



**NOTICE OF A REGULAR MEETING
THE BRENHAM CITY COUNCIL
THURSDAY MARCH 8, 2012 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 – Mayor Pro Tem Gloria Nix**
- 3. 3-a. Service Recognitions**

Curtis W Martin – Electric Department	5 years
Jeffery W Nowak – Collection	5 years
William Manas, Jr. – Street Department	25 years
- 3-b. New Employee**

Jose Perez – Police Department

- 4. Citizens Comments**

CONSENT AGENDA

5. Statutory Consent Agenda

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

- 5-a. Minutes from the February 16, 2012 Council Meeting**

Page 1-4

REGULAR AGENDA

- 6. Discuss and Possibly Act Upon Acceptance of the Audit from Seidel, Schroeder, & Company for Fiscal Year 2011**

Page 5

7. **Discuss and Possibly Act Upon a Contract with O'Malley Engineers, LLP for Engineering Services for the Realignment of Stringer Street Associated with the Improvements Related to the U.S. Highway 290 Project and Authorize the Mayor to Execute Any Necessary Documentation** **Page 6-19**
8. **Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending the City of Brenham Water Rate Tariff Schedule for Temporary Construction Service (W-D) and Adding a Water Rate Tariff Schedule for Reclaimed Wholesale Water (W-R)** **Page 20-31**
9. **Discuss and Possibly Act Upon an Ordinance on Its First Reading Amending Chapter 17, Noise Nuisances, of the Code of Ordinances of the City of Brenham** **Page 32-36**

EXECUTIVE SESSION

10. **Texas Government Code Section 551.071 – Consultation with the City Attorney Regarding Legal Issues Involved with a Building Set Back Encroachment to the Saeger Street Right Of Way** **Page 37**

RE-OPEN REGULAR SESSION

11. **Discuss and Possibly Take Action Regarding a Building Set Back Encroachment to the Saeger Street Right Of Way** **Page 38**

WORK SESSION

12. **Presentation of the 2011 Annual Report by the Administration Department** **Page 39**
13. **Presentation of the 2011 Annual Report by the Public Utilities Department** **Page 40**
14. **Presentation of the 2011 Annual Report by the Finance Department** **Page 41**

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.

15. **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 March 8, 2012 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 March 5, 2012 at _____ AM PM.

Jeana Bellinger, TRMC
City Secretary

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

I certify that the attached notice and agenda of items to be considered by the City Council was removed by me from the City Hall bulletin board on the _____ day of _____, 2012 at _____ AM PM.

Signature

Title

Brenham City Council Minutes

A regular meeting of the Brenham City Council was held on February 16, 2012 beginning at 1:00 p.m. in the Brenham City Hall, City Council Chambers, at 200 W. Vulcan Street, Brenham, Texas.

Members present:

Mayor Milton Y. Tate, Jr.
Mayor Pro Tem Gloria Nix
Councilmember Andrew Ebel
Councilmember Danny Goss
Councilmember Keith Herring
Councilmember Weldon Williams, Jr.

Members absent:

Councilmember Mary E. Barnes-Tilley

Others present:

City Manager Terry Roberts, Assistant City Manager Kyle Dannhaus, City Attorney Cary Bovey, City Secretary Jeana Bellinger, Deputy City Secretary Jennifer Salsgiver, Chief Financial Officer Carolyn Miller, Adam Griffin, Fire Chief Ricky Boeker, Police Chief Rex Phelps, David Doelitsch, Public Works Director Doug Baker, Kim Hodde, Casey Redman, Public Utilities Director Lowell Ogle, Alton Sommerfield, Lin Hartstack, Angela Hahn, and Kevin Schmidt

Citizens present:

Page Michel, Clint Kolby, Seneca McAdams, Jenny Mills, and Lu Hollander

Media Present:

Allison Smith, Brenham Banner Press; Frank Wagner, KWHI

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags – City Attorney Cary Bovey**
- 3. Citizens Comments**

There were no citizen comments.

WORK SESSION

4. Presentation of the 2010-11 Washington County Convention and Visitors Bureau Fiscal Year End Report

Seneca McAdams, with the Washington County Convention and Visitors Bureau, presented this report. She focused on the highlights featured in the *Evaluation Report – Fiscal Year 2010-11*, pointing out the reception they encountered from the photography classes hosted through the Dallas Arboretum to Washington County as well as the promising response from the bureau’s marketing efforts directed towards weddings.

