Section 8. That it is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

PASSED AND APPROVED, on its first reading this the 15th day of June 2023.

PASSED AND APPROVED, on its second reading this the 13th day of July 2023.

____
Atwood C. Kenjura
Mayor

ATTEST:

____
Jeana Bellinger, TRMC, CMC
City Secretary

EXHIBIT "A"

All of that certain 2.998-acre tract of land lying and being situated in the City of Brenham, Washington County, Texas, part of the Arrabella Harrington Survey, A-55, and being the same property described in a Deed dated June 30, 2022 from Ralph Todd Poehlmann to North Park Development, LLC as recorded in Volume 1848, Page 352, Official Records of Washington County, Texas.

Regular City Council
AGENDA ITEM 6-C.

Agenda Item: **Approve a Noise Variance Request from Outreach Ministries for a Back-to-School Celebration to be Held on August 5, 2023, in Fireman's Park from 11:00 a.m. to 5:00 p.m.**

Meeting Type: Regular Meeting-July 13, 2023

Department: Public Works

Staff Contact: JoAnne Hynes

SUMMARY STATEMENT:

Outreach Ministries has requested a noise variance for a Back-to-School Celebration to be Held Saturday, August 5th at Fireman's Park from 11:00 A.M. – 05:00 P.M. Activities planned include a bounce house, food, and music. Staff will be using a portable PA system for music; therefore, a noise variance is required.

The Organization has the kitchen at Fireman's Park reserved on August 5th for the event.

ATTACHMENTS:

(1) Noise Variance Request

RECOMMENDED ACTION:

Approve a noise variance from Outreach Ministries for a back-to-school celebration to be held on August 5, 2023, in Fireman's Park from 11:00 a.m. to 5:00 p.m.

ID#

Noise Variance Request

For: Back to School Celebration

Name of sponsoring organization: Outreach Ministries

Your Contact Information

Name: Minnie Dabera

Phone: 979.530.7523 **Email:**

Event Details

Event Name: Back to School Celebration

Purpose: To provide a back to school celebration for the children of the church congregation.

Location: Fireman's Park

Date: August 5, 2023

Time: 11:00 am – 5:00 pm

Setup From: 10:00 am **To:** 11:00 am

Clean up From: 5:00 pm **To:** 6:00 pm

Types of activities planned and any additional information specific to this event: bounce house, food and music

Describe activities at this event that require the variance to the noise ordinance: music provided via portable PA system

Will you use sound amplification equipment? Yes

Cleanup Provisions: Outreach Ministries members will clean up after event.

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

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

Approved by City Council on:

Regular City Council
AGENDA ITEM 6-D.

Agenda Item: **Approve a Noise Variance Request from Gather n Grace for Monday Family Dinners to be Held Every Monday Through December 18, 2023, Beginning July 17, 2023 at Fireman's Park Pavilion from 5:30 p.m. to 7:30 p.m.**

Meeting Type: Regular Meeting-July 13, 2023

Department: Public Works

Staff Contact: JoAnne Hynes

SUMMARY STATEMENT:

Gather n Grace will be hosting Monday Family Dinners, which is a free meal for the community. It will be located at the Fireman's Park Pavilion every Monday through December 18, 2023, beginning July 17th from 5:30pm to 7:30pm. Approximately 150-200 attendees are expected. During the meal, music will be playing and due to the use of amplified sound, a noise variance is required.

On 09/11/23, Gather n Grace will be honoring/celebrating First Responders; featuring a special activity: Touch-a-Truck. The kitchen at Fireman's Park has been reserved for this day.

ATTACHMENTS:

(1) Noise Variance Request

RECOMMENDED ACTION:

Approve a noise variance request from Gather n Grace for Monday Family Dinners to be held every Monday through December 18, 2023, beginning July 17, 2023 at Fireman's Park Pavilion from 5:30 p.m. to 7:30 p.m.

Noise Variance Request

For: Monday Night Family Dinner

Name of sponsoring organization: Gather n Grace

Your Contact Information

Name: tara steele

Phone: 512-626-3316 **Email:** hello@allthingsacres.com

Event Details

Event Name: Monday Night Family Dinner

Purpose: Community and connection

Location: Fireman's Park Pavilion

Date: 2023-07-03 every Monday night thru December 2023

Time: 5:30pm

Setup From: 5pm **To:** 5:30pm

Clean up From: 7:30pm **To:** 7:45pm

Types of activities planned and any additional information specific to this event: feed community live music games

Describe activities at this event that require the variance to the noise ordinance: praise and worship teams

Will you use sound amplification equipment? Yes

Cleanup Provisions: we bring all needed to clean up what we bring in pick up all trash and place in cans provided sweep

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

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

Approved by City Council on:

Regular City Council
AGENDA ITEM 7.

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

Meeting Type: Regular Meeting-July 13, 2023

Department: Economic Development

Staff Contact: Teresa Rosales

SUMMARY STATEMENT:

Valmont Industries, Inc. is a manufacturing company operating under two main business segments: infrastructure and agriculture. The Company desires to expand its Brenham, Texas production operation which would result in increased capacity across Valmont's three product lines. They are located on 80 acres at 2551 Valmont Drive and employ 232 people.

Valmont Industries, Inc. is renovating an existing structure to house $38.05 million in new equipment. The improvements and new equipment would expand the site's manufacturing production by approximately 50%.

By 2025, they expect to have 398 employees in the Brenham location.

ATTACHMENTS:

(1) Resolution No. R-23-026
(2) Valmont Tax Phase-In Agreement

RECOMMENDED ACTION:

Approve Resolution No. R-23-026 adopting a Commercial Tax Phase-In Agreement between the City of Brenham and Valmont Industries, Inc.

RESOLUTION NO. R-023-026

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS ADOPTING A COMMERCIAL TAX PHASE-IN AGREEMENT WITH VALMONT INDUSTRIES, INC.; AUTHORIZING THE MAYOR TO EXECUTE THE TAX PHASE-IN AGREEMENT; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Chapter 312 of the Texas Tax Code authorizes the City of Brenham, Texas, to participate in tax phase-in incentives; and

WHEREAS, in accordance with Section 312.002 of the Texas Tax Code, the City of Brenham, Texas previously passed a resolution stating the City's intent to participate in tax phase-in incentives; and

WHEREAS, in accordance with Section 312.002 of the Texas Tax Code, the City of Brenham, Texas also previously adopted tax phase-in incentive guidelines and criteria; and

WHEREAS, the City Council of the City of Brenham, Texas, finds and determines that the terms of the Tax Phase-In Agreement and the subject property meet the applicable tax phase-in incentive guidelines and criteria, and entering into the Tax Phase-In Agreement will be to the benefit of the citizens of the City of Brenham; and

WHEREAS, the City Council desires to adopt the Tax Phase-In Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein for all purposes, by and between the City of Brenham, Texas, and Valmont Industries, Inc., a Delaware corporation;

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

Section 1: That the foregoing recitals are hereby found to be true and correct legislative findings of the City of Brenham, Texas, and are fully incorporated into the body of this Resolution.

Section 2: That the City Council of the City of Brenham, Texas does hereby adopt the commercial Tax Phase-In Agreement, a copy of which is attached hereto as Exhibit "A", by and between the City of Brenham, Texas, and Valmont Industries, Inc.

Section 3: That the Mayor is hereby authorized to execute the Tax Phase-In Agreement between the City of Brenham, Texas, and Valmont Industries, Inc. a copy of which is attached hereto as Exhibit "A".

Section 4: This Resolution shall become effective immediately from and after its passage.

RESOLVED this ______ day of _______________, 2023.

____
Atwood C. Kenjura
Mayor

ATTEST:

____
Jeana Bellinger, TRMC, CMC
City Secretary

AGREEMENT FOR DEVELOPMENT AND TAX PHASE-IN IN REINVESTMENT ZONE NO. 49 FOR COMMERCIAL TAX PHASE-IN, CITY OF BRENHAM, TEXAS

THE STATE OF TEXAS

COUNTY OF WASHINGTON

This Agreement is entered into by and between the CITY OF BRENHAM, TEXAS, a Texas home-rule municipal corporation, of Washington County, Texas, acting herein by and through its Mayor, hereinafter referred to as CITY, and VALMONT INDUSTRIES, INC., a Delaware corporation hereinafter referred to as COMPANY.

WITNESSETH:

The City Council of the City of Brenham, Texas, ("COUNCIL") on February 20, 1992, adopted by resolution a policy for the creation of tax abatement zones in the City of Brenham ("POLICY"). Said POLICY was amended by COUNCIL on April 2, 1992, amended on June 4, 1992, and re-adopted on December 1, 1994, November 20, 1997, October 21, 1999, November 1, 2001, January 15, 2004, December 20, 2007, December 17, 2009, December 15, 2011, December 5, 2013, February 18, 2016 (as amended), December 7, 2017, December 19, 2019, and on May 4, 2023 (entitled "City of Brenham Policy Statement on Property Tax Phase-In Incentive for Selected Commercial Enterprises"). Said POLICY is attached hereto as Exhibit "A" and incorporated herein for all purposes. On July 13, 2023, the COUNCIL, by Ordinance, established Reinvestment Zone No. 49 for Commercial Tax Phase-In, City of Brenham, Texas ("ZONE") as authorized by V.T.C.A., Texas Tax Code Chapter 312. Said Ordinance No. O-23-008 is attached hereto as Exhibit "B" and incorporated herein for all purposes.

WHEREAS, COMPANY has filed an application for the phase-in of ad valorem taxes, and

WHEREAS, COUNCIL finds that the application, this Agreement, and the property subject to this Agreement meet the applicable guidelines and criteria of said POLICY, and

WHEREAS, in order to provide for the proper development of such property and to aid in the conduct of the operation thereof to the best interest of the CITY in accordance with the above referenced ordinances, POLICY and statutes, the parties do mutually agree as follows:

1. **Location of Tax Phase-In**. The property that is the subject matter of this Agreement is the land and improvements located at 2551 Valmont Drive, Brenham, Texas and described more particularly as all of that certain 80.088 acre tract of land, containing 14.888 acres out of the J. Carrington Survey, A-120 and being the property conveyed to American Lighting Standards Corporation by deed dated August 11, 1975, as recorded in Volume 338, Page 789, Deed Records of Washington County, Texas, and also containing 65.200 acres out of the J. Carrington League, A-120 and being a residue of the 95.578 acre tract described in a deed from Linda Giddings Anderson to American Lighting Standards Corporation, dated November 4, 1974 and recorded in Volume 332, Page 314, Deed Records of Washington County, Texas, being further described in Exhibit “C”, attached hereto and incorporated herein for all purposes, and which property is hereinafter referred to as "PREMISES."

2. **Improvements**. In consideration of COMPANY'S construction of at least Fifty-Seven Million, Five Hundred Ninety-Five Thousand and No/100 Dollars ($57,595,000.00) of

personal property improvements to said PREMISES, including fixed machinery and equipment, CITY agrees that, subject to the terms and conditions contained herein, eligible improvements and renovations to the above described PREMISES shall be entitled to tax phase-in incentives in accordance with the schedule as provided in “Table 1A – Property Improvements by an Existing Local Business”, and tax phase-in incentives in accordance with the schedule as provided in “Table 2 – Jobs Created & Retained – by Existing Businesses or New/Relocating Businesses”, said Tables being set out in the attached Exhibit “A” incorporated herein for all purposes, and that upon the expiration of such tax phase-in incentives this Agreement shall terminate.

"Improvements and renovations" as used herein shall be defined as including the building and all other associated improvements (personal and realty) and fixtures and equipment on the PREMISES added by the COMPANY within said zone. COMPANY will limit the uses of the property consistent with the general purpose of encouraging development or redevelopment of the ZONE during the period that property tax exemptions are in effect.

COMPANY acknowledges and agrees that the purpose of CITY in entering into this Agreement is to encourage development of the property in the ZONE and, therefore, COMPANY agrees to limit the use of the property to further said purpose.

3. **Submission of Plans**. COMPANY agrees that the site plan, interior and exterior design drawings and materials ("PLANS") for each improvement will be submitted to CITY and/or its designated representative for its approval when available. An official set of PLANS will be designated by the COMPANY and will be kept on file with the CITY.

4. **Other Applicable Regulations**. COMPANY agrees to construct all improvements in accordance with all applicable laws, ordinances, codes, rules, requirements or regulations of the City of Brenham, Washington County, the State of Texas and the United States, and any subdivision, agency or authority thereof.

5. **Liability of City in Approving Plans**. CITY, by approving the PLANS or any revised PLANS, assumes no liability or responsibility therefore for any defect in any fixed machinery or equipment installed or any improvement or structure constructed, renovated, or repaired from the PLANS or approved revised PLANS. The relationship between CITY and COMPANY at all times shall not be deemed a partnership or joint venture for purposes of this Agreement or for any other purpose.

COMPANY AGREES TO HOLD HARMLESS, INDEMNIFY AND REIMBURSE CITY, ITS OFFICERS, AGENTS, AND/OR EMPLOYEES FOR ANY DAMAGES SUFFERED BY THEM DUE TO COMPANY'S NEGLIGENCE OR WILLFUL MISCONDUCT, SUCH DUTY AND LIABILITY NOT TO EXCEED WHAT COMPANY WOULD OWE TO ANY OF THEM UNDER COMMON LAW. CITY AGREES TO NOTIFY COMPANY AS SOON AS REASONABLY POSSIBLE AFTER CITY BECOMES AWARE OF ANY LEGAL ACTION (INCLUDING PRE-LITIGATION NOTICES, DEMAND LETTERS, ETC.) WHICH REASONABLY COULD THEN BE FORESEEN AS HAVING THE PROSPECTIVE POTENTIAL OF ACTIVATING THE TERMS OF THE IMMEDIATELY PRECEDING SENTENCE.

6. **Rights of City to Inspect**. At all reasonable times during the construction and installation of improvements and renovations on the PREMISES and following completion, CITY and its respective designees may inspect PREMISES in order to verify the construction, workmanship, materials and installations involved in or incident to the project are performed in substantial compliance with the approved PLANS and compliance with the applicable building permits and governmental regulations.

7. **Payment of Taxes by Company**. COMPANY agrees to pay all ad valorem taxes and assessments that may be owed to CITY or any other taxing entity by it prior to such taxes and/or assessments becoming delinquent; provided, that COMPANY shall have the right to contest in good faith the validity or application of any such tax or assessment and shall not be considered in default hereunder so long as such contest is diligently pursued to completion. If COMPANY undertakes any such contest, COMPANY shall so notify in writing CITY and keep CITY appraised of the status of such contest. Should COMPANY be unsuccessful in such contest, COMPANY shall promptly pay the taxes, penalties, and/or interest, resulting therefrom.

COMPANY certifies that at the time of execution of this Agreement, there are no delinquent ad valorem taxes on the PREMISES, or fixed machinery, equipment and buildings located on the PREMISES, owed to any taxing jurisdiction. Subject to the foregoing paragraph, COMPANY shall pay all non-phased-in taxes subject to all requirements and due dates, as it would be required to pay in the absence of this Agreement.

8. **Tax Recapture**. In the event COMPANY (i) does not construct the improvements and renovations to the PREMISES as contemplated by this Agreement, (ii) fails to use the

PREMISES for the purposes that are contemplated by this Agreement, (iii) fails to comply with the terms of the “City of Brenham Policy Statement on Property Tax Phase-In Incentive for Selected Commercial Enterprises”, or (iv) otherwise fails to comply with the terms of this Agreement, then the CITY shall have the right to terminate this Agreement and recapture the amount of all property taxes abated as a result of this Agreement in accordance with Texas Tax Code Sec. 312.205 and the POLICY after written notice of intended recapture by CITY to COMPANY and failure to cure by COMPANY within thirty (30) days of said notice.

9. **Default**. In the event COMPANY (i) allows the PREMISES to become vacant, (ii) fails to pay all non-abated ad valorem taxes as required by Section 7 hereof, (iii) fails to comply with the terms of the “City of Brenham Policy Statement on Property Tax Phase-In Incentive for Selected Commercial Enterprises”, or (iv) otherwise fails to comply with the terms of this Agreement, then COMPANY shall be in "default" in the performance of this Agreement. The CITY shall notify COMPANY in writing of said "default." Further, in accordance with Chapter 2264, Texas Government Code, COMPANY certifies that COMPANY, or a branch, division, or department of COMPANY does not and will not knowingly employ an undocumented worker. COMPANY further certifies that in the event that COMPANY, or a branch, division, or department of COMPANY, is convicted of a violation under 8 U.S.C. Section 1324a(f), COMPANY shall be repay the amounts of ad valorem taxes previously abated by the CITY pursuant to this Agreement, with interest, calculated at the rate ten percent (10%) annually. Such a conviction shall constitute a default under this Agreement.

