



**NOTICE OF A REGULAR MEETING
THE BRENHAM CITY COUNCIL
THURSDAY, JANUARY 20, 2011 AT 1:00 P. M.
SECOND FLOOR CITY HALL
COUNCIL CHAMBERS
200 W. VULCAN
BRENHAM, TEXAS**

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags – City Manager Terry Roberts**
- 3. Citizens Comments**

CONSENT AGENDA

4. Statutory Consent Agenda

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

- 4-a. Minutes from the December 16, 2010 and January 6, 2011 Council Meetings and December 16, 2010 Joint Meeting with Washington County Commissioners Court**

WORK SESSION

- 5. Presentation and Discussion Related to Ralston Creek Erosion Issues**

REGULAR AGENDA

- 6. Discuss and Possibly Act Upon an Ordinance on its First Reading Amending Chapter 12 of the City of Brenham's Code of Ordinances to Include Article VII. Prohibiting Smoking Paraphernalia and Smoking Products**
- 7. Discuss and Possibly Act Upon an Agreement with First Southwest Asset Management, Inc., an Affiliate of First Southwest Company, for Arbitrage Rebate Compliance Services Regarding Outstanding Bond and Lease Obligations and Authorize the Mayor to Execute any Necessary Documentation**
- 8. Discuss and Possibly Act Upon a Memo of Understanding with GovDeals, Inc. for the Sale of Surplus Assets and Inventory Via an Online Auction System and Authorize the Mayor to Execute any Necessary Documentation**
- 9. Discuss and Possibly Act Upon: 1) a Participation Agreement Authorizing the City of Brenham to Participate in the Texas Payment Card Consortium; and 2) a Cooperative Purchasing Agreement Between the City of Fort Worth, Texas and the City of Brenham and Authorize the Mayor to Execute any Necessary Documentation**
- 10. Discuss and Possibly Act Upon an Agreement Between the City of Brenham and Dr. Wilfred Dietrich for the Amphitheater Project in Hohlt Park and Authorize the Mayor to Execute any Necessary Documentation**

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.

11. 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 20, 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 14, 2011 at _____ Am Pm.

Carolyn D. Miller, Chief Financial Officer

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



AGENDA FORM

DATE OF MEETING: January 20, 2011	DATE SUBMITTED: January 14, 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 checked="" type="checkbox"/> CONSENT	<input type="checkbox"/> 2 ND READING
<input type="checkbox"/> EXECUTIVE SESSION	<input type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Minutes from the December 16, 2010 and January 6, 2011 Council Meetings and December 16, 2010 Joint Meeting with Washington County Commissioners Court		
SUMMARY STATEMENT: Due to computer issues, the minutes from the above referenced meetings are unavailable. The City Secretary will request that Council pass on this item.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: None		
FUNDING SOURCE (Where Applicable):		
RECOMMENDED ACTION:		
APPROVALS: Terry Roberts		



AGENDA FORM

DATE OF MEETING: January 20, 2011	DATE SUBMITTED: January 14, 2011	
DEPT. OF ORIGIN: Public Works	SUBMITTED BY: Doug Baker	
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: Presentation and Discussion Related to Ralston Creek Erosion Issues		
<p>SUMMARY STATEMENT: The condition of the Ralston Creek’s Drainage channel has been a problem at least since 1983. That’s when O’Malley Engineers did a drainage study to determine what needed to be done to control the erosion that was occurring in the channel. The study focused on the section of the creek from Market Street to approximately 200 feet below Walnut Street. O’Malley determined that the excessive velocity of the water in the channel was causing the erosion and that a series of “drop structures” would reduce the velocity. In 1984 a series of “drop structures” were constructed in the channel, and we have not experiences any significant erosion problems along that portion of Ralston Creek since then.</p> <p>The portion of Ralston Creek below Walnut Street was tentatively undeveloped at that time and there was no need to make improvement there. Today, however, the section of Ralston Creek below Walnut Creek is completely developed, and we are experiencing the same problems that prompted the study in 1983. The bottom of the channel is getting deeper because of erosion, and as it does, the banks of the channel widen. What then happens, the banks get closer to back yard fences and when that happens, the property owners call the city expecting us to do something about it. And the street department has done something about it – many times, but it’s a losing battle. The erosion continues in spite of our efforts to control it, and the abutting property is now fully developed to the extent that repairing the channel banks as we have done in the past is almost impossible.</p> <p>In my opinion, it’s time to consider a more permanent solution to the erosion problem. Considering the problem with access to the creek, I don’t know what that solution might be. That’s why I am recommending that we engage the services of an engineering company to survey the creek and present us with some options that, if implemented, would eliminate the erosion problem.</p>		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		

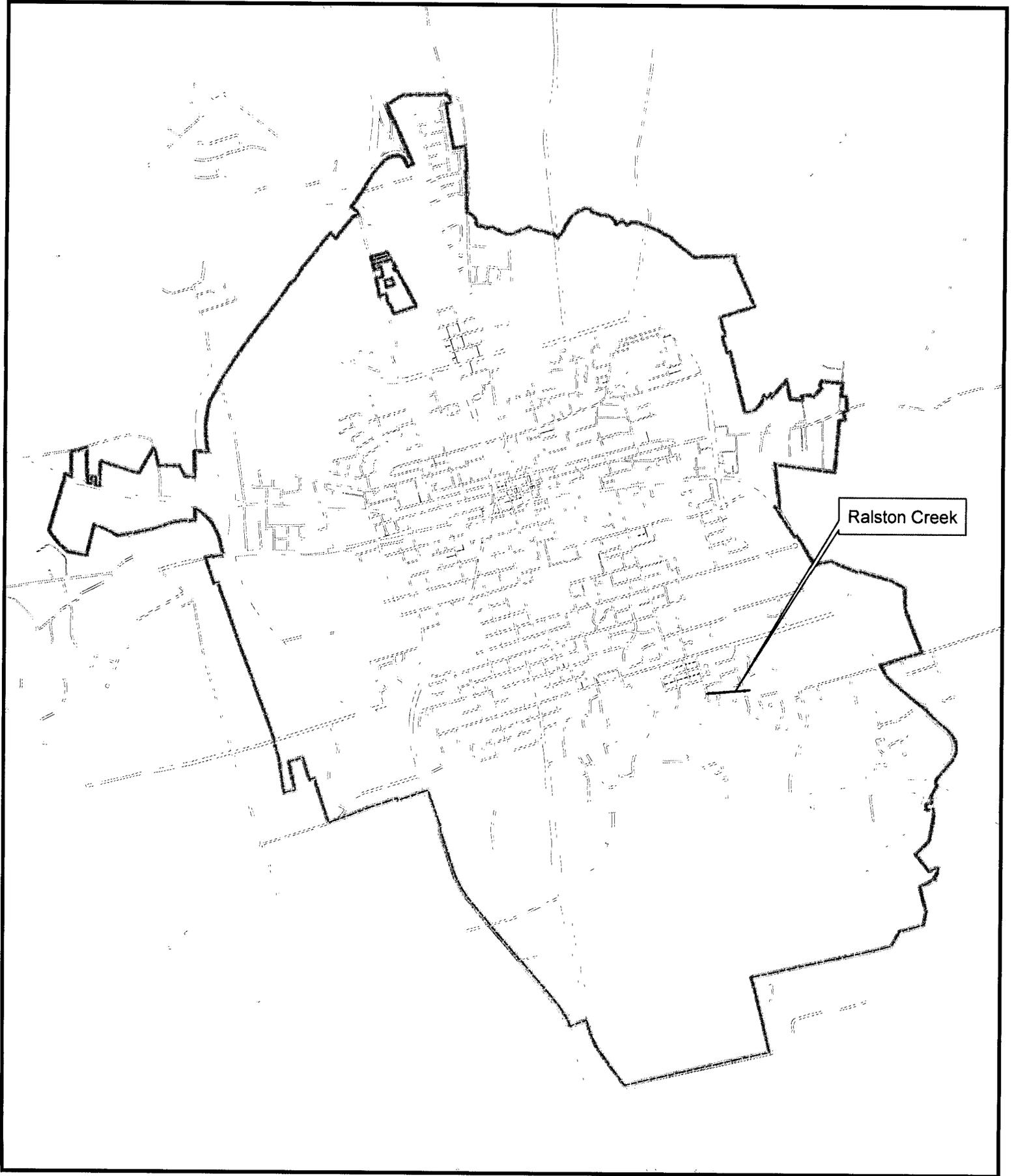
ALTERNATIVES (In Suggested Order of Staff Preference):

ATTACHMENTS: (1) Map; and (2) O'Malley Engineers Proposal

FUNDING SOURCE (Where Applicable): 237-5-100-402.00

RECOMMENDED ACTION: Discussion Only

APPROVALS: Terry Roberts



Ralston Creek

1 inch = 3,373 feet





O'Malley Engineers, L.L.P.

Craig Kankel, P.E.
Robert C. Schmidt, P.E.
Ed Addicks, P.E.

December 15, 2010

Mr. Doug Baker
City Engineer
City of Brenham
P.O. Box 1059
Brenham, Texas 77834-1059

**RE: Proposal to Perform Engineering Evaluation of Ralston Creek
Erosion Issues**

Dear Doug:

O'Malley Engineers is pleased to present this proposal to provide professional engineering services for the referenced project. Our proposed scope of services and method of compensation are detailed below.

SCOPE OF SERVICES

The scope of services for this project shall consist of an engineering evaluation with recommended improvements to control erosion along Ralston Creek from Walnut St. to Old Gun and Rod Road and shall include the following work items:

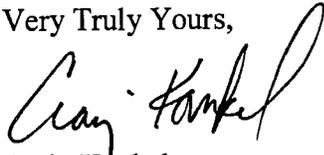
1. Perform topographic survey and develop drawings of the stream cross section at approximately 100' intervals and strategic locations.
2. Determine extent of erosion issues in the identified stream segment
3. Develop various alternatives for correcting and minimizing future erosion.
4. Prepare proposed cross sections and typical details of alternates considered.
5. Develop cost estimates for the alternates considered.
6. Prepare a brief written report presenting the findings of this evaluation.

COMPENSATION

Compensation for the scope of services described above shall be a lump sum fee of \$19,500.00.

Should this proposal meet the City's approval, please have each copy executed and return one copy to our office.

Very Truly Yours,



Craig Kankel
President

ACCEPTED BY:

City of Brenham



Terry Roberts, City Manager

1/10/11
Date

City of Brenham
 Contract Checklist
 For City Manager's Signature

Title of Document: O'Malley: Eval. of Ralston Creek

	Action Item	Responsible Party	Completed By	Date Completed
1	Transmittal Memo	Director	—	
2	Contract Review: (Provide the information below)	Director		
	Contract Amount: <i>\$ 19,500.00</i>			
	Funding Source (Account #): <i>237-5-100-402.00</i>			
	Budgeted Item: () Yes (<input checked="" type="checkbox"/>) No If no, please explain in Transmittal Memo			
	Effective Date: <i>1-10-2011</i>			
	General Terms:			
3	Contract reviewed by City Attorney: () Yes (<input checked="" type="checkbox"/>) No If yes, attach any e-mails/notes from attorney	Director		
4	Forward two (2) signed original contracts to the City Secretary; attach purchase requisition; indicate mailing/distribution instructions below	Director	<i>js</i>	<i>1/10/11</i>
5	Approval and execution by City Manager (return to City Secretary for mailing/distribution)	Admin. Asst.	<i>js</i>	<i>1/10/11</i>
6	Forward executed original, as instructed below	City Secretary	<i>js</i>	<i>1/10/11</i>
7	Send copies to: (<input checked="" type="checkbox"/>) Department; (<input checked="" type="checkbox"/>) Purchasing	City Secretary		
8	Post to Commitments & Contingencies Form	City Secretary		

MAILING/DISTRIBUTION INSTRUCTIONS:

SPECIAL NOTES:

- * Contract must be signed by other party before forwarding to City Secretary
- * Purchasing Agent will verify and maintain proof of insurance



AGENDA FORM

DATE OF MEETING: January 20, 2011	DATE SUBMITTED: January 10, 2011	
DEPT. OF ORIGIN: Police Department	SUBMITTED BY: Chief Rex Phelps	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input checked="" type="checkbox"/> 1ST READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING
<input type="checkbox"/> EXECUTIVE SESSION	<input type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon an Ordinance on its First Reading Amending Chapter 12 of the City of Brenham's Code of Ordinances to Include Article VII. Prohibiting Smoking Paraphernalia and Smoking Products		
SUMMARY STATEMENT: The purpose of this ordinance is to promote public health, safety, and welfare of the citizens this city. In May of 2010, the National Drug Intelligence Center alerted law enforcement and public health officials to a substance potentially being abused that has significantly harmful side effects. The substance is made up of synthetic chemicals that are a danger to users and the substance is not categorized as a controlled substance under the federal or state guidelines. The substances are commonly referred to by many different labels and local law enforcement have started to see these dangerous products in the possession of community members and particularly with young people. There have been a number of local youth and young adults that have suffered harmful side effects needing medical attention. Many other cities of this region have already passed city ordinances prohibiting these substances.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS: Promote and Improve community safety, equip law enforcement officers the authority to confiscate and enforce.		
B. CONS: None identified		
ALTERNATIVES (In Suggested Order of Staff Preference): N/A		
ATTACHMENTS: (1) Ordinance; and (2) Drug Alert Watch		
FUNDING SOURCE (Where Applicable): N/A		
RECOMMENDED ACTION: Approve an ordinance on its first reading amending Chapter 12 of the City of Brenham's Code of Ordinances to include Article VII. prohibiting smoking paraphernalia and smoking products		
APPROVALS: Terry Roberts		

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING CHAPTER 12 OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM BY ADDING ARTICLE VII. “PROHIBITED SMOKING PARAPHERNALIA AND SMOKING PRODUCTS” AND REGULATING FOR PUBLIC HEALTH PURPOSES THE USE, PURCHASE, POSSESSION, AND SALE OF SYNTHETIC CANNABINOIDS AND RELATED PARAPHERNALIA; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A PENALTY AND A FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00); PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PROPER NOTICE AND MEETINGS.

WHEREAS, on May 18, 2010, the National Drug Intelligence Center of the United States Department of Justice issued EWS Report 000006, a document that alerted law enforcement and public health officers to potential substance abuse problems and harmful side effects related to the use of products containing synthetic cannabinoids, salvia divinorum, or related chemicals products; and

WHEREAS, the federal government and the State of Texas have not designated synthetic cannabinoids, salvia divinorum, or related chemicals as controlled substances; and

WHEREAS, the City Council finds that the use of these products is a danger to the public health, safety and welfare because of the adverse side effects on a person from their use, including panic attacks, vomiting, tachycardia, elevated blood pressure, pallor, numbness and tingling, and in some cases, tremors and seizures;

WHEREAS, in order to promote the public health, safety, and welfare of the citizens of this City, products containing synthetic cannabinoids, salvia divinorum, or related chemicals and paraphernalia should be prohibited in the City of Brenham;

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

**SECTION 1
CHAPTER 12 OF THE CODE OF ORDINANCES IS HEREBY AMENDED BY ADDING ARTICLE VII TO READ AS FOLLOWS:**

ARTICLE VII. PROHIBITED SMOKING PARAPHERNALIA AND SMOKING PRODUCTS

Sec. 12-90. Purpose.

The purpose of this Article is to prohibit the use, possession, sale, ingestion, or smoking of illegal smoking products and the use, possession, or sale of illegal smoking paraphernalia, hereinafter defined, within the city limits of the City of Brenham, Texas.

Sec. 12-91. Definitions.

Illegal smoking paraphernalia means any equipment, material, object, or product that is used or intended for use in ingesting, inhaling, or otherwise introducing an illegal smoking product into the human body, including: a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl; a water pipe; a carburetion tube or device; a smoking or carburetion mask; a chamber pipe; a carburetor pipe; an electric pipe; an air-driven pipe; a chillum; a bong; or an ice pipe or chiller.

Illegal smoking product means any plant or other substance, whether described as tobacco, herbs, incense, spice, or any blend thereof, regardless of whether the substance is marketed for the purpose of being smoked, that includes any one or more of the following substances or chemicals:

- (1) salvia divinorum or salvinorin A; all parts of the plant presently classified botanically as salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts or similar structural analogs;
- (2) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol (also known as CP47,497) and homologues or similar structural analogs;
- (3) (6aS,10aS)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo[c]chromen-1-ol (also known as HU-211 or dexanabinol) or similar structural analogs;
- (4) 1-pentyl-3-(1-naphthoyl) indole (also known as JWH-018) or similar structural analogs;
- (5) 1-butyl-3-(1-naphthoyl) indole (also known as JWH-073) or similar structural analogs; or
- (6) 4-methoxynaphthalen-1-yl-(1-pentyndol-3-yl) (also known as JWH-081) or similar structural analogs.

Illegal smoking products include products marketed under the following commercial names: Blaze, Dascents, Diablo, Fire N' Ice, Genie, K-2, K-2 Summit, K-2 Sex, KO Knock-Out 2, Mojo, Pandora Potpourri, Pep Spice, Sage, Salvia Divinorum, Sense, Silver, Skunk, Solar Flare, Spice, Spice Cannabinoid, Spice Diamond, Spice Gold, Spicy Green, Yucatan Fire, and Zohai.

Person means an individual, corporation, partnership, wholesaler, retailer or any licensed or unlicensed business, or any other entity.

Sec. 12-92. Offenses.

A person commits an offense if the person:

- (1) uses, possesses, purchases, barter, gives, delivers, publicly displays, sells, or offers for sale any illegal smoking product; or
- (2) uses or possesses any illegal smoking paraphernalia with the intent to inject, ingest, inhale, or otherwise introduce into the human body an illegal smoking product.

Sec. 12-93. Affirmative Defenses.

It shall be an affirmative defense for a person charged with an offense that:

- (1) the use or possession was pursuant to the direction or prescription of a licensed physician or dentist authorized to direct or prescribe such act;
- (2) the sale or possession of salvinorin A was in conjunction with ornamental landscaping and used solely for that purpose; or
- (3) the use or possession was by an employee or agent of a governmental entity, including a licensed peace officer, who is acting in the course and scope of the employee's or agent's duties and whose use or possession is in compliance with the applicable procedures established by the governmental entity for the use or possession of the product.

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 violations 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 any provision of this Ordinance shall, 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 _____, 2011.

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



Drug Alert Watch

Use of Synthetic Cannabinoid Products by Teens and Young Adults Increasing

U . S . D E P A R T M E N T O F J U S T I C E

EWS Report 000006

May 18, 2010

Law enforcement officials in many areas of the country are reporting increasing use of synthetic cannabinoid products by teens and young adults as these products are widely available. Often hyped as a legal alternative to marijuana, individuals subject to scheduled or random drug screening tests allegedly also have used synthetic cannabinoid products to avoid a positive test for cannabis and the resulting consequences. Many synthetic cannabinoid users also abuse marijuana.

Synthetic cannabinoid products typically include olive-colored herbs, combination of herbs, or plant materials enhanced with a delta-9-tetrahydrocannabinol (THC) synthetic analog. When smoked, synthetic cannabinoid products mimic the hallucinogenic effects of marijuana. However, they have many adverse effects, including panic attacks, agitation, tachycardia (in the range of 110 to 150 beats per minute), elevated blood pressure (in the 140-160/100-110 range), anxiety, pallor, numbness and tingling, vomiting (which can be severe and may require sedation), hallucinations (which can be intense), and, in some cases, tremors, and seizures. Users report effects last between 30 minutes and 2 hours. Common brand names for synthetic cannabinoids include K2, Spice, Spice Gold, Spice Diamond, Yucatan Fire, Solar Flare, K2 Summit, Genie, PEP Spice, and Fire n' Ice.

Synthetic cannabinoid products are produced primarily internationally, but also produced domestically. Synthetic cannabinoid products are generally sold on Internet websites; however, they are becoming increasingly available at "headshops" and similar locations. The products often are marketed as "natural herbal incense" and include warnings that they "are not for human consumption."

This SENTRY Watch is based upon source materials that have not been validated and/or researched by NDIC. It is intended to serve as an immediate alert to law enforcement and public health officials of potential substance abuse problems.

If you would like to report an emerging drug issue in your area or have questions or comments about SENTRY, please e-mail us at NDIC.Sentry@usdoj.gov or visit us at www.justice.gov/ndic/sentry



AGENDA FORM

DATE OF MEETING: January 20, 2011	DATE SUBMITTED: January 17, 2011	
DEPT. OF ORIGIN: Finance	SUBMITTED BY: Carolyn D. Miller	
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 an Agreement with First Southwest Asset Management, Inc., an Affiliate of First Southwest Company, for Arbitrage Rebate Compliance Services Regarding Outstanding Bond and Lease Obligations and Authorize the Mayor to Execute any Necessary Documentation		
SUMMARY STATEMENT: In December 2007, Council approved a contract with First Southwest Asset Management, Inc. (FSAM) for arbitrage rebate compliance services. Although that agreement automatically renews annually for an additional one (1) year term unless either party gives written notice of termination, FSAM has presented us with a revised agreement which includes a reduced fee schedule for the contract renewal period. As Colby Jackson, vice president with FSAM stated in his cover letter to me, "In the current economic environment, investment options and strategies have become less complex. This translates to a reduced level of difficulty in the rebate calculations and less time on our part to produce them. We believe that the City deserves to share in this benefit of the less time required; thus, we are passing the cost savings directly to you." For comparison purposes, I have included <u>Appendix A-Fee Schedule</u> from the 2007 arbitrage rebate agreement on cream paper so that you can see the reduced fee structure as presented in the new contract. Since the original contract was executed, our fees paid to FSAM have decreased from \$31,318 in 2008, to \$13,865 in 2009, to \$12,050 in 2010 to \$8,400 which was paid in January 2011. We anticipate the fees being around \$12,000 under the proposed agreement due to the new debt issued in October 2010 – Pass-Through Toll Revenue Bonds for the Highway 290 project, Limited Tax Notes for Brenham Business Park Expansion, and the 2010 General Obligation Refunding Bonds.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		

ATTACHMENTS: (1) Cover letter from Colby Jackson; (2) Agreement for Arbitrage Rebate Compliance Services; and (3) Appendix A-Fees Schedule from 2007 Arbitrage Rebate Agreement.

FUNDING SOURCE (Where Applicable): Finance Department Budget 101-5-133-402.00

RECOMMENDED ACTION: Approve an Agreement with First Southwest Asset Management, Inc., an Affiliate of First Southwest Company, for Arbitrage Rebate Compliance Services Regarding Outstanding Bond and Lease Obligations and Authorize the Mayor to Execute any Necessary Documentation

APPROVALS: Carolyn D. Miller



J. Colby Jackson
Vice President

December 28, 2010

Ms. Carolyn D. Miller
Director of Finance
City of Brenham, Texas
P.O. Box 1059
Brenham, Texas 77834-1059

Dear Ms. Miller:

We recently noted that our contract to perform arbitrage rebate services between the City of Brenham, Texas and First Southwest Asset Management, Inc. ("FirstSouthwest") has expired. Thanks to clients such as you, FirstSouthwest has gained a national reputation as a leading provider of arbitrage rebate compliance services.

FirstSouthwest has been providing comprehensive arbitrage rebate compliance services to the City since January 2008, and we value the opportunity to be of continued service to the City. We are committed to continuing to provide the City with a full range of compliance services tailored to the needs of the City.

We have enclosed two copies of the arbitrage rebate renewal contract, for your review. *As you will note upon your review of the fee schedule contained in Appendix A, we are proposing a reduced fee for the contract renewal period.* In the current economic environment, investment options and strategies have become less complex. This translates to a reduced level of difficulty in the rebate calculations and time on our part to produce them. We believe that the City deserves to share in the benefit of the less time required; thus, we are passing the cost savings directly to you.

It is truly our privilege to partner with the City to ensure that current and future bond issues comply with the arbitrage rebate and yield restriction rules. At your convenience, please return one executed copy to us and retain the other executed copy for your records.

Should you have any questions, please do not hesitate to contact me at (800) 678-3792 or directly at (214) 953-8760.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Colby Jackson", is written over a printed name. The signature is fluid and cursive in style.

