



**NOTICE OF A REGULAR MEETING
THE BRENHAM CITY COUNCIL
THURSDAY, AUGUST 4, 2022 AT 01:00 PM
SECOND FLOOR CITY HALL
COUNCIL CHAMBERS
200 W. VULCAN STREET
BREHMAN, TEXAS**

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags - City Attorney Cary Bovey**
- 3. Proclamations**
 - ♦ **Rev. Dr. Johnnie Williams - 60 Years of Pastoral Service at Mt. Zion Missionary Baptist Church**
- 4. Service Recognitions**
 - ♦ **Christopher Bugai, Gas Department - 15 Years**
 - ♦ **William 'Bubba' Herrin, Street Department - 20 Years**
 - ♦ **Lloyd C. Powell, Police Department - 25 Years**
- 5. Special Recognition**
 - ♦ **Award of Meritorious Service Medal to Captain Lloyd C. Powell**
- 6. Citizens Comments**

CONSENT AGENDA

- 7. 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.

- 7-a. Approve the Minutes from the July 7, 2022 Regular City Council Meeting and the July 11, 2022 and July 12, 2022 Special City Council Meetings**
- 7-b. Approve Ordinance No. O-22-013 on Its Second Reading for the Abandonment of the Undeveloped Portion of Live Oak Street Bounded to the South by Sycamore Street and Being Generally Located 177 Feet to the East of the Northeast Intersection of N. Chappell Hill Street and Sycamore Street**
- 7-c. Approve an Audit Engagement Letter for Seidel Schroeder to Perform an Audit for the Fiscal Year Ending September 30, 2022 and Authorize the Mayor to Execute Any Necessary Documentation**
- 7-d. Approve the Appointment of Charles Keese to Fill a Vacancy on the Historic Preservation Board, for an Unexpired Term to Expire on December 31, 2024 and Authorize the Mayor to Execute Any Necessary Documentation**
- 7-e. Approve a Multi-Year Contract Between the City of Brenham and Pitney Bowes Global Financial Services, LLC Related to the Lease of Mail Meter Equipment and Associated Software, In the Amount of \$2,792.79, at the Brenham Police Department and Authorize the Mayor to Execute Any Necessary Documentation**

PUBLIC HEARING AND ASSOCIATED ACTION ITEM

- 8. Public Hearing, Discussion and Possible Action on an Ordinance on Its First Reading Amending Appendix A - 'Zoning' of the Code of Ordinances of the City of Brenham Granting a Specific Use Permit on Property Currently Addressed as 1200 S. Austin Street to Allow for a Daycare in the B-1, Local Business Residential Mixed Use Zoning District and Further Described as Lot 1A, Block 11 of the W. G. Wilkins Addition in Brenham, Washington County, Texas (Case No. P-22-017)**

9. **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 a Single-Family Residential Use District (R-1) and/or a Mixed Residential Use District (R-2) to a Local Business/Residential Mixed-Use District (B-1) on the Following (Case No. P-22-016):**
 - a. **A Tract of Land Being Approximately 8.97 Acres of Land Addressed as 1301 S. Market Street, Being Further Described as Keys 2nd, Block E, Lot 1, 2, and North Part of 3 and 4, Community Education Campus in Brenham, Washington County, Texas (R23658);**
 - b. **A Tract of Land Being Approximately 6.92 Acres of Land Addressed as 507 E. Sixth Street, Being Further Described as Keys 2nd, Block C, Lot PT 3D, 3E, 4B, All of Lots 5, 6 and 7 in Brenham, Washington County, Texas (R23650);**
 - c. **A Tract of Land Being Approximately 0.4180 Acres of Land Addressed as 504 E. Sixth Street, Being Further Described as Keys 2nd, Block F, Lot PT 4 in Brenham, Washington County, Texas (R23660); and**
 - d. **A Tract of Land Being Approximately 0.2215 Acre of Land Addressed as 506 E. Sixth Street, Being Further Described as Keys 2nd, Block F, Lot PT 4 in Brenham, Washington County, Texas (R23661)**
10. **Public Hearing, Discussion and Possibly Act Upon an Ordinance on Its First Reading Amending Division 16, Effective Date, of Ordinance No. O-21-005 Related to Industrial Wastewater Discharge Standards and Pretreatment for the City of Brenham, Texas**

REGULAR SESSION

11. **Submission of, Discussion, and Possible Action Regarding the No-New Revenue Tax Rate, Voter-Approval Tax Rate, and Proposed Tax Rate of \$0.4940 per \$100 Valuation for the 2022 Tax Year, and Take Record Vote on Proposed Tax Rate and Meeting Dates for Final Adoption of Tax Rate**
12. **Discuss and Possibly Act Upon Resolution No. R-22-025 to Select Engineering Service Provider(s) to Complete Project Implementation for the American Rescue Plan Act (ARP Act) Funding by the U. S. Department of the Treasury, or other Federal or State Agency**

13. **Discuss and Possibly Act Upon an Interlocal Agreement Between the City of Brenham and Brenham Independent School District Related to School Resource Officers and Authorize the Mayor to Execute Any Necessary Documentation**

14. **Administrative/Elected Officials Report**

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

EXECUTIVE SESSION

15. **Section 551.071 Texas Government Code - Consultation with Attorney - Consultation with City Attorney Regarding Aviators Plus, LLC v. City of Brenham, Texas; Cause No. 37896; 21st Judicial District Court, Washington County, Texas**

RE-OPEN REGULAR SESSION

16. **Discuss and Possibly Act Upon Matters Related to Aviators Plus, LLC v. City of Brenham, Texas; Cause No. 37896; 21st Judicial District Court; Washington County, Texas and Associated Issues, Including But Not Limited to Retaining Litigation Counsel, and Authorize the Mayor to Execute Any Necessary Documentation**

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 04, 2022 agenda of items to be considered by the City of Brenham City Council was posted to the City Hall bulletin board at 200 W. Vulcan St., Brenham, TX on Monday, August 1, 2022 at 12:00 p.m.

Karen Stack, TRMC

Deputy City Secretary

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

I certify that the attached notice and agenda of items to be considered by the City Council was removed by me from the City Hall bulletin board on the _____ day of _____, 2022 at _____ AM PM.

Signature

Title

PROCLAMATION

WHEREAS, Reverend Dr. Johnnie Williams was born August 13, 1941, in Somerville, Texas. He grew up in Somerville and graduated from E.J. Scott High School; and

WHEREAS, He attended Union Baptist Bible College and Seminary in Bryan-College Station Extension where he received his Bachelor's, Master's, and Doctorate of Divinity; and

WHEREAS, He was married for 59 years to the love of his life, Gwendolyn Simpson Williams. They are the parents of seven children, grandparents of 12 grandchildren, and great-grandparents of seven; and

WHEREAS, Reverend Dr. Williams has served for 60 years, and continues to serve the greater Washington County community. He continues to pastor Mt. Zion Missionary Baptist Church where he has pastored for 60 years. In addition to pastoring, he is Dean of Mount Olive District Association, Dean of Mount Carmel School of Religion, Brenham Police Department (Chaplain), Washington County Jail (Chaplain), Bread Partners of Washington County (Chaplain), and Worship Leader at several Washington County Nursing Homes; and

WHEREAS, The City of Brenham and the Washington County community honor Reverend Dr. Williams for his unwavering dedication and service. His mentorship, leadership, and steadfast devotion to the residents in the community are one to be celebrated and admired;

NOW, THEREFORE, I, Milton Y. Tate Jr., Mayor of the City of Brenham, do hereby proclaim August 7, 2022, as

60th Pastoral Anniversary and Rev. Dr. Johnnie Williams Day

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 Thursday, July 7, 2022 beginning at 1:00 p.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

Members Present:

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

Members Absent:

Councilmember Leah Cook

City of Brenham Staff present:

City Manager Carolyn Miller, City Attorney Cary Bovey, City Secretary Jeana Bellinger, Director of Public Works Dane Rau, Director of Development Services Stephanie Doland, Human Resources Director Susan Nienstedt, Legal and Legislative Services Manager Karen Stack, Deputy City Secretary Alyssa Faykus, Public Works Manager Shawn Bolenbarr, Public Utilities Director Alton Sommerfield, Director of Finance Stacy Hardy, Planning Technician Kim Hodde, Director of Tourism and Marketing Jennifer Eckermann, Nancy Joiner, Kevin Boggus, Fire Chief Roger Williams, Police Chief Roger Williams, Captain Dant Lange, Lt. Curtiss Schoen, and Carrie Derkowski.

Citizens/Others Present:

None

Media Present:

Jason May, Brenham Banner-Press; and Josh Blaschke, KWHI

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags – City Manager Carolyn Miller**

3. Service Recognitions

- David Herzog, Street Department – 10 Years

4. Special Recognitions

- Main Street Brenham – Main Street America© Accredited Program 2022
- Main Street Brenham Projects
 - o Upchurch & Yates, LLP
 - o BBA Architects LP
 - o Floyd's Wine Lounge
- TMCA Achievement of Excellence Award – City Secretary's Office
- Michael Draehn – Retirement, Brenham Fire Department
- Greg 'Tank' Nienstedt – Retirement, Brenham Fire Department

5. Citizens Comments

None.

CONSENT AGENDA

6. Statutory Consent Agenda

6-a. Approve the Minutes from the June 16, 2022 Regular City Council Meeting

6-b. Approve a Noise Variance for Patricia Johnson for a Family Reunion to be Held on July 16, 2022 at Henderson Park from 2:00 P.M. to 10:00 P.M.

6-c. Approve a Noise Variance from WB Enterprise for the Scrilla Fam Fun Day to be Held on July 24, 2022 at Henderson Park from 12:00 P.M. to 8:00 P.M.

6-d. Approve a Noise Variance from the City of Brenham for Pop Up Play Day to be Held on July 22, 2022 at Henderson Park from 7:00 P.M. to 9:00 P.M.

A motion was made by Councilmember Wright and seconded by Councilmember Saunders to approve the Statutory Consent Agenda Items 6.a. through 6.d. as presented.

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

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

REGULAR SESSION

7. **Discuss and Possibly Act Upon an Ordinance on Its First Reading Regulating the Speed of Traffic on Aviation Way, A Private Road within the Brenham Municipal Airport; Providing for a Penalty for the Violation Thereof; and Authorizing the Placement of Appropriate Speed Limit Signage**

Planning Technician Kim Hodde presented this item. Hodde said City staff received a complaint about the safety of the tenants and visitors to the Brenham Municipal Airport due to speeding on Aviation Way. After a period of observation, City staff concluded that creating a speed limit of 30 mph would be the solution.

Hodde said safety and security fits into the Airport Masterplan, and the Brenham Police Department has the jurisdiction to enforce a speed limit on Aviation Way. Staff will put signage in both directions to alert anyone driving what the posted speed limit is.

A motion was made by Councilmember Kenjura and seconded by Councilmember Saunders to approve an Ordinance on its first reading regulating the speed of traffic on Aviation Way, a private road within the Brenham Municipal Airport; providing for a penalty for the violation thereof; and authorizing the placement of appropriate speed limit signage.

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

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

8. **Discuss and Possibly Act Upon Bid No. 2022-02 Related to the 2022 City Street Onyx Resurfacing Project and Authorize the Mayor to Execute Any Necessary Documentation**

Public Works Director Dane Rau presented this item. Rau said on May 24, 2022, City staff and Strand Associates opened bids for the 2022 onyx resurfacing work. This work was budgeted in the 2021-22 budget and Strand was hired to oversee the project.

Rau said four packets were downloaded from Civicast but the City received only one bid from Clark Construction of Texas, Inc. The base bid received was \$305,809 for the quantities listed in the bid tabulation which would address 44,000 square yards of asphalt roadways which ultimately were eight street sections: Spinn Street, Tison Street, LJ Street, Hillside Drive, Clearspring Drive, and Robinhood Road.

A motion was made by Councilmember Canales and seconded by Mayor Pro Tem Kolby to award Bid No. 2022-02 related to Clark Construction of Texas, Inc. in the amount of \$305,809 for the 2022 city street onyx resurfacing 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 Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Absent
Councilmember Atwood Kenjura	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

9. Discuss and Possibly Act Upon Change Order No. 1 Related to City of Brenham Project No. 2022-02 for the 2022 City Street Onyx Resurfacing Project and Authorize the Mayor to Execute Any Necessary Documentation

Director of Public Works Dane Rau presented this item. Rau said this item was a deductive change order that both the City of Brenham and Clark Construction of Texas, Inc. was willing to agree on. This change order reduces the quantities of materials in order to proceed with work and complete six sections of streets with the onyx resurfacing project.

Rau said the quantity deductions were made to stay within the budgeted range and begin the project to rehabilitate some streets instead of waiting and letting them deteriorate further. The total deductions are at a value of \$75,546 which made the total project come in at \$230,263.00.

A motion was made by Mayor Pro Tem Kolby and seconded by Councilmember Saunders to approve deductive Change Order No. 1 to Clark Construction of Texas, Inc. in the amount of \$75,546.00 related to City of Brenham Project No. 2022-02 for the 2022 City street onyx resurfacing 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 Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Absent
Councilmember Atwood Kenjura	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

10. Discuss and Possibly Act Upon a Chapter 380 Agreement Between the City of Brenham and Brenham Market Square, LP and Authorize the Mayor to Execute Any Necessary Documentation

City Council passed on this item.

11. Administrative/Elected Officials Report

City staff reported on the following:

- City Manager Carolyn Miller stated that Tank Neinstedt's retirement party from the Brenham Fire Department would be at the Fireman's Training Center July 7, 2022 from 4:00 p.m. to 7:00 p.m.
- Police Chief Ron Parker presented the Brenham Police Department's strategic crowd control plan for Hot Nights, Cool Tunes.
- Public Works Director Dane Rau advised that staff was working to remove a total of 17 trees in different parks. All of the trees being removed were damaged by winter storm Uri.

City Council adjourned into Executive Session at 1:37 p.m.

EXECUTIVE SESSION

12. Texas Government Code Section 551.072 - Real Property: Deliberation Regarding the Possible Sale, Exchange, Transfer and/or Acquisition of Real Property Located in the Tax Increment Reinvestment Zone Number 1 in Brenham, Washington County, Texas

City Council reconvened into Regular Session at 2:29 p.m.

RE-OPEN REGULAR SESSION

13. Discuss and Possibly Act Upon the Possible Sale, Exchange, Transfer, and/or Acquisition of Real Property Located in the Tax Increment Reinvestment Zone Number 1 in Brenham, Washington County, Texas and Authorize the Mayor to Negotiate and Execute Any Necessary Documentation

No action was taken.

14. **Discuss and Possibly Act Upon Approval of the Allocation of Tax Increment Reinvestment Zone Number 1 Funds for the Possible Sale, Exchange, Transfer and/or Acquisition of Real Property, Located in the TIRZ Number 1 Zone, in Brenham, Washington County, Texas and Authorize the Mayor to Negotiate and Execute Any Necessary Documentation Related to the Sale, Exchange, Transfer and/or Acquisition of Said Real Property**

No action was taken.

The meeting was adjourned.

Milton Y. Tate, Jr.
Mayor

Jeana Bellinger, TRMC, CMC
City Secretary

Brenham City Council Minutes

A special meeting of the Brenham City Council was held on Monday, July 11, 2022 beginning at 8:30 a.m. at Morriss Hall in The Historic Simon Theater, 111 W. Main Street, Brenham, Texas.

Members Present:

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

Members Absent:

None

City of Brenham Staff present:

City Manager Carolyn Miller, City Secretary Jeana Bellinger, Strategic Budget Manager Tim McRoberts, General Manager of Public Utilities Debbie Gaffey, Director of Finance Stacy Hardy, Director of Public Works Dane Rau, Director of Development Services Stephanie Doland, Deputy General Manager of Public Utilities Alton Sommerfield, Director of Economic Development Susan Cates, Police Chief Ron Parker, Police Captain Dant Lange, Fire Roger Williams, Human Resources Director Susan Nienstedt, Jennifer Hill, and Monique Breaux.

Citizens/Others Present:

None

Media Present:

Jason May, Brenham Banner Press

1. Call Meeting to Order

2. **FY2022-23 Proposed Budget Discussions**

City Manager Carolyn Miller welcomed the Council and introduced Strategic Budget Officer Tim McRoberts.

McRoberts presented the following FY2022-23 proposed General Fund budget information:

- Budget Cycle and Timelines
- Budget Priorities
- FY2022-23 Economic Outlook
- Principle Issues and Challenges
 - Revenue
 - Expenditures
- FY22-23 Proposed Revenues
 - Property Tax
 - Sales Tax
 - Franchise Fees, Licenses and Permits, and other taxes
 - Charges for Service
- FY22-23 Proposed Expenditures
 - Personnel
 - Departments
- Inter-Fund Transfers
- Debt (I&S Tax Rate)
- Special Revenue Funds
 - Airport
 - Tourism and Marketing
 - BCDC
 - Drainage
 - Other Special Funds

McRoberts then went over General Fund departments individual line-item budgets and staff answered department-specific questions from City Council.

The meeting was adjourned.

Milton Y. Tate, Jr.
Mayor

Jeana Bellinger, TRMC, CMC
City Secretary

Brenham City Council Minutes

A special meeting of the Brenham City Council was held on Monday, July 12, 2022 beginning at 8:30 a.m. at Morriss Hall in The Historic Simon Theater, 111 W. Main Street, Brenham, Texas.

Members Present:

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

Members Absent:

None

City of Brenham Staff present:

City Manager Carolyn Miller, City Secretary Jeana Bellinger, Strategic Budget Manager Tim McRoberts, General Manager of Public Utilities Debbie Gaffey, Director of Finance Stacy Hardy, Director of Public Works Dane Rau, Deputy General Manager of Public Utilities Alton Sommerfield, Director of Economic Development Susan Cates, Director of Water and Wastewater Bobby Keene, Police Chief Ron Parker, Police Captain Dant Lange, Fire Roger Williams, Human Resources Director Susan Nienstedt, Jennifer Hill, Shawn Bolenbarr, Josh Daniels, Jerry Saldivar, Ande Bostain, Jason Lange, and Monique Breaux.

Citizens/Others Present:

None

Media Present:

Jason May, Brenham Banner Press; and Mark Whitehead, KWHI.

1. Call Meeting to Order

2. **FY2022-23 Proposed Budget Discussions**

City Manager Carolyn Miller welcomed the Council and introduced General Manager of Public Utilities Debbie Gaffey.

Gaffey presented the following FY2022-23 proposed Public Utilities budget information:

- Budget Challenges
- Growth
 - Accelerated Development
 - Electric Service Growth
 - Gas Service Growth
 - Water Service Growth
 - Wastewater Service Growth
- Inflation
 - Fuel Costs
 - Chemical Costs
 - Water Purchase Costs
 - Water Rate Increases of 5.5%
 - Natural Gas Prices
- Supply Shortages/Demands
- Labor
 - Turnover Ratios
 - Vacancies Impacting Overtime
 - Changes to State CDL license rules and regulations
- Capacity
 - Water Plant Treatment
 - Water Supply

Gaffey then went over each Public Utility department's individual line-item budgets and staff answered department-specific questions from City Council.

The meeting was adjourned.

Milton Y. Tate, Jr.
Mayor

Jeana Bellinger, TRMC, CMC
City Secretary

ORDINANCE NO. O-22-013

AN ORDINANCE PROVIDING FOR THE ABANDONMENT OF THE UNDEVELOPED LIVE OAK STREET RIGHT-OF-WAY CALLED 0.1133-ACRES AND BOUNDED TO THE SOUTH BY SYCAMORE STREET, BEING 25 FEET WIDE AND EXTENDING 146.60 FEET IN LENGTH AS SHOWN ON THE PLAT OF BECKER'S SUBDIVISION, AS RECORDED IN PLAT CABINET SLIDE NO. 5A, SITUATED IN THE A. HARRINGTON SURVEY, ABSTRACT 55, IN THE CITY OF BRENHAM, WASHINGTON COUNTY, TEXAS; AUTHORIZING THE CONVEYANCE THEREOF TO THE ABUTTING PROPERTY OWNERS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Brenham has previously had dedicated to it a 0.1133-acre undeveloped Live Oak Street right-of-way primarily bounded by private property as shown on the Davidson Addition Plat recorded in Plat Cabinet Slide No. 5A, Plat Records of Washington County, Texas; said 0.1133-acre street right-of-way being generally located 117 feet east of the northeast intersection of N. Chappell Hill Street and Sycamore Street and shown on Exhibit "A"; and

WHEREAS, the adjoining property owners have requested the abandonment and closing of said 0.1133-acre Live Oak Street right-of-way; and

WHEREAS, Gloria Nix owns the 1.2626 acre tract that abuts the undeveloped Live Oak Street right-of-way to the north and west and is identified as Lots 23-26, North 16 feet of Lot 38, Lots 41-46 of the Becker Subdivision; and Dara Childs owns the 0.1452-acre tract that abuts the undeveloped Live Oak Street right-of-way to the south and west and is identified as Reserve #1 of the L.D. Brown Subdivision; and

WHEREAS, the abandonment and closing of the Live Oak Street right-of-way as shown on Exhibit "A" will not create an undue burden on traffic; and

WHEREAS, the City of Brenham has no need or use for the Live Oak Street right-of-way as shown on Exhibit "A" as a public thoroughfare, and said portion of the Live Oak Street right-of-way remains undeveloped, unimproved, and unused; and

WHEREAS, pursuant to Texas Local Government Code § 272.001(b)(2) the City of Brenham may abandon streets or alleys to adjacent property owners for less than fair market value; and

WHEREAS, the City Council of the City of Brenham desires to abandon and close the northern portion of the undeveloped Live Oak Street right-of-way to the adjacent property owner to the north, Ms. Gloria Nix, as shown on Exhibits “B” and further described by metes and bounds description in Exhibit “C”; and further desires to abandon and close the southern portion of the undeveloped Live Oak Street right-of-way to the adjacent property owner to the south, Mr. Dara Childs, as shown on Exhibit “D” and further described by metes and bounds description in Exhibit “E”, said closure and abandonment being in the best interest of the citizens of Brenham;

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

SECTION I.

That the undeveloped portion of the Live Oak Street right-of-way as shown on the attached Exhibits “B” and “D” and further described by metes and bounds in Exhibits “C” and “E” is hereby abandoned and closed as a public thoroughfare.

SECTION II.

That the street right-of-way to be closed and abandoned by this Ordinance is currently undeveloped and unimproved, and any existing or future maintenance by the City of Brenham will cease.

SECTION III.

That the Mayor of the City of Brenham is hereby authorized to execute any documents necessary for the conveyance of the portion of the Live Oak Street right-of-way as shown on the attached Exhibits “B” and “D”, and further described by metes and bounds in Exhibits “C” and “E”, and incorporated herein for all purposes, to the adjoining property owners.

SECTION IV.

That the abandonment and conveyance provided for herein shall extend only to the public right, title, easement, and interest which the governing body for the City of Brenham may legally and lawfully abandon and vacate.

SECTION V.

This Ordinance shall take full force and effect immediately from and after its passage and approval on second reading and following approval by the Planning and Zoning Commission of a replat of the abandoned right-of-way parcels into conforming lots.

PASSED and **APPROVED** on its first reading this the 21st day of July 2022.

