NOTICE OF A REGULAR MEETING
THE BRENHAM CITY COUNCIL
THURSDAY, AUGUST 20, 2020 AT 01:00 PM
SECOND FLOOR CITY HALL
COUNCIL CHAMBERS
200 W. VULCAN STREET
BRENHAM, TEXAS

1. Call Meeting to Order

2. Invocation and Pledges to the US and Texas Flags - City Manager James Fisher

3. Proclamations

- **Childhood Cancer Awareness Month**

4. Special Recognitions

- **GFOA Distinguished Budget Presentation Award**
  - ***Tenth Consecutive Year***

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 6, 2020 Regular City Council Meeting

6-b. Ordinance No. O-20-017 on Its Second Reading Amending the Official Zoning Map of the City of Brenham to Change the Zoning District from an Industrial District (I) to a Commercial, Research and Technology District (B-2) on the Following:

- **a. Approximately 0.849 Acres of Land Located Adjacent to 1303 Prairie Lea Street and 1305 Prairie Lea Street, Being Further Described as Part of Lot No. 2 of the Continental Ribbon and Carbon Company Subdivision Out of the P. H. Coe Survey, A-31, in Brenham, Washington County, Texas; and**
- **b. Approximately 4.236 Acres of Land Addressed as 1303 Prairie Lea Street, Being Further Described as Part of Lot No. 2 of the Continental Ribbon and Carbon Company Subdivision Out of the P. H. Coe Survey, A-31, in Brenham, Washington County, Texas (Case No. P-20-027)**

6-c. Ordinance No. O-20-018 on Its Second Reading Providing for No Parking Zones in Certain Designated Areas Along W. Second St., Green St., High St., and W. Fifth St. in the City of Brenham

6-d. Ordinance No. O-20-019 on Its Second Reading to Grant a Non-Exclusive Franchise to Dillo Disposal Service, LLC to Operate a Roll-Off Container Service for Residents, Businesses, and Industries Inside the City Limit of the City of Brenham, Texas

REGULAR SESSION

7. Discuss and Possibly Act Upon RFP No. 20-008 Related to Banking Depository Services and Authorize the Mayor to Execute Any Necessary Documentation

8. Discuss and Possibly Act Upon an Audit Engagement Letter for Seidel Schroeder to Perform an Audit for the Fiscal Year Ending September 30, 2020 and Authorize the Mayor to Execute Any Necessary Documentation

9. Discuss and Possibly Act Upon the Approval of the FY2020-21 Proposed Budget for the Washington County Appraisal District and Authorize the Mayor to Execute Any Necessary Documentation

10. Discuss and Possibly Act Upon a First Amended Ground Space Lease Agreement for Fuel Farm Operation Between the City of Brenham and Aviators Plus, LLC and Authorize the Mayor to Execute Any Necessary Documentation

11. Discuss and Possibly Act Upon the Approval of a Ground Space Lease Agreement with Aviators Plus, LLC (Brent Nedbalek) for Construction of a Hangar at the Brenham Municipal Airport (3195 Aviation Way) and Authorize the Mayor to Execute Any Necessary Documentation

12. Discuss and Possibly Act Upon Recommendations for Appointments to Various City Boards and Commissions and Authorize the Mayor to Execute Any Necessary Documentation

13. Discuss and Possibly Act Upon an Amendment to Restrictive Covenants Governing the Brenham Oak Apartments Development Necessary to Secure Financing Insured by the U.S. Department of Housing and Urban Development, Approval of an Agreement Concerning City's Release from Said Restrictive Covenants, and Authorize the Mayor to Execute Any Necessary Documentation

14. Discussion and Update on the City of Brenham's COVID-19 (Coronavirus) Response and Recovery Efforts

15. Administrative/Elected Officials Report

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

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 August 20, 2020 agenda of items to be considered by the City of Brenham City Council was posted to the City Hall bulletin board at 200 W. Vulcan St., Brenham, TX on August 17, 2020 at 9:00 a.m.

Jeana Bellinger, TRMC, CMC
City Secretary

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

I certify that the attached notice and agenda of items to be considered by the City Council was removed by me from the City Hall bulletin board on the _____ day of _____, 2020 at _____ AM PM.

_____ _____
Signature Title

PROCLAMATION

WHEREAS, In the U.S., 15,780 children under the age of 19 are diagnosed with cancer every year; approximately 1/4th of them will not survive the disease; and

WHEREAS, The causes of pediatric cancer are still largely unknown, and though new discoveries are resulting in new treatments, this heartbreaking disease continues to scar families and communities in ways that may never fully heal; and

WHEREAS, September is National Childhood Cancer Awareness Month and represents an annual opportunity for supporters nationwide to focus on and raise awareness of the challenges of childhood cancer; and

WHEREAS, In Brenham, Texas, Adam's Angels Ministry, a local charitable organization, supports families who face childhood cancer and encourages everyone to join in their efforts to help defeat this terrible disease; and

WHEREAS, It is right and just for the City Council and the residents of Brenham to join together with Adam's Angels and all children and families touched by childhood cancer to raise awareness and encourage funding;

NOW, THEREFORE, I Milton Y. Tate, Jr., Mayor of the City of Brenham, Texas do hereby proclaim September 2020 as

CHILDHOOD CANCER AWARENESS MONTH

In Witness, Whereof, I have set my hand and affixed the Seal of Brenham.

_____

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

Brenham City Council Minutes

A regular meeting of the Brenham City Council was held on August 6, 2020 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.
Councilmember Susan Cantey
Councilmember Keith Herring
Councilmember Clint Kolby
Councilmember Adonna Saunders
Councilmember Albert Wright

Members absent:

Mayor Pro Tem Andrew Ebel

Others present:

City Manager James Fisher, Assistant City Manager – Chief Financial Officer Carolyn Miller, Assistant City Manager - Public Services/Utilities Donald Reese and City Secretary – Director of Administrative Services Jeana Bellinger, City Attorney Cary Bovey, Fire Chief Ricky Boeker, Police Chief Ron Parker, Director of Public Works Dane Rau, Project Planner Shauna Laauwe

Citizens present:

None.

Media Present:

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

1. Call Meeting to Order

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

3. Citizens Comments

None.

DRAFT

CONSENT AGENDA

4. Statutory Consent Agenda

4-a. Minutes from the July 2, 2020 and July 16, 2020 Regular City Council Meetings and the July 16, 2020 Special Workshop Meeting

4-b. Approve Change Order No. 1 and Final Payment on City of Brenham Project No. 2017-06 to Barclay's Premier Utility Services, LLC in the Amount of $31,233.00 for the 24' Raw Water Line Lowering at Sandy Creek and Authorize the Mayor to Execute Any Necessary Documentation

4-c. Discuss and Possibly Act Upon an Ordinance on Its First Reading to Grant a Non-Exclusive Franchise to Dillo Disposal Service, LLC to Operate a Roll-Off Container Service for Residents, Businesses, and Industries Inside the City Limits of the City of Brenham, Texas

A motion was made by Councilmember Herring and seconded by Councilmember Saunders to approve the Statutory Consent Agenda Item 4-a. through 4-c. 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	**Absent**
Councilmember Susan Cantey	Yes
Councilmember Keith Herring	Yes
Councilmember Clint Kolby	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

PUBLIC HEARING AND ASSOCIATED ACTION ITEM

5. Public Hearing, Discussion and Possibly Act Upon an Ordinance on Its First Reading Amending the Official Zoning Map of the City of Brenham to Change the Zoning District from an Industrial District (I) to a Commercial, Research and Technology District (B-2) on the Following:

a. Approximately 0.849 Acres of Land Located Adjacent to 1303 Prairie Lea Street and 1305 Prairie Lea Street, Being Further Described as Part of Lot No. 2 of Continental Ribbon and Carbon Company Subdivision Out of the P. H. Coe Survey, A-31, in Brenham, Washington County, Texas; and

b. Approximately 4.236 Acres of Land Addressed as 1303 Prairie Lea Street, Being Further Described as Part of Lot No. 2, of the Continental Ribbon and Carbon Company Subdivision Out of the P. H. Coe Survey, A-31, in Brenham, Washington County, Texas (Case No. P-20-027)

DRAFT

Mayor Tate opened the Public Hearing.

Project Planner Shauna Laauwe presented this item. Laauwe stated that the subject tracts are two adjacent vacant properties, 1303 and 1305 Prairie Lea Street and are currently zoned as Industrial (I).

Laauwe advised that the applicants, Michael Benestante and Nathan Winkelmann, are requesting the tracts be rezoned to B-2, Commercial, Research, and Technology District to allow for more compatible and less intense commercial uses and the possibility of multifamily development.

Laauwe explained that the Industrial District is intended to provide the placement of any lawful light or heavy industrial use, and excludes structures used as dwelling units. The requested B-2 District is a mixed use of commercial district established to preserve and to protect appropriate locations for existing light industry, multiple-family residential, retail, office, and commercial uses.

Laauwe said the use of the subject properties for commercial use is consistent with the Future Land Use Map and the 2040 Comprehensive Plan. On July 27, 2020, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning request.

There were no citizen comments.

Mayor Tate closed the Public Hearing.

A motion was made by Councilmember Cantey and seconded by Councilmember Saunders to approve an Ordinance on its first reading amending the Official Zoning Map of the City of Brenham, to change the Zoning District from an Industrial District (I) to a Commercial, Research and Technology District (B-2) on approximately 0.849 acres of land located adjacent to 1303 Prairie Lea Street and 1305 Prairie Lea Street, being further described as Part of Lot No. 2 of Continental Ribbon and Carbon Company Subdivision out of the P. H. Coe Survey, A-31, in Brenham, Washington County, Texas; and approximately 4.236 acres of land addressed as 1303 Prairie Lea Street, being further described as Part of Lot No. 2, of the Continental Ribbon and Carbon Company Subdivision out of the P. H. Coe Survey, A-31, in Brenham, Washington County, Texas (Case No. P-20-027).

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

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

REGULAR SESSION

6. Submission of, Discussion and Possible Action Regarding the No-New-Revenue Tax Rate, Voter-Approval Tax Rate and Proposed Tax Rate of $0.5040 per $100 Valuation for the 2020 Tax Year, and Take Record Vote on Proposed Tax Rate and Meeting Dates for Final Adoption of Tax Rate by City Council

This item was presented by City Manager James Fisher. Fisher explained that the process of developing an annual budget and adopting a property tax rate to support that budget must be accomplished in compliance with Property Tax Code, the Local Government Code, and the City's Charter.

Fisher explained that on July 16th, a Council Budget Workshop was held to review and discuss the proposed FY2020-21 budget. Based on the priorities presented at this workshop, it was discussed to maintain the current maintenance and operations (M&O) property tax rate of $0.3200 per $100 valuation, and to lower the interest and sinking (I&S) rate by approximately one cent from $0.1940 to $0.1840 per $100 valuation.

Fisher advised that the City is proposing to adopt a total tax rate (M&O and I&S) of $0.5040 for FY2020-21 and because the proposed tax rate does not exceed the lower of the No-New-Revenue Tax Rate or the Voter-Approval Tax Rate, a public hearing is not required.

A motion was made by Councilmember Cantey and seconded by Councilmember Kolby that a property tax rate of $0.5040 per $100 valuation be considered by the governing body on the agendas of the September 3, 2020 and September 17, 2020 Brenham City Council meetings.

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	**Absent**
Councilmember Susan Cantey	Yes
Councilmember Keith Herring	Yes
Councilmember Clint Kolby	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

7. Discuss and Possibly Act Upon the Termination of the Contract Between the City of Brenham and Southern Flyer, Inc. for Fixed Base Operator at the Brenham Municipal Airport and Authorize the Mayor to Execute Any Necessary Documentation

This item was presented by Assistant City Manager - Public Services/Utilities Donald Reese. Reese explained that the original Fixed Base Operator contract with Southern Flyer, Inc. began in 2000 but that City staff received a written 60-day notice from Southern Flyer, Inc. on June 24, 2020 of their desire to cease being an FBO at the Brenham Municipal Airport.

A motion was made by Councilmember Kolby and seconded by Councilmember Cantey to approve termination of the contract between the City of Brenham and Southern Flyer, Inc. for Fixed Base Operator services at the Brenham Municipal Airport effective August 31, 2020 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	**Absent**
Councilmember Susan Cantey	Yes
Councilmember Keith Herring	Yes
Councilmember Clint Kolby	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

8. Discuss and Possibly Act Upon the Purchase and Installation of Precision Approach Path Indicator (PAPI) Lights at the Brenham Municipal Airport and Authorize the Mayor to Execute Any Necessary Documentation

This item was presented by Assistant City Manager Donald Reese. Reese said that on March 7, 2020 the Coronavirus Aid, Relief, and Economic Security (CARES) Act authorized nearly $10 billion to eligible airports to prevent, prepare for, and respond to coronavirus impacts, including support for continuing airport operations.

Reese explained that Precision Approach Path Indicator (PAPI) light systems primarily assist pilots by providing visual glide slope guidance in non-precision approach environments. These systems have an effective visual range of at least 3 miles during the day and up to 20 miles at night. The existing PAPI systems have outlived their useful life; therefore, staff would like to utilize the CARES Act funding to replace the existing PAPI systems with an LED PAPI system.

Reese stated that the City was approved for $69,000 of Group 4 CARES Act Funding and that the funding could be used for Precision Approach Path Indicator (PAPI) lighting. Reese explained that once the PAPI lighting was replaced, the City will submit the documentation necessary to receive CARES Act reimbursement.

A motion was made by Councilmember Herring and seconded by Councilmember Saunders to approve the purchase and installation of Precision Approach Path Indicator (PAPI) lights at the Brenham Municipal Airport from B-C Company, Inc. to preserve the public health and safety of the City's residents, as authorized by Section 252.022(a)(2) of the Texas Local Government Code, said purchase shall not exceed $70,000.00 and authorize the Mayor to execute any necessary documentation.

DRAFT

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

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

9. Discuss and Possibly Act Upon an Ordinance on Its First Reading Providing for No Parking Zones in Certain Designated Areas Along W. Second St., Green St., High St., and W. Fifth St. in the City of Brenham

This item was presented by City Manager James Fisher. Fisher said that with recent improvements and additions of infrastructure around the Blinn Campus, that Blinn has reached out to the City to ask about establishing "No Parking" areas on four (4) local roadways that all front Blinn College property. Fisher said that after reviewing these areas and discussing with Development Services, staff does not object to working with Blinn to help align their parking plan but also open up these roadways for emergency personnel and improving these areas for pedestrians.

A motion was made by Councilmember Cantey and seconded by Councilmember Kolby to approve an Ordinance on its first reading providing for No Parking Zones in certain designated areas along W. Second St., Green St., High St., and W. Fifth St. in the City of Brenham.

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

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

10. Discuss and Possibly Act Upon a Professional Services Agreement Between the City of Brenham and Strand Associates, Inc. for Engineering Services Related to the Atlow Elevated Storage Tank Rehabilitation Project and Authorize the Mayor to Execute Any Necessary Documentation

This item was presented by City Manager James Fisher. Fisher explained that the Atlow Elevated Storage Tank, located on S. Lubbock Street, is in need of maintenance work. The work may include minor repairs, surface preparation, and coating of the entire interior and exterior, above ground piping and valves, and appurtenances with a specified coating system.

Fisher said the services to be provided by Strand Associates include, but are not limited to, Topographic Survey and Planning, Design Services, Bidding-Related Services, and Construction-Related Services. Fisher stated that the scope of services will be 730 calendar days beginning from execution date of the agreement and ending upon total completion of the project.

A motion was made by Councilmember Kolby and seconded by Councilmember Cantey to approve a Professional Services Agreement, for engineering services, between the City of Brenham and Strand Associates, Inc. in the amount of $59,100.00 related to the Atlow Elevated Storage Tank Rehabilitation Project 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	**Absent**
Councilmember Susan Cantey	Yes
Councilmember Keith Herring	Yes
Councilmember Clint Kolby	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

11. Discuss and Possibly Act Upon the Award of RFQ No. 20-006 Related to Engineering/Architectural/Surveying Services for the Community Development Block Grant Disaster Recovery Mitigation (CDBG-MIT) Projects and Authorize the Mayor to Execute Any Necessary Documentation

This item was presented by City Manager James Fisher. Fisher said that staff requested proposals from qualified professional engineering/architectural/surveying service providers to assist the City in its application for and implementation of proposed Community Development Block Grant Disaster Recovery-Mitigation (CDBG-MIT) Program projects if funded by the Texas General Land Office (GLO). The City received responses from five (5) firms.

Fisher reported that responses were evaluated by a selection committee made up of five members including Coucilmember Ebel, Assistant City Manager Donald Reese, Director of Public Works Dane Rau, City Secretary – Director of Administrative Services Jeana Bellinger, and Community Services Specialist Crystal Locke. The selection committee ranked each responder based on experience, work performance, and capacity to perform. After evaluating, the committee unanimously selected Strand Associates.

A motion was made by Councilmember Cantey and seconded by Councilmember Saunders to award RFQ No. 20-006 to Strand Associates, Inc. for engineering/architectural/surveying services related to the Community Development Block Grant Disaster Recovery Mitigation (CDBG-MIT) Program and authorize the Mayor to execute any necessary documentation.

DRAFT

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

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

12. Discuss and Possibly Act Upon Award of RFP No. 20-004 Related to Lease of Telecommunications Space on City-Owned Water Towers and Authorize the Mayor to Execute Any Necessary Documentation

This item was presented by Assistant City Manager Donald Reese. Reese reported that on May 19, 2020, RFP No. 20-004 was issued requesting proposals from qualified telecommunications companies for the placement and maintenance of wireless broadband communications equipment on City-owned water towers located at various locations throughout Brenham. Fisher advised that Unified Communications, Inc. d/b/a Zochnet was the only responding company.

Reese advised that Council that staff worked with the City Attorney and Zochnet to prepare a 5-year lease agreement in which Zochnet will pay the City $200.00 per month per tower for the exclusive right to install and maintain equipment on the City's elevated storage tanks. The tanks included in the agreement are the Jeffries St. Tower and the Church St. Tower.

Reese also explained that in addition to the monthly rent, Zochnet will provide in-kind services to the City for the term of the contract, with a total annual investment of $17,284.00. Those in-kind services include a high-speed hotspot in the downtown area of Brenham, twelve high-speed connections at the City's outdoor recreation areas such as parks and sports fields, three high-speed connections at locations to be determined by the City in the future, and the provision of certified climbers to the City as needed for minor repairs and maintenance work associated with both elevated storage tanks, not to exceed eight (8) trips per calendar year.

A motion was made by Councilmember Kolby and seconded by Councilmember Cantey to award Bid No. 20-004 to Unified Communications, Inc. d/b/a Zochnet and approve a Communications Facility License Agreement between the City of Brenham and Zochnet and authorize the Mayor to execute any necessary documentation.

DRAFT

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

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

13. Discuss and Possibly Act Upon Upcoming Community Events and Authorize the Mayor to Execute Any Necessary Documentation

This item was presented by City Manager James Fisher. Fisher explained that during the July 2, 2020 City Council meeting, the Council postponed several community events due to an increase in COVID-19 cases and Governor Abbott's Executive Order GA-28. Those events included the 2020 Summer Concert Series, the 2020 Community Picnic, Movies in the Park, and Summer Sip & Art Walk. At that time, staff advised they would bring these events back later to discuss possibly rescheduling them in the fall.

After discussion with the Council and staff, it was determined that the Community Events should be rescheduled; however, the Council advised that if COVID-19 cases were to rise again, the events may have to be cancelled once again.

A motion was made by Councilmember Herring and seconded by Councilmember Saunders to reschedule the 2020 Community Events to the following dates:

- 2020 Concert Series (Hot Nights, Cool Tunes): October 10, 16, 17 and 24
- Movies in the Park: October 2 and 9
- Summer Sip & Art Walk: September 12
- Community Picnic: Will not be rescheduled at this time. A reschedule date is still to be determined.

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

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

DRAFT

14. Discussion and Update on the City of Brenham's COVID-19 (Coronavirus) Response and Recovery Efforts

City Manager James Fisher reported on the following:

- August 10th City Hall will reopen to the public from 11:00 a.m. to 4:00 p.m. Hoping to get back to regular hours in September.

15. Administrative/Elected Officials Report

City Manager James Fisher reported on the following:

- Mayor Tate and City Manager met with Blinn College to talk about the start of the school year.
- Public Hearing on the CDBG Grant process will be held on August 13th at 5:30 p.m.
- Council Budget Workshop will be held at The Barnhill Center on August 13th at 4:00 p.m.

Council adjourned into Executive Session at 2:13 p.m.

EXECUTIVE SESSION

16. Section 551.071 - Texas Government Code - Consultation with Attorney - Consultation with City Attorney Regarding Pending Litigation: T. Hyde v. Washington County Sheriff's Department and Brenham Police Department, Cause No. 37404; 21st Judicial District, Washington County, Texas

Executive Session adjourned at 2:35 p.m.

RE-OPEN REGULAR SESSION

The meeting was adjourned.

