

REGULAR AGENDA

- 7. Discuss and Possibly Act Upon Ordinance No. O-10-022 on its Second Reading Amending Chapter 4, Ambulance Services, of the City of Brenham's Code of Ordinances**
- 8. Discuss and Possibly Act Upon Resolution No. R-11-001 Regarding the Exchange of Washington County's Undivided One-Half (1/2) Interest in the Linda Anderson Property for the City's Release of Certain Conditions on Conveyance to the County of the Public Health Facility Property Located at 100 S. Chappell Hill Street**
- 9. Discuss and Possibly Act Upon RFP No. 11-004 for the Purchase of Automated Meter Reading Equipment and Authorize the Mayor to Execute any Necessary Documentation**
- 10. Discuss and Possibly Act Upon Bid No. 11-006 for the Purchase of a 48' Aluminum Refuse Trailer along with an Extra Rim and Spare Tire and Authorize the Mayor to Execute any Necessary Documentation**
- 11. Discuss and Possibly Act Upon Authorization of Final Payment to Matula & Matula Construction, Inc. for the West Side Water System Improvements, Phase II and Authorize the Mayor to Execute any Necessary Documentation**

EXECUTIVE SESSION

- 12. Section 551.072, Texas Government Code – Deliberation Regarding Real Property – Discuss and Consider the Acquisition of Real Property for the U.S. Highway 290 Project and Acquisition of Right-Of-Way on and in the Vicinity of U.S. Highway 290 West**

RE-OPEN REGULAR SESSION

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

- 13. Administrative/Elected Officials Report**

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 Negotiations.

CERTIFICATION

I certify that a copy of the January 6, 2011 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, Brenham, Texas on January 3, 2011 at _____ Am Pm.

Tammy Cook, Deputy 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 _____, 2011 at _____ Am Pm.

Signature

Title

ORDINANCE NO. O-11-001

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS, AMENDING CHAPTER 26 OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS TO INCLUDE ARTICLE VI. GREASE, GRIT & OIL CONTROL; REQUIRING THE INSTALLATION OF GREASE TRAPS AND INTERCEPTORS; PROVIDING A SCHEDULE FOR REGULAR MAINTENANCE AND INSPECTION; ESTABLISHING A PERMIT SYSTEM FOR TRANSPORTERS OF GREASE WASTE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PROPER NOTICE AND MEETINGS.

WHEREAS, pursuant to the Local Government Code, Section 552.001(b), the City has the authority to adopt ordinances relating to the provision of sewer services and facilities, and the regulation of those services and facilities; and

WHEREAS, sanitary sewer overflows are often caused by the discharge of wastewater containing high levels of fats, oils, grease, and grit, and may pose a threat to the public health; and

WHEREAS, the City of Brenham desires that nondomestic wastewater users implement Best Management Practices that minimize the discharge of fats, oils, grease, and grit within the City's Publicly Owned Treatment Works System; and

WHEREAS, the regulations adopted herein will require existing Food Processing or Food Service Establishments to install grease control devices or interceptors no later than one (1) year after the effective date of this Ordinance; and

WHEREAS, newly proposed or newly constructed Food Processing or Food Service Establishments will be required to install grease control devices or interceptors prior to the City's issuance of a certificate of occupancy;

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

SECTION 1: That Chapter 26 of the Code of Ordinances is hereby amended to add Article VI to read as follows:

ARTICLE VI. GREASE, GRIT & OIL CONTROL

DIVISION 1. GENERAL PROVISIONS

Sec. 26-83. Purpose and Policy.

This Article sets forth uniform requirements for nondomestic wastewater users of the Publicly Owned Treatment Works for the City of Brenham and enables the City to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code § 1251 et seq.) and the General Pretreatment Regulations (40 Code of Federal Regulations Part 403). This Article requires nondomestic wastewater users to implement Best Management Practices prohibiting discharges identified within Sec. 26-24 of the City's General Sewer Use Requirements; more specifically this Article reduces fats, oils, grease and grit within the City's Publicly Owned Treatment Works system (as authorized by TPDES Permit No. 10388-001).

The Article works together with the City's Building Permit (Public Works) process through Code Enforcement (Health Inspection) and the City's Pretreatment and General Sewer Use regulations (Public Utilities Department) to do the following: authorize the implementation of a grease and grit trap/interceptor maintenance program; authorize the establishment of minimum grease and grit trap size requirements and pumping schedules; provide for inspections (both the Health Inspection and Public Utilities Departments); monitor compliance and enforcement activities; establish administrative review procedures; require user recordkeeping and reporting; and provide for the setting and allocation of fees for the equitable distribution of costs resulting from the program established herein. The Public Utilities Department will have the primary role of administering and enforcing the interdepartmental implementation of this Article.

Sec. 26-84. Administration.

Unless otherwise specified by this Article, the Director of Public Utilities shall administer, implement, and enforce the provisions of this Article. Any powers granted to or duties that are the responsibility of the Director of Public Utilities may be delegated to other appropriate designated City personnel.

Sec. 26-85. Abbreviations.

The following abbreviations, when used in this Article, shall have the below designated meanings:

- BMPs – Best Management Practices
- BOD – Biochemical Oxygen Demand
- C° - Celsius
- CFR – Code of Federal Regulations
- COD – Chemical Oxygen Demand
- EPA – U.S. Environmental Protection Agency
- F° – Fahrenheit
- FOG – Fats, Oils and Grease

- FOGG – Fats, Oils, Grease and Grit
- FPSE – Food Production Service Establishment
- TPDES – Texas Pollutant Discharge Elimination System
- POTW – Publicly Owned Treatment Works
- TSS – Total Suspended Solids
- U.S.C. – United States Code

Sec. 26-86. Definitions.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this Article, shall have the meanings hereinafter designated:

- (a) *Act or "the Act."* The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. § 1251 et seq.
- (b) *Best Management Practices (BMPs).* Scheduling activities, prohibiting practices, enforcing maintenance procedures, and implementing other management practices listed in 40 CFR Chapter I, Subchapter N, 403.5 (a)(1) and (b). BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. Such BMPs shall be considered local limits and pretreatment standards for the purposes of 40 CFR 403 and Section 307(b) of the Clean Water Act.
- (c) *Biochemical Oxygen Demand or BOD.* The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20° centigrade, usually expressed as a concentration (e.g., mg/l).
- (d) *City.* The City of Brenham, Washington County, Texas.
- (e) *Chemical Oxygen Demand (COD).* The value of the test for COD, as described in the latest edition of "Standard Methods for the Examination of Water & Wastewater" (a published guidebook for the testing of water and wastewater, meeting the approval of the U.S. Environmental Protection Agency).
- (f) *Director of Public Utilities.* The person designated by the City to supervise the operation of the POTW, and who is charged with certain duties and responsibilities by this article, or a duly authorized representative.
- (g) *Environmental Protection Agency or EPA.* The U.S. Environmental Protection Agency.
- (h) *Fats, oils, and greases (FOG).* Organic polar compounds derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures established in 40 CFR 136, as may be amended from time to time. All are sometimes referred to herein as "grease" or "greases."

- (i) *Food Processing / Food Service Establishments.* Any establishment that serves, prepares and handles food whether it is on an occasional, temporary, or permanent basis.
- (j) *Generator.* Any person who owns or operates a grease and/or grit trap/ interceptor, or whose act or process produces a grease trap waste.
- (k) *Grab Sample.* A sample, which is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed fifteen (15) minutes.
- (l) *Grease trap or interceptor.* A device designed to use differences in specific gravities to separate and retain light density liquids, waterborne fats, oils, and greases prior to the wastewater entering the sanitary sewer collection system. These devices also serve to collect settleable solids, generated by and from food preparation activities, prior to the water exiting the trap and entering the sanitary sewer collection system. Grease traps and interceptors are also referred to herein as "grease traps/interceptors."
- (m) *Grease Trap Waste* means material collected in and from a grease trap/interceptor in the sanitary sewer service line of a commercial, institutional, or industrial food service or processing establishment, including the solids resulting from de-watering processes.
- (n) *Grit.* Sediment such as sand, gravel, cinders or other heavy materials.
- (o) *Hauler.* A person who is registered with and authorized by the TCEQ to transport sewage sludge, water treatment sludge, domestic septage, chemical toilet waste, grit trap waste, or grease trap waste in accordance with 30 Texas Administrative Code §312.142; and is registered as a licensed grease and/or grit trap hauler with the City of Brenham.
- (p) *Indirect Discharge or discharge.* The introduction of pollutants into the POTW from any nondomestic source regulated under Section 307(b), (c), or (d) of the Act.
- (q) *Interference.* A discharge which alone or in conjunction with a discharge or discharges from other sources inhibits or disrupts the POTW, its treatment processes or operations, its sludge processes, its use or disposal capacity, or is a cause of a violation of the City's TPDES permit.
- (r) *pH.* The measure of the relative acidity or alkalinity of water and is defined as the negative logarithm (base 10) of the hydrogen ion concentration.
- (s) *POTW or Publicly Owned Treatment Works.* A treatment works which is owned by a state or municipality as defined by section 502(4) of the Clean Water Act. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes all sewers, pipes and other conveyances that convey wastewater to a POTW

Treatment Plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works. For purposes of this Article, the terms “sanitary sewer system” and “POTW” may be used interchangeably.

- (t) *TPDES*. The Texas Pollutant Discharge Elimination System, which is the federal regulatory program to control discharges of pollutants to surface waters of the United States.
- (u) *TCEQ*. The Texas Commission on Environmental Quality, and its predecessor and successor agencies.
- (v) *TSS*. The value of the test for Total Suspended Solids, as described in the latest edition of “Standard Methods for the Examination of Water & Wastewater.”
- (w) *User*. Any person, including those located outside the jurisdictional limits of the City, who contributes, causes or permits the contribution or discharge of wastewater into the POTW, including persons who contribute such wastewater from mobile sources.

DIVISION 2. TRAPPING AND TRANSPORTING WASTES; REQUIRED REPORTS, FEES, AND PENALTIES.

Section 26-87. Grease and/or Grit Trap/Interceptor Installation and Maintenance Requirements.

- (a) Grease and/or Grit Trap/Interceptor Installation Requirements.
 - (1) All Grease and/or Grit Trap/Interceptor Installations.
 - a) All grease and/or grit trap/interceptors shall be designed and installed to prevent water intrusion, to prevent corrosion and prevent buckling due to external below or above-grade forces.
 - b) All grease and/or grit trap/interceptors shall be installed with ease of access for inspection, cleaning and sampling. All users with grease and/or grit traps/interceptors shall install a wastewater discharge sample port for jar method grab sampling. The sample port shall be at the facility’s own expense and installed with ease of accessibility for City monitoring.
 - i) All above-ground interceptors are required to have an angle ball valve sample port installed on the outflow side of the interceptor for ease of City monitoring.
 - ii) All below-ground traps shall have a minimum of a 15” in-line sample well installed on the outflow side of the trap for ease of City monitoring.
 - c) All nondomestic generators with food grinders installed shall have a solids-trap installed prior to the grease trap/interceptor to eliminate non-grease, food-grade wastes from entering the grease trap/interceptor.

- d) Undersink traps are not to be used for primary grease treatment, and where undersink traps are used they must have a grease trap/interceptor installed secondary to the trap.
- e) Dishwasher lines are prohibited from discharging into a grease trap and shall be directed to the sanitary sewer line.
- f) All above-ground interceptors/traps shall have flow-restraint devices in front of or before the traps, and the devices are to remain on at all times.
- g) All users with grease and/or grit traps/interceptors shall implement FOG BMPs.

(2) New Facilities.

- a) Food processing or food service establishments (FPSEs) which are newly proposed or constructed, or existing facilities which will be expanded or renovated to include a food service facility, where such facility did not previously exist, shall be required to install a grease trap/interceptor.
- b) The grease and/or grit trap/interceptor shall be designed in accordance with City-approved sizing criteria, locally adopted plumbing codes and other applicable ordinances.
- c) The grease and/or grit trap/interceptor shall be properly installed, then operated and maintained according to a City-approved pumping schedule.
- d) Grease and/or grit traps/interceptors shall be installed and inspected by the City prior to issuance of a certificate of occupancy and prior to any use of FPSE or other trap/interceptor facilities.

(3) Existing Facilities.

- a) Existing FPSEs without a grease trap/interceptor must have one installed within one (1) year from this Article's effective date.
- b) The new grease and/or grit trap/interceptor shall be approved by the City and designed in accordance with City-approved sizing criteria, locally adopted plumbing codes and other applicable ordinances.
- c) The grease and/or grit trap/interceptor shall be operated and maintained according to a City-approved pumping schedule.

(4) Waivers.

- a) Waivers to New and Existing Facilities.
 - 1) Based on a request by and consultation with the FPSE, the City may determine that the new FPSE or an existing FPSE is not a potential significant FOG discharger, in which case the City may grant a waiver from the required grease and/or grit trap/interceptor license and installation.
 - 2) With this designation of a non-significant discharger waiver, the FPSE is required by the City to implement FOG Best Management Practices (BMPs) and to install a wastewater discharge sample port for jar method grab sampling at the facility's own expense. The sample port shall be installed with ease of accessibility for City monitoring purposes at the facility's own expense.
- b) Existing Facilities with Space Constraint Waivers.

- 1) The City may grant an exception to requiring an existing FPSE or other entity to install a grease and/or grit trap/interceptor if there is no feasible installation location, for example, infeasibility due to historical landmarks.
- 2) In the event of this space-constraint type of waiver, the City will charge a user fee as per Section 26-90(b); the FPSE discharger must implement FOG BMPs; and the FPSE must install a wastewater discharge sample port at the facility's own expense. The sample port shall be installed with ease of accessibility for City monitoring.
- c) Based on inspection and/or monitoring of the facility, the City reserves the right to revoke or reevaluate a previously approved waiver.
- d) All waivers require a completed waiver form to be submitted and approved by the Director of Public Utilities.

(b) Grease and/or Grit Trap/Interceptor Inspections.

The City shall have a right of entry to inspect grease and/or grit trap/interceptors upon showing proper identification and as established within Section 26-39.22 of the City's Pretreatment Ordinance. City grease and/or grit trap/interceptor inspections will be unannounced and are to be performed at a minimum of once per year per installation.

(c) Grease and/or Grit Trap/Interceptor Cleaning and Maintenance.

- (1) Grease/grit traps and grease/grit interceptors shall be maintained in an efficient operating condition at all times and according to City-established pumping requirements.
- (2) Each grease/grit trap pumped shall be fully evacuated unless the trap volume is greater than the tank capacity on the vacuum truck. In such a case, the hauler shall arrange for additional transportation capacity so that the trap is fully evacuated within a 24-hour period. All evacuation and transportation procedures must be in accordance with Title 30, Texas Administrative Code §312.143.
- (3) Chemicals intended for primary grease treatment are prohibited.

(d) Self-Cleaning.

- (1) Grease/grit trap self-cleaning operators must receive approval from the Director of Public Utilities annually prior to removing grease/grit from their own grease/grit trap(s). Self-cleaning operators must ensure the following:
 - a) grease traps are no more than fifty (50) gallons in liquid/operating capacity;
 - b) grit traps may be cleaned, at any capacity, as long as grit handling and disposal methods comply with Sections 26-87 and 26-88 of this Ordinance.
 - c) proper on-site material disposal methods are implemented (e.g. methods such as solidifying liquids and disposing into trash);
 - d) the local solid waste authority allows such practices;

- e) grease/grit trap waste is placed in a leak-proof, sealable container(s) located on the premises and in an area for the hauler to pump-out; and
 - f) detailed records on these activities are maintained.
- (2) Grease/grit trap self-cleaning operators must submit a completed self-cleaning request to the Director of Public Utilities for approval. The written request shall include the following information:
- a) Business name and street address;
 - b) Grease and/or grit trap/interceptor operator name, title, and phone number;
 - c) Description of maintenance frequency, method of disposal, method of cleaning and size (in gallons) of the grease and/or grit trap/interceptor; and
 - d) Signed statement that the operator will maintain records of waste disposal and produce them for compliance inspections.
- (3) Self-cleaners must adhere to all the requirements, procedures and detailed record keeping outlined in their approved application to ensure compliance with this Article. A maintenance log shall be kept by self-cleaning operators that indicates, at a minimum, the following information:
- a) Date the grease and/or grit trap/interceptor was last serviced;
 - b) Name of the person or company servicing the grease and/or grit trap/interceptor;
 - c) Waste disposal method used;
 - d) Gallons of grease/grit removed and disposed of;
 - e) Waste oil added to grease and/or grit trap/interceptor waste; and
 - f) Signature of the operator after each cleaning that certifies the following: all grease/grit was removed and disposed of properly; the grease and/or grit trap/interceptor was thoroughly cleaned; and that all parts were replaced and in operable condition.
- (4) Violations incurred by grease/grit trap self-cleaners will be subject to enforcement action, including fines and/or removal from the self-cleaner program.

(e) Cleaning Schedules.

- (1) Grease/grit traps and grease/grit interceptors shall be cleaned according to City-established pumping schedules based on trap size, flow, and frequency of use. Pumping schedules and procedures shall ensure the following: that sediment and floating materials do not accumulate or impair the efficiency of the grease and/or grit trap/interceptor; that the discharge is in compliance with local discharge limits; and that no visible grease/grit is observed in the discharge.
- (2) The City reserves the right to increase or decrease the frequency of evacuations for any given grease/grit trap or grease/grit interceptor. Pumping frequency will likely be increased when:
- a) twenty-five (25) percent or more of the wetted height of the grease/grit trap or grease/grit interceptor, as measured from the bottom of the device to the invert of the outlet pipe, contains floating materials, sediment, oils or greases/grit; or

- b) the discharge exceeds BOD, COD, TSS, FOG, pH, or other pollutant levels established by the Director of Public Utilities; or
- c) there is a history of non-compliance with this Article.

(f) Prohibition of Alternative Treatments.

- (1) A person commits an offense if the person introduces, or causes, permits, or suffers the introduction of any surfactant, solvent or emulsifier into a grease and/or grit trap. Surfactants, solvents, and emulsifiers are materials which allow the grease and/or grit to pass from the trap into the collection system, and include but are not limited to enzymes, soap, diesel, kerosene, terpene, and other solvents.
- (2) It is an affirmative defense to an enforcement of Section 26-87(f)(1) that the use of surfactants or soaps is incidental to normal kitchen hygiene operations.

Section 26-88. Hauled Fats, Oils, Grease and Grit Wastes.

