



**NOTICE OF A REGULAR MEETING
THE BRENHAM CITY COUNCIL
THURSDAY, JULY 15, 2021 AT 01:00 PM
SECOND FLOOR CITY HALL
COUNCIL CHAMBERS
200 W. VULCAN STREET
BRENHAM, TEXAS**

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags - Councilmember Atwood Kenjura**
- 3. Citizens Comments**

CONSENT AGENDA

4. 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.

4-a. Approve Ordinance No. O-21-012 on Its Second Reading Amending the Official Zoning Map of the City of Brenham to Change the Zoning District from a Single-Family Residential Use District (R-1) to a Local Business/Residential Mixed-Use District (B-1) on the Following (Case No. P-21-013):

- a. A Tract of Land Being Addressed as 1401 E. Tom Green Street, Being Further Described as Tract 82, Out of the Arrabella Harrington Survey, A-55, in Brenham, Washington County, Texas (R14394)**
- b. A Tract of Land Being Addressed as 1209 E. Tom Green Street, Being Further Described as Tract 109, Out of the Arrabella Harrington Survey, A-55, in Brenham, Washington County, Texas (R14428)**
- c. Approximately 5.3433 Acres of Land, Being Further Described as Tract 137, Out of the Arrabella Harrington**

Survey, A-55, in Brenham, Washington County, Texas (R36669)

- d. A Tract of Land Being Addressed as 1306 Loesch Street, Being Further Described as Section 1, Block 1, Lot 1, Out of the Kenjura Subdivision in Brenham, Washington County, Texas (R64466)**
- e. A Tract of Land Being Addressed as 1304 Loesch Street, Being Further Described as Section 1, Block 1, Lot 2, Out of the Kenjura Subdivision in Brenham, Washington County, Texas (R64467)**
- f. A Tract of Land Being Addressed as 1302 Loesch Street, Being Further Described as Section 1, Block 1, Lot 3, Out of the Kenjura Subdivision in Brenham, Washington County, Texas (R64468)**
- g. A Tract of Land Being Addressed as 1300 Loesch Street, Being Further Described as Section 1, Block 1, Lot 4, Out of the Kenjura Subdivision in Brenham, Washington County, Texas (R64469)**
- h. A Tract of Land Being Addressed as 1301 E. Tom Green Street, Being Further Described as Section 1, Block 1, Lot 5, Out of the Kenjura Subdivision in Brenham, Washington County, Texas (R64470)**
- i. A Tract of Land Being Addressed as 1200 E. Tom Green Street, Being Further Described as Tract 189, Out of the Arrabella Harrington Survey, A-55, in Brenham, Washington County, Texas (R14510)**
- j. A Tract of Land Being Addressed as 1204 E. Tom Green Street, Being Further Described as Tract 344, Out of the Arrabella Harrington Survey, A-55, in Brenham, Washington County, Texas (R45333)**
- k. A Tract of Land Being Addressed as 1301 Niebuhr Street, Being Further Described as Tract 178, Out of the Arrabella Harrington Survey, A-55, in Brenham, Washington County, Texas (R14502)**
- l. A Tract or Land Being Addressed as 1800 E. Tom Green Street, Being Further Described as Tract 326, Out of the Arrabella Harrington Survey, A-55, in Brenham, Washington County, Texas (R55363)**

- 4-b. Approve Ordinance No. O-21-013 on Its Second Reading Amending the Official Zoning Map of the City of Brenham to Change the Zoning District from a Mixed Residential Use District (R-2) to a Commercial, Research and Technology Use District (B-2) on Approximately 0.99 Acres of Land Being Further Described as Part of the P & A Hope Survey, A-62, in Brenham, Washington County, Texas (Case No. P-21-011)**
- 4-c. Approve Ordinance No. O-21-014 on Its Second Reading Amending the Planned Development District Ordinance No. O-20-028 Regarding Neighborhood Amenities and Improvements for Section II of the Lakes at Vintage Farms, Being Approximately 52.428 Acres of Land Being Located South and West of Dixie Road and Further Described as Tract 7 of the Phillip Coe Survey, A-31, in Brenham, Washington County, Texas (Case No. P-21-014)**
- 4-d. Approve an Audit Engagement Letter for Seidel Schroeder to Perform an Audit for the Fiscal Year Ending September 30, 2021 and Authorize the Mayor to Execute Any Necessary Documentation**
- 4-e. Approve a Noise Variance in Connection with Family Pickleball and Bocce Night to be Held at Jackson Street Park from 7:00 p.m. to 8:30 pm on Thursday, July 15, 2021 and Authorize the Mayor to Execute Any Necessary Documentation**
- 4-f. Approve a Noise Variance in Connection with an Official Skate Night and Competition to be Held at Fireman's Park from 7:30 p.m. to 9:30 pm on Thursday, July 29, 2021 and Authorize the Mayor to Execute Any Necessary Documentation**

PUBLIC HEARING AND ASSOCIATED ACTION ITEM

- 5. Public Hearing, Discussion and Possibly Act Upon an Ordinance on Its First Reading Amending Chapter 13, Reserved, of the Code of Ordinances of the City of Brenham, Texas to Provide for the Historical Preservation, Protection and Enhancement of Districts and Landmarks of Historical and Cultural Importance and Significance**

REGULAR SESSION

- 6. Discuss and Possibly Act Upon Ordinance No. O-21-015 on Its Second Reading Amending Chapter 21, Signs, of the Code of Ordinances of the City of Brenham, Texas Regarding Major Multi-Tenant Shopping Center Sign Regulations**

7. **Discuss and Possibly Act Upon an Agreement Between the City of Brenham and Ranier & Son Development Company (Stylecraft) Related to the City's Participation in the Construction Costs of Oversizing a Water Main Along Dixie Road and Authorize the Mayor to Execute Any Necessary Documentation**
8. **Discuss and Possibly Act Upon Resolution No. R-21-018 Approving an Advanced Funding Agreement Between the City of Brenham and TXDOT Related to Intersection Improvements at Old Chappell Hill Road and FM 577 in Brenham, Washington County, Texas**
9. **Discuss and Possibly Act Upon Amendment No. 1 to the Lease Agreement Between the City of Brenham, Texas and the Brenham Heritage Museum, Inc. and Authorize the Mayor to Execute Any Necessary Documentation**
10. **Discuss and Possibly Act Upon an Addendum to the Memorandum of Understanding Between the City of Brenham and Brenham Main Street Historical Preservation, Inc. and Authorize the Mayor to Execute Any Necessary Documentation**
11. **Administrative/Elected Officials Report**

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

Adjourn

Executive Sessions: The City Council for the City of Brenham reserves the right to convene into executive session at any time during the course of this meeting to discuss any of the matters listed, as authorized by Texas Government Code, Chapter 551, including but not limited to §551.071 - Consultation with Attorney, §551.072 - Real Property, §551.073 - Prospective Gifts, §551.074 - Personnel Matters, §551.076 - Security Devices, §551.086 - Utility Competitive Matters, and §551.087 - Economic Development Negotiation

CERTIFICATION

I certify that a copy of the July 15, 2021 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 12, 2021 at 10:00 a.m.

Jeana Bellinger, TRMC, CMC

City Secretary

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

I certify that the attached notice and agenda of items to be considered by the City Council was removed by me from the City Hall bulletin board on the _____ day of _____, 2021 at _____ AM PM.

Signature

Title

ORDINANCE NO. O-21-012

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS, AMENDING APPENDIX A - "ZONING" OF THE CODE OF ORDINANCES, AND THE OFFICIAL ZONING MAP OF THE CITY OF BRENHAM, BY CHANGING THE ZONING DISTRICT CLASSIFICATION FROM SINGLE-FAMILY RESIDENTIAL DISTRICT (R-1) TO A LOCAL BUSINESS/RESIDENTIAL MIXED-USE DISTRICT (B-1) ON CERTAIN TRACTS OF LAND AS FURTHER DESCRIBED IN THIS ORDINANCE.

WHEREAS, the City of Brenham has received requests from property owners within the subject rezoning area (the "Property") to change the zoning to reflect the current uses, and with the adoption of this Ordinance, institutional, philanthropic, and neighborhood commercial uses within the subject rezoning area will become permitted uses; and

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

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

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

WHEREAS, this amendment was recommended for approval by the City of Brenham Planning and Zoning Commission in its final report during its regular meeting on June 28, 2021; and

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

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

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

SECTION 1. That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas, and the Official Zoning Map of the City of Brenham are hereby amended by changing the zoning district classification from a Single-Family Residential District (R-1) to a Local Business/Residential Mixed-Use District (B-1) on all or a portion of twelve (12) tracts of land being more particularly described herein below as follows:

- a) Approximately 0.287 acres of land addressed as 1401 E. Tom Green Street, being further described as Tract 82, out of the Arrabella Harrington Survey, A-55, in Brenham Washington County, Texas (R14394);
- b) Approximately 0.334 acres of land addressed as 1209 E Tom Green Street, being further described as Tract 109, out of the Arabella Harrington Survey, A-55, in Brenham, Washington County, Texas (R14428);
- c) Approximately 0.8337-acre portion of a 5.3433-acre tract of vacant land being further described as Tract 137, out of the Arrabella Harrington Survey, A-55, in Brenham, Washington County, Texas (R36669);
- d) Approximately 0.9383 acres of land being four (4) tracts addressed as 1300, 1302, 1304, and 1306 Loesch Street, being further described as Section 1, Block 1, Lot 4, Lot 3, Lot 2, and Lot 1 of the Kenjura Subdivision, in Brenham, Washington county, Texas (R64469, R64468, R64467, R64466);
- e) Approximately 4.482 acres of land being addressed as 1301 E. Tom Green Street, being further described as Section 1, Block 1, Lot 5 of the Kenjura Subdivision, in Brenham, Washington County, Texas (R64470);
- f) Approximately 0.596 acres of land being addressed as 1200 E. Tom Green Street, being further described as Tract 189, out of the Arrabella Harrington Survey, A-55, in Brenham, Washington County, Texas (R14510);
- g) Approximately 3.214 acres of land being addressed as 1204 E. Tom Green Street, being further described as Tract 344, out of the Arrabella Harrington Survey, A-55, in Brenham, Washington County, Texas (R45333);
- h) Approximately 64.647 acres of land being addressed as 1301 Niebuhr Street, being further described as Tract 178, out of the Arrabella Harrington Survey, A-55, in Brenham, Washington County, Texas (R14502); and

- i) Approximately 7.215 acres of land being addressed as 1800 E. Tom Green Street, being further described as Tract 326, out of the Arrabella Harrington Survey, A-55, in Brenham, Washington County, Texas (R55363).

Further, said Property rezoned by this Ordinance to a Local Business/Residential Mixed-Use District (B-1) is further described and depicted in Exhibit “A” attached hereto and incorporated herein for all pertinent purposes.

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

PASSED and APPROVED on its first reading this the 1st day of July 2021.

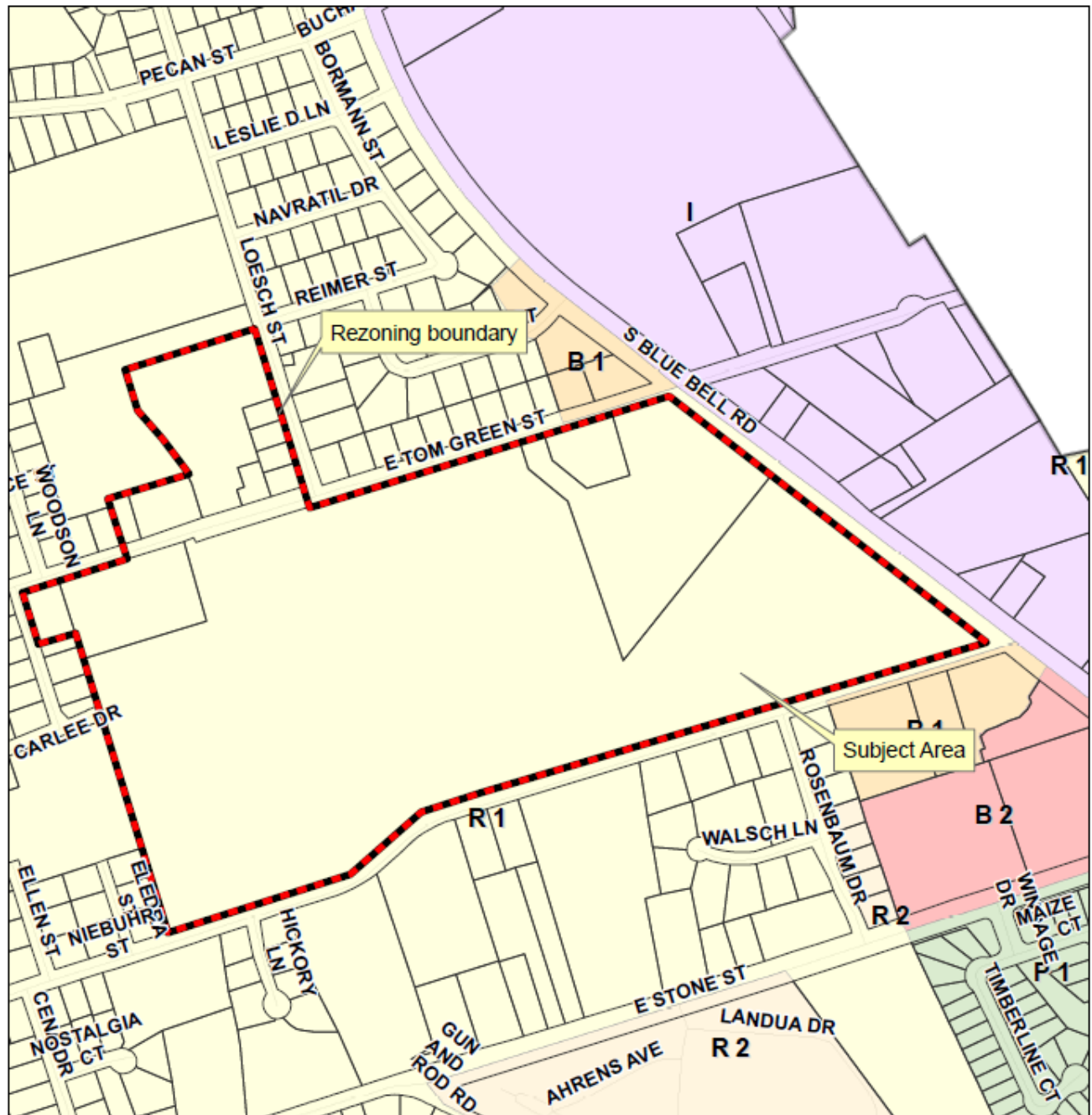
PASSED and APPROVED on its second reading this the 15th day of July 2021.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary

Exhibit "A"



East Tom Green Rezone Area
R-1 to B-1



1 inch = 458 feet



ORDINANCE NO. O-21-013

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS, AMENDING APPENDIX A - "ZONING" OF THE CODE OF ORDINANCES, AND THE OFFICIAL ZONING MAP OF THE CITY OF BRENHAM, BY CHANGING THE ZONING DISTRICT CLASSIFICATION FROM MIXED RESIDENTIAL DISTRICT (R-2) TO A COMMERCIAL, RESEARCH AND TECHNOLOGY DISTRICT (B-2) ON A 0.9903 ACRE TRACT OF LAND AS FURTHER DESCRIBED IN THIS ORDINANCE.

WHEREAS, the owner(s) of the 0.9903 acres of land generally located on the east side of N. Park Street, south of AH Ehrig Drive. and adjacent to the Hasskarl Tennis Court Center area to the north and east and addressed as 1408 N. Park Street, and being further described as P.&A. Hope Survey, A-62, in Brenham, Washington County, Texas, (the "Property"), have requested that the Property be rezoned; and

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

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

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

WHEREAS, this amendment was recommended for approval by the City of Brenham Planning and Zoning Commission in its final report during its regular meeting on June 28, 2021; and

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

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

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

SECTION 1. That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas, and the Official Zoning Map of the City of Brenham are hereby amended by changing the zoning district classification from a Mixed Residential District (R-2) to a Commercial, Research and Technology District (B-2) on approximately 0.9903 acres of land addressed as 1408 N. Park Street, and further described as P.&A. Hope Survey, A-62, in Brenham, Washington County, Texas, said area of land being further described and depicted on Exhibit "A" attached hereto and incorporated herein for all pertinent purposes.

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

PASSED and APPROVED on its first reading this the 1st day of July 2021.

PASSED and APPROVED on its second reading this the 15th day of July 2021.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary

Exhibit "A"



**Proposed Rezoning
1408 North Park Street
R-2 to B-2**



1 inch = 127 feet



**Redline of Ordinance No. O-21-014 Showing Council Approved
Change/Addition from 1st Reading**

I. Greenspace

- a. Developer shall reserve a minimum of thirteen (13) acres of greenspace and common area for neighborhood use, all of which shall be maintained by the HOA.
- b. Developer shall provide covered playground equipment facilities with at least five (5) play elements, park benches, and associated landscaping all of which shall be maintained by the HOA.
- c. Developer shall provide at minimum a 400 square foot pavilion and two (2) picnic tables in the greenspace/park area with the location and size to be determined based on topography, and final design of trail system. Pavilion and associated landscaping shall be maintained by the HOA.
- d. Developer shall provide a minimum 4,000 square foot, fenced dog park which shall include at least one (1) of each of the following: play elements, a park bench, a trash can, and associated landscaping all of which shall be maintained by the HOA. ~~Developer shall secure access to the dog park by installing a locking gate with a keypad entry, and the code to the locking gate shall be provided to all members of the HOA.~~ Placement of the dog park shall be the maximum distance away from adjacent residential property lines as feasible to provide an adequate buffer between the dog park and residential dwelling units.
- e. Developer shall install signage in the greenspace with posted rules and warnings regarding usage and safety. Signage shall establish park hours of operation. This signage shall be maintained and updated by the HOA.

Deleted: locked

J. Right-of-Way Dedication

- a. At the time of a road widening project conducted by the City of Brenham, the developer shall dedicate additional right-of-way for Dixie Road widening and general road improvements in accordance with the City's adopted Major Thoroughfare Plan.

SECTION III.

SUBDIVISION OF LAND. The development of land within this PD includes two (2) different single-family dwelling products. Dwellings located in Planning Area 1 (Exhibit A) shall comply with the development standards applicable to properties in a Single-Family Residential (R-1) zoning district, and dwellings located in Planning Area 2 (Exhibit A) shall comply with the development standards applicable to properties in a Mixed Residential (R-2) zoning district, except as follows:

A. Planning Area 1 - Vintage Farms Phases 5-7 – Single-Family Residential Detached Homes

- a. 100% of the lots shall be a minimum of 6,600 square feet
- b. 35% of the lots shall be a minimum of 7,000 square feet
- c. Minimum lot width shall be 55 feet except for radial lots which shall be a minimum 50 feet measured at the front setback.
- d. Minimum lot depth shall be 120 feet (determined by the average of the two side lot lines) except for radial lots which shall have an average minimum lot depth of 110 feet.
- e. Front yards shall be setback a minimum of 25 feet as per current City development requirements.

ORDINANCE NO. O-21-014

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS, AMENDING APPENDIX A - "ZONING" OF THE CODE OF ORDINANCES BY AMENDING PLANNED DEVELOPMENT DISTRICT ORDINANCE NO. O-20-028 REGARDING NEIGHBORHOOD AMENITIES AND IMPROVEMENTS FOR SECTION II OF THE LAKES AT VINTAGE FARMS, BEING APPROXIMATELY 52.428 ACRES OF LAND LOCATED SOUTH AND WEST OF DIXIE ROAD, BEING FURTHER DESCRIBED AS TRACT 7 OF THE PHILLIP COE SURVEY, A-31, IN BRENHAM, WASHINGTON COUNTY, TEXAS PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the 52.428 acres of land generally located south and west of Dixie Road, being further described as Tract 7 of the Phillip Coe Survey, A-31, in Brenham, Washington County, Texas, (the "Property"), was annexed into the City of Brenham and assigned the zoning classification of Planned Development District; and

WHEREAS, at least ten (10) days after publication in the official newspaper of the City of the time and place of the public hearing and at least ten (10) days written notice of that hearing to the owners of the land within two hundred feet (200') of the Property in the manner required by law, the Planning & Zoning Commission held a public hearing on the proposal to amend Planned Development District Ordinance No. O-20-028; and

WHEREAS, the Planning & Zoning Commission recommended on June 29, 2021 that City Council grant such request to amend Planned Development District Ordinance No. O-20-028; and

WHEREAS, the City Council deems it appropriate to amend Planned Development District Ordinance No. O-20-028;

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 AS FOLLOWS:

That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas, is hereby amended by amending Planned Development (PD) District Ordinance No. O-20-028 regarding neighborhood amenities and improvements for Section II of The Lakes at Vintage Farms, said District being approximately 52.428 acres of land generally located south and west of Dixie Road, being further described as Tract 7 of the Phillip Coe Survey, A-31, in Brenham, Washington County, Texas, said area of land being further described and depicted in Exhibits "A" and "B" attached hereto and incorporated herein for all purposes.

SECTION I.

PURPOSE AND INTENT. This Planned Development District PD which will contain Vintage Farms Phases 5 – 8 is intended to guide land use and physical development of the subject property. This development plan is enacted as a means to provide the City of Brenham and the Developer with alternative standards set forth by the City for their mutual benefit. This PD is intended to add this approximately 52.428acre tract of land to the existing Vintage Farms Subdivision (“Vintage Farms”) development by incorporating the existing design and feel of Vintage Farms while providing new elements which will enhance the development’s overall livability and enjoyment. Additionally, this PD looks to improve property utilization by facilitating the highest and best uses, provide quality cost-efficient housing, strengthen the area economy, and enhance the general welfare of the surrounding community. It reflects the goals of the City’s adopted Comprehensive Plan - Historic Past, Bold Future: Plan 2040 which establishes recommendations for developing quality neighborhood design. To this end, this addition to Vintage Farms shall include public amenities such as, but not limited to, sidewalks, landscaping, and parkland which exceed City of Brenham subdivision standards and are intended to provide a valuable product for the Brenham community. Only single-family residential uses as described herein shall be permitted on the approximately 52.428 acres of land out of the Phillip Coe Survey, being generally west of Dixie Road and State Highway 36 (Concept Plan - Exhibit A).

SECTION II.

LAND USE AND PHYSICAL DEVELOPMENT.

This addition to the community shall be managed and maintained by the expanded Vintage Farms Homeowners Association (“HOA”) to include all single-family residents of Vintage Farms Subdivision and shall be made subject to the same Declaration of Covenants, Conditions and Restrictions applicable to and governing Vintage Farms. Nothing herein shall modify or amend the existing ordinances or Declaration applicable to Vintage Farms.

- A. No floor plan shall be repeated on the lot directly across the street, diagonally across the street, or within two (2) lots on either side of the subject lot.
- B. Minimum square footage of each home shall be 1,200 square feet exclusive of garages, porches, patios and areas of the home that are not conditioned space (heat/AC). This square footage minimum matches the existing restrictions in Vintage Farms.
- C. Each single-family dwelling shall include, at a minimum, a two-car private, enclosed garage.
- D. Each home in Planning Area 1 (Exhibit A) shall have a minimum of 60% masonry on its front face exclusive of windows, doors, eaves, gables, trim work, walls above roof lines, and entryways/porches/patios.
- E. Each home in Planning Area 2 (Exhibit A) shall have a minimum of 20% masonry on its front face exclusive of windows, doors, eaves, gables, trim work, walls above roof lines, and entryways/porches/patios.
- F. The required minimum right-of-way shall be a 55-foot wide publicly dedicated right-of-way with 30-foot-wide pavement, measured back-of-curb to back-of-curb.

- G. A minimum of 4,500 linear feet of five foot (5') wide concrete sidewalks and concrete trails shall be constructed within the residential area, and a minimum of 2,800 linear feet of eight foot (8') wide concrete sidewalks shall be constructed in the greenspace/common areas. The Developer shall provide:
- a. Minimum of 4,500 linear feet of five foot (5') wide concrete sidewalks on one side of the streets, which shall correspond with the same look and feel of the design and layout of Vintage Farms.
 - b. Minimum of 2,800 linear feet of eight foot (8') wide concrete trails within the greenspace and common areas throughout the development to be consistent with the trail system of Vintage Farms. The final location of the trail system may differ from what is shown on Exhibit A because the exact location and design shall be determined by the topography and location of preserved trees, if any are able to remain.
 - c. Pedestrian connectivity to the existing phase of Vintage Farms sidewalks and trails, as shown on Exhibit A.
 - d. Five (5) pedestrian access points connecting the greenspace trails to the neighborhood sidewalk system.
- H. Landscape/Fencing
- a. Perimeter fencing shall be installed along Dixie Road, and shall be stained, capped and trimmed wooden privacy fence with steel posts to match the existing perimeter fence in Vintage Farms, Phase 1. This fencing will be maintained by the HOA.
 - b. Ten (10) masonry columns shall be installed in the perimeter fencing installed along Dixie Road, and shall be maintained by the HOA.
 - c. Each lot shall be landscaped and irrigated, at a minimum, with fully sodded yard.
 - d. Single-family residential lots shall have at least one (1) two-inch (2") or larger caliper (measured six inches (6") above the tree base) canopy or shade tree or two (2) non-canopy ornamental trees, as well as a minimum of five (5) one-gallon shrubs, planted in the front yard of the residence prior to the Certificate of Occupancy being issued by the City.
 - e. Community Trees - Prior to the first Certificate of Occupancy being issued by the City for each phase of the development, community trees shall be planted throughout the development at a ratio of at least one-half (1/2) of the total number of lots in each phase as reflected on the final plat. Required trees shall be planted in common areas, greenspace, along trails and sidewalks and other areas viewable to the public. Fifty percent (50%) of the required trees shall be canopy trees measuring at least six feet (6') tall and two inches (2") in caliper when measured six inches (6") from the ground.
 - f. Preservation of trees – In accordance with Appendix A - Zoning, Part II, Division 1, Section 12.05 (3) of the City of Brenham Code of Ordinances, developer shall receive credit for each existing tree that is preserved towards the number of community trees that are required by Section II (h)(e) herein above.

I. Greenspace

- a. Developer shall reserve a minimum of thirteen (13) acres of greenspace and common area for neighborhood use, all of which shall be maintained by the HOA.
- b. Developer shall provide covered playground equipment facilities with at least five (5) play elements, park benches, and associated landscaping all of which shall be maintained by the HOA.
- c. Developer shall provide at minimum a 400 square foot pavilion and two (2) picnic tables in the greenspace/park area with the location and size to be determined based on topography, and final design of trail system. Pavilion and associated landscaping shall be maintained by the HOA.
- d. Developer shall provide a minimum 4,000 square foot, fenced dog park which shall include at least one (1) of each of the following: play elements, a park bench, a trash can, and associated landscaping all of which shall be maintained by the HOA. Developer shall secure access to the dog park by installing a locking gate with a keypad entry, and the code to the locking gate shall be provided to all members of the HOA. Placement of the dog park shall be the maximum distance away from adjacent residential property lines as feasible to provide an adequate buffer between the dog park and residential dwelling units.
- e. Developer shall install signage in the greenspace with posted rules and warnings regarding usage and safety. Signage shall establish park hours of operation. This signage shall be maintained and updated by the HOA.

J. Right-of-Way Dedication

- a. At the time of a road widening project conducted by the City of Brenham, the developer shall dedicate additional right-of-way for Dixie Road widening and general road improvements in accordance with the City's adopted Major Thoroughfare Plan.

SECTION III.

SUBDIVISION OF LAND. The development of land within this PD includes two (2) different single-family dwelling products. Dwellings located in Planning Area 1 (Exhibit A) shall comply with the development standards applicable to properties in a Single-Family Residential (R-1) zoning district, and dwellings located in Planning Area 2 (Exhibit A) shall comply with the development standards applicable to properties in a Mixed Residential (R-2) zoning district, except as follows:

A. Planning Area 1 - Vintage Farms Phases 5-7 – Single-Family Residential Detached Homes

- a. 100% of the lots shall be a minimum of 6,600 square feet
- b. 35% of the lots shall be a minimum of 7,000 square feet
- c. Minimum lot width shall be 55 feet except for radial lots which shall be a minimum 50 feet measured at the front setback.
- d. Minimum lot depth shall be 120 feet (determined by the average of the two side lot lines) except for radial lots which shall have an average minimum lot depth of 110 feet.
- e. Front yards shall be setback a minimum of 25 feet as per current City development requirements.

