NOTICE OF A REGULAR MEETING
THE BRENHAM CITY COUNCIL
THURSDAY, JUNE 2, 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 - Councilmember Atwood Kenjura**

3. **Service Recognitions**

   - **Chad Westerfeld - Maintenance, 15 Years**

4. **Citizens Comments**

CONSENT AGENDA

5. **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.

5-a. Approve the Minutes from the May 16, 2022 Workshop Budget Meeting and the May 19, 2022 Regular Meeting

5-b. Approve Ordinance No. O-22-010 on Its Second Reading Adopting a Final Redistricting Plan

5-c. Approve a Noise Variance for The City of Brenham for the Summer Sip and Art Walk to be Held on June 11, 2022 in Downtown Brenham from 3:00 P.M. to 7:00 P.M.

5-d. Approve a Noise Variance for the City of Brenham for Hot Nights, Cool Tunes to be Held on July 9, 16, 23, and 30, 2022 at the Courthouse Square from 7:00 P.M. to 10:00 P.M.

5-e. Approve a Noise Variance Request from the Washington County Historical Juneteenth Association for the Juneteenth Freedom of Slavery Celebration on June 17, 2022 from 5:00 P.M. to 10:00 P.M. and June 18, 2022 from 10:00 A.M. to 10:00 P.M. at Fireman's Park

5-f. Approve a Noise Variance from Melvin Preston for the Palestine Family Reunion to be Held on June 18, 2022 at Henderson Park from 12:00 P.M. to 10:00 P.M.

5-g. Approve a Noise Variance from Margaret Moore for a Birthday Party to be Held on June 18, 2022 at 701 Parkview Street from 12:00 P.M. to 11:00 P.M.

5-h. Approve a Noise Variance from Ballad of the Bird Dog for a Grand Opening Event to be Held at 100 E. Alamo Street on June 25, 2022 from 9:00 A.M. to 6:00 P.M.

PUBLIC HEARING AND ASSOCIATED ACTION ITEM

6. Public Hearing, Discussion and Possible Action on an Ordinance on Its First Reading Amending Appendix A - 'Zoning' of the Code of Ordinances of the City of Brenham 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 1.0 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)

REGULAR SESSION

7. Discuss and Possibly Act Upon Resolution No. R-22-021 Authorizing the Execution of an Agreement with the Texas Department of Transportation for the Temporary Closure of State Right-of-Way in Connection with the 2022 Downtown Summer Concert Series, Hot Nights, Cool Tunes, to be Held on July 9, 16, 23, and 30, 2022 and Authorize the Mayor to Execute Any Necessary Documentation

8. Discuss and Possibly Act Upon a Noise Variance Request from Brenham Outlaws for a Juneteenth Event to be Held on June 18, 2022 at Hattie Mae Flowers Park from 9:00 A.M. to 11:00 P.M. and Authorize the Mayor to Execute Any Necessary Documentation

9. Discuss and Possibly Act Upon Bid No. 22-007 for Type 'D' Hot Mix Asphalt and Authorize the Mayor to Execute Any Necessary Documentation

10. Discuss and Possibly Act Upon an Interlocal Agreement Between the City of Brenham and Purchasing Solutions Alliance (PSA) for a Brazos Valley Council of Governments Purchasing Cooperative for Public Agencies and Authorize the Mayor or City Manager to Execute Any Necessary Documentation

11. Discuss and Possibly Act Upon the Development, Operations, Funding, and Possible Acquisition of the Barnhill Center at the Historic Simon Theater, Including But Not Limited to the Third Addendum to the Memorandum of Understanding Between the City of Brenham and Brenham Main Street Historic Preservation, Inc., and Authorize the Mayor to Execute Any Necessary Documentation

12. Administrative/Elected Officials Report

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

Adjourn

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

CERTIFICATION

I certify that a copy of the June 02, 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 May 27, 2022 at 4:15 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 workshop meeting of the Brenham City Council was held on Monday, May 16, 2022 beginning at 8:30 a.m. at Morriss Hall at the Historic Simon Theater, 111 W. Main Street Brenham, TX.

Members Present:

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

Members Absent:

Councilmember Shannan Canales

City of Brenham Staff present:

City Manager Carolyn Miller, City Secretary Jeana Bellinger, Fire Chief Roger Williams, Strategic Budget Officer Tim McRoberts, Director of Finance Stacy Hardy, Director of Economic Development Susan Cates, Public Works Manager Shawn Bolenbarr, Director of Human Resources Susan Nienstedt, Executive Administrative Assistant Monique Breaux, Budget Manager Jennifer Hill, Director of Development Services Stephanie Doland, Jerry Saldivar, Director of Water/Wastewater Bobby Keene, Maintenance Superintendent Stephen Draehn, Parks Superintendent Casey Redman, Utilities Deputy General Manager Alton Sommerfield, Gas Superintendent Ande Bostain, Police Capt. Dant Lange, PD Chief of Staff Christi Korth, Police Lt. Curtiss Schoen, Water/Wastewater Construction Superintendent Josh Daniels, and Electric Superintendent Jason Lange.

Citizens/Others Present:

None

Media Present:

Mark Whitehead, KWHI

DRAFT

1. Call Meeting to Order

REGULAR SESSION

2. FY2022-23 Proposed Budget – Utility Funds

Strategic Budget Officer Tim McRoberts presented this item. McRoberts discussed the following:

- Purpose of the five-year financial plan
- Components of the five-year financial plan
- Focus of the five-year financial plan
- Budget Process
- Important assumptions in the five-year plan
- Utility fund challenges
    - Inflation
    - Labor shortages
    - Supply chain shortages
    - Longer lead times
    - Future economic uncertainty
- Utility fund priorities
    - Increasing water treatment capacity
    - Updating and maintaining utility infrastructure
    - Containing utility costs

3. FY2022-23 Proposed Budget – General Fund

Strategic Budget Officer Tim McRoberts presented this item. McRoberts discussed the following:

- General fund revenue trends
- General fund challenges
    - Inflation
    - Labor shortages
    - Supply chain shortages
    - Longer lead times
    - Future economic uncertainty
- General fund priorities
    - Public Safety: New personnel and equipment; new fire station
    - Streets: Maintain and expand roadways as needed for new development
    - Parks: Continue to support our current parks and plan for future parks
    - Information Technology: Keeps the city's technology infrastructure secure and up to date

DRAFT

The meeting was adjourned.

_____

Milton Y. Tate, Jr.
Mayor

_____

Jeana Bellinger, TRMC, CMC
City Secretary

DRAFT

Brenham City Council Minutes

A regular meeting of the Brenham City Council was held on Thursday, May 19, 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 Adonna Saunders
Councilmember Albert Wright

Members Absent:

Councilmember Atwood Kenjura

City of Brenham Staff present:

City Manager Carolyn Miller, City Attorney Cary Bovey, City Secretary Jeana Bellinger, Deputy General Manager of Public Utilities Alton Sommerfield, Director of Public Works Dane Rau, Director of Development Services Stephanie Doland, Director of Finance Stacy Hardy, Deputy City Secretary Alyssa Faykus, Legal and Legislative Services Manager Karen Stack, Purchasing and Fleet Supervisor Kyle Branham, Strategic Budget Officer Tim McRoberts, Librarian Idalia Avezuela, Lt. Kelvin Raven, Capt. Lloyd Powell, Jean Lueara, Det. Jared Campbell, Sgt. Todd Ashorn, Sgt. Seth Klehm, Sgt. Steven Eilert, and Airport Manager Debora Pinto.

Citizens/Others Present:

Fortnightly Club Members

Media Present:

Trace Harris, Brenham Banner-Press; and Josh Blaschke, KWHI

1. Call Meeting to Order

2. Invocation and Pledges to the US and Texas Flags – Councilmember Shannan Canales

DRAFT

3. Proclamations

- **National Peace Officers Memorial Week**

4. Special Recognitions

- **Chief's Commendation – Officer Lawrence Garnett**

5. Citizens Comments

No comments received

CONSENT AGENDA

6. Statutory Consent Agenda

6-a. Approve the Minutes from the May 5, 2022 Special Meeting and May 5, 2022 Regular Meeting

6-b. Approve Ordinance No. O-22-009 on Its Second Reading Amending Chapter 2, Administration, of the Code of Ordinances of the City of Brenham, Texas by Repealing Article VII, Library Advisory Board, and Providing for a New Article VII, Reserves for Future Amendments to Chapter 2, Administration

6-c. Approve the Termination of a Contract Between the City of Brenham and Waller County Asphalt Related to Bid No. 19-005 for Type "D" Hot Mix Asphalt and Authorize the Mayor to Execute Any Necessary Documentation

6-d. Approve a Noise Variance from Brazos Valley Brewing Company for Live Outdoor Music at 206 S. Jackson Street, for Various Dates and Hours Between May 20, 2022 and June 5, 2022

6-e. Approve a Noise Variance for the City of Brenham for Pop-Up Play Day to be Held on May 21, 2022 at Jackson Street Park from 8:30 A.M. to 12 P.M.

6-f. Approve a Noise Variance for The Republican Club of Washington County for a Candidate Forum to be Held on June 2, 2022 at Fireman's Park Pavilion from 2 P.M. to 10 P.M.

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

DRAFT

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	**Absent**
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

PUBLIC HEARING

7. Public Hearing Regarding Draft Redistricting Plans as Designated by the City Council for Public Comments

City Secretary Jeana Bellinger presented this item. Bellinger reminded Council that at the April 7, 2022 City Council meeting Syd Falk with Bickerstaff Heath Delgado Acosta, LLP presented the Initial Redistricting Assessment and advised Council that based on growth in population, the City would need to redistrict.

Bellinger explained that at the May 5, 2022 Special Meeting the City Council reviewed two draft redistricting plans (Draft Plan A and Draft Plan B) presented by Falk; however, after discussion with the Washington County Elections Administrator Carol Jackson, the City Council worked to draft a third plan (Draft Plan C) that would not split the County's voting precincts.

Bellinger stated that at the Special Meeting, Council selected only Draft Plan C as the plan to be presented at the Public Hearing. Bellinger then asked Falk to provide the Council with information relative to Draft Plan C.

Falk presented the following redistricting information to the City Council:

- Reviewed the 10% deviation rule
- Discussed the requirements of the Voting Rights Act and Shaw v. Reno
- 2011 Benchmark with 2020 Census data which was a 17.46% deviation
- Proposed Draft Plan C which is a 7.07% deviation
- Draft Plan C individual ward maps

Mayor Tate opened the Public Hearing and there were no citizen comments received.

DRAFT

REGULAR SESSION

8. Discuss and Possibly Act Upon an Ordinance on Its First Reading Adopting a Final Redistricting Plan

Syd Falk with Bickerstaff Heath Delgado Acosta, LLP presented this item. Falk advised that the approval of the first reading of the ordinance would adopt Draft Plan C as the final redistricting plan. Falk explained that the Ordinance, as written, would go into effect on January 1, 2023; however, the Council could change that date if they so desired. City Attorney Cary Bovey advised that he made some minor revisions to the Ordinance that would need to be approved by Council.

A motion was made by Mayor Pro Tem Kolby and seconded by Councilmember Saunders to approve an ordinance on its first reading adopting a final redistricting plan, as amended by the City Attorney.

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	**Absent**
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

9. Discuss and Possibly Act Upon the Acceptance of a Donation from The Fortnightly Club in the Amount of $35,000 for the Nancy Carol Roberts Memorial Library and Authorize the Mayor to Execute Any Necessary Documentation

Librarian Idalia Avezuela presented this item. Avezula expressed her thanks to The Fortnightly Club for their continued support of the Library. The Fortnightly Club President Lu Hollander advised the Council that the Fortnightly raised $35,000.00 during their annual book sale for the Library.

A motion was made by Councilmember Cook and seconded by Councilmember Saunders to accept a donation from The Fortnightly Club in the amount of $35,000.00 for the Nancy Carol Roberts Memorial Library and authorize the Mayor to execute any necessary documentation.

DRAFT

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	**Absent**
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

10. Discuss and Possibly Act Upon the Appointment of Members to the City of Brenham's Airport Master Plan Committee (AMPC) and Authorize the Mayor to Execute Any Necessary Documentation

Director of Development Services Stephanie Doland presented this item. Doland stated that staff would like to create a group of individuals from the community to serve on an Airport Master Plan Committee. This Committee would work together to achieve the goals of the City while meeting all the expectations outlined in the scope of services provided by the consultant, Coffman Associates. The Committee would work with staff to hold community-wide public meetings and work along-side the consultant to develop the final Master Plan.

Doland explained that the Master Plan will be used as a long-term planning tool and guide to regulate development, improvements, and operation of the airport to meet current and future aviation demands.

Doland advised that it is staff's recommendation that the following citizens, along with herself, be appointed to serve on the Airport Master Plan Committee: Councilmember Kenjura; Councilmember Saunders; City Manager Carolyn Miller; Airport Manager Debora Pinto; Planning/Airport Technician Kim Hodde; Brenham Airport Liaison Randy Hodge; TxDOT Aviation Project Manager Mollie Klenzendorf; Washington County EMS Director Kevin Deramus; Corporate Aviation Representative Scott Caggiano; General Aviation Representative Gary Snow; Executive Dean of Blinn College Dr. John Turner; and Economic Development Representative Blake Brannon.

A motion was made by Mayor Pro Tem Kolby and seconded by Councilmember Wright to approve the appointment the recommended 13 members to the City of Brenham's Airport Master Plan Committee (AMPC) and authorize the Mayor to execute any necessary documentation.

DRAFT

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	**Absent**
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

11. Discuss and Possibly Act Upon a Service Agreement Between the City of Brenham and Bassco Services, Inc. for the Design, Construction, and Installation of the Fuel Farm at the Brenham Municipal Airport and Authorize the Mayor to Execute Any Necessary Documentation

Director of Development Services Stephanie Doland presented this item. Doland stated that on January 24, 2022, Council authorized staff to proceed with the purchase, delivery and installation of the former Marathon Oil fuel farm and associated equipment from Alberth Aviation. Doland explained that since the needs of the Brenham Municipal Airport are different from what Marathon Oil required, a rebuild of the fuel farm was needed.

Doland advised that the City received three quotes to rebuild the fuel farm. The quote received from Bassco includes three phases of the project: design, construction and installation. Doland stated that after reviewing all the quotes received, it is staff's recommendation to go forward with Bassco Services, Inc. for a total cost of $232,012.38

A motion was made by Mayor Pro Tem Kolby and seconded by Councilmember Cook to approve a service agreement between the City of Brenham and BASSCO Services, Inc. for the design, construction, and installation of the fuel farm at the Brenham Municipal Airport, in the amount of $232,012.38, as an exempt procurement pursuant to Texas Local Government Code Section 252.022(a)(2) 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	**Absent**
Councilmember Adonna Saunders	Yes
Councilmember Albert Wright	Yes

DRAFT

12. Administrative/Elected Officials Report

No reports were given.

The meeting was adjourned.

_____

Milton Y. Tate, Jr.
Mayor

_____

Jeana Bellinger, TRMC, CMC
City Secretary

DRAFT

ORDINANCE NO. O-22-010

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS, APPROVING THE REDISTRICTING OF THE CITY'S SINGLE-MEMBER COUNCIL WARDS AND ESTABLISHING NEW WARD BOUNDARY LINES FOR THE CITY OF BRENHAM'S CITY COUNCIL ELECTIONS BASED ON 2020 CENSUS DATA AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the results of the 2020 federal Census have been considered and indicate that the City of Brenham's single-member council wards are sufficiently out of population balance to require redistricting in order to comply with the "one-person, one-vote" (equal population) principle established by the U.S. Constitution; and

WHEREAS, the City of Brenham (the "City") engaged the law firm of Bickerstaff Heath Delgado Acosta LLP to act as the City's redistricting consultant, including advising and assisting the City Council in preparation of a new redistricting plan in compliance with applicable requirements of state and federal law; and

WHEREAS, on April 7, 2022, the City Council adopted redistricting criteria to assist the City and the public in developing redistricting plans which comply with applicable federal and state laws, and the adopted redistricting criteria were applied in the development of the City's new redistricting plan; and

WHEREAS, on April 7, 2022, the City Council also adopted redistricting guidelines regarding the submission of comments and proposed plans by the public, to ensure the ability of the City to timely receive and adequately consider them; and

WHEREAS, during the redistricting process the City provided notice to the public of its proposed discussions and development of a redistricting plan through meeting agendas posted in compliance with the Texas Open Meetings Act, notices on the City's website, including regarding a public hearing; and

WHEREAS, the City Council has considered proposed redistricting plans at City Council meetings on April 7, 2022, May 5, 2022, and May 19, 2022, and at a public hearing held on May 19, 2022, and advice from the City's redistricting consultant, and various proposed plans regarding the appropriate reconfiguration of the council member wards; and

WHEREAS, the City Council finds that the attached city council ward redistricting plan is in the best interest of the citizens of the City, complies with the adopted redistricting criteria, and is believed to comply with all state and federal requirements;

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

A. That the existing single-member council ward boundary lines for the City of Brenham are hereby amended, and the new districting plan depicted on the map attached hereto as **Exhibit A**, defining new wards as such new wards are further described in the tables attached hereto as **Exhibit B** reporting populations and demographic statistics for each such new ward, is hereby adopted and designated to define the City's four single-member council wards from and after the Effective Date; that **Exhibits A** and **B** are incorporated by reference in and made a part of this Ordinance, and shall be kept on file in the City Secretary's Office.

