



**NOTICE OF A REGULAR MEETING
THE BRENHAM CITY COUNCIL
THURSDAY, JULY 7, 2022 AT 01:00 PM
SECOND FLOOR CITY HALL
COUNCIL CHAMBERS
200 W. VULCAN STREET
BRENHAM, TEXAS**

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags - Mayor Milton Y. Tate, Jr.**
- 3. Service Recognitions**
 - ◆ **David Herzog, Street Department - 10 Years**
- 4. Special Recognitions**
 - ◆ **Main Street Brenham - Main Street America© Accredited Program 2022**
 - ◆ **Main Street Brenham Projects**
 - **Upchurch & Yates, LLP**
 - **BBA Architects LP**
 - **Floyd's Wine Lounge**
 - ◆ **TMCA Achievement of Excellence Award - City Secretary's Office**
 - ◆ **Michael Draehn - Retirement, Brenham Fire Department**
 - ◆ **Greg 'Tank' Nienstedt - Retirement, Brenham Fire Department**

5. Citizens Comments

CONSENT AGENDA

- 6. Statutory Consent Agenda**

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

- 6-a. Approve the Minutes from June 16, 2022 Regular City Council Meeting**
- 6-b. Approve a Noise Variance for Patricia Johnson for a Family Reunion to be Held on July 16, 2022 at Henderson Park from 2:00 P.M. to 10:00 P.M.**
- 6-c. Approve a Noise Variance from WB Enterprise for the Scrilla Fam Fun Day to be Held on July 24, 2022 at Henderson Park from 12:00 P.M. to 8:00 P.M.**
- 6-d. Approve a Noise Variance from the City of Brenham for Pop Up Play Day to be Held on July 22, 2022 at Henderson Park from 7:00 P.M. to 9:00 P.M.**

REGULAR SESSION

- 7. Discuss and Possibly Act Upon an Ordinance on Its First Reading Regulating the Speed of Traffic on Aviation Way, A Private Road within the Brenham Municipal Airport; Providing for a Penalty for the Violation Thereof; and Authorizing the Placement of Appropriate Speed Limit Signage**
- 8. Discuss and Possibly Act Upon Bid No. 2022-02 Related to the 2022 City Street Onyx Resurfacing Project and Authorize the Mayor to Execute Any Necessary Documentation**
- 9. Discuss and Possibly Act Upon Change Order No. 1 Related to City of Brenham Project No. 2022-02 for the 2022 City Street Onyx Resurfacing Project and Authorize the Mayor to Execute Any Necessary Documentation**
- 10. Discuss and Possibly Act Upon a Chapter 380 Agreement Between the City of Brenham and Brenham Market Square, LP and Authorize the Mayor to Execute Any Necessary Documentation**
- 11. Administrative/Elected Officials Report**

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

EXECUTIVE SESSION

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

RE-OPEN REGULAR SESSION

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

Adjourn

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

CERTIFICATION

I certify that a copy of the July 07, 2022 agenda of items to be considered by the City of Brenham City Council was posted to the City Hall bulletin board at 200 W. Vulcan St., Brenham, TX on Friday, July 1, 2022 at 3:30 P.M.

Jeana Bellinger, TRMC, CMC

City Secretary

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

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

Signature _____

Title _____

Brenham City Council Minutes

A regular meeting of the Brenham City Council was held on Thursday, June 16, 2022 beginning at 1:00 p.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

Members Present:

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

Members Absent:

None

City of Brenham Staff present:

City Manager Carolyn Miller, City Attorney Cary Bovey, Director of Public Works Dane Rau, Director of Development Services Stephanie Doland, Human Resources Director Susan Nienstedt, Legal and Legislative Services Manager Karen Stack, Public Works Manager Shawn Bolenbarr, Public Utilities Director Alton Sommerfield, Purchasing and Central Fleet Supervisor Kyle Branham, Police Captain Dant Lange, and David Doelitsch.

Citizens/Others Present:

Glen Vierus, Tom Whitehead

Media Present:

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

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

3. **Proclamations**
➤ National Garden Week

4. **Citizens Comments**

None.

CONSENT AGENDA

5. **Statutory Consent Agenda**

5-a. Approve the Minutes from the June 2, 2022 Regular City Council Meeting

5-b. Approve Ordinance No. O-22-011 on Its Second Reading Amending Appendix A - 'Zoning' of the Code of Ordinances of the City of Brenham for an Amendment to the City of Brenham's Official Zoning Map to Change the Zoning District From a Manufactured Home Residential Use District (R-3) to a Commercial, Research, and Technology Use District (B-2) on Approximately 1.00-Acre of Land Currently Addressed as 151 FM 109, Being Further Described as Tract 81 of the John Carrington Survey, Abstract No. 120 in Brenham, Washington County, Texas (Case No. P-22-014)

5-c. Approve a Noise Variance from Outreach Ministry for a Community Outreach Event to be Held on July 2, 2022 at Fireman's Park from 2:00 P.M. to 10:00 P.M.

A motion was made by Councilmember Wright and seconded by Councilmember Saunders to approve the Statutory Consent Agenda Items 5.a. through 5.c. as presented.

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

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

WORK SESSION

6. Discussion and Presentation on Possible Amendments to Chapter 17, Offenses and Miscellaneous Provisions, of the Code of Ordinances and Associated Changes to the Zoning Ordinance

Legal and Legislative Services Manager Karen Stack presented this item. Stack explained that City staff have been tasked with drafting a new noise nuisance ordinance for City Council for consideration. Stack advised that staff's goal is to amend the current noise ordinance to ensure it is consistent with noise provisions in the zoning ordinance and to provide a process for staff-issued noise permits.

Stack explained that the current noise ordinance uses a subjective standard to identify noise nuisances; therefore, any artificial noise that is plainly audible at fifty (50) feet from its source is considered a nuisance. In contrast, the zoning ordinance uses an objective standard whereby different zones have different decibel limits, depending on whether it is daytime or nighttime noise. Stack advised Council that staff recommends amending the noise ordinance so that it uses an objective standard that is consistent with the current zoning ordinance. Staff also recommends measuring noise levels at the property line, rather than fifty feet from the source. City Council expressed they were in favor of this recommendation.

Stack explained that as the noise ordinance is currently written, citizens wishing to have a special event involving the use of amplified sound must request a noise variance from City Council. Stack noted that the variance process oftentimes takes more than two weeks to complete and involves considerable staff time. Stack stated that staff would like to include a process for staff-issued noise permits in the new noise ordinance. City Council expressed they were in favor of this change.

Stack questioned City Council about their thoughts on whether allowed uses for properties should supersede applicable noise limits. Stack provided City Council with the following example: live music is an allowed use for the B-3 Zone; however, the decibel limit in the zoning ordinance is 65 decibels; however, most live music will exceed 65 decibels. After further discussion, City Council agreed that allowed uses should supersede the applicable noise limits. Councilmembers Cook and Canales noted that Brenham is a Texas Music Friendly City and cautioned that the new ordinance should take that into consideration.

Stack also questioned City Council about what standards should apply when noise carries across a property line dividing two properties from different zones, each with different noise limits. Mayor Pro Tem Kolby stated that he believes the less restrictive standard should apply.

7. Discussion and Presentation on the Main Street Advisory Board's Recommended Revisions to the City of Brenham Downtown Parklet Manual

City Manager Carolyn Miller presented this item. Miller reminded Council that the draft Parklet Manual was first brought to them at the April 20, 2022 City Council meeting. Staff later met with members of Council to discuss areas of concern. During a work session on the May 5, 2022, Council meeting, Miller presented Council with a list of proposed revisions to address those concerns.

