAR SESSION

8. 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 82-95**

9. Discuss and Possibly Act Upon a Professional Services Agreement with Strand Associates, Inc. for Services Related to FY19 Water Main Replacements and Authorize the Mayor to Execute Any Necessary Documentation **Pages 96-107**

10. Discuss and Possibly Act Upon a Request for a Noise Variance from Christ Lutheran Day School for a Fundraiser to be Held on October 19, 2018 from 6:00 p.m. – 9:00 p.m. at 1104 Carlee Drive and Authorize the Mayor to Execute Any Necessary Documentation **Pages 108-109**

11. Administrative/Elected Officials Report

EXECUTIVE SESSION

12. 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 110**

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

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 4, 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 1, 2018 at **12:20 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, The City of Brenham, Texas is committed to ensuring the safety and security of all those living in and visiting Brenham; and

WHEREAS, U.S. fire departments responded to 365,500 home fires in 2017, according to the National Fire Protection Association (NFPA). U.S. home fires resulted in 2,560 civilian deaths in 2017, representing the majority (78 percent) of all U.S. fire deaths; and

WHEREAS, Newer homes are built with lightweight materials that burn faster than older home constructions and many of today's products and furnishings produce toxic gases and smoke when burned, making it impossible to see and breathe within moments; and

WHEREAS, A home fire escape plan provides the skill set and know-how to quickly and safely escape a home fire situation; and

WHEREAS, Brenham's first responders are dedicated to reducing the occurrence of home fires and home fire injuries through prevention, protection and education; and

WHEREAS, The 2018 Fire Prevention Week theme, "Look, Listen, Learn: Plan 2 Ways Out!" effectively serves to educate the public about the vital importance of developing a home fire escape plan with all members of the household and practicing it twice a year;

NOW, THEREFORE I, Milton Y. Tate Jr., Mayor of the City of Brenham, do hereby proclaim October 7-13, 2018, as

FIRE PREVENTION WEEK

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Milton Y. Tate Jr., Mayor
City of Brenham

Brenham City Council Minutes

A regular meeting of the Brenham City Council was held on August 16, 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

Members absent:

Councilmember Charlie Pyle
Councilmember Weldon Williams, Jr.

Others present:

City Manager James Fisher, City Attorney Cary Bovey, City Secretary Jeana Bellinger, Deputy City Secretary Kacey Weiss, Assistant City Manager – Chief Financial Officer Carolyn Miller, Comptroller Stacy Hardy, Debbie Gaffey, Andria Heiges, Fire Chief Ricky Boeker, Police Chief Allwin Barrow, Public Works Director Dane Rau, Assistant City Manager of Public Utilities Lowell Ogle, and Kelvin Raven

Citizens present:

Perry Thomas and Willy Dilworth

Media Present:

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

1. Call Meeting to Order

2. Invocation and Pledges to the US and Texas Flags – Mayor Milton Y. Tate, Jr.

3. Special Presentations

3-a. Nancy Carol Roberts Memorial Library's Summer Reading Program

3-b. Nancy Carol Roberts Memorial Library's "For the City" School Supply Drive

4. Citizens Comments

There were no citizen comments.

CONSENT AGENDA

5. Statutory Consent Agenda

5-a. Ordinance No. O-18-008 on Its Second Reading Amending Appendix A – "Zoning" of the Code of Ordinances, Part I, Section 5.02, Definitions to Add Definitions for "Brewery", "Brewpub", "Distillery", and "Microdistillery or Craft Distillery", Part II, Division 1, Section 16.03 to Add Parking Requirements for the Associated Uses, Part II, Division 2, Section 4.02, Section 6.02, and Section 7.02 to Add or Remove the Associated Uses (Case No. P-18-020)

A motion was made by Councilmember Cantey and seconded by Councilmember Herring to approve the Statutory Consent Agenda Item 5-a. as presented.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	**Absent**
Councilmember Weldon Williams	**Absent**

PUBLIC HEARING

6. Proposed Tax Rate of $0.5170 per $100 Valuation for Fiscal Year Beginning October 1, 2018 and Ending September 30, 2019

Mayor Tate opened the Public Hearing.

Assistant City Manager – Chief Financial Officer Carolyn Miller presented this item. Miller advised a property tax rate of $0.5170 per $100 valuation is proposed. Miller stated that $0.3200 will be for maintenance and operations and the balance of $0.1970 will be for debt service. Miller explained that the increase in property taxes would cover the addition of several full-time public safety positions.

Miller advised that as outlined in the Property Tax Code, the Council must hold two public hearings to receive citizen comments on the proposed property tax rate. Miller stated that at each hearing, the Council must announce the date, time, and place of the meeting at which they will vote on the tax rate.

Mayor Tate announced that the first reading of the Ordinance to adopt the tax rate would be during a Special Council meeting on Monday, September 17, 2018 at 8:30 a.m. at City Hall, located at 200 W. Vulcan Street. The second reading of the Ordinance and adoption of the tax rate is scheduled for a Regular Council meeting on Thursday, September 20, 2018 at 1:00 p.m. at City Hall, located at 200 W. Vulcan Street.

Mayor Tate closed the Public Hearing.

REGULAR SESSION

7. Discuss and Possibly Act Upon the Approval of the FY2018-19 Proposed Budget for the Washington County Appraisal District

Assistant City Manager – Chief Financial Officer Carolyn Miller presented this item and introduced Willy Dilworth, Chief Appraiser with the Washington County Appraisal District (WCAD). Dilworth explained the WCAD proposed budget shows an increase of $6,870 over the prior year's budget due marginal increases in the personnel and professional services line items. Miller noted the impact for the City of Brenham is an increase of $2,354 for FY18-19, which was included in the General Fund, proposed budget already reviewed with Council.

A motion was made by Councilmember Herring and seconded by Mayor Pro Tem Ebel to approve the FY2018-19 Proposed Budget for the Washington County Appraisal District.

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	**Absent**
Councilmember Weldon Williams	**Absent**

8. Discuss and Possibly Act Upon the Approval of a Request from the Washington County Appraisal District to Retain the Accumulated Funds of $24,571 from FY2016-17 Budget Savings, the City of Brenham's Portion Being $2,679

Assistant City Manager – Chief Financial Officer Carolyn Miller presented this item and introduced Willy Dilworth, Chief Appraiser with the Washington County Appraisal District (WCAD). Dilworth stated that the Washington County Appraisal District's (WCAD) audited financial statement for the fiscal year ending August 31, 2017 showed budget savings of $24,571. Dilworth advised WCAD is requesting to retain the savings to use for the 2020 Pictometry flight. Miller explained, if approved, the City of Brenham's portion of the funds to be retained would be $2,679. Miller stated that if the $24,571 is not retained by the WCAD, $2,679 would be returned to the City.

A motion was made by Councilmember Goss and seconded by Mayor Pro Tem Ebel to approve a request from the Washington County Appraisal District to retain the accumulated funds of $24,571, from FY2016-17 budget savings, with the City of Brenham's portion being $2,679, for the 2020 Pictometry flight.

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	**Absent**
Councilmember Weldon Williams	**Absent**

9. Discuss and Possibly Act Upon the Approval of a Request from the Washington County Appraisal District to Reallocate Contingency Funds of $15,000 Previously Set Aside for Fleet Replacement to be Used For a Computer Back-Up System

Assistant City Manager – Chief Financial Officer Carolyn Miller presented this item. Miller explained that the City has received a request from the Washington County Appraisal District (WCAD) to reallocate $15,000 of contingency funds that were originally set aside for fleet replacement to be used for a computer backup system.

A motion was made by Councilmember Goss and seconded by Mayor Pro Tem Ebel to approve the request from Washington County Appraisal District to reallocate $15,000 of contingency funds from fleet replacement to the purchase of a computer back-up system.

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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	**Absent**
Councilmember Weldon Williams	**Absent**

Council adjourned into Executive Session at 1:31 p.m.

EXECUTIVE SESSION

10. Section 551.074 – Texas Government Code – Personnel Matters – Deliberation Regarding Update, Status and Options Regarding: 1) Vacancy Created by Death of Ward 2 Councilmember Weldon C. Williams, Jr.; and 2) Position 5 - At Large Councilmember Charlie Pyle

11. Section 551.074 – Texas Government Code – Deliberation Regarding Real Property – Update Regarding the Purchase of Approximately 3.0 Acres of Land for a Future Fire Station

Executive Session adjourned at 2:25 p.m.

RE-OPEN REGULAR SESSION

12. Discuss and Possibly Act Upon: 1) Vacancy Created by Death of Ward 2 Councilmember Weldon C. Williams, Jr. and/or 2) Position 5 - At Large Councilmember Charlie Pyle

A motion was made by Councilmember Goss and seconded by Mayor Pro Tem Ebel to appoint Albert Wright to the Brenham City Council, Ward 2 Position, to serve the unexpired term of late Councilmember Weldon Williams which will be until the City's General Election in May, 2019.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Charlie Pyle	**Absent**
Councilmember Weldon Williams	**Absent**

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A motion was made by Councilmember Herring and seconded by Councilmember Goss to accept the resignation of Place 5 – At Large Councilmember Charlie Pyle.

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	**Absent**
Councilmember Weldon Williams	**Absent**

13. Administrative/Elected Officials Report

City Manager James Fisher reported on the following:

- Mill Creek Hall Residence at Blinn College ribbon cutting is 10:00 a.m. August 17th
- Walter C. Schwartz Building at the Rellis Campus ribbon cutting is 10:00 a.m. August 23rd
- Washington County Chamber Tailgate Banquet is August 23rd
- TML Region 10 Meeting is September 12th at the Barnhill Center
- Washington County Fair parade is September 15th
- Council Retreat is October 24th – 26th in Bastrop

Police Chief Allwin Barrow reported on the following:

- Clear the Shelter is August 18th at 9:00 a.m.