B. That this Ordinance shall take and be given effect on January 1, 2023 and that hereafter all City Council elections shall be held under and in accordance with the new single-member council ward districting plan here adopted by the City Council until such time as a subsequent lawfully-enacted districting plan shall be adopted to replace this plan. *CLARIFYING NOTE: This plan will define the city council wards for which candidates will run in the May 2023 city elections.*

PASSED AND APPROVED on its first reading this the 19th day of May 2022.

PASSED AND APPROVED on its second reading this the 2nd day of June 2022.

_____
Milton Y. Tate, Jr.
Mayor

ATTEST:

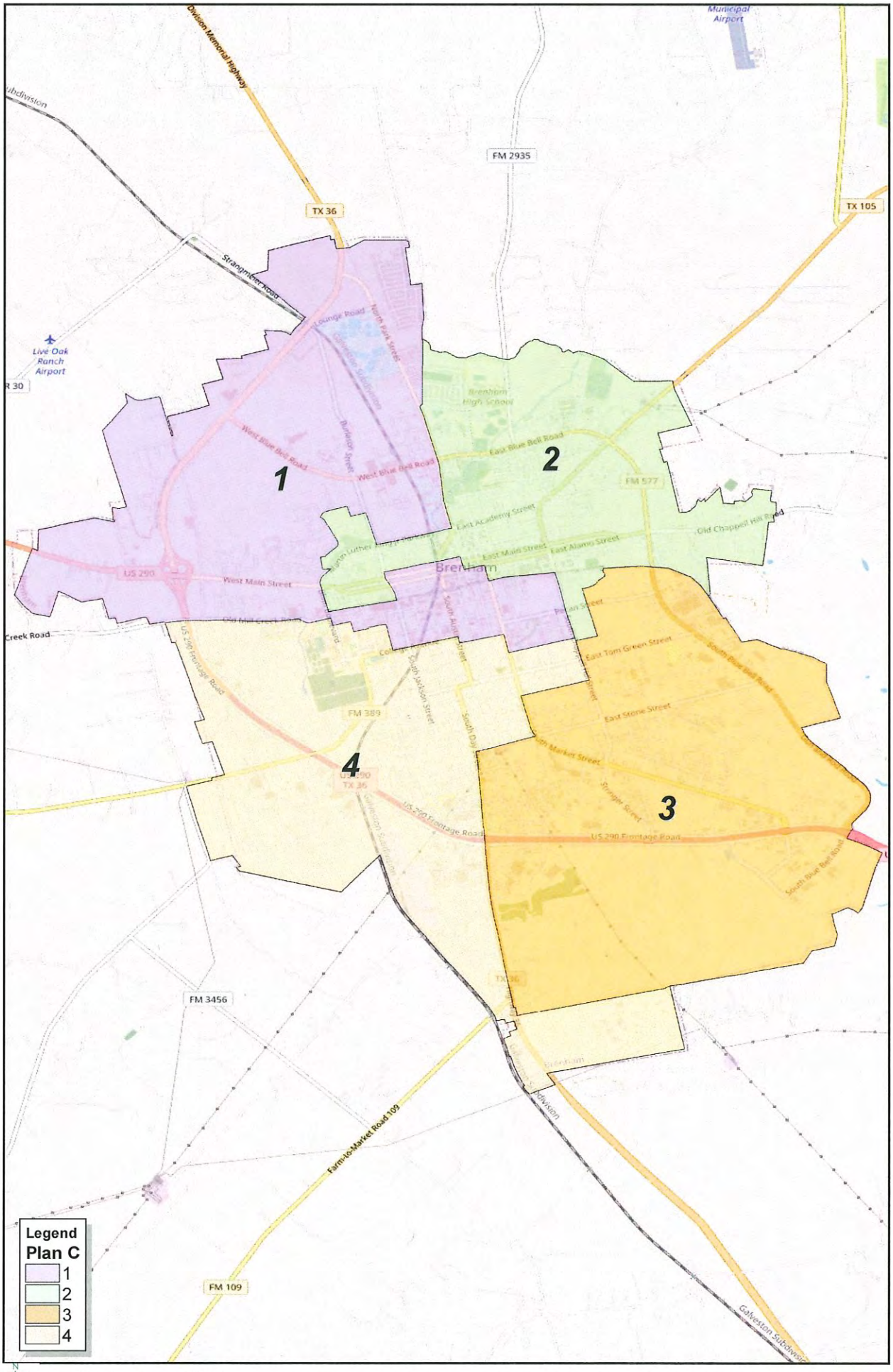
_____
Jeana Bellinger, TRMC, CMC
City Secretary

APPROVED AS TO FORM:

_____
Cary L. Bovey
City Attorney

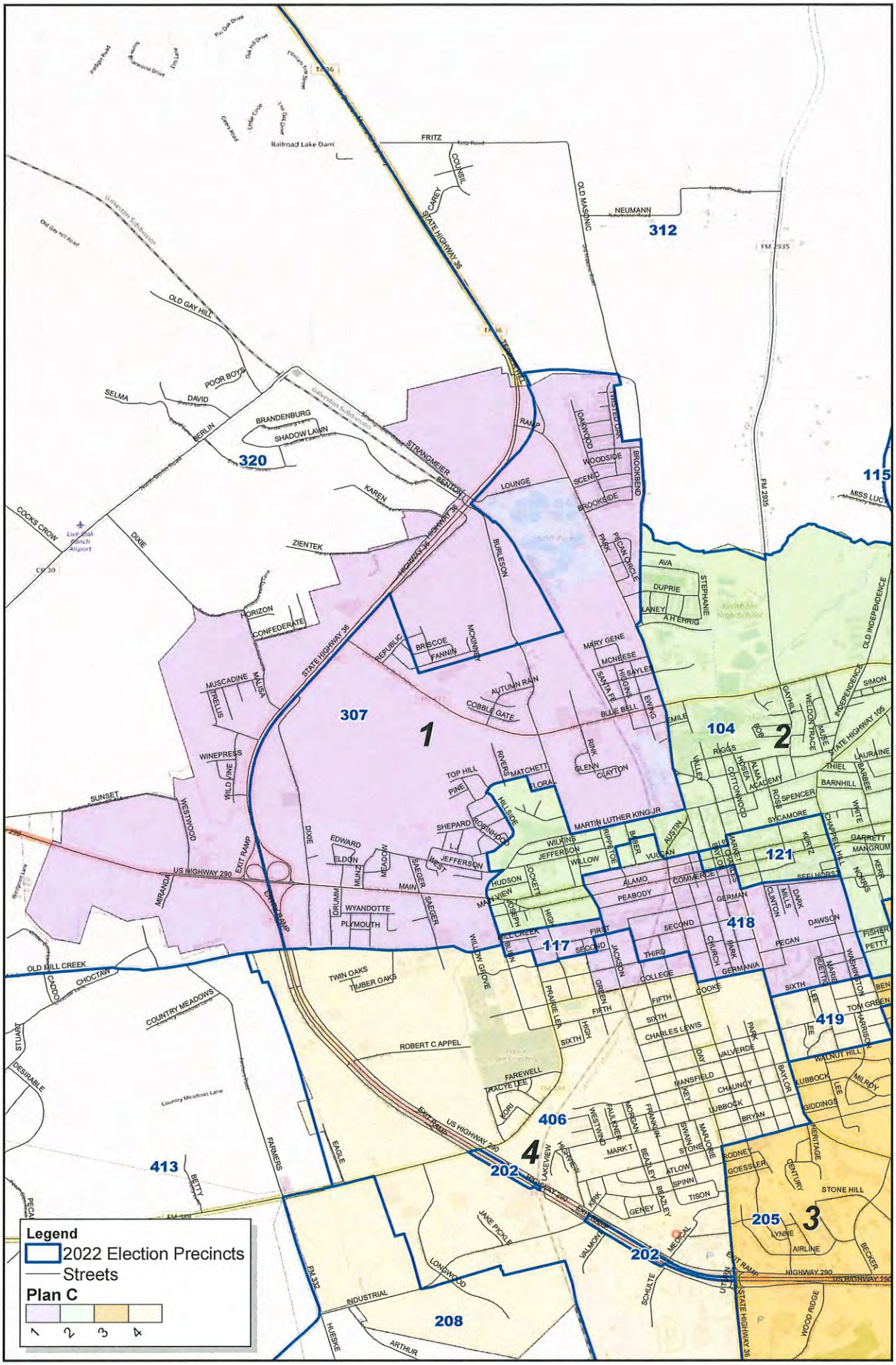
EXHIBIT A

Maps



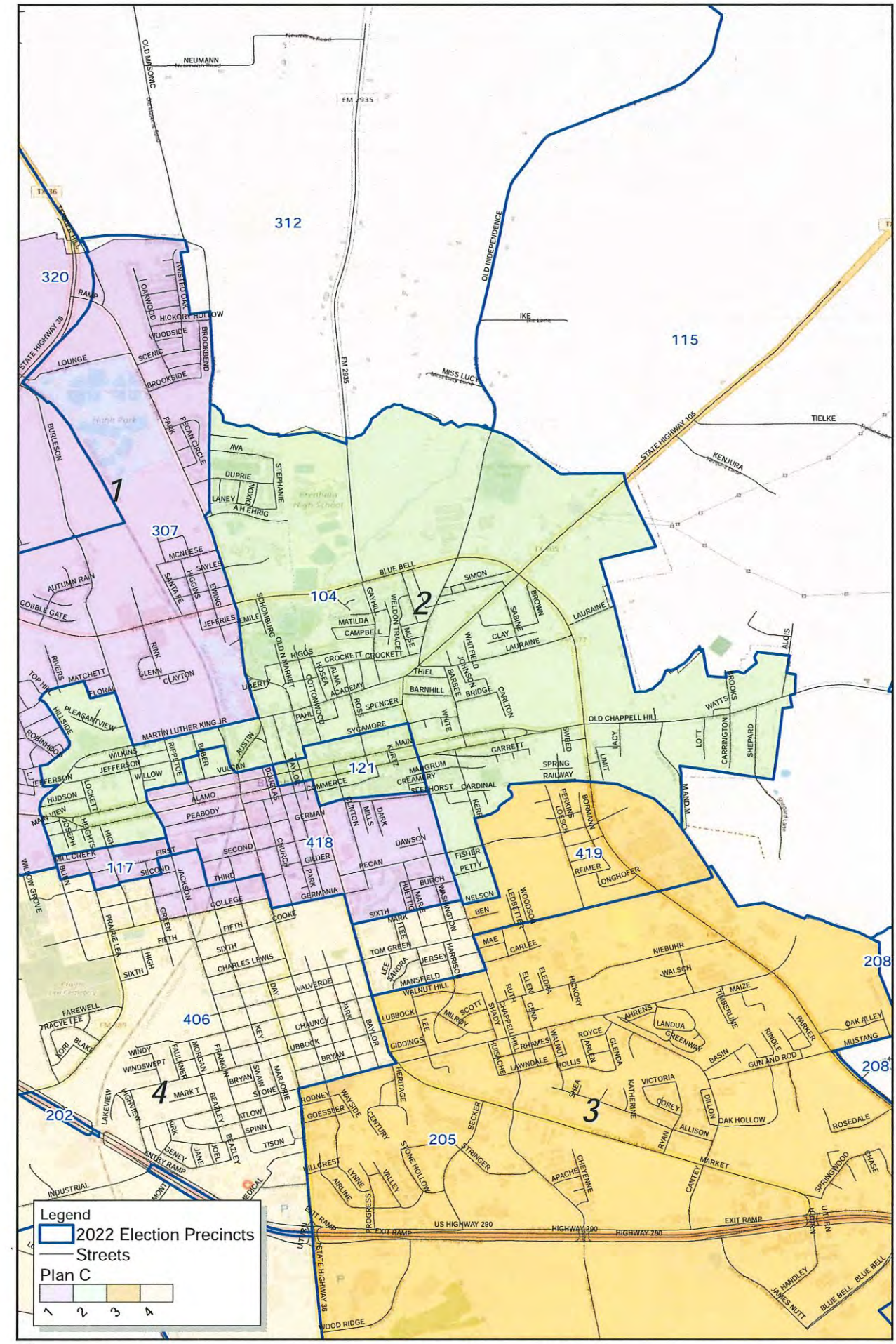
Brenham City Council Wards
Plan C - Adopted June 2, 2022

© 2022 Bickerstaff Heath Delgado Acosta LLP
Data Source: Roads, Water and other features obtained from the 2020 Tiger/line files, U.S. Census Bureau



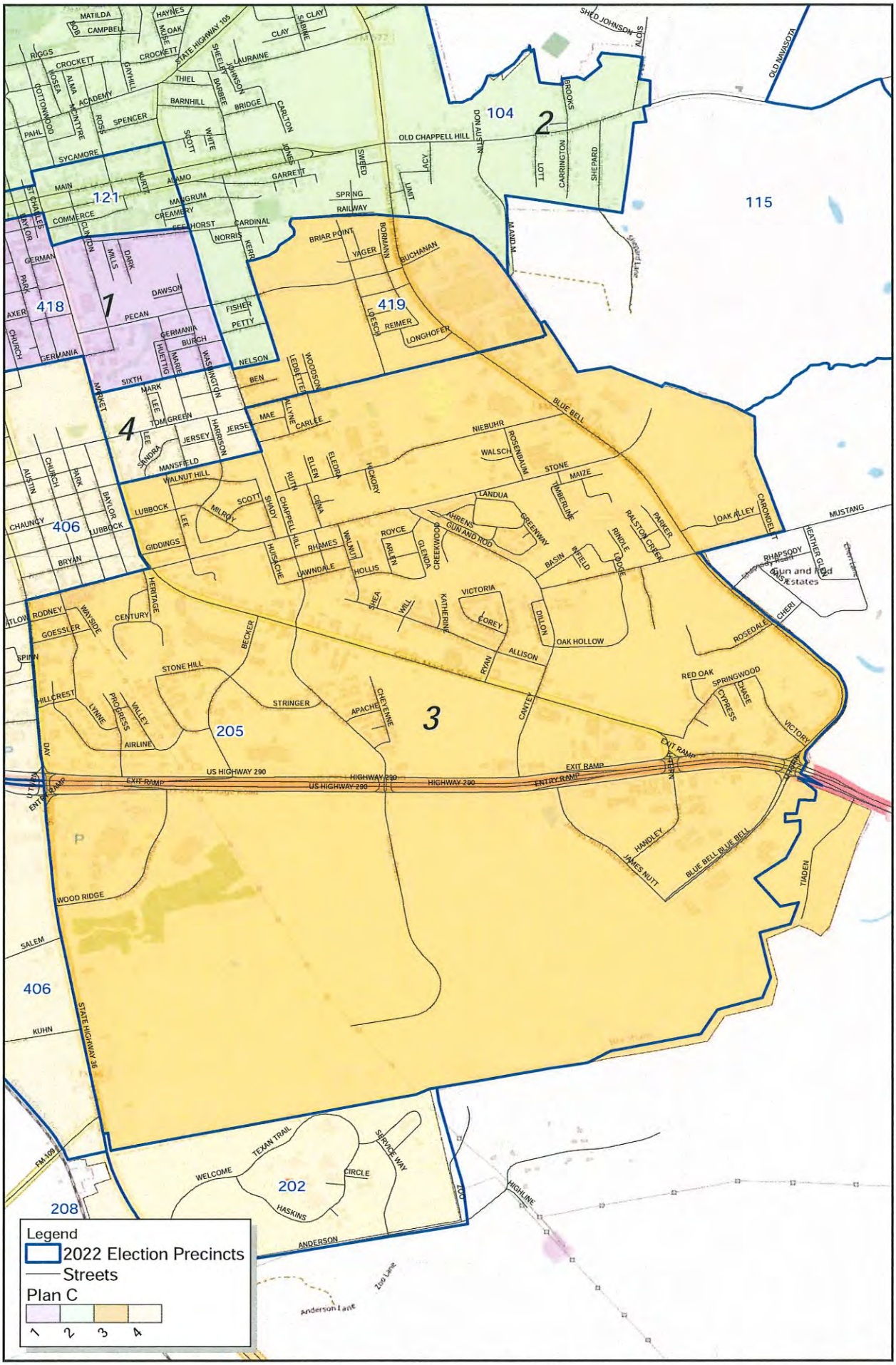
Brenham City Council Wards
Plan C - Adopted June 2, 2022
Ward 1

© 2022 Bickerstaff Heath Delgado Acosta LLP
Data Source: Roads, Water and other features obtained from the 2020 Tiger/line files, U.S. Census Bureau