Miller said that following the May 5, 2022 meeting, City Council's requested revisions were taken to the Main Street Advisory Board at their meeting on June 6, 2022 for their input. Miller explained that the Main Street Board had some additional changes and the purpose of this Work Session was to discuss those additional revisions.

Miller explained that the Main Street Advisory Board suggested removing the prohibition of non-disposable dinnerware from the manual and allow only businesses that primarily sell food or beverages to sponsor a parklet. Councilmember Canales said she was concerned about how the City would identify businesses that primarily sell food or beverages. Assistant Building Official David Doelitsch explained that there are three types of food handler licenses: no preparation, light preparation, and heavy preparation. City Council agreed that businesses should possess a light or heavy food preparation license to be eligible to sponsor a parklet.

There was also some discussion related to the use of the term "shade structures" instead of "umbrellas" throughout the Manual. Councilmember Canales pointed out that the term "umbrella" used on page 13 in the draft manual should be changed to "shade structure" for consistency.

City Council also discussed the requirement that parklet plans be stamped by an architect, engineer, or landscape architect prior to a building permit being issued. Development Services Director Stephanie Doland said that a stamp was not a requirement for approval of a building permit; however, it may make the approval process faster and easier due to these professionals' familiarity with applicable regulations. After further discussion, City Council agreed that this requirement should be removed due to the expense being unnecessary and burdensome for business owners.

City Council also discussed and agreed that the initial application period should remain sixty (60) days, beginning on July 1st, 2022, and ending on August 30th, 2022.

Miller requested clarification from City Council as to whether the parklet limit was to be one per block, or one on each side of the street per block. City Council agreed that only one parklet per block should be allowed.

Councilmember Canales expressed concern regarding the length of the application and suggested that the eligibility checklist on page 10 in the draft Manual be amended to indicate that the checklist should not be submitted with the application.

Miller explained that the Main Street Board suggested that once a building permit is issued, a parklet must be completed within ninety (90) days. After further discussion, City Council members agreed that a completion time of six (6) months should be allowed.

Mayor Pro Tem Kolby stated that he was not in support of approving the Manual until problems with the availability of parking in downtown have been addressed.

REGULAR SESSION

8. Discuss and Possibly Act Upon Resolution No. R-22-020 Adopting the City of Brenham Downtown Parklet Manual

City Manager Carolyn Miller presented this item. Miller explained that this Resolution would adopt the Downtown Parklet Manual as discussed in the Work Session.

A motion was made by Councilmember Canales and seconded by Councilmember Saunders to approve Resolution No. R-22-020 adopting the City of Brenham Downtown Parklet Manual, with the revisions as discussed in Work Session.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Clint Kolby	NO
Councilmember Shannan Canales	Yes
Councilmember Leah Cook	ABSENT
Councilmember Atwood Kenjura	Yes
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

9. Discuss and Possibly Act Upon the Renewal of City of Brenham Group Health Plan with TML Health Benefits Pool and Establishment of Funding Rates for the Plan Year Beginning October 1, 2022 through September 30, 2023 and Authorize the Mayor to Execute Any Necessary Documentation

Human Resources Director Susan Nienstedt explained that this item is for the annual renewal of the City's employee health benefits through the Texas Municipal League Health Benefits Pool. Nienstedt said the proposed renewal plan includes a premium increase of seven percent (7%) with no changes in deductible or out-of-pocket limits. Nienstedt explained that the seven percent (7%) increase will be split evenly between the City and the employees. The plan would continue to use the same Blue Cross Blue Shield network with no copay changes. In addition, the City will continue to fund the Health Reimbursement Arrangement. Nienstedt said that, if approved, the new rates would begin October 1, 2022, and last through September 30, 2023.

A motion was made by Councilmember Kenjura and seconded by Councilmember Canales to approve the City of Brenham Group Health Plan with the Texas Municipal League Health Benefits Pool and establishment of funding rates for the plan year beginning October 1, 2022 through September 30, 2023, and authorize the Mayor to execute any necessary documentation.

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

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

10. Discuss and Possibly Act Upon Contract No. 22-082-023-D556 Between the City of Brenham and the Texas General Land Office Related to the Community Development Block Grant Mitigation Program Infrastructure Projects Non-Research & Development Mitigation Funding and Authorize the Mayor to Execute Any Necessary Documentation

Public Works Director Dane Rau presented this item. Rau said that on October 15, 2020, Council approved submitting a grant application to the Texas General Land Office (GLO) for the Community Development Block Grant – Mitigation (CDBG-MIT) program for the 2016 Flood State Competition. The proposed project includes major drainage improvements to the Hog Branch Tributary throughout the City’s central area beginning at Market Street and ending on E. Alamo Street.

Rau reported that earlier this year, Brenham’s application was approved for funding for \$3,400,594.00 and the City will have a one percent (1%) match commitment of \$34,006.00. Rau said the matching funds will come from the Drainage Utility Fund.

A motion was made by Councilmember Canales and seconded by Councilmember Saunders to approve Contract No. 22-082-023-D556 between the City of Brenham and the Texas General Land Office related to the Community Development Block Grant Mitigation Program Infrastructure Projects Non-Research & Development Mitigation Funding and authorize the Mayor to execute any necessary documentation.

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

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

11. Discuss and Possibly Act Upon a Vocational Work Contract Between the City of Brenham and Texas Health and Human Services Commission on Behalf of the Brenham State Supported Living Center for Document Shredding and Litter Management Services and Authorize the Mayor to Execute Any Necessary Documentation

This item was presented by Public Works Manager Shawn Bolenbarr. Bolenbarr explained that this item is a contract between the City and the Brenham State Supported Living Center (BSSLC). The BSSLC will provide litter management in City parks and will also provide document destruction and shredding services. Bolenbarr noted that the City has been using these services for twenty years and has been very satisfied.

Bolenbarr said the contract provided for a litter management at a flat rate of \$2,200 per month, for an annual cost of \$26,400.00. Shredding services are charged at the rate of \$9.00 for pickup and \$0.18 for each pound of documents shredded. The contract will be effective upon execution and terminates on August 31, 2026.

Bolenbarr explained that the contract included in the Council packet had an incorrect version of Section 9.13, and that the correct version as approved by the City Attorney was laid around the dais for City Council's consideration.

Councilmember Cook noted that the BSSLC residents only work Monday through Friday and asked how litter is managed during weekend tournaments. Public Works Director Dane Rau said that City staff manage litter when necessary on the weekends.

A motion was made by Councilmember Saunders and seconded by Mayor Pro Tem Kolby to approve a Vocational Work Contract between the City of Brenham and Texas Health and Human Services Commission on behalf of the Brenham State Supported Living Center for document shredding and litter management services, with the discussed change to Section 9.13, and authorize the Mayor to execute any necessary documentation.

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

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

12. Administrative/Elected Officials Report

City staff reported on the following:

- City Manager Carolyn Miller said that Councilmembers who wish to ride the Invader in the Juneteenth parade should meet Saturday at 9:30 a.m.
- Assistant Building Official David Doelitsch recognized Code Compliance Officer Don Clark for arranging for a yard on Spinn Street to be cleaned and maintained. The home belongs to a hospitalized veteran who was facing possible citation for code violations. Clark coordinated with Brenham Police Officer Eddie Ortega for the lawn to be mowed, with ongoing services to be provided by Roger's Tree Service. In addition, Mark Wren, owner of Pioneer Smokehouse, collected the tree limbs on the property.
- Public Works Director Dane Rau reported that due to the announcement of a Stage 1 Drought Watch by the Brazos River Authority, and in accordance with the City's Drought Contingency Plan, the hours of the Henderson Park splashpad will be reduced. The temporary hours are Monday through Friday 10 a.m. – 1:00 p.m., and Saturday and Sunday 10:00 a.m. – 4:00 p.m.