Colby Jackson

direct 214.953.8760 toll free 800.678.3792
mobile 940.224.4431 fax 214.840.5040
colby.jackson@firstsw.com
325 North St. Paul Street, Suite 800, Dallas, Texas 75201-3852

**AGREEMENT FOR
ARBITRAGE REBATE COMPLIANCE SERVICES
BETWEEN
CITY OF BRENHAM, TEXAS
(Hereinafter Referred to as the "Issuer")
AND
FIRST SOUTHWEST ASSET MANAGEMENT, INC.
(Hereinafter Referred to as "First Southwest")**

It is understood and agreed that the Issuer, in connection with the sale and delivery of certain bonds, notes, certificates, or other tax-exempt obligations (the "*Obligations*"), will have the need to determine to what extent, if any, it will be required to rebate certain investment earnings (the amount of such rebate being referred to herein as the "*Arbitrage Amount*") from the proceeds of the Obligations to the United States of America pursuant to the provisions of Section 148(f)(2) of the Internal Revenue Code of 1986, as amended (the "*Code*"). For purposes of this Agreement, the term "Arbitrage Amount" includes payments made under the election to pay penalty in lieu of rebate for a qualified construction issue under Section 148(f)(4) of the Code.

We are pleased to submit the following proposal for consideration; and if the proposal is accepted by the Issuer, it shall become the agreement (the "*Agreement*") between the Issuer and First Southwest effective at the date of its acceptance as provided for herein below.

1. This Agreement shall apply to all issues of tax-exempt Obligations delivered subsequent to the effective date of the rebate requirements under the Code, except for (i) issues which qualify for exceptions to the rebate requirements in accordance with Section 148 of the Code and related Treasury regulations, or (ii) issues excluded by the Issuer in writing in accordance with the further provisions hereof, (iii) new issues effected in a fashion whereby First Southwest is unaware of the existence of such issue, (iv) issues in which, for reasons outside the control of First Southwest, First Southwest is unable to procure the necessary information required to perform such services.

Covenants of First Southwest

2. We agree to provide our professional services in determining the Arbitrage Amount with regard to the Obligations. The Issuer will assume and pay the fee of First Southwest as such fee is set out in Appendix A attached hereto. First Southwest shall not be responsible for any extraordinary expenses incurred on behalf of Issuer in connection with providing such professional services, including any costs incident to litigation, mandamus action, test case or other similar legal actions.
3. We agree to perform the following duties in connection with providing arbitrage rebate compliance services:
 - a. To cooperate fully with the Issuer in reviewing the schedule of investments made by the Issuer with (i) proceeds from the Obligations, and (ii) proceeds of other funds of the Issuer which, under Treasury Regulations Section 1.148, or any successor regulations thereto, are subject to the rebate requirements of the Code;
 - b. To perform, or cause to be performed, consistent with the Code and the regulations promulgated thereunder, calculations to determine the Arbitrage Amount under Section 148(f)(2) of the Code; and
 - c. To provide a report to the Issuer specifying the Arbitrage Amount based upon the investment schedule, the calculations of bond yield and investment yield, and other information deemed relevant by First Southwest. In undertaking to provide the services set forth in paragraph 2 and this paragraph 3, First Southwest does not assume any responsibility for any record retention requirements which the Issuer may have under the Code or other applicable laws, it being understood that the Issuer shall remain responsible for compliance with any such record retention requirements.

Covenants of the Issuer

4. In connection with the performance of the aforesaid duties, the Issuer agrees to the following:
- a. The fees due to First Southwest in providing arbitrage rebate compliance services shall be calculated in accordance with Appendix A attached hereto. The fees will be payable upon delivery of the report prepared by First Southwest for each issue of Obligations during the term of this Agreement.
 - b. The Issuer will provide First Southwest all information regarding the issuance of the Obligations and the investment of the proceeds therefrom, and any other information necessary in connection with calculating the Arbitrage Amount. First Southwest will rely on the information supplied by the Issuer without inquiry, it being understood that First Southwest will not conduct an audit or take any other steps to verify the accuracy or authenticity of the information provided by the Issuer.
 - c. The Issuer will notify First Southwest in writing of the retirement, prior to the scheduled maturity, of any Obligations included under the scope of this Agreement within 30 days of such retirement. This notification is required to provide sufficient time to comply with Treasury Regulations Section 1.148-3(g) which requires final payment of any Arbitrage Amount within 60 days of the final retirement of the Obligations. In the event the Issuer fails to notify First Southwest in a timely manner as provided hereinabove, First Southwest shall have no further obligation or responsibility to provide any services under this Agreement with respect to such retired Obligations.
5. In providing the services set forth in this Agreement, it is agreed that First Southwest shall not incur any liability for any error of judgment made in good faith by a responsible officer or officers thereof and, except to the limited extent set forth in this paragraph, shall not incur any liability for any other errors or omissions, unless it shall be proved that such error or omission was a result of the gross negligence or willful misconduct of said officer or officers. In the event a payment is assessed by the Internal Revenue Service due to an error by First Southwest, the Issuer will be responsible for paying the correct Arbitrage Amount and First Southwest's liability shall not exceed the amount of any penalty or interest imposed on the Arbitrage Amount as a result of such error.

Obligations Issued Subsequent to Initial Contract

6. The services contracted for under this Agreement will automatically extend to any additional Obligations (including financing lease obligations) issued during the term of this Agreement, if such Obligations are subject to the rebate requirements under Section 148(f)(2) of the Code. In connection with the issuance of additional Obligations, the Issuer agrees to the following:
- a. The Issuer will notify or cause the notification, in writing, to First Southwest of any tax-exempt financing (including financing lease obligations) issued by the Issuer during any calendar year of this Agreement, and will provide First Southwest with such information regarding such Obligations as First Southwest may request in connection with its performance of the arbitrage rebate services contracted for hereunder. If such notice is not provided to First Southwest with regard to a particular issue, First Southwest shall have no obligation to provide any services hereunder with respect to such issue.
 - b. At the option of the Issuer, any additional Obligations to be issued subsequent to the execution of this Agreement may be excluded from the services provided for herein. In order to exclude an issue, the Issuer must notify First Southwest in writing of their intent to exclude any specific Obligations from the scope of this Agreement, which exclusion shall be permanent for the full life of the Obligations; and after receipt of such notice, First Southwest shall have no obligation to provide any services under this Agreement with respect to such excluded Obligations.

In providing the services set forth in this Agreement, it is agreed that First Southwest shall be liable for any error of judgment by a responsible officer or officers thereof ~~and~~ and any other errors or omissions, to the extent ~~such~~ that such errors or omissions were caused by or resulted from the negligence or willful misconduct of First Southwest, or any officer or officers.

Effective Date of Agreement

one (1) year

7. This Agreement shall become effective at the date of acceptance by the Issuer as set out herein below and remain in effect thereafter for a period of ~~five (5) years~~ from the date of acceptance, provided, however, that this Agreement may be terminated with or without cause by the Issuer or First Southwest upon thirty (30) days prior written notice to the other party. In the event of such termination, it is understood and agreed that only the amounts due to First Southwest for services provided and extraordinary expenses incurred to and including the date of termination will be due and payable. No penalty will be assessed for termination of this Agreement. In the event this Agreement is terminated prior to the completion of its stated term, all records provided to First Southwest with respect to the investment of monies by the Issuer shall be returned to the Issuer as soon as practicable following written request by Issuer. In addition, the parties hereto agree that, upon termination of this Agreement, First Southwest shall have no continuing obligation to the Issuer regarding any arbitrage rebate related services contemplated herein, regardless of whether such services have previously been undertaken, completed or performed.

Acceptance of Agreement

This agreement shall automatically renew annually for an additional one (1) year term unless either party gives the other party written notice of termination at least thirty (30) days prior to the expiration of the then current term.

8. This Agreement is submitted in duplicate originals. When accepted by the Issuer in accordance with the terms hereof, it, together with Appendix A attached hereto, will constitute the entire Agreement between the Issuer and First Southwest for the purposes and the consideration herein specified. In order for this Agreement to become effective, it must be accepted by the Issuer within sixty (60) days of the date appearing below the signature of First Southwest's authorized representative hereon. After the expiration of such 60-day period, acceptance by the Issuer shall only become effective upon delivery of written acknowledgement and reaffirmation by First Southwest that the terms and conditions set forth in this Agreement remain acceptable to First Southwest.

Governing Law

9. This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to its principles of conflicts of laws. Exclusive venue for any lawsuit, claim or legal proceeding arising out of this Agreement shall be in Washington County, Texas.

10. The prevailing party in any lawsuit, claim or legal proceeding arising out of this Agreement shall be entitled to the recovery of reasonable and necessary attorney's fees and costs ~~in accordance with §271.159, Texas Local Government Code.~~

Acceptance will be indicated on both copies and the return of one executed copy to First Southwest.

Respectfully submitted,

FIRST SOUTHWEST ASSET MANAGEMENT, INC.

By Hill A. Feinberg

Hill A. Feinberg, Chairman & Chief Executive Officer

Date _____

ISSUER'S ACCEPTANCE CLAUSE

The above and foregoing is hereby in all things accepted and approved by

_____, on this the _____ day of _____, _____.

By _____
Authorized Representative

Title _____

Printed Name _____

APPENDIX A - FEES

The Obligations to be covered initially under this contract include all issues of tax-exempt obligations delivered subsequent to the effective dates of the rebate requirements, under the Code, except as set forth in Section I of the Agreement.

The fee for any Obligations under this contract shall only be payable if a computation is required under Section 148(f)(2) of the Code. In the event that any of the Obligations fall within an exclusion to the computation requirement as defined by Section 148 of the Code or related regulations and no calculations were required by First Southwest to make that determination, no fee will be charged for such issue. For example, certain obligations are excluded from the rebate computation requirement if the proceeds are spent within specific time periods. In the event a particular issue of Obligations fulfills the exclusion requirements of the Code or related regulations, the specified fee will be waived by First Southwest if no calculations were required to make the determination.

First Southwest's fee for arbitrage rebate services is based upon a fixed annual fee per issue. The annual fee is charged based upon the number of years that proceeds exist subject to rebate from the delivery date of the issue to the computation date.

First Southwest's fees are payable upon delivery of the report. The first report will be made following one year from the date of delivery of the Obligations and on each computation date thereafter during the term of the Agreement. The fees for computations of the Arbitrage Amount which encompass more, or less, than one Computation Year shall be prorated to reflect the longer, or shorter, period of work performed during that period.

The fee for each of the Obligations included in this contract shall be based on the table below.

Additionally, due to significant time saving efficiencies realized when investment information is submitted in an electronic format, First Southwest passes the savings to its clients by offering a 10% reduction in its fees if information is provided in a spreadsheet or electronic text file format.

Description	Annual Fee
ANNUAL FEE	\$1,200
COMPREHENSIVE ARBITRAGE COMPLIANCE SERVICES INCLUDE:	
<ul style="list-style-type: none"> • Commingled Funds Analysis & Calculations • Spending Exception Analysis & Calculations • Yield Restriction Analysis & Calculations (for yield restricted Project Funds, Reserve Funds, Escrow Funds, etc.) • Parity Reserve Fund Allocations • Transferred Proceeds Calculations • Universal Cap Calculations • Debt Service Fund Calculations (including earnings test when required) • Preparation of all Required IRS Paperwork for Making a Rebate Payment / Yield Reduction Payment • Retention of Records Provided for Arbitrage Computations • IRS Audit Assistance • Delivery of Rebate Calculations Each Year That Meets the Timing Requirements of the Audit Schedule • On-Site Meetings, as Appropriate, to Discuss Calculation Results / Subsequent Planning Items 	INCLUDED
OTHER SERVICES AVAILABLE:	
IRS Refund Request – Update calculation, prepare refund request package, and assist issuer as necessary in responding to subsequent IRS Information Requests	\$750
Commercial Paper Calculations – Per allocated issue	\$1,600

EXPLANATION OF TERMS:

- a. **Computation Year:** A "Computation Year" represents a one year period from the delivery date of the issue to the date that is one calendar year after the delivery date, and each subsequent one-year period thereafter. Therefore, if a calculation is required that covers more than one "computation year," the annual fee is multiplied by the number of computation years contained in the calculation being performed. If a calculation includes a portion of a computation year, i.e., if the calculation includes 1 ½ computation years, then the base fee will be multiplied by 1.5.
- b. **Electronic Data Submission:** The data should be provided electronically in MS Excel or ASCII text file (comma delimited text preferred) with the date, description, dollar amount, and an activity code (if not in debit and credit format) on the same line in the file.
- c. **Variable/Floating Rate Bond Issues:** Special services are also required to perform the arbitrage rebate calculations for variable rate bonds. A bond is a variable rate bond if the interest rate paid on the bond is dependent upon an index which is subject to changes subsequent to the issuance of the bonds. The computational requirements of a variable rate issue are more complex than those of a fixed rate issue and, accordingly, require significantly more time to calculate. The additional complexity is primarily related to the computation of the bond yield, which must be calculated on a "bond year" basis. Additionally, the regulations provide certain flexibility in computing the bond yield and determining the arbitrage amount over the first IRS reporting period; consequently, increased calculations are required to determine which bond yield calculation produces the lowest arbitrage amount.
- d. **Commingled Fund Allocations:** By definition, a commingled fund is one that contains either proceeds of more than one bond issue or proceeds of a bond issue and non-bond proceeds (i.e., revenues) of \$25,000 or more. The arbitrage regulations, while permitting the commingling of funds, require that the proceeds of the bond issue(s) be "carved out" for purposes of determining the arbitrage amount. Additionally, interest earnings must be allocated to the portion of the commingled fund that represents proceeds of the issue(s) in question. Permitted "safe-harbor" methods (that is, methods that are outlined in the arbitrage regulations and, accordingly, cannot be questioned by the IRS under audit), exist for allocating expenditures and interest earnings to issues in a commingled fund. First Southwest uses one of the applicable safe-harbor methods when doing these calculations.
- e. **Debt Service Reserve Funds:** The authorizing documents for many revenue bond issues require that a separate fund be established (the "Reserve Fund") into which either bond proceeds or revenues are deposited in an amount equal to some designated level, such as average annual debt service on all parity bonds. This Reserve Fund is established for the benefit of the bondholders as additional security for payment on the debt. In most cases, the balance in the Reserve Fund remains stable throughout the life of the bond issue. Reserve Funds, whether funded with bond proceeds or revenues, must be included in all rebate calculations.
- f. **Debt Service Fund Calculations:** Issuers are required under the regulations to analyze the invested balances in their debt service funds annually to determine whether the fund depletes as required during the year and is, therefore, "bona fide" (i.e., potentially exempt from rebate in that year). It is not uncommon for surplus balances to develop in the debt service fund that services an issuer's tax supported debt, particularly due to timing differences of when the funds were due to be collected versus when the funds were actually collected. First Southwest performs this formal analysis of the debt service fund and, should it be determined that a surplus balance exists in the fund during a given year, allocates the surplus balance among the various issues serviced by the fund in a manner that is acceptable under IRS review.
- g. **Earnings Test for Debt Service Funds:** Certain types of bond issues require an additional level of analysis for the debt service fund, even if the fund depletes as required under the regulations and is "bona fide." For short-term, fixed rate issues, private activity issues, and variable rate issues, the regulations require that an "earnings test" be performed on a bona fide debt service fund to determine if the interest earnings reached \$100,000 during the year. In cases where the earnings reach or exceed the \$100,000 threshold, the entire fund (not just the surplus or residual portion) is subject to rebate.
- h. **Transferred Proceeds Calculations:** When a bond issue is refinanced (refunded) by another issue, special services relating to "transferred proceeds" calculations may need to be performed. Under the regulations, when proceeds of a refunding issue are used to retire principal of a prior issue, a pro-rata portion of the unspent proceeds of the prior issue becomes subject to rebate and/or yield restriction as transferred proceeds of the refunding issue. The refunding issue essentially "adopts" the unspent proceeds of the prior issue for purposes of the arbitrage calculations. These

calculations are required under the regulations to ensure that issuers continue to exercise due diligence to complete the project(s) for which the prior bonds were issued.

- i. **Universal Cap:** Current regulations provide an overall limitation on the amount of gross proceeds allocable to an issue. Simply stated, the value of investments allocated to an issue cannot exceed the value of all outstanding bonds of the issue. For example, this situation can occur if an issuer encounters significant construction delays or enters into litigation with a contractor. It may take months or even years to resolve the problems and begin or resume spending the bond proceeds; however, during this time the debt service payments are still being paid, including any scheduled principal payments. Thus, it's possible for the value of the investments purchased with bond proceeds to exceed the value of the bonds outstanding. In such cases, a "de-allocation" of proceeds may be required to comply with the limitation rules outlined in the regulations.
- j. **Yield Restriction Analysis/Yield Reduction Computations:** The IRS strongly encourages issuers to spend the proceeds of each bond issue as quickly as possible to achieve the governmental purpose for which the bonds were issued. Certain types of proceeds can qualify for a "temporary period," during which time the proceeds may be invested at a yield higher than the yield on the bonds without jeopardizing the tax-exempt status of the issue. The most common temporary period is the three-year temporary period for capital project proceeds. After the end of the temporary period, the proceeds must be yield restricted or the issuer must remit the appropriate yield reduction payment when due. First Southwest performs a comprehensive yield restriction analysis when appropriate for all issues having proceeds remaining at the end of the applicable temporary period and also calculates the amount of the yield reduction payment due to the IRS.

APPENDIX A - FEES

The Bonds to be covered initially under this contract include all issues of tax-exempt bonds delivered subsequent to the effective dates of the rebate requirements, under the Code, except for issues which qualify for exceptions to the rebate requirements in accordance with Section 148 of the Code and related Treasury regulations. The fee for each of the Bonds included in this contract shall be:

Description	Annual Fees Per Issue Per Computation Year (1)
Base Fee Per Computation Year*	\$1,800
<i>Additional Charges for Special Services Related to</i>	
Debt Service Reserve Funds	\$500
Commingled Funds	\$500
Transferred Proceeds	\$500
Debt Service Fund Residual Calculations (Excess Tax Collections)	\$500
\$100,000 Test for Debt Service Funds	\$500
Variable/Floating Rate Bond Issue	\$1,000
Yield Restriction Analysis/Yield Reduction Computation	\$500
Universal Cap	\$500
Calculation of Late Interest Amount	\$500
Premium for Quick Turnaround (Preliminary or Final Liability Numbers within 21 days or less)	\$500
Preparation of IRS Refund Request	(2)
Commercial Paper*	
Per allocated issue to perform arbitrage rebate computation	\$4,000
Penalty Calculations:	
Semiannual fee for each issue of Bonds, regardless of issue size.	\$1,000

- (1) A "Computation Year" represents a one year period from the delivery date of the issue to the date that is one calendar year after the delivery date, and each subsequent one-year period thereafter. Therefore, if a calculation is required that covers more than one "computation year," the annual fee is multiplied by the number of computation years contained in the calculation being performed. For example, if the first calculation performed for an issue covers three computation years, the fee for that calculation would be three times the annual fees stated above.
- (2) Fee based upon complexities involved and estimated time to complete request.

EXPLANATION OF ADJUSTMENTS TO BASE FEE

- 1 **Debt Service Reserve Funds.** The authorizing documents for many revenue bond issues require that a separate fund be established (the "Reserve Fund") into which either bond proceeds or revenues are deposited in an amount equal to some designated level, such as average annual debt service on all parity bonds. This Reserve Fund is established for the benefit of the bondholders as additional security for payment on the debt. In most instances, the balance in the Reserve Fund remains stable throughout the life of the bond issue. Reserve Funds, whether funded with bond proceeds or revenues, must be included in any calculations of rebate.
2. **Commingled Fund Allocations.** By definition, a commingled fund means that the proceeds of any particular bond issue have been deposited in a fund that contains amounts that are not part of that bond issue. It is common for issuers to commingle bond proceeds with either operating revenues or other bond proceeds. The arbitrage regulations, while permitting the commingling of funds, require that bond proceeds be "carved-out" for purposes of calculating rebate. Interest must be allocated to the portion of the commingled fund that represents bond proceeds of the issue in question.

- 3 **Transferred Proceeds Calculations.** When a bond issue is refinanced (refunded) by another issue, special services relating to “transferred proceeds” calculations may have to be performed. Under the regulations, when proceeds of a refunding issue are used to pay principal on a prior issue, a pro rata portion of the refunded bond proceeds are treated as “transferred” to the refunding issue. Although no funds are physically transferred from one issue to another, it is often necessary to perform these calculations for rebate purposes.
- 4 **Debt Service Fund Residual Calculations.** Because tax rates are established using an estimated collection percentage, the balance in the debt service fund (often referred to as the Interest & Sinking Fund) may exceed the amount necessary to pay the current year’s debt service requirements. Any such excess amounts in a debt service fund must be treated as a “reserve fund,” thereby subjecting the excess balance to the rebate requirements. To the extent that any amounts deposited in the debt service fund remain for more than thirteen months on a first-in, first-out basis, that excess is classified as a “reserve fund portion” until used for payment of debt service. Special services are required to complete these debt service fund residual calculations.
- 5 **\$100,000 Test for Debt Service Funds.** The Code requires that a bona fide debt service fund be included in the arbitrage rebate computation if it earns \$100,000 or more in a given bond year and if the issue is not a private activity bond and a long-term fixed rate issue.
- 6 **Variable/Floating Rate Bond Issues.** Special services are also required to perform the arbitrage rebate calculations for variable rate bonds. A bond is a variable rate bond if the interest rate paid on the bond is dependent upon an index which is subject to changes subsequent to the issuance of the bonds. The computational requirements of a variable rate issue are more complex than those of a fixed rate issue and, accordingly, require significantly more time to calculate. For example, it is necessary to evaluate both a five-year yield as well as one-year yield increments to determine which yield is most beneficial to the issuer
- 7 **Yield Restriction Analysis/Yield Reduction Computations.** The Code provides that proceeds of a bond issue may not be invested above the yield on the bond unless an applicable exception applies which provides a temporary period during which proceeds are not yield restricted. First Southwest provides analysis to determine the amount of proceeds which must be yield restricted and provides computations to verify that the proceeds have been properly restricted. In addition, the 1993 Treasury Regulations provide that a yield reduction payment may be made in lieu of yield restricting proceeds. First Southwest will provide the necessary computations to determine the amount of yield reduction payment which must be made.
8. **Universal Cap.** Current regulations provide an overall limitation on the amount of gross proceeds allocable to an issue. In certain circumstances, it is necessary to deallocate proceeds from an issue. First Southwest reviews the universal cap limitation for each bond issue at the appropriate time periods and, if necessary, performs the deallocation of proceeds.
- 9 **Calculation of Late Interest Amount.** Additional calculations are required if an arbitrage rebate payment is not filed within the time permitted by the regulations. A fee is charged to compute the late interest amount from the time that the payment was originally due until the time the payment is made.

The fee for any Bonds under this contract shall only be payable if a computation is required under Section 148(f)(2) of the Code. In the event that any of the Bonds, fall within an exclusion to the computation requirement as defined by Section 148 of the Code or related regulations and no calculations were required by First Southwest to make that determination, no fee will be charged for such issue. For example, certain bonds are excluded from the rebate computation requirement if the proceeds are spent within specific time periods. In the event a particular issue of Bonds fulfills the exclusion requirements of the Code or related regulations, the specified fee will be waived by First Southwest if no calculations were required to make the determination. Recognizing that computational complexities are reduced when all or the majority of the gross proceeds of an issue are expended, it is First Southwest’s policy to reduce fees to the following levels, as appropriate:

Per issue fees for each circumstance itemized below shall be:

o Proceeds expended in prior year Liability updated and report issued.	\$750
o Debt Service Residual Calculation only	\$1,250
o Reserve Fund calculation only	\$1,250
o Escrow Fund only	\$1,250
o Rebate Fund only	\$1,250
o Yield Restriction/Yield Reduction Computation only	\$2,000

**AGREEMENT FOR
ARBITRAGE REBATE COMPLIANCE SERVICES
BETWEEN
CITY OF BRENHAM, TEXAS
(Hereinafter Referred to as the "Issuer")
AND
FIRST SOUTHWEST ASSET MANAGEMENT, INC.
(Hereinafter Referred to as "First Southwest")**

It is understood and agreed that the Issuer, in connection with the sale and delivery of certain bonds, notes, certificates, or other tax-exempt obligations (the "*Obligations*"), will have the need to determine to what extent, if any, it will be required to rebate certain investment earnings (the amount of such rebate being referred to herein as the "*Arbitrage Amount*") from the proceeds of the Obligations to the United States of America pursuant to the provisions of Section 148(f)(2) of the Internal Revenue Code of 1986, as amended (the "*Code*"). For purposes of this Agreement, the term "Arbitrage Amount" includes payments made under the election to pay penalty in lieu of rebate for a qualified construction issue under Section 148(f)(4) of the Code.

We are pleased to submit the following proposal for consideration; and if the proposal is accepted by the Issuer, it shall become the agreement (the "*Agreement*") between the Issuer and First Southwest effective at the date of its acceptance as provided for herein below.