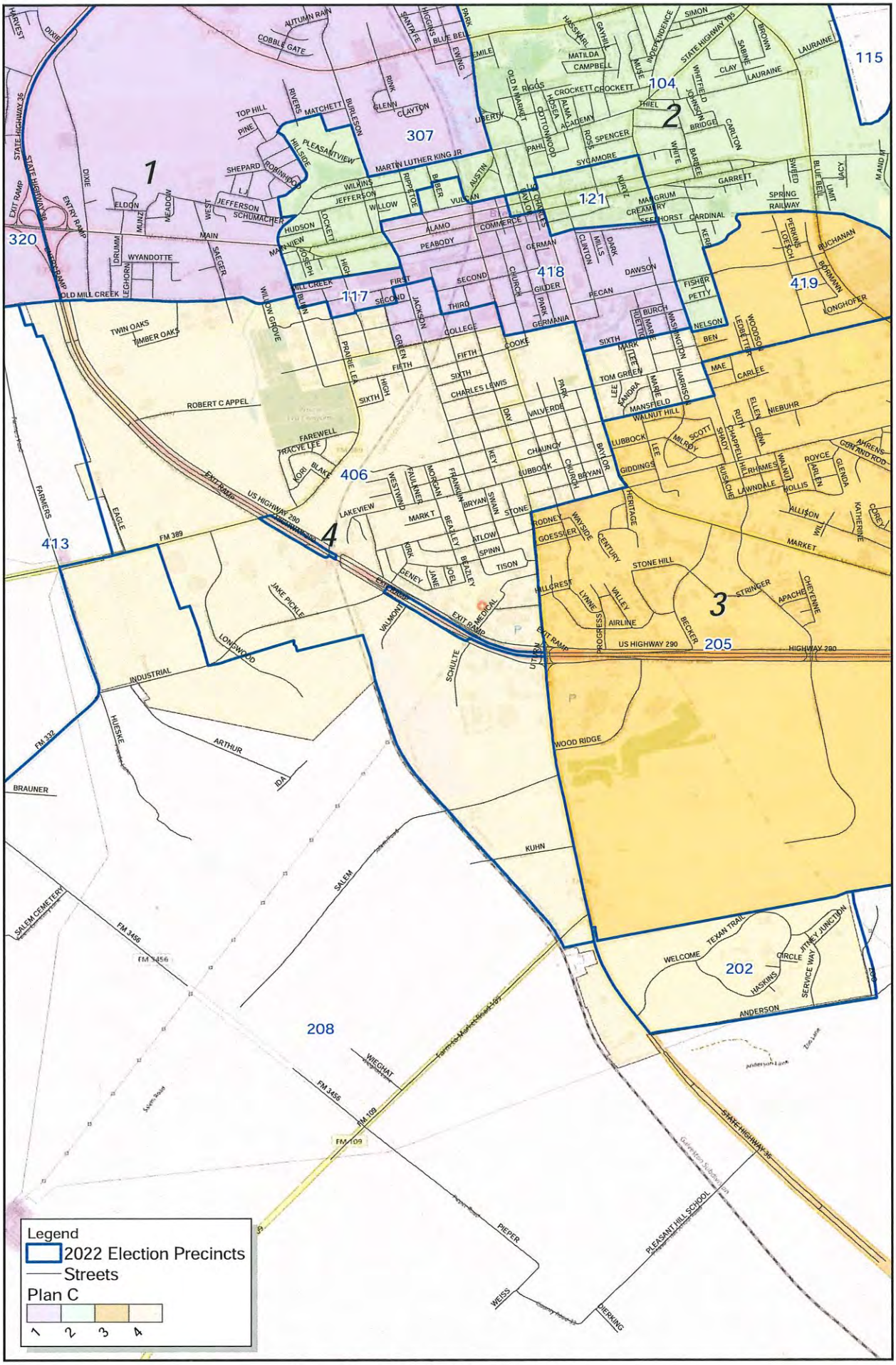
Brenham City Council Wards
Plan C - Adopted June 2, 2022
Ward 2

© 2022 Bickerstaff Heath Delgado Acosta LLP
Data Source: Roads, Water and other features obtained from the 2020 Tiger/line files, U.S. Census Bureau



Brenham City Council Wards
Plan C - Adopted June 2, 2022
Ward 3

© 2022 Bickerstaff Heath Delgado Acosta LLP
Data Source: Roads, Water and other features obtained from the 2020 Tiger/line files, U.S. Census Bureau



Brenham City Council Wards
Plan C - Adopted June 2, 2022
Ward 4

© 2022 Bickerstaff Heath Delgado Acosta LLP
Data Source: Roads, Water and other features obtained from the 2020 Tiger/line files, U.S. Census Bureau

EXHIBIT B

Tables

Brenham City Council Wards Plan C - *Adopted June 2, 2022*

Bickerstaff Heath Delgado Acosta LLP

Demographics Report - Detailed 2020 Census Total Population

Plan Last Edited on: 5/5/2022 11:07:40 AM

Ward	Persons	Ideal Size	Deviation	Hispanic	Hispanic % of Total Population	ANGLO	Non-Hispanic Anglo % of Total Population	Black	Black % of Total Population	Asian	Asian % of Total Population	AM Indian Native	IND / NAT % TOT Pop.	Haw Pac. Isl.	HAW/ PAC % of Tota Pop.	Other	Other % of Total Pop.	Two or More Races	Two or More Races % Tot Pop
1	4,456	4,342	2.62%	967	21.70%	2,362	53.01%	803	18.02%	150	3.37%	15	0.34%	2	0.04%	10	0.22%	149	3.34%
2	4,149	4,342	-4.45%	1,087	26.20%	1,207	29.09%	1,644	39.62%	56	1.35%	10	0.24%	0	0.00%	15	0.36%	130	3.13%
3	4,353	4,342	0.25%	499	11.46%	3,096	71.12%	493	11.33%	136	3.12%	4	0.09%	2	0.05%	15	0.34%	108	2.48%
4	4,411	4,342	1.58%	1,070	24.26%	2,164	49.06%	900	20.40%	92	2.09%	7	0.16%	10	0.23%	22	0.50%	147	3.33%
TOTAL:	17,369			3,623	20.86%	8,829	50.83%	3,840	22.11%	434	2.50%	36	0.21%	14	0.08%	62	0.36%	534	3.07%

Ideal Size: 17369 / 4 = 4342

Total Population: 17,369

Overall Deviation: 7.07%

Some percentages may be subject to rounding errors.

Report Date: 5/5/2022 11:25:28 AM

Based on: 2020 Census Geography, 2020 PL94-171

EDGE 2020 Professional Redistricting

Brenham City Council Wards Plan C - *Adopted June 2, 2022*

Bickerstaff Heath Delgado Acosta LLP

Demographics Report - Summary 2020 Census Total Population

Plan Last Edited on: 5/5/2022 11:07:40 AM

District	Persons	Ideal Size	Deviation	Hispanic % of Total Population	Non-Hispanic White % of Total Population	Non-Hispanic Black % of Total Population	Non-Hispanic Asian % of Total Population	Non-Hispanic Other % of Total Population
1	4,456	4,342	2.62%	21.70%	53.01%	18.02%	3.37%	3.95%
2	4,149	4,342	-4.45%	26.20%	29.09%	39.62%	1.35%	3.74%
3	4,353	4,342	0.25%	11.46%	71.12%	11.33%	3.12%	2.96%
4	4,411	4,342	1.58%	24.26%	49.06%	20.40%	2.09%	4.22%
TOTAL:	17,369			20.86%	50.83%	22.11%	2.50%	3.72%

Ideal Size: 17369 / 4 = 4342

Total Population: 17,369

Overall Deviation: 7.07%

Some percentages may be subject to rounding errors.

Brenham City Council Wards Plan C - *Adopted June 2, 2022*

Demographics Report - Detailed 2020 Census Voting Age Population

Bickerstaff Heath Delgado Acosta LLP

Plan Last Edited on: 5/5/2022 11:07:40 AM

District	Total VAP	Hispanic VAP	% Hispanic VAP	Anglo VAP	% Anglo VAP	Black VAP	% Black VAP	Asian VAP	% Asian VAP	AM IND NATIVE VAP	% AM IND NATIVE VAP	HAW/PAC VAP	% HAW/PAC VAP	Other VAP	% Other VAP	Two or More Races VAP	% Two or more VAP
1	3,405	659	19.35%	1,953	57.36%	584	17.15%	123	3.61%	12	0.35%	2	0.06%	10	0.29%	63	1.85%
2	3,109	697	22.42%	1,015	32.65%	1,277	41.07%	32	1.03%	5	0.16%	0	0.00%	10	0.32%	73	2.35%
3	3,398	292	8.59%	2,594	76.34%	328	9.65%	115	3.38%	4	0.12%	2	0.06%	2	0.06%	61	1.80%
4	3,632	716	19.71%	1,906	52.48%	796	21.92%	75	2.06%	7	0.19%	10	0.28%	20	0.55%	104	2.86%
TOTALS:	13,544	2,364	17.45%	7,468	55.14%	2,985	22.04%	345	2.55%	28	0.21%	14	0.10%	42	0.31%	301	2.22%

* VAP - Voting Age Population

Some percentages may be subject to rounding errors.

Brenham City Council Wards Plan C - *Adopted June 2, 2022*

Bickerstaff Heath Delgado Acosta LLP

Demographics Report - Summary 2020 Census Voting Age Population

Plan Last Edited on: 5/5/2022 11:07:40 AM

District	Total VAP*		Hispanic % of Total VAP	Non-Hispanic Anglo % of Total VAP	Non-Hispanic Black % of Total VAP	Non-Hispanic Asian % of Total VAP	Non-Hispanic Other % of Total VAP
1	3,405		19.35%	57.36%	17.15%	3.61%	2.56%
2	3,109		22.42%	32.65%	41.07%	1.03%	2.83%
3	3,398		8.59%	76.34%	9.65%	3.38%	2.03%
4	3,632		19.71%	52.48%	21.92%	2.06%	3.88%
	13,544		17.45%	55.14%	22.04%	2.55%	2.84%

* VAP - Voting Age Population

Some percentages may be subject to rounding errors.

Regular City Council
AGENDA ITEM 5-C.

Agenda Item: **Approve a Noise Variance for The City of Brenham for the Summer Sip and Art Walk to be Held on June 11, 2022 in Downtown Brenham from 3:00 P.M. to 7:00 P.M.**

Meeting Type: Regular Meeting-June 02, 2022

Department: Parks and Recreation

Staff Contact: Crystal Locke

SUMMARY STATEMENT:

Main Street Brenham is hosting the annual Summer Sip and Art Walk at the Courthouse square lawn in Downtown Brenham on Saturday, June 11, 2022, from 3-7 p.m. Main Street is requesting music to be played over a portable PA system at the gazebo; therefore, a noise variance is required for this event.

ATTACHMENTS:

(1) Noise Variance Request - Summer Sip and Art Walk
(2) Summer Sip and Art Walk Rack Card

RECOMMENDED ACTION:

Approve a noise variance for the City of Brenham for the Summer Sip and Art Walk to be held on June 11, 2022 in downtown Brenham from 3:00 p.m. to 7:00 p.m.

Noise Variance Request

For: Summer Sip and Art Walk

Name of sponsoring organization: Main Street Brenham

Your Contact Information

Name: Nancy Joiner

Phone: 979-337-7586 **Email:** njoiner@cityofbrenham.org

Event Details

Event Name: Summer Sip and Art Walk

Purpose: Main Street Fundraiser

Location: Courthouse Square Lawn

Date: 2022-06-11

Time: 3 pm to 7 pm

Setup From: 12:30 pm**To:** 2 pm

Clean up From: 6 pm**To:** 8 pm

Types of activities planned and any additional information specific to this event: Recorded music to be played on a speaker system at the Gazebo

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

Will you use sound amplification equipment? Yes

Cleanup Provisions: We will pick up any trash around the Courthouse. Also, we will have extra trash cans placed on Alamo Street. We will take all of our things with us but will leave items for Maintenance per work order to pick up on Monday by the Gazebo.

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:

SUMMER SIP and Art Walks

JUNE 11, 2022 3-7 pm

Enjoy Signature Drinks & Art Walk in Historic Downtown Brenham

$35

Don't miss the FUN & EXCITEMENT! View a variety of art while sipping on delicious drinks at each merchant.

ARTWORK ON DISPLAY TO INCLUDE:

WATERCOLOR • SCULPTURE
ACRYLIC PAINTING • PHOTOGRAPHY • POP ART
POTTERY • AND MORE!

Reserve your tickets & continue the fun at THE BARNHILL CENTER featuring entertainment by Mandy Barnett

JUNE 11, 2022 3-7 pm

Enjoy Signature Drinks & Art Walk in Historic Downtown Brenham

$35

Purchase tickets from any of the great participating merchants listed below!

- Ballad of the Bird Dog
- Brenham Floral Company
- Brenham Heritage Museum
- Brown Water Cigar Bar
- BT Longhorn Saloon & Steakhouse
- Floyd's Wine Lounge
- Hermann Emporium
- Hermann Furniture
- HSF Biergarten
- Main Street Uncorked
- Mimi's Brenham
- Organic Hemp Botanicals
- posey roe
- Puppy Dawgs & Cat Tails
- Scrubs N Stuff Boutique
- Tegg Studio
- The Book Nook
- The Canyon Chick
- The Pomegranate
- The Revival Mercantile
- The Southern Fox
- The Studio by Doug Peck
- The Tilted Windmill
- The Wash Wag
- Timeless Designs
- Trés Chic Boutique
- Tribal Trends
- Wine Bar Brenham
- Woman's Cave
- YellowTruck Market

Order glasses online for $40 at: DowntownBrenham.com/SummerSip
Tickets may be available on the day of event for $45.

A big thank you to our generous sponsors:

Deep in the Heart FARMS

Hermann Furniture SINCE 1876

Hurry, limited number of glasses available!
Glasses purchased online will be available for pick up at the Gazebo on the Courthouse Square the day of the event.

Regular City Council
AGENDA ITEM 5-D.

Agenda Item: **Approve a Noise Variance for the City of Brenham for Hot Nights, Cool Tunes to be Held on July 9, 16, 23, and 30, 2022 at the Courthouse Square from 7:00 P.M. to 10:00 P.M.**

Meeting Type: Regular Meeting-June 02, 2022

Department: Parks and Recreation

Staff Contact: Crystal Locke

SUMMARY STATEMENT:

The annual Hot Nights, Cool Tunes concert series is scheduled to take place in downtown Brenham on July 9, 16, 23, & 30, 2022. The concerts begin at 7:00 P.M., but street closures and set-up begin at 1:30 P.M. As in previous years, it will feature live music, classic cars, and food vendors. Due to the use of amplified sound equipment, a noise variance is required.

ATTACHMENTS:

(1) Noise Variance Request - Hot Nights, Cool Tunes
(2) Hot Nights, Cool Tunes Rack Card

RECOMMENDED ACTION:

Approve a noise variance for the City of Brenham for Hot Nights, Cool Tunes to be held July 9, 16, 23, and 30, 2022 at the Courthouse Square from 7:00 p.m. to 10:00 p.m.

Noise Variance Request

For: Hot Nights, Cool Tunes

Name of sponsoring organization: City of Brenham

Your Contact Information

Name: Crystal Locke

Phone: 979-337-7254 **Email:** clocke@cityofbrenham.org

Event Details

Event Name: Hot Nights, Cool Tunes

Purpose: Annual community event promoting Downtown Brenham.

Location: Downtown Brenham - Courthouse Square

Date: July 9, 16, 23, & 30, 2022

Time: 7 pm

Setup From: 1:30 pm**To:** 7 pm

Clean up From: 10 pm**To:** Midnight or until the stage is removed.

Types of activities planned and any additional information specific to this event: Live music, classic car cruise-in, food vendors

Describe activities at this event that require the variance to the noise ordinance: Bands/musical instruments

Will you use sound amplification equipment? Yes

Cleanup Provisions: City staff will check restrooms, pick up trash, and remove and replace trash bags throughout the 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:

2022

HOT NIGHTS Cool Tunes

CONCERT SERIES

BRENHAM

7:00pm Saturday
July 9, 16, 23, 30

Bring your lawn chairs to Downtown Brenham's Courthouse Square for a night of FAMILY FUN!

CLASSIC CAR CRUISE-IN

by Stray Katz Car Club
stray_katz_tx@yahoo.com

City of BRENHAM

KTEX 106.1

DowntownBrenham.com/HotNights
Facebook.com/DowntownBrenham

JULY 9 - THE FAB 5

Voted Best Cover/Tribute Band by Houston Press 2011-2015, they feature the music of the Beatles and other groups from the British Invasion of the '60s & '70s.

BRENHAM NATIONAL BANK

Budweiser
Mike Hopkins Distributing
Brazos Valley Brewing Company

Germania INSURANCE
Dahmann & Associates, LLC

SEIDEL SCHROEDER

JULY 16 - ASHMORE

100% genuine rock 'n roll band out of Dallas that is coming to rock Downtown Brenham!

BRIANNAS
Fine Salad Dressings

TIPPIT DENTAL GROUP

UPCHURCH & YATES LLP
ATTORNEYS AT LAW

ACU of TEXAS
ASSOCIATED CREDIT UNION

JULY 23 - BROWN SUGAR BAND

They will have everyone up on their feet, movin' and shakin' as they play Old School Rock' n Roll, Motown, R&B, and Today's Hits.

Citizens State Bank

Woodson Lumber Company 1913 100 2013

LEGACY

Bluebonnet Electric

JULY 30 - THE SPICOLIS

Houston's classic MTV band tribute band playing your favorite songs from the '80s….think Breakfast Club!

STRAND ASSOCIATES

Main Street Inn Salado, Texas

brazos valley schools CREDIT UNION
strength in numbers.

big
premier bvr stepandgo brand it

Regular City Council
AGENDA ITEM 5-E.

