



**NOTICE OF A REGULAR MEETING
THE BRENHAM CITY COUNCIL
THURSDAY, AUGUST 3, 2023 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 - Mayor Atwood C. Kenjura**
- 3. Service Recognitions**
 - ♦ **Karen Stack, Administration - 5 Years**
 - ♦ **Jean Luera, Police Department - 10 Years**
- 4. Proclamations**
 - ♦ **Clear the Shelters**
- 5. Citizens Comments**

CONSENT AGENDA

- 6. Statutory Consent Agenda**

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

 - 6-a. Approve the Minutes from the June 15, 2023 and July 13, 2023 Regular City Council Meetings**
 - 6-b. Approve a Noise Variance Request from Lucile Lewis for the Lewis Family Reunion to be Held on August 12, 2023 at Hohlt Park from 12:00 p.m. to 10:00 p.m.**

- 6-c. Approve the Final Payment to Collier Construction Inc. for Project No. 2202-06 in the Amount of \$41,158.16 Related to the Hohlt Park Nature Trail Improvements and Authorize the Mayor to Execute Any Necessary Documentation**
- 6-d. Approve an Electrical Distribution Construction Agreement Between the City of Brenham and Techline Construction, LLC, Through the Lower Colorado River Authority (LCRA), in an Amount Not To Exceed \$125,750.00 Related to the MLK Parkway Circuit Upgrade Pole Changeouts and Authorize the Mayor to Execute Any Necessary Documentation**
- 6-e. Approve an Electrical Distribution Construction Agreement Between the City of Brenham and Techline Construction, LLC, Through the Lower Colorado River Authority (LCRA), in an Amount Not To Exceed \$78,500 Related to the South Market Street Line Upgrade and Authorize the Mayor to Execute Any Necessary Documentation**
- 6-f. Approve Change Order No. 1 for Project No. 2021-06-B to D&S Contracting, Inc. in the Amount of -\$2,669.00 for the 2022 Sanitary Sewer Improvements - Stone Hollow Force Main and Ralston Creek Gravity Sewer Crossing and Authorize the Mayor to Execute Any Necessary Documentation**
- 6-g. Approve Change Order No. 1 for Project No. 63C-19C to McDonald Municipal and Industrial, a Division of C. F. McDonald Electric, Inc. in the Amount of -\$5,000.00 for the Generator at Atlow Booster Pumping Station and Authorize the Mayor to Execute Any Necessary Documentation**

PUBLIC HEARING AND ASSOCIATED ACTION ITEM

- 7. Public Hearing, Discussion and Possible Action on an Ordinance on Its First Reading for the Creation of Reinvestment Zone Number 51 Requested by MIC Group, LLC for Commercial Tax Phase-In Incentive on a Certain 16.291 Acre Tract or Parcel of Land Being Comprised of Lot 1, Industrial Park of Brenham as Recorded in Plat Slide 190-A and B of the Plat Records of Washington County (P.R.W.C.) and Lot 5, Brenham Business Center, Phase I, as Shown on the Boundary Line Adjustment Plat Recorded in Plat Slide 425-A (P.R.W.C.) and Being Located at 3140 S. Blue Bell Road., Brenham, Texas, with Boundaries Further Described in Exhibit 'A' of the Ordinance Creating Reinvestment Zone Number 51, and Designating This Property as Qualifying for Tax Phase-In**

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, in Washington County, Texas (Case No. P-23-026) to Include:**
 - a. **Revision of the Definition of 'Food Truck Site' Found in Part 1, Section 5, Section 5.02;**
 - b. **Revision of the Specific Use Provisions for the R-1 (Single Family Residential) and the Permitted and Specific Use Provisions of the R-2 (Mixed Residential) Zoning Districts Found in Part 2, Division 2, Sections 1 and 2 Respectively;**
 - c. **Deletions to Part 2, Division 1, Section 11 - Performance Standards; and**
 - d. **Deletions to Part IV, Division 2, Section 2 Pertaining to Conditions on Variances**

WORK SESSION

9. **Discussion and Presentation on City of Brenham's Noise Nuisance Ordinance**

REGULAR SESSION

10. **Discuss and Possibly Act Upon Ordinance No. O-23-019 on its Second Reading Amending Chapter 17, Offenses and Miscellaneous Provisions of the Code of Ordinances of the City of Brenham as Amended by City Council**
11. **Submission of, Discussion, and Possible Action Regarding the No-New Revenue Tax Rate, Voter-Approval Tax Rate, and Proposed Tax Rate for the 2023 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 an Agreement Between the City of Brenham and Brown Reynolds and Watford (BRW) Architects Related to the Design of Fire Station No. 2 and Authorize the Mayor to Execute Any Necessary Documentation**

13. Discuss and Possibly Act Upon:

- a. An Agreement with United Healthcare for Group Medical Coverage Benefits for the Plan Year October 1, 2023 through September 30, 2024;
- b. An Agreement with Surency for the Administration of Flexible Spending Account/Dependent Care Reimbursement, Health Savings Account, and COBRA for the Plan Year October 1, 2023 through September 30, 2024;
- c. An Agreement with Equitable for Voluntary Dental Coverage Benefits and Employer-Sponsored Basic Life, Accidental Death and Dismemberment, and Long-Term Disability for the Plan Year October 1, 2023 through September 30, 2024, with a Two-Year Rate Guarantee;
- d. An Agreement with Aveis for Voluntary Vision Coverage Benefits for Plan Year October 1, 2023 through September 30, 2024, with a Four-Year Rate Guarantee; and
- e. An Agreement with Alliance Work Partners for an Employee Assistance Program for the Plan Year October 1, 2023 through September 30, 2024

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**

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 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, July 31, 2003 at 12:00 p.m.

Jeana Bellinger, TRMC, CMC

City Secretary

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

I certify that the attached notice and agenda of items to be considered by the City Council was removed by me from the City Hall bulletin board on the _____ day of _____, 2023 at _____ a.m./p.m.

Signature

Title

Brenham City Council Minutes

A regular meeting of the Brenham City Council was held on Thursday, June 15, 2023, beginning at 1:00 p.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

Members Present:

Mayor Atwood C. Kenjura
Mayor Pro Tem Clint Kolby
Councilmember Leah Cook
Councilmember Dr. Paul F. LaRoche, III
Councilmember Adonna Saunders
Councilmember Albert Wright

Members Absent:

Councilmember Shannan Canales

City of Brenham Staff present:

City Manager Carolyn Miller, City Attorney Cary Bovey, City Secretary Jeana Bellinger, Director of Tourism & Marketing Jennifer Eckermann, Strategic Budget Officer Tim McRoberts, Human Resource Director Susan Nienstedt, Fire Chief Roger Williams, Police Chief Ron Parker, Assistant Police Chief Lloyd Powell, Public Works Director Dane Rau, Development Services Director Stephanie Doland, Economic and Community Development Director Teresa Rosales, Public Utilities Department General Manager Alton Sommerfield, Kyle Branham, Cherry Cash Prewitt, Shawn Bolenbarr, Curtis Schoen, Steven Eilert, Casey Redman, Leigh Linden, JoAnne Hynes, and Kevin Boggus

Citizens/Others Present:

Judge John D. Winkleman, Sherisse Powell, Ret. Chief Mike Gentry, Sandy Gentry, Alex Saenz, Lauren Vieceli, La'Darion Jenkins, Stephen Mosley, Robert Conrad, Brent Roszell, and Cynthia Timpa

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 – Councilmember Dr. Paul F. LaRoche, III**
3. **Special Recognitions**
 - **Brenham Police Department Promotion – Lloyd Powell, Assistant Chief of Police**
 - **Sergeant Steven Eilert – Texas Police Chiefs Association Law Enforcement Command Officer Program (LECOP)**

4. **Citizens Comments**

There were no citizen comments.

8. **Discuss and Possibly Act Upon Approval of Ordinance No. O-23-020 of the City of Brenham, Texas, Authorizing the Issuance and Sale of City of Brenham, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2023, Levying a Tax in Payment Thereof; Authorizing the Execution and Delivery of a Purchase Agreement and a Paying/Agent Registrar Agreement; Approving the Official Statement; and Enacting Other Provisions Relating Thereto**

City Manager Carolyn Miller presented this item. Miller explained the proceeds from the sale of these Certificates of Obligation in an amount not to exceed \$10 million will be used for: (1) construction of, and improvements to, City streets, sidewalks and drainage, including in each case the acquisition of land and rights-of-way in connection therewith; (2) acquisition, construction and equipping of a new fire station, including acquisition of land and rights-of-way in connection therewith; and (3) cost of professional services incurred in connection with the issuance of the Certificates.

Miller introduced the City's financial advisor, Jennifer Ritter, of Specialized Public Finance. Ritter reaffirmed that the City has an AA-Bond Rating, Standard and Poor's, and advised the City was able to secure a fixed interest rate of 3.69%, from the Bank of Oklahoma, for the Certificates over a twenty-year period. Ritter stated, if approved, the closing would be scheduled for July 11, 2023.

A motion was made by Councilmember Saunders and seconded by Councilmember Wright to approve Ordinance No. O-23-020 of the City of Brenham, Texas, authorizing the issuance and sale of City of Brenham, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2023, levying a tax in payment thereof; authorizing the execution and delivery of a purchase agreement and paying/agent registrar agreement; approving the official statement; and enacting other provisions relating thereto.

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

Mayor Atwood C. Kenjura	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Absent
Councilmember Leah Cook	Yes
Councilmember Dr. Paul F. LaRoche, III	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

CONSENT AGENDA

5. Statutory Consent Agenda

- 5.a. Approve the Minutes from May 18, 2023 Regular City Council Meeting, May 25, 2023 Special City Council Meeting, May 25, 2023 Joint Meeting with Washington County Commissioners Court, and the June 1, 2023 Regular City Council Meeting
- 5.b. Approve Corrected Minutes from the April 20, 2023 Regular City Council Meeting
- 5.c. Approve Ordinance No. O-23-019 on its Second Reading Amending Chapter 17, Offenses and Miscellaneous Provisions of the Code of Ordinances of the City of Brenham as Amended by City Council
- 5.d. Approve a Noise Variance from Margaret Moore for a Birthday Party to be Held on June 17, 2023, at 701 Parkview Street from 12:00 p.m. to 11:00 p.m.

Mayor Kenjura advised that Item 5.c. was being moved to the Regular Agenda.

A motion was made by Councilmember Saunders and seconded by Mayor Pro Tem Kolby to approve the Statutory Consent Agenda Items 5.a., 5.b. and 5d. as presented with a correction to the minutes dated May 18, 2023 to indicated that Councilmember LaRoche's term is two (2) years not four (4) years.

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

Mayor Atwood C. Kenjura	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Absent
Councilmember Leah Cook	Yes
Councilmember Dr. Paul F. LaRoche, III	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

PUBLIC HEARING AND ASSOCIATED ACTION ITEM

6. **Public Hearing, Discussion and Possible Action on an Ordinance on Its First Reading for the Creation of Reinvestment Zone Number 49 Requested by Valmont Industries, Inc. for Commercial Tax Phase-In Incentive on That Certain 80.088 Acres of Land, Generally Located at 2551 Valmont Dr., Brenham, Texas, Being More Fully Described in Exhibit “A” of the Ordinance Creating Reinvestment Zone 49, and Designating This Property as Qualifying for Tax Phase-In**

Mayor Kenjura opened the Public Hearing.

Economic and Community Development Director Teresa Rosales presented this item. Rosales stated Valmont Industries manufactures under two (2) main business segments: infrastructure and agriculture and desires to create a Reinvestment Zone Number 49 to expand their Brenham production. Rosales continued, renovating their existing structure to house \$38.05 million in new equipment would expand the site’s manufacturing production by approximately 50% and create approximately 160 jobs. Rosales explained to create the Reinvestment Zone Number 49 a public hearing was required.

There were no citizen comments.

Mayor Kenjura closed the Public Hearing.

A motion was made by Mayor Pro Tem Kolby and seconded by Councilmember Saunders to approve an Ordinance on its first reading for the creation of Reinvestment Zone Number 49 requested by Valmont Industries, Inc. for Commercial Tax Phase-In Incentive on that certain 80.888 acres of land, generally located at 2551 Valmont Dr., Brenham, Texas, being more fully described in Exhibit “A” of the Ordinance creating Reinvestment Zone 49, and designating this property as qualifying for Tax Phase-In.

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

Mayor Atwood C. Kenjura	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Absent
Councilmember Leah Cook	Yes
Councilmember Dr. Paul F. LaRoche, III	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

7. **Public Hearing, Discussion and Possible Action on an Ordinance on Its First Reading for the Creation of Reinvestment Zone Number 50 Requested by North Park Development, LLC for Commercial Tax Phase-In Incentive on That Certain 2.998 Acres of Land, Generally Located at 1809 N. Park Street, Brenham, Texas, Being More Fully Described in Exhibit “A” of the Ordinance Creating Reinvestment Zone 50, and Designating This Property as Qualifying for Tax Phase-In**

Mayor Kenjura opened the Public Hearing.

Economic and Community Development Director Teresa Rosales presented this item. Rosales stated North Park Development d/b/a PlanNorth Architectural Co. was established in 2010 and currently has 12 employees at their 107 S. Baylor Street location; however, with their continued growth it is necessary for the company to move to a new location, 1809 N. Park Street. Rosales continued, expansion at the new location would entail construction of a 7,600 square foot brick building that will serve as the company’s headquarters. Rosales stated PlanNorth desires to create a Reinvestment Zone Number 50 to expand their Brenham headquarters, which will allow them to increase employees and wages.

Mayor Kenjura opened the Public Hearing.

A resident of Scenic Estates Subdivision inquired about the amount of traffic this new building would create in an already high street traffic area; Councilmember Canales explained being an architectural design firm additional street traffic would be minimal as the building will only house PlanNorth’s employees.

Mayor Kenjura closed the Public Hearing.

A motion was made by Councilmember LaRoche and seconded by Councilmember Wright to approve an Ordinance on its first reading for the creation of Reinvestment Zone Number 50 requested by North Park Development, LLC for Commercial Tax Phase-In Incentive on that certain 2.998 acres of land, generally located at 1809 N. Park Street, Brenham, Texas, being more fully described in Exhibit “A” of the Ordinance creating Reinvestment Zone 50, and designating this property as qualifying for Tax Phase-In.

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

Mayor Atwood C. Kenjura	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Absent
Councilmember Leah Cook	Yes
Councilmember Dr. Paul F. LaRoche, III	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

REGULAR SESSION

9. Discuss and Possibly Act Upon Resolution No. R-23-021 Adopting a Commercial Tax Phase-In Agreement Between the City of Brenham and Stanpac USA, LLC

Economic and Community Development Director Teresa Rosales presented this item. Rosales stated that Stanpac USA, LLC did not require a new Reinvestment Zone, their previous zone, Number 43 located at 801 Mangrum Street situated on approximately 3.687 acres, remains active. Rosales explained with the purchase of new equipment Stanpac would be able to expand its product offering to include “Food Service” products (paper coffee cups). Rosales continued, stating Stanpac would be investing approximately \$5,500,000, add approximately 10 new positions and double sales to \$12,000,000 within a few years. Rosales introduced Brent Roszell, Vice President of Finance, and Mr. Roszell displayed the new product (paper coffee cups) Stanpac will be producing.

A motion was made by Mayor Pro Tem Kolby and seconded by Councilmember Cook to approve Resolution No. R-23-021 adopting a Commercial Tax Phase-In Agreement between the City of Brenham and Stanpac USA, LLC.

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

Mayor Atwood C. Kenjura	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Absent
Councilmember Leah Cook	Yes
Councilmember Dr. Paul F. LaRoche, III	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

5.c. Approve Ordinance No. O-23-019 on its Second Reading Amending Chapter 17, Offenses and Miscellaneous Provisions of the Code of Ordinances of the City of Brenham as Amended by City Council

City Secretary Jeana Bellinger presented this item. Bellinger stated this item was removed from the Consent Agenda to allow citizens and Council another opportunity to review and ask questions to ensure there was a good understanding of the ordinance.

Robert Conrad, from Lauren Concrete, expressed his concerns about their N. Park Street location, which is zoned B-1 (Local Business/Residential Mixed Use) exceeding the noise decibel limit. Conrad explained the company has been doing business at the Park Street location since 1939 and that his company has never, to his knowledge, had any noise issues with the neighbors but he is concerned if this ordinance passes and someone new moves into the area, his business could be forced to shut down because of the noise.

Conrad advised City Council of the following concerns:

- How decibel readings are taken.
- How the source of the noise/decibel is determined.
- Equipment warnings required by OSHA or TCEQ.
- What ambient issues are considered when decibel readings are taken.
- How enforcement will be handled

Director of Development Services Stephanie Doland clarified that decibel measurements would be taken from the property line of the complainant and the maximum decibel limit allowed would be the limit of the more permissive zone.

After further discussion on the noise ordinance a motion was made by Mayor Pro Tem Kolby and seconded by Councilmember Saunders to table Ordinance No. O-23-019 on its second reading amending Chapter 17, Offenses and Miscellaneous provisions of the Code of Ordinances for the City of Brenham as amended by City Council.

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

Mayor Atwood C. Kenjura	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Absent
Councilmember Leah Cook	Yes
Councilmember Dr. Paul F. LaRoche, III	Yes
Councilmember Adonna Saunders	Yes

10. Discuss and Possibly Act Upon Resolution No. R-23-022 Adopting a New Fee Schedule for the City of Brenham Development Services Department

Development Services Director Stephanie Doland presented this item. Doland stated that fees for Development Services have not been updated since 2019. Doland explained that staff completed a comparison of fees for cities of similar size and population in the general vicinity, evaluated the time associated with processing, reviewing, inspecting and approving each project application and the results of the comparison showed Brenham's fees to be comparatively low.

Doland stated that if approved, the fees would not be effective until July 17, 2023 to allow staff time to notify customers of the upcoming changes.

A motion was made by Councilmember Saunders and seconded by Councilmember Wright to approve Resolution No. R-23-022 adopting a new fee schedule for the City of Brenham Development Services Department.

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

Mayor Atwood C. Kenjura	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Absent
Councilmember Leah Cook	Yes
Councilmember Dr. Paul F. LaRoche, III	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

11. Discuss and Possibly Act Upon a Chapter 380 Agreement Between the City of Brenham and Academy, Ltd. d/b/a Academy Sports + Outdoors and Authorize the Mayor to Execute Any Necessary Documentation

Mayor Kenjura advised that Item 11 would be passed at this time.

12. Discuss and Possibly Act Upon a Memorandum of Agreement (MOA) Between the City of Brenham and Blinn College for the Use of Soccer Fields at Hohlt Park and Authorize the Mayor to Execute Any Necessary Documentation

Public Works Director Dane Rau presented this item. Rau explained in 2018, Blinn College and the City of Brenham had entered into a 5-year agreement that allowed Blinn to use Rankin Field for their soccer home games/clinics and other fields at Hohlt Park for practices. Rau stated Blinn no longer plays soccer on Rankin Field but puts usage on the field and reimburses the City for usage.

Rau advised that the 5-year agreement is coming to an end and Blinn wishes to renew the agreement for an additional 5-years. Rau continued, there are some minor changes to the original MOA with the bulk of the agreement remaining the same as the original in 2018. Rau explained the reimbursement for usage will start at \$26,500 for Rankin Field, practice fields and the use of a dressing/storage room with an increase of \$1,000 each year capping out at \$30,500 in 2027 (note the original agreement capped out at \$25,500 per year). Rau affirmed this agreement had been presented to the Parks and Recreation Advisory Board and there were no issues voiced.

A motion was made by Councilmember Saunders and seconded by Mayor Pro Tem Kolby to approve a Memorandum of Agreement (MOA) between the City of Brenham and Blinn College for the use of soccer fields at Hohlt Park and authorize the Mayor to execute any necessary documentation.

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

Mayor Atwood C. Kenjura	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Absent
Councilmember Leah Cook	Yes
Councilmember Dr. Paul F. LaRoche, III	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

13. Discuss and Possibly Act Upon a Lease Agreement Between the City of Brenham and Brenham RC Airplane Club Related to Property Located at 2080 Old Navasota Road, Brenham, Texas and Authorize the Mayor to Execute Any Necessary Documentation

Purchasing Supervisor Kyle Branham presented this item. Branham explained the original contract was signed 12-15 years ago and there have been several changes with the Club, and the City wanted to update the contract to represent those changes. Branham explained that the Club is operating as the Brenham RC Airplane Club and is located on the Old Landfill site at 2080 Old Navasota Road and occupies approximately 2-acres. Branham stated the Club has been a great partner over the years and this space is ideal for them; the Club performs its own maintenance on the landing strip and provides amenities at the property.

A motion was made by Councilmember LaRoche and seconded by Councilmember Saunders to approve a lease agreement between the City of Brenham and Brenham RC Airplane Club related to property located at 2080 Old Navasota Road, Brenham, Texas and authorize the Mayor to execute any necessary documentation.

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

Mayor Atwood C. Kenjura	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Absent
Councilmember Leah Cook	Yes
Councilmember Dr. Paul F. LaRoche, III	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

14. Discuss and Possibly Act Upon Amending Authorized Signatories for Bank of Brenham and Authorize the Mayor to Execute Any Necessary Documentation

City Manager Carolyn Miller presented this item. Miller stated due to the recent election of a new mayor, the authorized signers for the City's Bank of Brenham accounts must be updated; removing Milton Y. Tate, Jr. from the banking documents and adding Atwood C. Kenjura. Miller noted that with the removal of Mr. Tate and addition of Mayor Kenjura, three (3) authorized signatories will remain in place: Mayor Atwood C. Kenjura, City Manager, Carolyn D. Miller, and Director of Administrative Services, Jeana Bellinger.

A motion was made by Councilmember Wright and seconded by Councilmember Saunders to approve amending authorized signatories for all Bank of Brenham accounts to be Mayor Atwood C. Kenjura, City Manager Carolyn D. Miller, and Director of Administrative Services Jeana Bellinger and authorize the Mayor to execute any necessary documentation.

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

Mayor Atwood C. Kenjura	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Absent
Councilmember Leah Cook	Yes
Councilmember Dr. Paul F. LaRoche, III	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

15. Discuss and Possibly Act Upon

- a. **Resolution No. R-23-023 In Support of the Closure of Alamo Street Between S. Austin Street and Park Street for Film/Video Production**
- b. **Resolution No. R-23-024 In Support of the Closure of Market Street Between Alamo Street and Main Street for Film/Video Production**
- c. **Resolution No. R-23-025 In Support of the Closure of Alamo Street Between Park Street and Baylor Street for Film/Video Production**

Director of Tourism & Marketing Jennifer Eckermann presented this item. Eckermann stated the three (3) Resolutions were in support of the closure of three (3) TxDOT roadways to film in downtown Brenham on August 2-3, 2023. Eckermann noted the TXDOT road closure agreements would be with the production company, Ick Productions, LLC.

A motion was made by Councilmember Saunders and seconded by Mayor Pro Tem Kolby to approve (a) Resolution No. R-23-023 in support of the closure of Alamo Street between S. Austin Street and Park Street for film/video production; (b) Resolution No. 23-024 in support of the closure of Market Street between Alamo Street and Main Street for film/video production; and (c) Resolution No. R-23-025 in support of the closure of Alamo Street between Park Street and Baylor Street for film/video production.

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

Mayor Atwood C. Kenjura	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Absent
Councilmember Leah Cook	Yes
Councilmember Dr. Paul F. LaRoche, III	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

16. Administrative/Elected Officials Report

➤ **City Manager Carolyn Miller reported on the following:**

- Officer Eric Crosby was name Officer of the Year by the American Legion
- Saturday, June 16th the Juneteenth Parade starts at 10:30 a.m.
- All City offices will be closed on Monday, June 19th in observance of the Juneteenth Holiday
- City Council meetings in July will be held on July 13th & July 20th

Council adjourned into Executive Session at 2:40 p.m.

EXECUTIVE SESSION

17. 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

18. Section 551.071 Texas Government Code - Consultation with Attorney - Consultation with City Attorney Regarding Legal Issues Concerning the City of Brenham Lake Somerville Raw Water Intake Structure, the Federal Emergency Management Agency, and Associated Matters

Executive Session adjourned at 3:19 p.m.

RE-OPEN REGULAR SESSION

The meeting was adjourned.

Atwood C. Kenjura
Mayor

Jeana Bellinger, TRMC, CMC
City Secretary

Brenham City Council Minutes

A regular meeting of the Brenham City Council was held on Thursday, July 13, 2023 beginning at 1:00 p.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

Members Present:

Mayor Atwood C. Kenjura
Mayor Pro Tem Clint Kolby
Councilmember Shannan Canales
Councilmember Leah Cook
Councilmember Dr. Paul F. LaRoche, III
Councilmember Adonna Saunders
Councilmember Albert Wright

Members Absent:

None

City of Brenham Staff present:

City Manager Carolyn Miller, City Attorney Luke Cochran, City Secretary Jeana Bellinger, General Manager of Public Utilities Debby Gaffey, Director of Finance Stacy Hardy, Strategic Budget Officer Tim McRoberts, Human Resource Director Susan Nienstedt, Asst. Police Chief Lloyd Powell, Public Works Director Dane Rau, Development Services Director Stephanie Doland, Economic & Community Development Director Teresa Rosales, Director of Water/Wastewater Bobby Keene, Department General Manager Public Utilities Alton Sommerfield, Jessica Perez, Steven Eilert, Alex Saenz, Crystal Buckner, Tammy Jaster, Kelsey Toy, Karen Stack, Cherry Cash Prewitt, Shawn Bolenbarr, Jerry Saldivar, JoAnne Hynes, and Daniel McCracken

Citizens/Others Present:

Ryan D. Tinsley, Brian Hackman, James S. Brown, Kevin Strudthoff, and Mike Eickhoff

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. Special Recognitions**
 - Brenham Police Department Promotion - Crystal Buckner, Corporal
- 4. Proclamation**
 - National Parks and Recreation Month
- 5. Citizen Comments**

There were no citizen comments.