If COMPANY does not comply with this Agreement within thirty (30) days of written notice of such "default", CITY reserves the right to terminate this Agreement and terminate the benefits of tax phase-in provided for in this Agreement, and all taxes previously abated pursuant to this Agreement shall be recaptured and paid to the CITY by the COMPANY. In such event, the PREMISES and all improvements, fixed machinery and equipment installed thereon shall be deemed taxable and not entitled to tax phase-in as provided herein. If this Agreement is terminated, any taxes abated for the calendar year of the termination shall be paid within sixty (60) days of the date of such termination, and all taxes and all taxes previously abated pursuant to this Agreement shall be recaptured and paid to the CITY by the COMPANY within sixty (60) days of the date of termination.

10. **Tax Phase-In Amount.** COMPANY shall receive tax phase-in incentives for eligible property improvements in accordance with the schedule as provided in "Table 1A – Property Improvements by an Existing Local Business", and tax phase-in incentives for job creation in accordance with the schedule as provided in "Table 2 – Jobs Created & Retained – by Existing Businesses or New/Relocating Businesses" said Tables being set out in the attached Exhibit "A", and that upon the expiration of such tax phase-in incentives this Agreement shall terminate. The total annual tax phase-in incentive amount received by the COMPANY, expressed on a percentage basis, shall be the sum of the respective percentages provided for in Table 1A and Table 2 for the applicable year of the tax phase-in.

COMPANY shall, on or before October 15 of each calendar year, submit a sworn statement to the CITY'S Compliance Review Committee that COMPANY is in compliance with this Agreement, including such information as may be necessary to verify compliance (e.g. employment and payroll information), subject to verification by the City of Brenham and/or the Compliance Review Committee

During the term of this Agreement, the CITY, its officers and employees, and/or the Compliance Review Committee is entitled to review and verify the COMPANY'S employment records, payroll records, and such other information and documents as the CITY and/or the Compliance Review Committee deems reasonably necessary to verify compliance with this Agreement. The CITY, its officers and employees, and/or the Compliance Review Committee may conduct on-site inspections of the PREMISES and facilities located thereon during the term of this Agreement to verify compliance with this Agreement.

The estimated value of eligible property improvements for tax phase-in incentives is at least Fifty-Seven Million, Five Hundred Ninety-Five Thousand and No/100 Dollars ($57,595,000.00). Notwithstanding anything contained herein to the contrary, COMPANY and CITY agree that the amount of eligible property improvements and jobs created & retained as set forth herein are based on projected property improvement and personnel employed, and the actual amount of tax phase-in incentives shall be determined annually by Table 1A and Table 2 of the POLICY based on the actual eligible improvements and the actual number of employees. COMPANY agrees to reasonably cooperate with CITY to determine compliance with this Agreement and the applicable level of tax phase-in incentives.

11. **Certificate of Compliance**. Upon completion of the improvements and renovations to the PREMISES, COMPANY shall submit to CITY a sworn Certificate of Compliance certifying that all construction of the improvements and renovations to the PREMISES has been completed in accordance with the approved plans. After receipt of this Certificate of Compliance, CITY shall make a final inspection of PREMISES to determine whether

the improvements and renovations have been constructed and installed in compliance with this Agreement. Upon so finding, CITY shall approve such a Certificate of Compliance and authorize tax phase-in to commence on January 1 of the year indicated in said certificate and terminate after the property has received the tax phase-in incentives as provided by this Agreement and Exhibit "A."

12. **Eligible and Ineligible Property**. "Eligible property" is defined to include all of the following items located on the PREMISES which were not so located prior to execution of this Agreement and whether or not they are so affixed as to become "real property": buildings, structures, fixed machinery and equipment, site improvements (including landscaping), office space and related fixed improvements necessary to the operation and administration of the facility.

"Ineligible Property" shall be fully taxable and ineligible for abatement, defined as including:

Land;
Animals;
Inventories;
Supplies;
Tools;
Furnishings and other forms of movable personal property (except as described as "eligible property" above);
Vehicles;
Vessels;
Aircraft;
Hotels/motels;
Housing or residential property;
Fauna;
Flora (excluding landscaping improvements);
Retail facilities;
Deferred maintenance investments;
Improvements for the generation or transmission of electrical energy not wholly consumed by a new facility or expansion;
Any improvements including those to produce, store or distribute natural gas or fluids that are not integral to the operation of the facility; or

Property owned or used by the State of Texas or its political subdivisions or by any organization owned operated or directed by a political subdivision of the State of Texas.

13. **Severability**. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under the present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added automatically as part of this Agreement a provision that is similar in terms and substance to such deleted provision as may be possible and yet be legal, valid and enforceable under the Texas Tax Code and related state statutes.

14. **Texas Law to Apply.** This Agreement shall be construed under the POLICY adopted by the CITY, including the Glossary of Terms, in accordance with said POLICY in force at the date of execution hereof and in accordance with the laws of the State of Texas. All obligations of the parties created hereunder are performable in Washington County, Texas. In the event of litigation, or other claim or dispute arising out of or involving this Agreement, exclusive venue shall lie in a court of competent jurisdiction in Washington County, Texas.

15. **Prior Agreements Superseded**. This Agreement constitutes the sole agreement of the parties herein and supersedes any and all prior written or oral agreements, arrangements or understandings between the parties relating to the subject matter.

16. **Amendments**. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing, dated subsequent to the date of this Agreement and duly executed by the parties hereto.

17. **Rights and Remedies Cumulative**. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its rights to use all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

18. **No Waiver.** No waiver by CITY in any event of default, or breach of any covenant, condition or stipulation herein contained by COMPANY shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition or stipulation hereof.

19. **Assignment**. This Agreement may be assigned by COMPANY upon CITY'S written approval of said assignment by the adoption of a resolution by the COUNCIL, and assignee assumes any and all rights and obligations under this Agreement. Upon such assignment, the assignor shall be fully released from any and all obligations under this Agreement.

20. **Authority to Act**. The parties to this Agreement shall provide proof of authorization to execute this document.

21. **Notice**. Whenever notice or other communication is herein required to be given to COMPANY or to CITY, such notice will be sent, respectively, to the attention of COMPANY'S President or other designated officer at the address of Company's facility in the reinvestment ZONE, or to the attention of the City Manager at the address of said City Manager's then-current office location, via certified or registered mail, return receipt requested. Such notice will be considered effectively delivered when sent if such is properly addressed and sent and the return

receipt is received by the sender, or if addressee fails to receive or accept delivery and the undelivered item is returned to sender.

22. **Definitions**. Any definitions of words or phrases given in the currently effective tax phase-in guidelines entitled "City of Brenham Policy Statement on Property Tax Phase-in Incentive for Selected Commercial Enterprises" shall be controlling in this document as well, except as may be specifically modified herein

23. This Agreement has been approved by the governing body of the CITY.

24. Any aspect of this Agreement which may happen to conflict with the underlying jurisdiction's tax phase-in guidelines shall be considered as an approved modification or clarification of such guidelines as may be required to affect the intent of this Agreement.

25. For the duration of this Agreement and for additional consideration for this tax phase-in, COMPANY agrees to purchase the following utilities: water, electric, natural gas, and sewer, exclusively from the City of Brenham in its service area.

26. If any action is brought to enforce, construe or determine the validity of any term or provision of this Agreement (whether at the trial court level or any appeal therefrom), the prevailing party shall be entitled to reasonable attorney's fees and costs of the action.

The parties hereto have executed or caused to be executed by their duly authorized officials this Agreement in multiple counterparts, each of equal dignity, on this the ______ day of ___________________, 2023.

VALMONT INDUSTRIES, INC.

____
Name: Vish Sukhram
Title: Director – State Tax
Address: ___________________________
____

CITY OF BRENHAM, TEXAS

____
Atwood C. Kenjura
Mayor
P.O. Box 1059
Brenham, TX 77834-1059

ATTEST:

BY: ______________________________
Jeana Bellinger, TRMC, CMC
City Secretary
P.O. Box 1059
Brenham, TX 77834-1059

THE STATE OF TEXAS

COUNTY OF WASHINGTON

Before me, the undersigned authority, on this day personally appeared **ATWOOD C. KENJURA.**, Mayor of the CITY OF BRENHAM, TEXAS, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the ____ day of _______________, 2023.

____
Notary Public in and for
the State of Texas

THE STATE OF TEXAS

COUNTY OF WASHINGTON

Before me, the undersigned authority, on this day personally appeared **VISH SUKHRAM**, Director – State Tax of VALMONT INDUSTRIES, INC., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the ______ day of ____________, 2023.

____
Notary Public in and for
the State of Texas

Exhibit "A"

CITY OF BRENHAM

POLICY STATEMENT ON PROPERTY TAX PHASE-IN INCENTIVE FOR SELECTED COMMERCIAL ENTERPRISES

Policy Adoption Date: May 4, 2023

I. PURPOSE

The City of Brenham, hereinafter referred to as "the City," is committed to the promotion of high quality development in all parts of the community and to improving the quality of life for its citizens. In order to help meet these goals and to stimulate economic development, the City will consider providing incentives that include, but are not limited to, the property Tax Phase-In incentive, in accordance with the procedures, criteria and guidelines set forth in this Policy and as provided by Chapter 312 of the Texas Tax Code. Nothing in this Policy shall imply or suggest that the City is under any obligation to provide any incentives to any applicant. Each application for the Tax Phase-In incentive under this Policy shall be considered on an individual basis.

II. DEFINITION OF TAX PHASE-IN INCENTIVE

Tax Phase-In incentive, as referred to in this Policy, means the partial, temporary exemption from ad valorem taxes on certain qualifying property in a Reinvestment Zone designated by the City or County for economic development purposes. Only ad valorem (property) taxes are eligible for the incentive. Brenham ISD and Blinn College taxes are required to be paid in full at all times.

The attached Glossary is a list of words with their definitions that are found in this document, and the Glossary is incorporated herein by reference.

III. GUIDELINES AND CRITERIA

In order to be eligible for property Tax Phase-In incentive, the planned improvement at a minimum must:

(a) Be a facility used or to be used by a Primary Jobs Employer according to Exhibit A (except for a location in the Downtown Zone).

(b) The project must add new value to the tax roll of eligible property: a minimum of $300,000 for a business new to Brenham or $150,000 for an existing local business. For development in the Downtown Zone, a National Register Historic District, the added value must be a minimum of $50,000. This is to help maintain the economic viability of the central business district.

(c) The applicant must maintain or create within the first year and throughout the Tax Phase- In incentive period a minimum of ten (10) jobs at an average salary of $36,000/year or higher, including any benefits (except for a location in the Downtown Zone).

In consideration of the request for the Tax Phase-In incentive, the following factors will also be considered:

(1) Jobs The projected new jobs created including the number of jobs, the type of jobs and the average salary per job class.

(2) Fiscal Impact The amount of real and personal property value that will be added to the tax roll for both eligible and ineligible property, the amount of direct sales tax that may be generated, any infrastructure improvements by the City that will be required by the facility, the infrastructure improvements made by the facility, and the compatibility of the project with the City's master plan for development.

(3) Valuation at Termination of Tax Phase-In Incentive Period The estimated fair market value, valued at the end of incentive period, of any equipment included in the Tax Phase-In incentive. The economic life of the added-value property must exceed the duration of the granted Tax Phase-In incentive period.

(4) Community Impact

The pollution, if any, as well as other negative environmental impacts affecting the health and safety of the community that will be created by the project;

The revitalization of a depressed area;

The business opportunities of existing local businesses;

The alternative development possibilities for proposed site;

The impact on other taxing entities;

Whether the improvement is expected to solely or primarily have the effect of transferring employment from one part of Washington County to another; and/or,

Whether the product manufactured or service provided by the business competes to a substantial degree with an existing business.

IV. TAX PHASE-IN INCENTIVE AUTHORIZED

(a) Authorized Date A facility shall be eligible for the Tax Phase-In incentive if it has applied for the incentive prior to the commencement of construction and meets the guidelines and criteria under this Policy.

(b) Creation of New Value Tax Phase-In incentive may only be granted for the additional value of eligible property improvements made subsequent to the filing of an application for the Tax Phase-In incentive and specified in the Tax Phase-In incentive agreement between the City and the property owner and/or lessee, subject to such limitations as the guidelines and criteria may require.

(c) New and Existing Facilities Tax Phase-In incentive may be granted for new facilities and improvements and for the expansion or modernization of existing facilities and improvements. If the modernization project includes facility replacement, the Tax Phase-In incentive value shall be the tax- appraised value of the new unit(s) less the value of the old unit(s).

(d) Eligible Property Except as otherwise provided in this policy, the Tax Phase-In incentive may be extended to the value of buildings, structures, fixed machinery and equipment, site improvements plus that office space and related fixed improvements necessary or convenient to the operation and administration of the facility.

(e) Ineligible Property The following types of property shall be fully taxable and ineligible for property Tax Phase-In incentives:

land,
animals,
inventories,
supplies,
tools,
furnishings and other forms of movable personal property,
vehicles,
vessels,
aircraft,
housing or residential property (except for property owners in the Downtown Zone),
hotels/motels,
fauna,
flora,
retail facilities (except for property owners in the Downtown Zone),
deferred maintenance investments,
property to be rented or leased except as provided in Part IV (f),
improvements for the generation or transmission of electrical energy not wholly consumed by a new facility or expansion,
any improvements including those to produce, store or distribute natural gas or fluids that are not integral to the operation of the facility, or
property owned or used by the State of Texas or its political subdivisions or by any organization owned, operated or directed by a political subdivision of the State of Texas.

(f) Owned/Leased Facilities If a leased facility is granted the Tax Phase-In incentive, the agreement shall be executed with the lessor and the lessee and the new value investment shall be combined to calculate the total new value investment. If the lessee removes or reduces its new value investment to the detriment of the lessor, the lessor may annually elect to extend its Tax Phase-In incentive to obtain a replacement lessee. The lessor may obtain the full benefit of the remaining Tax Phase-In incentive period by resuming the Tax Phase-In incentive with the combined value of the replacement lessee by disregarding the Tax Phase-In incentive extension term. The lessor shall not receive any Tax Phase-In incentive during any year where a Tax Phase- In incentive extension has been elected. The Tax Phase-In incentive period, including any extensions, shall never exceed a total of ten years as provided by state law. The replacement lessee may apply for its own Tax Phase-In incentive based solely on its new value investment.

(g) Value and Term of Tax Phase-In incentive Tax Phase-In incentives shall commence with the January 1 valuation date immediately following the occupancy of the property qualifying for the Tax Phase-In incentive unless otherwise specified by the City. The value of new eligible properties shall be abated according to the approved agreement between applicant and the City. The City, in its sole discretion, shall determine the amount of any Tax Phase-In incentive. The Table 1and Table 2 Tax Phase-In incentive Schedules - Exhibit "B", Table 3 in a Downtown Zone (map Exhibit "C"), incorporated herein by reference, shall be the maximum Tax Phase-In incentive available based on total new value investment or added employment for each year during the Tax Phase-In incentive term, whichever is greater.

The total amount of eligible property improvements and jobs created and retained are based on projected property improvements and personnel employed. However, the actual amount of tax phase-in incentives shall be determined annually by Table 1 and Table 2 in Exhibit B based on the actual eligible improvements and the actual number of employees, unless located in a Downtown Zone, in which the total amount of abatement will be derived from Table 3.

If an Existing Local Business has ten to forty-nine (10-49) employees for their base year employment, then the total abatement levels shall be determined from Levels 1-4 in Table 2 of Exhibit B. If an Existing Local Business has fifty (50) or more employees for their base year employment, then the following abatement levels shall be determined from Table 2 in Exhibit B:

- Level 5 – if base year employment is at least 90% for that calendar year
- Level 4 – if base year employment is at least 80% for that calendar year
- Level 3 – if base year employment is at least 70% for that calendar year
- Level 2 – if base year employment is at least 60% for that calendar year
- Level 1 – if base year employment is at least 50% for that calendar year

(h) Downtown Zone A Tax Phase-In incentive zone within the designated downtown area in the attached Exhibit C, incorporated herein by reference, and any tracts or parcels contiguous to a tract in Exhibit C under common ownership. Tax Phase-In incentive in a Downtown Zone shall receive approval for building plans and specifications by the Main Street Board as a condition of receiving the Tax Phase-In incentive.