(a) Hauler Permit Requirements

Haulers of fats, oils, grease and grit waste shall comply with the following provisions in addition to compliance with all other provisions of this Article and any provisions required by the TCEQ and any other regulatory agency with this jurisdiction:

- (1) No person shall engage in hauling grease and/or grit trap/interceptor waste in the City of Brenham unless the owner/operator of such vehicle or vessel for grease and/or grit trap/interceptor waste hauling operations has applied for and been granted a grease and/or grit trap waste hauler permit for such activities, and has paid a permit fee so authorized by the City of Brenham Public Utilities Department. A pre-condition for consideration as a permitted City of Brenham hauler is a current TCEQ-permitted transporter certification.
- (2) All grease/grit trap hauler permits shall expire on October 5th of every year. Applications for permit renewals must be received no later than September 1 of each year in order to insure timely renewal. New application permits issued throughout the year after October 5th will receive a permit for the remainder of the year with expiration on October 5th of the following year. Hauler permits are effective only for the person and vehicle named therein and may not be transferred or assigned.
- (3) The City of Brenham shall develop a vehicle registration system and shall issue a decal for each registered vehicle. All decals shall be prominently displayed on the driver's side insuring the tag can be easily seen. These decals are not transferable from one vehicle to another.

- (4) One primary permit will be issued to each company in the name of the owner, operator, or chief officer. It shall be the responsibility of the owner to provide a copy of this permit to each of the drivers, but each truck must have a separate tag. Each company will pay a minimum of \$100.00 (if there are four trucks or fewer) or \$25.00 per truck, whichever is greater. This payment will be due annually.
- (5) It shall be the responsibility of the hauler to provide proof of the waste hauler permit to each generator or customer.
- (6) Before accepting a load of liquid waste for transportation, a grease and/or grit trap waste hauler shall:
 - a) Determine the nature of the material to be transported; and
 - b) Ensure that the hauler's equipment is sufficient to properly handle the job without spillage or leaks; and ensure that the equipment is free of any conditions that could cause spillage or leaks of waste from the vehicle.
- (7) A hauler shall ensure that all liquids and solids are completely removed from the grease and/or grit trap, and shall not return any material to the grease and grit trap once the trap has been cleaned.
- (8) Upon delivery of the waste to the grease and/or grit trap waste disposer, the hauler shall inform the disposer of the nature of the waste.
- (9) A hauler who holds a grease and/or grit trap waste hauler permit with the City of Brenham shall not transport hazardous materials in combination with grease and/or grit trap waste in a vehicle for disposal.
- (10) A hauler is responsible for the proper disposal of all waste, both solid and wastewater, that is removed from a grease and/or grit trap. The liquid waste shall be transported for disposal to a site approved by the appropriate local, state, and/or federal agencies. Under no circumstances will a liquid waste hauler discharge any liquid waste into the municipal collection system.
- (11) Waste manifests. A hauler who collects liquid waste within the jurisdiction of the City of Brenham must satisfy the liquid waste transport manifest system requirements. The City of Brenham, Public Utilities Department, shall provide a waste manifest form to the hauler.
- (12) The hauler shall complete and sign the hauler and secondary hauler (when applicable) sections of the waste manifest form, as appropriate, when removing waste.
- (13) Ultimately, it is the responsibility of the permitted hauler to provide the waste manifest to the City as per State requirements. See Section 26-88(c) Manifest Requirements below.

(b) Generator Requirements.

Generators of fats, oils, grease and grit waste shall comply with the following provisions in addition to compliance with all other provisions of this Article and any provisions required by the TCEQ and any other regulatory agency with this jurisdiction:

- (1) It shall be the responsibility of the generator to ensure that the generator section and the hauler section of the manifest are complete and accurate, complete with signatures.
- (2) The generator must ensure that the hauler gives the final original top copy of the manifest to the generator. The top copy of the manifest must include the disposal facility's signature after the waste has been disposed of at the final disposal site.
- (3) The generator shall ensure that both sides of the traps/interceptor(s) are fully evacuated when pumped, removing all water, floating grease, grit and any other visible signs of grease/grit as per the City-established pumping schedules. There shall be no skimming of trap/interceptor waste. Any other schedule is subject to approval by the City of Brenham Public Utilities Department.
- (4) Upon request by an authorized representative of the City of Brenham Public Utilities Department, the generator shall make any or all original generator copies of the waste manifest available for review.
- (5) A generator of grease and/or grit trap waste within the City of Brenham city limits shall have all liquid waste material picked up from his premises by a grease and/or grit trap waste hauler who is permitted by the City of Brenham. It shall be the responsibility of the hauler to provide proof of this permit to each generator. The grease and/or grit trap waste shall be transported for disposal to a site approved by the appropriate local, state, and/or federal agencies.
- (6) A generator of liquid wastes shall not have liquid waste in combination with hazardous waste removed from the premises by a liquid waste hauler who is not permitted for the transport of hazardous waste.
- (7) A generator shall perform the following BMPs:
 - a) Install or provide collection devices of the size and type specified by the Public Utilities Department;
 - b) Maintain a collection device in continuous proper condition;
 - c) Supervise proper cleaning of collection device;
 - d) Report spills and accidents involving a collection device to the proper local, state and/or federal agencies within 24 hours; and
 - e) Clean up spills and accidents immediately and have all waste material properly disposed of by a permitted hauler.

(c) Manifest Requirements.

- (1) Each pump-out of a grease and/or grit trap or interceptor must be accompanied by a manifest to be used for record-keeping purposes. The City will distribute the manifest documents initially and then as needed, upon request.
- (2) Persons who generate collect and transport grease and/or grit waste shall maintain a record of each individual collection and deposit. Such records shall be in the form of a manifest. The manifest shall include:
 - a) name, address, telephone, and TCEQ registration number of hauler;
 - b) name, signature, address, and phone number of the person who generated the waste and the date collected;
 - c) type and amount(s) of waste collected or transported;
 - d) name and signature(s) of responsible person(s) collecting, transporting, and depositing the waste;
 - e) date and place where the waste was deposited;
 - f) identification (license or site registration number, location, and operator) of the facility where the waste was deposited;
 - g) name and signature of the on-site representative of the waste deposit facility acknowledging receipt of the waste and the amount of waste received;
 - h) the volume of the grease and/or grit waste received; and
 - i) a consecutive numerical tracking number printed on the manifest to assist haulers, waste generators, and regulating authorities in tracking the volume of grease and/or grit transported.
- (3) Manifests shall be divided into five parts and records shall be maintained as follows.
 - a) The white copy is the generator's final copy, and is provided by the waste transporter within 15 days of the initial trap service.
 - b) The green copy is the City's copy, which should be forwarded to the City of Brenham by the 5th day of the month for the previous month's pumpage by the permitted hauler.
 - c) The canary copy is the transporter's copy.
 - d) The pink copy is the disposal site's copy.
 - e) The golden copy is the generator copy's, which is given on the day the trap is serviced.
 - f) In the event that there is no monthly waste pumpage, a letter indicating that there was no monthly pumpage must be provided to the City by the waste hauler.
- (4) Copies of manifests returned to the waste generator shall be retained for five (5) years and be readily available for review by the POTW.

Section 26-89. Grit Trap Maintenance Requirements.

A person who discharges wastewater from a grit trap to the POTW shall completely remove all grit waste, other liquid waste, semi-solids, solids, and residue from the grit trap when the grit trap is pumped.

A person pumping a grit trap shall dispose of the waste removed from a grit trap in accordance with federal, state, and local regulations.

The grit traps will be pumped a minimum of twice per year or as established and directed by the Public Utilities Department. The Director of Public Utilities may establish other pumping requirements for grit traps as necessary to protect the POTW or a portion of the sanitary sewer.

Section 26-90. Fees.

- (a) Fees are associated with the Hauler Permit per Section 26-88(a)(4) of this Article.
- (b) When the City grants a trap waiver due to space constraints and/or historical landmarks and requires a waiver fee, the FPSE shall pay an annual waiver fee of \$150. The City Council shall make the final decisions regarding waivers and applicable waiver fees. The annual waiver fee shall be paid by January 5th each year.

Section 26-91. Schedule of Penalties.

- (a) Blockage of a collection system line:

If the Director of Public Utilities determines that a generator is responsible for a blockage of a collection system line, the generator shall owe a civil penalty of \$1,000 for the first violation, \$1,500 for a second violation, and \$2,000 for the third violation within a two-year period. Continuous violations shall result in a consecutive increase per civil penalty by \$500 and may also result in termination of services.

- (b) Violations of this Article.

Any person violating any of the provisions of this Article shall be subject to the following penalties as listed below in order of occurrence:

- (1) First violation - Notice of Violation (NOV) letter shall be issued with no associated monetary penalty.
- (2) Second violation – Written Citation issued with an associated monetary penalty of \$1,000 for the second violation.
- (3) Third violation – Written Citation issued with an associated monetary penalty of \$1,500 for the third violation.
- (4) Fourth violation – Written Citation issued with an associated monetary penalty of \$2,000 for the fourth violation.
- (5) Consistent violations will result in a consecutive \$500 increase per civil penalty and may result in termination of service.

The violation shall be remedied within thirty (30) days from the violation date unless otherwise established by the Director of Public Utilities.

Section 26-92. Administrative Review.

- (a) Generators desiring to dispute fines and other penalties must file a written request for the Director of Public Utilities to reconsider the penalties, along with full payment of any and all fines, within fifteen (15) days of being notified of the penalty(ies). Where a request has merit, the Director of Public Utilities may convene a hearing on the matter. In the event the generator's appeal is successful, the payment shall be returned to the generator.
- (b) Failure to submit a timely written request for review shall be deemed to be a waiver of the administrative review process.
- (c) In the written request, the generator must indicate specific objections to the penalties and the reasons for the objections.
- (d) The Director of Public Utilities shall make a written decision upholding or denying the request for reconsideration no later than fifteen (15) days from the date of receipt of the written request for reconsideration or from the date of the hearing on the matter (if a hearing is convened by the Director), whichever date is later. The Director shall promptly provide a copy of said written decision to the generator that filed the written request for reconsideration. Such approval or denial will be considered a final administrative action for purposes of administrative review.

SECTION 2: Repealer Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for a violation occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 3: Severability Clause. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect.

SECTION 4: Effective Date. This Ordinance shall become effective upon adoption and publication as required by law.

SECTION 5: Proper Notice and Meetings. It is hereby officially found and determined that the meetings at which this Ordinance was passed were open to the public as required, and that public notice of the time, place and purpose of said meetings were given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED, on its first reading at the meeting of the City Council held on this the _____ day of _____, 2010.

PASSED AND APPROVED, on its second reading at the meeting of the City Council held on this the _____ day of _____, 2011.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC
City Secretary



AGENDA FORM

| | | |
|--|--|--|
| DATE OF MEETING: January 6, 2011 | DATE SUBMITTED: January 3, 2011 | |
| DEPT. OF ORIGIN: Administration | SUBMITTED BY: Jeana Bellinger | |
| MEETING TYPE: | CLASSIFICATION: | ORDINANCE: |
| <input checked="" type="checkbox"/> REGULAR | <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> 1 ST READING |
| <input type="checkbox"/> SPECIAL | <input type="checkbox"/> CONSENT | <input type="checkbox"/> 2 ND READING |
| <input type="checkbox"/> EXECUTIVE SESSION | <input type="checkbox"/> REGULAR | <input type="checkbox"/> RESOLUTION |
| | <input checked="" type="checkbox"/> WORK SESSION | |
| AGENDA ITEM DESCRIPTION: Discuss Chapter 4, Ambulance Services, of the City of Brenham's Code of Ordinances | | |
| SUMMARY STATEMENT: See attached memo. | | |
| STAFF ANALYSIS (For Ordinances or Regular Agenda Items): | | |
| A. PROS: | | |
| B. CONS: | | |
| ALTERNATIVES (In Suggested Order of Staff Preference): | | |
| ATTACHMENTS: (1) Memo from Jeana Bellinger | | |
| FUNDING SOURCE (Where Applicable): N/A | | |
| RECOMMENDED ACTION: No action required – discussion only. | | |
| APPROVALS: Terry Roberts | | |



To: Mayor & Council
From: Jeana Bellinger
Subject: Ambulance Services Research
Date: January 3, 2011

As you know, immediately following the November 18th council meeting, Council members Goss and Pyle met with me and requested that I do some additional research related to the proposed ambulance services ordinance.

Since the additional research would involve one-on-one communication with local facilities (either by phone, e-mail, or personal contact), I requested the moratorium on ambulance service franchises be extended an additional sixty (60) days. At a special meeting on November 22nd, City Council approved my request; thereby, extending the moratorium to January 31, 2011.

The results of my research are summarized below:

Why most cities only require BLS or ALS level of care for non-emergency transfers.

I contacted the cities of Austin, El Paso, Pasadena, Temple and Victoria. It seems that in four (4) of the five (5) cities there is no regulation of the level of care required for non-emergency transfers.

The City of El Paso was the only city that requires MICU level care and that is due to the fact that their franchise holders are dispatched, when needed, by the city's EMS department to respond to emergency calls and provide assistance. The City of El Paso requires all providers to follow the Federal specifications (KKK-A-1822E) for a Star-Of-Life Ambulance *"...a vehicle for emergency medical care which provides: a driver's compartment; a patient compartment to accommodate an emergency medical technician (EMT)/paramedic and two litter patients...so positioned that the primary patient can be given intense life-support during transit..."*

The other four cities (Austin, Pasadena, Temple and Victoria) do not regulate the level of care. As long as the provider is in good standings with the Texas Department of Health Services, they are issued a franchise permit to operate within the city limits.

The Fire Chief of Victoria, Vance Riley, stated that in Victoria the organizations needing the service somewhat regulate the level of care. For example: if there are two providers (one with BLS level care and one with ALS level care), the nursing home and/or hospital needing the transport service will contact whichever service can provide them the level of care they need for that patient/resident. Mr. Riley said that over the last few years all of their providers increased their level of care from BLS to BLS with MICU capabilities to get more business from area nursing homes and/or hospitals. Bringing a BLS level care unit to MICU capabilities can be achieved simply by adding a certified/licensed paramedic and at least an EMT to the ambulance when in service.

What is the number of non-emergency transfer calls made by the County?

In order to more accurately track all EMS dispatch calls, a new Emergency Medical Dispatch software (*ProQA*) was installed in January, 2010. The new software report indicates that 1,179 transfers were made by EMS in 2010; however, according to a letter dated October 27, 2010 from Dorothy Morgan, only 324 of these calls were for non-emergency transfers.

The city's Communications Department reported a total of 1,090 transfer calls in 2008 and 1,156 transfer calls in 2009. The Communications Department Supervisor, Pam Ruemke, indicated there is no way to track non-emergency transfers from other types of transfers.

What number of non-emergency transfer calls was upgraded to emergency calls?

According to the Communications Supervisor, we have no way to track the number of non-emergency transfers that were upgraded to emergency status while in route.

The number of non-emergency transfer calls that the County declines due to their unavailability.

As stated by the Communications Supervisor, the number of declined calls should be none since there no other providers operating within the city limits. However, one nursing home did state that there have been times when their calls for a non-emergency transfer were declined by the County because an ambulance was not available at the time.

What is the total amount of reimbursement from Medicaid/Medicare for non-emergency transfer service?

According to the U.S. Government's official site for Medicare (www.medicare.gov), ambulance services are covered under Medicare Part B and "...*only if transportation in any other vehicle would endanger your health...*" Coverage for ambulance service is provided at 80% of the Medicare-approved amounts; the patient is responsible for the other 20%; as well as a \$155 annual deductible for all Part B services.

I was not able to find a list of Medicare-approved amounts for ambulance service but according to the website, Medicare payments for ambulance services are based on how much it would cost to be transported to the closest appropriate facility.

Contact local nursing homes and get their input on:

- **How many non-emergency transfers do they have in a month?**
- **If all three service types (BLS, ALS and MICU) were available, which would they use most often?**
- **Would the availability of another non-emergency transfer provider be helpful to them?**
- **How are their patients billed for non-emergency transfers?**
- **Are they currently able to schedule, with the County, their non-emergency transfer needs in advance?**
- **Who determines how a resident/patient is to be transferred...the director of facility, a nurse, a doctor, the patient, etc...?**

I asked Angela Hahn to assist me with this research by contacting each of the local nursing homes. After contacting four of the six local facilities, she provided the following report:

There are six nursing home/assisted living facilities within the City limits. They offer a range of services including duplexes, apartments, private and shared rooms and "memory care", which is basically an Alzheimer's/dementia unit. Some of the facilities accept Medicaid and some are private pay. The facilities are Trinity Care Center, Bluebonnet Hills, Gazebo Terrace, Argent Court, Kruse Village which incorporates LaRoche Manor, and Brenham Rest Home. Administrators from four of the six were interviewed by telephone. They represented Trinity Care Center, Bluebonnet Hills, Gazebo Terrace and Brenham Rest Home.

Each facility has a private van which they use for non-emergency transfers as well as providing transportation to different appointments and social functions. Depending on their clients, the vans may be used daily for different doctors' appointments, dialysis visits and other health care-related issues. Typically the vans are equipped for residents who are ambulatory, which includes wheelchairs. Non-ambulatory residents are transported by ambulance. Because they provide their transportation, each facility is able to schedule non-emergency transfers as needed.

The facilities require employees to be at least CPR and first-aid certified and capable of assisting large patients, which they consider basic life support. It is the bare minimum acceptable. Facilities typically don't call Washington County EMS for non-emergency transfer unless the patient isn't mobile at all. They would all consider using another non-emergency transfer company depending on the cost. Each administrator stated they believed EMS charges too much for non-emergency transfer. According to the administrators, EMS charges \$200 per non-emergency transfer; that cost is covered either by the facility as part of the residents' care or directly by the patient or patient's family. Medicaid does not cover non-emergency transfers.

The nursing facility staff makes the decision on how a patient is transferred based on the status of the resident, and why the patient is being transferred. If there is any medical emergency, or even a question of one, the facility will call 911 regardless of having a van for transport. One of the issues raised by administrators is that if a patient is transported as an emergency, and then released as a non-emergency, EMS will not always return the patient to the facility. In that case, regardless of the time of day, someone from the nursing facility must go get the resident. According to the administrators, if the patient can't be picked up within a 30 minute time frame, the hospital will call EMS who charges for a non-emergency transfer. The nursing facility and/or patient are then responsible for the charges incurred.

All of the administrators commended EMS for their medical personnel and their abilities in handling emergency calls. They believe we have an excellent critical care system here, and, in fact, is one of the best in the state. However, for non-emergency transfers, it was agreed that another provider would be beneficial, if their rates were lower than currently charged. They also said they would continue to provide transportation for their residents as they do now.