CONSENT AGENDA

- 6. Statutory Consent Agenda**
 - 6-a. Approve Ordinance No. O-23-008 on Its Second Reading for the Creation of Reinvestment Zone Number 49 Requested by Valmont Industries, Inc. for Commercial Tax Phase-In Incentive on That Certain 80.088 Acres of Land, Generally Located at 2551 Valmont Dr., Brenham, Texas, Being More Fully Described in Exhibit “A” of the Ordinance Creating Reinvestment Zone 49, and Designating This Property as Qualifying for Tax Phase-In**
 - 6-b. Approve Ordinance No. O-23-009 on Its Second Reading for the Creation of Reinvestment Zone Number 50 Requested by North Park Development, LLC for Commercial Tax Phase-In Incentive on That Certain 2.998 Acres of Land, Generally Located at 1809 N. Park Street, Brenham, Texas, Being More Fully Described in Exhibit “A” of the Ordinance Creating Reinvestment Zone 50, and Designating This Property as Qualifying for Tax Phase-In**
 - 6-c. Approve a Noise Variance Request from Outreach Ministries for a Back-to-School Celebration to be Held on August 5, 2023, in Fireman's Park from 11:00 a.m. to 5:00 p.m.**
 - 6-d. Approve a Noise Variance Request from Gather n Grace for Monday Family Dinners to be Held Every Monday Through December 18, 2023, Beginning July 17, 2023 at Fireman's Park Pavilion from 5:30 p.m. to 7:30 p.m.**

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

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

Mayor Atwood C. Kenjura	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Yes
Councilmember Dr. Paul F. LaRoche, III	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

REGULAR SESSION

7. **Discuss and Possibly Act Upon Resolution No. R-23-026 Adopting a Commercial Tax Phase-In Agreement Between the City of Brenham and Valmont Industries, Inc.**

Economic & Community Development Director Teresa Rosales presented this item. Rosales stated Valmont Industries, Inc. is a manufacturing company operating under two (2) main business segments: infrastructure and agriculture. Rosales explained Valmont desires to expand its Brenham, Texas production operation with an investment of more than \$38 million in expansion of its existing structure, investment in new equipment increasing manufacturing production by 50% , and an increase in employees by 2025 from 258 to 398 at the Brenham location. Rosales noted that Kevin Strudthoff, Senior Director for Business Processes and Mike Eickhoff, Managing Director were in the audience.

A motion was made by Mayor Pro Tem Kolby and seconded by Councilmember Canales to approve Resolution No. R-23-026 adopting a Commercial Tax Phase-In Agreement between the City of Brenham and Valmont Industries, Inc.

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

Mayor Atwood C. Kenjura	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Yes
Councilmember Dr. Paul F. LaRoche, III	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

8. Discuss and Possibly Act Upon Resolution No. R-23-027 Adopting a Commercial Tax Phase-In Agreement Between the City of Brenham and North Park Development, LLC.

Economic & Community Development Director Teresa Rosales presented this item. Rosales stated PlanNorth LLC dba PlanNorth Architectural Co. was established in 2010 and currently has 12 employees at their 107 S. Baylor Street location; however, with their continued growth it is necessary for the company to move to a new location and construct a new headquarters, 7600 square foot brick building, to be located at 1809 N. Park Street.

A motion was made by Councilmember Saunders and seconded by Mayor Pro Tem Kolby to approve Resolution No. R-23-027 adopting a Commercial Tax Phase-In Agreement between the City of Brenham and North Park Development, LLC.

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

Mayor Atwood C. Kenjura	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Yes
Councilmember Dr. Paul F. LaRoche, III	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

9. Discuss and Possibly Act Upon the Appointment of Members to Serve on the Capital Improvements Advisory Committee and Authorize the Mayor to Execute Any Necessary Documentation

Director of Development Services Stephanie Doland presented this item. Doland recapped at the May 4, 2023 City Council meeting a Professional Service Agreement with Strand Associates, Inc. was approved to perform an Impact Fee Study in accordance with Chapter 395 of the Texas Local Government Code. Doland stated per Chapter 395 the formation of a Capital Improvements Advisory Committee (CIAC) is required to review, advise, and recommend adoption of assessing impact fees following the results of the study. Doland proposed the CIAC be comprised of the seven (7) member Planning and Zoning Commission; a Council representative, Dr. Paul LaRoche, III; a representative of the extraterritorial jurisdiction (ETJ), Blake Brannon; and two (2) real estate representatives, Lindi Braddock and Randy Hodde.

A motion was made by Mayor Pro Tem Kolby and seconded by Councilmember Wright to approve the appointment of members to serve on the Capital Improvements Advisory Committee as presented noting should Randy Hodde be unable to serve the Mayor is authorized to appoint a new member to serve in place of Mr. Hodde and authorize the Mayor to execute any necessary documentation.

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

Mayor Atwood C. Kenjura	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Yes
Councilmember Dr. Paul F. LaRoche, III	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

10. Discuss and Possibly Act Upon the Appointment of a City of Brenham Representative to Serve on the Governing Board of the Brazos Valley Wide Area Communications System (BVWACS) and Authorize the Mayor to Execute Any Necessary Documentation

City Secretary and Director of Administrative Services Jeana Bellinger presented this item. Bellinger stated as a member of the Brazos Valley Wide Area Communication System (BVWACS), providing public safety radio interoperability to various entities throughout Brazos Valley Region, the City is responsible for appointing one (1) member to serve on the BVWACS Governing Board. Bellinger explained the Interlocal Agreement for the operation of the BCWACS states the Governing Board directs and approves operating policies for BCWACS, adopts an annual budget, and any other tasks necessary for the BVWACS to function properly.

Bellinger advised former Mayor Milton J. Tate, Jr. had been serving on the Governing Board since its inception in 2008 as the City's representative; however, with the May, 2023 election of a new Mayor the City Council must appoint one (1) of their members to serve on the BVWACS Governing Board.

A motion was made by Councilmember Saunders and seconded by Councilmember Canales to approve the appointment of Mayor Atwood C. Kenjura to serve on the Governing Board of the Brazos Valley Wide Area Communications System (BVWACS) and authorize the Mayor to execute any necessary documentation.

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

Mayor Atwood C. Kenjura	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Yes
Councilmember Dr. Paul F. LaRoche, III	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

11. Discuss and Possibly Act Upon Resolution No. R-23-028 Authorizing the Submittal of an Advanced Funding Agreement with TxDOT Pertaining to a Bridge Located at Hog Branch Creek and Pecan Street

Public Works Director Dane Rau presented this item. Rau stated in November 2022 Council approved a Resolution in support of a partnership with TxDOT related to federal funding through the Highway Bridge Project for the crossing on Pecan Street at the Hog Branch tributary. Rau explained the Resolution authorized an Advanced Funding Agreement (AFA) between the City of Brenham and TxDOT and provided for a City match of 10%, \$49,000.00.

Rau advised Council TxDOT has some additional funding through the Federal Infrastructure and Jobs Act as well as the Highway Bridge Replacement and Rehabilitation Program and with the funding of these two (2) new grant programs the City's 10% match, \$49,000.00, will be covered in full. Rau stated this Resolution is authorizing a new AFA with TxDOT to clarify the City will not be required to match any of the grant funds.

A motion was made by Councilmember Canales and seconded by Councilmember Saunders to approve Resolution No. R-23-028 authorizing the submittal of an Advanced Funding Agreement with TxDOT pertaining to a bridge located at Hog Branch Creek and Pecan Street.

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

Mayor Atwood C. Kenjura	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Yes
Councilmember Dr. Paul F. LaRoche, III	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

12. Discuss and Possibly Act Upon Bid No. 23-005 Related to the Purchase of Polyaluminum Chloride for the City of Brenham Water Utility System and Authorize the Mayor to Execute Any Necessary Documentation

Public Utilities Water System Superintendent Jerry Saldivar presented this item. Saldivar stated on June 13, 2023 bids were opened for the ITB 23-005 Polyaluminum Chloride and three (3) bids were received. Saldivar explained Brenntag Southwest submitted the lowest bid and had been a proven supplier of Polyaluminum Chloride for the City since 2017. Saldivar stated the Brenntag's bid was for \$725.00 per liquid ton with two (2) optional one-year renewals and pricing would be subject to annual review prior to renewal.

A motion was made by Councilmember Canales and seconded by Councilmember LaRoche to award Bid No. ITB 23-005 related to the purchase of polyaluminum chloride for the City of Brenham water utility system to Brenntag Southwest at \$725.00 per liquid ton and authorize the Mayor to execute any necessary documentation.

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

Mayor Atwood C. Kenjura	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Yes
Councilmember Dr. Paul F. LaRoche, III	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

13. Discuss and Possibly Act Upon a Lease Agreement Between the City of Brenham and Central Washington County Water Supply Corporation (CWCWSC) Related to the City's Water System Auto-Dialer Relay Station and Authorize the Mayor to Execute Any Necessary Documentation

Public Utilities Compliance Manager Daniel McCracken presented this item. McCracken stated this lease is for the use of space on an elevated tower, designated as the West standpipe, and a 3-foot x 3-foot space and will include the right of ingress and egress on to the property and the tower where the equipment will be installed. McCracken continued the cost of the lease will not exceed \$1,200.00 and the annual rental fee shall increase by \$100.00 each year starting on the agreement's first anniversary with an auto-renewal each year.

A motion was made by Councilmember Canales and seconded by Councilmember Saunders to approve a lease agreement between the City of Brenham and Central Washington County Water Supply Corporation (CWCWSC) related to the city's water system auto-dialer relay station and authorize the Mayor to execute any necessary documentation.

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

Mayor Atwood C. Kenjura	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Yes
Councilmember Dr. Paul F. LaRoche, III	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

14. Discuss and Possibly Act Upon Amendment No. 2 to the Professional Services Agreement Between the City of Brenham and Hodde & Hodde Land Surveying, Inc. Related to Project No. 62C-67 City of Brenham 6" Gas Main Loop NE and Authorize the Mayor to Execute Any Necessary Documentation

Public Utilities Project Manager Shawn Bolenbarr presented this item. Bolenbarr explained the city entered into a Professional Services Agreement with Hodde & Hodde Land Surveying, Inc. in March of 2020 for engineering services related to the construction and installation of a six-inch gas line along the west side of FM 577 from East Alamo Street to Brown Street.

Bolenbarr explained due to the discovery of an additional easement and unanticipated additional topography survey work an amendment to the Professional Services Agreement is required, increasing the amount of the agreement from \$57,425.00 to an amount not to exceed \$61,925.00, which is an increase of \$4,500.00, to complete the engineering services for the six-inch gas line loop.

A motion was made by Councilmember Wright and seconded by Councilmember Saunders to approve Amendment No. 2 to the Professional Services Agreement between the City of Brenham and Hodde & Hodde Land Surveying Inc. related to Project No. 62-67 City of Brenham 6" gas main loop NE in the amount of \$4,500.00 and authorize the Mayor to execute any necessary documentation.

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

Mayor Atwood C. Kenjura	Yes
Mayor Pro Tem Clint Kolby	Yes
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	Yes
Councilmember Dr. Paul F. LaRoche, III	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

15. Administrative/Elected Officials Report

➤ **City Manager Carolyn Miller reported on the following:**

- The City Council meeting scheduled for Thursday, July 20, 2023 has been cancelled.
- Production company will be filming in downtown today.
- Special City Council Meeting & Budget Workshop on Monday, July 24, 2023 beginning at 8:30 a.m.
- Budget Workshop on Tuesday, July 25, 2023 beginning at 8:30 a.m.
- The nature trail at Hohlt Park will have a ribbon cutting on Friday, July 14, 2023 at 10:00 a.m.

- **Strategic Budget Officer Tim McRoberts reported on the following:**
 - Introduced new Budget Analyst Jessica Perez
- **Public Works Director Dane Rau reported on the following:**
 - MLK will be open to all traffic on Friday, July 14, 2023.
 - BNSF will be doing maintenance work at Main/Alamo railway crossing on July 18th and 20th.
 - S. Chappell Hill St. will be completed in mid-August 2023
 - Blue Bell Road and TXDOT project should be complete on or before school starts on August 16th.

WORK SESSION

16. Discussion and Presentation on the Water Capacity Study for the City of Brenham

General Manager of Public Utilities Debbie Gaffey presented this item. Gaffey introduced representatives from Strand Associates, Inc., Ryan Tinsley, Director of Operations in Brenham and Brian Hackman, Director of Practice – Water Supply in Madison, Wisconsin.

Tinsley and Hackman presented the water source and water treatment plant expansion plan to the City Council:

- Evaluation Objectives
 - Purpose of the evaluation and 60-year demand projections
- Water Infrastructure Summary
 - Brazos River Authority and Lake Somerville Intake Facility
 - Raw water mains
 - Supply capacity
 - Surface water treatment plant
 - Total storage
 - Elevated storage
 - Service pumping
- Population Projections and Capacity Demands – 2023 to 2043
- Additional Preliminary Options Considered:
 - Regionalization, redundant raw water main, and intermediate booster pumping station
- Alternatives Studied:
 - **Alternative A:** Remote wells and treatment to be located at Loesch Street or Westside elevated storage tank, ties directly into the distribution system. Approximately 500 gpm, implies 1,250 connections.
 - **Alternative B:** Remote wells to be constructed at WTP and Jackson Street Park with treatment centralized at WTP. Approximately 500 gpm, implies 1,250 connections.

- **Alternative C:** Rehab and expansion by conventional surface water treatment. Approximately 948 gpm, implies 2,370 connections.
- **Alternative D:** Rehab and expansion by membrane filtration. Approximately 948 gpm, implies 2,370 connections.
- Recommendation:
 - Alternative A: \$11.7 million for 1,770 connections
 - Alternative C: \$24.3 million for 2,370 connections
 - Design start in September 2023 with construction completed in September 2027

Council adjourned into Executive Session at 2:56 p.m.

EXECUTIVE SESSION

17. 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

Executive Session adjourned at 3:20 p.m.

RE-OPEN REGULAR SESSION

The meeting was adjourned.

Atwood C. Kenjura
Mayor

Jeana Bellinger, TRMC, CMC
City Secretary



Regular City Council
AGENDA ITEM 6-B.

Agenda Item: Approve a Noise Variance Request from Lucile Lewis for the Lewis Family Reunion to be Held on August 12, 2023 at Hohlt Park from 12:00 p.m. to 10:00 p.m.

Meeting Type: Regular Meeting-August 03, 2023

Department: Public Works

Staff Contact: JoAnne Hynes

SUMMARY STATEMENT:

Lucile Lewis is planning a family reunion to be held on Saturday, August 12th, at Hohlt Park from 12:00 p.m. to 10:00 p.m. There will be food, games, and music provided by a DJ. Due to the use of amplified sound, a noise variance is required.

Lucile Lewis has the All Sports Building at Hohlt Park reserved on August 12th for the event.

ATTACHMENTS:

(1) Noise Variance Request

RECOMMENDED ACTION:

Approve a Noise Variance request from Lucile Lewis for the Lewis Family Reunion to be held on August 12, 2023 at Hohlt Park from 12:00 p.m. to 10:00 p.m.



Noise Variance Request

For: Lewis Family Reunion

Name of sponsoring organization:

Your Contact Information

Name: Lucile Lewis

Phone: 979.347.2702

Email: lewislucille62@gmail.com

Event Details

Event Name: Lewis Family Reunion

Purpose: Family Reunion

Location: Hohlt Park – All Sports Building

Date: 08.12.23

Time: 12:00 pm – 10:00 pm

Setup From: 10:00 am **To:** 12:00 pm

Clean up From: 10:00 pm **To:** 11:00 pm

Types of activities planned and any additional information specific to this event: DJ, games, food, etc.

Describe activities at this event that require the variance to the noise ordinance: music

Will you use sound amplification equipment? yes

Cleanup Provisions: will clean up the premises to ensure that the property is left in the original condition

Have you ever been found guilty of a criminal offense involving crimes against property, moral turpitude, and/or a felony by any court? no

Please identify the offence, State of conviction and penalty imposed: n/a

Approved by City Council on:



Regular City Council
AGENDA ITEM 6-C.

Agenda Item: Approve the Final Payment to Collier Construction Inc. for Project No. 2202-06 in the Amount of \$41,158.16 Related to the Hohlt Park Nature Trail Improvements and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-August 03, 2023

Department: Public Works

Staff Contact: Dane Rau

SUMMARY STATEMENT:

On October 21, 2022, the City of Brenham and Alan King from AKLA Architects opened bids regarding the Hohlt Park Nature Trail Improvements.

Collier Construction received the bid of \$291,517.60. The scope of work involved two boardwalks over bog areas, educational signage, a 0.59-mile granite looped trail, rock benches, drainage work and numerous plantings that attract butterflies and pollinators. This is now known as the Hohlt Park Crossover Nature Trail.

We are happy to say that the project is complete, and the ribbon cutting was held on July 14th with a great attendance. The project came in at \$289,316.60. A portion of the funding comes from the Trails Grant Program by Texas Parks and Wildlife at \$66,400 and the remainder was funded by BCDC.

We ask that Council approve final payment to Collier Construction in the amount of \$41,158.16 so we can complete the final stages of the paperwork.

This asset will be enjoyed by many and makes this portion of Hohlt Park feel safer and provides some educational information for families to enjoy. It also can extend your walk another half mile.

ATTACHMENTS:

- (1) Pay Application #3 and Final
- (2) Certificate of Substantial Completion
- (3) Consent of Surety

RECOMMENDED ACTION:

Approve the final payment to Collier Construction Inc. for Project No. 2202-06 in the amount of \$41,158.16 related to the Hohlt Park Nature Trail Improvements and authorize the Mayor to execute any necessary documentation.

PROGRESS PAYMENT NO. 003 & Final

Owner: City of Brenham, 200 West Vulcan, Brenham, Tx. 77833
 Contractor: Collier Construction, LLC, P. O. Box 1889, Brenham, Tx. 77834
 Landscape Architect: The Land Design Group, Inc.
 Project: #2212 Hohlt Park Crossover Nature Trail

ITEM NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	THIS ESTIMATE		PREVIOUS ESTIMATE		TOTAL TO DATE		REMARKS
					QUANTITY	AMOUNT	QUANTITY	AMOUNT	QUANTITY	AMOUNT	
	Crossover Park										
1.	A Clearing and Trimming	LS	1	\$11,245.00		\$0.00	100.00%	\$11,245.00	100%	\$11,245.00	100.0%
2.	B Board walk	SF	1000	\$77.50		\$0.00	1,000	\$77,500.00	1,000	\$77,500.00	100.0%
	C Granite Path to First Crossover 5000 SF										
3.	Steel Edging & Stakes	LF	1570	\$7.00		\$0.00	1,570	\$10,990.00	1,570	\$10,990.00	100.0%
4.	Flex Base	Tons	84	\$242.00		\$0.00	84	\$20,328.00	84	\$20,328.00	100.0%
5.	Granite	Tons	65	\$370.00		\$0.00	65	\$24,050.00	65	\$24,050.00	100.0%
6.	8x8x24 Limestone Block	Tons	11.2	\$496.00		\$0.00	11.2	\$5,555.20	11.2	\$5,555.20	100.0%
	D Granite Path to Second Crossover 5400 SF										
7.	Steel Edging & Stakes	LF	2183	\$7.00		\$0.00	2,183	\$15,281.00	2,183	\$15,281.00	100.0%
8.	Flex Base	Tons	90	\$242.00		\$0.00	90	\$21,780.00	90	\$21,780.00	100.0%
9.	Granite	Tons	70	\$370.00		\$0.00	70	\$25,900.00	70	\$25,900.00	100.0%
10.	8x8x24 Limestone Block	Tons	6	\$496.00		\$0.00	6	\$2,976.00	6	\$2,976.00	100.0%
	E Granite Path to Third Crossover 2735 SF										
11.	Steel Edging & Stakes	LF	1118	\$7.00		\$0.00	1,118	\$7,826.00	1,118	\$7,826.00	100.0%
12.	Flex Base	Tons	46	\$242.00		\$0.00	46	\$11,132.00	46	\$11,132.00	100.0%
13.	Granite	Tons	36	\$370.00		\$0.00	36	\$13,320.00	36	\$13,320.00	100.0%
14.	8x8x24 Limestone Block	Tons	7.9	\$496.00		\$0.00	7.9	\$3,918.40	7.9	\$3,918.40	100.0%
	F Benches										
15.	24x24x48 Limestone blocks	Tons	19.5	\$640.00		\$0.00	19.50	\$12,480.00	19.50	\$12,480.00	100.0%
16.	G Signage	Per	18	\$877.00	18	\$15,786.00	0.00%	\$0.00	18	\$15,786.00	100.0%
	H Pollinator Plant List										
	Plantings Installed										
17.	Salvia greggii - Autumn Sage	1g	10	\$22.50		\$0.00	10	\$225.00	10	\$225.00	100.0%
18.	Anisacanthus quadrifidus var. wrightii - Flame Aranthus	1g	10	\$24.00		\$0.00	10	\$240.00	10	\$240.00	100.0%
19.	Soligado spp. - Golden Rod	1g	10	\$20.00		\$0.00	10	\$200.00	10	\$200.00	100.0%
20.	Conoclinium greggii - Mistflower	3g	5	\$54.00		\$0.00	5	\$270.00	5	\$270.00	100.0%

PROGRESS PAYMENT NO. 003 & Final

Owner: City of Brenham, 200 West Vulcan, Brenham, Tx. 77833
 Contractor: Collier Construction, LLC, P. O. Box 1889, Brenham, Tx. 77834
 Landscape Architect: The Land Design Group, Inc.
 Project: #2212 Hohlt Park Crossover Nature Trail

ITEM NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	THIS ESTIMATE		PREVIOUS ESTIMATE		TOTAL TO DATE		REMARKS
					QUANTITY	AMOUNT	QUANTITY	AMOUNT	QUANTITY	AMOUNT	
21.	Tecoma stans - Yellow Bells	3g	5	\$21.00		\$0.00	5	\$105.00	5	\$105.00	100.0%
22.	Lantana urticoides - Texas Lantana	1g	10	\$20.00		\$0.00	10.00	\$200.00	10	\$200.00	100.0%
23.	Malvaviscus drummondii - Turk's Cap	1g	10	\$19.00		\$0.00	10.00	\$190.00	10	\$190.00	100.0%
24.	Ceanothus herbaceus - Indian Tea	1g	10	\$24.00		\$0.00	10.00	\$240.00	10	\$240.00	100.0%
25.	Prunus Mexicana - Mexican Plum	15g	2	\$585.00		\$0.00	2.00	\$1,170.00	2	\$1,170.00	100.0%
26.	Cercis canadensis var. texensis - Texas Redbud	15g	2	\$585.00		\$0.00	2.00	\$1,170.00	2	\$1,170.00	100.0%
27.	Viburnum rufidulum - Rusty Blackhaw Viburnum	3g	5	\$27.00		\$0.00	5	\$135.00	5	\$135.00	100.0%
28.	Symphyotrichum spp. Aster	1g	10	\$22.00		\$0.00	10	\$220.00	10	\$220.00	100.0%
29.	Cephalanthus occidentalis - Buttonbush	1g	10	\$22.00		\$0.00	10.00	\$220.00	10	\$220.00	100.0%
30.	Liatris sp. - Blazing Star	1g	10	\$27.00		\$0.00	10.00	\$270.00	10	\$270.00	100.0%
31.	Rhus lanceolata - Prairie Flameleaf Sumac	15g	2	\$585.00		\$0.00	2.00	\$1,170.00	2	\$1,170.00	100.0%
	Wetland Plants										
32.	Typha domingensis - Southern Cattail	1g	10	\$22.00		\$0.00	10	\$220.00	10	\$220.00	100.0%
33.	Equisetum hyemale - Horsetail Grass	1g	10	\$23.00		\$0.00	10	\$230.00	10	\$230.00	100.0%
34.	Taxodium distichum - Bald Cypress	15g	2	\$585.00		\$0.00	2	\$1,170.00	2	\$1,170.00	100.0%
35.	Hibiscus coccineus - Texas Star Hibiscus	3g	10	\$54.00		\$0.00	10	\$540.00	10	\$540.00	100.0%
36.	Plantanus occidentalis - American Sycamore	15g	2	\$585.00		\$0.00	2.00	\$1,170.00	2	\$1,170.00	100.0%
37.	Sesbania drummondii - Rattlebush	1g	10	\$25.00		\$0.00	10	\$250.00	10	\$250.00	100.0%
38.	Sesbania herbacea - Coffeeweed	1g	10	\$25.00		\$0.00	10	\$250.00	10	\$250.00	100.0%
39.	Ilex decidua - Possumhaw Holly	3g	5	\$57.00		\$0.00	5	\$285.00	5	\$285.00	100.0%
40.	Acemella oppositifolia var. repens - Opposite-leaf Spotflower	1g	10	\$22.00		\$0.00	10.00	\$220.00	10	\$220.00	100.0%
41.	Juncus texanus - Texas Rush	1g	10	\$23.00		\$0.00	10.00	\$230.00	10	\$230.00	100.0%
42.	Carex Amphibola - Creek Sedge	1g	10	\$23.00		\$0.00	10.00	\$230.00	10	\$230.00	100.0%
43.	Eleocharis Montevidensis - Spike Rush	1g	10	\$22.00		\$0.00	10.00	\$220.00	10	\$220.00	100.0%
44.	Andropogon Gerardi - Big Bluestem Grass	1g	10	\$22.00		\$0.00	10.00	\$220.00	10	\$220.00	100.0%
45.	Agrostis scabra - Hair Grass	1g	10	\$19.00		\$0.00	10	\$190.00	10	\$190.00	100.0%
	Contract Modifications										
46.	PMP 2212-001 Scope Revisions	Per	1	\$0.00		\$0.00		\$0.00	100%	\$0.00	100.0%

PROGRESS PAYMENT NO. 003 & Final

Owner: City of Brenham, 200 West Vulcan, Brenham, Tx. 77833
 Contractor: Collier Construction, LLC, P. O. Box 1889, Brenham, Tx. 77834
 Landscape Architect: The Land Design Group, Inc.
 Project: #2212 Hohlt Park Crossover Nature Trail

ITEM NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	THIS ESTIMATE		PREVIOUS ESTIMATE		TOTAL TO DATE		REMARKS
					QUANTITY	AMOUNT	QUANTITY	AMOUNT	QUANTITY	AMOUNT	
47.	PMP 2212-002 Drainage	Per	1	\$4,815.00	1	\$4,815.00		\$0.00	100%	\$4,815.00	100.0%
48.	PMP 2212-003 Signage Credit	Per	1	(\$7,016.00)	1	(\$7,016.00)		\$0.00	100%	(\$7,016.00)	100.0%

Subtotal (Line Items)	\$13,585.00	\$275,731.60	\$289,316.60
Materials on Hand	\$0.00	\$0.00	\$0.00
Subtotal (Materials on Hand/Line Items)	\$13,585.00	\$275,731.60	\$289,316.60
Less Retainage (10%)	\$1,358.50	\$27,573.16	\$0.00
Total	\$12,226.50	\$248,158.44	\$289,316.60
Less Previous Estimates			\$248,158.44
Due this Estimate			\$41,158.16
Orig. Contract Amount	\$291,517.60		
Contract Modifications	(\$2,201.00)		
Total Contract Amount	\$289,316.60		
Construction Remaining	\$0.00		
Amount Approved	\$41,158.16		

CERTIFIED AS CORRECT PAYMENT DUE CONTRACTOR

APPROVED BY CONTRACTOR

APPROVED BY OWNER

The Land Design Group, Inc.