1. This Agreement shall apply to all issues of tax-exempt Obligations delivered subsequent to the effective date of the rebate requirements under the Code, except for (i) issues which qualify for exceptions to the rebate requirements in accordance with Section 148 of the Code and related Treasury regulations, or (ii) issues excluded by the Issuer in writing in accordance with the further provisions hereof, (iii) new issues effected in a fashion whereby First Southwest is unaware of the existence of such issue, (iv) issues in which, for reasons outside the control of First Southwest, First Southwest is unable to procure the necessary information required to perform such services.

Covenants of First Southwest

2. We agree to provide our professional services in determining the Arbitrage Amount with regard to the Obligations. The Issuer will assume and pay the fee of First Southwest as such fee is set out in Appendix A attached hereto. First Southwest shall not be responsible for any extraordinary expenses incurred on behalf of Issuer in connection with providing such professional services, including any costs incident to litigation, mandamus action, test case or other similar legal actions.
3. We agree to perform the following duties in connection with providing arbitrage rebate compliance services:
 - a. To cooperate fully with the Issuer in reviewing the schedule of investments made by the Issuer with (i) proceeds from the Obligations, and (ii) proceeds of other funds of the Issuer which, under Treasury Regulations Section 1.148, or any successor regulations thereto, are subject to the rebate requirements of the Code;
 - b. To perform, or cause to be performed, consistent with the Code and the regulations promulgated thereunder, calculations to determine the Arbitrage Amount under Section 148(f)(2) of the Code; and
 - c. To provide a report to the Issuer specifying the Arbitrage Amount based upon the investment schedule, the calculations of bond yield and investment yield, and other information deemed relevant by First Southwest. In undertaking to provide the services set forth in paragraph 2 and this paragraph 3, First Southwest does not assume any responsibility for any record retention requirements which the Issuer may have under the Code or other applicable laws, it being understood that the Issuer shall remain responsible for compliance with any such record retention requirements.

Covenants of the Issuer

4. In connection with the performance of the aforesaid duties, the Issuer agrees to the following:
 - a. The fees due to First Southwest in providing arbitrage rebate compliance services shall be calculated in accordance with Appendix A attached hereto. The fees will be payable upon delivery of the report prepared by First Southwest for each issue of Obligations during the term of this Agreement.
 - b. The Issuer will provide First Southwest all information regarding the issuance of the Obligations and the investment of the proceeds therefrom, and any other information necessary in connection with calculating the Arbitrage Amount. First Southwest will rely on the information supplied by the Issuer without inquiry, it being understood that First Southwest will not conduct an audit or take any other steps to verify the accuracy or authenticity of the information provided by the Issuer.
 - c. The Issuer will notify First Southwest in writing of the retirement, prior to the scheduled maturity, of any Obligations included under the scope of this Agreement within 30 days of such retirement. This notification is required to provide sufficient time to comply with Treasury Regulations Section 1.148-3(g) which requires final payment of any Arbitrage Amount within 60 days of the final retirement of the Obligations. In the event the Issuer fails to notify First Southwest in a timely manner as provided hereinabove, First Southwest shall have no further obligation or responsibility to provide any services under this Agreement with respect to such retired Obligations.
5. In providing the services set forth in this Agreement, it is agreed that First Southwest shall be liable for any error of judgment by a responsible officer or officers thereof and any other errors or omissions, to the extent that such errors or omissions were caused by or resulted from the negligence or willful misconduct of First Southwest, or any officer or officers. In the event a payment is assessed by the Internal Revenue Service due to an error by First Southwest, the Issuer will be responsible for paying the correct Arbitrage Amount and First Southwest's liability shall not exceed the amount of any penalty or interest imposed on the Arbitrage Amount as a result of such error.

Obligations Issued Subsequent to Initial Contract

6. The services contracted for under this Agreement will automatically extend to any additional Obligations (including financing lease obligations) issued during the term of this Agreement, if such Obligations are subject to the rebate requirements under Section 148(f)(2) of the Code. In connection with the issuance of additional Obligations, the Issuer agrees to the following:
 - a. The Issuer will notify or cause the notification, in writing, to First Southwest of any tax-exempt financing (including financing lease obligations) issued by the Issuer during any calendar year of this Agreement, and will provide First Southwest with such information regarding such Obligations as First Southwest may request in connection with its performance of the arbitrage rebate services contracted for hereunder. If such notice is not provided to First Southwest with regard to a particular issue, First Southwest shall have no obligation to provide any services hereunder with respect to such issue.
 - b. At the option of the Issuer, any additional Obligations to be issued subsequent to the execution of this Agreement may be excluded from the services provided for herein. In order to exclude an issue, the Issuer must notify First Southwest in writing of their intent to exclude any specific Obligations from the scope of this Agreement, which exclusion shall be permanent for the full life of the Obligations; and after receipt of such notice, First Southwest shall have no obligation to provide any services under this Agreement with respect to such excluded Obligations.

Effective Date of Agreement

7. This Agreement shall become effective at the date of acceptance by the Issuer as set out herein below and remain in effect thereafter for a period of one (1) year from the date of acceptance, provided, however, that this Agreement may be terminated with or without cause by the Issuer or First Southwest upon thirty (30) days prior written notice to the other party. In the event of such termination, it is understood and agreed that only the amounts due to First Southwest for services provided and extraordinary expenses incurred to and including the date of termination will be due and payable. No penalty will be assessed for termination of this Agreement. In the event this Agreement is terminated prior to the completion of its stated term, all records provided to First Southwest with respect to the investment of monies by the Issuer shall be returned to the Issuer as soon as practicable following written request by Issuer. In addition, the parties hereto agree that, upon termination of this Agreement, First Southwest shall have no continuing obligation to the Issuer regarding any arbitrage rebate related services contemplated herein, regardless of whether such services have previously been undertaken, completed or performed. This Agreement shall automatically renew annually for an additional one (1) year term unless either party gives the other party written notice of termination at least thirty (30) days prior to the expiration of the then current term.

Acceptance of Agreement

8. This Agreement is submitted in duplicate originals. When accepted by the Issuer in accordance with the terms hereof, it, together with Appendix A attached hereto, will constitute the entire Agreement between the Issuer and First Southwest for the purposes and the consideration herein specified. In order for this Agreement to become effective, it must be accepted by the Issuer within sixty (60) days of the date appearing below the signature of First Southwest's authorized representative hereon. After the expiration of such 60-day period, acceptance by the Issuer shall only become effective upon delivery of written acknowledgement and reaffirmation by First Southwest that the terms and conditions set forth in this Agreement remain acceptable to First Southwest.

Governing Law

9. This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to its principles of conflicts of laws. Exclusive venue for any lawsuit, claim or legal proceeding arising out of this Agreement shall be in Washington County, Texas.
10. The prevailing party in any lawsuit, claim or legal proceeding arising out of this Agreement shall be entitled to the recovery of reasonable and necessary attorney's fees and costs.

Acceptance will be indicated on both copies and the return of one executed copy to First Southwest.

Respectfully submitted,

FIRST SOUTHWEST ASSET MANAGEMENT, INC.

By Hill A. Feinberg

Hill A. Feinberg, Chairman & Chief Executive Officer

Date _____

ISSUER'S ACCEPTANCE CLAUSE

The above and foregoing is hereby in all things accepted and approved by

_____, on this the _____ day of _____, _____.

By _____
Authorized Representative

Title _____

Printed Name _____

APPENDIX A - FEES

The Obligations to be covered initially under this contract include all issues of tax-exempt obligations delivered subsequent to the effective dates of the rebate requirements, under the Code, except as set forth in Section I of the Agreement.

The fee for any Obligations under this contract shall only be payable if a computation is required under Section 148(f)(2) of the Code. In the event that any of the Obligations fall within an exclusion to the computation requirement as defined by Section 148 of the Code or related regulations and no calculations were required by First Southwest to make that determination, no fee will be charged for such issue. For example, certain obligations are excluded from the rebate computation requirement if the proceeds are spent within specific time periods. In the event a particular issue of Obligations fulfills the exclusion requirements of the Code or related regulations, the specified fee will be waived by First Southwest if no calculations were required to make the determination.

First Southwest's fee for arbitrage rebate services is based upon a fixed annual fee per issue. The annual fee is charged based upon the number of years that proceeds exist subject to rebate from the delivery date of the issue to the computation date.

First Southwest's fees are payable upon delivery of the report. The first report will be made following one year from the date of delivery of the Obligations and on each computation date thereafter during the term of the Agreement. The fees for computations of the Arbitrage Amount which encompass more, or less, than one Computation Year shall be prorated to reflect the longer, or shorter, period of work performed during that period.

The fee for each of the Obligations included in this contract shall be based on the table below.

Additionally, due to significant time saving efficiencies realized when investment information is submitted in an electronic format, First Southwest passes the savings to its clients by offering a 10% reduction in its fees if information is provided in a spreadsheet or electronic text file format.

Description	Annual Fee
ANNUAL FEE	\$1,200
COMPREHENSIVE ARBITRAGE COMPLIANCE SERVICES INCLUDE:	
<ul style="list-style-type: none"> • Commingled Funds Analysis & Calculations • Spending Exception Analysis & Calculations • Yield Restriction Analysis & Calculations (for yield restricted Project Funds, Reserve Funds, Escrow Funds, etc.) • Parity Reserve Fund Allocations • Transferred Proceeds Calculations • Universal Cap Calculations • Debt Service Fund Calculations (including earnings test when required) • Preparation of all Required IRS Paperwork for Making a Rebate Payment / Yield Reduction Payment • Retention of Records Provided for Arbitrage Computations • IRS Audit Assistance • Delivery of Rebate Calculations Each Year That Meets the Timing Requirements of the Audit Schedule • On-Site Meetings, as Appropriate, to Discuss Calculation Results / Subsequent Planning Items 	INCLUDED
OTHER SERVICES AVAILABLE:	
IRS Refund Request – Update calculation, prepare refund request package, and assist issuer as necessary in responding to subsequent IRS Information Requests	\$750
Commercial Paper Calculations – Per allocated issue	\$1,600

EXPLANATION OF TERMS:

- a. **Computation Year:** A "Computation Year" represents a one year period from the delivery date of the issue to the date that is one calendar year after the delivery date, and each subsequent one-year period thereafter. Therefore, if a calculation is required that covers more than one "computation year," the annual fee is multiplied by the number of computation years contained in the calculation being performed. If a calculation includes a portion of a computation year, i.e., if the calculation includes 1 ½ computation years, then the base fee will be multiplied by 1.5.
- b. **Electronic Data Submission:** The data should be provided electronically in MS Excel or ASCII text file (comma delimited text preferred) with the date, description, dollar amount, and an activity code (if not in debit and credit format) on the same line in the file.
- c. **Variable/Floating Rate Bond Issues:** Special services are also required to perform the arbitrage rebate calculations for variable rate bonds. A bond is a variable rate bond if the interest rate paid on the bond is dependent upon an index which is subject to changes subsequent to the issuance of the bonds. The computational requirements of a variable rate issue are more complex than those of a fixed rate issue and, accordingly, require significantly more time to calculate. The additional complexity is primarily related to the computation of the bond yield, which must be calculated on a "bond year" basis. Additionally, the regulations provide certain flexibility in computing the bond yield and determining the arbitrage amount over the first IRS reporting period; consequently, increased calculations are required to determine which bond yield calculation produces the lowest arbitrage amount.
- d. **Commingled Fund Allocations:** By definition, a commingled fund is one that contains either proceeds of more than one bond issue or proceeds of a bond issue and non-bond proceeds (i.e., revenues) of \$25,000 or more. The arbitrage regulations, while permitting the commingling of funds, require that the proceeds of the bond issue(s) be "carved out" for purposes of determining the arbitrage amount. Additionally, interest earnings must be allocated to the portion of the commingled fund that represents proceeds of the issue(s) in question. Permitted "safe-harbor" methods (that is, methods that are outlined in the arbitrage regulations and, accordingly, cannot be questioned by the IRS under audit), exist for allocating expenditures and interest earnings to issues in a commingled fund. First Southwest uses one of the applicable safe-harbor methods when doing these calculations.
- e. **Debt Service Reserve Funds:** The authorizing documents for many revenue bond issues require that a separate fund be established (the "Reserve Fund") into which either bond proceeds or revenues are deposited in an amount equal to some designated level, such as average annual debt service on all parity bonds. This Reserve Fund is established for the benefit of the bondholders as additional security for payment on the debt. In most cases, the balance in the Reserve Fund remains stable throughout the life of the bond issue. Reserve Funds, whether funded with bond proceeds or revenues, must be included in all rebate calculations.
- f. **Debt Service Fund Calculations:** Issuers are required under the regulations to analyze the invested balances in their debt service funds annually to determine whether the fund depletes as required during the year and is, therefore, "bona fide" (i.e., potentially exempt from rebate in that year). It is not uncommon for surplus balances to develop in the debt service fund that services an issuer's tax supported debt, particularly due to timing differences of when the funds were due to be collected versus when the funds were actually collected. First Southwest performs this formal analysis of the debt service fund and, should it be determined that a surplus balance exists in the fund during a given year, allocates the surplus balance among the various issues serviced by the fund in a manner that is acceptable under IRS review.
- g. **Earnings Test for Debt Service Funds:** Certain types of bond issues require an additional level of analysis for the debt service fund, even if the fund depletes as required under the regulations and is "bona fide." For short-term, fixed rate issues, private activity issues, and variable rate issues, the regulations require that an "earnings test" be performed on a bona fide debt service fund to determine if the interest earnings reached \$100,000 during the year. In cases where the earnings reach or exceed the \$100,000 threshold, the entire fund (not just the surplus or residual portion) is subject to rebate.
- h. **Transferred Proceeds Calculations:** When a bond issue is refinanced (refunded) by another issue, special services relating to "transferred proceeds" calculations may need to be performed. Under the regulations, when proceeds of a refunding issue are used to retire principal of a prior issue, a pro-rata portion of the unspent proceeds of the prior issue becomes subject to rebate and/or yield restriction as transferred proceeds of the refunding issue. The refunding issue essentially "adopts" the unspent proceeds of the prior issue for purposes of the arbitrage calculations. These

calculations are required under the regulations to ensure that issuers continue to exercise due diligence to complete the project(s) for which the prior bonds were issued.

- i. **Universal Cap:** Current regulations provide an overall limitation on the amount of gross proceeds allocable to an issue. Simply stated, the value of investments allocated to an issue cannot exceed the value of all outstanding bonds of the issue. For example, this situation can occur if an issuer encounters significant construction delays or enters into litigation with a contractor. It may take months or even years to resolve the problems and begin or resume spending the bond proceeds; however, during this time the debt service payments are still being paid, including any scheduled principal payments. Thus, it's possible for the value of the investments purchased with bond proceeds to exceed the value of the bonds outstanding. In such cases, a "de-allocation" of proceeds may be required to comply with the limitation rules outlined in the regulations.

- j. **Yield Restriction Analysis/Yield Reduction Computations:** The IRS strongly encourages issuers to spend the proceeds of each bond issue as quickly as possible to achieve the governmental purpose for which the bonds were issued. Certain types of proceeds can qualify for a "temporary period," during which time the proceeds may be invested at a yield higher than the yield on the bonds without jeopardizing the tax-exempt status of the issue. The most common temporary period is the three-year temporary period for capital project proceeds. After the end of the temporary period, the proceeds must be yield restricted or the issuer must remit the appropriate yield reduction payment when due. First Southwest performs a comprehensive yield restriction analysis when appropriate for all issues having proceeds remaining at the end of the applicable temporary period and also calculates the amount of the yield reduction payment due to the IRS.



AGENDA FORM

DATE OF MEETING: January 20, 2011	DATE SUBMITTED: January 17, 2011	
DEPT. OF ORIGIN: Finance	SUBMITTED BY: Carolyn D. Miller	
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 a Memo of Understanding with GovDeals, Inc. for the Sale of Surplus Assets and Inventory Via an Online Auction System and Authorize the Mayor to Execute Any Necessary Documentation		
SUMMARY STATEMENT: At the recent Texas Municipal League Conference, assistant city manager, Kyle Dannhaus had the opportunity to visit the vendor booth for GovDeals, Inc. a company which provides services to various government agencies that allow them to sell surplus and confiscated items via the internet. In the past, the City has used Mark Switzer Auction Services in Bellville, Texas. Surplus assets or inventory had to be hauled to Bellville and if unsold, had to be hauled back to Brenham. In contrast, an online auction system would allow us to post photos along with a description of the item. Potential customers could come to the City of Brenham to view the items if desired. After researching websites of other internet auction companies and after checking references of several existing GovDeals, Inc. customers, we are pleased to recommend GovDeals for an internet auction site for the City. Their website is www.govdeals.com .		
<p>The Memo of Understanding (MOU) is attached for your review along with the list of Texas governments that are using GovDeals. When reviewing the fees for this internet service, page 1 of the MOU item 3.0 makes note of the Flexible Pricing Option (FPO) contained in Exhibit A. The FPO contains an administrative fee paid to GovDeals of 7.5% of the winning bid, but not less than \$5.00. This compares favorably to the Switzer Auction Services commission rate which ranged from 25% down to 8% (rate decreased based on higher sales proceeds).</p> <p>The FPO also provided an option for collecting the sales proceeds: (1) the client (City) to collect proceeds or (2) GovDeals collects proceeds via credit card or wire-transfer. If we choose option (2) there will be a 5% premium charged to the buyer for this service. Winning bidders have paid a 5% Buyer Premium for financial settlement services (FSS) transactions with little or no apparent reduction in net auction results since GovDeals introduced the FSS program in November 2008. At the seller's (City) option, GovDeals can withhold its 7.5% fee when remitting the winning bid amount to the seller.</p>		
<p>We are recommending option (2) where GovDeals collects the proceeds electronically and withholds its 7.5% administrative fee when remitting the sales proceeds to the City. Our selection on page 2 would be Option B1.</p>		

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. PROS:

B. CONS:

ALTERNATIVES (In Suggested Order of Staff Preference):

ATTACHMENTS: (1) GovDeals Memo of Understanding; and (2) List of Texas Governments using GovDeals

FUNDING SOURCE (Where Applicable): N/A

RECOMMENDED ACTION: Approve a Memo of Understanding with GovDeals, Inc. for the Sale of Surplus Assets and Inventory Via an Online Auction System and Authorize the Mayor to Execute Any Necessary Documentation.

APPROVALS: Carolyn D. Miller

GovDeals

Online Auction Memo of Understanding

This Online Auction Memo of Understanding (MOU) is between GovDeals, Inc. (“GovDeals”), a Delaware corporation having its principal place of business at 5907 Carmichael Place, Montgomery, Alabama, 36117 and the City of Brenham (“Client”), having its principal place of business at 200 west Vulcan Street – Brenham, Texas 77833.

- 1.0 Description of Services:** GovDeals provides a means for Client to post assets for sale and for potential buyers to bid on these assets via an online auction system. Although GovDeals provides system access for Client to list assets, GovDeals is not a party to the actual sale and has no control over the listed information or the ability of the buyer and Client to complete the transaction.
- 2.0 GovDeals’ Responsibilities:** In addition to maintaining and operating an online auction system, GovDeals will provide Client with the following services for the period agreed to in **5.0** below:
 - 2.1** Access to a GovDeals online “Client Asset Server” (CAS), which will allow Client to load assets to the online auction system, maintain information about assets and view and run reports. The CAS will provide Client with the following capabilities:
 - Accept descriptive information concerning an asset including unlimited photos
 - Allow different auction phases based upon dates and times
 - Allow Client to set minimum starting prices, bid increments and reserves
 - 2.2** Training and support services to assist Client in implementing the GovDeals online auction system, which will include:
 - Familiarization with the nature and operation of CAS
 - Guidance in the posting of assets and provide ongoing support
 - Procedures for taking and posting pictures of assets
 - Based on mutual agreement between GovDeals and Client, training and support services will be provided on-site or via telephone or Internet
 - 2.3** Help Desk support available via telephone or email during normal business hours, except announced holidays.
 - 2.4** Provide marketing of assets posted to the online auction site and promote use of the site to potential buyers.
 - Work with Client to identify items that may benefit from marketing attention.
 - Provide documented proof of all marketing efforts made on behalf of Client.
 - Assist in determining values and starting prices for unique and high dollar assets.
- 3.0 Fees:** Please elect a Flexible Pricing Option (FPO) from **Exhibit A** and enter selection below signature block on MOU page two (2).
- 4.0 Payment:**
 - 4.1** If Client elects to collect auction proceeds, GovDeals will invoice Client for fees on the first business day of the month following the month assets are sold. Client agrees to remit payment to GovDeals within thirty (30) calendar days from receipt of invoice, unless an applicable prompt payment act or similar legislation specifies a different time period.

- 4.2 Client shall promptly, but no more than fifteen (15) business days after the auction end date, notify GovDeals of any transaction that was not completed. The fees for said transaction shall be credited to Client during the next invoice period.
- 4.3 If Client elects GovDeals to collect auction proceeds electronically via PayPal, credit card or wire transfer please review and complete **Exhibit B**.
- 5.0 **Term of MOU**: This MOU shall commence on the date it is signed by the second party and will continue for a period of twelve months unless otherwise terminated upon sixty days written notice by either party. This MOU shall automatically extend for additional one-year periods, unless either party notifies the other in writing of its intent not to renew at least sixty days prior to the anniversary date.
- 6.0 **Terms and Conditions**: Please find **Exhibit C** attached as an example of suggested Client Terms and Conditions. At any time during the term of this MOU, Client may modify the Terms and Conditions. Any substitutions or modification must be submitted to GovDeals in writing before posting assets to the GovDeals auction site.
- 7.0 **Governance**: This MOU will be governed, interpreted, construed and enforced in accordance with the laws of the State of Texas.
- 8.0 **Non-Exclusive Engagement**: This MOU is not exclusive. Client may utilize other approaches, including traditional auctioneer services or sealed bids. However, it is understood and agreed that Client will not utilize other disposal approaches for an asset at the same time the asset is listed on the GovDeals online auction site or sell by some other means to a prior bidder any item currently or previously listed on the GovDeals site for the purpose of avoiding payment of the GovDeals fee. Client agrees to not manipulate or interfere with the bidding process on the GovDeals site.

This online auction memo of understanding is agreed to by:

GovDeals, Inc

Client: City of Brenham

Signature: _____

Signature: _____

Print Name: Robert L. DeBardelaben

Print Name: Milton Y. Tate, Jr.

Title: President

Title: Mayor

Date: _____

Date: _____

Memo of Understanding Contact:

Attention: Sales Support
 5907 Carmichael Place
 Montgomery, AL 36117
 Telephone Number: 866.377.1494
 Fax Number: 334.387.0519
 Email: salesupport@govdeals.com

<p align="center">Flexible Pricing Options (FPO)</p> <p>Select one from options described in GovDeals Memo of Understanding- Exhibit A:</p> <p><u>Client Collects Proceeds</u></p> <p><input type="checkbox"/> Option A1 (7.5% Seller- 0% Buyer)</p> <p><input type="checkbox"/> Option A2 (0% Seller- 7.5% Buyer)</p> <p><u>Client elects FSS (GovDeals collects Proceeds)</u></p> <p><input type="checkbox"/> Option B1 (7.5% Seller- 5% Buyer)</p> <p><input type="checkbox"/> Option B2 (5% Seller- 7.5% Buyer)</p> <p><input type="checkbox"/> Option B3 (2.5% Seller- 10% Buyer)</p> <p><input type="checkbox"/> Option B4 (0% Seller- 12.5% Buyer)</p>

Flexible Pricing Options (FPO)

The Client has the option to choose from the following alternative plans:

A - Client Collects Proceeds

Option A1: The Client pays a 7.5%* fee which will be reduced according to the Tiered Fee Reduction Schedule (described below). GovDeals will invoice the client each month for fees on items sold in the previous month. The client is allowed thirty (30) calendar days from date of invoice receipt to remit payment.

Option A2: The Client pays a 7.5%* fee but is given the capability to easily pass the entire fee on to the winning bidder as an Administrative Fee. The client is only allowed to pass on to the winning bidder the amount charged to them based on the tiered pricing schedule above. The amount invoiced to the winning bidder will include the gross sale amount of the item, the administrative fee, any special fees and sales taxes, if any. By passing this fee on to the winning bidder, the client's effective fee is zero percent (0%). GovDeals will invoice the client each month for fees on items sold in the previous month. The client is allowed thirty (30) calendar days from date of invoice receipt to remit payment.

B - Client Elects GovDeals Financial Settlement Services (FSS) allowing GovDeals to Collect Proceeds. Only one option below can be used and once this option is chosen, it cannot be changed for twelve (12) months.