The meeting was adjourned.

Milton Y. Tate, Jr.
Mayor

Karen Stack, TRMC
Legal and Legislative Services Manager



Regular City Council
AGENDA ITEM 6-B.

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

Meeting Type: Regular Meeting-July 07, 2022

Department: Parks and Recreation

Staff Contact: Crystal Locke

SUMMARY STATEMENT:

Patricia Johnson is planning a family reunion on Saturday, July 16, 2022, at Henderson Park from 2:00 p.m. to 10:00 p.m. Activities include a DJ, bounce houses, games, and food. Due to the use of amplified sound, a noise variance is required.

Patricia Johnson has the kitchen at Henderson Park reserved on July 16 for the entire day.

ATTACHMENTS:

(1) Noise Variance Request - Patricia Johnson Family Reunion

RECOMMENDED ACTION:

Approve a noise variance for Patricia Johnson for a family reunion to be held on July 16, 2022 at Henderson Park from 2:00 p.m. to 10:00 p.m.



Noise Variance Request

For: Family Reunion

Name of sponsoring organization:

Your Contact Information

Name: Patricia Johnson

Phone: 9793372922

Email: patriciacrawford796@gmail.com

Event Details

Event Name: Family Reunion

Purpose: Family Reunion

Location: Henderson Park

Date: 2022-07-16

Time: 2 pm

Setup From: 7:30 am **To:** 2 pm

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

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

Describe activities at this event that require the variance to the noise ordinance: DJ set-up

Will you use sound amplification equipment? Yes

Cleanup Provisions: Estimated 100 people. Will leave the park in which it was found.

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 the day of , 2022



Regular City Council
AGENDA ITEM 6-C.

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

Meeting Type: Regular Meeting-July 07, 2022

Department: Parks and Recreation

Staff Contact: Crystal Locke

SUMMARY STATEMENT:

WB Enterprise is hosting Scrilla Fam Fun Day on Sunday, July 24, 2022, at Henderson Park from 12:00 pm-8:00 pm. Activities planned include food, music, live performances, inflatables, giveaways, and activities for children. Due to the use of amplified sound, a noise variance is required.

This is a new event. Staff from the Police, Streets, Parks, and Fire Departments have reviewed the application and recommended its approval.

ATTACHMENTS:

(1) Noise Variance Request - WB Enterprise

RECOMMENDED ACTION:

Approve a noise variance for WB Enterprise for the Scrilla Fam Fun Day to be held on July 24, 2022 at Henderson Park from 12:00 P.M. to 8:00 P.M.



Noise Variance Request

For: Scrilla Fam Fun Day

Name of sponsoring organization: WB Enterprise

Your Contact Information

Name: Sherry Jackson

Phone: 9797103904

Email: Countylinerecordlabel@gmail.com

Event Details

Event Name: Scrilla Fam Fun Day

Purpose: To host an event for Children and Families filled with food, activities for children, toy/bike giveaways, and music.

Location: Henderson Park

Date: 2022-07-24

Time: 12 pm to 8 pm

Setup From: 8 am **To:** 11 am

Clean up From: 7 pm **To:** 9pm

Types of activities planned and any additional information specific to this event: Food, music, inflatables without water, toy/bike/backpack giveaways, and activities for children

Describe activities at this event that require the variance to the noise ordinance: Music and live performances

Will you use sound amplification equipment? Yes

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

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

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

Approved by City Council on the day of , 2022



Regular City Council
AGENDA ITEM 6-D.

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

Meeting Type: Regular Meeting-July 07, 2022

Department: Parks and Recreation

Staff Contact: Crystal Locke

SUMMARY STATEMENT:

This is a noise variance request from City staff for Pop-up Play Day celebrating Park and Recreation Month at Henderson Park on Friday, July 22, from 7:00 p.m.-9:00 p.m. The free event promotes connecting kids and families to our local parks and will feature basketball, lawn games, art in the park, and more. Staff plans to use a portable PA system for music and announcements throughout the event; therefore, a noise variance is required.

ATTACHMENTS:

- (1) Noise Variance Request - Pop-Up Play Day
- (2) Pop-Up Play Day Flyer

RECOMMENDED ACTION:

Approve a noise variance from the City of Brenham for Pop Up Play Day to be held on July 22, 2022 at Henderson Park from 7:00 P.M. to 9:00 P.M.



Noise Variance Request

For: Pop-up Play Day Celebrating Parks and Recreation Month

Name of sponsoring organization: City of Brenham and the Boys & Girls Club of Washington County

Your Contact Information

Name: Crystal Locke

Phone: 979-337-7254

Email: clocke@cityofbrenham.org

Event Details

Event Name: Pop-up Play Day Celebrating Parks and Recreation Month

Purpose: Free community event promoting local parks and Parks and Recreation Month

Location: Henderson Park

Date: 2022-07-22

Time: 7 pm-9 pm

Setup From: 5 pm **To:** 7 pm

Clean up From: 9 pm **To:** 10 pm

Types of activities planned and any additional information specific to this event: Music, basketball, lawn games, art in the park, and more!

Describe activities at this event that require the variance to the noise ordinance: Portable speaker and microphone.

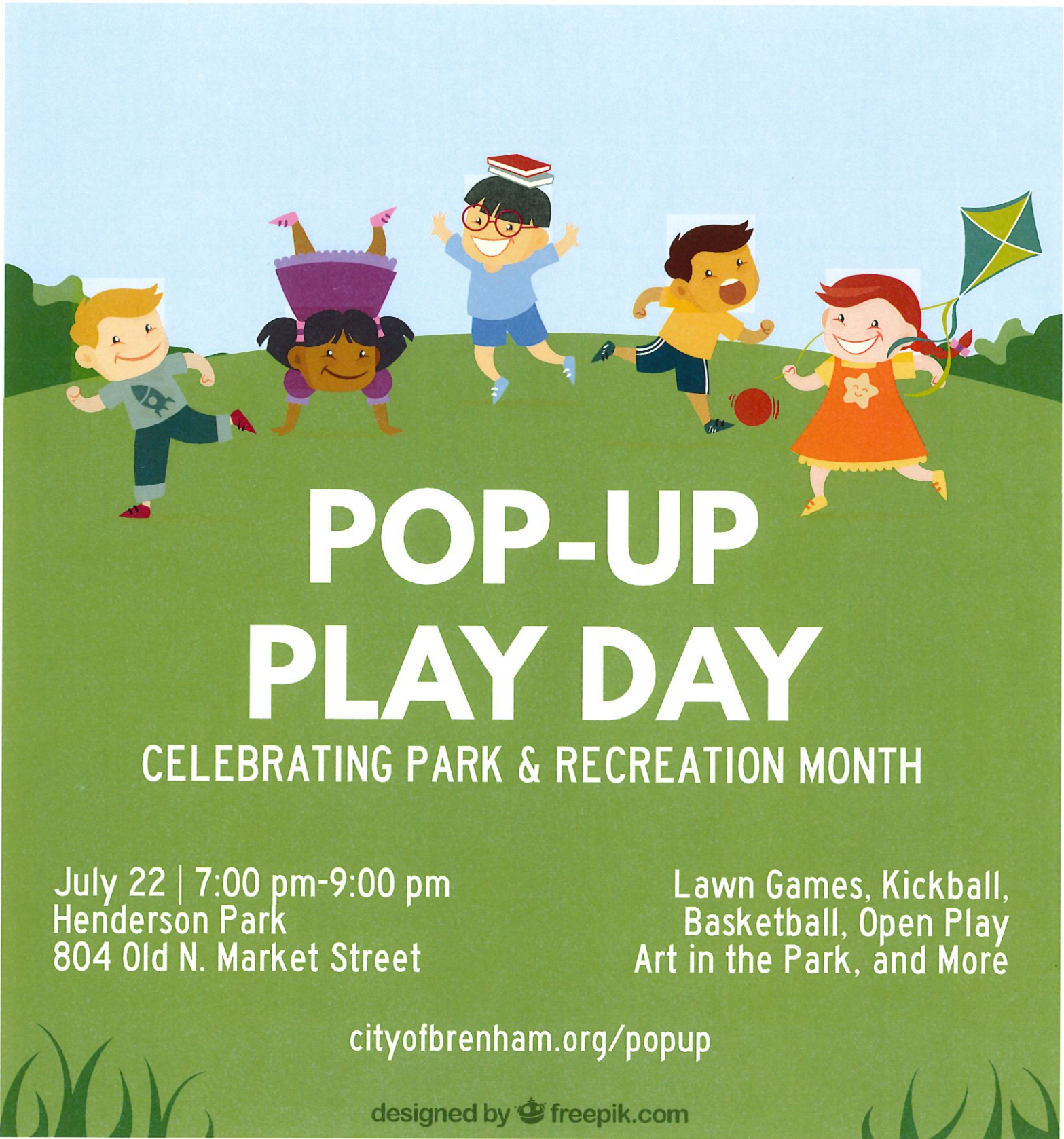
Will you use sound amplification equipment? Yes