Agenda Item: **Approve a Noise Variance Request from the Washington County Historical Juneteenth Association for the Juneteenth Freedom of Slavery Celebration on June 17, 2022 from 5:00 P.M. to 10:00 P.M. and June 18, 2022 from 10:00 A.M. to 10:00 P.M. at Fireman's Park**

Meeting Type: Regular Meeting-June 02, 2022

Department: Parks and Recreation

Staff Contact: Crystal Locke

SUMMARY STATEMENT:

The Washington County Historical Juneteenth Association will be holding its annual Juneteenth Celebration in Fireman's Park on Friday, June 17, 2022, from 5-10 p.m., and Saturday, June 18, 2022, from 10 a.m. to 10 p.m. The event will feature live music and a DJ; therefore, a noise variance is required.

This event has been successfully held for many years, with the organizers coordinating closely with staff regarding safety and logistics. Staff recommend approval of this noise variance request.

ATTACHMENTS:

(1) Noise Variance - Washington County Historical Juneteenth

RECOMMENDED ACTION:

Approve a noise variance request from the Washington County Historical Juneteenth Association for the Juneteenth Freedom of Slavery Celebration on June 17, 2022 from 5:00 P.M. to 10:00 P.M. and June 18, 2022 from 10:00 A.M. to 10:00 P.M. at Fireman's Park

Noise Variance Request

For: Juneteenth

Name of sponsoring organization: Washington County Historical Juneteenth

Your Contact Information

Name: Leticia Woodard

Phone: 9794466433 **Email:** Desmondmurphy95@gmail.com

Event Details

Event Name: Juneteenth

Purpose: Freedom of Slavery Celebration

Location: Fireman's Park

Date: June 17-18, 2022

Time: Friday, June 17 from 5-10 pm; Saturday, June 18 from 10 am-10 pm

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

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

Types of activities planned and any additional information specific to this event: Live band, music, food vendors

Describe activities at this event that require the variance to the noise ordinance: Musical instruments, bands

Will you use sound amplification equipment? Yes

Cleanup Provisions: Cleanup plans is to pick up all trash at the parks and make sure nothing is left on grounds

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:

Regular City Council
AGENDA ITEM 5-F.

Agenda Item: **Approve a Noise Variance from Melvin Preston for the Palestine Family Reunion to be Held on June 18, 2022 at Henderson Park from 12:00 P.M. to 10:00 P.M.**

Meeting Type: Regular Meeting-June 02, 2022

Department: Parks and Recreation

Staff Contact: Crystal Locke

SUMMARY STATEMENT:

Melvin Preston is planning a family reunion on Saturday, June 18, 2022, at Henderson Park from 12:00 p.m. to 10:00 p.m. Activities planned include food, music, board games, and a talent show. Due to the use of amplified sound, a noise variance is required.

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

ATTACHMENTS:

(1) Noise Variance Request - Palestine Family Reunion

RECOMMENDED ACTION:

Approve a noise variance from Melvin Preston for the Palestine Family Reunion to be held on June 18, 2022, at Henderson Park from 12:00 P.M. to 10:00 P.M.

Noise Variance Request

For:Palestine Family Reunion

Name of sponsoring organization: N/A

Your Contact Information

Name: Melvin Preston

Phone: 713-907-3706 **Email:** melvinpreston@aol.com

Event Details

Event Name: Palestine Family Reunion

Purpose: Family Gathering & Fellowship

Location: Henderson Park-

Date: 6/18/2022

Time: 12:00 pm- 10:00 pm

Setup From: 12:00 PM **To:** 10:00 PM

Clean up From: 9:00 PM **To:** 10:00 PM

Types of activities planned and any additional information specific to this event: Food, Music, Board Games, Talent Show

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

Will you use sound amplification equipment? Yes

Cleanup Provisions: We Have a Clean-Up Committee

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:

Regular City Council
AGENDA ITEM 5-G.

Agenda Item: **Approve a Noise Variance from Margaret Moore for a Birthday Party to be Held on June 18, 2022 at 701 Parkview Street from 12:00 P.M. to 11:00 P.M.**

Meeting Type: Regular Meeting-June 02, 2022

Department: Parks and Recreation

Staff Contact: Crystal Locke

SUMMARY STATEMENT:

Margaret Moore will be having her 70th Birthday Party on June 18, 2022 at her residence from 12:00 p.m. to 11:00 p.m. There will be a DJ who will use amplification equipment, therefore a noise variance is required. Ms. Moore has had this annual event for many years and it has never generated complaints from neighbors or other issues. Staff recommend approval of this request.

ATTACHMENTS:

(1) Noise Variance Request - Margaret Moore

RECOMMENDED ACTION:

Approve a noise variance from Margaret Moore for a birthday party to be held on June 18, 2022 at 701 Parkview Street from 12:00 P.M. to 11:00 P.M. (Crystal)

NOISE VARIANCE REQUEST

Application Fee $10.00

1. Name of sponsoring organization: Margaret Moore

2. Name and address of individual making application on behalf of sponsoring organization:
~~701 Parkview apt-19-B~~ MM
Margaret Moore

3. Purpose of the Event: Birthday Party

4. Location of Event: 701 Parkview apt-19-B

5. Date of the event: June 18th 2022

6. Time of Event: Noon- 11pm

7. Event Set-up: From: June 17, 2022 To: June 18, 2022
Event Clean-up: From: We clean up To:

8. You are required to describe the following:

a) Types of Activities Planned and any additional information specific to this event:
Just a Birthday party with Music

bl Bands/Musical Instruments:

c) Sound amplification equipment: Yes Some

d) Cleanup provisions:

Margaret Moore
Name of Applicant (Printed or Typed)

Date: 5-26-2022

Margaret Moore
Applicant or Authorized Person's Signature

Phone: 979-347-7769

Have you ever been found guilty of a criminal offense involving crimes against property, moral turpitude, and/or a felony by any Court? ___ Yes ~~X~~ No. If "Yes", please identify the offense, State of conviction and penalty imposed (attach additional sheets if necessa1-y):

Paid 5/26/22
$10 Cleyssa Sanchez

Regular City Council
AGENDA ITEM 5-H.

Agenda Item: **Approve a Noise Variance from Ballad of the Bird Dog for a Grand Opening Event to be Held at 100 E. Alamo Street on June 25, 2022 from 9:00 A.M. to 6:00 P.M.**

Meeting Type: Regular Meeting-June 02, 2022

Department: Parks and Recreation

Staff Contact: Crystal Locke

SUMMARY STATEMENT:

Ballad of the Bird Dog is requesting a Noise Variance for a Grand Opening event at 100 E. Alamo Street on Saturday, June 25, 2022, from 9:00 a.m. to 6:00 p.m. The event will feature live music or a DJ; therefore, a noise variance is required. The applicant has requested the closure of Park Street between Commerce Street and Alamo Street to host activities such as clothing and jewelry vendors, food vendors, alcohol vendors, music, and a pop-up tent for photoshoots.

This is a new event. After review, Public Safety and Streets staff have approved a related special event permit application. Staff recommend approval of this application for a noise variance.

ATTACHMENTS:

(1) Noise Variance Request - Ballad of the Bird Dog

RECOMMENDED ACTION:

Approve a noise variance from Ballad of the Bird Dog for a grand opening event to be held at 100 E. Alamo Street on June 25, 2022 from 9:00 a.m. to 6:00 p.m.

Noise Variance Request

For: Grand Opening

Name of sponsoring organization: Ballad of the Bird Dog

Your Contact Information

Name: Kayla Stetson

Phone: 2817611733 **Email:** kayla@balladofthebirddog.com

Event Details

Event Name: Grand Opening

Purpose: Grand Opening

Location: 100 E Alamo

Date: 2022-06-25 *From June 18 to June 25 per conversation with Kayla from Ballad of the Bird Dog on April 11 - CL

Time: 9 am to 6 pm

Setup From: 7:30 am**To:** 9 am

Clean up From: 6 pm**To:** 7 pm

Types of activities planned and any additional information specific to this event: clothing/jewelry vendors, food vendors, alcohol vendors, music, pop up tent for photoshoots

Describe activities at this event that require the variance to the noise ordinance: band or dj

Will you use sound amplification equipment? Yes

Cleanup Provisions: The whole staff at Ballad of the Bird Dog make sure to clean up as well as the vendors will each be responsible for cleaning up their area

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:

Regular City Council
AGENDA ITEM 6.

Agenda Item: **Public Hearing, Discussion and Possible Action on an Ordinance on Its First Reading Amending Appendix A - 'Zoning' of the Code of Ordinances of the City of Brenham 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 1.0 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)**

Meeting Type: Regular Meeting-June 02, 2022

Department: Development Services

Staff Contact: Shauna Laauwe, AICP

SUMMARY STATEMENT:

The subject tract is a 1.00-acre property located on the south side of FM 109 and approximately 425 feet west of State Highway 36 South. The tract is zoned as a R-3, Manufactured Home Residential Use District and has three (3) manufactured home addresses assigned, 151, 161, and 171 FM 109. The subject property currently consists of two (2) mobile homes in disrepair and several accessory structures. The subject property abuts the city limits along the west and south property lines. The applicant, Glenwood Vierus Jr., is in the process of purchasing the property and would like to redevelop the site with warehouse storage and office use. Thus, the applicant is requesting that the 1.00-acre tract currently zoned R-3 be rezoned to B-2, Commercial Research and Technology Use District.

The future land use map portion of the Historic Past, Bold Future: Plan 2040 Comprehensive Plan suggests the subject property may be appropriate for commercial uses.

The proposed zoning change would allow for the construction of a mixture of land uses to include retail, office, and commercial uses on the approximate 1.00-acre subject tract. The adjacent property to the east is zoned R-3, while the property to the north, across FM 109 is zoned R-1, Single-Family Residential and the properties to the northeast and southeast, along State Highway 36 South, are zoned B-2 District. The requested zoning and associated land uses are appropriate for this location given adjacent zoning designations, existing development in the vicinity, and conformance with the City's adopted future land use map.

If the rezoning is approved, any proposed development of the properties will undergo a planning permit process to ensure that all zoning, building, and fire codes are met.

The Planning and Zoning Commission held a public hearing on this item at the Monday, May 23, 2022, meeting and unanimously recommended approval of the zoning request.

ATTACHMENTS:

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

RECOMMENDED ACTION:

Approve an ordinance on its first reading amending Appendix A - 'Zoning' of the Code of Ordinances of the City of Brenham 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 1.0 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).

ORDINANCE NO. O-22-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS, AMENDING APPENDIX A - "ZONING" OF THE CODE OF ORDINANCES, AND THE OFFICIAL ZONING MAP OF THE CITY OF BRENHAM, BY CHANGING THE ZONING DISTRICT CLASSIFICATION FROM MANUFACTURED HOME RESIDENTIAL USE DISTRICT (R-3) TO A COMMERCIAL, RESEARCH, AND TECHNOLOGY USE DISTRICT (B-2) ON A 1.00 ACRE TRACT OF LAND AS FURTHER DESCRIBED IN THIS ORDINANCE.

WHEREAS, Karen L. Graves and Gaynelle Kay Tulp, property owners of the 1.00 acres of land generally located on south side of FM 109 and approximately 425 feet west of State Highway 36 South and addressed as 151 FM 109, and being further described as Tract 81 of the John Carrington Survey, A-120, in Brenham, Washington County, Texas, (the "Property"), have requested that the Property be rezoned; and

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

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

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

WHEREAS, this amendment was recommended for approval by the City of Brenham Planning and Zoning Commission in its final report during its regular meeting on May 23, 2022; and

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

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

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

SECTION 1. That Appendix A - "Zoning" of the Code of Ordinances of the City of Brenham, Texas, and the Official Zoning Map of the City of Brenham are hereby amended by changing the zoning district classification from a Manufactured Home Residential District (R-3) to Commercial, Research, and Technology Use District (B-2) on approximately 1.00 acres of land addressed as 151 FM 109, and further described as Tract 81 of the John Carrington Survey, A-120, in Brenham, Washington County, Texas, said area of land being further described and depicted on Exhibit "A" and Exhibit "B" attached hereto and incorporated herein for all pertinent purposes.

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

PASSED and APPROVED on its first reading this the__day of June 2022.

PASSED and APPROVED on its second reading this the ___day of June 2022.

_____
Milton Y. Tate, Jr.
Mayor

ATTEST:

_____
Jeana Bellinger, TRMC, CMC
City Secretary

Exhibit "A"

BEGINNING at an iron pin in the South line of F.M. Highway #109 at its intersection with the East line of the G.C. & S.F. Railroad;

THENCE with said highway line N. 44 deg. 15' E. 217.87 ft. to an iron pin;

THENCE S. 17 deg. 00' 50" E. 290.80 ft. to an iron pin;

THENCE S. 72 deg. 59' 10" W. 169.67 ft. to an iron pin in the East line of the Railroad Right of Way;

THENCE with said railroad N. 23 deg. 34' W. 187.28 ft. to the point or place of beginning, containing 1.000 acre of land.

As surveyed by Donald R. Muzzy, Registered Public Surveyor, on October 24, 1973.

Exhibit "B"

151 FM 109
Rezoning Request R-3 to B-2

City of BRENHAM

Legend

- County Parcels
- City Limits
- City Parcels

1 inch = 125 feet

City of Brenham
Planning and Zoning Commission
Staff Report
May 23, 2022

CASE NUMBER P-22-014
ZONE CHANGE REQUEST – 151 FM 109

STAFF CONTACT:	Shauna Laauwe, AICP, City Planner
OWNERS:	Karen L. Graves and Gaynelle Kay Tulp
APPLICANTS:	Glenwood Vierus, Jr.
ADDRESS/LOCATION:	151 FM 109 (Exhibit A)
LEGAL DESCRIPTION:	Tract 81 of the John Carrington Survey, A-120
LOT AREA:	Approximately 1.00 acre
ZONING DISTRICT/USE:	Manufactured Home Residential Use District (R-3) / Manufactured Home residences (3). (Exhibit B)
FUTURE LAND USE:	Commercial
REQUEST:	A request to change the zoning classification from a Manufactured Home Residential Use District (R-3) to a Commercial Research and Technology Use District (B-2) (Exhibit C)

BACKGROUND:

The subject tract is a 1.00-acre property located on the south side of FM 109 and approximately 425 feet west of State Highway 36S. The tract is zoned as a R-3, Manufactured Home Residential Use District and has three (3) manufactured home addresses assigned, 151, 161, and 171 FM 109. The subject property currently consists of two (2) mobile homes in disrepair and several accessory structures. The subject property abuts the city limits along the west and south property lines. The adjacent property to the east is also zoned R-3, while the property to the north, across FM 109 is zoned R-1, Single-Family Residential and the property to the northeast is zoned B-2 District. The applicant, Glenwood Vierus Jr., is in the process of purchasing the property and would like to redevelop the site with warehouse storage and office use. Thus, the applicant is requesting that the 1.00-acre tract currently zoned R-3 be rezoned to B-2, Commercial Research and Technology Use District.

Map 1

ANALYSIS OF CITY OF BRENHAM ZONING POLICIES:

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

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

Map 2

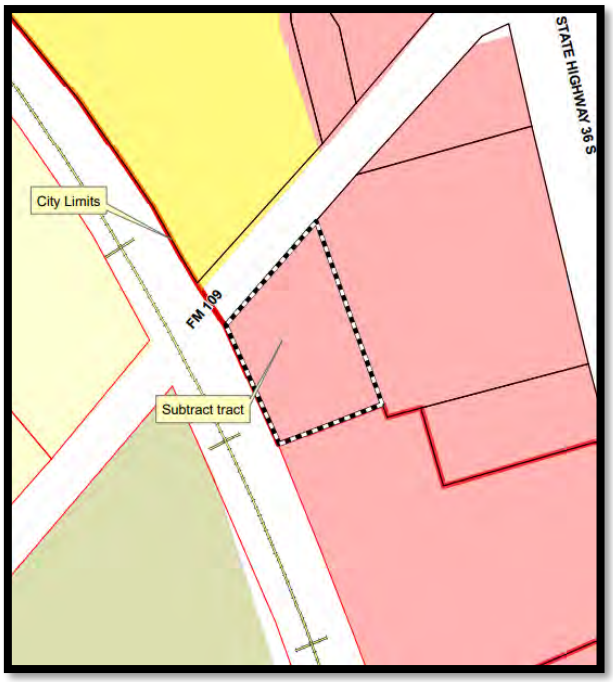
The subject property is a 1-acre tract currently addressed for three (3) manufactured home addresses as 151, 161, and 171 FM 109 and located on the south side of FM 109 and approximately 425 feet west of State Highway 36S (SH 36). The subject property abuts the city limit line to the west and south. The subject property currently consists of two (2) nonconforming mobile homes that are in disrepair and several small structures. The adjacent property to the east is also zoned R-3 and developed as Morris Mobile Home Park with 31 homesites. The property to the north, across FM 109 is a large 30-acre tract that comprises of two zoning districts, R-1 Single-Family and B-2, Research and Technology. Most of the tract is zoned R-1 on the west portion and is primarily vacant with a barn and cell tower, while the remaining east portion is undeveloped B-2 land. Additional B-2 zoned property is located to the southeast along State Highway 36 S and developed with a legally nonconforming residence. To the northeast, at the intersection of SH 36 and FM 109, the area is zoned B-2 and developed as a Phillips 66 gas station on the south side of FM 109 and a legally nonconforming mobile home park on the north side of the intersection.