Option B1: The Client pays a 7.5%* fee and the winning bidder pays a 5% Buyers Premium. **

Option B2: The Client pays a 5%* fee and the winning bidder pays a 7.5% Buyers Premium.

Option B3: The Client pays a 2.5%* fee and the winning bidder pays a 10% Buyers Premium.

Option B4: The Client pays zero percent fees (0%) and the winning bidder pays a 12.50% Buyers Premium.

Tiered Fee Reduction Schedule

GovDeals' **Tiered Fee Reduction Schedule** below explains how the base auction fee of 7.5% is reduced for assets that sell in excess of \$100,000 on www.govdeals.com.

- 1. When an asset sells for up to \$100,000 in a winning bid, the GovDeals fee is seven and one-half percent (7.5%*) of the winning bid, but not less than \$5.00.**
2. Where an asset sells for more than \$100,000, but less than \$500,000 the GovDeals fee is seven and one-half percent (7.5%) of the winning bid up to \$100,000, plus five and one-half percent (5.5%) of the winning bid for auction proceeds in excess of \$100,000 up to \$500,000.
3. Where an asset sells for greater than \$500,000 the GovDeals fee is seven and one-half percent (7.5%) of the first \$100,000 of the winning bid, plus a fee of five and one-half percent (5.5%) of the next \$400,000 of the winning bid, plus a fee of three and one-half percent (3.5%) of the bid amount in excess of \$500,000.

*Subject to a minimum per asset/lot fee of \$5.00.

If the Client chooses to pay the full 7.5% fee, they will have access to the **Tiered Fee Reduction Schedule.

EXHIBIT B - Online Auction Memo of Understanding

Financial Settlement Services (FSS)

It is understood the Client elects GovDeals to collect all proceeds due the Client from the winning bidder and remit the proceeds to the Client less the GovDeals fee. Optionally, the Client may elect to not have GovDeals withhold the fee by electing the appropriate section on the following page of this exhibit.

GovDeals will charge the winning bidder a "Buyer's Premium", therefore, the Client is not allowed to charge the winning bidder an additional "Buyer's Premium".

GovDeals will collect all proceeds from the winning bidder, including the "Buyer's Premium" through PayPal, credit card or wire transfer. This is the only means of payment by the bidder.

The Client will not release an asset to the winning bidder until the Client has received verification from GovDeals that payment has been received from the winning bidder. Prior to an item being released to the winning bidder, the Client will ensure the winning bidder or his/her agent has signed a "Bill of Sale" containing the following notation: "Asset is sold as is, where is and without warranty. Once the asset is removed from the seller's premises there is no refund of monies previously paid". The Bill of Sale must be printed from the Client Asset Server (CAS). Any other "Bill of Sale" used by the Client must be submitted to GovDeals for approval.

No proceeds will be remitted to the Client for any asset sold without verification of payment from GovDeals and verification from the Client the item has been picked up by the winning bidder. Approved payment from the winning bidder through PayPal, credit card or wire transfer will be noted in CAS. It is the Client's responsibility to notify GovDeals when an item has been picked up, which is accomplished by the Client accessing CAS and selecting the "Picked Up" option from the "Paid, not picked up" report.

GovDeals will remit all proceeds collected, less the "Buyer's Premium" and the GovDeals fee to the Client on a weekly basis for all assets marked in CAS as 'Picked Up'. However, if you choose to be invoiced for the GovDeals' fee, GovDeals will remit all proceeds collected, less the "Buyer's Premium" only. All proceeds will be remitted electronically by Automatic Clearing House (ACH) unless elected on the following page of this exhibit to receive a paper check. Whether proceeds are remitted electronically via ACH or via paper check, a detailed backup will be submitted to the Client to support the amount remitted.

Under no circumstance will the Client collect any proceeds directly from the winning bidder and if requested to do so, the Client should refer the winning bidder directly to GovDeals for payment instructions.

GovDeals will absorb all costs of Charge Backs by PayPal or a credit card company where an item is released to the winning bidder after the Client receives proper payment notification from GovDeals, GovDeals receives proper pickup notification from the Client and the Client obtained and retained a signed "Bill of Sale" from the winning bidder.

GovDeals will refund proceeds collected to the winning bidder in those rare occasions where the winning bidder pays for an asset but never picks it up and subsequently convinces PayPal or the credit card company to withdraw the amount from GovDeals' bank account. It is the Client's responsibility to request a credit on the asset paid for but not picked up as soon as the allowable pick up time passes. By taking the credit, it insures GovDeals will not charge the Client a fee and will allow the Client to resell the asset. If the asset is mistakenly placed in 'picked up' status by the Client and GovDeals has remitted payment, the Client agrees to refund this amount back to GovDeals.

A GovDeals' Client Services Representative or a GovDeals Help Desk Representative will train the Client on how to effectively use the Financial Settlement Services feature and provide ongoing support as needed. There are no additional costs to the Client for training and support.

GovDeals is covered by a Crime Insurance Policy with a limit of \$5,000,000, which will protect the Client against any loss of funds.



City of Brenham

Brenham, Texas

Online Sales - Terms and Conditions

All bidders and other participants of this service agree they have read and fully understand these terms and agree to be bound thereby.

Guaranty Waiver. All assets are offered for sale “AS IS, WHERE IS.” The City of Brenham (**Seller**) makes no warranty, guaranty or representation of any kind, expressed or implied, as to the merchantability or fitness for any purpose of the property offered for sale. The Buyer is not entitled to any payment for loss of profit or any other money damages – special, direct, indirect or consequential.

Description Warranty. Seller warrants to the Buyer the property offered for sale will conform to its description. Any claim for misdescription must be made prior to removal of the property. If **Seller** confirms the property does not conform to the description, **Seller** will keep the property and refund any money paid. The liability of the **Seller** shall not exceed the actual purchase price of the property. Please note upon removal of the property, **all sales are final.**

Personal and property risk. Persons attending during exhibition, sale or removal of goods assume all risks of damage of or loss to person and property and specifically release the seller and **GovDeals** from liability therefore.

Inspection. Most assets offered for sale are used and may contain defects not immediately detectable. Bidders may inspect the property prior to bidding. Bidders must adhere to the inspection dates and times indicated in the asset description. See special instructions on each asset page for inspection details.

Consideration of Bid. Seller reserves the right to reject any and all bids and to withdraw from sale any of the assets listed.

Buyer’s Certificate. Successful bidders will receive a Buyer’s Certificate by email from **GovDeals**.

Buyers Premium. If a Buyers Premium is shown on the auction page bidder box, then that amount (expressed as a percentage of the final selling price) will be added to the final selling price of all items in addition to any taxes imposed.

Payment. Payment in full is due not later than **5 business days** from the time and date of the Buyers Certificate. Payment must be made electronically through the GovDeals Website.

Acceptable forms of payment are:

- PayPal
- Wire Transfer
- Visa
- MasterCard
- American Express
- Discover

PayPal and Credit Card purchases are limited to below \$5,000.00. If the winning bid plus applicable taxes, if any indicated, and the buyer's premium, equals more than \$4,999.99, PayPal and Credit Cards may not be used. If Wire Transfer is chosen, a Wire Transfer Transaction Summary page will provide payment and account information. The Wire Transfer must be completed within 5 days.

Removal. All assets must be removed within **ten (10) business days** from the time and date of issuance of the Buyer's Certificate. Purchases will be released only upon receipt of payment as specified. Successful bidders are responsible for loading and removal of any and all property awarded to them from the place where the property is located as indicated on the website and in the Buyer's Certificate. The Buyer will make all arrangements and perform all work necessary, including packing, loading and transportation of the property. Under no circumstances will **Seller** assume responsibility for packing, loading or shipping. See special instructions on each asset page for removal details. A daily storage fee of \$10.00 may be charged for any item not removed within the ten (10) business days allowed and stated on the Buyer's Certificate.

Vehicle Titles. **Seller** will issue a title or certificate upon receipt of payment. Titles may be subject to restrictions as indicated in the asset description on the website.

Default. Default shall include (1) failure to observe these terms and conditions; (2) failure to make good and timely payment; or (3) failure to remove all assets within the specified time. Default may result in termination of the contract and suspension from participation in all future sales until the default has been cured. If the Buyer fails in the performance of their obligations, **Seller** may exercise such rights and may pursue such remedies as are provided by law. **Seller** reserves the right to reclaim and resell all items not removed by the specified removal date or paid for by the specified payment date.

Acceptance of Terms and Conditions. By submitting a bid, the bidder agrees they have read, fully understand and accept these Terms and Conditions, and agree to pay for and remove the property, by the dates and times specified. These Terms and Conditions are displayed at the top of each page of each asset listed on **GovDeals**. Special Instructions appearing on the asset page will override certain sections of the terms and conditions.

State/Local Sales and/or Use Tax. Buyers may be subject to payment of State and/or local sales and/or use tax. Buyers are responsible for contacting seller or the appropriate tax office, completing any forms and paying any taxes that may be imposed.

Sales to Employees. Employees of the **Seller** may bid on the property listed for auction, so long as they do NOT bid while on duty.

Why do Texas governments utilize GovDeals?
GovDeals is a highly efficient, proven system that produces higher prices for clients.
Other Texas governments are using GovDeals with great success.

CITY

- | | |
|-----------------------|---------------------|
| 1) Andrews | 22) Lampasas |
| 2) Austin | 23) Leander |
| 3) Big Spring | 24) Llano |
| 4) Brownwood | 25) Lockhart |
| 5) Buda | 26) Marble Falls |
| 6) Cedar Park | 27) Meadowlakes |
| 7) Clyde | 28) Nacogdoches |
| 8) Corsicana | 29) Palmer |
| 9) Crandall | 30) Port Lavaca |
| 10) Del Rio | 31) San Marcos |
| 11) Dumas | 32) Schertz |
| 12) El Paso | 33) Smithville |
| 13) Galveston City of | 34) Stephenville |
| 14) Garland | 35) Taylor |
| 15) Granite Shoals | 36) Texarkana |
| 16) Hallettsville | 37) Universal City |
| 17) Hutto | 38) Vernon |
| 18) Kerens | 39) Victoria |
| 19) Kerrville | 40) West Lake Hills |
| 20) Kyle | 41) Wichita Falls |
| 21) La Grange, TX | |

COUNTY

- | | |
|---------------------------------|------------------------|
| 1) Andrews County | 30) Henderson County |
| 2) Angelina County | 31) Howard County |
| 3) Archer County | 32) Hudspeth County |
| 4) Bastrop County | 33) Hutchinson County |
| 5) Bexar County | 34) Jack County |
| 6) Blanco County | 35) Jackson County |
| 7) Brown County | 36) Jasper County |
| 8) Burnet County | 37) Kerr County |
| 9) Caldwell County | 38) Lamb County |
| 10) Chambers County | 39) Lampasas County |
| 11) Colorado County | 40) Lavaca County |
| 12) Comal County | 41) Llano County |
| 13) Coryell County | 42) Medina County |
| 14) Dawson County | 43) Moore County |
| 15) Dewitt County | 44) Nacogdoches County |
| 16) Edwards County | 45) Navarro County |
| 17) Ellis County | 46) Nolan County |
| 18) Erath County | 47) Rockwall County |
| 19) Fayette County | 48) Smith County, TX |
| 20) Foard County | 49) Somervell County |
| 21) Fort Bend County | 50) Swisher County |
| 22) Gaines County | 51) Tom Green County |
| 23) Galveston County Purchasing | 52) Travis County |
| 24) Gillespie County | 53) Victoria County |
| 25) Gonzales County | 54) Washington County |
| 26) Guadalupe County | 55) Wharton County |
| 27) Hamilton County | 56) Wilbarger County |
| 28) Harrison County | 57) Williamson County |
| 29) Hartley County | |

FIRE & RESCUE

- | | |
|---|--|
| 1) Ellis County Emergency Services District | 3) Seven Points |
| 2) Quail Creek Volunteer Fire Department | 4) South Montgomery County Fire Department |

K-12

- | | |
|--|---|
| 1) Burnet Consolidated Independent School District | 9) Marble Falls Independent School District |
| 2) Cumby Independent School District | 10) Mason Independent School District |
| 3) Dallas County Schools | 11) New Braunfels ISD |
| 4) Eanes Independent School District | 12) North East Independent School District |

- 5) El Paso Independent School District
- 6) Huntington Independent School District
- 7) Jasper Independent School District
- 8) Lewisville Independent School District

- 13) Round Rock Independent School District
- 14) San Benito Consolidated ISD
- 15) Texas Association of School Boards

LAW ENFORCEMENT

- 1) 2nd 25th Judicial District CSCD
- 2) Austin Police Department
- 3) Caldwell County Community Supervision and Corrections Department
- 4) Del Rio Seized/Forfeited Assets
- 5) El Campo Police Department

- 6) Garrett Police Department
- 7) Gonzales County Constable's Department Pct 3
- 8) Kerr County Seized Funds
- 9) Rice Police Department

OTHER

- 1) BuyBoard
- 2) Colorado County Central Appraisal District
- 3) Comal Appraisal District

- 4) Coryell Central Appraisal District
- 5) Joe Barnhart Bee County Library

PARKS & REC

- 1) Galveston Park Board of Trustees (Moody Gardens Division)

- 2) Galveston Park Board of Trustees

PUBLIC AUTHORITY

- 1) Houston Housing Authority

TRANSPORTATION

- 1) Austin - Fleet Services
- 2) Capital Area Rural Transportation System
- 3) Capital Metropolitan Transportation Authority

- 4) Central Texas Rural Transit District
- 5) Port of Houston Authority
- 6) Spartan Public Transportation

UTILITY

- 1) Galveston County Water Control and Improvement District #1
- 2) Lower Colorado River Authority

- 3) New Braunfels Utilities
- 4) Pedernales Electric Cooperative

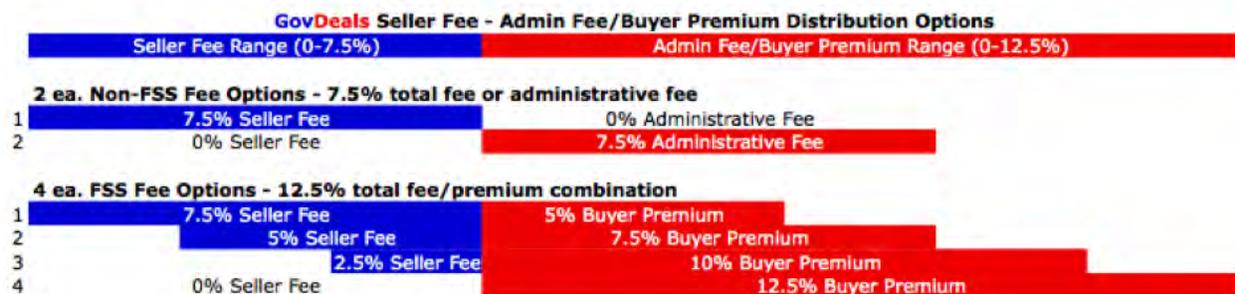
FPO- Flexible Pricing Options talking points

Since 1999 GovDeals has offered the same 7.5% fee to its clients and remains strongly committed to this pricing today. This consistent and transparent pricing allows clients to choose GovDeals knowing they have the best rate available. The 7.5% fee allows GovDeals to provide difference-making services that produce the time proven best results, NET of fee, when compared to any other company or method of disposition. In 2004 GovDeals began reducing the 7.5% fee charged when an individual item sold for more than \$100,000, thus providing an instant discount on such items.

In November 2008 GovDeals introduced Financial Settlement Services (FSS). This is an **optional** service where the buyer pays GovDeals by credit card or wire transfer with a 5% premium charged to the buyer. GovDeals remits the winning bid amount and any taxes charged to the seller. At the seller's option, GovDeals can withhold its 7.5% fee when remitting. The vast majority of our new clients elect to use FSS and have their fees withheld, reducing the client's expense of approving and remitting fees back to GovDeals.

Some sellers choose or would like the option to pass fees on to the buyer to reduce or totally offset our fee. Before now, GovDeals did not provide a method for our system to support this, therefore our sellers had to collect such fees from buyers outside the transparency and all important audit trail built into the GovDeals system.

We now have system features in place to facilitate and manage distribution of our 7.5% fee, with or without the 5% FSS buyer premium, between you as seller and the winning bidder. Based on your choice, this will result in your fee being from 0 to 7.5% with your buyer paying from 0 to 12.5%. Bidders will clearly see any fees that will be added to a winning bid amount. Of course, any applicable taxes will also be displayed.



Winning bidders have paid a 5% Buyer Premium for FSS transactions with little or no apparent reduction in net auction results since we introduced the FSS program in November 2008. We believe there are positive factors at play here: many buyers enjoy the convenience of paying online; GovDeals attracts a large targeted, focused bidder base that recognizes the value in the items sold on the site; and, the highly competitive end of auction activity GovDeals generates and promotes bidding above and beyond competitive results elsewhere. Therefore, when evaluating comparative solutions, it remains critical that you continue to focus on the **net** funds flowing back into your entity's account, as well as consider the costs associated with factors such as high bidder default rates. Subjectively, one might expect that bidders may take any buyer premium amount into account when bidding to win your items on GovDeals. Given the positive effect of the remarkably competitive bidder climate we continue to create, your results should remain far ahead of any other solution. GovDeals will continue to deliver the absolute best net results for your surplus and confiscated item sales, regardless of fee and fee structure. So, no matter how you distribute your surplus program's fees, **the most important decision you make will to be to choose GovDeals.**



AGENDA FORM

DATE OF MEETING: January 20, 2011	DATE SUBMITTED: January 17, 2011	
DEPT. OF ORIGIN: Finance	SUBMITTED BY: Carolyn D. Miller	
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: 1) a Participation Agreement Authorizing the City of Brenham to Participate in the Texas Payment Card Consortium; and 2) a Cooperative Purchasing Agreement Between the City of Fort Worth, Texas and the City of Brenham and Authorize the Mayor to Execute Any Necessary Documentation		
SUMMARY STATEMENT: In August, 2010, we were notified by the Texas Comptroller of Public Accounts that the State of Texas had awarded the contract for Procurement and Corporate Travel Charge Card Services to Citibank and would be terminating the current contract with JPMorgan Chase (Chase) effective February 28, 2011. Subsequently, Barbara Maurer, our local relationship manager, called to let us know that if we desired to stay with Chase, we could join the Texas Payment Card Consortium anchored by the City of Fort Worth. The Texas Payment Card Consortium is a competitively bid commercial card contract, anchored by the City of Fort Worth, which has a piggyback clause allowing governments and not-for-profits to participate at their discretion. This Texas Payment Card Consortium contract began in 2007 and is a 3 year contract with 2 one-year renewals. The first renewal was exercised beginning August 31, 2010, and the contract will expire on August 31, 2012. Since implementing our Procurement Card program with the State of Texas and Chase in April of 2007, we have been pleased with the program, services and flexibility. We are recommending that the City of Brenham join the Texas Payment Card Consortium and approve the cooperative purchasing agreement with the City of Fort Worth. By approving these agreements, the City would incur no costs of changing procurement card providers. No further action is required on the part of our Purchasing or Accounting departments, and the enrollment process for new cards will not change. Our employees will keep their current card and card number and replacement cards will not be issued until the current ones expire or if they are lost or stolen. The Texas Payment Card Consortium contract has a sophisticated rebate program with a minimum annual volume of \$500,000. Our annual volume under the procurement card program is around \$71,000 so we would not qualify for this rebate. The fee structure includes a monthly maintenance fee of \$50 for the Smart Data Online technology platform which we currently utilize.		

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. PROS:

B. CONS:

ALTERNATIVES (In Suggested Order of Staff Preference):

ATTACHMENTS: (1) Participation Agreement for Texas Payment Card Consortium; (2) Commercial Card Agreement between JP Morgan Chase and City of Fort Worth; (3) 1st Amendment to Commercial Card Agreement between JP Morgan Chase and City of Fort Worth; and (4) Cooperative Purchasing Agreement between the City of Brenham and the City of Fort Worth

FUNDING SOURCE (Where Applicable):

RECOMMENDED ACTION: Approve 1) a Participation Agreement Authorizing the City of Brenham to Participate in the Texas Payment Card Consortium; and 2) a Cooperative Purchasing Agreement Between the City of Fort Worth, Texas and the City of Brenham and Authorize the Mayor to Execute Any Necessary Documentation

APPROVALS: Carolyn D. Miller

PARTICIPATION AGREEMENT | JPMORGAN CHASE BANK.NA.

THIS PARTICIPATION AGREEMENT (the "Participation Agreement") is made and effective this _____ day of _____, ("Effective Date"), by and between City of Brenham, a Texas municipality (the "Participant") and JPMorgan Chase Bank, N.A. or Chase Bank USA, N.A., as may be determined from time to time, (the "Bank") each a national banking association.

WITNESSETH:

WHEREAS, pursuant to that certain Commercial Card Agreement dated as of August 31, 2007 (the "Commercial Card Agreement") between City of Fort Worth (the "Client") and the Bank, the Bank has agreed to provide commercial card services to the Client (the "Program") on the terms and conditions of the Commercial Card Agreement, attached hereto and incorporated herein as Exhibit I; and

WHEREAS, the Participant desires to participate in the Program, subject to the terms and conditions of the Commercial Card Agreement;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

- 1. Definitions.** Except as otherwise provided herein, all capitalized terms used herein and not otherwise defined and which are defined in the Commercial Card Agreement shall be used herein as so defined in the Commercial Card Agreement.
- 2. Mutual Obligations.** By their execution of this Participation Agreement, the Participant and Bank hereby agree to be bound by all the terms and conditions of the Commercial Card Agreement as may be amended from time to time attached hereto as Exhibit I. This Participation Agreement shall remain in effect according to its terms without regard to the continued existence or enforceability of the Commercial Card Agreement with respect to the original parties thereto. All references to "Client" in the Commercial Card Agreement shall be deemed to constitute references to the Participant hereunder.

Without limiting the generality of the foregoing, the Participant further agrees that it shall be responsible only for transactions and for fees, charges and other amounts due under the Commercial Card Agreement related to the use of Accounts of the Participant pursuant to the Commercial Card Agreement and that the Client shall not be liable for any such transactions and for any such fees, charges and other amounts.

- 3. Incentives.** For purposes of calculating rebates, Combined Charge Volume for each Participant will begin to accrue on the first day of the month following the date the Participation Agreement is executed.
- 4. Notices.** Notwithstanding the provisions of the Commercial Card Agreement, all notices and other communications required or permitted to be given under this Participation Agreement shall be in writing and shall be effective on the date on which such notice is actually received by the party to which addressed. All notices shall be sent to the address set forth below or such other address as specified in a written form from one party to the other.

To the Bank: JPMorgan Chase Bank, N.A.
300 South Riverside Plaza, Suite IL1-0199
Chicago, IL 60670-0199
Attn: Commercial Card Contracts Manager

To the Participant: City of Brenham

200 W. Vulcan

Brenham, TX 77833

Attn: Carolyn Miller

- 5. Miscellaneous.** This Participation Agreement shall be governed by and construed in accordance with the substantive laws of the State of Texas, and as applicable, federal law. The headings, captions, and arrangements used in this Participation Agreement are for convenience only and shall not affect the interpretation of this Participation Agreement. This Participation Agreement may be executed in any number of counterparts, all of which, when taken together shall constitute one and the same document, and each party hereto may execute this Participation Agreement by signing any of such counterparts.

IN WITNESS WHEREOF, the parties have caused this Participation Agreement to be duly executed as of the date first written above.

BANK:

By:

Name: _____

Title _____

PARTICIPANT:

By:

Name: _____

Title: _____

Participant Attestation:

The undersigned, a duly authorized officer or representative of Participant, does hereby certify that Participant has been duly authorized to enter into and perform this Participation Agreement and that the person signing above on behalf of the Participant, whose execution of this Participation Agreement was witnessed by the undersigned, is an officer, partner, member or other representative of Participant possessing authority to execute this Participation Agreement.