(i) Taxability From the execution of the Tax Phase-In incentive contract to the end of the agreement period, taxes shall be payable as follows:

(1) The value of ineligible property as provided in Part IV (e) shall be fully taxable.

(2) The base year value of existing eligible property as determined each year shall be fully taxable.

(3) The additional value of new eligible property shall be taxable in the manner described in Part IV (g).

V. APPLICATION PROCESS

(a) Any present or potential owner of taxable property in the City of Brenham may request the creation of a Reinvestment Zone and Tax Phase-In incentive by filing written request with the City Manager.

(b) The application shall consist of a completed application form accompanied by:

(1) A general description of the proposed use and the general nature and extent of the modernization, expansion or new improvements to be undertaken;

(2) A descriptive list of the improvements which will be a part of the facility;

(3) A map and property description or a site plan, including a legal description of the area proposed for designation as a Reinvestment Zone, as applicable.

(4) A time schedule for undertaking and completing the planned improvements;

(5) In the case of modernizing or replacing existing facilities, a statement of the assessed value of the facility, separately stated for real and personal property, shall be given for the tax year immediately preceding the application;

(6) The application form may require such financial and other information as deemed appropriate for evaluating the financial capacity and other factors of the applicant;

(7) A schedule reflecting the proposed amount of abated taxes for which the applicant seeks, as well as the anticipated taxes to be paid by the applicant which will not be subject to the Tax Phase-In incentive; and

(8) A schedule of the proposed job creation or retention, including details of job type(s), wages and benefits, and the timing of creation of any job within the phase-in period.

(c) Upon receipt of a completed application, the City Manager shall notify the Mayor and City Council. Before acting upon the application, the City may conduct an Economic Impact Study. Following this step, the City shall afford the applicant and any other interested persons the opportunity to speak and present evidence for or against the designation of the area as a Reinvestment Zone for the purpose of the Tax Phase-In incentive during a public hearing. Notice of the public hearing shall be clearly identified on an agenda of the City to be posted as required by law. At least seven (7) days before the date of the hearing, notice of the hearing must be 1) published in a newspaper having general circulation in the City; and 2) delivered in writing to the presiding officer of the governing body of each taxing entity having in its boundaries real property that is to be included in the proposed Reinvestment Zone.

(d) The City shall approve or disapprove the application for designation of an area as a Reinvestment Zone for Tax Phase-In incentive within ninety (90) days after receipt of the application. The presiding officer of the legislative body of the City shall notify the applicant of the approval or disapproval promptly thereafter.

(e) A request for designation of an area as a Reinvestment Zone for the purpose of receiving the Tax Phase-In incentive shall not be granted if the jurisdiction receiving the application finds that the request for the Tax Phase-In incentive was filed after the commencement of construction or installation of improvements related to a proposed modernization expansion or new facility began.

VI. PUBLIC HEARING

(a) Should the City be able to show cause in the public hearing why the granting of a designation of an area as a Reinvestment Zone for the Tax Phase-In incentive will have a substantial adverse effect on its bonds, service capacity or the provision of service, that showing shall be reason for the City to deny the granting of the application.

(b) Neither a Reinvestment Zone nor a property Tax Phase-In incentive agreement shall be authorized if it is determined that:

(1) There would be a substantial adverse effect on the provision of a government service or tax base of the City.

(2) The applicant has insufficient financial capacity

(3) Planned or potential use of the property would constitute a hazard to public safety, health or morals.

(4) Planned or potential use of the property violates governmental codes or laws.

VII. AGREEMENT

(a) After approval of the application for the designation of an area as a Reinvestment Zone for the property Tax Phase-In incentive, the City shall formally pass a resolution and execute an agreement with the owner of the facility and the lessee involved, if any, which shall include:

(1) Estimated value to be abated and the base year value.

(2) Percent of value to be abated each year as provided in Part IV (g).

(3) The commencement date and the termination date of Tax Phase-In incentive.

(4) The proposed use of the facility, nature of construction, time schedule for undertaking and completing the planned improvements, map, property description and improvements list as provided in Application, Part V.

(5) Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided herein and other provisions that may be required for uniformity or by state law.

(6) Amount of investment and average number of jobs involved for the period of the Tax Phase-In incentive.

(7) Said contract shall meet all of the requirements of Texas Tax Code Chapter 312.

(b) Such agreement shall be executed within ninety (90) days after the later of 1) the date applicant has forwarded all necessary information to the City or 2) the date of the approval of the application.

(c) The City shall make its own determination of the property Tax Phase-In incentive which shall not bind any other jurisdiction.

VIII. ADMINISTRATION

Each Tax Phase-In incentive project will be monitored annually for compliance. The agreement will require the applicant to provide a sworn statement and documents verifying compliance each year. Failure to provide the required documents in the manner outlined herein shall result in termination of the Tax Phase-In incentive agreement.

The terms of the agreement shall include the right of the City to review and verify the applicant's employment records and payroll records in each year during the term of the agreement, and to conduct an on-site inspection of the project in each year during the duration of the Tax Phase-In incentive, and to review such other items as may be reasonable to verify compliance with the terms of the agreement.

The agreement shall stipulate that employees and/or designated representatives of the City will have access to the Reinvestment Zone during the term of the Tax Phase-In incentive to inspect the facility to determine compliance with the terms and conditions of the agreement. All inspections will be made only after the giving of twenty-four (24) hours prior notice and will be conducted in such manner as to not unreasonably interfere with the construction and/or operation the facility. All City inspections will be made with one or more representatives of the company or individual and in accordance with its safety standards.

All proprietary information acquired by any affected jurisdiction for purposes of monitoring compliance with the terms and conditions of a property Tax Phase-In incentive agreement shall be considered confidential to the extent allowed by law.

Compliance will be monitored in the following manner:

(a) A Compliance Review Committee shall collect from the applicant a sworn statement of compliance and verifying documents and conduct any inspections on or before June 30 of each calendar year. The Committee shall be comprised of 5 representatives, with 2 appointed by the Mayor, 2 appointed by the County Judge and 1 by the Chief Appraiser. They will be appointed by January 30 of even numbered years for a two year term. Any vacancy on the committee will be filled by the designated official who appointed the vacating committee person. The designated official may remove an appointee at any time. The company/individual receiving the property Tax Phase-In incentive shall furnish the Committee with such information as may be necessary to verify compliance, including the number of new or retained employees associated with the facility and their salaries.

(b) The Chief Appraiser of the County shall annually determine an assessment of the real and personal property in the Reinvestment Zone. This shall be done on or before October 1 of each calendar year.

(c) The Committee shall provide a report on the status of all Tax Phase-In incentive agreements to the City Council on or before December 15 of each calendar year.

IX. DEFAULT

Should the City determine that a company or individual is in default according to the terms and conditions of its agreement, the City shall notify the company or individual in writing at the address stated in the agreement, and if such default is not cured within thirty (30) days or begun to be cured (in the case of a default that cannot reasonably be cured within 30 days) from the date of such notice ("Cure Period"), then the agreement shall be terminated.

In the event that the company or individual:

(1) allows its ad valorem taxes owed the City to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest; or

(2) does not create jobs as outlined in the agreement; or

(3) if an Existing Local Business falls below fifty percent (50%) of their base year employment number; or

(3) violates any of the terms and conditions of the Tax Phase-In incentive agreement and fails to cure same during the Cure Period; or

(4) if the facility is completed and begins producing product or service, but subsequently discontinues producing product or service for any reason excepting fire, explosion or other casualty or accident or natural disaster, for a period of more than one (1) year during the Tax Phase-In incentive period;

then the agreement shall terminate and so shall the Tax Phase-In incentive of taxes for the calendar year during which the agreement is terminated. The taxes otherwise abated for that calendar year shall be paid to the City within sixty (60) days from the date of termination.

X. ASSIGNMENT

(a) The Tax Phase-In incentive may be transferred and assigned by the holder to a new owner or lessee of the same facility upon the approval by resolution of the City, subject to the financial capacity of the assignee and provided that all conditions and obligations in the Tax Phase-In incentive agreement are guaranteed by the execution of a new contractual agreement with the City.

(b) The contractual agreement with the new owner or lessee shall not exceed the termination date of the Tax Phase-In incentive agreement with the original owner and/or lessee.

(c) No assignment or transfer shall be approved if the parties to the existing agreement, the new owner or new lessee are liable to the City for outstanding taxes or other obligations.

(d) Approval shall not be unreasonably withheld.

XI. SUNSET PROVISION

(a) This policy is effective upon the date of the adoption and will remain in force for two (2) years, at which time all Reinvestment Zones and Tax Phase-In incentive contracts created pursuant to its provisions may be reviewed by the City to determine whether the goals have been achieved. Based on that review, this policy may be modified, renewed or eliminated, providing that such actions shall not affect existing contracts.

(b) This policy does not amend any existing Industrial District Contracts or agreements with the owners of real property in areas deserving of specific attention as agreed by the City.

(c) Prior to the date for review, as defined above, this Policy Statement may be modified by a three fourths (3/4) vote of members each governing body, as provided for under the laws of the State of Texas.

XII. SEVERABILITY AND LIMITATIONS

(a) In the event that any section, clause, sentence, paragraph or any part of this Policy Statement shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such invalidity shall not affect, impair, or invalidate the remainder of this Policy Statement.

(b) Property that is owned or leased by the following is excluded from the property Tax Phase-In incentive:

  (1) a member of the governing body of the City of Brenham or a member of a planning board or commission of the City; or

  (2) a member of the Commissioners Court or a member of a planning board or commission of Washington County.

(c) If this Policy Statement has omitted any mandatory requirements of the applicable Tax Phase-In incentive laws of the State of Texas, then such requirements are hereby incorporated as a part of this Policy Statement.

XIII. VARIANCE

Requests for any variances from this Policy may be made in written form to the City Manager. Such request shall include a complete description of the circumstances explaining why the applicant, company or individual should be granted a variance. Approval of a request for variance requires a three- fourths (3/4) majority vote of the governing body of the City.

GLOSSARY

(a) "City" means the City of Brenham, Texas that levies ad valorem taxes upon and/or provides services to property located within the City limits.

(b) "Agreement" means a contractual agreement between a property owner and/or lessee and the City for the purpose of the Tax Phase-In incentive.

(c) "Base year employment" means the average number of employees for each quarter at an existing local business of the year prior to the execution of the agreement.

(d) "Base year value" means the assessed value of eligible property on January 1 preceding the execution of the agreement plus the agreed upon value of eligible property improvements made after January 1 but before the filing of an application for the Tax Phase-In incentive.

(e) "Committee" means the Compliance Review Committee, consisting of representatives appointed by the City, County and Chief Appraiser's office to annually review documents verifying compliance of all projects receiving the Tax Phase-In incentive.

(f) "Deferred maintenance" means improvements necessary for continued operations which do not improve productivity or alter the process technology.

(g) "Existing Local Business" means a business that has been located in the City of Brenham and has paid property taxes for at least one full year prior to submitting any application for the property Tax Phase-In incentive.

(h) "Expansion" means the addition of buildings, employees, structures, machinery or equipment for purposes of increasing production capacity.

(i) "Facility" means property improvements completed or in the process of construction which together comprise an integral whole.

(j) "Job(s)" shall represent a newly created or a retained employment position on a full-time permanent basis at an average base salary of $36,000 or higher, including any benefits, whether hired directly or leased through an employee leasing service.

(k) "Modernization" means the upgrading and or replacement of existing facilities which increases the productive input or output, updates the technology or substantially lowers the unit cost of the operation. Modernization may result from the construction, alteration or installation of buildings, structures, fixed machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing or repairing.

(l) "New Facility" means improvements to real estate previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.

(m) "Productive Life" means the number of years a property improvement is expected to be in service in a facility.

EXHIBIT A
PRIMARY JOBS EMPLOYER DEFINITION

Sec. III (a)
Be a facility used or to be used by a Primary Jobs Employer.

"Primary job" means a job that is:

(i) available at a company for which a majority of the products or services of that company are ultimately exported to regional, statewide, national, or international markets infusing new dollars into the local economy; and

(ii) included in one of the following sectors of the North American Industry Classification System (NAICS):

NAICS Sector #	**Description**
111	Crop Production
112	Animal Production
113	Forestry and Logging
11411	Commercial Fishing
115	Support Activities for Agriculture and Forestry
211-213	Mining
221	Utilities
311-339	Manufacturing
42	Wholesale Trade
48-49	Transportation and Warehousing
51 (excluding 512131 and 512132)	Information (excluding motion picture theaters and drive-in motion picture theaters)
523-525	Securities, Commodity Contracts, and Other Financial Investments and Related Activities; Insurance Carriers and Related Activities; Funds, Trusts, and Other Financial Vehicles
5413, 5415, 5416, 5417, and 5419	Architectural, Engineering, and Related Services; Computer System Design and Related Services; Management, Scientific, and Technical Consulting Services; Scientific Research and Development Services; Other Professional, Scientific, and Technical Services
551	Management of Companies and Enterprises
56142	Telephone Call Centers
922140	Correctional Institutions

EXHIBIT B
TAX PHASE-IN INCENTIVE SCHEDULES

Applicants may receive property Tax Phase-In incentive according to the schedules in Tables 1 and 2, depending on their combination of property value creation and job creation/retention.

TABLE 1 (earns 50% of incentive)

1A - Property Improvements by an Existing Local Business

Level	Amount of Valuation of Eligible Improvements as determined by the Tax Appraisal District: From	To	Percent of property tax to be abated each year: 1	2	3	4	5	6	7	8
1	$ 150,000	$1,000,000	45	40	30	20	0	0	0	0
2	$1,000,001	$2,500,000	45	45	40	30	20	0	0	0
3	$2,500,001	$4,000,000	45	45	45	40	30	20	0	0
4	$4,000,001	$5,500,000	45	45	45	45	40	30	20	0
5	More than	$5,500,000	45	45	45	45	45	40	30	20

1B - Property Improvements by a New Business

Level	Amount of Valuation of Eligible Improvements as determined by the Tax Appraisal District: From	To	Percent of property tax to be abated each year: 1	2	3	4	5	6	7	8
1	$ 300,000	$1,000,000	45	40	30	20	0	0	0	0
2	$1,000,001	$2,500,000	45	45	40	30	20	0	0	0
3	$2,500,001	$4,000,000	45	45	45	40	30	20	0	0
4	$4,000,001	$5,500,000	45	45	45	45	40	30	20	0
5	More than	$5,500,000	45	45	45	45	45	40	30	20

TABLE 2 (earns 50% of incentive)

2 - Jobs Created & Retained - by Existing Businesses or New/Relocating Businesses

Level	The number of new and/or retained full-time employees with an average salary level of $36,000+/year including benefits averaged during the twelve calendar months prior to the tax assessment date of January 1: From	To	Percent of property tax to be abated each year: 1	2	3	4	5	6	7	8
1	10	19	45	40	30	20	0	0	0	0
2	20	29	45	45	40	30	20	0	0	0
3	30	39	45	45	45	40	30	20	0	0
4	40	49	45	45	45	45	40	30	20	0
5	50 and more		45	45	45	45	45	40	30	20

TABLE 3 Downtown Zone

Amount of valuation of downtown reinvestment determined by tax appraisal:			Percent of property tax to be abated each year							
Valuation			1	2	3	4	5	6	7	8
$ 50,000	to	$150,000	90	90	90	60	40	20	0	0
$150,001	to	$250,000	90	90	90	90	60	40	20	0
$250,001	and beyond		90	90	90	90	90	60	40	20

EXHIBIT C
MAP OF DOWNTOWN ZONE

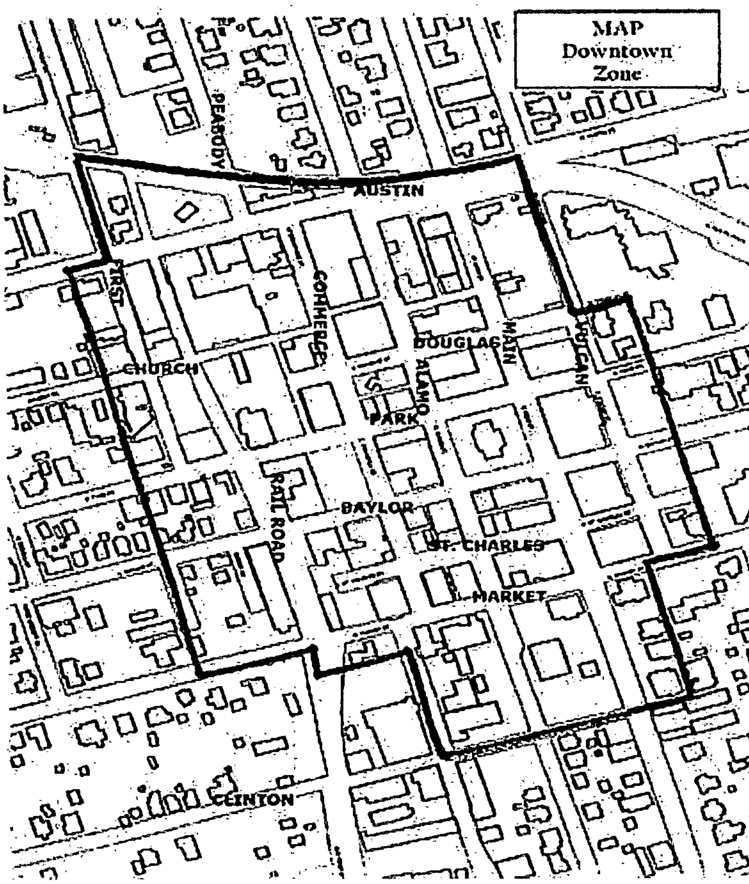

Exhibit "B"