The applicant wishes to rezone the approximate one-acre subject tract to be B-2, with proposed plans to remove the existing mobile homes and buildings to redevelop the site as a warehouse storage facility and office. Allowing the proposed rezoning request would be in keeping with the development pattern in the general vicinity.

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

As shown in Map 3, the future land use map portion of the Comprehensive Plan, Historic Past, Bold Future: Plan 2040 suggests the subject property may be appropriate for commercial uses. The Comprehensive Plan includes land use policies to help guide land use decisions. Specifically, the Plan recommends that the City consider permitting commercial and retail uses along highly traveled roadways such as State Highway 36 to the east. If the requested zone change were approved, commercial uses such as retail, office, and the proposed warehouse would be permitted. In its current configuration, the subject property does not have the minimum lot size of two (2) acres that is required for multifamily housing. Staff believes that the proposed request is aligned with the goals and land use polices established in the Comprehensive Plan.

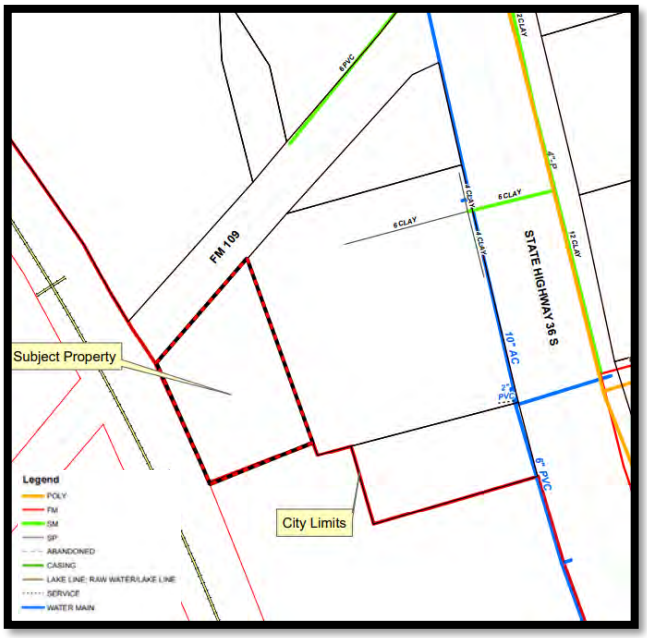
Map 3- *Future Land Use Map*



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

The subject property is currently developed with abandoned mobile homes and accessory structures and is located on the edge of the city limits, with the city limit line coinciding with the west and south property lines. The subject property was annexed in 2006 and is currently served by a septic system and water well. The nearest city utilities include a sewer line that is approximately 150 feet to the east on the north side of FM 109, with the nearest water line being located approximately 415 feet to the east along Highway 36. The existing septic tank and water well may be adequate for the proposed warehouse and office use, with the approval of the proposed rezoning. The City will work with the property owner on development needs.

Map 4- *Utility Map*



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

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

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

Property owners within 200 feet of the project site were mailed notifications of this request on May 12, 2022. The Notice of Public Hearing was published in the *Brenham Banner* on May 12, 2022. Any public comments submitted to staff will be provided in the Planning and Zoning Commission and City Council packets or during the public hearing.

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

If approved, the property will be required to adhere to minimum building setbacks and maximum impervious coverage requirements for property zoned B-2, Commercial Research and Technology. Staff finds that the requirements will ensure that adequate open spaces is preserved on the subject property.

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

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

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

Rezoning the subject property to B-2 will allow the subject property to develop in accordance with the Comprehensive plan and properties within the vicinity. The subject one-acre tract of land is less than 500 feet from SH 36 that is an arterial roadway which is capable of handling traffic associated with uses allowed in the B-2 district. Surrounding property to the east and southeast along SH 36 is zoned B-2 and developed with a Phillips 66 gas station, a used car sales lot, and several nonconforming single-family homes and manufactured homes. With any future development, the applicant will be required to adhere to minimum buffer yard requirements along the east property line that is shared with the Morris Mobile Home Park. Buffer yard requirements are established to preserve existing neighborhoods and ensure adjacent property develops in a manner compatible to nearby land uses.

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

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

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

Staff is unable to determine any destabilizing effects on the neighboring properties should this rezoning request be approved. Any future development will be required to adhere to the bufferyard and landscaping requirements along the east property line that is shared with the Morris Mobile Home Park. The proposed B-2 zoning for the subject property is aligned with the Future Land Use Map and properties in the vicinity of this tract.

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

If approved, the proposed rezoning will allow construction of a mixture of land uses, including retail, office, and commercial uses. The development of the subject tract will bring the primarily vacant R-3 zoned property to a viable commercial use that is in line with the vision of the Future Land Use Plan. Vacant commercial property is in the vicinity of the subject tract to the east and south. In addition, to the east along SH 36 is a corridor of commercially zoned properties with B-2, Commercial, Research and Technology District along the west portion of SH 36 and B-1, Local Business/Residential Mixed Use District zoned properties along the east side. Staff believes that the proposed zoning change, if approved, will not negatively affect vacant land classified for commercial uses.

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

The property is primarily vacant but was once developed with three (3) manufactured homes. Two manufactured homes remain and are in disrepair and unhabitable. Should the rezoning be approved, the applicant has stated his intention to remove the manufactured homes and redevelop the property to a commercial office and warehouse use. As such, the proposed rezoning would not result in any nonconforming uses on the subject property.

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

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

STAFF RECOMMENDATION:

Based on the evidence and findings above, Staff recommends **approval** of the proposed rezoning of the 1.00-acre tract generally located at 151 FM 109 to the Commercial Research and Technology zoning use district (B-2) for the subject tract.

EXHIBITS:

A. Aerial Map
B. Zoning Map
C. Future Land Use Map
D. Cover Letter
E. Site photos

EXHIBIT "A"
AERIAL MAP

151 FM 109
Rezoning Request R-3 to B-2

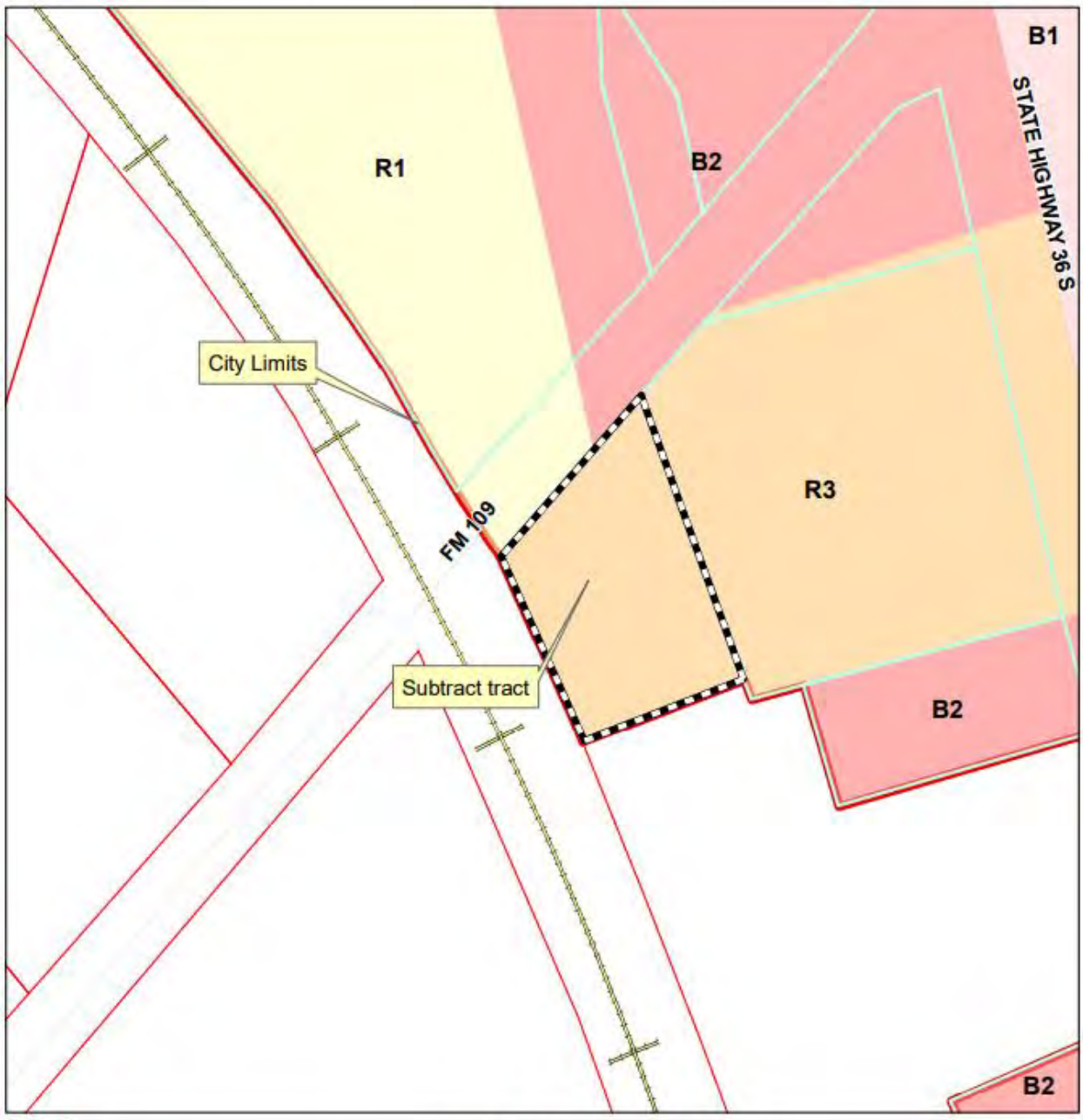
City of BRENHAM

Legend

- County Parcels
- City Limits
- City Parcels

1 inch = 125 feet

EXHIBIT "B"
ZONING MAP



Legend

- City Parcels
- County Parcels
- B1 Local Business Mixed
- B2 Commercial Research and Technology
- R1 Residential Single Family
- R3 Manufactured Home Residential
- City Limits

151 FM 109
Rezoning Request R-3 to B-2

City of BRENHAM

1 inch = 125 feet

EXHIBIT "C"
FUTURE LAND USE MAP

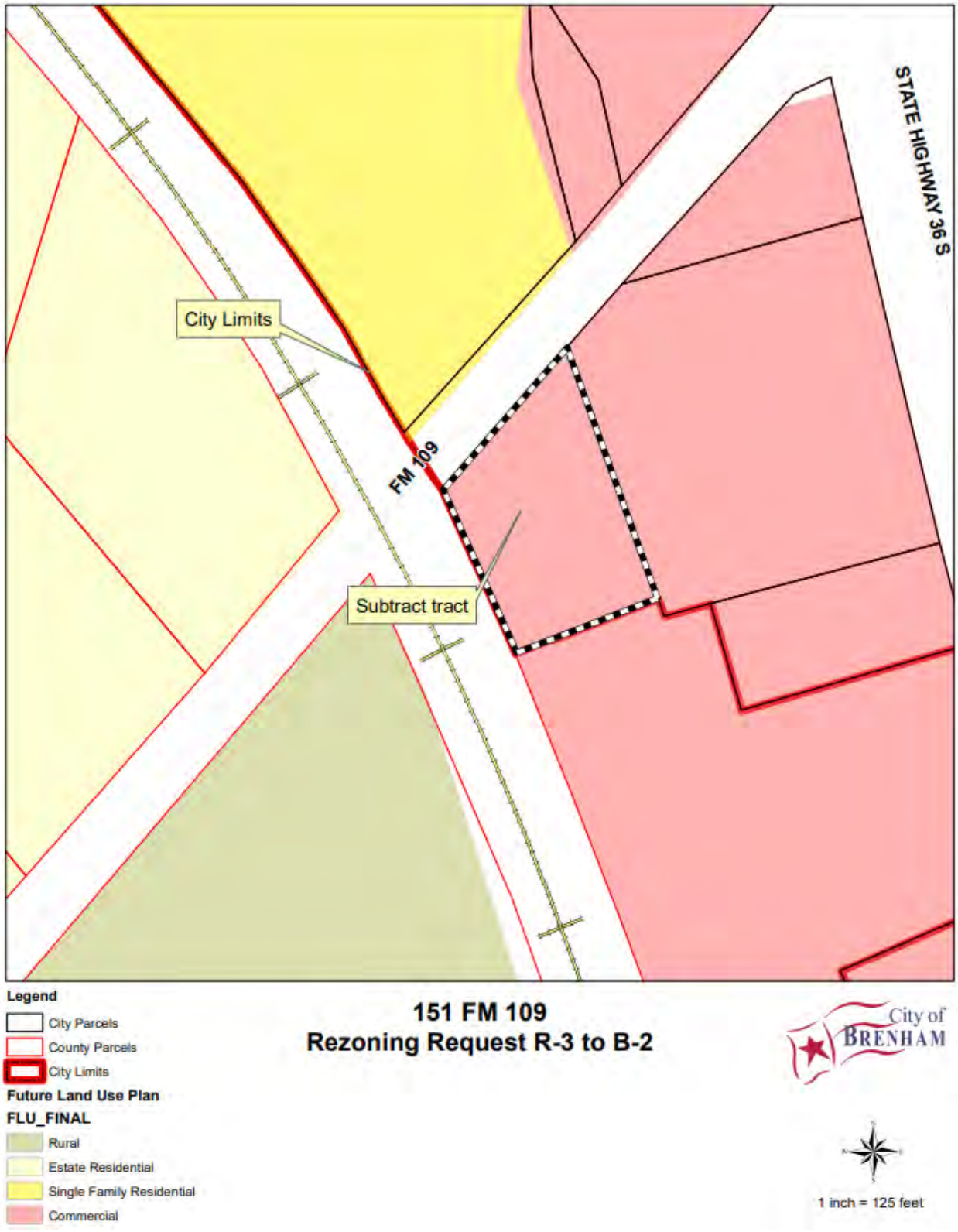


EXHIBIT "D"
ZONE CHANGE COVER LETTER

April 15, 2022

Planning and Zoning Commission

Brenham, Texas 77833

Dear Commission,

I am requesting that the zoning of the property at 151 FM 109 be changed from R3 to B2. The property has been uninhabited for several years and currently has 2 trailer houses and several small buildings. The trailers have holes in the floors and roofs and need to be demolished. Some of the buildings have the roofs missing and holes in the floors. The site is an eyesore for the neighborhood and community.

My plans include removal of the trailers and most of the buildings, clearing of the property, trimming and removal of some of the trees and tall weeds. I plan to build a storage/warehouse building on the property. In my opinion the site is more suitable for this type of building since it is bordered on the west side by railroad tracks and the east side by a mobile home park. My goal is to restore this property and build a new building that would be welcomed by the neighborhood and community. Thanks for your consideration.

Sincerely

Glen Vierus

Glen Vierus

EXHIBIT "E"
SITE PHOTOS

Subject Property 151 FM 109

Subject Property 151 FM 109

Looking northeast towards SH 36

Looking north, directly across FM 109

Looking west- City limits at railroad crossing

Regular City Council
AGENDA ITEM 7.

Agenda Item: **Discuss and Possibly Act Upon Resolution No. R-22-021 Authorizing the Execution of an Agreement with the Texas Department of Transportation for the Temporary Closure of State Right-of-Way in Connection with the 2022 Downtown Summer Concert Series, Hot Nights, Cool Tunes, to be Held on July 9, 16, 23, and 30, 2022 and Authorize the Mayor to Execute Any Necessary Documentation**

Meeting Type: Regular Meeting-June 02, 2022

Department: Parks and Recreation

Staff Contact: Crystal Locke

SUMMARY STATEMENT:

The Hot Nights, Cool Tunes summer concert series is hosted by the City of Brenham and sponsored by local businesses. Concerts are on Saturdays, July 9, 16, 23, and 30, 2022, from 7:00 p.m. – 10:00 p.m. These are free public events with live entertainment, food vendors, and a classic car cruise-in. Brenham residents and visitors bring lawn chairs, set them up in the street, and enjoy fellowship and entertainment. One lane of Alamo Street between Park Street and St. Charles Street will close at 1:30 p.m. for stage setup, followed by both lanes of Alamo Street closing between Austin Street and Market Street from 4:00 p.m. to midnight or until the stage is removed. The estimated attendance per weekend is 2,500 people.

ATTACHMENTS:

(1) Resolution No. R-22-021
(2) Agreement with TxDOT for the Temporary Closure of State Right-of-Way
(3) Detour Map
(4) Application for Event Permit
(5) Event Map

RECOMMENDED ACTION:

Approve Resolution No. R-22-021 authorizing the execution of an agreement with the Texas Department of Transportation for the temporary closure of state right-of-way in connection with the 2022 Downtown Summer Concert Series, Hot Nights, Cool Tunes, to be held on July 9, 16, 23, and 30, 2022 and authorize the Mayor to execute any necessary documentation.