By:

Name: _____

Title _____



AGENDA FORM

DATE OF MEETING: January 20, 2011	DATE SUBMITTED: January 14, 2011	
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"/> 1ST READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND 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 an Agreement Between the City of Brenham and Dr. Wilfred Dietrich for the Amphitheater Project in Hohlt Park and Authorize the Mayor to Execute any Necessary Documentation		
SUMMARY STATEMENT: See Attached Memorandum		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: (1) Memorandum from Terry Roberts; (2) AIA Document A107--1997 (Donor/Contractor Agreement); (3) Amphitheater Project and Dedication Agreement; and (4) Site Plan		
FUNDING SOURCE (Where Applicable):		
RECOMMENDED ACTION: Approve an agreement between the City of Brenham and Dr. Wilfred Dietrich for the Amphitheater Project in Hohlt Park and authorize the mayor to execute any necessary documentation		
APPROVALS: Terry Roberts		



To: Mayor and Council
From: Terry K. Roberts, City Manager
Subject: Updated Paperwork on Amphitheater Project
Date: January 14, 2011

Several months ago the City Council received news that longtime local educator Dr. Wilfred Dietrich was interested in providing the funding for an amphitheater in our parks system. Dr. Dietrich has been working with area architect and builder Constantine Barbu on the concept. He would like to utilize Mr. Barbu's services to design and construct such a facility. By general consensus, the Council agreed the donation would be a great asset to the community. The city staff needed to work with the City Attorney to prepare paperwork to formally implement the project.

As you know the Parks Advisory Board and the Brenham Community Development Corporation have discussed the project and a recommended location. The suggested location is at the south end of Hohlt Park. The BCDC has agreed to fund non-climate controlled restroom facilities to make the amphitheater venue code compliant.

The City staff and City Attorney have been working to create an agreement with Dr. Dietrich that will ensure completion of the project through a developer's agreement. That agreement would be allow Dr. Dietrich to construct an amphitheater project at a specific location in the park in accordance with set of plans and specifications approved in advance by the City.

There is a separate agreement between the donor, Dr. Dietrich and the builder, Mr. Barbu. In that agreement, Mr. Barbu agrees to design and construct the amphitheater project for the funds set aside by Dr. Dietrich. We have attached both of those documents to this agenda item.

Updated Paperwork on Amphitheater Project
Page 2

We met with Dr. Dietrich and Mr. Barbu Friday afternoon to review the paperwork that will formalize the arrangement and move the project forward. Dr. Dietrich has opened an account at a local bank with the funds set aside specifically for the purpose of building the amphitheater project. He will bring a copy of that paperwork to City Hall early next week.

This is an extremely beneficial project for the citizens of Brenham and Washington County and will be utilized by the public for years to come. We are grateful to Dr. Dietrich for his donation that is making such a worthwhile project possible.

The City Council is asked to consider approving the developer's agreement with Dr. Dietrich. The attached contract between donor and contractor is an exhibit to the developer's agreement. The way to accommodate Dr. Dietrich's desire to have his donation constructed by architect/builder Barbu is through such an agreement. In essence, the City, through the developer's agreement, will give Dr. Dietrich permission to construct an amphitheater in Hohlt Park in accordance with plans and specifications agreed to by the parties ahead of time.

While we do not need to have the plans fully developed at this stage of design, we can take the developer's agreement with the attached donor-contractor contract to City Council for approval now that it is agreeable to all parties. The Parks Advisory Board will review the final plans before a notice to proceed is issued.

AIA DOCUMENT A107-1997

Abbreviated Standard Form of Agreement Between Owner and Contractor for Construction Projects of Limited Scope where the basis of payment is a STIPULATED SUM

AGREEMENT made as of the FOURTEENTH day of DECEMBER in the year TWO THOUSAND TEN
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)

DR. WILFRED DIETRICH
 701 MILROY ST
 BRENHAM, TX 77833
 836-3120

and the Contractor:
(Name, address and other information)

CONSTANTIN BARBU
 3522 MIDWEST DR
 BRYAN, TX 77802
 979-412-7687

The Project is:
(Name and location)

BOBBIE DIETRICH MEMORIAL
 AMPHITHEATER
 HOLLT PARK, BRENHAM, TX

The Architect is:
(Name, address and other information)

CONSTANTIN BARBU
 3522 MIDWEST DR
 BRYAN, TX 77802
 979-412-7687

The Owner and Contractor agree as follows.

This document includes abbreviated General Conditions and should not be used with other general conditions.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document has been approved and endorsed by The Associated General Contractors of America.



© 1997 AIA®
AIA DOCUMENT A107-1997
 ABBREVIATED OWNER-
 CONTRACTOR AGREEMENT

The American Institute
 of Architects
 1735 New York Avenue, N.W.
 Washington, D.C. 20006-5292

ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

2.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

THE DATE TO BE DETERMINED BY CITY OF BRENTHAM

2.2 The Contract Time shall be measured from the date of commencement.

2.3 The Contractor shall achieve Substantial Completion of the entire Work not later than ONE HUNDRED days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

N/A

ARTICLE 3 CONTRACT SUM

3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be TWO HUNDRED FIFTY THOUSAND Dollars (\$ 250,000.00), subject to additions and deletions as provided in the Contract Documents.



© 1997 AIA®
AIA DOCUMENT A107-1997
ABBREVIATED OWNER-
CONTRACTOR AGREEMENT

The American Institute
of Architects
1735 New York Avenue, N.W.
Washington, D.C. 20006-5292

3.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

N/A

3.3 Unit prices, if any, are as follows:

N/A

ARTICLE 4 PAYMENTS

4.1 PROGRESS PAYMENTS

4.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

4.1.2 Provided that an Application for Payment is received by the Architect not later than the **FIRST** day of a month, the Owner shall make payment to the Contractor not later than the **SEVEN** day of the **SAME** month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than **FIVE** days after the Architect receives the Application for Payment.



© 1997 AIA®
AIA DOCUMENT A107-1997
ABBREVIATED OWNER-
CONTRACTOR AGREEMENT

The American Institute
of Architects
1735 New York Avenue, N.W.
Washington, D.C. 20006-5292

4.1.3 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

N/A

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

4.2 FINAL PAYMENT

4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Paragraph 17.2, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

SEVEN DAYS AFTER FINAL PAYMENT
CERTIFICATE ISSUE

ARTICLE 5 ENUMERATION OF CONTRACT DOCUMENTS

5.1 The Contract Documents are listed in Article 6 and, except for Modifications issued after execution of this Agreement, are enumerated as follows:

5.1.1 The Agreement is this executed 1997 edition of the Abbreviated Standard Form of Agreement Between Owner and Contractor, AIA Document A107-1997.

5.1.2 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated _____, and are as follows:

Document	Title	Pages
----------	-------	-------

RE ATTACHED EXHIBIT "A"



© 1997 AIA®
AIA DOCUMENT A107-1997
ABBREVIATED OWNER-
CONTRACTOR AGREEMENT

The American Institute
of Architects
1735 New York Avenue, N.W.
Washington, D C. 20006-5292

5.1.3 The Specifications are those contained in the Project Manual dated as in Subparagraph 5.1.2, and are as follows:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages
	N/A	

5.1.4 The Drawings are as follows, and are dated **DECEMBER 30, 2010** unless a different date is shown below:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Pages
A	ARCHITECTURAL	4
S	STRUCTURAL	3
C	CIVIL	2

5.1.5 The Addenda, if any, are as follows:

Number	Date	Pages
	N/A	

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 5.

5.1.6 Other documents, if any, forming part of the Contract Documents are as follows:
(List any additional documents which are intended to form part of the Contract Documents.)

N/A



© 1997 AIA®
AIA DOCUMENT A107-1997
 ABBREVIATED OWNER-
 CONTRACTOR AGREEMENT

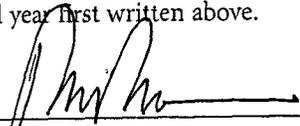
The American Institute
 of Architects
 1735 New York Avenue, N.W.
 Washington, D.C. 20006-5292

ARTICLE 20 OTHER CONDITIONS OR PROVISIONS

- CITY OF BRENHAM SHALL PROVIDE ELECTRICAL AND WATER SERVICE TO A PREDETERMINED LOCATION FOR THE PROJECT
- CITY OF BRENHAM SHALL ISSUE THE DAY OF COMMENCEMENT AND THE DATE OF COMPLETION.

This Agreement entered into as of the day and year first written above.

OWNER (Signature)



CONTRACTOR (Signature)


DR. WILFRED DIETRICH

(Printed name and title)

CONSTANTIN BARBU - ARCHITECT/BUILDER

(Printed name and title)

CAUTION: You should sign an original AIA document or a licensed reproduction. Originals contain the AIA logo printed in red; licensed reproductions are those produced in accordance with the Instructions to this document.



© 1997 AIA®
AIA DOCUMENT A107-1997
ABBREVIATED OWNER-
CONTRACTOR AGREEMENT

The American Institute
of Architects
1735 New York Avenue, N.W.
Washington, D.C. 20006-5292

EXHIBIT "A"

December 6, 2010

To: Dr. Wilfred Dietrich

Re: Design Specifications for Hohlt Park Amphitheater
Seating capacity for 200 to 250 people

SEATING	Colored Precast Concrete Benches. The color to be selected and approved by City of Brenham. The benches shall be secured to the concrete platforms as designed by Structural Engineer.
AMPHITHEATER	Cast in place Concrete Platforms 15" in height. The middle isles have steps with short galvanized metal handrails The lateral isles have continuous galvanized metal railing The entire area is designed with ease of maintenance in mind.
STAGE AREA	Cast in place concrete with a scored pattern. 24"x24" squares Concrete to be stained and sealed. The color to be selected and approved by City of Brenham. The Stage is divided into two areas Front Stage facing the Amphitheater and the Rear Stage facing the Park
STAGE WALL	8" high Austin Rock veneer on both sides of wall with cavity to be reinforced concrete as designed by Structural Engineer Precast Concrete Decorative Elements are included at all openings The color of precast to be selected and approved by City of Brenham.
STAGE LIGHTING	Cast in concrete water proof lights at front and rear of the stage
STAGE ELECTRICAL	Waterproof outlets in Stage Wall on both sides
SITE ELECTRICAL	Pole Lights on sides of Amphitheater and along walkway from parking lot Type of Pole Lights to conform with City of Brenham standards.
ACCOUSTICAL	Prewired stage areas for microphone and speakers. Equipment by others
LANDSCAPING	Trees, solid sod and shrubs on both sides of Amphitheater. Type of trees and shrubs to be approved by City of Brenham.
ACCESS	8 ft wide Concrete Walkway from Parking Lot to the Amphitheater to include handicap ramps. Walkway to tie into walkway leading to the Restrooms
MAINTENANCE	Recessed Water Hose Bibs placed for optimum usage as selected by City of Brenham.
DOCUMENTS	Architectural, Structural, Electrical and Landscaping Plans upon completion will be made available to you and to City of Brenham for Review and Approval.

Application and Certificate for Payment

TO OWNER:	PROJECT:	APPLICATION NO:	<u>Distribution to:</u>
		PERIOD TO:	OWNER <input type="checkbox"/>
		CONTRACT FOR:	ARCHITECT <input type="checkbox"/>
FROM CONTRACTOR:	VIA ARCHITECT:	CONTRACT DATE:	CONTRACTOR <input type="checkbox"/>
		PROJECT NOS: / /	FIELD <input type="checkbox"/>
			OTHER <input type="checkbox"/>

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM	\$ _____
2. Net change by Change Orders ..	\$ _____
3. CONTRACT SUM TO DATE (Line 1 ± 2)	\$ _____
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) ...	\$ _____
5. RETAINAGE:	
a. _____ % of Completed Work (Column D + E on G703)	\$ _____
b. _____ % of Stored Material (Column F on G703)	\$ _____
Total Retainage (Lines 5a + 5b or Total in Column I of G703)....	
6. TOTAL EARNED LESS RETAINAGE	\$ _____
(Line 4 Less Line 5 Total)	
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT	\$ _____
(Line 6 from prior Certificate)	
8. CURRENT PAYMENT DUE	\$ _____
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$ _____

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By: _____ Date: _____

State of: _____

County of: _____

Subscribed and sworn to before
me this _____ day of _____

Notary Public:

My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$ _____	\$ _____
Total approved this Month	\$ _____	\$ _____
TOTALS	\$ _____	\$ _____
NET CHANGES by Change Order	\$ _____	

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

AIA Document G702™ – 1992. Copyright © 1953, 1963, 1965, 1971, 1978, 1983 and 1992 by The American Institute of Architects. All rights reserved. WARNING: This AIA[®] Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA[®] Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. Purchasers are permitted to reproduce ten (10) copies of this document when completed. To report copyright violations of AIA Contract Documents, e-mail The American Institute of Architects' legal counsel, copyright@aia.org.

C. BARBU CO. - ARCHITECTS

3522 Midwest Dr, Bryan, Texas 77802

979-412-7687

November 16, 2010

To: Doug Baker
Director of Public Works, City Of Brenham

Re: Design Specifications for Holt Park Amphitheater

SEATING	Concrete Precast benches with capacity for 200 to 250 people
AMPHITHEATER	Cast in place concrete – different color than benches color <i>6 1/2" x 14" x 12"</i>
STAGE AREA	Cast in place concrete with scored pattern – Concrete to be stained There is a Front Stage facing the Amphitheater and Rear Stage facing the Park
STAGE WALL	Rock Wall with Precast Concrete Decorative Elements
STAGE LIGHTING	Cast in concrete water proof lights at front and rear of the stage
STAGE ELECTRICAL	Waterproof outlets in Stage Wall both sides
SITE ELECTRICAL	Pole Lights on sides of Amphitheater and along walkway from parking lot
ACCOUSTICAL	Prewired stage areas
LANDSCAPING	Trees and shrubs on sides of Amphitheater
ACCESS	8 ft wide Concrete Walkway from Parking Lot to the Amphitheater
MAINTENANCE	Recessed Water Hose Bibs placed for optimum usage

Sincerely



Constantin Barbu - Architect

Dec 2nd.

**AMPHITHEATER PROJECT
AND DEDICATION AGREEMENT**

STATE OF TEXAS §
§
COUNTY OF WASHINGTON §

THIS AGREEMENT, executed this ____ day of _____, 2011 (“Effective Date”) at Brenham, Texas, by and between the CITY OF BRENHAM, a Texas home-rule municipal corporation (“City”) and Wilfred Dietrich (“Donor”), sometimes referred to herein as “Party” or collectively as “Parties”:

RECITALS

- A. The City is the owner of certain real property more fully described in Exhibit “A,” attached hereto and incorporated herein by this reference (“Property”);
- B. The Donor proposes to develop an Amphitheater (also sometimes referred to herein as “Amphitheater Project” or “Project”) upon the Property, in the location on the Property designated by the City;
- C. The Donor has generously offered to pay for all labor and materials relating to the Amphitheater Project at his sole cost and expense, and has agreed to dedicate the Amphitheater in memory of Dr. Bobbie Morrow Dietrich to the City upon completion of the Project;
- D. Accordingly, the parties enter into this Agreement, which sets forth the Parties’ agreements, terms and conditions regarding the Donor’s design, construction and dedication of the Amphitheater Project to the City, and the City’s corresponding obligations and terms of acceptance.

NOW THEREFORE, in consideration of the mutual terms, covenants, and conditions herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. IMPROVEMENT PLANS

Donor agrees that he will construct at his sole cost and expense all those certain improvements set forth in the plans, drawings and specifications in Exhibit "B," attached hereto, hereby referred to and made a part hereof. Said improvements shall be completed **within 100 days from the date the City notifies the Donor in writing to proceed with the Project.** Donor agrees to comply with all requirements set forth in this Agreement and all attachments and exhibits hereto. Donor shall also be responsible for any and all costs and expenses related to the design of the Amphitheater Project (including without limitation all architect’s fees) and any materials and/or soil testing that may be necessary for the construction of the Project.

Donor agrees to provide to the City a copy of any and all invoices, receipts and other written evidence of all costs and expenses billed to and/or paid by Donor in designing and constructing the Amphitheater. Donor shall provide said copies to the City no later than ten (10) days after Donor makes payment of any invoice, receipt or other written evidence of a cost or expense related to the design or construction of the Amphitheater. This obligation of Donor shall survive termination of this Agreement.

The City acknowledges and agrees that the Donor will not be required to design, build, or pay for the restroom facilities that will be constructed in conjunction with the Amphitheater Project. The City further acknowledges and agrees that it shall be responsible for installing and marking the disabled parking spaces necessary to serve the Amphitheater as may be required by applicable law or regulation.

2. IMPROVEMENT REQUIREMENTS

Donor agrees that he will construct said Amphitheater in accordance with the requirements set forth in this Agreement and in accordance with: (1) all applicable ordinances, building codes, and regulations of the City, as amended or revised as of the date on which the Donor's building permit is issued for the Amphitheater Improvement Project; (2) all applicable state and federal laws and regulations; and (3) all plans, drawings and specifications (final versions of said plans, drawing and specifications being subject to written approval of the City) contained in Exhibit "B" and as may be required herein to be approved in writing by the City.

All work shall be performed in a good and workmanlike manner and to the satisfaction of the City. City shall decide all questions which arise as to the quality and acceptability of materials furnished, work performed, and the interpretation of specifications.

Donor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. Donor shall be responsible to see that the completed work complies accurately with the provisions of this Agreement. City may reject any of the work or improvements for which, in the judgment of the City, the work or improvements were not constructed in accordance with this Agreement.

Safety precautions at the site are a part of the construction techniques and processes for which the Donor shall be solely responsible. The Donor has the sole obligation to protect or warn any individual of potential hazards created by the performance of the work set forth herein. The Donor shall, at its own expense, take such precautionary measures for the protection of persons, property, and the work as may be necessary.

Permits. The Donor must obtain all applicable/required permits from the City for the Amphitheater Project before construction of the Project can begin. The Donor, upon the City's written approval of the Donor's site development plan, may proceed with site development prior to the issuance of a building permit by the City for the Amphitheater structure. The Amphitheater Project shall not be occupied until written evidence of conformance with all applicable ordinances, building codes, and regulations has been

issued by the City. All applicable/required permits shall be controlled by and issued through the City. The City shall waive all costs and expenses necessary for Donor to obtain the applicable/required permits, including the costs and expenses of any inspection. Records of the foregoing information shall be maintained by the Donor, and such records shall be provided to the City upon request at any time.

Construction. The City shall have the right, at any time, to inspect the construction of the Amphitheater Project for the purpose of identifying any improvements that are being constructed in violation of applicable ordinances, building codes, regulations, and/or this Agreement. City inspections shall be performed by an inspector selected by the City and all inspection results shall be in writing.

All work deemed not in conformity with this Agreement as determined by City, in its sole discretion, may be subject to rejection by City. City may reject any work found or determined by it to be defective or not in accordance with this Agreement. City may reject said work or any portion thereof regardless of the stage of its completion or the time or place of discovery of such errors. Further, City may reject said work regardless of whether City has previously accepted the work through oversight or otherwise. Neither observations by City nor inspections, tests, certificates or approvals made by City shall relieve Donor from its obligation to perform the work in accordance with the requirements of this Agreement and related documents.

If the work or any part thereof is rejected by City, it shall be deemed by City as not in conformity with the Agreement and related documents. Any remedial action required, as set forth herein, shall be at the Donor's expense, as follows:

Donor may be required, at City's option, after notice from City, to remedy such work so that it shall be in full compliance with this Agreement. All rejected work or materials shall be immediately replaced in order to conform with this Agreement.

3. SIGNAGE, LIGHTING, SIDEWALK, AND SOUND SYSTEM WIRING

The Donor agrees to design, construct, and pay for all signage, including without limitation any dedicatory or signage identifying the facility, as well as any lighting and sound system wiring necessary for the proper functioning of the Amphitheater. In addition, the Donor agrees to design, construct, and pay for a sidewalk connecting the Amphitheater with the existing adjacent parking lot. All signage, sidewalks, lighting and sound system wiring design and improvements must be in the appropriate plans, drawings and specifications and must be expressly approved by the City prior to the Donor's construction or installation of any part of said signage, sidewalks, lighting or sound system wiring.

4. APPROVAL OF IMPROVEMENT PLANS

Donor acknowledges and agrees that the Amphitheater Project plans, drawings and specifications described in this Agreement shall be subject to the inspection and approval of the City. If deemed necessary by the City, Project plans, drawings and specifications

shall include appropriate drainage and storm water control designs for proper water management. No work or improvements shall be undertaken by Donor until the plans, drawings and specifications have been submitted to the City and have been approved by the City in writing. In addition, no changes shall be made to the Amphitheater Project plans, drawings and specifications or in the work or improvements to be done under them without the prior written approval of the City.

5. FORMAL ACCEPTANCE OF THE PROJECT

Upon completion of the construction of the Amphitheater Project, the Donor will notify the City that the construction is complete and execute the appropriate instrument offering the Project for dedication to the City, at no cost to the City, thereby turning the Amphitheater over to the City. A City representative will inspect the Project, and if the City determines that the Project satisfies all requirements of this Agreement, all approved plans, drawings and specifications, and all applicable ordinances, building codes, and regulations, the City representative will recommend to the City Council that it formally accept the Project. Upon the City Council's formal acceptance of the Amphitheater Project by resolution, the City acquires full and unencumbered title and all rights of ownership pertaining to the Amphitheater Project, and the Amphitheater shall become a part of the City's park system.

Prior to acceptance of the Amphitheater by City, Donor shall furnish a written affidavit, in a form provided by City, stating all bids, charges, accounts or claims for labor performed and material furnished in connection with the construction of the Amphitheater have been paid in full and that there are no unreleased recorded liens filed against the Amphitheater, or Property to which they are affixed. As a prerequisite to such turn over and acceptance, the Donor will furnish to the City the following:

A. As built plans or drawings of the Amphitheater in a form acceptable to the City; and

B. A bill of sale and/or other evidence of title of the Amphitheater in a form approved by the City.

6. TERM

The term of this Agreement will commence on the Effective Date and continue until the Amphitheater Project is formally accepted by the City, unless sooner terminated under this Agreement. Except as otherwise indicated in this Agreement, the Parties' obligations under this Agreement shall expire upon the formal acceptance of the Amphitheater Project by resolution adopted by the Brenham City Council.

This Agreement may be terminated at any time in whole or, from time to time, in part, by the City for default in accordance with Sections 13 and 14 of this Agreement, or for the City's convenience, without cause. Any termination for convenience shall be effected by delivery to the Donor of a written notice (notice of termination) specifying the extent to which performance of the work is terminated, and the date upon which termination becomes effective.

7. FISCAL SECURITY - LETTER OF CREDIT

The City agrees that the Donor, with respect to the Amphitheater Project, will provide an Irrevocable Letter of Credit to the City, in substantially the form set out in Exhibit "C" for the Full and Faithful Performance of each of the terms, covenants, and conditions of this Agreement issued by the Bank named below:

(Name of Bank Issuing Letter of Credit)

For the sum of:

Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00)

And will provide a valid letter of credit to the City by:

(Date)

Donor agrees and understands that the purpose of this Irrevocable Letter of Credit in lieu of bond is to guaranty the completion of the Amphitheater Project.

The Donor agrees that, in the event the Donor becomes aware that the cost of completion will exceed the amount of the Irrevocable Letter of Credit, the Donor will , within five (5) calendar days of becoming aware of such project cost increase, cause a new Irrevocable Letter of Credit to be delivered to the City in an amount sufficient to complete the construction of the Amphitheater and satisfy the terms, covenants, and conditions of this Agreement.

8. LABOR AND MATERIALS CLAIMS

Donor agrees to pay all costs for labor or materials used in connection with the Amphitheater Improvement Project. The City shall not incur any liability to any contractor, subcontractor, or persons renting equipment or furnishing labor or materials to Donor in preparation for the dedication and acceptance of the Amphitheater Project.

Donor shall promptly pay all workmen and materialmen and shall not allow liens to be placed on the Amphitheater or Property. Upon completion and approval or acceptance of the Amphitheater by City, the Amphitheater shall become the property of City free and clear of all liens, claims, charges or encumbrances of any kind. If, after acceptance of the Amphitheater, any claim, lien, charge or encumbrance is made, or found to exist, against the Amphitheater, or land dedicated to the City, to which they are affixed, Donor shall upon notice by City promptly cause such claim, lien, charge or encumbrance to be satisfied and released or promptly post a bond with City in the amount of such claim, lien, charge or encumbrance, in favor of the City, to insure payment of such claim, lien, charge or encumbrance. This provision shall survive termination of this Agreement.

9. INDEMNIFICATION

Donor shall INDEMNIFY, DEFEND, AND HOLD HARMLESS, City, its officers, agents and employees from and against any and all suits, actions, claims, damages, losses, and expenses of any character, name and description, including, but not limited to, attorney's fees, arising out of or resulting from the operations of Donor, his agents, contractors, employees or subcontractors; or on account of any negligent act or fault of Donor, his contractors, agents, employees or subcontractors in construction of the Amphitheater, including, but not limited to, any such claim, damage, loss or expense attributable to bodily or personal injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and shall pay any judgment, with costs, which may be obtained against the City growing out of such injury or damage. Nothing herein shall waive any governmental immunity available to the City under Texas law and any defenses of the parties under Texas law. This provision shall survive termination of this Agreement.