The meeting was adjourned.

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Milton Y. Tate, Jr.
Mayor

_____

Jeana Bellinger, TRMC, CMC
City Secretary

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Brenham City Council Minutes

A regular meeting of the Brenham City Council was held on September 6, 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, Fire Chief Ricky Boeker, Assistant Fire Chief Brian Scheffer, Fire Marshal Brent Sauble, Police Chief Allwin Barrow, Public Works Director Dane Rau, Assistant City Manager of Public Utilities Lowell Ogle, Development Services Director Lori Lakatos, Stephanie Doland, Kevin Boggus, Kelvin Raven, Pam Ruemke, Greg Nienstedt, Jerred Eschete, Brent Folsom, Josh Sebastian, Chase Jones, Chris McCain and Carrie Derkowski

Citizens present:

Brad Leuschner, Fredericka DeBerry, Donna Culliver, Carol Muegge and Alesia Whaley

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 – City Attorney Cary Bovey

DRAFT

3. Administer Oath of Office to Ward 2 Councilman Albert Wright

4. Service Recognitions

- **Christopher McCain, Fire 5 Years**

5. Proclamations

- **Childhood Cancer Awareness Month**
- **Washington County READ**

6. Citizens Comments

There were no citizen comments.

CONSENT AGENDA

7. Statutory Consent Agenda

7-a. Minutes from the June 21, 2018 Regular City Council Meeting, July 18, 2018 Special City Council Meeting, July 19, 2018 Special City Council Meeting and July 20, 2018 Special City Council Meeting

7-b. Resolution No. R-18-010 Authorizing the Acceptance of TxDOT's Selective Traffic Enforcement Program (STEP) Comprehensive Grant for Traffic Enforcement October 1, 2018 through September 30, 2019

A motion was made by Councilmember Herring and seconded by Councilmember Cantey to approve the Statutory Consent Agenda Items 7-a., 7-b. and 7.c. with a correction on Page 5 in the minutes of June 21, 2018, to reflect Councilmember Danny Goss abstained from voting on Item 7.

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

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

WORK SESSION

8. Presentation of the 2017 Municipal Court Statistics

Municipal Court Administrator Rhonda Kuehn presented this item. Kuehn reviewed the report and advised that from October 2017 through June 2018 there have been 3,077 cases filed. Kuehn noted that the total number of cases filed in FY17 was 5,733.

PUBLIC HEARING

9. Proposed Tax Rate of $0.5170 per $100 Valuation for Fiscal Year Beginning October 1, 2018 and Ending September 30, 2019

Mayor Tate opened the Public Hearing.

Assistant City Manager – Chief Financial Officer Carolyn Miller presented this item. Miller explained that the Council must hold two public hearings to receive citizen comments on a proposed tax rate. The first public hearing was held during the Council meeting on August 16, 2018 and citizen comments were received.

Miller advised that a property tax rate of $0.5170 per $100 valuation is proposed to fund the FY2018-19 Budget. Of this rate, $0.3200 will be for maintenance and operations (M&O). The balance of $0.1970 is for debt service (interest and sinking or I&S). Miller explained that although the proposed budget maintains the current property tax rate of $0.5170, due to increased property values, this rate is above the effective rate and will produce higher tax revenues. Miller stated the increase in property taxes would cover the addition of several full-time public safety positions.

Mayor Tate announced the first reading of the Ordinance to adopt the tax rate will be during a Special Council meeting on Monday, September 17, 2018 at 8:30 a.m. at City Hall, located at 200 W. Vulcan Street. The second reading of the Ordinance and adoption of the tax rate is scheduled for a Regular Council meeting on Thursday, September 20, 2018 at 1:00 p.m. at City Hall, located at 200 W. Vulcan Street.

DRAFT

10. Public Hearing, Discussion and Receipt of Input Related to the Proposed 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

Assistant City Manager – Chief Financial Officer Carolyn Miller presented this item. Miller stated that prior to considering the creation of a Reinvestment Zone for implementing a Tax Phase-In incentive for Stanpac USA/Brenham Bartons, Inc., the City Council is required to hold a Public Hearing to receive input regarding the proposal. Miller explained that Stanpac is considering a modernization project at their Brenham location, which includes the purchase of new equipment valued at $3.1 million and 20 additional employees.

11. Public Hearing, Discussion and Receipt of Input Related to the Proposed 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

Assistant City Manager – Chief Financial Officer Carolyn Miller presented this item. Miller stated that prior to considering the creation of a Reinvestment Zone for implementing a Tax Phase-In incentive for MIC Group, LLC, the City Council is required to hold a Public Hearing to receive input regarding the proposal. Miller stated that MIC Group, LLC is planning to expand in Brenham by adding milling equipment valued at $1 million and 10 additional machinists.

Brad Leuschner, CFO with MIC Group, addressed the Council. Leuschner thanks the Council for their support and explained that MIC primarily serves the oilfield service industry and with the recent upswing in the oilfield industry, they need to expand.

DRAFT

12. Public Hearing, Discussion and Receipt of Input Related to the Proposed 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

Assistant City Manager – Chief Financial Officer Carolyn Miller presented this item. Miller stated that prior to considering the creation of a Reinvestment Zone for implementing a Tax Phase-In incentive for MIC Group, LLC, the City Council is required to hold a Public Hearing to receive input regarding the proposal. Miller explained that MIC Group, LLC is planning to expand in Brenham by adding additional equipment valued at $1.5 million and hiring 10 additional machinists.

Mayor Tate closed the Public Hearing.

REGULAR SESSION

13. Discuss and Possibly Act Upon an Ordinance on its First 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

A motion was made by Councilmember Cantey and seconded by Mayor Pro Tem Ebel to approve an Ordinance on its first 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.

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

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

14. Discuss and Possibly Act Upon an Ordinance on its First 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

A motion was made by Councilmember Herring and seconded by Councilmember Goss to approve an Ordinance on its first 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.

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

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

DRAFT

15. Discuss and Possibly Act Upon an Ordinance on its First 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 Cantey and seconded by Councilmember Herring to approve an Ordinance on its first 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.

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

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

16. Discuss and Possibly Act Upon an Order Calling a Special Election to be Held on December 8, 2018 for the Purpose of Electing One (1) Council Member to fill the Unexpired Term for the Place 5 – At Large Position

Considerar y Posiblemente Actuar Sobre una Orden para una Elección Especial que se efectuara el 8 de Diciembre, 2018 Con el Propósito de Elegir Un (1) miembro del Concejal para llenar el resto del termino de Lugar 5-Distrito Abierto.

City Secretary Jeana Bellinger presented this item. Bellinger explained that the recent resignation of Place 5 At Large Councilmember Charlie Pyle requires the City Council to order a Special Election to fill his unexpired term, until May 2021. Bellinger stated that the Texas Constitution mandates that a city with terms of office greater than two (2) years must hold a Special Election to fill the vacancy within 120 days after the vacancy occurs. Bellinger noted that the proposed election calendar calls for the Special Election to be held on Saturday, December 8, 2018 with Early Voting to begin on Wednesday, November 21, 2018.

A motion was made by Councilmember Goss and seconded by Councilmember Wright to approve an Order calling a Special Election to be held on December 8, 2018 for the purpose of electing one (1) Council Member to fill the unexpired term for the Place 5-At Large position.

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

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

17. Discuss and Possibly Act Upon an Election Services Contract Between the City of Brenham and Washington County Related to Election Responsibilities for the December 8, 2018 Special Election and Authorize the Mayor to Execute Any Necessary Documentation

City Secretary Jeana Bellinger presented this item. Bellinger stated that as in years past the City will be contacting with Washington County to provide various election services and equipment for the December 8, 2018 Special Election for the Place 5 – At Large vacancy created by the recent resignation of Charlie Pyle.

A motion was made by Councilmember Cantey and seconded by Mayor Pro Tem Ebel to approve an Election Services Contract between the City of Brenham and Washington County related to election responsibilities for the December 8, 2018 Special Election and authorize the Mayor to execute any necessary documentation.

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

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

DRAFT

18. Discuss and Possibly Act Upon Revisions to the City of Brenham's Policies and Procedures for Boards and Commissions and Authorize the Mayor to Execute Any Necessary Documentation

City Secretary Jeana Bellinger presented this item. Bellinger explained that back in 2012, the City Council adopted Policies and Procedures for Boards and Commissions to help establish uniform procedures for all advisory boards of the City. Bellinger stated that in in years past, during the months of September thru November the City accepts applications for appointment from citizens that would like to serve on a City advisory board.

Bellinger noted that there has been some discussion of late about whether or not to consider term limits for the volunteers and if there are any other provisions of the policy that need to be updated since it is over 5 years old. Bellinger advised that staff thought that prior to new appointments being made in December, now may be a good time to make changes to the policy.

Councilmember Cantey stated she would like there to be term limits, consequences for members not attending meetings and for the policy to be completely rewritten. Mayor Tate advised the Council that he would put together a sub-committee of the Council to work with staff on reviewing and updating the policy.

A motion was made by Councilmember Cantey and seconded by Councilmember Herring to table Item 18.