AGENDA FORM

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|--|---|---|
| DATE OF MEETING: January 6, 2011 | DATE SUBMITTED: January 3, 2011 | |
| DEPT. OF ORIGIN: Administration | SUBMITTED BY: Jeana Bellinger | |
| MEETING TYPE: | CLASSIFICATION: | ORDINANCE: |
| <input checked="" type="checkbox"/> REGULAR | <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> 1 ST READING |
| <input type="checkbox"/> SPECIAL | <input type="checkbox"/> CONSENT | <input checked="" type="checkbox"/> 2 ND READING |
| <input type="checkbox"/> EXECUTIVE SESSION | <input checked="" type="checkbox"/> REGULAR | <input type="checkbox"/> RESOLUTION |
| | <input type="checkbox"/> WORK SESSION | |
| AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon Ordinance No. O-10-022 on its Second Reading Amending Chapter 4, Ambulance Services, of the City of Brenham's Code of Ordinances | | |
| SUMMARY STATEMENT: At the November 4, 2010 Council meeting, the ambulance services ordinance was presented for first reading with the following provisions: | | |
| <ul style="list-style-type: none"> (1) Mobile intensive care unit (MICU) level service for all non-emergency transfers. The MICU level service requires a paramedic on board and requires the vehicle be equipped to handle paramedic level medical care. (2) The transfer service be located in Brenham and be able to respond to calls within 30 minutes. (3) The transfer service is required to engage a local physician as its medical director. | | |
| A motion was made by Councilmember Herring and seconded by Councilmember Ebel to approve the ordinance as presented with the following revisions to be made before second reading: | | |
| <ul style="list-style-type: none"> Sec. 4-34(a): Removed the words "<i>emergency or</i>"; and Sec. 4-22(b): Added language to address the two-way radio and mobile telephone communication requirement | | |
| On November 18, 2010 I presented the ordinance for 2 nd reading (Ordinance No. O-10-022) as approved by Council on November 4 th . However, there was considerable discussion among Council related to MICU level of service, the business location of the transfer service provider and requirements for the medical director. A motion was made by Councilmember Pyle and seconded by Councilmember Goss to table the ordinance until additional research could be done to answer Council's questions related to these issues. | | |
| The ordinance is being presented as adopted on first reading and presented at the November 18 th council meeting. Any desired changes as a result of the additional research can be discussed in Work Session prior to this Ordinance being considered for final approval. | | |

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. PROS:

B. CONS:

ALTERNATIVES (In Suggested Order of Staff Preference):

ATTACHMENTS: (1) Ordinance No. O-10-022 (as adopted on first reading)

FUNDING SOURCE (Where Applicable): N/A

RECOMMENDED ACTION: Approve Ordinance No. O-10-022 on its second reading amending Chapter 4, Ambulance Services, of the City of Brenham's Code of Ordinances

APPROVALS: Terry Roberts

ORDINANCE NO. O-10-022

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING CHAPTER 4 OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS; PROVIDING FOR THE REGULATION OF AMBULANCE SERVICES WITHIN THE CITY LIMITS OF THE CITY OF BRENAM, TEXAS; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PROPER NOTICE AND MEETINGS

WHEREAS, the City of Brenham takes pride in the level of medical services offered to both residents and visitors alike within our community; and

WHEREAS, the current high standard of emergency medical services offered here provides a sense of security to those who use it, for both emergency and non-emergency transports; and

WHEREAS, that level of standard was set in 1979 and is one that citizens and visitors have come to expect and grown accustomed to for non-emergency transfers; and

WHEREAS, the City Council of Brenham recognizes that high standard of medical service and wishes to continue to offer that to our citizens and our visitors; now therefore

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Brenham, Texas that:

SECTION 1.

Chapter 4, Ambulance Services, of the Code of Ordinances of the City of Brenham, Texas is hereby amended to read as follows:

**ARTICLE I.
IN GENERAL**

Sec. 4-1. Definitions.

For the purpose of this Chapter, the following words and phrases shall have the following meanings:

Advanced life support. Emergency pre-hospital care provided by a certified or licensed, emergency medical technician-intermediate or an emergency medical technician paramedic using invasive medical acts under the medical supervision and control of a licensed physician.

Ambulance. Any motor vehicle or other mode of transportation used, designed or redesigned, and equipped for the primary purpose of the transportation of sick or injured persons, whether functioning as a basic life support, advanced life support or mobile intensive care unit service level as provided by State law and this Chapter.

Applicant. Any person, partnership, corporation or other entity that makes application to obtain a franchise to operate within the city limits of the City of Brenham.

Basic life support. Emergency pre-hospital care provided by a certified or licensed pre-hospital care provider using non-invasive medical acts. The provision of basic life support may be under the medical supervision and control of a licensed physician.

Basic life support emergency medical services vehicle. A vehicle that is designed for transporting the sick or injured, has personnel and sufficient equipment and supplies for providing basic life support, is capable of providing emergency and nonemergency transportation, and is properly certified or licensed by the Texas Department of State Health Services as a basic life support emergency medical services vehicle.

City. The City of Brenham, Texas.

Emergency. An emergency is any circumstance that calls for an immediate action and which the element of time in transporting the sick, wounded or injured for medical treatment is essential to the health or life of any person. Such circumstances include, but are not limited to, general accidents, traffic accidents and acts of violence resulting in personal injury, sudden illness, and any patient with vital signs outside of normal parameters.

Emergency ambulance. Any ambulance responding to an emergency call using warning lights or horns or sirens.

Emergency Call. A telephone call or other similar communication from a member of the public or other person, as part of a 9-1-1 system or other emergency access communication system, made to obtain emergency medical services.

Emergency Care Attendant (ECA). Any person certified by the Texas Department of State Health Services as minimally proficient to provide emergency pre-hospital care by providing initial aid that promotes comfort and avoids aggravation of an injury or illness, as regulated by the Texas Health and Safety Code and relevant regulations.

Emergency Medical Care. Services provided after the sudden onset of a medical or traumatic condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in: placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

Emergency Medical Service. Response to an individual's perceived need for immediate medical care and to prevent death or aggravation of physiological or psychological illness or injury.

Emergency Medical Service Personnel. Any person certified by the Texas Department of State Health Service as: an emergency care attendant, an emergency medical technician, an emergency medical technician – intermediate, an emergency medical technician – paramedic, or a licensed paramedic.

Emergency Pre-Hospital Care. Care provided to the sick or injured before or during transportation to a medical facility, and includes any necessary stabilization of the sick or injured in connection with that transportation.

Emergency Transfer. The immediate transportation (from 911 calls or standard telephone direct) of the sick, injured or potentially sick or injured patient in an ambulance requiring any or all of the following: continuing assessment of the patient, monitoring of EKG, administration or monitoring of intravenous fluids or medications, and/or airway maintenance of any kind. All transfers from an emergency room to another medical facility is considered an emergency.

Emergency Medical Service Provider (EMS). The Emergency Medical Service Department of Washington County, which uses or maintains emergency medical service vehicles and emergency medical service personnel to provide emergency medical care of the sick or injured and non-emergency transportation, and including other providers serving in an emergency capacity pursuant to Section 4-16(4) of this Chapter 4.

Emergency Medical Technician (EMT). Any person certified by the Texas Department of State Health Services as minimally proficient to perform emergency pre-hospital care that is necessary for basic life support that includes cardiopulmonary resuscitation and the control of hemorrhaging, as regulated by the Texas Health and Safety Code and relevant regulations.

Emergency Medical Technician - Intermediate (EMT-I). Any person certified by the Texas Department of State Health Services as minimally proficient to provide emergency pre-hospital care by initiating, under medical supervision, certain procedures, including intravenous therapy and endotracheal or esophageal intubation, as regulated by the Texas Health and Safety Code and relevant regulations.

Emergency Medical Technician - Paramedic (EMT-P). Any person certified by the Texas Department of State Health Services as minimally proficient to provide advanced life support by initiating, under medical supervision, certain procedures, including intravenous therapy, endotracheal or esophageal intubation, electrical cardiac defibrillation or cardioversion, and drug therapy, as regulated by the Texas Health and Safety Code and relevant regulations.

Emergency transfer request. A request made by a physician directly or through a registered nurse for an emergency transfer.

Medical Facility. Any building or place of business established for the purpose of examination or treatment by a licensed physician of individuals that are sick or injured.

Mobile Intensive Care Unit. A vehicle that is designed to provide advanced life support emergency medical services and has personnel and sufficient equipment and supplies to provide cardiac monitoring, defibrillation, cardioversion, drug therapy, and two-way radio communication.

Non-Emergency Transfer. The transportation of persons not involving an Emergency Transfer. Transfers to/from medical facilities to/from residential facilities that do not require any of the services or treatments defined in emergency medical care are to be considered Non-Emergency Transfers.

Nurse/paramedic. An individual who is certified as an EMT - Paramedic and, in addition, holds a State license as a registered nurse.

Person. An individual, corporation, organization, business, trust, partnership, association or any other legal entity.

Sec. 4-2. Function

The operation of emergency and non-emergency ambulances within the city limits of the City of Brenham for furnishing medical service operations is hereby declared to be a primary governmental function necessary to protect health, safety and welfare of the citizens of Brenham.

Sec. 4-3. Exclusions

It shall be unlawful for any person to furnish, operate, advertise or otherwise engage or profess to be engaged in the operation of an emergency or non-emergency ambulance upon the streets of Brenham unless said person is:

- (1) A member of the Washington County EMS Department performing official duties;

- (2) An approved, licensed, and franchised non-emergency ambulance service provider operating in compliance with the rules and regulations of this Chapter;
- (3) An employee of a political subdivision or agency of the State;
- (4) A person providing service to or from a medical facility located in the City of Brenham going to or from a medical facility located outside of the city limits of Brenham using an ambulance that is licensed as a specialty care transport vehicle and meets or exceeds the level of care that Washington County EMS Department provides;
- (5) Non-emergency transfer services operated by a medical facility or other entity, for patients, residents or members of said medical facility or other entity, with no separate charge for such transfer, and that same medical facility of entity does not solicit or provide transfer business outside itself;
- (6) Any person meeting requirements of the State of Texas for personnel, vehicles and equipment who responds to a request from the City of Brenham, the Washington County EMS Director or the City's Emergency Management Coordinator to lend assistance when a major disaster or other event results in emergency calls exceeding the capacity of the Washington County EMS Department;
- (7) A person transporting a sick or injured person to medical care as an individual citizen not ordinarily engaged in that activity; or
- (8) A person or vehicle travelling through the City of Brenham on a call that neither originates nor ends within the City of Brenham.

Secs. 4-4 thru 4-9. Reserved.

ARTICLE II. WASHINGTON COUNTY EMERGENCY MEDICAL SERVICE DEPARTMENT

Sec. 4-10. Designation of Emergency Medical Services provider.

(a) The City of Brenham hereby designates the Washington County Emergency Medical Services (EMS) Department, operated by the Commissioner's Court of Washington County, as the sole and exclusive provider of emergency medical ambulance service within the city limits of Brenham.

(b) All calls for emergency ambulance service within the city limits of Brenham shall be directed to and responded to solely by the Washington County EMS Department, unless directed otherwise in accordance with this Chapter.

Sec. 4-11. Persons to whom available.

The Washington County EMS Department shall provide emergency medical services to all persons within the city limits of the City of Brenham. This service shall also be available to persons in other portions of Washington County, Texas, wherein the point of origination or destination is within the city limits of the City of Brenham.

Sec. 4-12. Mentally ill or disorderly persons.

(a) No insane or mentally ill person that poses a threat to the EMS crew will be transported without an attendant, nurse, or police officer accompanying such person. The City of Brenham shall not be responsible for obtaining or providing any nurse, attendant or police officer in such circumstances. However, this subsection shall not be interpreted to prohibit or limit a police officer from acting within the course and/or scope of his or her duties as a police officer of the City of Brenham.

(b) Any drunk, disorderly or unruly person ordered by a doctor or police officer to be transported in an ambulance may be refused by the EMS unless such person shall be accompanied by a police officer in said ambulance. The EMS crew shall be responsible for determining whether a threat is presented in any particular situation.

Sec. 4-13. Rates.

Any person who uses the emergency medical services of Washington County EMS shall be responsible for paying Washington County EMS for such services. Charges for emergency medical services shall be established by the Commissioners Court of Washington County.

Sec. 4-14. Standby service.

All requests for standby emergency medical service shall be made to the Washington County EMS Department in accordance with the policies and procedures adopted by Washington County. Washington County EMS shall not be required to provide standby service, but may provide such services where feasible.

In the event a person is transported to a hospital or other medical facility from the standby site, each person transported may be charged for an emergency call and any additional services rendered. The Washington County Commissioners Court shall establish and approve all standby fees charged by Washington County EMS.

Secs. 4-15 thru 4-19. Reserved.

**ARTICLE III.
PRIVATE AMBULANCE SERVICE FRANCHISE**

Sec. 4-20. Franchise required.

It shall be unlawful for any person to furnish, operate, advertise or otherwise engage or profess to be engaged in the operation of a private ambulance service upon the streets of Brenham without a franchise as provided by this Article, except as otherwise provided in Section 4-3 of this Chapter.

A private ambulance service which is granted a franchise pursuant to this Article shall be:

- (a) Operated within the city limits of Brenham; and
- (b) Limited to providing non-emergency transfer services, as provided in this Chapter.

Sec. 4-21. Franchise application; qualifications

- (a) An application for a private ambulance service franchise shall be filed with the City Secretary on such form as may be prescribed by the City and the applicant shall furnish the following information with the application:
 - 1. The name and address of (i) applicant, including all owners, partners (if a partnership), all officers (if a corporation), and any other persons with a direct interest in the applicant; and (ii) the names and the addresses of the managing agent or managing personnel of the business if not included in (i);
 - 2. An actual or pro forma financial statement and balance sheet showing the liabilities and equity of the applicant named in (1);
 - 3. Whether any person named in (1) has been convicted of a felony or a misdemeanor other than traffic offenses within the past ten (10) years and, if so, when and where and under what circumstances;
 - 4. Whether any person named in (1) holds or has held a permit for operation of an ambulance service from any other governmental agency or department or is engaged or has been engaged anywhere else in the business of providing private ambulance service;

5. That the applicant has been issued a permit by the Texas Department of State Health Services, pursuant to V.T.C.A., Health and Safety Code 773.041, for each ambulance which the applicant proposes to operate;
 6. The number of ambulances which the applicant proposes to operate and the make, model, motor number, current state license number and registered owner of each ambulance owned by or in the possession of the applicant;
 7. A description of the proposed insignia and color scheme for the ambulances listed in item (6) and a description of the distinctive apparel to be worn by the applicant's drivers;
 8. A list of all two-way radios to be used in ambulance service, their call numbers and the vehicle (identified by motor number) to which each radio has been assigned;
 9. The Brenham address and business telephone number from which the proposed service will be operated;
 10. The names of all attendants and drivers presently employed by the applicant, and, respectively, their Texas Department of State Health Services registry number, level of certification, and Texas State Driver's License number;
 11. A certificate of insurance proving that there is in effect insurance as required by Section 4-27 and a statement that the applicant will defend and hold harmless the City, its officers and employees against all claims arising out of the applicant's operation of the proposed private ambulance service;
 12. The trade or assumed name, if any, under which the applicant intends to do business if said name is different from the applicant; and
 13. Such further information as the City Manager, or his/her designee, may deem necessary.
- (b) The application shall be accompanied by an annual permit fee of \$200.00 plus \$35.00 for each ambulance requested to be approved. All permit fees are not refundable.
- (c) The application shall be accompanied by a copy of the applicant's license to operate from the Texas Department of State Health Services.
- (d) The application shall be accompanied by the name and addresses of the physician serving as medical director for the applicant. The named physician shall be licensed in the State of Texas and registered in Washington County.
- (e) The application shall be accompanied by copies of other relevant documents, as required by the City, to complete the application process.

Sec. 4-22. Franchise requirements

- (a) Each ambulance service franchise holder shall notify the City Secretary, in writing, of any change of address or change in ownership or management of the franchisee not less than ten (10) days prior to the change.
- (b) The ambulance service franchise holder must provide and staff, at its expense, a communications center, which must include twenty-four (24) hour day telephone access for service requests and two-way radio and mobile telephone communication with all ambulances utilized by the ambulance service franchise holder in the City.
- (c) The ambulance service franchise holder shall respond to requests for non-emergency transfer service within thirty (30) minutes at any time of the day, any day of the week, and within thirty (30) minutes of a scheduled non-emergency transfer pick-up time.

Sec. 4-23. Review and public hearing.

- (a) The City Secretary shall forward copies of each application for an ambulance service franchise to the City Manager for review and recommendation to the City Council. In addition, the Fire Chief shall also review each application and make recommendations to the City Council. Within ten (10) days of receipt of an application for an ambulance service franchise, the City Secretary shall also provide written notification to all existing franchisees and Washington County EMS of said application.
- (b) The City Council shall hold a public hearing on an application for an ambulance service franchise under this Article at the time and place specified in the notice published in a newspaper of general circulation fifteen (15) days prior to the hearing and no such franchise shall be granted until an ordinance granting the same has been read at two (2) regular meetings of the City Council.
- (c) An applicant shall not be granted a franchise unless the City Council finds and determines that the public convenience will be served by the issuance thereof. In all hearings, the burden of proof shall be upon the applicant to establish by clear, cogent and convincing evidence that the public convenience will be served by the granting of a private ambulance service franchise. In determining public convenience, the City Council shall consider all of the following:
 - (1) If the applicant has previously participated, or is currently participating, in an ambulance or transfer service and whether such service is being performed in a satisfactory manner.
 - (2) Whether there is a need in the City for the applicant's services, and the number of providers currently franchised in the City and whether granting the franchise will adversely affect existing service so as to lower the standards of existing services and/or cause public inconvenience.

- (3) Whether the applicant is qualified to render good service and has, or will have, sufficient equipment and personnel necessary for the applicant's ambulance service.

Sec. 4-24. Prerequisite to issuance of franchise.

No ambulance service franchise will be granted unless:

- (a) The City Council determines that the contents of the application as required by Section 4-21 are complete, true and correct; and
- (b) The City Council determines that the proposed operation of the ambulance service will be in compliance with all provisions of this Chapter, and all applicable city ordinances, state and federal statutes and regulations.

Sec. 4-25. Length of franchise.

The length of the franchise will be for two (2) years. However, the franchise holder will be subject to review, inspection, and evaluation by the City staff on a quarterly basis with results being presented to the City Manager

Sec. 4-26 Renewal of franchise.