10. INSURANCE

1. The Donor (or Donor's Contractor/Assignee designated in Section 17 of this Agreement) shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Donor, its agents, representatives, volunteers, employees or subcontractors. The Donor's insurance coverage shall be primary insurance with respect to the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be considered in excess of the Donor's insurance and shall not contribute to it. Further, the Donor shall include the City as an additional insured under each policy. All coverages for contractors and subcontractors shall be subject to all of the requirements stated herein. Certificates of Insurance and endorsements shall be furnished to the City and approved by the City before work commences.

2. Standard Insurance Policies Required:

(a) Commercial General Liability Policy

(b) Automobile Liability Policy

(c) Workers' Compensation Policy

3. General Requirements Applicable to All Policies:

(a) General Liability and Automobile Liability insurance shall be written by a carrier with a A:VIII or better rating in accordance with the current Best Key Rating Guide.

(b) Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.

(c) Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.

(d) "Claims Made" policies will not be accepted.

(e) The City of Brenham, its officials, employees and volunteers, are to be added as "Additional Insured" to the General Liability policy. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.

(f) A Waiver of Subrogation in favor of the City with respect to Workers' Compensation Insurance must be included.

(g) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City of Brenham.

(h) Upon request, certified copies of all insurance policies shall be furnished to the City of Brenham.

4. Commercial General liability

(a) Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

(b) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.

5. Automobile Liability

(a) Minimum Combined Single limit of \$500,000.00 per occurrence for bodily injury and property damage.

6. Worker's Compensation

(a) Employer's Liability limits of \$100,000.00 for each accident is required.

7. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain the following provisions and warranties:

(a) The company is licensed and admitted to do business in the State of Texas.

(b) The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Texas State Board of Insurance or ISO.

(c) All endorsements and insurance coverage according to requirements and instructions contained herein.

(d) The form of the notice of cancellation, termination, or change in coverage provisions to the City of Brenham.

(e) Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

11. WAIVER

Nothing contained in this Agreement shall be construed to be a waiver, release or extension of any provision heretofore required by ordinance, resolution, or order of the City.

Any failure by a Party to insist upon strict performance by the other Party of any provision of this Agreement will not, regardless of the length of time during which that failure continues, be deemed a waiver of that Party's right to insist upon strict compliance with all terms of this Agreement. In order to be effective as to a Party, any waiver of default under this Agreement must be in writing, and a written waiver will only be effective as to the specific default and as to the specific period of time set forth in the written waiver. A written waiver will not constitute a waiver of any subsequent default, or of the right to require performance of the same or any other provision of this Agreement in the future.

12. APPLICABLE LAW AND VENUE

The interpretation, performance, enforcement and validity of this Agreement are governed by the laws of the State of Texas. Exclusive venue will be in a court of appropriate jurisdiction in Washington County, Texas.

13. DEFAULT

If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least thirty (30) days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the 30-day period, the commencement of the cure within the 30-day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period.

14. REMEDIES OF DEFAULT

If either Party defaults under this Agreement and fails to cure the default within the applicable cure period, the non-defaulting Party will have all rights and remedies available under this Agreement or applicable law, including without limitation, the right to institute legal action to cure any default, to enjoin any threatened or attempted violation of this Agreement or to enforce the defaulting Party's obligations under this

Agreement by specific performance or writ of mandamus, or to terminate this Agreement. All remedies available to a Party will be cumulative and the pursuit of one remedy will not constitute an election of remedies or a waiver of the right to pursue any other available remedy.

In the event that Donor fails to perform any obligation on its part to be performed hereunder, Donor agrees to pay all costs and expenses incurred by City in securing performance of such obligation, and if suit be brought by City to enforce this agreement, Donor agrees to pay costs of suit and reasonable attorney's fees to be fixed by the Court.

15. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the Parties, and there are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement may be amended only by written agreement signed by the Parties.

16. AUTHORITY FOR EXECUTION

The City certifies, represents, and warrants that the execution of this Agreement has been duly authorized and that this Agreement has been approved in conformity with City ordinances and other applicable legal requirements. Donor certifies, represents, and warrants that the execution of this Agreement is duly authorized and in conformity with all legal requirements.

17. ASSIGNMENT

This Agreement and any rights, duties and obligations hereunder may not be assigned without the prior written consent of all of the parties hereto and, in the event of an attempted assignment by one party to this Agreement without the express prior written consent of all other parties, such attempted assignment shall be void and without effect. Notwithstanding the previous sentence, the City hereby consents to the Donor's written assignment of the specific obligations and duties under this Agreement, contained in the agreement between the Donor and Contractor attached hereto as Exhibit "D", to Contractor, as Assignee. The assignment of any of the provisions of this Agreement will be binding upon, and inure to the benefit of the Donor, the City and Assignee. The rights and obligations of Assignee will be non-severable, and Donor will be liable for the nonperformance of the Assignee and vice-versa. In the case of nonperformance by the Assignee, the City may pursue all remedies against the Donor and/or the nonperforming Assignee.

18. NOTICES

Any notices under this Agreement may be sent by hand delivery, facsimile (with confirmation of delivery) or certified mail, return receipt requested, to the Parties at the following addresses or as such addresses may be changed from time to time by written notice to the other Parties:

City: Terry Roberts, City Manager
City of Brenham

200 W. Vulcan
Brenham, TX 77833
Telephone: (979) 337-7200
Facsimile: (979) 337-7383

Copy to: Cary L. Bovey
City Attorney
2251 Double Creek Dr., Suite 204
Round Rock, TX 78664
Telephone: (512) 904-9441
Facsimile: (512) 904-9445

Donor: Wilfred Dietrich
701 Milroy Drive
Brenham, TX 77833
Telephone: 979-836-3120
Facsimile:

19. MISCELLANEOUS

- A. Time shall be of the essence of this Agreement.
- B. If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the Parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid or enforceable provision as is possible.
- C. The singular shall include the plural; the masculine gender shall include the feminine and neuter gender.
- D. All exhibits attached to this Agreement are incorporated into and made a part of this Agreement for all purposes.
- E. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.
- F. This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided.
- G. To the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws. Each Party to this Agreement has been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not be employed in interpreting this Agreement or its exhibits.
- H. The prevailing Party in any dispute under this Agreement will be entitled to recover from the non-prevailing Party its reasonable attorney's fees, expenses and court costs in connection with any original action, any appeals, and any post-

judgment proceedings to collect or enforce a judgment.

- I. Any failure by a Party to insist upon strict performance by the other Party of any provision of this Agreement will not, regardless of the length of time during which that failure continues, be deemed a waiver of that Party's right insist upon strict compliance with all terms of this Agreement. In order to be effective as to a Party, any waiver of default under this Agreement must be in writing, and a written waiver will only be effective as to the specific default and as to the specific period of time set forth in the written waiver. A written waiver will not constitute a waiver of any subsequent default, or of the right to require performance of the same or any other provision of this Agreement in the future.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, the day and year first above written.

CITY OF BRENHAM, TEXAS:

By: _____
Milton Y. Tate, Mayor
City of Brenham, Texas

STATE OF TEXAS §
 §
COUNTY OF WASHINGTON §

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

Notary Public in and for the State of Texas

(NOTARY SEAL)

DONOR:

By: _____
 Wilfred Dietrich, _____

STATE OF TEXAS §
 §
COUNTY OF WASHINGTON §

 This instrument was acknowledged before me on the ____ day of _____, 2011, by Wilfred Dietrich.

Notary Public in and for the State of Texas

(NOTARY SEAL)

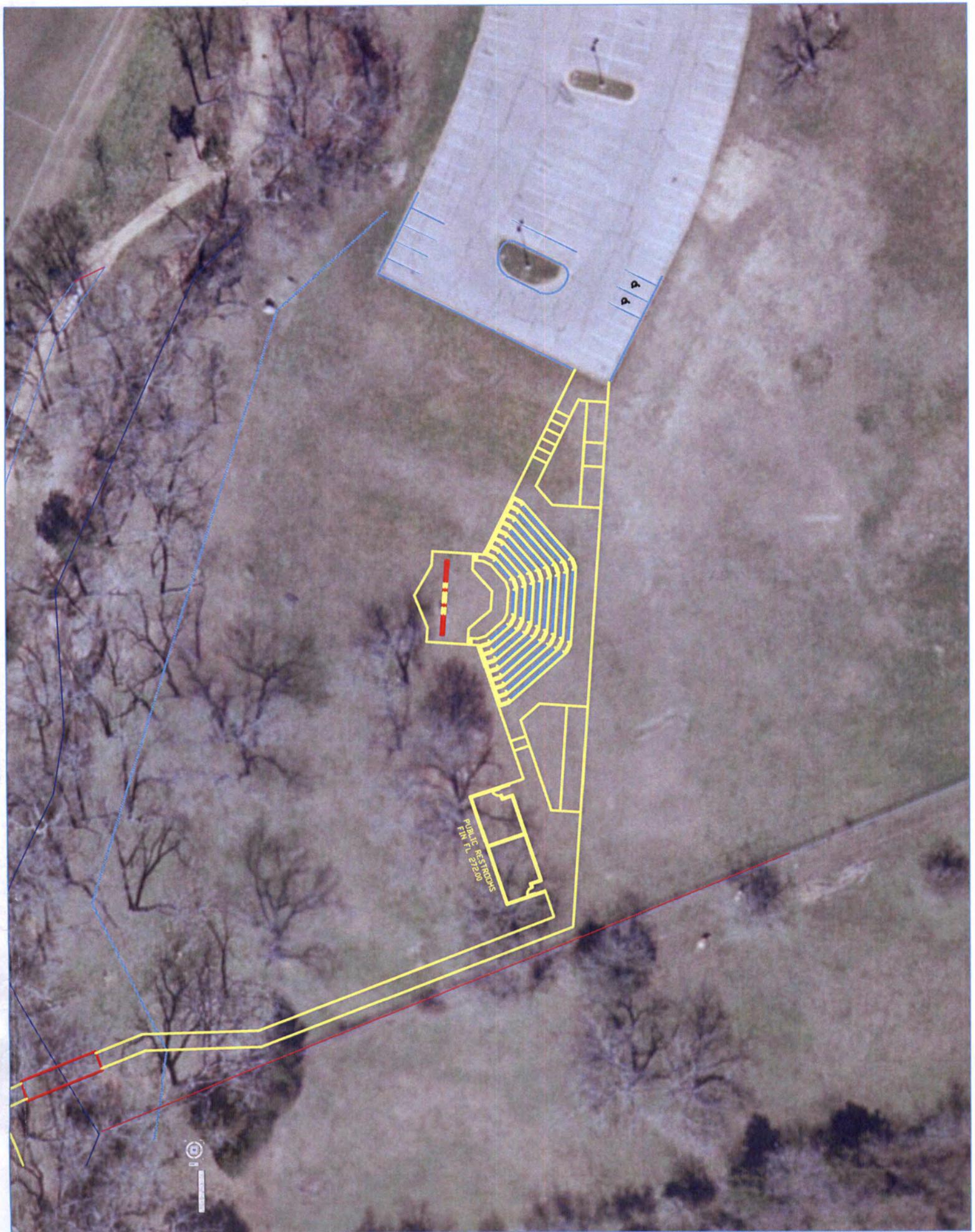
Exhibit "A"

[Map and legal description of the park property on which the amphitheater will be built]



Exhibit “B”

[Plans, Drawings and Specifications for Amphitheater Project]



PUBLIC RESTRICTIONS
PIN FL 631200



COMMERCIAL CARD AGREEMENT

This Commercial Card Agreement (the "Agreement") is entered into as of August 31, 2007 between City of Fort Worth, a Home-Rule Municipal Corporation, situated in Tarrant, Denton, Parker, and Wise, Counties, Texas (the "Client"), and JPMorgan Chase Bank, N.A. (the "Bank") a national banking association. Commencing on the date of this Agreement, the Bank and the Client hereby agree that the Bank will provide the Commercial Card Program, as hereinafter defined, and the Client may participate in the Program subject to the terms and conditions of this Agreement.

1. *Definitions.* Terms defined in the singular shall include the plural and vice versa, as the context requires.

"Access Code" means the user identification code and password assigned to individuals authorized by the Client, for use in connection with the Program or the System.

"Account" means the Visa or MasterCard account number assigned to a Cardholder and/or the Client, the related account, and any Card bearing such account number.

"Account Credit Limit" means the upper limit for an extension of credit for an Account specified by the Client from time to time and accepted by the Bank.

"Agreement" means this Commercial Card Agreement as it may be amended from time to time.

"Association" means either MasterCard or Visa.

"Authorized User" means individuals authorized by the Client to access and use the Program and System.

"Business Day" means a day on which both the Bank and the Federal Reserve Banks are open for business.

"Card" means a Visa or MasterCard card that is issued by the Bank with respect to an Account.

"Card Request" means a written or electronic transmittal from the Client, requesting the Bank to issue a Card(s) or establish an Account(s).

"Cardholder" means (i) an individual in whose name a Card is issued, and (ii) any other employee, officer, director, or person authorized by the Client or named Cardholder to use a Card or Account.

"Cardholder Agreement" means an agreement between the Bank and a Cardholder, as amended from time to time, governing use of an Account.

"Cash Transaction Module" ("CTM") means a System tool used in connection with the processing, management, and approval of cash transactions.

"Convenience Checks" means a check written against an Account.

"Contract Documents" means this Agreement in conjunction with City of Fort Worth RFP No. 07-0068, Addendum #1 thereto, and Bank's Proposal submitted in response to RFP No. 07-0068. RFP No. 07-0068, Addendum #1 thereto, and Bank's Proposal are each incorporated herein by this reference.

"Client Account" means the account of the Client into which the outstanding balances of all Accounts are aggregated and for which the Client is liable.

"Client Vendor" means a travel agent, travel agency or any other vendor of Client authorized by the Client to charge Transactions to an Account.

“Corporate Liability” means the Client is liable for all Transactions on an Account and such liability shall be as agreed to by the parties and reflected on the Bank’s records and subject to this Agreement.

“Credit Limit” means the upper limit established for an extension of credit that the Bank may authorize in connection with this Program under this Agreement.

“Credit Losses” means all amounts, including any related collection costs, due to the Bank in connection with any Account that the Bank has written off as uncollectible, excluding Fraud Losses.

“Cycle” means the monthly period ending on the same day each month, or, if that day is not a Business Day, then the following Business Day or preceding Business Day, as systems may require or such other period as the Bank may specify.

“Fraud Losses” means all amounts due to the Bank in connection with any Account that the Bank has written off as uncollectible as a result of an Account being lost, stolen, misappropriated, improperly used or compromised.

“International Transaction” means any Transaction that is made in a currency other than U.S. dollars or is made in U.S. dollars outside of the United States of America.

“MCC” means a Merchant Category Code as designated by Visa or MasterCard.

“Losses” means all Credit Losses and Fraud Losses.

“Marks” means the name, trade name, and all registered or unregistered service marks of the Client, the Association and the Bank.

“MasterCard” means MasterCard International, Inc.

“Program” means the commercial card system composed of Accounts, Card-use controls, and reports to facilitate purchases of and payments for, business goods and services, established in connection with the Contract Documents.

“Program Administrator” means an individual authorized by the Client to perform various administrative and security functions in connection with the Program and System.

“System” means the conduit through which the Client can access Account and Transaction data and reports.

“Transaction” means a purchase, a cash advance, use of a convenience check, fees, charges or any other activity that results in a debit to an Account.

“Visa” means Visa U.S.A., Inc.

2. *Obligations of the Bank.* In connection with the Client’s participation in the Program, the Bank shall:

A. Establish Accounts and where applicable issue Cards with such capabilities as may be elected by the Client and agreed to by the Bank from time to time. Any Cards and any Cardholder statements will be delivered to a U.S. address of the Client or Cardholder unless otherwise agreed. The Accounts are non-transferable and non-assignable. The Cards shall remain the property of the Bank.

B. The Bank may investigate the identity of the Client and any proposed or existing Cardholder by obtaining, verifying, and recording personal identifying information, and may if reasonably necessary obtain such information from third parties.

C. Make available to the Client any corporate liability waiver coverage extended by Visa or MasterCard in connection with suspected employee misuse of an Account.

3. *Obligations of the Client.* In connection with the Program, the Client shall:

A. Initially request a minimum of ten (10) Accounts in connection with the Program by submitting a Card Request. From time to time the Client may submit to the Bank a Card Request form for additional cards. The Card Request shall be in a form approved by the Bank, shall include all information required by the Bank, and shall be accompanied by such evidence of authority for the Card Request as the Bank may require. All Card Requests shall be delivered to the Bank in a secure, encrypted, or password protected format or by such other method as may be mutually agreed to by the parties. By submitting any Card Request, the Client represents to the Bank that the information contained therein is consistent with the Client's own records concerning the listed Cardholder or entity. The Client represents that the Cards and Accounts to be issued and established under this Agreement are substitutes for accepted cards and accounts, or will be sought and issued only in response to written requests or applications for such Cards or Accounts obtained by the Client from the prospective Cardholders in accordance with Section 226.12 (a) of Regulation Z of the Federal Truth in Lending Act. The Client shall retain such applications (paper or electronic) for any Account when such application is not provided to the Bank, for a period of twenty-five (25) months after the application has been received and acted upon. The Client agrees to use reasonable security precautions to safeguard Accounts in connection with their storage, use, and dissemination of Accounts.

B. Notify each Cardholder that the Accounts are to be used only for business purposes consistent with the Client's established policies.

C. Clearly disclose to each of its Cardholders the extent, if any, to which the Bank will provide Transaction and Account information to third parties.

D. Make commercially reasonable efforts to (i) maintain a process ensuring timely and accurate reimbursement of all business purchase transactions to its Cardholders, (ii) not exceed the Credit Limit or permit Cardholders to exceed the Account Credit Limits, and (iii) collect and destroy any Cards it no longer requires in connection with this Program.

E. Immediately notify the Bank of any Account for which the Client no longer has use.

F. Immediately notify the Bank by phone of any Account that the Client knows or suspects has been lost, stolen, misappropriated, improperly used or compromised.

G. Comply with all requirements of any corporate liability waiver coverage. Any balance outstanding associated with an Account for which a corporate liability waiver is requested shall become immediately due and payable.

H. Notify the Bank of any Transaction the Client disputes within sixty (60) days of the last day of the Cycle during which such Transaction is charged to the Client. The Client will use commercially reasonable efforts to assist the Bank in attempting to obtain reimbursement from the Merchant. The Bank will use commercially reasonable efforts to assist the Client in attempting to obtain reimbursement from the Merchant; provided, however, the Client understands that no chargebacks will be granted for Transactions resulting from Account usage where a Cardholder's name is not embossed on a Card or where there is no Card associated with such Account. The Client or Cardholder shall not be relieved of liability for any disputed Transaction if the chargeback is rejected. The Bank shall not be liable for any Transaction where notice of the disputed Transaction is received from the Client more than sixty (60) days after the last day of the Cycle during which such Transaction is charged to the Client. The Client shall not make a claim against the Bank or refuse to pay any amount because the Client or the person using the Card may have a dispute with any Merchant as to the goods or services purchased from such Merchant which has honored the Card for that purchase.

4. *Liabilities of the Client.*

A. Regardless of any established Credit Limits or Account Credit Limits, the Client agrees to pay and perform when due all of its obligations, including without limitation:

i) With respect to Corporate Liability Accounts, the Client shall be liable for all amounts owing and payable under or in connection with each such Account and this Agreement. The Client shall make payment as specified on Exhibit A for all Transactions posted to a Client Account as reflected on a periodic statement no later than the payment date (the "Payment Date"). If such Payment Date is a Saturday, Sunday, or Bank holiday, the payment shall be due on either the previous or the next business day as specified on the periodic statement. If all or any portion of a payment owed by the Client is not received by the Bank by the Payment Date, then any amounts outstanding shall be subject to the late fees and delinquency fees as specified on Exhibit A until payment in full of all such amounts.

B. The Client shall immediately notify the Bank by phone of any Account that the Client knows or suspects has been lost, stolen, misappropriated, improperly used or compromised. The Client will be liable for all Transactions made on an Account prior to notification of such lost, stolen, misappropriated, improperly used or compromised Account. The Client will further be liable for Transactions after such notification has occurred if such Transactions result in a direct or indirect benefit to the Client or any Cardholder.

C. The Client's obligations shall be enforceable regardless of the validity or enforceability of a Cardholder's obligations. The Client waives any defenses based upon any

- i) exercise, delay or waiver of any right, power, or remedy under any Cardholder Agreement,
- ii) bankruptcy or similar proceedings, or any discharge, affecting a Cardholder, the Client, or others,
- iii) modification of any Cardholder Agreement,
- iv) settlement with or release of any Cardholder, and/or
- v) action, inaction, or circumstance (with or without the Client's notice, knowledge, or consent) that varies the Client's risks or might otherwise legally or equitably constitute discharge of a surety or guarantor.

D. Payments under this Agreement shall be made in U.S. dollars drawn on a U.S. bank or a U.S. branch of a foreign bank.

E. If the Client elects to add Convenience Check capabilities to any Account, the Client will be liable for the amount of all Convenience Checks used in connection with such Account.

F. If the Client allows a Client Vendor to charge Transactions to an Account, the Client is solely responsible for instructing such Client Vendor in the handling and processing of Transactions. Client Vendors are for all purposes agents only of the Client and not of the Bank. No fee shall be payable by the Bank to any Client Vendor for performing any services.

The Bank may require the Client to deliver to the Bank authorization information for each Client Vendor including, but not limited to (a) the name and address of each authorized individual of the Client Vendor, and (b) such other information in such format as the Bank may in its sole discretion require.

The Client shall immediately notify the Bank upon revoking a Client Vendor's authority. Notwithstanding anything to the contrary in this Agreement, the Client shall be liable for all amounts owing and payable under or in connection with each such Account and this Agreement.

5. *Credit.*

A. The Bank, at its sole discretion, may authorize extensions of credit with respect to (i) each Account up to the Account Credit Limit, and (ii) all Accounts up to the Credit Limit. The Bank is entitled but not obligated to decline authorization of any Transaction that would result in any Credit Limit or Account Credit Limit being exceeded. Notwithstanding the foregoing, if the Client and/or the Cardholder exceed the Credit Limit and/or the

Account Credit Limit, the Client and/or Cardholder shall pay all amounts exceeding the Credit Limit and/or Account Credit Limit as applicable.

B. If not publicly available through the Securities and Exchange Commission, the Client shall provide the Bank with copies of its consolidated audited financial statements, including its annual income statement and balance sheet, prepared in accordance with GAAP, as soon as available and no later than 120 days after the end of each fiscal year. The Client shall provide such other current financial information as the Bank may request from time to time. If applicable, the Client will notify the Bank within five Business Days of any change in the Client's bond rating. The Bank shall be entitled to receive, and to rely upon, financial statements provided by the Client to Bank affiliates, whether for purposes of this Agreement or for other purposes.

C. The Bank at any time may cancel or suspend the right of Cardholders to use any Account or Accounts, or decline to establish any Account. The Bank may, at any time, increase or decrease any Account Credit Limit or the Credit Limit, modify the payment terms, or require the provision of collateral or additional collateral.

D. The Bank may from time to time require MCC authorization restrictions in connection with the Program.

E. Notwithstanding the foregoing, the Bank shall not be obligated to extend credit or provide any Account to the Client or any Cardholder in violation of any limitation or prohibition imposed by applicable law.

6. *Programs and System Access.*

A. The Bank shall provide the Client with password-protected daily access to Account and Transaction data, reports, and account maintenance functions through use of an Access Code. The Bank shall assign an initial Access Code to the Program Administrator. The Program Administrator shall create and disseminate Access Codes to Authorized Users. Such access shall be provided in accordance with such manuals, training materials, and other information as the Bank shall provide from time to time.

B. The Client agrees to be bound by and follow the security procedures, terms and conditions that the Bank may communicate from time to time upon notice to the Client.

C. The Client shall safeguard all Access Codes and be responsible for all use of Access Codes issued by the Program Administrator. The Client agrees that any access, Transaction, or business conducted using an Access Code may be presumed by the Bank to have been in the Client's name for the Client's benefit. Any unauthorized use of an Access Code (except for unauthorized use by a Bank employee) shall be solely the responsibility of the Client.