Cleanup Provisions: Staff will pick up the trash and leave the park in a good state.

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 the _____ day of _____, 2022



POP-UP PLAY DAY

CELEBRATING PARK & RECREATION MONTH

July 22 | 7:00 pm-9:00 pm
Henderson Park
804 Old N. Market Street

Lawn Games, Kickball,
Basketball, Open Play
Art in the Park, and More

cityofbrenham.org/popup

designed by  freepik.com





Regular City Council
AGENDA ITEM 7.

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

Meeting Type: Regular Meeting-July 07, 2022

Department: Airport

Staff Contact: Stephanie Doland

SUMMARY STATEMENT:

Recently, Staff received a complaint about the high rate of speed that traffic is driving on Aviation Way. The complaint was concern for the safety of tenants and visitors of the Brenham Municipal Airport. Following the receipt of the complaint City Staff, with the assistance of Brenham PD, began to observe the speed more closely along Aviation Way. Staff concurs with this concern and upon conferring with City Attorney Cary Bovey, recommends approval of the proposed Ordinance establishing a 30-mph speed limit on Aviation Way. Sections 22.014 and 22.015 of the Texas Transportation Code grant the City the ability to establish a speed limit and place speed limit signs on property owned by the City of Brenham located outside of the City's corporate limits and ETJ. Furthermore, the City has jurisdiction to enforce said ordinance adopting the 30-mph speed limit in the Brenham Municipal Court as necessary. Lastly, staff has conferred with the Public Works department and should the ordinance be approved, they will install 30-mph speed limit signs on Aviation Way to denote the speed limit.

ATTACHMENTS:

(1) Ordinance - Speed Limit - Aviation Way

RECOMMENDED ACTION:

Approve an ordinance on its first reading regulating the speed of traffic on Aviation Way, a private road within the Brenham Municipal Airport; providing for a penalty for the violation thereof; and authorizing the placement of appropriate speed limit signage.

ORDINANCE NO. _____

AN ORDINANCE REGULATING THE SPEED OF TRAFFIC ON AVIATION WAY, A PRIVATE ROAD WITHIN THE BRENHAM MUNICIPAL AIRPORT; PROVIDING FOR A PENALTY FOR THE VIOLATION THEREOF; AND PROVIDING THAT THE ORDINANCE SHALL TAKE EFFECT FROM AND AFTER ITS PASSAGE AND APPROVAL AS PROVIDED BY THE CHARTER OF THE CITY OF BRENHAM, TEXAS; AND AUTHORIZING THE MAYOR TO EXECUTE ANY NECESSARY DOCUMENTATION.

WHEREAS, the City Council hereby finds that vehicles traveling at high rates of speed within the Brenham Municipal Airport pose a threat to the health, safety, and general welfare of the public; and

WHEREAS, in order to enhance, promote, and protect the health, safety, and general welfare of the public, the City Council hereby finds that it is advisable to establish a thirty (30) mile per hour speed limit on Aviation Way, a private road within the Brenham Municipal Airport located at 3001 Aviation Way, Brenham, Washington County, Texas, and it being necessary to provide a penalty for the violation of such regulation; and

WHEREAS, the Brenham Municipal Airport is owned by the City of Brenham, Texas and is located outside of the City's corporate boundaries and extraterritorial jurisdiction; and

WHEREAS, the Texas Transportation Code, Section 22.014, Rules and Jurisdiction, states that:

- (a) A local government may adopt ordinances, resolutions, rules, and orders necessary to manage, govern, and use an airport or air navigation facility under its control or an airport hazard area relating to the airport. This authority applies to an airport, air navigation facility, or airport hazard area in or outside the territory of the local government.
- (b) An airport, air navigation facility, or airport hazard area that is controlled and operated by a local government and that is located outside the territory of the local government is, subject to federal and state law, under the jurisdiction and control of that local government. Another local government may not impose a license fee or occupation tax for operations on the airport, air navigation facility, or airport hazard area; and

WHEREAS, The Texas Transportation Code, Section 22.015, Enforcement of Rules, states that: To enforce an ordinance, resolution, rule, or order adopted under Section 22.014(a), a local government, by ordinance or resolution as appropriate, may appoint airport guards or police, with full police powers, and establish a penalty for a violation of an ordinance, resolution, rule, or order, within the limits prescribed by law. A penalty is enforced in the same manner in which a penalty prescribed by other ordinances or resolutions of the local government is enforced; and

WHEREAS, the City Council hereby finds that the adoption of this Ordinance and the provisions contained herein will promote the health, safety, and general welfare of the public;

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

- Section 1:** That from and after the effective date of this Ordinance it shall be unlawful for any vehicle to exceed the speed of thirty (30) miles per hour on any portion of Aviation Way, a private road within the Brenham Municipal Airport.
- Section 2.** Any person who shall violate any of the provisions of this Ordinance, or shall fail to comply therewith or with any of the requirements thereof, shall be deemed guilty of a misdemeanor and shall be liable to a fine, and upon conviction of any such violation shall be fined in a sum of not less than \$1.00 and not more than \$500.00, plus applicable court costs.
- Section 3.** The regulation of the speed of a vehicle under this Ordinance does not apply to the operator of any authorized emergency vehicle, as the term “authorized emergency vehicle” is defined by state law, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm, as long as the operator does not endanger life or property.
- Section 4.** All police officers of the City of Brenham Police Department are hereby authorized and granted full police powers to enforce the provisions of this Ordinance at the Brenham Municipal Airport. All police officers of the City of Brenham Police Department are hereby expressly granted the authority to issue citations to persons, and to take any other lawful action, for violations of any provision of this Ordinance. A citation issued pursuant to this Ordinance shall require the alleged violator to appear in Brenham Municipal Court to respond to the charge(s) made in the citation.
- Section 5.** Any and all violations of this Ordinance shall be subject to the exclusive original jurisdiction of the Brenham Municipal Court.
- Section 6.** The City Council hereby directs the City Manager or City Manager’s designee to cause the placement of appropriate speed limit signage providing notification of the speed limit established by this Ordinance. Any person operating a vehicle in excess of the speed limit established by such signage commits a violation of this Ordinance.