PASSED and **APPROVED** on its second reading this the 4th day of August 2022.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary

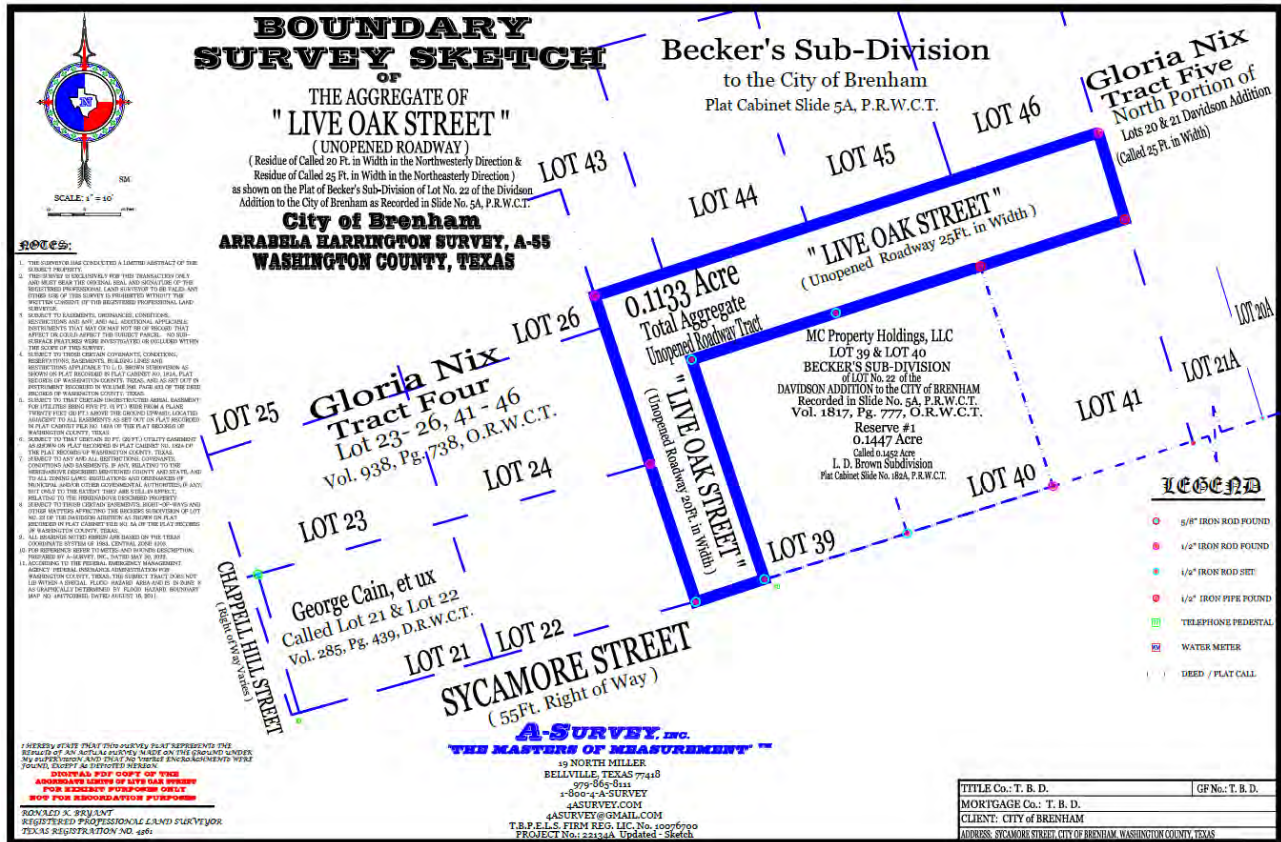


Exhibit "B"
Survey of 0.060-Acres to be Abandoned to Ms. Gloria Nix

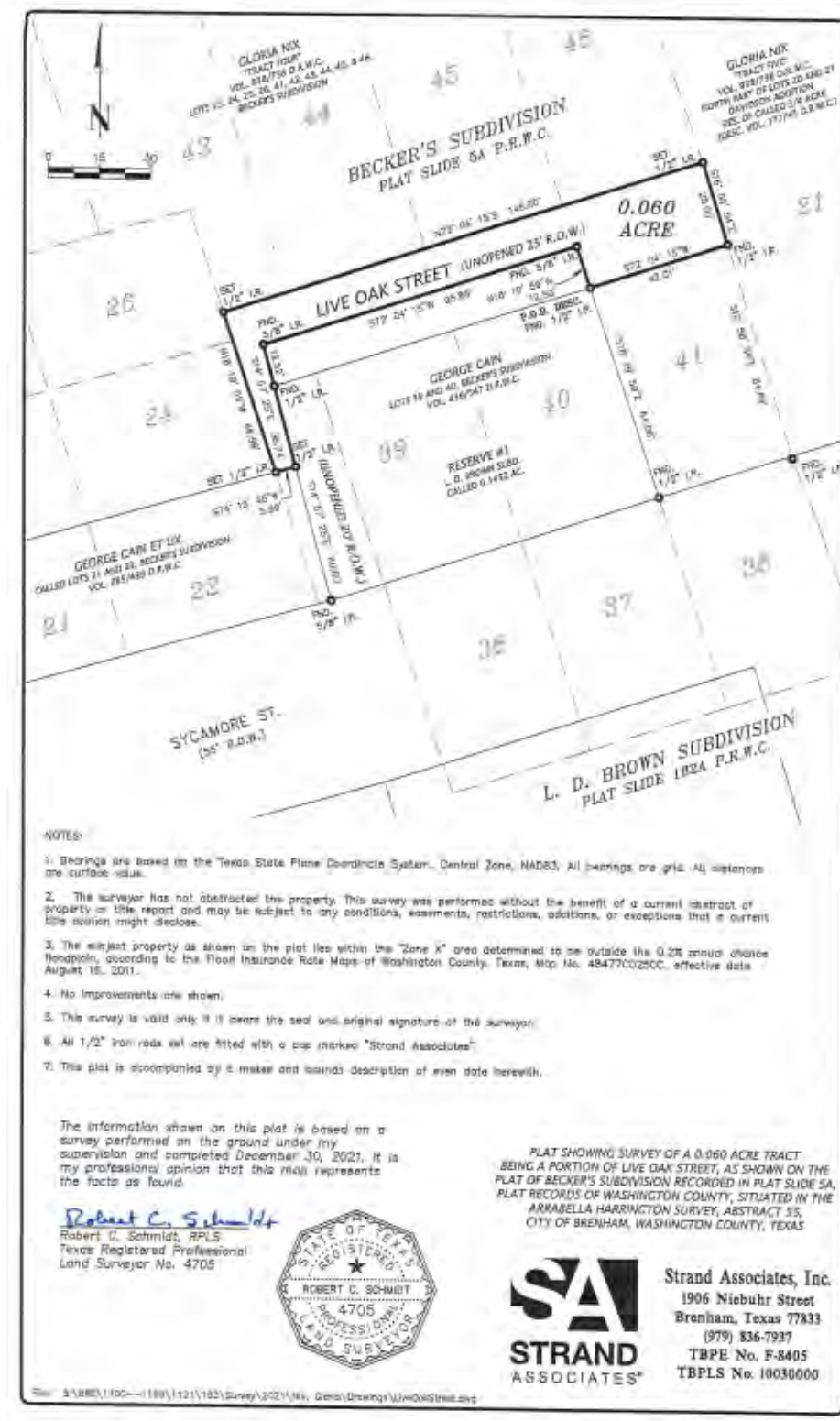


Exhibit "C"

Metes and Bounds Description of 0.060-Acres to be Abandoned to Ms. Gloria Nix



0.060 ACRE

STATE OF TEXAS)
COUNTY OF WASHINGTON)

ALL THAT CERTAIN 0.060-acre tract or parcel of land, lying and being situated in the City of Brenham, Washington County, Texas, part of the Arrabella Harrington Survey, Abstract 55, being a portion of Live Oak Street, as shown on the plat of Becker's Subdivision recorded in Plat Slide 5A, Plat Records of Washington County (P.R.W.C.). Said 0.060-acre tract being more particularly described by metes and bounds as follows.

BEGINNING at a 1/2-inch iron pipe found in the apparent south margin of Live Oak Street at the northeast corner of Reserve #1, L. D. Brown Subdivision, as shown on the plat recorded in Plat Slide 182A, P.R.W.C., same being the northeast corner of Lot 40 and the northwest corner of Lot 41 of said Becker's Subdivision, from which a 1/2-inch iron rod found at the southeast corner of said Reserve #1, the southeast corner of said Lot 40, and the southwest corner of said Lot 41 bears South 18°19'59" East, a distance of 64.08 feet;

THENCE severing Live Oak Street, North 18°19'59" West, a distance of 12.50 feet to a 5/8-inch iron rod found;

THENCE along a line 12.50 feet from and parallel to the apparent south margin of Live Oak Street and the north line of said Reserve #1, South 72°04'15" West, a distance of 95.85 feet to a 5/8-inch iron rod found;

THENCE South 14°57'25" East, at a distance of 12.52 feet pass a 1/2-inch iron rod found at the northwest corner of said Reserve #1, and continuing along a portion of the west line thereof for a total distance of 36.74 feet to a 1/2-inch iron rod set with cap marked "Strand Associates" for the lower southeast corner hereof, from which a 5/8-inch iron rod found in the north margin of Sycamore Street at the southwest corner of said Reserve #1 bears South 14°57'25" East, a distance of 40.00 feet. Said 5/8-inch iron rod also being the occupied southeast corner of the George Cain et ux. tract (Volume 285, Page 439, et seq., D.R.W.C.) called Lots 21 and 22, Becker's Subdivision, (Lots 22-26, Becker's Subdivision, called 40-feet in width per plat);

THENCE along a line 40.00 feet from and parallel to the north margin of Sycamore Street, being along the apparent north line of said George Cain et ux. tract, South 74°19'45" West, a distance of 5.99 feet to a 1/2-inch iron rod set in the apparent west margin Live Oak Street;

THENCE along the apparent west margin of Live Oak Street, along the apparent east line of Lot 24 Becker's Subdivision, and along a portion of the apparent east line of Lot 26, Becker's Subdivision; North 18°19'59" West, a distance of 48.96 feet to a 1/2-inch iron rod set for the northwest corner of Live Oak Street;

THENCE along the apparent north margin of Live Oak Street and along the apparent south line of Lots 43, 44, 45, and 46 of said Becker's Subdivision, North 72°04'15" East, a distance of 146.60 feet to a 1/2-inch iron rod set for the northeast corner of Live Oak Street in the apparent west line of the residue of "Tract Five" conveyed to Gloria Nix by instrument in Volume 938, Page 738, et seq., Official Records of Washington County, further described in Volume 177, Page 43, et seq., D.R.W.C.;

THENCE along the apparent east margin of Live Oak Street and along the apparent west line of said Gloria Nix "Tract Five", South 16°58'54" East, a distance of 25.00 feet to a 1/2-inch iron pipe found at the at the northeast corner of Lot 41, Becker's Subdivision, from which a 1/2-inch iron pipe found at the original southeast corner of said Lot 41 bears South 16°58'54" East, a distance of 64.84 feet;

THENCE along the apparent south line of Live Oak Street and the north line of said Lot 41, South 72°04'15" West, a distance of 42.01 feet to the Place of Beginning and containing 0.060 acre of land.



Notes:

1. Bearings are based on the Texas State Plane Coordinate System, Central Zone, NAD83, as determined from GPS observations. All distances are surface value.
2. This survey is valid only if it bears the seal and original signature of the surveyor.
3. This description is accompanied by a plat of even date herewith.

December 30, 2021

Robert C. Schmidt

Robert C. Schmidt, TX RPLS No. 4705



Exhibit "D"
Survey of 0.0533-Acres to be Abandoned to Mr. Dara Childs

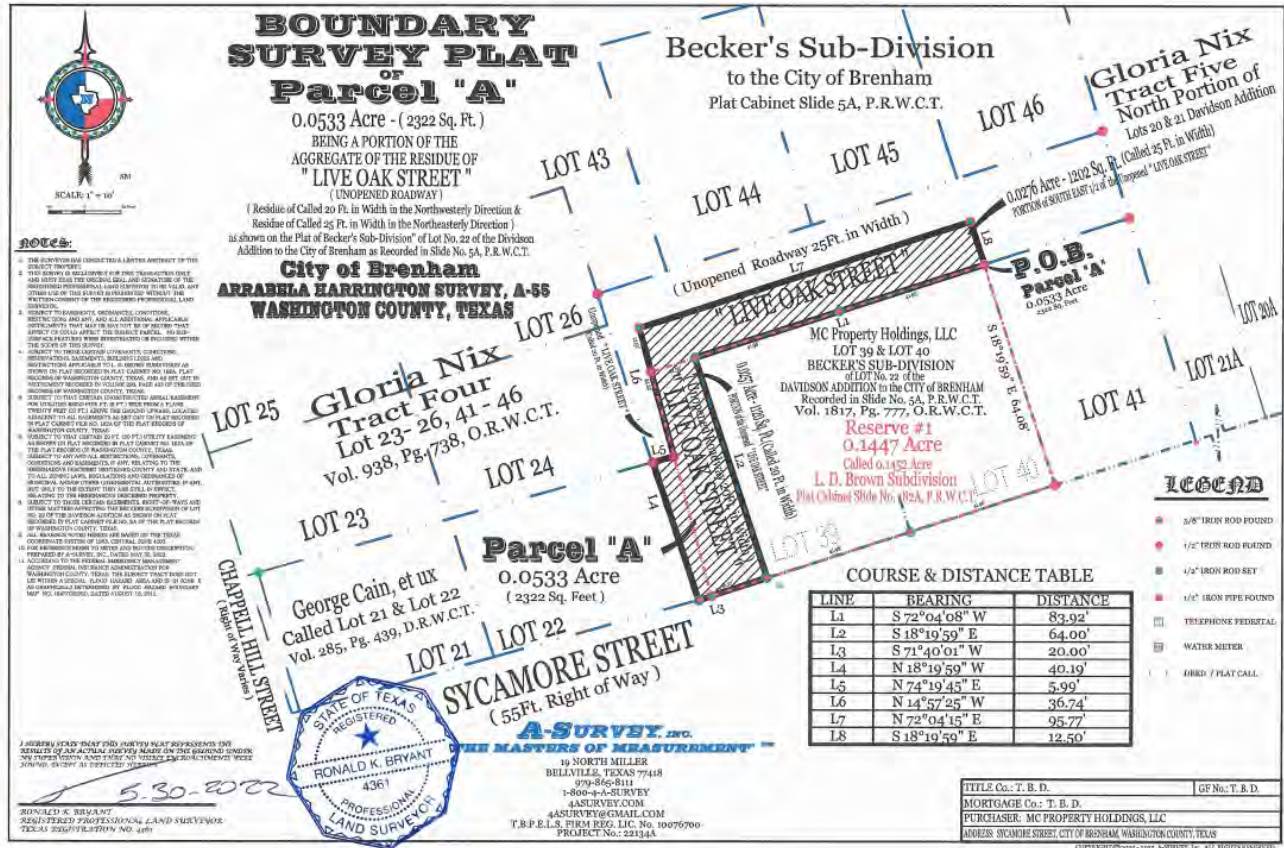


Exhibit "E"

Metes and Bounds Description of 0.0533-Acres to be Abandoned to Mr. Dara Childs

METES AND BOUNDS
DESCRIPTION
OF
0.0533 ACRE - 2,322 SQ. FT.
BEING A PORTION OF THE
AGGREGATE OF THE RESIDUE
OF
LIVE OAK STREET
(UNOPENED ROADWAY)
RESIDUE OF A CALLED 20 FT. IN WIDTH
IN A NORTHWESTERLY DIRECTION
AND
RESIDUE OF A CALLED 25 FT. IN WIDTH
IN A NORTHEASTERLY DIRECTION
AS SHOWN ON THE PLAT
OF BECKER'S SUB-DIVISION OF LOT NO. 22
OF THE DAVIDSON ADDITION
TO THE CITY OF BRENHAM
AS RECORDED IN SLIDE NO. 5A, P. R. W. C. T.

CITY OF BRENHAM
ARRABELA HARRINGTON SURVEY, ABSTRACT 55
WASHINGTON COUNTY, TEXAS

PARCEL "A"

BEING all that certain tract or parcel of land containing 0.0533 acre (2,322 Sq. Ft.) of land, more or less, being a portion of the aggregate of the residue of Live Oak Street (Unopened Roadway), residue of a called 20 Ft. in-width in a northwesterly direction and residue of a called 25 Ft. in-width in a northeasterly direction, as shown on the plat of Becker's Sub-Division of Lot No. 22 of the Davidson Addition to the City of Brenham, as recorded in Plat Cabinet Slide No. 5A, Plat Records of Washington County, Texas, City of Brenham, Arrabela Harrington Survey, Abstract 55, Washington County, Texas, said 0.0533 acre (2,322 Sq. Ft.) tract being more particularly described by metes and bounds, as follows, to-wit:

BEGINNING at a 1/2 inch iron pipe found for corner, same being the POINT OF BEGINNING and most easterly northeast corner of the tract herein described, same being the most northerly northeast corner of Lot 40 of said Becker's Sub-Division of Lot No. 22 of the Davidson Addition, and more particularly described by instrument recorded in Volume 1817, Page 777 of the Official Records of Washington County, Texas, same being the most northerly northwest corner of that certain Lot 41 of said Becker's Sub-Division of Lot No. 22 of the Davidson Addition, same being in a southerly southeast line of said Live Oak Street (Unopened Roadway) 25 Ft. in-width as depicted in said Becker's Sub-Division of Lot No. 22 of the Davidson Addition, same being the most northerly northeast corner of Reserve #1, L. D. Brown Subdivision called 0.1452 acre as recorded in Plat Cabinet Slide No. 182A of the Plat Records of Washington County, Texas, from which the most southerly southeast corner of said Lot 40, and the most southerly southwest corner of said Lot 41, and the most southerly southeast corner of said Reserve #1, and same being the northwesterly right-of-way line of Sycamore Street (55 Ft. Right-of-Way), bears South 18 degrees 19 minutes 59 seconds East, a distance of 64.08 feet to a 1/2 inch iron rod found for corner;

THENCE, with said southeasterly right-of-way line of said Live Oak Street, the northwesterly line of said Reserve #1, and the northwesterly line of said Lot 40, and said Lot 39, South 72 degrees 04 minutes 08 seconds West, pass at

✦ Continued
✦ Page 1 of 2



19 N. Miller Bellville, Texas 77418

1-979-865-8111 1-800-427-8783

T.B.P.L.S. Firm Reg./Lic. No. 10076700

- ⚡ Page 2 of 2
- ⚡ Metes and Bounds Description of 0.0533 acre (2,322 Sq. Ft.) in the
- ⚡ Arrabela Harrington Survey, Abstract 55, Washington County, Texas

a distance of 41.96 feet a 1/2 inch iron rod set for corner, same being in the northwesterly line of said Reserve #1, same being the most northerly northwest corner of said Lot 40, and same being the most northerly northeast corner of said Lot 39, in all a distance of 83.92 feet to a 1/2 inch iron rod set for corner, same being the most northerly northwest corner of said Lot 39, same being in a northwesterly line of said Reserve #1, a southeasterly interior corner of said Live Oak Street, and same being the southeasterly interior corner of the tract herein described, same being the intersection of the southeasterly right-of-way line of said Live Oak Street (25 Ft. in width), with the northeasterly right-of-way line of said Live Oak Street (20 Ft. in width), and same being a southeasterly interior corner of the tract herein described;

THENCE, departing said southeasterly right-of-way line of said Live Oak Street (25 Ft. in width), and with the northeasterly right-of-way line of said Live Oak Street (20 Ft. in width), South 18 degrees 19 minutes 59 seconds East, a distance of 64.00 feet to a 1/2 inch iron rod set for corner, same being the most southerly southwest corner of said Lot 39, same being the most southerly southeast corner and terminus of said Live Oak Street (20 Ft. in width), same being in the northwesterly right-of-way line of the aforementioned Sycamore Street, same being in the southeasterly line of said Reserve #1, and same being the most easterly southeast corner and terminus of said Live Oak Street and the tract herein described;

THENCE, with said northwesterly right-of-way line of said Sycamore Street, with the southeasterly line of said Reserve #1, and with the terminus of said Live Oak Street (20 Ft. in width), South 71 degrees 40 minutes 01 second West, pass at a distance of 16.27 feet a 5/8 inch iron rod found for corner, same being the most southerly southwest corner of said Reserve #1, same being in the southeasterly terminus of said Live Oak Street (20 Ft. in width), in all a distance of 20.00 feet to a 1/2 inch iron rod set for corner, same being the most southerly southeast corner of Lot 22 of said Becker's Sub-Division to the City of Brenham as recorded in Volume 285, Page 439 of the Deed Records of Washington County, Texas, and same being the most southerly southwest corner and terminus of said Live Oak Street (20 Ft. in width) and the tract herein described;

THENCE, departing said northwesterly right-of-way line of Sycamore Street, and with said common line, North 18 degrees 19 minutes 59 seconds West, a distance of 40.19 feet to a 1/2 inch iron rod found for corner, same being the most northerly northeast corner of said Lot 22, same being the most southerly southeast corner of Lot 24 of said Becker's Sub-Division, and same being in the southwesterly line of said Live Oak Street (20 Ft. in width), and same being a northwesterly exterior corner of the tract herein described;

THENCE, departing said southwesterly right-of-way line of Live Oak Street (20 Ft. in width) and said common line, North 74 degrees 19 minutes 45 seconds East, a distance of 5.99 feet to a 1/2 inch iron rod found for corner, same being in a southwesterly line of said Reserve #1, same being within the limits of Live Oak Street (20 Ft. in width), and same being a northwesterly interior corner of the tract herein described;

THENCE, with said common line and within the limits of Live Oak Street (20 Ft. in width), North 14 degrees 57 minutes 25 seconds West, pass at a distance of 24.22 feet a 1/2 inch iron rod found for corner, same being the most northerly northwest corner of said Reserve #1, and same being within the limits of Live Oak Street (20 Ft. in width), in all a distance of 36.74 feet to a 5/8 inch iron rod found for corner, same being within the limits of Live Oak Street, and same being the most northerly northwest corner of the tract herein described;

THENCE, within the limits of Live Oak Street, North 72 degrees 04 minutes 15 seconds East, a distance of 95.77 feet to a 5/8 inch iron rod found for corner, same being the projection of the aforementioned northeasterly line of said Becker's Sub-Division, same being within the limits of Live Oak Street, and same being the most northerly northeast corner of the tract herein described;

THENCE, departing the limits of said Live Oak Street (25 Ft. in width) and with said common projected line, South 18 degrees 19 minutes 59 seconds East, a distance of 12.50 feet to the POINT OF BEGINNING of the tract herein described and containing 0.0533 acre (2,322 Sq. Ft.) of land, more or less. All Bearings Noted Herein are Based on the Texas Coordinate System of 1983, Central Zone 4203. For Reference Refer to Boundary Survey, Prepared by A-Survey, Inc., Dated May 30, 2022.

PROJECT NO. 22134A- PARCEL "A"
MAY 30, 2022
COMPILED BY:



19 N. Miller Bellville, Texas 77418

1-979-865-8111 or 360-427-8783

T.B.P.L.S. Firm Reg./Lic. No. 10076700



Regular City Council
AGENDA ITEM 7-C.

Agenda Item: Approve an Audit Engagement Letter for Seidel Schroeder to Perform an Audit for the Fiscal Year Ending September 30, 2022 and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-August 04, 2022

Department: Finance

Staff Contact: Stacy Hardy

SUMMARY STATEMENT:

Attached is the proposed audit engagement letter from Seidel Schroeder for the fiscal year ending September 30, 2022, with the audit fee range of \$46,000 to \$48,500 for the financial statement audit. This fee range is approximately a 5% increase over the prior year. Seidel Schroeder has not had a fee increase since 2018.

This engagement letter is based on the assumption that a Single Audit will not be required. At this point we are unsure if we will meet the federal expenditure threshold requirements that trigger a Single Audit. A Single Audit is required when state and federal grant expenditures exceed \$750,000 in a fiscal year. If a Single Audit is required, the engagement letter would be revised and a small fee adjustment would be possible (estimate \$7,000-\$8,500). With the continued growth and complexity of the City's financial activities, the current fee structure is reasonable.

ATTACHMENTS:

(1) Audit Engagement Letter

RECOMMENDED ACTION:

Approve an Audit Engagement Letter for Seidel Schroeder to perform an audit for the fiscal year Ending September 30, 2022 and authorize the Mayor to execute any necessary documentation.

July 26, 2022

To The City Council of the
City of Brenham, Texas

The following represents our understanding of the services we will provide the City of Brenham, Texas.

You have requested that we audit the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the City of Brenham, Texas, as of September 30, 2022, and for the year then ended and the related notes, which collectively comprise the City of Brenham, Texas' basic financial statements as listed in the table of contents. We are pleased to confirm our acceptance and our understanding of this audit engagement by means of this letter.

The objectives of our audit are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with auditing standards generally accepted in the United States of America (GAAS) and *Government Auditing Standards*, will always detect a material misstatement when it exists. Misstatements, including omissions, can arise from fraud or error and are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

Accounting principles generally accepted in the United States of America, (U.S. GAAP,) as promulgated by the Governmental Accounting Standards Board (GASB) require that required supplementary information, such as management's discussion and analysis (MD&A) and schedules of pension and other post employment benefits, be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the GASB, 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 required supplementary information (RSI) in accordance with auditing standards generally accepted in the United States of America, (U.S. GAAS). These limited procedures will consist primarily of inquiries of management regarding their methods of measurement and presentation, and comparing the information for consistency with management's responses to our inquiries. We will not express an opinion or

provide any form of assurance on the RSI. The following RSI is required by U.S. GAAP. This RSI 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

Supplementary information other than RSI will accompany the City of Brenham, Texas' basic financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the basic financial statements and perform certain additional procedures, including comparing and reconciling the supplementary information to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and additional procedures in accordance with U.S. GAAS. We intend to provide an opinion on the following supplementary information in relation to the basic financial statements as a whole:

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

Also, the document we submit to you will include the following other additional information that will not be subjected to the auditing procedures applied in our audit of the basic financial statements:

1. Introductory section
2. Statistical data

Auditor Responsibilities

We will conduct our audit in accordance with GAAS and *Government Auditing Standards*. As part of an audit in accordance with GAAS and *Government Auditing Standards*, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery,

intentional omissions, misrepresentations, or the override of internal control.

- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Conclude, based on the audit evidence obtained, whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the City of Brenham, Texas' ability to continue as a going concern for a reasonable period of time.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements may not be detected exists, even though the audit is properly planned and performed in accordance with GAAS and *Government Auditing Standards*.

Our responsibility as auditors is limited to the period covered by our audit and does not extend to any other periods.

Compliance with Laws and Regulations

As previously discussed, as part of obtaining reasonable assurance about whether the basic financial statements are free of material misstatement, we will perform tests of the City of Brenham, Texas' compliance with the provisions of applicable laws, regulations, contracts, and agreements. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion.

Management Responsibilities

Our audit will be conducted on the basis that management acknowledges and understands that they have responsibility:

- a. For the preparation and fair presentation of the basic financial statements in accordance with accounting principles generally accepted in the United States of America;

- b. For the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of basic financial statements that are free from material misstatement, whether due to error, fraudulent financial reporting, misappropriation of assets, or violations of laws, governmental regulations, grant agreements, or contractual agreements; and
- c. To provide us with:
 - i. Access to all information of which management is aware that is relevant to the preparation and fair presentation of the basic financial statements such as records, documentation, and other matters;
 - ii. Additional information that we may request from management for the purpose of the audit;
 - iii. Unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence.
 - iv. A written acknowledgement of all the documents that management expects to issue that will be included in the annual report and the planned timing and method of issuance of that annual report; and
 - v. A final version of the annual report (including all the documents that, together, comprise the annual report) in a timely manner prior to the date of the auditor's report.
- d. For including the auditor's report in any document containing basic financial statements that indicates that such basic financial statements have been audited by us;
- e. For identifying and ensuring that the entity complies with the laws and regulations applicable to its activities;
- f. For adjusting the basic financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the current period under audit are immaterial, both individually and in the aggregate, to the basic financial statements as a whole; and
- g. For acceptance of nonattest services, including identifying the proper party to oversee nonattest work;
- h. For maintaining adequate records, selecting and applying accounting principles, and safeguarding assets;
- i. For informing us of any known or suspected fraud affecting the entity involving management, employees with significant role in internal control and others where fraud could have a material effect on the financials; and
- j. For the accuracy and completeness of all information provided.

With regard to the supplementary information referred to above, you acknowledge and understand your responsibility: (a) for the preparation of the supplementary information in accordance with the applicable criteria; (b) to provide us with the appropriate written representations regarding supplementary information; (c) to include our report on the

supplementary information in any document that contains the supplementary information and that indicates that we have reported on such supplementary information; and (d) to present the supplementary information with the audited basic financial statements, or if the supplementary information will not be presented with the audited basic financial statements, to make the audited basic financial statements readily available to the intended users of the supplementary information no later than the date of issuance by you of the supplementary information and our report thereon.

As part of our audit process, we will request from management, written confirmation concerning representations made to us in connection with the audit.

Nonattest Services

With respect to any nonattest services we perform, at the end of the year, we agree to perform the following:

- Assist in preparing the IRS Form 1099's based on information provided by you

We will not assume management responsibilities on behalf of the City of Brenham, Texas. However, we will provide advice and recommendations to assist management of the City of Brenham, Texas in performing its responsibilities.

The City of Brenham, Texas' management is responsible for (a) making all management decisions and performing all management functions; (b) assigning a competent individual to oversee the services; (c) evaluating the adequacy of the services performed; (d) evaluating and accepting responsibility for the results of the services performed; and (e) establishing and maintaining internal controls, including monitoring ongoing activities.

Our responsibilities and limitations of the nonattest services are as follows:

- We will perform the services in accordance with applicable professional standards.
- The nonattest services are limited to the preparation of Form 1099 services previously outlined. Our firm, in its sole professional judgment, reserves the right to refuse to do any procedure or take any action that could be construed as making management decisions or assuming management responsibilities, including determining account coding and approving journal entries.