- (a) A holder of an ambulance service franchise shall submit a completed renewal application, provided by the City Secretary, and the franchise renewal application fee of two hundred dollars (\$200.00) not fewer than sixty (60) days before the then current franchise expires.
- (b) The City Manager may make changes in the franchise application as he/she deems necessary.
- (c) If the franchise expires at no fault of the holder before a ruling on the approval or denial of a timely-submitted renewal application, the holder may continue to operate the ambulance service pending a final decision by City Council. The holder shall cease operation immediately upon denial of the renewal by the City Council.

Sec. 4-27. Insurance.

No private ambulance service shall be operated in the City unless the applicant or the holder of the permit is at all times insured by automobile liability insurance, covering the operation of each ambulance, which does not contain a passenger liability exclusion, in the minimum amount of five hundred thousand dollars (\$500,000) per person for bodily injury or death, one million dollars (\$1,000,000) for bodily injury or death per occurrence and one hundred thousand dollars (\$100,000) for property damage, and by liability insurance, covering the care and handling of the patients by attendants, emergency medical technicians and paramedics in the minimum amounts of one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per occurrence.

The City shall be named as a certificate holder and as an additional insured in all insurance policies required by this Section and the permit holder shall maintain on file with the City Secretary a certificate of insurance or other proof acceptable to the City Attorney that the required policies are in effect. The insurance policy must be issued by a solvent insurance company licensed to do business in the State of Texas.

Each insurance policy shall require written notice sent via certified mail, return receipt requested from the insured or insurer to the City Secretary at least thirty (30) days prior to termination by the insured or insurer.

Sec. 4-28. Suspension and revocation.

If the ambulance service franchise holder violates any provision of this Chapter or fails to comply with or maintain compliance with any requirement of this Chapter or the franchise, the City Manager may order the suspension or revocation of the franchise.

An ambulance service franchise holder shall also be subject to revocation if it is found that the holder of said franchise or any company, service or corporation that the holder is affiliated or in partnership with is duplicating emergency medical services, unless requested to do so by the City of Brenham Communications Center. Furthermore, if an ambulance franchise holder receives an emergency call from any source to respond in the City of Brenham, the franchisee shall immediately notify the City of Brenham Communications Center and shall not respond unless requested to do so by the City of Brenham dispatcher. Duplication of emergency medical services is defined as responding to the same call for service as a Washington County EMS unit without having been requested to do so by a City of Brenham dispatcher.

The City Secretary shall notify the franchise holder of the suspension or revocation in writing within ten (10) days of the City Manager's determination. Such notice shall disclose the deficiency and/or violation and outline the City Manager's actions.

Sec. 4-29. Appeal.

- (a) A franchise holder may appeal to the City Council the following decisions of the City Manager if the holder requests an appeal hearing in writing and delivers it to the City Secretary not more than ten (10) business days after receiving notice of the City Manager's action.
- (b) The City Council shall act as the appeals hearing body in an appeal hearing under this Section. The City Council shall give the appealing party an opportunity to present evidence and make argument in appellant's behalf. The formal rules of evidence do not apply to an appeal hearing under this Section, and the City Council shall make its ruling on the basis of a preponderance of the evidence presented at the hearing.
- (c) The City Council may affirm, modify, or reverse all or part of the action of the City Manager being appealed. The City Council may, in its sole discretion, reinstate the franchise if the franchise holder has corrected the violation or deficiency causing the suspension or revocation. The decision of the City Council is final.

Sec. 4-30. Gross receipts tax.

(a) The ambulance service franchise holder shall, during the life of said franchise, pay to the City, at the office of the City Secretary in lawful money of the United States, an amount equal to two percent (2%) of its gross receipts measured by ambulance service fees collected and other income derived from the operation of the ambulance service within the City of Brenham, said remittance shall be made monthly on or before the tenth day of each calendar month.

(b) A grantee herein shall be required to install and adequately keep the system of bookkeeping regarding the ambulance services provided pursuant to the franchise, which books shall be subject to inspections of the governing body of the City and the City Manager and such persons as the City may designate, or either of them, so as to enable the City of Brenham to check the correctness of the accounts kept and to compute fairly and accurately the amount of gross receipts that may be due to the City.

Sec. 4-31. Inspection of books and records.

The books and records of the ambulance service franchise holder shall be open at any reasonable time for inspection by the Mayor, City Council, City Manager, or any official designated by the City.

Sec. 4-32. Transfer of franchise.

No assignment, sale or subletting of any part of a franchise shall ever be made by the franchisee without first receiving written approval of the City Council of the City of Brenham.

Sec. 4-33. Emergency medical services personnel.

Attendants and drivers who provide services within the city limits of Brenham pursuant to an ambulance services franchise shall:

- (1) Be at least eighteen (18) years of age;
- (2) Be a citizen of or authorized to work in the United States;
- (3) Not have been convicted of a felony or any offense involving moral turpitude within the past ten (10) years and not have had any license for the operation of motor vehicles suspended or revoked with ten (10) years;
- (4) Be a holder of a valid Texas drivers license, entitling driver to operate an ambulance;
- (5) Present a certificate executed by a licensed practicing physician showing that the person is free of contagious or communicable diseases, color blindness, or any other condition or disability which would impair his/her ability to provide emergency medical services to the public;
- (6) Be currently certified by the Texas Department of State Health Services at the level required by this Article.

Sec. 4-34. Standards and requirements for vehicles and equipment.

(a) *Vehicles.* Each vehicle utilized in a non-emergency transfer must be permitted by the Texas Department of State Health Services as a mobile intensive care unit, and may be operated only when said vehicle meets all conditions required by Chapter 773 of the Texas Health and Safety Code and other applicable laws and regulations.

(b) *Equipment.* A vehicle may not be operated as a mobile intensive care unit unless it is furnished with all of the equipment (and qualified personnel) required by the Texas Department of State Health Services for a mobile intensive care unit and is permitted or licensed as such. Such equipment must be clean, in good working order, and available in sufficient quality to provide safe transport and care of sick and injured persons.

Sec. 4-35. Refusal to give service.

Neither the ambulance service franchise holder nor any employee or agent thereof shall refuse to transport a patient requesting ambulance service, except for good cause. In determining "good cause" for purposes of this section, the ambulance service franchise holder may consider whether the patient is insane, mentally ill, drunk, disorderly or unruly; whether the patient has previously willfully refused to pay for services; whether the ambulance service franchise holder can safely transport the patient; or whether it is the best available ambulance service with the capabilities to perform such a transport; or similar matters.

Sec. 4-36. Operations.

If, during a transport, the patient's condition worsens or he suffers an acute condition, attendants of the ambulance vehicle shall immediately contact the Brenham Communications Center and advise the dispatcher of such and then proceed on an emergency basis to the emergency care facility at the hospital of patient's choice or nearest appropriate medical facility. A patient who has a worsened or acute condition includes, but is not limited to, any or all of the following:

- (1) A patient who has difficulty breathing;
- (2) A patient who has stopped breathing;
- (3) A patient in cardiac arrest;
- (4) A patient who has seizures;
- (5) A patient who has unstable vital signs; or
- (6) A patient with a change in vital signs (e.g., drop or increase in blood pressure)

Sec. 4-37. Additional Services

The ambulance service franchise holder shall have the privilege of receiving non-emergency transfer overflow calls for ambulance service from the Washington County EMS Department. The ambulance franchise service holder shall respond to requests for service from the Washington County EMS as quickly and safely as possible.

Sec. 4-38. Rates.

The City Council hereby expressly reserves the right, power, and authority to fully regulate and establish, by resolution, the rates and charges for the services of an ambulance service franchise holder to its customers, fully reserving to the City Council all rights, powers, privileges, and immunities, subject to the duties, limitations and responsibilities which the constitution, the laws of the state, and this Chapter confer upon the City.

Secs. 4-39. Reserved.

SECTION 2.
SAVINGS CLAUSE

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

SECTION 3.
SEVERABILITY

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

SECTION 4.
PENALTY

Any person violating this Ordinance by interconnecting distributed generation to the City of Brenham electric system without a complete Application and executed Agreement shall, or violating any other provision of this Ordinance, upon conviction, be guilty of a misdemeanor and shall be fined up to \$2,000.00 per violation, and each day that a violation continues or each occurrence shall be considered a separate offense and punished accordingly.

SECTION 5.
REPEALER

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

SECTION 6.
EFFECTIVE DATE

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

SECTION 7.
PROPER NOTICE AND MEETINGS

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

PASSED AND APPROVED, on its first reading at the meeting of the City Council held on this the _____ day of _____, 2010.

PASSED AND APPROVED, on its second reading at the meeting of the City Council held on this the _____ day of _____, 2011.

Milton Y. Tate, Jr., Mayor

ATTEST:

Jeana Bellinger, TRMC, City Secretary



AGENDA FORM

| | | | |
|---|---|--|--|
| DATE OF MEETING: January 6, 2011 | | DATE SUBMITTED: December 30, 2010 | |
| DEPT. OF ORIGIN: Administration | | SUBMITTED BY: Terry Roberts | |
| MEETING TYPE: | CLASSIFICATION: | ORDINANCE: | |
| <input checked="" type="checkbox"/> REGULAR | <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> 1 ST READING | |
| <input type="checkbox"/> SPECIAL | <input type="checkbox"/> CONSENT | <input type="checkbox"/> 2 ND READING | |
| <input type="checkbox"/> EXECUTIVE SESSION | <input checked="" type="checkbox"/> REGULAR | <input checked="" type="checkbox"/> RESOLUTION | |
| | <input type="checkbox"/> WORK SESSION | | |
| AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon Resolution No. R-11-001 Regarding the Exchange of Washington County's Undivided One-Half (1/2) Interest in the Linda Anderson Property for the City's Release of Certain Conditions on Conveyance to the County of the Public Health Facility Property Located at 100 S. Chappell Hill Street | | | |
| SUMMARY STATEMENT: There was general consensus at the joint meeting of the City Council and Commissioners Court that the proposed exchange involving Linda Anderson Park and the former Police Station was a fair and equitable exchange for both entities. In July, Judge Morgan asked the City to consider an exchange of the County's one-half interest in Linda Anderson Park for cancellation of our remaining interest in the old PD building which has been converted into a public health clinic. Our staff research turned up records that showed the City and County acquired the real estate for Linda Anderson Park jointly at a cost of roughly \$50,000 each thus creating a one-half undivided interest in the property for each entity. In donating the old PD to the County for a health clinic, the City retained the right to reacquire the property if it ever ceased to be used as a health clinic. Given the amount of renovations undertaken on the property through grants and donations, the County preferred to pay the \$25,000 release that we reserved when deeding the property to the County. As discussed in the joint meeting in December, the County is still willing to jointly participate in the operation and maintenance of Linda Anderson Park so the offer to exchange our remaining interest in the old PD for the one-half County interest in Linda Anderson Park seemed to be a reasonable exchange. With that direction received at the joint meeting, staff has prepared the necessary resolutions required to authorize the exchange and authorize the Mayor to execute the necessary documentation. If approved, we will then proceed to prepare the necessary paperwork for formal conveyance of the interests described above. | | | |
| STAFF ANALYSIS (For Ordinances or Regular Agenda Items): | | | |
| A. PROS: This is an exchange of property interests that serves the interest of both the City and County. | | | |
| B. CONS: | | | |

ALTERNATIVES (In Suggested Order of Staff Preference):

ATTACHMENTS: (1) Resolution No. R-11-001; (2) Partial Termination and Release Agreement

FUNDING SOURCE (Where Applicable):

RECOMMENDED ACTION: Approve resolution no. R-11-001 regarding the exchange of Washington County's undivided one-half (1/2) interest in the Linda Anderson Property for the City's release of certain conditions on conveyance to the County of the Public Health Facility property located at 100 S. Chappell Hill Street

APPROVALS: Terry Roberts

RESOLUTION NO. R-11-001

A RESOLUTION OF THE CITY OF BRENHAM TERMINATING AND WAIVING THE FEE SIMPLE DETERMINABLE CONDITION ON THE CONVEYANCE OF THE PUBLIC HEALTH FACILITY PROPERTY IN EXCHANGE FOR WASHINGTON COUNTY'S CONVEYANCE OF ITS UNDIVIDED ONE-HALF (1/2) INTEREST IN THE LINDA ANDERSON PARK PROPERTY TO THE CITY OF BRENHAM; AND AUTHORIZING THE MAYOR TO EXECUTE THE NECESSARY DOCUMENTS.

WHEREAS, the City of Brenham, Texas ("City") conveyed the Public Health Facility Property to Washington County, Texas ("County") by special warranty deed executed on April 6, 2009, recorded in Volume 1306, Page 438, in the Official Records of Washington County, Texas; and

WHEREAS, City did grant, sell and convey the Public Health Facility Property to County by said special warranty deed, subject to the Fee Simple Determinable Condition as set forth in said special warranty deed, said special warranty deed being attached hereto and incorporated herein for all purposes as Exhibit "A"; and

WHEREAS, City hereby acknowledges and agrees to terminate and waive the provisions of the Fee Simple Determinable Condition as set out in Exhibit "A" attached hereto, in exchange for Washington County's conveyance of its undivided one-half (1/2) interest in the Linda Anderson Park Property to the City of Brenham, further described in Exhibit "B" attached hereto and incorporated herein for all purposes; and

WHEREAS, City desires to terminate and waive the provisions of the Fee Simple Determinable Condition on the conveyance of the Public Health Facility Property contained in Exhibit "A" attached hereto and release and waive any and all rights of City related thereto; and

WHEREAS, City and County hereby agree that the Public Health Facility Property shall be subject to all other provisions of the special warranty deed set forth in Exhibit "A" attached hereto; and

WHEREAS, the City desires to authorize the Mayor to execute any and all appropriate documents and instruments related to the purposes stated hereinabove;

NOW THEREFORE, be it resolved by the City Council of the City of Brenham that:

Section 1: The City hereby approves the termination and waiver of the provisions of the Fee Simple Determinable Condition from the conveyance of the Public Health Facility Property as set out in Exhibit "A" attached hereto, in exchange for Washington County's conveyance of its undivided one-half (1/2) interest in the Linda Anderson Park Property to the City of Brenham, further described in Exhibit "B" attached hereto and incorporated herein for all purposes

Section 2: The termination and removal of the Fee Simple Determinable Condition from the conveyance of the Public Health Facility Property is conditioned upon Washington County executing the necessary instrument(s) to convey its undivided one-half (1/2) interest in the Linda Anderson Park Property to the City of Brenham.

Section 3: All other provisions, reservations and exceptions to the conveyance and warranty set forth in the special warranty deed set forth in Exhibit "A" attached hereto, including specifically but without limitation the reservation of mineral interests by the City, shall remain in full force and effect.

Section 4: The Mayor, Milton Y. Tate, Jr, is hereby authorized to execute any and all documents and instruments necessary and appropriate for the transaction approved herein.

RESOLVED on this _____ day of _____, 2011.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, City Secretary, TRMC

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

1650

STATE OF TEXAS

§
§
§

COUNTY OF WASHINGTON

SPECIAL WARRANTY DEED

That the CITY OF BRENHAM, a Texas Home Rule municipality located in the County of Washington, State of Texas, hereinafter called Grantor, for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS, cash to Grantor in hand paid by WASHINGTON COUNTY, a political subdivision of the State of Texas, hereinafter called Grantee, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for which no lien, express or implied, is retained or shall exist;

Grantor has GRANTED, SOLD, and CONVEYED, and by these presents does GRANT, SELL, AND CONVEY unto the said Grantee, that certain real property, hereinafter referred to as the Property, located in Washington County, Texas, being more particularly described as follows:

All that tract or parcel of land situated in the City of Brenham, Washington County, Texas out of the A. Harrington Survey A-55, and being Lots 18A, 19A, 20A, 21A, 22A, 23A, 24A and 25A of the East Main Street Addition of the City of Brenham in Washington County, Texas, and being the same property conveyed by deed of the Urban Renewal Agency of the City of Brenham to the City of Brenham, Texas, of record in Volume 427, Page 387, Deed Records of Washington County, Texas.

Fee Simple Determinable Condition:

IT IS EXPRESSLY UNDERSTOOD AND AGREED that this conveyance shall be effective for only so long as Grantee uses the Property primarily as a public health facility and does not execute a document that purports to convey the Property for a private purpose. For the purposes of this condition, the property will be considered to be primarily used as public health facility if at least 75% of the square footage of all improvements on the Property is being used for public health and medical services for those individuals and families that qualify for such services. Only the following enumerated operations, or those later agreed to by the governing bodies of the City and the County, are permissible uses of the Property that may be counted in determining whether at least 75% of the square footage of all improvements on the Property is being used for a public health facility: Public health services; Medical care services to qualified individuals and families; Public Health Department; Medical Assistance Program; Women, Infants & Children (WIC) Nutrition Program; and Screening for eligibility for available public health services. Grantee shall have two (2) years from the date of this conveyance to complete construction of the improvements and rehabilitation of improvements on the Property necessary to use the Property primarily as a public health facility. Failure to complete such construction or use the Premises for such purpose as stated herein will result in the automatic reversion of ownership and control of the Property to Grantor.

Reservations from and Exceptions to Conveyance and Warranty:

A. Validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests outstanding in persons other than Grantor, and other instruments, other than conveyances of the surface fee estate, that affect the Property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; all rights, obligations, and other matters arising from and existing by reason of any Washington County water or utility district; and taxes for 2009, which Grantee assumes and agrees to pay, and subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes.

B. Grantor reserves for itself, and its successors, and assigns forever, all oil, gas, and other minerals in and under and that may be produced from the Property. If the mineral estate is subject to existing production or an existing lease, this reservation includes the production, the lease, and all benefits from it. In connection with this reservation, Grantor waives and conveys to Grantee the right of ingress and egress to and from the surface of the Property relating to the portion of the mineral estate owned by Grantor. Nothing herein, however, restricts or prohibits the pooling or unitization of the portion of the mineral estate owned by Grantor with land other than the Property; or the exploration or production of the oil, gas, and other minerals by means of wells that are drilled or mines that open on land other than the Property but enter or bottom under the Property, provided that these operations in no manner interfere with the surface or subsurface support of any improvements constructed or to be constructed on the Property.

C. The property described herein is sold in its present "as is," "where is," and "with all faults" condition. Grantor makes no warranties or representations, expressed or implied, as to the quality, quantity, or condition of the property or the improvements situated upon the property. Grantee herein, in accepting this Deed, acknowledges that it has inspected the property, is fully cognizant of the property's condition, and accepts it in its "as is," "where is," and "with all faults" condition. Grantee acknowledges that there is no obligation of any kind upon Grantor to make any repairs to, restoration of, or maintenance of the property or the improvements.