D. The Bank is authorized to rely upon any oral or written instruction that designates an Authorized User until the authority of any such Authorized User is changed by the Client by oral or written instruction to the Bank, and the Bank has reasonable opportunity to act on such instruction. Each Authorized User, subject to written limitation received and accepted by the Bank, is authorized on behalf of the Client to: open and close Accounts, designate Cardholders, appoint and remove Authorized Users, execute or otherwise agree to any form of agreement relating to the Program, including, without limitation, materials related to security procedures; and give instructions, by means other than a written signature, with respect to any Account opening or closure, designation of Cardholders, or appointment of Authorized Users, and any other matters in connection with the operation of the Program or the System.

E. In connection with use of the System, the Client may instruct the Bank to furnish specific Transaction data to third parties that provide reporting products or services to the Client. The Bank will transmit the Transaction data, without representation or warranty to such third parties identified in such instructions.

7. *Representations and Warranties.* Each party represents and warrants that this Agreement constitutes its legal, valid and binding obligation enforceable in accordance with its terms, and that execution and performance of this Agreement (i) do not breach any agreement of such party with any third party, (ii) do not violate any law,

rule, or regulation, or any duty arising in law or equity applicable to it, (iii) are within its organizational powers, and (iv) have been authorized by all necessary organizational action of such party.

8. *Fees and Charges.* The Client agrees to pay the fees and charges as specified by the Bank, from time to time. The fees initially applicable are specified in Exhibit A attached hereto. The Bank may change the fees and charges payable by the Client at any time provided the Bank notifies the Client at least thirty (30) days prior to the effective date of the change. Should there be a need to perform services other than those specified in Exhibit A, the Client agrees to pay the fees and charges associated with any such service.

9. *Incentives.* The Bank may pay the Client an annual incentive award. The incentive award schedule initially applicable is specified in Exhibit A. In no event shall the Bank pay the Client an incentive award for the year in which this Agreement is terminated.

10. *Term.* This Agreement shall have an initial term of three (3) years from the date first written above unless otherwise terminated pursuant to the provisions of this paragraph. Thereafter, this Agreement may be successively renewed for up to two one-year terms upon the anniversary of the effective date at the City's sole discretion.

11. *Termination.*

A. This Agreement may be terminated by the Bank upon the Client's default after Client receives notice of such default and has failed to remedy said default within thirty (30) days of Client's receipt of said notice. The Bank may refuse to allow further Transactions or revoke any of the Accounts at any time and for any reason.

B. The Client may terminate this Agreement and/or cancel any of the Accounts at any time and for any reason. The Client shall immediately pay all amounts owing under this Agreement, without set-off or deduction, and destroy all physical Cards furnished to Cardholders. The Bank will assign the Client all its rights concerning such amounts paid. In the event collection is initiated by the Bank, the Client shall be liable for payments of reasonable attorney's fees. Sections 2.B, 3.D, 3.F, 3.G, 3.H, 4, 5.A, 8, 11, 12, 13, 14, 16, 17.A, 17.C, 17.F, 17.G, 17.K, and 17.M shall survive the termination of this Agreement.

12. *Default.* As used herein, "Default" includes (i) the Client failing to remit any payment to the Bank as required by this Agreement; (ii) either party filing or suffering a petition as debtor in any bankruptcy, receivership, reorganization, liquidation, dissolution, insolvency, or other similar proceedings, or making any assignment for the benefit of creditors; (iii) default by the Client under any material debt owed to any Bank related entity; (iv) any material adverse change in the business, operations or financial condition of the Client.

13. *Remedies and Damages.* Upon the event of a default either party may terminate this Agreement pursuant to Section 12, or the Bank may, at its sole option, suspend its services or obligations. In the event of termination, Bank reserves the right to declare all obligations of the Client hereunder immediately due and payable. In no event shall termination or expiration release or discharge the Client from its obligation to pay all amounts payable under this Agreement.

14. *Limitation of Liability and Indemnification.* The Bank will be liable only for direct damages if it fails to exercise ordinary care. The Bank shall be deemed to have exercised ordinary care if its action or failure to act is in conformity with general banking usages or is otherwise a commercially reasonable practice of the banking industry. The Bank shall not be liable for any special, indirect or consequential damages, even if it has been advised of the possibility of these damages. This provision shall survive termination of this Agreement as to matters that occurred during its term.

15. *Notices.* All notices and other communication required or permitted to be given under this Agreement shall be in writing except as otherwise provided herein and shall be effective on the date actually received when delivered as provided herein. Notices to be provided hereunder shall be sufficient if forwarded to the other party by hand-delivery or via U.S. Postal Service certified mail, postage prepaid, to the address of the other party shown below:

To the Bank: JPMorgan Chase Bank, N.A.
300 South Riverside Plaza, Suite IL1-0199
Chicago, Illinois 60670-0199
Attn: Commercial Card Contracts Manager

To the Client: City of Fort Worth
Financial Systems Division
1000 Throckmorton Street
Fort Worth, Texas 76102
Attn: Procurement Card Administrator

16. *Confidentiality.* In accordance with the Texas Public Information Act of Texas Government Code Chapter 552 and except as expressly provided in this Agreement, all information furnished by either party in connection with this Agreement, the Program, or Transactions thereunder shall be kept confidential and used by the other party only in such connection, except to the extent such information (a) is already lawfully known when received, (b) thereafter becomes lawfully obtainable from other sources, (c) is required to be disclosed to, or in any document filed with the Securities and Exchange Commission, banking regulator, or any other governmental agencies, or (d) is required by law to be disclosed and notice of such disclosure is given (when legally permissible) by the disclosing party. Notice under (d), when practicable, shall be given sufficiently in advance of the disclosure to permit the other party to take legal action to prevent disclosure. Each party shall advise all employees, consultants, agents, and other representatives (collectively, "Representatives") who will have access to confidential information about these obligations. A party shall disclose confidential information only to its Representatives involved in this Agreement, the Program, or the Transactions. Upon termination of this Agreement, each party shall, at its option, return, destroy or render unusable, and discontinue use of all copies of the other party's Confidential Information upon request of the other party. The party receiving such request may, because of State law, system requirements or as may be required by its own record keeping requirements, retain any of the other party's Confidential Information, provided, however, its obligation of confidential treatment shall remain in place. If requested in writing, such party shall certify its compliance with the foregoing provisions. The Bank may exchange Client and Cardholder confidential information with affiliates. The Bank may also disclose confidential information to service providers in connection with their supporting the Bank's provision of Program services. Such providers shall be obligated to keep that information confidential under the same terms and conditions as set forth above obligating the Bank. The Bank may exchange credit or other information concerning the Client or Cardholders with credit reporting agencies and merchants (and, in the case of Cardholder information, with the Client), including but not limited to information concerning Transactions, payment history, reimbursements, and employment status and location. The Bank may in its sole discretion make an adverse report to credit reporting agencies if a Cardholder fails to pay or is delinquent in paying an Account.

17. *Miscellaneous.*

A. Except as otherwise provided herein, neither party shall use the name or logo of the other party without its written consent. If the Client elects to have its Marks embossed on the Cards or provide them to the Bank for other uses, the Client hereby grants the Bank a non-exclusive limited license to apply the Marks to the Cards solely for use in connection with the Program and for no other purpose.

B. If any provision in this Agreement is held by any court of competent jurisdiction to be inoperative, unenforceable, or invalid, such provision shall be inoperative, unenforceable, or invalid without affecting the remaining provisions, and to this end the provisions of this Agreement are declared to be severable. Failure of either party to exercise any of its rights in a particular instance shall not be construed as a waiver of those rights or any other rights for any purpose.

C. Nothing in this Agreement shall constitute or create a partnership, joint venture, agency, or other relationship between the Bank and the Client. To the extent either party undertakes or performs any duty for itself or for the other party as required by this Agreement, the party shall be construed to be acting as an independent contractor.

D. In the regular course of business, the Bank may monitor, record and retain telephone conversations made or initiated to or by the Bank, from or to the Client or Cardholders.

E. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Client and the Bank and their respective successors and assigns. Neither party hereto shall assign, sublet or transfer its interest herein without the prior written consent of the other party, except that either party may assign, sublet, or transfer its interest herein to any affiliate upon written notice to the other.

F. The Bank shall not be held responsible for any act, failure, event, or circumstance addressed herein if such act, failure, event, or circumstance is caused by conditions beyond its reasonable control.

G. The Contract Documents embody the entire agreement and understanding between the Client and the Bank and supersedes all prior agreements and understandings between the Client and the Bank relating to the subject matter hereof. In case of a conflict of terms in the Contract Documents, the order of precedence shall be this Agreement, Addendum No. 1, the Bank's proposal, and then the RFP. All representations and warranties of the parties contained in this Agreement shall survive the execution of this Agreement and consummation of the Transactions contemplated hereunder.

H. This Agreement may be amended only by a writing signed by the parties. All remedies contained in this Agreement or by law afforded shall be cumulative and all shall be available to the parties hereto.

I. To the extent that the Client would have or be able to claim sovereign immunity in any action, claim suit or proceeding brought by the Bank, the Client waives its sovereign immunity to suit for the purpose of adjudicating a claim for breach of this Agreement only, subject to the terms and conditions of Subchapter I – Adjudication of Claims Arising Under Written Contracts with Local Governmental Entities, Chapter 271, Texas Local Government Code.

J. Section headings in this Agreement are for convenience of reference only, and shall not govern the interpretation of any of the provisions of the Agreement. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement, as a whole and not to any particular provision of this Agreement.

K. *International Transactions and Fees.* If an International Transaction is made in a currency other than U.S. dollars, the Association will convert the Transaction into U.S. dollars using its respective currency conversion procedures. The exchange rate each Association uses to convert currency is a rate that it selects either from the range of rates available in the wholesale currency markets for the applicable processing date (which rate may vary from the rate the respective entity itself receives), or the government-mandated rate in effect on the applicable processing date. The rate in effect on the applicable processing date may differ from the rate on the date when the International Transaction occurred or when the Account was used. The Bank reserves the right to charge an International Transaction Fee, as specified in Exhibit A. The International Transaction Fee will be calculated on the U.S. dollar amount provided to the Bank by the Association. The same process and charges may apply if any International Transaction is reversed.

L. This Agreement may be signed in one or more counterparts, each of which shall be an original, with the same effect as if the signatures were upon the same Agreement. This Agreement shall become effective as of the date first appearing above when each of the parties hereto shall have signed a counterpart hereof.

M. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (AND NOT THE LAW OF CONFLICTS) OF THE STATE OF TEXAS, BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS. THE PARTIES HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY.

BANK

JPMORGAN CHASE BANK, N.A.

By Clare T. Trauth

Name CLARE T. TRAUTH
VICE PRESIDENT

Title _____

CLIENT

CITY OF FORT WORTH

Karen L. Montgomery
Karen L. Montgomery
Assistant City Manager/CFO 9/10/07

Recommended By:

Lena H. Ellis
Lena H. Ellis
Finance Director

Approved as to Form and Legality:

Amy J. Ramsey
Amy J. Ramsey
Assistant City Attorney

ATTEST:

Marty Hendrix
Marty Hendrix
City Secretary

Authorization: C-22246 7/17/07

Date: September 11, 2007

**EXHIBIT A
CITY OF FORT WORTH
INCENTIVES & FEES**

DEFINITIONS

“Association” means either MasterCard or Visa.

“Average Large Ticket Transaction Size” means Large Ticket Transaction Volume divided by the total number of transactions included in the calculation of Large Ticket Transaction Volume.

“Average Transaction Size” means Charge Volume divided by the total number of transactions included in the calculation of Charge Volume for any given period.

“Purchasing Card Charge Volume” means total U.S. dollar charges made on a Purchasing Card, net of returns, and excluding Large Ticket Transactions, cash advances, convenience check amounts, fraudulent charges and any transactions that do not qualify for interchange under applicable Association rules.

“Credit Losses” means all amounts due to Bank in connection with any Account that Bank has written off as uncollectible, excluding Fraud Losses.

“ExacTrac Charge Volume” means total U.S. dollar charges made on a virtual single use account used in connection with the ExacTrac System, net of returns, and excluding Large Ticket Transactions, cash advances, convenience check amounts, fraudulent charges and any transactions that do not qualify for interchange under applicable Association rules.

“Fraud Losses” means all amounts due to Bank in connection with any Account that Bank has written off as uncollectible as a result of a card being lost, stolen, misappropriated, improperly used or compromised.

“Gross Charge Volume” means Purchasing Card Charge Volume plus ExacTrac Charge Volume, net of returns, and excluding Large Ticket Transactions, cash advances, convenience check amounts, fraudulent charges and any transactions that do not qualify for interchange under applicable Association rules.

“Large Ticket Transaction” means a transaction that the Associations have determined is eligible for a Large Ticket Rate.

“Large Ticket Transaction Volume” means total U.S. dollar Large Ticket Transactions made on a Bank Commercial Card, net of returns and excluding cash advances, convenience check amounts, fraudulent charges and any transactions that do not qualify for interchange under applicable Association rules.

“Losses” means all Credit Losses and Fraud Losses.

“Settlement Terms” means the combination of the number of calendar days in a billing cycle and the number of calendar days following the end of a billing cycle to the date the payment is due. Settlement Terms are expressed as X & Y, where X is the number of calendar days in the billing cycle and Y is the number of calendar days following the end of a billing cycle to the date the payment is due.

“Speed of Payment” means the number of calendar days after a billing cycle until the date full payment of the cycle end balance is posted by the Bank.

REBATES

Volume Rebate

Bank will pay the Client a rebate based on the annual Gross Charge Volume achieved according to the following schedule. The Purchasing Card rebate will be calculated as the Rebate Rate times the annual Purchasing Card Charge Volume.

Qualified Charge Volume	Rebate Rate
\$10,000,000	1.22%
\$12,500,000	1.30%
\$15,000,000	1.35%
\$20,000,000	1.41%
\$25,000,000	1.46%
\$30,000,000	1.48%
\$35,000,000	1.50%
\$40,000,000	1.53%
\$45,000,000	1.55%
\$50,000,000	1.56%

ExacTrac Volume Rebate Adjustment

The ExacTrac rebate will be calculated as the Rebate Rate as determined above minus 0.15% times the annual ExacTrac Charge Volume.

Speed of Payment Escalator

The Bank will pay Client an additional rebate based on its average Speed of Payment throughout the year. If, on average, payment for the prior period full balance is received in fewer days from cycle end than required under the terms of this Agreement, a speed-to-pay escalator of 0.01% per full day of early payment will be earned.

Large Ticket Rebate

Bank will pay the Client an annual rebate based on annual Average Large Ticket Transaction Size and annual Large Ticket Transaction Volume according to the following schedule. The rebate will be calculated as the Rebate Rate times the annual Large Ticket Transaction Volume.

Average Large Ticket Transaction Size	Rebate Rate
\$7,500	0.60%
\$10,000	0.55%
\$15,000	0.50%
\$20,000	0.45%
\$25,000	0.40%
>\$25,000	0.35%

Rebate Computation

The following is for illustrative purposes only and, therefore, the numbers provided in the example below do not constitute a commitment by the Bank. This is an example of a rebate computed at 7 days based on the following criteria:

\$13,000,000 regular transactions and \$2,000,000 for large ticket transactions:

7 Day

<u>Description</u>	<u>Percentage</u>	<u>Dollars</u>
Regular Transactions	1.30%	\$169,000
Large Ticket Transactions	0.40%	\$8,000
Total Rebate		\$177,000

General Rebate Terms

Rebates will be calculated annually in arrears. Rebate amounts are subject to reduction by all Losses, subject to Section 4B of the Agreement. If Losses exceed the rebate earned for any calendar year, Bank will invoice the Client for the amount in excess of the rebate, which amount shall be payable within 14 days. Upon termination of the Program, the Losses for the six-month period immediately preceding the termination will be deemed to be equal to the Losses for the prior six-month period. Rebate payments will be made in the first quarter for the previous calendar year via Automated Clearing House ("ACH") credit to an account designated by the Client.

To qualify for any rebate payment, all of the following conditions apply.

- a. Settlement of any centrally billed account(s) must be by automatic debit or by Client initiated ACH or wire.
- b. Payments must be received by Bank in accordance with the Settlement Terms. Delinquent payments shall be subject to a Past Due Fees as specified below. Settlement Terms are 7 & 7.
- c. The Client is not in Default under the Agreement.
- d. Account(s) must be current at the time of rebate calculation and payment.

FEES (Purchasing Card)

Technology Fees

PaymentNet and/or SDOL: Custom Reporting/Mapper Programming/Post-loader: \$250 per hour (4 hour minimum)

PathwayNet Set up:

First 6 sites: No Charge

Additional sites: \$150 per site

Training

At JPMorganChase site: No Charge; client T&E not included

Via Telephone: No Charge

At Client site:

Initial Training: Four Days Training of up to 90 users at no charge to the Client

Additional Training: \$950 per day, includes all related travel expenses

Paper Statements: No Charge

Electronic Payment Fee: No Charge

Past Due Fees

Late fee: Prime + 2% applied to average daily which is calculated as follows:

(Past due balance + any new spend) / Number of days in cycle.

Will be charged on the cycle date.

Delinquency fee: No Charge

Account Fees

Annual Card Fees: No Charge

Special Purpose Cards (b2B): No Charge

Basic Plastic: No Charge

Logo Plastics: No Charge

Custom Plastics: At cost; based on complexity of design subject to a 1,000 card minimum

Document retrieval fee: \$8 per document (undisputed charges)

Statement Duplication: \$5 - \$8 per statement; \$0 through PaymentNet

ACH return item: No Charge

Return Check Fee: \$15 per return

Rush Card: No Charge

Standard Card Replacement: No Charge

Card Reinstatement: No Charge

International Transaction Fee: 1% surcharge (association pass through)

Dormant Credit Balance Fee: No Charge

Over Limit Fee: No Charge

Optional Services

Cash Advance: 2.0% (\$3.00 minimum)

Convenience Checks: \$1 per posted check + 0.5% of check value

Rejected Convenience Check: No Charge

Convenience Check Stop Payment: No Charge

Other

Should the Client request services not in this schedule, the Client agrees to pay the fee associated with such service.

FEES (ExacTrac Program)

Technology Fees

PaymentNet and/or SDOL: Custom Reporting/Mapper Programming/Post-loader: \$250 per hour (4 hour minimum)

EDI Set up/Transmission: Pass-through on all set up and development costs

Training

At JPMorganChase site: No Charge; client T&E not included

At Client site:

Initial Training: No Charge

Additional Training: \$950 per day, includes all related travel expenses

Paper Statements: No Charge

Electronic Payment Fee: No Charge

Past Due Fees

Late fee: Central Bill: 1% of unpaid balance at cycle + 15 days; charged on cycle date

Delinquency fee: 2.5% of the full amount past due at cycle + 15 days and each cycle thereafter; charged on cycle date

Account Fees

Document retrieval fee: first 3 copy requests are free, then \$5 per copy request (undisputed charges)

Statement Duplication: \$5 per statement; \$0 through PaymentNet

ACH return item: \$20 per return

Return Check Fee: \$15 per return

International Transaction Fee: 1% surcharge (association pass through)

Dormant Credit Balance Fee: No Charge

Over Limit Fee: No Charge

Miscellaneous Fees: Pass-through charges for other specialized services (case-by-case fees)

Optional Services

FTP:

Daily: \$500/month

Weekly: \$250/month

Bi-weekly: \$125/month

Monthly: \$75/month

Cash Advance: 2.5% (\$2.50 minimum and \$30 maximum)

Convenience Checks: 1.5% - 3% of check amount (\$1.50/check minimum, \$50 check maximum); \$1 per check fee for keying of payee name

Rejected Convenience Check: \$29 per check

Convenience Check Stop Payment: No Charge

Other

Should the Client request services not in this schedule, the Client agrees to pay the fee associated with such service.

**FIRST AMENDMENT TO
COMMERCIAL CARD AGREEMENT | JPMORGAN CHASE BANK, N.A.**

THIS FIRST AMENDMENT (the "Amendment") to Commercial Card Agreement (the "Agreement") dated as of August 31, 2007 between JPMorgan Chase Bank, N.A. (the "Bank"), and City of Fort Worth, a Home-Rule Municipal Corporation, situated in Tarrant, Denton, Parker, and Wise Counties, Texas (the "Client") is made as of NOVEMBER 9, 2010 (the "Effective Date").

The Bank and the Client agree to amend the Agreement as follows:

1. **Definitions.** Capitalized terms used in this Amendment and defined in the Agreement shall be used herein as so defined, except as otherwise provided herein.
2. **Amendment.** Paragraph 4.B. of the Agreement is hereby deleted in its entirety and restated to read as follows:

"Fraud Losses will not be deducted from rebates, provided that the Client shall immediately notify the Bank by phone of any Account that the Client knows or suspects has been lost, stolen, misappropriated, improperly used, or compromised. The Client shall not be liable for fraudulent transaction(s) made on an Account by persons other than employees or agents of the Client and the Client's vendors, provided that (i) the Client or Cardholder has immediately notified the Bank as specified in the previous sentence; (ii) neither the Client nor the Cardholder has received any direct or indirect benefit from such fraudulent Transaction(s); (iii) the program has been set up and operated by the Client in accordance with the Bank's fraud reduction best practices as designated by the Bank from time to time (including but not limited to blocking high-risk MCCs; payment to the Bank by the Client rather than Cardholders for approved expenses; limiting cash advances; adhering to transaction, daily, and cycle limits established by the Bank); (iv) the Client maintains reasonable security precautions and controls regarding the dissemination, use and storage of Cards and transaction data; and (v) the Client notifies the Bank no later than ten (10) business days after the date a paper or electronic statement in which the fraudulent Transaction(s) first appeared was first made available to the Client. In the event the Client does not adopt the fraud reduction best practices including but not limited to those designated in this section, as designated by the Bank from time to time, within 10 business days of being so notified in writing by the Bank, the Client will be liable for any fraudulent Transactions on any Account prior to the time the Client notifies the Bank."
3. **Amendment.** Exhibit A is hereby deleted in its entirety and replaced in full with a new 'Exhibit A as attached hereto.
4. **Amendment.** The Agreement is hereby modified to incorporate a new 'Exhibit B entitled 'Single Use Accounts Addendum' as attached hereto.
5. **Amendment.** Section 11 of the Agreement, Termination, is hereby amended to add Section 11. C, which shall read as follows:

"In the event no funds or insufficient funds are appropriated by the Client in any fiscal period for any payments due hereunder, Client will notify Bank of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the Client of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds have been appropriated."
6. **Continued Effect.** Except to the extent amended hereby, all terms, provisions and conditions of the Agreement, as it may have been amended from time to time, shall continue in full force and effect and the Agreement shall remain enforceable and binding in accordance with its terms.
7. **Piggyback Provision.** Pursuant to the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code (the "Act"), the use of this Agreement may be extended to other local governments and with agencies of the state as described in the Act. Additionally, the Agreement may be extended to Not-For-Profit organizations and private universities at Client's discretion. Notwithstanding the foregoing, the Bank, in its sole discretion, shall have the option to approve the participation of any Participant (as later defined herein) under this Agreement. Each Participant allowed by the Bank to obtain services under this Agreement shall do so independent of any other Participant. Each Participant shall be responsible for its own obligations by virtue of this Agreement. The Bank shall not be liable to the Client for payments hereunder or otherwise, due to any failure to issue any Card or establish any Account for a Participant. Client shall not be liable for any transactions, payment of fees, or any other obligations of any Participant under this Agreement.
8. **Counterparts.** This Amendment may be executed in any number of counterparts, all of which when taken together shall constitute one and the same document, and each party hereto may execute this Amendment by signing any of such counterparts.

IN WITNESS WHEREOF, the Bank and the Client have caused this Amendment to be executed by their respective authorized officers as of the effective date written above.

JPMORGAN CHASE BANK, N.A.

CITY OF FORT WORTH, TEXAS

By: Clare T. Trauth
Name: CLARE T. TRAUTH
Title: VICE PRESIDENT

By: Karen L. Montgomery
Name: Karen L. Montgomery
Title: Assistant City Manager

NO M&A REQUIRED

Client Attestation:

The undersigned, a duly authorized officer or representative of the Client, does hereby certify that the Client has been duly authorized to enter into and perform this Amendment and that the person signing above on behalf of the Client, whose execution of this Amendment was witnessed by the undersigned, is an officer, partner, member or other representative of the Client possessing authority to execute this Amendment.

By: _____
Name: _____
Title: _____

*Note: The person signing the attestation shall be someone different from the person signing above on behalf of the Client.

APPROVED AS TO FORM AND LEGALITY

By: Maleshia Farmer
Name: Maleshia Farmer
Title: Assistant City Attorney

Attested by:
Marty Hendrix
Marty Hendrix, City Secretary



EXHIBIT A

INCENTIVES AND FEES

DEFINITIONS

"Association" means either MasterCard or Visa.