- f. Side yards shall be setback a minimum of 7.5 feet unless adjacent to a side street in which case the minimum shall be 15 feet.
 - g. Rear yards shall be setback a minimum of 20 feet
- B. Planning Area 2 - The Cove at Vintage Farms – Patio Homes
 - a. 100% of the lots shall be a minimum of 4,400 square feet
 - b. 30% of the lots shall be a minimum of 5,700 square feet
 - c. Minimum lot width shall be 40 feet
 - d. Minimum lot depth shall be 120 feet (determined by the average of the two side lot lines). Three lots shall be permitted to have a minimum lot depth of 100 feet, as established in current City development requirements.
 - e. Front yards shall be setback a minimum of 20 feet
 - f. Side yards shall be setback a minimum of 5 feet unless adjacent to a side street in which case the minimum shall be 15 feet. Distances between adjacent patio homes shall not be less than 10 feet. Lots adjacent to common areas shall maintain the 5 foot side setback.
 - g. Rear yards shall be setback a minimum of 15 feet

SECTION IV.

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 V.

This Ordinance shall in no manner amend, change, supplement or revise any portion of any ordinance of the City, save and except the change in zoning classification for the Property provided herein subject to the regulations, restrictions, terms and conditions of the Planned Development District provided for herein.

SECTION VI.

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

PASSED and APPROVED on its first reading this the 1st day of July 2021.

PASSED and APPROVED on its first reading this the 15th day of July 2021.

ATTEST:

Milton Y. Tate, Jr.
Mayor

Jeana Bellinger, TRMC, CMC
City Secretary

EXHIBIT A

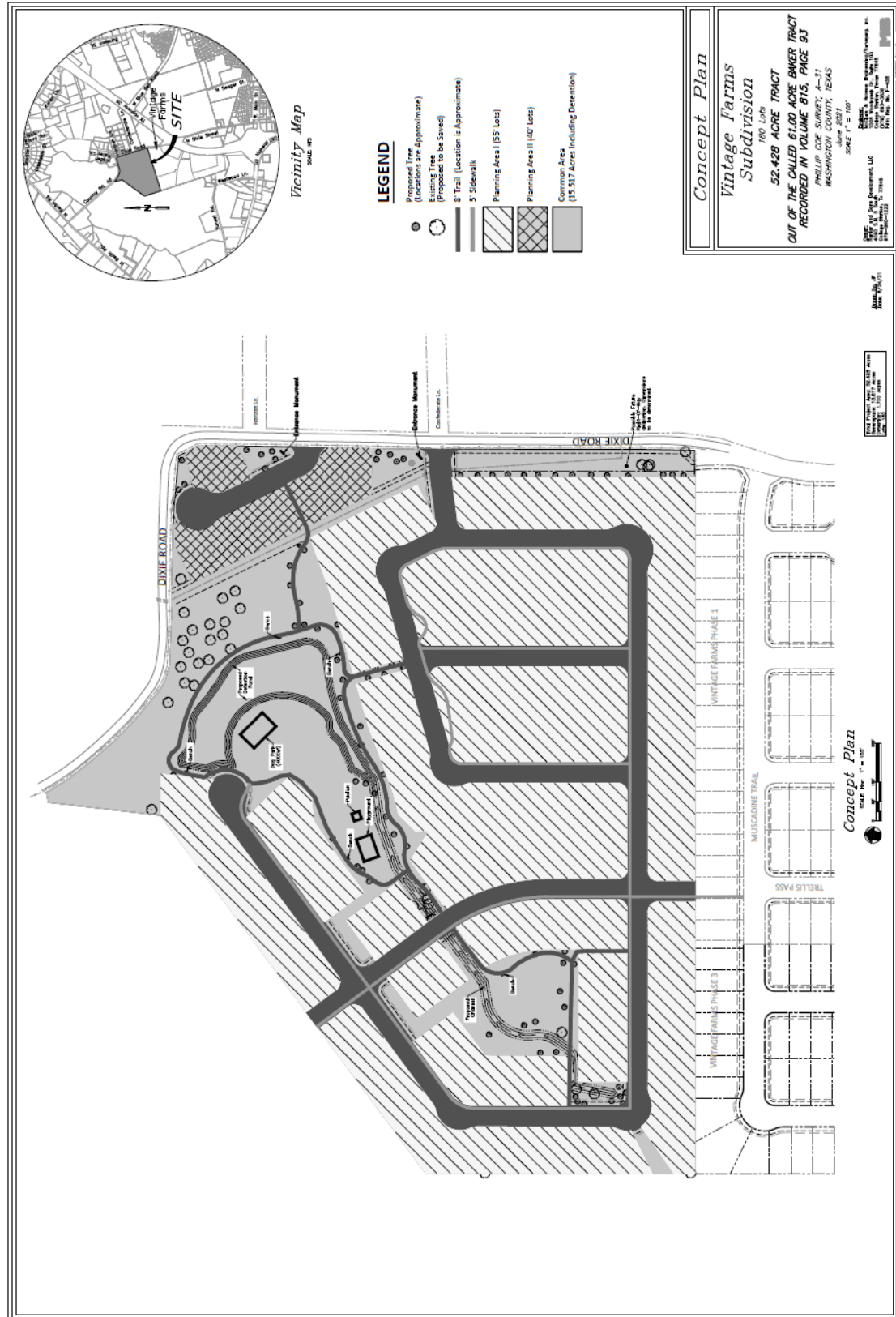
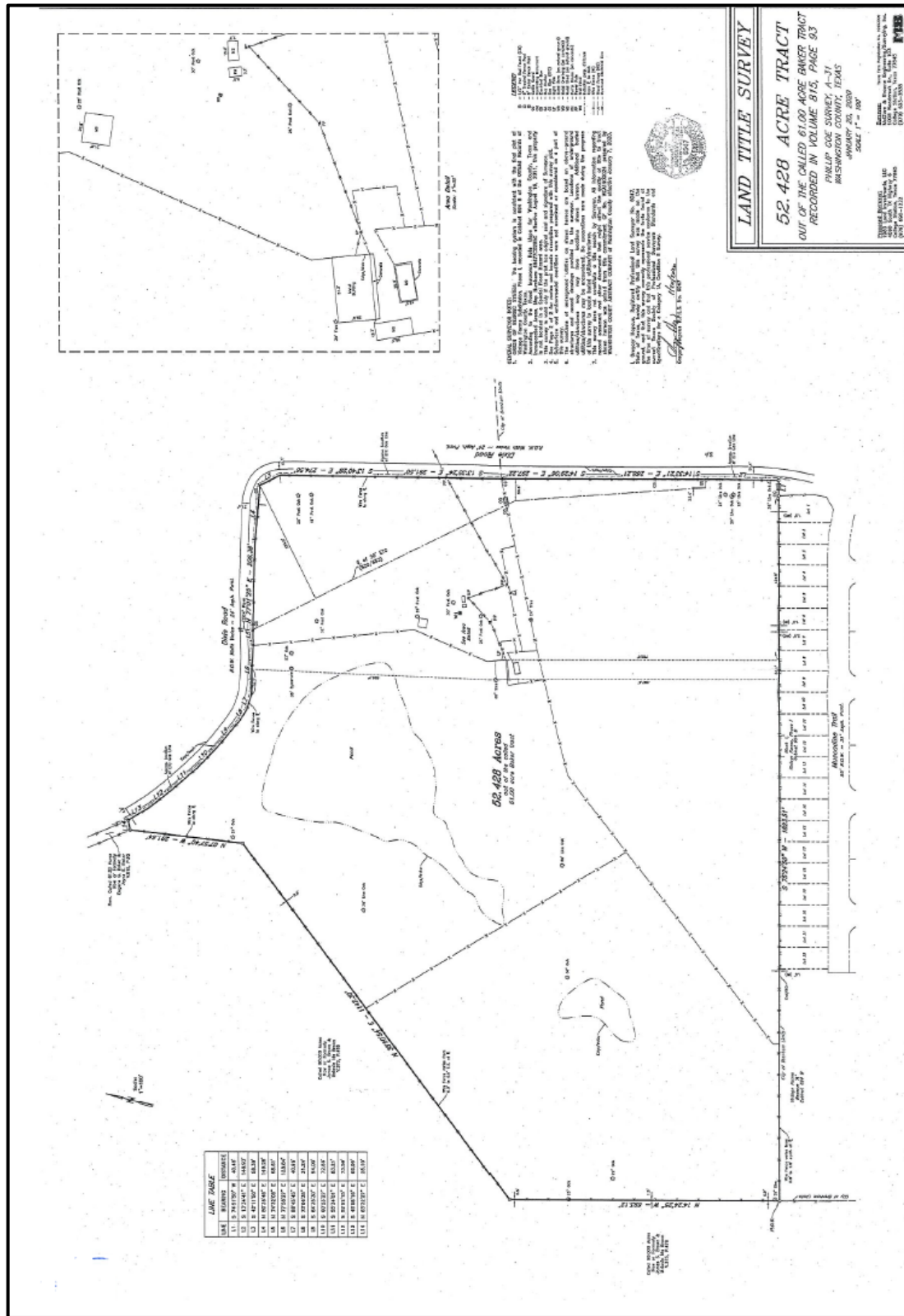


EXHIBIT B





Regular City Council
AGENDA ITEM 4-D.

Agenda Item: Approve an Audit Engagement Letter for Seidel Schroeder to Perform an Audit for the Fiscal Year Ending September 30, 2021 and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-July 15, 2021

Department: Finance

Staff Contact: Carolyn D. Miller

Classification: Consent

SUMMARY STATEMENT:

Attached is the proposed audit engagement letter from Seidel Schroeder for the fiscal year ending September 30, 2021, with the audit fee range of \$43,900 to \$45,900 for the financial statement audit plus an additional \$7,000 to \$8,500 for the Single Audit. This fee range is the same as the prior year.

The Single Audit fee is based on the assumption that a Single Audit will be required. A Single Audit is required when state and federal grant expenditures exceed \$750,000 in a fiscal year. The City anticipates meeting this threshold in FY21 due expenses related to the Lake Intake Structure FEMA project, the family park capital project covered by the Texas Parks & Wildlife grant, several drainage projects funded by HMGP grants, and expenditures associated with other state and federal grants. With the continued growth and complexity of the City's financial activities, the current fee structure is reasonable.

ATTACHMENTS:

(1) FY21 Audit Engagement Letter

RELEVANCE TO COMPREHENSIVE PLAN:

RECOMMENDED ACTION:

Approve an Audit Engagement Letter for Seidel Schroeder to perform an audit for the fiscal year Ending September 30, 2021 and authorize the Mayor to execute any necessary documentation.



CERTIFIED PUBLIC ACCOUNTANTS / BUSINESS ADVISORS

June 23, 2021

To The City Council of the
City of Brenham, Texas

We are pleased to confirm our understanding of the services we are to provide the City of Brenham, Texas for the year ended September 30, 2021. We will audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information, including the related notes to the financial statements, which collectively comprise the basic financial statements of the City of Brenham, Texas, as of and for the year ended September 30, 2021. Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement the City of Brenham's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the City of Brenham's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by U.S. generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

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

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

Serving Central Texas Since 1967

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

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

1. Introductory section
2. Statistical data

Audit Objectives

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

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

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

Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions

of the Uniform Guidance, and will include tests of accounting records, a determination of major program(s) in accordance with the Uniform Guidance, and other procedures we consider necessary to enable us to express such opinions. We will issue written reports upon completion of our Single Audit. Our reports will be addressed to the mayor and councilmembers of the City of Brenham. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or issue reports, or we may withdraw from this engagement.

Audit Procedures—General

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

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

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about your responsibilities for the financial statements; schedule of expenditures of federal awards; federal award programs; compliance with laws, regulations, contracts, and grant agreements; and other responsibilities required by generally accepted auditing standards.

Audit Procedures—Internal Control

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

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

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

Audit Procedures—Compliance

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

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

Other Services

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

Management Responsibilities

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

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, including identification of all related parties and all related-party relationships and transactions, (2) access to personnel, accounts, books, records, supporting documentation, and other information as needed to perform an audit under the Uniform Guidance, (3) additional information that we may request for the purpose of the audit, and (4) unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence.

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

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

your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws, regulations, contracts, agreements, and grants. Management is also responsible for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements that we report. Additionally, as required by the Uniform Guidance, it is management's responsibility to evaluate and monitor noncompliance with federal statutes, regulations, and the terms and conditions of federal awards; take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; promptly follow up and take corrective action on reported audit findings; and prepare a summary schedule of prior audit findings and a separate corrective action plan. The summary schedule of prior audit findings should be available for our review on November 1, 2021.

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

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

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility

includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

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

Engagement Administration, Fees, and Other

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

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

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

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

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

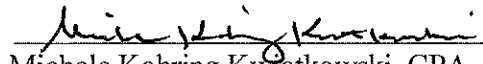
We expect to begin our audit planning process during October, 2021, audit fieldwork beginning in November, 2021 and to issue our reports no later than March 1, 2022. Michele Kohring Kwiatkowski is the engagement partner and is responsible for supervising the engagement and signing the reports or authorizing another individual to sign them.

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

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

Very truly yours,

SEIDEL SCHROEDER

By: 
Michele Kohring Kwiatkowski, CPA

RESPONSE:

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

Management signature: _____

Title: _____

Date: _____

Governance signature: _____

Title: _____

Date: _____



Regular City Council
AGENDA ITEM 4-E.

Agenda Item: Approve a Noise Variance in Connection with Family Pickleball and Bocce Night to be Held at Jackson Street Park from 7:00 p.m. to 8:30 pm on Thursday, July 15, 2021 and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-July 15, 2021

Department: Parks & Recreation

Staff Contact: Crystal Locke

Classification: Consent

SUMMARY STATEMENT:

In celebration of Parks and Recreation month, the City will be holding a Family Pickleball & Bocce Night at Jackson Street Park on Thursday, July 15, 2021. The event will take place between 7:00 pm and 8:30 pm. A portable PA system will be used; therefore, a noise variance is required.

ATTACHMENTS:

(1) Noise Variance Request

RELEVANCE TO COMPREHENSIVE PLAN:

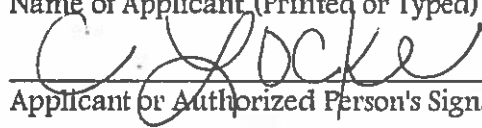
RECOMMENDED ACTION:

Approve a Noise Variance in Connection with Family Pickleball and Bocce Night to be Held at Jackson Street Park from 7:00 p.m. to 8:30 pm on Thursday, July 15, 2021 and Authorize the Mayor to Execute Any Necessary Documentation

NOISE VARIANCE REQUEST

Application Fee \$10.00

1. Name of sponsoring organization:
City of Brenham Parks and Recreation
2. Name and address of individual making application on behalf of sponsoring organization: _____
Crystal Locke - 200 W. Vulcan Street Brenham, Texas 77833
3. Purpose of the Event: Family Pickleball & Bocce Night at the Park celebrating Park and Recreation Month
4. Location of Event: Jackson Street Park - 1300 S. Jackson Street
5. Date of the event: Thursday, July 15, 2021
6. Time of Event: 7:00 pm-8:30 pm
7. Event Set-up: From: 6:30 pm To: 7:00 pm
Event Clean-up: From: 8:30 pm To: 9:00 pm
8. You are required to describe the following:
 - a) Types of Activities Planned and any additional information specific to this event: _____
Pickleball and bocce games
 - b) Bands/Musical Instruments: None
 - c) Sound amplification equipment:
Portable PA system
 - d) Cleanup provisions: _____

Crystal Locke
Name of Applicant (Printed or Typed)

Applicant or Authorized Person's Signature

Date: 07/07/2021
Phone: 979-337-7254

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



Regular City Council
AGENDA ITEM 4-F.

Agenda Item: Approve a Noise Variance in Connection with an Official Skate Night and Competition to be Held at Fireman's Park from 7:30 p.m. to 9:30 pm on Thursday, July 29, 2021 and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-July 15, 2021

Department: Parks and Recreation

Staff Contact: Crystal Locke

Classification: Consent

SUMMARY STATEMENT:

In celebration of Parks and Recreation month, the City will be holding an Official Skate Night & Competition at Fireman's Park on Thursday, July 29, 2021. The event will take place between 7:30 pm and 9:30 pm and will feature two hours of skateboarding at the Skate Park, including beginner lessons focusing on core techniques. There will also be races, games, and contests. A portable PA system will be used; therefore, a noise variance is required.

ATTACHMENTS:

(1) Noise Variance Request

RELEVANCE TO COMPREHENSIVE PLAN:

RECOMMENDED ACTION:

Approve a Noise Variance in Connection with an Official Skate Night and Competition to be Held at Fireman's Park from 7:30 p.m. to 9:30 pm on Thursday, July 29, 2021 and Authorize the Mayor to Execute Any Necessary Documentation

NOISE VARIANCE REQUEST

Application Fee \$10.00

1. Name of sponsoring organization:
City of Brenham Parks and Recreation
2. Name and address of individual making application on behalf of sponsoring organization: _____
Crystal Locke - 200 W. Vulcan Street Brenham, Texas 77833
3. Purpose of the Event: Official Skate Night & Competition celebrating Park and Recreation Month
4. Location of Event: Skate Park @ Fireman's Park - 901 N. Park Street
5. Date of the event: Thursday, July 29, 2021
6. Time of Event: 7:30 pm-9:30 pm
7. Event Set-up: From: 6:30 pm To: 7:30 pm
Event Clean-up: From: 9:30 pm To: 10:00 pm
8. You are required to describe the following:
 - a) Types of Activities Planned and any additional information specific to this event: _____
Two hours of skateboarding engagement and growth development; 7:30-8:30 pm beginner lessons focusing on core techniques and development; 8:30-9:30 pm races, games, and contests.
 - b) Bands/Musical Instruments: None
 - c) Sound amplification equipment:
Portable PA system
 - d) Cleanup provisions: _____

Crystal Locke
Name of Applicant (Printed or Typed)
C. Locke
Applicant or Authorized Person's Signature

Date: 07/07/2021
Phone: 979-337-7254

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



Regular City Council
AGENDA ITEM 5.

Agenda Item: Public Hearing, Discussion and Possibly Act Upon an Ordinance on Its First Reading Amending Chapter 13, Reserved, of the Code of Ordinances of the City of Brenham, Texas to Provide for the Historical Preservation, Protection and Enhancement of Districts and Landmarks of Historical and Cultural Importance and Significance

Meeting Type: Regular Meeting-July 15, 2021

Department: Main Street

Staff Contact: Jennifer Eckermann

Classification: Public Hearing

SUMMARY STATEMENT:

In 2019 the City conducted a Comprehensive Planning effort which included a large public engagement and citizen input component and resulted in the adoption of the current plan – Historic Past, Bold Future: Plan 2040. Plan 2040 included Strategic Action Priorities for the City to focus on implementing over the next 20 years. Multiple priorities were adopted in relation to preserving the City's Historic Downtown District, state and nationally recognized landmarks and historic homes within the City. As a result of Plan 2040, corresponding public interest and concern, and most recently encouragement by a local group of citizens, the Brenham City Council appointed a committee to develop a Historic Preservation Ordinance. City Main Street and Development Services Staff worked alongside the committee, meeting on average once a month since October. From the beginning, public input throughout the process was a priority. The committee produced six email newsletters between November and June. Newsletter subscribers had the opportunity to provide feedback, which was discussed and considered at each meeting. Postcards were mailed twice to downtown property owners encouraging them to subscribe and provide feedback or review the committee's progress on the City's website. An in-person public update was held on April 22, with 29 in attendance, and, in addition, Planning & Zoning, the Main Street Board, and City Council received public updates.

Along with sample ordinances from other Texas communities, the committee used a previously considered ordinance, drafted in 2009, with an overarching goal to address issues and concerns voiced at that time.

SUMMARY:

Our authentic and unique community identity is tied to the Downtown Brenham Historic District and positively impacts economic development in our area. Millions of dollars of

public investment contribute to a thriving downtown district that enhances the quality of life of all Brenham citizens. With at least ten buildings within the Downtown District changing hands since late 2020, change is inevitable as Brenham grows. The Historic Preservation Ordinance will preserve the authenticity for which we are known and protect the heavy public investment made in the past 20+ years.

With the adoption of the proposed Historic Preservation Ordinance, additional Historic Districts and Local Landmarks may be designated upon request by property owners and upon review by the Historic Preservation Board.

A brief summary of the sections included within the proposed Ordinance is outlined below. The complete proposed Historic Preservation Ordinance as drafted by City Staff and the Historic Preservation Committee is enclosed.

Sec. 1. Short Title and Purpose:

- In short, this Historic Preservation Ordinance's purpose is to protect, enhance, and encourage preservation to the historic district, while also continuing to bring pride to the community, as well as visitors to the area.

Sec. 2. Definitions:

- This section lists the different terms that are used in this ordinance. These definitions will help bring clarity to what each word may mean in this particular setting.

Sec. 3. Historic Overlay District:

- Refer to map of the proposed overlay district to see the properties that will be subject to the regulations of this Ordinance if approved by Council.

Sec. 4. Historic Preservation Board:

- The Brenham Historic Preservation Board, referred to as the "Board," will be responsible for assuring that the integrity of Landmarks and properties within Historic Districts are protected. This Board will be primarily property owners within the District and will be responsible for considering requests for a Certificate of Appropriateness.

Sec. 5. Historic Preservation Officer:

- The qualified city staff person(s) will be appointed by the City Manager to serve as the Historic Preservation Officer (HPO). The Historic Preservation Officer will review Certificate of Appropriateness Applications (COA) for Insignificant Alterations and grant or deny the application based on the proposed Ordinance.

Sec. 6. Designation of Historic Landmarks or Historic Districts:

- For a new Historic District designation to be considered by City Council, 60% of the property owners (one vote per property) in the proposed district shall submit in writing their approval to be designated as a Historic District.

If the request is approved, such district shall bear the words “Historic Overlay” (HO) in their zoning designation. Such designation and the requirements thereof shall be in addition to any other zoning district designation or requirement established in the City's Zoning Ordinance. Historic landmark designations must be requested by the property owner. The Historic Preservation Board shall make a recommendation for or against such designation to City Council.

Sec. 7. Certificate of Appropriateness:

- Ordinary Repairs and Maintenance, defined in Sec. 2. Definitions, does not require a Certificate of Appropriateness (COA).
- Significant Alterations, as defined in Sec. 2. Definitions, must first obtain a Certificate of Appropriateness from the Board.
- All new construction in the Historic Overlay District will be reviewed by the Historic Preservation Officer to ensure the façade complements the surrounding buildings and environment in relation to design, height, scale, and setback.
- If the application qualifies as an Insignificant Alteration, an Administrative Certificate of Appropriateness may be issued by the Historic Preservation Officer without review by the Board. Any appeal of the decision will be considered by the Board.

Sec. 8. Criteria for Approval of a Certificate of Appropriateness:

- The Board or Historic Preservation Officer shall be guided by the adopted Main Street Design Guidelines, and The Secretary of the Interior's Standards for Rehabilitation of Historic Buildings when reviewing and considering an application.

Sec. 9. Certificate of Appropriateness application procedures:

- A detailed list of application procedures and requirements are included in this section.

Sec. 10. Building Permit Required

- One must obtain a building permit from the City of Brenham Development Services Department before carrying out any significant exterior alteration, restoration, reconstruction, new construction or moving of a Landmark within a Historic District.

Sec. 11. Demolition

- ◦ Demolitions are approved by the Historic Preservation Board for properties located within the Historic District.

Sec. 12. Demolition by Neglect

- ◦ No property owner within the Historic District shall permit the property to fall into a serious state of disrepair or to allow deliberate or inadvertent neglect to the buildings or structures within the Historic District.

Sec. 13. Economic Hardship

- Property owner may submit for consideration by the Board and application claiming economic hardship within the context of the requirements of this Ordinance.

Sec. 14. Enforcement

- The Historic Preservation Officer may periodically inspect any work that was granted in accordance with a Certificate of Appropriateness to assure compliance of those requirements.

Sec. 15. Appeals

- A decision by the Board relating to economic hardship or a COA may be appealed within fifteen (15) days of receipt of the written decision. The City Council shall issue a final decision on all appeals from the Board within sixty (60) days of receiving the appeal.

Sec. 16. Tax Incentives

- Tax incentives will be provided for the renovation and rehabilitation of properties which are located within a historic district or designated as historic landmarks.

Sec. 17. Historical Markers and Plaques (Reserved)

Sec. 18. Penalties

- Failure to comply with any of the provisions of this Ordinance shall be deemed a violation.

ATTACHMENTS:

- (1) Ordinance for First Reading
- (2) HPO Downtown District Design Guidelines

RELEVANCE TO COMPREHENSIVE PLAN:

Plan 2040 includes Strategic Action Priorities for the City to focus on implementing over the next 20 years. Multiple priorities were adopted in relation to preserving the City's Historic Downtown District, state and nationally recognized landmarks and historic homes within the City.

RECOMMENDED ACTION:

Approve an Ordinance on its first reading amending Chapter 13, Reserved, of the Code of Ordinances of the City of Brenham, Texas to provide for the Historical Preservation, Protection and Enhancement of Districts and Landmarks of Historical and Cultural Importance and Significance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING CHAPTER 13, RESERVED, OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS; PROVIDING FOR THE PRESERVATION, PROTECTION AND ENHANCEMENT OF PLACES, AREAS, DISTRICTS AND LANDMARKS OF HISTORICAL, CULTURAL OR ARCHITECTURAL IMPORTANCE AND SIGNIFICANCE, AND ASSOCIATED MATTERS; PROVIDING FOR THE ADOPTION OF DESIGN GUIDELINES FOR THE BRENHAM DOWNTOWN HISTORIC DISTRICT; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PROPER NOTICE AND MEETINGS

WHEREAS, Section 211.001 et seq. of the Texas Local Government Code authorizes the City Council to protect and preserve places and areas of historical, cultural or architectural importance and significance; and

WHEREAS, Section 211.001 et seq. of the Texas Local Government Code authorizes the City Council to regulate and restrict the construction, reconstruction, alteration, or razing of buildings or other structures to maintain and protect heritage and property values in designated places and areas of historical, cultural or architectural importance and significance; and

WHEREAS, Section 214.001 et seq. of the Texas Local Government Code, authorizes the governing body of a municipality to, by ordinance, require the vacation, relocation of occupants, securing, repair, removal, or demolition of a building dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare based on minimum standards established for the continued use and occupancy of all buildings regardless of the date of their construction; and

WHEREAS, Section 214.00111 of the Texas Local Government Code provides additional authority to preserve substandard buildings as historic property to a municipality that is designated as a certified local government by the state historic preservation officer as provided by 16 U.S.C.A. Section 470 et seq.; and

WHEREAS, the City Council of the City of Brenham finds that the protection, preservation and enhancement of its historically and culturally significant places, areas and structures are important elements of the economic, educational, and cultural welfare of the City of Brenham; and

WHEREAS, the City Council finds historically and architecturally significant structures within a historically and architecturally significant area should be maintained in a manner that promotes the area and serves as a stimulus to the economic viability of the structure and the area; and

WHEREAS, the City Council finds that the preservation of the historic, architectural, and cultural features will stabilize property values, and promote harmonious, orderly, and efficient growth of the places and areas protected by this Ordinance; and

WHEREAS, the City Council finds that the enhancement of the area and its structures is in the best interest of the general welfare of the City of Brenham;

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

SECTION 1.

Chapter 13, Reserved, of the Code of Ordinances of the City of Brenham, Texas is hereby amended in its entirety to read as follows:

Sec. 13-1. Short Title and Purpose.

This Ordinance shall be known and may be cited as the “Historic Preservation Ordinance.” The City Council of the City of Brenham, Texas, hereby declares that as a matter of public policy the protection, enhancement and perpetuation of districts and landmarks of historical and cultural importance and significance are necessary to promote the economic, cultural, educational, and general welfare of the public. It is recognized that the historic districts and landmarks within the City of Brenham represent the unique confluence of time and place that shaped the identity of generations of citizens, collectively and individually, and produced significant historic, architectural, and cultural resources that constitute their heritage; and, therefore, this Ordinance is intended to:

- (a) Protect and enhance the districts and landmarks which represent distinctive elements of the City of Brenham’s historic, architectural, and cultural heritage;
- (b) Foster civic pride in the accomplishments of the past and to promote the use of historic landmarks for the culture, prosperity, education and general welfare of the people of the City of Brenham;
- (c) Protect and enhance the City of Brenham’s attractiveness to the community and its visitors, and thereby support and promote business, commerce, and industry, bringing economic benefit to the City and its citizenry;
- (d) Foster and encourage preservation, restoration and rehabilitation of properties within the historic districts and landmarks within the City, thereby preventing future blight;
- (e) Stabilize and improve the values of such properties;
- (f) Provide a review process for the continued preservation and appropriate development of the City’s historic resources;
- (g) Balance the rights of the public which justify preservation of the community’s history and culture, with those of private property owners who own and control property, and are entitled to the reasonable use and return from their assets;
- (h) Provide assistance to property owners and tenants as well as civic organizations concerned with historic preservation; and

- (i) Provide assistance to interested property owners with regard to preservation and renovation projects, e.g. tax incentives, low interest loans, design, construction, and pre-inspection consultations.