_____

Milton Y. Tate, Jr.
Mayor

_____

Jeana Bellinger, TRMC, CMC
City Secretary

DRAFT

ORDINANCE NO. O-20-017

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS, AMENDING APPENDIX A - "ZONING" OF THE CODE OF ORDINANCES, AND THE OFFICIAL ZONING MAP OF THE CITY OF BRENHAM, BY CHANGING THE ZONING DISTRICT CLASSIFICATION FROM INDUSTRIAL DISTRICT (I) TO A COMMERCIAL, RESEARCH AND TECHNOLOGY DISTRICT (B-2) ON TWO TRACTS OF LAND, BEING A 4.236 ACRE TRACT OF PROPERTY ADDRESSED AS 1303 PRAIRIE LEA STREET AND A 0.849 ACRE PORTION OF THE ADJACENT TRACT GENERALLY LOCATED SOUTH AND ADJACENT TO 1303 AND 1305 PRAIRIE LEA STREET, BEING FURTHER DESCRIBED AS PART OF LOT 2 OF THE CONTINENTAL RIBBON AND CARBON COMPANY SUBDIVISION OUT OF THE P.H. COE SURVEY, A-31 IN BRENHAM, WASHINGTON COUNTY, TEXAS.

WHEREAS, the owner(s) of two tracts of land, being a 4.236 acre tract of property addressed as 1303 Prairie Lea Street and a 0.849 acre portion of the adjacent tract, generally located south and adjacent to 1303 and 1305 Prairie Lea Street, and being further described as part of Lot 2 of the Continental Ribbon and Carbon Company Subdivision out of the P.H. Coe Survey, A-31, in Brenham, Washington County, Texas, (the "Property"), have requested that the Property be rezoned; and

WHEREAS, the City of Brenham has adopted Appendix A – "Zoning" of the City of Brenham Code of Ordinances, as amended, which divides the City of Brenham into various zoning districts; and

WHEREAS, Appendix A – "Zoning" of the City of Brenham Code of Ordinance authorizes the City Council to grant zoning changes by adopting ordinances amending Appendix A for each individual permanent zoning change; and

WHEREAS, at least ten (10) days after publication in the official newspaper of the City of the time and place of a public hearing and at least ten (10) days after written notice of that hearing was mailed to the owners of land within two hundred feet of the Property in the manner required by law, the Planning and Zoning Commission held a public hearing on the requested rezoning; and

WHEREAS, this amendment was recommended for approval by the City of Brenham Planning and Zoning Commission in its final report during its regular meeting on July 27, 2020; and

WHEREAS, at least fifteen (15) days after publication in the official newspaper of the City of the time and place of a public hearing for the requested rezoning, the City Council held the public hearing for the requested rezoning and the City Council considered the final report of the Planning & Zoning Commission; and

WHEREAS, the City Council deems it appropriate to grant such proposed change in the zoning district classification of the Property;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS, THAT APPENDIX A - "ZONING" OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS, AND THE OFFICIAL ZONING MAP BE AMENDED IN THE FOLLOWING MANNER:

SECTION 1. That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas, and the Official Zoning Map of the City of Brenham are hereby amended by changing the zoning district classification from an Industrial District (I) to a Commercial, Research and Technology District (B-2) on two tracts of land, being a 4.236 acre tract of property addressed as 1303 Prairie Lea Street and a 0.849 acre portion of the adjacent tract, generally located south and adjacent to 1303 and 1305 Prairie Lea Street, and being further described as part of Lot 2 of the Continental Ribbon and Carbon Company Subdivision out of the P.H. Coe Survey, A-31, in Brenham, Washington County, Texas, in Brenham, Washington County, Texas, said area of land being further described and depicted in Exhibit "A" and Exhibit "B" attached hereto and incorporated herein for all purposes.

SECTION 2. This Ordinance shall take effect as provided by the Charter of the City of Brenham, Texas.

PASSED and APPROVED on its first reading this the 6th day of August 2020.

PASSED and APPROVED on its second reading this the 20th day of August 2020.

_____
Milton Y. Tate, Jr.
Mayor

ATTEST:

_____
Jeana Bellinger, TRMC, CMC
City Secretary

Exhibit "A"

Metes and Bounds of 4.236 acre tract

VOL. 1693 PAGE 483

EXHIBIT "A"

Prairie Lea Investments, LLC.
4.236 Acres

Phillip Coe Survey
Abstract No.31

STATE OF TEXAS §

COUNTY OF WASHINGTON §

A METES & BOUNDS description of a certain 4.236 acre tract situated in the Phillip Coe Survey, Abstract No. 31 in Washington County, Texas, being a portion of a called 6.224 acre tract conveyed by Special Warranty Deed with Vendor's Lien to John Kenjura recorded in Volume 1195, Page 517 of the Official Records of Washington County, being the same 6.224 acre tract know as Lot 2 of the Continental Ribbon and Carbon Company Subdivision as recorded in Plat File No. 292B of the Plat Records of Washington County; said 4.236 acre tract being more particularly described as follows with all bearings based on the Texas Coordinate System of 1983, Central Zone;

BEGINNING at a found 1/2-inch iron rod in the occupied southeast right-of-way of Farm-to-Market Highway 389 (F.M. 389), marking the most northerly corner of the herein described 4.236 acre tract being common with the southwest corner of a called 3.280 acre tract conveyed by Special Warranty Deed to Michael S. Benestante recorded in Volume 1200, Page 459 of the Official Records of Washington County, from which a found 1/2-inch iron rod bears North 34°30'01" East, 429.43 feet;

THENCE South 55°34'38" East, departing said southeast right-of-way of F.M. 389, passing at 365.14 feet a set 5/8-inch iron rod (with cap stamped "Jones & Carter") in the G.C. & S.F. Railway Company west right-of-way recorded in Book 44, Page 52 of the Deed Records of Washington County, continuing in all a total distance of 388.88 feet to a found 1/2-inch iron rod marking the most northerly east corner of the herein described 4.236 acre tract being common with the south corner of said 3.280 acre tract and being in the occupied west line of the G.C. & S.F. Railway Company right-of-way;

THENCE South 15°32'13" West, along said occupied west line of the G.C. & S.F. Railway Company right-of-way, 47.57 feet to a point-for-corner from which a found 1/2-inch iron rod bears South 74°06'28" East, 4.53 feet;

THENCE continuing along said occupied west line of the G.C. & S.F. Railway Company right-of-way the following three (3) courses and distances:

1. South 14°39'26" West, 102.90 feet to a found 1/2-inch iron rod;
2. South 13°04'20" West, 101.42 feet to a found 1/2-inch iron rod;

Exhibit "A"
Metes and Bounds of 0.849 acre Tract

LAMPE SURVEYING, INC
PROFESSIONAL LAND SURVEYORS
Texas Licensed Surveying Firm No. 10040700
P. O. Box 2037 - 1408 West Main Street
Brenham, Texas 77833
(979) 836-6677

3432-20

THE STATE OF TEXAS

COUNTY OF WASHINGTON

SURVEYOR'S DESCRIPTION

0.849 ACRE

NATHAN C. WINKELMANN

All that certain tract or parcel of land, lying and being situated in the City of Brenham, Washington County, Texas in the P. H. Coe Survey, A-31, being part of the same land described as 1.150 acres and part of Lot No. 2 of Continental Ribbon and Carbon Company Subdivision (Plat Cabinet File Slide 292B) in a deed from John Kerjura, et ux to Nathan C. Winkelmann, dated November 14, 2012, recorded in Volume 1418, Page 455, Official Records of Washington County, Texas (1418/455, O.R.W.C.,Tx.), and being more fully described by metes and bounds as follows, to-wit:

BEGINNING at a 1/2" iron rod found with "2835" cap for the east corner hereof and of said original tract, being on the southeast line of said Lot No. 2, common with the northwest line of Lot No. 1 of Continental Ribbon and Carbon Company Subdivision, said Lot No. 1 being described in a deed to Robert Hodde, et ux (1349/817, O.R.W.C.,Tx.);

THENCE along common lines of said Lot No. 2 and Lot No. 1, as follows:
South 58 degrees 04 minutes 42 seconds West, 160.93 feet to a 5/8" iron rod found; and
South 03 degrees 42 minutes 09 seconds West, 75.88 feet to a 1/2" iron rod set on the east line of said original tract, common with the west line of said Lot No. 1, for the south corner hereof;

THENCE through said original tract, North 52 degrees 12 minutes 28 seconds West, at 74.48 feet pass an interior corner of said original tract, being the east corner of a Nathan C. Winkelmann tract called 1.130 acres (925/720, O.R.W.C.,Tx.), and continuing for a total distance of 167.54 feet to a 1/2" iron rod set on the northeast line of said Winkelmann tract called 1.130 acres, being the south corner of the residue of a D Bar B Sausage & Meats, LLC tract (372/65, O.R.W.C.,Tx.);

THENCE along the common lines of said original tract and said residue of D Bar B Sausage & Meats, LLC tract, as follows:
North 55 degrees 26 minutes 03 seconds East, 198.86 feet to a 1/2" iron rod found with "2183" cap; and
North 34 degrees 24 minutes 17 seconds West, 164.73 feet to the north corner of said residue of D Bar B Sausage & Meats, LLC tract, being the upper west corner hereof and of said original tract, being in a curve of the southeast margin of F. M. Highway 389 (Prairie Lea Street), a 1/2" iron rod found with "2183" cap bears South 34 degrees 24 minutes 17 seconds East, 0.88 feet;

THENCE along a counterclockwise curve of the southeast margin of F. M. Highway 389, having a radius of 1004.93 feet, an arc length of 60.67 feet and a chord of North 47 degrees 45 minutes 54 seconds East, 60.66 feet to the north corner hereof and of said original tract, common with a Prairie Lea Investments, LLC tract called 4.236 acres (1542/716, O.R.W.C.,Tx.), a found 1/2" iron rod with "2183" cap bears South 34 degrees 22 minutes 50 seconds East, 0.90 feet;

THENCE along the northeast line hereof and of said original tract, being the southwest line of said Prairie Lea Investments, LLC tract, South 34 degrees 22 minutes 50 seconds East, 280.34 feet to the PLACE OF BEGINNING and containing 0.849 Acre of land, more or less.

Prepared in conjunction with a separate survey plat.
Iron rods set are fitted with plastic cap stamped Lampe Surveying.
Bearings are based on the Texas Coordinate System of 1983-Central Zone, as obtained by GPS observations.

I, Donald W. Lampe, Registered Professional Land Surveyor No. 1732 of the State of Texas, do hereby certify that this description accurately represents the results of an on the ground survey made under my direction.

Dated this the 26th day of June, 2020.

Donald W. Lampe
R.P.L.S. No. 1732
Lampe Surveying, Inc

3432-20
3432Wink0.849Ac

Exhibit "B"

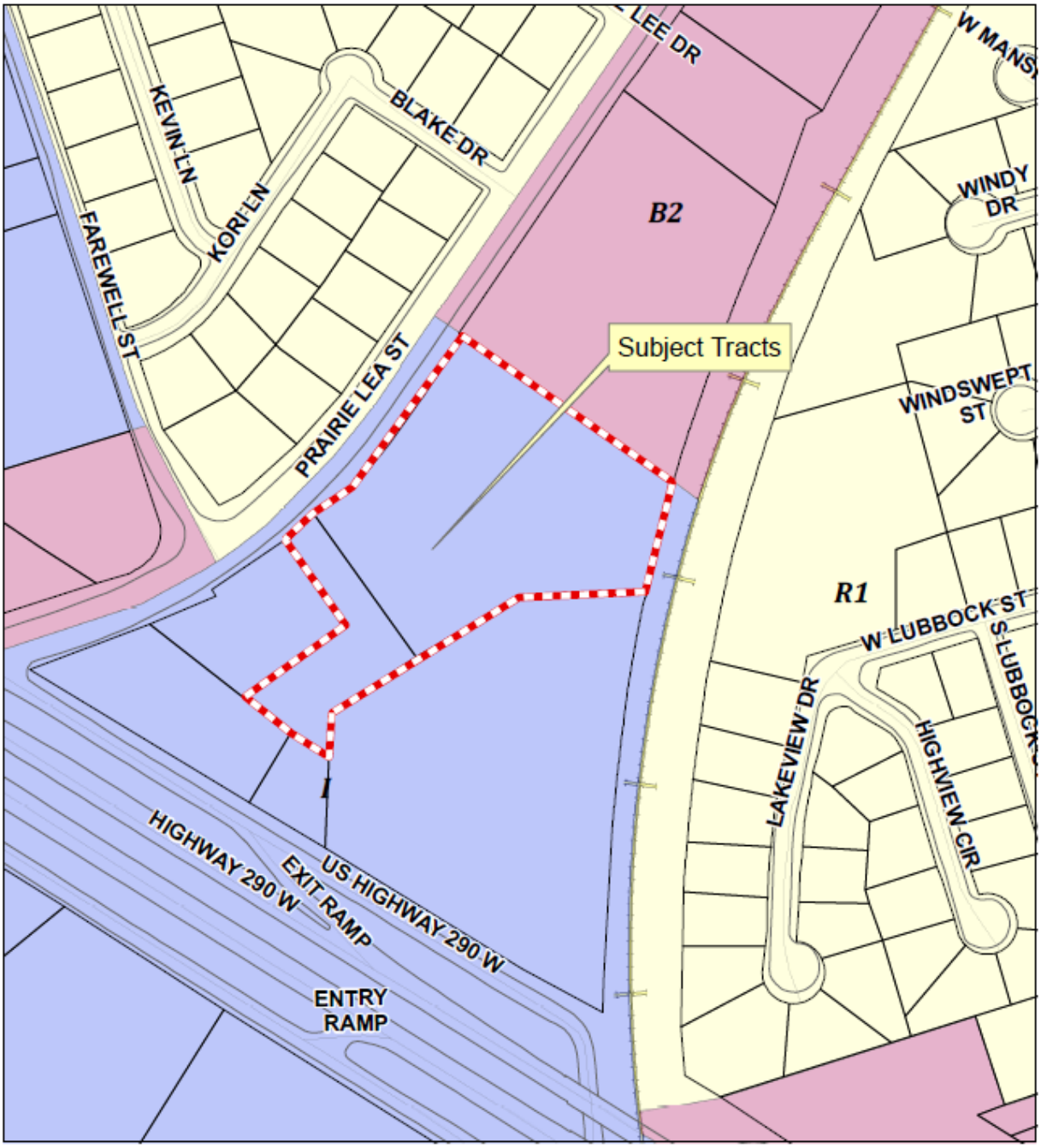


Exhibit "B"

1 inch = 210 feet

City of BRENHAM

ORDINANCE NO. O-20-018

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; and

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 W. Second St. beginning at Prairie Lea St. and ending at High St.

b. On the north side of W. Second St beginning at High St. and extending eastward approximately 255 feet ending at the shared property line of 808 W. Second St. and 806 W. Second St.

c. On the south side of W. Second St. beginning at High St. and ending at Green St.

d. On the east side of Green St. beginning at W. Third St. and ending at College Avenue.

e. On the south side of W. Fifth St. beginning at High St. and extending eastward approximately 210 feet ending at the shared property line of 811 W. Fifth St. and 805 W. Fifth St.

f. On the east side High St. beginning at W. Fifth St. and extending southward 215 feet ending at the shared property line of 1109 High St. and 1107 High St.

g. On the west side of High St. beginning at W. Fifth St. extending southward approximately 285 feet ending at the shared property line of 911 W. Fifth St. and 1108 High St.

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 6th day of August 2020.

PASSED and APPROVED on its second reading this the 20th day of August 2020.

_____
Milton Y. Tate, Jr.
Mayor

ATTEST:

_____
Jeana Bellinger, TRMC, CMC
City Secretary

ORDINANCE NO. O-20-019

AN ORDINANCE GRANTING DILLO DISPOSAL SERVICE, LLC, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE FOR THE PRIVILEGE AND USE OF PUBLIC STREETS, ALLEYS, AND PUBLIC WAYS WITHIN THE CORPORATE LIMITS OF THE CITY OF BRENHAM FOR THE PURPOSE OF ENGAGING IN THE BUSINESS OF COLLECTING SOLID WASTE FROM COMMERCIAL, RESIDENTIAL AND INDUSTRIAL SITES USING ROLL-OFF CONTAINERS AND/OR COMMERCIAL COMPACTORS; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS, AND LIMITATIONS UNDER WHICH SAID FRANCHISE SHALL BE EXERCISED; PROVIDING FOR THE CONSIDERATION; FOR PERIOD OF GRANT; FOR ASSIGNMENT; FOR METHOD OF ACCEPTANCE; FOR REPEAL OF CONFLICTING ORDINANCES AND FOR PARTIAL INVALIDITY.

WHEREAS, the City of Brenham, by ordinance, provides exclusively all solid waste collection and disposal services for solid waste generated from within the corporate limits of the City of Brenham; and

WHEREAS, the City of Brenham may, by ordinance and charter, grant franchises to other entities for the use of public streets, alleys and thoroughfares within the corporate limits of CITY and for the collection and disposal of solid waste generated from within the corporate limits of the City of Brenham; and

WHEREAS, the City of Brenham desires to exercise the authority provided to it by ordinance and charter to grant a franchise for the collection and disposal of certain solid waste generated from within the corporate limits of the City of Brenham; and

WHEREAS, the City of Brenham hereinafter referred to as "CITY" desires to grant this franchise to DILLO DISPOSAL SERVICE, LLC, under the terms of this Agreement as set out below.

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

SECTION 1.
DEFINITIONS

Agreement. This contract between the City of Brenham and for the provision of certain roll-off container and/or commercial compactor service within the corporate limits of the City of Brenham under certain terms and conditions set out herein.

City of Brenham. Also referred to as "CITY" in this Agreement.

City Council. Also referred to as "COUNCIL" denoting the governing body of the City of Brenham.

Customers. Those industrial, residential, and/or commercial premises located within the CITY that generates solid waste requiring collection using roll-off containers and/or commercial compactors.

Solid Waste. All putrescible and nonputrescible solid, semi-solid, and liquid wastes, including residential, industrial, commercial and municipal garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes.

Roll-Off Containers. A type of solid waste industry container that is loaded by a winch truck. Also referred to as “container”.

Commercial Compactor. A type of solid waste industry container that is loaded by a winch truck and compacts solid waste. Also referred to as “compactor”.

Dillo Disposal Service, LLC. Herein-after referred to as "DILLO DISPOSAL SERVICE, LLC". The party contracting with the CITY for roll-off container and/or commercial compactor service, which contains demolition/construction debris or solid waste.

SECTION 2.
GENERAL DESCRIPTION OF SERVICES TO BE PROVIDED

For and in consideration of the compliance by DILLO DISPOSAL SERVICE, LLC with the covenants and conditions herein set forth, and the Charter, Ordinances and Regulations of the City governing the collection and disposal of solid waste, CITY hereby grants to DILLO DISPOSAL SERVICE, LLC a non-exclusive franchise for use of designated public streets, alleys and thoroughfares within the corporate limits of City for the sole purpose of engaging in the business of collecting solid waste using roll-off containers and/or commercial compactors from commercial, residential and industrial sites within the jurisdictional limits of CITY, as approved by the City Manager or his designee.

SECTION 3.
AUTHORITY FOR TO PROVIDE SERVICE

CITY hereby grants to DILLO DISPOSAL SERVICE, LLC the privilege to collect from commercial, residential, and industrial customers within the City limits solid waste using roll-off containers and/or commercial compactors only.

SECTION 4.
DISPOSAL SITE TO BE USED

Unless approved otherwise in writing by the CITY, DILLO DISPOSAL SERVICE, LLC shall utilize any Type I permitted landfill that DILLO DISPOSAL SERVICE, LLC deems appropriate and is authorized for disposal of all solid waste, which is collected by DILLO DISPOSAL SERVICE, LLC from within the corporate limits of the CITY.

SECTION 5.
RATES TO BE CHARGED

A written Schedule of Rates that DILLO DISPOSAL SERVICE, LLC shall charge for the aforementioned services shall be provided to each customer, and such Schedule of Rates may be revised periodically as agreed by DILLO DISPOSAL SERVICE, LLC and its customers. DILLO DISPOSAL SERVICE, LLC shall immediately provide the CITY with copies of any and all revised Schedule of Rates documents.

SECTION 6.
PAYMENTS TO CITY

For and in consideration of the use of designated streets, alleys, and thoroughfares as well as in consideration of the covenants and agreements contained herein, DILLO DISPOSAL SERVICE, LLC agrees and shall pay to CITY upon acceptance of this Agreement and thereafter during the term hereof, a sum equivalent to five percent (5%) of DILLO DISPOSAL SERVICE, LLC monthly gross revenues generated from DILLO DISPOSAL SERVICE, LLC provision of solid waste roll-off container collection services within the CITY excluding actual landfill tipping charges.

Any revenue received by DILLO DISPOSAL SERVICE, LLC in excess of the actual landfill tipping charges will be subject to the franchise fee and shall be computed into DILLO DISPOSAL SERVICE, LLC monthly gross revenue. Said payment shall be paid monthly to the City of Brenham Attn: City Secretary and must be received by the CITY no later than the twenty-fifth (25^{th}) day of the month following the end of the previous month. If the payment due date falls on a Saturday, Sunday or other holiday designated by the CITY, the payment must be received by the CITY on the next regular business day.