Section 7. This Ordinance shall take full force and effect from and after its passage, approval, and publication as required by applicable law and in accordance with the Charter of the City of Brenham, Texas.

PASSED and APPROVED on its first reading this the ____ day of July, 2022.

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

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC, CMC
City Secretary



Regular City Council
AGENDA ITEM 8.

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

Meeting Type: Regular Meeting-July 07, 2022

Department: Public Works

Staff Contact: Dane Rau

SUMMARY STATEMENT:

On May 24, 2022, the City of Brenham and Strand Associates opened bids regarding the 2022 Onyx Resurfacing Work. This work was budgeted for in the 2021-22 budget in which we allocated \$250,000 for engineering and resurfacing. With specifications and bidding required we have dedicated \$30,000 for specifications, bidding, and construction related services.

During the bid process, there were 4 bid packets downloaded from Civicast with only 1 bid received. We received the one bid from Clark Construction of Texas, Inc which has performed Onyx Resurfacing for many cities throughout Texas. The base bid received was \$305,809 for the quantities listed in the attached bid tabulation. This would address 44,000 square yards of asphalt roadways which ultimately were 8 street sections. With this being over our budgeted amount we have asked Clark Construction to consider decreasing the quantities in order for us to stay within our budgetary range.

Clark Construction has agreed to decrease the quantities and the next agenda item will follow with a Change Order to reflect those quantity deductions. We would like to move forward with applying this product to 6 street sections that are rated in "Fair" condition that will extend the life of them at a more economical rate so re-construction is not needed for many years. Those streets are Spinn St, Tison St, LJ St, Hillside Dr, Clearspring Dr, and Robinhood.

With the Onyx Resurfacing Project, Clark Construction will replace certain sections that are structurally not sound (spot repairs), our Street Dept will level up the low areas or utility cuts, and two coats of aggregate material will be applied with oil to seal the roadway off. It will protect these sections of roadways for many years and give it the black asphalt look again. This is the medium level of protection after cracksealing that was recommended in the Street Inventory that was conducted in 2020.

We would like to ask Council to award Bid # 2022-02 to Clark Construction of Texas, Inc. in the amount of \$305,809 for the Onyx Resurfacing Project.

ATTACHMENTS:

(1) Bid Recommendation and Bid Tabulation

RECOMMENDED ACTION:

Award Bid No. 2022-02 to Clark Construction of Texas, Inc. in the amount of \$305,809.00 related to the 2022 City street onyx resurfacing project and authorize the Mayor to execute any necessary documentation.



Strand Associates, Inc.[®]
1906 Niebuhr Street
Brenham, TX 77833
(P) 979-836-7937

June 14, 2022

Mr. Dane Rau, Director of Public Works
City of Brenham
200 West Vulcan Street
Brenham, TX 77833

Re: 2022 City Street Onyx Resurfacing
Project No: 2022-02
City of Brenham, Texas

Dear Mr. Rau:

Bids for the above-referenced project were opened on May 24, 2022. One Bid was received with the resulting Bid tabulation enclosed. The low base Bid of \$305,809.00 exceeds ENGINEER's opinion of probable construction cost.

Clark Construction of Texas, Inc. of San Antonio, Texas, was the apparent low Bidder at \$305,809. The Bid included a Bid Bond for 5 percent. The Bid is deemed to be responsive.

Strand Associates, Inc.[®] has not had previous experience with Clark Construction of Texas, Inc.

If you determine that Clark Construction of Texas, Inc. is a responsible Bidder after your evaluation of their qualifications, we recommend proceeding with award of the Contract in accordance with Article 16 of the Instructions to Bidders.

Sincerely,

STRAND ASSOCIATES, INC.[®]



Jared D. Engelke, P.E.

Enclosure

TBPE No. F-8405
TBPLS No. 10030000

3900.262\UDE.mds\RA\BREN\Documents\Specifications\Archive\2022\Brenham, City of\3900.262.2022-02\JDE\16) Specification Letters(a) Resulting Bid Tabulation\061422.docx

Bids Received: 10:00 A.M.
May 24, 2022

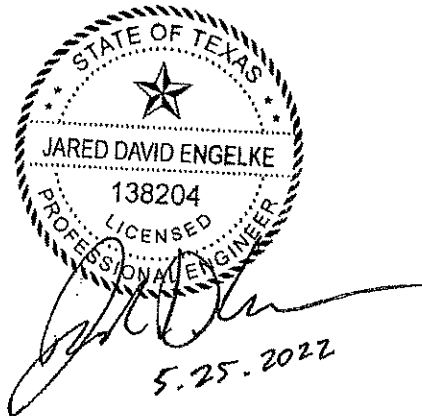
STRAND ASSOCIATES, INC.®
TBPE No. F-8405
TBPLS No. 10030000
1906 Niebuhr Street
Brenham, TX 77833

CITY OF BRENHAM, TEXAS
2022 CITY STREET ONYX RESURFACING
PROJECT NO. 2022-02

BID TABULATION SUMMARY

Bidder and Address	Bid Bond or Guarantee	Addenda Acknowledged	Total Base Unit Price
Clark Construction of Texas, Inc. 5140 Gibbs Sprawl Road San Antonio, TX 78219	5%	NA	\$305,809.00

Reviewed by: JARED D. ENGELKE, P.E.



Bids Received: 10:00 A.M., May 24, 2022

STRAND ASSOCIATES, INC.*
TBPE No. F-8405
TBPLS No. 10030000
1906 Niebuhr Street
Brenham, TX 77833

CITY OF BRENHAM, TEXAS
2022 CITY STREET ONYX RESURFACING
PROJECT NO. 2022-02
BID TABULATION BREAKDOWN

Clark Construction of Texas, Inc.
5140 Gibbs Sprawl Road
San Antonio, TX 78219

No.	Description	Quantity	Unit	Unit Price	Total Price
1.	Mobilization (Not to Exceed 10% of Total Bid)	1	LS	\$ 25,000.00	\$ 25,000.00
2.	Traffic Control and Barricading	1	LS	\$ 3,500.00	\$ 3,500.00
3.	Stormwater Pollution Prevention Plan (SWPPP)	1	LS	\$ 7,500.00	\$ 7,500.00
4.	Onyx Frictional Mastic Surface Treatment (0.30 GAL/SY Minimum) (TxDOT Item 3028)	44,000	SY	\$ 3.99	\$ 175,560.00
5.	Asphalt Pavement Spot Repairs, 6-IN Compacted Depth, Type B as Directed by Engineer (15 Locations Estimated) (Includes Excavation and Haul-off)	251	SY	\$ 299.00	\$ 75,049.00
6.	Remove Existing Stop Bar (Blasting Method) (TxDOT Item 677)	48	LF	\$ 150.00	\$ 7,200.00
7.	Prefabricated Pavement Markings Type C, White Solid 24-IN (TxDOT Item 668)	48	LF	\$ 250.00	\$ 12,000.00
ENGINEER'S COMPUTED TOTAL ITEMS NO. 1 THROUGH 7					\$ 305,809.00
CONTRACTOR'S COMPUTED TOTAL ITEMS NO. 1 THROUGH 7					\$ 305,809.00

Reviewed by JAMES D. ENGELKE, P.E.



Regular City Council
AGENDA ITEM 9.