ORDINANCE NO. O-23-008

AN ORDINANCE DESIGNATING ALL OF THAT CERTAIN 80.088 ACRE TRACT OR PARCEL OF LAND LYING AND BEING PART OF THE J. CARRINGTON SURVEY, A-120, CONTAINING 14.888 ACRES AND BEING THE SAME TRACT OF LAND CONVEYED TO AMERICAN LIGHTING STANDARDS CORPORATION BY DEED DATED AUGUST 11, 1975, AS RECORDED IN VOLUME 338, PAGE 789, IN SAID OFFICIAL RECORDS OF WASHINGTON COUNTY, TEXAS, AND ALSO CONTAINING 65.200 ACRES OF LAND OUT OF THE J. CARRINGTON LEAGUE, A-120, AND BEING A RESIDUE OF THE 95.578 ACRE TRACT DESCRIBED IN A DEED FROM LINDA GIDDINGS ANDERSON TO AMERICAN LIGHTING STANDARDS CORPORATION, DATED NOVEMBER 4, 1974 AND RECORDED IN VOLUME 332, PAGE 314, IN SAID OFFICIAL RECORDS OF WASHINGTON COUNTY, TEXAS AND SAID PROPERTY BEING LOCATED AT 2551 VALMONT DR., BRENHAM, TEXAS, AND SAID PROPERTY BOUNDARIES BEING MORE FULLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN FOR ALL PURPOSES, AS REINVESTMENT ZONE NUMBER FORTY-NINE FOR COMMERCIAL TAX PHASE-IN, CITY OF BRENHAM, TEXAS AS PROVIDED IN CHAPTER 312, TEXAS TAX CODE; ESTABLISHING THE NUMBER OF YEARS FOR THE ZONE, AUTHORIZING AN AGREEMENT FOR EXEMPTION FROM TAXATION THE INCREASE IN VALUE OF CERTAIN PROPERTY IN ORDER TO ENCOURAGE DEVELOPMENT AND REDEVELOPMENT AND OTHER MATTERS RELATING THERETO; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

WHEREAS, on the 15th day of June 2023, the City Council held a public hearing to receive comments concerning the designation of proposed Reinvestment Zone Number Forty-Nine. The notice of such hearing was published on June 8, 2023, such date being not later than the seventh day before the date of the public hearing; and

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

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

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

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

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

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

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

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

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

b) That the City has jurisdiction to hold and conduct said public hearing on the creation of the proposed reinvestment zone pursuant to the Act; and

c) That creation of the proposed reinvestment zone with boundaries described herein will result in improvements made after the passage of this Ordinance and the execution of tax phase-in agreements, that are feasible and practical and will benefit the City, its residents and property owners in the reinvestment zone; and

d) That the proposed designation will be reasonably likely to contribute to the retention or expansion of primary employment or to attract major investments to the zone that would be a benefit to the property and contribute to economic development of the City.

Section 3. That the City hereby creates Reinvestment Zone Number Forty-Nine, consisting of total of 80.088 acres of land, containing 14.888 acres out of the J. Carrington Survey, A-120 and being the property conveyed to American Lighting Standards Corporation by deed dated August 11, 1975, as recorded in Volume 338, Page 789, Deed Records of Washington County, Texas, and also containing 65.200 acres out of the J. Carrington League, A-120 and being a residue of the 95.578 acre tract described in a deed from Linda Giddings Anderson to American Lighting Standards Corporation, dated November 4, 1974 and recorded in Volume 332, Page 314, Deed Records of Washington County, Texas, said property being located at 12551 Valmont Dr., Brenham, Texas, and said property boundaries being more fully described in Exhibit "A" attached hereto and incorporated herein for all purposes, and such reinvestment zone shall hereafter be identified as Reinvestment Zone Number Forty-Nine for Commercial Tax Phase-In, City of Brenham, Texas.

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

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

Section 6. That said designation of Reinvestment Zone Number Forty-Nine for Commercial Tax Phase-In and the written agreement thereof are in accordance with the City of Brenham's "Policy Statement on Property Tax Phase-In Incentive for Selected Commercial Enterprises" and will be a benefit to the land which will be included within the Reinvestment Zone and to the City of Brenham after the expiration of the agreement.

Section 7. That if any provision of this Ordinance shall be held to be invalid or unconstitutional, the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part of it.

Section 8. That it is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

PASSED AND APPROVED, on its first reading this the 15^{th} day of June 2023.

PASSED AND APPROVED, on its second reading this the 13^{th} day of July 2023.

____
Atwood C. Kenjura
Mayor

ATTEST:

____
Jeana Bellinger, TRMC, CMC
City Secretary

EXHIBIT “A”

All of that certain 80.088 acre tract of land, containing 14.888 acres out of the J. Carrington Survey, A-120 and being the property conveyed to American Lighting Standards Corporation by deed dated August 11, 1975, as recorded in Volume 338, Page 789, Deed Records of Washington County, Texas, and also containing 65.200 acres out of the J. Carrington League, A-120 and being a residue of the 95.578 acre tract described in a deed from Linda Giddings Anderson to American Lighting Standards Corporation, dated November 4, 1974 and recorded in Volume 332, Page 314, Deed Records of Washington County, Texas.

Exhibit "C"

All of that certain 80.088 acre tract of land, containing 14.888 acres out of the J. Carrington Survey, A-120 and being the property conveyed to American Lighting Standards Corporation by deed dated August 11, 1975, as recorded in Volume 338, Page 789, Deed Records of Washington County, Texas, and also containing 65.200 acres out of the J. Carrington League, A-120 and being a residue of the 95.578 acre tract described in a deed from Linda Giddings Anderson to American Lighting Standards Corporation, dated November 4, 1974 and recorded in Volume 332, Page 314, Deed Records of Washington County, Texas.

Regular City Council
AGENDA ITEM 8.

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

Meeting Type: Regular Meeting-July 13, 2023

Department: Economic Development

Staff Contact: Teresa Rosales

SUMMARY STATEMENT:

PlanNorth LLC dba PlanNorth Architectural Co. was established in 2010 and has 12 employees at their 107 S. Baylor Street location. Their continued growth and recognition as an entrepreneurial leader has necessitated an office expansion to a new location. The project is the construction of a 7,600 square foot brick building located at 1809 N. Park Street.

Their current average annual wage is $67,780 and they expect that to rise over the next 10 years to $88,450.

ATTACHMENTS:

(1) Resolution No. R-23-027
(2) North Park Development Tax Phase-In Agreement

RECOMMENDED ACTION:

Approve Resolution No. R-23-027 adopting a Commercial Tax Phase-In Agreement between the City of Brenham and North Park Development, LLC.

RESOLUTION NO. R-23-027

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS ADOPTING A COMMERCIAL TAX PHASE-IN AGREEMENT WITH NORTH PARK DEVELOPMENT, LLC; AUTHORIZING THE MAYOR TO EXECUTE THE TAX PHASE-IN AGREEMENT; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Chapter 312 of the Texas Tax Code authorizes the City of Brenham, Texas, to participate in tax phase-in incentives; and

WHEREAS, in accordance with Section 312.002 of the Texas Tax Code, the City of Brenham, Texas previously passed a resolution stating the City's intent to participate in tax phase-in incentives; and

WHEREAS, in accordance with Section 312.002 of the Texas Tax Code, the City of Brenham, Texas also previously adopted tax phase-in incentive guidelines and criteria; and

WHEREAS, the City Council of the City of Brenham, Texas, finds and determines that the terms of the Tax Phase-In Agreement and the subject property meet the applicable tax phase-in incentive guidelines and criteria, and entering into the Tax Phase-In Agreement will be to the benefit of the citizens of the City of Brenham; and

WHEREAS, the City Council desires to adopt the Tax Phase-In Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein for all purposes, by and between the City of Brenham, Texas, and North Park Development, LLC, a Texas limited liability company;

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

Section 1: That the foregoing recitals are hereby found to be true and correct legislative findings of the City of Brenham, Texas, and are fully incorporated into the body of this Resolution.

Section 2: That the City Council of the City of Brenham, Texas does hereby adopt the commercial Tax Phase-In Agreement, a copy of which is attached hereto as Exhibit "A", by and between the City of Brenham, Texas, and North Park Development, LLC.

Section 3: That the Mayor is hereby authorized to execute the Tax Phase-In Agreement between the City of Brenham, Texas, and North Park Development, LLC, a copy of which is attached hereto as Exhibit "A".

Section 4: This Resolution shall become effective immediately from and after its passage.

RESOLVED this ______ day of _______________, 2023.

____
Atwood C. Kenjura
Mayor

ATTEST:

____
Jeana Bellinger, TRMC, CMC
City Secretary

AGREEMENT FOR DEVELOPMENT AND TAX PHASE-IN IN REINVESTMENT ZONE NO. 50 FOR COMMERCIAL TAX PHASE-IN, CITY OF BRENHAM, TEXAS

THE STATE OF TEXAS

COUNTY OF WASHINGTON

This Agreement is entered into by and between the CITY OF BRENHAM, TEXAS, a Texas home-rule municipal corporation, of Washington County, Texas, acting herein by and through its Mayor, hereinafter referred to as CITY, and NORTH PARK DEVELOPMENT, LLC, a Texas limited liability company hereinafter referred to as COMPANY.

WITNESSETH:

The City Council of the City of Brenham, Texas, ("COUNCIL") on February 20, 1992, adopted by resolution a policy for the creation of tax abatement zones in the City of Brenham ("POLICY"). Said POLICY was amended by COUNCIL on April 2, 1992, amended on June 4, 1992, and re-adopted on December 1, 1994, November 20, 1997, October 21, 1999, November 1, 2001, January 15, 2004, December 20, 2007, December 17, 2009, December 15, 2011, December 5, 2013, February 18, 2016 (as amended), December 7, 2017, December 19, 2019, and on May 4, 2023 (entitled "City of Brenham Policy Statement on Property Tax Phase-In Incentive for Selected Commercial Enterprises"). Said POLICY is attached hereto as Exhibit "A" and incorporated herein for all purposes. On June 15, 2023, the COUNCIL, by Ordinance, established Reinvestment Zone No. 50 for Commercial Tax Phase-In, City of Brenham, Texas ("ZONE") as authorized by V.T.C.A., Texas Tax Code Chapter 312. Said Ordinance No. O-23-009 is attached hereto as Exhibit "B" and incorporated herein for all purposes.

WHEREAS, COMPANY has filed an application for the phase-in of ad valorem taxes, and

WHEREAS, COUNCIL finds that the application, this Agreement, and the property subject to this Agreement meet the applicable guidelines and criteria of said POLICY, and

WHEREAS, in order to provide for the proper development of such property and to aid in the conduct of the operation thereof to the best interest of the CITY in accordance with the above referenced ordinances, POLICY and statutes, the parties do mutually agree as follows:

1. **Location of Tax Phase-In**. The property that is the subject matter of this Agreement is the land and improvements located at 1809 N. Park Street, Brenham, Texas and described more particularly as all of that certain 2.998-acre tract of land lying and being situated in the City of Brenham, Washington County, Texas, part of the Arrabella Harrington Survey, A-55, and being the same property described in a Deed dated June 30, 2022 from Ralph Todd Poehlmann to North Park Development, LLC as recorded in Volume 1848, Page 352, Official Records of Washington County, Texas being further described in Exhibit "C", attached hereto and incorporated herein for all purposes, and which property is hereinafter referred to as "PREMISES."

2. **Improvements**. In consideration of COMPANY'S construction of at least Two Million, Five Hundred Thousand and No/100 Dollars ($2,500,000.00) of personal property improvements to said PREMISES, including fixed machinery and equipment, CITY agrees that, subject to the terms and conditions contained herein, eligible improvements and renovations to the above described PREMISES shall be entitled to tax phase-in incentives in accordance with the

schedule as provided in “Table 1A – Property Improvements by an Existing Local Business”, and tax phase-in incentives in accordance with the schedule as provided in “Table 2 – Jobs Created & Retained – by Existing Businesses or New/Relocating Businesses”, said Tables being set out in the attached Exhibit “A” incorporated herein for all purposes, and that upon the expiration of such tax phase-in incentives this Agreement shall terminate.

"Improvements and renovations" as used herein shall be defined as including the building and all other associated improvements (personal and realty) and fixtures and equipment on the PREMISES added by the COMPANY within said zone. COMPANY will limit the uses of the property consistent with the general purpose of encouraging development or redevelopment of the ZONE during the period that property tax exemptions are in effect.

COMPANY acknowledges and agrees that the purpose of CITY in entering into this Agreement is to encourage development of the property in the ZONE and, therefore, COMPANY agrees to limit the use of the property to further said purpose.

3. **Submission of Plans**. COMPANY agrees that the site plan, interior and exterior design drawings and materials ("PLANS") for each improvement will be submitted to CITY and/or its designated representative for its approval when available. An official set of PLANS will be designated by the COMPANY and will be kept on file with the CITY.

4. **Other Applicable Regulations**. COMPANY agrees to construct all improvements in accordance with all applicable laws, ordinances, codes, rules, requirements or regulations of the

City of Brenham, Washington County, the State of Texas and the United States, and any subdivision, agency or authority thereof.

5. **Liability of City in Approving Plans**. CITY, by approving the PLANS or any revised PLANS, assumes no liability or responsibility therefore for any defect in any fixed machinery or equipment installed or any improvement or structure constructed, renovated, or repaired from the PLANS or approved revised PLANS. The relationship between CITY and COMPANY at all times shall not be deemed a partnership or joint venture for purposes of this Agreement or for any other purpose.

COMPANY AGREES TO HOLD HARMLESS, INDEMNIFY AND REIMBURSE CITY, ITS OFFICERS, AGENTS, AND/OR EMPLOYEES FOR ANY DAMAGES SUFFERED BY THEM DUE TO COMPANY'S NEGLIGENCE OR WILLFUL MISCONDUCT, SUCH DUTY AND LIABILITY NOT TO EXCEED WHAT COMPANY WOULD OWE TO ANY OF THEM UNDER COMMON LAW. CITY AGREES TO NOTIFY COMPANY AS SOON AS REASONABLY POSSIBLE AFTER CITY BECOMES AWARE OF ANY LEGAL ACTION (INCLUDING PRE-LITIGATION NOTICES, DEMAND LETTERS, ETC.) WHICH REASONABLY COULD THEN BE FORESEEN AS HAVING THE PROSPECTIVE POTENTIAL OF ACTIVATING THE TERMS OF THE IMMEDIATELY PRECEDING SENTENCE.

6. **Rights of City to Inspect**. At all reasonable times during the construction and installation of improvements and renovations on the PREMISES and following completion, CITY and its respective designees may inspect PREMISES in order to verify the construction,

workmanship, materials and installations involved in or incident to the project are performed in substantial compliance with the approved PLANS and compliance with the applicable building permits and governmental regulations.

7. **Payment of Taxes by Company**. COMPANY agrees to pay all ad valorem taxes and assessments that may be owed to CITY or any other taxing entity by it prior to such taxes and/or assessments becoming delinquent; provided, that COMPANY shall have the right to contest in good faith the validity or application of any such tax or assessment and shall not be considered in default hereunder so long as such contest is diligently pursued to completion. If COMPANY undertakes any such contest, COMPANY shall so notify in writing CITY and keep CITY appraised of the status of such contest. Should COMPANY be unsuccessful in such contest, COMPANY shall promptly pay the taxes, penalties, and/or interest, resulting therefrom.