Payments received by the CITY after the due date shall be assessed a ten percent (10%) penalty on the outstanding franchise fee amount owed under this Section.

Failure by DILLO DISPOSAL SERVICE, LLC to pay amounts due under this Agreement, after written notice by CITY, shall constitute Failure to Perform under this Agreement and CITY may invoke the provisions of Section 15 of this Agreement (FAILURE TO PERFORM), and/or any other remedy available to the CITY in law or equity.

SECTION 7.
ACCESS TO RECORDS & REPORTING

CITY shall have access to DILLO DISPOSAL SERVICE, LLC records, billing records of those customers served by DILLO DISPOSAL SERVICE, LLC and all papers relating to this Agreement and the operation of solid waste roll-off container collection and disposal services within the CITY. Access by CITY to DILLO DISPOSAL SERVICE, LLC records shall be provided to CITY within ten (10) business days, after written notice to DILLO DISPOSAL SERVICE, LLC during normal business hours.

The following records and reports shall be filed quarterly with the City Secretary or his/her designee:

A. Reports of all complaints, investigations, and actions taken by DILLO DISPOSAL SERVICE, LLC with regard to services provided pursuant to this Agreement.

B. A listing of all DILLO DISPOSAL SERVICE, LLC accounts served and monthly revenue derived from roll-off containers placed in the CITY under the terms of this Agreement. The reports should include: a unique customer identification or account number, frequency of pick-up, size of container and monthly charges.

The CITY is subject to the Texas Public Information Act ("Act"). Generally, the Act requires the release of requested information by the CITY, but there are exceptions. If the requested information meets the criteria outlined in the exceptions, the CITY may decline to release the information for the purpose of requesting a decision from the Texas Attorney General's Office. The Act excepts from public disclosure trade secrets and certain commercial or financial information. The Act states the CITY may withhold:

A. A trade secret obtained from a person and privileged or confidential by statute or judicial decision; or

B. Commercial or financial information for which it is determined based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

Pursuant to Section 552.305 of the Act, the CITY is obligated to make a good faith attempt to contact third parties who have a trade secret interest or a commercial financial interest in the information that's been requested so that the third party has an opportunity to submit reasons to the Texas Attorney General's Office why the information should be withheld or released.

The CITY will comply with Section 552.305 of the Act with regard to any requests for records concerning DILLO DISPOSAL SERVICE, LLC that invoke Section 552.305.

SECTION 8.
PLACEMENT OF CONTAINERS

All roll-off containers and/or compactors placed for service within CITY shall be located in such a manner so as not to be a safety or traffic hazard. Under no circumstances shall DILLO DISPOSAL SERVICE, LLC place containers on public streets, alleys and/or thorough fares without the prior written approval of the CITY. CITY reserves the right to specify to DILLO DISPOSAL SERVICE, LLC the exact location and time period allowed for placement of any roll-off container(s) it places for service in CITY.

DILLO DISPOSAL SERVICE, LLC agrees and acknowledges that it shall be liable for any and all damages it causes to any public street, alley and/or thorough fare, and associated improvements and DILLO DISPOSAL SERVICE, LLC will pay CITY's entire construction costs and other expenses associated with repairing and/or replacing the damaged public street, alley and/or through fare, and associated improvements.

SECTION 9.
CONTAINER MAINTENANCE

DILLO DISPOSAL SERVICE, LLC agrees to properly maintain as necessary, including but not limited to cleaning and painting, all roll-off containers placed for service within CITY.

SECTION 10.
COMPLAINTS REGARDING SERVICE/SPILLAGE

DILLO DISPOSAL SERVICE, LLC shall receive and directly respond to any complaints pertaining to service from their roll-off containers and/or compactor customers located within CITY. However, any such complaints received by CITY shall be forwarded to DILLO DISPOSAL SERVICE, LLC within twenty four (24) hours of their receipt by CITY. DILLO DISPOSAL SERVICE, LLC shall respond to all complaints within twenty four (24) hours of receiving notice of such complaint from CITY and shall report to CITY as to the action taken. Failure by DILLO DISPOSAL SERVICE, LLC to respond and report to CITY on action taken within this twenty four (24) hour period may subject DILLO DISPOSAL SERVICE, LLC to a $25.00 per incident charge from CITY payable with the next payment due to CITY under Section 6 of this Agreement.

DILLO DISPOSAL SERVICE, LLC agrees that during transport all vehicles used by DILLO DISPOSAL SERVICE, LLC in the removal of solid waste shall be properly covered to prevent spillage, blowing, or scattering of refuse onto public streets or properties adjacent thereto. All equipment necessary for the performance of this Agreement shall be in good condition and repair. A standby vehicle shall always be available. DILLO DISPOSAL SERVICE, LLC vehicles shall at all times be clearly marked with DILLO DISPOSAL SERVICE, LLC name in letters not less than three (3) inches in height.

SECTION 11.
OBEISANCE OF LAWS

DILLO DISPOSAL SERVICE, LLC agrees that it shall comply with all laws, policies, rules and regulations of the United States, State of Texas, and CITY. All collections made hereunder shall be made by DILLO DISPOSAL SERVICE, LLC without unnecessary noise, disturbance, or commotion.

SECTION 12.
UNDERSTANDINGS PERTAINING TO NON-EXCLUSIVITY

It is understood by and between the parties that this Agreement executed by and between the parties on the _____ day of _____, 20____, constitutes the only agreement between the parties. It is further understood and agreed that there are no other agreements between these parties with regard to the disposal of commercial, industrial or residential solid waste in the CITY using roll-off containers/compactors and that this Agreement does not authorize DILLO DISPOSAL SERVICE, LLC to utilize the streets, alleys or public ways to dispose of commercial, industrial, or residential solid waste other than demolition and construction debris. Both parties agree and understand that nothing in this Agreement conveys to DILLO DISPOSAL SERVICE, LLC an exclusive franchise for the services described in this Agreement and that this Agreement is non-exclusive.

SECTION 13.
OWNERSHIP OF MATERIALS COLLECTED

Nothing herein shall create or be construed to convey any title to CITY of any solid waste collected pursuant to the provisions of this agreement.

SECTION 14.
INTERRUPTION OF SERVICE OR DEFAULT

A. Termination of Service. In the event that DILLO DISPOSAL SERVICE, LLC terminates service to any customer with the CITY limits for cause, DILLO DISPOSAL SERVICE, LLC must notify the CITY through certified mail within forty-eight (48) hours of termination and state the cause of such termination.

B. Excessive Interruption in Service. If the interruption in service continues for a period of seventy-two (72) hours or more, then it may constitute Failure to Perform under this Agreement and CITY may invoke the provisions of Section 15 of this Agreement (FAILURE TO PERFORM).

SECTION 15.
FAILURE TO PERFORM

It is expressly understood and agreed by the parties that if at any time DILLO DISPOSAL SERVICE, LLC shall fail to perform any of the terms, covenants, or conditions herein set forth, CITY may after a hearing as described herein, revoke and cancel the Agreement by and between the parties and said Agreement shall be null and void. Upon the determination by the staff of CITY that a hearing should be held before the City Council, CITY shall mail notice of the hearing to DILLO DISPOSAL SERVICE, LLC, at the address designated herein or at such address as may be designated from time to time, by registered or certified mail. The notice shall specify the time and place of the hearing and shall include the allegations being asserted for the revocation of this Agreement. The hearing shall be conducted in public before the City Council and DILLO DISPOSAL SERVICE, LLC shall be allowed to present evidence and given an opportunity to answer all reasons for the termination set forth in the notice. In the event that the Council determines that the allegations set forth are true as set forth in the notice it may by majority vote cancel this Agreement between the parties at no penalty to the CITY.

SECTION 16.
INDEMNIFICATION

In the event CITY is damaged due to the act, omission, mistake, fault or default of DILLO DISPOSAL SERVICE, LLC, then DILLO DISPOSAL SERVICE, LLC shall indemnify and hold CITY harmless for such damage.

DILLO DISPOSAL SERVICE, LLC is to indemnify and hold CITY harmless for any disposal of any prohibited material whether intentional or inadvertent.

DILLO DISPOSAL SERVICE, LLC shall indemnify and hold CITY harmless from any and all injuries to or claims of adjacent property owners caused by DILLO DISPOSAL SERVICE, LLC, its agents, employees, and representatives.

DILLO DISPOSAL SERVICE, LLC agrees to and shall indemnify and hold harmless 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 DILLO DISPOSAL SERVICE, LLC under this Agreement, regardless of whether such injuries, death or damages are caused in whole or in part by the negligence, including but not limited to the contractual comparative negligence, concurrent negligence or gross negligence, of CITY.

SECTION 17.
INSURANCE

DILLO DISPOSAL SERVICE, LLC shall procure and maintain at its sole cost and expense for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by DILLO DISPOSAL SERVICE, LLC, its agents, representatives, volunteers, employees or subcontractors.

DILLO DISPOSAL SERVICE, LLC insurance coverage shall be primary insurance with respect to the CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, employees or volunteers shall be considered in excess of the DILLO DISPOSAL SERVICE, LLC insurance and shall not contribute to it.

DILLO DISPOSAL SERVICE, LLC shall include all subcontractors as additional insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage’s for subcontractors shall be subject to all of the requirements stated herein.

Certificates of Insurance and endorsements shall be furnished to CITY and approved by CITY before work commences.

A. STANDARD INSURANCE POLICIES REQUIRED

1. Commercial General Liability Policy
2. Automobile Liability Policy
3. Worker's Compensation Policy

B. GENERAL REQUIREMENTS APPLICABLE TO ALL POLICIES

1. General Liability and Automobile Liability insurance shall be written by a carrier with a better rating in accordance with the current Best Key Rating Guide.

2. Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.

3. Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.

4. Claims Made Policies will not be accepted.

5. The CITY, its officials, employees and volunteers are to be added as "Additional Insured" to the General Liability and the Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officials, employees or volunteers.

6. A Waiver of Subrogation in favor of the CITY with respect to the General Liability, Automobile Liability, and Workers' Compensation insurance must be included.

7. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the CITY.

8. Upon request, certified copies of all insurance policies shall be furnished to the CITY.

C. COMMERCIAL GENERAL LIABILITY

1. Minimum Combined Single Limit of $1,000,000 per occurrence for Bodily Injury and Property Damage.

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

D. AUTOMOBILE LIABILITY

1. Minimum Combined Single Limit of $1,000,000 per occurrence for Bodily Injury and Property Damage.

E. WORKERS' COMPENSATION

1. Employer's Liability limits of $500,000/$500,000/ $500,000 are required.

F. CERTIFICATES OF INSURANCE

1. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain provisions representing and warranting the following:

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

    b. The insurance set forth by the insurance company are underwritten on forms which have been approved by the Texas Department of Insurance or ISO.

    c. Sets forth all endorsements as required above and insurance coverage's as previously set forth herein.

    d. Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the CITY.

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

SECTION 18.
ASSIGNMENT

This Agreement and the rights and obligations contained herein may not be assigned by DILLO DISPOSAL SERVICE, LLC without the specific prior written approval of the City Council. Any assignment by DILLO DISPOSAL SERVICE, LLC without prior written approval of the City Council shall be null and void.

SECTION 19.
SAFETY

DILLO DISPOSAL SERVICE, LLC shall perform the collection in accordance with applicable laws, codes, ordinances and regulations of the United States, State of Texas, Washington County, and CITY and in compliance with OSHA and other laws as they apply to its employees. It is the intent of the parties that the safety precautions are a part of the collection techniques for which DILLO DISPOSAL SERVICE, LLC is solely responsible. In the carrying on of the work herein provided for, DILLO DISPOSAL SERVICE, LLC shall use all proper skill and care, and DILLO DISPOSAL SERVICE, LLC shall exercise all due and proper precautions to prevent injury to any property, person or persons. DILLO DISPOSAL SERVICE, LLC assumes responsibility and liability and hereby agrees to indemnify the CITY from any liability caused by DILLO DISPOSAL SERVICE, LLC failure to comply with applicable federal, state or local laws and regulations, touching upon the maintenance of a safe and protected working environment, and the safe use and operation of machinery and equipment in that working environment.

SECTION 20.
AD VALOREM TAXES

DILLO DISPOSAL SERVICE, LLC agrees to render all personal property utilized in its solid waste operation services to Washington County Appraisal District so that said personal property will be the subject of ad valorem taxation for the benefit of CITY.

SECTION 21.
NOTICES

All notices required under the terms of this Agreement to be given by either party to the other shall be in writing, and unless otherwise specified in writing by the respective parties, shall be sent to the parties at the addresses following:

City of Brenham	_____
P.O. Box 1059	_____
Brenham, Texas 77834	_____
ATTN: City Secretary	ATTN: _____

All notices shall be deemed to have been properly served only if sent by certified mail, to the person(s) at the address designated as above provided, or to any other person at the address which either party may hereinafter designate by written notice to the other party.

SECTION 22.
AMENDMENTS

It is hereby understood and agreed by the parties to this Agreement that no alternation or variation to the terms of this Agreement shall be made unless made in writing, approved by both parties, and attached to this Agreement to become a part hereof.

SECTION 23.
SEVERABILITY

If any section, sentence, clause or paragraph of this Agreement is for any reason held to be invalid or illegal, such invalidity shall not affect the remaining portions of the Agreement.

SECTION 24.
TERM OF AGREEMENT

The term of this Agreement shall be effective beginning on the _____ day of _____, 20_____, being the date of acceptance by DILLO DISPOSAL SERVICE, LLC and shall terminate on September 30, 20__.

Thereafter, this Agreement shall automatically renew annually for a subsequent one (1) year terms beginning on October 1 and terminating on the following September 30 unless either party gives written notice of non-renewal by certified mail no later than sixty (60) days prior to the then current termination date. Further, either party may terminate this Agreement without cause at any time by providing the other party with sixty (60) days written notice of termination by certified mail. This section is not intended, nor shall this section be construed, to limit or prohibit a party's ability to terminate this Agreement as otherwise provided in this Agreement.

SECTION 25.
ACCEPTANCE OF AGREEMENT

That DILLO DISPOSAL SERVICE, LLC shall have sixty (60) days from and after the final passage and approval of this Ordinance to file its written acceptance thereof with the City Secretary, and upon such acceptance being filed, this Ordinance shall take effect and be in force from and after the date of its acceptance, and shall effectuate and make binding the agreement provided by the terms hereof.

SECTION 26.
AUTHORIZATION TO EXECUTE

The parties signing this Agreement shall provide adequate proof of their authority to execute this Agreement. This Agreement shall inure to the benefit and is binding upon the parties hereto and their respective successors or assigns but shall not be assignable by either party without the written consent of the other party.

SECTION 27.
PUBLIC MEETING

It is hereby found and determined that the meeting(s) at which this Ordinance was considered were open to the public, as required by Chapter 551, Texas Government Code, and that advance public notice of time, place, and purpose of said meetings was given in accordance with law.

PASSED and APPROVED on its first reading this 6th day of August 2020.

PASSED and APPROVED on its second reading this 20th day of August 2020.

_____
Milton Y. Tate, Jr.
Mayor

ATTEST:

_____
Jeana Bellinger, TRMC, CMC
City Secretary

Regular City Council
AGENDA ITEM 7.

Agenda Item: **Discuss and Possibly Act Upon RFP No. 20-008 Related to Banking Depository Services and Authorize the Mayor to Execute Any Necessary Documentation**

Meeting Type: Regular Meeting-August 20, 2020

Department: Finance

Staff Contact: Carolyn Miller

Classification: Regular

SUMMARY STATEMENT:

See separate memo from Assistant City Manager-Chief Financial Officer

ATTACHMENTS:

(1) Memo
(2) Analysis from Patterson & Associates

RELEVANCE TO COMPREHENSIVE PLAN:

RECOMMENDED ACTION:

Award RFP No. 20-008 for Banking Depository Services to Bank of Brenham for a period to begin September 1, 2020 and extend through August 31, 2025 and authorize the Mayor to execute any necessary documentation.

MEMORANDUM

To: Mayor and Council

From: Carolyn D. Miller
Assistant City Manager - Chief Financial Officer

Subject: Bank Depository Services RFP No. 20-008

Date: August 10, 2020

In June 2020, the City issued RFP No. 20-008 soliciting proposals for bank depository services. The contract, to begin September 2020, is for a five-year period. The City received three proposals from the following financial institutions: Bank of Brenham (our current depository bank), Brenham National Bank and Chase Bank. Linda Patterson, of Patterson & Associates, performed an analysis of the bank depository services proposals. Key issues in evaluating bank services include (a) the banking services themselves and the automation capabilities; (b) the fees charged for those services; and (c) the earnings potential in and through the bank. The complete analysis is included as an attachment to this memo.

Banking Services

The proposing banks represent two state banks and one international bank. The basic services are similar although the technology and online services flexibility range significantly between banks. Chase has an international footprint which has allowed it to focus on the best treasury technology available. The ultimate decision comes down to whether the City needs that flexibility and customization.

Bank Costs/Earnings

The two local banks are offering services on a "no fee" basis. With this methodology the banks are assuming that funds will be retained in the bank.

Brenham National has set their target balance from a minimum of $3 million to a maximum of $5 million as a required balance with funds over $5 million with *a fixed interest rate of .0375%*. Any balance above $5 million will sweep into an Insured Cash Sweep account. The ICS is currently yielding .05%.

Bank of Brenham has not set any target balance (although can assume they might expect the same historical balance of $9 million to be maintained in the bank). *The bank is offering to pay 1.10% for the entire contract period.* If rated rise during the five-year period above the 1.10% in other liquid options like the pools, since no minimum balance is being required the City could move funds out of the bank for better earning.

Chase addresses fees on a different basis. Instead of solely setting a compensating balance methodology as the other banks, Chase has stipulated the exact fees to be applied for every service provided. The

average monthly service fees total $4,665. The bank is recommending the use of their *hybrid* structure which would utilize the 0.20% ECR rate (for approximately $6.9 million) and then move to their interest-bearing rates. The managed ECR rate however is 0.20% currently and interest-bearing accounts are yielding 0.05% neither of which compares to the other two banks.

The banks were asked if they were offering any transition or retention incentives. Bank of Brenham offered to provide all checks and deposit slips. Chase proposed to eliminate $1,001 in balance-based fees through use of a sweep account, provide two remote deposit scanners, and waive all fees for 24 months. These incentives and sweep earnings credit have been calculated into the gross fees and result in a more complete picture of the total fees.

Depository	Gross Mo. Fees	Net Mo. Fees
Bank of Brenham	$ 00	$ 00
Brenham National	$ 00	$ 00
Chase Bank	$ 4,665	$ 2,762

Collateral

Banking regulators are globally attempting to assure that liquidity remains available in the markets and ensure that bank leverage is reduced both of which contributed to the *great recession of 2008-09.* The collateral which must be pledged to public accounts is from the bank's own portfolios so providing that collateral lowers the banks' liquidity ratios and raises the banks' leverage ratios in contradiction of the regulatory guidelines. This has moved some banks to utilize letters of credit (LOC) as collateral instead of pledged securities. Bank of Brenham is proposing use a LOC as collateral while the other two banks are still willing to offer pledged securities.

Recommendation from Patterson & Associates

The City's goal has to be to maintain maximum services while earning all possible potential interest. The service scores reflect the advanced technology and services offered at Chase, however, Chase has materially lower interest rates. The service score for Bank of Brenham was higher than Brenham National, and the rate offered by Bank of Brenham of 1.10% is higher than that offered by Brenham National of .375%. On any combination of these factors, the City appears to be best served by Bank of Brenham.

It is recommended therefore that the City award the banking services contract to Bank of Brenham.

CITY OF BRENHAM
Analysis of Bank Depository Service Proposals
July 2020

The City of Brenham solicited proposals for banking services to serve the City with efficient and cost-effective banking services in June 2020. The City intended for its banking partner to provide state-of-the-art technology to assure that its current banking needs would be met for all departments and allow the City to continue to incorporate technological changes and improvements into its operations over the period of the contract. The contract, to begin September 2020, is to be for a five-year period.

The City received three proposals for banking services in response to its Request for Proposal (RFP). The proposals were made by the incumbent Bank of Brenham, Brenham National Bank, and Chase Bank. All these banks can fulfill the basic needs of the City for banking services but there is a major difference in the level and availability of services as well as the fee proposal structures from these banks.

Current banking situation is affected by Covid-19 as well as its effects in the banking arena. In addition, it is controlled by three regulatory elements (a) increased banking regulations impacting collateral alternatives, (b) regulatory balance based fees and (c) the very low interest rate environment.

Banking regulators are globally attempting to assure that liquidity remains available in the markets and ensure that bank leverage is reduced both of which contributed to the *great recession of 2008-09.* The collateral which must be pledged to public accounts is from the banks own portfolios so providing that collateral lowers the banks' liquidity ratios and raises the banks' leverage ratios in contradiction of the regulatory guidelines. This has moved some banks to utilize letters of credit (which is a simple expense to the bank) as collateral instead of pledged securities. Bank of Brenham is proposing use an LOC as collateral while the other two banks are still willing to offer pledged securities.