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

Meeting Type: Regular Meeting-July 07, 2022

Department: Public Works

Staff Contact: Dane Rau

SUMMARY STATEMENT:

As discussed in the previous item this will be a deductive change order that both the City of Brenham and Clark Construction of Texas, Inc are willing to agree on that will reduce the quantities in order to proceed with work and complete 6 sections of streets with the Onyx Resurfacing Project.

Quantity deductions are described in the Change Order 1 as it relates to the original base bid. This was done in order to stay within our budgetary range and get work done rather than not being able to seal any roads this budget year. The total deductions are at a value of \$75,546 which will make the total project come in at \$230,263.

If approved, we plan to get documents signed and the work will take place in August-September of 2022.

We would ask council to approve the deductive Change Order 1 in the amount of \$75,546 making the total project costs \$230,263.00. The two streets that have been postponed are Pecan St and Atlow Dr.

ATTACHMENTS:

(1) Change Order No. 1

RECOMMENDED ACTION:

Approve deductive Change Order No. 1 to Clark Construction of Texas, Inc. in the amount of \$75,546 related to City of Brenham Project No. 2022-02 for the 2022 City street onyx resurfacing project and authorize the Mayor to execute any necessary documentation.



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

June 28, 2022

CHANGE ORDER NO. 1

PROJECT: 2022 City Street Onyx Resurfacing
OWNER: City of Brenham, Texas
CONTRACT: 2022-02
CONTRACTOR: Clark Construction of Texas, Inc.

Description of Change

1a	Decrease the quantity of Bid Item No. 4 from 44,000 square yards (sy) to 33,700 SY (Unit Price: \$3.99 per SY).	(DEDUCT)	(\$41,097.00)
1b	Decrease the quantity of Bid Item No. 5 from 251 sy to 200 SY (Unit Price: \$299.00 per SY).	(DEDUCT)	(\$15,249.00)
1c	Decrease the quantity of Bid Item No. 6 from 48 LF to 0 LF (Unit Price: \$150.00 per LF).	(DEDUCT)	(\$7,200.00)
1d	Decrease the quantity of Bid Item No. 7 from 48 LF to 0 LF (Unit Price: \$250.00 per LF).	(DEDUCT)	(\$12,000.00)
TOTAL VALUE OF THIS CHANGE ORDER:		(DEDUCT)	(\$75,546.00)

Contract Price Adjustment

Original Contract Price	\$305,809.00
Previous Change Order Adjustments	\$0.00
Adjustment in Contract Price this Change Order	(\$75,546.00)
Current Contract Price including this Change Order	\$230,263.00

Contract Substantial and Final Completion Date Adjustment

Original Contract Final Completion Date	(60 calendar days from Notice to Proceed [NTP])
Contract Final Completion Date Adjustments due to previous Change Orders	0 Days
Contract Final Completion Date Adjustments due to this Change Order	0 Days
Current Final Contract Completion Dates including all Change Orders	(60 calendar days from NTP)

City of Brenham–Clark Construction of Texas, Inc.
Contract 2022-02, Change Order No. 1
Page 2
June 28, 2022

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

RECOMMENDED

ENGINEER–Strand Associates, Inc.®

Date

APPROVED

CONTRACTOR–Clark Construction of Texas, Inc.

Date

APPROVED

OWNER–City of Brenham, Texas

Date



Regular City Council
AGENDA ITEM 10.

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

Meeting Type: Regular Meeting-July 07, 2022

Department: Economic Development

Staff Contact: Susan Cates

SUMMARY STATEMENT:

At the March 17, 2022 Council meeting, Council approved a Memorandum of Understanding (MOU) between the City of Brenham and Brenham Market Square, LP for reimbursement of qualified public infrastructure costs in accordance with the Policy for the Reimbursement of Qualified Infrastructure Costs for Private Development of Public Infrastructure within Tax Increment Reinvestment Zone Number One, City of Brenham (Policy). The intent of the MOU was to provide an instrument indicating the City's intent to enter into a Chapter 380 agreement with Brenham Market Square and outlining specific terms. The necessity of the MOU was timing to allow Brenham Market Square to meet certain business goals regarding sale of property to certain prospective buyers and to secure financing for the infrastructure while the Chapter 380 was being drafted by the City.

The terms of the Chapter 380 Agreement presented for your consideration are the same as stipulated in the MOU and in accordance with the Policy with one exception. Due to the economic constraints of post-pandemic supply chain issues that have impacted the Market Square Development, the developers have requested a revision of the date stipulated in the MOU Section III.5. to make Year One 2024 instead of 2023. The revision of the date may benefit the City with funding of TIRZ projects to allow an additional year of funds to flow into the TIRZ before disbursements commence for this Chapter 380 Agreement.

ATTACHMENTS:

(1) Chapter 380 Agreement

RECOMMENDED ACTION:

Approve a Chapter 380 agreement between the City of Brenham and Brenham Market Square, LP and authorize the Mayor to execute any necessary documentation.

CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF BRENHAM
AND MARKET SQUARE SERIES, LLC

This Chapter 380 Economic Development Agreement (the “Agreement”) is entered into to be effective as of July 1, 2022 (the “Effective Date”) by and between the City of Brenham, a Texas home-rule municipal corporation located in Washington County, State of Texas (the “City”), by and through its Mayor, and Brenham Market Square, LP, a Texas limited partnership (“Market Square”), collectively sometimes referred to herein as the “Parties.”

WITNESSETH:

WHEREAS, Chapter 380 of the Texas Local Government Code permits cities to make loans or grants of public funds for the purpose of promoting economic development and stimulating business and commercial activity within the City; and

WHEREAS, the City of Brenham established Tax Increment Reinvestment Zone Number One, City of Brenham, Texas (“TIRZ”) pursuant to Chapter 311 of the Texas Tax Code on December 20, 2018; and

WHEREAS, the purpose of the TIRZ is to utilize Tax Increment Financing to fund public improvements within the TIRZ that significantly enhance the value of all taxable real property in the TIRZ and as a general benefit to the City; and

WHEREAS, the City of Brenham adopted the Tax Increment Reinvestment Zone Number One, City of Brenham, Texas Final Project and Finance Plan (“Final Project and Finance Plan”) pursuant to Chapter 311 of the Texas Tax Code on December 19, 2019; and

WHEREAS, Section 15 of the Final Project and Finance Plan establishes Economic Development Programs as a valid use of funds in the TIRZ to incentivize the development of public improvements necessary to the growth of commercial enterprises in undeveloped or underdeveloped areas within the TIRZ; and

WHEREAS, the City adopted by Resolution R-22-015 the “Policy for the Reimbursement of Qualified Infrastructure Costs for Private Development of Public Infrastructure within Tax Increment Reinvestment Zone Number One, City of Brenham, Texas” (“Policy”) on March 17, 2022; and

WHEREAS, the Policy authorizes the City to enter into Chapter 380 agreements with Developers to provide for reimbursement of eligible infrastructure costs using TIRZ funds; and

WHEREAS, Market Square is a proposed 51-acre mixed use development (“Project”) that will include multi-family residential, commercial, retail, hospitality, and restaurant properties which will positively impact the ad valorem tax revenue, hotel occupancy tax revenue, and sales tax revenue of the City of Brenham; and

WHEREAS, the Market Square development will provide additional residential options for Brenham citizens. Further, it is anticipated that this commercial development will mitigate retail leakage to adjacent communities and attract visitors to our community for shopping, dining, and hotel stays; and

WHEREAS, Market Square anticipates the total property value of the fully developed Project to be in excess of \$133,850,000; and

WHEREAS, it is necessary to build infrastructure to support the development of the Market Square Project. The infrastructure will include water, wastewater, roads, and drainage. The estimated cost of the infrastructure is \$7,500,914; and

WHEREAS, the City has determined that construction of the Project will positively impact the local economy through expansion of the City's ad valorem tax base, sales tax revenue, and creation of jobs in the community; and

WHEREAS, the City Council of the City of Brenham supports the continued growth and expansion of economic development in the City by entering into this Agreement to promote and expand desirable commercial growth within the City;

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1. **AUTHORIZATION AND PROGRAM ESTABLISHMENT**

- 1.01 The City Council of the City hereby establishes a Chapter 380 economic development program (the "Program"), utilizing TIRZ funds as authorized by the Policy, to fund Public Improvements within the boundaries of the TIRZ in order to enhance the value of all taxable real property in the TIRZ as a general benefit to the City, which will also encourage economic development within the City and promote new businesses, and the City Council finds and determines that this Agreement will effectuate the purposes of the Program and Policy, and that Market Square's performance of its obligations herein will also promote local economic development and stimulate business and commercial activity in the City.