Collier Construction, LLC

City of Brenham


 Name Printed: William Alan King
 Title Printed: Landscape Architect
 Date: 7-13-23


 Name Printed: Tom Albus
 Title Printed: Vice President
 Date: 7-13-2023

Name Printed: _____
 Title Printed: _____
 Date: _____

AIA® Document G704® – 2017

Certificate of Substantial Completion

PROJECT: <i>(name and address)</i> Hohlt Park - Crossover Nature Trail Construction Project 2425 N Park St, Brenham, TX 77833	CONTRACT INFORMATION: Contract For: General Construction Date: 01/30/2023	CERTIFICATE INFORMATION: Certificate Number: 001 Date: 07/12/2023
OWNER: <i>(name and address)</i> City of Brenham 200 W Vulcan St Brenham, TX 77833	ARCHITECT: <i>(name and address)</i> The Land Design Group, Inc. 547 William D Fitch Pkwy #108 College Station, TX 77845	CONTRACTOR: <i>(name and address)</i> Collier Construction PO Box 1889 Brenham TX 77833

The Work identified below has been reviewed and found, to the Architect's best knowledge, information, and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion designated below is the date established by this Certificate.
(Identify the Work, or portion thereof, that is substantially complete.)

The Land Design Group
Inc.

ARCHITECT *(Firm Name)*


SIGNATURE

William Alan King
PRINTED NAME AND TITLE

05/23/2023

DATE OF SUBSTANTIAL COMPLETION

WARRANTIES

The date of Substantial Completion of the Project or portion designated above is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:

(Identify warranties that do not commence on the date of Substantial Completion, if any, and indicate their date of commencement.)

WORK TO BE COMPLETED OR CORRECTED

A list of items to be completed or corrected is attached hereto, or transmitted as agreed upon by the parties, and identified as follows:
(Identify the list of Work to be completed or corrected.)

n/a

The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment, whichever occurs first. The Contractor will complete or correct the Work on the list of items attached hereto within Thirty (30) days from the above date of Substantial Completion.

Cost estimate of Work to be completed or corrected: \$0

The responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, insurance, and other items identified below shall be as follows:

(Note: Owner's and Contractor's legal and insurance counsel should review insurance requirements and coverage.)

The Owner and Contractor hereby accept the responsibilities assigned to them in this Certificate of Substantial Completion:

Collier Construction
CONTRACTOR *(Firm Name)*


SIGNATURE

Tom Albo, VP
PRINTED NAME AND TITLE

7-12-23
DATE

City of Brenham
OWNER *(Firm Name)*


SIGNATURE

Dan Ran, PV
PRINTED NAME AND TITLE

7/28/23
DATE

**CONSENT OF SURETY
TO FINAL PAYMENT**

AIA Document G707

OWNER	☐
ARCHITECT	☐
CONTRACTOR	☐
SURETY	☐
OTHER	☐

Bond No. 58S216644

TO OWNER:

(Name and address)

City of Brenham
200 West Vulcan Street
Brenham, TX 77833

PROJECT:

(Name and address)

Hohlt Park - Crossover Nature Trail Construction Project

ARCHITECT'S PROJECT NO.:

CONTRACT FOR: General Construction

CONTRACT DATED: January 30, 2023

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the
(Insert name and address of Surety)

Liberty Mutual Insurance Company
10713 W. Sam Houston Parkway N., Suite 650
Houston, TX 77064

, SURETY,

on bond of

(Insert name and address of Contractor)

Collier Construction, LLC
P. O. Box 1889
Brenham, TX 77834-1889

, CONTRACTOR,

hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety of
any of its obligations to

(Insert name and address of Owner)

City of Brenham
200 West Vulcan Street
Brenham, TX 77833

, OWNER,

as set forth in said Surety's bond.

IN WITNESS WHEREOF, the Surety has hereunto set its hand on this date: June 27, 2023

(Insert in writing the month followed by the numeric date and year.)



Attest:

(Seal):

[Signature]

Liberty Mutual Insurance Company

(Surety)

By:

(Signature of authorized representative)

Michele Bonnin

Attorney-in-Fact

(Printed name and title)

G707—1994

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated. Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees. For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.



**Liberty
Mutual.**

SURETY

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint Michele Bonnin of the city of The Woodlands, state of TX its true and lawful attorney-in-fact, with full power and authority hereby conferred to sign, execute and acknowledge the following surety bond:

Principal Name: Collier Construction, LLC

Obligee Name: City of Brenham

Surety Bond Number: 58S216644

Bond Amount: See Bond Form

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 12th day of March, 2021.



The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: David M. Carey

David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA
COUNTY OF MONTGOMERY

ss

On this 12th day of March, 2021, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044

Member, Pennsylvania Association of Notaries

By: Teresa Pastella

Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following by-laws and Authorizations of Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, of Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company do hereby certify that this power of attorney executed by said Companies is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 27th day of June, 2023.



By: Renee C. Llewellyn

Renee C. Llewellyn, Assistant Secretary



Regular City Council
AGENDA ITEM 6-D.

Agenda Item: Approve an Electrical Distribution Construction Agreement Between the City of Brenham and Techline Construction, LLC, Through the Lower Colorado River Authority (LCRA), in an Amount Not To Exceed \$125,750.00 Related to the MLK Parkway Circuit Upgrade Pole Changeouts and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-August 03, 2023

Department: Public Utilities

Staff Contact: Alton Sommerfiled

SUMMARY STATEMENT:

The Electric Department has developed a 5-year Capital Improvement Plan that each year upgrades lines, replaces poles, and transformers. The replacement of poles and transformers is necessary to protect the integrity and reliability of the City's electrical system.

This year, the upgrade will replace the overhead line along MLK, starting at Pole #2457 next to the railroad tracks and will finish at Pole #2436 at 103 E. Academy. The project includes upgrading 800 lf of overhead copper to 477 ACSR. The contractor will perform the work to McCord Engineering specifications. This project was approved in the current budget year.

This contract is executed through our Technical Services Agreement between LCRA and the City of Brenham dated January 18, 1980, Amendment No. 1 dated June 27, 2023 and will be done in accordance with terms and specifications between LCRA and the Contractor. The Contractor estimates the total cost of labor and equipment to complete the project not to exceed \$125,750.00.

ATTACHMENTS:

- (1) Construction DWG - MLK
- (2) Electrical Construction Agmt-MLK

RECOMMENDED ACTION:

Approve an electrical distribution construction agreement between the City of Brenham and Techline Construction, LLC, through the Lower Colorado River Authority (LCRA), in an amount not to exceed \$125,750.00 related to the MLK Parkway circuit upgrade pole changeouts and authorize the Mayor to execute any necessary documentation.

Electrical Distribution Construction Agreement

This Electrical Distribution Construction Agreement ("Agreement")
Is made and entered into effective as of the date of the last to sign
below, by and between the City of Brewer TX ("Owner")
and Techline Construction, LLC ("Contractor") _____

Techline Construction LLC

(the Construction Drawings") and Contract No. 5045 Distribution
Construction Services between Lower Colorado River Authority (LCRA)
and Techline Construction, LLC dated October 1, 2018 (the
"Contract") are attached to this Agreement as Exhibit A and Exhibit B
respectively and are incorporated into it for all purposes. Both parties
agree to all provisions of the Construction Drawings and the Contract,
provided, however, that both the City, as Owner, and Contractor
acknowledge that this Agreement is issued under Section C of Contract
permitting LCRA'S Wholesale Customers to purchase under the
Contract, and provided further that Owner and Contractor agree that
LCRA is not a party to this Agreement between the Owner and the
Contractor, and that LCRA does not guarantee payment by Owner to
Contractor, warrant performance by Contractor to Owner or otherwise
assume any Liability under this Agreement to Owner or Contractor
(whether in tort (including negligence and strict liability) contract,
warranty, indemnity, contribution or otherwise).

Contractor has thoroughly examined the jobsite, the Construction drawings and other specifications applicable laws and regulations, and all other matters affecting the work to be performed, and has delivered its offer to the City of Brahm TX in the form of the Proposal by Techline Construction, LLC to the City of dated 6-26-23 (the "Proposal"). The Proposal is attached to this Agreement as Exhibit C and incorporated into it for all purposes.

Contractor shall furnish all labor, construction equipment, transportation, subcontracting, and other required services to complete the work described in the Contract Documents, specifications, and Construction Drawings and the Contract Documents.

Contractor agrees to perform the work and Owner agrees to pay the Contractor in accordance with the prices listed in the Proposal and in any change orders executed by the parties.

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EXHIBIT A

Construction Drawings {complete title}

City has drawings

EXHIBIT B

Contract No. 5045 Distribution Construction Services between Lower
Colorado River Authority and Techline Construction, LLC dated
October 1, 2018.

City has copy of Contract

EXHIBIT C

Proposal by Techline Construction, LLC to the City of

Brenham TX Dated 6-26.

Techline Construction estimates the total cost of labor and equipment to complete the project or projects to be known as MLK &.

Academy St Upgrade.

_____ for the City of Brenham TX will
be \$NTE 125,750. Any added or unusual work will
be done by Techline Construction for extra compensation.

SIGNATURE PAGE TO ELECTRICAL DISTRIBUTION CONSTRUCTION
AGREEMENT BETWEEN CITY OF Brenham
AS OWNER, AND TECHLINE CONSTRUCTION, LLC, AS CONTRACTOR

EXECUTED EFFECTIVE as of the date of the last to sign below.

CONTRACTOR

Techline Construction, LLC

By: Don Lanyon

Name: Don Lanyon

Title: President

Date: 6-26-23

OWNER

City of Brenham

By: Atwood C. KENZURA

Name: _____

Title: Mayor

Date: _____
Name: _____



Regular City Council
AGENDA ITEM 6-E.

Agenda Item: Approve an Electrical Distribution Construction Agreement Between the City of Brenham and Techline Construction, LLC, Through the Lower Colorado River Authority (LCRA), in an Amount Not To Exceed \$78,500 Related to the South Market Street Line Upgrade and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-August 03, 2023

Department: Public Utilities

Staff Contact: Alton Sommerfield

SUMMARY STATEMENT:

The recent development of Market Square will require upgrades to the electric infrastructure. The existing overhead line on South Market requires upsizing to accommodate the additional load of Market Square Development and is necessary to protect the reliability of power in the new development. This project is part of the Electric Department's 5-year Capital Improvement Plan where each year lines are upgraded, poles and transformers replaced.

The project will start at Pole #2931 at the Dollar General store and will finish at 2411 South Market Street at Pole #4261. This will include upgrading from 1/0 ACSR to 336 AAC and Pole #4261 as well as Pole #2934 will be replaced. This project was approved in the current budget year.

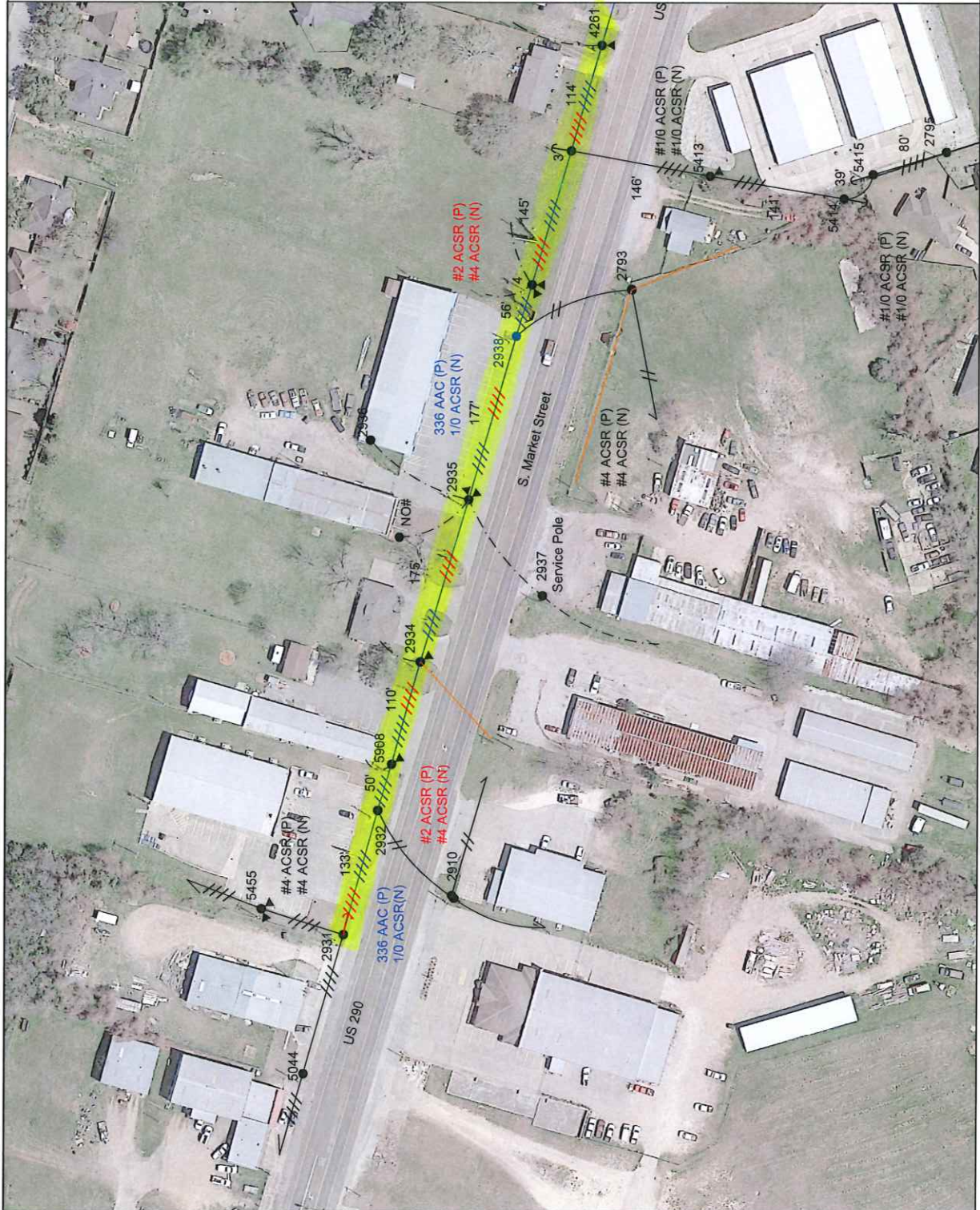
This contract is executed through our Technical Services Agreement between LCRA and the City of Brenham dated January 18, 1980, Amendment No. 1 dated June 27, 2023 and will be done in accordance with terms and specifications between LCRA and the Contractor. The Contractor estimates the total cost of labor and equipment to complete the project not to exceed \$78,500.00

ATTACHMENTS:

- (1) Construction Dwg-S Market
- (2) Electrical Construction Agmt-S Market

RECOMMENDED ACTION:

Approve an electrical distribution construction agreement between the City of Brenham and Techline Construction, LLC, through the Lower Colorado River Authority (LCRA), in an amount not to exceed \$78,500 related to the South Market Street line upgrade and authorize the Mayor to execute any necessary documentation.



LEGEND

- EXISTING ELECTRIC FACILITIES
- PROPOSED ELECTRIC FACILITIES
- REMOVE EXISTING ELECTRIC FACILITIES
- EXISTING POLE
- PROPOSED POLE IN NEW LOCATION
- PROPOSED POLE IN EXISTING LOCATION
- EXISTING TRANSFORMER
- REMOVE EXISTING TRANSFORMER
- EXISTING LUMINAIRE
- EXISTING GUY LOCATION
- EXISTING SINGLE-PHASE OVERHEAD POWER LINE
- EXISTING V-PHASE OVERHEAD POWER LINE
- EXISTING THREE-PHASE OVERHEAD POWER LINE
- EXISTING OVERHEAD SECONDARY OR SERVICE
- PROPOSED THREE-PHASE UNDERGROUND
- PROPOSED SINGLE-PHASE UNDERGROUND
- EXISTING UNDERGROUND SECONDARY OR SERVICE
- PROPOSED JUNCTION BOX
- PROPOSED PADMOUNT TRANSFORMER
- POWER LINE PHASE

GRAPHIC SCALE



F-2864
THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY
REX N. WOODS, P.E. 87089
FEBRUARY 17, 2023
NOT VALID UNLESS SIGNED.
ALTERATION OF A SEALED DOCUMENT WITHOUT
PROPER ENGINEERING PRACTICE
IS AN OFFENSE UNDER THE
TEXAS ENGINEERING PRACTICE ACT.

APPROVED
FOR CONSTRUCTION



Construction Drawing
Market Square Phase 2
23-13812



Texas Registered Engineering Firm F-2864
916 Southwest Parkway East
Columbus, Texas 76801
(979) 764-3350

SCALE	DATE	BY	CHK	APP	REV
1"=100'	02/09/2023	BR-11-B-A-A	MEI-16189-1	1 OF 4	REV.

Electrical Distribution Construction Agreement

This Electrical Distribution Construction Agreement ("Agreement")
Is made and entered into effective as of the date of the last to sign
below, by and between the City of Breham Tx ("Owner")
and Techline Construction, LLC ("Contractor") Techline Construction LLC.

(the Construction Drawings") and Contract No. 5045 Distribution
Construction Services between Lower Colorado River Authority (LCRA)
and Techline Construction, LLC dated October 1, 2018 (the
"Contract") are attached to this Agreement as Exhibit A and Exhibit B
respectively and are incorporated into it for all purposes. Both parties
agree to all provisions of the Construction Drawings and the Contract,
provided, however, that both the City, as Owner, and Contractor
acknowledge that this Agreement is issued under Section C of Contract
permitting LCRA'S Wholesale Customers to purchase under the
Contract, and provided further that Owner and Contractor agree that
LCRA is not a party to this Agreement between the Owner and the
Contractor, and that LCRA does not guarantee payment by Owner to
Contractor, warrant performance by Contractor to Owner or otherwise
assume any Liability under this Agreement to Owner or Contractor
(whether in tort (including negligence and strict liability) contract,
warranty, indemnity, contribution or otherwise).

Contractor has thoroughly examined the jobsite, the Construction drawings and other specifications applicable laws and regulations, and all other matters affecting the work to be performed, and has delivered its offer to the City of Brenham Tx in the form of the Proposal by Techline Construction, LLC to the City of dated 6-26-23 (the "Proposal"). The Proposal is attached to this Agreement as Exhibit C and incorporated into it for all purposes.

Contractor shall furnish all labor, construction equipment, transportation, subcontracting, and other required services to complete the work described in the Contract Documents, specifications, and Construction Drawings and the Contract Documents.

Contractor agrees to perform the work and Owner agrees to pay the Contractor in accordance with the prices listed in the Proposal and in any change orders executed by the parties.

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EXHIBIT A

Construction Drawings {complete title}

City has Drawings

EXHIBIT B

Contract No. 5045 Distribution Construction Services between Lower Colorado River Authority and Techline Construction, LLC dated October 1, 2018.

City has copy of current contract

EXHIBIT C

Proposal by Techline Construction, LLC to the City of

Brenham Texas Dated 6-26-23.

Techline Construction estimates the total cost of labor and equipment to complete the project or projects to be known as Reconstruct.

S. Market St.

_____ for the City of Brenham will
be \$ Not to Exceed \$ 78,500. Any added or unusual work will
be done by Techline Construction for extra compensation.

SIGNATURE PAGE TO ELECTRICAL DISTRIBUTION CONSTRUCTION
AGREEMENT BETWEEN CITY OF Brenham
AS OWNER, AND TECHLINE CONSTRUCTION, LLC, AS CONTRACTOR

EXECUTED EFFECTIVE as of the date of the last to sign below.

CONTRACTOR

Techline Construction, LLC

By: Don Lanyon

Name: Don Lanyon

Title: President

Date: 6-26-23

OWNER

City of Brenham

By: Atwood C. KENSURA

Name: _____

Title: Mayor

Date: _____
Name: _____



Regular City Council
AGENDA ITEM 6-F.

Agenda Item: Approve Change Order No. 1 for Project No. 2021-06-B to D&S Contracting, Inc. in the Amount of -\$2,669.00 for the 2022 Sanitary Sewer Improvements - Stone Hollow Force Main and Ralston Creek Gravity Sewer Crossing and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-August 03, 2023

Department: Public Utilities

Staff Contact: Shawn Bolenbarr

SUMMARY STATEMENT:

On February 2, 2023 City Council awarded the 2022 Sanitary Sewer Improvements-Stone Hollow Force Main and Ralston Creek Gravity Sewer Crossing project to D&S Contracting for a not to exceed amount of \$924,932.00.

On June 13, 2023 The City of Brenham receive Change Order Number 1 for the 2022 Sanitary Sewer Improvements-Stone Hollow Force Main and Ralston Creek Gravity Sewer Crossing project. The Provided change order documentation contains the descriptions of changes to the contract.

City staff met and discussed this Change Order with Strand Associates and are in agreement with all of the quantity changes that are outlined in Change Order Number 1.

By proceeding with this deductive change proposal, it will require the City to execute Change Order Number 1 in the amount of -\$2,669.00. By accepting this deductive change order, the total amount of the project will be \$922,263.00.

ATTACHMENTS:

(1) Change Order Number 1 for the 2022 Sanitary Sewer Improvements-Stone Hollow Force Main and Ralston Creek Gravity Sewer Crossing

RECOMMENDED ACTION:

Approve Change Order No. 1 for Project No. 2021-06-B to D & S Contracting, Inc. in the amount of -\$2,669.00 for the 2022 Sanitary Sewer Improvements - Stone Hollow Force Main and Ralston Creek Gravity Sewer Crossing and authorize the Mayor to execute any necessary documentation.



Strand Associates, Inc.®
 1906 Niebuhr Street
 Brenham, TX 77833
 (P) 979.836.7937
 www.strand.com

Transmittal Letter

DATE: July 13, 2023 PROJECT NO. 3900.253

COMPANY NAME: D&S Contracting, Inc.
 ATTENTION: DeAnne Moore Smith, President
 ADDRESS: 5024 Blue Ridge Drive
 CITY/STATE/ZIP: College Station, TX 77845
 RE: 2022 Sanitary Sewer Improvements–Stone Hollow Force Main and Ralston Creek Gravity Sewer Crossing, City of Brenham, Texas

WE ARE SENDING YOU:

- | | | | | |
|--|-----------------------------------|-----------------------------------|----------------------------------|---|
| ☐ Agreement | ☐ Contract | ☐ Letter | ☐ Report | ☐ Shop Drawings |
| ☒ Change Order | ☐ Drawings | ☐ Pay Apps | ☐ Samples | ☐ Specifications |
| ☐ Other _____ | | | | |

Copies	Date	No.	Description
1	7/13/2023	1	Change Order No. 1

ITEMS TRANSMITTED AS SHOWN:

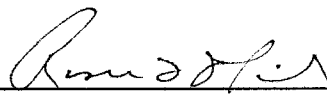
- | | | |
|---|---|---|
| ☐ For approval | ☐ Approved as submitted | ☐ Resubmit _____ copies for approval |
| ☐ For your use | ☐ Approved as noted | ☐ Submit _____ copies for distribution |
| ☐ As requested | ☐ Approved as noted–Resubmit | ☐ Additional Information Required |
| ☐ For review and comment | ☐ Not Approved | ☒ For signature |
| ☐ Other _____ | | |

REMARKS:

Please see the enclosed Change Order No. 1 for the above-referenced project. Sign and return the change order to our office for execution by the Owner. It is acceptable to print, sign, scan, and digitally return the signed change order as long as the document is legible and there are no scan lines on the document. Once the document has been fully executed, you will receive a fully executed copy for your records.

Please call 979-836-7937 should you have any questions. Thank you!

Signed


 Ryan D. Tinsley, P.E., ENV SP

Copy to: File

S:\BRE\3900-3999\3900\253\Construction\Change Orders\Piping\Change Order No. 1\Transmittal_Contractor.docx



Strand Associates, Inc.[®]
 1806 Nichols Street
 Brenham, TX 77833
 (P) 979.836.7507
 www.strand.com

July 13, 2023

CHANGE ORDER NO. 1

PROJECT: 2022 Sanitary Sewer Improvements–Stone Hollow Force Main and Ralston Creek Gravity Sewer Crossing
 OWNER: City of Brenham, Texas
 CONTRACT: 2021-06-B
 CONTRACTOR: D&S Contracting, Inc.