COMPANY certifies that at the time of execution of this Agreement, there are no delinquent ad valorem taxes on the PREMISES, or fixed machinery, equipment and buildings located on the PREMISES, owed to any taxing jurisdiction. Subject to the foregoing paragraph, COMPANY shall pay all non-phased-in taxes subject to all requirements and due dates, as it would be required to pay in the absence of this Agreement.

8. **Tax Recapture**. In the event COMPANY (i) does not construct the improvements and renovations to the PREMISES as contemplated by this Agreement, (ii) fails to use the PREMISES for the purposes that are contemplated by this Agreement, (iii) fails to comply with the terms of the "City of Brenham Policy Statement on Property Tax Phase-In Incentive for Selected Commercial Enterprises", or (iv) otherwise fails to comply with the terms of this

Agreement, then the CITY shall have the right to terminate this Agreement and recapture the amount of all property taxes abated as a result of this Agreement in accordance with Texas Tax Code Sec. 312.205 and the POLICY after written notice of intended recapture by CITY to COMPANY and failure to cure by COMPANY within thirty (30) days of said notice.

9. **Default**. In the event COMPANY (i) allows the PREMISES to become vacant, (ii) fails to pay all non-abated ad valorem taxes as required by Section 7 hereof, (iii) fails to comply with the terms of the "City of Brenham Policy Statement on Property Tax Phase-In Incentive for Selected Commercial Enterprises", or (iv) otherwise fails to comply with the terms of this Agreement, then COMPANY shall be in "default" in the performance of this Agreement. The CITY shall notify COMPANY in writing of said "default." Further, in accordance with Chapter 2264, Texas Government Code, COMPANY certifies that COMPANY, or a branch, division, or department of COMPANY does not and will not knowingly employ an undocumented worker. COMPANY further certifies that in the event that COMPANY, or a branch, division, or department of COMPANY, is convicted of a violation under 8 U.S.C. Section 1324a(f), COMPANY shall be repay the amounts of ad valorem taxes previously abated by the CITY pursuant to this Agreement, with interest, calculated at the rate ten percent (10%) annually. Such a conviction shall constitute a default under this Agreement.

If COMPANY does not comply with this Agreement within thirty (30) days of written notice of such "default", CITY reserves the right to terminate this Agreement and terminate the benefits of tax phase-in provided for in this Agreement, and all taxes previously abated pursuant to this Agreement shall be recaptured and paid to the CITY by the COMPANY. In such event, the PREMISES and all improvements, fixed machinery and equipment installed thereon shall be deemed taxable and not entitled to tax phase-in as provided herein. If this Agreement is terminated, any taxes abated for the calendar year of the termination shall be paid within sixty (60) days of the date of such termination, and all taxes and all taxes previously abated pursuant to this Agreement shall be recaptured and paid to the CITY by the COMPANY within sixty (60) days of the date of termination.

10. **Tax Phase-In Amount.** COMPANY shall receive tax phase-in incentives for eligible property improvements in accordance with the schedule as provided in "Table 1A – Property Improvements by an Existing Local Business", and tax phase-in incentives for job creation in accordance with the schedule as provided in "Table 2 – Jobs Created & Retained – by Existing Businesses or New/Relocating Businesses" said Tables being set out in the attached Exhibit "A", and that upon the expiration of such tax phase-in incentives this Agreement shall terminate. The total annual tax phase-in incentive amount received by the COMPANY, expressed on a percentage basis, shall be the sum of the respective percentages provided for in Table 1A and Table 2 for the applicable year of the tax phase-in.

COMPANY shall, on or before October 15 of each calendar year, submit a sworn statement to the CITY'S Compliance Review Committee that COMPANY is in compliance with this Agreement, including such information as may be necessary to verify compliance (e.g. employment and payroll information), subject to verification by the City of Brenham and/or the Compliance Review Committee

During the term of this Agreement, the CITY, its officers and employees, and/or the Compliance Review Committee is entitled to review and verify the COMPANY'S employment records, payroll records, and such other information and documents as the CITY and/or the Compliance Review Committee deems reasonably necessary to verify compliance with this Agreement. The CITY, its officers and employees, and/or the Compliance Review Committee may conduct on-site inspections of the PREMISES and facilities located thereon during the term of this Agreement to verify compliance with this Agreement.

The estimated value of eligible property improvements for tax phase-in incentives is at least Two Million, Five Hundred Thousand and No/100 Dollars ($2,500,000.00). Notwithstanding anything contained herein to the contrary, COMPANY and CITY agree that the amount of eligible property improvements and jobs created & retained as set forth herein are based on projected property improvement and personnel employed, and the actual amount of tax phase-in incentives shall be determined annually by Table 1A and Table 2 of the POLICY based on the actual eligible improvements and the actual number of employees. COMPANY agrees to reasonably cooperate with CITY to determine compliance with this Agreement and the applicable level of tax phase-in incentives.

11. **Certificate of Compliance**. Upon completion of the improvements and renovations to the PREMISES, COMPANY shall submit to CITY a sworn Certificate of Compliance certifying that all construction of the improvements and renovations to the PREMISES has been completed in accordance with the approved plans. After receipt of this Certificate of Compliance, CITY shall make a final inspection of PREMISES to determine whether the improvements and renovations have been constructed and installed in compliance with this Agreement. Upon so finding, CITY shall approve such a Certificate of Compliance and authorize tax phase-in to commence on January 1 of the year indicated in said certificate and terminate after

the property has received the tax phase-in incentives as provided by this Agreement and Exhibit "A."

12. **<u>Eligible and Ineligible Property</u>**. "Eligible property" is defined to include all of the following items located on the PREMISES which were not so located prior to execution of this Agreement and whether or not they are so affixed as to become "real property": buildings, structures, fixed machinery and equipment, site improvements (including landscaping), office space and related fixed improvements necessary to the operation and administration of the facility.

"Ineligible Property" shall be fully taxable and ineligible for abatement, defined as including:

Land;
Animals;
Inventories;
Supplies;
Tools;
Furnishings and other forms of movable personal property (except as described as "eligible property" above);
Vehicles;
Vessels;
Aircraft;
Hotels/motels;
Housing or residential property;
Fauna;
Flora (excluding landscaping improvements);
Retail facilities;
Deferred maintenance investments;
Improvements for the generation or transmission of electrical energy not wholly consumed by a new facility or expansion;
Any improvements including those to produce, store or distribute natural gas or fluids that are not integral to the operation of the facility; or
Property owned or used by the State of Texas or its political subdivisions or by any organization owned operated or directed by a political subdivision of the State of Texas.

13. **Severability**. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under the present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added automatically as part of this Agreement a provision that is similar in terms and substance to such deleted provision as may be possible and yet be legal, valid and enforceable under the Texas Tax Code and related state statutes.

14. **Texas Law to Apply.** This Agreement shall be construed under the POLICY adopted by the CITY, including the Glossary of Terms, in accordance with said POLICY in force at the date of execution hereof and in accordance with the laws of the State of Texas. All obligations of the parties created hereunder are performable in Washington County, Texas. In the event of litigation, or other claim or dispute arising out of or involving this Agreement, exclusive venue shall lie in a court of competent jurisdiction in Washington County, Texas.

15. **Prior Agreements Superseded**. This Agreement constitutes the sole agreement of the parties herein and supersedes any and all prior written or oral agreements, arrangements or understandings between the parties relating to the subject matter.

16. **Amendments**. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing, dated subsequent to the date of this Agreement and duly executed by the parties hereto.

17. **Rights and Remedies Cumulative**. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its rights to use all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

18. **No Waiver.** No waiver by CITY in any event of default, or breach of any covenant, condition or stipulation herein contained by COMPANY shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition or stipulation hereof.

19. **Assignment**. This Agreement may be assigned by COMPANY upon CITY'S written approval of said assignment by the adoption of a resolution by the COUNCIL, and assignee assumes any and all rights and obligations under this Agreement. Upon such assignment, the assignor shall be fully released from any and all obligations under this Agreement.

20. **Authority to Act**. The parties to this Agreement shall provide proof of authorization to execute this document.

21. **Notice**. Whenever notice or other communication is herein required to be given to COMPANY or to CITY, such notice will be sent, respectively, to the attention of COMPANY'S President or other designated officer at the address of Company's facility in the reinvestment ZONE, or to the attention of the City Manager at the address of said City Manager's then-current office location, via certified or registered mail, return receipt requested. Such notice will be considered effectively delivered when sent if such is properly addressed and sent and the return

receipt is received by the sender, or if addressee fails to receive or accept delivery and the undelivered item is returned to sender.

22. **Definitions**. Any definitions of words or phrases given in the currently effective tax phase-in guidelines entitled "City of Brenham Policy Statement on Property Tax Phase-in Incentive for Selected Commercial Enterprises" shall be controlling in this document as well, except as may be specifically modified herein

23. This Agreement has been approved by the governing body of the CITY.

24. Any aspect of this Agreement which may happen to conflict with the underlying jurisdiction's tax phase-in guidelines shall be considered as an approved modification or clarification of such guidelines as may be required to affect the intent of this Agreement.

25. For the duration of this Agreement and for additional consideration for this tax phase-in, COMPANY agrees to purchase the following utilities: water, electric, natural gas, and sewer, exclusively from the City of Brenham in its service area.

26. If any action is brought to enforce, construe or determine the validity of any term or provision of this Agreement (whether at the trial court level or any appeal therefrom), the prevailing party shall be entitled to reasonable attorney's fees and costs of the action.

The parties hereto have executed or caused to be executed by their duly authorized officials this Agreement in multiple counterparts, each of equal dignity, on this the ______ day of ___________________, 2023.

NORTH PARK DEVELOPMENT, LLC	**CITY OF BRENHAM, TEXAS**
BY: ______________________________	BY: ______________________________
Katie Burch Managing Member P.O. Box 2468 Brenham, TX 77834-2468	Atwood C. Kenjura Mayor P.O. Box 1059 Brenham, TX 77834-1059
	ATTEST:
	BY: __________________________
	Jeana Bellinger, TRMC, CMC City Secretary P.O. Box 1059 Brenham, TX 77834-1059

THE STATE OF TEXAS

COUNTY OF WASHINGTON

Before me, the undersigned authority, on this day personally appeared **ATWOOD C. KENJURA.**, Mayor of the CITY OF BRENHAM, TEXAS, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the ____ day of _______________, 2023.

____
Notary Public in and for
the State of Texas

THE STATE OF TEXAS

COUNTY OF WASHINGTON

Before me, the undersigned authority, on this day personally appeared **KATIE BURCH,** Managing Partner of North Park Development, LLC, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the ______ day of ____________, 2023.

____
Notary Public in and for
the State of Texas

Exhibit "A"

CITY OF BRENHAM

POLICY STATEMENT ON PROPERTY TAX PHASE-IN INCENTIVE FOR SELECTED COMMERCIAL ENTERPRISES
Policy Adoption Date: May 4, 2023

I. PURPOSE

The City of Brenham, hereinafter referred to as "the City," is committed to the promotion of high quality development in all parts of the community and to improving the quality of life for its citizens. In order to help meet these goals and to stimulate economic development, the City will consider providing incentives that include, but are not limited to, the property Tax Phase-In incentive, in accordance with the procedures, criteria and guidelines set forth in this Policy and as provided by Chapter 312 of the Texas Tax Code. Nothing in this Policy shall imply or suggest that the City is under any obligation to provide any incentives to any applicant. Each application for the Tax Phase-In incentive under this Policy shall be considered on an individual basis.

II. DEFINITION OF TAX PHASE-IN INCENTIVE

Tax Phase-In incentive, as referred to in this Policy, means the partial, temporary exemption from ad valorem taxes on certain qualifying property in a Reinvestment Zone designated by the City or County for economic development purposes. Only ad valorem (property) taxes are eligible for the incentive. Brenham ISD and Blinn College taxes are required to be paid in full at all times.

The attached Glossary is a list of words with their definitions that are found in this document, and the Glossary is incorporated herein by reference.

III. GUIDELINES AND CRITERIA

In order to be eligible for property Tax Phase-In incentive, the planned improvement at a minimum must:

(a) Be a facility used or to be used by a Primary Jobs Employer according to Exhibit A (except for a location in the Downtown Zone).

(b) The project must add new value to the tax roll of eligible property: a minimum of \$300,000 for a business new to Brenham or \$150,000 for an existing local business. For development in the Downtown Zone, a National Register Historic District, the added value must be a minimum of \$50,000. This is to help maintain the economic viability of the central business district.

(c) The applicant must maintain or create within the first year and throughout the Tax Phase- In incentive period a minimum of ten (10) jobs at an average salary of \$36,000/year or higher, including any benefits (except for a location in the Downtown Zone).

In consideration of the request for the Tax Phase-In incentive, the following factors will also be considered:

(1) Jobs The projected new jobs created including the number of jobs, the type of jobs and the average salary per job class.

(2) Fiscal Impact The amount of real and personal property value that will be added to the tax roll for both eligible and ineligible property, the amount of direct sales tax that may be generated, any infrastructure improvements by the City that will be required by the facility, the infrastructure improvements made by the facility, and the compatibility of the project with the City's master plan for development.

(3) Valuation at Termination of Tax Phase-In Incentive Period The estimated fair market value, valued at the end of incentive period, of any equipment included in the Tax Phase-In incentive. The economic life of the added-value property must exceed the duration of the granted Tax Phase-In incentive period.

(4) Community Impact

The pollution, if any, as well as other negative environmental impacts affecting the health and safety of the community that will be created by the project;

The revitalization of a depressed area;

The business opportunities of existing local businesses;

The alternative development possibilities for proposed site;

The impact on other taxing entities;

Whether the improvement is expected to solely or primarily have the effect of transferring employment from one part of Washington County to another; and/or,

Whether the product manufactured or service provided by the business competes to a substantial degree with an existing business.

IV. TAX PHASE-IN INCENTIVE AUTHORIZED

(a) Authorized Date A facility shall be eligible for the Tax Phase-In incentive if it has applied for the incentive prior to the commencement of construction and meets the guidelines and criteria under this Policy.

(b) Creation of New Value Tax Phase-In incentive may only be granted for the additional value of eligible property improvements made subsequent to the filing of an application for the Tax Phase-In incentive and specified in the Tax Phase-In incentive agreement between the City and the property owner and/or lessee, subject to such limitations as the guidelines and criteria may require.

(c) New and Existing Facilities Tax Phase-In incentive may be granted for new facilities and improvements and for the expansion or modernization of existing facilities and improvements. If the modernization project includes facility replacement, the Tax Phase-In incentive value shall be the tax- appraised value of the new unit(s) less the value of the old unit(s).

(d) Eligible Property Except as otherwise provided in this policy, the Tax Phase-In incentive may be extended to the value of buildings, structures, fixed machinery and equipment, site improvements plus that office space and related fixed improvements necessary or convenient to the operation and administration of the facility.

(e) Ineligible Property The following types of property shall be fully taxable and ineligible for property Tax Phase-In incentives:

land,
animals,
inventories,
supplies,
tools,
furnishings and other forms of movable personal property,
vehicles,
vessels,
aircraft,
housing or residential property (except for property owners in the Downtown Zone),
hotels/motels,
fauna,
flora,
retail facilities (except for property owners in the Downtown Zone),
deferred maintenance investments,
property to be rented or leased except as provided in Part IV (f),
improvements for the generation or transmission of electrical energy not wholly consumed by a new facility or expansion,
any improvements including those to produce, store or distribute natural gas or fluids that are not integral to the operation of the facility, or
property owned or used by the State of Texas or its political subdivisions or by any organization owned, operated or directed by a political subdivision of the State of Texas.

(f) Owned/Leased Facilities If a leased facility is granted the Tax Phase-In incentive, the agreement shall be executed with the lessor and the lessee and the new value investment shall be combined to calculate the total new value investment. If the lessee removes or reduces its new value investment to the detriment of the lessor, the lessor may annually elect to extend its Tax Phase-In incentive to obtain a replacement lessee. The lessor may obtain the full benefit of the remaining Tax Phase-In incentive period by resuming the Tax Phase-In incentive with the combined value of the replacement lessee by disregarding the Tax Phase-In incentive extension term. The lessor shall not receive any Tax Phase-In incentive during any year where a Tax Phase- In incentive extension has been elected. The Tax Phase-In incentive period, including any extensions, shall never exceed a total of ten years as provided by state law. The replacement lessee may apply for its own Tax Phase-In incentive based solely on its new value investment.