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

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

19. Discuss and Possibly Act Upon Final Payment to Site Work Contractors L.L.C. for the Emergency Road Repairs and Storm Damage Repairs, Package 2A, for Burleson Street at Higgins Branch and Authorize the Mayor to Execute Any Necessary Documentation

Development Services Director Lori Lakatos presented this item. Lakatos explained that Site Work Contractors L.L.C. has completed the Burleson Street at Higgins Branch crossing repairs that resulted from the May 2016 storm events and Hurricane Harvey, August 2018. Lakatos stated the project included one change order, a deduction from the overall project, -$80,599.00. Lakatos noted that the contract was originally awarded for $464,700.00 and the final cost with the deduction is $384,101.00.

Councilmember Goss stated that he is disappointed in the final site conditions. Lakatos advised that Site Work Contractors went to the location this morning and is working with City staff to get the sites cleaned up Lakators explained that final payment would not be made until the site condition is satisfactory to staff.

A motion was made by Councilmember Goss and seconded by Councilmember Cantey to authorize final payment, once approved by staff, to Site Work Contractors L.L.C. in the amount of $21,599.05 for the Emergency Road Repairs and Storm Damage Repairs, Package 2A, for Burleson Street at Higgins Branch and authorize the Mayor to execute any necessary documentation.

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

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

20. Discuss and Possibly Act Upon the Final One Year Contract Extension, in Accordance with Bid No. IFB 16-009, for Bulk Water and Wastewater Treatment Chemicals and Authorize the Mayor to Execute Any Necessary Documentation

This item was passed.

21. Administrative/Elected Officials Report

City Manager James Fisher reported on the following:

- Introduced new employees Stephanie Doland and Karen Stack
- TML Region 10 Meeting is September 12th at 6:00 p.m.
- Washington County Fair parade is September 15th at 10:30 a.m.
- National Night Out is October 2nd
- TML Conference is October 9th – 12th

Council adjourned into Executive Session at 2:14 p.m.

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EXECUTIVE SESSION

22. 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

Executive Session adjourned at 2:40 p.m.

The meeting was adjourned.

_____
Milton Y. Tate, Jr.
Mayor

_____
Jeana Bellinger, TRMC, CMC
City Secretary

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Brenham City Council Minutes

A special meeting of the Brenham City Council was held on September 17, 2018 beginning at 8:30 a.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

Members present:

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

Members absent:

Councilmember Albert Wright
Position 5 - Vacant

Others present:

City Manager James Fisher, 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, Fire Chief Ricky Boeker and Lloyd Powell

Citizens present:

None

Media Present:

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

1. Call Meeting to Order

2. Invocation and Pledges to the US and Texas Flags – Mayor Pro Tem Ebel

3. Citizens Comments

There were no citizen comments.

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PUBLIC HEARING

4. Proposed Budget for Fiscal Year Beginning October 1, 2018 and Ending September 30, 2019

This budget will raise more total property taxes than last year's budget by an estimated $268,777 (4.15%), and of that amount, $84,022 is tax revenue to be raised from estimated new property added to the tax roll this year.

Mayor Tate opened the Public Hearing.

Assistant City Manager – Chief Financial Officer Carolyn Miller presented this item. Miller stated the FY19 Proposed Budget for the City of Brenham includes appropriations of operating resources for 30 separate funds and authorizes $69.9 million in expenditures. Miller explained that the budget represents a one-year financial commitment of resources needed to implement multi-year strategic initiatives. Miller noted that the biggest operating expenditure is for personnel.

Mayor Tate closed the Public Hearing.

REGULAR SESSION

5. Discuss and Possibly Act Upon Ratification of the Property Tax Increase Reflected in the Proposed Budget for Fiscal Year Beginning October 1, 2018 and Ending September 30, 2019, which Raises More Revenue from Property Taxes than the Previous Year's Budget

Assistant City Manager – Chief Financial Officer Carolyn Miller presented this item. Miller advised that in compliance with the Local Government Code, if a municipal budget raises more property taxes than in the previous year's budget, City Council must formally ratify a property tax increase.

Miller noted that the FY2018-19 budget will raise more total property taxes than last year's budget by $268,777 (4.15%), and of that amount $84,022 is tax revenue to be raised from new property added to the tax roll this year. Miller stated that a vote must be taken to ratify the property tax increase reflected in the budget.

A motion was made by Councilmember Herring and seconded by Councilmember Cantey to ratify the property tax increase reflected in the proposed budget for the fiscal year beginning October 1, 2018 and ending September 30, 2019, which raises more revenue from property taxes than the previous year's budget.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Andrew Ebel	Yes
Councilmember Susan Cantey	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Albert Wright	**Absent**
Position 5 - Vacant	

6. Discuss and Possibly Act Upon an Ordinance on Its First 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 advised that the proposed FY2018-19 budget has been developed in compliance with the property tax code, local government code, and City Charter. Miller stated the proposed budget includes appropriations of operating resources for 30 separate funds and authorizes $69.9 million in expenditures. Miller explained that the proposed budget is on the City's website and on file with the City Secretary.

A motion was made by Councilmember Herring and seconded by Mayor Pro Tem Ebel to approve Ordinance on its First 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 Albert Wright	**Absent**
At Large - Position 5	Vacant

7. Discuss and Possibly Act Upon an Ordinance on Its First 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 that the proposed FY2018-19 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 would allocate $0.3200 to the General Fund for maintenance and operations and, the balance of $0.1970 to the Debt Service Fund for interest and sinking.

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Miller noted that the City has complied with all of the notices, publications, and public hearings as required by the Tax Code. Miller stated that pursuant to the Tax Code, the vote on the ordinance setting a tax rate that exceeds the effective tax rate must be a record vote, and at least 60 percent of the members of the governing body must vote in favor of the ordinance.

A motion was made by Mayor Pro Tem Ebel and seconded by Councilmember Goss that the property tax rate be increased by the adoption of a tax rate of $0.5170 per $100 valuation, which is effectively a 3.03% 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 Albert Wright	**Absent**
At Large, Position 5	Vacant

8. Administrative/Elected Officials Report

The meeting was adjourned.

_____
Milton Y. Tate, Jr.
Mayor

_____
Jeana Bellinger, TRMC, CMC
City Secretary

DRAFT

ORDINANCE NO. O-18-014

AN ORDINANCE PROVIDING FOR THE PROHIBITION OF PARKING MOTOR VEHICLES, TRAILERS OR OTHER VEHICLES ON CERTAIN DESIGNATED STREETS IN THE CITY OF BRENHAM, AND ASSOCIATED MATTERS; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATION THEREOF; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Texas Local Government Code section 51.001, the City of Brenham, Texas ("City") has the authority to adopt ordinances and regulations that are for the good government, peace and order of the City; and

WHEREAS, the City Council desires to provide for no-parking zones on certain streets within the City of Brenham in order to: prevent accidents, collisions and damages; promote the flow of traffic along and into such streets; and regulate the same; and

WHEREAS, the general welfare, health and safety of the citizens of the City will be promoted by the enactment of this Ordinance;

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Brenham, Texas:

SECTION I.

That every person, firm, corporation, or other entity shall be prohibited from parking any motor vehicle, trailer, or other vehicle, upon any of the following designated streets or portions thereof, when signs are erected giving notice thereof:

a. On the south side of West Fifth Street from its intersection with Blinn Boulevard to its intersection with Prairie Lea Street.

b. On both the north and south sides of Old Mill Creek Road from its intersection with Blinn Boulevard to its intersection with South Saeger Street.

c. On both the north and south sides of Old Mill Creek Road, extending to and including the entire width of the improved and unimproved portions of the Old Mill Creek Road right-of-way, from its intersection with South Saeger Street extending two hundred and thirty feet (230') to the west from South Saeger Street.

d. On both the east and west sides of South Saeger Street, from its intersection with Old Mill Creek Road to its intersection with Hidden Creek Lane.

SECTION II.

The terms “park” and “parking” shall mean the standing or stopping of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading passengers or property.

SECTION III.

In any case when a person, firm, corporation or other entity shall have been charged with a violation of this Ordinance, proof that said motor vehicle, trailer, or other vehicle was, at the date of the offense alleged, owned by the person, firm, corporation or entity charged with the offense, shall constitute prima facie evidence that said motor vehicle, trailer, or other vehicle was stopped, left standing or parked at the place charged by said owner.

SECTION IV.

The provisions of this Ordinance shall not apply to any authorized emergency vehicle or City of Brenham motor vehicle, trailer, or other vehicle.

SECTION V.

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION VI.

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, clauses and phrases remaining should any provision be declared unconstitutional or invalid.

SECTION VII.

That any person, firm, corporation or other entity violating this Ordinance shall be fined a sum of not less than $1.00 and not more than $500.00, plus applicable court costs.

SECTION VIII.

This Ordinance shall take full force and effect from and after its passage and approval.

PASSED and APPROVED on its first reading this the 20th day of September, 2018.

PASSED and APPROVED on its second reading this the 4th day of October, 2018.

_____
Milton Y. Tate, Jr.
Mayor

ATTEST:

_____
Jeana Bellinger, TRMC, CMC
City Secretary

RESOLUTION NO. R-18-015

A RESOLUTION REAUTHORIZING AN INVESTMENT POLICY FOR THE CITY OF BRENHAM

WHEREAS, in the 1987 session the Texas Legislature adopted the Public Funds Investment Act, "the Act", which established guidelines for local government investments; and

WHEREAS, the Act requires that a local government adopt a written investment policy; and

WHEREAS, the Act requires the governing body of a local government to reauthorize the written investment policy annually; and

WHEREAS, the policy dated October 4, 2018 complies with the provision of the Act; and

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

Section 1: The City of Brenham Investment Policy attached hereto as "Exhibit A" is hereby reauthorized as the investment policy of the City of Brenham effective October 4, 2018.