AFTER CONVEYANCE, AS BETWEEN GRANTEE AND GRANTOR, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE CONVEYANCE, WILL BE THE SOLE RESPONSIBILITY OF GRANTEE, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CONVEYANCE. ONCE CONVEYANCE HAS OCCURRED, GRANTEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES GRANTOR FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. GRANTEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES GRANTOR FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF GRANTOR'S OWN NEGLIGENCE OR THE NEGLIGENCE OF GRANTOR'S REPRESENTATIVES. GRANTEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES GRANTOR FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO

SPECIAL WARRANTY DEED: THE CITY OF BRENHAM, TEXAS TO WASHINGTON COUNTY, TEXAS

THE STATE OF TEXAS I
COUNTY OF WASHINGTON I

3589

KNOW ALL MEN BY THESE PRESENTS:

That THE CITY OF BRENHAM, TEXAS, a public corporation of Washington County, Texas, acting by and through its duly authorized Mayor, LESLIE D. CLAYTON, heretofore duly authorized, for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars, cash, and other good and valuable considerations, to it in hand paid by WASHINGTON COUNTY, TEXAS, the receipt and sufficiency of all of which is hereby acknowledged and confessed, and no lien, express or implied being retained;

Have GRANTED, SOLD AND CONVEYED, and by these presents do GRANT, SELL AND CONVEY, unto the said WASHINGTON COUNTY, TEXAS, hereinafter sometimes called Grantee, an undivided one-half (1/2) interest in and to the hereinafter described property, lying and being situated in Washington County, Texas, to-wit:

All that tract or parcel of land situate in Washington County, Texas out of the P. & A. Hope Survey A-62 and the A. Harrington Survey A-55 and being the 11.413 acre tract of land conveyed by deed dated August 16, 1979 from Clinton G. Anderson to the City of Brenham, Texas as recorded in Volume 380, Page 710 of the Washington County Deed Records and also being the three tracts of land called 3.673 acres, 1.638 acres and 5.510 acres in a deed dated January 3, 1980 from Clinton G. Anderson to the City of Brenham, Texas as recorded in Volume 387, Page 172 of the Washington County Deed Records, more particularly described as follows:

BEGINNING at an iron pin marking the intersection of the South line of the 3.673 acre tract with the East line of County Road #60, formerly called Independence Street; THENCE with the East line of County Road #60 N 13 deg. 49 min. 25 sec. E, 400.00 ft. to an iron pin for angle point; N 12 deg. 36 min. E, 129.02 ft. to an iron pin and fence line angle; N 8 deg. 35 min. 25 sec. E, 185.38 ft. to an iron pin and fence line angle; N 11 deg. 26 min. 51 sec. E, 334.49 ft. to a monument marking the city limit line for the City of Brenham, Texas; N 12 deg. 22 min. 22 sec. E, 274.88 ft. to an iron pin and fence line angle; N 20 deg. 40 min. 57 sec. E, 145.87 ft. to a tree fence line angle; N 14 deg. 56 min. 47 sec. E, 88.40 ft. to a tree fence line angle for Northmost corner of the 11.413 acre tract and the tract of land herein described;

THENCE S 64 deg. 52 min. 15 sec. E, 350.83 ft. with the fenced South line of the S. A. Murski Tract to a fence line angle;
 THENCE S 50 deg. 28 min. E, 114.00 ft. with said line to an iron pin in the fence line;
 THENCE S 14 deg. 38 min. 34 sec. W, 397.72 ft. to an iron pin for interior corner;
 THENCE S 75 deg. 21 min. 26 sec. E, 300.00 ft. to an iron pin for Eastmost corner of the 5.510 acre tract and the tract of land herein described;
 THENCE S 14 deg. 38 min. 34 sec. W, 1035.71 ft. with the East line of the 5.510 acre and 1.638 acre tracts to an iron pin marking the Southmost corner of the 1.638 acre tract and the tract of land herein described;
 THENCE N 76 deg. 10 min. 35 sec. W, 714.03 ft. to the PLACE OF BEGINNING and containing 22.234 acres of land.

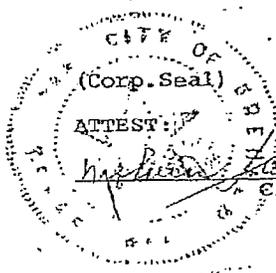
A portion of both the 11.413 acre tract and the 5.510 acre tract lie outside of the City of Brenham city limit line.

As surveyed by John E. Pledger, III, Registered Public Surveyor #2183 on May 28, 1980.

So that from and after this date The City of Brenham, Texas shall own an undivided one-half (1/2) interest in the hereinabove described property and Washington County, Texas shall own an undivided one-half (1/2) interest in the hereinabove described property.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantee, its successors and assigns, forever; and the said CITY OF BRENHAM, TEXAS does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND, all and singular the said premises, unto the said Grantee herein, its successors and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof, by, through or under it.

EXECUTED at Brenham, Texas, on this the 4th day of June, 1980.



THE CITY OF BRENHAM, TEXAS

By Leslie D. Clayton
 Leslie D. Clayton, Mayor

Jeana Bellinger
 City Secretary

VOL 397 PAGE 518

THE STATE OF TEXAS X
COUNTY OF WASHINGTON X

Before me, the undersigned authority, on this day personally appeared LESLIE D. CLAYTON, as Mayor of the City of Brenham, Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein set forth.

Given under my hand and seal of office, this the 5th day of June, 1980.

R. Wm Spinn
Notary Public in and for
Washington County, Texas
R. Wm Spinn



FILED FOR RECORD ON THE 22nd DAY OF July A.D. 1980, AT 10:10 O'CLOCK AM
DULY RECORDED THIS THE 29th DAY OF July A.D. 1980, AT 8:10 O'CLOCK AM

GERTRUDE LEHRMANN, COUNTY CLERK
WASHINGTON COUNTY, TEXAS

INSTRUMENT NO. 3589

BY *Gale Huff* DEPUTY
Gale Huff

PARTIAL TERMINATION AND RELEASE

STATE OF TEXAS)
)
COUNTY OF WASHINGTON)

PROPERTY: All that tract or parcel of land situated in the City of Brenham, Washington County, Texas out of the A. Harrington Survey A-55, and being Lots 18A, 19A, 20A, 21A, 22A, 23A, 24A and 25A of the East Main Street Addition of the City of Brenham in Washington County, Texas, and being the same property described in the deed from the City of Brenham to Washington County, Texas, as recorded in Volume 1306, Page 438, dated April 6, 2009, in the Official Records of Washington County, Texas.

WHEREAS, the City of Brenham, hereinafter sometimes referred to as Grantor, conveyed the Property to Washington County, Texas, hereinafter sometimes referred to as Grantee, by special warranty deed executed on April 6, 2009, recorded in Volume 1306, Page 438, in the Official Records of Washington County, Texas; and

WHEREAS, Grantor did grant, sell and convey the Property to Grantee by said special warranty deed, subject to the Fee Simple Determinable Condition as set forth in said special warranty deed, said special warranty deed being attached hereto and incorporated herein for all purposes as Exhibit "A"; and

WHEREAS, Grantor hereby acknowledges and agrees to terminate and waive the Fee Simple Determinable Condition set out in Exhibit "A" attached hereto, in exchange for Washington County's conveyance of its undivided one-half (1/2) interest in the Linda Anderson Park Property to the City of Brenham; and

WHEREAS, Grantor desires to terminate and waive the Fee Simple Determinable Condition on the conveyance of the Property contained in Exhibit "A" attached hereto and release and waive any and all rights of Grantor related thereto; and

WHEREAS, Grantor and Grantee hereby agree that the Property shall be subject to all other provisions of the special warranty deed set forth in Exhibit "A" attached hereto;

NOW THEREFORE, the Grantor, for ten dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, on behalf of said Grantor, its successors and assigns, and the Grantee, its successors and assigns, do hereby agree as follows:

1. Washington County has executed the necessary instrument(s) to convey its undivided one-half (1/2) interest in the Linda Anderson Park Property to the City of Brenham.

2. The provisions of the Fee Simple Determinable Condition set out in Exhibit "A" attached hereto are hereby forever terminated and waived and of no further force and effect, and the Grantee is hereby forever released from said Fee Simple Determinable Condition.
3. The Grantor hereby forever terminates, releases, relinquishes and waives any and all rights reserved to and held by Grantor in the Fee Simple Determinable Condition set out in Exhibit "A" attached hereto.
4. All other provisions, reservations and exceptions to the conveyance and warranty set forth in the special warranty deed set forth in Exhibit "A" attached hereto, including specifically but without limitation the reservation of mineral interests by the City, shall remain in full force and effect.

Executed to be effective as of _____, 2011 ("Effective Date").

CITY OF BRENHAM – GRANTOR:

Hon. Milton Y. Tate, Jr., Mayor

WASHINGTON COUNTY – GRANTEE:

Hon. John Brieden, County Judge

STATE OF TEXAS)
)
COUNTY OF WASHINGTON)

This instrument was acknowledged before me on this the ____ day of _____, 2011, by Milton Y. Tate, Jr., Mayor of the City of Brenham, Texas.

Notary Public, State of Texas

STATE OF TEXAS)
)
COUNTY OF WASHINGTON)

This instrument was acknowledged before me on this the ____ day of _____, 2011, by John Brieden, County Judge, Washington County, Texas.

Notary Public, State of Texas

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

1650

STATE OF TEXAS

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COUNTY OF WASHINGTON

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SPECIAL WARRANTY DEED

That the CITY OF BRENHAM, a Texas Home Rule municipality located in the County of Washington, State of Texas, hereinafter called Grantor, for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS, cash to Grantor in hand paid by WASHINGTON COUNTY, a political subdivision of the State of Texas, hereinafter called Grantee, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for which no lien, express or implied, is retained or shall exist;

Grantor has GRANTED, SOLD, and CONVEYED, and by these presents does GRANT, SELL, AND CONVEY unto the said Grantee, that certain real property, hereinafter referred to as the Property, located in Washington County, Texas, being more particularly described as follows:

All that tract or parcel of land situated in the City of Brenham, Washington County, Texas out of the A. Harrington Survey A-55, and being Lots 18A, 19A, 20A, 21A, 22A, 23A, 24A and 25A of the East Main Street Addition of the City of Brenham in Washington County, Texas, and being the same property conveyed by deed of the Urban Renewal Agency of the City of Brenham to the City of Brenham, Texas, of record in Volume 427, Page 387, Deed Records of Washington County, Texas.

Fee Simple Determinable Condition:

IT IS EXPRESSLY UNDERSTOOD AND AGREED that this conveyance shall be effective for only so long as Grantee uses the Property primarily as a public health facility and does not execute a document that purports to convey the Property for a private purpose. For the purposes of this condition, the property will be considered to be primarily used as public health facility if at least 75% of the square footage of all improvements on the Property is being used for public health and medical services for those individuals and families that qualify for such services. Only the following enumerated operations, or those later agreed to by the governing bodies of the City and the County, are permissible uses of the Property that may be counted in determining whether at least 75% of the square footage of all improvements on the Property is being used for a public health facility: Public health services; Medical care services to qualified individuals and families; Public Health Department; Medical Assistance Program; Women, Infants & Children (WIC) Nutrition Program; and Screening for eligibility for available public health services. Grantee shall have two (2) years from the date of this conveyance to complete construction of the improvements and rehabilitation of improvements on the Property necessary to use the Property primarily as a public health facility. Failure to complete such construction or use the Premises for such purpose as stated herein will result in the automatic reversion of ownership and control of the Property to Grantor.

Reservations from and Exceptions to Conveyance and Warranty:

A. Validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests outstanding in persons other than Grantor, and other instruments, other than conveyances of the surface fee estate, that affect the Property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; all rights, obligations, and other matters arising from and existing by reason of any Washington County water or utility district; and taxes for 2009, which Grantee assumes and agrees to pay, and subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes.

B. Grantor reserves for itself, and its successors, and assigns forever, all oil, gas, and other minerals in and under and that may be produced from the Property. If the mineral estate is subject to existing production or an existing lease, this reservation includes the production, the lease, and all benefits from it. In connection with this reservation, Grantor waives and conveys to Grantee the right of ingress and egress to and from the surface of the Property relating to the portion of the mineral estate owned by Grantor. Nothing herein, however, restricts or prohibits the pooling or unitization of the portion of the mineral estate owned by Grantor with land other than the Property; or the exploration or production of the oil, gas, and other minerals by means of wells that are drilled or mines that open on land other than the Property but enter or bottom under the Property, provided that these operations in no manner interfere with the surface or subsurface support of any improvements constructed or to be constructed on the Property.

C. The property described herein is sold in its present "as is," "where is," and "with all faults" condition. Grantor makes no warranties or representations, expressed or implied, as to the quality, quantity, or condition of the property or the improvements situated upon the property. Grantee herein, in accepting this Deed, acknowledges that it has inspected the property, is fully cognizant of the property's condition, and accepts it in its "as is," "where is," and "with all faults" condition. Grantee acknowledges that there is no obligation of any kind upon Grantor to make any repairs to, restoration of, or maintenance of the property or the improvements.

AFTER CONVEYANCE, AS BETWEEN GRANTEE AND GRANTOR, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE CONVEYANCE, WILL BE THE SOLE RESPONSIBILITY OF GRANTEE, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CONVEYANCE. ONCE CONVEYANCE HAS OCCURRED, GRANTEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES GRANTOR FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. GRANTEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES GRANTOR FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF GRANTOR'S OWN NEGLIGENCE OR THE NEGLIGENCE OF GRANTOR'S REPRESENTATIVES. GRANTEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES GRANTOR FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO

EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON GRANTORS IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY. GRANTEE FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE, AND ON BEHALF OF GRANTOR AND IN THE NAME OF GRANTOR, ANY CLAIM OR LITIGATION BROUGHT IN CONNECTION WITH ANY SUCH ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.

Grantor, for the consideration and subject to the reservations from conveyance and exceptions to conveyance and warranty, grants, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Grantee, their heirs, beneficiaries, successors and assigns for as long as the Fee Simple Determinable Condition is satisfied, and if the Fee Simple Determinable Condition is not satisfied, the Property will automatically revert to and be owned by Grantor without the necessity of any further act on the part of Grantor, it being the Grantor's intent to convey a fee simple determinable estate to Grantee. Grantor binds itself and its successors to WARRANT AND FOREVER DEFEND all and singular the said Property unto the said Grantee, their heirs, beneficiaries, successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty, when the claim is by, through or under Grantor but not otherwise.

When the context requires, singular nouns and pronouns include the plural.

WITNESS MY HAND, this the 6th day of April, 2009.

Milton Y Tate
HON. MILTON Y. TATE, MAYOR
CITY OF BRENHAM

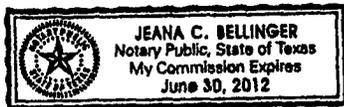
STATE OF TEXAS

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COUNTY OF WASHINGTON

BEFORE ME, the undersigned authority, a Notary Public in and for said county and state, on this day personally appeared MILTON Y. TATE, Mayor of the City of Brenham, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this the 6th day of April, 2009.



Jeana C. Bellinger
Notary Public, State of Texas

My commission expires: 6-30-12

STATE OF TEXAS
COUNTY OF WASHINGTON

I hereby certify that this instrument was FILED on the date and at the time affixed hereon by me and was duly RECORDED in the volume and page of the OFFICIAL RECORDS of Washington County, Texas, as stamped hereon by me on

APR 15 2009

FILED FOR RECORD
WASHINGTON COUNTY TEXAS

2009 APR 14 AM 10:12

BETH A. ROTHERMEL
WASHINGTON COUNTY CLERK



Beth A. Rothermel
Beth Rothermel, County Clerk
Washington County, Texas



AGENDA FORM

| | | |
|--|---|--|
| DATE OF MEETING: 1/6/2011 | DATE SUBMITTED: 12/30/2010 | |
| DEPT. OF ORIGIN: Public Utilities | SUBMITTED BY: Lowell Ogle | |
| MEETING TYPE: | CLASSIFICATION: | ORDINANCE: |
| <input checked="" type="checkbox"/> REGULAR | <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> 1 ST READING |
| <input type="checkbox"/> SPECIAL | <input type="checkbox"/> CONSENT | <input type="checkbox"/> 2 ND READING |
| <input type="checkbox"/> EXECUTIVE SESSION | <input checked="" type="checkbox"/> REGULAR | <input type="checkbox"/> RESOLUTION |
| | <input type="checkbox"/> WORK SESSION | |
| AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon RFP No.11-004 for the Purchase of Automated Meter Reading Equipment and Authorize the Mayor to Execute Any Necessary Documentation | | |
| SUMMARY STATEMENT: On November 18, 2010 we received RFP's for an AMI/AMR system. We sent out 9 bid packets and received one bid and two no bids. The low bidder on the system was Aqua metric Sales Co. with the Sensus Flexnet system. This system is compatible with the AMR meters we have installed and interfaces with our current billing system. We would like to award \$70,000 for the Tower Gateway Base (TGB) system and the Regional Network Interface(RNI). We need to purchase this equipment to continue using the meters we have installed and to keep one meter reader position vacant. We would recommend purchasing the equipment using reserves from the Electric fund, Gas fund, Water fund and Wastewater fund split 4 ways at \$17,500 per fund. We are going to take a phased approach on the meter installations over a 3 to 4 year period as discussed with council. We are currently in discussions with vendor on the number and types of meters we will need and will come back to council for the approval of the meter purchases and funding approval. At that time we will include our plan for installation, funding etc. | | |
| STAFF ANALYSIS (For Ordinances or Regular Agenda Items): | | |
| A. PROS: Reduce staffing, increase customer service | | |
| B. CONS: | | |
| ALTERNATIVES (In Suggested Order of Staff Preference): None | | |
| ATTACHMENTS: | | |
| FUNDING SOURCE (Where Applicable): Utility Fund Reserves | | |
| RECOMMENDED ACTION: Approve RFP 11-004 for the purchase of Automated Meter Reading Equipment and authorize the mayor to execute any necessary documentation | | |
| APPROVALS: Terry Roberts | | |



AGENDA FORM

| | | | | |
|--|------|--|---------|-------------|
| DATE OF MEETING: 1/6/2011 | | DATE SUBMITTED: 12/27/2010 | | |
| DEPT. OF ORIGIN: Public Utilities | | SUBMITTED BY: Dane Rau | | |
| MEETING TYPE: | | CLASSIFICATION: | | |
| <input checked="" type="checkbox"/> REGULAR | | <input type="checkbox"/> PUBLIC HEARING | | |
| <input type="checkbox"/> SPECIAL | | <input type="checkbox"/> CONSENT | | |
| <input type="checkbox"/> EXECUTIVE SESSION | | <input checked="" type="checkbox"/> REGULAR | | |
| | | <input type="checkbox"/> WORK SESSION | | |
| ORDINANCE: | | | | |
| <input type="checkbox"/> 1ST READING | | | | |
| <input type="checkbox"/> 2ND READING | | | | |
| <input type="checkbox"/> RESOLUTION | | | | |
| AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon Bid No. 11-006 for the Purchase of a 48' Aluminum Refuse Trailer along with an Extra Rim and Spare Tire and Authorize the Mayor to Execute Any Necessary Documentation | | | | |
| SUMMARY STATEMENT: On November 18, 2008 the Purchasing Dept. opened bids for the purchase of a 48' aluminum refuse trailer. The bids were as follows: | | | | |
| Bidder | Year | Mfg. | Del. | Bid Price |
| Travis Body & Trailer (Houston, TX) | 2011 | Travis Body | 120 ARO | \$56,922.00 |
| <p>As seen above Travis Body and Trailer was the only bid and low bid submitted and meets all bid specifications. Bids were advertised and only one packet was requested. Travis Body and Trailer did receive the bid in 2008 for an identical trailer at the same price and we are very pleased with the trailer that was purchased. This purchase was budgeted for during the 2010-11 budget process in combination with the rehabilitation of the Collection Station improvements at a total of \$132,000. We will now have \$75,000 to rehabilitate the Collection Station and possibly buy a used haul truck which will allow us to haul all of our non-compacted waste rather than pay a 3rd party to haul waste utilizing roll-offs.</p> <p>The addition of a spare tire and a rim was bid as an option and Travis Body and Trailer submitted a low bid of \$350.00 to be added to the trailer contract. Therefore the total amount of the trailer, spare rim, and tire is \$57,272.00.</p> <p>Staff is recommending that Council approve the bid from Travis Body and Trailer for the purchase of a 48' aluminum refuse trailer along with an extra rim and spare tire.</p> | | | | |

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. PROS: Will allow us to transition from roll-offs to haul trailers at the Collection Station. Will be hauling all of our trash rather than a 3rd party hauling it.