A second change generated from the regulations is the application of a *balance based fee.* Neither Bank of Brenham or Brenham National are proposing defined fees so identification of this fee is not apparent for these two banks. Chase, which is proposing on a set fee basis, is proposing a balance based fee equaling approximately $1,000 a month. Use of a sweep into a money market fund is normally highly recommended to eliminate this type fee but with rates so low in the funds this makes the option currently ineffective.

The City's RFP was structured to allow for the use of sweeps as rates change which would then allow the City to reduce balances and move all collected funds to a money market mutual fund for higher rates. This would be possible at Chase but not at the other banks. The investment alternatives at the two state chartered banks are considerably more limited.

Finally from the national banking regulations, the low interest rate environment has reduced all earnings capabilities in the banks which make the investment decisions and account structure decisions extremely,

and materially, important to the evaluation. The confluence of these factors and their impacts play a major role in choosing the best banking solution. At any time, structural account decisions must be based on interest rates offered with consideration for the potential that these structures allow as market rates change. The City's goal has to be to maintain maximum services while earning all possible potential interest.

Key issues in evaluating bank services include (a) the services themselves and the automation capabilities which support those services as technology has developed and will undoubtedly continue to develop over the contract period. Consideration is also based on (b) the fees charged for those services. Finally, (c) the earnings potential in and through the banks is considered because the City will always maintain balances of working capital in the banking system making outside investments limited. Each of these three aspects is discussed separately below. Detailed backup upon which the evaluation was based are shown on matrices which accompany this report. Only the key factors defining and differentiating the proposals are discussed directly in this report.

BANKING SERVICES

The proposing banks represent two state chartered banks and one international bank behemoth. The basic services provided by these banks are similar although the technology and online services flexibility range significantly between banks. Obviously a money center bank like Chase has an international footprint which has allowed its focus on the best treasury technology available. The scope and flexibility and customization available at Chase is significantly higher at Chase although the ultimate decision comes with whether the City needs that flexibility and customization.

Each question presented in the RFP was weighted as to its importance in providing that particular service and each response was rated. The resulting score (weight x rate) for each bank indicates the differences between the banks and gives an indication of overall service and technology expectations. The City did not ask for any "Optional Services" which would not be *required* but could be used in the contract period.

All the questions allowed for an analysis of what the banks had available as well as how each approached the services. The banks scores for required services were:

	Required Services Score
Bank of Brenham	397
Brenham National	366
Chase	456

Many of the additional services, heightened technology, and levels of service available at Chase extend service capabilities with increased flexibility in reporting, e-payables and e-receivables services.

CREDITWORTHINESS

All the banks were queried on their senior and subordinate debt (or other credit rating) as well as their community involvement, as measured by their regulators. All are stable and solid financial institutions. Community Reinvestment ratings are highest at Brenham National.

CUSTOMER SERVICE

The local banks provide local support with one or more representatives. Chase also is providing a local designated representative but has considerable depth in supporting technology and service teams. Chase organizes its customer service through a *team* approach headed by the one dedicated representative assigned to the City. Ongoing customer service is difficult to ascertain on written proposals but the three banks scored quite closely in this area.

Chase are naturally focuses on providing technology in treasury services to provide these services. The local banks focus on hands-on service.

ACCOUNT STRUCTURE

The RFP required that all banks have the ability to structure accounts as ZBAs (zero balance accounts) to facilitate a sweep into a AAA-rated money market mutual fund which strives to maintain a $1 NAV. This structure is to facilitate access to higher rates in the funds (normally) and to reduce any balance based fee a bank may assess. The three banks differ considerably on the recommended account structures.

Bank of Brenham can sweep only to internal accounts (for example a money market account) but they the proposal negates the structure question in that the bank is offering a 1.10% rate on all interest bearing account types. This rate is set for the entire contract period. (The incumbent has increased the rate from the current contract's 1.0% level.)

Brenham National has a sweep structure but this sweep is into the ICS program (Insured Cash Sweep) which spreads the deposits throughout the *Promontory Network* of ICS assuring that all funds are 100% FDIC insured in money market accounts. The bank has noted that the current rate is 0.05% on such accounts.

Chase has the sweep structure available but has recommended, because of the extremely low rates, a *hybrid* structure combining savings accounts (at 0.05% and a managed CD ladder. The CD rates are currently sitting at 0.10%.

The RFP required that the City also have the option to change from a compensating balance basis or fees and as rates change this would be available only at Chase. If, during the contract period, market rates rise materially the sweep to a money market mutual fund will probably represent the best option, however, given today's environment there is no way to estimate when rates will change. Overnight rates, which largely affect this bank rate, may not change through 2021.

INFORMATION SERVICES

A key to today's banking services for the City's departments is the availability of online services. All the banks offer a single portal, web-based information system giving the City the administrative ability to control access and transactions. All have the City as administrator on the online access and controls.

Prior day activity is made available before the open next day at all the banks and current day information is real time. Bank of Brenham and Chase have mobile access although it is somewhat more limited at Bank of Brenham. Alerts, both automatic and customized are more extensive at Bank of Brenham and Chase. Chase excels at scheduling of transactions, flexibility in reporting, graphic abilities and customization options on reporting.

COLLECTION AND DEPOSIT SERVICES

There are few differences between the banks in collection services. All the banks have remote deposit services to streamline and accelerate collections on paper checks (a service which is strongly recommended). All the banks have local depositing at branches and do not require couriers to remote bank vaults. Cutoff times at Chase are extended at all deposit types. Remote deposit cutoff at Chase is 9pm versus 4pm at Bank of Brenham and 6pm at Brenham National. Deposit bags are being offered free by Bank of Brenham and Brenham National.

RCK (representment of checks by ACH debit) is available at Chase but they require a higher minimum monthly deposit volume than is evident at Brenham. Neither of the other banks offer a true RCK service.

DISBURSEMENT SERVICES

In the area of disbursements the banks vary only slightly. All the banks image checks, deposit slips and deposit items and have these available images online. Images are maintained at Bank of Brenham and Chase for 7 years but only 18 months at Brenham National. In the area of consolidated payables which is a

technology developed to streamline payables and save City staff time only Chase has this available in a developed form. Most banks are moving swiftly to consolidated payables which allow entities to send all payables in one file to the bank for handling and utilize the technology available.

The banks were asked whether they would cash City employee checks if the holder was not a client. They all agreed but Chase would require a minimal fee.

Chase has recommended a Single Use Account (SUA) to improve disbursements fraud control and provide a rebate. The SUA is a digital/virtual commercial card which would be used by the City for payments thereby hiding the card number but making the expenditure available for rebate. This SUA has been gathering momentum because of the fraud control and rebate capabilities.

POSITIVE PAY AND RECONCILIATION

All the banks have positive pay but only Chase has *payee* positive pay to best control fraud. Chase is also the only bank with partial and full reconciliation available.

Alerts for positive pay as well as other transactions are available at all the banks although 'pushed' at Chase to tell the City the status each day. The banks differ in the times given for City review of exceptions. Both local banks give notice of exceptions at opening of business with responses due at 10:30 at Brenham National and 11am at Bank of Brenham. Chase sends an alert then an email on exceptions by 11:00am with responses due by 4:00pm. If no response has been received by 3:00pm Chase sends an email reminder.

WIRES AND TRANSFERS

The initiation of wires is available online at Brenham National and Chase. At Bank of Brenham the City sends an online message but the wire is then created by the bank. Notification is then back by email or fax. Brenham National appears to have a routine similar to this with a confirming email. All wire transactions, monitoring and confirmation are online at Chase as is notification of incoming wires and transfers. At all the banks dual control is available. Future dating of wires is available only at Chase. Internal transfers are available online at Brenham National and Chase.

Brenham National has stated that wires must have *ledger* balance for release (collected required at the other banks) but it is unclear whether the bank actually intended to state *ledger* over collected ledger.

ACH SERVICES

ACH services are controlled primarily through NACHA so little difference is found between any banks on the actual processing of transactions. Chase offers considerably more flexibility and optionality on ACH input such as future dating (unavailable at the other banks) and settlement offsets.

For ACH processing and acceptance utilization of filters and blocks is critical to limit fraudulent direct debits. Filters are more extensive at Chase but blocks and originator filters are available at all the banks. The access to addenda on ACH is limited at Bank of Brenham and Brenham National.

Another key in the ACH service is whether the bank debits the City account on initiation of the ACH credits or on the settlement date. Bank of Brenham places a hold on the funds at initiation (so effectively requires the funds on initiation. Brenham National and Chase debit on settlement date.

SAFEKEEPING

Safekeeping services for securities owned by the City are available only through Bank of Brenham and Brenham National. Both of these are correspondent relationships. Bank of Brenham uses TIB with all communications going through Bank of Brenham. Brenham National would use FHLB of Dallas. Brenham National has reserved the right to pass on FHLB fees.

COLLATERALIZATION

When the City is using a sweep to remove balances from the bank on a daily basis, collateral is not a factor, but, when funds are left in the bank collateral is crucial. Bank of Brenham is offering a letter of credit (LOC) from FHLB. Brenham National will offer securities to be held at FHLB with monthly reports. Chase is offering pledged securities to be held at the Federal Reserve and monitored by the National Collateral Management Group to assure margin control.

STOP PAYS

Stop pays now can be handled through a void on the positive pay file, but when they are needed there are specific differences between the banks in their initiation and use. All the banks allow for online or batch entry of stop pays as a single transaction or range of checks. Both Bank of Brenham and Brenham National have six month stops and no potion for renewal – a new stop must be entered. Chase's stops are one year with auto renewal out to 7 years. The deadline for stops is longest at Chase (6:30pm) with Bank of Brenham at 5pm and Brenham National at 11am for same day stop.

ACCOUNT ANALYSIS

Chase which is based on fees provides an account analyses on an individual account and relationship basis. Neither other bank has an analysis. Chase's analysis is available in 6 days and remains on line 13 months.

STATEMENTS

The statements are also being provided online at all the banks and vary only on online retention periods which are 18 months at the local banks and 7 years at Chase. All the statements are downloadable. [Note: Banks must have these statements maintained for 7 years but they may not be available immediately on line to customers.]

BANK COSTS/EARNINGS

The two local banks provide are offering services on a 'no fee' basis. With this methodology the banks are assuming that funds will be retained in the bank.

Brenham National has set their target balance from a minimum $3 million to a maximum $5 million as a required balance with funds over $5 million sweeping to ICS. The bank states that its 'fixed interest rate of 0.375% applies' with no fees and further clarifies that it intends to pay 0.375% up to $5 million with the remainder moved to ICS. Brenham National sweeps to the ICS (Insured Cash Sweep) which spreads the funds in money market accounts through the Promontory Network keeping it all under FDIC coverage and eliminating any collateral cost for the bank. The Promontory Network is currently yielding 0.05% and can be expected to remain at that level at least through mid-2021. The bank has also reserved the right to pass through any third-party fees.

Bank of Brenham has not set any target balance (although can assume they might expect the same historical balance of $9 million to be maintained in the bank). The bank is offering to pay 1.10% for the entire contract period. If rates rise during the five year period above the 1.10% in other liquid options like the pools, since no minimum balance is being required the City could move funds out of the bank for the better earnings.

Chase addresses fees on a different basis. Instead of solely setting a compensating balance methodology as the other banks, Chase has stipulated the exact fees to be applied for every service provided. The average monthly service fees total $4,665. This however includes $1,001 in balance based fees which would be eliminated through the use of a sweep to a money market fund which unfortunately is not practical now with rates so low even in these funds. The bank is recommending the use of their *hybrid* structure which would utilize the 0.20% ECR rate (for approximately $6.9 million) and then move to their interest bearing rates. This however leaves the balances in the bank and therefore the fees will include the balance based fee every month. With the balance based fee the monthly fee over five years would average $2,762 and without the balance based fee would average $2,161 (both net of the incentives offered). The managed

ECR rate however is 0.20% currently and interest bearing accounts are yielding 0.05% neither of which compares to the other two banks.

The banks were asked if they were offering any transition or retention incentives.

- Bank of Brenham has offered to provide all checks and deposit slips during the contract and is offering a 1.10% rate on all interest bearing accounts for the entire contract period.
- Brenham National is offering a fixed income interest rate of 0.375% for the life of the contract on a target balance of $3 million minimum and $5 million maximum, paying 0.375% up to $5million (Above $5 million would sweep to the ICS program.)
- Chase is waiving all service fees for 24 months. They are also offering two remote deposit scanners and an annual supply credit of $750. They also will do a quarterly carry-over settlement on the account analysis.

These financial incentives have been calculated into the gross fees and result in a more complete picture of the total fees.

	Gross Mo Fees	Net Mo Fees
Bank of Brenham		
Brenham National		
Chase	$ 4,665	$ 2,762

SUMMARY AND RECOMMENDATION

The service scores reflect the plethora of advanced technology and services offered at Chase. However, Chase has materially lower interest rates and even with the generous incentives these rates reduce the bank's proposal value. The more than three-quarter percent earnings rate offered at Chase or Bank of Brenham (over Brenham National) will earn the City significantly more interest over the period. The service score is also higher at Bank of Brenham.

On any combination of these factors the City appears to be best served by Bank of Brenham. Therefore, this analysis recommends that the City award the banking contract to Bank of Brenham.

Patterson & Associates

Regular City Council
AGENDA ITEM 8.

Agenda Item: **Discuss and Possibly Act Upon an Audit Engagement Letter for Seidel Schroeder to Perform an Audit for the Fiscal Year Ending September 30, 2020 and Authorize the Mayor to Execute Any Necessary Documentation**

Meeting Type: Regular Meeting-August 20, 2020

Department: Finance

Staff Contact: Carolyn D. Milller

Classification: Regular

SUMMARY STATEMENT:

Attached is the proposed audit engagement letter from Seidel Schroeder for the fiscal year ending September 30, 2020. A fee range of $43,900 to $45,900 is proposed for the financial statement audit, which is the same as the prior year. An additional fee of $7,000 to $8,500 expected based on the assumption that a Single Audit will be required. A Single Audit is required when state and federal grant expenditures exceed $750,000 in a fiscal year. The City anticipates meeting this threshold in FY20 due to storm related repairs covered by FEMA awards and expenditures associated with other state and federal grants. With the continued growth and complexity of the City's financial activities, the current fee structure is reasonable.

ATTACHMENTS:

(1) Audit Engagement Letter from Seidel Schroeder

RELEVANCE TO COMPREHENSIVE PLAN:

RECOMMENDED ACTION:

Approve an audit engagement letter from Seidel Schroeder to perform an audit for the fiscal year ending September 30, 2020 and authorize the Mayor to execute any necessary documentation.

SEIDEL SCHROEDER

CERTIFIED PUBLIC ACCOUNTANTS / BUSINESS ADVISORS

August 10, 2020

To The City Council of the
City of Brenham, Texas

We are pleased to confirm our understanding of the services we are to provide the City of Brenham, Texas for the year ended September 30, 2020. We will audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information, including the related notes to the financial statements, which collectively comprise the basic financial statements of the City of Brenham, Texas, as of and for the year ended September 30, 2020. Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement the City of Brenham's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the City of Brenham's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by U.S. generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

1. Management's Discussion and Analysis
2. Schedule of Changes in Total OPEB Liability and Related Ratios
3. Schedule of Changes in Net Pension Liability and Related Ratios – Texas Municipal Retirement System
4. Schedules of Contributions – Texas Municipal Retirement System
5. Schedule of the City's Proportionate Share of the Net Pension Liability – Texas Emergency Services Retirement System
6. Schedule of Contributions – Texas Emergency Services Retirement System

We have also been engaged to report on supplementary information other than RSI that accompanies the City of Brenham's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of

America, and we will provide an opinion on it in relation to the financial statements as a whole, in a report combined with our auditor's report on the financial statements.

1. Combining and individual non-major fund financial statements
2. Budgetary comparison information – Other Governmental Funds and Blended Component Unit
3. Schedules within the reports for management
4. Schedule of expenditures of federal awards

The following other information accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements, and our auditor's report will not provide an opinion or any assurance on that other information:

1. Introductory section
2. Statistical data

Audit Objectives

The objective of our audit is the expression of opinions as to whether your financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. The objective also includes reporting on –

- Internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.

- Internal control over compliance related to major programs and an opinion (or disclaimer of opinion) on compliance with federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and the Title 2 U.S. *Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance).

The *Government Auditing Standards* report on internal control over financial reporting and on compliance and other matters will include a paragraph that states that (1) the purpose of the report is solely to describe the scope of testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance, and (2) the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. The Uniform Guidance report on internal control over compliance will include a paragraph that states that the purpose of the report on internal control over compliance is solely to describe the scope of testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Both reports will state that the report is not suitable for any other purpose.

Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of the Uniform Guidance, and will include tests of accounting records, a determination of major program(s) in accordance with the Uniform Guidance, and other procedures we consider necessary to enable us to express such opinions. We will issue written reports upon completion of our Single Audit. Our report will be addressed to the mayor and councilmembers of the City of Brenham. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or issue reports, or we may withdraw from this engagement.

Audit Procedures—General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity. Because the determination of waste and abuse is subjective, *Government Auditing Standards* do not expect auditors to perform specific procedures to detect waste or abuse in financial audits nor do they expect auditors to provide reasonable assurance of detecting waste or abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, an unavoidable risk exists that some material misstatements or noncompliance may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or on major programs. However, we will inform the appropriate level of management of any material errors, any fraudulent financial reporting, or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our

audit, we will require certain written representations from you about your responsibilities for the financial statements; schedule of expenditures of federal awards; federal award programs; compliance with laws, regulations, contracts, and grant agreements; and other responsibilities required by generally accepted auditing standards.

Audit Procedures—Internal Control

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards.*

As required by the Uniform Guidance, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to the Uniform Guidance.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. Accordingly, we will express no such opinion. However, during the audit we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, and the Uniform Guidance.

Audit Procedures—Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of City of Brenham's compliance with the provisions of applicable laws, regulations, contracts, and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

The Uniform Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with federal statutes, regulations, and the terms and conditions of federal awards applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the OMB *Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the City of Brenham's major programs. For federal programs that are included in the Compliance Supplement, our compliance and internal control procedures will relate to the compliance requirements that the Compliance Supplement identifies as being subject to the audit. The purpose of these procedures will be to express an opinion on the City of Brenham's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to the Uniform Guidance.

Other Services
We will also assist in preparing the IRS Form 1099's based on information provided by you. These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*. We will perform the services in accordance with applicable professional standards. The other service are limited to the preparation of Form 1099 services previously defined. We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

Management Responsibilities
Management is responsible for (1) designing, implementing, establishing, and maintaining effective internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error, including internal controls over federal awards, and for evaluating and monitoring ongoing activities to help ensure that appropriate goals and objectives are met; (2) following laws and regulations; (3) ensuring that there is a reasonable assurance that government programs are administered in compliance with compliance requirements; and (4) ensuring that management and financial information is reliable and properly reported. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements. You are also responsible for the selection and application of accounting principles, for the preparation and fair presentation of the financial statements, schedule of expenditures and federal awards, and all accompanying information in conformity with U.S. generally accepted accounting principles, and for compliance with applicable laws and regulations (including federal statutes) and the provisions of contracts and grant agreements (including award agreements). Your responsibilities also include identifying significant contractor relationships in which the contractor has responsibility for program compliance and for the accuracy and completeness of that information.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, including identification of all related parties and all related-party relationships and transactions, (2) access to personnel, accounts, books, records, supporting documentation, and other information as needed to perform an audit under the Uniform Guidance, (3) additional information that we may request for the purpose of the audit, and (3) unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence.

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the written representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements of each opinion unit as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of

your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws, regulations, contracts, agreements, and grants. Management is also responsible for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements that we report. Additionally, as required by the Uniform Guidance, it is management's responsibility to evaluate and monitor noncompliance with federal statutes, regulations, and the terms and conditions of federal awards; take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; promptly follow up and take corrective action on reported audit findings; and prepare a summary schedule of prior audit findings and a separate corrective action plan. The summary schedule of prior audit findings should be available for our review on November 1, 2020.

You are responsible for identifying all federal awards received and understanding and complying with the compliance requirements and for the preparation of the schedule of expenditures of federal awards (including notes and noncash assistance received) in conformity with the Uniform Guidance. You agree to include our report on the schedule of expenditures of federal awards in any document that contains and indicates that we have reported on the schedule of expenditures of federal awards. You also agree to include the audited financial statements with any presentation of the schedule of expenditures of federal awards that includes our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the schedule of expenditures of federal awards in accordance with the Uniform Guidance; (2) you believe the schedule of expenditures of federal awards, including its form and content, is stated fairly in accordance with the Uniform Guidance; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the schedule of expenditures of federal awards.

You are also responsible for the preparation of the supplementary information, which we have been engaged to report on, in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains and indicates that we have reported on the supplementary information. You also agree to make the audited financial statements readily available to users of the supplementary information no later than the date the supplementary information is issued with our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits, or other studies

related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

You agree to assume all management responsibilities relating to the nonaudit services we provide. You agree to oversee the nonaudit services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of those services; and accept responsibility for them.