ARTICLE 2. **DEFINITIONS**

- 2.01 The terms "Agreement," "Effective Date," "City," "Market Square," "Policy," "Project," "Parties," and "Program" shall have the meanings provided herein.

ARTICLE 3.
TERM

- 3.01 The term (“Term”) of this Agreement shall commence on the Effective Date herein above and, unless otherwise terminated earlier in accordance with this Agreement, shall terminate: 1) immediately upon the reimbursement payment for year twenty (20) has been made by the City to Market Square; 2) upon Market Square’s receipt of total reimbursement payments equal to the amount of the Qualified Infrastructure Costs; or 3) upon Market Square’s receipt of total reimbursement payments equal to the amount of the Maximum Infrastructure Reimbursement Cap; whichever occurs first.

ARTICLE 4.
COVENANTS OF MARKET SQUARE AND THE CITY

- 4.01 Based on the Market Square’s application for Economic Development Incentives and the Opinion of Probable Cost for public infrastructure, it is estimated that \$7,259,539.00 is the amount of Qualified Infrastructure Costs to be incurred in development of the Project.
- 4.02 The estimated appraised value of the Project’s real property, including Washington County Appraisal District tracts R20290, R67212, R24715, R67801, R20315, and R20322 as fully developed, will be greater than \$100,000,000. Therefore, 8% of the appraised value of the Project property value can be reimbursed for Qualified Infrastructure Costs. The maximum Qualified Infrastructure Reimbursement for this Project is \$10,000,000.
- 4.03 Only Tax Increment revenues generated by the properties listed in Section 4.02 herein above may be used to fund the reimbursement payments to Market Square for this Project.
- 4.04 Notwithstanding Section 3.3 of the Policy, due to current time constraints, Market Square may proceed with the construction of public infrastructure associated with the Project, and such commencement of construction will not cause such public infrastructure to be deemed ineligible for reimbursement as Qualified Infrastructure Costs pursuant to the Policy. The reimbursement payments will be paid as revenues are received annually into the TIRZ fund. At no time will reimbursement payments to Market Square exceed the funds generated by the Project.
- 4.05 Reimbursement payments for Qualified Infrastructure Costs shall commence in 2024 – Year One. In years one through ten (1-10) 100% of the increment generated by the Project shall be used to reimburse Qualified Infrastructure Costs for which proof of payment has been received and approved by the TIRZ Board. In years eleven through twenty (11-20) 75% of the increment generated by the Project shall be used to reimburse Qualified Infrastructure Costs for which proof of payment has been received and approved by the TIRZ Board.
- 4.06 Should the appraised value of the developed Project not meet the projections, the maximum value of the reimbursement payments will be adjusted accordingly based on the appraised value of the developed Project.

- 4.07 Except as expressly stated otherwise in this Agreement, Market Square and the City shall comply with any and all provisions of the Policy.
- 4.08 Market Square shall timely pay and remain current on all property taxes imposed on the Project or any portion thereof, subject to appeal rights in accordance with applicable law, and subject to a right to cure any delinquency. Market Square shall have the right to protest, contest, or litigate: (a) any assessment of the value of the Project by the Washington County Appraisal District which appraises real or personal property on all or any part of the Project; and, (b) any tax imposed on the Project by any taxing authority with jurisdiction that includes the Project.
- 4.09 Market Square shall provide to the City access to the Project, and any and all information and records, upon reasonable notice to Market Square, related to the Project or the associated improvements necessary to confirm Market Square's compliance with the terms of this Agreement.
- 4.10 Subject to Market Square complying with all of its duties and obligations in this Agreement, the City agrees to make reimbursement payments to Market Square in compliance with this Agreement and the Policy.
- 4.11 It is the responsibility of Market Square to submit proof of payment for all Qualified Infrastructure Costs that are eligible for reimbursement within one (1) year of payment to the contractor or supplier. Receipts submitted to the TIRZ Board after one (1) year will no longer be considered allowable costs for reimbursement.

ARTICLE 5.
AUTHORITY; COMPLIANCE WITH LAW

- 5.01 Market Square hereby represents and warrants to the City that it has full lawful right, power and authority to execute and deliver and perform the terms and obligations of this Agreement and that the execution and delivery of this Agreement has been duly authorized by all necessary action by Market Square and this Agreement constitutes the legal, valid, and binding obligation of Market Square, and is enforceable in accordance with its terms and provisions.
- 5.02 Notwithstanding any other provision of this Agreement, Market Square shall comply with all federal, state, and local laws and regulations.
- 5.03 Market Square certifies that Market Square does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If Market Square is convicted of a violation under 8 U.S.C. § 1324a(f), that is proven to have occurred during the term of this Agreement, Market Square shall repay the full amount of the reimbursement payments made to Market Square pursuant to this Agreement plus interest, at the rate of the prime rate plus two percent (2%) per annum, not later than the 120th day after the date the City notifies Market Square of the violation.

ARTICLE 6.
BREACH AND REMEDY; TERMINATION; ADDITIONAL REMEDIES

- 6.01 Except as otherwise provided in this Article 6, should either party fail to comply with any of the material terms or conditions of this Agreement, and any such failure (hereinafter, a “breach”) specified, remains uncured for ninety (90) days following the breaching party’s receipt of written notice (the “Breach Notice”) from the non-breaching party, delivered in accordance with Section 11.09 herein below, of the event and nature of such breach; provided, however, that if such breach is not reasonably susceptible of cure within such ninety (90) day period and the breaching party has commenced and is continuing to diligently pursue the cure of such breach, then after first advising the non-breaching party of such cure efforts, the breaching party shall automatically receive an additional ninety (90) day period within which to cure such breach. The non-breaching party may authorize additional time to cure any such breach but is not obligated to grant such additional time. Notwithstanding anything expressed or implied herein to the contrary, no breach shall exist if the failure of either party to fully perform its obligations hereunder is the result of a force majeure event as defined in Article 7 herein below. Further time for cure of a breach by the breaching party shall be extended by the reasonable time the breaching party is delayed by a force majeure event.
- 6.02 Upon the occurrence and during the continuation of any uncured breach, the City shall have the right to suspend the reimbursement payments specified in Article 4 herein above, pursuant to a notice (the “Suspension Notice”) delivered in accordance with Section 11.09 herein below, and thereafter to receive from Market Square, as liquidated damages, a sum equal to the amount of all reimbursement payments paid to Market Square. The calculation of liquidated damages shall not include any penalties or late charges. Such liquidated damages shall be due and payable to the City within thirty (30) days of the receipt by Market Square of the Suspension Notice. If the City delivers a Suspension Notice pursuant to this Section 6.02, then Market Square shall thereafter have no right to receive the reimbursement payments specified in Article 4 herein above unless and until Market Square has cured the breach or breaches specified in the Breach Notice.