Sec. 13-2. Definitions.

Words, phrases and terms not defined herein nor defined in the City of Brenham Zoning Ordinance shall be given their usual and customary meanings except where the context clearly indicates a different meaning.

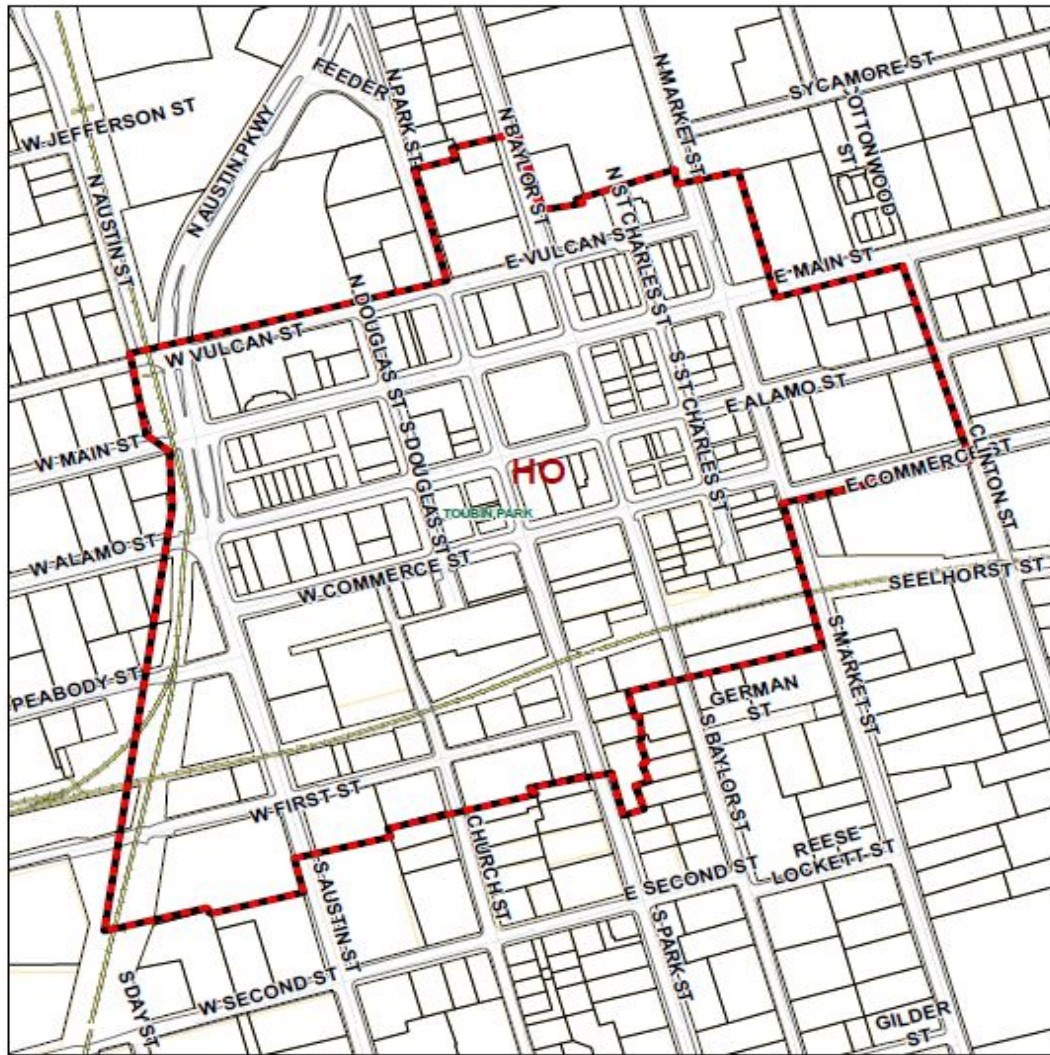
- (a) **Administrative Certificate of Appropriateness:** A document evidencing the approval of the Historic Preservation Officer, signed and dated by him or her, for Insignificant Alterations as such term is defined herein.
- (b) **Appurtenance:** Features that define the design of a building, Structure or property including but not limited to porches, railings, columns, shutters, steps, fences, attic vents, sidewalks, driveways, garages, carports, outbuildings, gazebos, and arbors.
- (c) **Board:** The Brenham Historic Preservation Board.
- (d) **Certificate of Appropriateness (COA):** A document evidencing the approval of the Historic Preservation Board, signed and dated by the chairperson of the Board or the Historic Preservation Officer, as applicable, for the addition, installation, construction, alteration, change, Restoration, removal, or Demolition of any Exterior Architectural Feature, resource or other significant Appurtenance of any Historic Landmark or of any building or Structure located within a Historic District, to be issued in cases further defined in this Ordinance where approval for the same is required.
- (e) **City:** The City of Brenham, Texas.
- (f) **Demolition:** An act or process that destroys, dismantles or tears down, in part or in whole, a Landmark, or a building or Structure within a Historic District.
- (g) **Demolition by Neglect:** A situation in which a property owner allows, or is allowing, in part or in whole, a Historic Landmark, or building or Structure within a Historic District, to suffer severe deterioration beyond, or potentially beyond, the point of repair or Rehabilitation.
- (h) **Design Guidelines for Brenham Downtown Historic Overlay District:** The design guidelines for the Downtown Historic District Overlay District adopted in accordance with and as provided for by this Ordinance.
- (i) **District, Historic Overlay District, or Historic District:** An area that: 1) possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects that are united historically or aesthetically by plan or physical development; and 2) is designated as a District, Historic Overlay District or Historic District pursuant to the applicable provisions of this Ordinance.
- (j) **Exterior Architectural Features:** The architectural style, design, general arrangement and components of all of the outer surfaces of a Structure, as distinguished from the interior surfaces, including but not limited to the kind, color and texture of the building material and the type and style of all windows, doors, lights and other fixtures of the Structure.
- (k) **Historic Preservation Officer:** The person who is appointed by the City Manager of the City of Brenham to administer the provisions of this Ordinance, or his or her designee.

- (l) **Insignificant Alteration:** Minor changes to the appearance of Exterior Architectural Features of a Structure which: 1) do not require a building permit; and 2) are reviewed and approved by the Historic Preservation Officer in compliance with Section 7 of this Ordinance.
- (m) **Landmark:** Refers to any individual Structure or Site that: 1) is significant for historical, architectural, engineering, archeological, or cultural reasons; and 2) is designated as a Landmark pursuant to the applicable provisions of this Ordinance.
- (n) **Ordinance:** This Historic Preservation Ordinance.
- (o) **Ordinary Repairs and Maintenance:** Any work, the sole purpose and effect of which is to correct or prevent deterioration, decay or damage, including repair of damage caused by storm, fire or other disaster, and which does not result in a change in the existing appearance or materials of a Structure or property. Examples of this type of work are further described in Section 7 of this Ordinance.
- (p) **Overlay Zone:** A set of zoning requirements that is adopted and described in the City of Brenham's Code of Ordinances, mapped, and is imposed in addition to those of the underlying zoning district. Development and improvements within the overlay zone must conform to the requirements of both zones, or the more restrictive of the two in the case of any conflict between the requirements.
- (q) **Preservation:** The act or process of applying measures to sustain the existing form, integrity, and material of a Structure, and the existing form of a Site.
- (r) **Rehabilitation:** The act or process of returning a Structure or property to a state of utility through repair or alteration with makes possible an efficient contemporary use while preserving those portions or features of the Structure or property which are significant to its historical, architectural, and cultural values.
- (s) **Restoration:** The act or process of accurately recovering the form and details of a Structure or property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.
- (t) **Significant Alteration:** Additions or changes to any part of the exterior of a Structure that require a building permit; represents new construction or is added as material to an existing feature of a Structure, as well as changes that alter design, architectural elements or character of a Structure.
- (u) **Site:** The location of a significant event, historic occupation or activity, or a Structure, whether standing, ruined, or vanished, where the location itself possesses historical, cultural, or archeological value regardless of the purely economic value of any existing Structure.
- (v) **Sign Standards:** The applicable requirements and guidelines as are established in the City of Brenham Sign Ordinance, as may be amended from time to time.
- (w) **Structure:** Any man-made building or object constructed or erected upon real property.

Sec. 13-3. Historic Preservation Overlay Districts.

The Brenham Downtown Historic District (the "Downtown Overlay District") is hereby adopted and the boundaries, as described herein below, shall be designated with an "HO" on the official zoning map and Historic Overlay District map of the City of Brenham.

After the effective date of the original enactment of this Historic Preservation Ordinance, additional areas designated as Historic Preservation Overlay Districts in compliance with the provisions hereof shall be delineated with an “HO” on the official zoning map and Historic Overlay District map of the City of Brenham. Said Historic Preservation Overlay Districts are also sometimes referred to herein as Historic Districts or Districts.



Downtown Historic Overlay District Map Containing 49.412 Acres

Sec. 13-4. Historic Preservation Board.

There is hereby created a Board to be known as the Brenham Historic Preservation Board, hereinafter sometimes referred to as the “Board,” which shall be charged with the responsibility of assuring that the integrity of designated Historic Landmarks and properties within Historic Districts are protected. The members of this Board shall be subject to all requirements and provisions applicable to all board or committee members as may be established by the City Council.

- (a) The Board shall be composed of seven (7) voting members appointed by City Council, and a minimum of four (4) Board members shall be property owners within a Historic District, or an owner of a Historic Landmark. Other members should be appointed, to the extent possible, from the following categories: architect with historic preservation experience; planner; design professional; historian; licensed real estate broker; attorney; or member of a historic preservation society.
- (b) All Board members shall have a known and demonstrated interest, competence, or knowledge of historic preservation within the City, or in general.
- (c) Board members shall serve for staggered terms of three (3) years. For the initial Board members, the Historic Preservation Officer shall draw lots to establish the staggered terms with four (4) of the initial Board members serving 2-year terms and the remainder serving a full 3-year term. Board membership shall be limited to two (2) full consecutive terms, with a minimum one (1) year absence from the Board before consideration for reappointment.
- (d) The Chair and Vice-Chair of the Board shall be elected by and from the members of the Board and shall serve as said officers for a term of one (1) year.
- (e) The Board shall meet monthly if business is at hand. Special meetings may be called at any time as requested by the Historic Preservation Officer. All meetings shall be held in conformance with the Texas Open Meetings Act.
- (f) A quorum shall consist of not less than four (4) members.
- (g) The Board shall:
 - 1. Establish criteria for the identification of historic, architectural and cultural Landmarks.
 - 2. Recommend conferral of recognition upon the owners of Landmarks or within Districts by means of certificates, plaques or markers.
 - 3. Increase public awareness of the value of historic, cultural and architectural preservation by encouraging and participating in public education programs developed by the Historic Preservation Officer.
 - 4. Make recommendations to the City Council concerning the utilization of local, state, federal or private funds to promote the preservation of Landmarks and Historic Districts within the City.
 - 5. Grant or deny Certificates of Appropriateness for Significant Alterations in accordance with Sections 8 and 9 of this Ordinance.
 - 6. Adopt specific design guidelines for the review of new Landmarks and new Districts to ensure compatibility within the District.
 - 7. Prepare and submit to the City Council an annual report on the state of historic preservation in the City, a summary of activities for the past year and a proposed program for the next year.
 - 8. Perform any other such activities necessary to achieve the goals of this Ordinance, and other duties as assigned by the City Council.
 - 9. Review and make comments to the Texas Historical Commission concerning the nomination of properties within its jurisdiction to the National Register of Historic Places;
 - 10. Monitor and report to the Texas Historical Commission any actions affecting any county courthouse, Recorded Texas Historic Landmark, State Antiquities Landmark, National Register property, and any locally designated landmark.

Sec. 13-5. Historic Preservation Officer

The City Manager shall appoint a qualified City staff person to serve as the Historic Preservation Officer (“HPO”). The HPO shall administer and enforce the terms of this Ordinance as provided herein and advise the Board, as an ex-officio member, on matters submitted to it.

The HPO shall review Certificate of Appropriateness Applications for Insignificant Alterations and grant or deny the application.

As the City of Brenham liaison to the Board, the HPO will ensure proper posting and noticing of all Board meetings, schedule applications for Board review; provide information packets to its members prior to the meetings, record meeting minutes and facilitate Board meetings.

In addition to serving as liaison to the Board, the HPO will maintain an inventory of significant historic, architectural and cultural Landmarks and Historic Districts within the City.

The HPO is responsible for coordinating the City’s preservation activities with those of state and federal agencies and with local, state and national nonprofit preservation organizations.

Sec. 13-6. Designation of Historic Landmarks or Historic Districts

(a) Historic Districts

Historic District zoning designation. Designation of a Historic District will be considered by City Council if requested by at least sixty percent (60%) of property owners (one vote per property) within the proposed district and upon recommendation by the Historic Preservation Board and Planning and Zoning Commission. Such districts shall bear the words “Historic Overlay” (“HO”) in their zoning designation. Such designation and the requirements thereof shall be in addition to any other zoning district designation or requirement established in the City’s zoning ordinance and in this Ordinance.

(b) Historic Landmarks

Historic landmark designation. Individual historic sites may be designated only upon the request of the property owner. Pursuant to Texas Local Government Code Section 211.0165(e), the City shall allow the property owner to withdraw the designation request/consent at any time during the Historic Landmark designation process. Following an owner’s application, the Historic Preservation Board shall make a recommendation for or against such designation to the City Council which may designate certain buildings, sites, structures and objects as Historic Landmarks. Each such property or Resource shall bear the words “Historic Landmark” (“HL”) in its zoning designation. Such designation shall indicate that such property/Resource is subject to the terms of this Ordinance. Provided, however, with regard to site plans, uses, setback and other development and/or building regulations, such property shall be governed by its zoning district.

(c) Criteria

1. *Historic District criteria.* In making the designation of an area as a historic district, the City Council shall affirmatively find that the area has one or more of the following characteristics:
 - a. Possesses significance in history, architecture, archeology and/or culture.
 - b. Is associated with events that made a significant contribution to the broad patterns of local, regional, state and /or national history.
 - c. Is associated with the lives of persons significant in our past.
 - d. Embodies the distinctive characteristic of a type, period and/or method of construction.
 - e. Represents the work of a master designer, builder and/or craftsman;
 - f. Represents an established and familiar visual of the City.
2. *Historic Landmark criteria.* In making the designation of a place as a historic landmark, the City Council shall follow the criteria set forth in the historic district criteria subsection of this section as the same relate to an individual property, part of a property or Resource thereof.

(d) Applications for Designation of Historic District or Historic Landmark

1. Applications to designate or change the boundaries of a historic district or to designate a historic landmark must include:
 - a. A legal description of the boundaries of the district or site on which the historic landmark is located;
 - b. A photograph or photographs of each contributing building, structure, site, area or land;
 - c. A description of all buildings, structure, site, area or land showing the condition, color, and architectural style of each and:
 1. Date of construction, if known;
 2. Builder or architect, if known;
 3. Chain of uses and ownership;
 4. Building materials;
 5. Construction technique; and
 6. Summary of recognition of state or national government including reason designated, if applicable.
 - d. A statement of reasons for recommending designation or changes to the historic district or designation of the historic landmark, including a list of contributing buildings, structures, sites, areas or lands of importance and a description of the particular importance of each contributing building, structure, site, area or land;
 - e. Findings supporting designation of or change to the historic district or designation of the historic landmark according to the criteria in this section and indicating the particular importance or value of the historic district or the historic landmark; and
 - f. Signature of applicant. Eligible applicants are: property owner [or 60 percent of owners (one vote per property) in a proposed historic district of more than one property]; Historic Preservation Board (historic district only); or Historic Preservation Officer (historic district only).

2. The Board shall conduct a public hearing on the proposed historic district or historic landmark. At least fifteen (15) days prior to the date of the Board's hearing concerning a proposed Historic Landmark designation, the City must provide the property owner a statement that describes the impact that the Historic Landmark designation of the owner's property may have on the owner and the owner's property. The Historic Landmark designation impact statement must include a list of the: (1) regulations that may be applied to any structure on the property after the designation; (2) procedures for the designation; (3) tax benefits that may be applied to the property after the designation; and (4) rehabilitation or repair programs that the City offers, if any, for a property designated as a Historic Landmark. The property owner may, in the property owner's written application for the designation of a Historic Landmark, waive the right to require the City to provide the Historic Landmark designation impact statement to the property owner.
3. At the Board's public hearing, owners, interested parties, and technical experts may present testimony or documentary evidence which will become part of the record regarding the historic, architectural, or cultural importance of the proposed historic district or historic landmark. The Board shall prepare a recommendation on the proposed change stating its findings and evaluation within thirty-two (32) days subsequent to the hearing on the proposed designation.

Sec. 13-7. Certificate of Appropriateness.

- (a) Ordinary Repairs and Maintenance as defined above does not require a Certificate of Appropriateness.

Ordinary Repairs and Maintenance include, but are not limited to:

1. Painting an already painted surface the same color;
2. Repair of architectural features using the same materials;
3. New roof, if not seen from public right-of-way;
4. Cleaning a Structure with low-to-mid pressure power washing;
5. Replacement of mechanical equipment; and
6. Replacement of foundation work, chimney work, or similar if no change in appearance occurs.

- (b) Any person performing Significant Alterations must first obtain a Certificate of Appropriateness from the Board.

Significant Alterations include, but are not limited to:

1. Work requiring a building permit to meet construction requirements in accordance with adopted codes and ordinances, unless otherwise specified herein;
2. Work that represents new construction and is added as material to an existing feature of a building;

3. Changes that alter design, architectural elements or character of a building; and
 4. Moving or demolition of a Landmark or property within a Historic District visible from the public right-of-way.
- (c) **New construction in Historic Districts.** The Historic Preservation Officer, or the Board, if requested by the applicant, will review all new construction plans within Historic Districts in order to ensure the exterior architectural features visually complement the surrounding buildings and environment in relation to design, height, scale, and setback.
- (d) Provided the application sought to be approved qualifies as an Insignificant Alteration, an Administrative Certificate of Appropriateness may be issued by the Historic Preservation Officer as an administrative matter without review by the Board. Any appeal of the decision shall be considered by the Board.

Insignificant Alterations include, but are not limited to:

1. Changes to exterior paint colors on previously painted surfaces;
2. Replacement of a non-historic door with one in keeping with the character and era in which the building was built;
3. Removal of non-historic features such as burglar bars, awnings, shutters;
4. Removal on non-historic siding to expose historic siding;
5. Elements attached to the exterior of any building or structure, including door hardware, hinges, mailboxes, and light fixtures; and
6. Minor modifications to an existing Certificate of Appropriateness that, after modification, still meets the intent of the original approval.
7. Repainting or refurbishing a “mural,” as defined in the City’s Sign Ordinance.

Sec. 13-8. Criteria for approval of a Certificate of Appropriateness.

In considering an application for a Certificate of Appropriateness or Administrative Certificate of Appropriateness, the Board or Historic Preservation Officer shall be guided by any adopted design guidelines, and the following from *The Secretary of the Interior’s Standards for Rehabilitation of Historic Buildings*. Any adopted guidelines and the *Secretary of the Interior’s Standards* shall be made available to the public through the office of the Historic Preservation Officer and on the City’s website.

The guidelines and standards adopted by this Ordinance are not intended to apply to the design, construction, and aesthetics of the interiors of buildings and Structures.

- (a) Every reasonable effort shall be made to adapt the property in a manner which requires minimal alteration of the building, structure, object, or site and its environment.
- (b) The distinguishing original qualities or character of a historic building, structure, object, or Historic Property of any kind and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.

- (c) All buildings, structures, objects and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- (d) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, object, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- (e) Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, object or site shall be retained wherever possible.
- (f) Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should reflect the material being replaced in composition, design, color, texture and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplication of features, substantiated by historical, physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- (g) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- (h) Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- (i) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural, or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood, or environment.
- (j) Whenever possible, new additions or alterations to buildings, structures, objects, or sites shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the building, structure, object, or site would be unimpaired.

Sec. 13-9. Certificate of Appropriateness application procedures.

- (a) Prior to the commencement of any work requiring a Certificate of Appropriateness, the owner or the owner's representative shall file an application and supporting materials for such certificate, and one (1) complete copy of the application and supporting materials, with the Historic Preservation Officer, who shall forward one (1) copy of the application and supporting materials to the City's Building Official or designee.

The property owner or the owner's representative shall consult with the Historic Preservation Officer prior to submission of the application with regard to the applicable standards and guidelines for the property.

- (b) The application shall contain all of the following information and items (except where otherwise noted):
 - 1. Name and signature of applicant and property owner.
 - 2. Mailing address, phone number and email address of applicant and address, phone number and email address of property owner.

3. The location and photographs of the existing conditions of the property and adjacent properties.
 4. A detailed description of the nature of the proposed work.
 5. Samples of materials to be used, including paint color chips that will be used.
 6. Evidence of historic authenticity (photographs). (Significant Alterations only)
 7. Site plan and exterior elevations (Significant Alterations only)
- (c) The Board shall review the application at a regularly scheduled, or specially called meeting within thirty-five (35) days from the date that the application was received. The Board may hold any additional meetings needed within sixty (60) days of the application. Should the Board not act within the 60-day period, the Certificate of Appropriateness shall be deemed automatically approved.
- (d) If the Historic Preservation Officer determines that the application is for an Insignificant Alteration, he/she may, within fourteen (14) days, approve the application. *The Secretary of the Interior's Standards for Rehabilitation* will be used in assessing the application.
- (e) All decisions of the Board and Historic Preservation Officer shall be in writing. Decisions shall state findings pertaining to the approval, denial, or modification of the application. A copy shall be sent to the applicant, and a copy attached to the building permit for public inspection.
- (f) A certificate will expire twelve (12) months after its issuance but will continue as long as work is not discontinued for a period of twelve (12) months, in which a case a new certificate is required. In the event a certificate expires and is discontinued, the HPO is authorized to administratively approve a new certificate having identical terms and provisions as the original certificate.
- (g) Certificates of Appropriateness may be issued for distinct and separate phases of an ongoing project.

Sec. 13-10. Building permit required

No person shall carry out any significant exterior alteration, restoration, reconstruction, new construction or moving of a Landmark or property within a Historic District without first obtaining a building permit from the City of Brenham Development Services Department.

Sec. 13-11. Demolition.

- (a) A permit for the demolition of a Historic Landmark or property within a Historic District, including secondary buildings, shall not be granted by the City's Building Official without the review of a completed application and issuance of a Certificate of Appropriateness for demolition by the Board.
- (b) The Board shall hold a public hearing on each application within sixty (60) days from the date the application is received by the City of Brenham Development Services Department. Following the hearing, a 60-day stay of demolition is required. The Board has thirty (30) days in which to prepare a written recommendation to the Chief Building Official. In the event that the Board does not act within one hundred twenty (120) days of the receipt of the application, a permit shall be granted.

- (c) The City of Brenham retains all of the rights and remedies to obtain damages for demolition of Historic Property set forth in Texas Local Government Code Section 315.006, as may be amended from time to time, and in accordance with additional rights as may be available in law or equity.
- (d) Nothing herein shall be construed to impair, limit or suspend the emergency powers of the City of Brenham and its officials pertaining to demolition of structures in cases of emergency, such as calamity or natural disasters.

Sec. 13-12. Demolition by Neglect.

- (a) No owner or person with an interest in real property designated as a Landmark or included within a Historic District shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Board, produce a detrimental effect upon the character of the Historic District as a whole, or the life and character of the property itself. It is the intent of this Ordinance to preserve from deliberate or inadvertent neglect the exterior features of the buildings and structures so designated or included within the District and the interior portions thereof, when such maintenance is necessary to prevent deterioration and decay of the exterior.
- (b) All historical buildings or structures shall be preserved against decay and deterioration and free from structural defects through prompt corrections of any of the following defects:
 - (1) Facades which may fall and injure persons or property;
 - (2) Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls or other vertical structural supports;
 - (3) Members of ceilings, roofs, ceiling and roof supports or other horizontal members which sag, split, or buckle due to defective material or deterioration;
 - (4) Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations, or floors, including broken windows or doors;
 - (5) Defective or insufficient weather protection for exterior wall covering, including lack of paint or weathering due to lack of paint or other protective covering;
 - (6) Any fault or defect in the building or structure which renders it not properly watertight or structurally unsafe; and
 - (7) Deterioration of any feature as to create a hazardous condition, which could lead to the claim that demolition is necessary for public safety.

Sec. 13-13. Economic Hardship

- (a) After receiving written notification from the Board of the denial of a Certificate of Appropriateness, an applicant may commence the hardship process. No building permit or demolition permit shall be issued unless the Board makes a finding that hardship exists.
- (b) When a claim of economic hardship is made due to the effect of this Ordinance, the owner must prove that:
 - 1. The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;

2. The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and
 3. Efforts to find a purchaser interested in acquiring the property and preserving it have failed.
- (c) The applicant shall consult in good faith with the Board, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the property. Such efforts must be shown to the Board.
 - (d) The Board shall hold a public hearing on the hardship application and notify all property owners within the applicable historic district or those within 200 feet of a landmark at which an opportunity will be provided for proponents and opponents of the application to present their views.
 - (e) All decisions of the Board shall be in writing. A copy shall be sent to the applicant by certified mail and a copy filed with the City Secretary's office for public inspection. The Board's decision shall state the reasons for granting or denying the hardship application.

Sec. 13-14. Enforcement.

All work performed pursuant to a Certificate of Appropriateness issued under this Ordinance shall conform to any requirements included therein. The City's Historic Preservation Officer may inspect periodically any such work to assure compliance with the Certificate of Appropriateness. In the event work is found that is not being performed in accordance with the Certificate of Appropriateness, the Historic Preservation Officer shall issue a stop work order to the contractor and property owner, and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop work order is in effect. Work may be reinstated, however, upon assurance that compliance will henceforth exist. Irrespective of the provisions in this Ordinance, the City's Building Official or designee may inspect properties to ensure compliance with building regulations, as necessary.

Sec. 13-15. Appeals.

Any person aggrieved by a decision of the Board relating to Economic Hardship or a Certificate of Appropriateness may, within thirty (30) days of receipt of the written decision, file a written application with the City Council, through the office of the City Secretary, for review of the decision and the approval, denial, modification of, or deviation from, the Board's decision. The appeal application shall be set before the City Council at the first available City Council meeting. The City Council shall issue a final decision on all appeals from the Board within sixty (60) days of receiving the appeal. The City Council's decision shall be final.

Sec. 13-16. Tax Incentives

The purpose of this section is to encourage historic preservation by providing tax incentives for the renovation and rehabilitation of properties which are located within a historic district or designated as historic landmarks.

(a) Criteria

In accordance with Section 11.24 of the Texas Tax Code, the owner of a building and/or structure may apply to the City Council for a tax exemption if the following criteria are met:

- (1) The building and/or structure is designated as a historic landmark or located within a historic district; and
- (2) The site has been designated as a local historically significant site in need of tax relief to encourage its preservation; and
- (3) The building and/or structure has been substantially rehabilitated and/or restored as authorized by the Brenham Historic Preservation Board; and
- (4) The building and/or structure is maintained in compliance with all applicable City codes and regulations.

(b) Available Tax Incentives

The period of tax exemption for a building or structure shall run concurrently. Property owners with more than one historic landmark or structure within a historic district may be eligible for multiple exemptions. Eligible properties that meet the criteria established herein shall be entitled to the following municipal tax incentives:

- (1) The increase in appraised value caused directly by eligible improvements completed pursuant to a Certificate of Appropriateness shall not be added to the appraised tax value of the building or structure for municipal tax purposes for a period of three (3) years when the property owner(s) expend \$5,000.00 - \$25,000.00 on eligible improvements;
- (2) The increase in appraised value caused directly by eligible improvements completed pursuant to a Certificate of Appropriateness shall not be added to the appraised tax value of the building or structure for municipal tax purposes for a period of five (5) years when the property owner(s) expend \$25,000.01 - \$50,000.00 on eligible improvements; or
- (3) The increase in appraised value caused directly by eligible improvements completed pursuant to a Certificate of Appropriateness shall not be added to the appraised tax value of the building or structure for municipal tax purposes for a period of seven (7) years when the property owner(s) expend more than \$50,000.00 on eligible improvements

(c) Eligible Improvements

Eligible improvements shall consist of all improvements and work performed on a building or structure, classified as historic landmark or located within a historic district and thereby considered to be a local historically significant site as contemplated by Section 11.24 of the Texas Tax Code, which are completed pursuant to a valid Certificate of Appropriateness.