Engagement Administration, Fees, and Other

We understand that your employees will prepare all cash, accounts receivable, or other confirmations we request and will locate any documents selected by us for testing.

At the conclusion of the engagement, we will complete the appropriate sections of the Data Collection Form that summarizes our audit findings. It is management's responsibility to electronically submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditor's reports, and corrective action plan) along with the Data Collection Form to the federal audit clearinghouse. We will coordinate with you the electronic submission and certification. The Data Collection Form and the reporting package must be submitted within the earlier of 30 calendar days after receipt of the auditor's reports or nine months after the end of the audit period.

We will provide copies of our reports to the City; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the property of Seidel Schroeder and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to a cognizant, grantor agency, or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Seidel Schroeder personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release date or for any additional period requested by the parties listed in the above paragraph. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

We expect to begin our audit planning process during October, 2020, audit fieldwork beginning in November, 2020 and to issue our reports no later than March 1, 2021. Michele Kohring Kwiatkowski is the engagement partner and is responsible for supervising the engagement and signing the reports or authorizing another individual to sign them.

Our fee for these services will be at our standard hourly rates plus out-of-pocket costs (such as report reproduction, word processing, postage, travel, copies, telephone, etc.) except that we agree that our gross fee, including expenses will range from $43,900 to $45,900 plus an additional $7,000 to $8,500 for the Single Audit. Our standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your audit. The above fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

We appreciate the opportunity to be of service to the City of Brenham, Texas and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,

SEIDEL SCHROEDER

By: _____
Michele Kohring Kwiatkowski, CPA

RESPONSE:

This letter correctly sets forth the understanding of the City of Brenham, Texas.

Management signature: _____

Title: _____

Date: _____

Governance signature: _____

Title: _____

Date: _____

Regular City Council
AGENDA ITEM 9.

Agenda Item: **Discuss and Possibly Act Upon the Approval of the FY2020-21 Proposed Budget for the Washington County Appraisal District and Authorize the Mayor to Execute Any Necessary Documentation**

Meeting Type: Regular Meeting-August 20, 2020

Department: Administration

Staff Contact: Carolyn D. Miller

Classification: Regular

SUMMARY STATEMENT:

The City has received a copy of the Washington County Appraisal District's (WCAD) FY2020-2021 Proposed Budget. The WCAD Proposed Budget shows and increase of $900 over the prior year's budget due to an increase in copier maintenance. The expenses of the WCAD are allocated (based on tax levy) to the 9 taxing entities served by the appraisal district. The City of Brenham's share of the FY2020-2021 WCAD budget is $99,429 which is a $532 increase from the prior year allocation of $98,897. This amount has been included in the City's FY21 proposed budget.

ATTACHMENTS:

(1) Transmittal Letter and WCAD Proposed Budget from Willy Dilworth, Chief Appraiser

RELEVANCE TO COMPREHENSIVE PLAN:

RECOMMENDED ACTION:

Staff recommends the approval of the FY2020-2021 Washington County Appraisal District Proposed Budget.

WASHINGTON COUNTY APPRAISAL DISTRICT

1301 NIEBUHR
P. O. BOX 681
BRENHAM, TX 77834-0681
(979) 277-3740

August 3, 2020

City of Brenham
Mr. James Fisher
PO Box 1059
Brenham, TX 77834-1059

Dear Mr. Fisher,

The Washington County Appraisal District Board of Directors adopted our budget for the 2020-2021 budget year on July 28, 2020. The total amount of the budget is $911,494. A copy is attached. Please note that this is an increase of $900.00 from last year's budget.

We are asking you to approve this budget for the coming fiscal year.

Thank you for your consideration in this matter.

Sincerely;

Willy Dilworth
Chief Appraiser

RECEIVED

AUG - 3 2020

James Fisher
City Manager

Washington County Appraisal District
2020-2021 Budget
Adopted
July 28, 2020

41 General Administration

6100 Payroll Costs		2019-2020	2020-2021
Professional Personnel	6119.00-952-0-99	$ 70,849	$ 70,849
Para Professional Personnel	6129.00-952-0-99	$ 473,000	$ 473,000
In District Travel	6139.00-952-0-99	$ 600	$ 600
FIMM Medicare	6141.00-952-0-99	$ 7,584	$ 7,584
Health Insurance/ Life Insurance	6142.00-952-0-99	$ 43,485	$ 43,485
Workers Comp.	6143.00-952-0-99	$ 665	$ 665
Unemployment Comp.	6145.00-952-0-99	$ -	$ -
Teacher Retirement	6146.00-952-0-99	$ 16,830	$ 16,830
New Staff Member			
Payroll Costs		**$ 613,013**	**$ 613,013**

6200 Professional & Contracted Services		2019-2020	2020-2021
Legal Services	6211.00-952-0-99	$ 1,200	$ 1,200
Arbitration	6212.00.952-0-99	$ 2,000	$ 2,000
Audit Services	6212.00-952-0-99	$ 6,000	$ 6,000
Tax Evaluation- T.Y. Pickett	6213.00-952-0-99	$ 60,000	$ 60,000
Data Processing Services	6218.00-952-0-99	$ 5,000	$ 5,000
Appraisal Review Board	6219.00-952-0-99	$ 6,000	$ 6,000
Contracted Services- Software	6249.00-952-0-99	$ 62,781	$ 62,781
Equipment Repair	6249.01-952-0-99	$ 1,500	$ 1,500
Contracted Maintenance- MAP	6249.P2-952-0-99	$ 12,700	$ 12,700
Contracted Maintenance- Copier	6249.P5-952-0-99	$ 4,100	$ 5,000
Building Rental	6269.01-952-0-99	$ 20,000	$ 20,000
Professional & Contracted Services		**$ 181,281**	**$ 182,181**

6300 Supplies & Materials		2019-2020	2020-2021
Vehicle Supplies	6311.00-952-0-99	$ 10,000	$ 10,000
Books & Magazines	6329.00-952-0-99	$ 2,400	$ 2,400
Computer Supplies	6397.00-952-0-99	$ 5,200	$ 5,200
General Supplies	6399.00-952-0-99	$ 20,000	$ 20,000
Supplies & Materials		**$ 37,600**	**$ 37,600**

6400 Other Operating Costs		2019-2020	2020-2021
Travel	6411.00-952-0-99	$ 3,600	$ 3,600
Insurance & Bonding Expenses	6429.00-952-0-99	$ 11,000	$ 11,000
Fees & Dues	6499.00-952-0-99	$ 5,500	$ 5,500
Misc. Expenses	6499.01-952-0-99	$ 5,000	$ 5,000
Other Operating Costs		**$ 25,100**	**$ 25,100**

6500 Debt Service		2019-2020	2020-2021
Computer Note Payment	6512.00-952-0-99	$ -	$ -
Interest on Loan	6522.00-952-0-99	$ -	$ -
Debt Service		$ -	$ -

6600 Capital Outlay- Land, Buildings & Equip.		2019-2020	2020-2021
Vehicles	6631.00-952-0-99	$ -	$ -
Fixed Assets- >$5000	6638.00-952-0-99	$ 13,000	$ 13,000
Fixed Assets	6639.00-952-0-99	$ -	$ -
Fixed Assets- Unit<$5000	6649.00-952-0-99	$ 10,000	$ 10,000
Capital Outlay-Special Projects	6649.SP-952-0-99	$ 6,600	$ 6,600
Capital Outlay- Land, Buildings & Equip.		**$ 29,600**	**$ 29,600**

51 Plant Maintenance and Operations

6200 Professional & Contracted Services(51)		2019-2020	2019-2021
GCA	6248.00-952-0-99	$ 6,250	$ 6,250
Water	6255.00-952-0-99	$ 1,000	$ 1,000
Telephone	6256.00-952-0-99	$ 2,500	$ 2,500
Electricity	6257.00-952-0-99	$ 12,000	$ 12,000
Garbage & Sewer	6259.00-952-0-99	$ 1,500	$ 1,500
Natural Gas	6258.00-952-0-99	$ 750	$ 750
Professional & Contracted Services(51)		**$ 24,000**	**$ 24,000**

	Budget	2019-2020	2019-2021
Payroll Costs		$ 613,013	$ 613,013
Professional & Contracted Services (41)		$ 181,281	$ 182,181
Supplies & Materials		$ 37,600	$ 37,600
Other Operating Costs		$ 25,100	$ 25,100
Debt Service		$ -	$ -

Washington County Appraisal District
2020-2021 Budget
Adopted
July 28, 2020

Capital Outlay- Land, Buildings & Equip.		$ 29,600	$ 29,600
Professional & Contracted Services(51)		$ 24,000	$ 24,000
	Totals	$ 910,594	$ 911,494

Entity/ Appraisal Allocation	2019 Levy		Entity Cost
Brenham ISD	$ 31,366,206	45.74%	$ 416,923
Burton ISD	$ 7,571,362	11.04%	$ 100,639
City of Brenham	$ 7,480,290	10.91%	$ 99,429
City of Burton	$ 134,762	0.20%	$ 1,791
Oak Hill FWD	$ 169,236	0.25%	$ 2,250
Washington County General	$ 14,792,698	21.57%	$ 196,626
Washington County F&M	$ 4,581,154	6.68%	$ 60,893
Blinn College	$ 2,221,718	3.24%	$ 29,531
Giddings ISD	$ 256,682	0.37%	$ 3,412
	$ 68,574,108	100%	$ 911,494

2020 Cost	$	911,494
2019 Cost	$	910,594
Increase	$	900
% Increase		0.0988%

%Total= 2019 Levy/$63,112,545
Budget Allocation= % Total Levy x $ 911,494

Entity/ Appraisal Allocation	2019 Cost	2020 Cost	Change
Brenham ISD	$ 446,467	$ 416,923	$ (29,544)
Burton ISD	$ 75,591	$ 100,639	$ 25,048
City of Brenham	$ 98,897	$ 99,429	$ 532
City of Burton	$ 1,816	$ 1,791	$ (25)
Oak Hill FWD	$ 2,336	$ 2,250	$ (86)
Washington County General	$ 191,428	$ 196,626	$ 5,198
Washington County F&M	$ 60,871	$ 60,893	$ 23
Blinn College	$ 29,828	$ 29,531	$ (296)
Giddings ISD	$ 3,361	$ 3,412	$ 51
	$ 910,594	$ 911,494	$ 900

Regular City Council
AGENDA ITEM 10.

Agenda Item: **Discuss and Possibly Act Upon a First Amended Ground Space Lease Agreement for Fuel Farm Operation Between the City of Brenham and Aviators Plus, LLC and Authorize the Mayor to Execute Any Necessary Documentation**

Meeting Type: Regular Meeting-August 20, 2020

Department: Airport

Staff Contact: Donald Reese / Kim Hodde

Classification:

SUMMARY STATEMENT:

The original ground space lease agreement executed on May 7, 2020 between Aviators Plus, LLC (Brent Nedbalek) and the City of Brenham to authorize Aviators Plus, LLC to operate a fuel farm at the leased location was specifically for installation of an Avgas fuel storage tank. Mr. Nedbalek installed the Avgas tank and would now like to install a 3,000-gallon Jet-A fuel tank as well. Since the original lease agreement referenced Avgas but not Jet-A fuel, staff is requesting this amendment to the ground space lease agreement for the Jet-A fuel tank. All other provisions of the agreement remain the same. Aviators Plus has been operating its business at the Brenham Airport for numerous years and will be making a substantial investment in its new endeavor.

Continued focus and improvements to the Brenham Municipal Airport are in line with the Economic Opportunity Goal EO3 of the City of Brenham's Comprehensive Plan.

ATTACHMENTS:

(1) Amended Airport Ground Space Lease Agreement - Fuel Farm - Aviators Plus LLC
(2) Exhibit A - Aviators Plus LLC fuel farm

RELEVANCE TO COMPREHENSIVE PLAN:

RECOMMENDED ACTION:

Approve an Amended ground space lease agreement between Aviators Plus, LLC and the City of Brenham to Authorize Aviators Plus, LLC to Operate a Fuel Farm at the leased location and authorize the Mayor to execute any necessary documentation.

FIRST AMENDED GROUND SPACE LEASE AGREEMENT FOR FUEL FARM OPERATION

THE STATE OF TEXAS
COUNTY OF WASHINGTON

This First Amended Ground Space Lease Agreement for Fuel Farm Operation (hereinafter referred to as "Lease") is made and entered into this 20th day of August, 2020, which amends the Ground Space Lease Agreement for Fuel Farm Operation made and entered into 7th day of MayFebruary, 2020 by and between City of Brenham, a Texas home-rule municipal corporation (hereinafter referred to as "Lessor") and as the owner of the Brenham Municipal Airport, and Aviators Plus, LLC, a Texas limited liability company (hereinafter referred to as "Lessee").

Formatted: Superscript

WITNESSETH:

WHEREAS, Lessor is the owner of the Brenham Municipal Airport (hereinafter referred to as "Airport"); and

WHEREAS, Lessee is a Fixed Base Operator ("FBO") at the Airport; and

WHEREAS, Lessee desires to lease a 0.0177 acre tract of land from Lessor for the construction and operation of a fuel farm; and

WHEREAS, Lessor desires to lease the 0.0177 acre tract of land to Lessee for the fuel farm;

NOW THEREFORE, in consideration of the terms and conditions listed herein to be kept and performed by Lessee, Lessor does lease unto said Lessee the following described property situated in Washington County, Texas, to have and to hold all and singular the said premises and improvements thereon, together with the rights, privileges and appurtenances thereunto belonging to said Lessee, subject to compliance with the following terms and conditions:

ARTICLE I – PREMISES AND PRIVILEGES

A. DESCRIPTION OF PREMISES.

Lessor hereby leases to Lessee a 0.0177 acre tract of land located at the Airport, said tract being more fully described on Exhibit "A" which is attached hereto and incorporated herein for all purposes (hereinafter referred to as "Premises").

Lessee accepts the Premises in its present condition subject to and including all defects and Lessee will, without expense to Lessor, repair and maintain any and all buildings, improvements and installations thereon and remove, or cause to be removed, any debris, buildings, improvements to the extent required for Lessee's use thereof in accordance with this Lease.

B. TERM AND RENT.

The term of this Lease shall begin upon May 7, 2020 (the effective date of this Lease) and terminate on October 31, 2029 ("Initial Term"). Unless otherwise terminated as provided herein, this Lease shall automatically renew for two (2) subsequent five (5) year renewal terms unless either party sends the other party written notice of its intention to not renew this Lease. At the expiration of the second five (5) year renewal term, this Lease shall renew annually for one (1) year terms unless either party sends the other party written notice of its intention to not renew this Lease. Any written notice of intent to not renew this Lease shall be sent at least sixty (60) days prior to the expiration of the then current term of this Lease.

The rental rate for the first year shall be ten cents ($0.10) per square foot per year for the 770 square feet and shall be paid upon the execution of this Lease by Lessee. Subsequent rental payments are payable annually on the anniversary hereof. Any rental payment not paid by the tenth of the month in which it is due is subject to a late fee of five ($5.00) dollars. The Lessee acknowledges and agrees that the Lessor reserves the right to adjust the Lease rental rate in an amount not to exceed an increase of two cents ($0.02) per square foot in a five (5) year period.

C. ACCESS.

Upon executing this Lease and paying the first year's rental payment hereunder and performing the requirements of this Lease, Lessee shall have the right of access to and from the Premises over such roadway(s), as may be designed for that purpose and the right of access to and from the landing area for airplanes over taxiways and aircraft parking ramps as provided by Lessor at its sole discretion. Said roadway(s), aircraft parking ramps and taxiways shall be used jointly with other airport tenants and Lessee shall not interfere with the rights and privileges of other persons or firms using said facilities and shall be subject to such weight and type use restrictions as Lessor deems appropriate.

D. OBJECTS AND PURPOSES OF LEASE.

Lessee is hereby granted the right and privilege to use the Premises for the construction, repair, maintenance, use and operation of a Fuel Farm. In this Lease "Fuel Farm" shall mean fuel storage facilities for aviation gasoline (including "avgas" and "Jet-A" fuel), such as fuel storage tanks, and all other components of the fuel delivery system that are owned or operated by Lessee.

Lessee shall not use the Premises for any purposes other than those authorized herein, without the prior written consent of Lessor.

It is understood and agreed that nothing herein shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958, [49 USCA Chapter 471 or successor statute].

E. LESSOR'S RESERVED RIGHTS.

1. Development. Lessor, at its sole discretion, reserves the right to further develop or improve the aircraft operating area of the Airport as it sees fit and to take action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Lessee from erecting or permitting to be erected, any building or other structure on the Airport which, in the opinion of the Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft.

2. Oil, Gas, Mineral Interests. It is understood and agreed that this Lease is made subject and subordinate to the terms of any oil, gas, and other mineral interest; leases; or right-of-way easements of any nature that may have been executed heretofore.

   Lessor agrees that (1) if it should, as a mineral owner under the premises, develop all or part of the Airport for oil, gas or other mineral purposes, no well will be drilled or other operations conducted on the Premises, and (2) in the event it should hereafter execute an oil, gas or other mineral lease in favor of a third party covering the Airport area, or a portion thereof, it will cause such lease to contain a provision that the lessee therein will not conduct any of its drilling or other operations on the land covered by this Lease, or in a manner which would unreasonably interfere with Lessee's use and enjoyment of the Premises.

3. Other Contracts. Lessee hereby acknowledges that Lessor is bound by the terms and conditions of any and all Federal Aviation Administration, Texas Department of Transportation, and other grant agreements, grant assurances and regulations regarding the Airport, and terms of any grant, loan, regulation, or agreement under Section 22.055 of the Texas Transportation Code, as amended or superseded, whether now existing or made in the future. Lessee agrees not to take any action or omit to take any action in relation to the Fuel Farm and this Lease that would cause Lessor to be in violation of such terms, conditions, agreements, assurances, regulations, grant or loan.

4. Other Laws. Lessee hereby acknowledges that there are in effect federal, state, county, and municipal laws, rules, regulations, standards, and policies (together, "laws") and that the same may hereafter be modified or amended and additional laws may hereafter be enacted or go into effect, relating to or affecting the Fuel Farm or this Lease. Lessee shall not cause, or permit or allow anyone to cause, any violation of any applicable laws. Further, Lessee shall have no claim against Lessor by reason of any changes Lessor may make in the Fuel Farm or this Lease required

by any applicable laws or any charges imposed upon Lessee, Lessee's customers or other invitees of Lessee as a result of changes in applicable laws.

5. Other Leases. Nothing herein contained shall limit Lessor with respect to the granting of leases to other aviation tenants under other terms as herein set forth or to granting of leases for non-commercial aviation or non-aviation purposes at terms different from those set forth herein.

6. Entry. Lessor shall have the right to enter upon the Premises for the purpose of a) confirming the performance by Lessee of all obligations under this Lease; b) doing any other act which the Lessor may be obligated or have the right to perform under this Lease; or c) inspecting and copying the books and records of Lessee related to Lessee's performance of its obligations under this Lease.

F. CONSTRUCTION OF FUEL FARM.

Lessee agrees to complete the construction of the Fuel Farm and all other improvements on the Premises within 365 days of the effective date of this Lease, except that a longer period of time may be granted by the Lessor upon a showing by the Lessee that progress has been delayed because of reasons beyond the control of Lessee. If Lessee fails to complete construction within 365 days of the date stated or within such additional period of time as granted by Lessor, this lease shall become voidable at Lessor's option. The construction of any improvements on the Premises is at the sole cost and expense of Lessee.

Lessee understands that all development and construction shall conform to Airport Master Plan Guidelines, the Airport Layout Plan ("ALP"), and other Airport Rules and Regulations as approved by Lessor. Further, the Fuel Farm must comply with all appropriate City of Brenham Code of Ordinances, applicable National Fire Protection Association standards, applicable International Fire Code requirements, and other applicable state and federal regulations. A site plan of Lessee's area is attached as Exhibit "A". Intentional failure to conform development to approved plans and as scheduled shall be cause for termination of this Lease upon failure to conform within thirty (30) days of Lessor's notice to Lessee of its failure to conform.

Should any action of the Lessee require the Lessor to submit an amended ALP to the Federal Aviation Administration ("FAA") for its approval, then Lessee shall be responsible for all costs incurred by Lessor in creating and submitting the amended ALP. Further, Lessee shall be responsible for all costs incurred by Lessor for any environmental review initiated by the FAA pursuant to the National Environmental Policy Act because of the construction of the Fuel Farm.

H. EXPIRATION OR TERMINATION.

Upon the expiration or termination of this Lease, the Lessor may purchase the Fuel Farm and any other improvements on the Premises at a fair market value as determined by an

Independent Appraiser mutually agreeable to the Lessor and the Lessee, all fees for such appraisal services to be paid by the Lessee.

Upon the expiration or termination of this Lease, the Lessee shall, at Lessee's sole expense, conduct a Phase 1 environmental site assessment of the Premises.

I. DEFAULT.

Any of the following events constitutes default:

1. An act of the Lessee which is in variation with the site plan and is not corrected after thirty (30) days' notice by Lessor to Lessee of said default, or

2. The nonperformance by Lessee of any other covenant or condition of this lease which is not cured within thirty (30) days after written notice thereof from Lessor, or

3. The Lessee's Fixed Base Operator Agreement with the City of Brenham is terminated or expires, or

4. The subjection of any of Lessee's property to any levy, seizure, assignment, application, or sale for or by any creditor or governmental agency.