"Average Fileturn" means the number of days between the transaction posting date and the posting date of payment in full, averaged over the rebate calculation period.

"Average Large Ticket Transaction Size" means Large Ticket Transaction Volume divided by the total number of transactions included in the calculation of Large Ticket Transaction Volume.

"Average Payment Terms" means the Average Fileturn minus half the number of calendar days in the billing cycle, as specified in the Settlement Terms.

"Charge Volume" means total U.S. dollar charges made on a Bank Commercial Card, net of returns, and excluding Large Ticket Transactions, cash advances, convenience check amounts, fraudulent charges and any transactions that do not qualify for interchange under applicable Association rules.

"Combined Charge Volume" means Charge Volume and Single Use Charge Volume.

"Contract Year" means a 12-month period beginning on August 31st of each year or any anniversary of such date.

"Credit Losses" means all amounts due to Bank in connection with any Account that Bank has written off as uncollectible, excluding Fraud Losses.

"Fraud Losses" means all amounts due to Bank in connection with any Account that Bank has written off as uncollectible as a result of a card being lost, stolen, misappropriated, improperly used or compromised.

"Large Ticket Transaction" means a transaction that the Associations have determined is eligible for a Large Ticket Rate.

"Large Ticket Transaction Volume" means total U.S. dollar Large Ticket Transactions made on a Bank Commercial Card, net of returns and excluding cash advances, convenience check amounts, fraudulent charges and any transactions that do not qualify for interchange under applicable Association rules.

"Losses" means all Credit Losses and Fraud Losses.

"Texas Payment Card Consortium" means the City of Fort Worth, Texas and other Texas public entities eligible to participate in the Program under the Act and that have been approved by the Bank for participation.

"Participant" means the Client or a Texas public entity approved by the Bank to participate under the Commercial Card Purchasing and Single Use Account programs provided to Client under this Agreement and which have executed an agreement in the form as attached hereto as 'Exhibit C' (the "Participation Agreement") or in such other form as provided by the Bank from time to time.

"Settlement Terms" means the combination of the number of calendar days in a billing cycle and the number of calendar days following the end of a billing cycle to the date the payment is due. Settlement Terms are expressed as X & Y, where X is the number of calendar days in the billing cycle and Y is the number of calendar days following the end of a billing cycle to the date the payment is due.

"Single Use Charge Volume" means total U.S. dollar charges made on a Virtual Single Use Account used in connection with the Single Use System, net of returns, and excluding Large Ticket Transactions, cash advances, fraudulent charges and any transactions that do not qualify for interchange under applicable Association rules.

"Virtual Single Use Account" means a Card-less Account used in connection with a single, unique transaction.

REBATES¹

Volume Rebate – Purchasing and Single Use Account (E-Payables Solution)

Bank will pay the Participant a rebate based on the annual Texas Payment Card Consortium's Combined Charge Volume achieved according to the following schedule. The rebate will be calculated as the Rebate Rate times the annual Participant's respective Combined Charge Volume.

NOTE: In year 1 of this Agreement (8/31/2010 – 8/30/2011), Bank will assume Charge Volume of \$200,000,000 and pay at the .95% and 1.59% rebate levels based on the Participant's current annual volume. For each year thereafter, the consortium rebate will be paid per the grid below.

*Combined Consortium Charge Volume	TEXAS PAYMENT CARD CONSORTIUM (Individual Participant Volume Grid) Purchasing Card Program	
	\$500K - \$1MM	\$1MM or greater
Under \$25,000,000	0.75%	1.25%
\$25,000,000	0.80%	1.50%
\$75,000,000	0.85%	1.55%
\$150,000,000	0.90%	1.57%
\$200,000,000	0.95%	1.59%
\$300,000,000	1.00%	1.60%
\$500,000,000	1.02%	1.61%

*Combined Charge Volume for each Participant will begin to accrue on the first day of the month following the date the Participation Agreement is executed.

Single Use Account (E-Payables Solution) Rebate

Bank will pay the Participant a rebate based on the annual Single Use Charge Volume achieved as indicated below. The rebate will be calculated as the indicated Rebate Rate times the annual Single Use Charge Volume.

- If Participant achieves \$1,000,000 - \$10,000,000 in Single Use Charge Volume, the rebate rate is 1.24%
- If Participant achieves Single Use Charge Volume greater than \$10,000,000, the rebate rate is in accordance with the rebate grid above.

NOTE: Participants with Single Use Account Charge Volume less than \$1,000,000 will not be implemented.

Average Payment Terms Escalator

The Bank will pay Client an additional rebate based on its Average Payment Terms throughout the year. If, on average, payment for the prior period full balance is received in fewer days from cycle end than required under the terms of this Agreement, an Average Payment Terms escalator of 0.01% per full day of early payment will be earned.

Participant Reporting system option

For Participants with program spend of under \$10 million annually, the *smartdata* reporting solution will be implemented.

Participants with annual spend of \$10 million or above can select the Bank's PaymentNet reporting platform or *smartdata*

Large Ticket Rebate – Purchasing and Single Use Account (E-Payables Solution) programs

Bank will pay the Participant an annual rebate based on annual Average Large Ticket Transaction Size and annual Large Ticket Transaction Volume according to the following schedule, when the respective Participant's annual Combined Charge Volume threshold requirements are achieved. The rebate will be calculated as the Rebate Rate times the annual Large Ticket Transaction Volume.

PURCHASING AND SINGLE USE ACCOUNT (E-PAYABLES SOLUTION) PROGRAMS	
AVERAGE LARGE TICKET TRANSACTION SIZE	REBATE RATE (%)
\$4500 - \$4999	.65%
\$5000 - \$7499	.60%
\$7500 - \$9,999	.55%
\$10,000 - \$14,999	.50%
\$15,000 - \$19,999	.45%
\$20,000 - \$24,999	.35%
\$25,000 - \$99,999	.30%
\$100,000+	0.15

¹In the event of a reduction in interchange rates by the Associations, the Bank reserves the right to ratably adjust the rebate rates accordingly.

General Rebate Terms

Rebates will be calculated annually in arrears. Rebate amounts are subject to reduction by all Losses. If Losses exceed the rebate earned for any Contract Year, Bank will invoice the respective Participant for the amount in excess of the rebate, which amount shall be payable within thirty (30) days of receipt of the invoice. Upon termination of the Program, the Losses for the six-month period immediately preceding the termination will be deemed to be equal to the Losses for the subsequent six-month period. If the Participant is participating in more than one program, Bank reserves the right to offset any Losses from one program against any rebate earned under any other program.

Rebate payments will be made within 90 days after the end of the previous Contract Year via wire transfer to an account designated by the Participant.

To qualify for any rebate payment, all of the following conditions apply.

- a. Settlement of any centrally billed account(s) must be by automatic debit or by the Participant initiated ACH or wire.
- b. Payments must be received by Bank in accordance with the Settlement Terms. Delinquent payments shall be subject to a Past Due Fees as specified below. Settlement Terms are 30 & 14 for both the purchasing and single use account programs.
- c. The Participant must maintain a satisfactory Bank credit risk rating (investment grade equivalent).
- d. The Participant is not in Default under the Agreement.

Fees Schedule - for Programs using the Smartdata System

The following are the fees associated with our purchasing card and single use account program in the United States:

Annual card fee	\$0.00
Cash advance fee	2.0% (\$3.00 minimum)
Convenience check fee	2% of check amount (\$1.50/check minimum)
Rejected convenience check	\$0.00
Convenience check stop payment	\$0.00
Standard card replacement	\$0.00 per card
Card reinstatement	\$0.00
Emergency (rush) card replacement	\$25 per card if effected through the Bank. If effected through the association, Client shall pay any fees charged by the association.
Return check (payment)	\$15 per return
ACH return	\$0.00
Document retrieval	Dispute-related: \$0.00 Non-dispute-related: \$8 per document
Duplicate statement	\$8 per statement
Currency conversion fee	1% surcharge (association pass through)
Dormant credit balance fee	\$0.00
Over-limit fee	\$0.00
Miscellaneous fees	None
Finance charge	Prime + 2% is applied to the average daily, which is calculated as follows: (past due balance + any new spend) / number of days in cycle. Will be charged on the cycle date.
Basic plastic	\$0.00
Customer logo plastic	\$500 per logo for any newly designed logo; No fee to apply a current logo on a new plastic.
Customized plastic	At cost (pass-through), based on complexity of design, subject to a 1,000 card minimum
Training at Bank's site	\$0.00 (customer T&E not included)
Training at your site(s)	\$1,550/day
Paper statements	\$0.00
Electronic payment fee	\$0.00
Custom reporting/mapper programming/post-loader	SDOL custom mapper: priced by MasterCard; pass-through charge

File transfer using FTP	Daily—\$500.00/month Weekly—\$250.00/month Bi-weekly—\$125.00/month Monthly—\$75.00/month
PaymentNet setup fee	Waived
Smartdata setup fee	\$0.00
SDOL monthly maintenance fee	\$50 per program per month - WAIVED after a Participant reaches \$500,000 annual spend during a Contract Year
SDOL real time	\$0.00

Should the Participant request services not in this schedule, the Participant agrees to pay the fees associated with such services.

Fees Schedule - for Programs Using Bank's PaymentNet Solution

The following are the fees associated with our purchasing card and single use account programs in the United States:

PROGRAM FEES	
Annual card fee	\$0.00
Cash advance fee	2.5% (\$2.50 minimum)
Convenience check fee	2% of check amount (\$1.50/check minimum)
Rejected convenience check	\$0.00 per occurrence
Convenience check stop payment	\$0.00
Standard card replacement	\$0.00 per card
Card reinstatement	\$0.00
Emergency (rush) card replacement	\$25 per card if effected through the Bank. If effected through the association, Client shall pay any fees charged by the association.
Return check (payment)	\$15 per return
ACH return	\$20 per return
Document retrieval	Dispute-related: \$0.00 Non-dispute-related: 3 copy requests free, then \$5 per copy request
Duplicate statement	\$5 per statement
Currency conversion fee	1% surcharge (association pass-through)
Dormant credit balance fee	\$0.00
Over-limit fee	\$0.00
Miscellaneous fees	Pass-through charges for other specialized services (case-by-case fee)
PAST-DUE FEES	
Late fee	<u>Central Bill</u> : 1% of unpaid balance at cycle; charged on cycle date
Finance charge	None
Delinquency fee	2.5% of the full amount past due (30- & 60-day+) at cycle and each cycle thereafter; charged on cycle date.
CARD DESIGN	
Basic plastic	\$0.00
Customer logo plastic	\$500 per logo for any newly designed logo. No fee for existing logos on new plastics.
Customized plastic	\$1 per card, subject to a 1,000 card minimum for any new cards
TRAINING AND CONSULTING	
Training at Bank's site	\$0.00 (customer T&E not included)
Training at your site(s)	\$0.00 for first session; additional sessions @ \$1,550/day
TECHNOLOGY SERVICES	
PaymentNet setup fee	Waived
EDI setup/transmission	Pass-through on all setup and development costs

Paper statements	\$0.00
Electronic payment fee	\$0.00
Custom reporting/mapper programming/post-loader	\$250 per hour (\$1,000 minimum)
OPTIONAL PROGRAM/TECHNOLOGY SERVICES	
File transfer using FTP	Daily—\$500/month Weekly—\$250/month Bi-weekly—\$125/month Monthly—\$75/month

Should the Participant request services not in this schedule, the Participant agrees to pay the fees associated with such services.

EXHIBIT B

SINGLE USE ACCOUNTS ADDENDUM

In consideration of the mutual promises and upon the terms and conditions herein, Bank will deliver to the Texas Payment Card Consortium Participant the Network Services described below:

Definitions. Terms defined in the singular shall include the plural and vice versa, as the context requires.

"Single Use Account(s)" means a 16-digit commercial card number issued to the Participant in connection with a Single Use Transaction and Single Use Account shall be construed to be an Account as defined in the Commercial Card Agreement.

"Intellectual Property Rights" means patent rights (including patent applications and disclosures), copyrights, trade secrets, Marks (including registrations and applications for registrations thereof), know-how, inventions and any other intellectual property or proprietary rights recognized in any country or jurisdiction in the world.

"Network" means the Bank's Internet based platform for exchanging electronic commercial card payment information data between the Participant and its Suppliers and merchant processors related to commercial card settlement.

"Network Security Procedures" means the digital certificates, user logon identifications, passwords, approval limits or other security devices, whether issued or made available by the Bank or a third party, for use by the Bank and the Participant in authenticating Network users and Payment Instructions initiated by the Participant via the Network.

"Network Services" means the software hosting services, implementation services, training services, support services, and/or consulting services, provided by the Bank to the Participant under this Addendum.

"Payment Instruction" means an instruction initiated by the Participant, either via file integration or via the user interface, to the Bank via the Network requesting the Bank to provide a Single Use Account to the Supplier.

"Single Use Program" means the commercial card management system composed of Single Use Account controls, and reports to facilitate purchases of and payments for, business goods and services.

"Supplier" means an entity that is enrolled in the Network to exchange and process transaction data relating to payments with the Participant and to receive commercial card payments through the Network.

"Single Use Transaction" means a purchase, payment, fee, charge or any other activity that results in a debit to a Single Use Account and shall be construed to be a Transaction as defined in the Agreement.

1. In connection with the Participant's participation in the Single Use Program, the Participant may initiate and request through the Single Use Program, Single Use Account(s) to be used for payment of Single Use Transactions and must provide to the Bank all required data for processing of Single Use Transactions. The Single Use Accounts are non-transferable and non-assignable. The Single Use Accounts shall remain the property of the Bank. Participants shall receive a periodic statement of the Single Use Account Transactions. The Participant shall be liable for all Single Use Account Transactions on all Single Use Accounts. Statements will be made available to the Participant, either delivered to a U.S address or in electronic form.
2. During the term of this Addendum and subject to the Participant's performance of its obligations hereunder, the Bank will maintain the Network and allow the Participant to access the Network for its internal use. The Bank reserves the right at any time to revise or modify the Network's functionality, specifications, and/or capabilities. The Participant acknowledges that the Network exchanges payment-related data between Participant and Suppliers to effect commercial card settlement.
3. Subject to the terms and conditions of this Addendum, during the term hereof, the Bank grants to the Participant a nonexclusive right to access the Network for the sole purpose of receiving the Network Services.
4. The Participant has no right to provide access to the Network to any third party. The Participant may not access the Network in any manner not contemplated herein, including providing service bureau, time-sharing or other computer services to third parties.
5. The Participant's rights to access the Network will be limited to those expressly granted in this Addendum. The Bank reserves all rights, title and interest in and to the Network not expressly granted to the Participant hereunder.
6. The Bank or its licensor(s) is and shall remain the sole and exclusive owner of all of the proprietary features and functionality of the Network and Intellectual Property Rights in and to the design, architecture, and software implementation of the Network.
7. Except for those licenses expressly granted hereunder, neither party shall gain by virtue of this Addendum any rights of ownership of Intellectual Property Rights owned by the other. Bank or its licensors shall solely own all Intellectual Property Rights in any enhancements, modifications or customizations of the Network or Network Services and in any ideas, concepts, know how, documentation or techniques which it or its representatives develop or provide under this Addendum.

8. The Bank shall have no responsibility for the terms, conditions or performance of purchase, sale, or payment transactions between the Participant and its Suppliers. The Participant is responsible for regularly inspecting the Single Use Transaction history available via the Network and promptly notifying the Bank of any errors.
9. The Participant is solely responsible for establishing, maintaining and enforcing its internal policies and procedures in conformity with industry standards, to safeguard against the entry of unauthorized approvals, or Payment Instructions into the Network. Participant agrees to maintain the confidentiality of the Network Security Procedures and of any passwords, codes, digital certificates, security devices and related instructions for use of the Network. If the Participant believes or suspects that any such information or instructions have been accessed by unauthorized persons, the Participant shall promptly notify the Bank and will advise the Bank as to the effect of the security breach on its invoice or payment processing procedures and the corrective actions to be taken to restore or verify security over payment processing.
10. All Payment Instructions submitted in the name of the Participant are subject to authentication pursuant to the Network Security Procedures. The Bank shall process Participant's Payment Instructions when the Payment Instructions are verified by Bank pursuant to the Network Security Procedures. The Bank shall be entitled to rely and act upon all information received from the Participant or any Supplier in connection with a Payment Instruction. The Participant agrees to be bound by any Payment Instruction, whether or not authorized, issued in the Participant's name and authenticated by the Bank in accordance with the Network Security Procedures.

BANK

By: Clare T. Trauth
 Name: CLARE T. TRAUTH
VICE PRESIDENT
 Title: _____

PARTICIPANT

By: Karen L. Montgomery
 Name: Karen L. Montgomery
 Title: Assistant City Manager

NO M&C REQUIRED

Participant Attestation:

The undersigned, a duly authorized officer or representative of the Participant, does hereby certify that the Participant has been duly authorized to enter into and perform this Addendum and that the person signing above on behalf of the Participant, whose execution of this Addendum was witnessed by the undersigned, is an officer, partner, member or other representative of the Participant possessing authority to execute this Addendum.

By: _____
 Name: _____
 Title: _____

*Note: The person signing the attestation shall be someone different from the person signing above on behalf of the Participant.

APPROVED AS TO FORM AND LEGALITY

By: Maleshia Farmer
 Name: Maleshia Farmer
 Title: Assistant City Attorney

Attested by:
Marty Hendrix, City Secretary



EXHIBIT C

PARTICIPATION AGREEMENT | JPMORGAN CHASE BANK.NA.

THIS PARTICIPATION AGREEMENT (the "Participation Agreement") is made and effective this _____ day of _____ ("Effective Date"), by and between _____, a _____ (the "Participant") and JPMorgan Chase Bank, N.A. or Chase Bank USA, N.A., as may be determined from time to time, (the "Bank") each a national banking association.

WITNESSETH:

WHEREAS, pursuant to that certain Commercial Card Agreement dated as of [MONTH, DATE, YEAR] (the "Commercial Card Agreement") between [INSERT CLIENT LEGAL ENTITY NAME] (the "Client") and the Bank, the Bank has agreed to provide commercial card services to the Client (the "Program") on the terms and conditions of the Commercial Card Agreement, attached hereto and incorporated herein as Exhibit I; and

WHEREAS, the Participant desires to participate in the Program, subject to the terms and conditions of the Commercial Card Agreement;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

1. **Definitions.** Except as otherwise provided herein, all capitalized terms used herein and not otherwise defined and which are defined in the Commercial Card Agreement shall be used herein as so defined in the Commercial Card Agreement.
2. **Mutual Obligations.** By their execution of this Participation Agreement, the Participant and Bank hereby agree to be bound by all the terms and conditions of the Commercial Card Agreement attached hereto as Exhibit I. This Participation Agreement shall remain in effect according to its terms without regard to the continued existence or enforceability of the Commercial Card Agreement with respect to the original parties thereto. All references to "Client" in the Commercial Card Agreement shall be deemed to constitute references to the Participant hereunder.

Without limiting the generality of the foregoing, the Participant further agrees that it shall be responsible only for transactions and for fees, charges and other amounts due under the Commercial Card Agreement related to the use of Accounts of the Participant pursuant to the Commercial Card Agreement and that the Client shall not be liable for any such transactions and for any such fees, charges and other amounts.

3. **Incentives.** For purposes of calculating rebates, Combined Charge Volume for each Participant will begin to accrue on the first day of the month following the date the Participation Agreement is executed.
4. **Notices.** Notwithstanding the provisions of the Commercial Card Agreement, all notices and other communications required or permitted to be given under this Participation Agreement shall be in writing and shall be effective on the date on which such notice is actually received by the party to which addressed. All notices shall be sent to the address set forth below or such other address as specified in a written form from one party to the other.

To the Bank: JPMorgan Chase Bank, N.A.
300 South Riverside Plaza, Suite IL1-0199
Chicago, IL 60670-0199
Attn: Commercial Card Contracts Manager

To the Participant:

Attn: _____

5. **Miscellaneous.** This Participation Agreement shall be governed by and construed in accordance with the substantive laws of the State of Texas, and as applicable, federal law. The headings, captions, and arrangements used in this Participation Agreement are for convenience only and shall not affect the interpretation of this Participation Agreement. This Participation Agreement may be executed in any number of counterparts, all of which, when taken together shall constitute one and the same document, and each party hereto may execute this Participation Agreement by signing any of such counterparts.

IN WITNESS WHEREOF, the parties have caused this Participation Agreement to be duly executed as of the date first written above.

BANK:

By:

Name: _____

Title: _____

PARTICIPANT:

By:

Name: _____

Title: _____

Participant Attestation:

The undersigned, a duly authorized officer or representative of Participant, does hereby certify that Participant has been duly authorized to enter into and perform this Participation Agreement and that the person signing above on behalf of the Participant, whose execution of this Participation Agreement was witnessed by the undersigned, is an officer, partner, member or other representative of Participant possessing authority to execute this Participation Agreement.

By:

Name: _____

Title: _____

COOPERATIVE PURCHASING AGREEMENT

This Cooperative Purchasing Agreement (“Agreement”) is made and entered into as of the date written below between the City of Brenham (“Brenham”) and the City of Fort Worth, Texas (“Fort Worth”).

WHEREAS, both Brenham and Fort Worth have each determined a need for a cooperative agreement to purchase like goods and services to avoid duplicate procurement efforts and obtain the benefits of volume purchasing; and

WHEREAS, Brenham and Fort Worth are authorized by Section 271.102 of the Local Government Code to pursue mutually beneficial and cooperative purchasing programs.

NOW, THEREFORE, for and in consideration of the mutual obligations and benefits contained herein, Brenham and Fort Worth agree as follows:

SECTION 1. The purpose of this Agreement is to provide Brenham and Fort Worth with additional purchasing options by satisfying the provisions of Section 271.102 of the Local Government Code.

SECTION 2. The parties agree that each of the parties shall respectively designate a person to act under the direction of, and on behalf of, the designating party (the “Designated Representative”).

SECTION 3. At the request of the other party, a party that enters into a contract with a vendor for goods or services (the “First Purchasing Party”) shall attempt to obtain the vendor’s agreement to offer those goods and services to the other party (the “Second Purchasing Party”) for the same price and on the same terms and conditions as have been offered to the First Purchasing Party. If the vendor so agrees, and if the Second Purchasing Party is agreeable to such terms and conditions, the Second Purchasing Party may enter into its own separate contract with the vendor for the purchase of such goods or services.

SECTION 4. Unless otherwise agreed between the Designated Representatives, payments for a purchase made by the Second Purchasing Party shall be paid directly to the vendor and not to the First Purchasing Party. The Second Purchasing Party shall have the responsibility of determining whether the vendor has complied with any provisions in its contract with the vendor, including but not limited to those relating to the quality of items and terms of delivery, and shall be responsible for enforcement of its contract against the vendor, including all cost of enforcement.

SECTION 5. This Agreement will be subject to all applicable federal, state and local laws, ordinances, rules and regulations.

City of Fort Worth & City of Brenham
Cooperative Purchasing Agreement

SECTION 6. This Agreement may be terminated by either party, without cause or penalty, upon not less than thirty days written notice to the other party.

SECTION 7. The parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party must not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

SECTION 8. If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas – Fort Worth Division. This Agreement shall be construed in accordance with the laws of the State of Texas.

SECTION 9. If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, the parties shall endeavor to agree to a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

SECTION 10. Execution of this Agreement does not obligate Brenham or Fort Worth to make any purchase, to pay any membership fee or to otherwise or in any manner incur any cost or obligation.

SECTION 11. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

SECTION 12. The undersigned officers and/or agents are properly authorized to execute this Agreement on behalf of the parties hereto and each party hereby certifies to the other that any necessary actions extending such authority have been duly passed and are now in full force and effect.

SECTION 13. All notices, requests, demands, and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, to the respective city representative set out below, or his/her designee.

City of Fort Worth & City of Brenham
Cooperative Purchasing Agreement

EXECUTED this _____ day of _____, 2011.

CITY OF FORT WORTH
1000 Throckmorton Street
Fort Worth, Texas 76102

CITY OF BRENHAM
200 W. Vulcan Street
Brenham, Texas 77833

By: _____
Karen L. Montgomery

By: _____
Milton Y. Tate, Jr.

Title: Assistant City Manager

Title: Mayor

**APPROVED AS TO
FORM AND LEGALITY:**

Denis McElroy
Assistant City Attorney

Carey Bovey
City Attorney

Contract Authorization

Marty Hendrix, City Secretary

Jeana Bellinger, City Secretary

Date

Date