Reporting

We will issue a written report upon completion of our audit of the City of Brenham, Texas' basic financial statements. Our report will be addressed to the Members of the City Council of the City of Brenham, Texas. Circumstances may arise in which our report may differ from its expected form and content based on the results of our audit. Depending on the nature of these

circumstances, it may be necessary for us to modify our opinions, add an emphasis-of-matter or other-matter paragraph(s) to our auditor's report, or if necessary, withdraw from the engagement. If our opinions on the basic financial statements 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 to issue a report as a result of this engagement.

In accordance with the requirements of *Government Auditing Standards*, we will also issue a written report describing the scope of our testing over internal control over financial reporting and over compliance with laws, regulations, and provisions of grants and contracts, including the results of that testing. However, providing an opinion on internal control and compliance will not be an objective of the audit and, therefore, no such opinion will be expressed.

Other

We understand that your employees will prepare all confirmations we request and will locate any documents or support for any other transactions we select for testing.

If you intend to publish or otherwise reproduce the basic financial statements and make reference to our firm, you agree to provide us with printers' proofs or masters for our review and approval before printing. You also agree to provide us with a copy of the final reproduced material for our approval before it is distributed.

Regarding the electronic dissemination of audited financial statements, including financial statements published electronically on your Internet website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

Professional standards prohibit us from being the sole host and/or the sole storage for your financial and non-financial data. As such, it is your responsibility to maintain your original data and records and we cannot be responsible to maintain such original information. By signing this engagement letter, you affirm that you have all the data and records required to make your books and records complete.

Provisions of Engagement Administration, Timing and Fees

During the course of the engagement, we may communicate with you or your personnel via fax or e-mail, and you should be aware that communication in those mediums contains a risk of misdirected or intercepted communications.

We expect to begin our audit planning process during October, 2022, audit fieldwork beginning in November, 2022 and to issue our reports no later than March I, 2023.

Michele Kohring Kwiatkowski is the engagement partner for the audit services specified in this letter. Her responsibilities include supervising Seidel Schroeder's services performed as part of this engagement and signing or authorizing another qualified firm representative to sign the audit report.

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 \$46,000 to \$48,500. 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.

During the course of the audit we may observe opportunities for economy in, or improved controls over, your operations. We will bring such matters to the attention of the appropriate level of management, either orally or in writing.

You agree to inform us of facts that may affect the basic financial statements of which you may become aware during the period from the date of the auditor's report to the date the financial statements are issued.

We agree to retain audit documentation or work papers for a period of at least five years from the date of our report.

At the conclusion of our audit engagement, we will communicate to the members of the audit committee the following significant findings from the audit:

- Our view about the qualitative aspects of the entity's significant accounting practices;
- Significant difficulties, if any, encountered during the audit;
- Uncorrected misstatements, other than those we believe are trivial, if any;
- Disagreements with management, if any;
- Other findings or issues, if any, arising from the audit that are, in our professional judgment, significant and relevant to those charged with governance regarding their oversight of the financial reporting process;
- Material, corrected misstatements that were brought to the attention of management as a result of our audit procedures;
- Representations we requested from management;
- Management's consultations with other accountants, if any; and
- Significant issues, if any, arising from the audit that were discussed, or the subject of correspondence, with management.

The audit documentation for this engagement is the property of Seidel Schroeder and constitutes confidential information. However, we may be requested to make certain audit documentation available 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 pursuant to authority given to it by law or regulation, or to peer reviewers. If requested, access to such audit documentation will be provided under the supervision of Seidel Schroeder's personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. The aforementioned parties may intend, or decide, to distribute the copies of information contained therein to others, including other governmental agencies. In accordance with the requirements of *Government Auditing Standards*, we have attached a copy of our latest external peer review report of our firm for your consideration and files.

Please sign and return the attached copy of this letter to indicate your acknowledgment of, and agreement with, the arrangements for our audit of the basic financial statements including our respective responsibilities.

We appreciate the opportunity to be your financial statement auditors and look forward to working with you and your staff.

Respectfully,

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 7-D.

Agenda Item: Approve the Appointment of Charles Keese to Fill a Vacancy on the Historic Preservation Board, for an Unexpired Term to Expire on December 31, 2024 and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-August 04, 2022

Department: Administration

Staff Contact: Jeana Bellinger

SUMMARY STATEMENT:

The Boards and Committees Sub-Committee of City Council (Canales, Cook and Saunders) selected Charles Keese to fill the vacancy on the HPO Board. Susan Cates reached out to Mr. Keese and he is willing to serve.

ATTACHMENTS:

(1) Application for Appointment

RECOMMENDED ACTION:

Approve the appointment of Charles Keese to fill a vacancy on the Historic Preservation Board, for an unexpired term to expire on December 31, 2024 and authorize the Mayor to execute any necessary documentation.



REQUEST FOR APPOINTMENT TO CITY OF BRENHAM BOARDS AND COMMISSIONS

Name of Board or Commission in which you have an interest:

- | | |
|--|---|
| ☐ Animal Shelter Advisory Committee | ☐ Board of Adjustments |
| ☐ Brenham Community Development Corp. | ☐ Brenham Housing Authority |
| ☐ Building Standards Commission | ☐ Main Street Board |
| ☐ Library Advisory Board | ☐ Tourism Advisory Board |
| ☐ Parks & Recreation Board | ☐ Planning & Zoning Board |
| ☐ Police Citizens Advisory Board | ☒ Historic Preservation Board |

(Composition, terms, duties and responsibilities are outlined on the Attachment)

Name: Mr. Keese Charles A
(Title) (Last) (First) (Middle)

Residence Address: 3671 FM 109, Brenham, TX 77833
(Street) (City) (State) (Zip)

Mailing Address: (If different from above)

(Street) (City) (State) (Zip)

Preferred Phone and Fax: 979-277-2506
(Phone) (Fax)

Email Address: ckeese@keeseearchitects.com

Occupation: Architect

Employer: self - Keese & Associates LLP

Are you a registered voter in Washington County? ☒ Yes ☐ No

Are you a resident of the City of Brenham? ☐ Yes ☒ No Length of residency:

Are you a resident of Washington County? ☒ Yes ☐ No Length of residency: 51 Years

Do you, your spouse or your employer have any financial interest, directly or indirectly, in matters that might come before the Board to which you seek appointment?

☒ Yes ☐ No If yes, explain: I may have an architectural project in town that is a Historical Preservation project.

Applicant Name: Charles A. Keese, AIA

BACKGROUND

Education/Training: Master of Architecture, TAMU; Certificate in Historic Preservation, TAMU;

Areas of Interest: Photography, Woodworking

Current or Past Volunteer Experience/Community Service:

Please specify current or past volunteer experience/community service, if any, on Boards, Commissions, Corporations, Non-Profit Entities, Agencies, or other Entities. Additional information may be attached.

Organization: Manager for Red Cross Shelter at St. Mary's Catholic Church during hurricanes Katrina and Rita

Organization: _____

Organization: _____

Organization: _____

Reasons for seeking appointment: Please attach a brief narrative outlining your interests and qualifications for seeking this appointment. You may also add a resume or any additional documentation.

I have read and understand the instructions and appointment process. I certify that all statements that I have made on this application and other supplementary materials are true and correct. I acknowledge that any false statement or misrepresentation on this application or supplementary materials will be cause for refusal of appointment or immediate dismissal at any time during the period of my appointment. If appointed, I agree to attend a new board member training session conducted by the City Secretary's Office.

Signature



March 17, 2022

Date

FILE THIS COMPLETED APPLICATION FORM WITH CITY SECRETARY'S OFFICE ON OR BEFORE 5:00 P.M. ON OCTOBER 1ST.

City of Brenham – Office of the City Secretary
P.O. Box 1059
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(Original copy will be kept on file in the City Secretary's office for 12 months from the date of submission)



Keese & Associates
Architecture

Charles A. Keese, AIA, RID
Registered Architect and Interior Designer

Bachelor of Science, Industrial Education 1971, Texas A&M University
Master of Architecture, 1992, Texas A&M University
Certificate in Historic Preservation, 2000, Texas A&M University

Member American Institute of Architects
Member Texas Society of Architects
Member Brazos Chapter of American Institute of Architects, Chapter
President 2007



Awards:

Charles E. Peterson Prize, 1st Place, Giddings-Wilkin House, HABS, 1991
J.R.'s Antiques, Brenham, TX; Main Street Project of the Year
Brenham Airport Terminal - Small Airport of the Year 2004, Aviation Division, Texas Department of Transportation

Projects as Design Architect:

St. Paul's Lutheran Church & Fellowship Remodeling, Brenham, Texas
Texas A&M University, Indoor Batting Cages and Training Facility at Olsen Field, College Station, Texas
LaRoche Chevrolet, Renovation and Additions to Current Facility, Brenham, Texas
Washington County Annex Office Building, Brenham, Texas
Washington County Events Center, Brenham, Texas
Washington County Annex at Main/Park Streets, Brenham, Texas
Courthouse Renovations – 6 Projects to Update existing Courthouse, Brenham, Texas
City of Brenham Pocket Parks and Parking, Phase I, Brenham, Texas
Brenham Airport Terminal, Brenham, Texas
Texas A&M University, Jack E. Brown Building Renovation, College Station, Texas
Texas A&M University, Reed McDonald Building, Computer Lab Renovations, College Station, Texas

Projects as Specification Writing Consultant for other Architectural Firms:

Houston Zoo Office Building and Garage with Brave Architecture, Houston, Texas
Dr. Shannon Walker Neighborhood Library with Brave Architecture, Houston, Texas
The Tree Farm, a golf course resort with cabins, with Rivers Barden Architects, Leesburg, South Carolina
Tellepsen YMCA with Kirksey Architecture, Houston, Texas
Creekside YMCA with Kirksey Architecture, Houston, Texas
Saudi Arabian Consulate with Studio Red Architects, Houston, Texas
First Baptist Church Woodlands with Studio Red Architects, The Woodlands, Texas
Woodlands Church East at Atascocita with Studio Red Architects, Atascocita, Texas
Metro National Treehouse Office Building with Studio Red Architects, Houston, Texas
Brazosport College, Dow Academic Complex with Kirksey Architecture, Freeport, Texas
Golden Nugget Hotel and Landry Aquarium Restaurant with Kirksey Architecture, Las Vegas Nevada
Montgomery Elementary School with Studio Red Architects, Houston, Texas
San Benito Natatorium and Performing Arts Center, San Benito ISD, with ROFA Architects, McAllen, Texas



Regular City Council
AGENDA ITEM 7-E.

Agenda Item: Approve a Multi-Year Contract Between the City of Brenham and Pitney Bowes Global Financial Services, LLC Related to the Lease of Mail Meter Equipment and Associated Software, In the Amount of \$2,792.79, at the Brenham Police Department and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-August 04, 2022

Department: Police Department

Staff Contact: Christi Korth

SUMMARY STATEMENT:

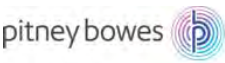
The Police Department uses a Pitney Bowes ('PBI') postage meter and associated software for its outgoing mail. This meter allows staff to weigh mail and purchase and print appropriate postage. The model currently in use has been in place for ten years, and PBI has informed the City that it will no longer be able to provide service for this equipment. This Agreement is for lease of a new model postage meter. The total monthly cost is \$44.33 and the lease term is 63 months, for a total cost of \$2,792.79. At the end of the lease term, the City will have the option to return the equipment, enter into a new lease agreement, or purchase the equipment at its fair market value.

ATTACHMENTS:

- (1) Metering Equipment Lease Agreement
- (2) Terms and Conditions

RECOMMENDED ACTION:

Approve a multi-year contract between the City of Brenham and Pitney Bowes Global Financial Services, LLC related to the lease of mailing equipment and associated software, in the amount of \$2,792.79, at the Brenham Police Department and authorize the Mayor to execute any necessary documentation.



Lease Agreement

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Agreement Number

Your Business Information

Full Legal Name of Lessee / DBA Name of Lessee	Tax ID # (FEIN/TIN)
BRENHAM POLICE DEPARTMENT	746000404

Sold-To: Address
1800 LONGWOOD DR, BRENHAM, TX, 77833-5243, US

Sold-To: Contact Name	Sold-To: Contact Phone #	Sold-To: Account #
* Christi Korth	9793377364	0010707876

Bill-To: Address
1800 LONGWOOD DR, BRENHAM, TX, 77833-5243, US

Bill-To: Contact Name	Bill-To: Contact Phone #	Bill-To: Account #	Bill-To: Email
* Christi Korth	9793377364	0010707876	ckorth@cityofbrenham.org

Ship-To: Address
1800 LONGWOOD DR, BRENHAM, TX, 77833-5243, US

Ship-To: Contact Name	Ship-To: Contact Phone #	Ship-To: Account #
* Christi Korth	9793377364	0010707876

PO #

Your Business Needs

Qty	Item	Business Solution Description
1	SPMAILSTATION	SendPro Mailstation
1	COVER-SPM	Protective Dust Cover - SPMailStation
1	DMMRK	Return Kit for MailStation
	F9S6	SendPro Mailstation Install and Training
1	HZ00	SendPro Mailstation with 5lb Scale
1	PTJ1	SendPro Online-PitneyShip
1	PTJ8	SPO-PitneyShip Mailing included w HW
1	PTJN	Single User Access
1	PTJR	50 User Access with Hardware or Meter
1	PTKQ	SendPro Mailstation Stamps 50 Users
1	STDSLA	Standard SLA-Equipment Service Agreement (for SendPro Mailstation)

Your Payment Plan

Initial Term: 63 months	Initial Payment Amount:	
Number of Months	Monthly Amount	Billed Quarterly at*
63	\$ 44.33	\$ 132.99

*Does not include any applicable sales, use, or property taxes which will be billed separately.

- ☐ Tax Exempt Certificate Attached
- ☐ Tax Exempt Certificate Not Required
- ☒ Purchase Power® transaction fees included
- ☐ Purchase Power® transaction fees extra

Your Signature Below

By signing below, you agree to be bound by all the terms of this Agreement including the Pitney Bowes Terms (Version 3/22), which are available at <http://www.pb.com/termsconditions> and are incorporated by reference. You acknowledge that you may not cancel the lease for any reason and that all payment obligations are unconditional. The lease will be binding on us after we have completed our credit and documentation approval process and have signed below. The lease requires you either to provide proof of insurance or participate in the ValueMAX® equipment protection program (see Section 16 of the Pitney Bowes Terms) for an additional fee. If software is included in the Order, additional terms apply which are available by clicking on the hyperlink for that software located at <http://www.pitneybowes.com/us/license-terms-of-use/software-and-subscription-terms-and-conditions.html>. Those additional terms are incorporated by reference.

Not Applicable

State/Entity's Contract#

Lessee Signature

Print Name

Title

Date

Email Address

Pitney Bowes Signature

Print Name

Title

Date

Sales Information

Brian Richbrian.rich@pb.com

Account Rep NameEmail AddressPBGFS Acceptance

PITNEY BOWES TERMS

Thank you for choosing Pitney Bowes products and services. These Terms and the executed order (the “**Order**”) make up your agreement with Pitney Bowes (this “**Agreement**”). Please read this Agreement carefully.

Let’s start with a few definitions that should help you better understand your agreement. “**PBI**” means Pitney Bowes Inc. “**Pitney Bowes**” means PBI and its subsidiaries. “**PBGFS**” means Pitney Bowes Global Financial Services LLC, a wholly-owned subsidiary of PBI, or one of its subsidiaries. “**We**”, “**our**” or “**us**” refers to the Pitney Bowes companies with whom you’ve entered into the Order. “**You**” or “**your**” refers to the entity identified on the Order. “**Meter**” means any postage meter supplied by PBI under the Order, including (i) in the case of a Connect+®, a SendPro® P series or a SendPro C series mailing system, the postal security device that accounts for and enables postage to be purchased and printed (“PSD”), and (ii) in the case of all other mailing systems, the PSD, the user interface or keyboard and display and the print engine. “**Meter Services**” means access to the PSD to download, account for, and enable printing of postage within a PBI Postage Evidencing System as defined in Title 39, Part 501 of the Code of Federal Regulations (“**CFR**”); USPS mandated processes associated with the PSD, including registration, usage reporting and withdrawal; repair or replacement of the PSD as described in Section 33; and the Soft-Guard Program outlined in Section 35. “**Equipment**” means the equipment listed on the Order, excluding any Meter or standalone software. “**Lease**” means Lease terms and conditions set out in Sections 10 through 17. “**Installment Sale**” means installment sale terms and conditions set out in Sections 18 through 24.

The provisions included in these Terms consist of: (i) General Terms; (ii) Lease Terms; (iii) Installment Sale Terms; (iv) a Service Level Agreement; (v) Equipment Rental and Meter Services Terms; (vi) an Acknowledgement of Deposit required by the United States Postal Service in any transaction involving a Meter; (vii) Purchase Power® Terms for a limited purpose credit line that may be available to you; and (viii) provisions relating to specific products.

GENERAL TERMS

1. Warranties

We warrant that all PBI-branded equipment (“**PBI Equipment**”) will be free from defects in material and workmanship and will perform according to the operator guides for a period of ninety days from the date (i) the PBI Equipment is installed at your location when PBI installs the PBI Equipment for you or (ii) the PBI Equipment is delivered to you when you can install it yourself. The DI2000™ inserting system has its own unique warranty that you can see at pitneybowes.com/us/di2000-terms.html.

- (a) A defect doesn’t include the failure of rates within a rate update to conform to published rates.
- (b) We warrant that any service (“**Service**”) we perform under the Service Level Agreement set out in Sections 25 through 30 (the “**SLA**”) will be performed in a professional and workmanlike manner.
- (c) **YOUR SOLE REMEDY FOR A WARRANTY CLAIM IS TO HAVE US REPAIR OR REPLACE THE PBI EQUIPMENT OR, IN THE CASE OF DEFECTIVE SERVICE, REPERFORM THE SERVICE.**
- (d) There is no warranty for PBI Equipment that needs to be repaired or replaced because of any Excluded Circumstance. “**Excluded Circumstance**” is a circumstance outside of PBI’s control, including an accident, your negligent or reckless use of the equipment, use of the equipment which exceeds our recommendations or in a way not authorized by this Agreement or any operator guide, use of the equipment in an environment with unsuitable humidity, line voltage, damage in transit, software virus, loss of data, loss or fluctuation of power, fire, flood or other natural causes, and other external forces beyond our control, servicing of the equipment by someone other than us, failure to use required software updates, use of the equipment with any system where we have told you that we will no longer provide support or that we have advised you is no longer compatible, or use of third party supplies (such as ink), hardware or software that

results in (i) damage to equipment (including damage to printheads), (ii) poor indicia, text or image print quality, (iii) indicia readability failures or (iv) a failure to print indicia, text or images.

- (e) The print engine(s), print engine components, structural components and printed circuit board assemblies supplied with or within the PBI Equipment may be reclaimed, reconditioned or remanufactured. These items are warranted to perform according to the same standards as the equivalent new item.
- (f) The warranty doesn't cover ink, integrated printhead/ink cartridges, ink rollers, toner and drum cartridges, ribbons and similar items ("**Consumable Supplies**").
- (g) **EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, WE (ON BEHALF OF OURSELF AND OUR SUPPLIERS) MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS TO THE EQUIPMENT OR SERVICES. WE MAKE NO REPRESENTATION OR WARRANTY AS TO ANY THIRD PARTY EQUIPMENT. WE AGREE TO PASS THROUGH TO YOU ALL THIRD PARTY EQUIPMENT WARRANTIES TO THE EXTENT PERMITTED.**

2. Limitation of Liability

OUR TOTAL LIABILITY (INCLUDING ANY LIABILITY OF OUR SUPPLIERS) IS LIMITED TO THE FEES PAID BY YOU FOR THE APPLICABLE EQUIPMENT OR SERVICES. NEITHER WE NOR OUR SUPPLIERS IS LIABLE FOR ANY: (I) DAMAGE YOU MAY INCUR BY REASON OF YOUR MISUSE OR NEGLIGENT USE OF THE EQUIPMENT OR YOUR NEGLIGENT ACTS OR OMISSIONS OR (II) INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING COMMERCIAL LOSS, OR LOST PROFITS, DATA OR GOODWILL, FOR ANY MATTER RELATING TO THIS AGREEMENT.

3. Default and Remedies

- (a) If you don't make any payment within three days after the due date shown on our invoice, you breach any other obligation under this Agreement or under any other agreement with Pitney Bowes and such breach continues for thirty days after we give you notice or you become insolvent or file for bankruptcy, you will be in default and we may:
 - (i) cancel this Agreement and any other agreements Pitney Bowes has with you;
 - (ii) require you to pay to us immediately all amounts payable under the Lease, Installment Sale or other agreements, whether then due or payable in the future;
 - (iii) disable the Meter;
 - (iv) require you to return the Equipment and Meter, and delete or remove software; and deny you access to software;
 - (v) if you don't return the Equipment, require you to immediately pay to us an amount equal to the value of the Equipment, as determined by us;
 - (vi) charge you a late charge for each month that your payment is late;
 - (vii) charge you a check return fee for payments made by you with insufficient funds; and
 - (viii) pursue any other remedy, including repossessing the Equipment and Meter without notice to you. To the extent permitted by law, you waive any notice of our repossession or disposition of the Equipment or Meter. By repossessing the Equipment or Meter, we aren't waiving our right to collect the balance due.
- (b) You agree to pay all our costs, including attorneys' fees, incurred in enforcing our rights.
- (c) We may suspend any services during any period that your account is more than thirty days past due.

4. Taxes

You agree to pay us for all applicable sales, use, property or other taxes (excluding taxes on net income) related to the Lease, Equipment rental agreement, Installment Sale agreement or Meter Services agreement based on or measured by your payments, the Equipment, Equipment location, Meter and Meter location. We will determine the amount of all property and similar taxes to be charged to you based on our reasonable valuation of the Equipment or of the Meter, taking into consideration tax rates

and depreciation. If any of these taxes are applicable, you agree to pay a tax administrative charge set by us without reference to the tax charged or services performed; such fee and charge won't exceed a total of \$35 per year for each Lease schedule or Equipment rental agreement or Meter Services agreement.

5. Embedded Software; Applications

(a) Our Equipment may contain embedded software. For embedded software, you agree that: (i) we and our licensors own the copyrights and other intellectual property to it; (ii) you are licensed only to use it with our Equipment in which it resides; (iii) you won't copy, modify, de-compile, or attempt to unbundle, reverse engineer or create derivative works of it; and (iv) you won't distribute or disclose it (or any portion) to anyone. Technical support for embedded software will be given according to the SLA covering the Equipment with the embedded software.

(b) Certain products and services may provide you an opportunity to access applications provided by us or a third party. Each application you access will have its own terms and conditions applicable to your use of that application located within it, and by using the application you agree to those terms and conditions.

6. Internet Access Point and Analog Connectivity

(a) The internet connectivity for the Equipment or Meter may use an internet access point provided by us. You may only use this access point for connectivity between the Equipment or Meter and the internet and for no other purpose. You agree to pay all costs resulting from the use of the access point in violation of this restriction.

(b) **IF YOU USE AN ANALOG CONNECTION FOR YOUR MAILING SYSTEM, YOU ACKNOWLEDGE THAT THE ANALOG CONNECTIVITY IS PROVIDED BY A THIRD PARTY SUPPLIER. NEITHER WE NOR OUR SUPPLIERS PROVIDE ANY WARRANTY WITH RESPECT TO THE FUNCTIONALITY OR QUALITY OF THE ANALOG CONNECTION. IF THE THIRD PARTY SUPPLIER NO LONGER PROVIDES ANALOG CONNECTION CAPABILITY, WE WON'T BE RESPONSIBLE FOR PROCURING AN ALTERNATIVE SUPPLIER AND YOU WILL HAVE TO USE A DIGITAL CONNECTION.**

7. Security Interest

You grant us a purchase money security interest in the Equipment, any replacements, and any proceeds from the sale of the Equipment, to secure payment of any balance due. We have the right to recover the Equipment if you haven't paid for it. We may file a copy of this Agreement as a financing statement with the State authorities. If you are leasing Equipment, you authorize us to file a Uniform Commercial Code financing statement naming you as debtor/lessee with respect to the Equipment in order to protect our interest in the Equipment. If you have purchased Equipment under an Installment Sale agreement, you authorize us to file a Uniform Commercial Code financing statement naming you as debtor with respect to the Equipment in order to protect our interest in the Equipment.

8. Delivery

You bear all shipping charges for physical delivery of the Equipment, Meters and software.

9. Miscellaneous

(a) We will use your information in accordance with our [Privacy Statement](#).

(b) You agree to use the Equipment and Meter only for business or commercial purposes, and not for personal, family, or household purposes.

(c) We aren't responsible for any delay or failure to perform resulting from causes outside of our control.

- (d) You may not assign this Agreement without our prior written consent. Any assignment without our consent is void.
- (e) Payments aren't subject to setoff or reduction.
- (f) **ANY LEGAL ACTION YOU FILE AGAINST US MUST BE STARTED WITHIN ONE YEAR AFTER THE EVENT GIVING RISE TO YOUR CLAIM. YOU WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION RELATED TO THIS AGREEMENT.**
- (g) We can only change this Agreement if we both agree to do so in writing. You may use a purchase order to offer to obtain equipment or services but none of its provisions will modify or supersede these provisions unless we expressly agree in writing. If any provision in this Agreement is found to be invalid or unenforceable, the remaining provisions won't be affected.
- (h) Our respective rights and obligations under Sections 2 (Limitation of Liability), 3 (Default and Remedies) and 4 (Taxes) will survive termination of this Agreement.
- (i) We may deliver any notice and other communication to you under this Agreement by email to the email address that we have on file for you. You agree to the delivery of these notices and other communications by email. We may call you at any number you give to us.
- (j) This Agreement is governed by the laws of the State of Delaware.
- (k) You agree that we can use your name in a client list and identify you as a client when communicating with prospective clients, in each case along with our product or service that you are using. You agree that we can use your name and logo in marketing content, including in an advertising campaign, with your prior consent.
- (l) You agree to comply with all applicable export control laws and regulations.

LEASE TERMS

10. Lease of Equipment; Provider of Leasing Services

If you are leasing Equipment, these Lease terms apply. PBI is the manufacturer of the Equipment. PBGFS provides you with the leasing services. The term of this Lease is the number of months stated on the Order (the "**Lease Term**"). **You may not cancel this Lease for any reason and all payment obligations under this Lease are unconditional.** You understand that we own the Equipment. PBI owns any Meter as USPS regulations require. Except as stated in Section 13, you don't have the right to become the owner of the Equipment at the end of the Lease Term.