J. LESSOR'S RIGHTS UPON DEFAULT.

On the occurrence of any of the events defined as constituting "default", Lessor may without notice to or demand on Lessee terminate this Lease and take possession of the Premises and lease the same or any portion thereof, for such period and such rental, and to such persons, as Lessor shall elect.

K. MORTGAGE OF LEASEHOLD INTEREST.

Lessee shall have the right, subject to written approval from the City Manager of the City of Brenham, to place a first mortgage lien upon its leasehold. Any approved lender shall notify Lessor of all action taken by it in the event payments on such loans shall become delinquent.

ARTICLE II – OBLIGATIONS OF LESSEE

A. NET LEASE: MAINTENANCE AND OPERATION.

The use and occupancy of the leased Premises by Lessee will be without cost or expense to Lessor. During the term of this Lease, Lessee, at Lessee's sole expense, shall maintain, repair and replace all equipment at the Fuel Farm, including, but not limited to fuel storage tanks and all fuel loading and unloading equipment, such as hoses, couplings, swivels and such other devices related to the fuel storage tanks.

Lessee shall maintain the Premises at all times in a safe, neat and attractive condition and shall not permit the accumulation of any trash or debris on the Premises. Lessee shall repair all damages to said Premises caused by its employees, patrons, or its operation thereon; shall maintain and repair all buildings, pavements, equipment and improvements; and shall repaint the improvements as necessary. Lessee shall pay all taxes against the property and indemnify Lessor from any tax lien.

Lessor reserves the right to make periodic inspection of the Premises and improvements and equipment thereon.

Lessor, in its reasonable discretion, shall be the sole judge of the quality of maintenance that shall apply to the Premises. Upon written notice by Lessor to Lessee, Lessee shall be required to perform whatever reasonable maintenance Lessor deems necessary. If said maintenance is not undertaken by Lessee within ten (10) days after receipt of written notice, Lessor shall have the right to enter upon the leased premises and perform the necessary maintenance, the cost of which shall be borne by Lessee.

B. ALTERATIONS TO AND CONDITIONS OF PREMISES.

Lessee agrees not to construct, install, remove and/or materially modify any improvements on the Premises without prior written approval of the Lessor subject to the conditions considered by Lessor to be necessary.

Lessee shall not remove or demolish, in whole or in part, any improvements upon the Premises without the prior written consent of Lessor, which may, at its discretion, condition such consent upon the obligation of Lessee to replace the same by an improvement specified in such consent.

C. TRASH, GARBAGE, LANDSCAPING.

Lessee shall provide a complete and proper arrangement of the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage, and other refuse caused as a result of the operation of the Fuel Farm. Lessee shall provide and use approved receptacles for all such garbage, trash and other refuse. Piling of boxes, cartons, barrels or other similar items in an unattractive or unsafe manner, on or about the Premises, is prohibited.

Lessee is specifically responsible for mowing, if applicable, and to ensure that weed or grass growth is never allowed in excess of that allowed by Lessor's weed ordinance requirements, and removal of weeds from around fences and improvements for the area within ten (10) feet of the Premises shown on the attached Exhibit "A". Lessee is encouraged to provide additional landscaping beyond the minimum required by Lessor to assist in enhancing Airport appearance.

D. SIGNS.

Lessee may not install identifying signs on the Premises except with the written permission of Lessor.

E. UTILITIES.

Lessee shall assume and pay for all costs or charges for utility services furnished to Lessee during the term hereof; provided, however, that Lessee shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense; and Lessee shall pay for any and all service charges incurred therefor.

F. FIELD USE CHARGES.

Nothing herein shall be deemed to relieve Lessee and its tenants, sublessees, patrons, invitees, and others from field landing fees, nor its guests from fuel flowage fees, as are levied by Lessor or the Fixed Base Operator.

G. PAYMENTS DUE.

Lessee agrees that no payments owed by Lessee of any nature whatsoever to Lessor, including payment in advance for service charges, such as garbage collection, or any other sums of any character whatsoever, shall become delinquent or in arrears.

H. COMPLIANCE WITH RULES.

Lessee will comply with any and all federal or state laws, rules and regulations, and all regulations made by the City of Brenham and approved by the City Council of the City of Brenham.

I. NONDISCRIMATION/FEDERALLY REQUIRED ASSURANCES.

Lessee, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby agree that "as a covenant running with the land" (1) no person on the grounds of race, color, sex, creed, national origin, or handicapped status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, or in the construction of any improvements on, or under such land, or the furnishing of services thereof, and (2) that Lessee shall use the premises in compliance with and conduct its operations in accordance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, or Section 504 of the Rehabilitation of 1973 (23 USC 794) and 49 CFR Part 27 and as said regulations may be amended, and that Lessee will comply with such enforcement procedures as the United States might demand that Lessor take.

J. FAA AND OTHER APPROVAL OF USE.

Lessee agrees to secure approval from the Federal Aviation Administration concerning the height and location of all buildings or improvements or modifications thereof which may be constructed or installed on the Premises and to satisfy any applicable environment or other requirements of federal, state, and local authorities as to noise, smoke, fumes emissions, storm water, or other hazards or potential hazards or other offensive sues, if any, which may occur as a result of Lessee's operations on the Premises.

K. NON-INTERFERENCE WITH OPERATION OF AIRPORT/EASEMENTS.

1. Lessee, by accepting this Lease, expressly agrees for itself, its successors and assigns that it will not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft at Airport or otherwise constitute a hazard. If Lessee violates this, Lessor reserves the right to enter upon the Premises and remove the interference at the expense of the Lessee.

2. Lessor shall maintain and keep in good repair the landing area of the Airport, and shall have the right to direct and control all activities of the Lessee in this regard.

3. Lessor shall retain an easement over, above and on the Premises in relation to aircraft noise and the utilization of the air space for the purposes of the operation of said Airport.

L. FUEL STORAGE.

Fuel delivered, stored, or dispensed by Lessee shall fully comply with the quality specifications outlined in ASTM (American Society for Testing and Materials) D1910 (avgas) and D1655-20 (Jet A), as well as all other applicable ASTM specifications. The Lessee shall also comply with all applicable FAA regulations and advisory circulars concerning the storage, handling, and dispensing of avgas and Jet A fuel. Ensuring the quality of fuel is the sole responsibility of Lessee.

M. LESSEE AUTHORITY.

The officer of the Lessee who executes this Lease represents and promises that he is duly authorized by corporate resolution or other appropriate authorization to execute the same on behalf of Lessee.

N. INDEMNIFICATION.

1. Lessee agrees to defend, indemnify, and hold harmless the Lessor from and against and reimburse the Lessor for any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to reasonable attorneys' fees),

fines, environmental costs and/or penalties (collectively "Costs") which may be imposed upon, claimed against or incurred by the Lessor and which, in whole or in part, directly or indirectly, arise from or are in any way connected with any of the following , except to the extent resulting from the gross negligence or willful misconduct of the Lessor or Lessor's employees, agents, or contractors: (a) any act, omission or negligence of Lessee or Lessee's partners, officers, directors, agents, employees, invitees or contractors; (b) any use, occupation, management or control of the Premises by Lessee, whether or not due to Lessee's own act or omission and whether or not occurring on the Premises; (c) any condition created in or about the Premises by Lessee or any of its agents, including any accident, injury or damage occurring on or about the Premises after the effective date of this Lease; (d) any breach, violation or nonperformance of any of Lessee's obligations under this Lease; (e) any damage caused by Lessee on or to the Premises. For purposes of this section, Lessee shall be deemed to include Lessee and Lessee's employees, agents, invitees and contractors.

2. Notwithstanding any provisions of this Agreement, Lessee agrees to defend, indemnify and hold harmless the Lessor and its directors, agents and employees from and against any and all damages, fines, penalties, judgments, losses, liabilities, costs and reasonable expenses (including without limitation, reasonable attorneys' fees and expenses), claims, actions, suits and other proceedings (collectively "Liabilities"), which result from, are related to, or arise out of the existence or discovery of any Hazardous Substance on, under, from, through, about or within the Premises.

O. INSURANCE.

Lessee shall secure the below referenced insurance coverage, in which Lessor shall be named an additional insured. Such policies of insurance shall protect Lessor and Lessee against any and all liability for death, injury, loss or damage against which Lessee has elsewhere in this Lease undertaken to save and hold the Lessor, and its authorized agents, officers, representatives and employees harmless from and against any and all penalties, liability and annoyance of loss resulting from claims or court action of any nature and arising directly or indirectly out of the acts of Lessee, its agents, servants, guests, employees, business visitors or others under this Lease or by result of any act or omission of such persons. Such policies shall be placed with a company authorized to do business in the State of Texas and shall have not less than the following limits:

1. $1,000,000 Comprehensive General Liability
2. Medical Expense Limit (Any one Person) $5,000
3. Personal & Advertising Injury Aggregate Limit $1,000,000
4. Products/Completed Operations Aggregate Limit $1,000,000
5. Pollution Liability -- $1,000,000 per loss

Lessee shall provide the above referenced coverage and, if applicable, also procure and maintain Worker's Compensation insurance, including employer's liability, in the amounts required by the State of Texas.

The amounts of said insurance shall not be deemed a limitation of Lessee's agreement to save and hold Lessor harmless, and if Lessee becomes liable for an amount in excess of the insurance Lessee will save and hold Lessor harmless as the holder thereof. Lessee shall furnish to the Lessor certificates of insurance for the insurance coverage required herein.

Lessee shall maintain the insurance with an insurance company authorized to do business in the State of Texas and approved by Lessor. Lessee shall furnish Lessor with a certificate from the insurance carrier showing the insurance to be in full force during the entire term of this Agreement or shall deposit with the Lessor copies of the policies.

The policies or certificates shall contain a provision that written notice of cancellation or of any material change in the policy by the insurer shall be delivered to Lessor thirty (30) days in advance of the effective date of the cancellation or change.

ARTICLE III – OTHER CONDITIONS

1. Lessee agrees to pay all public utility charges that may be assessed, including charges for gas, electric, water and any other utility charge.

2. Any holding over by Lessee or his successors, at the expiration or termination of this Lease, in whatever manner its termination may be brought about, shall not operate as a renewal of this lease, but during the period of such holding over Lessee shall be a tenant at the will of Lessor.

3. The Lessor requires that Lessee and users of Lessee's Premises shall agree to be bound by all of the regular rules and regulations as may be set out by the FAA as to pilots and their conduct and that they agree to abide by any and all local rules that may be approved by the City Council of the City of Brenham, Texas, for pilots at the City of Brenham Municipal Airport and as may be adopted by the Airport Advisory Committee of the City of Brenham. Lessee shall agree that in the event it is found not to have abided by the rules or does not correct a situation required to be corrected by the City of Brenham, then and in that event it may lose its privilege to operate the Fuel Farm that is located on the Premises being leased from the City of Brenham.

4. This Lease is governed by the laws of the State of Texas and performable in Washington County, Texas. Venue shall lie exclusively in Washington County, Texas.

5. If any provision herein is held to be invalid in a court of law, the invalidity of such provision shall in no way affect the validity of any other provision.

6. Any notice required herein shall be effective upon mailing to the address described herein by depositing said notice in the mail, certified mail – return receipt requested to the addresses below.

APPROVED this the ____ day of _____, 2020.

CITY OF BRENHAM:

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

ATTEST:

_____
Jeana Bellinger, City Secretary, TRMC, CMC

AVIATORS PLUS, LLC:

_____
Brent Nedbalek, Member
Aviators Plus, LLC
2901 Aviation Way
Brenham, Texas 77833

30 0 30 60 90

GRAPHIC SCALE. – FEET

GRID NORTH

SCALE: 1" = 30'

NOTES:

1. THE BEARINGS AND COORDINATES SHOWN HEREON ARE RELATIVE TO THE TEXAS STATE PLANE GRID SYSTEM, NAD–83 {2011}, CENTRAL ZONE 4203. CONVERGENCE ANGLE AT N: 10063157.87' – E: 3547344.52' IS 2'–02'–23.7", COMBINED SCALE FACTOR IS 0.99996823, U.S. SURVEY FEET, UTILIZING NATIONAL GEODETIC SURVEY (NGS) MONUMENT BM1073 LOCATED ON THE AIRPORT PROPERTY. DISTANCES SHOWN HEREON ARE GROUND DISTANCES.

2. NO PART OF THE SUBJECT PROPERTY LIES WITHIN THE SPECIAL FLOOD HAZARD AREA ACCORDING TO THE FLOOD INSURANCE RATE MAP (FIRM) AS COMPILED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, NATIONAL FLOOD INSURANCE PROGRAM, MAP NUMBER 48477C0325D, EFFECTIVE DATE MAY 16, 2019, WASHINGTON COUNTY, TEXAS.

3. ◉ – DENOTES A 5/8" IRON ROD SET WITH ID. CAP STAMPED "HODDE & HODDE LAND SURVEYING" UNLESS OTHERWISE NOTED ON THE PLAT.

4. A CURRENT TITLE COMMITMENT OR REPORT WAS NOT AVAILABLE OR PROVIDED TO THE UNDERSIGNED SURVEYOR AS OF THE DATE OF THIS SURVEY AND THE UNDERSIGNED SURVEYOR DID NOT ABSTRACT THE SUBJECT PROPERTY.

5. (DRWCT) DENOTES DEED RECORDS OF WASHINGTON COUNTY, TEXAS.

SURVEY MAP

SHOWING A SURVEY OF 0.0177 ACRE OF LAND (770 SQ. FT.) LEASE AREA, LYING AND BEING SITUATED IN WASHINGTON COUNTY, TEXAS, PART OF THE JOHN COLE SURVEY, A–32, BEING PART OF THE SAME LAND DESCRIBED AS 31.125 ACRES IN THE DEED FROM LILLIE MAE CARAWAY DOCKERY, ET VIR TO THE CITY OF BRENHAM, DATED FEBRUARY 15, 1964, AS RECORDED IN VOLUME 251, PAGE 561, IN THE DEED RECORDS OF WASHINGTON COUNTY, TEXAS.

CERTIFICATION

THE STATE OF TEXAS

COUNTY OF WASHINGTON

I, JON E. HODDE, REGISTERED PROFESSIONAL LAND SURVEYOR, NO. 5197 OF THE STATE OF TEXAS, DO HEREBY CERTIFY THAT THIS MAP SHOWING A SURVEY OF 0.0177 ACRE OF LAND (770 SQ. FT.) LEASE AREA, IS TRUE AND CORRECT IN ACCORDANCE WITH AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY PERSONAL DIRECTION AND SUPERVISION.

DATED THIS THE 30TH DAY OF JULY, 2019, A.D.

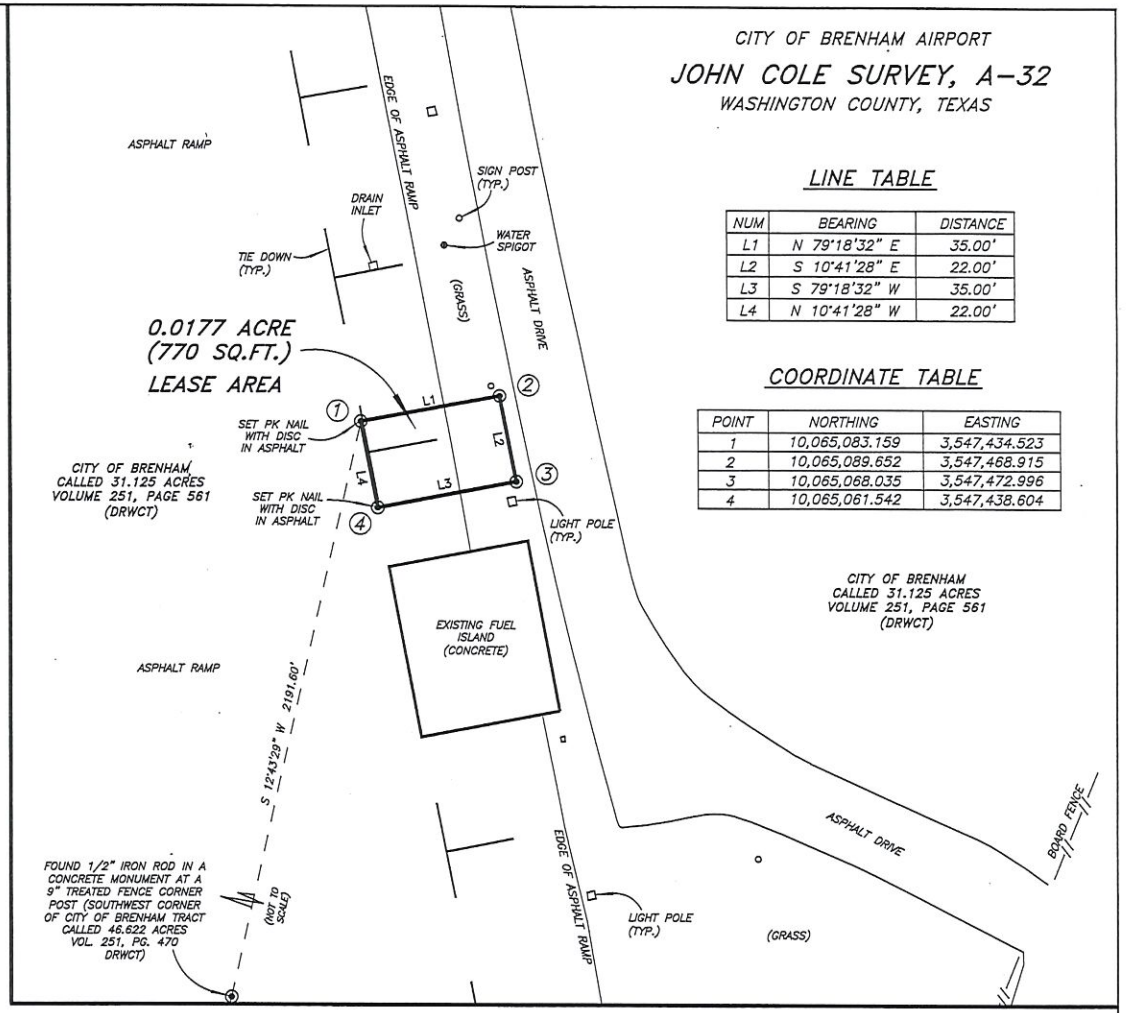
STATE OF TEXAS
REGISTERED
JON E. HODDE
5197
PROFESSIONAL
LAND SURVEYOR

JON E. HODDE
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 5197
HODDE & HODDE LAND SURVEYING, INC.
613 EAST BLUE BELL ROAD
BRENHAM, TEXAS 77833
(979)–836–5681
TEXAS FIRM REGISTRATION NO. 10018800

CITY OF BRENHAM AIRPORT

JOHN COLE SURVEY, A–32

WASHINGTON COUNTY, TEXAS



LINE TABLE

NUM	BEARING	DISTANCE
L1	N 79°18'32" E	35.00'
L2	S 10°41'28" E	22.00'
L3	S 79°18'32" W	35.00'
L4	N 10°41'28" W	22.00'

COORDINATE TABLE

POINT	NORTHING	EASTING
1	10,065,083.159	3,547,434.523
2	10,065,089.652	3,547,468.915
3	10,065,068.035	3,547,472.996
4	10,065,061.542	3,547,438.604

W.O. NO. 7560 (AVIATORSPLUS7473.DWG/MVIEW)
REF: AVIATORSPLUS7473.SURVEY

Hodde & Hodde Land Surveying, Inc.
Professional Land Surveying
613 E. Blue Bell Road . Brenham, Texas 77833
979-836-5681 . 979-836-5683 (Fax)
www. hoddesurveying.com

COPYRIGHT © 2019
HODDE & HODDE
LAND SURVEYING, INC.
ALL RIGHTS RESERVED.

Regular City Council
AGENDA ITEM 11.

Agenda Item: **Discuss and Possibly Act Upon the Approval of a Ground Space Lease Agreement with Aviators Plus, LLC (Brent Nedbalek) for Construction of a Hangar at the Brenham Municipal Airport (3195 Aviation Way) and Authorize the Mayor to Execute Any Necessary Documentation**

Meeting Type: Regular Meeting-August 20, 2020

Department: Airport

Staff Contact: Donald Reese / Kim Hodde

Classification: Consent

SUMMARY STATEMENT:

Aviators Plus, LLC (Brent Nedbalek) would like to construct a new 800x100 airplane hangar at 3195 Aviation Way (just south of the first set of city-owned nested T-hangars). Mr. Nedbalek's total lease space will be 19,800 square feet. The lease agreement is the City's standard ground-space lease for $0.10 cents per square foot per year and the lease rate may increase up to $0.02 per square foot in a five-year period as the prevailing rates change.

ATTACHMENTS:

(1) Hangar lease agreement - 3195 Aviation Way
(2) Exhibit A - Aviators Plus LLC hangar - 3195 Aviation Way

RELEVANCE TO COMPREHENSIVE PLAN:

RECOMMENDED ACTION:

Approve a ground space lease agreement with Aviators Plus, LLC (Brent Nedbalek) for 3195 Aviation Way and authorize the Mayor to execute any necessary documentation.