RESOLUTION NO. R-22-021

WHEREAS, the Texas Department of Transportation operates certain state highways within the City limits of the City of Brenham;

WHEREAS, the City of Brenham has received requests for street closings involving a portion of the state highway system within the City of Brenham;

WHEREAS, the Texas Department of Transportation and the City of Brenham have agreed to certain terms and conditions regarding the closing of a portion of the state highway system within the City limits for the purpose of said closings;

WHEREAS, the City Council of the City of Brenham has considered the foregoing and the aforesaid agreement and have agreed to be bound by the provisions thereof for the purpose of closing said streets for the 2022 Downtown Summer Concert Series, Hot Nights, Cool Tunes, to be held on **July 9, 16, 23, 30, 2022**.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS, the Mayor of Brenham, acting on behalf of the City Council of the City of Brenham is hereby authorized to execute the attached agreement with the Texas Department of Transportation in connection with the closure of a portion of the state highway system within the City of Brenham associated with the 2022 Downtown Summer Concert Series, Hot Nights, Cool Tunes. This resolution is effective upon its adoption.

PASSED AND APPROVED this the 2nd of June 2022.

_____
Milton Y. Tate, Jr., Mayor

ATTEST:

_____
Jeana Bellinger, TRMC
City Secretary

STATE OF TEXAS §

COUNTY OF TRAVIS §

AGREEMENT FOR THE TEMPORARY CLOSURE OF STATE RIGHT OF WAY

THIS AGREEMENT is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State," and the City of Brenham, a municipal corporation, acting by and through its duly authorized officers, hereinafter called the "local government."

W I T N E S S E T H

WHEREAS, the State owns and operates a system of highways for public use and benefit, including Alamo Street, in Washington, County; and

WHEREAS, the local government has requested the temporary closure of Alamo Street (Business 290) for the purpose of 2022 Downtown Summer Concert Series, Hot Nights, Cool Tunes, from 1:30 pm to 12:00 am as described in the attached "Exhibit A," hereinafter identified as the "Event;" and

WHEREAS, the Event will be located within the local government's incorporated area; and

WHEREAS, the State, in recognition of the public purpose of the Event, wishes to cooperate with the City so long as the safety and convenience of the traveling public is ensured and that the closure of the State's right of way will be performed within the State's requirements; and

WHEREAS, on the 2nd day of June, 20 22, the Brenham City Council passed Resolution / Ordinance No. R-22-021, attached hereto and identified as "Exhibit B," establishing that the Event serves a public purpose and authorizing the local government to enter into this agreement with the State; and

WHEREAS, 43 TAC, Section 22.12 establishes the rules and procedures for the temporary closure of a segment of the State highway system; and

WHEREAS, this agreement has been developed in accordance with the rules and procedures of 43 TAC, Section 22.12;

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

A G R E E M E N T

Article 1. CONTRACT PERIOD

This agreement becomes effective upon final execution by the State and shall terminate upon completion of the Event or unless terminated or modified as hereinafter provided.

Article 2. EVENT DESCRIPTION

The physical description of the limits of the Event, including county names and highway numbers, the number of lanes the highway has and the number of lanes to be used, the proposed schedule of start and stop times and dates at each location, a brief description of the proposed activities involved, approximate number of people attending the Event, the number and types of animals and equipment, planned physical modifications of any man-made or natural features in or adjacent to the right of way involved shall be attached hereto along with a location map and identified as "Exhibit C."

Article 3. OPERATIONS OF THE EVENT

A. The local government shall assume all costs for the operations associated with the Event, to include but not limited to, plan development, materials, labor, public notification, providing protective barriers and barricades, protection of highway traffic and highway facilities, and all traffic control and temporary signing.

B. The local government shall submit to the State for review and approval the construction plans, if construction or modifications to the State's right of way is required, the traffic control and signing plans, traffic enforcement plans, and all other plans deemed necessary by the State. The State may require that any traffic control plans of sufficient complexity be signed, sealed and dated by a registered professional engineer. The traffic control plan shall be in accordance with the latest edition of the Texas Manual on Uniform Traffic Control Devices. All temporary traffic control devices used on state highway right of way must be included in the State's Compliant Work Zone Traffic Control Devices List. The State reserves the right to inspect the implementation of the traffic control plan and if it is found to be inadequate, the local government will bring the traffic control into compliance with the originally submitted plan, upon written notice from the State noting the required changes, prior to the event. The State may request changes to the traffic control plan in order to ensure public safety due to changing or unforeseen circumstances regarding the closure.

C. The local government will ensure that the appropriate law enforcement agency has reviewed the traffic control for the closures and that the agency has deemed them to be adequate. If the law enforcement agency is unsure as to the adequacy of the traffic control, it will contact the State for consultation no less than 10 workdays prior to the closure.

D. The local government will complete all revisions to the traffic control plan as requested by the State within the required timeframe or that the agreement will be terminated upon written notice from the State to the local government. The local government hereby agrees that any failure to cooperate with the State may constitute reckless endangerment of the public and that the Texas Department of Public Safety may be notified of the situation as soon as possible for the appropriate action, and failing to follow the traffic control plan or State instructions may result in a denial of future use of the right of way for three years.

E. The local government will not initiate closure prior to 24 hours before the scheduled Event and all barriers and barricades will be removed and the highway reopened to traffic within 24 hours after the completion of the Event.

F. The local government will provide adequate enforcement personnel to prevent vehicles from stopping and parking along the main lanes of highway right of way and otherwise prevent interference with the main lane traffic by both vehicles and pedestrians. The local government will prepare a traffic enforcement plan, to be approved by the State in writing at least 48 hours prior to the scheduled Event. Additionally, the local government shall provide to the State a letter of certification from the law enforcement agency that will be providing traffic control for the Event, certifying that they agree with the enforcement plan and will be able to meet its requirements.

G. The local government hereby assures the State that there will be appropriate passage

allowance for emergency vehicle travel and adequate access for abutting property owners during construction and closure of the highway facility. These allowances and accesses will be included in the local government's traffic control plan.

H. The local government will avoid or minimize damage, and will, at its own expense, restore or repair damage occurring outside the State's right of way and restore or repair the State's right of way, including, but not limited to, roadway and drainage structures, signs, overhead signs, pavement markings, traffic signals, power poles and pavement, etc. to a condition equal to that existing before the closure, and, to the extent practicable, restore the natural and cultural environment in accordance with federal and state law, including landscape and historical features.

Article 4. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this agreement, all documents prepared by the local government will remain the property of the local government. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

Article 5. TERMINATION

A. This agreement may be terminated by any of the following conditions:

(1) By mutual written agreement and consent of both parties.

(2) By the State upon determination that use of the State's right of way is not feasible or is not in the best interest of the State and the traveling public.

(3) By either party, upon the failure of the other party to fulfill the obligations as set forth herein.

(4) By satisfactory completion of all services and obligations as set forth herein.

B. The termination of this agreement shall extinguish all rights, duties, obligations, and liabilities of the State and local government under this agreement. If the potential termination of this agreement is due to the failure of the local government to fulfill its contractual obligations as set forth herein, the State will notify the local government that possible breach of contract has occurred. The local government must remedy the breach as outlined by the State within ten (10) days from receipt of the State's notification. In the event the local government does not remedy the breach to the satisfaction of the State, the local government shall be liable to the State for the costs of remedying the breach and any additional costs occasioned by the State.

Article 6. DISPUTES

Should disputes arise as to the parties' responsibilities or additional work under this agreement, the State's decision shall be final and binding.

Article 7. RESPONSIBILITIES OF THE PARTIES

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

Article 8. INSURANCE

A. Prior to beginning any work upon the State's right of way, the local government and/or its contractors shall furnish to the State a completed "Certificate of Insurance" (TxDOT Form 1560, latest edition) and shall maintain the insurance in full force and effect during the period

that the local government and/or its contractors are encroaching upon the State right of way.
B. In the event the local government is a self-insured entity, the local government shall provide the State proof of its self-insurance. The local government agrees to pay any and all claims and damages that may occur during the period of this closing of the highway in accordance with the terms of this agreement.

Article 9. AMENDMENTS
Any changes in the time frame, character, agreement provisions or obligations of the parties hereto shall be enacted by written amendment executed by both the local government and the State.

Article 10. COMPLIANCE WITH LAWS
The local government shall comply with all applicable federal, state and local environmental laws, regulations, ordinances and any conditions or restrictions required by the State to protect the natural environment and cultural resources of the State's right of way.

Article 11. LEGAL CONSTRUCTION
In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Article 12. NOTICES
All notices to either party by the other required under this agreement shall be delivered personally or sent by certified U.S. mail, postage prepaid, addressed to such party at the following respective addresses:

Local Government:	**State:**
City of Brenham	Texas Department of Transportation
P.O. Box 1059	
Brenham, Texas 77833	

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided herein.

Article 13. SOLE AGREEMENT
This agreement constitutes the sole and only agreement between the parties hereto and supersedes any prior understandings or written or oral agreements respecting the within subject matter.

Each party is signing this agreement on the date stated beside that party's signature.

THE CITY OF BRENHAM
Executed on behalf of the local government by:

By_____ Date_____
City Official

Typed or Printed Name and Title _____

_____

THE STATE OF TEXAS
Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By_____ Date_____
District Engineer

Exhibit A

This request is for the closure of Alamo Street (Business 290) in Brenham, Texas (Washington County) as follows: One lane of Alamo Street (Business 290) from Park Street to St. Charles Street closing at 1:30 pm until 12:00 am; both lanes of Alamo Street (Business 290) from Austin Street to Market Street closing at 4:00 pm until 12:00 am on July 9, 16, 23, and 30, 2022.

Streets will be barricaded with traffic control devices and staffed with personnel from the Brenham Police Department and Citizens on Patrol.

The proposed activity that requires these street closures is the Downtown Summer Concert Series, Hot Nights, Cool Tunes held on the last four (4) Saturdays in July. These are free concerts for the public with live entertainment, food vendors, and a classic car cruise-in. Brenham residents and visitors bring lawn chairs, set them up in the street, and enjoy fellowship and entertainment. Estimated attendance per event is approximately 2,500.

No animals. The elevated stage, 24'x 16'. will be set up at the intersection of Baylor and Alamo Streets.

Exhibit B

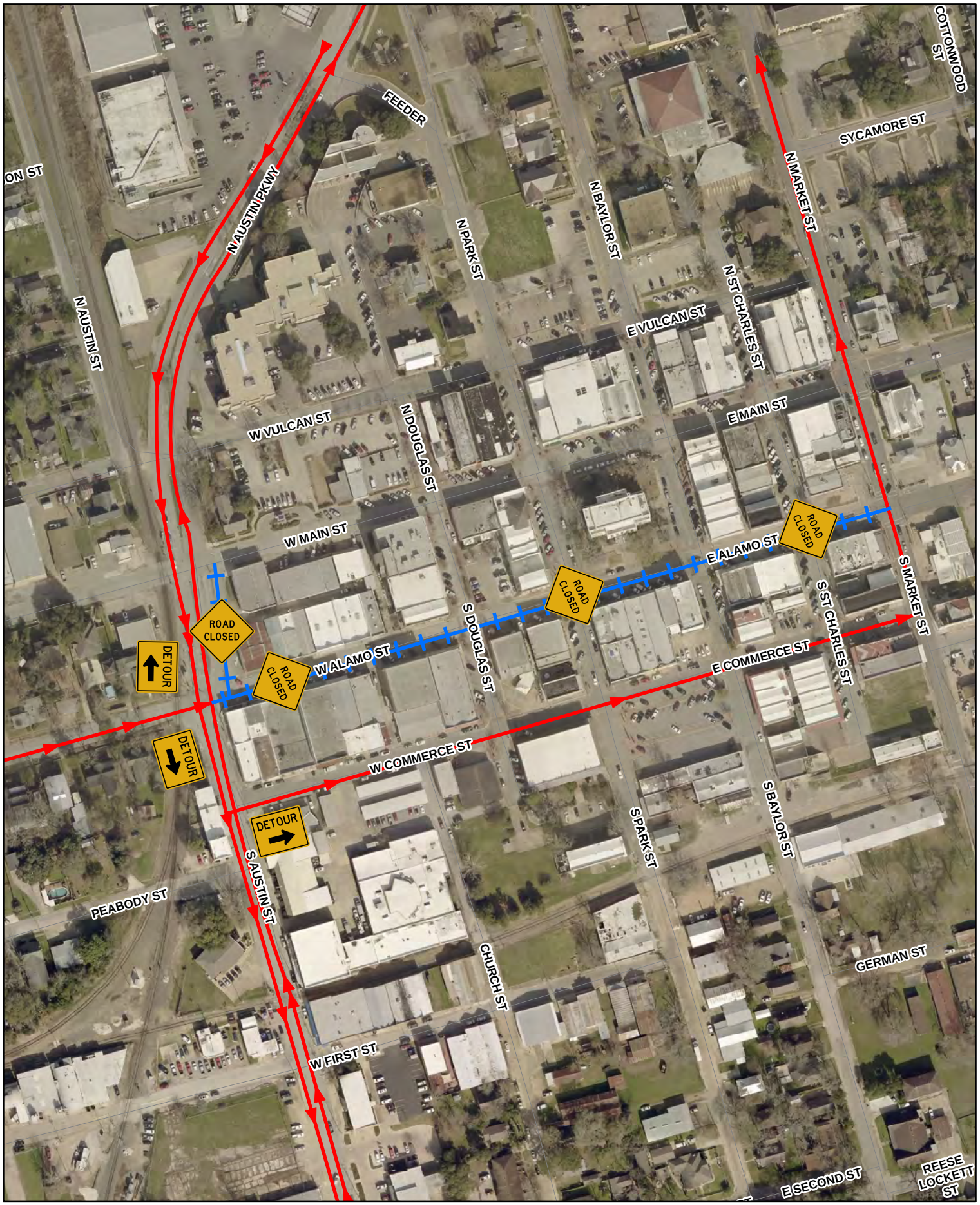
Exhibit C

This request is for the closure of Alamo Street (Business 290) in Brenham, Texas (Washington County) as follows: One lane of Alamo Street (Business 290) from Park Street to St. Charles Street closing at 1:30 pm until 12:00 am; both lanes of Alamo Street (Business 290) from Austin Street to Market Street closing at 4:00 pm until 12:00 am on July 9, 16, 23, and 30, 2022.

Streets will be barricaded with traffic control devices and staffed with personnel from the Brenham Police Department and Citizens on Patrol.

The proposed activity that requires these street closures is the Downtown Summer Concert Series, Hot Nights, Cool Tunes held on the last four (4) Saturdays in July. These are free concerts for the public with live entertainment, food vendors, and a classic car cruise-in. Brenham residents and visitors bring lawn chairs, set them up in the street, and enjoy fellowship and entertainment. Estimated attendance per event is approximately 2,500.

No animals. The elevated stage, 24'x 16'. will be set up at the intersection of Baylor and Alamo Streets.



1 inch = 220 feet

Hot Nights Cool Tunes
Detours

City of BRENHAM

Document Path: H:\GIS PROJECTS\COMMUNITY SERVICES\Hot Nights Detour Map\Hot Nights Detour Map.mxd

Event Permit Request

For: Hot Nights, Cool Tunes

Name of sponsoring organization: City of Brenham

Your Contact Information

Name: Crystal Locke

Phone: 979-337-7254 **Email:** clocke@cityofbrenham.org

Event Details

Name of Event: Hot Nights, Cool Tunes

Purpose: Annual community event promoting Downtown Brenham.

Location: Downtown Brenham - Courthouse Square

Date: July 9, 16, 23, & 30, 2022

Start Time: 7 pm **End Time:** 10 pm

Setup From: 1:30 pm **To:** 7 pm

Clean up From: 10 pm **To:** Midnight, or until the stage is removed.