B. CONS:

ALTERNATIVES (In Suggested Order of Staff Preference):

ATTACHMENTS: (1) Bid Information Sheet; and (2) Bid Evaluation Sheet

FUNDING SOURCE (Where Applicable): 106-5-042-813.00
106-5-043-813.00

RECOMMENDED ACTION: Approve Bid No. 11-006 for the Purchase of a 48' Aluminum Refuse Trailer along with an extra rim and spare tire and authorize the mayor to execute any necessary documentation

APPROVALS: Lowell Ogle Jr.



Bid Information Sheet

December 14, 2010

Request for Bid No. 11-006

For: 48' Aluminum, Live Floor, Refuse Transfer Trailer

Number of bidders requesting bid packet: 1

Number of completed bids returned to Purchasing: 1



Bid Evaluation Sheet

**48' Aluminum, Live Floor, Refuse Transfer Trailer
Bid No. 11-006**

December 14, 2010

| Bidder | Year/Model/Manufacturer | Total |
|---|--|--------------------|
| Travis Body & Trailer, Inc. Houston, TX. | 2011 Travis Aerolite S-102 Live Floor Travis Body & Trailer, Inc. | \$56,922.00 |
| Delivery: 120 days from date of order | | |
| <u>Options:</u> | | |
| 1. Extra Steel Wheel & Tire | | \$350.00 |
| 2. 8 each 8.25 x 22.5 Aluminum Finish Wheels | \$250.00 each | \$2,000.00 |

Note: The nearest parts and service center is located in Houston, Texas



AGENDA FORM

| | | | |
|--|---|--|--|
| DATE OF MEETING: January 6, 2011 | | DATE SUBMITTED: December 30, 2010 | |
| DEPT. OF ORIGIN: Public Utilities | | SUBMITTED BY: Lowell Ogle | |
| MEETING TYPE: | CLASSIFICATION: | ORDINANCE: | |
| <input checked="" type="checkbox"/> REGULAR | <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> 1 ST READING | |
| <input type="checkbox"/> SPECIAL | <input type="checkbox"/> CONSENT | <input type="checkbox"/> 2 ND READING | |
| <input type="checkbox"/> EXECUTIVE SESSION | <input checked="" type="checkbox"/> REGULAR | <input type="checkbox"/> RESOLUTION | |
| <input type="checkbox"/> WORK SESSION | | | |
| AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon Authorization of Final Payment to Matula & Matula Construction, Inc. the West Side Water System Improvements, Phase II and Authorize the Mayor to Execute Any Necessary Documentation | | | |
| SUMMARY STATEMENT: Matula & Matula Construction, Inc. has completed their work on the West Side Water System Improvements, Distribution System Improvements, Phase II. Their contract consisted of installation of approx 3,600 linear feet of water line along N. Dixie St (between Main and Hwy 36 N), approx 2,000 linear feet along Hwy 36 N (from N. Dixie to FM 577), approx 1,800 linear feet along FM 577, approx 1,000 linear feet along Hwy 290 near Old Mill Creek Rd, and approx 400 linear feet along Old Mill Creek Rd. Work also included the installation of check valves and pressure reducing/sustaining valves at several locations throughout the system. | | | |
| STAFF ANALYSIS (For Ordinances or Regular Agenda Items): | | | |
| A. PROS: | | | |
| B. CONS: | | | |
| ALTERNATIVES (In Suggested Order of Staff Preference): | | | |
| ATTACHMENTS: (1) Certificate of Substantial Completion; (2) Change Order No. 1 (Reconciliation); (3) Affidavit of Guarantee; (4) Affidavit of Bills Paid; (5) Progress Payment No. 5 (Final); and (6) Certificate of Acceptance. | | | |
| FUNDING SOURCE (Where Applicable.) | | | |
| RECOMMENDED ACTION: Approve final payment to Matula & Matula Construction, Inc. in the amount of \$185,479.38 for the West Side Water System Improvements, Phase II and authorize the mayor to execute any necessary documentation | | | |
| APPROVALS: Terry Roberts | | | |

CERTIFICATE OF SUBSTANTIAL COMPLETION FOR
CONSTRUCTION OF WEST SIDE WATER SYSTEM IMPROVEMENTS
DISTRIBUTION SYSTEM IMPROVEMENTS, PHASE 2

November 4, 2010

OWNER: Honorable Milton Y. Tate, Jr.
 Mayor
 City of Brenham
 P.O. Box 1059
 Brenham, Texas 77834-1059

CONTRACTOR: Mr. Jon Matula
 President
 Matula & Matula Construction, Inc.
 122 West Way, Suite 325
 Lake Jackson, Texas 77566

CONTRACT: City of Brenham
 West Side Water System Improvements
 Distribution System Improvements, Phase 2
 J&C No. B0039-002-00

Gentlemen:

Jones & Carter, Inc. (J&C) has observed the subject project constructed by the **CONTRACTOR** and finds it to be substantially complete in accordance with the approved plans and specifications.

J&C recommends that the **OWNER** issue the **CONTRACTOR** a Certificate of Acceptance of the Work, and that final payment be made to the **CONTRACTOR**. J&C also recommends that the Contractor's guarantee period of one (1) year begin on September 15, 2010.

Very truly yours,



Wm. R. Krueger, P.E.
Vice President
Brenham Operations Manager

E:\Project Files\Documents\Brenham\07 West Side Water\Dist Ph 2\Closing Documents.doc

JC **JONES & CARTER, INC**
ENGINEERS • PLANNERS • SURVEYORS
Texas Board of Professional Engineers Registration No. F-439
1500 South Day Street, Brenham, Texas 77833
(979) 836-6631

CHANGE ORDER NO. 1 (RECONCILIATION)

DATE: NOVEMBER 4, 2010

| | |
|--|--|
| Project: Construction of West Side Water System Improvements Distribution System Improvements, Phase 2 | J&C Job No.: B0039-002-00 |
| Owner: City of Brenham P.O. Box 1059 Brenham, TX 77834 | Contractor: Matula & Matula Construction, Inc. 122 West Way, Suite 325 Lake Jackson, TX 77566 |

| |
|--|
| Description of Changes: Adjustment to actual quantities installed. |
| Reason for Changes: To reconcile to final contract quantities and time. |

| <u>Change in Contract price and time summary:</u> | <u>COST</u> | <u>TIME</u> |
|---|---------------------|--------------------------|
| Original Contract: | <u>\$523,863.80</u> | <u>180</u> Calendar Days |
| Net previous change(s): | <u>\$0.00</u> | <u>0</u> Calendar Days |
| Contract prior to this change order: | <u>\$523,863.80</u> | <u>180</u> Calendar Days |
| Net increase from this change order: | <u>\$5,033.60</u> | <u>47</u> Calendar Days |
| Revised Contract Amount: | <u>\$528,897.40</u> | <u>227</u> Calendar Days |
| Cumulative % Change in Contract: | <u>0.96 %</u> | <u>26.11 %</u> |

| | |
|--|--|
| RECOMMENDED BY: Jones & Carter, Inc.  _____ Wm. R. Krueger, P.E., Vice President <div style="text-align: right; margin-right: 50px;"> <u>11/4/2010</u> Date </div> | ACCEPTED BY: Contractor: Matula & Matula Construction, Inc.  _____ Jon Matula, President <div style="text-align: right; margin-right: 50px;"> <u>11/4/2010</u> Date </div> |
|  | APPROVED BY: Owner: City of Brenham, Texas _____ Milton Y. Tate, Jr., Mayor <div style="text-align: right; margin-right: 50px;"> <u>11/4/2010</u> Date </div> |

Enclosure: Attachment No. 1

CHANGE ORDER NO. 1
ATTACHMENT NO. 1

**Construction of City of Brenham
West Side Water System Improvements
Distribution System Improvements, Phase 2
B0039-002-00**

To implement payment for this work, the following revisions are made to the Item/Quantity Sheets:

| <u>Item No.</u> | <u>Description</u> | <u>Unit</u> | <u>Unit Price</u> | <u>Revised Unit Price</u> | <u>Bid Quantity</u> | <u>Revised Quantity</u> | <u>Previous Amount</u> | <u>Revised Amount</u> | <u>Net Change</u> |
|-----------------|--|-------------|-------------------|---------------------------|---------------------|-------------------------|------------------------|-----------------------|-------------------|
| 5. | 12" Class 150 AWWA C-900 PVC water line, including tracer wire (all cuts). | L.F. | \$18.25 | \$18.25 | 7,055 | 7,247 | \$128,753.75 | \$132,257.75 | \$3,504.00 |
| 6. | 12" Class 150 AWWA C-900 PVC water line, including tracer wire by bore (all cuts). | L.F. | \$37.25 | \$37.25 | 195 | 180 | \$7,263.75 | \$6,705.00 | (\$558.75) |
| 9. | 8" Class 150 AWWA C-900 PVC water line, including tracer wire (all cuts). | L.F. | \$13.80 | \$13.80 | 337 | 335 | \$4,650.60 | \$4,623.00 | (\$27.60) |
| 10. | 6" Class 150 AWWA C-900 PVC water line, including tracer wire (all cuts). | L.F. | \$13.00 | \$13.00 | 203 | 201 | \$2,639.00 | \$2,613.00 | (\$26.00) |
| 12. | 10" gate valve and valve box. | Ea. | \$1,470.00 | \$1,470.00 | 3 | 2 | \$4,410.00 | \$2,940.00 | (\$1,470.00) |
| 14. | 6" gate valve and valve box. | Ea. | \$725.00 | \$725.00 | 15 | 16 | \$10,875.00 | \$11,600.00 | \$725.00 |
| 18. | 2" automatic flush valve. | Ea. | \$2,890.00 | \$2,890.00 | 15 | 16 | \$43,350.00 | \$46,240.00 | \$2,890.00 |
| 25. | Make a wet connection to an existing 12" water line. | Ea. | \$450.00 | \$450.00 | 4 | 3 | \$1,800.00 | \$1,350.00 | (\$450.00) |
| 26. | Make a wet connection to an existing 10" water line. | Ea. | \$320.00 | \$320.00 | 3 | 4 | \$960.00 | \$1,280.00 | \$320.00 |
| 27. | Make a wet connection to an existing 8" water line. | Ea. | \$300.00 | \$300.00 | 4 | 5 | \$1,200.00 | \$1,500.00 | \$300.00 |
| 28. | Make a wet connection to an existing 6" water line. | Ea. | \$300.00 | \$300.00 | 33 | 34 | \$9,900.00 | \$10,200.00 | \$300.00 |

| <u>Item No.</u> | <u>Description</u> | <u>Unit</u> | <u>Unit Price</u> | <u>Revised Unit Price</u> | <u>Bid Quantity</u> | <u>Revised Quantity</u> | <u>Previous Amount</u> | <u>Revised Amount</u> | <u>Net Change</u> |
|-----------------|--|-------------|-------------------|---------------------------|---------------------|-------------------------|------------------------|-----------------------|-------------------|
| 30. | Connect existing service to 12" water line. | Ea. | \$285.00 | \$285.00 | 9 | 10 | \$2,565.00 | \$2,850.00 | \$285.00 |
| 31. | Connect existing service to 2" water line. | Ea. | \$285.00 | \$285.00 | 4 | 5 | \$1,140.00 | \$1,425.00 | \$285.00 |
| 32. | Ductile iron fittings. | Ton | \$3,100.00 | \$3,100.00 | 9.23 | 7.83 | \$28,613.00 | \$24,273.00 | (\$4,340.00) |
| 34. | 1" long polyethylene water service line by bore, including connection to existing water main line and meter. | Ea. | \$800.00 | \$800.00 | 1 | 0 | \$800.00 | \$0.00 | (\$800.00) |
| 35. | Construct 6" reinforced concrete pavement over all water main lines constructed under existing concrete pavement. | L.F. | \$21.10 | \$21.10 | 51 | 37 | \$1,076.10 | \$780.70 | (\$295.40) |
| 42. | Remove existing 8" water line and fill casing with slurry. | L.F. | \$16.00 | \$16.00 | 160 | 468 | \$2,560.00 | \$7,488.00 | \$4,928.00 |
| 43. | Remove existing 8" water line. | L.F. | \$6.00 | \$6.00 | 360 | 55 | \$2,160.00 | \$330.00 | (\$1,830.00) |
| 44. | Remove existing 6" water line. | L.F. | \$6.00 | \$6.00 | 587 | 408 | \$3,522.00 | \$2,448.00 | (\$1,074.00) |
| 45. | Remove existing 8" check valve assembly and reconnect to 8" water line. | Ea. | \$670.00 | \$670.00 | 3 | 2 | \$2,010.00 | \$1,340.00 | (\$670.00) |
| 46. | Remove existing 6" check valve assembly and reconnect to 6" water line. | Ea. | \$570.00 | \$570.00 | 4 | 5 | \$2,280.00 | \$2,850.00 | \$570.00 |
| 47. | Abandon 8" water line in place and fill with cement slurry. | L.F. | \$14.00 | \$14.00 | 75 | 40 | \$1,050.00 | \$560.00 | (\$490.00) |
| 53. | Make a wet connection to an existing 6" water line. | Ea. | \$300.00 | \$300.00 | 1 | 3 | \$300.00 | \$900.00 | \$600.00 |
| 55. | Type A, Grade 2 crushed limestone base material, prime oil, tack and Type D hot mix asphaltic concrete pavement over all water main lines under existing asphalt pavement. | L.F. | \$10.30 | \$10.30 | 44 | 153 | \$453.20 | \$1,575.90 | \$1,122.70 |
| 57. | Ductile iron fittings. | Ton | \$3,100.00 | \$3,100.00 | 0.27 | 0.26 | \$837.00 | \$806.00 | (\$31.00) |

| <u>Item No.</u> | <u>Description</u> | <u>Unit</u> | <u>Unit Price</u> | <u>Revised Unit Price</u> | <u>Bid Quantity</u> | <u>Revised Quantity</u> | <u>Previous Amount</u> | <u>Revised Amount</u> | <u>Net Change</u> |
|--------------------------------|---|-------------|-------------------|---------------------------|---------------------|-------------------------|------------------------|-----------------------|-------------------|
| 58. | 3-foot riser extension to the precast concrete check valve vault. | L.S. | \$0.00 | \$1,062.50 | 0 | 1 | \$0.00 | \$1,062.50 | \$1,062.50 |
| 59. | Labor to assist City with water leak repair. | L.S. | \$0.00 | \$204.15 | 0 | 1 | \$0.00 | \$204.15 | \$204.15 |
| NET INCREASE IN CONTRACT PRICE | | | | | | | | | \$5,033.60 |

AFFIDAVIT
OF
GUARANTEE

STATE OF TEXAS §

COUNTY OF BRAZORIA §

Before me, a Notary Public in and for the State of Texas, on this day personally appeared Jon Matula of **MATULA & MATULA CONSTRUCTION, INC.**, well known to me to be the person making this affidavit, who, being by me first duly sworn and deposed did say:

I am Jon Matula of **MATULA & MATULA CONSTRUCTION, INC.** and have personal knowledge of the matter stated in this affidavit. **MATULA & MATULA CONSTRUCTION, INC.** does hereby give notice to the Owner, **CITY OF BRENHAM**, that work for the Owner, known as J&C No. B0039-002-00, Construction of West Side Water System Improvements Distribution System Improvements, Phase 2 has been substantially completed. In accordance with the provisions of Supplementary Condition 24, Guaranty Against Defective Work, of the Supplementary Conditions, **MATULA & MATULA CONSTRUCTION, INC.** does hereby guarantee all of the work under the contract to be free from faulty materials and improper workmanship in every particular, and against injury from proper and usual wear; and agrees to replace or re-execute without cost to the Owner such work as may be found to be improper or imperfect, and to make good all damage caused to other work or materials due to such required replacement or recompletion of all work under this contract, as evidenced by the Engineer's Certificate of Substantial Completion.

This affidavit is made in connection with the final payment under the contract between **CITY OF BRENHAM** and **MATULA & MATULA CONSTRUCTION, INC.** and with the knowledge that it will be relied upon in making such payment and that such payment would not be made except upon the truth of the matter contained in this affidavit.

Date: 11-19-10

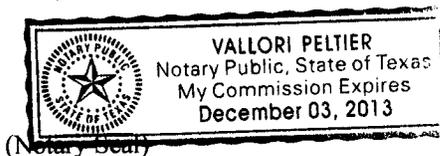
By: [Signature]
Jon Matula, President

STATE OF TEXAS §

COUNTY OF BRAZORIA §

BEFORE ME, the undersigned, a Notary Public, in and for the State of Texas, on this day personally appeared, Jon Matula known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 19 day of November,
A.D., 2010.