LEASE AGREEMENT: CITY OF BRENHAM, TEXAS TO AND WITH AVIATORS PLUS, LLC (3195 AVIATION WAY)

THE STATE OF TEXAS
COUNTY OF WASHINGTON

This Lease Agreement made and entered into by and between CITY OF BRENHAM, a Texas Municipal Corporation, hereinafter called "Lessor" and AVIATORS PLUS, LLC, through its agent, Brent Nedbalek, hereinafter called "Lessee":

WITNESSETH:

Lessor, in consideration of the premises and the covenants and agreements herein undertaken to be kept and performed by Lessee does lease unto said Lessee the following described property situated in Washington County, Texas, to have and to hold all and singular the said premises and improvements thereon, together with the rights, privileges and appurtenances thereunto belonging unto said Lessee under the following terms and provisions:

ARTICLE I – PREMISES AND PRIVILEGES

A. DESCRIPTION OF PREMISES.

For and in consideration of the terms, conditions and covenants of this Lease to be performed by Lessee, all of which Lessee accepts, City hereby leases to Lessee the premises being an area located on the City of Brenham Municipal Airport, north of the CITY OF BRENHAM, TEXAS and being a space of land located as shown on the attached “EXHIBIT A”.

Lessee accepts the premises in their present condition subject to and including all defects and Lessee will, without expense to City, repair and maintain any installations thereon and remove, or cause to be removed, any debris, buildings or improvements to the extent required for Lessee’s use thereof.

B. TERM.

The term of said lease is for a period of thirty (30) years commencing August 20, 2020 and terminating August 19, 2050. The rent for the first year shall be ten ($.10) cents per square foot per year for 19,800 square feet, payable annually on the anniversary hereof. Any rental fee not paid by the tenth of the month is subject to a late fee of five ($5) dollars. The Lessee acknowledges and agrees that the City reserves the right to adjust the Lease rental rate in an amount not to exceed an increase of two ($.02) cents per square foot in a five (5) year period.

C. ACCESS.

Upon paying the rental hereunder and performing the requirements of this Lease, Lessee shall have the right of access to and from said premises over such roadway(s), as may be designed for that purpose and the right of access to and from the landing area for airplanes over taxiways and aircraft parking ramps as provided by City at its sole discretion. Said roadway(s), aircraft parking ramps and taxiways shall be used jointly with other airport tenants, but not for the conduct of business of another Lessee’s premises and Lessee shall not interfere with the rights and privileges of other persons or firms

using said facilities and shall be subject to such weight and type use restrictions as the City Council deems necessary.

D. OBJECTS AND PURPOSES OF LEASE.

Lessee is hereby granted the right and privilege to use the leased area for aviation related activities, being those provided by a Corporate Hangar Operator. Lessee shall have the uses and rights to build a private, corporate hangar to house its own privately-owned aircraft, all of which shall be subject to the terms set forth:

Lessee shall not use the premises for any purposes other than those authorized herein, without the prior written consent of City. Specifically, Lessee will not store fuel, nor do any aircraft maintenance on aircraft other than the aircraft owned or contracted by Lessee.

It is understood and agreed that nothing herein shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958, [49 USCA Chapter 471 or successor statute].

E. CITY'S RESERVED RIGHTS.

1. Development. City, at its sole discretion, reserves the right to further develop or improve the aircraft operating area of the airport as it sees fit and to take action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Lessee from erecting or permitting to be erected, any building or other structure on the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft.

2. Oil, Gas, Mineral Interests. It is understood and agreed that this Lease is made subject and subordinate to the terms of any oil, gas, and other mineral interest; leases; or right-of-way easements of any nature that may have been executed heretofore.

   City agrees that (1) if it should, as a mineral owner under the premises, develop all or part of the Airport for oil, gas or other mineral purposes, no well will be drilled or other operations conducted on the leased premises, and (2) in the event it should hereafter execute an oil, gas or other mineral lease in favor of a third party covering the Airport area, or a portion thereof, it will cause such lease to contain a provision that the Lessee therein will not conduct any of its drilling or other operations on the land covered by this Lease, or in a manner which would unreasonably interfere with Lessee's use and enjoyment of the premises.

3. Other Contracts. This lease shall be subordinate to the provisions of any existing or future agreement between the City and the United States, relative to the operation or maintenance of the airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to City of federal funds for the development of the Airport

4. Other Leases. Nothing herein contained shall limit City with respect to granting of leases to other aviation tenants under other terms as herein set forth or to granting of leases for non-commercial aviation or non-aviation purposes at terms different from those set forth herein.

F. PROHIBITED USES.

Lessee shall not use or permit the use of any part of the premises in any other manner than set out in Section D of this Lease. Some specific activities prohibited are as follows:

1. Auto rental service.

2. Food sales (except the sale of confections and refreshments prepared and packaged off the leased premises through either coin-operated vending machines or over-the-counter or in the waiting area, and other foods prepared and packaged off the leased premises for food trays for private or charter flights) at the leased premises.

3. Sales of alcoholic beverages at the leased premises, except with City approval.

4. Sales, advertisement, or storage of non-aviation products.

5. Storage, transfer, or sale of fuel.

6. Any sublease which allows further sublease by Lessee's tenant

7. Any use prohibited by law.

G. MANDATORY CONSTRUCTION.

Lessee agrees to commence construction of the improvements described within this section within 150 days of starting date of this lease. Generally, such improvements shall include a hangar having 8,000 square feet of space (80x100). Lessee agrees to complete all improvements within 365 days of the above date, except that a longer period of time may be granted by the City of Brenham upon a showing by the Lessee that progress has been delayed because of reasons beyond the control of Lessee. If Lessee fails to commence construction within 150 days of the date above stated or if Lessee fails to complete construction within 365 days of the date stated or within such additional period of time as granted by the City of Brenham, this lease shall become voidable at the City's option.

Lessee understands that all development shall conform to Airport Master Plan Guidelines and other Airport Rules and Regulations as approved by City Council. A site plan of Lessee's area is attached as Exhibit "A". Intentional failure to conform development to approved plans and as scheduled shall be cause for termination of this Lease upon failure to conform within thirty (30) days of City's notice to Lessee of its failure to conform.

Title to all improvements constructed or installed by Lessee on the leased premises shall throughout the term of this Lease remain in Lessee. However, upon expiration or termination of this Lease, Lessee shall have no further right or interest in the improvements, except as provided in Article I, Section H.

H. EXPIRATION.

Upon the expiration of this Lease,

1. The City may purchase building and improvements on the lease area at a fair market value as determined by an Independent Appraiser mutually agreeable to the City and the Lessee, all fees for such appraisal services to be paid by the Lessee, or

2. The City may enter into a new lease agreement for the lease area.

I. DEFAULT.

Any of the following events constitutes default:

1. An act of the Lessee which is in variation with the site plan and is not corrected after 30 days' notice by Lessor to Lessee of said default,

2. The nonperformance by Lessee of any other covenant or condition of this lease which is not cured within thirty (30) days after written notice thereof from Lessor, or

3. The subjection of any of Lessee's property to any levy, seizure, assignment, application, or sale for or by any creditor or governmental agency.

J. LESSOR'S RIGHTS UPON DEFAULT.

On the occurrence of any of the events defined as constituting "default", Lessor may without notice to or demand on Lessee, take possession of the leased property and lease the same or any portion thereof, for such period and such rental, and to such persons, as Lessor shall elect.

K. MORTGAGE OF LEASEHOLD INTEREST.

Lessee shall have the right subject to City Manager approval to place a first mortgage lien upon its leasehold. Any approved lender shall notify City of all action taken by it in the event payments on such loans shall become delinquent.

ARTICLE II – OBLIGATIONS OF LESSEE

A. NET LEASE: MAINTENANCE AND OPERATION.

The use and occupancy of the leased premises by Lessee will be without cost or expense to City. It shall be the sole responsibility of Lessee to construct, maintain, repair and operate the entirety of the leased premises and any improvements and facilities constructed thereon at Lessee's sole cost and expense except as specifically set forth in this article.

Lessee shall maintain the leased premises at all times in a safe, neat, and attractive condition and shall not permit the accumulation of any trash or debris on the premises. Lessee shall repair all damages to said premises caused by its employees, patrons, or its operation thereon; shall maintain and repair all buildings, pavements, equipment, and improvements; and shall repaint the buildings, as necessary. Lessee shall pay all taxes against the property and indemnify City from any tax lien.

City reserves the right to make periodic inspection of leased premises and improvements and equipment therein during normal business hours.

City, in its reasonable discretion, shall be the sole judge of the quality of maintenance that shall uniformly apply to all airport tenants. Upon written notice by City to Lessee, Lessee shall be required to perform whatever reasonable maintenance City deems necessary. If said maintenance is not undertaken by Lessee within ten (10) days after receipt of written notice, City shall have the right to enter upon the leased premises and perform the necessary maintenance, the cost of which shall be borne by Lessee.

B. ALTERATIONS TO AND CONDITIONS OF PREMISES.

Any change in exterior paint colors shall be subject to the prior written approval of the City of Brenham. Lessee agrees not to construct, install, remove and/or materially modify any of the buildings or premises leased hereunder without prior written approval of the City of Brenham subject to the conditions considered by City to be necessary.

Lessee shall not remove or demolish, in whole or in part, any improvements upon the premises without the prior written consent of City, which may, at its discretion, condition such consent upon the obligation of Lessee to replace the same by an improvement specified in such consent.

C. TRASH, GARBAGE, LANDSCAPING.

Lessee shall provide a complete and proper arrangement of the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage, and other refuse caused as a result of the operation of its business. Lessee shall provide and use approved receptacles for all such garbage, trash, and other refuse. Piling of boxes, cartons, barrels, or other similar items in an unattractive or unsafe manner, on or about the leased premises, is prohibited.

Lessee shall be responsible for maintaining suitably attractive yard-appearance, as follows: Lessee shall be responsible for groundskeeping and shall screen any outside storage or work areas by the use of an opaque fence or other suitable opaque barrier so that such storage or work areas shall be hidden from public view from the street.

Lessee is specifically responsible for mowing (and to ensure that weed or grass growth is never allowed in excess of that allowed by City weed ordinance requirements) and removal of weeds from around fences and buildings for the area within ten feet of the property shown on the attached Exhibit "A". Lessee is encouraged to provide additional landscaping beyond the minimum required by City to assist in enhancing Airport appearance.

D. SIGNS.

Lessee may not install identifying signs on the leased premises except with the written permission of City Manager.

E. UTILITIES.

Lessee shall assume and pay for all costs or charges for utility services furnished to Lessee during the term hereof; provided, however, that Lessee shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense; and Lessee shall pay for any and all service charges incurred therefor.

F. FIELD USE CHARGES.

Nothing herein shall be deemed to relieve Lessee and its tenants, sublessees, patrons, invitees, and others from field landing fees, nor its guests from fuel flowage fees, as are levied by City or the Fixed Base Operator.

G. PAYMENTS DUE.

Lessee agrees that no payments owed by Lessee of any nature whatsoever to City, including payment in advance for service charges, such as garbage collection, or any other sums of any character whatsoever, shall become delinquent or in arrears.

H. COMPLIANCE WITH RULES.

Lessee will comply with any and all federal or state laws, rules and regulations, and all regulations made by the City of Brenham and approved by the City Council.

I. NONDISCRIMATION/FEDERALLY REQUIRED ASSURANCES.

Lessee, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby agree that “as a covenant running with the land” (1) no person on the grounds of race, color, sex, creed, national origin, or handicapped status shall be excluded from participation in, denied the benefits of , or be otherwise subjected to discrimination in the use of said facilities, or in the construction of any improvements on, or under such land, or the furnishing of services thereof, and (2) that Lessee shall use the premises in compliance with and conduct its operations in accordance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, or Section 504 of the Rehabilitation of 1973 (23 USC 794) and 49 CFR Part 27 and as said regulations may be amended, and that Lessee will comply with such enforcement procedures as the United States might demand that City take.

J. FAA AND OTHER APPROVAL OF USE.

Lessee agrees to secure approval from the Federal Aviation Administration concerning the height and location of all buildings or improvements or modifications thereof which may be constructed or installed on the leased premises and to satisfy any applicable environment or other requirements of federal, state, and local authorities as to noise, smoke, fumes emissions, storm water, or other hazards or potential hazards or other offensive sues, if any, which may occur as a result of Lessee's operations on the premises.

K. NON-INTERFERENCE WITH OPERATION OF AIRPORT/EASEMENTS.

1. Lessee, by accepting this Lease, expressly agrees for itself, its successors and assigns that it will not make use of the premises in any manner which might interfere with the landing and taking off of aircraft at Airport or otherwise constitute a hazard. If Lessee violates this, City reserves the right to enter upon the premises and remove the interference at the expense of the Lessee.

2. City shall maintain and keep in good repair the landing area of the Airport and shall have the right to direct and control all activities of the Lessee in this regard.

3. City shall retain an easement over, above and on the premises in relation to aircraft noise and the utilization of the air space for the purposes of the operation of said Airport.

L. LESSEE AUTHORITY.

The officers of the Lessee which execute this lease represent and promise that they are duly authorized by corporate resolution or other appropriate authorization to execute the same on behalf of Lessee.

ARTICLE III – OTHER CONDITIONS

1. Lessee agrees to pay all public utility charges that may be assessed, including charges for gas, electric, water and any other utility charge.

2. Any holding over by Lessee or his successors, at the expiration or termination of this lease, in whatever manner its termination may be brought about, shall not operate as a renewal of this lease, but during the period of such holding over Lessee shall be a tenant at the will of Lessor.

3. Lessee shall maintain property and casualty insurance in amounts satisfactory with Lessor and shall provide for public liability insurance in the amount of ONE MILLION AND N0/100 ($1,000,000.00) DOLLARS in order to protect Lessor against claims arising because of the operation of Lessee. Lessee shall give evidence of insurability. CITY OF BRENHAM, TEXAS shall always be shown as an addition insured. Provided, however, if CITY OF BRENHAM, TEXAS so elects, it may take out said insurance and then prorate said costs to Lessee and any Sublessees on an equitable basis, as determined by CITY OF BRENHAM, TEXAS. The CITY OF BRENHAM reserves the right to require that the amount of any and all types of insurance may be increased upon the CITY OF BRENHAM giving thirty (30) days notice to Lessee or any sublessee.

4. The CITY OF BRENHAM requires that Lessee and users of Lessee's premises shall agree to be bound by all of the regular rules and regulations as may be set out by the F.A.A. as to pilots and their conduct and that they agree to abide by any and all local rules that may be approved by the City Council of the CITY OF BRENHAM, TEXAS, for pilots at the CITY OF BRENHAM MUNICIPAL AIRPORT and as may be adopted by the AIRPORT ADVISORY COMMITTEE of the CITY OF BRENHAM, TEXAS. Lessee shall agree that in the event he is found not to have abided by the rules or does not correct a situation required to be corrected by the City of Brenham, then and in that event he may lose his privilege to occupy the Hangar that is located on property being leased by the CITY OF BRENHAM, TEXAS.

5. This Lease is governed by the laws of the State of Texas and performable in Washington County, Texas.

6. If any provision herein is held to be invalid in a court of law, the invalidity of such provision shall in no way affect the validity of any other provision.

7. Any notice required herein shall be effective upon mailing to the address described herein by depositing said notice in the mail, certified mail – return receipt requested.

APPROVED this the ____ day of August 2020

CITY OF BRENHAM (LESSOR)

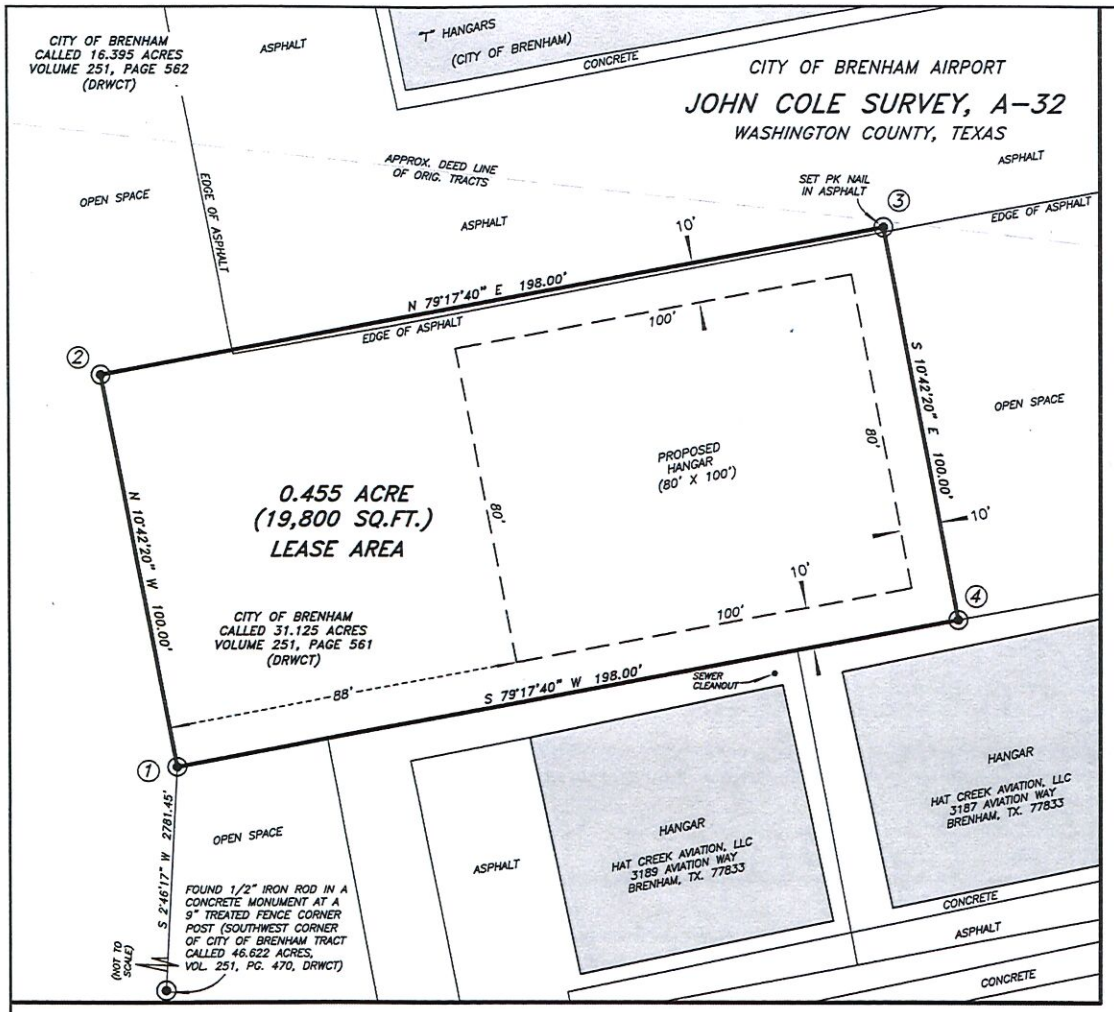
_____
Milton Y. Tate, Jr., Mayor
City of Brenham
P. O. Box 1059
Brenham, TX 77834-1059

ATTEST:

_____
Jeana Bellinger, City Secretary

AVAITORS PLUS, LLC (LESSEE)

_____
Aviators Plus, LLC
Brent Nedbalek
2901 Aviation Way
Brenham, Texas 77833
(979) 777-8916
Brent@aviatorsplus.com



30 0 30 60 90

GRAPHIC SCALE – FEET

GRID NORTH

SCALE: 1" = 30'

NOTES:

1. THE BEARINGS AND COORDINATES SHOWN HEREON ARE RELATIVE TO THE TEXAS STATE PLANE GRID SYSTEM, NAD–83 {2011}, CENTRAL ZONE 4203. CONVERGENCE ANGLE AT N: 10063157.87' – E: 3547344.52' IS 2°–02'–23.7", COMBINED SCALE FACTOR IS 0.99996823, U.S. SURVEY FEET, UTILIZING NATIONAL GEODETIC SURVEY (NGS) MONUMENT BM1073. DISTANCES SHOWN HEREON ARE GROUND DISTANCES.

2. NO PART OF THE SUBJECT PROPERTY LIES WITHIN THE SPECIAL FLOOD HAZARD AREA ACCORDING TO THE FLOOD INSURANCE RATE MAP (FIRM) AS COMPILED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, NATIONAL FLOOD INSURANCE PROGRAM, MAP NUMBER 48477C0325D, MAP REVISED DATE MAY 16, 2019, WASHINGTON COUNTY, TEXAS.

3. ⊙ – DENOTES A 5/8" IRON ROD SET WITH ID. CAP STAMPED "HODDE & HODDE LAND SURVEYING" UNLESS OTHERWISE NOTED ON THE PLAT.

4. A CURRENT TITLE COMMITMENT OR REPORT WAS NOT AVAILABLE OR PROVIDED TO THE UNDERSIGNED SURVEYOR AS OF THE DATE OF THIS SURVEY AND THE UNDERSIGNED SURVEYOR DID NOT ABSTRACT THE SUBJECT PROPERTY.