Section 2: This Resolution shall take effect immediately upon its passage.

APPROVED on this 4th day of October, 2018.

_____
Milton Y. Tate, Jr.
Mayor

ATTEST:

_____
Jeana Bellinger, TRMC, CMC
City Secretary

INVESTMENT POLICY

I. POLICY

It is the policy of the City of Brenham that all available funds shall be invested in conformance with these legal and administrative guidelines with consideration for anticipated cash flow requirements and consideration of the safety and risk of investments. The City shall seek to optimize interest earnings to the extent possible based on these risk parameters.

Effective cash management is recognized as essential to good fiscal management. Investment interest is a source of revenue to City of Brenham funds. The City of Brenham's investment portfolio shall be designed and managed in a manner designed to obtain the highest reasonable earnings from this revenue source, to be responsive to public trust, and to be in compliance with legal requirements and limitations.

Investments shall be made with the primary objectives of:

- **Safety** and preservation of principal
- Maintenance of sufficient **liquidity** to meet operating needs
- Diversification to avoid concentrated risk
- **Public trust** from prudent investment activities
- Optimization of **interest earnings** on the portfolio

The Investment Policy addresses the methods, procedures and practices that must be exercised to ensure effective and judicious fiscal management of the City of Brenham's funds. This Policy serves to satisfy the statutory requirements of the Public Funds Investment Act, the "Act", (Texas Government Code, Chapter 2256) in defining and adopting a formal investment policy and strategy. The policy and strategy shall be reviewed by the Audit / Investment Committee and adopted by resolution of the City Council no less than annually. Any modifications to the Policy will be noted in the written resolution.

II. SCOPE

This Investment Policy shall govern the investment of all financial assets of the City of Brenham. These funds are accounted for in the City of Brenham's Comprehensive Annual Financial Report (CAFR) and include:

- General Fund
- Special Revenue Funds
- Capital Projects Funds
- Enterprise Funds
- Trust and Agency Funds, to the extent not required by law or existing contract to be kept segregated and managed separately
- Debt Service Funds, including reserves and sinking funds, to the extent not required by law or existing contract to be kept segregated and managed separately
- Brenham Community Development Corporation Funds
- Internal Service Funds
- Self-Insurance Funds
- Any new fund created by the City of Brenham, unless specifically exempted from this Policy by the City Council or by law.

The City of Brenham may consolidate cash balances from all funds for investment purposes and efficiencies. Investment income will be allocated to the various funds based on their respective participation and in accordance with generally accepted accounting principles. The consolidated portfolio will address the varying needs, goals, and objectives of each fund.

This Investment Policy shall apply to all transactions involving the financial assets and related activity for all the foregoing funds. However, this Policy does not apply to the assets administered for the benefit of the City of Brenham by outside agencies or under deferred compensation programs.

III. INVESTMENT OBJECTIVES

The City of Brenham shall manage and invest its cash with five primary objectives, listed in order of priority: **safety, liquidity, diversification, public trust, and yield**. The safety of the principal invested always remains the primary objective. All investments shall be designed and managed in a manner responsive to the public trust and consistent with state and local law.

The City of Brenham shall maintain a comprehensive cash management program, which includes timely collection of account receivables, vendor payments in accordance with invoice terms, and prudent investment of funds. Cash management is defined as the process of managing monies in order to ensure cash availability and reasonable market earnings on the City's assets.

INVESTMENT POLICY

SAFETY

Safety of principal is the foremost objective of the investment program. Investments of the City of Brenham shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. Competitive bidding and perfected ownership of investments will be in place at all times. The objective will be to mitigate credit and interest rate risk. Each investment transaction shall be conducted in a manner to control the risk of capital loss by investing in high credit quality securities.

- Credit Risk – The Entity will minimize credit risk, the risk of loss due to the failure of the issuer or backer of the investment, by:
  - Limiting investments to the highest credit quality investments
  - Pre-qualifying the financial institutions and broker/dealers with which the City of Brenham transacts business
  - Perfecting City ownership by delivery versus payment settlement, and
  - Diversifying the investment portfolio so that potential credit or market risk is minimized.
- Market Risk – the City will minimize the risk from interest rate volatility by:
  - Structuring the investment portfolio to meet cash requirements for ongoing operations, thereby avoiding the need to liquidate investments prior to maturity.
  - Investing operating funds in laddered securities and maintaining a liquidity portion to cover unanticipated expenses.

LIQUIDITY

The City of Brenham investment portfolio shall be structured in a ladder of maturities to match expected liabilities along with a liquidity portion to meet unanticipated liabilities. Securities will have active secondary markets.

PUBLIC TRUST

All participants in the City of Brenham's investment process shall seek to act responsibly as custodians of the public trust. Investment officers shall avoid any transaction that might impair public confidence in the City of Brenham's ability to govern effectively.

DIVERSIFICATION

The portfolio will be diversified by market sector and maturity based on the cash flow and risk tolerances of the City.

YIELD

The City of Brenham investment portfolio shall be designed with the objective of attaining a reasonable market yield throughout budgetary and economic cycles, taking into account the City's investment risk constraints and the cash flow characteristics of the portfolio. Yield is secondary to the safety and liquidity objectives described above.

Based upon the cash flow of the City the maximum dollar-weighted average maturity of the consolidated portfolio shall be six months. The benchmark used to determine whether reasonable yields are being achieved shall be the six month U.S. Treasury Bill.

IV. INVESTMENT STRATEGY

The City of Brenham maintains a consolidated portfolio which is designed to address the unique characteristics of the fund groups represented in the portfolio.

Operating Funds: The primary objective for operating funds is to assure anticipated cash flows are matched with adequate investment liquidity. The secondary objective is to create a portfolio structure which will experience minimal volatility during economic cycles. This may be accomplished by purchasing high credit quality, short to medium term securities in a laddered structure. The maximum dollar weighted average maturity of six months reflects the expenditure cash flow of operating funds and will be calculated using the stated final maturity dates of each security.

Capital Project Funds: Funds for capital projects or special purposes should be invested based on anticipated cash flows and allow for flexibility and unanticipated project outlays. At no time will the stated final maturity dates of investments exceed the estimated project completion date on capital project funds.

Debt Service Funds: Debt service funds shall be invested with the primary objective of funding debt service obligations on the required payment date. Priority will be given to funding the next debt service due before any extensions are made in the funds.

Debt Service Reserve Funds: Debt Service Reserves should be invested to generate a dependable revenue stream from securities with a low degree of volatility. Securities should be short to medium term maturities and of high credit quality.

The City primarily utilizes a passive “buy and hold” portfolio strategy. Maturity dates are primarily matched with cash flow requirements and investments are purchased with the intent to be held until maturity. However, investments may be liquidated prior to maturity for the following reasons:

- An investment with declining credit may be liquidated early to minimize loss of principal.
- Cash flow needs require that the investment be liquidated.
- Market conditions present an opportunity to benefit from the trade.

V. RESPONSIBILITY AND CONTROL

CITY COUNCIL RESPONSIBILITIES

The City Council, in accordance with the Act, shall:

- Designate Investment Officers by resolution
- Receive and review quarterly investment reports
- Annually review and approve the City's broker/financial institution certification list – *As noted in Section VIII, the governing body has designated this responsibility to the Audit & Investment Committee*
- Review and adopt the investment policy and strategy at least annually
- Provide for investment training for investment officers

INVESTMENT OFFICERS

The Chief Financial Officer and the City Manager are hereby designated as "Investment Officers" pursuant to the Act. Investment Officers are delegated authority to invest the funds on behalf of the City and such authorization shall remain in effect until rescinded by the City Council or until the Officer resigns or is terminated. The Investment Officers are authorized to execute investment transactions on behalf of the City. No person may engage in an investment transaction or the management of City of Brenham funds except as provided under the terms of this Investment Policy as approved by the City Council.

Investment Officers shall:

- Obtain training as defined by the Act and this Policy
- Prepare, sign, and submit quarterly investment reports to Council
- Maintain compliance files on all counter-parties (brokers) and provide the list for Council approval at least annually
- Provide for competitive bidding
- Disclose personal business relationships in accordance with policy
- Maintain full and complete records of the City's portfolio and transactions.

QUALITY AND CAPABILITY OF INVESTMENT MANAGEMENT

The Investment Officers shall obtain training in investments. The seminars should be offered by professional organizations, associations, and other independent sources approved by Council. The training is to insure the quality and capability of investment management in compliance with the Act.

In accordance with the Act, the designated Investment Officers shall attend 10 hours of investment training session within 12 months of their designation and every successive two fiscal years shall attend eight hours of training. A newly appointed Investment Officer must attend a training session of at least 10 hours of instruction within twelve months of the date the officer took office or assumed the officer's duties. For purposes of this policy, an "independent source" from which investment training shall be obtained shall include a professional organization, an institution of higher education or any other sponsor other than a business organization with whom the City of Brenham may engage in an investment transaction.

INTERNAL CONTROLS

The Chief Financial Officer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the City are protected from loss, theft, or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived; and (2) the valuation of costs and benefits requires estimates and judgments by management.

The Chief Financial Officer shall establish a process for a compliance audit on policies and procedures. The internal controls shall address the following points at a minimum.

- Control of collusion.
- Separation of transactions authority from accounting and record keeping.
- Custodial safekeeping.
- Clear delegation of authority to subordinate staff members.
- Written confirmation for all transactions for investments and wire transfers.
- Review of wire transfer agreements with the depository bank or third party custodian.
- Review of compliance with the Act and this Policy.