Description of Change

1a	New Item: Manhole (MH)-9 is now within 9 feet of a nearby water main. Cement stabilized sand will be installed at the manhole to maintain Texas Commission on Environmental Quality (TCEQ) Compliance (1 Lump Sum [LS] at \$600.00 per LS).	ADD	\$600.00
1b	New Item: Install 18-inch American Society for Testing and Materials (ASTM) F-679 PS115 sanitary sewer line by open cut, all depths (10 Linear Feet [LF] at \$240.00 per LF). The pipe being reconnected to proposed MH-1 was larger than expected.	ADD	\$2,400.00
1c	New Item: Remove the concrete pavement underneath existing asphalt (400 Square Feet [SF] at \$15.00 per SF). Contractor discovered concrete under the existing asphalt pavement around MH-1. This item covers the extra time and effort required for its removal.	ADD	\$6,000.00
1d	Increase Bid Item 8 quantity from 91 LF to 186 LF (at \$127.00 per LF). The proposed sewer line was lowered to account for the relocation of MH-9.	ADD	\$12,065.00
1e	Decrease Bid Item 2 quantity from 1,945 LF to 1,849 LF (at \$104.00 per LF). The proposed force main was shortened to account for the relocation of MH-9.	(DEDUCT)	(\$9,984.00)
1f	Remove Bid Item 10 (1 EA at \$4,000.00 per EA). The proposed sewer line was lowered to account for the relocation of MH-9 making the drop connection unnecessary.	(DEDUCT)	(\$4,000.00)
1g	Remove Bid Item 14 (5 LF at \$190.00 per LF). The pipe at MH-1 was larger than anticipated.	(DEDUCT)	(\$950.00)
1h	Remove Bid Item 23 (40 LF at \$220.00 per LF). The existing water lines were in positions and depths that did not require relocations.	(DEDUCT)	(\$8,800.00)

TBPE No. F-8405
 TBPLS No. 10030000

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City of Brenham–D&S Contracting, Inc.
Contract 2021-06-B, Change Order No. 1
Page 2
July 13, 2023

1i	Increase Contract duration by 19 days to account for the difference between the Notice to Proceed (NTP) and Preconstruction Meeting dates.	ADD	\$0.00
1j	Increase Contract duration by 14 days to account for delays experienced because of weather delays	ADD	\$0.00
TOTAL VALUE OF THIS CHANGE ORDER:		(DEDUCT)	(\$2,669.00)

Contract Price Adjustment

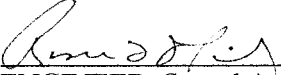
Original Contract Price	\$924,932.00
Previous Change Order Adjustments	\$0.00
Adjustment in Contract Price this Change Order	(\$2,669.00)
Current Contract Price including this Change Order	\$922,263.00

Contract Substantial and Final Completion Date Adjustment

Original Contract Final Completion Date	December 28, 2023
Contract Final Completion Date Adjustments due to previous Change Orders	0 Days
Contract Final Completion Date Adjustments due to this Change Order	33 Days
Current Final Contract Completion Dates including all Change Orders	January 30, 2024

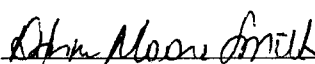
This document shall become a supplement to the Contract and all provisions will apply hereto.

RECOMMENDED



ENGINEER–Strand Associates, Inc.®
Date July 13, 2023

APPROVED



CONTRACTOR–D&S Contracting, Inc.
Date 7/13/23

APPROVED

OWNER–City of Brenham, Texas
Date _____



Regular City Council
AGENDA ITEM 6-G.

Agenda Item: Approve Change Order No. 1 for Project No. 63C-19C to McDonald Municipal and Industrial, a Division of C. F. McDonald Electric, Inc. in the Amount of -\$5,000.00 for the Generator at Atlow Booster Pumping Station and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-August 03, 2023

Department: Public Utilities

Staff Contact: Shawn Bolenbarr

SUMMARY STATEMENT:

On April 20, 2023 City Council awarded the ARPA Generator at Atlow Booster Pumping Station project to McDonald Municipal and Industrial for a not to exceed amount of \$184,136.00.

On June 15, 2023 McDonald Municipal and Industrial proposed an alternate method for the electrical service to the new ATS (Automatic Transfer Switch). Their proposal was to reuse the existing conduit and wire and mount the new ATS adjacent to the existing MTS (Manual Transfer Switch). All internal components in the MTS would be removed and the box would be used as a junction box.

City staff met and discussed this option and agreed that this proposal would be an acceptable change to the design. By proceeding with McDonald Municipal and Industrial's proposal, the City would save on the cost of the wire and conduit. We would also reduce total length of time need for the power outage to change over to the new ATS. Also, by going the original route we would not need to build an overhead temporary power service to the project location.

By proceeding with this deductive change proposal, it will require the City to execute Change Order Number 1 in the amount of -\$5,000.00. By accepting this deductive change order, the total amount of the project will be \$179,136.00.

ATTACHMENTS:

(1) Change Order Number 1 for the Generator at Atlow Booster Pumping Station

RECOMMENDED ACTION:

Approve Change Order No. 1 for Project No. 63C-19C to McDonald Municipal and Industrial, a Division of C. F. McDonald Electric, Inc. in the amount of -\$5,000.00 for the generator at Atlow Booster Pumping Station and authorize the Mayor to execute any necessary documentation.



Strand Associates, Inc.®
1906 Niebuhr Street
Brenham, TX 77833
(P) 979.836.7937
www.strand.com

July 11, 2023

CHANGE ORDER NO. 1

PROJECT: ARPA Generator at Atlow Booster Pumping Station
OWNER: City of Brenham, Texas
CONTRACT: 63C-19C
CONTRACTOR: McDonald Municipal and Industrial, a Division of C.F. McDonald Electric, Inc.

Description of Change

1a Reuse the existing conduit and wire and mount a new automatic transfer switch adjacent to the existing manual transfer switch. (DEDUCT) (\$5,000.00)

TOTAL VALUE OF THIS CHANGE ORDER: (DEDUCT) (\$5,000.00)

Contract Price Adjustment

Original Contract Price	\$184,136.00
Previous Change Order Adjustments	\$0.00
Adjustment in Contract Price this Change Order	(\$5,000.00)
Current Contract Price including this Change Order	\$179,136.00

Contract Final Completion Date Adjustment

Original Contract Final Completion Date	June 25, 2024
Contract Final Completion Date Adjustments due to previous Change Orders	0 Days
Contract Final Completion Date Adjustments due to this Change Order	0 Days
Current Final Contract Completion Dates including all Change Orders	June 25, 2024

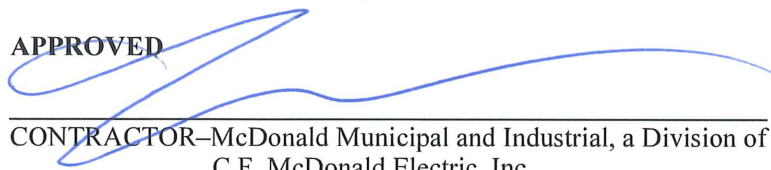
This document shall become a supplement to the Contract and all provisions will apply hereto.

RECOMMENDED


ENGINEER—Strand Associates, Inc.®

July 11, 2023
Date

APPROVED


CONTRACTOR—McDonald Municipal and Industrial, a Division of
C.F. McDonald Electric, Inc.

07-11-23
Date

APPROVED

OWNER—City of Brenham, Texas

Date

MKG:cdg\S:\BRE\3900--3999\3900\268\Construction\Change Orders\Change Order 1\CO 1.docx

TBPE No. F-8405
TBPLS No. 10030000



Regular City Council
AGENDA ITEM 7.

Agenda Item: Public Hearing, Discussion and Possible Action on an Ordinance on Its First Reading for the Creation of Reinvestment Zone Number 51 Requested by MIC Group, LLC for Commercial Tax Phase-In Incentive on a Certain 16.291 Acre Tract or Parcel of Land Being Comprised of Lot 1, Industrial Park of Brenham as Recorded in Plat Slide 190-A and B of the Plat Records of Washington County (P.R.W.C.) and Lot 5, Brenham Business Center, Phase I, as Shown on the Boundary Line Adjustment Plat Recorded in Plat Slide 425-A (P.R.W.C.) and Being Located at 3140 S. Blue Bell Road., Brenham, Texas, with Boundaries Further Described in Exhibit 'A' of the Ordinance Creating Reinvestment Zone Number 51, and Designating This Property as Qualifying for Tax Phase-In

Meeting Type: Regular Meeting-August 03, 2023

Department: Economic Development

Staff Contact: Teresa Rosales

SUMMARY STATEMENT:

MIC Group, LLC is a precision machining and electromechanical assembly manufacturing company located in Brenham. The company would like to acquire additional manufacturing equipment in order to expand operations. They are located at 3140 South Blue Bell Road and employ 130 people.

The equipment they are purchasing has a total capital investment of \$6,000,000.

ATTACHMENTS:

- (1) MIC Ordinance for RZ51
- (2) Exhibit A to Ordinance for RZ51

RECOMMENDED ACTION:

Approve an Ordinance on its first reading for the creation of Reinvestment Zone Number 51 requested by MIC Group, LLC for Commercial Tax Phase-In incentive on that certain 16.291 acre tract or parcel of land being comprised of Lot 1, Industrial Park of Brenham as recorded in Plat Slide 190-A and B of the Plat Records of Washington County (P.R.W.C.) and Lot 5, Brenham Business Center Phase I as shown on the boundary line adjustment plat recorded in Plat Slide 425-A (P.R.W.C.) and being located at 3140 S. Blue Bell Road, Brenham, Texas, being more fully described in Exhibit "A" of the Ordinance creating Reinvestment Zone 51, and designating this property as qualifying for Tax Phase-In.

ORDINANCE NO. _____

AN ORDINANCE DESIGNATING ALL OF THAT CERTAIN 16.291 ACRE TRACT OR PARCEL OF LAND BEING COMPRISED OF LOT 1, INDUSTRIAL PARK OF BRENHAM AS RECORDED IN PLAT SLIDE 190-A AND B OF THE PLAT RECORDS OF WASHINGTON COUNTY (P.R.W.C.) AND LOT 5, BRENHAM BUSINESS CENTER, PHASE I, AS SHOWN ON THE BOUNDARY LINE ADJUSTMENT PLAT RECORDED IN PLAT SLIDE 425-A (P.R.W.C.), IN WASHINGTON COUNTY, TEXAS, BEING THE SAME PROPERTY DESCRIBED IN A DEED DATED DECEMBER 17, 2010 FROM MIC GROUP, LLC TO POINDEXTER PROPERTIES, LLC, RECORDED IN VOLUME 1360, PAGE 392, OFFICIAL RECORDS OF WASHINGTON COUNTY, TEXAS, SAID PROPERTY BEING LOCATED AT 3140 S. BLUE BELL ROAD, BRENHAM, TEXAS, AND SAID PROPERTY BOUNDARIES BEING MORE FULLY DESCRIBED IN EXHIBIT “A” ATTACHED HERETO AND INCORPORATED HEREIN FOR ALL PURPOSES, AS REINVESTMENT ZONE NUMBER FIFTY-ONE FOR COMMERCIAL TAX PHASE-IN, CITY OF BRENHAM, TEXAS AS PROVIDED IN CHAPTER 312, TEXAS TAX CODE; ESTABLISHING THE NUMBER OF YEARS FOR THE ZONE, AUTHORIZING AN AGREEMENT FOR EXEMPTION FROM TAXATION THE INCREASE IN VALUE OF CERTAIN PROPERTY IN ORDER TO ENCOURAGE DEVELOPMENT AND REDEVELOPMENT AND OTHER MATTERS RELATING THERETO; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Council of the City of Brenham, Texas, ("City") desires to encourage supervised improvements by property owners and lessees through tax phase-in procedures within its jurisdiction by the creation of a reinvestment zone as authorized by Chapter 312, Texas Tax Code (the “Act”); and

WHEREAS, on the 3rd day of August 2023, the City Council held a public hearing to receive comments concerning the designation of proposed Reinvestment Zone Number Fifty-One. The notice of such hearing was published on July 27, 2023, such date being not later than the seventh day before the date of the public hearing; and

WHEREAS, the City called a public hearing and published notice of such public hearing as required by Section 312.201 of the Act; and has delivered written notice to the presiding officer of the governing body of each taxing unit within the jurisdiction of the proposed Reinvestment Zone Number Fifty-One for Commercial Tax Phase-In; and

WHEREAS, at said public hearing the City presented evidence that such proposed designation would be reasonably likely to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property, that the proposed improvements are feasible and practical, that said improvements would be a benefit to the land included in the zone and that would contribute to the economic development of the City; and

WHEREAS, the designation of the proposed reinvestment zone is consistent with the City's policies adopted by Council Resolution No. R-23-015 on the 7th day of May 5, 2023, and will benefit the land included within the Reinvestment Zone after the expiration of the Agreement; and

WHEREAS, the City at such public hearing invited any interested person or his attorney to appear and contend for or against the creation of the reinvestment zone, the boundaries of the proposed reinvestment zone, whether all or part of the territory which is referred to as City of Brenham Reinvestment Zone Number Fifty-One for Commercial Tax Phase-In, should be included in such proposed reinvestment zone, and obtain tax phase-in; and

WHEREAS, at such hearing recommendations were given as to the number of years the reinvestment zone would be designated, the number of years in which an agreement would be available, as well as the percentage of potential tax exemption under the aforesaid tax phase-in guidelines and criteria to be applied to taxable real property which is developed;

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

Section 1. That the facts and recitations contained in the preamble of this Ordinance are hereby found and declared to be true and correct and are incorporated herein for all purposes.

Section 2. That the City, after conducting such hearing and having further studied recommendations, as well as the evidence presented at the public hearing, has made the following findings based on the evidence and testimony presented to it:

- a) That the public hearing on the adoption of the reinvestment zone under the provisions of the Act has been properly called, held and conducted and that notice of such hearing has been published as required by law and has been sent to the respective taxing units within the proposed reinvestment zone; and

- b) That the City has jurisdiction to hold and conduct said public hearing on the creation of the proposed reinvestment zone pursuant to the Act; and
- c) That creation of the proposed reinvestment zone with boundaries described herein will result in improvements made after the passage of this Ordinance and the execution of tax phase-in agreements, that are feasible and practical and will benefit the City, its residents and property owners in the reinvestment zone; and
- d) That the proposed designation will be reasonably likely to contribute to the retention or expansion of primary employment or to attract major investments to the zone that would be a benefit to the property and contribute to economic development of the City.

Section 3. That the City hereby creates Reinvestment Zone Number Fifty-One, designated as all of a certain 16.291 acre tract or parcel of land being comprised of Lot 1, Industrial Park of Brenham as recorded in Plat Slide 190-A and B of the Plat Records of Washington County (P.R.W.C.) and Lot 5, Brenham Business Center, Phase I, as shown on the Boundary Line Adjustment plat recorded in Plat Slide 425-A (P.R.W.C.) in Washington County, Texas, being the same property described in Deed dated December 17, 2010 from MIC Group, LLC to Poindexter Properties, LLC as recorded in Volume 1360, Page 392, Official Records of Washington County, Texas, said property being located at 3140 S. Blue Bell Rd., Brenham, Texas, and said property boundaries being more fully described in Exhibit "A" attached hereto and incorporated herein for all purposes, and such reinvestment zone shall hereafter be identified as Reinvestment Zone Number Fifty-One for Commercial Tax Phase-In, City of Brenham, Texas.

Section 4. That the designation of Reinvestment Zone Number Fifty-One for Commercial Tax Phase-In, shall expire five (5) years from the date of this Ordinance, unless renewed as provided by the Act, or at an earlier time designated by subsequent ordinance.

Section 5. That written agreements as provided in the Act with owners of eligible property located within the reinvestment zone shall be for a period of up to ten (10) years, and that the eligible property that is subject to the above mentioned exemption from taxation shall be the improvements to the property in conformity with the City's criteria and guidelines, and written agreements shall provide for an exemption from taxation of the total increase in value of the eligible property over its value in the year the agreement is executed. The written agreement will require that all taxes be current at the time of execution of agreement and be kept current to all taxing entities during the term of said agreement.

- Section 6.** That said designation of Reinvestment Zone Number Fifty-One for Commercial Tax Phase-In and the written agreement thereof are in accordance with the City of Brenham’s “Policy Statement on Property Tax Phase-In Incentive for Selected Commercial Enterprises” and will be a benefit to the land which will be included within the Reinvestment Zone and to the City of Brenham after the expiration of the agreement.
- Section 7.** That if any provision of this Ordinance shall be held to be invalid or unconstitutional, the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part of it.
- Section 8.** That it is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

PASSED AND APPROVED, on its first reading this the _____ day of August 2023.

PASSED AND APPROVED, on its second reading this the ____ day of August 2023.

Atwood C. Kenjura
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary

EXHIBIT “A”

16.291 acre tract of land being comprised of Lot 1, Industrial Park of Brenham as recorded in Plat Slide 190-A and B of the Plat Records of Washington County (P.R.W.C.) and Lot 5, Brenham Business Center, Phase I, as shown on the Boundary Line Adjustment plat recorded in Plat Slide 425-A (P.R.W.C.) in Washington County, Texas, being the same property described in Deed dated December 17, 2010 from MIC Group, LLC to Poindexter Properties, LLC as recorded in Volume 1360, Page 392, Official Records of Washington County, Texas.



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, in Washington County, Texas (Case No. P-23-026) to Include:

- a. Revision of the Definition of 'Food Truck Site' Found in Part 1, Section 5, Section 5.02;
- b. Revision of the Specific Use Provisions for the R-1 (Single Family Residential) and the Permitted and Specific Use Provisions of the R-2 (Mixed Residential) Zoning Districts Found in Part 2, Division 2, Sections 1 and 2 Respectively;
- c. Deletions to Part 2, Division 1, Section 11 - Performance Standards; and
- d. Deletions to Part IV, Division 2, Section 2 Pertaining to Conditions on Variances

Meeting Type: Regular Meeting-August 03, 2023

Department: Development Services

Staff Contact: Shauna Laauwe

SUMMARY STATEMENT:

The Zoning Ordinance is a living document that requires revisions from time to time to reflect new codes, make corrections, to revise/add new definitions, to allow for new uses or perhaps remove uses that are no longer seen as compatible within a particular zoning district. In the past year, the Development Services Staff has made note of several revisions that are worthy of consideration by the Planning & Zoning Commission and City Council. These include amending the definition regarding food truck sites; revising the R-1 District specific uses to include duplexes and twin homes; revising the R-2 District to include accessory dwelling units and twin homes as permitted uses, and include parameters for twin home and townhome developments; delete a portion of Section 11, Performance Standards regarding noise regulations that are repetitive or contradictory to Chapter 17 of the Code of Ordinances; and lastly removing the provisions that allows conditions to be placed upon variances.

Please see the attached Staff Report for the justification behind each amendment and the attached Exhibits to the Staff Report for the proposed redline edits.

The Planning & Zoning Commission conducted a public hearing on Monday, July 24, 2023, and approved the proposed text amendments unanimously except for a provision to reduce the lot coverage for townhomes that has been redacted from the staff report and Exhibit B.

Staff recommends approval of the text amendments to Appendix A- Zoning of the Code of Ordinances.

ATTACHMENTS:

- | |
|--|
| <ul style="list-style-type: none">(1) Staff Report(2) Exhibit "A": Part 1, General Provisions, Section 5: Definitions and Interpretation(3) Exhibit "B": Division 2, Section 1.03: R-1 Residential District Specific Uses and Division 2, Section 2: R-2 Mixed Residential District(4) Exhibit "C": Part 2, Division 1, Section 11: Performance Standards(5) Exhibit "D": Part IV, Division 2: Variances(6) Ordinance - First Reading |
|--|

RECOMMENDED ACTION:

Approve an Ordinance on its first reading amending Appendix A - Zoning of the Code of Ordinances of the City of Brenham, in Washington County, Texas (Case No. P-23-026) to include:
--

- | |
|---|
| <ul style="list-style-type: none">a. Revision of the definition of 'Food Truck Site' found in Part 1, Section 5, Section 5.02;b. Revision of the Specific Use provisions for the R-1 (Single Family Residential) and the Permitted and Specific Use provisions of the R-2 (Mixed Residential) Zoning Districts found in Part 2, Division 2, Sections 1 and 2 respectively;c. Deletions to Part 2, Division 1, Section 11 - Performance Standards; andd. Deletions to Part IV, Division 2, Section 2 pertaining to conditions on variances. |
|---|



CASE NUMBER P-23-026 TEXT AMENDMENTS

REQUEST:

The City of Brenham initiated this request to amend the City of Brenham's Code of Ordinances, Appendix A: Zoning to amend five (5) different areas of the current regulations to include:

- a. A revision of the definition of "Food Truck Site" found in Part 1, Section 5, Section 5.02; and
- b. A revision of the Specific Use provisions for the R-1 (Single Family Residential) and the Permitted and Specific Use provisions of the R-2 (Mixed Residential) Zoning Districts found in Part 2, Division, 2, Sections 1 and 2 respectively; and
- c. Deletions to Part 2, Division 1, Section 11 – Performance Standards; and
- d. Deletion of Part IV, Division 2, Section 2 pertaining to conditions on variances.

BACKGROUND:

The Zoning Ordinance is a living document that requires revisions from time to time to reflect new codes, make corrections, to revise/add new definitions, to allow for new uses or perhaps remove uses that are no longer seen as compatible within a particular zoning district. In the past year, the Development Services Staff has made note of several revisions that are worthy of consideration by the Planning & Zoning Commission and City Council. These include amending the definition regarding food truck sites; revising the R-1 District specific uses to include duplexes and twin homes; revising the R-2 District to include accessory dwelling units and twin homes as permitted uses, and include parameters for twin home and townhome developments; delete a portion of Section 11, Performance Standards regarding noise regulations that are repetitive or contradictory to Chapter 17 of the Code of Ordinances; and lastly removing the provisions that allows conditions to be placed upon variances. Please see below for a summary of the reasoning behind each amendment and the attached Exhibits for the proposed ordinance edits to include deletions and additions.

Proposed Amendments:

Appendix A Zoning, Part 1, Section 5 – Definitions and Interpretation. In November 2021, the City adopted regulations regarding Food Trucks and Mobile Kitchens in both the Code of Ordinances in Chapter 9- Food and Food Establishments and in Section 18 of the Zoning Ordinance. For the Zoning Ordinance, definitions of a "Food Truck Park," "Food Truck Site," and "Mobile Kitchen" were established as well as regulations in Section 18 of the parameters to develop a food truck park. In recent months, it has come to our attention of some owners of food trucks storing their trucks or trailers on residential property when not in use. This has brought about several complaints from neighboring property owners. While the definitions currently state that a food truck business shall not be an accessory use on a residential property, it does not clarify that storage of the vehicles or trailers is prohibited. As shown in Exhibit "A", the definition of "Food Truck Site" has been revised to reflect that storing such vehicles are prohibited on residential property.

Appendix A, Part 2, Division 2, Zoning District Regulations, Section 1 - R-1 Residential District and Section 2 – Mixed Residential. In July 2022, the City Council established and appointed the Housing Task Force with the goal to collaborate with input from all members in order to present viable suggestions concerning housing to City Council and Planning and Zoning Commission. Between August 31, 2022, and March 22, 2023, the Housing Task Force met six (6) times to discuss housing constraints, opportunities, and ways to alleviate the shortage of workforce housing in Brenham. On April 6, 2023, a final report was made to City Council. Included in the final Housing Task Force recommendation to Council were revisions to the R-2 District: including, clearer duplex standards that establish setbacks and minimum lot standards; adding a provision to allow twin homes, and to allow accessory dwelling units (ADUs) as a permitted use instead of requiring the specific use permit process. During the Housing Task Force presentation to Council, Council expressed willingness to also allow duplexes in the R-1 District with the approval of a Specific Use Permit. Lastly, with recent townhome developments coming forward, Development Services and Public Utilities found that a provision should be added to R-2 District, Section 2.05(2)(E) to require access to public utilities via an adjacent public or private all-weather surface, as serving these sites without a clear access could prove challenging. The detailed revisions to the R-1 District and R-2 District may be found in Exhibit “B”.

Appendix A, Part II, Division 1 Regulations, Section 11– Performance Standards. During discussions regarding the noise ordinance earlier this year, it came to light that Section 11 of the Zoning Ordinance repeated the same information that was included in Chapter 17 – Offenses and Miscellaneous Provisions, Article V – Noise Nuisances of the City of Brenham Code of Ordinances. To reduce repetitiveness and give clarity, City Staff recommends removing the regulations from the Zoning Ordinance and that noise and vibration would be enforced by the general Code of Ordinances. In Exhibit “C”, a reference is added in the opening paragraph that refers to Chapter 17, and the subsequent Section 11.02(1-3) with associated tables are deleted. The only addition is renumbering the open storage regulations from Section 11.02(4) to Section 11.02(1).

Appendix A, Part IV, Division 2 Variances, Section 2 – Conditions. In May 2023, the Board of Adjustments heard a Variance case for a business that was seeking a variance to the bufferyard setbacks to allow for an open-air covering. It was asked if a condition of the type of material could be placed on approval of the structure. The State of Texas Local Government Code 211.009 does not allow for conditions to be placed on the approval of variances. While not allowed by the State, it is included within our current zoning regulations. Exhibit “D” details the removal of Part IV, Division 2, Section 2 that grants provisions for conditions to be placed on variance requests bringing the City of Brenham code into compliance with local law.

ANALYSIS:

As cited in the city’s adopted Zoning Ordinance, site development standards are established for the purpose of promoting and protecting the health, safety, morals and general welfare of the residents, citizens, and inhabitants of the City of Brenham and for the protection and preservation of the small-town character of Brenham, including historical places, places of cultural importance and places that reflect the predominant community values as reflected in the City's Comprehensive Plan. However, staff finds that from time-to-time it is necessary to update the Zoning Ordinance and existing site development standards to accommodate development and modernize development requirements.

PUBLIC COMMENTS:

The Notice of Public Hearing for the proposed Text Amendment was published in the Brenham Banner on July 13, 2023. Any public comments submitted to staff will be provided prior to the Planning and Zoning Commission and City Council prior to their decision on the matter.