11. Lease Commencement Date

If none of the Equipment on your Order includes installation, the Lease Term commences on the date as of which all of the Equipment has shipped. If your Order includes installation of any Equipment (the "**Install Equipment**"), then your Lease Term will commence on the date as of which all Equipment has shipped and all of the Install Equipment has been installed; provided, however, that if (i) PBI has been ready, willing and able to install all of the Install Equipment and (ii) 90 days have passed since the Install Equipment has shipped (the "**Install Period**") but PBI has been unable to install the Install Equipment as a result of any action or inaction by you, then the Lease Term shall commence on the last day of the Install Period. You agree that the Install Period provides you with an adequate amount of time to be able to allow PBI to install the Install Equipment and that you will take any and all actions necessary to enable the installation.

12. Payment Terms

We will invoice you quarterly in advance for all payments on the Order, unless the Order says otherwise (each such payment is a "**Periodic Payment**"). You will make each Periodic Payment by the due date

shown on our invoice. Your Periodic Payment may include a one-time origination fee, amounts carried over from a previous lease, software license and maintenance fees and other charges. Any Meter Services fees, SLA fees and subscription fees (collectively “**PBI Payments**”) will be included with your Periodic Payment and begin with the start of the Lease Term. After the Lease Term, your Periodic Payment will increase if your PBI Payments increase.

13. End of Lease Options

During the 90 days before your Lease ends, you may, unless you are in default: (i) enter into a new lease or an amended lease with us; (ii) purchase the Equipment “as is, where is” for its fair market value; or (iii) return the Equipment and Meter in their original condition, reasonable wear and tear excepted, and pay us our then applicable processing fee (including any equipment return fee). If you return the Equipment and Meter, you will, as specified by us, either properly pack and return them to us in the return box and with the shipping label provided by us or furnish them to a service carrier specified by us to pick up and ship them to us. If you don’t do one of the things listed in clause (i), (ii) or (iii) above, you will be deemed to have agreed to enter into successive month to month extensions of the term of this Lease. You may choose to cancel the automatic extensions at any time by giving us 30 days’ written notice by creating a case at pitneybowes.com/us/contact-us.html (follow the instructions under “how to create a case”). Upon cancellation, you agree to either return all items as provided in this Section 13 or purchase the Equipment.

14. WARRANTY AND LIMITATION OF LIABILITY

PBI PROVIDES YOU WITH THE LIMITED WARRANTIES IN SECTION 1. PBGFS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR FREEDOM FROM INTERFERENCE OR INFRINGEMENT, AND PBGFS ISN’T LIABLE FOR ANY LOSS, DAMAGE (INCLUDING INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES) OR EXPENSE CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT.

15. Equipment Obligations

You will keep the Equipment free from liens and in good condition and working order. We may inspect the Equipment and related maintenance records. You may not move the Equipment from the location specified on the Order without our prior written consent.

16. Risk of Loss and ValueMAX® Program

- (a) You bear the entire risk of loss, theft, damage or destruction to the Equipment from the date of shipment by us until the Equipment is returned to, and received by, us, regardless of cause, ordinary wear and tear excepted (“**Loss**”). No Loss will relieve you of any of your obligations under this Lease. You must immediately notify us in writing of any Loss. To protect the Equipment from loss, you will either: (i) keep the Equipment insured against Loss for its full replacement value under a comprehensive policy of insurance or other arrangement that is reasonably satisfactory to us (“**Insurance**”); or (ii) be enrolled in PBGFS’ ValueMAX program described in paragraph (b) below.
- (b) YOU MUST CALL US AT 1-800-732-7222 OR GO TO pitneybowes.com/us/valuemaxoptout AND PROVIDE US WITH EVIDENCE OF INSURANCE IF YOU DO NOT WISH TO BE ENROLLED IN THE VALUEMAX PROGRAM. If you don’t provide evidence of Insurance and haven’t previously enrolled in our equipment replacement program (ValueMAX), we may include the Equipment in the ValueMAX program and charge you a fee, which we will include as an additional charge on your invoice. We will provide written notice reminding you of your Insurance obligations described in paragraph (a) above. If the Equipment is included in the ValueMAX program and any Loss occurs (other than from your gross negligence or willful misconduct, which is not covered by ValueMAX), we will (unless you are in default) repair or replace the Equipment. We aren’t liable to you if we terminate the ValueMAX program. By providing the ValueMAX program, we aren’t offering or selling you insurance; accordingly,

regulatory agencies haven't reviewed this Lease, this program or its associated fees, nor are they overseeing our financial condition.

17. Other Lease Terms

- (a) If more than one lessee is named in this Lease, liability is joint and several. You, and any guarantor signing the Order or any documents executed in connection with this Lease, agree to furnish us financial information upon request. Each of these persons authorizes us to obtain credit reports on them now and in the future.
- (b) You may not assign or sublet the Equipment, the Meter or this Agreement without our prior written consent. Any assignment without our consent is void. We may sell or assign all or part of this Lease or the Equipment but it will not affect your rights or obligations.

INSTALLMENT SALE TERMS

18. Installment Sale Purchase of Equipment; Obligation Unconditional

If you have purchased Equipment under an Installment Sale, these Installment Sale terms apply. PBI is the manufacturer of the Equipment. PBGFS has sold the Equipment to you under an installment sale. The term of this Installment Sale agreement is the number of months stated on the Order (the "**Installment Sale Term**"). **You may not cancel this Installment Sale agreement for any reason and all payment obligations under this Installment Sale agreement are unconditional.** PBI owns any Meter as USPS regulations require.

19. Equipment Ownership; Installment Sale Commencement Date

Title to the Equipment passes to you upon installation, however you and we agree that title will automatically revert to us if you default under this Agreement, subject to applicable law. If none of the Equipment on your Order includes installation, the Installment Sale Term commences on the date as of which all of the Equipment has shipped. If your Order includes installation of any Equipment (the "**Install Equipment**"), then your Installment Sale Term will commence on the date as of which all Equipment has shipped and all of the Install Equipment has been installed; provided, however, that if (i) PBI has been ready, willing and able to install all of the Install Equipment and (ii) 90 days have passed since the Install Equipment has shipped (the "**Install Period**") but PBI has been unable to install the Install Equipment as a result of any action or inaction by you, then the Installment Sale Term shall commence on the last day of the Install Period. You agree that the Install Period provides you with an adequate amount of time to be able to allow PBI to install the Install Equipment and that you will take any and all actions necessary to enable the installation.

20. Payment Terms

We will invoice you quarterly in advance for all payments on the Order, unless the Order says otherwise (each such payment is a "**Periodic Payment**"). You will make each Periodic Payment by the due date shown on our invoice. Your Periodic Payment may include a one-time origination fee, amounts carried over from a previous agreement, software license and maintenance fees and other charges. Any Meter Services fees, SLA fees and subscription fees (collectively "**PBI Payments**") will be included with your Periodic Payment and begin with the start of the Installment Sale Term. After the Installment Sale Term, your Periodic Payment will increase if your PBI Payments increase.

21. WARRANTY AND LIMITATION OF LIABILITY

PBI PROVIDES YOU WITH THE LIMITED WARRANTIES IN SECTION 1. PBGFS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR FREEDOM FROM INTERFERENCE OR INFRINGEMENT, AND PBGFS ISN'T LIABLE FOR ANY LOSS, DAMAGE (INCLUDING INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES) OR EXPENSE CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT.

22. Equipment Obligations

During the Installment Sale Term, (a) you will keep the Equipment free from liens and in good condition and working order, (b) we may inspect the Equipment and related maintenance records, and (c) you may not move the Equipment from the location specified on the Order without our prior written consent.

23. Risk of Loss

You bear the entire risk of loss, theft, damage or destruction to the Equipment from the date of shipment by us, regardless of cause, ordinary wear and tear excepted ("**Loss**"). No Loss will relieve you of any of your obligations under this Installment Sale agreement. You must immediately notify us in writing of any Loss during the Installment Sale Term. To protect the Equipment from loss, during the Installment Sale Term you will keep the Equipment insured against Loss for its full replacement value under a comprehensive policy of insurance or other arrangement that is reasonably satisfactory to us.

24. Other Installment Sale Terms

- (a) If more than one purchaser is named in this Installment Sale agreement, liability is joint and several. You, and any guarantor signing the Order or any documents executed in connection with this Installment Sale agreement, agree to furnish us financial information upon request. Each of these persons authorizes us to obtain credit reports on them now and in the future.
- (b) You may not assign or sublet the Equipment, the Meter, or this Agreement without our prior written consent. Any assignment without our consent is void. We may sell or assign all or part of this Installment Sale agreement but it will not affect your rights or obligations.

SERVICE LEVEL AGREEMENT

25. Applicability of SLA

This SLA section applies to you if we have entered into an agreement to provide service for any Equipment we lease, rent or sell on the Order, excluding any DI2000 (the covered equipment is called "**Covered Equipment**").

26. Service Level Options

- (a)
 - (i) If you sign up for **Standard SLA** on the Order, PBI will provide at its option either repair or replacement services for the Covered Equipment during the Initial Service Term or any Renewal Service Term (each term as defined in Section 27) (the "**Service Term**"). You are also entitled to: (x) replacement printheads for Covered Equipment without additional charge, except for printheads which need to be replaced as a result of any Excluded Circumstance, and except for integrated printhead/ink cartridges; and (y) two preventative maintenance service calls per calendar year. PBI will notify you when preventative maintenance is due or you can request preventative maintenance service. If your Covered Equipment needs repair, PBI may provide repair by remote access, diagnostics and service and/or by on-site repair service. Repair service is provided only for damage resulting from normal wear and tear. Repair service may include the use of new, reconditioned, or remanufactured parts and assemblies. PBI will provide parts or assemblies for discontinued equipment (or equipment not marketed as new) only if available. If PBI deems it necessary, PBI will dispatch a service technician to arrive at your location for on-site service. You won't incur hourly charges unless service is performed outside Normal Working Hours, which will be done only with your consent. "**Normal Working Hours**" means 8 a.m. – 5 p.m., Monday – Friday, excluding PBI-observed U.S. holidays, in the time zone where the Equipment or other items are located.
 - (ii) If PBI determines that replacement of Covered Equipment is necessary, PBI will, at no additional cost to you, promptly ship new, reconditioned, or remanufactured equipment of the same or a functionally equivalent model to replace the affected Covered Equipment. Unless PBI instructs you otherwise, within five days of receiving the replacement equipment, you must pack the Covered Equipment to be replaced in the shipping carton that contained the

replacement equipment, place the pre-paid return address label on the carton, and return it to PBI. You are responsible for the Covered Equipment until PBI receives it.

- (b) If you are eligible to receive **Performance SLA** under our policies and you sign up for Performance SLA on the Order, you will be entitled to receive: (i) all coverage provided under Standard SLA; and (ii) one two-hour application consultation for your mailing and shipping needs. If PBI determines that on-site service is necessary, PBI will use commercially reasonable efforts to have a service technician on-site (during Normal Working Hours only) within 4 hours or 8 hours, as specified on the Order, after PBI has determined that it can't resolve the issue remotely (the "**Response Time Commitment**"). The Response Time Commitment relates solely to the arrival of a technician at your location. It isn't a guaranteed resolution of the problem within the Response Time Commitment period, and it doesn't guarantee that all parts necessary to make a repair will be on-site within this time frame. The Response Time Commitment does not apply to Service designated as service by replacement, relocation services, software maintenance, preventative maintenance, operator training, or other services not essential to repair the Covered Equipment. If the Covered Equipment is moved from its original location, PBI may, at its option, remove the Response Time Commitment. If this happens, you will receive Standard SLA and we will adjust the SLA charges payable by you appropriately. If we don't meet the Response Time Commitment, we will provide you with a credit equal to the difference between the cost of Standard SLA and Performance SLA for three months. In order to receive this credit, you must use a credit request form which you can obtain from your service technician or by calling the Customer Care Center. The credits are limited to credits for four failures to meet the Response Time Commitment in any twelve-month period during the Service Term. **These remedies are your sole remedy for PBI's failure to meet the Response Time Commitment.**

27. Service Term

PBI will provide you with Service for twelve months, or if you have a Lease or Installment Sale agreement, then for the term of that agreement (as applicable, the "**Initial Service Term**"). **SERVICE AUTOMATICALLY RENEWS FOR CONSECUTIVE ONE YEAR TERMS (EACH A "RENEWAL SERVICE TERM") UNLESS A) YOU TERMINATE YOUR SERVICE AS PROVIDED BELOW, B) IN THE CASE OF A LEASE, THE LEASE EXPIRES OR IS TERMINATED, C) IN THE CASE OF AN INSTALLMENT SALE, THE INSTALLMENT SALE AGREEMENT IS TERMINATED BY US, OR D) THE RENEWAL IS PROHIBITED BY LAW.** If you don't wish to renew Service, you must deliver a written notice (the "**Termination Notice**") at least 60 days (or 30 days if you are in Wisconsin) prior to the renewal of the term to us at 2225 American Drive, Neenah, WI 54956 or you may notify us by creating a case at pitneybowes.com/us/contact-us.html (follow the instructions under "how to create a case"). Your Termination Notice must include your customer account number and agreement number (if applicable). PBI reserves the right not to renew your SLA for any reason.

28. SLA Fees

You will pay the SLA fees for the Initial Service Term and any Renewal Service Term(s). We may increase the SLA fees after the Initial Service Term, and any increases will be reflected on your invoice. If you receive service for repairs caused by any Excluded Circumstance, PBI will charge you for the service at PBI's current hourly rates and for any required parts. If you exceed the cycle volume of your Equipment specified on the Order, PBI may bill you for the additional cycles over the specified cycle volume (the additional cycles are called the "**Overage**"). The charge will be determined by reference to the rate in effect at the time that we determine that an Overage exists. Upon request, you will provide the cycle volume to us. If you do not provide the cycle volume to us, we will estimate the cycle volume and send an invoice to you for any Overage based on our estimate. If, in the prior quarter, we estimated cycle volume and later receive actual cycle volume, then we will make adjustments based on actual usage on your next invoice.

29. Service Changes

PBI may modify its Service by giving written notice to you (a "**Service Change Notice**"), which will state whether the change is material. After receiving a Service Change Notice, if the change is material, you may terminate Service by giving us a termination notice at the address indicated in Section 27 or you may

create a case at pitneybowes.com/us/contact-us.html (follow the instructions under “how to create a case”).

30. Additional Service Terms

You can't elect to have Service apply to some but not all of the items of Equipment. Service doesn't include services and repairs that are made necessary due to any Excluded Circumstance. Service excludes the supply of postal and carrier rate changes and Consumable Supplies. If you replace any of your Covered Equipment during the Service Term, and the replacement Equipment qualifies for Services, PBI will automatically enroll you for maintenance coverage on the new Equipment at PBI's then current annual rates. If you acquire an attachment, or add a unit, to your Covered Equipment, PBI will provide coverage for each attachment or unit which we determine qualifies for coverage under the SLA and adjust your rate accordingly. If you choose not to continue coverage on the replacement Equipment, attachment or unit, you may cancel Service for the item within thirty days of the date of your initial invoice for the item from PBI. If you cancel, any further maintenance or repair services on the Equipment, attachment or unit will be subject to PBI's current rates. Standard SLA will apply to rented Equipment at no additional charge.

EQUIPMENT RENTAL AND METER SERVICES TERMS

31. Equipment Rental and Meter Services

(a) If you aren't leasing the Equipment or purchasing the Equipment through an Installment Sale, we will invoice you the Equipment rental (“rental”) and Meter Services fees listed on the Order. After the period listed on the Order (the “**Initial Term**”), we may increase the rental and/or Meter Services fees upon at least 30 days' prior written notice. When you receive notice of an increase, you may terminate your rental or Meter Services only as of the date the increase becomes effective.

(b) At the end of the Initial Term, the rental term and Meter Services term will convert to successive month to month extensions. You may choose to cancel the month to month extensions at any time by giving us 30 days' written notice to the address in Section 27 or create a case at pitneybowes.com/us/contact-us.html (follow the instructions under “how to create a case”). Upon expiration of the term of the rental or Meter Services, you agree to return Equipment and Meters covered by the rental and Meter Services agreement in their original condition, reasonable wear and tear excepted.

32. Postage

You may transfer funds to The Pitney Bowes Bank, Inc. (the “**Bank**”) for deposit into your Reserve Account that you maintain with the Bank (your “**Reserve Account**”) or you may transfer funds to the United States Postal Service (the “**USPS**”) through a lockbox bank (a “**Lockbox Bank**”). See the “USPS Acknowledgment of Deposit” below for more information. Until the end of the Initial Term, we may charge you a fee of up to \$15.00 for refilling your postage. After the Initial Term, we may increase postage refill fees upon 30 days prior written notice. If you participate in any PBI, PBGFS, or Bank postage advance programs (such as Purchase Power), we will advance payment on your behalf to the USPS, subject to repayment by you under the terms of the postage advance program and billed separately from your Meter Services fees.

33. Meter Repair or Replacement; Meter Care and Risk of Loss

If the Meter malfunctions or fails due to reasons other than an Excluded Circumstance, we will repair or replace the Meter. You agree to take proper care of the Meter(s), as stated in this Agreement and any user documentation. You assume all risk of loss or damage to the Meter(s) while you have possession.

34. Terms of Use of Meter; Federal Regulations

You may use the Meter solely for the purpose of processing your mail, provided that you are authorized by the USPS to use the Meter, and that you comply with (i) this Agreement, (ii) any operator guide and (iii) all USPS regulations. You agree to use only attachments or printing devices authorized by us. You must

receive our written consent before moving the Equipment or Meter to a different location. Federal regulations require that we own the Meter. Tampering with or misusing the Meter is a violation of federal law. Activities of the USPS, including the payment of refunds for postage by the USPS to clients, will be made in accordance with the current Domestic Mail Manual. If the Meter is used in any unlawful scheme, or isn't used for any consecutive 12 month period, or if you take the Meter or allow the Meter to be taken outside the United States without proper written permission of USPS Headquarters, or if you otherwise fail to abide by the postal regulations and this Agreement regarding care and use of the Meter, then this Agreement and any related Meter Services agreement may be revoked. You acknowledge that any use of a Meter that fraudulently deprives the USPS of revenue can cause you to be subject to civil and criminal penalties applicable to fraud and/or false claims against the United States. The submission of a false or fraudulent statement can result in imprisonment of up to 5 years and fines of up to \$10,000 (18 U.S.C. 1001) and a civil penalty of up to \$5,000 plus an assessment of twice the amount falsely claimed (3 U.S.C. 3802). The mailing of matter bearing a fraudulent postage meter imprint is an example of a violation of these statutes. You are responsible for immediately reporting (within 72 hours or less) the theft or loss of the Meter to us. Failure to comply with this notification provision in a timely manner may result in the denial of refund of any funds remaining on the Meter at the time of loss or theft. You understand that the rules and regulations regarding the use of this Meter as documented in the Domestic Mail Manual may be updated from time to time by the USPS and it is your obligation to comply with any rules and regulations regarding its use.

35. Rate Updates and Soft-Guard® Program

Your Meter or Equipment may require periodic rate updates that you will obtain under our Soft-Guard program. We will provide rate updates only if required due to a postal or carrier change in rate, service, ZIP Code™ or zone change. The Soft-Guard program doesn't cover any change in rates due to custom rate changes, new classes of carrier service, or a change in ZIP Code or zone due to equipment relocation. We won't be responsible for any losses arising out of or resulting from the failure of rating or software downloads to conform to published rates.

36. Collection of Information

You authorize us to access and download information from your Meter or from your PC Postage account. We may disclose this information to the USPS or other authorized governmental entity. We won't share with any third parties (except the USPS or other governmental entity) individually identifiable information that we obtain about you in this manner unless required to by law or court order. We may elect to share aggregate data about our clients' postage usage with third parties.

37. Value Based Services

Value based services are services the USPS provides, including e-Return Receipt and USPS Confirmation Services. Any fees the USPS charges for these services are your responsibility to pay for and are payable the same way that you pay for postage. The USPS is solely responsible for its services. We are not responsible for any malfunctions of any part of the communication link connecting the Meter with the USPS data system. We have the right to terminate the value-based services if the USPS discontinues offering the service or you breach your obligations under this Agreement and fail to cure the breach within thirty days after you have been notified in writing.

USPS ACKNOWLEDGEMENT OF DEPOSIT

38. Acknowledgement of Deposit

This section of the agreement provides you with the sections that the USPS requires we include in any agreement where we are providing Meter Services. The USPS requires that we use specific language. The "acknowledgement of deposit" terms are as follows:

- (a) In connection with your use of a Postage Evidencing System, you may transfer funds to the USPS through a Lockbox Bank for the purpose of prepayment of postage on Postage Evidencing Systems, generating evidence of postage (a "**Deposit**"), or you may transfer funds to the Bank for deposit into your Reserve Account.

- (b) To the extent you deposit funds in advance of the use of any evidence of postage, you may make Deposits in the Lockbox Bank account identified as “United States Postal Service CMRS-PB” or make deposits in your Reserve Account, in either case through electronic means, including Automated Clearinghouse Transfers. The USPS may, at its discretion, designate itself or a successor as recipient of Deposits made by you to the Lockbox Bank account described above.
- (c) Any deposit made by you in your Reserve Account is subject to the Reserve Account – Agreement and Disclosure Statement governing your Reserve Account.
- (d) Any Deposit made by you in the Lockbox Bank account shall be credited by the USPS only for the payment of evidence of postage. Such Deposits may be commingled with Deposits of other clients. You shall not receive or be entitled to any interest or other income earned on such Deposits.
- (e) The USPS will provide a refund to you for the remaining account balances of Deposits held by the USPS. These refunds are provided in accordance with the rules and regulations governing deposit of funds for evidence of postage, published in the CFR.
- (f) The Lockbox Bank, which shall collect funds on behalf of the USPS, shall provide PBI, on each business day, information as to the amount of each Deposit made to the USPS by you, so that PBI can update its records.
- (g) PBI may deposit funds on your behalf. The USPS will make no advances of funds to you. Any relationship concerning advances of funds is between you and PBI, PBGFS and/or the Bank.
- (h) You acknowledge that the terms of this Acknowledgement may be changed, modified, or revoked by the USPS, with appropriate notice.
- (i) Postal Regulations governing the deposit of funds are published in the CFR or its successor. You acknowledge that you shall be subject to all applicable rules, regulations, and orders of the USPS, including future changes to such rules, regulations, and orders, and such additional terms and conditions as may be determined in accordance with applicable law. The USPS rules, regulations, and orders shall prevail in the event of any conflict with any other terms and conditions applicable to any Deposit.

PURCHASE POWER TERMS

39. Purchase Power Program

- (a) The Purchase Power credit line is a product of the Bank and is not available to individuals for personal, family, or household purposes. In order to participate in the Purchase Power program (the “**Program**”), you must provide the information described in paragraph (h) below. You will receive a set of more specific provisions for the Program within thirty days of the date of this Agreement.
- (b) Your Purchase Power account (the “**Account**”) will be charged for the amount of postage, products, and services requested and the related fees, if applicable. Unless prohibited by law, you agree to pay the fees and charges of which the Bank has given you notice, including those relating to: (i) applicable transaction or overage fees; (ii) your failure to pay in a timely manner; (iii) your exceeding your credit line; and (iv) fees attributable to the return of any checks.
- (c) You will receive a billing statement for each billing cycle in which you have activity in the Account. The Bank may deliver any statement electronically to the email address that is on file for you. Payments are due by the due date shown on your billing statement. You may pay the entire balance due or a portion of the balance, provided that you pay at least the minimum payment shown on the statement. In the event of a partial payment, you will be responsible for the unpaid balance.
- (d) (i) By using the Program, you agree that whenever there is an unpaid balance outstanding on the Account which is not paid in full by the due date shown on your billing statement, the Bank will charge

you, and you will pay, interest on the unpaid balance of the Account from time to time, for each day from the date the transaction is posted to the Account until the date the unpaid balance is paid in full, at a variable rate equal to the Annual Percentage Rate applicable to the Account from time to time. (ii) The Annual Percentage Rate applicable to the Account will be: the greater of (x) 22% and (y) the sum of the highest "Prime Rate" published in the "Money Rates" section of *The Wall Street Journal* on the last business day of the month and the margin set forth below (the sum of the margin and the Prime Rate is herein called the "Floating Rate"). The Annual Percentage Rate will be adjusted on a monthly basis based on any fluctuation in the Floating Rate, if applicable. Any change in the Annual Percentage Rate based on the calculation described in this section will become effective on the first day of your next billing cycle. (iii) The margin which will be added to the Prime Rate to determine the Floating Rate will be 14.75% (using the Prime Rate in effect as of December 31, 2019, the daily periodic rate would be .05342% and the corresponding annual percentage rate would be 19.50%). (iv) The Account balance that is subject to a finance charge each day will include (x) outstanding balances, minus any payments and credits received by the Bank on the Account that day, and (y) unpaid interest, fees, and other charges on the Account. (v) The Bank will charge a minimum finance charge of \$1.00 in any billing cycle if the finance charge as calculated above is less than \$1.00. (vi) Each payment that you make will be applied to reduce the outstanding balance of the Account and replenish your available credit line. (vii) The Bank may refuse to extend further credit if the amount of a requested charge plus your existing balance exceeds your credit limit.

(e) The Bank may at any time close or suspend the Account, and may refuse to allow further charges to the Account. Cancellation or suspension will not affect your obligation to pay any amounts you owe.

(f) The Bank can amend any of the provisions and terms related to the Program at any time by written notice to you (including by electronic notice via the email address that is then on file for you). You are consenting to electronic delivery of any amendments to the Program terms. Each time you use the Program, you are signifying your acceptance of the terms then in effect. An amendment becomes effective on the date stated in the notice and will apply to any outstanding balance on the Account. The Bank may terminate the Program at any time and will notify you in the event of any termination. Any outstanding obligation will survive termination of the Program.

(g) The Program and any advances are governed by and construed in accordance with the laws of the State of Utah and applicable federal law.

(h) USA PATRIOT Act - To help the government fight the funding of terrorism and money laundering activities, Federal law requires financial institutions to obtain, verify and record information that identifies each person who opens an account. Accordingly, in order to activate the Account, the Bank asks that you agree to provide identifying information, including your address and taxpayer identification number. The Bank may also ask for additional identifying information, where appropriate, including asking that your representative who is opening the Account provide his/her name, address, date of birth, driver's license and/or other documents and information that will allow the Bank to identify him/her. You agree to provide all such requested identifying information.

PRODUCT SPECIFIC TERMS

40. Software

If you are acquiring an on-premise software license or on-demand subscription services, additional terms apply which are available by clicking on the hyperlink for that software or subscription service located at pitneybowes.com/us/license-terms-of-use/software-and-subscription-terms-and-conditions.html. Those additional terms are incorporated by reference.

41. DI2000 Inserting System Terms

Certain provisions which apply when you purchase, lease or rent a DI2000 inserting system and when you purchase a service plan for it are set forth at pitneybowes.com/us/di2000-terms.html and are incorporated by reference. Those provisions govern to the extent that they are inconsistent with the other terms of this Agreement.