Describe the types of activities planned: Live music, classic car cruise-in, food vendors

Estimated Attendance: 2,500 per concert

Special Requests/Additional Information: None

Street Closure Begin Time: Various **End Time:** Midnight

Street Closures: Baylor Street from Commerce to Alamo at noon Alamo Street (one lane) from Park to St. Charles at 1:30 pm Alamo Street from Austin to Market at 4 pm Park Street from Commerce to Main at 4 pm Douglas Street from Commerce to Main at 4 pm Baylor Street from Alamo to Main at 4 pm St. Charles Street from Alamo to Main at 4 pm

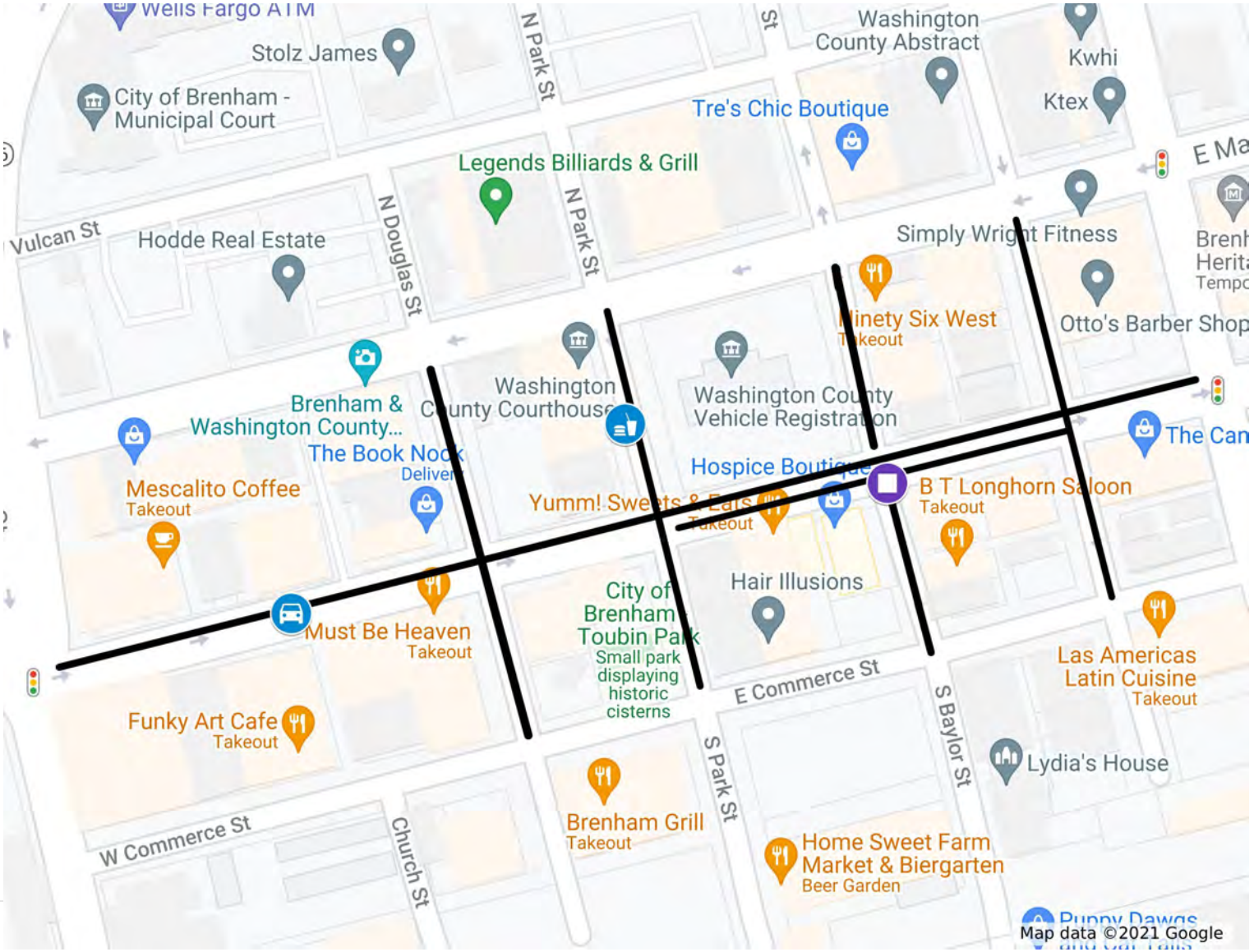
Cleanup Provisions: City staff will check restrooms, pick up trash, and remove and replace trash bags throughout the event.

Hot Nights, Cool Tunes

July 9, 16, 23 & 30, 2022

Street Closures and Information

- Alamo Street closes at 4pm
- Stage
- Park Street from Commerce Street to Main Street closes at 4pm for food vendors to set-up.
- Food Vendor
- Classic Car Cruise-In
- Douglas Street from Commerce Street to Main Street closes at 4pm.
- St. Charles closes at 4pm
- Alamo (one-lane) from Park to St. Charles closes at 1:30pm
- Baylor Street from Commerce to Alamo closes at noon.
- Baylor Street from Alamo to Main Street closes at 4pm.



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7:00pm-10:00pm

Regular City Council
AGENDA ITEM 8.

Agenda Item: **Discuss and Possibly Act Upon a Noise Variance Request from Brenham Outlaws for a Juneteenth Event to be Held on June 18, 2022 at Hattie Mae Flowers Park from 9:00 A.M. to 11:00 P.M. and Authorize the Mayor to Execute Any Necessary Documentation**

Meeting Type: Regular Meeting-June 02, 2022

Department: Parks and Recreation

Staff Contact: Karen Stack

SUMMARY STATEMENT:

The Brenham Outlaws have requested a noise variance for an event at Hattie Mae Flowers Park on June 18th. The proposed event will take place after the Juneteenth parade and will involve amplified sound; therefore, a noise variance is required. Staff are recommending denial of this request for several reasons.

The proposed event is scheduled to end after the closing time of the park. This organization has had variances granted for similar events in the past and their event generated complaints. Staff is concerned that this event will go late into the night and generate complaints from surrounding residents.

Parks staff also have concerns about the amount of parking spaces in the park compared to the anticipated size of the event. In the past, attendees have parked in the grass. Parks staff have noted that due to the gathering of families and children in the grass area, along with valve boxes and water meters underground, driving on the grass should be avoided to prevent injuries and damage to utilities.

Finally, Police Department staff have concerns about a history of disturbances and fights where trail riding groups gather, not necessarily caused by the organizers, but by the attendees.

ATTACHMENTS:

(1) Brenham Outlaws Noise Variance Request

RECOMMENDED ACTION:

Deny a noise variance request from Brenham Outlaws for a Juneteenth event to be held on June 18, 2022 at Hattie Mae Flowers Park from 9:00 A.M. to 11:00 P.M.

NOISE VARIANCE REQUEST

Application Fee $10.00

1. Name of sponsoring organization: Brenham outLaws

2. Name and address of individual making application on behalf of sponsoring organization:
Craig Burns - Allen Road
Mary Garrett - 1000 South Day st

3. Purpose of the Event: Juneteenth

4. Location of Event: Hattie Mae Flowers Park

5. Date of the event: June 18, 2022

6. Time of Event: after the parade

7. Event Set-up: From: 9am To: _____

Event Clean-up: From: 11 pm To: midnight

8. You are required to describe the following:

a) Types of Activities Planned and any additional information specific to this event:
food - music

b) Bands/Musical Instruments: Music

c) Sound amplification equipment: Party wagon

d) Cleanup provisions: 11:00 until

Mary Garrett
Name of Applicant (Printed or Typed)

Date: 5-10-2022

Applicant or Authorized Person's Signature

Phone: 936-727-4003

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

Regular City Council
AGENDA ITEM 9.

Agenda Item: **Discuss and Possibly Act Upon Bid No. 22-007 for Type 'D' Hot Mix Asphalt and Authorize the Mayor to Execute Any Necessary Documentation**

Meeting Type: Regular Meeting-June 02, 2022

Department: Purchasing

Staff Contact: Kyle Branham

SUMMARY STATEMENT:

On May 19, 2022, the city opened bids for Type 'D' Hot mix asphalt. Due to volatility of the asphalt market, the City requested 6-month, 9-month, and 12-month term pricing. Three bids were received. BPI Materials, Gulf Coast, and Waller County Asphalt. Waller County Asphalt submitted the lowest bid at $84.00 a ton delivered, $75.00 a ton picked up, and emergency rates of $80.00 a ton picked up and $89.00 a ton delivered. Waller County submitted the same rate for all three term options. This is a $20.00 a ton increase in price for delivered asphalt from the previous contract. Staff's recommendation is to award ITB 22-007 Type 'D' Hot Mix asphalt to Waller County Asphalt in the amounts referenced above for the term of 9 months, which will provide the City with a firm price for the duration of the general hot mix season. Upon completion of the initial term, the City will go out for rebid to determine current market rates.

ATTACHMENTS:

(1) Bid Tabulation

RECOMMENDED ACTION:

Award Bid No. 22-007 for 'Type 'D' to Waller County Asphalt, for a period of 9 months, in the amount of $84.00 a ton delivered to job site and $75.00 a ton if picked up at Waller County Asphalt by City staff and authorize the Mayor to execute any necessary documentation.

BID TABULATION FORM

BID OPENING DATE: 19-May-22

BID OPENING TIME: 10:00 AM

BID NAME/NO: ITB 22-007 Type "D" Hot Mix Asphalt

WITNESSED BY: *Kyle Branham, Robin Hutchens, & Billy Prewitt*

ITEM		BIDDERS		
		BPI Materials	Waller County Asphalt	Gulf Coast
(1) Asphalt, Hot-Mix, Type D, in accordance with TSDHPT 1993 Standard Specs Item #340 Annual Estimates				
1,000 TONS Picked up by City	12 month Unit Price	$102.00	$75.00	$89.90
7,000 TONS Delivered	12 month Unit Price	$132.00	$84.00	$104.90
1,000 TONS Picked up by City	9 month Unit Price	$100.00	$75.00	$84.90
7,000 TONS Delivered	9 month Unit Price	$130.00	$84.00	$99.90
1,000 TONS Picked up by City	6 month Unit Price	$120.00	$75.00	$84.90
7,000 TONS Delivered	6 month Unit Price	$96.00	$84.00	$99.90
(2) Asphalt, Hot-Mix, Type D, in accordance with TSDHPT 1993 Standard Specs Item #340 *Emergency Requests after 5:00 p.m. (Mon-Fri) or anytime on week-ends or holidays*				
To be picked up by City	Per Occ.	$2,500.00	$80.00	$1,500.00
Delivered	Per Occ.	$3,500.00	$89.00	$1,500.00

Regular City Council
AGENDA ITEM 10.

Agenda Item: **Discuss and Possibly Act Upon an Interlocal Agreement Between the City of Brenham and Purchasing Solutions Alliance (PSA) for a Brazos Valley Council of Governments Purchasing Cooperative for Public Agencies and Authorize the Mayor or City Manager to Execute Any Necessary Documentation**

Meeting Type: Regular Meeting-June 02, 2022

Department: Purchasing

Staff Contact: Kyle Branham

SUMMARY STATEMENT:

In May, the City was notified that Wilton's Office Works out of Bryan, Texas had a new cooperative contract available to the City through the Purchasing Solutions Alliance (PSA). This contract will offer supplies for technology, printing, janitorial, breakroom, safety, and furniture. All prices and terms have been completely vetted through PSA's bidding process. PSA is a cooperative purchasing program of the Brazos Valley Council of Governments (BVCOG). Currently the City uses Wilton's Office works for furniture, printing, and supplies. Becoming a member is at no cost to the city and by joining the PSA and purchasing goods through Wilton's, the City will gain free next-day delivery (in most cases) and volume rebates.

ATTACHMENTS:

(1) Memo from Karen Stack
(2) Purchasing Solutions Alliance Agreement

RECOMMENDED ACTION:

Approve an Interlocal Agreement between the City of Brenham and Purchasing Solutions Alliance (PSA) for a Brazos Valley Council of Governments Purchasing Cooperative for public agencies and authorize the Mayor or City Manager to execute any necessary documentation.

City of BRENHAM

To: Jeana Bellinger, City Secretary

From: Karen Stack, Legal & Legislative Services Manager

Subject: Interlocal Agreement with Purchasing Solutions Alliance

Date: May 25, 2022

The City of Brenham has an opportunity to join Purchasing Solutions Alliance (PSA). PSA was created by BVCOG as a cooperative for public agencies. PSA identifies qualified vendors of goods and services and complies with state bidding requirements. Membership would allow Brenham to save money using the combined buying power of the PSA members. As a condition of participation, the Mayor or City Manager must sign the attached Agreement.

I have reviewed the Agreement and it involves no receipt or expenditure of funds by the City. The agreement is for services limited in scope, and liability is limited to agreeing to pay for all purchased items within 30 days. The City is able to terminate the agreement with 30 days written notice. There are no minimum spending requirements. I am advising Carolyn Miller that she may execute this Agreement, and that a fully executed copy should be provided to your office for retention.

Thank you,

Karen Stack

Purchasing Solutions Alliance PSA

a purchasing cooperative for public agencies

INTERLOCAL PURCHASING AGREEMENT

THIS INTERLOCAL AGREEMENT ("ILA"), made and entered into pursuant to the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code and Chapter 271, Subchapter F of the Texas Local Government Code (together, the "Acts"), and other similar, applicable laws of other states, by and between the Purchasing Solutions Alliance, hereinafter referred to as "PSA," having its principal place of business in Bryan, Texas, and _____, a local government, a state agency, or a non-profit corporation created and operated to provide one or more governmental functions and services, hereinafter referred to as "Cooperative Member," having its principal place of business in _____(city), _____(state).

WHEREAS, PSA is a cooperative purchasing program of the Brazos Valley Council of Governments, a regional planning commission and political subdivision of the State of Texas operating under Chapter 391, Texas Local Government Code and as such is authorized to contract with eligible entities to perform governmental functions and services, including the purchase of goods and services; and

WHEREAS, PSA is duly authorized to contract with eligible entities under the Acts; and

WHEREAS, Cooperative Member has represented that it is an eligible entity under the applicable laws of its state, that its governing body has authorized this Agreement and that it desires to contract with PSA on the terms set forth below;

NOW, THEREFORE, PSA and the Cooperative Member do hereby agree as follows:

ARTICLE 1: LEGAL AUTHORITY

The Cooperative Member represents and warrants to PSA that it is eligible to contract with PSA under the Acts for the purposes recited herein because it is one of the following: a local government, as defined in the Acts (a county, a municipality, a special district, or other political subdivision of its state, or a combination of two or more of those entities, a state agency, or a non-profit corporation created and operated to provide one or more governmental functions and services, and it possesses adequate legal authority to enter into this Agreement.

ARTICLE 2: APPLICABLE LAWS

PSA and the Cooperative Member agree to conduct all activities under this Agreement in accordance with all applicable rules, regulations, and ordinances and laws in effect or promulgated during the term of this Agreement.

ARTICLE 3: WHOLE AGREEMENT

This Agreement and any attachments, as provided herein, constitute the complete agreement between the parties hereto, and supersede any and all oral and written agreements between the parties relating to matters herein.

ARTICLE 4: PERFORMANCE PERIOD

This Agreement shall be effective when signed by the last party whose signing makes the Agreement fully executed and will remain in full force and effect for one (1) year. This Agreement shall automatically renew for successive one-year terms unless sooner terminated in accordance with the

provisions of this Agreement. The conditions set forth below shall apply to the initial term and all renewals. Notwithstanding this provision, any party may modify or terminate this Agreement as provided in Article(s) 7 or 8.

ARTICLE 5: SCOPE OF SERVICES

The Cooperative Member appoints PSA its true and lawful purchasing agent for the purchase of certain products and services. All purchases hereunder shall be in accordance with federal statutes and procedures governing competitive bids and competitive proposals as denoted in 2 CFR Part 200 and in accordance with specifications and contract terms established by PSA, and at the prices available and published by PSA. Ownership (title) to products purchased through contracts awarded pursuant to the PSA program shall transfer directly from the contractor to the Cooperative Member. Nothing in this Agreement shall prevent the Cooperative Member from purchasing and/or accepting and awarding bids, proposals and contracts subject to this Agreement on its own behalf.

ARTICLE 6: PAYMENTS

Upon delivery of goods or services purchased and presentation of a properly documented invoice, the Cooperative Member shall promptly, and in any case within thirty (30) days, pay the vendor and/or contractor the full amount of the invoice. All payments for goods or services will be made from current revenues available to the paying party. In no event shall PSA have any financial liability to the Cooperative Member for any goods or services Cooperative Member procures through the PSA program.

ARTICLE 7: CHANGES AND AMENDMENTS

This Agreement may be amended only by a written amendment executed by both parties, except that any alternations, additions, or deletions to the terms of this Agreement which are required by changes in Federal and State law or regulations are automatically incorporated into this Agreement without written amendment hereto and shall become effective on the date designated by such law or regulation. PSA reserves the right to make changes in the scope of products and services to be performed hereunder.

ARTICLE 8: TERMINATION PROCEDURES

PSA or the Cooperative Member may cancel this Agreement at any time upon thirty (30) days written notice by certified mail to the other party to this Agreement. The obligations of the Cooperative Member, including obligations to pay any vendor or contractor for all goods and/or services purchased under this Agreement, shall survive such cancellation, as well as any other obligation incurred under this Agreement, until performed or discharged by the Cooperative Member.

ARTICLE 9: SEVERABILITY

All parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

ARTICLE 10: FORCE MAJEURE

To the extent that either party to this Agreement shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be

suspended until such disability to perform is removed; provided, however, force majeure shall not excuse an obligation solely to pay funds.

ARTICLE 11: CONSENT TO SUIT

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

ARTICLE 12: MISCELLANEOUS

a. This Agreement has been made under and shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under, or in connection with, this Agreement shall lie exclusively in Brazos County, Texas.

b. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective entities.

c. This Agreement and the rights and obligations contained herein may not be assigned by either party without the prior written approval of the other party to this Agreement.

THIS INSTRUMENT HAS BEEN EXECUTED BY THE PARTIES HERETO AS FOLLOWS:

Purchasing Solutions Alliance
Brazos Valley Council of Governments
3991 East 29th St.
Bryan, Texas 77802

_____
Brazos Valley Council of Governments,
Executive Director or Designee

_____
Signature of Executive Director or Designee

Date:_____

Susan Lightfoot
Attest: PSA Program Manager

Attest:_____
Signature of PSA Program Manager

Date:_____

_____
Name of Cooperative Member

_____
Mailing Address

_____
City, State, ZIP Code

_____
Name & Title of Primary Contact Person

_____
Telephone

_____
E-mail Address

_____
Authorized by (Printed Name and Title)

_____
Authorized by (Signature)

Date:_____

Regular City Council
AGENDA ITEM 11.

Agenda Item: **Discuss and Possibly Act Upon the Development, Operations, Funding, and Possible Acquisition of the Barnhill Center at the Historic Simon Theater, Including But Not Limited to the Third Addendum to the Memorandum of Understanding Between the City of Brenham and Brenham Main Street Historic Preservation, Inc., and Authorize the Mayor to Execute Any Necessary Documentation**

Meeting Type: Regular Meeting-June 02, 2022

Department: Administration

Staff Contact: Jeana Bellinger

SUMMARY STATEMENT:

In January, 2021 the City Council approved an Addendum to an agreement with Brenham Main Street Historical Preservation Inc, (the Barnhill Center at the Historic Simon Theater) to continue the reimbursement to BMSHP an amount not to exceed $35,000.00 for quarterly interest on the existing loans encumbering the Barnhill Center. This Addendum continues the payment agreement until January 1, 2023.