STAFF RECOMMENDATION:

Staff recommends **approval** of an ordinance to amend Appendix A – Zoning of the Brenham Code of Ordinances, to approve text amendments to: Part 1, Section 5, Section 5.02 pertaining to the definition of “Food truck site”; to the R-1 and R-2 Districts, Division 2, Sections 1 and 2, respectively; to Part 2, Division 1, Section 11 – Performance Standards; and, to Part IV, Division 2, Section 2 – Variances.

Attachments:

1. Exhibit “A”: Part 1, Section 5, Section 5.02: Definitions
2. Exhibit “B”: Division 2, Sections 1 and 2, R-1 District and R-2 District, respectively.
3. Exhibit “C”: Part 2, Division 1, Section 11 – Performance Standards
4. Exhibit “D”: Part IV, Division 2, Section 2 - Variances.

Exhibit “A”
Part 1, General Provisions, Section 5: Definitions and Interpretation

Please note: Only the two proposed revised definitions are shown, and all other definitions are unaffected. Proposed revisions to the definition of “Food Truck Site” are shown below in **bold purple.

§ 5 Definitions and interpretation.

(Sec. 5.02) Definitions. The following definitions shall apply in the interpretation and the enforcement of this ordinance:

...

Food truck site: Shall mean a developed property where a mobile kitchen operates as an accessory use to the primary active business located on the same site. Food truck sites shall not be permitted as an accessory use, **nor shall Mobile Kitchens be stored**, on property developed with a residential use.

Exhibit “B”

Division 2, Section 1.03: R-1 Residential District Specific Uses

Division 2, Section 2: R-2 Mixed Residential District

****Please note:** All proposed deletions are shown in ~~red~~ and additions in **bold purple**. **

§ 1. R-1 Residential District

(Sec.1.03) Specific Uses:

- (1) Accessory dwelling unit.
- (2) Churches and related auxiliary uses, including educational or philanthropic uses.
- (3) Country clubs or golf courses, but not including miniature golf courses, driving ranges or similar forms of commercial amusement.
- (4) Private and accredited elementary and secondary schools.
- (5) Farms, nurseries or truck gardens, limited to the propagation and cultivation of plants, provided no retail or wholesale business is conducted on the premises, and provided further that no poultry or livestock other than normal household pets shall be housed within one hundred (100) feet of any property line.
- (6) **Dwelling, two family (duplex): Two (2) single-family attached units in accordance with the development standards outlined in the “R-2: Mixed Residential District.”**
- (7) **Twin Homes: Single-family attached units on individual lots in accordance with the development standards outlined in the “R-2: Mixed Residential District.”**

§ 2. R-2 Mixed Residential District.

(Sec. 2.01) Purpose. The R-2 Mixed Residential District is established to protect and restore where necessary the integrity of historically residential neighborhoods. The R-2 Residential District will be characterized by the zoning requirements set forth in this section.

(Sec. 2.02) Permitted uses:

- (1) Any permitted use in district “R-1.”
- (2) Cluster housing in accordance with cluster housing development provisions of the subdivision ordinance of the City of Brenham.
- (3) Group residential uses as provided by state law, such as “family homes.”
- (4) Multifamily dwellings, including dormitories for students and fraternity or sorority houses, on sites of less than two (2) acres.
- (5) ~~Two-family dwellings or duplexes,~~ Dwelling, Two-family (duplex), but not including mobile homes or manufactured homes.
- (6) Single-family attached dwellings, (townhouses) in accordance with townhouse development provisions of the subdivision ordinance of the City of Brenham.
- (7) Zero lot line housing development, in accordance with zero lot line development provisions of the Subdivision Ordinance of the City of Brenham.
- (8) **Accessory dwelling unit.**
- (9) Accessory buildings and uses, customarily incidental to the above uses and located on the same lot therewith, but not involving the conduct of a retail business.
- (10) **Twin homes. Single-family attached dwelling of two units on separate adjacent lots that share a common interior wall and property line. Each twin home unit is platted on a separate lot.**

(Sec. 2.03) Specific uses:

~~(1) Accessory dwelling unit.~~

- (1) Bed and breakfast house.
- (2) Churches and related auxiliary uses, including educational or philanthropic uses.
- (3) Country clubs or golf courses, but not including miniature golf courses, driving ranges or similar forms of commercial amusement.
- (4) Multifamily development, including dormitories for students and fraternity or sorority houses, that meets the standard density requirements for the R-2 District, and that is proposed for a development site of two (2) acres or more.

- (5) Private and accredited elementary and secondary schools.
- (6) Retirement villages with site areas of two (2) acres or more.

(Sec. 2.04) Height regulations. No building shall exceed forty (40) feet or two and one-half (2-1/2) stories in height, except that a multifamily (apartment) building shall not exceed forty-five (45) feet or three (3) stories in height.

(Sec. 2.05) Area regulations

(1) Single-family detached units.

(A) Size of yards:

- (i) Front yard. There shall be a front yard having a depth of not less than twenty-five (25) feet. Where lots have double frontage, running through from one street to another, the required front yard shall be provided on both streets.
- (ii) Side yard. There shall be a side yard on each side of the lot having a width of not less than ten (10) feet. A side yard adjacent to a side street shall not be less than fifteen (15) feet.
- (iii) Rear yard. There shall be a rear yard having a depth of not less than twenty-five (25) feet.

(B) Size of lot:

- (i) Lot area. No building shall be constructed on any lot of less than seven thousand (7,000) square feet.
- (ii) Lot width. The width of the lot shall not be less than sixty (60) feet at the front street building line, nor shall its average width be less than sixty (60) feet.
- (iii) Lot depth. The average depth of the lot shall not be less than one hundred fifteen (115) feet, except that a corner lot, having a minimum width of not less than eighty (80) feet, may have an average depth of less than one hundred fifteen (115) feet, provided that the minimum depth is no less than ninety (90) feet.
- (iv) Legally existing nonconforming lots. Where a legally existing lot having less area, width and/or depth than herein required existed under separate ownership upon the effective date of this ordinance, the above regulations shall not prohibit the erection of a one-family dwelling thereon, or a two-family dwelling on a lot containing not less than five thousand (5,000) square feet.

(C) Lot coverage: In no case shall more than fifty-five (55) percent of

the total lot area be covered by the combined area of the main buildings, accessory buildings and other impervious surfaces, excluding pools.

(2) Single-family attached units (townhomes)

(A) Minimum site area. The minimum area for townhouse development shall be nine thousand (9,000) square feet.

(B) Size of yards:

- (i) Front yard. There shall be a front yard having a depth of not less than twenty (20) feet, and a front yard [width] of not less than thirty (30) feet adjacent to all major streets.
- (ii) Side yard. No side yard shall be required, except where contiguous townhomes are separated, a minimum of ten (10) feet shall be maintained between the separated units and on corner lots a minimum of ~~twenty (20)~~ **fifteen (15)** feet shall be maintained between the building line and the side lot line of the corner lot.
- (iii) Rear yard. A rear yard of fifteen (15) feet shall be maintained for all attached townhome units, except that a rear yard of not less than twenty-five (25) feet shall be maintained where adjacent to a major street.

(C) Size of lots:

- (i) Lot area. No building shall be constructed on any lot of less than three thousand (3,000) square feet.
- (ii) Lot width. The width of the lot shall be not less than thirty (30) feet at the front street building line, nor shall its average width be less than thirty (30) feet.
- (iii) Lot depth. The average depth of the lot shall not be less than one hundred (100) feet.
- (iv) Legally existing nonconforming lots. Where a legally platted lot for townhomes having less area, width, and/or depth than herein required existed upon the effective date of this ordinance, the above regulations shall not prohibit the erection of a single family attached or detached unit thereon, provided the applicable setbacks as provided above shall be maintained.

(D) Lot coverage: In no case shall more than eighty (80) of the total lot area be covered by the combined area of the main buildings, and accessory buildings and other impervious surfaces, excluding pools.

- (E) Utility Access: All utilities shall be located adjacent to a public or private paved all-weather surface. Utility layouts shall be approved by the General Manager of Public Utilities or designee prior to approval of civil plans.

(3) Dwelling, two-family (duplex): Two (2) Single-family attached units

- (A) Minimum site area. The minimum area for a duplex development is six thousand (6,000) square feet.
- (B) Size of Yards:
 - (i) Front yard. There shall be a front yard having a depth of not less than twenty-five (25) feet.
 - (ii) Side yard. A minimum of ten (10) feet shall be maintained between the exterior building line and side lot line. On corner lots a side street setback of fifteen (15) feet shall be maintained between the building line and the side lot line of the corner lot.
 - (iii) Rear yard. A rear yard of twenty (20) feet shall be maintained for all attached home units, except that a rear yard of not less than twenty-five (25) feet shall be maintained where adjacent to a major street.
- (C) Size of lots:
 - (i) Lot area. Duplex units shall not be constructed on any lot of less than six thousand (6,000) square feet.
 - (ii) Lot width. The width of the lot shall be not less than sixty (60) feet at the front street building line, nor shall its average width be less than sixty (60) feet.
 - (iii) Lot depth. The average depth of the lot shall not be less than one hundred (100) feet.
- (D) Lot coverage: In no case shall more than sixty (60) percent of the total lot area be covered by the combined area of the main buildings, and accessory buildings and other impervious surfaces, excluding pools.

(4) Twin homes: Single-family attached units on individual lots

- (A) Minimum site area. The minimum area for twin home development shall be six thousand (6,000) square feet.
- (B) Size of Yards:

- (i) **Front yard.** There shall be a front yard having a depth of not less than twenty-five (25) feet.
- (ii) **Side yard.** A minimum of ten (10) feet shall be maintained between the exterior building line and the side lot line. On corner lots, a minimum side street setback of fifteen (15) feet shall be maintained between the building line and the side lot line of the corner lot.
- (iii) **Rear yard.** A rear yard of twenty (20) feet shall be maintained for all attached home units, except that a rear yard of not less than twenty-five (25) feet shall be maintained where adjacent to a major street.

(C) **Size of lots:**

- (i) **Lot area.** No twin home unit shall be constructed on any lot of less than three thousand (3,000) square feet.
- (ii) **Lot width.** The width of the lot shall be not less than thirty (30) feet at the front street building line, nor shall its average width be less than thirty (30) feet.
- (iii) **Lot depth.** The average depth of the lot shall not be less than one hundred (100) feet.
- (iv) **Legally existing nonconforming lots.** Where a legally platted lot for twin homes having less area, width, and/or depth than herein required existed upon the effective date of this ordinance, the above regulations shall not prohibit the erection of a single family attached or detached unit thereon, provided the applicable setbacks as provided above shall be maintained.

(D) **Lot coverage:** In no case shall more than sixty (60) percent of the total lot area be covered by the combined area of the main buildings, and accessory buildings and other impervious surfaces, excluding pools.

(3 5) **Zero lot line (patio homes):**

- (A) **Minimum site area.** The minimum area for patio home development shall be twelve thousand (12,000) square feet.
- (B) **Size of yards:**
 - (i) **Front yard.** There shall be a front yard having a depth of not less than twenty (20) feet.
 - (ii) **Side yard.** A side yard of ten (10) feet shall be maintained adjacent to one property line, except that a side yard where the side yard is adjacent to a plat boundary that is contiguous to a standard single-family subdivision, said side yard shall be ten feet. Adjacent to public streets, a side yard of not less than fifteen (15) feet is required.

- (iii) Rear yard. A rear yard of fifteen (15) feet shall be maintained. There shall be a rear yard of not less than twenty-five (25) feet adjacent to all major streets.

(C) Size of lots:

- (i) Lot area. No building shall be constructed on any lot of less than four thousand (4,000) square feet.
 - (ii) Lot width. The width of the lot shall not be less than forty (40) feet at the front of the building line nor shall its average width be less than forty (40) feet.
 - (iii) Lot depth. The average depth of the lot shall not be less than one hundred (100) feet.
 - (iv) Legally existing nonconforming lots. Where a legally platted lot for patio homes having less area, width, and/or depth than herein required existed upon the effective date of this ordinance, the above regulations shall not prohibit the erection of a single-family detached unit thereon, provided the applicable setbacks as provided above shall be maintained.
- (D) Lot coverage. In no case shall more than sixty (60) percent of the total lot area be covered by the combined area of the main buildings, and accessory buildings and other impervious surfaces, excluding pools.
- (E) Openings prohibited. Openings are prohibited on the zero-lot line side. The wall of the dwelling located on the lot line shall have no windows, doors, air conditioning units, or any other type of openings; provided, however, that atriums or courts shall be permitted on the zero-lot line side when the court or atrium is enclosed by three (3) walls of the dwelling unit and a solid wall of at least eight (8) feet in height is provided on the zero-lot line. Said wall shall be constructed of the same material as exterior walls of the unit.

(4 6) Multifamily units (apartments):

- (A) Minimum site area. ~~The minimum site area for duplexes shall be five thousand (5,000) square feet and the~~ The minimum site for multifamily development shall be six thousand (6,000) square feet.

(B) Size of yards:

- (i) Front yard. There shall be a front yard having a depth of not less than ~~twenty (20)~~ twenty-five (25) feet.
- (ii) Side yard. There shall be a side yard of not less than fifteen (15) feet, including, but not limited to, side yards adjacent to public streets.
- (iii) Rear yard. A rear yard of fifteen (15) feet shall be maintained. There shall be a rear yard of not less than twenty-five (25) feet adjacent to all major streets.

(C) Size of lots:

- (i) Lot area. There shall be a minimum of two thousand (2,000) square feet of lot area per multifamily dwelling unit.
- (ii) Lot width. The width of the lot shall not be less than fifty (50) feet at the front building line nor shall its average width be less than fifty (50) feet.
- (iii) Lot depth. The average depth of the lot shall not be less than one hundred (100) feet.

(D) Lot coverage: In no case shall more than seventy-five (75) percent of the total lot area be covered by the combined area of the main buildings, and accessory buildings and other impervious surfaces.

Section 2.06 Parking regulations. Off-street parking spaces shall be provided in accordance with the applicable requirements for specific uses set forth in Part II, Division 1, Section 16 of this ordinance.

Exhibit “C”
Part 2, Division 1, Section 11: Performance Standards

****Please note: Additions are in bold purple, deletions are in red.**

Sec. 11. Performance standards

(Sec. 11.01) Compliance required. No land, structures or uses in any district of the City of Brenham shall create any dangerous, injurious, noxious, or otherwise objectionable fire, noise or vibration **in violation of Chapter 17, Article V of the City of Brenham Code of Ordinances**, air pollution, odorous matter, fire and explosive hazard material, toxic and noxious matter, vibration, open storage and glare in such an amount as to adversely affect the surrounding area or adjoining premises. In the event of conflict between any of the specific provisions or sections of this ordinance with regulations of the Environmental Protection Agency, the Occupational Health and Safety Administration and the Texas Natural Resource Conservation Commission, then the most restrictive provisions shall be deemed controlling. Permitted uses as set forth in this ordinance shall be undertaken and maintained only upon the condition that they conform to the regulations of this section.

(Sec. 11.02) Standards. The following standards shall apply in the various zoning districts as set forth below:

(1) ~~—Noise. For recurring noise emanating from a facility within the City of Brenham, the allowable noise level shall not exceed that indicated for the type of district in which it is located as shown in the Table 1 below. For the purpose of enforcing these provisions, a measurement shall not be for less than ten (10) minutes nor more than thirty (30) minutes. Measurement shall be made on the property line at the point closest to the activity that is generating the noise which is being evaluated.~~

(2) ~~The following uses and activities shall be exempt from the noise level regulations herein specified:~~

- ~~(a) —Noises not directly under control of the property user or his invitee;~~
- ~~(b) —Noises emanating from construction and maintenance activities between the hours of 7:00 a.m. and 7:00 p.m. (daylight hours);~~
- ~~(c) —Noises of safety signals, warning devices and emergency pressure relief valves;~~
- ~~(d) —Noise of moving sources such as automobiles, trucks, airplanes and trains that are operating in the public domain.~~
- ~~(e) —Noise of otherwise permitted activities conducted on public parks, playgrounds and public or private schools.~~
- ~~(f) —Noise emanating from air conditioning or refrigeration systems or associated equipment.~~
- ~~(g) —Noise emanating from special events such as business promotional events, parades or civic celebrations that are temporary and otherwise permitted by the City of Brenham.~~

Table 1. Limiting Sound Levels for Land Use Districts

Land Use	Time	Allowable Exterior Noise Level

Residential (R-1, R-2)	10:00 pm to 7:00 am 7:00 am to 10:00 pm	50 dB (A) 55 dB (A)
Commercial-Mixed Use (B-1, B-2, B-3)	10:00 pm to 7:00 am 7:00 am to 10:00 pm	62 dB (A) 62 dB (A)
Industrial (I)	10:00 pm to 7:00 am 7:00 am to 10:00 pm	85 dB (A) 85 dB (A)

~~(4) Vibration. No operation or use in any district shall create earthborn vibration when measured at any residential property line within any district which exceeds the limit of displacement set forth in the following table in the frequency ranges specified.~~

~~**Table 2. Limiting Vibration at Specified Frequency Levels**~~

Frequency Cycles per Second	Displacement in Inches
0 to 10	0.0010
10 to 20	0.0008
20 to 30	0.0005
30 to 40	0.0004
40 and Over	0.0003

(1) Open storage. No open storage of materials or commodities shall be permitted in any district except as an accessory use to a main use in a B-2 (Business, Research and Technology District) or an ID (Industrial District). The prohibition against open storage set forth above does not apply to the display and sale of automobiles, recreational vehicles, manufactured housing, mobile homes, and/or boats if conducted as a principal or primary use in a zoning district which specifically permits that type of enterprise.

In the B-2 or I District open storage operation shall not be located in the front or on the side of a main building, unless it is screened from adjacent residential uses and public rights-of-way as provided below, except that a front or side yard that is adjacent to public right-of-way may be used for open display and sale of retail merchandise, if said use is an accessory use to a principal retail use that is located and legally permitted in the B-2 District or the I District. A front or side yard that is adjacent to public right-of-way may by specific use permit be used for the open display and sale of retail merchandise when said use of land is an accessory use to a principal retail use located and legally permitted in the B-1 District. In addition, automobile wrecking, junk or salvage yards where legally permitted as a principal or primary use shall be screened as provided below.

- (a) A screening wall or fence shall be of wood or masonry construction of sufficient height to conceal that which is being stored.
- (b) A hedge which shall be of a height and density to conceal that which is being stored.

(Ordinance O-19-025, sec. 1, adopted 8/15/19)

Appendix “D”
Part IV, Division 2: Variances

****Please note: All proposed deletions are in red and additions in bold purple.**

DIVISION 2. VARIANCES

§ 1 Limitations.

The board of adjustment shall have the authority to grant variances in accordance with the standards and procedures provided herein, from any and all technical requirements of the zoning ordinance, but may not grant variances to use requirements or procedural requirements or for procedural requirements for hearing or notice, provided that:

- (1) Such modifications are necessary to accommodate appropriate development of a particular parcel of land that is restricted by attributes inherent in the land such as area, shape or slope to the extent that it cannot otherwise be appropriately developed.
- (2) The granting of the variance will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located, nor impair an adequate supply of light or air to adjacent property, nor substantially increase the congestion in the public streets, nor increase the danger of fire, or in any way endanger the public health, safety and wellbeing of the neighborhood in which the subject property is located.
- (3) The literal enforcement of the ordinance would work on unnecessary hardship.
- (4) The piece of property is unique and contains properties or attributes not common to other similarly situated properties.
- (5) The need for the variance was not created by the applicant.
- (6) The hardship to be suffered through the literal enforcement of the ordinance would not be financial alone.
- (7) The granting of the variance would not be injurious to the public health, safety and welfare or defeat the intent of the philosophy contained in the zoning ordinance.

~~§ 2 Conditions.~~

~~The board may establish conditions in the written order granting a variance to safeguard the character of the area and to protect adjacent property owners.~~

§ 3 2 Prohibitions.

The board shall not consider or grant use variances, except as provided in Division 4 below for legally existing nonconforming uses.

(Ordinance O-18-004, sec. 1, adopted 2/15/18)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS, AMENDING APPENDIX A -STANDARDS; PROVIDING OF ORDINANCES BY AMENDING PART I, SECTION 5.02, DEFINITIONS TO REVISE THE DEFINITION OF “FOOD TRUCK SITE”; AMENDING PART 2, DIVISION 2, SECTION 1 – ZONING DISTRICT REGULATIONS, TO ALLOW DWELLING, TWO-FAMILY (DUPLEX) AND TWIN HOMES BY SPECIFIC USE PERMIT IN THE R-1 (SINGLE-FAMILY RESIDENTIAL) DISTRICT; AMENDING PART 2, DIVISION 2, SECTION 2 – ZONING DISTRICT REGULATIONS, TO REVISE THE TERM TWO-FAMILY DWELLINGS OR DUPLEXES, TO ALLOW ACCESSORY DWELLING UNITS AND TWIN HOMES AS PERMITTED USES IN THE R-2 (MIXED RESIDENTIAL) DISTRICT, AND TO REMOVE ACCESSORY DWELLING UNITS AS A SPECIFIC USE IN THE R-2 (MIXED RESIDENTIAL) DISTRICT; PROVIDING FOR THE ADDITION OF PART 2 DIVISION 2 – ZONING DISTRICT REGULATIONS, TO ESTABLISH REGULATIONS AND STANDARDS RELATED TO THE DEVELOPMENT OF DWELLING, TWO-FAMILY (DUPLEX); PROVIDING FOR REGULATIONS TO ESTABLISH TWIN HOME, SINGLE-FAMILY ATTACHED UNITS ON INDIVIDUAL LOTS IN THE R-2 (MIXED RESIDENTIAL) DISTRICT; PROVIDING FOR A REVISION TO THE MINIMUM SITE AREA PROVISION AND THE FRONT YARD SETBACK REGULATIONS FOR MULTIFAMILY UNITS (APARTMENTS) IN THE R-2 (MIXED RESIDENTIAL) DISTRICT; AMENDING PART 2, DIVISION 1, SECTION 11 - ZONING DISTRICT REGULATIONS, TO ADD A REFERENCE TO CHAPTER 17, ARTICLE V OF THE CITY OF BRENHAM CODE OF ORDINANCES, AND TO DELETE THE STANDARDS FOR NOISE, USES AND ACTIVITIES, TABLE 1, VIBRATIONS, AND TABLE 2 FROM THE SECTION 11 PERFORMANCE STANDARDS; PROVIDING FOR THE DELETION OF DIVISION 2, SECTION 2 – ZONING DISTRICT REGULATIONS, TO REMOVE THE PROVISION ALLOWING CONDITIONS TO A VARIANCE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Brenham has requested that Appendix A - "Zoning" of the Code of Ordinances be amended; and

WHEREAS, the Planning and Zoning Commission and the City Council of the City of Brenham, Texas, have published notice and conducted public hearings regarding the request to amend Appendix A - "Zoning" of the Code of Ordinances; and

WHEREAS, all persons desiring to comment on the proposal were given a full and complete opportunity to be heard; and

WHEREAS, these amendments were recommended for approval by the City of Brenham Planning and Zoning Commission in its final report during its regular meeting July 24, 2023; and

WHEREAS, the City Council deems it appropriate to approve the requested amendments to Appendix A- "Zoning" of the Code of Ordinances;

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 BE AMENDED IN THE FOLLOWING MANNER:

SECTION 1.

That Appendix A- "Zoning" of the Code of Ordinances of the City of Brenham, Texas Part I, Section 5.02, Definitions, is hereby amended by adding the following definitions to read as follows:

Food Truck Site: Shall mean a developed property where a mobile kitchen operates as an accessory use to the primary active business located on the same site. Food Truck Sites shall not be permitted as an accessory use, nor shall Mobile Kitchens be stored, on property developed with a residential use.

SECTION 2.

That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas Part II, Division 2, Section 1 – R-1, Single-Family Residential District (Section 1.03) Specific uses is hereby amended to read as follows:

Section 1. R-1 Residential District

(Sec.1.03) Specific Uses:

- (1) Accessory dwelling unit.
- (2) Churches and related auxiliary uses, including educational or philanthropic uses.

- (3) Country clubs or golf courses, but not including miniature golf courses, driving ranges or similar forms of commercial amusement.
- (4) Private and accredited elementary and secondary schools.
- (5) Farms, nurseries, or truck gardens, limited to the propagation and cultivation of plants, provided no retail or wholesale business is conducted on the premises, and provided further that no poultry or livestock other than normal household pets shall be housed within one hundred (100) feet of any property line.
- (6) Dwelling, two family (duplex): Two (2) single-family attached units in accordance with the development standards outlined in the "R-2: Mixed Residential District."
- (7) Twin Homes: Single-family attached units on individual lots in accordance with the development standards outlined in the "R-2: Mixed Residential District."

SECTION 3.

That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas Part II, Division 2, Section 2 - R-2, Mixed Residential District, (Sec. 2.02) Permitted uses, is hereby amended to read as follows:

(Sec. 2.02) **Permitted uses:**

- (1) Any permitted use in district "R-1."
- (2) Cluster housing in accordance with cluster housing development provisions of the subdivision ordinance of the City of Brenham.
- (3) Group residential uses as provided by state law, such as "family homes."
- (4) Multifamily dwellings, including dormitories for students and fraternity or sorority houses, on sites of less than two (2) acres.
- (5) Dwelling, Two-family (duplex), but not including mobile homes or manufactured homes.
- (6) Single-family attached dwellings, (townhouses) in accordance with townhouse development provisions of the subdivision ordinance of the City of Brenham.
- (7) Zero lot line housing development, in accordance with zero lot line development provisions of the Subdivision Ordinance of the City of Brenham.
- (8) Accessory dwelling unit.
- (9) Accessory buildings and uses, customarily incidental to the above uses and located on the same lot therewith, but not involving the conduct of a retail business.
- (10) Twin homes. Single-family attached dwelling of two units on separate adjacent lots that share a common interior wall and property line. Each twin home unit is platted on a separate lot.

SECTION 4.