42. PBBackup and PC-Backup Service Terms

Certain provisions which apply when you utilize the PBBackup or PC-Backup services are set forth at pitneybowes.com/us/pbbackup-service-and-pcbackup-service-terms.html and are incorporated by reference.

43. Lockers

If you are acquiring lockers, your Order may include on-demand subscription services and a statement of work. We are not responsible for the contents of the lockers. If we provide on-site service, one of your employees must accompany our service technician at all times during the service. You are solely responsible for selecting the location for the installation of the lockers, and for the safety and security of the individuals using the lockers.

44. AddressRight® Printers

Certain provisions which apply when you purchase, lease or rent an AddressRight Printer are set forth at pitneybowes.com/us/addressrightprinter-terms.html and are incorporated by reference. Those provisions govern to the extent that they are inconsistent with the other terms of this Agreement.



Regular City Council **AGENDA ITEM 8.**

Agenda Item: Public Hearing, Discussion and Possible Action on an Ordinance on Its First Reading Amending Appendix A - 'Zoning' of the Code of Ordinances of the City of Brenham Granting a Specific Use Permit on Property Currently Addressed as 1200 S. Austin Street to Allow for a Daycare in the B-1, Local Business Residential Mixed Use Zoning District and Further Described as Lot 1A, Block 11 of the W. G. Wilkins Addition in Brenham, Washington County, Texas (Case No. P-22-017)

Meeting Type: Regular Meeting-August 04, 2022

Department: Development Services

Staff Contact: Shauna Laauwe, AICP, City Planner

SUMMARY STATEMENT:

Angie Wheeler (applicant) is requesting approval of a Specific Use Permit for a licensed kindergarten/nursery school (daycare) on approximately 0.62 acres of land generally located on the west side of S. Austin Street, south of W. Fifth Street and north of Charles Lewis Street and addressed as 1200 S. Austin Street. The subject site is an existing commercial property most recently utilized as the former Design II restaurant and catering kitchen that has been out of business for several years. The subject property is zoned B-1, Local Business Residential Mixed Use zoning district. The current B-1 zoning designation allows for a mixture of retail, office, and residential uses by-right. In addition, the B-1 district allows several uses, to include licensed kindergartens/nursery schools (Daycares) to be permitted with prior approval of a Specific Use Permit (SUP).

The applicant has requested a SUP in order to redevelop the existing site and 7,500 square foot structure as a daycare facility that will employ 10 staff members to accommodate care for up to 105 children from the ages of 6 weeks to 12 years. The proposed hours of operation are Monday through Friday from 6:30am to 6:00pm. The applicant has provided both a site plan and floorplan that is detailed within the Staff Report (Exhibit B). The site plan depicts the existing structure located on the south portion of the site, the parking lot to the north, and playground/open space along the west property line. The parking requirements for a kindergarten/nursery school state 1 off-street parking space per 10 children plus one parking space per employee, for a total of 21 required off-street parking spaces for the proposed daycare. The proposed parking lot exceeds the requirements with 23 off-street parking spaces, to include one handicap accessible space. In addition, the parking area has two driveways via S. Austin Street that will provide adequate circulation within the site, with the northern driveway serving as a one-way entrance and the southern driveway as the exit for ease of drop-off and pick up of the children during peak times. The floorplan delineates 7

classrooms to accommodate separate age groups, an office, employee breakroom, 6 restrooms, and a kitchen/food prep area.

The subject property and adjacent properties to the north, south and to the east, across S. Austin Street, are zoned B-1 and developed as commercial properties to the north and east and as single-family residential to the south along the west side of S. Austin Street. The adjacent property and surrounding area to the west is zoned R-1, Single-Family Residential. The proposed commercial use will be required to adhere to the additional bufferyard and landscape requirements along the west property line and along the south property line as they are developed as a single-family use. Approval of the SUP would be in keeping with the development pattern in the general vicinity and would serve as a viable neighborhood commercial use.

The purpose of the SUP process is to identify those uses which might be appropriate within a zoning district but, due to either their location, function, or operation, could have a potentially harmful impact on adjacent properties or the surrounding area; and to provide for a procedure whereby such uses might be permitted by further restricting or conditioning them so as to mitigate or eliminate such adverse impacts. The proposed site plan details extensive landscaping and bufferyard within the parking lot to help mitigate any potential adverse impacts to nearby residential uses.

On Monday, July 25, 2022, after conducting a Public Hearing, the Planning and Zoning Commission voted unanimously **to recommend approval** of the SUP request as presented.

ATTACHMENTS:

- (1) Ordinance for First Reading
- (2) Staff Report

RECOMMENDED ACTION:

Approve an Ordinance on its first reading amending Appendix A - 'Zoning' of the Code of Ordinances of the City of Brenham granting a Specific Use Permit on property currently addressed as 1200 S. Austin Street to allow for a daycare in the B-1, Local Business Residential Mixed Use Zoning District and further described as Lot 1A, Block 11 of the W. G. Wilkins Addition in Brenham, Washington County, Texas (Case No. P-22-017)

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF BRENHAM GRANTING A SPECIFIC USE PERMIT TO ALLOW A LICENSED KINDERGARTEN/NURSERY SCHOOL (DAYCARE) USE IN A B-1 LOCAL BUSINESS/RESIDENTIAL MIXED USE ZONING DISTRICT ON APPROXIMATELY 0.62 ACRES OF LAND ADDRESSED AS 1200 SOUTH AUSTIN STREET, BEING FURTHER DESCRIBED AS LOT 1A, BLOCK 11 OF THE W. G. WILKINS ADDITION IN BRENHAM, WASHINGTON COUNTY, TEXAS.

WHEREAS, Angie Wheeler, applicant, and Reka Pennington, owner of the 0.62 acres of land generally located on the west side of South Austin Street, south of West Fifth Street, and north of Charles Lewis Street and addressed as 1200 South Austin Street, being further described as Lot 1A, Block 11 of the W.G. Wilkins Addition, in Brenham, Washington County, Texas, and being further described on Exhibit “A” attached hereto and incorporated herein for all purposes (the “Property”), have requested that the Property be issued a Specific Use Permit for a Licensed Kindergarten/Nursery School (Daycare); 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 Ordinances authorizes the City Council to grant specific use permits for specific uses within the various zoning districts; 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 (200’) of the Property in the manner required by law, the Planning and Zoning Commission held a public hearing on the requested Specific Use Permit; and

WHEREAS, this amendment was recommended unanimously for approval by the Brenham Planning and Zoning Commission during its regular meeting on July 25, 2022; and

WHEREAS, the City Council desires to approve this Ordinance granting the Specific Use Permit, as described herein below; 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 Specific Use Permit, the City Council held the public hearing for the requested Specific Use Permit and the City Council considered the final report of the Planning and Zoning Commission;

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

SECTION 1. The Official Zoning Map of the City of Brenham is hereby amended to show that a Specific Use Permit is granted for a licensed kindergarten/nursery school (daycare), more particularly described in Exhibit “B” and Exhibit “C”, attached hereto and incorporated herein for all purposes, in a B-1, Local Business/ Residential Mixed Use zoning district on approximately 0.62 acres of land addressed as 1200 South Austin Street, being further described as Lot 1A, Block 11 of the W.G. Wilkins Addition in Brenham, Washington County, Texas, said 0.62 acres of land being further described on Exhibit “A” attached hereto and incorporated herein for all purposes.

SECTION 2. Upon holding a properly notified public hearing, the City Council may amend, change, or rescind the Specific Use Permit granted by this Ordinance if:

- a. There is a violation and conviction of any of the provisions of this Ordinance, or any ordinance of the City of Brenham, that occurs on the Property;
- b. The premises, or Property, used pursuant to the Specific Use Permit granted by this Ordinance are enlarged, modified, structurally altered, or otherwise significantly changed unless a separate Specific Use Permit is granted for such enlargement, modification, structural alteration, or change;
- c. As otherwise permitted by law and/or Brenham’s Zoning Ordinance, as it exists or may be amended.

SECTION 3. 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 ____ day of August 2022.

PASSED and APPROVED on its second reading this the ____ day of August 2022.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary

EXHIBIT "A"

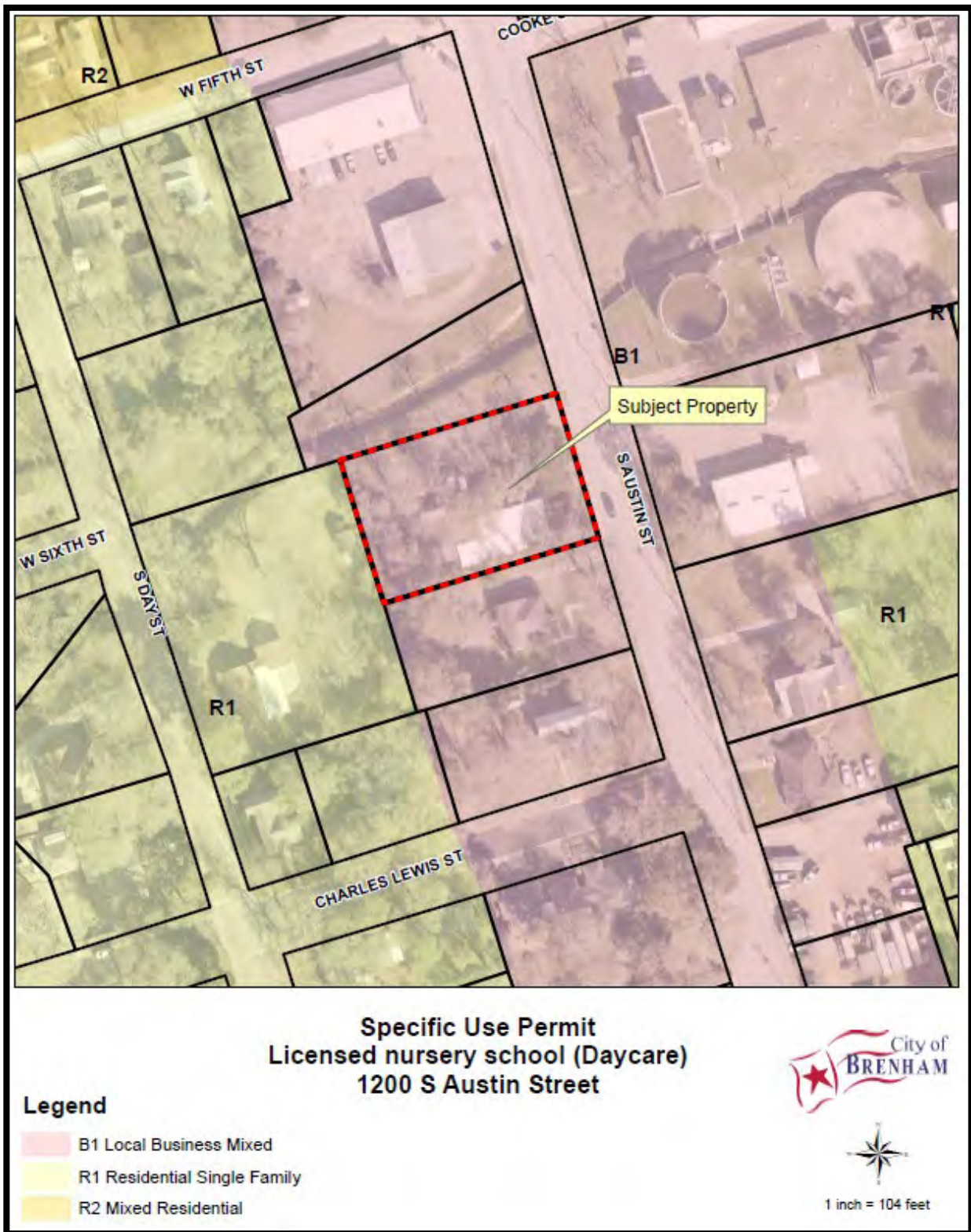


EXHIBIT “B” Site Plan

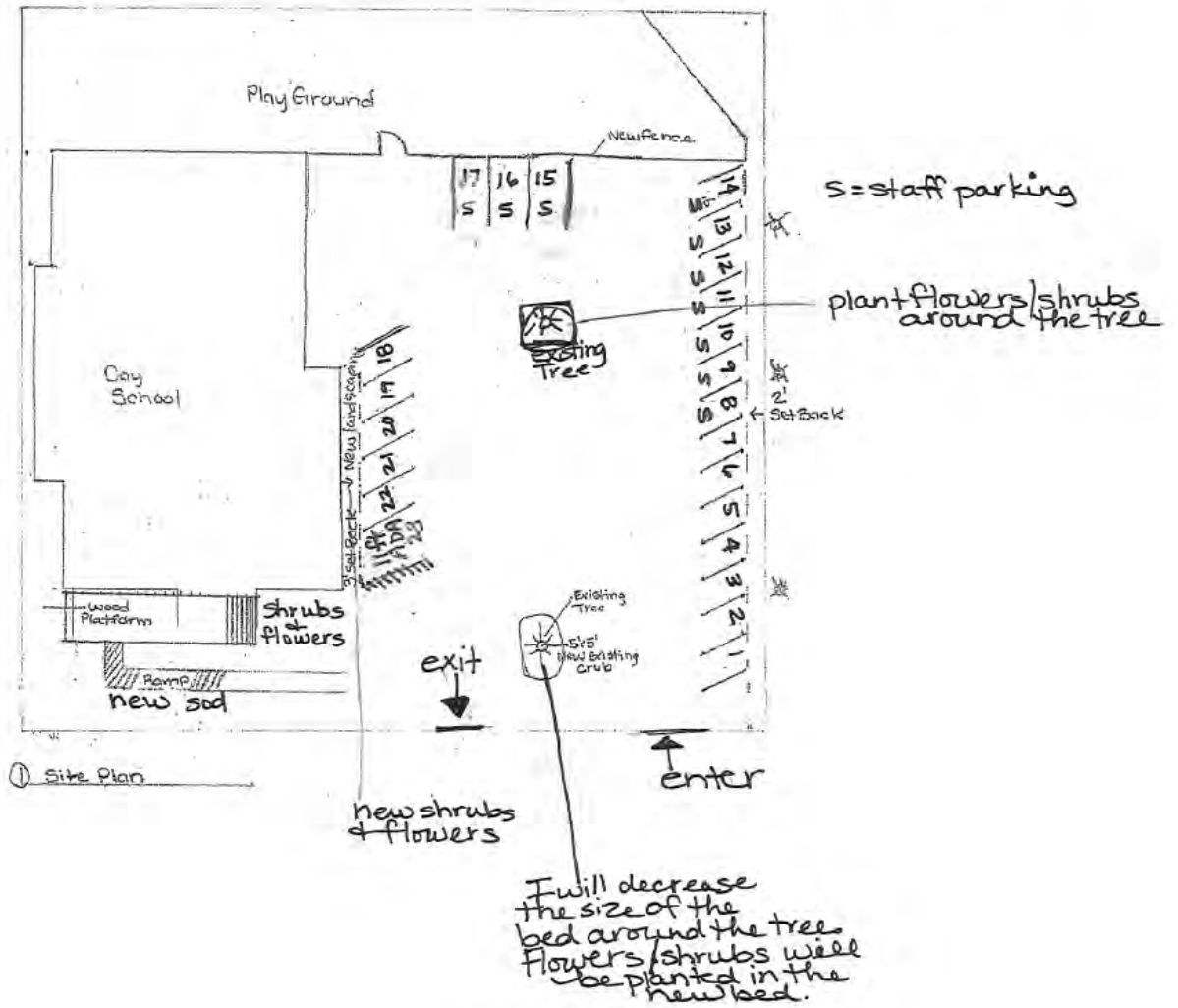
of children = 105 @ 1 space per 10 children = 10.5 $\rightarrow$ 11

of staff = 10 @ 1 per employee = 10

Total required = 21 parking spaces

Number provided = 23 parking spaces

22 parking spots @ 9 ft
1 ADA parking spot @ 11 ft

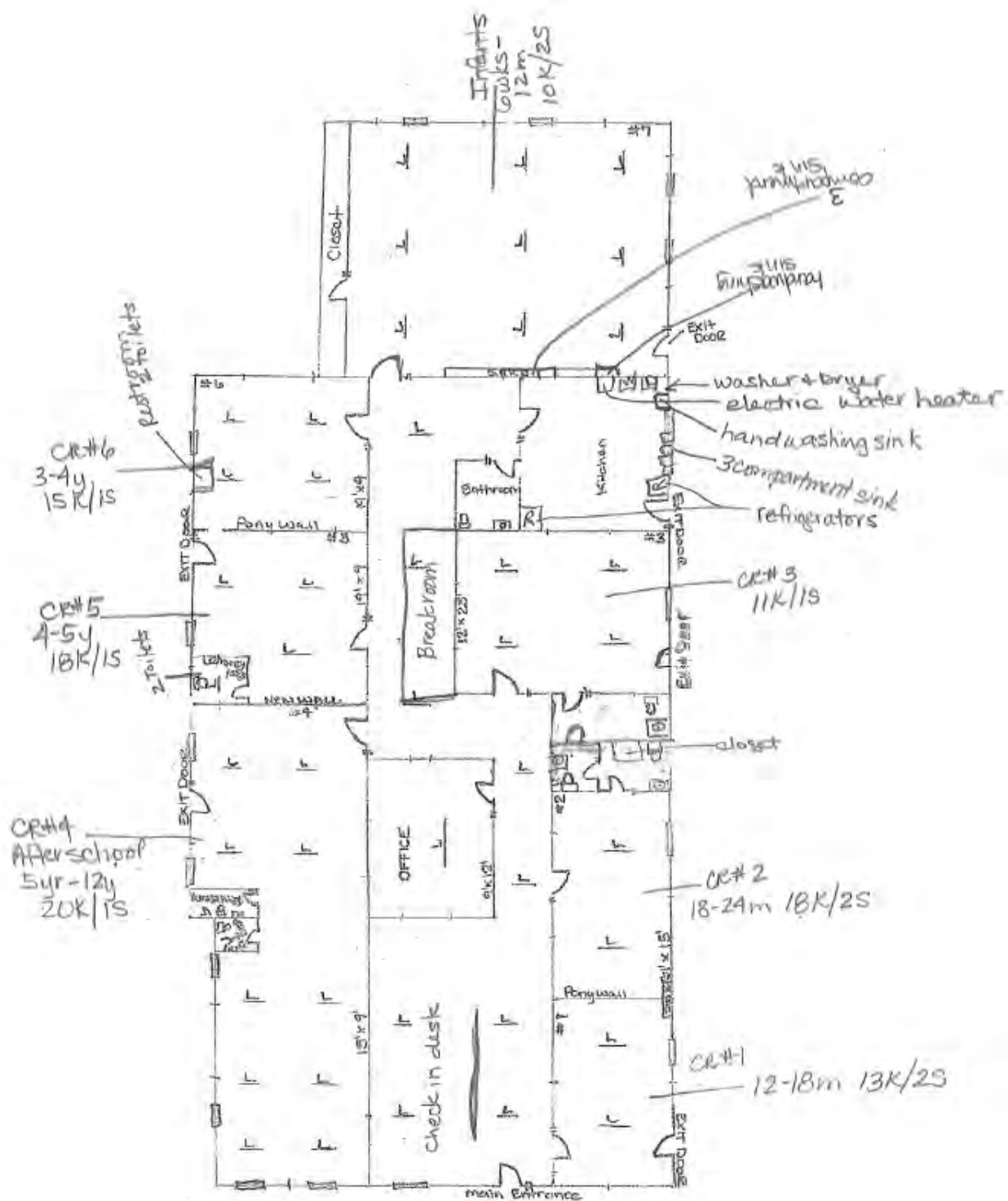


S. Austin Street



EXHIBIT "C"

Floor Plan



S. Austin Street



CASE NUMBER P-22-017
SPECIFIC USE PERMIT REQUEST – 1200 S. Austin Street

STAFF CONTACT:	Shauna Laauwe AICP, City Planner
OWNER:	Reka Kristina Pennington
APPLICANTS:	Angie Wheeler (proposed owner)
ADDRESS/LOCATION:	1200 S. Austin Street (Exhibit A).
LEGAL DESCRIPTION:	W.G. Wilkins Addition, Lot 1A, Block 11
LOT AREA:	Approximately 0.62 acres
ZONING DISTRICT/USE:	B-1 Local Business/Residential Mixed Use (Exhibit B)
FUTURE LAND USE:	Corridor Mixed Use (Exhibit C)
REQUEST:	A request for a Specific Use Permit to allow a proposed a day care use in a B-1 Local Business/Residential Mixed Use Zoning District (Exhibit D).

BACKGROUND:

The subject property is an approximate 0.62-acre rectangular shaped tract that is 138-feet in width by 207-feet in depth. The property is addressed as 1200 S. Austin and is generally located on the west side of S. Austin Street, south of W. Fifth Street and north of Charles Lewis Street (see Map 1). The subject property is currently zoned B-1, Local Business/Residential Mixed-Use District and is the former site of Design II, a restaurant/catering kitchen. The applicant, Ms. Angie Wheeler, is proposing to renovate the existing 7,500 square foot structure and redevelop the site as a day care facility for infants (6-weeks old) to school age children for after school care. Licensed kindergartens/nursery schools are allowed only as a Specific Use in the B-1 District, thus the applicant is requesting a Specific Use Permit for the proposed daycare.

As shown in Map 1, the subject property and surrounding properties to the east, north and south

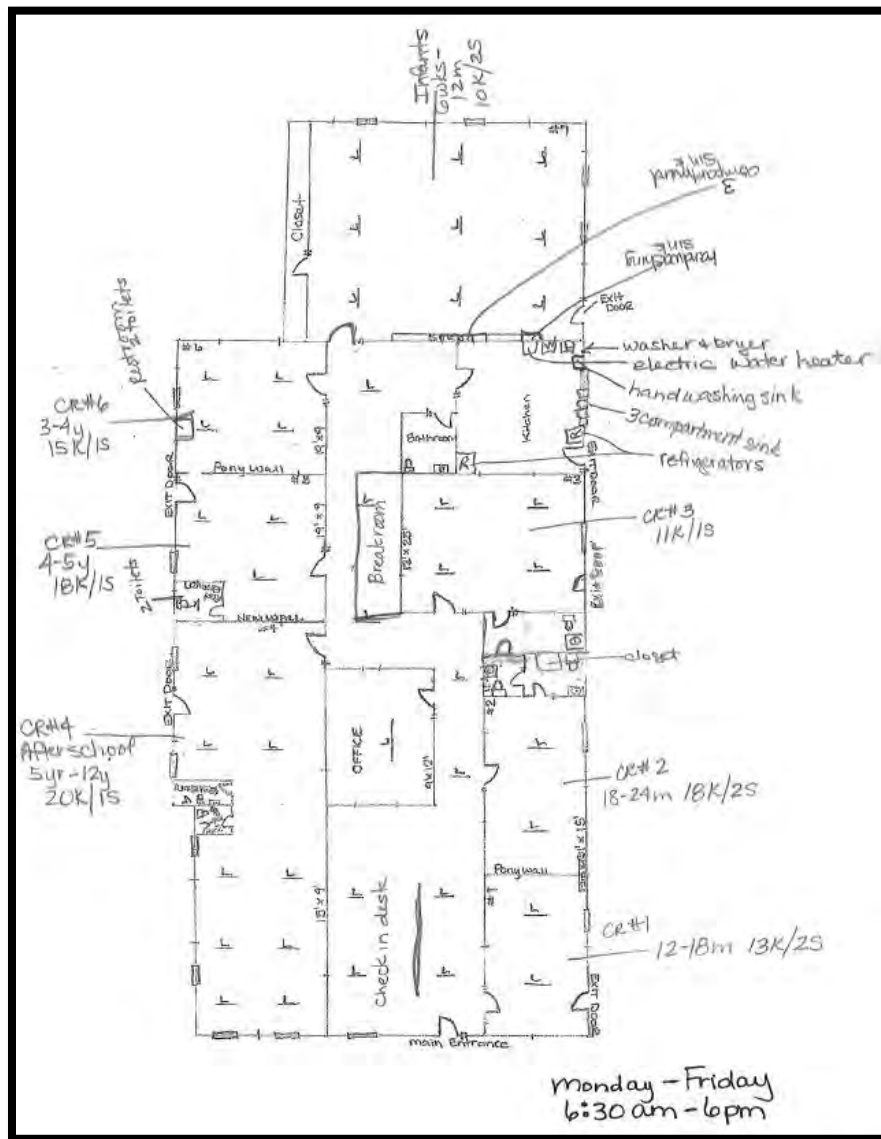
Map 1



The applicant has provided a site plan, preliminary landscape plan, and floorplan for the proposed daycare. As seen below in Figure 1 and in Exhibit E, the existing structure fronts onto S. Austin Street and is situated on the south portion of the property with the off-street parking area to the north. The site plan also indicates a playground/open space area to the west that will make good use of the required bufferyard area. The floorplan shown in Figure 2 and in Exhibit F, delineates 7 classrooms to accommodate separate age groups, an office, employee breakroom, 6 restrooms, and a kitchen/food prep area. Per the floorplan and the applicant's documents, the daycare facility may accommodate up to 105 children and employee 10 staff members. The parking requirements for a kindergarten/nursery school state 1 off-street parking space per 10 children plus one parking space per employee, for a total of 21 required off-street parking spaces. The site plan provides for 23 off-street parking spaces, to include one handicap accessible space. Ms. Wheeler has stated that proposed hours of operation for the daycare facility will be Monday through Friday from 6:30am to 6pm.