ATTACHMENTS:

(1) Simon Theater MOU - Third Addendum
(2) Exhibits for Third Addendum

RECOMMENDED ACTION:

Approve the Third Addendum to the Memorandum of Understanding Between the City of Brenham and Brenham Main Street Historic Preservation, Inc., as presented and authorize the Mayor to execute any necessary documentation.

THIRD ADDENDUM TO AND MODIFICATION OF MEMORANDUM OF UNDERSTANDING

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

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

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

WHEREAS, the City and BMSHP entered into an "Addendum to and Modification of Memorandum of Understanding" ("Addendum") effective July 30, 2021 and attached hereto as Exhibit "C" and incorporated herein for all purposes pertinent; and

WHEREAS, the City and BMSHP entered into a "Second Addendum to and Modification of Memorandum of Understanding" ("Second Addendum") effective February 1, 2022 and attached here to as Exhibit "D" and incorporated herein for all purposes pertinent; and

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

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

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

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

2. This Third Addendum shall automatically terminate at 11:59 p.m., prevailing Central Time, on January 1, 2023 without the need for any further action by either party. However, notwithstanding the previous sentence, either party may terminate this Third Addendum, without cause, at any time, upon thirty (30) days' written notice to the other party.

3. For purposes of the MUO, the Addendum, the Second Addendum, and this Third Addendum, the term "Barnhill Center" shall be deemed to include all rooms and facilities associated with the Simon Theater, including but not necessarily limited to the Barnhill Ballroom, Simon Theater, newly constructed meeting spaces, and all other areas associated with the Simon Theater.

4. **City's Obligations:**

Additional Consideration. During the time this Third Addendum is in effect and beginning with the interest payment(s) due on September 30, 2022, the City shall reimburse the BMSHP interest-only payments made by the BMSHP on the existing loans encumbering the Barnhill Center, as the interest payments become due during the effective period of this Third Addendum. Under no circumstances will the total amount of interest-only reimbursement payments from the City to BMSHP pursuant to this Third Addendum exceed $18,000.00.

5. **BMSHP's Obligations:**

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

6. This Third Addendum shall prevail over any provision or term contained in the MOU dated and effective February 7, 2019, the Addendum dated and effective July 30, 2021, and the Second Addendum dated and effective February 1, 2022 to the extent said MOU and Addenda may be inconsistent with the terms of this Third Addendum. Except as otherwise provided herein, to the extent the MOU is inconsistent with the provisions of the Addenda, the parties hereto shall be subject to and governed by all terms and provisions of the MOU.

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

BMSHP:

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

By:_____
Name: R. Hal Moorman
Title: President

CITY:

THE CITY OF BRENHAM, TEXAS

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

MEMORANDUM OF UNDERSTANDING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) *Facility Usage Fee. Additional amounts payable to Simon Theater*. During the Term of this MOU, the City shall pay to Simon Theater a facility usage fee of One Thousand Five Hundred and No/100 Dollars ($1,500.00) per month. Within ten (10) days after the execution of this MOU by both parties, City shall pay to Simon Theater the additional lump sum amount of Thirty-Seven Thousand Five Hundred and No/100 Dollars ($37,500.00) for accrued, unpaid facility usage fees payable to Simon Theater by the City for the time period beginning January 1, 2017 through ~~September 30, 2018.~~ January 31, 2019

3. **Negative Covenants**: The City agrees not to:

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

(b) Create a nuisance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. **Miscellaneous.**

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

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

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

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

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

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

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

With a copy to:
Cary L. Bovey
Law Office of Cary L. Bovey, PLLC
2251 Double Creek Dr., Suite 204
Round Rock, TX 78664

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

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

With a copy to:
R. Hal Moorman
P.O. Box 1808
Brenham, TX 77834-1808

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

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

SIMON THEATER:

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

By:_____
Name: R. Hal Moorman
Title: President

CITY:

THE CITY OF BRENHAM TEXAS

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

EXHIBIT A
Property Description

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

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

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

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

LICENSE AGREEMENT PARCEL:

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

EXHIBIT "A"

Blakey Land Surveying

4650 Wilhelm Lane
Burton, Texas 77835-5794

Telephone/Fax 979-289-3900

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

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

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

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

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

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

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

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

Michael J. Blakey
Registered Professional Land Surveyor No. 5935

Plat prepared and made a part of this description.

EXHIBIT "A"

Blakey Land Surveying

4630 William Lane
Burton, Texas 77835-5794

Telephone/Fax 979-289-3900

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

ALL THAT TRACT OR PARCEL OF LAND containing 5348 Sq.Ft., situated in Washington County, Texas, being out of the A. Harrington Survey, Abstract No. 55, in the City of Brenham, being all of Lots 1 and 2 of the Original Town Lot 22, and being the same tract described in that deed from Elizabeth Behrend Bennett, et al to Brenham Main Street Historical Preservation, Inc. dated December 19, 2012, and recorded in Volume 1422, Page 0071 of the Official Records of Washington County, Texas, said 5348 Sq.Ft. tract being more particularly described as follows:

BEGINNING at a point at building corner, lying in the West margin of Douglas Street (public right-of-way), marking the Southeast corner of the Brenham Main Street Historical Preservation, Inc. tract (called Lots 1, 2 and 3 of the Original Town Lot 21, Volume 1052, Page 454, Official Records of Washington County, Texas), the Southeast corner of Lot 3 of Original Town Lot 21, the Northeast corner of Lot 1 of Original Town Lot 22, and the Northeast corner of the herein described tract;

THENCE along the West margin of Douglas Street, with a portion of the East line of Original Town Lot 22, S 19deg 14min 03sec E, 59.53 ft., to a point at building corner, marking the Northeast corner of the Frederick C. F. Kugel called 2763 Sq.Ft. tract (Volume 260, Page 116, Deed Records of Washington County, Texas), the Northeast corner of Lot 3 of Original Town Lot 22, the Southeast corner of Lot 2 of Original Town Lot 22, and the Southeast corner of the herein described tract;

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

THENCE along the East margin of said 30 ft. alley, with a portion of the West line of Original Town Lot 22, N 13deg 12min 23sec W, 59.30 ft., to a point at building corner, marking the Southwest corner of the aforementioned Brenham Main Street Historical Preservation, Inc. tract (called Lots 1, 2 and 3 of the Original Town Lot 21), the Southwest corner of Lot 3 of Original Town Lot 21, the Northwest corner of Lot 1 of Original Town Lot 22, and the Northwest corner of the herein described tract;

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

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

Michael J. Blakey
Registered Professional Land Surveyor No. 5935

Plat prepared and made a part of this description.

Exhibit "B"

Insurance Addendum to MOU

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

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

1. Maintain the following coverages:

   a. Commercial property insurance written on a causes of loss - special form (known as "all risks" form) covering the City's personal property, fixtures, and leasehold improvements in the Barnhill Center, and naming Simon Theater as "Building Owner Loss Payable."

   b. If the City is utilizing the Barnhill Center for commercial purposes and Improvements are present on the Barnhill Center, the City will, at its sole cost and expense, maintain boiler and machinery/equipment breakdown insurance as may be required by law.

   c. Commercial general liability insurance written on an occurrence basis, including contractual liability, covering the City's operations within the Barnhill Center, naming Simon Theater, Simon Theater's Investor Member, and Simon Theater's Lienholder, if any, as "additional insured" or, in the alternative providing an EL 217 – Indemnification Under Contract endorsement in favor of the Simon Theater, Simon Theater's Investor Member, and Simon Theater's Lienholder, if any, and having limits of not less than $3,000,000 each occurrence and $3,000,000 general aggregate.

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

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

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

C. Simon Theater and the City agree that -

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

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

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

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

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

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

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

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

Exhibit "C"

Simon Theater – Required Insurance Policies and Coverage

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

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

Property Coverage
Limits, Deductibles, Coverage Features:
Building: $4,131,250
Contents: $400,000
Business Income: $250,000

Deductibles:
All Other Perils - $1,000 (including Wind/Hail)
Business Income – 72 Hours

Coverage Features:
Valuation – Historic Replacement Cost
Perils – Special Form
Co-Insurance – Waived / Agreed Value Applies
Terrorism – Included
Equipment Breakdown – Included
Flood – Excluded
Earthquake – Excluded
Data Breach Sublimit - Included

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

Commercial General Liability – Occurrence Form
Limits:
$ 2,000,000 General Aggregate Including Products and Completed Operations - Aggregate
$ 1,000,000 Personal & Advertising Injury
$ 1,000,000 Each Occurrence
$ 100,000 Damage to Rented Premises
$ 10,000 Medical Expense
Liquor Liability Endorsement
$ 50,000 Cyber Liability sublimit ($5,000 deductible)

Rating Basis:
- Theatre Admissions – 10,000 per year

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

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

d. Automobile Liability

Limits:
$ 1,000,000 Bodily Injury and Property Damage

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

e. Umbrella Liability

Provides excess over:
Commercial General Liability
Host Liquor Liability
Automobile Liability
Employers Liability
Directors & Officers Liability
Employee Practices Liability

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

Self-Insured Retention:
$ 0

f. Volunteer Accident

Coverage, Benefits & Limits:

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

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

Eligible Persons:
All volunteers of the Policyholder

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

g. Directors and Officers Liability

Directors & Officers Liability

Limits:
$ 1,000,000 Aggregate Limit of Liability
$ 1,000,000 Directors & Officers Liability
$ 1,000,000 Employment Practices Liability
Retentions:
$ 2,500 Directors & Officers
$ 2,500 Employment Practices Liability

CONSENT OF CITY OF BRENHAM, TEXAS TO ASSIGNMENT OF LEASE AGREEMENT AND MEMORANDUM OF UNDERSTANDING

Simon Theater Master Tenant, LLC ("Assignor") to Brenham Main Street Historical Preservation, Inc. ("Assignee")

This Consent of City of Brenham, Texas to Assignment of Lease Agreement (as amended) and Memorandum of Understanding (this "**Consent**") is executed by the **City of Brenham, Texas**, a Texas home-rule municipal corporation, of Washington County, Texas ("the "**City**"), **Simon Theater Master Tenant, LLC**, a Texas limited liability company ("**Assignor**"), and **Brenham Main Street Historical Preservation, Inc.**, a Texas corporation ("**Assignee**") to be effective as of the 1st day of February, 2021 (the "**Effective Date**").

WHEREAS, Assignor and the City entered into that certain Lease Agreement, dated September 25, 2018 to be effective on October 1, 2018, as amended by an Addendum to the Lease Agreement effective on October 1, 2018 (collectively the "**Lease Agreement**"), attached hereto as Exhibit "A" and incorporated herein for all purposes pertinent; and

WHEREAS, Assignor and the City entered into that certain Memorandum of Understanding, dated and effective on February 7, 2019 (the "**MOU**"), attached hereto as Exhibit "B" and incorporated herein for all purposes pertinent; and

WHEREAS, Assignor was created for the purpose of facilitating the use of historic tax credits to assist in financing improvements to the Simon Theater facility; and

WHEREAS, the requirements and obligations related to the Assignor's facilitation of the historic tax credit program benefitting the Simon Theater facility have been satisfied, therefore the purpose for which the Assignor was created has ceased to exist, and accordingly Assignor has dissolved and terminated its existence; and

WHEREAS, Assignee, as owner of the Simon Theater facility, is now the appropriate entity to assume the rights and obligations of the Lease Agreement and MOU; and

WHEREAS, in this regard, Assignor, in winding up its existence, desires to assign to Assignee all right, title and interest in and to the Lease Agreement and MOU, and Assignee desires to accept such assignment and to assume all of the duties and obligations of Assignor under the Lease Agreement and MOU; and

WHEREAS, the City, by its signature below, desires to consent to such Assignment;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City, Assignor and Assignee agree as follows:

1. Assignment. As of the Effective Date, Assignor hereby assigns, sells, transfers, and conveys to Assignee all of Assignor's right, title and interest in and to the Lease Agreement and MOU, and Assignee does hereby accept such assignment.

2. Assumption. As of the Effective Date, Assignee expressly agrees to assume and does hereby assume all duties, liabilities and obligations of the Assignor in connection with the Lease Agreement and MOU arising from and after the Effective Date.

3. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, and both of which together shall constitute one and the same instrument.

4. Applicable Law. This Assignment shall be governed by and interpreted 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.

5. Binding Effect. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective transferees, successors, and assigns.

EXECUTED to be effective as of the 1st day February, 2021.

ASSIGNOR:

Simon Theater Master Tenant, LLC, a Texas limited liability company

By:_____
R. Hal Moorman, President

ASSIGNEE:

Brenham Main Street Historical Preservation, Inc., a Texas corporation

By:_____
R. Hal Moorman, President

BY ITS EXECUTION BELOW, THE CITY HEREBY EVIDENCES ITS ACCEPTANCE OF, AND CONSENT TO, THE TERMS AND PROVISIONS OF THIS ASSIGNMENT AND ITS AGREEMENT TO BE BOUND BY SUCH ASSIGNMENT.

CITY OF BRENHAM, TEXAS

By: Milton Y. Tate, Jr.
Name: Milton Y. Tate, Jr.
Title: Mayor
Date: 3/26/21

CITY OF BRENHAM TEXAS

ADDENDUM TO AND MODIFICATION OF MEMORANDUM OF UNDERSTANDING

THIS **ADDENDUM TO AND MODIFICATION OF MEMORANDUM OF UNDERSTANDING** ("**ADDENDUM**") is made and entered into between BRENHAM MAIN STREET HISTORICAL PRESERVATION, INC., a Texas nonprofit corporation ("BMSHP"), and the CITY OF BRENHAM, a Texas home-rule municipal corporation ("***City***"), effective as of this 30 day of July, 2021 (the "***Commencement Date***").

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

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

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

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

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

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

2. This Addendum shall automatically terminate at 11:59 p.m., prevailing Central Time, on January 31, 2022 without the need for any further action by either party. However, notwithstanding the previous sentence, either party may terminate this Addendum, without cause, at any time, upon thirty (30) days' written notice to the other party.

3. For purposes of the MUO and this Addendum, the term "Barnhill Center" shall be deemed to include all rooms and facilities associated with the Simon Theater, including but not necessarily limited to the Barnhill Ballroom, Simon Theater, newly constructed meeting spaces, and all other areas associated with the Simon Theater.

4. **City's Obligations:**

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

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

5. **BMSHP's Obligations:**

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

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

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

BMSHP:

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

By:_____
Name: R. Hal Moorman
Title: President

CITY:

THE CITY OF BRENHAM, TEXAS

By:_____
Name: Clint Kolby
Title: Mayor Pro Tempore

SECOND ADDENDUM TO AND MODIFICATION OF MEMORANDUM OF UNDERSTANDING

THIS **SECOND ADDENDUM TO AND MODIFICATION OF MEMORANDUM OF UNDERSTANDING** ("**SECOND ADDENDUM**") is made and entered into between BRENHAM MAIN STREET HISTORICAL PRESERVATION, INC., a Texas nonprofit corporation ("BMSHP"), and the CITY OF BRENHAM, a Texas home-rule municipal corporation ("***City***"), effective as of this 1st day of February, 2022 (the "***Commencement Date***").

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

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

WHEREAS, the City and BMSHP entered into an "Addendum to and Modification of Memorandum of Understanding" ("Addendum") effective July 30, 2021 and attached hereto as Exhibit "C" and incorporated herein for all purposes pertinent; and

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

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

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

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

2. This Second Addendum shall automatically terminate at 11:59 p.m., prevailing Central Time, on July 1, 2022 without the need for any further action by either party. However, notwithstanding the previous sentence, either party may terminate this Second Addendum, without cause, at any time, upon thirty (30) days' written notice to the other party.

3. For purposes of the MUO, the Addendum, and this Second Addendum, the term "Barnhill Center" shall be deemed to include all rooms and facilities associated with the Simon Theater, including but not necessarily limited to the Barnhill Ballroom, Simon Theater, newly constructed meeting spaces, and all other areas associated with the Simon Theater.

4. **City's Obligations:**

Additional Consideration. During the time this Second Addendum is in effect and beginning with the interest payment(s) due on March 30, 2022, the City shall reimburse the BMSHP interest-only payments made by the BMSHP on the existing loans encumbering the Barnhill Center, as the interest payments become due during the effective period of this Second Addendum. Under no circumstances will the total amount of interest-only reimbursement payments from the City to BMSHP pursuant to this Second Addendum exceed $18,000.00.

5. **BMSHP's Obligations:**

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

6. This Second Addendum shall prevail over any provision or term contained in the MOU dated and effective February 7, 2019 and the Addendum dated and effective July 30, 2021, to the extent said MOU and Addendum may be inconsistent with the terms of this Second Addendum. Except as otherwise provided herein, to the extent the MOU is inconsistent with the provisions of the Addendum or Second Addendum, the parties hereto shall be subject to and governed by all terms and provisions of the MOU.

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

BMSHP:

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

By:_____
Name: R. Hal Moorman
Title: President

CITY:

THE CITY OF BRENHAM, TEXAS

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