[Signature]
Notary Public Signature

AFFIDAVIT
OF
BILLS PAID

STATE OF TEXAS §

COUNTY OF BRAZORIA §

Before me, a Notary Public in and for the State of Texas, on this day personally appeared Jon Matula of **MATULA & MATULA CONSTRUCTION, INC.**, well known to me to be the person making this affidavit, who, being by me first duly sworn and deposed did say:

I am Jon Matula of **MATULA & MATULA CONSTRUCTION, INC.** and have personal knowledge of the matter stated in this affidavit. **MATULA & MATULA CONSTRUCTION, INC.** has paid all of the labor and material costs in connection with construction for the **CITY OF BRENHAM**, known as J&C No. B0039-002-00, Construction of West Side Water System Improvements Distribution System Improvements, Phase 2, and as of this date, there are no unpaid bills for labor performed upon, or materials or supplies delivered to or used in connection with such job.

This affidavit is made in connection with the final payment under the contract between the **CITY OF BRENHAM** and **MATULA & MATULA CONSTRUCTION, INC.** and with the knowledge that it will be relied upon in making such payment and that such payment would not be made except upon the truth of the matter contained in this affidavit.

Date: 11-19-10

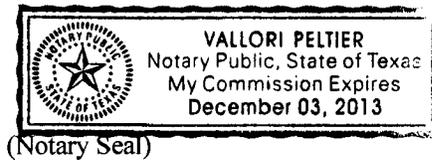
By: [Signature]
Jon Matula, President

STATE OF TEXAS §

COUNTY OF BRAZORIA §

BEFORE ME, the undersigned, a Notary Public, in and for the State of Texas, on this day personally appeared, Jon Matula known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 19 day of November,
A.D., 2010.



[Signature]
Notary Public Signature

JONES & CARTER, INC.
1500 SOUTH DAY ST
BRENHAM, TEXAS 77833

| OWNER: City of Brenham, P.O. Box 1059, Brenham, Texas 77834-1059 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|-----------|--------------------|-------------------|---------------|------------|-------------------|--------------|---------------|--------------|---------|--|----------|------|----|------|--|---------|-----------|-----------|-------------------|--|-----------|-----------|-----------|-------------------|--|--|-----------|-----------|------------------|
| PROGRESS PAYMENT NO. 5 (FINAL) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| PROJECT: West Side Water System Improvements, Distribution System Improvements, Phase 2 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| JOB NO.: B0039-002-00 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| CONTRACTOR: Matula & Matula Construction, Inc., 122 West Way, Suite 325, Lake Jackson, Texas 77566 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;"></td> <td style="width: 15%; text-align: center;">ORIGINAL</td> <td style="width: 20%; text-align: center;">FROM</td> <td style="width: 15%; text-align: center;">TO</td> <td style="width: 10%; text-align: center;">USED</td> </tr> <tr> <td></td> <td style="text-align: center;">REVISED</td> <td style="text-align: center;">01-Feb-10</td> <td style="text-align: center;">31-Jul-10</td> <td style="text-align: center;">180 Calendar Days</td> </tr> <tr> <td></td> <td style="text-align: center;">THIS EST.</td> <td style="text-align: center;">01-Feb-10</td> <td style="text-align: center;">15-Sep-10</td> <td style="text-align: center;">227 Calendar Days</td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">01-Jul-10</td> <td style="text-align: center;">15-Sep-10</td> <td style="text-align: center;">77 Calendar Days</td> </tr> </table> | | | | | | | | | | | | | ORIGINAL | FROM | TO | USED | | REVISED | 01-Feb-10 | 31-Jul-10 | 180 Calendar Days | | THIS EST. | 01-Feb-10 | 15-Sep-10 | 227 Calendar Days | | | 01-Jul-10 | 15-Sep-10 | 77 Calendar Days |
| | ORIGINAL | FROM | TO | USED | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | REVISED | 01-Feb-10 | 31-Jul-10 | 180 Calendar Days | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| ITEM NO. | DESCRIPTION | UNIT | ESTIMATED QUANTITY | UNIT PRICE | THIS ESTIMATE | | PREVIOUS ESTIMATE | | TOTAL TO DATE | | REMARKS | | | | | | | | | | | | | | | | | | | | |
| | | | | | QUANTITY | AMOUNT | QUANTITY | AMOUNT | QUANTITY | AMOUNT | | | | | | | | | | | | | | | | | | | | | |
| BASE BID | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1 | Mobilization, including bonds, insurance, move-in, move-out and related work. | L.S. | 1 | \$22,000.00 | 10% | \$2,200.00 | 90% | \$19,800.00 | 100% | \$22,000.00 | 100.0% | | | | | | | | | | | | | | | | | | | | |
| 2. | Prepare a Storm Water Pollution Prevention Plan, issue and/or post all required notices; pay all required permit fees; perform all required inspections; maintain all required records; install, maintain and remove all necessary erosion control measures and reestablish vegetation upon completion of construction. | L.S. | 1 | \$4,000.00 | 50% | \$2,000.00 | 50% | \$2,000.00 | 100% | \$4,000.00 | 100.0% | | | | | | | | | | | | | | | | | | | | |
| 3. | Perform all site preparation, including erection, maintenance and removal of barricades, signs and traffic control devices; perform all required clearing and grubbing; perform all required demolition; dispose of all cleared and/or demolished materials. | Sta. | 83.57 | \$100.00 | 6.00 | \$600.00 | 77.57 | \$7,757.00 | 83.57 | \$8,357.00 | 100.0% | | | | | | | | | | | | | | | | | | | | |
| 4. | 12" Class 350 ductile iron pipe water line with restrained joints (all cuts). | L.F. | 240 | \$42.90 | 0.0 | \$0.00 | 240.0 | \$10,296.00 | 240.0 | \$10,296.00 | 100.0% | | | | | | | | | | | | | | | | | | | | |
| 5. | 12" Class 150 AWWA C-900 PVC water line, including tracer wire (all cuts). ***Change Order No. 1 | L.F. | 7,247 | \$18.25 | 0.0 | \$0.00 | 7,247.0 | \$132,257.75 | 7,247.0 | \$132,257.75 | 100.0% | | | | | | | | | | | | | | | | | | | | |
| 6. | 12" Class 150 AWWA C-900 PVC water line, including tracer wire by bore (all cuts). ***Change Order No. 1 | L.F. | 180 | \$37.25 | 0.0 | \$0.00 | 180.0 | \$6,705.00 | 180.0 | \$6,705.00 | 100.0% | | | | | | | | | | | | | | | | | | | | |

JONES & CARTER, INC.
1500 SOUTH DAY ST.
BRENHAM, TEXAS 77833

| OWNER: City of Brenham, P.O. Box 1059, Brenham, Texas 77834-1059 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|---|-----------|--------------------|------------|---------------|-------------|-------------------|-------------|---------------|-------------|---------|--|------|----|------|----------|-----------|-----------|-------------------|---------|-----------|-----------|-------------------|-----------|-----------|-----------|------------------|
| PROJECT: West Side Water System Improvements, Distribution System Improvements, Phase 2 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| JOB NO.: B0039-002-00 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| CONTRACTOR: Matula & Matula Construction, Inc., 122 West Way, Suite 325, Lake Jackson, Texas 77566 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <table border="0" style="width:100%; border:none;"> <tr> <td style="width:50%;"></td> <td style="text-align:center;">FROM</td> <td style="text-align:center;">TO</td> <td style="text-align:center;">USED</td> </tr> <tr> <td style="text-align:center;">ORIGINAL</td> <td style="text-align:center;">01-Feb-10</td> <td style="text-align:center;">31-Jul-10</td> <td style="text-align:center;">180 Calendar Days</td> </tr> <tr> <td style="text-align:center;">REVISED</td> <td style="text-align:center;">01-Feb-10</td> <td style="text-align:center;">15-Sep-10</td> <td style="text-align:center;">227 Calendar Days</td> </tr> <tr> <td style="text-align:center;">THIS EST.</td> <td style="text-align:center;">01-Jul-10</td> <td style="text-align:center;">15-Sep-10</td> <td style="text-align:center;">77 Calendar Days</td> </tr> </table> | | | | | | | | | | | | | FROM | TO | USED | ORIGINAL | 01-Feb-10 | 31-Jul-10 | 180 Calendar Days | REVISED | 01-Feb-10 | 15-Sep-10 | 227 Calendar Days | THIS EST. | 01-Jul-10 | 15-Sep-10 | 77 Calendar Days |
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| ORIGINAL | 01-Feb-10 | 31-Jul-10 | 180 Calendar Days | | | | | | | | | | | | | | | | | | | | | | | | |
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| ITEM NO. | DESCRIPTION | UNIT | ESTIMATED QUANTITY | UNIT PRICE | THIS ESTIMATE | | PREVIOUS ESTIMATE | | TOTAL TO DATE | | REMARKS | | | | | | | | | | | | | | | | |
| | | | | | QUANTITY | AMOUNT | QUANTITY | AMOUNT | QUANTITY | AMOUNT | | | | | | | | | | | | | | | | | |
| 7 | 12" Class 150 AWWA C-900 PVC water line encased in 20" steel casing (0.375" minimum wall thickness) by bore (all cuts). | L.F. | 162 | \$106.00 | 0.0 | \$0.00 | 162.0 | \$17,172.00 | 162.0 | \$17,172.00 | 100.0% | | | | | | | | | | | | | | | | |
| 8. | 12" Class 150 AWWA C-900 PVC water line encased in 20" steel casing (0.375" minimum wall thickness) by open cut (all cuts). | L.F. | 165 | \$59.00 | 0.0 | \$0.00 | 165.0 | \$9,735.00 | 165.0 | \$9,735.00 | 100.0% | | | | | | | | | | | | | | | | |
| 9. | 8" Class 150 AWWA C-900 PVC water line, including tracer wire (all cuts). ***Change Order No. 1 | L.F. | 335 | \$13.80 | 25.0 | \$345.00 | 310.0 | \$4,278.00 | 335.0 | \$4,623.00 | 100.0% | | | | | | | | | | | | | | | | |
| 10. | 6" Class 150 AWWA C-900 PVC water line, including tracer wire (all cuts). ***Change Order No. 1 | L.F. | 201 | \$13.00 | 48.0 | \$624.00 | 153.0 | \$1,989.00 | 201.0 | \$2,613.00 | 100.0% | | | | | | | | | | | | | | | | |
| 11. | 12" gate valve and valve box. | Ea. | 7 | \$1,700.00 | 1.0 | \$1,700.00 | 6.0 | \$10,200.00 | 7.0 | \$11,900.00 | 100.0% | | | | | | | | | | | | | | | | |
| 12. | 10" gate valve and valve box. ***Change Order No. 1 | Ea. | 2 | \$1,470.00 | 2.0 | \$2,940.00 | 0.0 | \$0.00 | 2.0 | \$2,940.00 | 100.0% | | | | | | | | | | | | | | | | |
| 13. | 8" gate valve and valve box. | Ea. | 7 | \$990.00 | 5.0 | \$4,950.00 | 2.0 | \$1,980.00 | 7.0 | \$6,930.00 | 100.0% | | | | | | | | | | | | | | | | |
| 14. | 6" gate valve and valve box. ***Change Order No. 1 | Ea. | 16 | \$725.00 | 3.0 | \$2,175.00 | 13.0 | \$9,425.00 | 16.0 | \$11,600.00 | 100.0% | | | | | | | | | | | | | | | | |
| 15. | 10" check valve assembly | Ea. | 2 | \$6,000.00 | 2.0 | \$12,000.00 | 0.0 | \$0.00 | 2.0 | \$12,000.00 | 100.0% | | | | | | | | | | | | | | | | |
| 16. | 8" check valve assembly. | Ea. | 3 | \$5,000.00 | 3.0 | \$15,000.00 | 0.0 | \$0.00 | 3.0 | \$15,000.00 | 100.0% | | | | | | | | | | | | | | | | |
| 17. | 6" check valve assembly. | Ea. | 5 | \$4,600.00 | 2.0 | \$9,200.00 | 3.0 | \$13,800.00 | 5.0 | \$23,000.00 | 100.0% | | | | | | | | | | | | | | | | |
| 18. | 2" automatic flush valve. ***Change Order No. 1 | Ea. | 16 | \$2,890.00 | 15.0 | \$43,350.00 | 1.0 | \$2,890.00 | 16.0 | \$46,240.00 | 100.0% | | | | | | | | | | | | | | | | |
| 19. | 2" air release valve assembly | Ea. | 3 | \$1,620.00 | 3.0 | \$4,860.00 | 0.0 | \$0.00 | 3.0 | \$4,860.00 | 100.0% | | | | | | | | | | | | | | | | |
| 20. | 1" air release valve assembly. | Ea. | 1 | \$910.00 | 1.0 | \$910.00 | 0.0 | \$0.00 | 1.0 | \$910.00 | 100.0% | | | | | | | | | | | | | | | | |

JONES & CARTER, INC.
1500 SOUTH DAY ST.
BRENHAM, TEXAS 77833

| OWNER: City of Brenham, P.O. Box 1059, Brenham, Texas 77834-1059 | | | | | | | | | | | |
|---|---|------|--------------------|------------|---------------|-------------|-------------------|-------------|---------------|-------------|---------|
| PROGRESS PAYMENT NO. 5 (FINAL) | | | | | | | | | | | |
| PROJECT: West Side Water System Improvements, Distribution System Improvements, Phase 2 | | | | | | | | | | | |
| FROM TO USED | | | | | | | | | | | |
| ORIGINAL 01-Feb-10 31-Jul-10 180 Calendar Days | | | | | | | | | | | |
| REVISED 01-Feb-10 15-Sep-10 227 Calendar Days | | | | | | | | | | | |
| CONTRACTOR: Matula & Matula Construction, Inc., 122 West Way, Suite 325, Lake Jackson, Texas 77566 THIS EST. 01-Jul-10 15-Sep-10 77 Calendar Days | | | | | | | | | | | |
| ITEM NO. | DESCRIPTION | UNIT | ESTIMATED QUANTITY | UNIT PRICE | THIS ESTIMATE | | PREVIOUS ESTIMATE | | TOTAL TO DATE | | REMARKS |
| | | | | | QUANTITY | AMOUNT | QUANTITY | AMOUNT | QUANTITY | AMOUNT | |
| 21. | 6" pressure reducing/sustaining valve assembly. | Ea. | 2 | \$9,180.00 | 1.0 | \$9,180.00 | 1.0 | \$9,180.00 | 2.0 | \$18,360.00 | 100.0% |
| 22. | Fire hydrant assembly. | Ea. | 14 | \$2,610.00 | 5.0 | \$13,050.00 | 9.0 | \$23,490.00 | 14.0 | \$36,540.00 | 100.0% |
| 23. | Connect existing fire hydrant to 12" water line. | Ea. | 1 | \$750.00 | 0.0 | \$0.00 | 1.0 | \$750.00 | 1.0 | \$750.00 | 100.0% |
| 24. | Connect existing fire hydrant to 8" water line. | Ea. | 1 | \$650.00 | 0.0 | \$0.00 | 1.0 | \$650.00 | 1.0 | \$650.00 | 100.0% |
| 25. | Make a wet connection to an existing 12" water line. ***Change Order No. 1 | Ea. | 3 | \$450.00 | 2.0 | \$900.00 | 1.0 | \$450.00 | 3.0 | \$1,350.00 | 100.0% |
| 26. | Make a wet connection to an existing 10" water line. ***Change Order No. 1 | Ea. | 4 | \$320.00 | 4.0 | \$1,280.00 | 0.0 | \$0.00 | 4.0 | \$1,280.00 | 100.0% |
| 27. | Make a wet connection to an existing 8" water line. ***Change Order No. 1 | Ea. | 5 | \$300.00 | 5.0 | \$1,500.00 | 0.0 | \$0.00 | 5.0 | \$1,500.00 | 100.0% |
| 28. | Make a wet connection to an existing 6" water line. ***Change Order No. 1 | Ea. | 34 | \$300.00 | 13.0 | \$3,900.00 | 21.0 | \$6,300.00 | 34.0 | \$10,200.00 | 100.0% |
| 29. | Make a wet connection to an existing 4" water line. | Ea. | 1 | \$275.00 | 0.0 | \$0.00 | 1.0 | \$275.00 | 1.0 | \$275.00 | 100.0% |
| 30. | Connect existing service to 12" water line. ***Change Order No. 1 | Ea. | 10 | \$285.00 | 0.0 | \$0.00 | 10.0 | \$2,850.00 | 10.0 | \$2,850.00 | 100.0% |
| 31. | Connect existing service to 2" water line. ***Change Order No. 1 | Ea. | 5 | \$285.00 | 5.0 | \$1,425.00 | 0.0 | \$0.00 | 5.0 | \$1,425.00 | 100.0% |
| 32. | Ductile iron fittings. ***Change Order No. 1 | Tons | 7.83 | \$3,100.00 | 2.61 | \$8,091.00 | 5.22 | \$16,182.00 | 7.83 | \$24,273.00 | 100.0% |

JONES & CARTER, INC.
 1500 SOUTH DAY ST.
 BRENHAM, TEXAS 77833

| OWNER: City of Brenham, P.O. Box 1059, Brenham, Texas 77834-1059 | | | PROGRESS PAYMENT NO. 5 (FINAL) | | | | | | | | | |
|--|--|------|--------------------------------|------------|---------------|------------|-------------------|-------------|-------------------|-------------|-------------------|--|
| PROJECT: West Side Water System Improvements, Distribution System Improvements, Phase 2 | | | | | FROM | | TO | | USED | | | |
| JOB NO.: B0039-002-00 | | | | | ORIGINAL | | 31-Jul-10 | | 180 Calendar Days | | | |
| CONTRACTOR: Matula & Matula Construction, Inc., 122 West Way, Suite 325, Lake Jackson, Texas 77566 | | | | | REVISED | | 01-Feb-10 | | 15-Sep-10 | | 227 Calendar Days | |
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| | | | | | QUANTITY | AMOUNT | QUANTITY | AMOUNT | QUANTITY | AMOUNT | | |
| 33. | 2" long polyethylene water service line by bore, including connection to existing water main line and meter. | Ea. | 1 | \$980.00 | 1.0 | \$980.00 | 0.0 | \$0.00 | 1.0 | \$980.00 | 100.0% | |
| 34 | 1" long polyethylene water service line by bore, including connection to existing water main line and meter. ***Change Order No. 1 | Ea. | 0 | \$800.00 | 0.0 | \$0.00 | 0.0 | \$0.00 | 0.0 | \$0.00 | 0.0% | |
| 35. | Construct 6" reinforced concrete pavement over all water main lines constructed under existing concrete pavement. ***Change Order No. 1 | L.F. | 37 | \$21.10 | 37.0 | \$780.70 | 0.0 | \$0.00 | 37.0 | \$780.70 | 100.0% | |
| 36. | Construct 6" reinforced concrete pavement over all water service lines, fire hydrant leads, air release valve leads, etc. located partially under existing concrete pavement. | Ea. | 2 | \$450.00 | 2.0 | \$900.00 | 0.0 | \$0.00 | 2.0 | \$900.00 | 100.0% | |
| 37. | Type A, Grade 2 crushed limestone base material, prime oil, tack and Type D hot mix asphaltic concrete pavement over all water main lines under existing asphalt pavement. | L.F. | 3,264 | \$10.30 | 564.0 | \$5,809.20 | 2,700.0 | \$27,810.00 | 3,264.0 | \$33,619.20 | 100.00% | |
| 38. | Type A, Grade 2 crushed limestone base material, prime oil, tack and Type D hot mix asphaltic concrete pavement over all water service lines, fire hydrant leads, air release valve leads, etc. located partially under existing asphalt pavement. | Ea. | 19 | \$205.00 | 10.00 | \$2,050.00 | 9.00 | \$1,845.00 | 19.00 | \$3,895.00 | 100.0% | |