[illegible]

Figure 2 (Floorplan)



ANALYSIS OF CITY OF BRENHAM ZONING POLICIES:

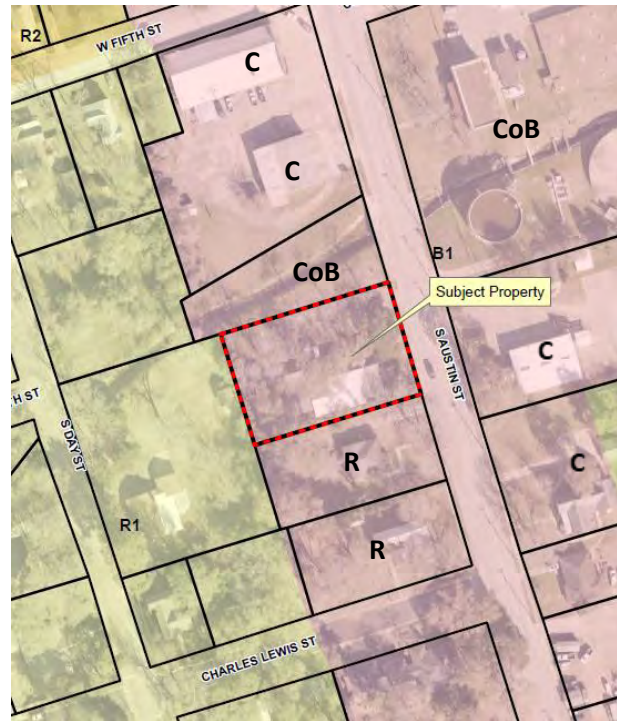
The purpose of zoning policies is to provide guidelines for considering future amendments to the zoning ordinance (Part 1, Section 4 of Appendix A – “Zoning” of the Brenham Code of Ordinances). They are as follows:

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

The 0.62-acre tract of land is addressed as 1200 S. Austin Street and generally located on the west side of S. Austin Street, south of W. Fifth Street and north of Charles Lewis Street. The subject property and the surrounding properties along S. Austin Street to the east, north, and south are

located within a B-1 District, while the adjacent and surrounding properties to the west are within a R-1 District. The area has a mixture of uses. The B-1 District allows residential uses as well as less intense neighborhood commercial uses, whereas the R-1 District only permits single-family uses and a small number of specific uses. On Map 2, commercial properties are identified with a "C," residential properties with a "R" and City of Brenham properties with "CoB." Properties to the north, across a drainage channel owned by the City of Brenham, are developed as commercial uses with Jaaco Auto Transmissions mechanic shop and a Napa Auto Parts on the southwest corner of W. Fifth Street and S. Austin Street. The B-1 property to the east, across S. Austin Street, is developed as Brenham Independence Allergy Clinic and an Eye Doctor medical office, while the City of Brenham water and wastewater facilities are located to the northeast. The adjacent B-1 properties to the south, on the west side of S. Austin Street are developed as single-family homes. Due to the adjacent residential development along the west and south property lines, additional bufferyard setbacks, landscaping and screening will be required along those property lines.

Map 2



The applicant proposes to redevelop the former Design II restaurant into a daycare facility to care for up to 105 children, ages infant (6 weeks) to 12 years old. The stated hours of operation are Monday through Friday from 6:30am to 6pm.

Staff finds that the use is in character with the surrounding neighborhood and will not adversely affect the small-town attributes that make Brenham a special place for its citizens to live, work and play.

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

The future land use map portion of the Envision 2020 Comprehensive Plan suggests the subject property may be appropriate for mixed-use development. The B-1 District is a district that provides for diverse uses and convenient locations for light commercial uses suitable for neighborhood shopping and for residential uses. While the subject property and adjacent properties along S. Austin Street to the east, south and north are currently zoned B-1, Local Business/Residential Mixed-Use District, the surrounding area to the west is zoned R-1, Single-Family Residential and developed as a single-family home neighborhood. Daycares (kindergarten/nursery schools), with adequate bufferyards, attention to parking circulation, and hours of operation may be suitable as a neighborhood commercial use that aligns with the goals and land use policies established in the Comprehensive Plan.

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

The subject property has existing utilities available along South Austin Street and will not require any extension of utility services.

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

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

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

Property owners within 200 feet of the project site were mailed notifications of this request on July 14, 2022. The Notice of Public Hearing was published in the Brenham Banner on July 14, 2022. Any public comments submitted to staff will be provided in the Planning & Zoning Commission and City Council packets or during the public hearing.

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

The existing structure meets minimum building setbacks for the front, north side yard, and the rear yard, that includes the additional 20-foot bufferyard to the west, however the existing structure has only a 10-foot south side and is nonconforming to the south bufferyard requirement (total 30-foot setback). The adjacent south property is within the B-1 District, and if it develops as a commercial use in the future, the subject property would no longer be considered nonconforming. No additions are proposed to the existing structure, thus a variance is not required.

The site will also be required to adhere to maximum impervious coverage requirements, landscaping, and buffer yard requirements. The applicant has submitted a preliminary site plan (Exhibit F) which depicts the location of the existing structure, use of the bufferyard area as a playground and open space, associated parking lot with circulation and pickup/drop off cueing, and landscape plan. Staff finds that the site development requirements will ensure that adequate open space is preserved on the subject property.

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

Staff finds that the requested land use is appropriate in this location given adjacent zoning designations, existing development in the vicinity, and conformance with the City's adopted Comprehensive Plan. The proposed development is in line with the Future Land Use Plan, while also providing adequate parking, landscaping, and screening.

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

The subject property and the surrounding properties to the east, north and south along S. Austin Street are located within a B-1 District, with properties to the east being R-1. Given that the B-1 District allows a variety of commercial and residential uses, and the adjacent single-family residential to the west, the proposed daycare use is consistent with the neighborhood culture and

consistent with the future land use plan as a mixed use corridor. The adjacent property to the north is an undeveloped city owned drainage canal, while other nearby north properties are developed as commercial uses with Jacco Auto Transmissions mechanic shop and a Napa Auto Parts on the southwest corner of W. Fifth Street and S. Austin Street. Directly across S. Austin Street from the subject property, is the Brenham Independence Allergy Clinic and Eye doctor office. The adjacent property to the south is developed as a single-family residence. The proposed day care will provide an acceptable redevelopment of this commercial site that has gone unused for several years. The day care use is compatible to nearby land uses and consistent with the land policies established in the Comprehensive Plan.

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

Staff finds that approval of the proposed SUP and development of the property as a day care facility would provide for an orderly and healthful development of the community. Due to adjacent residential uses to the west and south, the proposed commercial use is required to provide an additional 20-feet of bufferyard to the minimum setbacks for the B-1 District. This bufferyard provision requires that screening of either a 6-foot fence or 6-foot in height dense shrubbery be provided along the shared property lines of residential uses. In addition, 20-percent of the bufferyard shall be landscaped. The existing structure has a rear yard setback of approximately 80 feet and a south side yard setback of 10 feet. The existing structure is legally nonconforming to the bufferyard requirements to the south as the structure predates the bufferyard provisions but does far exceed the 30-foot requirement along the west property line that is adjacent to a R-1 District neighborhood. If the adjacent B-1 property to the south develops as a commercial use, then the existing structure would no longer be nonconforming to the additional bufferyard setback requirements. The applicant proposes to utilize the west portion of the subject property for open space and playground area. A more detailed landscape plan will be required during the building permit process, but the proposed areas of landscaping appear to meet the intent and regulations.

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

Staff believes that the proposed development will have a positive effect on the surrounding area and will be compatible with anticipated uses surrounding this property and will be in accordance with the land use policies of Brenham's Comprehensive Plan. The subject property has had a vacant commercial structure on the property for several years. The proposed day care facility use will redevelop the site and be compatible with neighborhood commercial and residential uses surrounding the property. Staff is unable to determine any destabilizing effects on the neighboring properties should this specific use permit request be approved.

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

If approved, the proposed SUP will allow for the redevelopment of a commercial site that has been vacant for several years. The S. Austin Street corridor has a variety of neighborhood commercial uses to include retail, office uses, repair shops, public uses, and residential. This area is largely developed, with no vacant commercial properties within the vicinity, though the existing residential uses within the B-1 District along the west side of S. Austin Street could be converted to commercial uses. Staff believes that the proposed SUP, if approved, will not negatively affect vacant land classified for commercial uses.

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

The B-1, Local Business/Residential Mixed-Use District subject property is currently developed with dilapidated commercial and accessory structures and has an existing nonconforming driveway and parking area. The applicant's request will allow the subject property to develop in a compatible, legally conforming manner.

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

Staff finds approval of the proposed SUP will allow for the orderly growth and development in the general vicinity and throughout the city.

STAFF RECOMMENDATION:

Staff recommends **approval** of a Specific Use Permit to allow a day care use as provided in the application site plan, general landscape plan, and written documents in a B-1 Local Business/Residential Mixed-Use Zoning District for the subject 0.62-acre tract of land that is located at 1200 S. Austin Street and legally described as W.G. Wilkins Addition, Tract 1A, Lot 11.

EXHIBITS:

- A. Aerial Map
- B. Zoning Map
- C. Future Land Use Map
- D. Cover Letter
- E. Proposed Site Plan
- F. Proposed Floor Plan
- G. Site photos

EXHIBIT "A"
AERIAL MAP



Aerial Map
Specific Use Permit
Licensed Nursery School (Daycare)
1200 S Austin Street



1 inch = 104 feet

EXHIBIT "B"
ZONING MAP



Specific Use Permit
Licensed nursery school (Daycare)
1200 S Austin Street

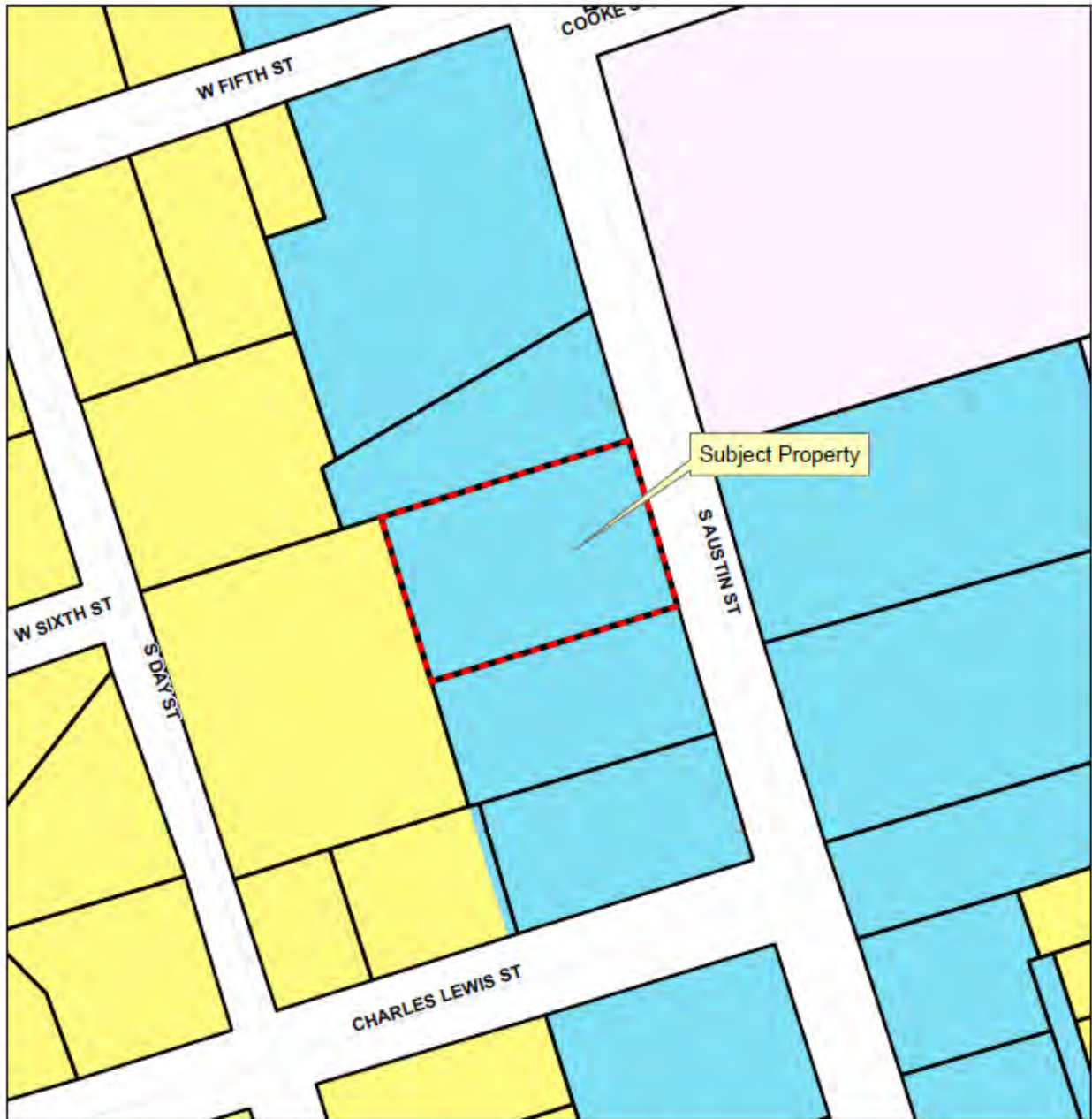
Legend

- B1 Local Business Mixed
- R1 Residential Single Family
- R2 Mixed Residential



1 inch = 104 feet

EXHIBIT "C"
Future Land Use Map



Specific Use Permit
Licensed Nursery School (Daycare)
1200 S Austin Street

Future Land Use Plan
FLU_FINAL

-  Single Family Residential
-  Corridor Mixed Use
-  Local Public Facilities



1 inch = 104 feet

EXHIBIT "D"
SUP COVER LETTER BY APPLICANT

To whom it may concern,

I have had it in my heart for sometime now to help our community with the lack of childcare facilities for our growing community. I would like to turn the property at 1200 S. Austin (formerly Design II) into a daycare facility. We would cater to infants (6 weeks) to after school students age children. Most of the daycare facilities in Brenham have waiting lists and our community keeps on growing. I am hoping to accommodate about 105 children to have a place to learn in a safe environment. Due to the extensive construction that will occur at the property, my daycare will be very updated and safe meeting all the new regulations. Please consider this location for Brenham's newest childcare facility.

Sincerely,

A handwritten signature in cursive script that reads "Angie Wheeler". The signature is written in dark ink and is positioned below the word "Sincerely,".

Angie Wheeler

EXHIBIT "E"
PROPOSED SITE PLAN

of children = 105 @ 1 space per 10 children = 10.5 → 11
 # of staff = 10 @ 1 per employee = 10

Total required = 21 parking spaces
 Number provided = 23 parking spaces

22 parking spots @ 9 ft
 1 ADA parking spot @ 11 ft

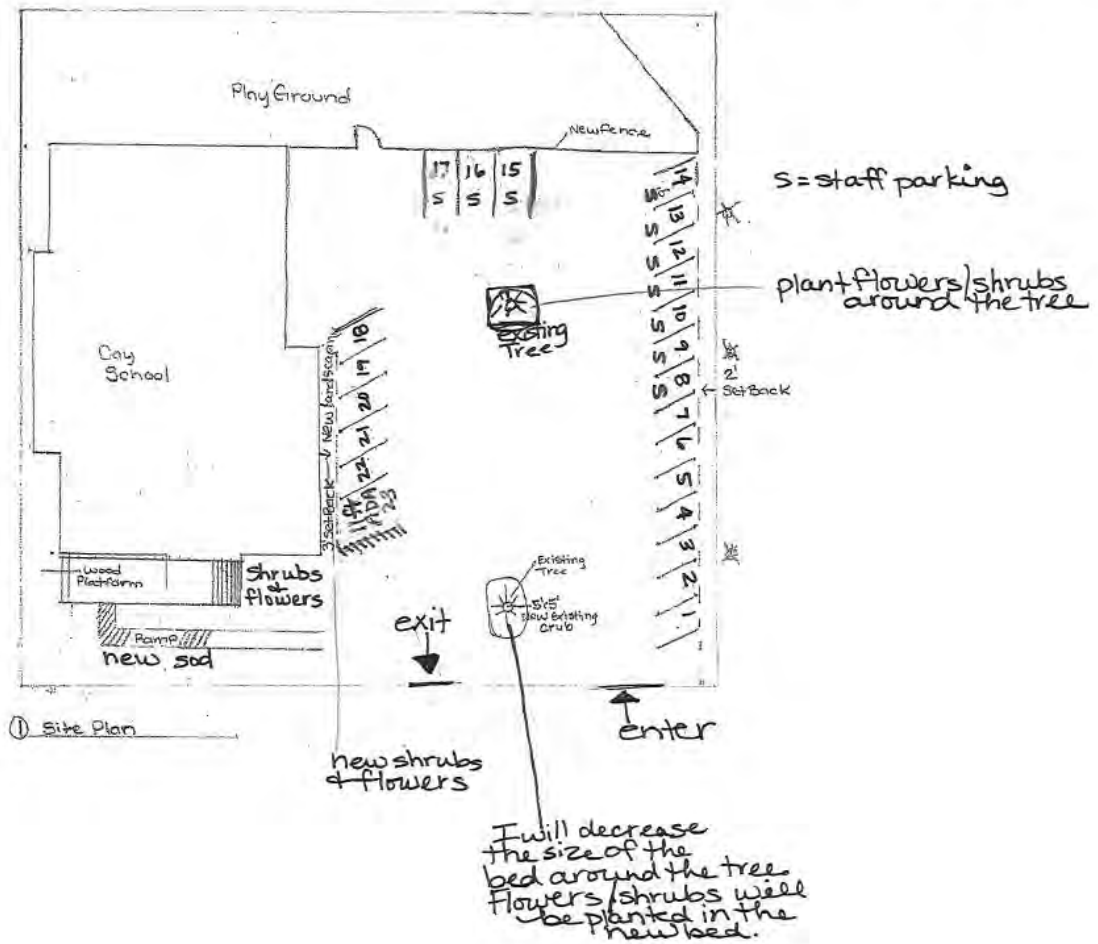
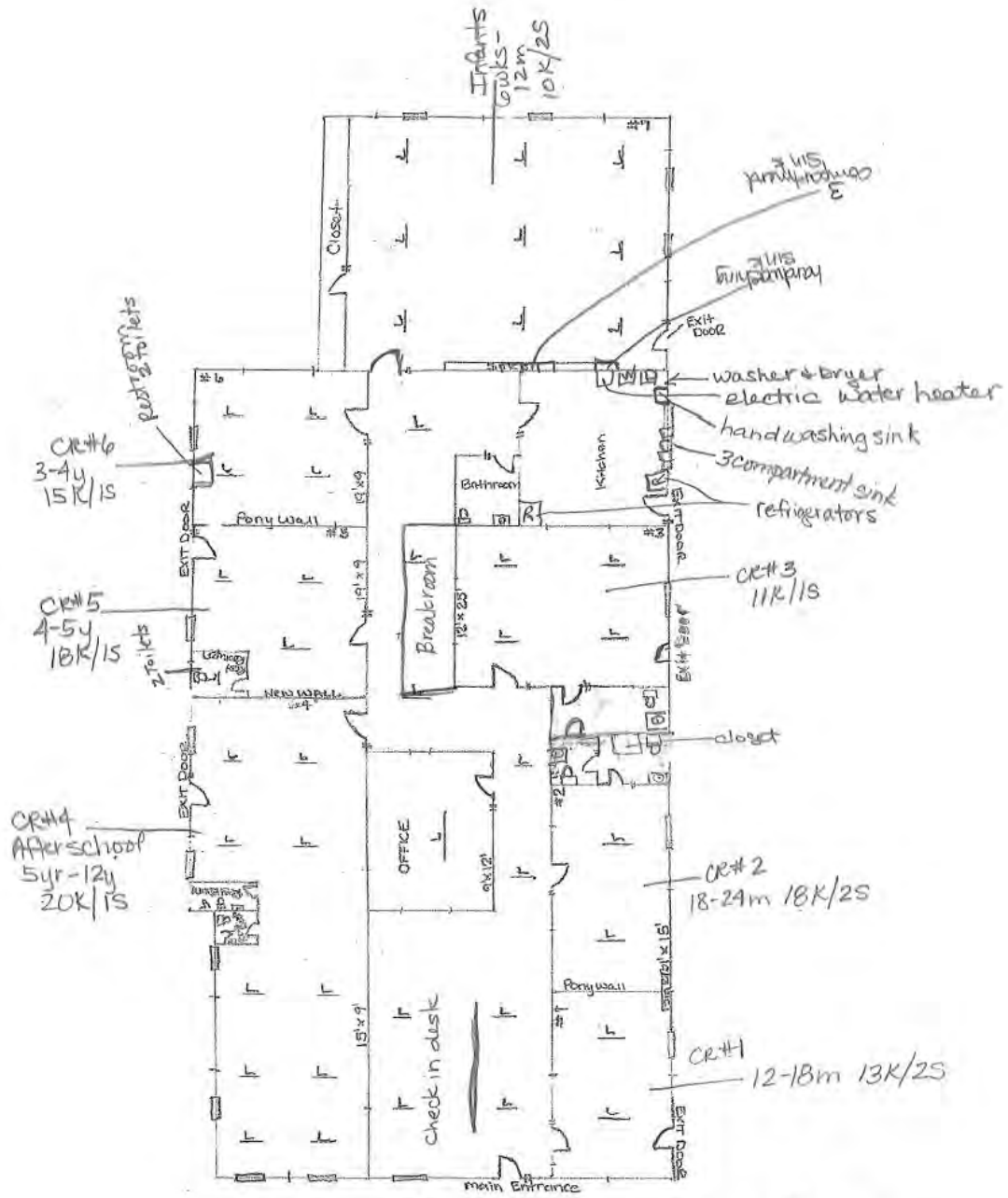


EXHIBIT "F"
FLOOR PLAN



Monday - Friday
6:30 am - 6 pm

EXHIBIT "G"
SITE PHOTOS



Subject Property Structure & Parking Area



West bufferyard /open space area



South property line vegetation



Adjacent Residential to South



Adjacent Commercial to North



Water plant & Medical Offices to the East



Regular City Council
AGENDA ITEM 9.

Agenda Item: 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 a Single-Family Residential Use District (R-1) and/or a Mixed Residential Use District (R-2) to a Local Business/Residential Mixed-Use District (B-1) on the Following (Case No. P-22-016):

- a. A Tract of Land Being Approximately 8.97 Acres of Land Addressed as 1301 S. Market Street, Being Further Described as Keys 2nd, Block E, Lot 1, 2, and North Part of 3 and 4, Community Education Campus in Brenham, Washington County, Texas (R23658);
- b. A Tract of Land Being Approximately 6.92 Acres of Land Addressed as 507 E. Sixth Street, Being Further Described as Keys 2nd, Block C, Lot PT 3D, 3E, 4B, All of Lots 5, 6 and 7 in Brenham, Washington County, Texas (R23650);
- c. A Tract of Land Being Approximately 0.4180 Acres of Land Addressed as 504 E. Sixth Street, Being Further Described as Keys 2nd, Block F, Lot PT 4 in Brenham, Washington County, Texas (R23660); and
- d. A Tract of Land Being Approximately 0.2215 Acre of Land Addressed as 506 E. Sixth Street, Being Further Described as Keys 2nd, Block F, Lot PT 4 in Brenham, Washington County, Texas (R23661)

Meeting Type: Regular Meeting-August 04, 2022

Department: Development Services

Staff Contact: Shauna Laauwe, AICP, City Planner

SUMMARY STATEMENT:

The subject area is comprised of four (4) parcels on seven (7) lots and approximately 16.766 acres of land generally bisected north/south by E. Sixth Street with the subject area north of E. Sixth Street being bounded by S. Market Street to the west, E. Germania Street to the north and Huettig Street, to the east, and the subject area south of E. Sixth Street being bounded by S. Market Street to the west, Lee Street to the east, and E. Tom Green to the south. The subject area is currently zoned Mixed Residential Use District (R-2) to the north of E. Sixth Street and Single-Family Residential District (R-1) to the south of E. Sixth Street.

Please see the attached Staff Report for details and pertinent maps of this request. In

summary, City Staff has received numerous calls from potential buyers of 504 E Sixth Street, a property that was developed originally in 1980 with a 5,900 square foot structure, presumed to be a church. While this property has been zoned R-1, Single-Family Residential District since zoning was implemented in the City of Brenham in 1968, the property has had many nonresidential uses as a church, private school, dance studio, and office space and fitness studio. The Brenham Bible Church sold the property in 2019 to the current owner, Lawrence Roscow. In 2021, it came to the City's attention that the 5,900 square foot structure was being utilized with illegally nonconforming uses as an office and fitness studio. In the spring of 2022, a potential buyer inquired about a building permit to renovate and update the interior for a buildout of five (5) office spaces within the structure. The individual was informed that the property was within a R-1 District and offices were not a permitted use. He then asked about the possibility of rezoning the property, but such a zoning on a small lot, and not adjacent to a B-1 District which would be considered a spot zoning.

The structure located at 504 E. Sixth Street was originally built as a church with an asphalt parking area and later underwent minor renovations to convert to a dance studio and office space. As a result, the exterior and much of the interior of the existing structure is commercial in character. When researching this property and the adjacent and surrounding uses, it was found that of the remaining six (6) lots that encompass the adjacent properties located in the approximate 16.766-acre rezoning area (*See Map 1 in the Staff Report*) only one (1) lot, located at 506 E. Sixth Street, was a permitted single-family use. The Brenham Independent School District (BISD) encompasses the remainder five (5) lots that are considered educational uses that are legally nonconforming educational uses that predate the requirement for a specific use permit. The BISD lots include the Transportation and Maintenance (bus barn) located at 507 & 509 E. Sixth Street that is within a R-2 Mixed Residential District, and the Pride Academy alternative education facility that is zoned R-1 District and is located west of the 504 E. Sixth Street. The Pride Academy includes the main building at 1301 S. Market Street, the Rock Gym located on the southwest corner of E. Sixth Street and Lee Street, and two vacant lots.

The Future Land Use Map, approved as part of the Comprehensive Plan: Historic Past, Bold Future: Plan 2040 approved in September 2019, envisions the area within the proposed rezoning area as Corridor Mixed Use as part of the adjacent S. Market Street corridor to the west. City Staff initiated the rezoning of the area from R-1 and R-2 to B-1, Local Business Mixed Residential District to bring the 16.766-acres in line with the future land use plan and the predominate existing uses. As single-family homes, offices, churches, schools, and governmental institutions are permitted uses in the B-1 District, the proposed rezoning would not cause any of the existing land uses within the proposed rezoning area to become nonconforming.

The proposed zoning change would allow for the existing commercial uses and institutional uses to make improvements within the B-1 specifications that include bufferyard and landscaping requirements and for neighborhood commercial uses to potentially develop on E. Sixth Street. If the rezoning is approved, any proposed development of the properties will undergo a planning permit process to ensure that all zoning, building, and fire codes are met.

On Monday, July 25, 2022, after conducting a Public Hearing, the Planning and Zoning Commission voted unanimously **to recommend approval** of the SUP request as

presented.

ATTACHMENTS:

- | |
|---|
| (1) Ordinance for First Reading
(2) Staff Report |
|---|

RECOMMENDED ACTION:

Approve an Ordinance on its first reading amending the Official Zoning Map of the City of Brenham to Change the Zoning District from a Single-Family Residential Use District (R-1) and/or a Mixed Residential Use District (R-2) to a Local Business/Residential Mixed-Use District (B-1) on the following (Case No. P-22-016):

- a. A Tract of Land Being Approximately 8.97 Acres of Land Addressed as 1301 S. Market Street, Being Further Described as Keys 2nd, Block E, Lot 1, 2, and North Part of 3 and 4, Community Education Campus in Brenham, Washington County, Texas (R23658);
- b. A Tract of Land Being Approximately 6.92 Acres of Land Addressed as 507 E. Sixth Street, Being Further Described as Keys 2nd, Block C, Lot PT 3D, 3E, 4B, All of Lots 5, 6 and 7 in Brenham, Washington County, Texas (R23650);
- c. A Tract of Land Being Approximately 0.4180 Acres of Land Addressed as 504 E. Sixth Street, Being Further Described as Keys 2nd, Block F, Lot PT 4 in Brenham, Washington County, Texas (R23660); and
- d. A Tract of Land Being Approximately 0.2215 Acre of Land Addressed as 506 E. Sixth Street, Being Further Described as Keys 2nd, Block F, Lot PT 4 in Brenham, Washington County, Texas (R23661)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL 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 SINGLE-FAMILY RESIDENTIAL DISTRICT (R-1) AND/OR A MIXED RESIDENTIAL DISTRICT (R-2) TO A LOCAL BUSINESS/RESIDENTIAL MIXED-USE DISTRICT (B-1) ON CERTAIN TRACTS OF LAND AS FURTHER DESCRIBED IN THIS ORDINANCE.