5. (DRWCT) DENOTES DEED RECORDS OF WASHINGTON COUNTY, TEXAS.

SURVEY MAP

SHOWING A SURVEY OF 0.455 ACRE OF LAND (19,800 SQ. FT.) LEASE AREA, LYING AND BEING SITUATED IN WASHINGTON COUNTY, TEXAS, PART OF THE JOHN COLE SURVEY, A–32, BEING PART OF THE SAME LAND DESCRIBED AS 31.125 ACRES IN THE DEED FROM LILLIE MAE CARAWAY DOCKERY, ET VIR TO THE CITY OF BRENHAM, DATED FEBRUARY 15, 1964, AS RECORDED IN VOLUME 251, PAGE 561, IN THE DEED RECORDS OF WASHINGTON COUNTY, TEXAS.

CERTIFICATION

THE STATE OF TEXAS

COUNTY OF WASHINGTON

I, JON E. HODDE, REGISTERED PROFESSIONAL LAND SURVEYOR, NO. 5197 OF THE STATE OF TEXAS, DO HEREBY CERTIFY THAT THIS MAP SHOWING A SURVEY OF 0.455 ACRE (19,800 SQ. FT.) OF LAND IS TRUE AND CORRECT IN ACCORDANCE WITH AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY PERSONAL DIRECTION AND SUPERVISION.

DATED THIS THE 16TH DAY OF JULY, 2020, A.D.

STATE OF TEXAS
REGISTERED
JON E. HODDE
5197
PROFESSIONAL
LAND SURVEYOR

JON E. HODDE
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 5197
HODDE & HODDE LAND SURVEYING, INC.
613 EAST BLUE BELL ROAD
BRENHAM, TEXAS 77833
(979)–836–5681
TBPE&LS SURVEY FIRM REG. NO. 10018800

COORDINATE TABLE

POINT	NORTHING	EASTING
1	10,065,723.56	3,547,086.28
2	10,065,821.81	3,547,067.71
3	10,065,858.59	3,547,262.25
4	10,065,760.34	3,547,280.83

W.O. NO. 7739 (AVIATORSPLUS7473.DWG/MVIEW)
REF: AVIATORSPLUS7473.SURVEY

Hodde & Hodde Land Surveying, Inc.
Professional Land Surveying & Engineering
613 E. Blue Bell Road . Brenham, Texas 77833
979-836-5681 . 979-836-5683 (Fax)
www. hoddesurveying.com

COPYRIGHT © 2020
HODDE & HODDE
LAND SURVEYING, INC.
ALL RIGHTS RESERVED.

Regular City Council
AGENDA ITEM 12.

Agenda Item: **Discuss and Possibly Act Upon Recommendations for Appointments to Various City Boards and Commissions and Authorize the Mayor to Execute Any Necessary Documentation**

Meeting Type: Regular Meeting-August 20, 2020

Department: Administration

Staff Contact: Karen Stack

Classification: Regular

SUMMARY STATEMENT:

Staff recently received the resignations of Leroy Jefferson from the Planning and Zoning Commission, and Fredericka DeBerry from the Library Advisory Board. City staff would like to thank them for their service.

On August 13, 2020, The Boards and Commissions Subcommittee consisting of Mayor Tate, Councilmember Cantey, and Councilmember Sanders voted to recommend the following appointments:

1) Artis Edwards for appointment to the unexpired term of Leroy Jefferson, which ends December 31, 2020. Mr. Edwards is a local developer whose experience will benefit the Planning and Zoning Commission.

2) Carol Kiphart for appointment to the unexpired term of Fredericka DeBerry, which ends December 31, 2021. Mrs. Kiphart will bring a lifelong interest in public libraries and education to the Library Board.

ATTACHMENTS:

(1) Board Membership Summary

RELEVANCE TO COMPREHENSIVE PLAN:

RECOMMENDED ACTION:

Approve the appointment of Artis Edwards to the Planning and Zoning Commission for a term to expire on December 31, 2020 and Carol Kiphart to the Library Advisory Board for a term to expire on December 31, 2021 and authorize the Mayor to execute any necessary documentation.

LIBRARY ADVISORY BOARD

Position	Board Member	Nominating Entity	Term Expiration
1	Lillian Marshall	City of Brenham	December 31, 2020
2	Keith Herring	City of Brenham	December 31, 2020
3	Elizabeth Coker	City of Brenham	December 31, 2020
4	~~Fredericka DeBerry~~ Carol Kiphart	City of Brenham	December 31, 2021
5	Sabrina Roberts	Brenham Fortnightly	December 31, 2020
6	Jody Tyson	Brenham Fortnightly	December 31, 2021
7	Janie Mehrens	Brenham Fortnightly	December 31, 2020
8	Lu Hollander	Brenham Fortnightly	December 31, 2020
9	Renee Mueller	Brenham Fortnightly	December 31, 2021

PLANNING & ZONING COMMISSION

Position	Board Member	Expiration
1	M. Keith Behrens	December 31, 2021
2	Marcus Wamble	December 31, 2020
3	Catharyne Neil	December 31, 2021
4	~~Leroy Jefferson~~ Artis Edwards	December 31, 2020
5	Deanna Alfred	December 31, 2021
6	Calvin Kossie	December 31, 2020
7	Lynette Scheffield	December 31, 2020

Regular City Council
AGENDA ITEM 13.

Agenda Item: **Discuss and Possibly Act Upon an Amendment to Restrictive Covenants Governing the Brenham Oaks Apartments Development Necessary to Secure Financing Insured by the U.S. Department of Housing and Urban Development, Approval of an Agreement Concerning City's Release from Said Restrictive Covenants, and Authorize the Mayor to Execute Any Necessary Documentation**

Meeting Type: Regular Meeting-August 20, 2020

Department: Administration

Staff Contact: Cary Bovey

Classification: Regular

SUMMARY STATEMENT:

See attached memo from City Attorney, Cary Bovey.

ATTACHMENTS:

(1) Memo from City Attorney
(2) Amended Restrictive Covenants
(3) HUD Amendment to Covenants

RELEVANCE TO COMPREHENSIVE PLAN:

RECOMMENDED ACTION:

Approve an Agreement to Amend Restrictive Covenants governing the Brenham Oaks Apartments, L.P. to secure financing insured by the U.S. Department of Housing and Urban Development, approve of an Agreement concerning the City's release from said Restrictive Covenants, and authorize the Mayor to execute any necessary documentation

BOVEY & COCHRAN, PLLC

2251 Double Creek Drive, Suite 204 ♦ Round Rock, Texas 78664 ♦ Phone: (512) 904-9441 Fax: (512) 904-9445
cary@boveycochran.com

Confidential / Privileged Attorney-Client Communication

MEMORANDUM

TO: **Hon. Mayor and City Council, City of Brenham**
James Fisher, City Manager, City of Brenham

FROM: **Cary L. Bovey, City Attorney**

DATE: **August 17, 2020**

RE: **August 20, 2020 City Council Meeting – Item # 13 – Brenham Oaks Apartments**

In 2002, the Brenham Oaks Apartments ("Brenham Oaks") obtained Low Income Housing Tax Credits from the Texas Department of Housing and Community Affairs ("TDHCA") to financially assist in the development of the apartment project. As a condition of receiving the tax credits, TDHCA required the developer of Brenham Oaks to record certain restrictive covenants (entitled "Declaration of Land Use Restrictive Covenants for Low-Income Housing Credits") against the property used for the Brenham Oaks project.

In 2007, a small 0.88141 acre parcel of the property owned by the developer of Brenham Oaks was conveyed to the City of Brenham for public right-of-way. The City took ownership of the property in 2007 subject to the TDHCA restrictive covenants.

Currently the developer of Brenham Oaks is attempting to obtain new financing for the project that is insured by the U.S. Department Housing and Urban Development ("HUD"). HUD is requiring, as a condition of insuring the financing of the project, that the lien and covenants of the restrictive covenants be subordinated to the lien, covenants, and enforcement of the instruments securing the loan. Because the City's property is technically still subject to the restrictive covenants, the City's consent to HUD amendment to the restrictive covenants is required for the developer to obtain the financing. Also, note that the City's 0.88141 acre parcel is not being used at all to secure the financing, so there is no risk of the City's property being foreclosed on if the developer defaults on the financing. The HUD amendment would subordinate the restrictive covenants to the lien to secure the new HUD insured financing.

A companion matter to this item is an agreement that the developer will apply to TDHCA for approval of the release of the City's property from being subject to the restrictive covenants, to prevent something like this from being an issue in the future.

Please let me know if you have any questions or if I can provide additional information.

AGREEMENT TO AMEND RESTRICTIVE COVENANTS

This AGREEMENT TO AMEND RESTRICTIVE COVENANTS (this "Agreement") is dated as of August ___, 2020 by and between BRENHAM OAKS APARTMENTS, L.P., a Texas limited partnership (the "Development Owner") and THE CITY OF BRENHAM, a Texas home-rule municipal corporation (the "City").

R E C I T A L S

WHEREAS, the Development Owner is the owner of that certain multi-family development known as Brenham Oaks Apartments located on a tract of land more particularly described on Exhibit A attached hereto (the "Development Tract");

WHEREAS, the Developer Owner was the owner of that certain tract of land more particularly described on Exhibit B attached hereto (the "City Tract") which was conveyed to, and is currently owned by, the City pursuant to the General Warranty Deed dated as of May 2, 2007 and recorded in the Real Property Records of Washington County, Texas ("Records") on May 9, 2007 in Volume 1243, Page 326;

WHEREAS, the Development Tract and the City Tract are subject to that certain Declaration of Land Use Restrictive Covenants for Low-Income Housing Credits dated as of December 31, 2002 executed by and between the Development Owner and The Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas ("Agency") and recorded in the Records on August 15, 2003 in Volume 1089, Page 791 (the "Restrictive Covenants");

WHEREAS, the Development Owner is obtaining financing from ORIX Real Estate Capital, LLC, a Delaware limited liability company ("Lender"), for the benefit of the Development Tract (the "Loan"), which Loan is insured by the United States Department of Housing and Urban Development ("HUD");

WHEREAS, as a condition to the closing of the Loan, Lender and HUD are requiring the Development Owner, the City, and the Agency to execute an amendment to the Restrictive Covenants in the form attached hereto as Exhibit C (the "HUD Amendment");

WHEREAS, after the closing of the Loan, the Development Owner will seek a further amendment of the Restrictive Covenants releasing the City Tract from the Restrictive Covenants (the "Release"); and

WHEREAS, the City has agreed to execute and deliver the HUD Amendment in exchange for the Development Owner's commitment to seek the Release from the Agency in accordance with the terms of this Agreement.

A G R E E M E N T

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The City hereby agrees to execute and deliver to the Development Owner an original of the HUD Amendment within two (2) business days of the date of this Agreement.

2. The Development Owner hereby agrees to submit to the Agency a written request with ten (10) days after the closing of the Loan seeking the Release, and any and all costs or expenses incurred in connection with the Release shall be borne solely by the Development Owner. The Development Owner shall use good faith and commercially reasonably efforts to obtain the Release including submitting any required documentation to the Agency in a timely manner. The City agrees to reasonably cooperate with the Development Owner in obtaining the Release, at no cost or expense to the City. Upon the Development Owner's written request to the Agency seeking the Release, the Development Owner shall deliver to the City evidence (in the form of copies of correspondence to the Agency transmitting all applications, documentation and other data) of its request for the Release and payment of the required amendment fee. Additionally, Development Owner shall attend all meetings and hearings, if any, conducted by the Agency at which the Release is to be discussed and/or considered, and the Development Owner shall advocate for the Release to be granted by the Agency at such meetings and hearings. Development Owner shall also provide prior written notification to the City of any meeting and/or hearing of the Agency at which the Release will be discussed and/or considered.

3. Complete Agreement; No Other Changes. This Agreement contains the entire agreement between the parties relating to the matters contained herein. Any modification of this Agreement shall be of no force or effect unless in writing and signed by all parties.

4. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and is intended to be binding when all parties have delivered their signatures to the other parties. Signatures may be delivered by electronic mail or facsimile transmission. All counterparts shall be deemed an original of this Agreement. The parties hereby acknowledge and agree that facsimile signatures or signatures transmitted by electronic mail in ".pdf" format shall be legal and binding and shall have the same full force and effect as if an original of this Agreement had been delivered. The Development Owner and the City intend to be bound by the signatures on any document sent by facsimile or electronic mail, are aware that the other party will rely on such signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the foregoing forms of signature.

5. Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

6. Governing Law; Venue. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Texas. Any dispute arising under this Agreement or the documents referred to herein will be adjudicated exclusively in the courts of Washington County, Texas.

[Signature Page Follows]

IN WITNESS WHEREOF, the Development Owner and the City have executed this Agreement as of the date first written above.

DEVELOPMENT OWNER:

BRENHAM OAKS APARTMENTS, L.P.,
a Texas limited partnership

By: KF Brenham Oaks GP, LLC,
a Texas limited liability company,
its general partner

By: KF Residential Investor, L.L.C.,
a Delaware limited liability company,
its sole member

By: Encore Residential, L.L.C.,
a Texas limited liability company,
its manager

By: _____
J. Steve Ford, Manager

CITY:

CITY OF BRENHAM,
a Texas home-rule municipal corporation

By: _____
Name:
Title:

EXHIBIT A

Legal Description of the Development Tract

Lot 1, Block II, containing 6.723 acres of land, of the Brenham Oaks Subdivision, located in the City of Brenham, Washington County, Texas, according to the map or plat thereof, recorded in Plat Cabinet File Nos. 450A and 450B, Plat Records of Washington County, Texas.

EXHIBIT B

Legal Description of the City Tract

Reserve "A", 0.88141 acre, Brenham Oaks Subdivision as recorded in plat cabinet file slide numbers 450A and 450B, Plat Records of Washington County, Texas.

EXHIBIT C

Form of HUD Amendment

(Attached hereto)

HUD AMENDMENT TO RESTRICTIVE COVENANTS

This HUD AMENDMENT TO RESTRICTIVE COVENANTS ("Amendment") is effective as of _____ 1, 2020, by BRENHAM OAKS APARTMENTS, L.P., a Texas limited partnership ("Borrower"), and THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas ("Agency") and is acknowledged and agreed to by THE CITY OF BRENHAM, a Texas home-rule municipal corporation ("City").

WHEREAS, Borrower has obtained financing from ORIX Real Estate Capital, LLC, a Delaware limited liability company ("Lender"), for the benefit of the project known as Brenham Oaks Apartments located on land more particularly described in Exhibit A attached hereto ("Project"), which loan is secured by a Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement (HUD 94000-M) ("Security Instrument") dated as of _____ 1, 2020, and recorded in the Real Property Records of Washington County, Texas ("Records") simultaneously herewith and is insured by the United States Department of Housing and Urban Development ("HUD"); and

WHEREAS, Borrower has received an allocation of Low Income Housing Tax Credits from the Agency, which Agency has required certain restrictions be recorded against the Project and that certain land more particularly described in Exhibit B attached hereto (the "Reserve Tract"); and

WHEREAS, Borrower entered into that certain Declaration of Land Use Restrictive Covenants for Low-Income Housing Credits dated as of December 31, 2002 and recorded in the Records on August 14, 2003 in Volume 1089, Page 791 (the "Restrictive Covenants"), with respect to the Project and the Reserve Tract; and

WHEREAS, Borrower conveyed the Reserve Tract to the City pursuant to the General Warranty Deed dated as of May 2, 2007 and recorded in the Records on May 9, 2007 in Volume 1243, Page 326; and

WHEREAS, HUD is requiring, as a condition to its insuring the Lender's financing of the Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the Agency has agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this Amendment.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Amendment**,** the provision contained in this Amendment shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

"Code" means the Internal Revenue Code of 1986, as amended.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

"Lender" means ORIX Real Estate Capital, LLC, a Delaware limited liability company, its successors and assigns.

"Mortgage Loan" means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

"Mortgage Loan Documents" means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

"National Housing Act" means the National Housing Act of 1934, as amended.

"Program Obligations" has the meaning set forth in the Security Instrument.

"Residual Receipts" has the meaning specified in the Program Obligations.

"Security Instrument" means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

"Surplus Cash" has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, except the requirements in 26 U.S.C. §42(h)(6)(E)(ii) to the extent applicable, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including, without limitation, the Security Instrument and (ii) the Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the "HUD Requirements"). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency's ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower's knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In the event of foreclosure, the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall terminate,

with the exception of the requirements in 26 U.S.C. §42(h)(6)(E)(ii) above to the extent applicable, or as otherwise approved by HUD.

(e) Borrower and the Agency acknowledge that Borrower's failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

(f) Except for the Agency's reporting requirement, in enforcing the Restrictive Covenants the Agency will not file any claim against the Project, or any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the Project other than a claim against:

i. Available Surplus Cash, if the Borrower is a for-profit entity;

ii. Available distributions of Surplus Cash and Residual Receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or

iii. Available Residual Receipts authorized by HUD, if the Borrower is a non-profit entity.

(g) For so long as the Mortgage Loan is outstanding, Borrower and Agency shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Agency may require the Borrower to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against the Agency relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Agency harmless shall be limited to available Surplus Cash and/or Residual Receipts of the Borrower.

(i) Notwithstanding anything to the contrary contained herein, it is not the intent of any of the parties hereto to cause a recapture of the Low Income Housing Tax Credits or any portion thereof related to any potential conflicts between the HUD Requirements and the Restrictive Covenants. Borrower represents and warrants that to the best of Borrower's knowledge the HUD Requirements impose no requirements which may be inconsistent with full compliance with the Restrictive Covenants. The acknowledged purpose of the HUD Requirements is to articulate requirements imposed by HUD, consistent with its governing statutes, and the acknowledged purpose of the Restrictive Covenants is to articulate requirements imposed by Section 42 of the Code. In the event an apparent conflict between the HUD Requirements and the Restrictive Covenant arises, the parties and HUD will work in good faith to determine which federally imposed requirement is controlling. It is the primary responsibility of the Borrower, with advice of counsel, to determine that it will be able to comply with the HUD Requirements and its obligations under the Restrictive Covenants.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

BORROWER:

BRENHAM OAKS APARTMENTS, L.P.,
a Texas limited partnership

By: KF Brenham Oaks GP, LLC,
a Texas limited liability company,
its general partner

By: KF Residential Investor, L.L.C.,
a Delaware limited liability company,
its sole member

By: Encore Residential, L.L.C.,
a Texas limited liability company,
its manager

By: _____
J. Steve Ford, Manager

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on this _____day of _____, 2020, by J. Steve Ford, Manager of Encore Residential, L.L.C., a Texas limited liability company, manager of KF Residential Investor, L.L.C., a Delaware limited liability company, its sole member of KF Brenham Oaks GP, LLC, a Texas limited liability company, general partner of BRENHAM OAKS APARTMENTS, L.P., a Texas limited partnership, the limited partnership that executed the foregoing instrument, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of said limited partnership, and that he executed the same as the act of such limited partnership for the purposes and consideration therein expressed and in the capacity therein stated.

(SEAL)

_____
Notary Public, State of Texas

AGENCY:

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,
a public and official agency of the State of Texas

By: _____
Name: Rosalio Banuelos
Title: Its duly authorized officer or representative

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this ___ day of July, 2020 by Rosalio Banuelos, Director of Multifamily Asset Management, duly authorized officer or representative of the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas, on behalf of said agency.

(SEAL)

_____
Notary Public, State of Texas

ACKNOWLEDGED AND AGREED:

CITY:

CITY OF BRENHAM,
a Texas home-rule municipal corporation

By: _____
Name:
Title:

STATE OF TEXAS §
§
COUNTY OF WASHINGTON §

This instrument was acknowledged before me on this ___ day of _____, 2020 by _____, _____ of the City of Brenham, a Texas home-rule municipal corporation, on behalf of said municipal corporation.

(SEAL)

_____
Notary Public, State of Texas

EXHIBIT A

Legal Description of the Project

Lot 1, Block II, containing 6.723 acres of land, of the Brenham Oaks Subdivision, located in the City of Brenham, Washington County, Texas, according to the map or plat thereof, recorded in Plat Cabinet File Nos. 450A and 450B, Plat Records of Washington County, Texas.

EXHIBIT B

Legal Description of the Reserve Tract

Reserve "A", 0.88141 acre, Brenham Oaks Subdivision as recorded in plat cabinet file slide numbers 450A and 450B, Plat Records of Washington County, Texas.

Regular City Council
AGENDA ITEM 14.

Agenda Item: **Discussion and Update on the City of Brenham's COVID-19 (Coronavirus) Response and Recovery Efforts**

Meeting Type: Regular Meeting-August 20, 2020

Department: Administration

Staff Contact: James Fisher

Classification: Regular

SUMMARY STATEMENT:

City Manager James Fisher will provide the City Council with an update on the City's COVID-19 response and recovery efforts.

ATTACHMENTS:

None

RELEVANCE TO COMPREHENSIVE PLAN:

RECOMMENDED ACTION:

No action needed - discussion and update only.