That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas Part II, Division 2, Section 2 - R-2, Mixed Residential District, (Sec. 2.03) Specific uses, is hereby amended to read as follows:

(Sec. 2.03) Specific uses:

- (1) Bed and breakfast house.
- (2) Churches and related auxiliary uses, including educational or philanthropic uses.
- (3) Country clubs or golf courses, but not including miniature golf courses, driving ranges or similar forms of commercial amusement.
- (4) Multifamily development, including dormitories for students and fraternity or sorority houses, that meets the standard density requirements for the R-2 District, and that is proposed for a development site of two (2) acres or more.
- (5) Private and accredited elementary and secondary schools.
- (6) Retirement villages with site areas of two (2) acres or more.

SECTION 5.

That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas Part II, Division 2, Section 2 - R-2, Mixed Residential District, (Sec. 2.05) (2) Area regulations – Single-family attached units (townhomes), is hereby amended to read as follows:

(2) Single-family attached units (townhomes)

- (A) Minimum site area. The minimum area for townhouse development shall be nine thousand (9,000) square feet.
- (B) Size of yards:
 - (i) Front yard. There shall be a front yard having a depth of not less than twenty (20) feet, and a front yard [width] of not less than thirty (30) feet adjacent to all major streets.
 - (ii) Side yard. No side yard shall be required, except where contiguous townhomes are separated, a minimum of ten (10) feet shall be maintained between the separated units and on corner lots a minimum of fifteen (15) feet shall be maintained between the building line and the side lot line of the corner lot.
 - (iii) Rear yard. A rear yard of fifteen (15) feet shall be maintained for all attached townhome units, except that a rear yard of not less than twenty-five (25) feet shall be maintained where adjacent to a major street.

- (C) Size of lots:
- (i) Lot area. No building shall be constructed on any lot of less than three thousand (3,000) square feet.
 - (ii) Lot width. The width of the lot shall be not less than thirty (30) feet at the front street building line, nor shall its average width be less than thirty (30) feet.
 - (iii) Lot depth. The average depth of the lot shall not be less than one hundred (100) feet.
 - (iv) Legally existing nonconforming lots. Where a legally platted lot for townhomes having less area, width, and/or depth than herein required existed upon the effective date of this ordinance, the above regulations shall not prohibit the erection of a single family attached or detached unit thereon, provided the applicable setbacks as provided above shall be maintained.
- (D) Lot coverage: In no case shall more than eighty (80) percent of the total lot area be covered by the combined area of the main buildings, and accessory buildings and other impervious surfaces, excluding pools.
- (E) Utility Access: All utilities shall be located adjacent to a public or private all weather surface. Utility layouts shall be approved by the General Manager of Public Utilities or designee prior to approval of civil plans.

SECTION 6.

That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas Part II, Division 2, Section 2 - R-2, Mixed Residential District, is hereby amended to add Section 2.05(3) Area regulations – Dwelling, two-family (duplex): Two (2) Single-family attached units, to read as follows:

- (3) Dwelling, two-family (duplex): Two (2) Single-family attached units
- (A) Minimum site area. The minimum area for a duplex development is six thousand (6,000) square feet.
 - (B) Size of Yards:
 - (i) Front yard. There shall be a front yard having a depth of not less than twenty-five (25) feet.
 - (ii) Side yard. A minimum of ten (10) feet shall be maintained between the exterior building line and side lot line. On corner lots a side street setback of fifteen (15) feet shall be maintained between the building line and the side lot line of the corner lot.
 - (iii) Rear yard. A rear yard of twenty (20) feet shall be maintained for all attached home units, except that a rear yard of not less than twenty-five (25) feet shall be maintained where adjacent to a major street.

- (C) Size of lots:
 - (i) Lot area. Duplex units shall not be constructed on any lot of less than six thousand (6,000) square feet.
 - (ii) Lot width. The width of the lot shall be not less than sixty (60) feet at the front street building line, nor shall its average width be less than sixty (60) feet.
 - (iii) Lot depth. The average depth of the lot shall not be less than one hundred (100) feet.
- (D) Lot coverage: In no case shall more than sixty (60) percent of the total lot area be covered by the combined area of the main buildings, and accessory buildings and other impervious surfaces, excluding pools.

SECTION 7.

That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas Part II, Division 2, Section 2 - R-2, Mixed Residential District, is hereby amended to add Section 2.05(4) Area regulations – Twin homes: Single-family attached units on individual lots, to read as follows:

(4) Twin homes: Single-family attached units on individual lots

- (A) Minimum site area. The minimum area for twin home development shall be six thousand (6,000) square feet.
- (B) Size of Yards:
 - (i) Front yard. There shall be a front yard having a depth of not less than twenty-five (25) feet.
 - (ii) Side yard. A minimum of ten (10) feet shall be maintained between the exterior building line and the side lot line. On corner lots, a minimum side street setback of fifteen (15) feet shall be maintained between the building line and the side lot line of the corner lot.
 - (iii) Rear yard. A rear yard of twenty (20) feet shall be maintained for all attached home units, except that a rear yard of not less than twenty-five (25) feet shall be maintained where adjacent to a major street.
- (C) Size of lots:
 - (i) Lot area. No twin home unit shall be constructed on any lot of less than three thousand (3,000) square feet.
 - (ii) Lot width. The width of the lot shall be not less than thirty (30) feet at the front street building line, nor shall its average width be less than thirty (30) feet.
 - (iii) Lot depth. The average depth of the lot shall not be less than one hundred (100) feet.

- (iv) Legally existing nonconforming lots. Where a legally platted lot for twin homes having less area, width, and/or depth than herein required existed upon the effective date of this ordinance, the above regulations shall not prohibit the erection of a single family attached or detached unit thereon, provided the applicable setbacks as provided above shall be maintained.
- (D) Lot coverage: In no case shall more than sixty (60) percent of the total lot area be covered by the combined area of the main buildings, and accessory buildings and other impervious surfaces, excluding pools.

SECTION 8.

That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas Part II, Division 2, Section 2 - R-2, Mixed Residential District, (Sec. 2.05) (3) Area regulations – Zero lot line (patio homes), is hereby renumbered to read Sec. 2.05 (5).

SECTION 9.

That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas Part II, Division 2, Section 2 - R-2, Mixed Residential District, (Sec. 2.05) (4)(A)(B) Area regulations – Multifamily units (apartments), is hereby amended to read as follows:

(6) Multifamily units (apartments):

- (A) Minimum site area. The minimum site for multifamily development shall be six thousand (6,000) square feet.
- (B) Size of yards:
 - (i) Front yard. There shall be a front yard having a depth of not less than twenty-five (25) feet.
 - (ii) Side yard. There shall be a side yard of not less than fifteen (15) feet, including, but not limited to, side yards adjacent to public streets.
 - (iii) Rear yard. A rear yard of fifteen (15) feet shall be maintained. There shall be a rear yard of not less than twenty-five (25) feet adjacent to all major streets.

SECTION 10.

That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas Part II, Division 1, Section 11 – Performance Standards, is hereby amended to read as follows:

Sec. 11. Performance standards

(Sec. 11.01) Compliance required. No land, structures or uses in any district of the City of Brenham shall create any dangerous, injurious, noxious, or otherwise objectionable fire, noise or vibration in violation of Chapter 17, Article V of the City of Brenham Code of Ordinances, air pollution, odorous matter, fire and explosive hazard material, toxic and noxious matter, vibration, open storage and glare in such an amount as to adversely affect the surrounding area or adjoining premises. In the event of conflict between any of the specific provisions or sections of this ordinance with regulations of the Environmental Protection Agency, the Occupational Health and Safety Administration and the Texas Natural Resource Conservation Commission, then the most restrictive provisions shall be deemed controlling. Permitted uses as set forth in this ordinance shall be undertaken and maintained only upon the condition that they conform to the regulations of this section.

(Sec. 11.02) Standards. The following standards shall apply in the various zoning districts as set forth below:

- (1) Open storage. No open storage of materials or commodities shall be permitted in any district except as an accessory use to a main use in a B-2 (Business, Research and Technology District) or an ID (Industrial District). The prohibition against open storage set forth above does not apply to the display and sale of automobiles, recreational vehicles, manufactured housing, mobile homes, and/or boats if conducted as a principal or primary use in a zoning district which specifically permits that type of enterprise.

In the B-2 or I District open storage operation shall not be located in the front or on the side of a main building, unless it is screened from adjacent residential uses and public rights-of-way as provided below, except that a front or side yard that is adjacent to public right-of-way may be used for open display and sale of retail merchandise, if said use is an accessory use to a principal retail use that is located and legally permitted in the B-2 District or the I District. A front or side yard that is adjacent to public right-of-way may by specific use permit be used for the open display and sale of retail merchandise when said use of land is an accessory use to a principal retail use located and legally permitted in the B-1 District. In addition, automobile wrecking, junk or salvage yards where legally permitted as a principal or primary use shall be screened as provided below.

- (a) A screening wall or fence shall be of wood or masonry construction of sufficient height to conceal that which is being stored.
- (b) A hedge which shall be of a height and density to conceal that which is being stored.

SECTION 11.

That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas Part IV, Division 2 – Variances, is hereby amended to read as follows:

Section 1. Limitations.

The board of adjustment shall have the authority to grant variances in accordance with the standards and procedures provided herein, from any and all technical requirements of the zoning ordinance, but may not grant variances to use requirements or procedural requirements or for procedural requirements for hearing or notice, provided that:

- (1) Such modifications are necessary to accommodate appropriate development of a particular parcel of land that is restricted by attributes inherent in the land such as area, shape or slope to the extent that it cannot otherwise be appropriately developed.
- (2) The granting of the variance will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located, nor impair an adequate supply of light or air to adjacent property, nor substantially increase the congestion in the public streets, nor increase the danger of fire, or in any way endanger the public health, safety and wellbeing of the neighborhood in which the subject property is located.
- (3) The literal enforcement of the ordinance would work on unnecessary hardship.
- (4) The piece of property is unique and contains properties or attributes not common to other similarly situated properties.
- (5) The need for the variance was not created by the applicant.
- (6) The hardship to be suffered through the literal enforcement of the ordinance would not be financial alone.
- (7) The granting of the variance would not be injurious to the public health, safety and welfare or defeat the intent of the philosophy contained in the zoning ordinance.

Section 2. Prohibitions.

The board shall not consider or grant use variances, except as provided in Division 4 below for legally existing nonconforming uses.

SECTION 12.

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

SECTION 13.

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

SECTION 14.

This Ordinance shall become effective upon adoption and publication as required by law. However, notwithstanding the immediately preceding sentence, Section 11 of this Ordinance shall become effective only upon the adoption of Ordinance No. O-23-019 on its second reading, and Section 11 of this Ordinance shall become effective on the same date as Ordinance No. O-23-019.

PASSED and APPROVED on its first reading this the ____ day of August 2023.

PASSED and APPROVED on its second reading this the ____ day of August 2023.

Atwood C. Kenjura
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary



Regular City Council
AGENDA ITEM 9.

Agenda Item: Discussion and Presentation on City of Brenham's Noise Nuisance Ordinance

Meeting Type: Regular Meeting-August 03, 2023

Department: Administration

Staff Contact: Karen Stack

SUMMARY STATEMENT:

On June 1, 2023, Council passed a revised Noise Nuisance Ordinance on its first reading. During the second reading on June 15th, several concerns were discussed, and the item was tabled for further review.

Changes have been made to address Council's concerns. The purpose of this Work Session is to discuss these changes before the ordinance is presented for second reading.

ATTACHMENTS:

(1) O-23-019 Redline

RECOMMENDED ACTION:

Discussion only.

ORDINANCE NO. O-23-019

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING CHAPTER 17, OFFENSES AND MISCELLANEOUS PROVISIONS, OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS BY REPEALING ARTICLE I, SECTION 17-8, NOISE NUISANCES; PROVIDING FOR NEW ARTICLE I, SECTION 17-8, RESERVED, FOR FUTURE AMENDMENTS TO CHAPTER 17; REPEALING ARTICLE V, RESERVED; REPEALING ARTICLE VI, RESERVED, PROVIDING FOR A NEW ARTICLE V, NOISE NUISANCES; PROVIDING FOR A REPEALER AND SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PROPER NOTICE AND MEETINGS

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

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

WHEREAS, the City Council finds that Chapter 17, Offenses and Miscellaneous Provisions, of the City of Brenham's Code of Ordinances should be amended to promote the health, safety, and welfare of the public; and

WHEREAS, the City Council hereby finds that the best interests of the City will be promoted by the enactment of this Ordinance.

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

SECTION 1.

Chapter 17, Offenses and Miscellaneous Provisions, Article I, In General, Section 17-8, Noise Nuisances, of the Code of Ordinances of the City of Brenham is hereby repealed in its entirety.

SECTION 2.

Chapter 17, Offenses and Miscellaneous Provisions, Article I, In General, Section 17-8, is hereby amended to read as follows:

Section 17-8 (**Reserved**)

SECTION 3.

Chapter 17, Article V, Reserved, of the Code of Ordinances of the City of Brenham is hereby repealed in its entirety.

SECTION 4.

Chapter 17, Article VI, Reserved, of the Code of Ordinances of the City of Brenham is hereby repealed in its entirety.

SECTION 5.

Chapter 17, Article V, of the Code of Ordinances of the City of Brenham is hereby amended to read as follows:

ARTICLE V. NOISE NUISANCES

Sec. 17-71. Definitions.

As used in this Article V, the following terms shall have the respective meanings ascribed in them:

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

Daytime hours shall mean the hours between 7:00 a.m. on one day and 10:00 p.m. on the same day.

Db(A) shall mean the intensity of a sound expressed in decibels read from a sound level meter utilizing the A-level weighting scale and the slow meter response, as specified by the American National Standards Institute.

Decibel shall mean a logarithmic unit of measure used in describing the amplitude of sound, denoted as Db.

Emergency shall mean any occurrence or set of circumstances involving actual or imminent threat of physical trauma or property damage loss which demands immediate action.

Emergency work shall mean any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency, or which is otherwise necessary to restore property to a safe condition following a fire, accident or natural disaster, or which is required to protect persons or property from exposure to danger, or which is required to restore public utilities.

Nighttime hours shall mean the hours between 10:00 p.m. on one day and 7:00 a.m. on the following day.

Noise shall mean any sound which is unwanted by any person, or which causes, or tends to cause, an adverse psychological or physiological effect on human beings.

Person shall mean any individual, firm, association, partnership, corporation, or any other entity, public or private.

Plainly audible shall mean any sound which can be clearly heard. Determination of whether a sound is plainly audible shall be made without regard to the discernibility of words or phrases. Bass reverberations may be considered plainly audible.

Property line shall mean the line along the ground surface, and its vertical extension, which separates the real property owned, leased, or legally occupied by a person from that owned, leased or legally occupied by another person and the imaginary line which represents the legal limits of property of any person who owns, leases or otherwise legally occupies an apartment, condominium, hotel or motel room, office or any other type of occupancy.

Public right-of-way shall mean any street, avenue, boulevard, highway, road, thoroughfare, sidewalk, alley or any other property which is owned or controlled by a governmental entity.

Residential property shall mean any real property in the city limits used for human habitation and which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, unless such premises are actually occupied and used primarily for purposes other than human habitation. To be considered residential for the purposes of this Chapter, the property must be in a R-1, R-2, R-3 or B-1 zone as defined in the Official Zoning Map of the City of Brenham, as it exists now or may in the future be revised.

Sound shall mean any pressure variation that can be detected by the human ear.

Sec. 17-72. Enforcement.

1. The Police Department shall have primary enforcement responsibility for the provisions of this Article V.
2. Enforcement of any provision of this Article V by the Police Department shall not prevent an authorized representative of the Development Services Department from making necessary inspections and tests to determine whether any provision of the City's Zoning Ordinance may also be violated, and to issue a notice of violation and/or abatement order for any such violation.

Sec. 17-73. Maximum permissible sound levels; declaration of nuisance.

1. No person, including but not limited to a property owner, tenant, user, or invitee, shall make, assist in making, or allow the production of a sound in the territorial limits of the City which, when measured as provided in this section, exceeds the applicable Db(A) level listed in Table 1 of this section. Any sound in violation of this section is declared to be a public nuisance.

Table 1. Limiting Sound Levels for Land Use Districts

Land Use	Time	Maximum Allowable Exterior Sound Level
Residential (R-1, R-2, R-3)	10:00 pm to 7:00 am	50 dB (A)
	7:00 am to 10:00 pm	55 dB (A)
Commercial-Mixed Use (B-1, B-2, B-3)	10:00 pm to 7:00 am	62 dB (A)
	7:00 am to 10:00 pm	62 dB (A)
Industrial (I)	10:00 pm to 7:00 am	85 dB (A)
	7:00 am to 10:00 pm	85 dB (A)

2. Whenever portions of this Article V prohibit sound over a certain decibel limit, measurement of said sound shall be made with a Type 1 or Type 2 sound level meter utilizing the A-weighting scale and the slow meter response as specified by the American National Standards Institute. Sound levels shall be measured in decibels and A-weighted.
3. Measurements of sound shall be taken so as to provide a proper representation of the sound being measured. The microphone of said meter shall be positioned so as not to create any unnatural enhancement or diminution of the measured sound. Measurements of sound shall be taken for at least one (1) minute. The highest reading shown during the measurement shall be used to determine whether a violation has occurred. Measurements of sound shall be taken at the property line of the complaining person, at the point nearest as practicable to the source of the noise.
4. If the decibel level of a noise cannot be determined due to ambient noise from another source such as motor vehicle traffic, and such noise is not measurable over ambient noise, no violation of this section has occurred.
~~When a noise source can be identified and measured in more than one land use district, the maximum allowable exterior sound level limits of the more permissive district shall apply at the property line of the complaining person, at the point nearest as practicable to the source of the noise.~~
5. The applicable sound level limit shall be that of the district in which a noise originates, regardless of the district in which the measurement is taken.

Sec. 17-74. Prohibited Acts.

The following acts are declared to be nuisances in violation of this section, regardless of whether the sound created is within the -maximum allowable exterior sound levels specified in Section 17-73.

1. The operation of a sound amplifying device in a public park or public right-of-way so that the sound is plainly audible at fifty (50) feet or more from the sound amplifying device.
2. The operation of any loudspeaker or sound-amplifying equipment in or on any vehicle in or upon any street, alley, sidewalk, park or other public property so that the sound is plainly audible at a distance of fifty (50) feet or more from its source. This prohibition does not apply to emergency vehicles or individuals who possess a valid City of Brenham vendor's permit and are using the amplifying equipment to attract customers during daytime hours. It shall be presumed that the driver of any vehicle is the operator of the sound-making device(s).
3. The keeping of any animal or bird which is causing frequent or long-continued noise that disturbs the comfort and repose of any person of ordinary sensibilities near the property on which the animal or bird is being kept.
4. Yelling, shouting, whistling, or singing outdoors during nighttime hours.
5. The use of any motor vehicle or motorcycle so out of repair, so loaded, or so noisy that it creates loud and unreasonable grating, grinding, rattling or any other loud and unreasonable sound.

Sec. 17-75. Exceptions.

The following exceptions shall apply to any offense established in this Article V:

1. The sound was produced for the purpose of alerting people to the existence of an emergency, danger, or attempted crime. This exception applies to a vehicle theft alarm only when it is properly installed and maintained.
2. The sound was produced by emergency work.
3. The sound was produced by a commercial vehicle engaged in garbage collection.
4. The sound was created by an event sponsored or cosponsored, or permitted by the City, or by spectators and participants of the event.
5. The sound was created by a pyrotechnic display authorized by the Fire Marshal.
6. The sound was created by an event authorized by the city which is held at the Dr. Bobbie M. Dietrich Memorial Amphitheater located in Hohlt Park.
7. The sound was produced by the erection, excavation, construction, demolition, alteration, or repair work, or the permitting or causing thereof, of any building or other structure, or the operation or the permitting or causing the operation of any tools or equipment used in any such activity conducted during daytime hours.
8. The sound was produced by an aircraft in flight or in operation at the Brenham Municipal Airport, or railroad equipment in operation on railroad rights-of-way.
9. The sound was produced from operating or permitting the operation of any mechanically powered saw, drill, sander, router, grinder, lawn or garden tool, lawn mower, or any other

similar device used during daytime hours for the maintenance or upkeep of the property on which it was used.

10. The sound emanates from properly maintained residential air conditioning systems, refrigeration systems or associated equipment.
11. The sound was produced by construction work in public rights-of-way or easements by the City or the Texas Department of Transportation.
12. The sound was created by a school or school-sponsored athletic event.

13. The sound was produced by an event at the Washington County Expo Center.

~~13,14.~~ The sound was produced by equipment required by applicable Federal or State safety or environmental regulations.

Sec. 17-76. Music Venues.

Notwithstanding any provision of Section 17-73 or 17-74, persons utilizing sound amplifying equipment to amplify a live musician or band on a property for which such entertainment is an allowed use under the City of Brenham Zoning Ordinance, may operate such equipment after 10:00 a.m. or before 12:00 a.m. The music shall produce no more than 85dB(A) when measured as provided in Section 17-3.

Sec. 17-77. Noise permit required for use of outdoor sound amplification.

Except as provided by Section 17-75 or 17-76, no person shall use or cause to be used any loudspeaker, loudspeaker system, sound amplifier, or any other machine or device that produces, reproduces, or amplifies sound outside of buildings or other enclosed structures in a manner that exceeds the maximum allowable exterior sound levels specified in section 17-73, when measured from the property where the sound is being received, without first obtaining a noise permit to do so. A noise permit may be granted only for the amplification of music or human speech, or both.

1. The permit:
 - a) May be obtained by making application to the director of the city department so designated by the City Manager at least thirty (30) days prior to the scheduled event;
 - b) Requires payment of a fee established by the City Manager or his or her designee, for the administrative costs of issuing the permit;
 - c) Shall not authorize, allow, or otherwise permit the production, reproduction, or amplification of sound that exceeds 85 dB(A) when measured from the property line of the nearest receiving residential property;
 - d) Shall not authorize a permanent or ongoing exception to Section 17-73 or 17-74 or otherwise issue for a term of more than seventy-two (72) hours;
 - e) Application shall contain the date of the application, the date and hours for which the permit is requested; and the name, address, and telephone number of the applicant;

- f) Application shall contain the name and address of the person who will have charge of the sound amplifying equipment;
 - g) Application shall contain the purpose for which the sound equipment will be used;
 - h) Application shall contain the address and a description of the location where the sound equipment will be used, and
 - i) Application shall contain a description of the type of sound amplifying equipment to be used.
2. The individual who applies for a noise permit must remain on site during the permitted event and be able to answer the telephone at the number provided on the application. The applicant is responsible for ensuring that all participants comply with the terms of the permit.
3. A noise permit may be revoked or limited in scope by a City of Brenham police officer during a permitted event if in the opinion of the officer, such limitation is necessary for public health, safety, welfare or order. Failure by the applicant or his or her agents to promptly comply with such a limitation or revocation is a violation subject to the penalties in Section 17-80.
4. The City may require the applicant to notify residents and businesses in proximity to the proposed event as a condition of a permit. In such case, the City will provide a list of addresses to which a notice must be sent. The applicant will be required to certify to the city that the required notices have been sent. Failure to provide such certification will result in revocation of a noise permit.
5. If an application for a noise permit is denied by staff, the reason for denial will be provided to the applicant in writing. The applicant may appeal the denial to City Council by delivering a written request to the City Manager's office. Reasons for denial may include but are not limited to:
- a) The application was not received at least thirty (30) days prior to the scheduled event;
 - b) The application did not contain all the required information;
 - c) The proposed activity would be an unreasonable burden to neighboring residents or business owners;
 - d) The applicant has had prior noise violations or has failed to comply with police instructions or,
 - e) Prior events sponsored by the person or the organization he or she represents have resulted in multiple citizen complaints and/or calls to emergency dispatch.

Sec. 17-78. Free Speech

This Article V shall not be administered or enforced in such a way as to directly or indirectly limit a citizen's rights guaranteed under the First Amendment of the Constitution of the United States of America. Permits shall not be refused based on the content of speech or the political, social or religious views of the applicant. In enacting this Article V, it is the intent of City Council to regulate only the time, place, and manner of speech in the interest of public health, safety and welfare.

Sec. 17-79. Previous Non-conforming Use for Certain Industrial Operations.

Properties which meet the nonconforming use status of the Brenham Code of Ordinances, Appendix A – Zoning, Division 3 as of the effective date of this Section 17-9 shall, for the purposes of determining the maximum permissible sound level, adhere to the land use district in which the use is legally allowed by-right. The Section applies only to sound produced by activities related to manufacturing, assembling, processing or otherwise treating raw materials, semi-finished products, or finished products for packaging and distribution to either wholesale or retail markets.

Sec. 17-80. Presumptions; Violations; penalties; affirmative defenses.

1. When noise in violation of Section 17-73 or 17-74 originates from a property, and the person creating the noise cannot be ascertained, it shall be presumed that the property owner and/or tenant is the person who committed the violation.
- ~~1.~~2. Any person violating Section 17-73 or 17-74 is guilty of a class C misdemeanor and upon first conviction shall be fined in an amount not less than one dollar (\$1.00) and not more than five hundred dollars (\$500.00), plus costs. The penalty shall increase by fifty dollars (\$50.00) for each subsequent violation, up to a maximum penalty of two thousand dollars (\$2,000.00) per violation. Each occurrence of any violation shall constitute a separate offense.
- ~~2.~~3. The penalty provided for herein shall be in addition to any other legal remedies available to the city to prevent and prohibit any such violation of this article. The city may institute any appropriate administrative action or proceeding or any action at law or equity to require compliance with the provisions of this article.
- ~~3.~~4. If a person's conduct would otherwise violate Section 17-73 or 17-74, it is an affirmative defense to prosecution that:
 - a) The first order given by a police officer to discontinue the conduct was promptly obeyed and the violation was not repeated; or
 - b) The production of the sound was not directly under the control of the property owner, tenant, user, or invitee.

SECTION 6. **SAVINGS CLAUSE**

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of

occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 7.
SEVERABILITY

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

SECTION 8.
REPEALER

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

SECTION 9.
EFFECTIVE DATE

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

SECTION 10.
PROPER NOTICE AND MEETINGS

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

PASSED AND APPROVED, on its first reading on the 1st day of June, 2023.

| **PASSED AND APPROVED**, on its second reading on the ~~15th~~- 3rd day of ~~August~~June, 2023.