WHEREAS, the City of Brenham has received a request from property owners within the subject rezoning area to change the zoning to reflect the current uses, and with the adoption of this Ordinance institutional and neighborhood commercial uses within the subject rezoning area will become permitted uses; 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 (200’) 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 unanimously recommended for approval by the City of Brenham Planning and Zoning Commission in its final report during its regular meeting on July 25, 2022; 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 a Single-Family Residential District (R-1) and/or a Mixed Residential District (R-2) to a Local Business/Residential Mixed Use District (B-1) on all or a portion of twelve (12) tracts of land being more particularly described herein below as follows:

- a) Approximately 8.97 acres of land addressed as 1301 S. Market Street, being further described as Keys 2nd, Block E, Lot 1, 2 and North Part of 3 and 4, Community Education Campus, in Brenham Washington County, Texas (R23658);
- b) Approximately 6.92 acres of land addressed as 507 E. Sixth Street, being further described as Keys 2nd, Block C, Lot PT 3D, 3E, 4B, All of Lots 5, 6, and 7, in Brenham, Washington County, Texas (R23650);
- c) Approximately 0.4180-acres of land addressed as 504 E. Sixth Street, being further described as Keys 2nd, Block F, Lot PT 4, in Brenham, Washington County, Texas (R23660); and
- d) Approximately 0.2215 acres of land addressed as 506 E. Sixth Street, being further described as Keys 2nd, Block F, Lot PT 4, in Brenham, Washington County, Texas (R23661).

Further, said area of land rezoned by this Ordinance to a Local Business/Residential Mixed Use District (B-1) is further described and depicted in Exhibit "A" attached hereto and incorporated herein for all pertinent 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 ____ day of August 2022.

PASSED and APPROVED on its second reading this the ____ day of August 2022.

ATTEST:

Milton Y. Tate, Jr.
Mayor

Jeana Bellinger, TRMC, CMC
City Secretary

Exhibit "A"





CASE NUMBER P-22-016
ZONE CHANGE REQUEST – R-1 & R-2 to B-1

STAFF CONTACT:	Shauna Laauwe, AICP, City Planner
APPLICANT:	City of Brenham
LEGAL DESCRIPTION:	The area includes the following tracts of land generally bound by E Germania Street to the north, Huettig Street and Lee Street to the east, S. Market Street to west, and E. Tom Green Street to the south: a. 1301 S. Market Street, Keys 2nd, Block E, Lot 1, 2, N PT 3, 4 (Community Ed Campus) [R-1] b. 507 E. Sixth Street, Keys 2nd, Block C, Lot PT 3D, 3E, 4B, All 5, 6, 7 (Transportation and Maintenance) [R-2] c. 504 E. Sixth Street, Keys 2nd, Block F, Lot PT 4 [R-1] d. 506 E. Sixth Street, Keys 2nd, Block F, Lot PT 4 [R-1]
LOT AREA:	Approximately 16.766 acres
ZONING DISTRICT/USE:	R-1, Single Family Residential & R-2, Mixed Residential Use District/ Residential and Institutional uses (Exhibit B)
FUTURE LAND USE:	Corridor Mixed Use
REQUEST:	A request to change the zoning classification from Single-Family Residential Use District (R-1) and Mixed Residential District (R-2) to Local Business Mixed Residential District (B-1). (Exhibit C)

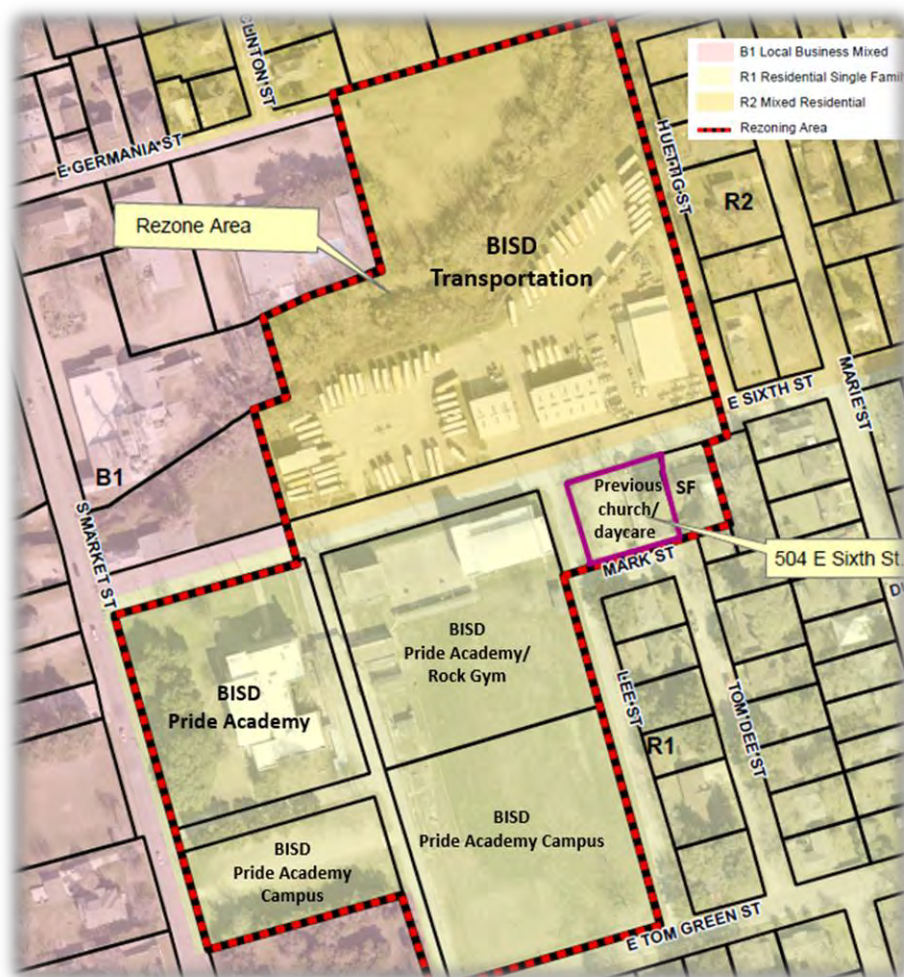
BACKGROUND:

Over the last two years, City Staff has received numerous calls from potential buyers of 504 E Sixth Street, a property that was developed originally in 1980 with a 5,900 square foot structure, presumed to be a church. While this property has been zoned R-1, Single-Family Residential District since zoning was implemented in the the City of Brenham in 1968, the property has had many nonresidential uses. In 1988, the Brenham Bible Church purchased the property as a church and in 1996, received a Specific Use Permit to expand the church use by the addition of two portable classrooms. Research suggests, the church rented a portion of the structure to Betty School of Dance from 1995-2002. The Brenham Bible Church sold the property in 2019 to the current owner, Lawrence Roscow. In 2021, it came to the City's attention that the 5,900 square foot structure was being utilized with illegally nonconforming uses as an office and fitness studio. In November 2021, the Citadel Christian School applied for a Specific Use Permit to convert the property into a private school. The application was ultimately withdrawn based on concerns for parking, before and afterschool circulation issues, and expensive building and fire code requirements that

pertain to schools. In the spring of 2022, a potential buyer inquired about a building permit to renovate and update the interior for a buildout of five (5) office spaces within the structure. The individual was informed that the property was within a R-1 District and offices were not a permitted use. He then asked about the possibility of rezoning the property, but such a zoning on a small lot, and not adjacent to a B-1 District would be considered a spot zoning.

As the structure located at 504 E. Sixth Street was originally built as a church with an asphalt parking area and minor renovations to convert to a dance studio and office space over the years, the exterior and much of the interior of the existing structure is commercial in character. When researching this property and the adjacent and surrounding uses, it was found that of the remaining six (6) lots that encompass the adjacent properties located in the approximate 16.766-acre rezoning area (*Shown in Map 1 below*) only one (1) lot, located at 506 E. Sixth Street, was a permitted single family use. The proposed rezoning area is generally bounded by E. Germania to the north, S. Market Street to the west, Huettig Street and Lee Street to the east, and E. Tom Green Street to the south. The Brenham Independent School District (BISD) encompasses the remainder five (5) lots that are considered educational uses that are legally nonconforming educational uses that predate the requirement for a specific use permit. The BISD lots include the Transportation and Maintenance (bus barn) located at 507 & 509 E. Sixth Street that is within a R-2 Mixed Residential District, and the Pride Academy alternative education facility that is zoned R-1 District and is located west of the 504 E. Sixth Street. The Pride Academy includes the main building at 1301 S. Market Street, the Rock Gym located on the southwest corner of E. Sixth Street and Lee Street, and two vacant lots (See Map 1).

Map 1



The Future Land Use Map envisions the area within the proposed rezoning area as Corridor Mixed Use as part of S. Market Street corridor located to the west. In order to bring the 16.766-acres in line with the future land use plan and predominate existing uses, Staff has prepared a City initiated rezoning of the area from R-1 and R-2 to B-1, Local Business Mixed Residential District. As single-family homes, offices, churches, schools, and governmental institutions are permitted uses in the B-1 District, the rezoning would not cause any of the existing land uses within the proposed 16.766-acres to become nonconforming. The proposed rezoning to B-1 would also be a step towards the envisioned non-residential use of the future land use plan.

ANALYSIS OF CITY OF BRENHAM ZONING POLICIES:

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

- (1) The city's zoning should recognize and seek to preserve the small-town attributes that make Brenham a special place for its citizens to live, work and play. *Please refer to Map 1 for a visual of the current zoning described herein.*

The subject rezoning area is characterized by a mixture of surrounding residential and commercial uses adjacent to and within the vicinity. The proposed area encompasses approximately 16 acres and 7 separate lots. To the south and southeast, adjacent properties are zoned R-1, Single-Family Residential and developed as single-family homes. To the north along E. Germania Street and northeast along Huettig Street, is zoned R-2, Mixed Residential District. This area is predominately developed as single-family homes though on the northeast corner, there are 3 duplexes along the 800 block of Marie Street. To the west, adjacent to the entire length of the rezoning area, is a B-1, Local Business Mixed Residential District. The adjacent B-1 area is primarily developed as commercial, with most of the properties fronting onto S. Market Street.

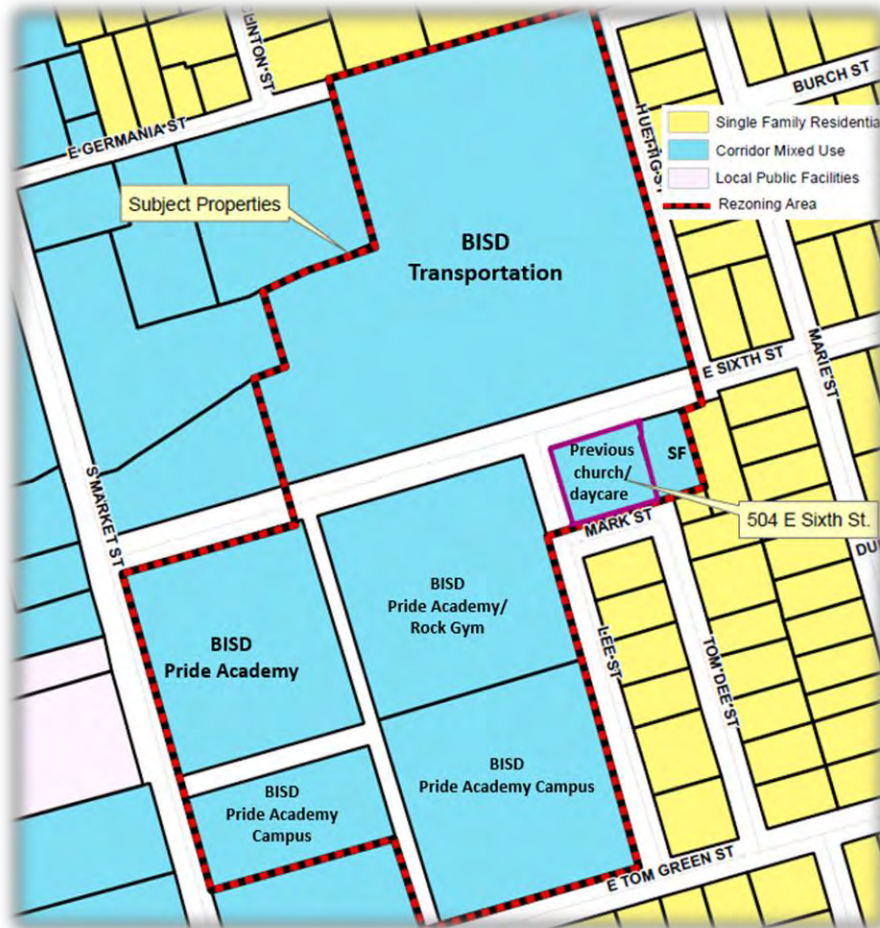
The City is currently pursuing the rezoning to B-1 in order to establish the existing specific uses and educational/institutional uses as permitted uses and to align the zoning with the envisioned future land use plan approved as part of the Comprehensive Plan: Historic Past, Bold Future: Plan 2040 approved in September 2019. The existing property located at 504 E. Sixth Street that was originally developed as a church and office space and the BISD properties are unlikely to be converted to residential uses in the future. The purpose of the B-1, Local Business/Residential Mixed-Use District is to serve as a transition between higher retail and commercial uses and traditional single-family home by establishing a medium density, mixed use district that provides convenient locations for neighborhood shopping and for affordable moderate density multifamily housing with easy access to transportation routes and neighborhood shopping. The B-1 District allows residential uses to include single-family, two-family, townhomes, and multifamily developments on two acres or more. The property located at 504 E. Sixth Street and the existing single-family property located 506 E. Sixth Street combined do not meet the minimum acreage for a multifamily development. Furthermore, they are too small for a large commercial development due to minimum parking and landscaping requirements, to include buffer yards restrictions. These lots are suitable for neighborhood commercial uses such as, offices, florist shops, dance studios, retail, small restaurants, and outpatient clinics (to name a few). All the existing uses, to include the single-family residential lot, located within the proposed rezoning area are permitted within the B-1 District.

As evidenced, the subject area is a long-standing mixture of land uses to include residential, commercial, and institutional. Approval of the proposed rezoning request would allow for the

existing residential uses and institutional uses to make improvements within the B-1 specifications that include bufferyard and landscaping requirements and for neighborhood commercial uses to potentially develop near the S. Market Street corridor.

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

Map 2- Future Land Use Map



As shown in Map 2, the future land use map portion of the Historic Past, Bold Future: Plan 2040 Comprehensive Plan suggests the subject property may be appropriate for commercial uses and the existing institutional/educational uses. In the future land use map, the blue area represents corridor mixed uses that is for properties envisioned to be commercial retail, office and service uses along and near a high-profile roadway corridor, in this instance, S. Market Street. The yellow represents single-family residential, and the pink represents areas appropriate for local public facility uses. The proposed B-1 zoning district allows for a mixture of land uses, including single-family, two-family, and multifamily residential, and neighborhood commercial uses. The proposed rezoning to B-1 and the existing developed uses are in conformance with the envisioned future land use map.

The proposed B-1 zoning is in line with the Future Land Use Map vision of commercial uses, in addition to being adjacent to the existing B-1 District to the west along S. Market Street. The Comprehensive Plan encourages neighborhood-focused businesses that include smaller footprint sites, such as those found in the B-1 District, that cater to serving a smaller area. Such

neighborhood-focused businesses would be an asset to both the surrounding residential and institutional uses. Staff finds that the proposed request meets the Future Land Use Plan and is directly in line with the goals and land use policies established in the Comprehensive Plan.

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

The proposed rezoning area mostly consists of developed land with existing utility services located along the rights-of-way of E. Sixth Street, S. Market Street, and E. Germania Street. It is unlikely that additional infrastructure would be required for new development.

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

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

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

Property owners within 200 feet of the project site were mailed notifications of this request on July 14, 2022. The Notice of Public Hearing was published in the *Brenham Banner* on July 14, 2022. Any public comments submitted to staff will be provided in the Planning & Zoning Commission and City Council packets or during the public hearing.

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

If approved, the properties will be required to adhere to minimum building setbacks and maximum impervious coverage requirements for property zoned B-1. The B-1 zoning district establishes a maximum impervious coverage limit of 80% and minimum building setbacks. Furthermore, development of new nonresidential uses adjacent to an existing residential use will require additional buffer yard requirements along the property lines of the residential use. Staff finds that the adopted zoning ordinance and building codes will ensure that adequate open spaces are preserved on the subject lots.

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

The requested zoning and associated land uses are appropriate for this location given adjacent zoning designations, existing development within and in the vicinity, as well as conformance with the City's adopted future land use map.

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

Rezoning the subject area to B-1 will allow the existing commercial and institutional uses that comprise 6 of the 7 lots to be legally conforming permitted uses. The adjacent properties to the subject area are zoned R-1 to the south and southeast, R-2 to the east and northeast and B-1 along the west boundary of the proposed rezoning area. The proposed B-1 District is an appropriate step

up from the surrounding residential uses to the nearby commercial uses as the B-1 District allows both residential uses and neighborhood commercial.

Rezoning the area from a residential use to a mixed commercial and residential use would allow the existing residential properties to benefit from buffer yard and screening requirements that are established to preserve existing neighborhoods and ensure adjacent commercial property develops in a manner compatible to nearby land uses. Any new commercial development next to an existing residential use, would be required to have a 20-foot buffer yard in addition to the standard setbacks. In addition, twenty percent (20%) of the buffer yard is required to be landscaped and a screening hedge or fence is mandated. Staff finds that the proposed zoning would preserve the existing neighborhood culture and is consistent with the community's plan for the development and/or redevelopment of its neighborhoods.

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

Staff finds that rezoning the properties will protect and not adversely affect adjacent existing and future residential neighborhoods due to the City's adopted development standards including requirements related to buffer yards, screening, setbacks, drainage, and landscaping.

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

Staff is unable to determine any destabilizing effects on the neighboring properties should this rezoning request be approved. The proposed B-1 zoning for the subject properties is aligned with the surrounding areas to the west and provides an adequate step-up in zoning from the single-family and mixed residential uses to the adjacent neighborhood commercial uses along S. Market Street.

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

The subject properties are within an area predominately made up of single-family homes to the east and south and nearby neighborhood commercial uses to the west along the S. Market Street corridor. Staff finds that the proposed zoning change, if approved, will allow for orderly commercial development along a portion of E. Sixth Street that will serve the properties in the general vicinity and the community. Similarly, there are additional properties in the vicinity that could be utilized for residential use.

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

The proposed properties to be rezoned are primarily institutional uses and staff is unaware of any lots that the B-1 rezoning would result in being considered legally nonconforming (grandfathered) uses. Existing nonconforming neighborhood commercial uses would become conforming permitted uses with the proposed rezoning.

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

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

STAFF RECOMMENDATION:

Based on the evidence and findings above, Staff recommends **approving** the proposed rezoning of the approximate 16.766-acre area generally bounded by E. Germania to the north, S. Market Street to the west, Huettig Street and Lee Street to the east, and E. Tom Green Street to the south, to the Local Business Mixed Residential zoning use district (B-1).

As of the date of this report, Staff has not received any comments, phone calls, or letters of concern and from surrounding property owners or the general public.

EXHIBITS:

- A. Aerial Map
- B. Zoning Map
- C. Future Land Use Map
- D. Site photos

EXHIBIT "A"
AERIAL MAP



Proposed City Initiated Rezoning
R-1 & R-2 to B-1



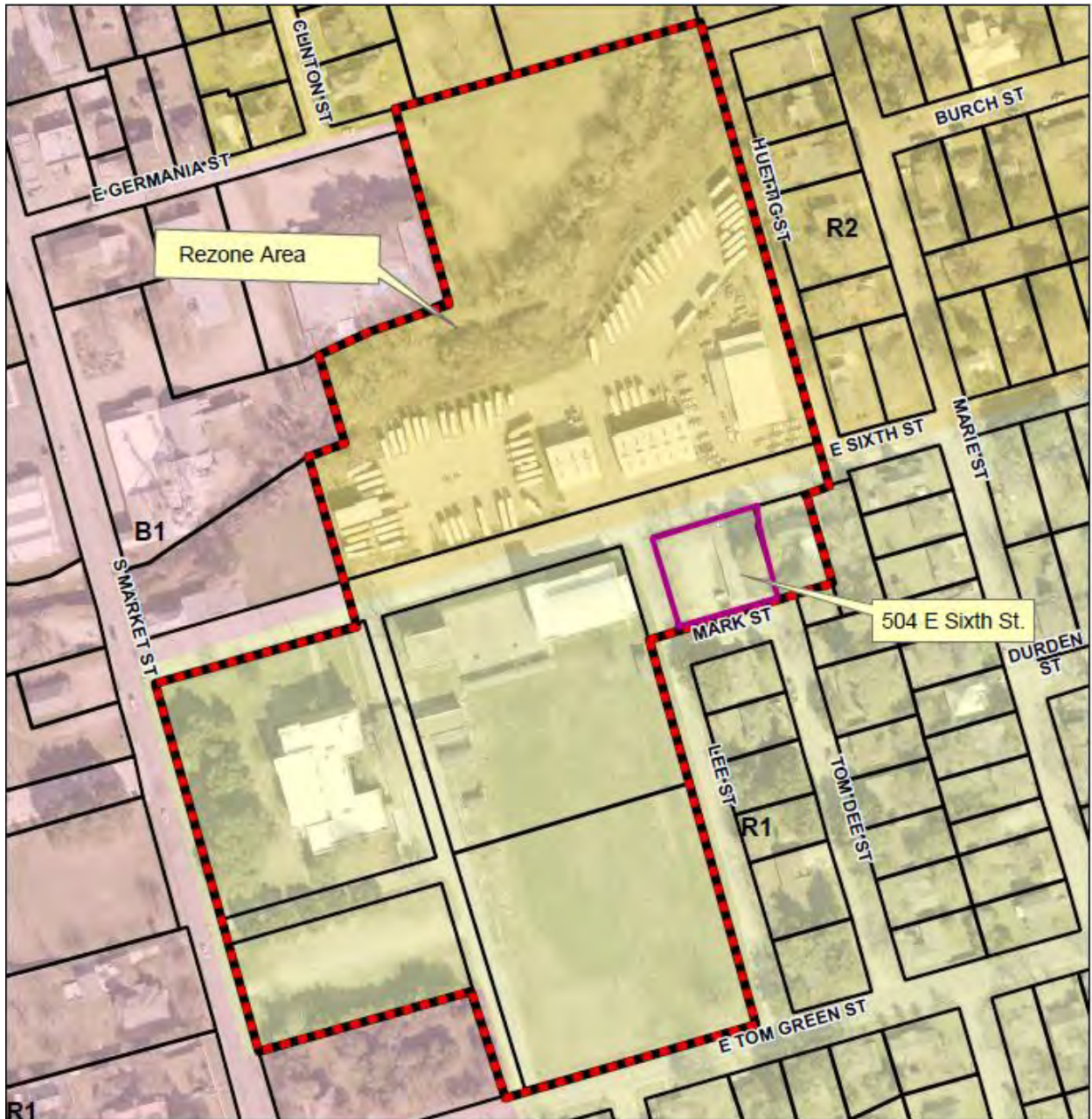
Legend

--- Rezoning Area



1 inch = 175 feet

EXHIBIT "B" ZONING MAP



Proposed City Initiated Rezoning R-1 & R-2 to B-1

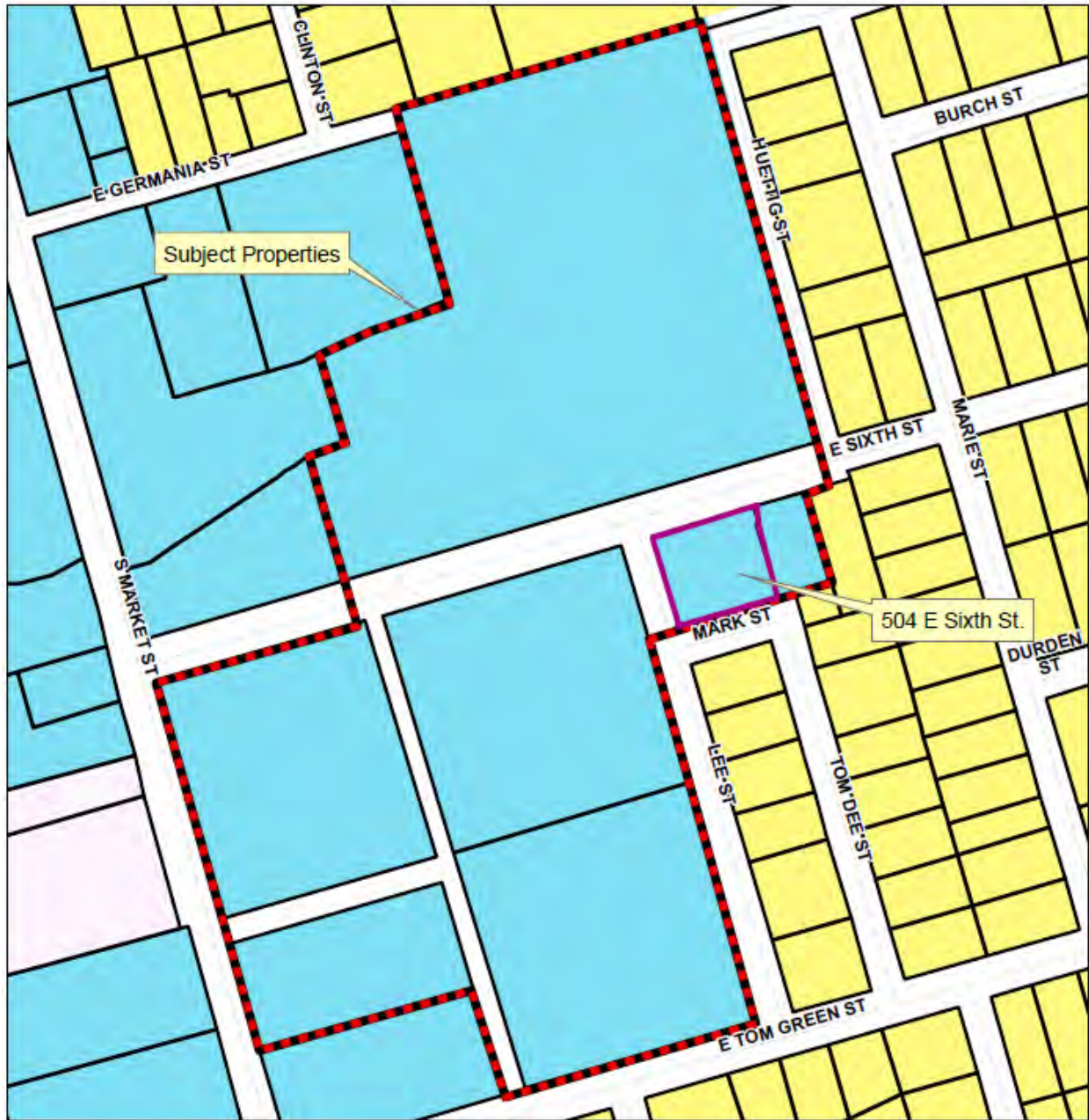
Legend

- B1 Local Business Mixed
- R1 Residential Single Family
- R2 Mixed Residential
- Rezoning Area



1 inch = 175 feet

EXHIBIT "C"
FUTURE LAND USE MAP



Future Land Use Plan
FLU_FINAL

- Single Family Residential
- Corridor Mixed Use
- Local Public Facilities
- Rezoning Area

Proposed City Initiated Rezoning
R-1 & R-2 to B-1



1 inch = 175 feet

EXHIBIT "D"
SITE PHOTOS



504 E 6th Street and adjacent residential to the east



Rear of 504 E 6th Street & parking area



BISD Transportation Depot & Rock Gym



Pride Academy football field & Structures



504 E 6th Street and adjacent residential – Mark Street



Regular City Council
AGENDA ITEM 10.