(d) Application for Tax Incentive

An Application for Tax Incentive shall be filed with the Historic Preservation Board. In the event the Application for Tax Incentive is received and the Board deems the improvements to qualify as eligible improvements under the terms set forth herein, the Historic Preservation Board shall approve the Application for Tax Incentive and forward the Application to the City Council with a recommendation for final approval. The Application for Tax Incentive may be processed concurrently with the application for a Certificate of Appropriateness. Each application shall be signed by the owner(s) of the property and shall include the following:

- (1) The legal description and address of the property;
- (2) Proof of ownership of the property;

- (3) A written statement of the owner describing the historic, cultural, architectural or archeological significance of the structure in need of municipal tax relief to encourage its preservation; and
- (4) Proof that the taxes on the property are not delinquent; and
- (5) A statement of costs for the project that must be validated upon conclusion of the project by the City Building Inspector.

(e) City Council Review

Upon the approval of an Application for Tax Incentive by the Brenham Historic Preservation Board, the City Council shall consider the Application to determine its compliance with the requisites stated herein. In the event the Application is deemed in compliance, the owner(s) of the property shall be entitled to the tax incentive. The tax exemption applies only to City property taxes and not to taxes assessed by or payable to any other taxing units. The property owner(s) will be responsible for obtaining a copy of the documentation, certified by the City Secretary, evidencing the City Council's approval of the Application and submitting that information to the Washington County Appraisal District for processing. Further, in order to receive the tax exemption, the property owner(s) shall be responsible for timely filing an application for tax exemption each year with the Washington County Appraisal District in accordance with the applicable provisions of the Texas Tax Code. The tax exemption runs with the property notwithstanding any change in ownership, provided the property owner(s) comply with the applicable provisions of this Ordinance and the Texas Tax Code.

Sec. 13-17. Penalties.

Failure to comply with any of the provisions of this Ordinance shall be deemed a violation, and the violator shall be liable for a misdemeanor charge and be subject to fine not to exceed \$100.00, and each day that such violation continues shall constitute a separate offense and shall be punishable accordingly. Notwithstanding the preceding sentence, the City may bring a civil action to enjoin any violation of the terms of this Ordinance or an action for mandatory injunction to remove any previous violation hereof.

SECTION 2.

BREHAM DOWNTOWN HISTORIC DISTRICT DESIGN GUIDELINES

The "Design Guidelines for the Brenham Downtown Historic District," attached hereto as Exhibit "A" and incorporated herein for all pertinent purposes, are hereby adopted as the design guidelines governing the maintenance and improvement of structures located in the Brenham Downtown Historic District. The "Design Guidelines for the Brenham Downtown Historic District" shall not be codified in the Code of the Ordinances, City of Brenham, Texas, but may only be amended, altered or repealed by an ordinance adopted by the Brenham City Council.

SECTION 3.

SAVINGS CLAUSE

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

**SECTION 4.
SEVERABILITY**

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

**SECTION 5.
REPEALER**

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

**SECTION 6.
EFFECTIVE DATE**

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

**SECTION 7.
PROPER NOTICE AND MEETINGS**

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

PASSED and APPROVED on its first reading this the ____ day of _____ 2021.

PASSED and APPROVED on its second reading this the ____ day of _____ 2021.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary

Design Guidelines

for the

**Brenham Downtown
Historic District**

Brenham, Texas

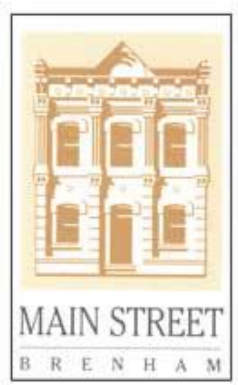


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Introduction

These Guidelines are a mechanism for the maintenance and improvements to the site and buildings of the Brenham Downtown Historic District. It is not the intention of the Guidelines to restrict the use and appearance of each property but rather to preserve the historic character and integrity of the buildings and district through the use of appropriate limits of change. The document is intended to guide the property owner and Historic Preservation Board in making appropriate decisions about maintenance and improvement of the historic structures and surrounding property.

These Guidelines shall be used in conjunction with and shall not supercede the following Codes and Standards:

- All applicable local building codes
- *The Secretary of the Interior's Standards for the Treatment of Historic Properties*
- *The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings.*
- State of Texas Historic Preservation Ordinances
- Local Historic Preservation Ordinances

A local tax incentive program is available for major renovation projects. There is also an Incentive Grant Reimbursement Program for exterior finishes and signage. More information is available at the Main Street office at (979) 337-7384.

Many of Brenham historic downtown structures are contributing resources to the Brenham Downtown Historic District listed on the National Register of Historic Places in 2004. In order to be considered contributing, properties must exhibit the applicable National Register criteria:

- Property is associated with events that have made a significant contribution to the broad patterns of our history.
- Property is associated with the lives of persons significant in our past.
- Property embodies the distinctive characteristics of a type, period, or method of construction or represents the work of a master, or possesses high artistic value, or represents a significant and distinguishable entity whose components lack individual distinction.
- Property has yielded, or is likely to yield, information important in prehistory or history.

Properties that have been altered or destroyed since their designation may not be considered as a contributor and will lose eligibility for grants and incentives. A copy of the National Register Application may be viewed at the Main Street office at City Hall.

Properties that are currently listed are eligible for tax incentives. For more information, contact the Texas Historical Commission.

Purpose

The purpose of these Guidelines is to preserve the historic character and integrity of the Brenham Downtown Historic District established in 2004. The structures in the district should be preserved in accordance with The Secretary of the Interior's Standards for the Treatment of Historic Properties and The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings.

The intent of which is to identify, retain, and preserve “the form and detailing of those architectural materials and features that are important in defining the historic character.” It is expected that the property owner will protect and maintain materials and features that are historically significant, repair when character-defining materials warrant additional work, and replace features with new materials where the level of deterioration or damage precludes repair.

This document may be used to guide both the maintenance and improvement of the historic structures. Each of the historically significant features and materials of the structures is outlined in the Guidelines. In conjunction with *The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings*, these Guidelines provide specific direction for the replacement of damaged or deteriorated features and other improvements, which are necessary updates for contemporary use and are consistent with the historic character of the original structures.

The Secretary of the Interior's Standards for Preservation

1. A property will be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces and spatial relationships. Where a treatment and use have not been identified, a property will be protected and, if necessary, stabilized until additional work may be undertaken.
2. The historic character of a property will be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place and use. Work needed to stabilize, consolidate and conserve existing historic materials and features will be physically and visually compatible, identifiable upon close inspection and properly documented for future research.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. The existing condition of historic features will be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material will match the old in composition, design, color and texture.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

<https://www.nps.gov/tps/standards.htm>

The Secretary of the Interior's Standards for Rehabilitation

The Standards (Department of Interior regulations, 36 CFR 67) pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and the interior, related landscape features and the building's site and environment as well as attached, adjacent, or related new construction. The Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

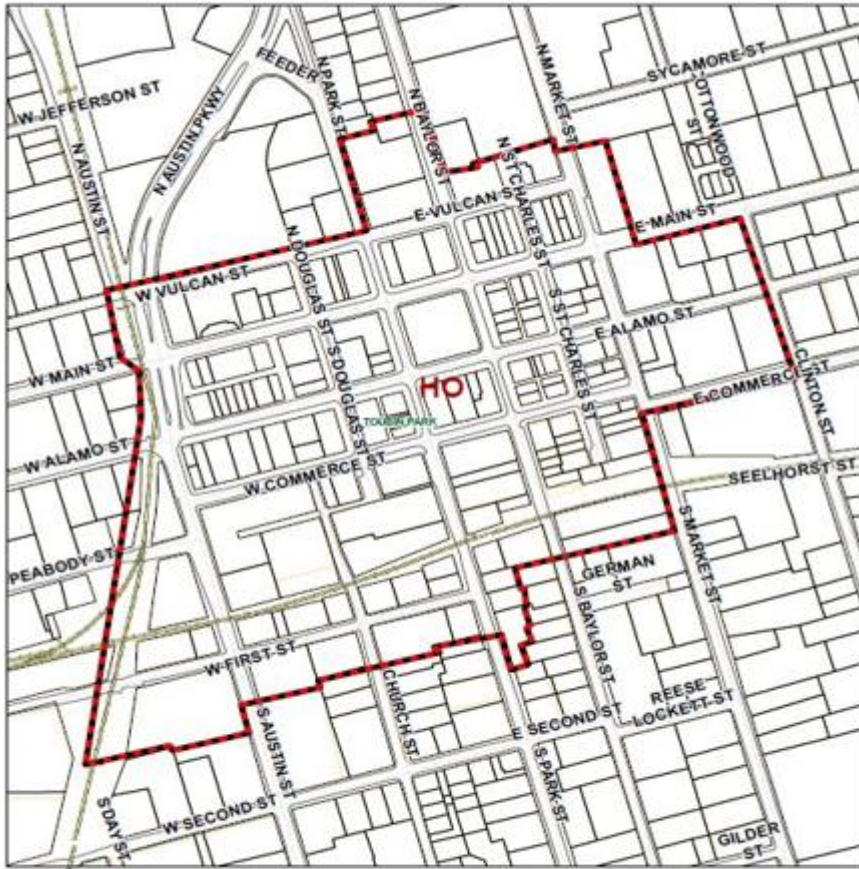
1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

<https://www.nps.gov/tps/standards/rehabilitation/rehab/stand.htm>

Planning for Preservation and Rehabilitation

1. Inspect the existing condition of the structure. Note features and materials that need maintenance or repair. Determine the priorities for work. It is recommended that structural components and integrity of the exterior envelope (roof, walls, windows, doors) be given priority for work prior to proceeding with other repairs or alterations.
2. Confirm features and materials that are character defining and contribute to the historic qualities of the property.
3. Consider the requirements and options to achieve the functional, structural, and aesthetic alterations and additions desired. Choose the options which best preserve the historic character of the property.
4. Confirm applicable codes and standards for the proposed scope of work. Verify impact of codes and standards on the intent of the alterations and consistency with preservation of the historic character of the property.
5. Contact local and state historic preservation offices for further assistance with project compliance.
Local: Main Street Brenham (979) 337-7384
State: Texas Historical Commission (512) 463-6100
Website: www.thc.texas.gov
Email: thc@thc.texas.gov
6. Proceed to develop a plan for project construction in accordance with these Guidelines.

Map of the HPO Overlay District



Downtown Historic Overlay District Map Containing 49.412 Acres

Building Exterior – Masonry

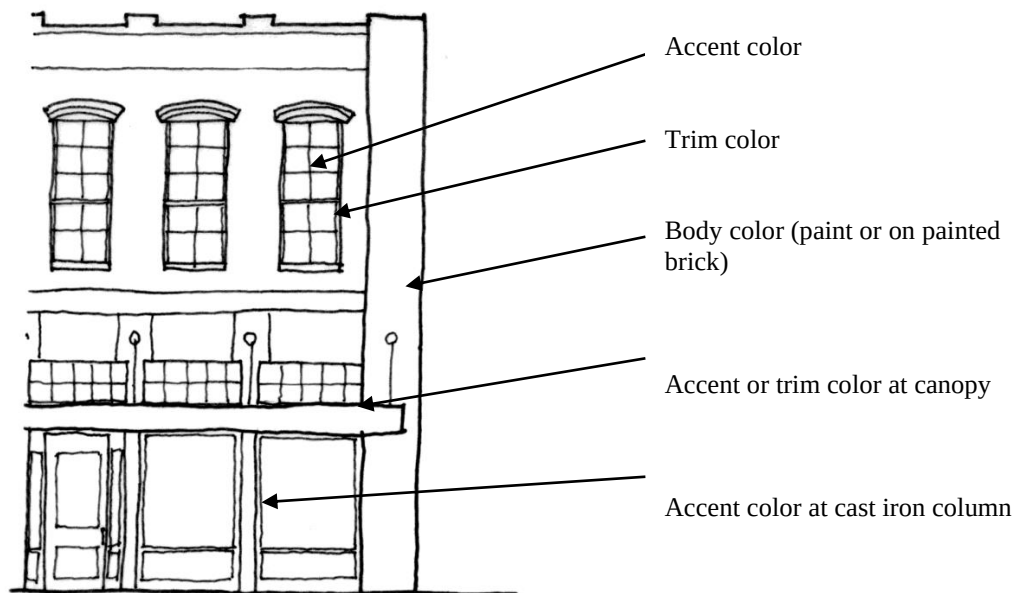
- Existing, unpainted masonry surfaces shall not be painted without receiving a Certificate of Appropriateness.
- Existing masonry surfaces shall be maintained. Damaged materials, when removed, shall be replaced with materials that are the same as or, if approved by the Historic Preservation Officer, similar to the existing masonry.
- Existing concrete surfaces shall be maintained. Damaged materials, when removed, shall be patched and repaired such that the coloration and texture is consistent with the existing concrete.
- Existing, unpainted concrete steps, walls, and floors at the exterior may not be painted without receiving a Certificate of Appropriateness.
- Proper maintenance of exterior masonry surfaces includes:
 - Cleaning with the gentlest method possible to remove dirt and other deleterious materials from the affected surfaces.
 - Ensuring that all surfaces drain properly such that water does not accumulate on any of the surfaces.
- Masonry shall be repointed if necessary. Repointing is the repair of cracks or damaged mortar joints and is considered a significant alteration, requiring an Administrative Certificate of Appropriateness. The new mortar shall be consistent with the original mortar in type, strength, and coloration. In addition, the joint type and thickness should not be modified.

Building Exterior – Wood

- Existing wood surfaces shall be maintained. Damaged materials, when removed, shall be selectively replaced with wood siding and trim that maintain the dimensional, texture, and detail characteristics of the existing materials.
- Proper maintenance of exterior wood surfaces includes:
 - Cleaning surfaces with the gentlest method possible to remove dirt and other deleterious materials from the affected surfaces.
 - Ensuring that all surfaces drain properly such that water does not accumulate on any of the surfaces.
 - Frequently inspecting painted wood surfaces to ensure that the paint will protect the wood from the elements.
- Wood siding and trim may not be replaced or concealed by synthetic wood surfaces such as:
 - Vinyl siding and trim
 - Aluminum siding and trim
 - Cementitious siding and trim

Building Exterior - Paint

- Existing painted surfaces may contain lead. Prior to undertaking any necessary paint removal, refer to the National Park Services *Health and Safety Considerations* for more information.
- Existing painted surfaces shall be maintained. Damaged or deteriorating paint may be removed using the gentlest methods possible. Refer to *Health and Safety Considerations* for more information on paint removal.
- Original masonry surfaces shall be maintained and not painted, unless severe deterioration of the brick or stone can be shown to require painting. If color or texture of replacement brick or stone cannot be matched with existing, painting may be an appropriate treatment.
- Proper maintenance of exterior painted surfaces includes:
 - Cleaning with the gentlest method possible to remove dirt and other deleterious materials from the affected surfaces.
 - Ensuring that all surfaces drain properly such that water does not accumulate on any of the surfaces.
 - Frequently inspecting painted wood surfaces to ensure that the paint will protect the wood from the elements.



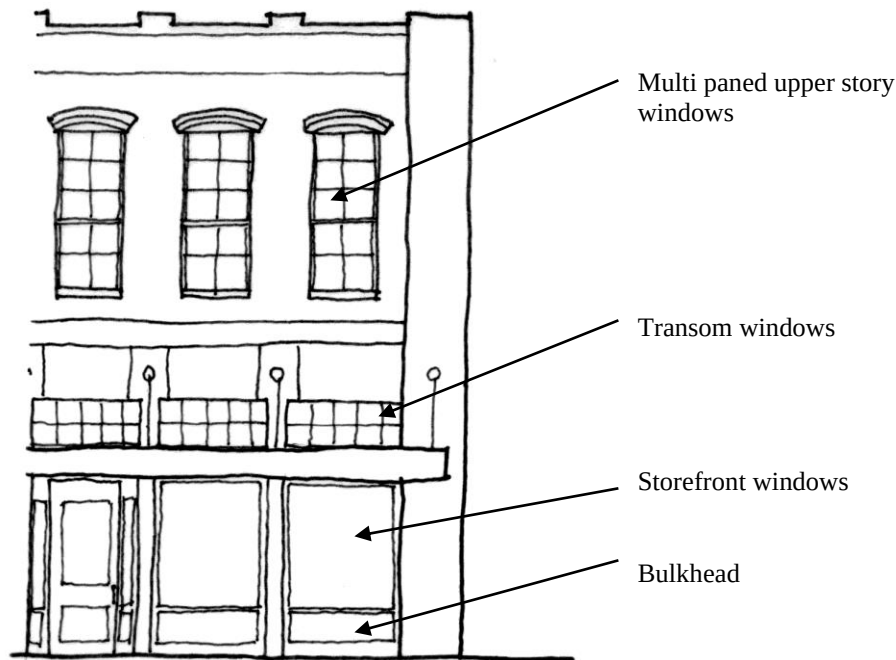
Building Exterior – Architectural Metals

- Existing metals, including gutters and downspouts, decorative railings, and flashings, shall be preserved and maintained. Damaged materials, when removed, shall be replaced with materials that match as closely as possible to the original metalwork.
- Existing exposed copper gutters and downspouts should be cleaned regularly for proper maintenance. If replacement of components is necessary, existing materials, forms, and finishes should be matched.
- Existing concealed gutter and downspout systems shall be retained in their original design and operation. Systems shall be cleaned regularly for proper maintenance. If repair is required, care shall be exercised in the removal and replacement of trim, flashings, and other components. Gutters and downspouts shall be replaced with components of the same material and size to prevent conflicts between incompatible materials.
- Existing decorative metal railings should be repaired and maintained. If replacement is needed, railings may be removed or replaced with metal or wood railings that meet local building code requirements and preserve the historic character of the structure.
- Existing metal flashings, shall be maintained. If new flashings are required to prevent water penetration, the new material shall match the old in type, size, thickness, and installation pattern.
- Proper maintenance of metal surfaces includes:
 - Cleaning with the gentlest method possible to remove dirt and other deleterious materials from the affected surfaces.
 - Ensuring that all surfaces drain properly such that water does not accumulate on any of the surfaces.
- Decorative metals shall be painted with an appropriate coating to protect the element from corrosion.

Building Exterior – Roofs

- Existing exposed roofing materials that are visible from the right of way, shall be maintained. Damaged materials, when removed, shall be replaced with materials that are the same as or, if approved by the Historic Preservation Officer, similar to the existing roof.
- Roof slopes and profiles may not be altered. Damaged or deteriorated roof framing and decking shall be repaired and replaced with materials and methods consistent with the original roof framing system.
- If a new roof is required, the original roof shall be removed in its entirety. No layering of roofing materials will be accepted. Roofing selection shall be appropriate to the roof configuration and slope.
- Replacement roofs may include the following: Color limitation and types are noted as well.
 - Wood Shingle
 - Clay tile –Tile should match existing in size, shape, texture, and coloration.
 - Asphalt Composition Shingle – Composition shingle roofs are not historic in nature but will be accepted as a lower cost, low maintenance, durable roofing product that does not detract from the historic character of the structures.
 - Standing Seam Metal – Metal is an excellent choice for those roof areas that do not achieve the slope required for shingle roofs. New Metal roofs may be used as the main roofing material. Roof framing should be examined for structural integrity.
 - Membrane Roofing – Existing roofs concealed by a parapet wall may be replaced with PVC or TPO membrane roofing. Ensure that parapet caps are retained such that the appearance from the street has not been altered or compromised.
- Proper maintenance of roofing materials includes:
 - Cleaning with the gentlest method possible to remove dirt and other deleterious materials from the affected surfaces.
 - Ensuring that all surfaces drain properly such that water does not accumulate on any of the surfaces.

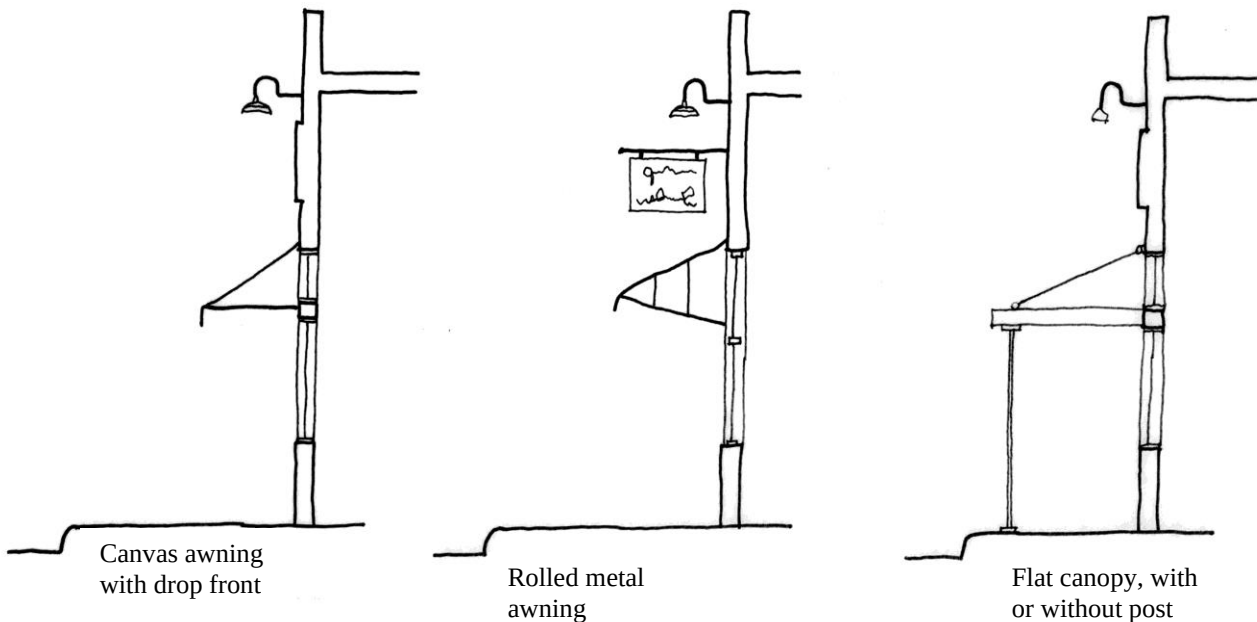
Building Exterior - Windows



- Existing historic windows shall be maintained. Damaged materials, when removed, shall be selectively replaced with materials and components that are the same as, or if approved by the Historic Preservation Officer, similar to the original glass and finish.
- Maintain original elements of the storefront design: cornices, transoms, display windows, cast iron columns, kick plates and spandrels. Maintain recessed entries where they existed. They provide weather-protection, protect pedestrians from opening doors, and add attractive detail to the storefront. Do not recess entire storefront.
- Multiple paned windows are important elements of upper story windows, while storefront windows shall consist of larger sheets of glass to maximize visibility of merchandise. Dark tinted glass is inappropriate for retail space (refer to “Windows,” pg 21).
- If replacement windows are required, they shall match the existing windows in size, operation, configuration and appearance. New windows shall utilize the rough openings of the existing windows. Piecemeal infill of the existing openings is not acceptable. Windows should have the same light patterns and muntin bar dimensions as the original windows. The finish of new and existing windows shall match in coloration.

- All replacement glazing shall be clear. No tinting or reflective film will be accepted.
- Windows should not be replaced solely for energy conservation. Refer to *The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings* for strategies to enhance the solar and thermal performance and utilize the existing windows.
- Proper maintenance of windows includes:
 - Cleaning with the gentlest method possible to remove dirt and other deleterious materials from the affected surfaces.
 - Ensuring that all surfaces drain properly such that water does not accumulate on any of the surfaces.

Awnings and Canopies



- Rolled or flat metal canopies, similar to styles formerly seen in Brenham, may be used. Awnings or canopies may be attached either above transoms or between the transoms and display windows.
- Awnings shall be made of canvas or other fabric material. Canvas awnings are typical of historic buildings. Plastic or backlit awnings may not be used.
- Awnings may be a “drop-front” style.
- The modern bubble design, often used on commercial buildings, detracts from historic architectural styles and is typically not appropriate for commercial structures.
- All awnings or canopies shall provide at least 8 feet of clearance above grade.
- Canopies shall be made of metal or wood. Plastic components or other synthetic materials shall not be used.

Awnings and Canopies

- Awnings shall not be continuous across a facade, but rather relate to each bay or window.



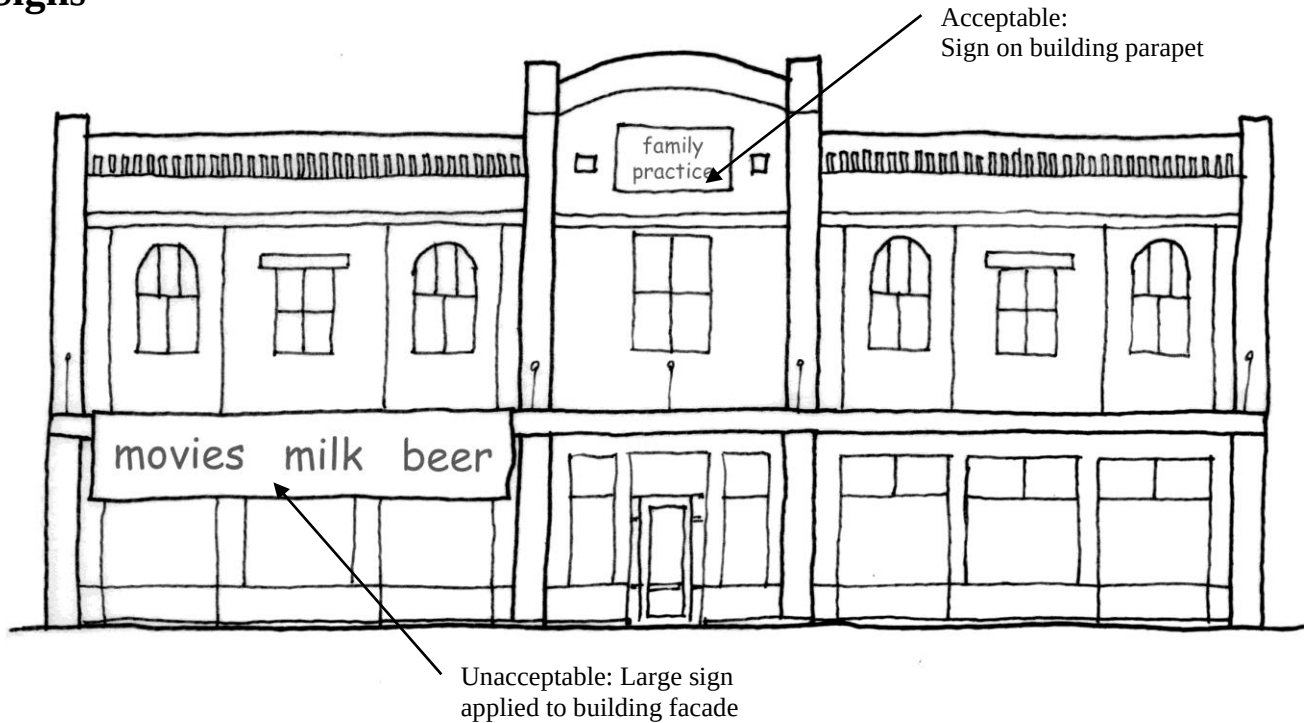
The rhythm of awnings at left is typical of historic commercial styles, and provides greater interest to pedestrians.



This continuous type of awning is unacceptable.

Commercial Awning Rhythm

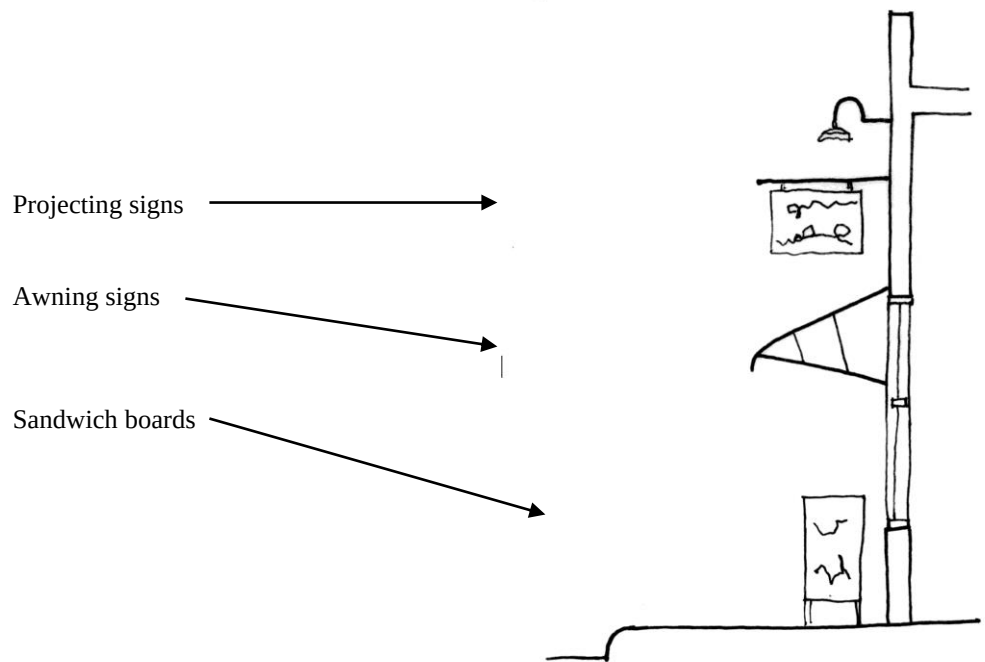
Signs



- In retail areas, focus on merchandise, not signs.
- Signs which compete for attention detract from the Historic District as a whole. Signs shall not cover transoms or historic building features.
- Avoid clutter and limit the number and size of signs.
- In commercial areas, the building itself may be considered part of the sign. The use of awnings and projecting signs are encouraged.
- In general, signs may be small and limited to one per business on buildings with multiple tenants. Avoid garish colors or patterns, but use the detail and style of the building's architecture to speak for the business. Locate signs so they relate to architectural features of the building.
- Typical signs at commercial buildings in the past included parapet signs above storefronts within panels of the parapet and signs painted on windows. Signs for businesses located in residential style buildings with generous front yard setbacks may use an appropriately scaled monument sign. These shall be encouraged.