The Chief Financial Officer shall monitor, on no less than a monthly basis, the credit rating on all authorized investments in the portfolio based upon independent information from a nationally recognized rating agency. If any security falls below the minimum rating required by Policy, the Investment Officer shall notify the City Manager of the loss of rating, conditions affecting the rating and possible loss of principal with liquidation options available, within three days after notification of the loss of the required rating.

PRUDENCE

The standard of prudence to be applied to all transactions shall be the “prudent person rule". This rule states that “Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.”

In determining whether an Investment Officer has exercised prudence with respect to an investment decision, the determination shall be made taking into consideration:

- The investment of all funds, or funds under the City’s control, over which the Officer had responsibility rather than a consideration as to the prudence of a single investment.
- Whether the investment decision was consistent with the written approved Investment Policy of the City.

INDEMNIFICATION

The Investment Officer, acting in accordance with written procedures and exercising due diligence, shall not be held personally liable for a specific investment's credit risk or market price changes, provided that these deviations are reported immediately and the appropriate action is taken to control adverse developments.

ETHICS AND CONFLICTS OF INTEREST

All participants in the investment process shall seek to act responsibly as custodians of the public trust. Investment officers shall avoid any transaction that might impair public confidence in the City's ability to govern effectively. Officers and employees involved in the investment process shall refrain from personal business activity that would conflict with the proper execution and management of the investment program, or that would impair their ability to make impartial decisions.

Council members, employees and Investment Officers shall disclose to the Texas Ethics Commission and the City Manager, and the City Manager discloses to the City Council if:

a) The officer has a personal business relationship with a business organization offering to engage in an investment transaction with the City; or
b) The officer is related within the second degree by affinity of consanguinity, as determined under Chapter 573 of the Texas Government Code, to an individual seeking to transact investment business with the City; or
c) The officer has any material interests in financial institutions with which they conduct business; or
d) The officer has any personal financial/investment positions that could be related to the performance of the investment portfolio.

Employees and officers shall refrain from undertaking personal investment transactions with the same individual with which business is conducted on behalf of the City of Brenham.

VI. SUITABLE AND AUTHORIZED INVESTMENTS

City funds may be invested only in the instruments described below, all of which are authorized and further defined by the Act. The City will not be required to liquidate an investment that becomes unauthorized subsequent to its purchase.

I. AUTHORIZED INVESTMENTS

1. Obligations of the United States of America, its agencies and instrumentalities with stated maturities not to exceed three (3) excluding mortgage backed securities.

2. Obligations of the this State or any State or agency thereof including political subdivisions having been rated as investment quality by two nationally recognized investment rating firm, and having

received a rating of not less that "AA" or its equivalent with maturities not to exceed three (3) years.

3. Fully insured or collateralized Certificates of Deposit issued by a bank doing business in Texas insured by the Federal Deposit Insurance Corporation or its successor or secured by obligations in a manner provided for by this Policy and state law with maturities not to exceed 12 months.

4. Constant dollar, local government investment pools, which 1) are created under and conform to the requirements of the Act, 2) are rated no lower than AAA or an equivalent rating by at least one nationally recognized rating service, 3) seek to maintain a $1.00 net asset value, and 4) are authorized by resolution or ordinance by the City Council.

5. Fully insured or collateralized interest bearing or money market account in any bank in Texas.

6. AAA rated money market funds which strive to maintain a $1 net asset value and comply with SEC Rule 2a-7.

II. UN-AUTHORIZED INVESTMENTS

The Act and this Policy prohibits investment in the following investment instruments:

- Obligations whose payment represents the coupon payments of the outstanding principal balance of the underlying mortgage-backed security collateral and pay no principal (Interest Only mortgage backed securities);
- Obligations whose payment represents the principal stream of cash flow from underlying mortgage-backed security collateral and bear no interest (Principal only mortgage backed securities);
- Collateralized mortgage obligations that have a stated final maturity date of greater than 10 years;
- Collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index; and

The practice of "leveraging" whereby funds are borrowed for the sole purpose of investing is prohibited.

VII. INVESTMENT PARAMETERS

MAXIMUM MATURITIES

The longer the maturity of investments, the greater their price volatility; therefore, it is the City's policy to concentrate its investment portfolio in shorter-term securities in order to limit principal risk caused by changes in interest rates.

The City shall attempt to match its investments with anticipated cash flow requirements. The City will not directly invest in securities maturing more than three (3) years from the date of purchase; however, the above described obligations, certificates, or agreements may be collateralized using longer dated investments.

The consolidated portfolio will have a maximum dollar-weighted average maturity of six months. This dollar-weighted average will be calculated using the stated final maturity dates of each security.

DIVERSIFICATION

The City of Brenham recognizes that investment risks can result from issuer defaults, market price changes or various technical complications leading to temporary illiquidity. Risk is controlled through portfolio diversification that shall be achieved by the following general guidelines:

- Limiting investments to avoid over concentration in investments from a specific issuer or business,
- Limiting investment in investments that have higher credit risks
- Investing in investments with varying maturities, and
- Continuously investing a portion of the portfolio in readily available funds such as local government investment pools (LGIPs), or money market funds to ensure that appropriate liquidity is maintained in order to meet ongoing obligations.

VIII. SELECTION OF BANKS AND DEALERS

DEPOSITORY

As required by the City of Brenham Charter, every five (5) years a banking services depository shall be selected through a competitive process, which shall include a formal request for proposal (RFP) and be consistent with state law. The selection of a depository will be determined by competitive bid and evaluation of bids will be based on the following selection criteria:

- The ability to qualify as a depository for public funds in accordance with state law.
- The ability to provide required services.
- The ability to meet all requirements in the banking RFP.
- The lowest net banking service cost, consistent with the ability to provide an appropriate level of service.
- The credit worthiness and financial stability of the bank.

All banks will execute a written depository agreement in accordance with FIRREA[1] designating authorized collateral.

AUTHORIZED BROKERS/DEALERS

The City Audit/Investment Committee shall, at least annually, review, revise, and adopt a list of qualified broker/dealers and financial institutions (banks and pools) authorized to engage in securities transactions with the City. Those firms that request to become qualified bidders for securities transactions will be required to provide information for the City's questionnaire that provides information regarding creditworthiness, contact information, and experience; and 2) the City's certification stating the firm has

[1]The Financial Institutions Resource and Recover Enforcement Act governs the actions of the FDIC in cases of bank default.

received, read and understood the City of Brenham's Investment Policy and have in place controls to prohibit selling the City any security not authorized by that Policy.

The City shall have a minimum of three broker/dealers to assure competitive bidding. Authorized firms may include primary dealers or regional dealers and qualified depositories. All investment providers, including financial institutions, banks, and local government investment pools, must sign the City's certification.

COMPETITIVE BIDS

All transactions will be made on a competitive basis. The Chief Financial Officer shall develop and maintain procedures for ensuring a competition in the investment of the City funds.

DELIVERY VS. PAYMENT

Securities shall be purchased only using the **delivery vs. payment** method with the exception of investment pools and mutual funds. Funds will be released after notification that the purchased security has been received by the custodian.

IX. SAFEKEEPING OF SECURITIES AND COLLATERAL

SAFEKEEPING AND CUSTODIAN AGREEMENTS

The City of Brenham shall contract with a depository for the safekeeping of securities owned by the City of Brenham as part of its investment portfolio or approve the custodial agreement for collateral to secure demand or time deposits. Securities owned by the City of Brenham shall be held in the City's name as evidenced by safekeeping receipts of the institution holding the securities.

Collateral for deposits will be held by an independent third party custodian outside of the pledging bank and evidenced by original safekeeping receipts of the pledging institution with which the collateral is deposited. Original safekeeping receipts and monthly collateral reports shall be delivered to the City.

COLLATERAL POLICY

Consistent with the requirements of the Public Funds Collateral Act, it is the policy of the City to require collateralization of City funds in time and demand deposit with any depository bank. In order to anticipate market changes and provide a level of security for all funds, the collateralization level will be 102% of market value of principal and accrued interest on the deposits or investments less an amount insured by the FDIC. At its discretion, the City of Brenham may require a higher level of collateralization for certain investment securities.

Securities pledged as collateral shall be held by an independent third party outside the holding company of the pledging bank with whom the City has a current custodial agreement. The Chief Financial Officer is responsible for entering into or approving collateralization agreements with custodians. The agreements

are to specify the acceptable investment securities for collateral, including provisions relating to possession of the collateral, the substitution or release of investment securities, ownership of securities, and the method of valuation of securities. A clearly marked evidence of ownership (safekeeping receipt) must be supplied to and retained by the City. Collateral shall be priced weekly at a minimum and to assure that the market value of the pledged securities is adequate.

Any substitution of collateral shall require prior City approval. The substituted security's market value will be equal to or greater than the required security value. Written notification of the substitution must be provided to the bank or safekeeping agent prior to any security release.

COLLATERAL DEFINED

The Entity shall accept only the following types of collateral:

- Obligations of the United States or its agencies and instrumentalities including mortgage backed securities

- Direct obligations of the state of Texas or its agencies and instrumentalities rated as to investment quality by a nationally recognized rating firm not less than A or its equivalent

- Obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized rating firm not less than A or its equivalent

SUBJECT TO AUDIT

All collateral shall be subject to inspection and audit by the Chief Financial Officer or the City of Brenham's independent auditors.

X. PERFORMANCE

PERFORMANCE STANDARDS

The City of Brenham's investment portfolio will be managed in accordance with the parameters specified within this Policy. The portfolio shall be designed with the objective of obtaining a reasonable yield throughout budgetary and economic cycles, commensurate with the investment risk constraints and the cash flow requirements of the City.