(g) Value and Term of Tax Phase-In incentive Tax Phase-In incentives shall commence with the January 1 valuation date immediately following the occupancy of the property qualifying for the Tax Phase-In incentive unless otherwise specified by the City. The value of new eligible properties shall be abated according to the approved agreement between applicant and the City. The City, in its sole discretion, shall determine the amount of any Tax Phase-In incentive. The Table 1and Table 2 Tax Phase-In incentive Schedules - Exhibit "B", Table 3 in a Downtown Zone (map Exhibit "C"), incorporated herein by reference, shall be the maximum Tax Phase-In incentive available based on total new value investment or added employment for each year during the Tax Phase-In incentive term, whichever is greater.

The total amount of eligible property improvements and jobs created and retained are based on projected property improvements and personnel employed. However, the actual amount of tax phase-in incentives shall be determined annually by Table 1 and Table 2 in Exhibit B based on the actual eligible improvements and the actual number of employees, unless located in a Downtown Zone, in which the total amount of abatement will be derived from Table 3.

If an Existing Local Business has ten to forty-nine (10-49) employees for their base year employment, then the total abatement levels shall be determined from Levels 1-4 in Table 2 of Exhibit B. If an Existing Local Business has fifty (50) or more employees for their base year employment, then the following abatement levels shall be determined from Table 2 in Exhibit B:

- Level 5 – if base year employment is at least 90% for that calendar year
- Level 4 – if base year employment is at least 80% for that calendar year
- Level 3 – if base year employment is at least 70% for that calendar year
- Level 2 – if base year employment is at least 60% for that calendar year
- Level 1 – if base year employment is at least 50% for that calendar year

(h) Downtown Zone A Tax Phase-In incentive zone within the designated downtown area in the attached Exhibit C, incorporated herein by reference, and any tracts or parcels contiguous to a tract in Exhibit C under common ownership. Tax Phase-In incentive in a Downtown Zone shall receive approval for building plans and specifications by the Main Street Board as a condition of receiving the Tax Phase-In incentive.

(i) Taxability From the execution of the Tax Phase-In incentive contract to the end of the agreement period, taxes shall be payable as follows:

(1) The value of ineligible property as provided in Part IV (e) shall be fully taxable.

(2) The base year value of existing eligible property as determined each year shall be fully taxable.

(3) The additional value of new eligible property shall be taxable in the manner described in Part IV (g).

V. APPLICATION PROCESS

(a) Any present or potential owner of taxable property in the City of Brenham may request the creation of a Reinvestment Zone and Tax Phase-In incentive by filing written request with the City Manager.

(b) The application shall consist of a completed application form accompanied by:

(1) A general description of the proposed use and the general nature and extent of the modernization, expansion or new improvements to be undertaken;

(2) A descriptive list of the improvements which will be a part of the facility;

(3) A map and property description or a site plan, including a legal description of the area proposed for designation as a Reinvestment Zone, as applicable.

(4) A time schedule for undertaking and completing the planned improvements;

(5) In the case of modernizing or replacing existing facilities, a statement of the assessed value of the facility, separately stated for real and personal property, shall be given for the tax year immediately preceding the application;

(6) The application form may require such financial and other information as deemed appropriate for evaluating the financial capacity and other factors of the applicant;

(7) A schedule reflecting the proposed amount of abated taxes for which the applicant seeks, as well as the anticipated taxes to be paid by the applicant which will not be subject to the Tax Phase-In incentive; and

(8) A schedule of the proposed job creation or retention, including details of job type(s), wages and benefits, and the timing of creation of any job within the phase-in period.

(c) Upon receipt of a completed application, the City Manager shall notify the Mayor and City Council. Before acting upon the application, the City may conduct an Economic Impact Study. Following this step, the City shall afford the applicant and any other interested persons the opportunity to speak and present evidence for or against the designation of the area as a Reinvestment Zone for the purpose of the Tax Phase-In incentive during a public hearing. Notice of the public hearing shall be clearly identified on an agenda of the City to be posted as required by law. At least seven (7) days before the date of the hearing, notice of the hearing must be 1) published in a newspaper having general circulation in the City; and 2) delivered in writing to the presiding officer of the governing body of each taxing entity having in its boundaries real property that is to be included in the proposed Reinvestment Zone.

(d) The City shall approve or disapprove the application for designation of an area as a Reinvestment Zone for Tax Phase-In incentive within ninety (90) days after receipt of the application. The presiding officer of the legislative body of the City shall notify the applicant of the approval or disapproval promptly thereafter.

(e) A request for designation of an area as a Reinvestment Zone for the purpose of receiving the Tax Phase-In incentive shall not be granted if the jurisdiction receiving the application finds that the request for the Tax Phase-In incentive was filed after the commencement of construction or installation of improvements related to a proposed modernization expansion or new facility began.

VI. PUBLIC HEARING

(a) Should the City be able to show cause in the public hearing why the granting of a designation of an area as a Reinvestment Zone for the Tax Phase-In incentive will have a substantial adverse effect on its bonds, service capacity or the provision of service, that showing shall be reason for the City to deny the granting of the application.

(b) Neither a Reinvestment Zone nor a property Tax Phase-In incentive agreement shall be authorized if it is determined that:

(1) There would be a substantial adverse effect on the provision of a government service or tax base of the City.

(2) The applicant has insufficient financial capacity

(3) Planned or potential use of the property would constitute a hazard to public safety, health or morals.

(4) Planned or potential use of the property violates governmental codes or laws.

VII. AGREEMENT

(a) After approval of the application for the designation of an area as a Reinvestment Zone for the property Tax Phase-In incentive, the City shall formally pass a resolution and execute an agreement with the owner of the facility and the lessee involved, if any, which shall include:

(1) Estimated value to be abated and the base year value.

(2) Percent of value to be abated each year as provided in Part IV (g).

(3) The commencement date and the termination date of Tax Phase-In incentive.

(4) The proposed use of the facility, nature of construction, time schedule for undertaking and completing the planned improvements, map, property description and improvements list as provided in Application, Part V.

(5) Contractual obligations in the event of default, violation of terms or conditions, delinquent taxes, recapture, administration and assignment as provided herein and other provisions that may be required for uniformity or by state law.

(6) Amount of investment and average number of jobs involved for the period of the Tax Phase-In incentive.

(7) Said contract shall meet all of the requirements of Texas Tax Code Chapter 312.

(b) Such agreement shall be executed within ninety (90) days after the later of 1) the date applicant has forwarded all necessary information to the City or 2) the date of the approval of the application.

(c) The City shall make its own determination of the property Tax Phase-In incentive which shall not bind any other jurisdiction.

VIII. ADMINISTRATION

Each Tax Phase-In incentive project will be monitored annually for compliance. The agreement will require the applicant to provide a sworn statement and documents verifying compliance each year. Failure to provide the required documents in the manner outlined herein shall result in termination of the Tax Phase-In incentive agreement.

The terms of the agreement shall include the right of the City to review and verify the applicant's employment records and payroll records in each year during the term of the agreement, and to conduct an on-site inspection of the project in each year during the duration of the Tax Phase-In incentive, and to review such other items as may be reasonable to verify compliance with the terms of the agreement.

The agreement shall stipulate that employees and/or designated representatives of the City will have access to the Reinvestment Zone during the term of the Tax Phase-In incentive to inspect the facility to determine compliance with the terms and conditions of the agreement. All inspections will be made only after the giving of twenty-four (24) hours prior notice and will be conducted in such manner as to not unreasonably interfere with the construction and/or operation the facility. All City inspections will be made with one or more representatives of the company or individual and in accordance with its safety standards.

All proprietary information acquired by any affected jurisdiction for purposes of monitoring compliance with the terms and conditions of a property Tax Phase-In incentive agreement shall be considered confidential to the extent allowed by law.

Compliance will be monitored in the following manner:

(a) A Compliance Review Committee shall collect from the applicant a sworn statement of compliance and verifying documents and conduct any inspections on or before June 30 of each calendar year. The Committee shall be comprised of 5 representatives, with 2 appointed by the Mayor, 2 appointed by the County Judge and 1 by the Chief Appraiser. They will be appointed by January 30 of even numbered years for a two year term. Any vacancy on the committee will be filled by the designated official who appointed the vacating committee person. The designated official may remove an appointee at any time. The company/individual receiving the property Tax Phase-In incentive shall furnish the Committee with such information as may be necessary to verify compliance, including the number of new or retained employees associated with the facility and their salaries.

(b) The Chief Appraiser of the County shall annually determine an assessment of the real and personal property in the Reinvestment Zone. This shall be done on or before October 1 of each calendar year.

(c) The Committee shall provide a report on the status of all Tax Phase-In incentive agreements to the City Council on or before December 15 of each calendar year.

IX. DEFAULT

Should the City determine that a company or individual is in default according to the terms and conditions of its agreement, the City shall notify the company or individual in writing at the address stated in the agreement, and if such default is not cured within thirty (30) days or begun to be cured (in the case of a default that cannot reasonably be cured within 30 days) from the date of such notice ("Cure Period"), then the agreement shall be terminated.

In the event that the company or individual:

(1) allows its ad valorem taxes owed the City to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest; or

(2) does not create jobs as outlined in the agreement; or

(3) if an Existing Local Business falls below fifty percent (50%) of their base year employment number; or

(3) violates any of the terms and conditions of the Tax Phase-In incentive agreement and fails to cure same during the Cure Period; or

(4) if the facility is completed and begins producing product or service, but subsequently discontinues producing product or service for any reason excepting fire, explosion or other casualty or accident or natural disaster, for a period of more than one (1) year during the Tax Phase-In incentive period;

then the agreement shall terminate and so shall the Tax Phase-In incentive of taxes for the calendar year during which the agreement is terminated. The taxes otherwise abated for that calendar year shall be paid to the City within sixty (60) days from the date of termination.

X. ASSIGNMENT

(a) The Tax Phase-In incentive may be transferred and assigned by the holder to a new owner or lessee of the same facility upon the approval by resolution of the City, subject to the financial capacity of the assignee and provided that all conditions and obligations in the Tax Phase-In incentive agreement are guaranteed by the execution of a new contractual agreement with the City.

(b) The contractual agreement with the new owner or lessee shall not exceed the termination date of the Tax Phase-In incentive agreement with the original owner and/or lessee.

(c) No assignment or transfer shall be approved if the parties to the existing agreement, the new owner or new lessee are liable to the City for outstanding taxes or other obligations.

(d) Approval shall not be unreasonably withheld.

XI. SUNSET PROVISION

(a) This policy is effective upon the date of the adoption and will remain in force for two (2) years, at which time all Reinvestment Zones and Tax Phase-In incentive contracts created pursuant to its provisions may be reviewed by the City to determine whether the goals have been achieved. Based on that review, this policy may be modified, renewed or eliminated, providing that such actions shall not affect existing contracts.

(b) This policy does not amend any existing Industrial District Contracts or agreements with the owners of real property in areas deserving of specific attention as agreed by the City.

(c) Prior to the date for review, as defined above, this Policy Statement may be modified by a three fourths (3/4) vote of members each governing body, as provided for under the laws of the State of Texas.

XII. SEVERABILITY AND LIMITATIONS

(a) In the event that any section, clause, sentence, paragraph or any part of this Policy Statement shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such invalidity shall not affect, impair, or invalidate the remainder of this Policy Statement.

(b) Property that is owned or leased by the following is excluded from the property Tax Phase-In incentive:

   (1) a member of the governing body of the City of Brenham or a member of a planning board or commission of the City; or

   (2) a member of the Commissioners Court or a member of a planning board or commission of Washington County.

(c) If this Policy Statement has omitted any mandatory requirements of the applicable Tax Phase-In incentive laws of the State of Texas, then such requirements are hereby incorporated as a part of this Policy Statement.

XIII. VARIANCE

Requests for any variances from this Policy may be made in written form to the City Manager. Such request shall include a complete description of the circumstances explaining why the applicant, company or individual should be granted a variance. Approval of a request for variance requires a three- fourths (3/4) majority vote of the governing body of the City.

GLOSSARY

(a) "City" means the City of Brenham, Texas that levies ad valorem taxes upon and/or provides services to property located within the City limits.

(b) "Agreement" means a contractual agreement between a property owner and/or lessee and the City for the purpose of the Tax Phase-In incentive.

(c) "Base year employment" means the average number of employees for each quarter at an existing local business of the year prior to the execution of the agreement.

(d) "Base year value" means the assessed value of eligible property on January 1 preceding the execution of the agreement plus the agreed upon value of eligible property improvements made after January 1 but before the filing of an application for the Tax Phase-In incentive.

(e) "Committee" means the Compliance Review Committee, consisting of representatives appointed by the City, County and Chief Appraiser's office to annually review documents verifying compliance of all projects receiving the Tax Phase-In incentive.

(f) "Deferred maintenance" means improvements necessary for continued operations which do not improve productivity or alter the process technology.

(g) "Existing Local Business" means a business that has been located in the City of Brenham and has paid property taxes for at least one full year prior to submitting any application for the property Tax Phase-In incentive.

(h) "Expansion" means the addition of buildings, employees, structures, machinery or equipment for purposes of increasing production capacity.

(i) "Facility" means property improvements completed or in the process of construction which together comprise an integral whole.

(j) "Job(s)" shall represent a newly created or a retained employment position on a full-time permanent basis at an average base salary of $36,000 or higher, including any benefits, whether hired directly or leased through an employee leasing service.

(k) "Modernization" means the upgrading and or replacement of existing facilities which increases the productive input or output, updates the technology or substantially lowers the unit cost of the operation. Modernization may result from the construction, alteration or installation of buildings, structures, fixed machinery or equipment. It shall not be for the purpose of reconditioning, refurbishing or repairing.

(l) "New Facility" means improvements to real estate previously undeveloped which is placed into service by means other than or in conjunction with expansion or modernization.

(m) "Productive Life" means the number of years a property improvement is expected to be in service in a facility.

EXHIBIT A
PRIMARY JOBS EMPLOYER DEFINITION

Sec. III (a)
Be a facility used or to be used by a Primary Jobs Employer.

"Primary job" means a job that is:

(i) available at a company for which a majority of the products or services of that company are ultimately exported to regional, statewide, national, or international markets infusing new dollars into the local economy; and

(ii) included in one of the following sectors of the North American Industry Classification System (NAICS):

NAICS Sector #	Description
111	Crop Production
112	Animal Production
113	Forestry and Logging
11411	Commercial Fishing
115	Support Activities for Agriculture and Forestry
211-213	Mining
221	Utilities
311-339	Manufacturing
42	Wholesale Trade
48-49	Transportation and Warehousing
51 (excluding 512131 and 512132)	Information (excluding motion picture theaters and drive-in motion picture theaters)
523-525	Securities, Commodity Contracts, and Other Financial Investments and Related Activities; Insurance Carriers and Related Activities; Funds, Trusts, and Other Financial Vehicles
5413, 5415, 5416, 5417, and 5419	Architectural, Engineering, and Related Services; Computer System Design and Related Services; Management, Scientific, and Technical Consulting Services; Scientific Research and Development Services; Other Professional, Scientific, and Technical Services
551	Management of Companies and Enterprises
56142	Telephone Call Centers
922140	Correctional Institutions

EXHIBIT B
TAX PHASE-IN INCENTIVE SCHEDULES

Applicants may receive property Tax Phase-In incentive according to the schedules in Tables 1 and 2, depending on their combination of property value creation and job creation/retention.