Signs

- No roof signs, off premise signs, flashing signs and plastic backlit signs may be used. Free-standing signs may be used in front yard areas, when appropriately scaled and placed to minimize visual interference with the significant features of the property.
- Signs must be constructed of painted wood or metal. Plastic signs or letters may not be used. Lighting of signs can be done with incandescent bulbs on the sign, or gooseneck front lighting using fixtures appropriate to the style and period of the building.



- Awnings and projecting signs were common in 19th and early 20th century Brenham. Small projecting signs, at an appropriate scale in relation to the building and the adjacent area are encouraged.
- Sidewalk sandwich boards are typical of the historic retail style, but they must be well maintained and removed after business hours. No changeable letters on tracks may be used. Chalkboards may be used for daily changing messages. Sandwich boards may not be wider than 24", or be placed to extend more than 24" from the building face. The height is restricted to 35". No more than one per building will be allowed.
- Where several businesses share a building, signs may be coordinated and shared.

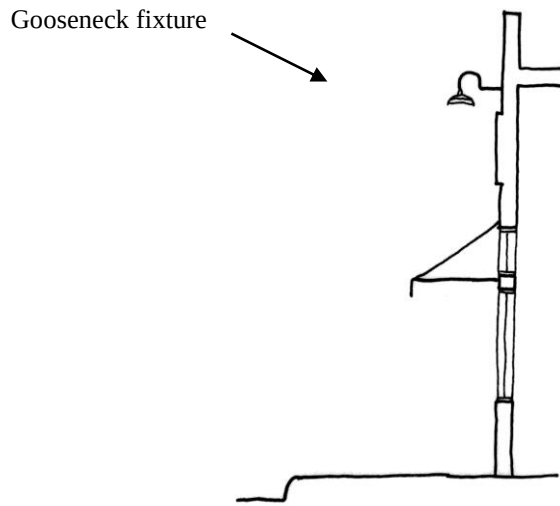
Signs

- Neon can enhance a retail and restaurant area by creating a sense of fun and festivity, but excessive use can also detract from a district. Neon shall be used inside windows only, and occupy a limited amount of space within that window, exception: theatrical uses. Neon marquee signs are allowed only for buildings with theatrical uses.
- Banners of no more than 30 square feet may be hung for a period of no more than 3 months awaiting completion of permanent signs or no more than 2 weeks to advertise special events.

Murals

- Plans for proposed murals including drawings, size, sample colors, must apply for an Administrative Certificate of Appropriateness with the Historic Preservation Officer.

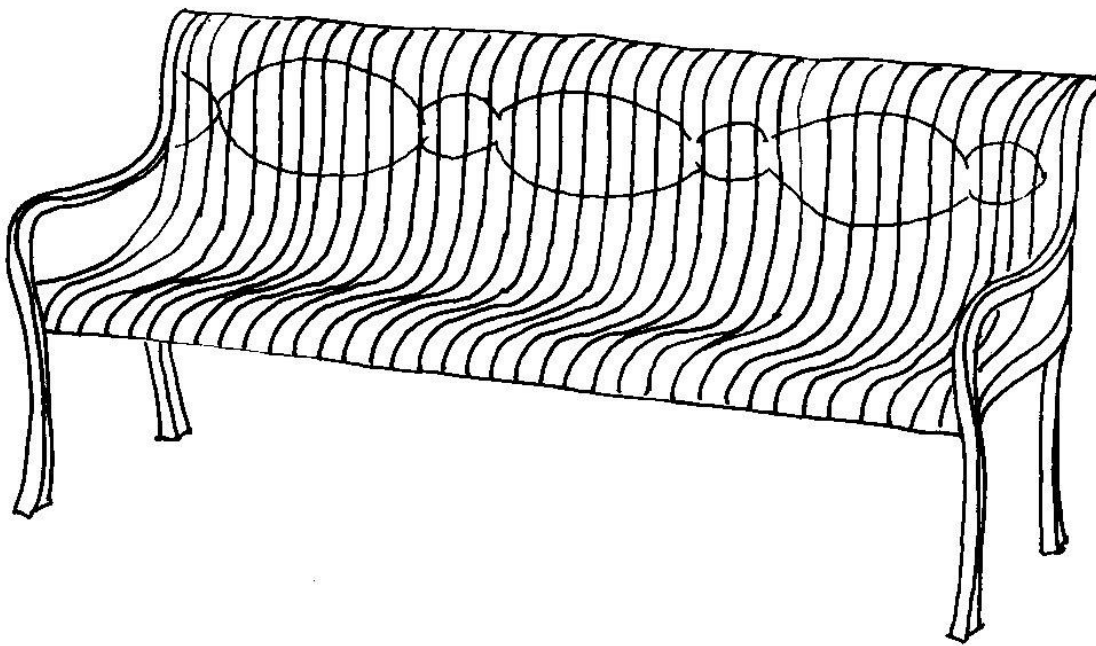
Lighting



- Lighting is an important element in commercial areas. Fixtures shall be consistent with the historic character of the area.
- Fully recessed down lights, gooseneck lights or other incandescent fixtures appropriate to the style and period of the district may be used.
- Avoid exposed lighting of any kind.
- Lighting fixtures are supported in front of the building and may cast light on a sign and highlight the building or offer lighting for pedestrians on sidewalks. The fixtures should be shielded to prevent glare on the street and sidewalk.
- A well-designed window display illuminated at night is more desirable than an illuminated sign.

Sidewalk Furniture

- Includes benches, planters, statues, trash receptacles and objects for sale. Objects on the sidewalk should increase the overall attractiveness of design without impeding the flow of pedestrians on the sidewalks with too many objects, oversized objects or objects placed in the pathway.
- Advertising or promotions on benches is not allowed under any circumstance.
- Planters should match the building architecture in style. Attractive and well-maintained plants should be in the planters. No artificial plants will be allowed. Statues appropriate to the architecture of the building can enhance a building.
- Main Street Brenham will provide a specification for benches, trash cans, planters, and other equipment to match existing downtown sidewalk furniture.



Special Considerations - Energy Conservation

Equipment

The installation of new, more efficient, mechanical equipment, including water heaters, can make the most significant impact on the reduction of energy costs. Solar collectors may be installed in a manner that does not compromise the historic character of the structure nor destroy or obscure any character defining elements.

Windows

The thermal efficiency of the historic windows can be improved through the following methods:

- Regular inspection and maintenance to ensure weather tightness and good operation.
- Installation of insulation at the rough opening. (Trim should be carefully removed and reinstalled.)
- Maintenance and replacement of caulk at joints and openings.
- Installation of weather stripping at all doors and windows.
- Installation of appropriate storm windows as detailed in *The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings*.

Windows shall not be tinted or covered with reflective foil or film.

Insulation

Thermal insulation may be installed in attics and basements to increase the efficiency of the mechanical systems. Appropriate materials shall be selected such that historic character defining elements are not concealed or destroyed during installation. Insulation may be added at exterior walls if done so in a manner that does not damage the wall finish at the interior or exterior of the wall.

Special Considerations - New Additions and Infill

Alterations

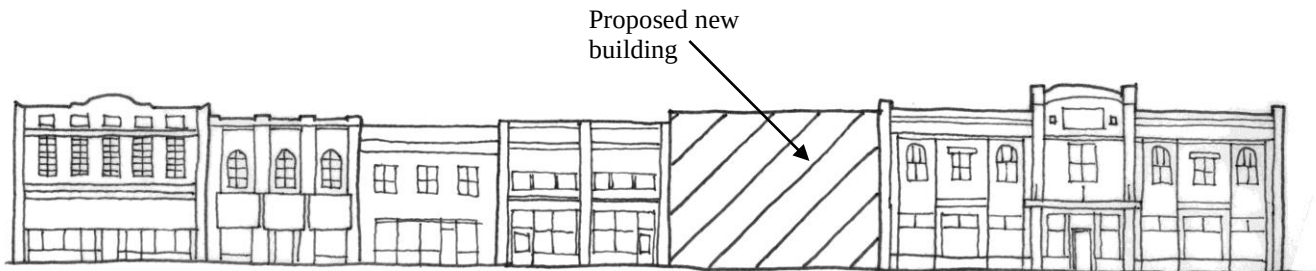
- Removal of previous additions may be undertaken. New exterior finish materials shall match existing in texture, dimension, etc. Detailing of alterations should be such that there is a clear differentiation between the new work and the historic fabric of the structure.

Additions

- Additions shall be subordinate in scale to the existing structure.
- Exterior additions should not be undertaken if the non-character defining interior spaces can be reconfigured to meet the needs of the new use.
- New additions should not obscure or remove character-defining elements such as porches, pediments, etc.

Infill

- New construction proposals and rehabilitation of non-historic buildings will be reviewed by the Historic Preservation Officer and based on these Criteria. Judgment will be based on the compatibility of the design within the context of the property's adjacent and nearby historic buildings.
- Infill construction shall be encouraged. Construction should respect both the height and bay spacing of adjacent buildings. They shall also ensure proportion and continuity of the texture of façade treatments, in terms of cornice lines, window lintels and sills, and kick plates. Flat roofs shall be hidden from view by parapets. The building should be of similar form and materials, but not an actual replication.



Special Considerations – Accessibility Concerns

All commercial properties in Texas must comply with the Texas Accessibility Standards. Copies of the Standards are available through the Texas Department of Licensing and Regulation. In addition, residential units available for lease may be required to be accessible. Check federal fair housing standards for guidelines.

New barrier-free features may be added but should not alter, damage, or destroy the historic character defining features of the structures.

Ramps

If required, a ramp may not replace an existing main stair access to the entrance but rather shall be installed in such a manner that is subordinate in appearance, scale, and location to the main entrance.

Elevators

Elevators may be added provided they do not alter, damage, or destroy historic character defining elements and spaces at the interior or exterior of the structure.



Regular City Council
AGENDA ITEM 6.

Agenda Item: Discuss and Possibly Act Upon Ordinance No. O-21-015 on Its Second Reading Amending Chapter 21, Signs, of the Code of Ordinances of the City of Brenham, Texas Regarding Major Multi-Tenant Shopping Center Sign Regulations

Meeting Type: Regular Meeting-July 15, 2021

Department: Development Services

Staff Contact: Shauna Laauwe, AICP

Classification: Regular

SUMMARY STATEMENT:

At the July 1, 2021, Council meeting, Council approved an Ordinance on its first reading to amend Chapter 21 -Signs to address sign standards and the necessity for a master sign plan for major multi-tenant shopping centers and mixed-use developments that have more than five (5) retail tenants/businesses that collectively occupy a minimum of 100,000 square feet of retail use gross floor area. In addition to requiring and giving provisions for a master sign plan application, the text amendment also gives specifications for landmark signs that identify the development, minimum separation of ground signs. In the ordinance presented at the July 1st meeting, one of the specifications for landmark signs listed under Section 21-18(2)(a) stipulates that "Landmark signs shall not be a pole sign. The entire base of each landmark sign shall be affixed directly to the ground or supported by a base whose width measures at least seventy-five percent (75%) of the width of the sign that is placed or anchored in the ground." After further consideration, Staff would like to revise this requirement and reduce the minimum base width to measure at least forty-five percent (45%) of the width of the sign. This revision would still meet the intent that landmark signs would not have the characteristics of a pole sign but would also give developers more flexibility in design. Staff had additional concerns that requiring the sign bases to be at least seventy-five percent (75%) of the width could result in the bases to be wall-like in nature and potentially a sight-vision obstruction if the sign were to be located at an access point.

The master sign plan provisions would pertain to major multi-tenant shopping centers located within a Commercial Research and Technology District (B-2) or a Planned Development District (PDD). Approval of the master sign plan would be by the Director of Development Services or designee. The proposed text amendment will resolve a gap in the sign ordinance of how to regulate but provide flexibility to large developments that have several tenants and potential pad sites that require signage. The provisions will accommodate an orderly and unified presentation of signage in a master sign plan that would benefit the developer, consumer, and community. (Section 21-18).

ATTACHMENTS:

- | |
|--|
| (1) Redline of Ordinance Since First Reading
(2) Ordinance No. O-21-015 |
|--|

RELEVANCE TO COMPREHENSIVE PLAN:

N/A

RECOMMENDED ACTION:

Approve Ordinance No. O-21-015 on its second reading amending Chapter 21, Signs, of the Code of Ordinances of the City of Brenham, Texas regarding Major Multi-Tenant Shopping Center Sign Regulations
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Sec. 21-18. – Major Multi-Tenant Shopping Center Master Sign Plan

- A. Purpose. Major Multi-Tenant Shopping Center Master Sign Plans are authorized under this section 21-18 to allow, within parcels to which this section is applicable, the following:
- a. The unified presentation of signage throughout major shopping centers or mixed-use developments;
 - b. The flexibility to provide for unique environments; and
 - c. Approval of signs, locations, sizes, designs and design elements that will make subsequent applications for sign permits under an approved Master Sign Plan more efficient.
- B. Applicability. A Master Sign Plan for a Major Multi-Tenant Shopping Center located within a Commercial Research and Technology District (B-2), or a Planned Development District (PDD), shall be approved in writing by the Development Services Director or designee provided that the minimum requirements of this section 21-18 are met:
1. A Major Multi-Tenant Shopping Center, for the purposes of this chapter, shall include a mixed-use development or retail shopping center that contains more than five (5) retail tenants/businesses that collectively occupy a minimum of 100,000 square feet of retail use gross floor area.
 2. Landmark Sign. The purpose of a landmark sign is to provide an effective area for multi-tenant advertisement and such signs shall only be permitted within a Major Multi-Tenant Shopping Center development. All landmark signs shall be included within the Master Sign Plan permit application and comply with the following specifications:
 - a. Landmark signs shall not be a pole sign. The entire base of each landmark sign shall be affixed directly to the ground or supported by a base whose width measures at least ~~seventy~~forty-five percent (~~47~~5%) of the width of the sign that is placed or anchored in the ground.
 - b. Maximum Height. Thirty-five feet (35').
 - c. Maximum Effective Area of Signage: 450 square feet.
 - d. Architectural Features: Landmark signs shall be architecturally compatible to the principal building(s) on the property or overall architectural theme of a development.
 - e. Minimum separation of 100 feet between ground signs.
- C. Master Sign Plan Permit Application.
1. Major Multi-Tenant Shopping Center Master Sign Plan: A Master Sign Plan permit application shall be submitted to the Director of Development Services or designee for review and consideration no later than 9 months of the projected opening date of the development.

ORDINANCE NO. O-21-015

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS, AMENDING CHAPTER 21, SIGNS, OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS PROVIDING FOR THE DEFINITION OF LANDMARK SIGN IN SECTION 21-4; PROVIDING FOR THE ADDITION OF SECTION 21-18 REGARDING MAJOR MULTI-TENANT SHOPPING CENTER MASTER SIGN PLAN REGULATIONS; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Brenham is authorized to adopt sign standards and regulations pursuant to Chapter 216 of the Texas Local Government Code; and

WHEREAS, the City of Brenham has requested that Chapter 21 – “Signs” of the Code of Ordinances be amended; and

WHEREAS, in order to enhance, promote and protect the health, safety and general welfare of the citizens of Brenham, Texas the City Council must from time to time amend and/or adopt new regulations; and

WHEREAS, the City Council finds the following regulations to be reasonable and beneficial to the general health, safety and welfare of the citizens of Brenham; and

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

SECTION 1.

Chapter 21 – Signs, Section 21 - 4 – Definitions, of the Code of Ordinances of the City of Brenham, Texas, is hereby amended to include the addition of the following definition:

Sec. 21-4. Definitions

Landmark Sign: A ground sign that provides an effective area for multi-tenant advertisement which identifies a Major Multi-Tenant Shopping Center and displays the name of a business, profession, service, product, or activity conducted, sold, or offered within the Major Multi-Tenant Shopping Center.

SECTION 2.

Chapter 21 - Signs, Section 21-18 – Reserved of the Code of Ordinances of the City of Brenham, Texas, is hereby amended to read as follows:

Sec. 21-18. – Major Multi-Tenant Shopping Center Master Sign Plan

- A. Purpose. Major Multi-Tenant Shopping Center Master Sign Plans are authorized under this section 21-18 to allow, within parcels to which this section is applicable, the following:
 - a. The unified presentation of signage throughout major shopping centers or mixed-use developments;
 - b. The flexibility to provide for unique environments; and
 - c. Approval of signs, locations, sizes, designs and design elements that will make subsequent applications for sign permits under an approved Master Sign Plan more efficient.
- B. Applicability. A Master Sign Plan for a Major Multi-Tenant Shopping Center located within a Commercial Research and Technology District (B-2), or a Planned Development District (PDD), shall be approved in writing by the Development Services Director or designee provided that the minimum requirements of this section 21-18 are met:
 - 1. A Major Multi-Tenant Shopping Center, for the purposes of this chapter, shall include a mixed-use development or retail shopping center that contains more than five (5) retail tenants/businesses that collectively occupy a minimum of 100,000 square feet of retail use gross floor area.
 - 2. Landmark Sign. The purpose of a landmark sign is to provide an effective area for multi-tenant advertisement and such signs shall only be permitted within a Major Multi-Tenant Shopping Center development. All landmark signs shall be included within the Master Sign Plan permit application and comply with the following specifications:
 - a. Landmark signs shall not be a pole sign. The entire base of each landmark sign shall be affixed directly to the ground or supported by a base whose width measures at least forty-five percent (45%) of the width of the sign that is placed or anchored in the ground.
 - b. Maximum Height. Thirty-five feet (35’).
 - c. Maximum Effective Area of Signage: 450 square feet.
 - d. Architectural Features: Landmark signs shall be architecturally compatible to the principal building(s) on the property or overall architectural theme of a development.
 - e. Minimum separation of 100 feet between ground signs.

C. Master Sign Plan Permit Application.

1. Major Multi-Tenant Shopping Center Master Sign Plan: A Master Sign Plan permit application shall be submitted to the Director of Development Services or designee for review and consideration no later than 9 months of the projected opening date of the development.
2. The owner of a platted lot of real property on which a development is currently located or is proposed may submit a Master Sign Plan permit application to the Director of Development Services or designee.
3. The Master Sign Plan shall include one (1) digital copy and two (2) paper copies of the site layout of the Major Multi-Tenant Shopping Center development and a narrative describing the development.
4. Master Sign Plan Requirements. The Master Sign Plan shall depict the proposed signage for the entire development. A Master Sign Plan shall include all tenants/businesses and out parcels within the development. The Master Sign Plan shall also include the following:
 - a. Identification of the development as a Major Multi-Tenant Shopping Center with total square footage of retail use gross floor area in the development.
 - b. A depiction of all proposed signs including landmark signs, out-parcel monument signs, directional signs and all other signage.
 - c. Size, location, and number of all signs, including area, letter height, and sign structure height;
 - d. Materials, styles (letter colors, background colors, text, fonts, etc.) and colors for all signs subject to the Master Sign Plan, including context of where signs are to be placed on each façade;
 - e. Proposed illumination (external, internal, etc.), including illumination levels, placement of illumination devices, and direction of lighting;
 - f. A design theme with illustrative examples of each sign type and the proposed general locations of each sign type;
 - g. Any proposed landscaping at the base or complementing proposed signage; and
 - h. Written narrative. The application shall include a narrative that articulates the design and quality components that exceed the requirements of the existing rules, including but not limited to the use of brick or natural stone; uniformity of sign size, style, and color across the development; use of landscaping around a sign base; use of channel lettering; use of directional signs; greater spacing between signs along street frontages; off-premises directional signage; or use of entry signs. In addition, the narrative shall establish an integrated architectural vocabulary and cohesive theme for the applicable development.

SECTION 3.

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 4.

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 5.

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

PASSED and **APPROVED** on its first reading this the 1st day of July 2021.

PASSED and **APPROVED** on its second reading this the 15th day of July 2021.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary



Regular City Council **AGENDA ITEM 7.**

Agenda Item: Discuss and Possibly Act Upon an Agreement Between the City of Brenham and Ranier & Son Development Company (Stylecraft) Related to the City's Participation in the Construction Costs of Oversizing a Water Main Along Dixie Road and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-July 15, 2021

Department: Public Works

Staff Contact: Dane Rau

Classification: Regular

SUMMARY STATEMENT:

The City of Brenham and Ranier & Son Development Company (Stylecraft) have worked together to create an Agreement pertaining to upsizing a 6" waterline to a 12" waterline which will benefit the City's water system and give a looped feed to the west side of Hwy 36 N. With Stylecraft developing Phase 5 and having already partnered on an upsizing agreement with Phase 3 the City finds it very beneficial to partner once again to assure that a 12" line is constructed to complete the looped line. Stylecraft will be responsible for the costs of a 6" line and the City will pay the difference for the upsizing as seen on the Engineer's opinion of probable construction costs. Actual costs will be considered at the time of construction, but the City's share of the construction costs will not exceed \$35,000.

The new 12" line will tie into the existing 12" line on Dixie Rd that was installed by Stylecraft last year and also was a partnership in which the City paid for the upsizing. With this upsizing it will allow a two-way feed to all the new development on the west side of Hwy 36 and allow for future demands to be met regarding growth. This is very important to have versatility in case water service gets interrupted from one feed and will assure that residents have a consistent source of water at the desired pressure. We will also save on engineering costs with the City only paying for the upsizing of the line and Stylecraft paying for construction costs, bidding the project, and managing the project.

The request is in accordance with Chapter 23, titled "Subdivisions" and under Section 23-31 titled "Cost-payment for installation of improvements by subdivider". We have worked with Stylecraft on these plans, and they will meet the City of Brenham's Construction Standards. This work is expected to be completed with Phase 5 development in which the City of Brenham will reimburse Stylecraft for the difference when actual costs are paid not to exceed \$35,000. This was budgeted in the 2021-22 budget.

ATTACHMENTS:

- | |
|--|
| (1) Developer Agreement
(2) Exhibit A - VF Phase 5 Waterline Upsizing
(3) Exhibit B - OPC Estimate |
|--|

RELEVANCE TO COMPREHENSIVE PLAN:

Growth Capacity Goal GC 3: A growth pattern that provides for the long-term financial sustainability of the City, balancing infrastructure investment needs with reinvestment/rehabilitation needs of existing developed areas.

RECOMMENDED ACTION:

Approve an Agreement Between the City of Brenham and Ranier & Son Development Company (Stylecraft) Regarding the City's Participation in the Construction Costs of Oversizing a Water Main Along Dixie Road Related to the Vintage Farms Subdivision Phase 5 in the Amount Not to Exceed \$35,000 and Authorize the Mayor to Execute Any Necessary Documentation.

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

THE STATE OF TEXAS §
§
COUNTY OF WASHINGTON §

This Agreement with Developer for Construction of Public Improvement (“Agreement”) executed as of the __day of _____, 20__ between the City of Brenham, Texas, (“City”) and Ranier & Son Development Company, LLC (“Developer”), owner and developer of certain hereinafter described property located within the City, both collectively referred to herein as “Parties.”

WHEREAS, Developer wishes to develop certain property located within the City limits, being 52.428 acres of unrecorded land, which is described as Tract 7 of the Phillip Coe Survey, A-31, being situated in the City of Brenham, Washington County, Texas, (the “Property”); and

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

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

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

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

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

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

ARTICLE I

Definitions

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

- 1.01 “Agreement” means this agreement, including any amendments hereto, between the City and Developer.
- 1.02 “Contractor” shall mean the person, firm, corporation, partnership, association, or other entity awarded the contract by Developer for the construction and installation of the Improvements.
- 1.03 “Improvements” shall mean up sizing 759 linear feet of proposed 6-inch water line to 12-inch water line including fittings and appurtenances. The 12-inch water line shall be constructed beginning at and tying into the existing 12-inch water line along Dixie Road at Muscadine Trail, installed in the public right of way along and parallel to Dixie Road, and then tying into the 8-inch water line at the intersection of Dixie Road and Oak Creek Way.

ARTICLE II

Construction of Improvements

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

required to carry Worker's Compensation Insurance on its employees and public liability and property damage insurance on its equipment and employees. The public liability insurance shall be not less than five hundred thousand dollars (\$500,000.00) per person and one million dollars (\$1,000,000.00) per occurrence, with property damage insurance of not less than five hundred thousand dollars (\$500,000.00). In addition, City shall be furnished with Certificates of Insurance and shall be named an additional named insured on such Certificates, and City shall be notified at least ten (10) calendar days prior to any cancellation or modification of such insurance.

- 2.06 Accounting. Developer shall submit to City a complete accounting of all costs incurred by Developer in the construction of the Improvements. City will not contribute or pay for any costs incurred by Developer which was not approved by City prior to it being incurred. Developer shall maintain the accounting on this project for a period of two (2) years from the date of acceptance by the City, and the City may inspect the Developer's books and records related to the project at any time with reasonable notice.
- 2.07 **INDEMNITY. DEVELOPER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY AND THE CITY'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS OR CLAIMS OF ANY CHARACTER, NAME AND DESCRIPTION INCLUDING ATTORNEYS' FEES AND EXPENSES BROUGHT FOR ANY INJURIES TO PERSONS OR DAMAGES TO PROPERTY IN CONNECTION WITH THE PERFORMANCE OR ATTEMPTED PERFORMANCE OF THIS AGREEMENT BY DEVELOPER OR DEVELOPER'S AGENTS, REPRESENTATIVES, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS.**

ARTICLE III. City Obligations

- 3.01 Oversized Improvements. The City agrees to pay to Developer the construction costs of oversizing the Improvements, not to exceed Thirty-Five Thousand and No/100 Dollars (\$35,000.00), as identified and described in Exhibit "B" attached hereto and made a part hereof.
- 3.02 Payment to Developer. Exhibit "B" attached hereto designates the proportional split in costs for construction of the Improvements. City shall deliver to Developer full payment of the City's share of the costs of construction of the Improvements following submittal and review of documentation showing final, actual construction costs paid by the Developer, and compliance with the procedure set forth herein below. The City Engineer shall review the construction documents, conduct a final inspection on the Improvements, noting any required corrections or repairs, and make a recommendation to City Council on acceptance of the Improvements. Upon action by City Council accepting such Improvements, the City will pay to Developer the City's share of the costs. Any additional costs above those enumerated, or above the amounts described in Exhibit "B" must be approved by the City Council prior to being incurred.