PERFORMANCE BENCHMARK

It is the policy of the City of Brenham to purchase investments with maturity dates coinciding with cash flow needs. Through this strategy, the City shall seek to optimize interest earnings utilizing allowable investments available on the market at that time. Market value will be calculated on a monthly basis on all securities owned and compared to current book value. The City of Brenham's portfolio shall be designed with the objective of regularly meeting or exceeding the period average yield on the six month

U.S. Treasury Bill which is comparable to the City's maximum weighted average maturity in days based on its cash flow analysis.

XI. REPORTING

METHODS

The Investment Officer shall prepare an internal investment report on a monthly basis and on a quarterly basis for Council that summarizes investment strategies employed in the most recent quarter and describes the portfolio in terms of investment securities, maturities including the yield for the quarter.

The quarterly investment report shall be in compliance with the Act and include a summary statement of investment activity prepared in compliance with generally accepted accounting principles. This summary will be prepared in a manner that will allow the City Audit/Investment Committee to ascertain whether investment activities during the reporting period have conformed to the Investment Policy. The report will be provided to the City Council for review. The report will include the following:

- A listing of individual securities held at the end of the reporting period.
- Unrealized gains or losses as calculated on the beginning and ending book and market value of securities for the period.
- Additions and changes to the market value during the period.
- Average weighted yield of portfolio as compared to the City's benchmark.
- Listing of investments by maturity date.
- Fully accrued interest and earnings for the reporting period
- The percentage of the total portfolio that each type of investment represents.
- Any additional reporting information as required by the Act.
- Statement of compliance of the City of Brenham's Investment Policy and the Act.

Month-end market prices on each security are to be obtained from nationally recognized security databases (e.g., The Wall Street Journal, Bloomberg, etc.).

An independent auditor will perform an annual formal review of the quarterly reports with the results reported to the governing body.

MONITORING MARKET VALUE

Market value of all securities in the portfolio will be determined on a monthly basis. These values will be obtained from a reputable and independent source reported in the quarterly report.

XII. INVESTMENT POLICY ADOPTION

The City of Brenham's Investment Policy shall be adopted no less than annually by resolution of the City Council. The City of Brenham's Investment Policy shall be subject to revisions consistent with changing laws, regulations, and needs of the City but any such changes must be adopted by the Council before use. The resolution adopting the policy and strategies must include any changes or modifications to the Policy.

AUTHORITY/DATE ISSUED:

City Council Resolution # R-07-026	November 15, 2007
City Council Resolution # R-08-037	October 16, 2008
City Council Resolution # R-09-024	October 15, 2009
City Council Resolution # R-10-025	November 4, 2010
City Council Resolution # R-11-020	November 3, 2011
City Council Resolution # R-12-021	November 29, 2012
City Council Resolution # R-13-017	November 7, 2013
City Council Resolution # R-14-022	October 9, 2014
City Council Resolution # R-15-024	October 1, 2015
City Council Resolution # R-16-014	April 7, 2016
City Council Resolution # R-16-027	October 13, 2016
City Council Resolution # R-17-018	October 12, 2017
City Council Resolution #R-18-015	October 4, 2018

RESOLUTION NO. R-18-016

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS APPOINTING KAREN STACK AS DEPUTY CITY SECRETARY II; ESTABLISHING OTHER TERMS AND CONDITIONS RELATED TO THE DEPUTY CITY SECRETARY II POSITION.

WHEREAS, the City Council desires to plan for situations in which the City Secretary is unable to or refuses to exercise the powers and perform the duties of the office of City Secretary; and

WHEREAS, Article III, Section 23 of the Brenham City Charter provides that the City Council may create such appointive offices as the City Council deems advisable; and

WHEREAS, the City Council desires to appoint a Deputy City Secretary II to exercise the powers and perform the duties of the City Secretary in the event the City Secretary is unable or refuses to carry out the powers and duties of the City Secretary; and

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

1. Karen Stack be appointed Deputy City Secretary II and shall exercise the powers and perform the duties of the office of City Secretary in the event that the City Secretary is unable or refuses to carry out the powers and duties of the City Secretary.

2. The Deputy City Secretary II shall possess all of the powers and duties of the Office of City Secretary when exercising the powers and performing the duties of the City Secretary as authorized herein.

RESOLVED this the 4th day of October, 2018.

_____
Milton Y. Tate, Jr.
Mayor

ATTEST:

_____
Jeana Bellinger, TRMC, CMC
City Secretary

AGENDA ITEM 7

DATE OF MEETING: October 4, 2018	**DATE SUBMITTED:** October 1, 2018
DEPT. OF ORIGIN: Administration	**SUBMITTED BY:** Jeana Bellinger

MEETING TYPE:	**CLASSIFICATION:**	**ORDINANCE:**
☒ **REGULAR**	☐ **PUBLIC HEARING**	☐ **1ST READING**
☐ **SPECIAL**	☐ **CONSENT**	☐ **2ND READING**
☐ **EXECUTIVE SESSION**	☐ **REGULAR**	☐ **RESOLUTION**
	☒ **WORK SESSION**	

AGENDA ITEM DESCRIPTION: Presentation and Discussion Regarding Updates to and Revision of Chapter 18, Oil and Gas Production, of the Code of Ordinances for the City of Brenham

SUMMARY STATEMENT: The Texas Legislature passed House Bill 40 in 2015. The bill was enacted in response to a ban on hydraulic fracturing approved by voters in Denton, Texas. HB40 effectively overturned the Denton fracking ban by providing that oil and gas operations (exploration, development, production, processing, and transportation of oil and gas, including drilling, hydraulic fracking, and other activities) are subject to the exclusive jurisdiction of the state, and Texas cities may not enact or enforce ordinances or other regulations that ban, limit or otherwise oil and gas operations. However, the bill also provided cities with authority to reasonably regulate aboveground activity related to oil and natural gas operations such as setbacks from other structures, traffic, and noise.

Since the City's ordinance dealing with oil and gas production has not been updated since 1969 coupled with the passage of HB40, staff asked the City Attorney to prepare an updated ordinance that would protect the City's interests while being in compliance with the new state law.

The updated Ordinance regulates aboveground activity related to oil and natural gas operations in the City, including but not limited to the following:

- Requires persons wanting to engage in and operate in oil and gas production activities to apply for and obtain a surface permit from the City.
- Authorizes the City to enter and inspect the premises of all drill sites for compliance with the City's ordinance.
- Imposes specific requirements on setbacks, signage, fencing, gates, landscaping, traffic routes, work hours, and noise restrictions.
- Requires periodic reports from the drilling operator.
- Imposes specific insurance, bonding, and letter of credit requirements.
- Mandates requirements for minimizing dust, vibration and odors; emergency response plans; fire prevention standards; electric lines; lighting; signage; roads; equipment storage; waste disposal; access of public property; and additional matters.

• Charges fees applicable to related surface permitting services.
STAFF ANALYSIS (For Ordinances or Regular Agenda Items): **A. PROS:** **B. CONS:**
ALTERNATIVES (In Suggested Order of Staff Preference):
ATTACHMENTS: (1) Draft of the new Oil and Gas Production Ordinance
FUNDING SOURCE (Where Applicable): N/A
RECOMMENDED ACTION: None – discussion only.
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 of oil and gas deposits under portions of the City; and

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:

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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.

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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 found in Section 18-21 of this code of the city.

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.

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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 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, amusement, or health care. Public buildings include, but shall not be limited to, churches, schools, theaters, assembly halls, auditoriums, armories, mortuary chapels, dance halls, exhibition halls, museums, gymnasiums, bowling lanes, libraries, skating rinks, courtrooms, restaurants, hospitals.

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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 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.

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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 one business week notify the city inspector in writing of any change in such agent or such mailing address unless operations within the city are discontinued.

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 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.

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(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

(4) 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.

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(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 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 lease property to be used for the oil or gas operation. Property recorded by plat should reference subdivision, block and lot numbers.

(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 lessee. Mineral lessee name and address.

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(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 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;

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(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.

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(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 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.

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(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 his employees are not within the enclosure.

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

(A) Each gate shall be not less than twelve (12') feet wide and the height of the fence and be composed of two (2) gates, each of which is not less than six (6') feet wide, or one sliding gate not less than twelve (12') feet 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;

(B) The gates shall be of metal frame construction that meets the applicable 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.

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(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 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 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.

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(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 days may result in forfeiture of bond or letter of credit.

(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.

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(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.

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(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. 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, 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 fling 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.

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(c) Notice of denial. If the city inspector denies a surface permit application, he 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 in Section 18-21 and shall accompany each surface permit transfer application.

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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 business day.

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(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 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 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.

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(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 bonding or insurance institution 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 run to 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.

(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 and five 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:

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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.

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(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.

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(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.

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(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 State Board of Insurance or ISO, or an equivalent policy form acceptable to the city, with the exception of environmental pollution liability and control of well coverage.

(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.

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(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.

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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.

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(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 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.

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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

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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

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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 twenty-five feet (25') from the boundary of the drill/operation site;

(2) Storage tank. Within twenty-five feet (25') from any storage tank, or source of ignition;

(3) Public street. Within seventy-five feet (75') of any public street, road, highway or future street, right-of-way or property line, or railroad right-of-way;

(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

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(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 300 feet 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:

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.

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(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.

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(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.

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(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,

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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 in Section 18-21 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.

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(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 in Section 18-21 shall accompany each filing.

(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.