ARTICLE 7.
FORCE MAJEURE

Performance of the parties’ obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and the parties’ obligations shall be abated during any period of force majeure. Force majeure shall include, without limitation, damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, pandemic, unreasonable delay in issuance of any permit and/or legal authorization (including engineering approvals by any governmental entity), unreasonable delay in governmental approvals and permits, shortage or unreasonable delay in shipment of materials or fuel occasioned by any event referenced herein, acts of God, unusually adverse weather or wet soil conditions or other causes beyond the parties’ reasonable control, including but not limited to, any court or judgment resulting from any litigation affecting the Project or this Agreement.

ARTICLE 8.

GIFT TO PUBLIC SERVANT OR TO MARKET SQUARE REPRESENTATIVE

- 8.01 No Benefit. Each party hereto represents to the other that it has not offered, conferred, or agreed to confer and that it will not offer, confer or agree to confer in the future any benefit upon an employee or official of the other party. For purposes of this section, “benefit” means anything reasonably regarded as economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.
- 8.02 Right of Repayment. Notwithstanding any other legal remedies, City may obtain repayment for any expenditure or reimbursement payment made to Market Square as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 9. **ASSIGNMENT**

- 9.01 Market Square may not assign any part of this Agreement without express written approval by the City Council of the City of Brenham, which approval will not be unreasonably withheld, provided that any approved assignee assumes, in writing, all of Market Square’s obligations under this Agreement.

ARTICLE 11. **INDEMNIFICATION**

- 10.01 MARKET SQUARE EXPRESSLY AGREES TO FULLY AND COMPLETELY DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, AND ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS AND VOLUNTEERS AGAINST ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, DAMAGES OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ANY NEGLIGENT, GROSSLY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF MARKET SQUARE OR ITS OFFICERS, AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT.** Nothing in this paragraph may be construed as waiving any governmental immunity or other defense available to the City under state or federal law except as expressly provided herein. This provision is solely for the benefit of Market Square and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.
- 10.02 It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. The City (including its past, present and future officers, elected officials, directors, employees and

agents of the City) does not assume any responsibility to any third party in connection with Market Square's construction of the Project.

ARTICLE 12.

MISCELLANEOUS MATTERS

- 11.01 Time is of Essence. Time is of the essence in this Agreement. The Parties hereto will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.
- 11.02 Applicable Law and Venue. This Agreement is made subject to and in accordance with the City of Brenham Home Rule Charter and ordinances of City, as amended, and all applicable local, state and federal laws and regulations. This Agreement is performable in Washington County, Texas. Exclusive venue for any action arising under or involving this Agreement shall lie in the State District Courts of Washington County or if in federal court, the United States District Court for the Western District of Texas.
- 11.03 Interpretation. Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any Party based on draftsmanship.
- 11.04 Counterparts Deemed Original. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- 11.05 Relationship of Parties. The Parties shall not be deemed in a relationship of partners or joint ventures by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement.
- 11.06 Governmental Powers. By execution of this Agreement, the City does not waive or surrender any governmental immunities, powers or rights, except as provided in Chapter 271, Texas Local Government Code.
- 11.07 Captions. The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.
- 11.08 Complete Agreement. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in the Agreement, and except as otherwise provided herein cannot be modified without mutual written agreement of the parties to be attached and made a part of this Agreement.

- 11.09 Notice. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefore; or (ii) sent by a nationally recognized overnight courier service; or (iii) delivered by United States certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the respective party at its address set forth below and shall be effective (a) upon receipt or refusal if delivered personally; (b) one business day after depositing, with such an overnight courier service or (c) three business days after deposit in the United States mails, if mailed. Any party hereto may change its address for receipt of notices by service of a notice of such change in accordance with this subsection.

Market Square: Brenham Market Square, LP
Attn: Paul Leventis, President
1722 Broadmoor Drive, Suite 212
Bryan, TX 77802

With a copy to: Chris Peterson
Peterson Law Group
416 Tarrow Street
College Station, TX 77840

City: City of Brenham, Texas
Attn: Carolyn D. Miller, CPA, City Manager
200 W. Vulcan St.
Brenham, TX 77833

With a copy to: Cary L. Bovey
Bovey & Cochran, PLLC
2251 Double Creek Dr., Suite 204
Round Rock, Texas 78664
(512) 904-9441
Fax (512) 904-9445
<mailto:cary@boveycochran.com>

- 11.10 Amendment. This Agreement may only be amended by the mutual written agreement of the parties.
- 11.11 Severability. In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word herein is held invalid, illegal, or unenforceable, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, or word. In the event there shall be substituted for such deleted provision a provision as similar in terms and in effect to such deleted provision as may be valid, legal and enforceable.

11.12 Attorney's Fees. The parties hereto agree that the prevailing party in any dispute, lawsuit or other legal proceeding between the parties arising out of this Agreement shall be entitled to recover its reasonable attorney's fees and costs.

EXECUTED on the respective dates of acknowledgement, to be effective as of the date first set forth above.

CITY OF BRENHAM, TEXAS

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

STATE OF TEXAS

COUNTY OF WASHINGTON

This instrument was acknowledged before me on the ____ day of _____, 2022 by Milton Y. Tate, Jr., Mayor of the City of Brenham, a Texas home-rule municipal corporation, on behalf of said municipal corporation.

[Notary Seal]

Notary Public, State of Texas

APPROVED AS TO FORM

By: _____
Cary L. Bovey, City Attorney

BRENHAM MARKET SQUARE, LP

By: _____, a Texas _____,
its general partner

By: _____
Name:
Title:

STATE OF TEXAS

COUNTY OF BRAZOS

This instrument was acknowledged before me on the ____ day of _____, 2022
by _____, the _____ of _____, a Texas _____, general partner
of BRENHAM MARKET SQUARE, LP, a Texas limited partnership.

[Notary Seal]

Notary Public, State of _____



Regular City Council
AGENDA ITEM 12.

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

Meeting Type: Regular Meeting-July 07, 2022

Department: Administration

Staff Contact: Carolyn Miller

SUMMARY STATEMENT:

To be discussed in Executive Session.

ATTACHMENTS:

None

RECOMMENDED ACTION:

To be discussed in Executive Session.



Regular City Council
AGENDA ITEM 13.

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

Meeting Type: Regular Meeting-July 07, 2022

Department: Administration

Staff Contact: Carolyn Miller

SUMMARY STATEMENT:

As discussed in Executive Session.

ATTACHMENTS:

None

RECOMMENDED ACTION:

Approve the sale, exchange, transfer, and/or acquisition of real property located in the Tax Increment Reinvestment Zone Number 1 in Brenham, Washington County, Texas and authorize the Mayor to negotiate and execute any necessary documentation.



Regular City Council
AGENDA ITEM 14.

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

Meeting Type: Regular Meeting-July 07, 2022

Department: Administration

Staff Contact: Carolyn Miller

SUMMARY STATEMENT:

As discussed in Executive Session.

ATTACHMENTS:

None

RECOMMENDED ACTION:

Approve the allocation of Tax Increment Reinvestment Zone Number 1 funds for the possible sale, exchange, transfer and/or acquisition of real property, located in the TIRZ Number 1 Zone, in Brenham, Washington County, Texas and authorize the City Manager to negotiate and execute any necessary documentation related to the sale, exchange, transfer and/or acquisition of said real property.