TABLE 1 (earns 50% of incentive)

1A - Property Improvements by an Existing Local Business

Level	Amount of Valuation of Eligible Improvements as determined by the Tax Appraisal District:		Percent of property tax to be abated each year							
	From	To	1	2	3	4	5	6	7	8
1	$ 150,000	$1,000,000	45	40	30	20	0	0	0	0
2	$1,000,001	$2,500,000	45	45	40	30	20	0	0	0
3	$2,500,001	$4,000,000	45	45	45	40	30	20	0	0
4	$4,000,001	$5,500,000	45	45	45	45	40	30	20	0
5	More than	$5,500,000	45	45	45	45	45	40	30	20

1B - Property Improvements by a New Business

Level	Amount of Valuation of Eligible Improvements as determined by the Tax Appraisal District:		Percent of property tax to be abated each year							
	From	To	1	2	3	4	5	6	7	8
1	$ 300,000	$1,000,000	45	40	30	20	0	0	0	0
2	$1,000,001	$2,500,000	45	45	40	30	20	0	0	0
3	$2,500,001	$4,000,000	45	45	45	40	30	20	0	0
4	$4,000,001	$5,500,000	45	45	45	45	40	30	20	0
5	More than	$5,500,000	45	45	45	45	45	40	30	20

TABLE 2 (earns 50% of incentive)

2 - Jobs Created & Retained - by Existing Businesses or New/Relocating Businesses

Level	The number of new and/or retained full-time employees with an average salary level of $36,000+/year including benefits averaged during the twelve calendar months prior to the tax assessment date of January 1:		Percent of property tax to be abated each year							
	From	To	1	2	3	4	5	6	7	8
1	10	19	45	40	30	20	0	0	0	0
2	20	29	45	45	40	30	20	0	0	0
3	30	39	45	45	45	40	30	20	0	0
4	40	49	45	45	45	45	40	30	20	0
5	50 and more		45	45	45	45	45	40	30	20

TABLE 3 Downtown Zone

Amount of valuation of downtown reinvestment determined by tax appraisal:	Percent of property tax to be abated each year							
Valuation	1	2	3	4	5	6	7	8
$ 50,000 to $150,000	90	90	90	60	40	20	0	0
$150,001 to $250,000	90	90	90	90	60	40	20	0
$250,001 and beyond	90	90	90	90	90	60	40	20

EXHIBIT C
MAP OF DOWNTOWN ZONE

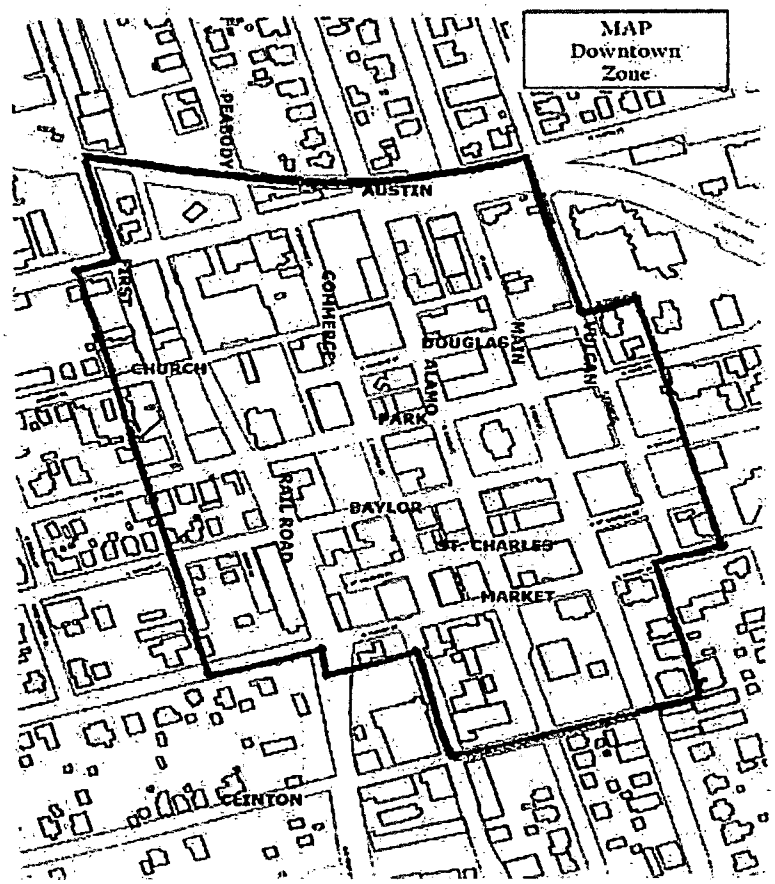

Exhibit "B"

ORDINANCE NO. O-23-009

AN ORDINANCE DESIGNATING ALL OF THAT CERTAIN 2.998 ACRE TRACT OR PARCEL OF LAND LYING AND BEING PART OF THE ARRABELLA HARRINGTON SURVEY, A-55, BEING THE SAME PROPERTY DESCRIBED IN THE DEED FROM RALPH TODD POEHLMANN TO NORTH PARK DEVELOPMENT, LLC, DATED JUNE 30, 2022, AS RECORDED IN VOLUME 1848, PAGE 352, IN THE OFFICIAL RECORDS OF WASHINGTON COUNTY, TEXAS, SAID PROPERTY BEING LOCATED AT 1809 N. PARK STREET, BRENHAM, TEXAS, AND SAID PROPERTY BOUNDARIES BEING MORE FULLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN FOR ALL PURPOSES, AS REINVESTMENT ZONE NUMBER FIFTY FOR COMMERCIAL TAX PHASE-IN, CITY OF BRENHAM, TEXAS AS PROVIDED IN CHAPTER 312, TEXAS TAX CODE; ESTABLISHING THE NUMBER OF YEARS FOR THE ZONE, AUTHORIZING AN AGREEMENT FOR EXEMPTION FROM TAXATION THE INCREASE IN VALUE OF CERTAIN PROPERTY IN ORDER TO ENCOURAGE DEVELOPMENT AND REDEVELOPMENT AND OTHER MATTERS RELATING THERETO; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

WHEREAS, on the 15th day of June 2023, the City Council held a public hearing to receive comments concerning the designation of proposed Reinvestment Zone Number Fifty. The notice of such hearing was published on June 8, 2023, such date being not later than the seventh day before the date of the public hearing; and

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

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

WHEREAS, the designation of the proposed reinvestment zone is consistent with the City's policies adopted by Council Resolution No. R-23-015 on the 4th day of May 2023, and will benefit the land included within the Reinvestment Zone after the expiration of the Agreement; and

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

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

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

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

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

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

b) That the City has jurisdiction to hold and conduct said public hearing on the creation of the proposed reinvestment zone pursuant to the Act; and

c) That creation of the proposed reinvestment zone with boundaries described herein will result in improvements made after the passage of this Ordinance and the execution of tax phase-in agreements, that are feasible and practical and will benefit the City, its residents and property owners in the reinvestment zone; and

d) That the proposed designation will be reasonably likely to contribute to the retention or expansion of primary employment or to attract major investments to the zone that would be a benefit to the property and contribute to economic development of the City.

Section 3. That the City hereby creates Reinvestment Zone Number Fifty, designated as all of that certain 2.998 acre tract or parcel of land, lying and being situated in the City of Brenham, Washington County, Texas, part of the Arrabella Harrington Survey, A-55, being the same land described in a deed dated June 30, 2022 from Ralph Todd Poehlmann to North Park Development LLC, as recorded in Volume 1848, Page 352, in the Official Records of Washington County, Texas, said property being located at 1809 N. Park Street, Brenham, Texas, and said property boundaries being more fully described in Exhibit "A" attached hereto and incorporated herein for all purposes, and such reinvestment zone shall hereafter be identified as Reinvestment Zone Number Fifty for Commercial Tax Phase-In, City of Brenham, Texas.

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

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

Section 6. That said designation of Reinvestment Zone Number Fifty for Commercial Tax Phase-In and the written agreement thereof are in accordance with the City of Brenham's "Policy Statement on Property Tax Phase-In Incentive for Selected Commercial Enterprises" and will be a benefit to the land which will be included within the Reinvestment Zone and to the City of Brenham after the expiration of the agreement.

Section 7. That if any provision of this Ordinance shall be held to be invalid or unconstitutional, the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part of it.

Section 8. That it is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

PASSED AND APPROVED, on its first reading this the 15th day of June 2023.

PASSED AND APPROVED, on its second reading this the 13th day of July 2023.

____
Atwood C. Kenjura
Mayor

ATTEST:

____
Jeana Bellinger, TRMC, CMC
City Secretary

EXHIBIT "A"

All of that certain 2.998-acre tract of land lying and being situated in the City of Brenham, Washington County, Texas, part of the Arrabella Harrington Survey, A-55, and being the same property described in a Deed dated June 30, 2022 from Ralph Todd Poehlmann to North Park Development, LLC as recorded in Volume 1848, Page 352, Official Records of Washington County, Texas.

EXHIBIT "C"

All of that certain 2.998-acre tract of land lying and being situated in the City of Brenham, Washington County, Texas, part of the Arrabella Harrington Survey, A-55, and being the same property described in a Deed dated June 30, 2022 from Ralph Todd Poehlmann to North Park Development, LLC as recorded in Volume 1848, Page 352, Official Records of Washington County, Texas.

City of BRENHAM

Regular City Council
AGENDA ITEM 9.

Agenda Item: **Discuss and Possibly Act Upon the Appointment of Members to Serve on the Capital Improvements Advisory Committee and Authorize the Mayor to Execute Any Necessary Documentation**

Meeting Type: Regular Meeting-July 13, 2023

Department: Development Services

Staff Contact: Stephanie Doland

SUMMARY STATEMENT:

During their regular Council meeting on May 4, 2023 the Brenham City Council approved a Professional Services Agreement with Strand Associates to perform a Impact Fee Study in accordance with Chapter 395 of the Texas Local Government Code. Impact fees for water, wastewater and roadways are currently being evaluated to help finance infrastructure improvements needed in response to growth and new development. Impact fees reduce the economic burden on existing citizens by increasing development costs in conjunction with subdivision platting and new development. The cost of the Impact Fee Study is not to exceed $250,000 and is anticipated to be completed in the beginning of 2024.

The project is well underway with staff sharing necessary growth and utility data with Strand Associates to begin to articulate Land Use assumptions and needed Capital Improvement Projects in response to the growing community. As per Local Government Code Chapter 395, the formation of a Capital Improvements Advisory Committee (CIAC) is required to review, advise, and recommend adoption of assessing impact fees following the results of the study.

Staff proposes the CIAC to be comprised of the seven (7) member Planning and Zoning Commission as well as a Council representative – Dr. Paul LaRoche, III, a representative of the extraterritorial jurisdiction (ETJ) – Blake Brannon, and two real estate representatives – Lindi Braddock and Randy Hodde.

Staff requests Council approval of the proposed 11-member committee. The committee will meet three (3) times during the remaining calendar year.

ATTACHMENTS:

(1) CIAC Proposed Representatives

RECOMMENDED ACTION:

Approve the appointment of members to serve on the Capital Improvements Advisory Committee and authorize the Mayor to execute any necessary documentation.

Capital Improvements Advisory Committee

1. Councilmember Dr. Paul LaRoche, III
2. Blake Brannon, ETJ Representative
3. Lindi Braddock, Real Estate Representative
4. Randy Hodde, Real Estate Representative
5. Keith Behrens, Planning and Zoning Commission Chair
6. Dr. Deanna Alfred, Planning and Zoning Commission Vice-Chair
7. Calvin Kossie, Planning and Zoning Commission Secretary
8. Christopher Cangelosi, Planning and Zoning Commissioner
9. Artis Edwards, Jr., Planning and Zoning Commissioner
10. Darren Heine, Planning and Zoning Commissioner
11. Cayte Neil, Planning and Zoning Commissioner

Regular City Council
AGENDA ITEM 10.

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

Meeting Type: Regular Meeting-July 13, 2023

Department: Administration

Staff Contact: Jeana Billinger

SUMMARY STATEMENT:

The City is a member of the Brazos Valley Wide Area Communication System (BVWACS) which provides public safety radio interoperability to various entities throughout the Brazos Valley Region. As of today the entities in BVWACS include: City of Bryan, City of College Station, Brazos County, Grimes County, Madison County, Washington County, Blinn College, and Texas A&M University.

As outlined the the Interlocal Agreement for the operation of the BVWACS, each of the member entities shall appoint one member to serve on the BVWACS Governing Board. As outlined in the ILA, the Governing Board shall direct and approve operating policies for BVWACS, adopt an annual budget, and any other tasks necessary for the BVWACS to function properly.

Since its inception in 2008, former Mayor Milton Tate has served on the Governing Board as the City's representative. Due to the May, 2023 election of a new Mayor, the City Council must appoint one of their members to serve on the BVWACS Governing Board.

ATTACHMENTS:

None

RECOMMENDED ACTION:

Approve the appointment of a City of Brenham representative to serve on the Governing Board of the Brazos Valley Wide Area Communications System (BVWACS) and authorize the Mayor to execute any necessary documentation.

Regular City Council
AGENDA ITEM 11.

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

Meeting Type: Regular Meeting-July 13, 2023

Department: Public Works

Staff Contact: Dane Rau

SUMMARY STATEMENT:

In November 2022 the City Council approved a Resolution in support of a partnership with TXDOT related to federal funding through the Highway Bridge Project for the crossing on Pecan Street at the Hog Branch tributary. That Resolution authorized an Advanced Funding Agreement (AFA) between the City and TXDOT and it also provided for the City's 10% match ($49,000) of the total $490,000 project.

Last week staff was notified by TXDOT that some additional funding is now through the Federal Infrastructure and Jobs Act as well as the Highway Bridge Replacement and Rehabilitation Program. These two new grant programs will cover, in full, the City's 10% match. This Resolution is also authorizing a new AFA with TXDOT to clarify that the City will not be required to match any of the grant funds.

ATTACHMENTS:

(1) Resolution No. R-23-028

RECOMMENDED ACTION:

Approve Resolution No. R-23-028 authorizing the submittal of an Advanced Funding Agreement with TxDOT pertaining to a bridge located at Hog Branch Creek and Pecan Street.

RESOLUTION NO. R-23-028

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 BRIDGE REPLACEMENT OR REHABILITATION OFF THE STATE SYSTEM

WHEREAS, the federal off-system bridge program is administered by the Texas Department of Transportation (the State) to replace or rehabilitate structurally deficient and functionally obsolete (collectively referred to as deficient) bridges located on public roads and streets off the designated state highway system; and

WHEREAS, City of Brenham, hereinafter referred to as the Local Government owns bridges located at PECAN ST AT HOG BRANCH, National Bridge Inventory (NBI) Structure Number 17-239-0-LD12-13-001, State Control-Section-Job (CSJ) Number 0917-19-056; and

WHEREAS, a project to remedy the bridge is included in the currently approved program of projects as authorized by Texas Transportation Commission Minute Order Number 116073. Dated August 31th, 2021; and

WHEREAS, federally-eligible items of work for this project are approved for 100% federal and state funding through the Infrastructure Investment and Jobs Act (IIJA) as well as the Highway Bridge Replacement and Rehabilitation Program (HBRRP).

WHEREAS, the typical estimated local match fund participation requirement for federally-eligible items of work is waived in full for CSJ 0917-19-056.

WHEREAS, any non-eligible items of work will be paid by the Local Government; and

THEREFORE, BE IT RESOLVED that the Local Government approves the execution of an Advance Funding Agreement with the State. The City of Brenham Mayor is authorized to execute the agreement on behalf of the Local Government.

PASSED and APPROVED on this the 13th day of July, 2023.

____
Atwood C. Kenjura
Mayor

ATTEST:

____
Jeana Bellinger, TRMC, CMC
City Secretary

Regular City Council
AGENDA ITEM 12.

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

Meeting Type: Regular Meeting-July 13, 2023

Department: Public Utilities

Staff Contact: Jerry Saldivar

SUMMARY STATEMENT:

On June 13, 2023, the city opened bids for ITB 23-005 Polyaluminum Chloride. There were three bids received: Brenntag Southwest, Univar Solution, and Thornton, Musso & Bellemin (TMB). Brenntag Southwest submitted the lowest bid at $725 per liquid ton. Brenntag Southwest has been providing the City with Polyaluminum Chloride since 2017 and their product has held true. It is the staff's recommendation to award ITB 23-005 Polyaluminum Chloride to Brenntag Southwest to provide an annual amount of Polyaluminum Chloride for $725 per liquid ton, with two (2) optional one-year renewals. Pricing will be subject to annual review prior to renewal.

ATTACHMENTS:

(1) Bid Tabulation

RECOMMENDED ACTION:

Award Bid No. ITB 23-0005 related to the purchase of polyaluminum chloride for the City of Brenham water utility system to Brenntag Southwest at $725.00 per liquid ton and authorize the Mayor to execute any necessary documentation.

ITB 23-005 Polyaluminum Chloride

ITB 23-005 Tuesday, June 13, 2023 @ 10AM

BIDDERS	Bid Received Date/Time	UNIT PRICE PER LIQUID TON	EXTENDED PRICE	NOTES
Brenntag	6/13/23 8:54AM	$725.00	$377,000.00	Current Supplier
Univar Solution	6/8/23 1:00PM	NB	NB	
TMB	6/12/23 9:54AM	$898.00	$466,960.00	

Regular City Council
AGENDA ITEM 13.

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

Meeting Type: Regular Meeting-July 13, 2023

Department: Public Utilities

Staff Contact: Daniel McCracken

SUMMARY STATEMENT:

See attached memo from Daniel McCracken.

ATTACHMENTS:

(1) Memo Longpoint Agreement
(2) CWCWSC Lease Agreement

RECOMMENDED ACTION:

Approve a lease agreement between the City of Brenham and Central Washington County Water Supply Corporation (CWCWSC) related to the city's water system auto-dialer relay station and authorize the Mayor to execute any necessary documentation.