Atwood C. Kenjura
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary



Regular City Council
AGENDA ITEM 10.

Agenda Item: Discuss and Possibly Act Upon Ordinance No. O-23-019 on its Second Reading Amending Chapter 17, Offenses and Miscellaneous Provisions of the Code of Ordinances of the City of Brenham as Amended by City Council

Meeting Type: Regular Meeting-August 03, 2023

Department: Administration

Staff Contact: Karen Stack

SUMMARY STATEMENT:

On June 1, 2023, Council passed Ordinance No. O-23-019 on its first reading. The Ordinance is being presented for its second reading, with several changes. The changes: 1) clarify how a decibel reading is taken 2) clarify that a business grandfathered for a non-conforming use is also grandfathered for purposes of the noise ordinance, 3) add an exemption for noise caused by safety or environmental equipment required by law, and 4) provide that the applicable decibel limit is based upon the location of the noise source.

ATTACHMENTS:

(1) Ordinance No. O-23-019

RECOMMENDED ACTION:

Approve Ordinance No. O-23-019 on its second reading amending Chapter 17, Offenses and Miscellaneous Provisions of the Code of Ordinances of the City of Brenham as amended by City Council.

ORDINANCE NO. O-23-019

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING CHAPTER 17, OFFENSES AND MISCELLANEOUS PROVISIONS, OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS BY REPEALING ARTICLE I, SECTION 17-8, NOISE NUISANCES; PROVIDING FOR NEW ARTICLE I, SECTION 17-8, RESERVED, FOR FUTURE AMENDMENTS TO CHAPTER 17; REPEALING ARTICLE V, RESERVED; REPEALING ARTICLE VI, RESERVED, PROVIDING FOR A NEW ARTICLE V, NOISE NUISANCES; PROVIDING FOR A REPEALER AND SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PROPER NOTICE AND MEETINGS

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

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

WHEREAS, the City Council finds that Chapter 17, Offenses and Miscellaneous Provisions, of the City of Brenham's Code of Ordinances should be amended to promote the health, safety, and welfare of the public; and

WHEREAS, the City Council hereby finds that the best interests of the City will be promoted by the enactment of this Ordinance.

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

SECTION 1.

Chapter 17, Offenses and Miscellaneous Provisions, Article I, In General, Section 17-8, Noise Nuisances, of the Code of Ordinances of the City of Brenham is hereby repealed in its entirety.

SECTION 2.

Chapter 17, Offenses and Miscellaneous Provisions, Article I, In General, Section 17-8, is hereby amended to read as follows:

Section 17-8 (**Reserved**)

SECTION 3.

Chapter 17, Article V, Reserved, of the Code of Ordinances of the City of Brenham is hereby repealed in its entirety.

SECTION 4.

Chapter 17, Article VI, Reserved, of the Code of Ordinances of the City of Brenham is hereby repealed in its entirety.

SECTION 5.

Chapter 17, Article V, of the Code of Ordinances of the City of Brenham is hereby amended to read as follows:

ARTICLE V. NOISE NUISANCES

Sec. 17-71. Definitions.

As used in this Article V, the following terms shall have the respective meanings ascribed in them:

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

Daytime hours shall mean the hours between 7:00 a.m. on one day and 10:00 p.m. on the same day.

Db(A) shall mean the intensity of a sound expressed in decibels read from a sound level meter utilizing the A-level weighting scale and the slow meter response, as specified by the American National Standards Institute.

Decibel shall mean a logarithmic unit of measure used in describing the amplitude of sound, denoted as Db.

Emergency shall mean any occurrence or set of circumstances involving actual or imminent threat of physical trauma or property damage loss which demands immediate action.

Emergency work shall mean any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency, or which is otherwise necessary to restore property to a safe condition following a fire, accident or natural disaster, or which is required to protect persons or property from exposure to danger, or which is required to restore public utilities.

Nighttime hours shall mean the hours between 10:00 p.m. on one day and 7:00 a.m. on the following day.

Noise shall mean any sound which is unwanted by any person, or which causes, or tends to cause, an adverse psychological or physiological effect on human beings.

Person shall mean any individual, firm, association, partnership, corporation, or any other entity, public or private.

Plainly audible shall mean any sound which can be clearly heard. Determination of whether a sound is plainly audible shall be made without regard to the discernibility of words or phrases. Bass reverberations may be considered plainly audible.

Property line shall mean the line along the ground surface, and its vertical extension, which separates the real property owned, leased, or legally occupied by a person from that owned, leased or legally occupied by another person and the imaginary line which represents the legal limits of property of any person who owns, leases or otherwise legally occupies an apartment, condominium, hotel or motel room, office or any other type of occupancy.

Public right-of-way shall mean any street, avenue, boulevard, highway, road, thoroughfare, sidewalk, alley or any other property which is owned or controlled by a governmental entity.

Residential property shall mean any real property in the city limits used for human habitation and which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, unless such premises are actually occupied and used primarily for purposes other than human habitation. To be considered residential for the purposes of this Chapter, the property must be in a R-1, R-2, R-3 or B-1 zone as defined in the Official Zoning Map of the City of Brenham, as it exists now or may in the future be revised.

Sound shall mean any pressure variation that can be detected by the human ear.

Sec. 17-72. Enforcement.

1. The Police Department shall have primary enforcement responsibility for the provisions of this Article V.
2. Enforcement of any provision of this Article V by the Police Department shall not prevent an authorized representative of the Development Services Department from making necessary inspections and tests to determine whether any provision of the City's Zoning Ordinance may also be violated, and to issue a notice of violation and/or abatement order for any such violation.

Sec. 17-73. Maximum permissible sound levels; declaration of nuisance.

1. No person, including but not limited to a property owner, tenant, user, or invitee, shall make, assist in making, or allow the production of a sound in the territorial limits of the City which, when measured as provided in this section, exceeds the applicable Db(A) level listed in Table 1 of this section. Any sound in violation of this section is declared to be a public nuisance.

Table 1. Limiting Sound Levels for Land Use Districts

Land Use	Time	Maximum Allowable Exterior Sound Level
Residential (R-1, R-2, R-3)	10:00 pm to 7:00 am	50 dB (A)
	7:00 am to 10:00 pm	55 dB (A)
Commercial-Mixed Use (B-1, B-2, B-3)	10:00 pm to 7:00 am	62 dB (A)
	7:00 am to 10:00 pm	62 dB (A)
Industrial (I)	10:00 pm to 7:00 am	85 dB (A)
	7:00 am to 10:00 pm	85 dB (A)

2. Whenever portions of this Article V prohibit sound over a certain decibel limit, measurement of said sound shall be made with a Type 1 or Type 2 sound level meter utilizing the A-weighting scale and the slow meter response as specified by the American National Standards Institute. Sound levels shall be measured in decibels and A-weighted.
3. Measurements of sound shall be taken so as to provide a proper representation of the sound being measured. The microphone of said meter shall be positioned so as not to create any unnatural enhancement or diminution of the measured sound. Measurements of sound shall be taken for at least one (1) minute. The highest reading shown during the measurement shall be used to determine whether a violation has occurred. Measurements of sound shall be taken at the property line of the complaining person, at the point nearest as practicable to the source of the noise.
4. If the decibel level of a noise cannot be determined due to ambient noise from another source such as motor vehicle traffic, and such noise is not measurable over ambient noise, no violation of this section has occurred.
5. The applicable sound level limit shall be that of the district in which a noise originates, regardless of the district in which the measurement is taken.

Sec. 17-74. Prohibited Acts.

The following acts are declared to be nuisances in violation of this section, regardless of whether the sound created is within the maximum allowable exterior sound levels specified in Section 17-73.

1. The operation of a sound amplifying device in a public park or public right-of-way so that the sound is plainly audible at fifty (50) feet or more from the sound amplifying device.

2. The operation of any loudspeaker or sound-amplifying equipment in or on any vehicle in or upon any street, alley, sidewalk, park or other public property so that the sound is plainly audible at a distance of fifty (50) feet or more from its source. This prohibition does not apply to emergency vehicles or individuals who possess a valid City of Brenham vendor's permit and are using the amplifying equipment to attract customers during daytime hours. It shall be presumed that the driver of any vehicle is the operator of the sound-making device(s).
3. The keeping of any animal or bird which is causing frequent or long-continued noise that disturbs the comfort and repose of any person of ordinary sensibilities near the property on which the animal or bird is being kept.
4. Yelling, shouting, whistling, or singing outdoors during nighttime hours.
5. The use of any motor vehicle or motorcycle so out of repair, so loaded, or so noisy that it creates loud and unreasonable grating, grinding, rattling or any other loud and unreasonable sound.

Sec. 17-75. Exceptions.

The following exceptions shall apply to any offense established in this Article V:

1. The sound was produced for the purpose of alerting people to the existence of an emergency, danger, or attempted crime. This exception applies to a vehicle theft alarm only when it is properly installed and maintained.
2. The sound was produced by emergency work.
3. The sound was produced by a commercial vehicle engaged in garbage collection.
4. The sound was created by an event sponsored or cosponsored, or permitted by the City, or by spectators and participants of the event.
5. The sound was created by a pyrotechnic display authorized by the Fire Marshal.
6. The sound was created by an event authorized by the city which is held at the Dr. Bobbie M. Dietrich Memorial Amphitheater located in Hohlt Park.
7. The sound was produced by the erection, excavation, construction, demolition, alteration, or repair work, or the permitting or causing thereof, of any building or other structure, or the operation or the permitting or causing the operation of any tools or equipment used in any such activity conducted during daytime hours.
8. The sound was produced by an aircraft in flight or in operation at the Brenham Municipal Airport, or railroad equipment in operation on railroad rights-of-way.
9. The sound was produced from operating or permitting the operation of any mechanically powered saw, drill, sander, router, grinder, lawn or garden tool, lawn mower, or any other similar device used during daytime hours for the maintenance or upkeep of the property on which it was used.
10. The sound emanates from properly maintained residential air conditioning systems, refrigeration systems or associated equipment.

11. The sound was produced by construction work in public rights-of-way or easements by the City or the Texas Department of Transportation.
12. The sound was created by a school or school-sponsored athletic event.
13. The sound was produced by an event at the Washington County Expo Center.
14. The sound was produced by equipment required by applicable Federal or State safety or environmental regulations.

Sec. 17-76. Music Venues.

Notwithstanding any provision of Section 17-73 or 17-74, persons utilizing sound amplifying equipment to amplify a live musician or band on a property for which such entertainment is an allowed use under the City of Brenham Zoning Ordinance, may operate such equipment after 10:00 a.m. or before 12:00 a.m. The music shall produce no more than 85dB(A) when measured as provided in Section 17-3.

Sec. 17-77. Noise permit required for use of outdoor sound amplification.

Except as provided by Section 17-75 or 17-76, no person shall use or cause to be used any loudspeaker, loudspeaker system, sound amplifier, or any other machine or device that produces, reproduces, or amplifies sound outside of buildings or other enclosed structures in a manner that exceeds the maximum allowable exterior sound levels specified in section 17-73, when measured from the property where the sound is being received, without first obtaining a noise permit to do so. A noise permit may be granted only for the amplification of music or human speech, or both.

1. The permit:
 - a) May be obtained by making application to the director of the city department so designated by the City Manager at least thirty (30) days prior to the scheduled event;
 - b) Requires payment of a fee established by the City Manager or his or her designee, for the administrative costs of issuing the permit;
 - c) Shall not authorize, allow, or otherwise permit the production, reproduction, or amplification of sound that exceeds 85 dB(A) when measured from the property line of the nearest receiving residential property;
 - d) Shall not authorize a permanent or ongoing exception to Section 17-73 or 17-74 or otherwise issue for a term of more than seventy-two (72) hours;
 - e) Application shall contain the date of the application, the date and hours for which the permit is requested; and the name, address, and telephone number of the applicant;
 - f) Application shall contain the name and address of the person who will have charge of the sound amplifying equipment;
 - g) Application shall contain the purpose for which the sound equipment will be used;
 - h) Application shall contain the address and a description of the location where the sound equipment will be used, and

- i) Application shall contain a description of the type of sound amplifying equipment to be used.
2. The individual who applies for a noise permit must remain on site during the permitted event and be able to answer the telephone at the number provided on the application. The applicant is responsible for ensuring that all participants comply with the terms of the permit.
3. A noise permit may be revoked or limited in scope by a City of Brenham police officer during a permitted event if in the opinion of the officer, such limitation is necessary for public health, safety, welfare or order. Failure by the applicant or his or her agents to promptly comply with such a limitation or revocation is a violation subject to the penalties in Section 17-80.
4. The City may require the applicant to notify residents and businesses in proximity to the proposed event as a condition of a permit. In such case, the City will provide a list of addresses to which a notice must be sent. The applicant will be required to certify to the city that the required notices have been sent. Failure to provide such certification will result in revocation of a noise permit.
5. If an application for a noise permit is denied by staff, the reason for denial will be provided to the applicant in writing. The applicant may appeal the denial to City Council by delivering a written request to the City Manager's office. Reasons for denial may include but are not limited to:
 - a) The application was not received at least thirty (30) days prior to the scheduled event;
 - b) The application did not contain all the required information;
 - c) The proposed activity would be an unreasonable burden to neighboring residents or business owners;
 - d) The applicant has had prior noise violations or has failed to comply with police instructions or,
 - e) Prior events sponsored by the person or the organization he or she represents have resulted in multiple citizen complaints and/or calls to emergency dispatch.

Sec. 17-78. Free Speech

This Article V shall not be administered or enforced in such a way as to directly or indirectly limit a citizen's rights guaranteed under the First Amendment of the Constitution of the United States of America. Permits shall not be refused based on the content of speech or the political, social or religious views of the applicant. In enacting this Article V, it is the intent of City Council to regulate only the time, place, and manner of speech in the interest of public health, safety and welfare.

Sec. 17-79. Previous Non-conforming Use for Certain Industrial Operations.

Properties which meet the nonconforming use status of the Brenham Code of Ordinances, Appendix A – Zoning, Division 3 as of the effective date of this Section 17-9 shall, for the purposes of determining the maximum permissible sound level, adhere to the land use district in which the use is legally allowed by-right. The Section applies only to sound produced by activities related to manufacturing, assembling, processing or otherwise treating raw materials, semi-finished products, or finished products for packaging and distribution to either wholesale or retail markets.

Sec. 17-80. Presumptions; Violations; penalties; affirmative defenses.

1. When noise in violation of Section 17-73 or 17-74 originates from a property, and the person creating the noise cannot be ascertained, it shall be presumed that the property owner and/or tenant is the person who committed the violation.
2. Any person violating Section 17-73 or 17-74 is guilty of a class C misdemeanor and upon first conviction shall be fined in an amount not less than one dollar (\$1.00) and not more than five hundred dollars (\$500.00), plus costs. The penalty shall increase by fifty dollars (\$50.00) for each subsequent violation, up to a maximum penalty of two thousand dollars (\$2,000.00) per violation. Each occurrence of any violation shall constitute a separate offense.
3. The penalty provided for herein shall be in addition to any other legal remedies available to the city to prevent and prohibit any such violation of this article. The city may institute any appropriate administrative action or proceeding or any action at law or equity to require compliance with the provisions of this article.
4. If a person's conduct would otherwise violate Section 17-73 or 17-74, it is an affirmative defense to prosecution that:
 - a) The first order given by a police officer to discontinue the conduct was promptly obeyed and the violation was not repeated; or
 - b) The production of the sound was not directly under the control of the property owner, tenant, user, or invitee.

SECTION 6. **SAVINGS CLAUSE**

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

SECTION 7. **SEVERABILITY**

Should any section, subsection, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any

and all remaining portions of this Ordinance shall remain in full force and effect. City hereby declares that it would have passed this Ordinance, and each section, subsection, sentences, clauses and phrases remaining should any provision be declared unconstitutional or invalid.

SECTION 8.
REPEALER

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

SECTION 9.
EFFECTIVE DATE

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

SECTION 10.
PROPER NOTICE AND MEETINGS

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

PASSED AND APPROVED, on its first reading on the 1st day of June, 2023.

PASSED AND APPROVED, on its second reading on the 3rd day of August, 2023.

Atwood C. Kenjura
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 for the 2023 Tax Year, and Take Record Vote on Proposed Tax Rate and Meeting Dates for Final Adoption of Tax Rate

Meeting Type: Regular Meeting-August 03, 2023

Department: Finance

Staff Contact: Tim McRoberts

SUMMARY STATEMENT:

See attached memo.

ATTACHMENTS:

(1) Memo

RECOMMENDED ACTION:

I move that a property tax rate of \$0.4584 per \$100 valuation be considered by the governing body of the agendas of the September 7, 2023 and September 21, 2023 Brenham City Council meetings.



MEMORANDUM

To: Mayor, Council and City Manager

From: Tim McRoberts
Strategic Budget Officer

Subject: Proposed Property Tax Rate for FY2023-24

Date: August 3, 2023

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 FY2023-24

The maintenance & operations (M&O) property tax rate will be lowered to \$0.3102 per \$100 valuation; and the interest and sinking (I&S) rate will rise slightly to \$0.1482 per \$100 valuation.

The City is proposing to adopt a total tax rate (M&O and I&S) of \$0.4584 for FY2023-24. The proposed rate is less than the Voter-Approval rate of \$0.4606, so no election will be necessary. However, the proposed rate is higher than the No-New-Revenue Rate of \$0.4445 which requires us to hold a public hearing before the tax rate is adopted.

Tax Rate Comparison			
	23-24 PROPOSED		22-23 ADOPTED
Property Tax Rate	\$	0.4584	\$ 0.4737
Voter-Approval Tax Rate	\$	0.4606	\$ 0.4738
No-New-Revenue Tax Rate	\$	0.4445	\$ 0.3966
No-New-Revenue M&O Rate	\$	0.3007	\$ 0.2772
M&O Tax Rate	\$	0.3102	\$ 0.3297
Debt Tax Rate	\$	0.1482	\$ 0.1440

PROPERTY TAX RATE	M&O	I&S (DEBT)	TOTAL
CURRENT TAX RATE	\$ 0.3297	\$ 0.1440	\$ 0.4737
PROPOSED TAX RATE	\$ 0.3102	\$ 0.1482	\$ 0.4584
INCREASE/DECREASE	\$ (0.0195)	\$ 0.0042	\$ (0.0153)

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 FY 2023-24, the number of homesteads with this freeze is noted below:

- Over 65 – 1,690 accounts with an appraised value of \$372,172,181
- Disabled Persons – 45 accounts with an appraised value of \$5,402,139

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. These 1735 accounts with a local exemption for Over 65 or Disabled Persons represent 33% of the total homestead eligible properties (5,225 total).

We have prepared a comparison chart showing the average homestead taxable value for 2022 versus 2023, and the total change in taxes.

Comparison Table	Tax Year		Change	
	2023	2024	Dollar	Percent
Total Tax Rate (per \$100 of value)	\$ 0.4737	\$ 0.4584	\$ (0.0153)	-3.23%
Average Homestead Taxable Value	\$ 215,591	\$ 239,681	\$ 24,090	11.17%
Tax on Average Homestead	\$ 1,021.25	\$ 1,098.70	\$ 77.44	7.58%
Total Tax Levy on all Properties	\$ 9,545,969	\$ 10,180,380	\$ 634,411	6.65%

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 \$0.4584 per \$100 valuation be considered by the governing body on the agendas of the September 7, 2023 and September 21, 2023 Brenham City Council meetings.*”**



Regular City Council
AGENDA ITEM 12.

Agenda Item: Discuss and Possibly Act Upon an Agreement Between the City of Brenham and Brown Reynolds and Watford (BRW) Architects Related to the Design of Fire Station No. 2 and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-August 03, 2023

Department: Fire Department

Staff Contact: Chief Roger Williams

SUMMARY STATEMENT:

At the April 20, 2023 City Council Meeting, Mayor and Council approved RFQ No. 23-003 related to Professional Services for the Design and Engineering of the City of Brenham Fire Station No. 2 Project. Included within your packet today, is the American Institute of Architects (AIA) Document B101-2017 'Standard Form of Agreement Between Owner and Architect, for the City of Brenham Fire Station No. 2 Project. The Standard Form of Agreement has been reviewed by both the City of Brenham and Brown Reynolds Watford Architects, Inc. Legal Council and all corrective changes have been made and subsequently the document is ready to present to Council for consideration and approval.

ATTACHMENTS:

(1) BRW Contract

RECOMMENDED ACTION:

Approve an Agreement between the City of Brenham and Brown Reynolds and Watford (BRW) Architects related to the design of Fire Station No. 2 and authorize the Mayor to execute any necessary documentation.

AIA® Document B101® – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Twentieth day of July in the year Two Thousand Twenty-Three

(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

City of Brenham 200
W. Vulcan
Brenham, TX 77833

and the Architect:
(Name, legal status, address and other information)

Brown Reynolds Watford Architects, Inc.
175 Century Square Drive, Suite 350
College Station, TX 77840

for the following Project:
(Name, location and detailed description)

City of Brenham
Fire Station No. 2

The facility is anticipated to be an approximately 10,000-square foot facility with three 80
feet deep apparatus bays, living quarters for six personnel, exercise room, training
classroom, and associated support spaces.
Located at the Intersection of James Nutt Boulevard and Handley Street Brenham, Texas
77833

This document has important
legal consequences. Consultation
with an attorney
is encouraged with respect to
its completion or modification.

The Owner and Architect agree as follows.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	SUPPLEMENTAL AND ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Basic professional architectural services for the design and engineering of the new Fire Station No. 2 for the City of Brenham; located at the intersection of James Nutt Boulevard and Handley Street, Brenham, TX. The facility is anticipated to be an approximately 10,000-square foot facility with a construction budget of \$6,000,000.00

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

Undecided at time of execution.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

\$6,000,000.00

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

Init.

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User Notes:

(1246118201)

TBD see Section 11.1

.2 Construction commencement date:

Upon "Notice to Proceed"

.3 Substantial Completion date or dates:

~~.4 Other milestone dates:~~ 1 year after the "Notice to Proceed" has been issued.

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Competitive Sealed Proposals.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

Not Applicable.

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™-2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204-2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204-2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

Carolyn D. Miller City Manager 200 W. Vulcan
Brenham, TX 77833
979-337-7590
cmiller@cityofbrenham.org

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

Unknown at the time of execution.

§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

~~.1~~ Geotechnical Engineer:

~~.2~~ ~~Civil Engineer:~~

Unknown at the time of execution.

~~.3~~ ~~Other, if any:~~

~~_____ (List any other consultants and contractors retained by the Owner.)~~

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:

(List name, address, and other contact information.)

Ray Holliday, AIA, Principal
Brown Reynolds Watford Architects, Inc.
175 Century Square Drive, Suite 350
College Station, TX 77840

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:

(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Gessner Engineering, LLC
401 Ww. 26th Street, Suite 3
Bryan, TX 77803

.2 Mechanical Engineer:

Jordan & Skala Engineers, Inc.
6201 West Plano Pkwy, Suite 250
Plano, TX 75093

~~.3 Electrical Engineer:~~ .3 Electrical Engineer:

Jordan & Skala Engineers, Inc.
6201 West Plano Pkwy, Suite 250
Plano, TX 75093

.4 Plumbing Engineer:

Jordan & Skala Engineers, Inc.
6201 West Plano Pkwy, Suite 250
Plano, TX 75093

.5 Landscape Architect:

Brown Reynolds Watford Architects, Inc.
175 Century Square Drive, Suite 350
College Station, TX 77840

.6 Surveying:

Hodde & Hodde Land Surveying
613 E Blue Bell Road
Brenham, TX 77833

.7 Geotechnical Engineer:

Gessner Engineering, LLC
401 Ww. 26th Street, Suite 3
Bryan, TX 77803

§ 1.1.11.2 Consultants retained under Supplemental Services:

Not Applicable.

§ 1.1.12 Other Initial Information on which the Agreement is based:

Not Applicable.

§ 1.2 The Owner and Architect may reasonably rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall ~~appropriately adjust~~ negotiate appropriate adjustments in the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

I. SCOPE OF ARCHITECTURAL SERVICES:

Architectural:

- Description of basic services listed below under Scope of Services by Project Phase.
- Permitting Submittal Process

Landscape:

- Landscape design to meet Zoning Ordinance requirements as applicable and native vegetation goals.

Landscape Irrigation:

- Irrigation performance specification and drawing (Contractor to provide shop drawings)

Survey:

- Topographic Survey

Civil:

- Drainage, grading, and paving design
- Grading spot elevations adequate for TAS compliance; driveway and parking lot design
- Site Utilities including water, gas, & sanitary sewer
- Storm water calculations and tying into existing development's detention

Structural:

- Foundation and Structural Framing
- Geotechnical Report

Mechanical, Plumbing and Electrical:

- Mechanical systems, including temperature controls systems and written sequence of operations.
- Fire protection (sprinkler system) performance specification (Contractor to provide shop drawings).
- Electrical power, lighting, and fire alarm systems
- Coordination with utility service providers for electrical power, telephone, fiber, cable TV service to the building.
- Emergency Generator
- Station radio, antenna, and alerting systems coordination
- Lightning Protection
- Security Access Control infrastructure coordination including conduit and junction boxes
- Audio/Visual infrastructure coordination including conduit and junction boxes to devices
- Data and Telecommunications infrastructure coordination including conduit and junction boxes to devices

II. EXCLUSIONS FROM BASIC SERVICES:

The services shown below are not anticipated at this time; however, project requirements identified during design may require them to be added.

Architectural:

- Demolition site plan of buildings and other structures
- As-Built drawings of existing building and other structures
- Professional models and renderings produced out-of-house
- LEED Certification
- Preparation or assistance of additional bid packages after the initial bid
- Preparation or assistance of Contract Documents Between Owner and Contractor
- Full-time on-site construction observation
- Environmental or hazardous materials conditions / issues
- Furniture and office equipment procurement
- Fitness equipment procurement

Structural:

- Structural Windstorm Certification. WPI – 8 Certification; inspections and submissions to obtain certification.