ARTICLE IV Miscellaneous Provisions

- 4.01 Assignment. This Agreement shall bind and benefit the respective Parties and their legal successors and shall not be assignable, in whole or in part, by any party without first obtaining written consent of the other party.
- 4.02 Amendment or Modification. Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment or modification only in writing, and by the signatures and mutual consent of the Parties.
- 4.03 Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the Parties hereto and shall not be construed to confer any rights upon any third party.
- 4.04 Remedies Not Exclusive. The rights and remedies contained in this Agreement shall not be exclusive, but shall be cumulative of all rights and remedies now or hereinafter existing, by law or in equity.
- 4.05 Waiver. The failure of any party to insist in any one or more instances on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance.
- 4.06 Entire Agreement. This Agreement constitutes the entire agreement between the Parties related to the subject matter of this Agreement and supersedes any and all prior agreements, whether oral or written, dealing with the subject matter of this Agreement.
- 4.07 Applicable Law; Venue. This Agreement shall be performable and enforceable in Washington County, Texas, and shall be construed in accordance with the laws of the State of Texas without regard to any conflicts of law provisions. Exclusive venue for any claim, dispute, legal proceeding or litigation shall lie in a court of competent jurisdiction in Washington County, Texas.
- 4.08 Severability. If any term or provision of this Agreement is held to be invalid, void or unenforceable by a court of competent jurisdiction, the remainder of the terms and provisions of this Agreement shall remain in full force and effect and shall not in any way be invalidated, impaired or affected.
- 4.09 Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by (i) depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, registered or certified mail, return receipt requested; or (ii) by delivering the same in person to such party; or (iii) by overnight or messenger delivery service that retains regular records of delivery and receipt; or (iv) by facsimile; provided a copy of such notice is sent within one (1) day thereafter by another method provided above. The initial addresses of the parties for the purpose of notice under this Agreement shall be as follows:

If to City:

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

If to Developer:

Ranier & Son Development Company, LLC
4090 State Highway 6, South
College Station, TX 77845
ATTN: Stephen Grove

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

CITY OF BRENHAM

Milton Y. Tate, Jr.
Mayor

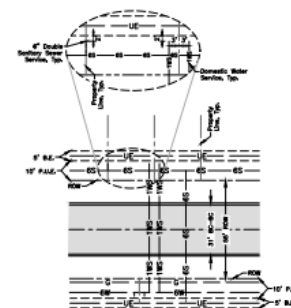
ATTEST:

Jeana Bellinger
City Secretary

DEVELOPER:

Ranier & Son Development Company, LLC

Authorized Signature, Name, and Title:



NOTE:
This serves as a general guide only. Utility
Company is to provide location of proposed
electric, gas, and telecommunication lines.

Typical Utility Layout

City of Brenham Additional Notes:

1. Contractor shall cut a "W" on the curb at each water service crossing.
- 2.

Survey Note:
1. Some utilities shown are based on signs or markings observed in the field. Actual location of buried utilities may differ than what is shown. Contractor shall be responsible for locating and protecting all buried utilities.

THESE PLANS DO NOT INCLUDE NECESSARY COMPONENTS FOR CONSTRUCTION SAFETY

NOTE: LOCATION OF EXISTING BURIED UTILITIES, WHERE SHOWN, IS APPROXIMATE ONLY. THERE MAY EXIST UTILITIES WHICH ARE NOT SHOWN. THE CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATING AND PROTECTING ALL BURIED UTILITIES.

REVISED

McCLURE & BROWNE
ENGINEERING/SURVEYING, INC.
Engineer Reg. No. P-4506 - Survey Reg. No. 1010036-00



Overall Domestic Water Plan

Vintage Farms - Phase 5

SHEET NO.

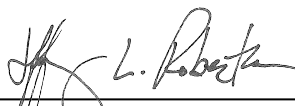
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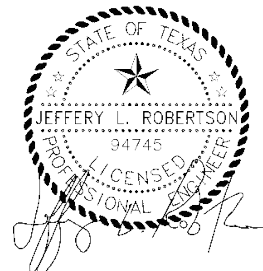
Dixie Road Water Line
MBESI PROJ #: 1053-0092
Engineer's Preliminary Estimate of Project Costs
March 9, 2021

Item #	Description	Unit	Quantity	Unit Price	Total
Water System Construction – 12" Water Line					
1	Mobilization	L.S.	1	\$8,000.00	\$8,000.00
2	12" AWWA C900 Water Pipe (Non-Str. Backfill)	L.F.	759	\$60.00	\$45,543.00
3	Directional Bore Construction (additional cost per linear ft.)	L.F.	75	\$90.00	\$6,750.00
4	12"x8" Tee	EACH	1	\$450.00	\$450.00
5	12" Gate Valve	EACH	2	\$2,250.00	\$4,500.00
6	12" Cap	EACH	1	\$300.00	\$300.00
7	12"x13" Anchor Coupling	EACH	2	\$300.00	\$600.00
8	Connect to Existing Water Line	EACH	1	\$1,500.00	\$1,500.00
9	Fire Hydrant	EACH	2	\$4,250.00	\$8,500.00
Water System Subtotal					\$76,143
Engineering/Surveying (10%):					\$7,614
Material Testing (1.5%):					\$1,142
Contingency (5.0%):					\$3,807
TOTAL PROJECT COST					\$88,707
Item #	Description	Unit	Quantity	Unit Price	Total
Water System Construction – 6" Water Line					
1	Mobilization	L.S.	1	\$8,000.00	\$8,000.00
2	6" AWWA C900 Water Pipe (Non-Str. Backfill)	L.F.	759	\$30.00	\$22,771.50
3	Directional Bore Construction (additional cost per linear ft.)	L.F.	75	\$45.00	\$3,375.00
4	6"x8" Tee	EACH	1	\$300.00	\$300.00
5	6" Gate Valve	EACH	2	\$1,200.00	\$2,400.00
6	6" Cap	EACH	1	\$200.00	\$200.00
7	6"x13" Anchor Coupling	EACH	2	\$200.00	\$400.00
8	Connect to Existing Water Line	EACH	1	\$1,500.00	\$1,500.00
9	Fire Hydrant	EACH	2	\$4,250.00	\$8,500.00
Water System Subtotal					\$47,447
Engineering/Surveying (10%):					\$4,745
Material Testing (1.5%):					\$712
Contingency (5.0%):					\$2,372
TOTAL PROJECT COST					\$55,275
 COST (OP ESTIMATE)					\$33,431.42

The above construction estimate is based on the engineer's preliminary opinion of probable construction costs. This estimate constitutes our best judgment at this time. Please note that the engineer does not have any control over contractor or supplier.


 Jeffery L. Robertson, P.E.

03-08-2021
 Date





Regular City Council
AGENDA ITEM 8.

Agenda Item: Discuss and Possibly Act Upon Resolution No. R-21-018 Approving an Advanced Funding Agreement Between the City of Brenham and TXDOT Related to Intersection Improvements at Old Chappell Hill Road and FM 577 in Brenham, Washington County, Texas

Meeting Type: Regular Meeting-July 15, 2021

Department: Public Works

Staff Contact: Dane Rau

Classification: Regular

SUMMARY STATEMENT:

This resolution is between the City of Brenham and TxDOT in relation to intersection improvements at Old Chappell Hill and FM 577. With a combination of the recent developments along Old Chappell Hill Rd and the widening and drainage work between Zippy J's and the Collection Station we have reached out to TXDOT to improve the intersection at Old Chappell Hill Rd and FM 577. Currently this intersection is very narrow and does not have dedicated turn lanes on Old Chappell Hill or on FM 577 when heading south. Partnering with TxDOT and entering into this advanced funding agreement will dramatically enhance this intersection by adding dedicated turn lanes on Old Chappell Hill Rd and FM 577, adding additional pavement to the west side of the intersection to allow better turning movements for large trucks, installation of four new signal poles and cabinet, improving the drainage around the intersection and adding designated crosswalks.

The total cost of this project is expected to be \$761,582. The advanced funding agreement outlines the responsibility of each party with the City of Brenham being responsible for the engineering and utility relocation costs valued at \$225,000. The City of Brenham has planned for expenditures related to this enhancement and we feel that this is a great partnership and enhancement that will benefit this area long term. Originally, all costs related to the widening of Old Chappell Hill and Intersection Improvements were anticipated to be 100% of the City's responsibility, but Mr. Fisher was able to coordinate with TXDOT in which they will be funding the major costs of the intersection improvements. This has helped tremendously and now the City is able to get both projects done along with Salem Rd in 2021-22.

TxDOT will be responsible for all construction costs and selecting a contractor for the planned work. TXDOT is expected to let the project in August. Based on the agreement with TXDOT and the contractor chosen the planned work should take 120 days once a notice to proceed is awarded. We are looking at late 2021 or early 2022 for a start date.

Staff would like to ask Council to approve the advanced funding resolution with TxDOT so that we may begin to work together for the betterment of this area.

ATTACHMENTS:

- | |
|---|
| (1) Resolution No. R-21-018
(2) Advanced Funding Agreement - FM 577 at Chappell Hill |
|---|

RELEVANCE TO COMPREHENSIVE PLAN:

Growth Capacity Goal GC 3: A growth pattern that provides for the long-term financial sustainability of the City, balancing infrastructure investment needs with reinvestment/rehabilitation needs of existing developed areas.

RECOMMENDED ACTION:

Approve Resolution No. R-21-018 authorizing submittal of an Advanced Funding Agreement with TxDOT related to Intersection Improvements at Old Chappell Hill Rd and FM 577 in Brenham, Washington County, Texas.

RESOLUTION NO. R-21-018

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS (“CITY”) PROVIDING FOR THE APPROVAL OF AN ADVANCED FUNDING AGREEMENT BETWEEN THE CITY AND THE STATE OF TEXAS, ACTING BY AND THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION, FOR INTERSECTION IMPROVEMENTS AT OLD CHAPPELL HILL ROAD AND FM 577

WHEREAS, Chapter 311 of Transportation Code gives the City exclusive dominion, control and jurisdiction over and under the public streets within its corporate limits and authorizes the City to enter into agreements with the State of Texas to fix responsibilities for maintenance, control, supervision and regulation of State highways within and through its corporate limits; and

WHEREAS, the Texas Transportation Code, Sections 201.103 and 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with local governments; and

WHEREAS, the City of Brenham is responsible for 100% of costs and cost overruns for Utilities, Environmental, Engineering, and Construction Phase Services; and

WHEREAS, the Texas Transportation Commission passed Minute Order Number 115814, authorizing the State to undertake and complete a highway improvement generally described as intersection improvements at FM 577 and Old Chappell Hill Road project in Brenham, Texas;

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

That an Advanced Funding Agreement between the City of Brenham and the State of Texas for Surface Transportation Block Grant (STBG) On-System in Brenham, Texas is hereby approved. Further, the Mayor is hereby authorized to execute said Agreement and any other necessary documentation on behalf of the City of Brenham and to transmit the same to the State of Texas for appropriate action.

PASSED and APPROVED on this the 15th day of July 2021.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary

TxDOT:		Federal Highway Administration:	
CSJ #	2447-01-032	CFDA No.	20.205
District #	17 – Bryan	CFDA Title	Highway Planning and Construction
Code Chart 64 #	05600 – City of Brenham		
Project Name	Intersection Improvements at FM 577 and Old Chappell Hill Road	AFA Not Used For Research & Development	

STATE OF TEXAS §

COUNTY OF TRAVIS §

ADVANCE FUNDING AGREEMENT
For
Surface Transportation Block Grant (STBG)
On-System

THIS AGREEMENT (Agreement) is made by and between the State of Texas, acting by and through the **Texas Department of Transportation** called the “State”, and the **City of Brenham**, acting by and through its duly authorized officials, called the “Local Government”. The State and Local Government shall be collectively referred to as “the parties” hereinafter.

WITNESSETH

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

WHEREAS, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments, and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision, and

WHEREAS, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds, and

WHEREAS, the Texas Transportation Commission has codified 43 TAC, Rules 15.50-15.56 that describe federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects, and

WHEREAS, the Texas Transportation Commission passed Minute Order Number **115814** authorizing the State to undertake and complete a highway improvement or other transportation project generally described as **intersection improvements at FM 577 and Old Chappell Hill Road**. The portion of the project work covered by this Agreement is identified in the Agreement, Article 3, Scope of Work (Project), and

WHEREAS, the Governing Body of the Local Government has approved entering into this Agreement by resolution, ordinance, or commissioners court order dated _____, which is attached to and made a part of this Agreement as Attachment A, Resolution, Ordinance, or Commissioners Court Order (Attachment A). A map showing the Project location appears in Attachment B, Location Map Showing Project (Attachment B), which is attached to and made a part of this Agreement.

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NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as set forth in this Agreement, it is agreed as follows:

AGREEMENT

1. Responsible Parties:

For the Project covered by this Agreement, the parties shall be responsible for the following work as stated in the article of the Agreement referenced in the table below:

1.	Local Government	Utilities	Article 8
2.	Local Government	Environmental Assessment and Mitigation	Article 9
3.	Local Government	Architectural and Engineering Services	Article 11
4.	Local Government	Construction Phase Services	Article 12
5.	State	Construction Responsibilities	Article 14
6.	State	Right of Way and Real Property	Article 16

2. Period of the Agreement

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until the Project is completed or unless terminated as provided below.

3. Scope of Work

The scope of work for the Project consists of preliminary engineering, utilities, right-of-way, environmental, plans, specifications, and estimate (PS&E), and construction of improvements along FM 577 at the intersection of Old Chappell Hill Road in the City of Brenham, Washington County, Texas. The proposed work includes, but is not limited to, widening the existing intersection to add turning lanes and enhance turning movements, replacing existing traffic signals, and improving intersection drainage.

4. Project Sources and Uses of Funds

The total estimated cost of the Project is shown in Attachment C, Project Budget (Attachment C) which is attached to and made a part of this Agreement.

- A. If the Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. If federal funds are being used, the training must be completed before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled "Local Government Project Procedures and Qualification for the Texas Department of Transportation" and retains qualification in accordance with applicable TxDOT procedures. Upon request, the Local Government shall provide the certificate of qualification to the State. The individual

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who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.

- B. The expected cash contributions from the federal government, the State, the Local Government, or other parties are shown in Attachment C. The State will pay for only those Project costs that have been approved by the Texas Transportation Commission. For projects with federal funds, the State and the federal government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration (FHWA). After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
- C. Attachment C shows, by major cost categories, the cost estimates and the party responsible for performing the work for each category. These categories may include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.
- D. The State will be responsible for securing the federal and State share of the funding required for the development and construction of the local Project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.
- E. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement. For items of work subject to specified percentage funding, the Local Government shall only in those instances be responsible for all Project costs that are greater than the maximum State and federal participation specified in Attachment C and for overruns in excess of the amount specified in Attachment C to be paid by the Local Government.
- F. The budget in Attachment C will clearly state all items subject to fixed price funding, specified percentage funding, and the periodic payment schedule, when periodic payments have been approved by the State.
- G. When the Local Government bears the responsibility for paying cost overruns, the Local Government shall make payment to the State within thirty (30) days from the receipt of the State's written notification of additional funds being due.
- H. When fixed price funding is used, the Local Government is responsible for the fixed price amount specified in Attachment C. Fixed prices are not subject to adjustment unless (1) differing site conditions are encountered; (2) further definition of the Local Government's requested scope of work identifies greatly differing costs from those estimated; (3) work requested by the Local Government is determined to be ineligible

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for federal participation; or (4) the adjustment is mutually agreed to by the State and the Local Government.

- I. Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment C. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering performed or reviewed by the State for the Project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction cost.
- J. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this Agreement.
- K. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation" or may use the State's Automated Clearing House (ACH) system for electronic transfer of funds in accordance with instructions provided by TxDOT's Finance Division. The funds shall be deposited and managed by the State and may only be applied by the State to the Project.
- L. The State will not pay interest on any funds provided by the Local Government.
- M. If a waiver for the collection of indirect costs for a service project has been granted under 43 TAC §15.56, the State will not charge the Local Government for the indirect costs the State incurs on the Project, unless this Agreement is terminated at the request of the Local Government prior to completion of the Project.
- N. If the Local Government is an Economically Disadvantaged County (EDC) and if the State has approved adjustments to the standard financing arrangement, this Agreement reflects those adjustments.
- O. Where the Local Government is authorized to perform services under this Agreement and be reimbursed by the State, the Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice, in a form and containing all items required by the State, no more frequently than monthly and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.
- P. Upon completion of the Project, the State will perform a final accounting of the Project costs for all items of work with specified percentage funding. Any funds due by the Local Government, the State, or the federal government for these work items will be promptly paid by the owing party.
- Q. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit

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or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

- R. Payment under this Agreement beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this Agreement shall be terminated immediately with no liability to either party.

5. Termination of This Agreement

This Agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A. The Agreement is terminated in writing with the mutual consent of the parties;
- B. The Agreement is terminated by one party because of a breach, in which case any costs incurred because of the breach shall be paid by the breaching party;
- C. The Local Government elects not to provide funding after the completion of preliminary engineering, specifications, and estimates (PS&E) and the Project does not proceed because of insufficient funds, in which case the Local Government agrees to reimburse the State for its reasonable actual costs incurred during the Project; or
- D. The Agreement is terminated by the State because the parties are not able to execute a mutually agreeable amendment when the costs for Local Government requested items increase significantly due to differing site conditions, determination that Local government requested work is ineligible for federal or state cost participation, or a more thorough definition of the Local Government's proposed work scope identifies greatly differing costs from those estimated. The State will reimburse Local Government remaining funds to the Local Government within ninety (90) days of termination; or
- E. The Project is inactive for thirty-six (36) consecutive months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this Agreement.

6. Amendments

Amendments to this Agreement due to changes in the character of the work, terms of the Agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

7. Remedies

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

8. Utilities

The party named in Article 1, Responsible Parties, under AGREEMENT shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or State funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established

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procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is commenced.

9. Environmental Assessment and Mitigation

Development of a transportation project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects. The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. The identification and assessment of any environmental problems associated with the development of a local project governed by this Agreement.
- B. The cost of any environmental problem's mitigation and remediation.
- C. Providing any public meetings or public hearings required for the environmental assessment process. Public hearings will not be held prior to the approval of the Project schematic.
- D. The preparation of the NEPA documents required for the environmental clearance of this Project.

If the Local Government is responsible for the environmental assessment and mitigation, before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

10. Compliance with Accessibility Standards

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with standards issued or approved by the Texas Department of Licensing and Regulation (TDLR) as meeting or consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

11. Architectural and Engineering Services

The party named in Article 1, Responsible Parties, under AGREEMENT has responsibility for the performance of architectural and engineering services. The engineering plans shall be developed in accordance with the applicable State's *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the special specifications and special provisions related to it. For projects on the State highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the State highway system, the design shall, at a minimum, conform to applicable American Association of State Highway and Transportation Officials (AASHTO) design standards.

In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if the Project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases. Professional contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters. If the Local Government is the responsible party, the Local Government shall submit

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its procurement selection process for prior approval by the State. All professional services contracts must be reviewed and approved by the State prior to execution by the Local Government.

12. Construction Phase Engineering Services

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. Construction Phase Services at the written request of the State's Project Manager. The written request must include a description of the work requested, a mutually agreed upon time limit, and any special instructions for coordination and submittal. These services shall include, but are not limited to the following:
 - a. Calculate quantities and assist the area engineer in preparing change orders
 - b. Responding to requests for information (RFIs)
 - c. Providing redesign, which will include changes to the affected plan sheets and an updated copy of the 3D corridor model.
 - d. Answering general questions
 - e. Providing clarification
 - f. Other project related tasks in support of the State during construction

13. Automation Requirements

Planimetric design files (DGN) provided by the Local Government shall be fully compatible with the State's MicroStation graphics program without further modification or conversion as requested by the State.

If applicable, electronically collected and processed field survey data files must be fully compatible with the State's computer systems without further modification or conversion. All files must incorporate only those feature codes currently being used by the State. If applicable, Digital Terrain Models (DTM) must be fully compatible with the State's OpenRoads civil design system without further modification or conversion. All DTM must be fully edited and rectified to provide a complete digital terrain model with all necessary break lines.

14. Construction Responsibilities

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the following:

- A. Advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- B. If the State is the responsible party, the State will use its approved contract letting and award procedures to let and award the construction contract.

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- C. If the Local Government is the responsible party, the Local Government shall submit its contract letting and award procedures to the State for review and approval prior to letting.
- D. If the Local Government is the responsible party, the State must concur with the low bidder selection before the Local Government can enter into a contract with the vendor.
- E. If the Local Government is the responsible party, the State must review and approve change orders.
- F. Upon completion of the Project, the party responsible for constructing the Project will issue and sign a “Notification of Completion” acknowledging the Project’s construction completion and submit certification(s) sealed by a professional engineer(s) licensed in the State of Texas.
- G. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form “FHWA-1273” in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Subpart B.

15. Project Maintenance

The Local Government shall be responsible for maintenance of locally owned roads and locally owned facilities after completion of the work. The State shall be responsible for maintenance of the State highway system after completion of the work if the work was on the State highway system, unless otherwise provided for in existing maintenance agreements with the Local Government.

16. Right of Way and Real Property

The party named in Article 1, Responsible Parties, under AGREEMENT is responsible for the provision and acquisition of any needed right of way or real property.

17. Insurance

If this Agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work, the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

18. Notices

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

TxDOT:		Federal Highway Administration:	
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Local Government:	State:
City of Brenham ATTN: City Manager P.O. Box 1059 Brenham, TX 77834	Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 th Street Austin, TX 78701

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this Agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

19. Legal Construction

If one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

20. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party, and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

21. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data and information prepared under this Agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State, in the format directed by the State, on a monthly basis or as required by the State. The originals shall remain the property of the Local Government. .

22. Compliance with Laws

The parties to this Agreement shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

23. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.

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24. Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the cost principles established in 2 CFR 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

25. Procurement and Property Management Standards

The parties to this Agreement shall adhere to the procurement and property management standards established in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and to the Texas Uniform Grant Management Standards. The State must pre-approve the Local Government's procurement procedures for purchases to be eligible for state or federal funds.

26. Inspection of Books and Records

The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the FHWA and the U.S. Office of the Inspector General or their duly authorized representatives for review and inspection at its office during the Agreement period and for seven (7) years from the date of final reimbursement by FHWA under this Agreement or until any impending litigation or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

27. Civil Rights Compliance

The parties to this Agreement are responsible for the following:

- A. Compliance with Regulations: Both parties will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.
- B. Nondiscrimination: The Local Government, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government's obligations under this

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Agreement and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

- D. Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this Agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
1. withholding of payments to the Local Government under the Agreement until the Local Government complies and/or
 2. cancelling, terminating, or suspending of the Agreement, in whole or in part.
- F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

28. Pertinent Non-Discrimination Authorities

During the performance of this Agreement, each party, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).

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- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, subrecipients and contractors, whether such programs or activities are federally funded or not).
- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- I. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

29. Disadvantaged Business Enterprise (DBE) Program Requirements

If federal funds are used:

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State’s federally approved DBE program.
- C. The Local Government shall incorporate into its contracts with subproviders an appropriate DBE goal consistent with the State’s DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall submit its proposed scope of services and quantity estimates to the State to allow the State to establish a DBE goal for each Local Government contract with a subprovider. The Local Government shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State’s DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the

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Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.

- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.*

30. Debarment Certifications

If federal funds are used, the parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this Agreement, the Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a subcontract or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

If state funds are used, the parties are prohibited from making any award to any party that is debarred under the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter G, Rule §20.585 and the Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter G.

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31. Lobbying Certification

If federal funds are used, in executing this Agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

32. Federal Funding Accountability and Transparency Act Requirements

If federal funds are used, the following requirements apply:

- A. Any recipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This Agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
 1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>
 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
 3. Report the total compensation and names of its top five executives to the State if:

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- i. More than 80% of annual gross revenues are from the federal government, and those revenues are greater than \$25,000,000; and
- ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

33. Single Audit Report

If federal funds are used:

- A. The parties shall comply with the single audit report requirements stipulated in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- B. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division by email at singleaudits@txdot.gov.
- C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Compliance Division as follows: "We did not meet the \$_____ expenditure threshold and therefore, are not required to have a single audit performed for FY _____."
- D. For each year the Project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the Agreement, unless otherwise amended or the Project has been formally closed out and no charges have been incurred within the current fiscal year.

34. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this Agreement on behalf of the entity represented.

Each party is signing this Agreement on the date stated under that party's signature.

THE STATE OF TEXAS

THE LOCAL GOVERNMENT

Signature

Kenneth Stewart

Typed or Printed Name

Director of Contract Services

Typed or Printed Title

Date

Signature

Typed or Printed Name

Typed or Printed Title

Date

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ATTACHMENT A
RESOLUTION, ORDINANCE, OR COMMISSIONERS COURT ORDER

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ATTACHMENT B LOCATION MAP SHOWING PROJECT



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ATTACHMENT C PROJECT BUDGET

The Local Government is responsible for 100% of costs and cost overruns for Utilities, Environmental, Engineering, and Construction Phase Services. All other costs will be allocated based on applicable Federal/State funding with the State being responsible for overruns.

Description	Total Estimated Cost	Federal Participation		State Participation		Local Participation	
		%	Cost	%	Cost	%	Cost
Utilities (By LG)	\$150,000	0%	\$0	0%	\$0	100%	\$150,000
Environmental (By LG)	\$1,350	0%	\$0	0%	\$0	100%	\$1,350
Engineering (By LG)	\$58,650	0%	\$0	0%	\$0	100%	\$58,650
Construction Phase Services (By LG)	\$15,000	0%	\$0	0%	\$0	100%	\$15,000
Construction (By State)	\$500,000	80%	\$400,000	20%	\$100,000	0%	\$0
Subtotal	\$725,000		\$400,000		\$100,000		\$225,000
Utilities (Direct State Cost)	\$2,800	0%	\$0	100%	\$2,800	0%	\$0
Environmental (Direct State Cost)	\$2,450	0%	\$0	100%	\$2,450	0%	\$0
Engineering (Direct State Cost)	\$5,250	0%	\$0	100%	\$5,250	0%	\$0
Construction (Direct State Cost)	\$21,000	0%	\$0	100%	\$21,000	0%	\$0
Right of Way (Direct State Cost)	\$3,500	0%	\$0	100%	\$3,500	0%	\$0
Indirect State Costs (4.52%)	\$1,582	0%	\$0	100%	\$1,582	0%	\$0
TOTAL	\$761,582		\$400,000		\$136,582		\$225,000

Initial payment by the Local Government to the State: \$0

Payment by the Local Government to the State before construction: \$0

Total payment by the Local Government to the State: \$0

This is an estimate. The final amount of participation will be based on actual costs.



Regular City Council
AGENDA ITEM 9.

Agenda Item: Discuss and Possibly Act Upon Amendment No. 1 to the Lease Agreement Between the City of Brenham, Texas and the Brenham Heritage Museum, Inc. and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-July 15, 2021

Department: Administration

Staff Contact: James Fisher, City Manager

Classification: Consent

SUMMARY STATEMENT:

The City entered into a Lease Agreement with Brenham Heritage Museum Inc on December 19, 2019 after several years of contract negotiations to lease the old post office facility (the City in 1990 became custodian of this facility and stated that it would be used for historical preservation, specifically as a museum to preserve and display historical items). The Lease Agreement established benchmarks for the Brenham Heritage Museum to meet in regards to construction initiation and opening to the public. The proposed Amendment pushes all benchmark dates back one year due to the COVID – 19 Pandemic.

ATTACHMENTS:

- (1) Amendment No. 1
- (2) 2019 Museum Lease

RELEVANCE TO COMPREHENSIVE PLAN:

RECOMMENDED ACTION:

Approve Amendment No. 1 to the Lease Agreement Between the City of Brenham, Texas and the Brenham Heritage Museum, Inc. and Authorize the Mayor to Execute Any Necessary Documentation.

**AMENDMENT NO. 1 TO THE
LEASE AGREEMENT
BETWEEN THE CITY OF BRENHAM, TEXAS
AND THE
BRENHAM HERITAGE MUSEUM**

THIS AMENDMENT NO. 1 TO THE LEASE AGREEMENT BETWEEN THE CITY OF BRENHAM, TEXAS AND THE BRENHAM HERITAGE MUSEUM (“Amendment No. 1”) is made and entered into between Brenham Heritage Museum, Inc., a Texas non-profit corporation (hereinafter referred to as “Lessee” or “Museum”), and the City of Brenham, a Texas home-rule municipal corporation (hereinafter referred to as “City” or “Lessor”), effective as of this ____ day of _____, 20__ (the “Commencement Date”).

WHEREAS, Lessor and Lessee entered into that certain Lease Agreement, dated December 31, 2019 and effective commencing on January 1, 2020 (the “Lease Agreement”), related to the Brenham Heritage Museum facility located at 105 South Market Street, Brenham, Texas; and

WHEREAS, Lessor and Lessee acknowledge and agree that the COVID-19 pandemic affected the Lessee’s ability comply with certain deadlines set forth in said Lease Agreement; and

WHEREAS, Lessor and Lessee desire to mutually agree to revise certain deadlines and dates set forth in said Lease Agreement, as further described in this Amendment No. 1;

NOW, THEREFORE, in consideration of the mutual obligations and undertakings described herein, and other good and valuable consideration set forth in this Amendment No. 1, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** The above Recitals provisions are fully incorporated herein by this reference.
2. Article XI of the Lease Agreement is hereby modified to read as follows:

XI.