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Sec. 18-21. Fee Schedule

Oil and gas well drilling and production:

(1) Surface permit fee: $2,000.00.

(2) Extended permit fee: $250.00.

(3) Annual inspection fee: $100.00.

(4) Follow-up inspection fee: $100.00.

(5) Amended permit fee: $500.00.

(6) Transfer permit fee: $700.00.

(7) Appeal fee: $2,300.00.

(8) "Taking" application fee: $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.

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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

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AGENDA ITEM 8

DATE OF MEETING: October 4, 2018	**DATE SUBMITTED:** September 26, 2018
DEPT. OF ORIGIN: Purchasing	**SUBMITTED BY:** Sara Parker

MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
☒ REGULAR	☐ PUBLIC HEARING	☐ 1ST READING
☐ SPECIAL	☐ CONSENT	☐ 2ND READING
☐ EXECUTIVE SESSION	☒ REGULAR	☐ RESOLUTION
	☐ WORK SESSION	

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 formally bid purchases and contracts is no longer viable. 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 direct submission by bidders impossible. These circumstances may prevent the City from accepting what would be the Best Value bid, or force us to spend time and money on a rebid process as well as delaying urgent projects or acquisition of needed commodities. Electronic bidding was determined to be a solution.

Purchasing staff began reviewing and evaluating available systems. Some systems required bidders to pay a yearly registration fee, which staff felt would discourage smaller local businesses that we want to attract whenever possible. Other systems were too limited and poorly supported. The Ion Wave system that we are recommending today is reasonable in price, involves no cost to bidders and offers other features such as contract management, vendor registration and management of insurance certificates. Ion Wave is used by several other entities in this area, including the Cities of Bryan and College Station.

Implementation of the system will begin as soon as approved by Council and is expected to be in place by early November.

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. PROS: Best meets City's needs.

B. CONS:

ALTERNATIVES (In Suggested Order of Staff Preference):

ATTACHMENTS: (1) System Features and Solutions; (2) Five year pricing table; and (3) Master License and Services Agreement
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 and authorize the Mayor to execute any necessary documentation
APPROVALS: James Fisher

Ion Wave Features and Solutions

1. Electronic Bidding

- Allows vendors to review, complete, and submit bids online.
- Allows revision or withdrawal of bids up to bid deadline.
- Reduces expense to vendors for shipment of hard copy bids.
- Reaches a wider pool of potential bidders.
- Tracks number of interested bidders.
- Automatically sends bid addenda to interested bidders.
- Unaffected by weather or delivery failure by mail or courier services.
- Bid tabulations can be posted and remain available on the system, reducing the number of open records requests handled by staff.

2. Vendor Registration

- Builds database of interested vendors, regardless of whether already doing business with the City.
- Categorizes vendors by commodities and services offered.
- Sends bid notices to correct vendors by category.
- Can also be utilized to request quotes.
- Vendors self-register, saving time for City personnel.
- Vendors can update their information at any time.

3. Contract Management

- All contracts, agreements, interlocal agreements and leases can be consolidated in the same system.
- Vendors, staff and any other necessary parties are notified at appropriate times for renewals, rebids or expiration.
- As many City personnel as desired can be given view only access to contracts.
- Perpetual records may be kept of expired items.

4. Insurance Certificates

- Required insurance certificates may be kept in system for any vendor.
- System will notify staff and vendor prior to expiration of certificate for update.
- As many personnel as desired may be given view only access to see if a vendor has certificates on file.

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

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:	**If to Client:**
Ion Wave Technologies, Inc.	City of Brenham
3653 South Avenue	Attn: Purchasing
Springfield, Missouri 65807	315 West 2nd Street
Phone: 417-823-7773	Brenham, TX 77833
Fax: 417-823-7778	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: Darren C Henderson	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.

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: Darren C Henderson	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 interoperation 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: Darren C Henderson	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: Darren C Henderson	Signed:
Printed Name: Darren C Henderson	Printed Name:
Printed Title: CEO	Printed Title:
Date: 08/28/2018	Date:

AGENDA ITEM 9

DATE OF MEETING: October 4, 2018	**DATE SUBMITTED:** September 27, 2018
DEPT. OF ORIGIN: Public Utilities	**SUBMITTED BY:** Lowell Ogle

MEETING TYPE:	**CLASSIFICATION:**	**ORDINANCE:**
☒ **REGULAR**	☐ **PUBLIC HEARING**	☐ **1ST READING**
☐ **SPECIAL**	☐ **CONSENT**	☐ **2ND READING**
☐ **EXECUTIVE SESSION**	☒ **REGULAR**	☐ **RESOLUTION**
	☐ **WORK SESSION**	

AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon a Professional Services Agreement with Strand Associates, Inc. for Services Related to FY19 Water Main Replacements and Authorize the Mayor to Execute Any Necessary Documentation

SUMMARY STATEMENT: Attached is an agreement from Strand Associates, Inc. for engineering services related to improvements within the Water Distribution System. These improvements will involve replacing old asbestos concrete (AC) and cast iron (CI) water lines with new C-900 PVC pipe.

Approximately 11,000 linear feet of existing water main will be replaced. Some of the areas where mains are to be replaced are Blinn Blvd, Vulcan St, N Douglas, N Park, Prairie Lea, with others to be determined at a later date. This project will take up to two years to complete. Replacement of service lines leading up to the meter will also included. Estimates for engineering design services, bidding-related services, and construction-related services are estimate at $117,750.

We are planning to spend approximately $1.5 million at this time. We are hoping that the bids will allow more to be replaced than the 11,000 feet.

This is a part of the AC/Cast iron replacement program that we have discussed with City Council. Over the past few years we have replaced 5+ miles of these mains but still have approximately 75 miles remaining. We will be discussing the change-out program with Council at the retreat.

Staff is recommending that Council approve the Agreement for Engineering Services with Strand Associates, Inc.

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. PROS: Will replace old a/c and cast iron water lines with new PVC greatly reducing possible leaks.

B. CONS:

ALTERNATIVES (In Suggested Order of Staff Preference):

ATTACHMENTS: (1) Agreement for Engineering Services

FUNDING SOURCE (Where Applicable): Debt

RECOMMENDED ACTION: Approve a Professional Services Agreement with Strand Associates, Inc. for Services Related to FY19 Water Main Replacements and authorize the Mayor to execute any necessary documentation
APPROVALS: James Fisher

PROFESSIONAL SERVICES AGREEMENT
FOR
ENGINEERING SERVICES
RELATED TO
CITY OF BRENHAM
PROJECT NO. _____
FY 19 WATER MAIN REPLACEMENTS

THE STATE OF TEXAS §
§
COUNTY OF WASHINGTON §

THIS AGREEMENT made on the _____ day of _____, 20___, entered into, and executed by and between the City of Brenham, Texas (the "City"), a municipal corporation of the State of Texas, and Strand Associates, Inc.® ("Engineer").

WITNESSETH:

WHEREAS, the City desires to replace approximately 10,970 linear feet of existing water main within the City, as further described in Part A of Attachment "A" (the "Project"); and

WHEREAS, the services of a professional engineering firm are necessary to provide land surveying, project planning, project design, and preparation of construction documents, and

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

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

SECTION I
SCOPE OF AGREEMENT

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

SECTION II
CHARACTER AND EXTENT OF SERVICES

Engineer shall do all things necessary to render the engineering services and perform the Scope of Services with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license. It is expressly understood and agreed that Engineer is an Independent Contractor in the performance of the services agreed to herein. It is further understood and agreed that Engineer shall not have the authority to

obligate or bind the City, or make representations or commitments on behalf of the City or its officers or employees without the express prior written approval of the City. The City shall be under no obligation to pay for services rendered not identified in Attachment "A" without prior written authorization from the City.

SECTION III
OWNERSHIP OF WORK PRODUCT

Engineer agrees that the City shall have the right to use all exhibits, maps, reports, analyses and other documents prepared or compiled by Engineer pursuant to this Agreement. The City shall be the absolute and unqualified owner of all studies, exhibits, maps, reports, analyses, determinations, recommendations, computer files, and other documents prepared or acquired pursuant to this Agreement with the same force and effect as if the City had prepared or acquired the same. The City's use of any work product prepared by the Engineer for purposes other than for the intended project shall be at the City's sole risk and without liability to the Engineer.

SECTION IV
TIME FOR PERFORMANCE

The time for performance of the Scope of Services is 270 calendar days beginning from the execution date of this Agreement. Upon written request of Engineer, the City may grant time extensions to the extent of any delays caused by the City or other agencies with which the services must be coordinated and over which Engineer has no control.

SECTION V
COMPLIANCE AND STANDARDS

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

SECTION VI
INDEMNIFICATION

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

SECTION VII
ENGINEER'S COMPENSATION

For and in consideration of the services rendered by Engineer pursuant to this Agreement, the City shall pay Engineer only for the actual services performed under the Scope of Services, on the basis set forth in Attachment "A," up to an amount not to exceed $195,750, as identified in Attachment "A."

SECTION VIII
TERMINATION

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

SECTION IX
ADDRESSES, NOTICES AND COMMUNICATIONS

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

Strand Associates, Inc.®
203 S. Jackson Street
Brenham, TX 77833
Attn: Ryan D. Tinsley, P.E.