To: Jeana Bellinger, City Secretary

From: Daniel McCracken

Date: June 28,2023

Re: Central Washington County Water Supply Corporation Longpoint Agreement.

This Lease Agreement is between the Central Washington County Water Supply Corporation (CWCWSC) and the City of Brenham for use of space on an elevated tower, designated as the West standpipe, and a 3-foot x 3-foot space. The lease will also include the right of ingress and egress on to the property and the tower where equipment will be installed. The amount for the first year of the lease will not exceed $1,200 and the annual rental fee shall increase each year by $100 starting on the agreement's first anniversary date. The agreement will be auto-renewed each year until one party provides the other a 90-day written notice of intent to terminate.

Under a previous agreement in (2010) with CWCWSC, the City had access to space for SCADA communication between the Water Treatment Plant and Lake Somerville. The added use of tower space will allow for better communications between the City's communication infrastructure and the Sommerville Lake pumping station where the City's drinking water is obtained.

The Lease Agreement between CWCWSC and the City of Brenham been reviewed and approved By Karen Stack, Legal & Legislative Services Manager.

Thank you,

Daniel McCracken
Public Utilities Compliance Manager
979-337-7415
DMcCracken@cityofbrenham.org
City of Brenham, Texas

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is entered into on the __________day of __________, 2023, by and between the City of Brenham, Texas, a municipal home-rule corporation of the State of Texas ("City"), and Central Washington County Water Supply Corporation, a non-profit water supply corporation located in Washington County, Texas ("CWCWSC").

Whereas CWCWSC owns real property in Washington County, Texas located at 3515 FM 390 West, Brenham, Texas 77833 (Property) wherein CWCWSC has located its Longpoint Water Plant;

Whereas on January 1,2010, City entered an agreement with CWCWSC regarding the lease of a 3-foot x 3-foot space and associated electric utilities ("2010 Lease Location") which are no longer needed by the City, and

Whereas City desires to use land and space on CWCWSC's West standpipe ("tower") at the Property to improve communications between Brenham and the Lake Pumping Station located at Somerville Lake.

Now, therefore, in consideration of the covenants and considerations provided herein, the receipt and sufficiency of which are hereby acknowledged, the City and CWCWSC agree to the following:

SECTION I
SCOPE OF AGREEMENT

1) City will lease a 3-foot x 3-foot space adjacent to the 2010 Lease Location, for installation of City's communication cabinet and equipment. This new 3-foot x 3-foot location ("Leased Premises") is shown in Exhibit "A", attached hereto, and incorporated herein for all purposes.

2) The City may use sufficient space on the tower for the installation of communication equipment to be owned and maintained by City. This will include space to run cables and conduit between the Leased Premises and the tower as well from ground level to the top of the tower as shown in Exhibit A. CWCWSC reserves the right to approve the layout of any equipment installed on the tower. City will remove the existing microwave equipment located on the tower.

3) The existing communication tower and enclosure that is installed on the 2010 Lease Location shall be removed by City once all equipment has been moved to the tower currently holding ESC6 radios.

4) City, its employees, agents, and contractors shall have the right of ingress/egress over CWCWSC's adjacent property to access the communication equipment. However, to protect the safety of CWCWSC's public drinking water supply, City, its employees, agents, and contractors shall not enter the fenced portion of the Longpoint Water Plant without notice to and consent of CWCWSC, which consent shall not be unreasonably withheld.

5) The Agreement shall become effective on the date of execution and the 2010 Lease Location shall be terminated 60 days after the date of execution of this Agreement.

6) The lease will be for a term of one year with automatic one-year renewals unless a condition of termination has been executed as per Section VII.

SECTION II
PROPERTY CONDITION

City agrees to accept the leasehold in its "as is" condition with no warranties or representations by CWCWSC.

SECTION III
LEASE PAYMENT

City shall pay $1200 per year as rental for the Leased Premises, which shall be paid on or before the first day of each rental year. The first rental year of the Agreement shall begin on the effective date of this Agreement. The annual rental fee shall be increased on each of the Agreement's anniversary by $100. For example, at the beginning of year five (5) of the Agreement, the annual fee will be $1600 per year.

SECTION IV
ELECTRICAL

Electrical for all communication equipment installed by City will be provided by the existing electrical infrastructure which is currently paid for by City. No electrical tie connections will be made to the infrastructure owned by CWCWSC.

SECTION V
PHYSICAL INTERFERENCE

City shall not use the Property in any way which interferes with the use of the Property or any equipment or antenna(s) of CWCWSC. City also agrees not to:

1) Create a nuisance;
2) Operate the premises in violation of Texas Commission on Environmental Quality (TCEQ) and Environmental Protection Agency (EPA) rules, or
3) Use the Leased Premises in any way that is hazardous to the public water supply, would reasonably be expected to increase insurance premiums, or would reasonably be expected to void insurance on the Property.

CWCWSC shall not interfere with the communication operation of the City without prior notice to City.

SECTION VI
THIRD PARTY

This Agreement is for the benefit of the named parties only. There are no third-party beneficiaries, and none are intended.

SECTION VII
TERMINATION

This Agreement may be terminated at any time by either the City or CWCWSC effective on the anniversary date , except as otherwise provided herein, without any penalty or further liability as follows:

1) Upon ninety (90) days written notice from one party to the other party.

2) Immediately upon written notice by City if the tower, or antenna(s) are destroyed or damaged so that in City reasonable judgement the effective use of the Antenna(s) is substantially or adversely affected, in such event the rights and obligations of the parties relating to use for the leased premises shall cease as of the date of the damage or destruction.

As soon as practicable after receipt of notice of termination, City shall remove all equipment and apparatus from the Property. If City does not vacate the premises following termination of this lease, City shall be a tenant at will and shall vacate the premises on receipt of notice from CWCWSC. Any damage caused by the removal of said equipment by City will be the sole responsibility of City.

SECTION VIII
INDEMNITY

To the extent allowed by law, City agrees to indemnify, defend and hold CWCWSC harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with, or (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the City's property or City's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of CWCWSC, its employees, invitees, agents or independent contractors.

CWCWSC agrees to indemnify, defend and hold City harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with or (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of CWCWSC, its employees, invitees, agents or independent contractors, or CWCWSC's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of City, its employees, agents or independent contractors.

The indemnified party: (i) shall promptly provide the indemnifying party with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section VIII and provide the indemnifying party with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the indemnifying party; and (iii) shall fully cooperate with the indemnifying party in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve the indemnifying party of its indemnity obligation, except (1) to the extent the indemnifying

party can show it was prejudiced by the delay; and (2) the indemnifying party shall not be liable for any settlement or litigation expenses incurred before the time when notice is given.

SECTION IX
VENUE

The Agreement is performable in Washington County, Texas where venue over any cause arising hereunder shall lie. This Agreement shall be interpreted under the laws of the State of Texas. The prevailing party in any dispute shall be entitled to reasonable attorney's fees and litigation costs.

This Agreement and the obligations created herein shall run with the land. It shall be binding on the parties, their successors and assigns unless found contrary to law or public policy by a court of competent jurisdiction.

SECTION X
ENTIRE AGREEMENT

This Agreement is and shall be the complete agreement of the parties on the subject matter hereof. It supersedes all other agreements, written or verbal. It may be amended only by written agreement signed by both parties and expressly identified as an addendum hereto. This Agreement may be executed in multiple copies each of which shall be deemed to be an original.

The undersigned parties bind themselves to the faithful performance of this Agreement, executed and effective this _____ day of _______________, 2023.

By: KW Miller

Name: K W MILLER

Title: PRESIDENT

Date: 7/6/23

Central Washington County Water Supply Corporation

By:_________________________________

Name: Atwood C. Kenjura

Title: Mayor

Date: ______________________________

City of Brenham

EXHIBIT A

1) Western most tower on property where communication equipment shall be installed.
2) 2010 Lease Location (3' x 3' space with concrete slab, cabinet, and 15' antenna)
3) Leased Premises - New 3'x3' space to be leased by City (Existing cabinet and concrete slab in place).

Regular City Council
AGENDA ITEM 14.

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

Meeting Type: Regular Meeting-July 13, 2023

Department: Public Utilities

Staff Contact: Shawn Bolenbarr

SUMMARY STATEMENT:

The City of Brenham and Hodde & Hodde Land Surveying, Inc. agreed on February 7, 2022, to amend the 6” Gas Main Loop NE, Project No. 62C-67 agreement to increase the lump sum from $22,925.00 to $57,425.00 due to increased project scope. The scope of services was to provide a topographic survey of the project area, establishing TxDOT right of way, easement documents for the Street department tract and the area between Old Independence and Armbrister, gas line plan and profile sheets, details, assistance with TxDOT permitting and assistance in bidding the project.

We are requesting an amendment to the Professional Services Agreement with Hodde & Hodde Land Surveying, Inc., increasing the amount not to exceed from $57,425.00 to $61,925.00. This is an increase of $4,500.00. The reasoning for the increase is due to scope of services further increasing due to the discovery of an additional easement and unanticipated additional topography survey work, further described in the June 28, 2023 letter from Engineer to City.

ATTACHMENTS:

(1) June 28th Explanation Letter
(2) Amendment No. 1
(3) Amendment No. 2

RECOMMENDED ACTION:

Approve Amendment No. 2 to the Professional Services Agreement between the City of Brenham and Hodde & Hodde Land Surveying Inc. related to Project No. 62C-67 City of Brenham 6" gas main loop NE in the amount of $4,500.00 and authorize the Mayor to execute any necessary documentation.

HODDE & HODDE
LAND SURVEYING, INC.
Registered Professional Land Surveying
and Engineering
613 E. Blue Bell Road
Brenham, Texas 77833-2411

OFFICE PHONE: (979) 836-5681
FAX: (979) 836-5683
www.hoddesurveying.com
TEXAS FIRM REGISTRATION NO. 10018800
TBPE FIRM REGISTRATION NO. F-18046

June 28, 2023

Debbie Gaffey
General Manager of Public Utilities
City of Brenham
200 West Vulcan Street
Brenham, Texas 77833

Re: East Blue Bell Road (FM 577) Gas Line Extension, Phase 2 – Project No. 62C-67

Ms. Gaffey,

Hodde and Hodde Land Surveying, Inc. (Hodde) was retained by the City of Brenham (Client) to provide engineering and surveying services for the above referenced project.

The proposal for Phase 2 included $15,000 for engineering services and $19,500 for surveying services. The topography survey portion was completed as well as a portion of the boundary surveying for the easements. All the engineering services were invoiced and $16,462.50 of the surveying was invoiced, leaving $3,037.50 of the surveying not invoiced.

The topography survey entailed additional detail at the Highway 105 crossing that was not anticipated. During the topography survey, we attempted to recover and locate boundary corners along the route in anticipation of the easement preparation. No corner monuments were recovered along the FM 577 right of way for the City of Brenham Street Department tract or the Washington County tract (between Old Independence and Armbrister). Additional work was involved with this as well. We also provided surveying services (boundary locations, as-marked gas pipeline locations, easement staking multiple times and multiple map exhibits for the gas lines crossing the Northwest corner of the Boeker tract east of FM 577 and South of Highway 105.

Also, the surveying and engineering proposal for Phase 2 included only two easements to be acquired. It has now been determined that a third easement will be required at the Northwest intersection of Harrington Street and East Blue Bell Road. The paragraph from the proposal reads as follows:
"Portions of the gas line will also be constructed in private easement. The areas in private easement will include the City of Brenham Street Department equipment yard and from Old Independence to Armbrister. Other existing easements are available from Armbrister to Gay Hill."

Surveying services are invoiced using an hourly rate schedule and we try within reason to estimate the hours required to perform the services requested to arrive at a cost estimate. Sometimes there are issues or unanticipated difficulties that arise, especially with boundary surveys.

The cost estimate to complete the three easement surveys (which includes the easement that was added after the proposal) is $7,500. Considering the $3,037.50 not invoiced, this amounts to an additional $4,500± that was not in the original agreement.

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TBPE FIRM REGISTRATION NO. F-18046

We appreciate the opportunity to continue to provide services for this project as well as future projects for the City of Brenham.

If you have any questions, please call or email.

Respectfully,

Jon E. Hodde, RPLS No. 5197
Hodde & Hodde Land Surveying, Inc.
613 East Blue Bell Road
Brenham, Texas 77833

jon@hoddesurveying.com (email)
www.hoddesurveying.com (website)
(979)-836-5681 (voice)
(979)-836-5683 (fax)

AMENDMENT NO. 1 TO THE MARCH 30, 2020
PROFESSIONAL SERVICES AGREEMENT
FOR
ENGINEERING SERVICES
RELATED TO
PROJECT NO. 62C-67
6" GAS MAIN LOOP NE

WHEREAS, the City of Brenham and Hodde & Hodde Land Surveying, Inc. agree to amend the referenced Agreement as follows:

Under Section VII, Engineer's Compensation, change the lump sum amount of $22,925.00 to $57,425.00 due to increasing the project scope which entails connecting and completing a 6" gas loop along FM 577, from Brown Street to Gayhill Street, to improve control of gas pressure.

Except as expressly amended hereby, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the City of Brenham has lawfully caused this Amendment to be executed by the Mayor of said City and attested by the City Secretary and Hodde & Hodde Land Surveying, Inc., acting through its duly authorized representative, does now sign, execute and deliver this instrument.

EXECUTED on this 7TH day of FEBRUARY, 2022.

ENGINEER:
HODDE & HODDE LAND SURVEYING, INC.

Jon E. Hodde — 2-7-2022

Jon E. Hodde
Vice President

Date

CITY OF BRENHAM, TEXAS

Milton Y. Tate, Jr. — 2/4/2022

Milton Y. Tate, Jr.
Mayor

Date

CITY OF BRENHAM TEXAS

ATTEST:

Jeana Bellinger

Jeana Bellinger, TRMC, CMC
City Secretary

AMENDMENT NO. 2 TO THE MARCH 30, 2020
PROFESSIONAL SERVICES AGREEMENT
FOR
ENGINEERING SERVICES
RELATED TO
PROJECT NO. 62C-67
6" GAS MAIN LOOP NE

WHEREAS, the City of Brenham (the "City") and Hodde & Hodde Land Surveying, Inc. ("Engineer"), agreed on February 7th, 2022, to amend Section VII, Engineer's Compensation, of the above-referenced Agreement to increase the lump sum from $22,925.00 to $57,425.00 due to increased project scope; and

WHEREAS, the scope of services has further increased due to the discovery of an additional easement and unanticipated additional topography survey work, further described in the June 28, 2023 letter from Engineer to City, attached hereto and incorporated herein; and

WHEREAS, the City and Engineer hereby agree it is necessary to further increase Engineer's compensation to account for this unexpected increase in scope of service; and

NOW THEREFORE, the City and Engineer agree as follows:

1. Section VII, Engineer's Compensation, of the Agreement, as amended, shall be further amended, to increase the Engineer's Compensation from $57,425.00 to $61,925.00.

2. Except as expressly amended hereby, all other terms and conditions of the Agreement, as amended on February 7th, 2022, shall remain in full force and effect.

3. This Amendment No. 2 shall be effective immediately upon execution.

IN WITNESS WHEREOF, the City of Brenham has lawfully caused this Amendment to be executed by the Mayor of said City and attested by the City Secretary, and Hodde & Hodde Land Surveying, Inc., acting by and through its duly authorized representative, does now sign, execute and deliver this instrument.

EXECUTED on this _____ day of _____________, 2023.

ENGINEER:
HODDE & HODDE LAND SURVEYING, INC.

_______________________________________ ____________________

Jon E. Hodde | Date
Vice President

CITY OF BRENHAM, TEXAS

Attwood C. Kenjura
Mayor

Date

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary

Regular City Council
AGENDA ITEM 16.

Agenda Item: **Discussion and Presentation on the Water Capacity Study for the City of Brenham**

Meeting Type: Regular Meeting-July 13, 2023

Department: Public Utilities

Staff Contact: Debbie Gaffney

SUMMARY STATEMENT:

Discussion and presentation by Representatives from Strand and Associates, Inc. on the Water Capacity Study for the City of Brenham.

ATTACHMENTS:

None

RECOMMENDED ACTION:

No action - discussion and Presentation only.

Regular City Council
AGENDA ITEM 17.

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

Meeting Type: Regular Meeting-July 13, 2023

Department: Administration

Staff Contact: Carolyn Miller

SUMMARY STATEMENT:

To be discussed in Executive Session.

ATTACHMENTS:

None

RECOMMENDED ACTION:

No action - Executive Session discussion only.