Civil:

- Boundary, Easements Descriptions Survey (owner provided)
- Zoning modifications, including street abandonments, easements
- Environmental or hazardous materials conditions / issues
- Traffic Engineering, Traffic Analysis and Traffic Controls

- TX Dot Coordination
- Storm Water Quality Management Design
- TCEQ Coordination
- Water Well Design
- Septic System Design
- Property Plat

Mechanical, Plumbing and Electrical:

- Fire protection (sprinkler) system design (beyond performance specification)
- Data, telecommunications, and computer equipment/wiring design, including voice, data, cable TV, fiber optic cabling, wire management systems and terminations.
- Building Utility bill estimates
- Technology Design and Documentation
- Energy Efficient LEED Design/Certification / Life Cycle Analysis
- Pre-emption Light Design
- Acoustical Design and Documentation
- Commissioning

III. OWNER RESPONSIBILITIES

- The Owner shall not increase or decrease the overall budget, or the portion the budget allocated for construction or contingencies, without modifying the agreement of the Architect to a corresponding change in the project scope, quality, and/or professional service fees.
- The Owner shall provide written comments within fourteen (14) calendar days pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architects' services. The Owner shall not modify a decision once given to the Architect without additional compensation to the Architect.
- Should the Owner fail to perform required responsibilities under this contract or fail to make payments to the Architect, the Architect shall have the right to terminate this contract upon written notice to the Owner.
- The Architect's services are copyrighted and for the sole benefit of the City of Brenham. No third party may use or benefit from the Architect's services or products for this project. In the event that the property is sold, the new owner shall have no recourse or benefit from the Architect's services rendered for this project.

IV. OWNER PROVIDED SERVICES AND SYSTEM

The Owner shall furnish services or building systems other than Basic Services or authorize the Architect to furnish them as an Additional Service, when such services are required to complete the project. These services may include those listed below as applicable:

- Laboratory materials testing / inspections (during construction)
- Texas Accessibility Standards site inspection at completion of construction. Architect will submit plan review. The plan review fee is a reimbursable expense. Architect will also have the RAS submit a fee proposal to the Owner for the site inspection.
- Data, telecommunications and computer equipment, fiber optic cabling, wire management systems, and terminations
- Boundary, Easements Descriptions Survey (owner provided)

V. SCOPE OF SERVICES BY PROJECT PHASE:

Programming:

- Kick Off Meeting. Review Scope of work with project team. Identify contact information as well as chain of command for distributing information.

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- Programming. BRW, working with City of Brenham Fire Department, will develop a program of spaces for the new station. BRW will compose a summary sheet listing the rooms, sizes, area, special requirements, required adjacencies, type of lighting, required data/telephone, interior finishes, proposed occupancy, and type of furniture.
- Code research. Research the International Building Code requirements as well as plumbing, electrical, lighting, and mechanical, site, floodplain, TAS by identifying requirements and restrictions related to the new building.
- The programming phase will consist of two (2) working design meetings with the Owner.

Schematic Design:

- Conceptual Design: BRW will provide two schemes for conceptual design of the new Fire Station. Upon review of the schemes, one of the schemes will be selected for modification and further development. The Architect shall provide Schematic Design Documents based on the mutually agreed-upon space program, schedule, and budget for the Cost of the Work. The documents shall establish the preliminary design illustrating the scale and relationship of the components. Upon refinement of the preferred conceptual scheme BRW will provide colored floor plans and exterior elevations and computer modeling of 3-D images. BRW will submit five copies of the 11 x 17 conceptual designs for the Owner's review and comment.
- Schematic Design documents shall include a site plan, building plans, sections, and elevations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.
- Statement of Probable Cost. BRW will provide a statement of probable cost at the completion of Schematic Design, which will be a general estimate developed from several cost data bases including BRW's own to determine the cost per square foot.
- The Schematic Design phase shall include two (2) working design meetings with the Owner.
- If requested, BRW will make one (1) presentation to City Council for their approval of the design.

Design Development:

- The Architect shall provide Design Development Documents based on the approved Schematic Design Documents and probable cost of the Work. The Design Development Documents shall illustrate and describe the refinement of the design establishing the scope, relationships, forms, size and appearance of the project by means of plans, sections and elevations, typical construction details, and outline specifications. The Design Development Documents shall include in general the quality levels for major materials and project systems.
- During the design process, the Architect shall work with the Owner and user groups to coordinate the scope of the project. At the completion of Design Development, the Architect shall update the probable cost of the Work and the project schedule. The Architect shall advise the Owner of any changes from previous cost projections due to adjustments in the project scope, refinement of the probable cost of the work, or general market conditions. If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget, the Architect shall make appropriate recommendations to the Owner to adjust the project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.
- Design Development Documents shall contain preliminary mechanical, electrical, and plumbing engineering and structural engineering services. Design and coordination with the Owner's IT department will be implemented at this phase. During this phase interior elevations will be developed and BRW will review finish materials, lighting, and furniture. BRW will review with the Owner, equipment and furniture that are owner supplied vs. items supplied by the contractor during construction. Door hardware will be outlined and reviewed. BRW will prepare an outline for materials and products used for specifications.
- The Civil Engineer will evaluate the site conditions along with parking requirements, drainage, landscaping and irrigation.
- The Design Development phase shall include two (2) working design meetings with the Owner. Design Development deliverables shall include two (2) half size sets 30" x 42" format (15" x 21") and electronic PDF files for the Owner's review and comment.

Construction Documents:

- The Architect shall provide Construction Documents based on the approved Design Development Documents and updated probable cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and project systems required for construction.
- The Architect shall update the estimate of the Cost of the Work and project schedule at 50% and 95% completion of Construction Documents. The Statement of Probable Cost shall be an estimate to include materials, equipment, component systems and construction types for construction costs. The Statement of Probable Cost will also include project costs consisting of alternates to the bid, owner provided furniture and equipment, an allowance for construction testing, along with the contingency. The contingency includes Owner Generated Changes, Architectural and Engineering Design Contingency, and unforeseen construction conditions. It is recognized that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment, over the contractor's methods of determining bid prices, over competitive bidding, or market conditions. Accordingly, the Architect acknowledges that the bids may vary from the Owner's budget or the Architect's cost estimates.
- During the development of the Construction Documents, the Architects shall prepare a Project Manual including (1) bidding and procurement information which describes the time, place and conditions of bidding; bidding or proposal forms; and (2) the Conditions of the contract for Construction (General, Supplementary and other Conditions).
- Final design and coordination of the civil, structural, mechanical, electrical, and plumbing will be completed. Mechanical engineering will include sizing of equipment, ducts, diffusers, dampers, and appropriate calculations. Plumbing engineer will include design of waste water system tied into the existing system, supply water, and gas system. Electrical engineer will provide lighting and power systems as well as coordinate with phone, cable, data, security and alerting systems. Civil engineering work will be reviewed and coordinated and final details will be drawn and specified.
- BRW will submit the required number of site plans to Developmental Services Department for their review and submit the required number of sets of drawings to the Building Inspection Department for their review. Upon receipt of comments, BRW will correct plans to reflect issues noted by Review for Permit.
- Submit plans and coordinate with Texas Department of Licensing and Regulation (TDLR) or Registered Accessibility Specialist (RAS) for accessibility review and county permitting. Obtain EAB Number and Plan Review Report and approval for permit.
- The Construction Documentation Phase shall consist of four (4) meetings. Construction Documents phase deliverables shall include two (2) full-size sets of documents at 50% completion and 95% completion for the Owner's review and comment. Final deliverables at 100% completion shall include three (3) sets of full-size sets of prints, three (3) sets of specifications, and one (1) electronic file of the Construction Documents in PDF format and Specifications in PDF format.
- Coordination of all architectural drawings will be detailed and finalized. Specifications will be coordinated with drawings and completed. BRW shall provide the solicitation documents for inclusion in the specifications.

Bid Phase:

- The Owner intends to utilize CSP, Competitive Sealed Proposal, delivery method for the project. BRW will provide the drawings and specifications for bidders and assist the City with any questions pertaining to the documents. Hard copy documents will be provided by the Architect to the Contractor at an additional cost.
- The Architect shall prepare responses to questions from proposers and provide clarifications and interpretations of the Contract Documents in the form of Addenda.

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- The Architect shall consider requests for substitutions during the pricing period, as permitted by the Contract Documents, and shall prepare Addenda including approved submittals.
- The Architect will lead and conduct a pre-proposal conference for prospective bidders.
- BRW will assist the Owner during the bid evaluation phase.

Construction Administration Phase:

- Attend and chair Pre-Construction meeting with the selected Contractor. Prepare agenda and sign-in sheet.
- Attend construction progress meetings based roughly on one (1) meeting per month on site.
- The Architect shall not have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction as selected by the Contractor, or for the safety precautions and programs incident to the work of the Contractor, or for the failure of the Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to the Contractor furnishing and performing the work.
- The Architect shall review and approve or take other appropriate action upon Contractor's submittals such as shop drawings, product data, samples, and mock-ups for general conformance with information given and the design concept expressed in the Contract Documents. Review is not conducted for the purpose of determining the accuracy, completeness, or quantities, or for substantiating instructions for installation or performance of equipment or systems.
- The Architect shall review and certify the amounts requested by the Contractor on the Application and Certification for Payment. The issuance of a Certification for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality of the work, (2) reviewed construction means, methods, techniques, or sequences, (3) reviewed copies of requisitions received from Subcontractors and material suppliers, or (4) ascertain how or for what purpose the Contractor has used money previously paid on account of the contract sum.
- The Architect shall visit the site to become generally familiar with the progress of the quality of the work completed (assuming work is ongoing). The Architect's representative shall attend pre-arranged progress meetings and prepare field reports described the status of the work and any deviations observed from the Construction Documents.
- Through the construction administration activities with monthly progress meetings, submittal approvals, RFI's, change orders, construction schedule approval, and project close-out, BRW will serve as the representative of the Owner during construction to observe the construction effort and the general conformance by the construction contractor with the construction drawings and specifications.
- Architect shall perform final closeout procedures as defined in the Contract Documents, including preparation and verification of Punch Lists for the Contractor's use.
- Construction Administration services beyond the following limits shall be an Additional Service:
 - Evaluation of Contractor's substitution requests after thirty (30) days following the execution of the contract
 - Owner requested project scope changes resulting in changes to the Construction Documents
 - Evaluation of claims submitted by the Contractor in connection with the work
 - One (1) eleven (11) month warranty walk through after completion.
- Construction Administration services provided more than sixty (60) days after the date of the Substantial Completion, originally established in the construction contract shall be Additional Services, with the exception of final completion and project closeout, and warranty walk. The monthly lump-sum fee for extended Construction Administration (CA) services shall be the CA portion of the fee divided by the number of months for construction originally established in the construction contract.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall

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perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and written consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000.00) for each occurrence and Two Million Dollars (\$ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000.00) each accident, One Million Dollars (\$ 1,000,000.00) each employee, and One Million Dollars (\$ 1,000,000.00) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million Dollars (\$ 2,000,000.00) per claim and Four Million Dollars (\$ 4,000,000.00) in the aggregate.

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and

timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;

- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	<u>Architect</u>
§ 4.1.1.2 Multiple preliminary designs	<u>Architect</u>
§ 4.1.1.3 Measured drawings	<u>Not Provided</u>
§ 4.1.1.4 Existing facilities surveys	<u>Not Provided</u>
§ 4.1.1.5 Site evaluation and planning	<u>Architect</u>
§ 4.1.1.6 Building Information Model management responsibilities	<u>Not Provided</u>
§ 4.1.1.7 Development of Building Information Models for post construction use	<u>Not Provided</u>
§ 4.1.1.8 Civil engineering	<u>Architect</u>
§ 4.1.1.9 Landscape design	<u>Architect</u>
§ 4.1.1.10 Architectural interior design	<u>Architect</u>
§ 4.1.1.11 Value analysis	<u>Not Provided</u>
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	<u>Architect</u>
§ 4.1.1.13 On-site project representation	<u>Architect</u>
§ 4.1.1.14 Conformed documents for construction	<u>Not Provided</u>
§ 4.1.1.15 As-designed record drawings	<u>Not Provided</u>
§ 4.1.1.16 As-constructed record drawings	<u>Architect</u>
§ 4.1.1.17 Post-occupancy evaluation	<u>Not Provided</u>
§ 4.1.1.18 Facility support services	<u>Not Provided</u>
§ 4.1.1.19 Tenant-related services	<u>Not Provided</u>
§ 4.1.1.20 Architect's coordination of the Owner's consultants	<u>Architect</u>
§ 4.1.1.21 Telecommunications/data design	<u>Owner Provided</u>
§ 4.1.1.22 Security evaluation and planning	<u>Owner Provided</u>
§ 4.1.1.23 Commissioning	<u>Not Provided</u>
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	<u>Not Provided</u>
§ 4.1.1.25 Fast-track design services	<u>Not Provided</u>
§ 4.1.1.26 Multiple bid packages	<u>Not Provided</u>
§ 4.1.1.27 Historic preservation	<u>Not Provided</u>
§ 4.1.1.28 Furniture, furnishings, and equipment design	<u>Owner Provided</u>
§ 4.1.1.29 Other services provided by specialty Consultants	<u>Not Provided</u>
§ 4.1.1.30 Other Supplemental Services	<u>Not Provided</u>

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Supplemental Services	Responsibility (Architect, Owner, or not provided)

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

Not Applicable.

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

Not Applicable.

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

1. Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
2. Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
3. Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
4. Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
5. Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
6. Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
7. Preparation for, and attendance at, a public presentation, meeting or hearing;
8. Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto; or
9. ~~Evaluation of the qualifications of entities providing bids or proposals;~~
10. Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
11. ~~Assistance to the Initial Decision Maker, if other than the Architect.~~

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Twenty-Six (26) visits to the site by the Architect during construction
- .3 One (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One (1) inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within Twenty-Four (24) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. ~~The Owner and the Architect~~ Owner, after consultation with the Architect, shall thereafter agree to make a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a reasonably timely manner based on the circumstances in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and

contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the ~~Architect~~ Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, ~~the~~ The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the

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Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

~~**§ 8.1.2** To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein. The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgment arising from claims by third parties, including reasonable attorneys' fees and expenses, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement.~~

~~**§ 8.1.3** The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.~~

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this

Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction, The City of Brenham, Brenham, Texas

☐ Other: (Specify)

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

~~§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

~~§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

§ 8.3.4 Consolidation or Joinder

~~§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

~~§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.~~

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

~~§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:~~

~~(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)~~

~~.1 — Termination Fee:~~

~~.2 — Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:~~

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8. Nothing herein shall be construed to limit Owner's ability to comply with the Texas Public Information Act.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or

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unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

.1 Stipulated Sum
(Insert amount)

Payment for Basic Architectural Services shall be fixed fee in amount of \$584,600.00 shall be invoiced monthly based on percentage of work completed.

Fee Breakdown by Discipline:

Architectural	\$358,600.00
Structural	\$ 47,200.00
MEP	\$106,000.00
Civil	\$ 58,000.00
Survey (Topography)	\$ 4,000.00
Geo-technical Engineering	\$ 10,800.00

TOTAL FEE **\$584,600.00**

If the square footage of the buildings increases by more than 5% prior to acceptance of the construction contractor's competitive sealed proposal or construction manager's guaranteed maximum price, the Architect shall request additional fees for additional services for owners' approval of the additional fees.

BRW anticipates the following time periods for the project phases starting with the "Notice to Proceed" from the Owner.

<u>Schematic Design</u>	<u>6 weeks</u>
<u>50% Review</u>	
<u>100% Review</u>	
<u>Design Development</u>	<u>6 weeks</u>
<u>50% Review</u>	
<u>100% Review</u>	
<u>Construction Documents</u>	<u>14 weeks</u>
<u>50% Review</u>	
<u>95% Review</u>	
<u>100% Final Documents</u>	
<u>Permitting Review</u>	<u>4 weeks</u>
<u>Total Design Phase</u>	<u>30 weeks</u>
<u>Bidding Phase</u>	<u>4-8 weeks</u>
<u>Building Construction Phase</u>	<u>12 months</u>

.2 Percentage Basis
(Insert percentage value)

() % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other
(Describe the method of compensation)

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Not Applicable.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Additional Services will be negotiated in a lump sum agreement.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Zero percent (0 %), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

Not Applicable.

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	<u>\$116,920.00</u>	percent (	<u>20</u>	%)
Design Development Phase	<u>\$ 87,690.00</u>	percent (	<u>15</u>	%)
Construction Documents Phase	<u>\$233,840.00</u>	percent (	<u>40</u>	%)
Procurement Phase	<u>\$ 29,230.00</u>	percent (	<u>5</u>	%)
Construction Phase	<u>\$116,920.00</u>	percent (	<u>20</u>	%)
Total Basic Compensation	<u>one hundred</u> <u>\$584,600.00</u>	percent (	<u>100</u>	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate (\$0.00)
<u>Principal</u>	<u>\$240.00 per hour</u>

<u>Senior Project Manager</u>	<u>\$185.00 per hour</u>
<u>Project Manager</u>	<u>\$170.00 per hour</u>
<u>Project Architect</u>	<u>\$150.00 per hour</u>
<u>Architect</u>	<u>\$125.00 per hour</u>
<u>Intern Architect I</u>	<u>\$105.00 per hour</u>
<u>Intern Architect II</u>	<u>\$ 85.00 per hour</u>
<u>Administrative Staff</u>	<u>\$ 70.00 per hour</u>

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- ~~.1 Transportation and authorized out-of-town travel and subsistence;~~
- ~~.2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;~~
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- ~~.4 Printing, reproductions, plots, and standard form documents;~~
- ~~.5 Postage, handling, and delivery;~~
- ~~.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- ~~.8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;~~
- ~~.9 All taxes levied on professional services and on reimbursable expenses;~~
- ~~.10 Site office expenses;~~
- ~~.11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,~~
- ~~.12 Other similar Project related expenditures.~~

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Zero percent (0 %) of the expenses incurred.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

Not Applicable.

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of Zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

~~§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of (\$) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.~~

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30)

) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

The lower of 5 % percent per annum or the maximum rate allowed under Chapter 2251, Texas Government Code.

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

Any element of this Agreement later held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force. However, the Owner and the Architect will, in good faith, attempt to replace an invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing the intent of the original provision.

The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas:

Texas Board of Architectural Examiners (TBAE)
P.O. Box 12337
Austin, Texas 78711
512.305.9000

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect
- ~~.2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:~~
~~(Insert the date of the E203-2013 incorporated into this agreement.)~~

Not Applicable.

- .3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

[] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this agreement.)
Not Applicable.

[] Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)
Not Applicable.

- .4 Other documents:
(List other documents, if any, forming part of the Agreement.)

Not Applicable.

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Atwood C. Kenjura, Mayor

City of Brenham

(Printed name and title)

ARCHITECT (Signature)

Ray W. Holliday, AIA, Principal

Brown Reynolds Watford Architects, Inc.

(Printed name, title, and license number, if required)

Ray Holliday

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User Notes:

(1246118201)



Regular City Council
AGENDA ITEM 13.

Agenda Item: Discuss and Possibly Act Upon:

- a. **An Agreement with United Healthcare for Group Medical Coverage Benefits for the Plan Year October 1, 2023 through September 30, 2024;**
- b. **An Agreement with Surency for the Administration of Flexible Spending Account/Dependent Care Reimbursement, Health Savings Account, and COBRA for the Plan Year October 1, 2023 through September 30, 2024;**
- c. **An Agreement with Equitable for Voluntary Dental Coverage Benefits and Employer-Sponsored Basic Life, Accidental Death and Dismemberment, and Long-Term Disability for the Plan Year October 1, 2023 through September 30, 2024, with a Two-Year Rate Guarantee;**
- d. **An Agreement with Aveis for Voluntary Vision Coverage Benefits for Plan Year October 1, 2023 through September 30, 2024, with a Four-Year Rate Guarantee; and**
- e. **An Agreement with Alliance Work Partners for an Employee Assistance Program for the Plan Year October 1, 2023 through September 30, 2024**

and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-August 03, 2023

Department: Human Resources

Staff Contact: Susan Nienstedt

SUMMARY STATEMENT:

See attached memo from Susan Nienstedt, Director of HR and Risk Management.

ATTACHMENTS:

(1) Memo from Susan Nienstedt

RECOMMENDED ACTION:

Approve:

- a. An agreement with Aveis for voluntary vision coverage benefits for plan year October 1, 2023 through September 30, 2024, with a four-year rate guarantee;
- b. An agreement with Equitable for voluntary dental coverage benefits and employer-sponsored basic life, accidental death and dismemberment, and long-term disability for the plan year October 1, 2023 through September 30, 2024, with a two-year rate guarantee;
- c. An agreement with United Healthcare for group medical coverage benefits for the plan year October 1, 2023 through September 30, 2024;
- d. An agreement with Surency for the administration of flexible spending account/dependent care reimbursement, health savings account, and COBRA for the plan year October 1 2023 through September 30, 2024, and
- e. An agreement with Alliance Work Partners for an Employee Assistance Program for the plan year October 1, 2023 through September 30, 2024

and authorize the Mayor to execute any necessary documentation.



MEMORANDUM

To: Mayor and City Council

From: Susan Nienstedt – Director of HR and Risk Management

Subject: Employee Benefits for Plan Year 2023-2024

Date: July 27, 2023

The City of Brenham provides an excellent benefit package to our full-time employees, and dependents if elected, which includes medical, dental, vision, life, and long-term disability insurance coverage. Texas Municipal League (TML) Health Benefits has been our group medical provider for many years, however in anticipation of significant rate increases in medical premiums, Mayor and City Council approved an agreement with HUB International to work as our benefit consultant to bid out and negotiate pricing for our medical, dental, vision, and life and long-term disability lines of coverage. We are pleased to inform you we have good news!

HUB International received five quality responses for our group medical insurance, which is one of our greatest benefits for employees and their families. United Healthcare (UHC) provided us with plan options for employees to choose what is best for their medical and financial needs, as well as premium savings. On page 2 you will find a summary of the group medical plan options. The City of Brenham will base our funding strategy on the HMO plan (middle plan) and employees can buy-up to the PPO plan which will be a higher premium out of their paycheck; or employees can choose the lower plan with a Health Savings Account (HSA) that will cost them less per paycheck, however they will pay for services at the time of service rather than utilizing a copay. The HMO plan (middle plan) will require employees to have a primary care physician, and if the need arises to see a specialist, the employee will need a referral from their primary care physician. The HMO plan does not cover out-of-network physicians or procedures. The recommendation of UHC group medical plan options cost sharing between the employee and the city can be found on page 2 of this memo.

2023-24 MEDICAL RATES 100% Employee BASE HMO

Buy-Up Plan	Medical Rate per Unit	City Contribution (\$)
Employee	\$624.61	\$524.48
+ Spouse	\$643.32	\$378.13
+ Children	\$475.16	\$279.29
+ Family	\$1,216.28	\$714.91
Premium Contributions	\$2,247,150.00	\$1,672,032.08

<u>Base</u> HMO Plan	Medical Rate per Unit	City Contribution (\$)	A
Employee	\$524.48	\$524.48	
+ Spouse	\$540.19	\$378.13	
+ Children	\$398.99	\$279.29	
+ Family	\$1,021.30	\$714.91	
Premium Contributions	\$1,886,914.68	\$1,672,032.08	

Buy-Down HDHP PLAN w/ H.S.A.	Medical Rate per Unit	City Contribution (\$)	B
Employee	\$426.26	\$426.26	
+ Spouse	\$439.03	\$378.13	
+ Children	\$324.27	\$279.29	
+ Family	\$830.04	\$714.91	
Premium Contributions	\$1,533,549.96	\$1,452,805.04	

City H.S.A. Funding
\$98.22
\$1,178.64

A - B

\$524.88 - \$426.26

Annual - Funded in 2 equal pmts
October & April

As a part of our medical plans we offer Flexible Spending Accounts (FSA) and Health Savings Accounts (HSA), which will require administration and oversight of claims and deposits by a third party. Surency provides partnerships with employers to provide this valuable service and was the top vendor in the RFP process. For those employees enrolling in the HDHP plan, the City will fund the HSA account two times during the plan year, October and April.

Additional recommendations by HUB International include enhancing lines of coverage for additional benefits such as dental, vision, and the life insurance and long-term disability policies. Dental coverage is voluntary and paid for by the employee. After receiving several competitive bids for these lines of coverage, we are recommending using the insurance carrier Equitable for dental coverage which will result in lower employee costs. Equitable also provides Basic Life and Accidental Death, and Long-Term Disability coverage at a very favorable premium. The City fully funds the cost of providing full-time employees with basic life insurance valued at two-times their base salary. By changing carriers to Equitable, these lines of coverage will result in lower costs to the City of Brenham. We are recommending the carrier Equitable for voluntary dental coverage, and City funded life and accidental death, and long-term disability coverage.

Vision coverage is also a voluntary benefit employees can choose to enroll themselves and/or their dependents. We are happy to recommend the carrier Avesis for vision coverage which will result in a very slight increase in monthly premiums to employees, however benefits will be greatly improved.

The Employee Assistance Program (EAP) elevates employee well-being, increases productivity, and supports our mission to lower healthcare concerns and costs. Alliance Work Partners is recommended by HUB International as a reputable, full-service employee assistance program that provides a great benefit at a reasonable cost to the city. This service allows employees and family members in their household access to a 24-hour call center staffed by trained counselors, six free confidential counseling sessions, management consultations, critical incident stress response, case management services, and a variety of online resources. We are recommending the approval of the Agreement with Alliance Work Partners for our Employee Assistance Program.

We have several great changes this year to our benefits package to both enhance the benefits and reduce costs for our employees and the City. Open enrollment will be held in the next few weeks to allow employees to enroll in the coverages they choose, for the plan year beginning October 1, 2023.



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 03, 2023

Department: Administration

Staff Contact: Carolyn Miller

SUMMARY STATEMENT:

To be discussed in Executive Session.

ATTACHMENTS:

None

RECOMMENDED ACTION:

No action - Executive Session discussion only.