Agenda Item: Public Hearing, Discussion and Possibly Act Upon an Ordinance on Its First Reading Amending Division 16, Effective Date, of Ordinance No. O-21-005 Related to Industrial Wastewater Discharge Standards and Pretreatment for the City of Brenham, Texas

Meeting Type: Regular Meeting-August 04, 2022

Department: Public Utilities

Staff Contact: Bobby Keene

SUMMARY STATEMENT:

Between November 29-December 3, 2021, the City's Wastewater Department underwent a TCEQ audit. After review of Ordinance No. 0-21-005, TCEQ requested Ordinance No. 0-21-005 be amended to delete the phrase "and is incorporated into the City's TPDES permit". Staff recommends approval of the amendment to Division 16 of Ordinance No. 0-21-005 as requested by the TCEQ.

ATTACHMENTS:

(1) Ordinance for First Reading

RECOMMENDED ACTION:

Approve an Ordinance on Its First Reading Amending Division 16, Effective Date, of Ordinance No. O-21-005 Related to Industrial Wastewater Discharge Standards and Pretreatment for the City of Brenham, Texas

ORDINANCE NO. _____

**AN ORDINANCE AMENDING DIVISION 16, EFFECTIVE DATE, OF
ORDINANCE NO. O-21-005 RELATED TO INDUSTRIAL WASTEWATER
DISCHARGE STANDARDS AND PRETREATMENT FOR THE CITY OF
BRENHAM, TEXAS**

WHEREAS, the City of Brenham (“City”) is a Texas home-rule municipality; and

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

WHEREAS, on March 11, 2021 the City Council of the City of Brenham adopted Ordinance No. O-21-005 to set forth uniform requirements for users of the Publicly Owned Treatment Works for the City of Brenham and to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code § 1251 et seq.) and the General Pretreatment Regulations (40 Code of Federal Regulations Part 403); and

WHEREAS, the Texas Commission on Environmental Quality (“TCEQ”) has requested that Division 16 of Ordinance No. O-21-005 be amended to delete the phrase “and is incorporated into the City’s TPDES permit”; and

WHEREAS, the City staff recommends approval of the amendment to Division 16 of Ordinance No. O-21-005 as requested by the TCEQ;

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

SECTION I.

That Division 16 of Ordinance No. O-21-005 is hereby amended in its entirety to read as follows:

DIVISION 16. EFFECTIVE DATE

The Ordinance shall be in full force and effect on the date it is approved by TCEQ.

SECTION II

This Ordinance shall become effective upon adoption as provided by the Charter of the City of Brenham, Texas.

PASSED AND APPROVED, on its first reading this the ____ day of August 2022.

PASSED AND APPROVED, on its second reading this the ____ day of August 2022.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary



Regular City Council
AGENDA ITEM 11.

Agenda Item: Submission of, Discussion, and Possible Action Regarding the No-New Revenue Tax Rate, Voter-Approval Tax Rate, and Proposed Tax Rate of \$0.4940 per \$100 Valuation for the 2022 Tax Year, and Take Record Vote on Proposed Tax Rate and Meeting Dates for Final Adoption of Tax Rate

Meeting Type: Regular Meeting-August 04, 2022

Department: Finance

Staff Contact: Tim McRoberts

SUMMARY STATEMENT:

See attached memo.

ATTACHMENTS:

(1) Tax Rate Memo

RECOMMENDED ACTION:

'I move that a property tax rate of \$0.4940 per \$100 valuation be considered by the governing body on the agendas of the September 1, 2022 and September 15, 2022 Brenham City Council Meetings.'



MEMORANDUM

To: Mayor, Council and City Manager

From: Tim McRoberts
Strategic Budget Officer

Subject: Proposed Property Tax Rate for FY2022-23

Date: August 4, 2022

Developing an annual budget and adopting a property tax rate to support that budget must be accomplished in compliance with property tax code, local government code, and City Charter. Following legislative guidelines ensures that the public is informed of any increases. In 2019, the Texas Legislature passed Senate Bill 2, also known as the *Texas Property Tax Reform and Transparency Act of 2019*.

At its most fundamental level, S.B. 2 reformed the system of property taxation in three primary ways:

- (1) Lowered the tax rate a taxing unit can adopt without voter approval from 8.0% to 3.5% and requires a mandatory election to go above the lowered rate;
- (2) Made numerous changes to the procedures by which a city adopts a tax rate (see section below);
- (3) Made several changes to the property tax appraisal process.

What changes were made to how a city provides notice of its tax rate every year?

S.B. 2 provides a few different mechanisms for providing notice of the city's tax rate:

- By August 7th, or as soon thereafter as practicable, the city must post a notice on the city's website in the form prescribed by the comptroller.
- New notice provisions for the Public Hearing on the tax rate are required depending on the tax rate proposed by the city.
- New notice provision for the Meeting to vote on the tax rate is required.
- Requires a table to be included at the end of the notice for the Public Hearing on the tax rate that compares the taxes imposed on the average residence homestead in the city last year to the taxes proposed to be imposed on the average residence homestead this year.

City of Brenham Proposed Tax Rate for FY2022-23

During the month of July, a Council Budget Workshop was held to review and discuss the proposed FY2022-23 budget. Based on the priorities presented at these workshops, we discussed maintaining the current property tax rate of \$0.4940 per \$100 valuation. The maintenance & operations (M&O) property

tax rate will remain \$0.3500 per \$100 valuation; and the interest and sinking (I&S) rate will remain \$0.1440 per \$100 valuation.

The City is proposing to adopt a total tax rate (M&O and I&S) of \$0.4940 for FY2022-23. The proposed rate is less than the Voter-Approval rate, adjusted for unused increment rate, of \$0.5416, so no election will be necessary. However, the proposed rate is higher than the No-New-Revenue Rate of \$0.3966 which requires us to hold a public hearing before the tax rate is adopted.

<u>Proposed Property Tax Rate</u>			
	<u>M&O</u>	<u>I&S</u>	<u>Total</u>
Current FY21-22	\$ 0.3500	\$ 0.1440	\$ 0.4940
Proposed Tax Rate FY22-23	\$ 0.3500	\$ 0.1440	\$ 0.4940
Proposed Increase/(Decrease)	\$ -	\$ -	\$ -

<u>Senate Bill 2 Comparison</u>			
Proposed Tax Rate FY22-23	\$ 0.3500	\$ 0.1440	\$ 0.4940
No-New-Revenue Rate			\$ 0.3966
Voter-Approval Rate			\$ 0.5416

Tax Freeze for Residential Homestead Property Owners Over 65 and Disabled Persons

In June of 2019, Council approved an Ordinance providing for a tax freeze for persons over 65 years of age and disabled persons. For FY2022-23, the number of homesteads with this freeze is noted below:

- Over 65 – 1,380 accounts with an appraised value of \$263,261,973
- Disabled Persons – 40 accounts with an appraised value of \$5,136,618

These accounts will have their “tax bill” frozen from this point forward, or until the property is sold. The appraised value continues to increase (or decrease), but the amount due for property taxes cannot increase but can decrease.

We have prepared a comparison chart showing the average homestead taxable value for 2021 versus 2022, and the total change in taxes.

Comparison Table	Tax Year		Change	
	2021	2022	Dollar	Percent
Total Tax Rate (per \$100 of value)	\$ 0.4940	\$ 0.4940	\$ -	0.00%
Average Homestead Taxable Value	\$ 192,510	\$ 215,591	\$ 23,081	11.99%
Tax on Average Homestead	\$ 951.00	\$ 1,065.02	\$ 114.02	11.99%
Total Tax Levy on all Properties	\$ 7,965,034	\$ 9,907,514	\$ 1,942,480	24.39%

Council Action

Although not required by Tax Code, we recommend that Council take a RECORD vote to place an item to adopt the proposed property tax rate on agendas of future meetings. The motion for the vote should be made as follows:

***“I move that a property tax rate of \$0.4940 per \$100 valuation be considered by the governing body on the agendas of the September 1, 2022 and September 15, 2022 Brenham City Council meetings.*”**



Regular City Council
AGENDA ITEM 12.

Agenda Item: Discuss and Possibly Act Upon Resolution No. R-22-025 to Select Engineering Service Provider(s) to Complete Project Implementation for the American Rescue Plan Act (ARP Act) Funding by the U. S. Department of the Treasury, or other Federal or State Agency

Meeting Type: Regular Meeting-August 04, 2022

Department: Administration

Staff Contact: Jeana Bellinger

SUMMARY STATEMENT:

In July, under the direction of our grant administrator, GrantWorks, the City issued a Request for Qualification (RFQ) seeking qualified engineering, architectural, and/or surveying firms to prepare preliminary and final design plans and specifications for various water and wastewater projects eligible for funding under the American Rescue Plan Act (ARPA). The City received RFQs from Gunda Corporation, Strand Associates and TLC Engineering.

As required by the grant, a 5-member selection committee (Councilmember Kenjura, Jeana Bellinger, Debbie Gaffey, Alton Sommerfield, and Shawn Bolenbarr) reviewed each RFQ and scored them on experience, performance and capacity. The RFQ receiving the highest score was Strand Associates, Inc.; therefore, staff is requesting that the City Council award the RFQ for engineering, architectural and/or surveying services for the ARPA projects to Strand.

ATTACHMENTS:

- (1) Resolution No. R-22-025
- (2) RFQ Scoring Sheet

RECOMMENDED ACTION:

Approve Resolution No. R-22-025 to select engineering service provider to complete project implementation for the American Rescue Plan Act (ARP Act) funding by the U. S. Department of the Treasury, or other Federal or State Agency.

RESOLUTION NO. R-22-025

A RESOLUTION OF THE CITY OF BRENHAM, TEXAS, AUTHORIZING THE SELECTION OF ENGINEERING SERVICE PROVIDER(S) TO COMPLETE PROJECT IMPLEMENTATION FOR THE AMERICAN RESCUE PLAN ACT (ARP ACT) PROGRAM(S)

WHEREAS, the ARP ACT program(s) requires implementation by professionals experienced in federally-funded projects; and

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

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

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

- Section 1.** That Strand Associates, Inc. be selected to provide application and project-related **professional engineering services** for the ARP ACT program(s).
- Section 2.** That any and all project-related services contracts or commitments made with the above-named service provider are dependent on the award of ARP ACT funds and successful negotiation of a contract with the service provider.

PASSED and APPROVED this 4th day of August 2022.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary

**AMERICAN RESCUE PLAN ENGINEERING RFQ 22-008
SCORING SHEET**

Proposer	Experience	Performance	Capacity	Total Score
Gunda Corporation, LLC	233	104	67	404
Strand Associates, Inc.	286	113	75	474
TLC Engineering, Inc.	188	102	30	320



Regular City Council
AGENDA ITEM 13.

Agenda Item: Discuss and Possibly Act Upon an Interlocal Agreement Between the City of Brenham and Brenham Independent School District Related to School Resource Officers and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-August 04, 2022

Department: Police Department

Staff Contact: Chief Parker

SUMMARY STATEMENT:

The City of Brenham and Brenham Independent School District (BISD) agree on increasing the staffing levels at BISD with another designated school resource officer. The City of Brenham and BISD are seeking to expand their current Interlocal Agreement (ILA) for the designated school resource officers to include the addition of another Officer to supply the school district with more law enforcement staffing. With council approval Brenham Police Department and BISD will abide by all necessary ILA criteria set forth in the designated contract.

ATTACHMENTS:

(1) School Resource Officer Agreement

RECOMMENDED ACTION:

Approve an Interlocal Agreement between the City of Brenham and Brenham Independent School District Related to School Resource Officers and authorize the Mayor to execute any necessary documentation.

**INTERLOCAL AGREEMENT
FOR SCHOOL RESOURCE OFFICERS BETWEEN
BRENHAM I.S.D. AND THE CITY OF BRENHAM**

THIS INTERLOCAL AGREEMENT ("Agreement") is made this ____ day of ____, 2022, by and between the following parties ("Parties"): City of Brenham ("City") and Brenham Independent School District, ("BISD") for the use of School Resource Officers ("SROs").

WHEREAS, the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code, the City and BISD are authorized to enter into agreements to perform governmental functions and services; and

WHEREAS, the City of Brenham currently has officers assigned to BISD campuses to provide SRO services; and

WHEREAS, BISD desires to have additional SROs placed on its campuses; and

WHEREAS, the Parties agree that the SROs shall remain City employees, under the command of the City's Chief of Police; and

NOW, THEREFORE, in consideration of the mutual covenants expressed in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the City and BISD do hereby agree as follows:

ARTICLE 1:
ASSIGNMENT OF SCHOOL RESOURCE OFFICERS

The City of Brenham agrees to provide five (5) certified police officers as agreed upon to BISD in the implementation of the School Resource Officer Program. Assigned Officers shall be provided by the City to BISD in accordance with the terms and conditions of the School Resource Officer Program attached hereto as Exhibit A, attached hereto and incorporated herein by reference for all purposes.

The City will staff a School Resource Officer ("SRO") Program consisting of one (1) sergeant and four (4) police officers of the City of Brenham Police Department to provide school resource and police services throughout the boundaries of Brenham ISD.

Officers will be assigned as SROs by the City of Brenham Chief of Police subject to the approval of the Brenham ISD Superintendent or designee for the sergeant and the applicable Brenham ISD school principal for the SROs. If the Brenham ISD Superintendent or designee determines that the performance of the sergeant is unacceptable, the City shall reassign that person and assign another sergeant with the approval of Brenham ISD Superintendent or designer. If the principal determines that the SRO is unacceptable, the City shall reassign that person and assign another SRO with the approval of the principal.

In the event of a resignation, retirement, dismissal, or reassignment of an SRO, or in the case of long-term absences by an SRO, the Police Department will provide a temporary replacement for the SRO within thirty (30) school days of receiving notice of such absence, dismissal, resignation, or reassignment.

The City, including the SROs, shall have the status of an independent contractor for the purposes of this Agreement. An SRO assigned to BISD is an employee of the City and shall not be considered an employee of BISD. As such, the SRO shall be subject to Police Department control, supervision, policies, procedures, and directives.

In accordance with the Police Department's policies as established for its employees. The City shall maintain appropriate Worker's Compensation and unemployment insurance coverage for each SRO in accordance with coverage maintained for all other police officers employed by the City.

The SROs will carry radios that will allow contact with BISD personnel, central dispatch, and emergency medical services. In addition, cellular telephones for each SRO will be provided by and paid for by the City along with the monthly charges.

The SRO is subject to current procedures in effect for City police officers, including mandated training and testing to maintain state peace officer licensing and certification. This training and certification should take place throughout the summer if possible.

When an SRO is temporarily absent from his/her assigned campus for training or other reason on a day that school is in session, the police department will make reasonable efforts to provide a police presence for that campus by assigning other SROS or police officers to spend a portion of the school day on the affected campus.

The District will provide the SRO with access to an office that affords security and equipment as is necessary at the assigned school. This equipment should include, but is not limited to a phone, access to a computer, and filing space capable of being secured.

In compliance with City policies, SROs will carry with them any approved weapons deemed necessary to successfully complete their day-to-day law enforcement duties.

ARTICLE 2: **SCOPE OF SERVICES**

The SRO will work in concert with the school principal(s), or the school designee, meeting with the principal(s) on a periodic basis.

The SRO will check in and out with the designated school staff upon arriving or departing from campus unless circumstances prevent the SRO from doing so.

The SRO may provide a program of education leadership by acting as a guest speaker in addressing tobacco, alcohol, and other drug issues, and in addressing violence diffusion, violence prevention, and safety issues in the school community.

The SRO will act as a communication liaison with law enforcement agencies and provide basic information concerning students on the campus served by the officer.

The SRO may present or facilitate programs to parents on issues related to tobacco, alcohol, and other drugs, violence prevention, and safety.

The SRO may provide informational programs for BISD staff on issues related to alcohol and other drugs and the law, violence, gangs, safety, security, and other topics as requested or deemed necessary.

The SRO will gather and properly disseminate to Brenham ISD administrators information regarding potential problems such as criminal activity, gang activity, and student unrest, and attempt to identify particular individuals who may be a substantial or material disruptive influence to the school and/or students.

The SRO will assist BISD staff in maintaining order on school property.

The SRO will take appropriate law enforcement action, consistent with a police officer's duty. As soon as practical, the SRO will make the principal of the school aware of such action. Whenever practical, the SRO will advise the principal when requesting additional police assistance on campus.

The SRO will not act as a school disciplinarian. However, if the principal believes an incident involves a violation of the law, the principal may contact the SRO and the SRO will then determine whether law enforcement action is appropriate.

The Sergeant and SROs will provide SRO services to BISD during each classroom instruction day of the BISD calendar including summer school and professional development.

The Sergeant will supervise the four SROs and also provide school resource services which include, but are not limited to, the activities listed under this section and law enforcement functions.

Performance evaluations of the Sergeant and SROs will be conducted in accordance with current City policy. In the case of the performance evaluation of the Sergeant, the police Lieutenant supervising the Sergeant will receive input from the BISD Superintendent or designee. In the case of the SROs, the sergeant will confer with the principal on whose campus the SRO is assigned prior to completing the evaluation.

The sergeant and each SRO will meet with the respective school campus staff on a regular basis as determined by the respective school principal.

Citations issued by City police officers for Class C misdemeanor offenses in connection with the SRO program that occur within the city limits will be filed in the Brenham Municipal Court. Class C charges originating from offenses that occur outside the city limits but within Washington County will be documented by a report and forwarded to the District Attorney's office to be filed in the appropriate Justice of the Peace court. Class A and B misdemeanors and felony offenses will be filed in the court having jurisdiction over the offense.

The SRO may perform other duties as may be mutually agreed upon in writing by the Police Department and BISD.

The Police Department will provide the SRO with all training necessary for the acquisition and maintenance of state licensing and certification requirements for police officers.

Provided further that nothing required herein is intended to or will constitute a relationship or duty of the assigned police officer or the City beyond the general duties that exist for a law enforcement officer within the state.

ARTICLE 3: **RECORDS**

Documentation created by the Sergeant or SRO that pertains to any BISD student and is shared with BISD staff may be considered educational records of the student. Documentation created by the Sergeant or an SRO strictly for law enforcement purposes and not shared with BISD staff may constitute law enforcement records and not educational records of the students. Records and documentation may be treated differently depending upon the purpose, content, and how the documents are maintained and shared. Disclosure of these records will be in accordance with state and federal law.

ARTICLE 4: **PAYMENT**

BISD agrees to reimburse the City for 100% of the annual SRO budget as approved by Council.

For annual budgeting purposes, the cost of the program will be projected by the Police Department and agreed upon in time for BISD and the City to incorporate the projection into the annual budget planning process of both entities.

The City will prepare and adopt a budget for the SRO program each year based on the City's fiscal year, October 1 through September 30, and will submit a copy of the approved budget to BISD. The City will submit a copy of the proposed SRO budget for each fiscal year no later than August 15 of the respective year so that BISD may submit comments to the City concerning the SRO budget.

Reimbursement from BISD to the City will be due quarterly during the City's fiscal year.

The City will provide BISD with quarterly expense reports and BISD will be entitled to review the records concerning the expenses after giving the City reasonable notice of its desire to review the records.

With the knowledge and consent of both parties, BISD or the City may apply for a funding grant to offset the cost of the SRO program or a portion thereof.

BISD will be responsible for paying for, separate and apart from this Agreement, security or extra-duty employment of police officers at BISD extracurricular events. The rate of pay for

such security or extra-duty employment will be at the rate of \$45 per hour with a three (3) hour minimum.

Brenham ISD will be responsible for paying for, separate and apart from this Agreement, security or extra-duty employment of police officers at Brenham ISD campuses that do not staff an SRO. The rate of pay for such security or extra-duty employment will be at the rate of \$40 per hour with a four (4) hour minimum.

ARTICLE 5: **TERM**

This Agreement shall be valid for a term of one (1) year beginning October 1, 2022 and shall thereafter be renewed automatically for successive one (1) year terms unless terminated in writing by either party at least thirty (30) prior to the expiration of the then current term.

ARTICLE 6: **SEVERABILITY**

If any one or more of the provisions contained in this Agreement shall for any reason be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision and this agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

ARTICLE 7: **CONSENT TO SUIT**

Nothing in this Agreement will be construed as a waiver or relinquishment by any party of its right to claim such exemptions, privileges, and immunities as may be provided by law.

ARTICLE 8: **FORCE MAJEURE**

To the extent that any party to this Agreement shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed; provided, however, force majeure shall not excuse an obligation solely to pay funds.

ARTICLE 9: **MISCELLANEOUS TERMS**

1. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matter. Each party to the Agreement acknowledges that no representation, inducements, promises, or agreement, oral or otherwise, have been made by any other party or anyone acting on behalf of any party which

are not embodied herein and that no other agreements, statement, or promise not contained in this Agreement shall be valid or binding. No modification concerning this instrument shall be of any force or effect, excepting a subsequent amendment in writing signed by the parties.

2. This Agreement has been made under and shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under, or in connection with, this Agreement shall lie exclusively in Washington County, Texas.
3. Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof.

IN WITNESS WHEREOF, CITY and BISD have hereby entered this agreement effective upon adoption by each governing body.

BRENHAM ISD

By: _____

Name: _____

Superintendent, Brenham ISD

Date: _____

CITY OF BRENHAM

Milton Y. Tate, Jr.

Mayor

Date: _____

EXHIBIT A

The primary role of School Resource Officers is to assist BISD with its commitment to an Exceptional Education for ALL students by promoting and maintaining a safe learning and teaching environment. Protecting the lives of students, employees and visitors is paramount. The School Resource Officers will help generate a positive understanding of law enforcement and promote good citizenship through daily interaction with students. Officers will enforce local and state laws in a consistent and fair manner. They will provide a positive role model for students. The parties have agreed to the following terms and conditions for the operation of the School Resource Officer Program:

- Assigned School Resource Officers will provide services to enforce all federal, State of Texas, and City of Brenham laws and will not enforce the rules, regulations and procedures of BISD.
- Assigned Officers shall at all times remain part of the Brenham Police Department Chain of Command and subject to the rules, regulations and procedures of the Brenham Police Department. Assigned Officers are at all times employees of the Brenham Police Department and not employees of BISD. Administrative personnel from BISD will be consulted prior to the assignment of police personnel.
- Assigned Officer will utilize a community policing program and method of implementation of said program be at the sole discretion of the Brenham Police Department.
- The City of Brenham shall provide training and equipment for all Assigned Officers unless BISD shall request any specialized training or equipment, at the sole cost of BISD. Any specialized training or equipment requested by BISD is subject to prior written approval of the Chief of Police.
- The Chief of Police or his designee will be responsible for the scheduling of the use of the Assigned Officers with preference to BISD.
- The City of Brenham shall provide reports and analysis of criminal activity on the property of BISD, as BISD may reasonably request.
- BISD shall provide the Assigned Officer(s) necessary office space, supplies and utility services to perform the duties in accordance with this agreement.
- Assigned Officers will be available for use by the Brenham Police Department for either emergency or non-emergency assignment according to the off-campus needs of the Police Department, as determined in the sole discretion of the Chief of Police or his designee.
- BISD and City shall have a joint operating committee to manage the operation of the School Resource Officers. The joint operating committee shall consist of the Superintendent and the City Manager, or their designees. All disputes under this agreement shall first be referred to the joint operating committee to attempt to negotiate a resolution.
- The Chief of Police will direct the Police Department's Volunteer Citizens on Patrol to conduct traffic detail during the mornings and afternoons around BISD school campuses as agreed upon by both parties.
- BISD and City shall have the ability to evaluate the program and/or Agreement at any time and make recommendations to address concerns or needs. The aforementioned committee

can petition the BISD Superintendent and the City Manager to amend this inter-local Agreement.



Regular City Council
AGENDA ITEM 15.

Agenda Item: Section 551.071 Texas Government Code - Consultation with Attorney - Consultation with City Attorney Regarding Aviators Plus, LLC v. City of Brenham, Texas; Cause No. 37896; 21st Judicial District Court, Washington County, Texas

Meeting Type: Regular Meeting-August 04, 2022

Department: Administration

Staff Contact: Carolyn Miller

SUMMARY STATEMENT:

To be discussed in Executive Session.

ATTACHMENTS:

None

RECOMMENDED ACTION:

No action - Executive Session discussion only.



Regular City Council
AGENDA ITEM 16.

Agenda Item: Discuss and Possibly Act Upon Matters Related to Aviators Plus, LLC v. City of Brenham, Texas; Cause No. 37896; 21st Judicial District Court; Washington County, Texas and Associated Issues, Including But Not Limited to Retaining Litigation Counsel, and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-August 04, 2022

Department: Administration

Staff Contact: Carolyn Miller

SUMMARY STATEMENT:

As discussed in Executive Session.

ATTACHMENTS:

None

RECOMMENDED ACTION:

As discussed in Executive Session.