Beginning on or before October 1, 2023, and continuing thereafter for the remainder of the Term, Lessee shall operate a museum, regularly open to the public on at least a weekly basis, which promotes and preserves the history and heritage of Brenham and the surrounding area. Beginning no later than six (6) months after the commencement of the Term of this Lease and continuing on a semi-annual basis thereafter until Lessee completes the renovation of and opens the museum as required herein, Lessee shall provide the City with written progress reports and updates regarding the Lessee’s museum fundraising efforts and accomplishments (including goals and amounts raised), Board of Directors actions, undertakings and meetings, museum operations and similar activities. No later than April 1, 2022, Lessee shall commence construction of the improvements necessary to open said museum to the public on or before October 1, 2023. In the event Lessee fails to comply with any provision of this Article XI, including but not limited to: 1) Lessee fails to provide

the City with written progress reports and updates as required herein; 2) Lessee fails to open said museum to the public on or before October 1, 2023; or 3) at any time after October 1, 2023, Lessee allows said museum to remain closed to the public for a period of forty-five (45) or more consecutive calendar days, City may, by written notice to Lessee, immediately terminate this lease, notwithstanding the provisions of Article XII or any other provision herein. Lessee may, by written notice to City, terminate this lease at any time with sixty (60) days' notice.

3. This Amendment No. 1 shall prevail over any provision or term contained in the Lease Agreement to the extent said Lease Agreement may be inconsistent with the terms of this Amendment No. 1. Except as expressly amended by this Amendment No. 1, all other terms and conditions of the Lease Agreement shall remain in full force and effect.

This Amendment No. 1 is agreed to and accepted by both parties to the Lease Agreement, and shall be effective as of the ____ day of _____, 2021.

LESSEE:

BRENNHAM HERITAGE MUSEUM, INC.

LESSOR:

CITY OF BRENNHAM

By: _____
Jo Ann Wolf
Chair, Board of Directors

By: _____
Hon. Milton Y. Tate, Jr., Mayor

ATTEST:

By: _____
Name:
Title:

ATTEST:

By: _____
Jeana Bellinger, TRMC, CMC
City Secretary

LEASE AGREEMENT

WHEREAS, the City of Brenham, a Texas home rule municipal corporation, owns the real property and improvements thereon located at 105 South Market Street, Brenham, Texas ("Premises"); and

WHEREAS, Brenham Heritage Museum, Inc., a Texas non-profit corporation, desires to lease from the City of Brenham the Premises for the exclusive purpose of operating a museum which promotes and preserves the history and heritage of Brenham and the surrounding area; and

WHEREAS, this Lease Agreement, hereinafter referred to as "this lease," is made and entered into by and between Brenham Heritage Museum, Inc. (hereinafter referred to as "Lessee" or "Museum") and the City of Brenham, as Lessor (hereinafter referred to as "City" or "Lessor").

WITNESSETH:

I.

City, in consideration of the covenants and agreements to be performed by Lessee and upon terms and conditions hereinafter stated, does hereby lease to Lessee the Premises located at 105 South Market Street, Brenham, Texas, said Premises further described in Exhibit "A" attached hereto and incorporated herein for all pertinent purposes. The term of this lease shall be for a period of fifty (50) years, commencing on January 1, 2020 and ending on December 31, 2069 ("Term"); provided however, that City and Lessee shall have the right to terminate this lease as provided elsewhere herein.

II.

For and in consideration of this lease, upon execution hereof by all parties, Lessee shall pay ONE DOLLAR AND NO/100 (\$1.00) per year ("Annual Rent") to City during the Term. Said Annual Rent shall be paid to the City in advance each year on or before the 1st day of February. Any rent funds collected pursuant to this lease shall be used to maintain and preserve the building.

As additional consideration, Lessee agrees that the Premises shall be used solely to operate, during the Term, at no cost to the City, a museum which promotes and preserves the history and heritage of Brenham and the surrounding area. Lessee hereby accepts the Premises in its "as is" condition. THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE. Further, Lessee shall be responsible for any and all improvements to or retrofitting of the Premises as may be required by law for compliance with the Americans with Disabilities Act or similar state or federal law, and any regulations promulgated thereunder.

It is also agreed by Lessee that a violation of any covenant herein contained shall constitute forfeiture of Lessee's right to occupy the Premises, and City shall be entitled to terminate this lease in accordance with Article XII and take possession of the Premises without the necessity of legal proceedings.

City and City's officials, employees, agents and representatives shall have the right to enter upon and inspect the Premises at any reasonable time after providing Lessee notice at least twenty-four (24) hours before entering the Premises, for the purpose of ascertaining compliance with the terms of this lease and/or the condition of the Premises.

City shall be entitled to designate two (2) persons to serve on the Board of Directors of Brenham Heritage Museum, Inc. ("City Board Members"), having the same authority and terms of office as all other Board members. The City Board Members shall also be entitled to serve on the Board of Directors of any successor organization to the Brenham Heritage Museum, Inc. Within thirty (30) days after the commencement of this lease, the Brenham Heritage Museum Board of Directors shall take any and all action appropriate and necessary to appoint the City Board Members to immediately begin serving on the Brenham Heritage Museum Board of Directors.

III.

City shall pay the cost of all utility services, initial utility connection charges, and all charges for gas, water, wastewater, garbage, and electricity utility services used on the Premises.

Lessee shall be responsible for the installation, maintenance and expense of its own telephone service and security system if said services are desired by Lessee.

Lessee shall not permit any mechanic's lien to be placed upon the Land, Building or Premises, caused by or resulting from work performed, materials furnished or obligations incurred by or at the request of Lessee, and in the case of such filing of such lien, Lessee agrees to promptly pay the same or otherwise cause the immediate release of the same.

Lessee shall be responsible for all payment of taxes levied or assessed against the Premises and/or personal property located thereon, during the Term.

IV.

Lessee shall, at its own cost and expense, make all improvements needed to use Premises as a museum which promotes and preserves the history and heritage of Brenham and the surrounding area.

City shall, at its own cost and expense, keep and maintain the roof, foundation, driveway and parking area(s) of the Premises in good condition, making all necessary repairs.

Lessee shall, at its own cost and expense, keep and maintain all other parts of the Premises in good condition, promptly making all necessary repairs and replacements, including but not limited to the windows, exterior and interior walls, finish work, elevator, backflow preventer, fire alarm system, floors and floor covering, fixtures, pest extermination, and regular removal of trash and debris. Lessee shall be responsible for structural repair and maintenance of the Building and Premises, including but not limited to, plumbing, electrical wiring and system, and heating and air conditioning systems. No major maintenance project may begin until Lessee has contacted the National Parks Service and Texas Historical Commission, if required, for review of the project and obtained the approval of said entities.

Lessee may request funding from the City for specific maintenance or repair projects, and the City, in its sole discretion, may authorize the expenditure of funds for the project. With the exception of costs associated with the maintenance or repair of the roof, foundation, driveway and parking area(s) the City shall bear no cost of maintenance or repair of any sort to the Premises, unless funding is authorized by the City for a specific maintenance or repair project in response to a request from Lessee.

Renovations to be made to the Premises, if any, shall be the subject of a separate Renovation Agreement. Lessee shall pay all costs associated with any renovations. During any renovation of the Premises by the Lessee, the Lessee shall obtain, or require its general contractor to obtain, builder's risk ("all-risk" coverage) insurance covering the renovation project from its commencement through the date of completion of the renovation project. Such builder's risk insurance coverage must: 1) include the interests of the Lessor, contractor and subcontractors of all tiers; and 2) be approved in writing by the Lessor prior to Lessee's commencement of a renovation project. No improvements, changes, additions or alterations shall be made to the Premises by the Lessee until Lessee has contacted the National Parks Service and Texas Historical Commission, on behalf of the City, for review and obtained approval of the improvements, changes, additions or alterations from said entities and the Lessee has obtained written approval from the City. Further, any improvements, changes, additions or alterations to the Premises shall meet the SOI Standards for the Treatment of Historic Properties and shall be made in a good and workmanlike manner, and in accordance with plans approved by the City.

V.

Upon termination of this lease by City or Lessee, City and Lessee agree that Lessee may at Lessee's sole expense, remove its trade fixtures, including equipment, provided that such removal shall not impair the structural integrity of the Premises; such determination shall be made by the Brenham City Manager, or his designee acting reasonably, and same shall be binding on the parties hereto: and Lessee shall repair any damages caused by such removal to the reasonable satisfaction of the Brenham City Manager, or his designee.

VI.

Lessee shall, at Lessee's expense, obtain all governmental licenses and permits necessary for the permitted uses of the Premises and shall comply with all governmental laws, ordinances and regulations applicable to the use of the Premises; also Lessee shall promptly comply with all

governmental orders and directives for the correction, prevention and abatement of violations, nuisances and hazardous conditions in or upon, or connected with the Premises. Lessee shall prepare, on behalf of the City, all reports required to be submitted, including, but not limited to: biennial reports setting forth the use made of the Premises during the preceding two-year period, said reports shall be submitted to the Secretary at the National Park Service, Intermountain Regional Office, Historic Surplus Property Program, Heritage Partnerships Program, 12795 W. Alameda Parkway, Lakewood, CO 80228.

VII.

AS A CONDITION HEREOF, LESSEE AGREES TO INDEMNIFY AND DEFEND CITY AGAINST ANY AND ALL CLAIMS FOR INJURIES, DAMAGES, COSTS AND EXPENSE, TO PERSONS OR PROPERTY THAT MAY ARISE OUT OF, OR BE OCCASIONED BY THE USE, OCCUPANCY OR MAINTENANCE OF THE PREMISES BY LESSEE, OR FROM ANY NEGLIGENT OR WILLFUL ACT OR OMISSION OF ANY OFFICER, REPRESENTATIVE, AGENT, INVITEE AND/OR EMPLOYEE OF LESSEE. LESSEE HEREBY AGREES TO DEFEND ANY AND ALL SUITS, CLAIMS, OR CAUSES OF ACTION BROUGHT AGAINST CITY ON ACCOUNT OF SAME, AND DISCHARGE ANY JUDGMENT OR JUDGMENTS THAT MAY BE RENDERED AGAINST CITY IN CONNECTION THEREWITH.

VIII.

The Lessor shall procure and maintain at its sole cost and expense for the duration of this lease property and casualty insurance at replacement cost for the building and fixtures. The Lessee shall procure and maintain at its sole cost and expense for the duration of this lease commercial general liability insurance against claims for injuries to persons or damages to property that may arise from or in connection with the use and occupancy of the Premises by the Lessee, and the Lessee's officers, agents, representatives, volunteers, employees or subcontractors. Additionally, Lessee shall maintain at its expense property and casualty insurance on all of its personal property, including trade fixtures and other property placed by Lessee in, on or about the Premises. Lessor shall not be responsible for maintaining insurance on any of the lessee's personal property, trade fixtures or other property placed by Lessee in, on or about the Premises. The Lessee's insurance coverage shall be primary insurance with respect to the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be considered in excess of the Lessee's insurance and shall not contribute to it. All insurance premiums shall be paid by Lessee. Further, the Lessee shall include the City as an additional insured under its commercial general liability insurance policy. Certificates of Insurance and endorsements shall be furnished to the City in a timely manner to demonstrate Lessee's ongoing compliance with this Article VIII.

Standard Insurance Policies Required:

- (a) Property and Casualty Insurance for Lessee's Personal Property
- (b) Commercial General Liability Policy

General Requirements Applicable to All Policies:

- (a) Policies shall be written by a carrier with a A:VIII or better rating in accordance with the current Best Key Rating Guide.
- (b) Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.
- (c) Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
- (d) "Claims Made" policies will not be accepted.
- (e) The City of Brenham, its officials, employees and volunteers, are to be added as "Additional Insured" to the Commercial General Liability Policy. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.
- (f) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City of Brenham.
- (h) Certified copies of all insurance policies shall be furnished to the City of Brenham.

Commercial General Liability

- (a) Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
- (b) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.

IX.

Lessee shall not assign this lease or sublet the Premises or any part thereof without the prior written consent of City.

Lessee shall not occupy or allow the Premises to be occupied for any business or purpose deemed extra hazardous because of the threat of fire or otherwise, such determination to be made by the Brenham City Manager or his designee.

X.

In the event the Premises are substantially or totally damaged or destroyed or rendered partially unfit for occupancy by natural disaster, or fire or water damage or other casualty, either party may elect to terminate this Lease. City shall not be liable for any damage to any museum property or other personal property located on the Premises caused by natural disaster, fire, water damage or other casualty.

XI.

Beginning on or before October 1, 2022, and continuing thereafter for the remainder of the Term, Lessee shall operate a museum, regularly open to the public on at least a weekly basis, which promotes and preserves the history and heritage of Brenham and the surrounding area. Beginning no later than six (6) months after the commencement of the Term of this Lease and continuing on a semi-annual basis thereafter until Lessee completes the renovation of and opens the museum as required herein, Lessee shall provide the City with written progress reports and updates regarding the Lessee's museum fundraising efforts and accomplishments (including goals and amounts raised), Board of Directors actions, undertakings and meetings, museum operations and similar activities. No later than April 1, 2021, Lessee shall commence construction of the improvements necessary to open said museum to the public on or before October 1, 2022. In the event Lessee fails to comply with any provision of this Article XI, including but not limited to: 1) Lessee fails to provide the City with written progress reports and updates as required herein; 2) Lessee fails to open said museum to the public on or before October 1, 2022; or 3) at any time after October 1, 2022, Lessee allows said museum to remain closed to the public for a period of forty-five (45) or more consecutive calendar days, City may, by written notice to Lessee, immediately terminate this lease, notwithstanding the provisions of Article XII or any other provision herein. Lessee may, by written notice to City, terminate this lease at any time with sixty (60) days' notice.

XII.

If either party defaults in the performance of any obligation or covenant herein, the non-defaulting party may enforce the performance of this lease in any manner provided by law. This lease may be terminated at the non-defaulting party's discretion if such default continues for a period of thirty (30) days after written notification of such default and of the intention of the non-defaulting party to declare this lease terminated, provided, however, if the default is not capable of being fully cured within thirty (30) days, the defaulting party shall be allowed the needed additional time to cure the default if (i) the defaulting party begins the cure within the thirty (30) day period, (ii) diligently pursues the cure thereafter until it is fully cured, and (iii) has been given advance written approval to proceed by the non-defaulting party. Such notice shall be sent by the non-defaulting party to the party in default. If Lessee, as the defaulting party, has not substantially cured the default within the time period referenced above, this lease shall terminate. Thereafter, City, if the non-defaulting party, or its agents, shall have the right, without further notice or demand, to enter the Premises and remove all persons and property there from without being deemed guilty of trespass and without waiving any other remedies for arrears of rent or breach of covenant. City or its agents may resume possession of the Premises and relet the same for the remainder of the Term, and/or exercise any other remedy available to the City by law or equity.

XIII.

City and its officers, employees and agents shall not be liable to Lessee or to Lessee's officers, employees, patrons, visitors, invitees or any other persons for any injury to any such persons or any damage to personal property occurring on the Premises caused by the negligence or misconduct of Lessee and/or its officers, employees, agents or volunteers.

XIV.

Subject to and only after written approval of the Brenham City Manager or his designee, Lessee shall have the right to erect signs on the Premises, provided that Lessee bears the expense of all signs it places on the Premises and the sign(s) conform to the ordinances, regulations, requirements, and conditions of approval of the City of Brenham.

XV.

Any waiver by City or Lessee of any default or breach of any term, covenant, condition, agreement, provision or stipulation herein contained must be in writing and shall not constitute a waiver of any subsequent default or breach of the same or any other term, covenant, condition, agreement, provision or stipulation hereof.

XVI.

This lease agreement constitutes the full and final expression of the agreement between City and Lessee, through the entire Term, and it may not be amended except by written instrument signed by both parties.

XVII.

In the event Lessee defaults in the performance of any of the terms, covenants, agreements, or conditions contained in this lease and City places in the hands of its attorney the enforcement of all or any part of this lease, the collection of any rent due or to become due or recovery of the possession of the Premises, Lessee agrees to pay City reasonable attorney's fees for the services of its attorney, whether a suit is actually filed or not.

XVIII.

As security for payment of rent, damages and all other payment required to be made by this lease, Lessee hereby grants to City a lien upon all property, including personal property, of Lessee now or subsequently located upon the Premises. If Lessee abandons or vacates any substantial portion of the Premises or is in default in the payment of any rentals, damages or other payments required to be made by this lease or is in default of any other provision of this lease, City may enter upon the Premises, by picking or changing locks if necessary, and take possession of all or any part of the personal property, and may sell all or any part of the personal property at a public or private sale, in one or successive sales, with or without notice, to the highest bidder for cash, and, on behalf of Lessee, sell and convey all or part of the personal property to the highest bidder all of Lessee's title and interest in the personal property shall be applied by Lessor toward the reasonable costs and expenses of the sale, including attorney's fees, and then the terms of this lease; any excess remaining shall be paid to Lessee or any other person entitled thereto by law.

XIX.

All notices required under this lease shall be made in writing. Any notice or document required or permitted to be delivered herein shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties hereto at the addresses set out below, or at such other addresses as they may specify by notice delivered in accordance herewith:

Chairperson, Board of Directors
Brenham Heritage Museum
P.O. Box 1122
Brenham, Texas 77834

City Manager
City of Brenham
P.O. Box 1059
Brenham, Texas 77834

XX.

This lease is expressly made subject to the Charter and ordinances of the City of Brenham, and all applicable state and federal laws. Should any legal action be instituted in connection with this lease, legal venue for all purposes shall lie exclusively in Washington County, Texas.

IN TESTIMONY WHEREOF, the parties have hereunto set their hands this 31st day of December, 2019.

LESSEE:

BRENNHAM HERITAGE MUSEUM, INC.

By: [Signature]
Name:
Title: Chair

LESSOR:

CITY OF BRENNHAM

By: [Signature]
Hon. Milton Y. Tate, Jr., Mayor

ATTEST:

By: [Signature]
Name: Rebecca Ruffino
Title: Executive Assistant

ATTEST:

By: [Signature]
Jeana Bellinger, TRMC, CMC
City Secretary





Regular City Council
AGENDA ITEM 10.

Agenda Item: Discuss and Possibly Act Upon an Addendum to the Memorandum of Understanding Between the City of Brenham and Brenham Main Street Historical Preservation, Inc. and Authorize the Mayor to Execute Any Necessary Documentation

Meeting Type: Regular Meeting-July 15, 2021

Department: Administration

Staff Contact: James Fisher, City Manager

Classification: Regular

SUMMARY STATEMENT:

The proposed Addendum to the Memorandum of Understanding between the City of Brenham and the Brenham Main Street Historical Preservation Inc, (the Barnhill Center at the Historic Simon Theater) is to allow for a feasibility study/business plan to be developed about the operations of this facility by the City. Several community members came together numerous years ago to restore the historic Simon Theater and invested millions of dollars to create a community gem with the intention of turning the Theater over to the City. The proposed MOU allows the City time to study the feasibility of receiving this facility and to develop a business plan as the sole operator. The business plan will look at operations, revenue potential, marketing opportunities, fiscal impact to the City including personnel and other related matters. The business plan will also explore the idea of creating a Local Government Corporation (LGC) as a potential owner and operator. The LGC may be a good alternative to City ownership as we may be able lessen the liability to the City regarding financial matters and create operational opportunities.

ATTACHMENTS:

- (1) Addendum to MOU
- (2) 2019 MOU

RELEVANCE TO COMPREHENSIVE PLAN:

RECOMMENDED ACTION:

Approve the Addendum to the Memorandum of Understanding Between the City of Brenham and Brenham Main Street Historical Preservation, Inc. and Authorize the Mayor to Execute Any Necessary Documentation.

**ADDENDUM TO AND MODIFICATION OF
MEMORANDUM OF UNDERSTANDING**

THIS **ADDENDUM TO AND MODIFICATION OF MEMORANDUM OF UNDERSTANDING** (“**ADDENDUM**”) is made and entered into between BRENHAM MAIN STREET HISTORICAL PRESERVATION, INC., a Texas nonprofit corporation (“**BMSHP**”), and the CITY OF BRENHAM, a Texas home-rule municipal corporation (“**City**”), effective as of this ____ day of _____, 20____ (the “**Commencement Date**”).

WHEREAS, Simon Theater Master Tenant, LLC and the City entered into that certain Memorandum of Understanding, dated and effective on February 7, 2019 (the “**MOU**”), attached hereto as Exhibit “A” and incorporated herein for all purposes pertinent; and

WHEREAS, Simon Theater Master Tenant, LLC has assigned the MOU to Brenham Main Street Historical Preservation, Inc. (“**BMSHP**”) in an assignment to which the City consented in the “Consent of City of Brenham, Texas to Assignment of Lease Agreement and Memorandum of Understanding,” effective February 1, 2021 and attached hereto as Exhibit “B” and incorporated herein for all purposes pertinent; and

WHEREAS, the City desires an adequate period to evaluate the possible ownership of the Barnhill Center, as requested by BMSHP; and

WHEREAS, BMSHP and the City desire to mutually agree to certain additional terms and obligations related to the MOU as further described in this Addendum;

NOW, THEREFORE, in consideration of the mutual obligations and undertakings described herein, and other good and valuable consideration set forth in this MOU, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** The above Recitals provisions are fully incorporated herein by this reference.
2. This Addendum shall automatically terminate at 11:59 p.m., prevailing Central Time, on January 31, 2022 without the need for any further action by either party. However, notwithstanding the previous sentence, either party may terminate this Addendum, without cause, at any time, upon thirty (30) days’ written notice to the other party.
3. For purposes of the MUO and this Addendum, the term “Barnhill Center” shall be deemed to include all rooms and facilities associated with the Simon Theater, including but not necessarily limited to the Barnhill Ballroom, Simon Theater, newly constructed meeting spaces, and all other areas associated with the Simon Theater.
4. **City’s Obligations:**

Additional Consideration. During the time this Addendum is in effect and beginning with the interest payment(s) due on June 30, 2021, the City shall reimburse the BMSHP interest-only payments made by the BMSHP on the existing loans encumbering the Barnhill Center, as the interest payments become due during

the effective period of this Addendum. Under no circumstances will the total amount of interest-only reimbursement payments from the City to BMSHP exceed \$35,000.00.

5. BMSHP's Obligations:

Exclusive Rights. BMSHP hereby grants the City exclusive right and authority to promote, market, operate, utilize, and/or occupy the Barnhill Center for the purposes of scheduling, organizing and/or conducting conferences, cultural arts programing, concerts, weddings, and any other events and activities at the Barnhill Center. Notwithstanding the immediately preceding sentence, and subject to the scheduling approval of the City, in its sole discretion, and availability of the Barnhill Center, the Board of Directors of the Brenham Main Street Historical Preservation, Inc. ("BMSHP") will be permitted to use the Barnhill Center up to two (2) times each year for any BMSHP fundraising events, meetings of the BMSHP Board of Directors and Development Committee, or to conduct small tours for BMSHP fundraising.

6. This Addendum shall prevail over any provision or term contained in the MOU dated and effective February 7, 2019, to the extent said MOU may be inconsistent with the terms of this Addendum. Except as otherwise provided herein, or to the extent the MOU is inconsistent with the provisions of this Addendum, the parties hereto shall be subject to and governed by all terms and provisions of the MOU.

IN WITNESS WHEREOF, the undersigned have executed this Addendum to and Modification of Memorandum of Understanding to be made effective as of the date first written above.

BMSHP:

BRENHAM MAIN STREET HISTORICAL PRESERVATION,
INC., a Texas nonprofit corporation

By: _____

Name: R. Hal Moorman

Title: President

CITY:

THE CITY OF BRENHAM, TEXAS

By: _____

Name: Clint Kolby

Title: Mayor Pro Tempore

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“*MOU*”) is made and entered into between SIMON THEATER MASTER TENANT, LLC, a Texas limited liability company (“*Simon Theater*”), and the CITY OF BRENHAM, a Texas home-rule municipal corporation (“*City*”), effective as of this 7th day of February, 20 19 (the “*Commencement Date*”).

WHEREAS, Simon Theater is the leasehold owner of that certain building known as The Barnhill Center, located 111 West Main Street in Brenham, Texas (the “*Barnhill Center*”), being more fully described in Exhibit “A” attached hereto and incorporated herein for all purposes pertinent; and

WHEREAS, Simon Theater has agreed to allow the City to operate the Barnhill Center as a conference center event destination and for cultural arts programming; and

WHEREAS, the City has agreed to market, promote and operate the Barnhill Center and provide reimbursement of certain expenses, technology support services and facility repair and maintenance services;

NOW, THEREFORE, IN CONSIDERATION OF One Thousand Five Hundred and No/100 Dollars (\$1,500.00) per month and other good and valuable consideration set forth in this MOU, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** The above Recitals provisions are fully incorporated herein by this reference.

2. **City’s Obligations.** The City agrees to:

(a) *Rental Policies.* The City shall have the authority, within its sole discretion, to establish the policies and rates for rental of the Barnhill Center and associated facilities, and all related charges and fees.

(b) *City Staff.* Have City staff present at all times during events at the Barnhill Center; however, this obligation of the City shall not apply to occasions when the Simon Theater is using the Barnhill Center, in compliance with subparagraph 5(b) herein below, for fundraising events and at other times for meetings of the Brenham Main Street Historical Preservation, Inc. Board of Directors and Development Committee, and to conduct small tours for fundraising. Except for events and meetings sponsored by or conducted by the City, event rentals must purchase event insurance online (through a third-party provider) at a minimum of three (3) days prior to an event.

(c) *Marketing and Promotion.* Promote and market the Barnhill Center as a conference center event destination and for cultural arts programing. The City will have the exclusive and final authority in determining the utilization and development of marketing materials and advertisements related to the promotion and marketing of the Barnhill Center/Simon Theater, including without limitation the exclusive administrative rights and control of all website and social media domains and content related to the Barnhill Center/Simon Theater. Accordingly, Simon Theater hereby grants to the City an

exclusive, nontransferable license, irrevocable during the period that this MOU is in effect, to all of the Barnhill Center/Simon Theater's website(s) and social media sites, further identified as follows: thebarnhillcenter.com; The Barnhill Center on Instagram and www.facebook.com/BarnhillCenter. Simon Theater may request that the City include additional content on the website and social media sites for BMSHP/Simon Theater fundraising events.

(d) *Concessions and alcohol.* Provide or contract to provide all alcohol concessions and other concessions at all events at the Barnhill Center. The City will receive all of the income from the alcohol concessions and other concessions from all conferences, cultural arts programing, concerts, weddings, and all other events and activities at the Barnhill Center. Further, at such time as the City, or an entity affiliated with the City, may obtain any necessary license(s) and/or permit(s) from the Texas Alcoholic Beverage Commission ("TABC") to provide alcohol concessions at the Barnhill Center, the City or such affiliated entity shall be the exclusive provider of all alcohol concessions at all events at the Barnhill Center, and the City/affiliated entity will continue to receive all of the income from the alcohol concessions. At such time as the City/affiliated entity may obtain any necessary license(s) and/or permit(s) from the Texas Alcoholic Beverage Commission to provide alcohol concessions at the Barnhill Center, Simon Theater shall immediately take all actions necessary to cancel Simon Theater's license(s) and/or permit(s) issued by the Texas Alcoholic Beverage Commission for providing alcohol concessions at the Barnhill Center. City staff that serve as Barnhill Center event coordinators and/or managers must obtain TABC server/seller certification and follow all applicable regulations of the TABC.

(e) *Maintenance.* Repair, replace, and maintain the (i) roof; (ii) foundation, (iii) exterior and interior walls, doors, corridors, light fixtures, flooring and windows; (iv) HVAC, plumbing and electrical systems; (v) other structures or equipment/machinery fixtures serving the Barnhill Center (excluding the elevator which shall remain the responsibility of the Simon Theater; however the City will reimburse Simon Theater for the annual cost of the Schindler Elevator Company Extended Warranty Agreement as part of the annual maintenance cost paid by the City pursuant to this subsection); and (vi) any property damaged as a result of a defect or malfunction of the aforementioned items, except to the extent that damage to the same is caused by the Simon Theater or the Simon Theater's employees, agents, or invitees. Unless otherwise agreed to in writing by the parties, the City shall not be required to expend more than \$12,000.00 each fiscal year (October 1 – September 30) in performing its obligations set forth in the previous sentence, and Simon Theater shall be responsible for said repair, replacement and maintenance costs in excess of \$12,000.00, except to the extent that damage to the premises is caused by the City or the City's employees, agents, or invitees. The City will keep all audio-visual and lighting equipment situated at the Barnhill Center in good and clean order and condition and will promptly make all necessary or appropriate repairs, replacements, and renewals of such equipment. To the extent the audio-visual or lighting equipment is damaged or rendered inoperable in any manner by a party to this MOU, the party causing such damage or inoperability shall be responsible for the costs necessary for the repair or replacement of the audio-visual or lighting equipment. Repairs, replacements, and other maintenance costs necessitated by damages resulting from fire or other casualty losses shall be funded in

accordance with the terms and conditions set forth in **Exhibit "B"** attached hereto and incorporated herein for all purposes pertinent.

(f) **Requests for Repairs.** Submit in writing to Simon Theater any request for repairs, replacement, and maintenance that are the obligations of Simon Theater.