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

City of Brenham
200 W. Vulcan Street
Brenham, TX 77833
Attn: City Engineer

SECTION X
LIMIT OF APPROPRIATION

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

SECTION XI
SUCCESSORS AND ASSIGNS

The City and Engineer bind themselves and their successors and assigns to the other party of this Agreement and to the successors and assigns of such other party, in

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

SECTION XII
MODIFICATIONS

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

SECTION XIII
ADDITIONAL SERVICES OF ENGINEER

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

SECTION XIV
CONFLICTS OF INTEREST

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

SECTION XV
PAYMENT TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

Invoices for Basic and Additional Services and reimbursable expenses will be prepared in accordance with Engineer's standard invoicing practices and will be submitted to the City by Engineer at least monthly. Invoices are due and payable thirty (30) days after receipt by the City. Non-payment within 45 days of receipt of invoice by the City, may at Engineers option, result in suspension of services upon 5 days written notice to the City. Upon receipt of payment in full Engineer will resume services without liability to City for such suspension.

SECTION XVI
INSURANCE

Engineer shall procure and maintain insurance in accordance with the terms and conditions set forth in Attachment "B," for protection from workers' compensation claims, claims for damages because of bodily injury, including personal injury, sickness or disease or death, claims or damages because of injury to or destruction of property including loss of use resulting therefrom, and claims of errors and omissions.

SECTION XVII
MISCELLANEOUS PROVISIONS

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

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

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

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

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

EXECUTED on this _____ day of _____, 20___.

ENGINEER:

STRAND ASSOCIATES, INC.®

_____

Matthew S. Richards Date
Corporate Secretary

ATTEST:

CITY OF BRENHAM, TEXAS

_____ _____

Jeana Bellinger Date
City Secretary

Milton Y. Tate, Jr. Date
Mayor

ATTACHMENT "A"

PART A–SCOPE OF SERVICES

CITY OF BRENHAM
PROJECT NO. _____
FY 19 WATER MAIN REPLACEMENTS

Description of Project

Engineer will perform topographic surveys, prepare drawings and specifications, obtain necessary permits, and provide bidding- and construction-related services, including part-time resident project representation, for approximately 10,970 linear feet of water main replacements in the City.

A. Design Services

1. Attend initial kickoff meeting, perform data collection, and review of each of the sites.

2. Perform topographic field survey and prepare background drawings for design services.

3. Develop and submit 50 percent design drawings, specifications, and an opinion of probable construction costs (OPCC) for the water main replacements to review with City.

4. Develop and submit 90 percent design drawings, specifications, bid form, and a final OPCC for the water main replacements to review with City.

5. Review preliminary regulatory permit requirements for the Texas Department of Transportation (TxDOT) and Texas Commission on Environmental Quality (TCEQ) and meet with City to review. Prepare and submit TxDOT and TCEQ applications and assist with obtaining the permits.

6. Prepare Bidding Documents using Engineers Joint Contract Documents Committee C 700 Standard General Conditions of the Construction Contract, 2013 edition, technical specifications, and engineering drawings.

B. Bidding-Related Services

1. Distribute Bidding Documents electronically through QuestCDN, available at www.strand.com and www.questcdn.com. Submit Advertisement to Bid to City for publishing.

2. Attend prebid meeting, prepare addenda, and answer questions during bidding.

3. Attend bid opening, tabulate and analyze bid results, and assist City in the award of the Construction Contract.

4. Prepare three sets of Contract Documents for signature.

C. Construction-Related Services

1. Provide contract administration Services, including attendance at preconstruction conference, review of contractor's shop drawing submittals, review of contractor's periodic pay requests, attendance at construction progress meetings, periodic site visits, and participation in project closeout. Services are based on a 270-day construction schedule.

2. Provide record drawings in paper format from information compiled from contractor's records. Engineer is providing drafting services only for record drawings based on the records presented to Engineer by contractor and City. Engineer will not be liable for the accuracy of the record drawing information provided by contractor and City.

D. Resident Project Representative (Additional If-Authorized Services)

Provide resident project representative for eight hours per week of part-time observation of construction based on a 270-day construction schedule. In furnishing observation services, Engineer's efforts will be directed toward determining for City that the completed project will, in general, conform to the Contract Documents; but Engineer will not supervise, direct, or have control over the contractor's work and will not be responsible for the contractor's construction means, methods, techniques, sequences, procedures, or health and safety precautions or programs, or for the contractor's failure to perform the construction work in accordance with the Contract Documents.

E. Services Not Provided

1. Hazmat soil testing/evaluation
2. Wetland delineation
3. Flood studies
4. Archeological
5. Land/easement procurement
6. Design revisions after approval
7. Services related to buried waste and contamination
8. Construction staking
9. Geotechnical information (City shall provide)
10. Construction materials testing
11. Review of product substitutions or means, method, technique, sequence, or procedure substitutions proposed by contractor

PART B–BASIS OF COMPENSATION AND REIMBURSABLE EXPENSES

CITY OF BRENHAM
PROJECT NO. _____
FY 19 WATER MAIN REPLACEMENTS

The following represents the estimated maximum compensation for the scope of services documented in Attachment A, Part A of this Agreement. If services beyond those specifically identified are determined necessary during the Project, Engineer shall not proceed with those services until such time written approval of the scope and any additional fees are approved by the City.

City shall compensate Engineer for Design Services, Bidding-Related Services, and Construction-Related Services a lump sum of $117,750. City shall compensate Engineer for additional If-Authorized Services on an hourly basis for an estimated fee of $32,000.

SCHEDULE OF CHARGES

Compensation for engineering services shall be on an hourly basis at the rates set forth below which are subject to change annually on July 1.

Engineering Services Classification	Hourly Billing Rates*
Principal Engineer	$280
Senior Project Manager	$210
Project Managers	$165
Project Engineers	$130
Engineering Technicians	$118
Graduate Engineer	$113
NACE Certified Project Representative (Tank Construction)	$ 97
Project Representative	$102
Computer-Aided Design and Drafting (CADD) Operator	$ 91
Administrative	$ 75

* Updated annually on July 1

Compensation for surveying services shall be on an hourly basis at the rates set forth below which are subject to change annually on July 1.

Surveying Services Classification	Hourly Billing Rates*
Registered Professional Land Surveyor	$180
Surveying Technician	$102
Three-Man Field Party	$225
Two-Man Field Party	$161
One-Man Field Party	$102
Global Positioning System (GPS) Equipment	$ 55
Robotic Total Station	$ 35

* Updated annually on July 1

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

ATTACHMENT "B"

INSURANCE

CITY OF BRENHAM
PROJECT NO. _____
FY 19 WATER MAIN REPLACEMENTS

AGENDA ITEM 10

DATE OF MEETING: October 4, 2018 **DEPT. OF ORIGIN:** Administration	**DATE SUBMITTED:** September 27, 2018 **SUBMITTED BY:** Kacey Weiss

MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
☒ REGULAR	☐ PUBLIC HEARING	☐ 1ST READING
☐ SPECIAL	☐ CONSENT	☐ 2ND READING
☐ EXECUTIVE SESSION	☒ REGULAR	☐ RESOLUTION
	☐ WORK SESSION	

AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon a Request for a Noise Variance from Christ Lutheran Day School for a Fundraiser to be Held on October 19, 2018 from 6:00 p.m. – 9:00 p.m. at 1104 Carlee Drive and Authorize the Mayor to Execute Any Necessary Documentation

SUMMARY STATEMENT: Shelley Scheffer with Christ Lutheran Day School has requested a noise variance to hold a fundraiser on October 19, 2018 from 6:00 p.m. – 9:00 p.m. at 1104 Carlee Drive. They will have an outdoor movie and will be using an inflatable movie screen and sound system. Both the Police Department and the Fire Department have approved the noise variance request.

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. PROS:

B. CONS:

ALTERNATIVES (In Suggested Order of Staff Preference):

ATTACHMENTS: (1) Noise Variance Request

FUNDING SOURCE (Where Applicable): N/A

RECOMMENDED ACTION: Approve a request for a noise variance from Christ Lutheran Day School for a fundraiser to be held on October 19, 2018 from 6:00 p.m. – 9:00 p.m. at 1104 Carlee Drive and authorize the Mayor to execute any necessary documentation

APPROVALS: James Fisher

NOISE VARIANCE REQUEST

Application Fee $10.00

1. Name of sponsoring organization: Christ Lutheran Day School

2. Name and address of individual making application on behalf of sponsoring organization: Shelley Scheffer, 5315 FM 1457 Round Top, TX 78954

3. Purpose of the Event: Fundraiser

4. Location of Event: 1104 Carlee Dr.

5. Date of the event: Friday, 10/19/18

6. Time of Event: 6 pm - 10 pm

7. Event Set-up: From: 4pm To: 6 pm

   Event Clean-up: From: 9 pm To: 10 pm

8. You are required to describe the following:

   a) Types of Activities Planned and any additional information specific to this event: Food Booth, Outdoor Movie, Silent Auction, Pumpkin Patch

   b) Bands/Musical Instruments: _____

   c) Sound amplification equipment: Inflatable Movie screen & Sound

   d) Cleanup provisions: _____

Shelley Scheffer
Name of Applicant (Printed or Typed)

Date: 9/12/18

Shelley Scheffer
Applicant or Authorized Person's Signature

Phone: 979-277-8784

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

Paid 09/12/18
check # 906 KW

AGENDA ITEM 12

DATE OF MEETING: October 4, 2018 **DEPT. OF ORIGIN:** Administration	**DATE SUBMITTED:** September 27, 2018 **SUBMITTED BY:** James Fisher

MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
☐ REGULAR	☐ PUBLIC HEARING	☐ 1ST READING
☐ SPECIAL	☐ CONSENT	☐ 2ND READING
☒ EXECUTIVE SESSION	☒ REGULAR	☐ RESOLUTION
	☐ WORK SESSION	

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.