JONES & CARTER, INC.
1500 SOUTH DAY ST.
BRENHAM, TEXAS 77833

| OWNER: City of Brenham, P.O Box 1059, Brenham, Texas 77834-1059 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|-----------|--------------------|------------|---------------|-------------------|-------------------|------------|---------------|------------|---------|--|----------|-----------|------|-----------|------|-------------------|--|---------|-----------|--|-----------|--|-------------------|--|-----------|-----------|--|-----------|--|------------------|
| PROJECT: West Side Water System Improvements, Distribution System Improvements, Phase 2 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| JOB NO.: B0039-002-00 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| CONTRACTOR: Matula & Matula Construction, Inc., 122 West Way, Suite 325, Lake Jackson, Texas 77566 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <table border="0" style="width:100%; border:none;"> <tr> <td style="width:45%;"></td> <td style="width:15%; text-align:center;">ORIGINAL</td> <td style="width:15%;">01-Feb-10</td> <td style="width:15%; text-align:center;">FROM</td> <td style="width:10%;">31-Jul-10</td> <td style="width:10%; text-align:center;">USED</td> <td style="width:10%;">180 Calendar Days</td> </tr> <tr> <td></td> <td style="text-align:center;">REVISED</td> <td>01-Feb-10</td> <td></td> <td>15-Sep-10</td> <td></td> <td>227 Calendar Days</td> </tr> <tr> <td></td> <td style="text-align:center;">THIS EST.</td> <td>01-Jul-10</td> <td></td> <td>15-Sep-10</td> <td></td> <td>77 Calendar Days</td> </tr> </table> | | | | | | | | | | | | | ORIGINAL | 01-Feb-10 | FROM | 31-Jul-10 | USED | 180 Calendar Days | | REVISED | 01-Feb-10 | | 15-Sep-10 | | 227 Calendar Days | | THIS EST. | 01-Jul-10 | | 15-Sep-10 | | 77 Calendar Days |
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| ITEM NO. | DESCRIPTION | UNIT | ESTIMATED QUANTITY | UNIT PRICE | THIS ESTIMATE | | PREVIOUS ESTIMATE | | TOTAL TO DATE | | REMARKS | | | | | | | | | | | | | | | | | | | | | |
| | | | | | QUANTITY | AMOUNT | QUANTITY | AMOUNT | QUANTITY | AMOUNT | | | | | | | | | | | | | | | | | | | | | | |
| 39. | Minimum of 8" of Type A, Grade 2 crushed limestone base material over all water main lines constructed under existing gravel driveways. | L.F | 30 | \$8.50 | 30.0 | \$255.00 | 0.0 | \$0.00 | 30.0 | \$255.00 | 100.0% | | | | | | | | | | | | | | | | | | | | | |
| 40. | 8" ASTM D2241 SDR 26 PVC sanitary sewer line centered on water line. | L.F | 20 | \$16.00 | 20.0 | \$320.00 | 0.0 | \$0.00 | 20.0 | \$320.00 | 100.0% | | | | | | | | | | | | | | | | | | | | | |
| 41 | 6" ASTM D2241 SDR 26 PVC sanitary sewer line centered on water line. | L.F | 180 | \$16.00 | 60.0 | \$960.00 | 120.0 | \$1,920.00 | 180.0 | \$2,880.00 | 100.0% | | | | | | | | | | | | | | | | | | | | | |
| 42. | Remove existing 8" water line and fill casing with slurry. ***Change Order No. 1 | L.F | 468 | \$16.00 | 468.0 | \$7,488.00 | 0.0 | \$0.00 | 468.0 | \$7,488.00 | 100.0% | | | | | | | | | | | | | | | | | | | | | |
| 43. | Remove existing 8" water line. ***Change Order No. 1 | L.F. | 55 | \$6.00 | 55.0 | \$330.00 | 0.0 | \$0.00 | 55.0 | \$330.00 | 100.0% | | | | | | | | | | | | | | | | | | | | | |
| 44. | Remove existing 6" water line. ***Change Order No. 1 | L.F | 408 | \$6.00 | 125.0 | \$750.00 | 283.0 | \$1,698.00 | 408.0 | \$2,448.00 | 100.0% | | | | | | | | | | | | | | | | | | | | | |
| 45. | Remove existing 8" check valve assembly and reconnect to 8" water line. ***Change Order No. 1 | Ea. | 2 | \$670.00 | 0.0 | \$0.00 | 2.0 | \$1,340.00 | 2.0 | \$1,340.00 | 100.0% | | | | | | | | | | | | | | | | | | | | | |
| 46. | Remove existing 6" check valve assembly and reconnect to 6" water line. ***Change Order No. 1 | Ea. | 5 | \$570.00 | 1.0 | \$570.00 | 4.0 | \$2,280.00 | 5.0 | \$2,850.00 | 100.0% | | | | | | | | | | | | | | | | | | | | | |
| 47. | Abandon 8" water line in place and fill with cement slurry. ***Change Order No. 1 <u>ALTERNATE BID</u> | L.F | 40 | \$14.00 | 40.0 | \$560.00 | 0.0 | \$0.00 | 40.0 | \$560.00 | 100.0% | | | | | | | | | | | | | | | | | | | | | |
| 48. | Mobilization, including bonds, insurance, move-in, move-out and related work. | L.S. | 1 | \$800.00 | 50% | \$400.00 | 50% | \$400.00 | 100% | \$800.00 | 100.0% | | | | | | | | | | | | | | | | | | | | | |

JONES & CARTER, INC.
 1500 SOUTH DAY ST.
 BRENHAM, TEXAS 77833

| OWNER: City of Brenham, P.O. Box 1059, Brenham, Texas 77834-1059 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|---|-----------|--------------------|-------------------|---------------|------------|-------------------|------------|---------------|------------|---------|--|------|--|----|--|----------|-----------|-------|-----------|-------------------|---------|-----------|-----------|-----------|-------------------|-----------|-----------|--|-----------|------------------|
| PROJECT: West Side Water System Improvements, Distribution System Improvements, Phase 2 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| JOB NO.: B0039-002-00 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| CONTRACTOR: Matula & Matula Construction, Inc., 122 West Way, Suite 325, Lake Jackson, Texas 77566 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| | FROM | | TO | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| ORIGINAL | 01-Feb-10 | REVIS | 31-Jul-10 | 180 Calendar Days | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| REVISED | 01-Feb-10 | THIS EST. | 15-Sep-10 | 227 Calendar Days | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| ITEM NO. | DESCRIPTION | UNIT | ESTIMATED QUANTITY | UNIT PRICE | THIS ESTIMATE | | PREVIOUS ESTIMATE | | TOTAL TO DATE | | REMARKS | | | | | | | | | | | | | | | | | | | | |
| | | | | | QUANTITY | AMOUNT | QUANTITY | AMOUNT | QUANTITY | AMOUNT | | | | | | | | | | | | | | | | | | | | | |
| 49. | Prepare a Storm Water Pollution Prevention Plan, issue and/or post all required notices; pay all required permit fees; perform all required inspections; maintain all required records; install, maintain and remove all necessary erosion control measures and reestablish vegetation upon completion of construction. | L.S. | 1 | \$1,750.00 | 100% | \$1,750.00 | 0% | \$0.00 | 100% | \$1,750.00 | 100.0% | | | | | | | | | | | | | | | | | | | | |
| 50. | Perform all site preparation, including erection, maintenance and removal of barricades, signs and traffic control devices; perform all required clearing and grubbing; perform all required demolition; dispose of all cleared and/or demolished materials. | Sta. | 5.94 | \$100.00 | 0.00 | \$0.00 | 5.94 | \$594.00 | 5.94 | \$594.00 | 100.0% | | | | | | | | | | | | | | | | | | | | |
| 51. | 8" Class 150 AWWA C-900 PVC water line, including tracer wire (all cuts). | L.F. | 594 | \$13.80 | 4.0 | \$55.20 | 590.0 | \$8,142.00 | 594.0 | \$8,197.20 | 100.0% | | | | | | | | | | | | | | | | | | | | |
| 52. | Make a wet connection to an existing 8" water line. | Ea. | 1 | \$300.00 | 0.0 | \$0.00 | 1.0 | \$300.00 | 1.0 | \$300.00 | 100.0% | | | | | | | | | | | | | | | | | | | | |
| 53. | Make a wet connection to an existing 6" water line. ***Change Order No. 1 | Ea. | 3 | \$300.00 | 0.0 | \$0.00 | 3.0 | \$900.00 | 3.0 | \$900.00 | 100.00% | | | | | | | | | | | | | | | | | | | | |
| 54. | Connect existing service to 8" water line. | Ea. | 3 | \$285.00 | 0.00 | \$0.00 | 3.00 | \$855.00 | 3.00 | \$855.00 | 100.0% | | | | | | | | | | | | | | | | | | | | |
| 55. | Type A, Grade 2 crushed limestone base material, prime oil, tack and Type D hot mix asphaltic concrete pavement over all water main lines under existing asphalt pavement. ***Change Order No. 1 | L.F | 153 | \$10.30 | 0.0 | \$0.00 | 153.0 | \$1,575.90 | 153.0 | \$1,575.90 | 100.0% | | | | | | | | | | | | | | | | | | | | |

JONES & CARTER, INC.
 1500 SOUTH DAY ST.
 BRENHAM, TEXAS 77833

| OWNER: City of Brenham, P.O. Box 1059, Brenham, Texas 77834-1059 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|--|-----------|--------------------|------------|---------------|------------|-------------------|----------|---------------|------------|---------|--|------|----|------|----------|-----------|-----------|-------------------|---------|-----------|-----------|-------------------|-----------|-----------|-----------|------------------|
| PROJECT: West Side Water System Improvements, Distribution System Improvements, Phase 2 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| JOB NO.: B0039-002-00 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| CONTRACTOR: Matula & Matula Construction, Inc., 122 West Way, Suite 325, Lake Jackson, Texas 77566 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| ORIGINAL | 01-Feb-10 | 31-Jul-10 | 180 Calendar Days | | | | | | | | | | | | | | | | | | | | | | | | |
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| ITEM NO. | DESCRIPTION | UNIT | ESTIMATED QUANTITY | UNIT PRICE | THIS ESTIMATE | | PREVIOUS ESTIMATE | | TOTAL TO DATE | | REMARKS | | | | | | | | | | | | | | | | |
| | | | | | QUANTITY | AMOUNT | QUANTITY | AMOUNT | QUANTITY | AMOUNT | | | | | | | | | | | | | | | | | |
| 56. | Type A, Grade 2 crushed limestone base material, prime oil, tack and Type D hot mix asphaltic concrete pavement over all water service lines, fire hydrant leads, air release valve leads, etc. located partially under existing asphalt pavement. | Ea. | 3 | \$205.00 | 0.0 | \$0.00 | 3.0 | \$615.00 | 3.0 | \$615.00 | 100.0% | | | | | | | | | | | | | | | | |
| 57. | Ductile iron fittings. ***Change Order No. 1 | Tons | 0.26 | \$3,100.00 | 0.00 | \$0.00 | 0.26 | \$806.00 | 0.26 | \$806.00 | 100.0% | | | | | | | | | | | | | | | | |
| 58. | 3-foot riser extension to the precast concrete check valve vault. ***Change Order No. 1 | L.S. | 1 | \$1,062.50 | 100% | \$1,062.50 | 0% | \$0.00 | 100% | \$1,062.50 | 100.0% | | | | | | | | | | | | | | | | |
| 59. | Labor to assist City with water leak repair. ***Change Order No. 1 | L.S. | 1 | \$204.15 | 100% | \$204.15 | 0% | \$0.00 | 100% | \$204.15 | 100.0% | | | | | | | | | | | | | | | | |

JONES & CARTER, INC.
 1500 SOUTH DAY ST.
 BRENHAM, TEXAS 77833

OWNER: City of Brenham, P.O. Box 1059, Brenham, Texas 77834-1059 **PROGRESS PAYMENT NO. 5 (FINAL)**

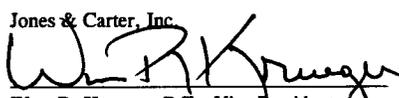
PROJECT: West Side Water System Improvements, Distribution System Improvements, Phase 2

| | | | |
|-----------|-----------|-----------|-------------------|
| | FROM | TO | USED |
| ORIGINAL | 01-Feb-10 | 31-Jul-10 | 180 Calendar Days |
| REVISED | 01-Feb-10 | 15-Sep-10 | 227 Calendar Days |
| THIS EST. | 01-Jul-10 | 15-Sep-10 | 77 Calendar Days |

JOB NO.: B0039-002-00

CONTRACTOR: Matula & Matula Construction, Inc., 122 West Way, Suite 325, Lake Jackson, Texas 77566

| ITEM NO. | DESCRIPTION | UNIT | ESTIMATED QUANTITY | UNIT PRICE | THIS ESTIMATE | | PREVIOUS ESTIMATE | | TOTAL TO DATE | | REMARKS | |
|-------------------------------------|---|------|--------------------|------------|---------------|---------------|-------------------|--------------|---------------|--------|--------------|--|
| | | | | | QUANTITY | AMOUNT | QUANTITY | AMOUNT | QUANTITY | AMOUNT | | |
| CHANGE ORDER PLUS/MINUS | | | | | | | | | | | | |
| | Change Order No. 1 | | | | | \$5,033.60 | | | | | \$5,033.60 | |
| TOTAL CONTRACT MODIFICATIONS | | | | | | | | | | | \$5,033.60 | |
| | Subtotal (Line Items) | | | | | \$167,404.75 | | \$361,492.65 | | | \$528,897.40 | |
| | Materials on Hand | | | | | \$0.00 | | \$0.00 | | | \$0.00 | |
| | Subtotal (Materials on Hand/Line Items) | | | | | \$167,404.75 | | \$361,492.65 | | | \$528,897.40 | |
| | Less Retainage (5%) | | | | | (\$18,074.63) | | \$18,074.63 | | | \$0.00 | |
| | Total | | | | | \$185,479.38 | | \$343,418.02 | | | \$528,897.40 | |
| | Less Previous Estimates | | | | | | | | | | \$343,418.02 | |
| | Due this Estimate | | | | | | | | | | \$185,479.38 | |
| 100% Complete by Time | Orig. Contract Amount | | | | | \$523,863.80 | | | | | | |
| 100% Complete by Value | Contract Modifications | | | | | \$5,033.60 | | | | | | |
| | Total Contract Amount | | | | | \$528,897.40 | | | | | | |
| | Construction Remaining | | | | | \$0.00 | | | | | | |
| | Amount Approved | | | | | \$185,479.38 | | | | | | |

| | | |
|--|---|---|
| <p>CERTIFIED AS CORRECT PAYMENT DUE</p> <p>Jones & Carter, Inc.</p>  <p>Wm. R. Krueger, P.E., Vice President Date: November 4, 2010</p> | <p>APPROVED BY CONTRACTOR</p> <p>Matula & Matula Construction, Inc.</p>  <p>Jon Matula, President Date: November 4, 2010</p> | <p>APPROVED BY OWNER</p> <p>City of Brenham, Texas</p> <hr/> <p>Milton Y. Tate, Jr., Mayor Date: November 4, 2010</p> |
|--|---|---|

November 4, 2010

Construction Progress Report No. 5 (Final)
Period From July 1, 2010 to September 15, 2010

Construction of the City of Brenham West Side Water System Improvements, Distribution System Improvements, Phase 2

- A. Contractor: Matula & Matula, Inc.
- B. Contract Date: December 18, 2009
- C. Authorization to Proceed: January 22, 2010
- D. Contract Time: 180 Calendar Days; Revised to 227 Calendar Days in Change Order No. 1
- E. Contract Time Used: 227 Calendar Days

I. General

During this period, the contractor completed the project.

II. Change Orders

Change Order No. 1 was issued on November 4, 2010 to reconcile to final contract quantities and time.

III. Completion Report

A. Estimated Cost as of this Report Period

| | |
|-----------------------------------|--------------------|
| 1. Contract Bid Price | \$523,863.80 |
| 2. Change Orders | <u>\$ 5,033.60</u> |
| 3. Total Estimated Contract Price | \$528,897.40 |

B. Actual Cost as of this Report \$528,897.40

C. Amount Paid Contractor

| | |
|-------------------------------------|---------------------|
| 1. Amount Paid | \$343,418.02 |
| 2. Amount Due this Progress Payment | <u>\$185,479.38</u> |
| 3. Total Amount Paid Contractor | \$528,896.40 |

D. Amount Retained (0% of B.) \$ 0.00

E. Estimated Cost Remaining (A.3. - B.) \$ 0.00

F. Construction Complete 100%

IV. Frequency of Observation

A. Field Representative - Periodically, Multiple Visits per Week

B. Engineer Observation - Once Weekly

V. Problems

No problems this report.



Mayor
Milton Y. Tate, Jr.

Council Members
Gloria Nix, Mayor Pro Tem
Andrew Ebel
Danny Goss
Keith Herring
Charlie Pyle
Weldon C. Williams, Jr.

November 4, 2010

Mr. Jon Matula
President
Matula & Matula Construction, Inc.
122 West Way, Suite 325
Lake Jackson, Texas 77566

Re: CERTIFICATE OF ACCEPTANCE
City of Brenham
West Side Water System Improvements
Distribution System Improvements, Phase 2
J&C No. B0039-002-00

Dear Mr. Matula:

This is to certify that the City of Brenham accepts the subject project on the basis of the Certificate of Substantial Completion issued by our engineers, Jones & Carter, Inc., and understands that a guarantee shall cover a period of one (1) year beginning on September 15, 2010.

Very truly yours,

Milton Y. Tate, Jr.
Mayor