(g) *Vacate.* Vacate the Barnhill Center and return all keys to the Barnhill Center on the last day of the Term.

(h) *Indemnification.* TO THE EXTENT ALLOWED BY LAW, INDEMNIFY, DEFEND, AND HOLD SIMON THEATER AND ANY HOLDER OF A MORTGAGE LIEN COVERING SIMON THEATER ("*LIENHOLDER*"), AND THEIR RESPECTIVE AGENTS, HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) OCCURRING IN ANY PORTION OF THE BARNHILL CENTER, BUT ONLY TO THE EXTENT SUCH INJURY IS CAUSED BY THE CITY'S NEGLIGENCE OR WILLFUL MISCONDUCT. THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF THE CITY'S INSURANCE, (ii) WILL SURVIVE THE END OF THE TERM, AND (iii) WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SIMON THEATER OR LIENHOLDER, AND THEIR RESPECTIVE AGENTS, OR ANY PERSON OR ENTITY OTHER THAN THE CITY.

(i) *Facility Usage Fee. Additional amounts payable to Simon Theater.* During the Term of this MOU, the City shall pay to Simon Theater a facility usage fee of One Thousand Five Hundred and No/100 Dollars (\$1,500.00) per month. Within ten (10) days after the execution of this MOU by both parties, City shall pay to Simon Theater the additional lump sum amount of Thirty-Seven Thousand Five Hundred and No/100 Dollars (\$37,500.00) for accrued, unpaid facility usage fees payable to Simon Theater by the City for the time period beginning January 1, 2017 through ~~September 30, 2018.~~

January 31, 2019 myt RHM

3. Negative Covenants: The City agrees not to:

(a) Use the Barnhill Center for any purpose other than general business and recreational use, including but not limited to operating, renting, subleasing, licensing and promoting the Barnhill Center as a facility for conferences, cultural arts programming, concerts, weddings, and other events.

(b) Create a nuisance.

(c) Use the Barnhill Center in any way that would void insurance on the Barnhill Center.

(d) Change Barnhill Center's lock system except as approved by Simon Theater. Simon Theater shall not issue any keys or other devices allowing access to the Barnhill

Center to any person other than members of the Brenham Main Street Historical Preservation, Inc. ("BMSHP") Board of Directors or BMSHP staff.

(e) Alter the Barnhill Center without written authorization from the Simon Theater.

(f) Allow a lien to be placed on the Barnhill Center.

(g) Assign this MOU without Simon Theater's written consent.

(h) Attach any permanent signage to the Barnhill Center without written permission of Simon Theater.

4. Simon Theater's Obligations: Simon Theater agrees to:

(a) *Repairs and Maintenance.* Repair, replace, and maintain the elevator and any other part of the Barnhill Center (normal wear excepted) that the City is not obligated to repair, replace, or maintain (e.g. casualty losses as described in Exhibit "B"). In the event the City and Simon Theater agree that the City will make any repairs or perform any maintenance for which Simon Theater is responsible under this subparagraph 4(a), Simon Theater shall promptly reimburse the City for such repairs and maintenance costs.

(b) *Telephone Service.* The Simon Theater further agrees that the published phone number - (979) 836-6980 - shall be ported to the City as soon as possible after the Commencement Date of this MOU.

(c) *Personnel.* Carry out and provide sufficient personnel for all events and meetings held pursuant to subparagraph 5(b) herein by, on behalf of, or for the benefit of Simon Theater and/or BMSHP. The City will provide event setup and cleaning of facilities before and after an event held pursuant to subparagraph 5(b) herein by, on behalf of, or for the benefit of Simon Theater and/or BMSHP.

(d) TO THE EXTENT ALLOWED BY LAW, INDEMNIFY, DEFEND, AND HOLD CITY HARMLESS FROM ANY INJURY AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS, OCCURRING IN ANY PORTION OF THE PREMISES, BUT ONLY TO THE EXTENT SUCH INJURY IS CAUSED BY SIMON THEATER'S OR LIENHOLDER'S NEGLIGENCE OR WILLFUL MISCONDUCT. **THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF SIMON THEATER'S INSURANCE, (ii) WILL SURVIVE THE END OF THE TERM, AND (iii) WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY.**

(e) Coordinate, control and schedule the breakout room construction work in consultation with the City so that the breakout room construction work does not interfere with, hamper, negatively affect or disturb in any manner (including but not limited to

excessive noise, foul odor, detectible vibration, impeding ingress/egress of event attendees and/or City staff, presence of rubbish and debris on the premises, or other similar conditions) the use of the Barnhill Center during an event or conference being held on the premises, or during activities in preparation for an event, meeting or conference to be held on the premises. The contractor performing the breakout room construction work shall be required to maintain the premises in a clean, orderly and sanitary manner. Simon Theater shall direct the architect/engineer designing the breakout room improvements to confer with the City regarding the design of said breakout room improvements, and shall also ensure that the audio-visual equipment is functionally compatible with, and operable with, the existing audio-visual equipment at the Barnhill Center. Simon Theater shall retain the final decision-making authority regarding the design of the breakout room improvements.

5. General Provisions: Simon Theater and the City agree to the following:

(a) *Alterations.* Any physical additions or improvements to the Barnhill Center made by the City will become the property of Simon Theater. Simon Theater may require that the City, at the end of the Term and at the City's expense, remove any physical additions and improvements, repair any alterations, and restore the Barnhill Center to the condition existing at the Commencement Date, normal wear excepted.

(b) *Simon Theater's Use of Barnhill Center.* Except as otherwise provided for in this MOU, the City shall have exclusive use of the Barnhill Center for general business and recreational use, including but not limited to operating, renting, subleasing, licensing and promoting the Barnhill Center as a facility for conferences, cultural arts programming, concerts, weddings, and other events. Subject to the scheduling approval of the City and availability of the Barnhill Center, the Board of Directors of the Brenham Main Street Historical Preservation, Inc. ("BMSHP") will be permitted to use the Barnhill Center up to six (6) times each year for any fundraising events and at other times for meetings of the BMSHP Board of Directors and Development Committee and to conduct small tours for fundraising. The City shall endeavor in good faith to accommodate the BMSHP's request to use the Barnhill Center pursuant to this subparagraph 5(b) on a particular date; however, the Barnhill Center will not be made available for the BMSHP's use on a particular date if another event has been booked on BMSHP's requested date, or the City has in any manner (e.g. via email, telephone, fax, in-person meeting, etc.) communicated with a potential user of the Barnhill Center, even though the potential user has not booked the Barnhill Center, about the use of the Barnhill Center on a particular date or dates that conflict with BMSHP's requested date.

(c) *Insurance.* The City and Simon Theater will maintain the respective insurance coverages described in the Insurance Addendum attached hereto as Exhibit "B" and incorporated herein for all purposes.

(d) *Release of Claims/Subrogation.* SIMON THEATER AND CITY RELEASE EACH OTHER AND LIENHOLDER, AND THEIR RESPECTIVE AGENTS, FROM ALL CLAIMS OR LIABILITIES FOR DAMAGE TO THE BARNHILL CENTER OR BUILDING, DAMAGE TO OR LOSS OF PERSONAL PROPERTY WITHIN THE BUILDING, AND LOSS OF BUSINESS OR REVENUES THAT ARE COVERED BY

THE RELEASING PARTY'S PROPERTY INSURANCE OR THAT WOULD HAVE BEEN COVERED BY THE REQUIRED INSURANCE IF THE PARTY FAILS TO MAINTAIN THE PROPERTY COVERAGES REQUIRED BY THIS MOU. IF APPLICABLE, THE PARTY CAUSING THE DAMAGE OR LOSS WILL BE RESPONSIBLE FOR ANY DEDUCTIBLE OR SELF-INSURED RETENTION UNDER THE PROPERTY INSURANCE POLICY PROVIDING COVERAGE FOR THE DAMAGE OR LOSS. SIMON THEATER AND CITY WILL NOTIFY THE ISSUING PROPERTY INSURANCE COMPANIES OF THE RELEASE SET FORTH IN THIS PARAGRAPH AND WILL HAVE THE PROPERTY INSURANCE POLICIES ENDORSED, IF NECESSARY, TO PREVENT INVALIDATION OF COVERAGE. THIS RELEASE WILL NOT APPLY IF IT INVALIDATES THE PROPERTY INSURANCE COVERAGE OF THE RELEASING PARTY. THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF THE RELEASED PARTY OR ITS AGENTS BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE RELEASED PARTY OR ITS AGENTS.

6. Miscellaneous.

(a) *Term.* The Term of this MOU shall begin on the Commencement Date and shall terminate on September 30, 2019 unless this MOU is otherwise terminated earlier as provided herein. Thereafter, this MOU shall automatically renew each year on October 1 for successive twelve (12) month terms unless either party provides written notice of non-renewal at least sixty (60) days prior to the termination of the then current term, or unless this MOU is otherwise terminated as provided herein.

(b) *Successors and Assigns.* This MOU is binding on, and inures to, the benefit of the parties and their respective successors and assigns.

(c) *Governing Law; Venue.* This MOU shall be governed by the laws of the State of Texas. Exclusive venue for any claim, dispute, lawsuit or other legal proceeding arising out of or involving this MOU shall lie in Washington County, Texas.

(d) *Default.* The failure of either party to comply with the terms and conditions of this MOU shall constitute a default of this MOU. If either party commits a default in the performance of any obligation or covenant herein, the non-defaulting party may enforce the performance of this MOU in any manner provided by law. This MOU may be terminated at the non-defaulting party's discretion if such default continues for a period of thirty (30) days after written notification of such default and of the intention of the non-defaulting party to declare this MOU terminated, provided, however, if the default is not capable of being fully cured within thirty (30) days, the defaulting party shall be allowed the needed additional time to cure the default if (i) the defaulting party begins the cure within the thirty (30) day period, (ii) the defaulting party diligently pursues the cure thereafter until it is fully cured, and (iii) the defaulting party has been given advance written approval to proceed by the non-defaulting party. Such notice shall be sent by the non-defaulting party to the party in default. If the defaulting party has not substantially cured

the default within the time period referenced above, this MOU may be terminated by the non-defaulting party, and the non-defaulting party may pursue any other remedies available in law or equity.

(e) *Notice.* All notices sent pursuant to this MOU shall be in writing and may be hand delivered, or sent by registered or certified mail, postage prepaid, return receipt requested. Notices sent pursuant to this MOU shall be delivered or sent to the City at the following address:

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

With a copy to:

Cary L. Bovey
Law Office of Cary L. Bovey, PLLC
2251 Double Creek Dr., Suite 204
Round Rock, TX 78664

Notices sent pursuant to this MOU shall be delivered or sent to the Simon Theater at the following address:

Attention: R. Hal Moorman and Donna Cummins
P.O. Box 2006
Brenham, Texas 77834-2006

With a copy to:

R. Hal Moorman
P.O. Box 1808
Brenham, TX 77834-1808

When notices sent are hand-delivered, notice shall be deemed effective upon delivery. When notices are mailed by registered or certified mail, notice shall be deemed effective three (3) days after deposit in a U.S. mail box or at a U.S. post office. Either party may change its address for notice under this MOU by providing a notice of the change in compliance with this paragraph to all other parties.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Understanding to be made effective as of the date first written above.

SIMON THEATER:

SIMON THEATER MASTER TENANT, LLC,
a Texas limited liability company

By: 
Name: R. Hal Moorman
Title: President

CITY:

THE CITY OF BRENHAM TEXAS

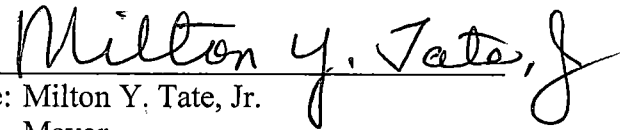
By: 
Name: Milton Y. Tate, Jr.
Title: Mayor

EXHIBIT A
Property Description

TRACT 1:

All that certain tract or parcel of land, lying and being situated in the City of Brenham, Washington County, Texas, and being designated in the Official City Map of Brenham, Texas as all of Lots 1, 2 and 3, Original Town Lot Number 21, Washington County, Texas, containing 8100 square feet of land, more or less, and being more fully described by metes and bounds on page 2 of this Exhibit "A" attached hereto and made a part hereof for all purposes pertinent.

Being the same property described in Deed dated June 25, 2003, executed by Hai Van Tran, by and through his Attorney-in-Fact, Tim Q. Tran, and Muoi Huynh Tran, by and through her Attorney-in-Fact, Tim Q. Tran, to Brenham Main Street Historical Preservation, Inc., a Texas Non-Profit Corporation, recorded in Volume 1082, Page 454, Official Records of Washington County, Texas.

TRACT 2:

All that certain tract or parcel of land, lying and being situated in the City of Brenham, Washington County, Texas, being all of Lot 1 and Lot 2 in the Division of Original Town Lot 22, containing 5348 square feet of land, more or less, and being more fully described by metes and bounds on page 3 of this Exhibit "A" attached hereto and made a part hereof for all purposes pertinent.

Being the same property described in Deed dated December 19, 2012, executed by Elisabeth Behrend Bennett, et al to Brenham Main Street Historical Preservation, Inc., a Texas Non-Profit Corporation, recorded in Volume 1422, Page 0071, Official Records of Washington County, Texas.

LICENSE AGREEMENT PARCEL:

Together with all of the rights and subject to all obligations created under a License Agreement between the City of Brenham, Texas (the "City") and Brenham Main Street Historical Preservation, Inc. ("BMSHP"), dated January 13, 2014, and recorded in Book 1474, age page 1011, Official Records of Washington County, Texas, and an Amendment to License Agreement between the City and BMSHP dated June 26, 2014, and recorded in Book 1474, Page 1017, Official Records of Washington County, Texas; reference to both of which said instruments being hereby made for all pertinent purposes.

KIGHTBT "A"

Blakey Land Surveying

4650 Wilhelm Lane
Burton, Texas 77835-5794

Telephone/Fax 979-289-3900

BRENNHAM MAIN STREET HISTORICAL PRESERVATION, INC.
8100 SQ. FT. TRACT

ALL THAT TRACT OR PARCEL OF LAND containing 8100 Sq.Ft., situated in Washington County, Texas, being out of the A. Harrington Survey, Abstract No. 55, in the City of Brenham, being all of Lots 1, 2 and 3 of the Original Town Lot 21, and being the same tract described in that deed from Hai Vau Tran, by and through his Attorney-In-Fact, Tim Q. Tran, and Mai Huynh Tran, by and through her Attorney-In-Fact, Tim Q. Tran to Brenham Main Street Historical Preservation, Inc. dated June 25, 2003, and recorded in Volume 1082, Page 454 of the Official Records of Washington County, Texas, said 8100 Sq.Ft. tract being more particularly described as follows:

BEGINNING at a point at building corner, lying at the intersection of the South margin of Main Street (public right-of-way) with the West margin of Douglas Street (public right-of-way), marking the Northeast corner of Lot 1 of Original Town Lot 21, and the Northeast corner of the herein described tract;

THENCE along the West margin of Douglas Street, with the East line of Original Town Lot 21, S 13deg 00min 00sec E, 90.00 ft., to a point at building corner, marking the Northeast corner of the Brenham Main Street Historical Preservation, Inc. tract (called Lot 1 and Lot 2 in the Division of Original Town Lot 22, Volume 1422, Page 0071, Official Records of Washington County, Texas), the Northeast corner of Lot 1 of Original Town Lot 22, the Southeast corner of Lot 3 of Original Town Lot 21, and the Southeast corner of the herein described tract;

THENCE departing the West margin of Douglas Street, along the North line of Lot 1 of Original Town Lot 22, with the South line of the herein described tract, S 77deg 00min 00sec W, 90.00 ft., to a point at building corner, lying in the East margin of a called 30 ft. alley ("Alamo Alley"), marking the Northwest corner of Lot 1 of Original Town Lot 22, the Northwest corner of the Brenham Main Street Historical Preservation, Inc. tract (called Lot 1 and Lot 2 in the Division of Original Town Lot 22), the Southwest corner of Lot 3 of Original Town Lot 21, and the Southwest corner of the herein described tract;

THENCE along the East margin of said 30 ft. alley, with the West line of Original Town Lot 21, N 13deg 00min 00sec W, 90.00 ft., to a point at building corner, lying in the South margin of the aforementioned Main Street, marking the Northeast corner of said 30 ft. alley, the Northwest corner of Lot 1 of Original Town Lot 21, and the Northwest corner of the herein described tract;

THENCE along the South margin of Main Street, with the North line of Original Town Lot 21, N 77deg 00min 00sec E, 90.00 ft., to the PLACE OF BEGINNING and containing 8100 Sq.Ft. of land.

June 24, 2014
W.O.#2014-2104


Michael J. Blakey
Registered Professional Land Surveyor No. 5935

Plat prepared and made a part of this description.

EXHIBIT "A"

Blakely Land Surveying

4630 Wilhelm Lane
Burton, Texas 77835-3794

Telephone/Fax 979-289-3900

BRENNHAM MAIN STREET HISTORICAL PRESERVATION, INC.
5348 SQ. FT. TRACT

ALL THAT TRACT OR PARCEL OF LAND containing 5348 Sq.Ft., situated in Washington County, Texas, being out of the A. Harrington Survey, Abstract No. 33, in the City of Brenham, being all of Lots 1 and 2 of the Original Town Lot 22, and being the same tract described in that deed from Elizabeth Reinold Bennett, et al to Brenham Main Street Historical Preservation, Inc. dated December 19, 2012, and recorded in Volume 1422, Page 0071 of the Official Records of Washington County, Texas, said 5348 Sq.Ft. tract being more particularly described as follows:

BEGINNING at a point at building corner, lying in the West margin of Douglas Street (public right-of-way), marking the Southeast corner of the Brenham Main Street Historical Preservation, Inc. tract (called Lots 1, 2 and 3 of the Original Town Lot 21, Volume 1482, Page 454, Official Records of Washington County, Texas), the Southeast corner of Lot 3 of Original Town Lot 21, the Northeast corner of Lot 1 of Original Town Lot 22, and the Northeast corner of the herein described tract;

THENCE along the West margin of Douglas Street, with a portion of the East line of Original Town Lot 22, S 13 deg 14 min 03 sec E, 59.53 ft., to a point at building corner, marking the Northeast corner of the Frederick C. F. Kugel called 2763 Sq.Ft. tract (Volume 260, Page 116, Deed Records of Washington County, Texas), the Northeast corner of Lot 3 of Original Town Lot 22, the Southeast corner of Lot 2 of Original Town Lot 22, and the Southeast corner of the herein described tract;

THENCE departing the West margin of Douglas Street, along the North line of said Kugel tract, with the South line of the herein described tract, S 77 deg 08 min 41 sec W, 90.03 ft., to a point at concrete wall, lying in the East margin of a called 30 ft. alley ("Alamo Alley"), marking the Northwest corner of said Kugel tract, the Northwest corner of Lot 3 of Original Town Lot 22, the Southwest corner of Lot 2 of Original Town Lot 22, and the Southwest corner of the herein described tract;

THENCE along the East margin of said 30 ft. alley, with a portion of the West line of Original Town Lot 22, N 13 deg 14 min 23 sec W, 59.34 ft., to a point at building corner, marking the Southwest corner of the aforementioned Brenham Main Street Historical Preservation, Inc. tract (called Lots 1, 2 and 3 of the Original Town Lot 21), the Southwest corner of Lot 2 of Original Town Lot 21, the Northwest corner of Lot 1 of Original Town Lot 22, and the Northwest corner of the herein described tract;

THENCE departing said alley, with the South line of Lot 3 of Original Town Lot 21, and with the North line of Lot 1 of Original Town Lot 22, N 77 deg 00 min 00 sec E, 90.00 ft., to the **PLACE OF BEGINNING** and containing 5348 Sq.Ft. of land.

June 24, 2014
W.O.#2014-2104


Michael J. Blakely
Registered Professional Land Surveyor No. 5935

That prepared and made a part of this description.

Exhibit "B"

Insurance Addendum to MOU

This insurance addendum is part of the MOU. Notwithstanding any other provision of this MOU or any exhibit thereto, the City's insurance coverage requirements may be satisfied by the City's participation in a risk pool comprised of political subdivisions.

A. At all times during the Term, the City agrees to -

1. Maintain the following coverages:
 - a. Commercial property insurance written on a causes of loss - special form (known as "all risks" form) covering the City's personal property, fixtures, and leasehold improvements in the Barnhill Center, and naming Simon Theater as "Building Owner Loss Payable."
 - b. If the City is utilizing the Barnhill Center for commercial purposes and Improvements are present on the Barnhill Center, the City will, at its sole cost and expense, maintain boiler and machinery/equipment breakdown insurance as may be required by law.
 - c. Commercial general liability insurance written on an occurrence basis, including contractual liability, covering the City's operations within the Barnhill Center, naming Simon Theater, Simon Theater's Investor Member, and Simon Theater's Lienholder, if any, as "additional insured" or, in the alternative providing an EL 217 – Indemnification Under Contract endorsement in favor of the Simon Theater, Simon Theater's Investor Member, and Simon Theater's Lienholder, if any, and having limits of not less than \$3,000,000 each occurrence and \$3,000,000 general aggregate.
 - d. Worker's compensation insurance in the statutory amount and employer's liability insurance having limits of not less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 bodily injury by disease for entire policy.

B. At all times during the Term, Simon Theater agrees to maintain -

1. *Current Insurance.* Simon Theater will each year that this MOU is in effect maintain and pay for the insurance policy and coverages described in **Exhibit "C"** attached to this MOU and made a part hereof for all purposes pertinent.

C. Simon Theater and the City agree that -

1. The commercial general liability insurance will be primary to the maintaining party and not contributory to any similar insurance carried by the other party and will contain a severability-of-interest clause.

2. Any insurance proceeds received on account of casualty loss to or of the Improvements will be used for the purpose of defraying the cost of rebuilding or repairing the Improvements or erecting new improvements in replacement equal to the total fair market value of the repaired or replaced Improvements immediately before the casualty loss, and for the purpose of paying to Simon Theater any excess remaining after the work of building, rebuilding, or repairing is substantially completed. However, Simon Theater's duty to repair, restore, and replace the Improvements will be waived if Simon Theater and the City mutually agree in writing to waive Simon Theater's restoration duty.

All proceeds from the Simon Theater's property insurance received by Simon Theater will be made available to Simon Theater for the construction, reconstruction, or repair, as the case may be, of the Improvements or any part of them damaged or destroyed by fire or other casualty. The holder of the insurance proceeds will pay out, from time to time, on the estimates of Simon Theater's architect or other advisor, all reasonable amounts incurred or paid by Simon Theater for the construction, reconstruction, or repair. Restoration or replacement of the Improvements will be such that the constructed, reconstructed, or repaired Improvements will have a fair market value at least equal to the fair market value of the Improvements as they existed immediately before the casualty. If restoration of the Improvements is required under this MOU, Simon Theater must begin the construction, reconstruction, or repair of the Improvements within thirty (30) days after receipt of the property insurance proceeds, and Simon Theater will prosecute the work with diligence to completion at the earliest practicable date, taking into account the nature and extent of the work to be performed. If Simon Theater does not begin repairs or complete the work within thirty (30) days after receipt of the property insurance proceeds, the City may (a) terminate this MOU and retain as liquidated damages, and not as a penalty, all insurance money not previously disbursed as provided above or (b) undertake the work in Simon Theater's stead.

If the proceeds from the property insurance are insufficient to cover the cost of the construction, reconstruction, or repair of the Improvements, Simon Theater will, at Simon Theater's election, either (a) rebuild the Improvements with Simon Theater's funds or (b) restore the Barnhill Center to the condition the Barnhill Center was in as of the Commencement Date. However, Simon Theater's duty to repair, restore, and replace the Improvements will be waived if Simon Theater and the City mutually agree in writing to waive Simon Theater's restoration duty.

3. Simon Theater and the City's obligations to maintain insurance under this MOU may be satisfied by appropriate amendment, rider, or endorsement on any blanket policy or policies carried by Simon Theater and the City. Simon Theater and the City will obtain the type and limits of coverage provided in this MOU by companies licensed to do business in Texas and having a Best's Insurance Guide rating of at least "A+". Insurance policies of the City, except for workers' compensation coverage, will name Simon Theater, Simon Theater's Investor Member, and Simon Theater's Lienholder, if any, as an additional insured via additional insured

endorsements that are acceptable to Simon Theater, or, in the alternative the City shall provide an EL 217 – Indemnification Under Contract endorsement in favor of the Simon Theater, and Simon Theater's Lienholder, if any. The insurance policies will also contain endorsements that the insurance may not be canceled or the limits of coverage reduced except on ten (10) days' written notice to Simon Theater and the City. Each party will annually deliver to the other party policies of insurance evidencing the party's compliance with its obligations to maintain insurance under this MOU before the expiration of the insurance policies.

4. All insurance policies obtained by Simon Theater and the City under this MOU will provide for waiver of subrogation for any loss or damage insured against unless it is demonstrated that the waiver cannot be obtained.

5. If Simon Theater or the City does not maintain the insurance required under this MOU or fails to carry any insurance required by law, Simon Theater or the City, as applicable, may, but will not be obligated to, at any time and from time to time, procure the required insurance and pay the premiums. If Simon Theater or the City procures and pays the premiums on the required insurance the other party will, immediately on demand by Simon Theater or the City for payment, repay to the Simon Theater or the City all premiums paid by Simon Theater or the City together with interest at the per annum rate of ten percent (10%) from the date Simon Theater or the City makes payment to the date of other party's reimbursement.

Exhibit "C"

Simon Theater – Required Insurance Policies and Coverage

At all times during the Term, Simon Theater agrees to maintain the following coverages, and the City of Brenham, its officials, employees and volunteers are to be added as "Additional Insured":

- a. Property insurance written on a historic replacement cost basis, with the additional provisions/endorsements as follows:

Property Coverage

Limits, Deductibles, Coverage Features:

Building: \$4,131,250

Contents: \$400,000

Business Income: \$250,000

Deductibles:

All Other Perils - \$1,000 (including Wind/Hail)

Business Income – 72 Hours

Coverage Features:

Valuation – Historic Replacement Cost

Perils – Special Form

Co-Insurance – Waived / Agreed Value Applies

Terrorism – Included

Equipment Breakdown – Included

Flood – Excluded

Earthquake – Excluded

Data Breach Sublimit - Included

- b. Commercial general liability insurance written on an occurrence basis, with the additional provisions/enforcements as follows:

Commercial General Liability – Occurrence Form

Limits:

\$ 2,000,000 General Aggregate Including Products and Completed Operations - Aggregate

\$ 1,000,000 Personal & Advertising Injury

\$ 1,000,000 Each Occurrence

\$ 100,000 Damage to Rented Premises

\$ 10,000 Medical Expense

Liquor Liability Endorsement

\$ 50,000 Cyber Liability sublimit (\$5,000 deductible)

Rating Basis:

- Theatre Admissions – 10,000 per year

- LRO Square Footage (retail, visitors center, etc.) – 2,200
- Concession Sales - \$25,000 per year

- c. Worker's compensation insurance in the statutory amount and employer's liability insurance having limits of not less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 bodily injury by disease for entire policy.
- d. Automobile Liability

Limits:

\$ 1,000,000 Bodily Injury and Property Damage

Terms, Conditions and Exclusions include but are not limited to:
Non-Owned & Hired Auto Liability Only

- e. Umbrella Liability

Provides excess over:

Commercial General Liability
Host Liquor Liability
Automobile Liability
Employers Liability
Directors & Officers Liability
Employee Practices Liability

Limits:

\$ 3,000,000 Each Occurrence Limit
\$ 3,000,000 General Aggregate Limit (where applicable)
\$ 3,000,000 Products/Completed Operations Limit

Self-Insured Retention:

\$ 0

- f. Volunteer Accident

Coverage, Benefits & Limits:

Accident Medical Expense:	\$75,000 (per Participant, per accident)
Accident Medical Expense Aggregate:	No Aggregate
Benefit Amount:	100% of usual and customary charge
Accidental Dental Expense:	Included in Medical
Deductible:	\$0
Benefit Period:	52 Weeks
Plan Type:	Full Excess

Accidental Death, Dismemberment & Paralysis:	\$60,000
AD&D and Paralysis Aggregate:	\$500,000 per accident

Eligible Persons:

All volunteers of the Policyholder

Covered Activities:

Participation in and attendance at the following Policyholder Supervised and Sponsored Activities: All Volunteering activities.

g. Directors and Officers Liability

Directors & Officers Liability

Limits:

\$ 1,000,000 Aggregate Limit of Liability

\$ 1,000,000 Directors & Officers Liability

\$ 1,000,000 Employment Practices Liability

Retentions:

\$ 2,500 Directors & Officers

\$ 2,500 Employment Practices Liability