Ms. McAdams summarized program expenditures and shared statistics: The Visitor Center greeted 14,761 walk-ins and approximately 150,000 Visitor Guides were printed and distributed. The State of Texas Tourism Research Department estimated the overall “travel impact” through “total direct spending” in Washington County for 2010 was \$84.91 million.

Lu Hollander, with the Washington County Convention and Visitors Bureau, presented advertisement and publication reports. She pointed out items of broadcast coverage and provided samples of publicity Washington County received in 2010.

There were no questions.

CONSENT AGENDA

5. Statutory Consent Agenda

5-a. Minutes from the January 30, 2012 Special Council Meeting

5-b. Minutes from the February 2, 2012 Council Meeting

A motion was made by Mayor Pro Tem Nix and seconded by Councilmember Williams to approve the Statutory Consent Agenda Item 5-a. Minutes from the January 19, 2012 Special Council meeting and 5-b. Minutes from the February 2, 2012 council meeting.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Gloria Nix	Yes
Councilmember Mary E. Barnes-Tilley	Absent
Councilmember Andrew Ebel	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes

REGULAR AGENDA

6. **Discuss and Possibly Act Upon the Rejection of Bid No. 12-005 for Sheet Metal Work for New and Existing City Buildings and Authorize the Mayor to Execute Any Necessary Documentation**

Assistant City Manager Kyle Dannhaus presented this item. He explained that the City budgeted \$66,700 this year for four sheet metal work projects. Since J&A Roofing, LLC offered the lowest bid at \$84,565, Mr. Dannhaus recommended that council reject all of the bids. He noted that staff will investigate alternative cost effective options to complete the proposed projects and explained one option involves the City purchasing the material and bidding out the labor.

A motion was made by Mayor Pro Tem Nix and seconded by Councilmember Williams to reject Bid No. 12-005 for sheet metal work for new and existing city buildings and authorize the Mayor to execute any necessary documentation.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Gloria Nix	Yes
Councilmember Mary E. Barnes-Tilley	Absent
Councilmember Andrew Ebel	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes

7. **Discuss and Possibly Act Upon Bid No. 12-006 for Mowing and Cleanup Services for Various City Departments and Authorize the Mayor to Execute Any Necessary Documentation**

Assistant City Manager Kyle Dannhaus presented this item. He explained that in this year's budget, staff recommended contracting out mowing and cleanup services for various locations to cut staffing and equipment costs. The City received two bids and Precision Lawn Management provided the lowest overall bid. He recommends that the entire contract, serving the Park Department and the Health Department, be awarded to Precision Lawn Management in order to consolidate to one contractor. He explained that the City estimates this contract will cost \$27,520 a year if the service is rendered 32 times. Outsourcing this service saves the City \$13,000 to \$14,000 dollars each year.

Councilmember Goss questioned how often the City will receive services for \$27,520. Mr. Dannhaus explained that Precision Lawn Management provided an itemized list per occurrence and staff projected the \$27,520 figure by estimating the need for service 32 times a year. He explained that the contractor's payments are based on the number of times the service is provided, which largely depends on the amount of rainfall. City Attorney Cary Bovey noted that the contract will not guarantee that Precision Lawn Management will earn \$27,520.

A motion was made by Councilmember Herring and seconded by Councilmember Ebel to award Bid No. 12-006 for mowing and cleanup services for various city departments to Precision Lawn Management and authorize the Mayor to execute any necessary documentation.

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

Mayor Milton Y. Tate, Jr.	Yes
Mayor Pro Tem Gloria Nix	Yes
Councilmember Mary E. Barnes-Tilley	Absent
Councilmember Andrew Ebel	Yes
Councilmember Danny Goss	Yes
Councilmember Keith Herring	Yes
Councilmember Weldon Williams	Yes

8. Administrative/Elected Officials Report

Terry Roberts reported on the following:

- Downtown Master Plan public meeting in Council Chambers tonight at 5:30 p.m.
- Gladys Hodde's retirement party at 5:30 p.m. Monday, February 20, 2012
- Council update was distributed yesterday
- March 8, 2012 and March 22, 2012 Council Meetings will be extensive.
- Audit committee meets March 8, 2012 at 8:00 a.m.
- Possible water supply study at a future meeting.

Lowell reported on the following:

- Lake Somerville update: 232.5 gained 5 feet in last 4 to 5 weeks.

The meeting was adjourned.

Milton Y. Tate, Jr.
Mayor

Jeana Bellinger, TRMC
City Secretary



AGENDA ITEM 6

DATE OF MEETING: March 8, 2012	DATE SUBMITTED: March 5, 2012	
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 Acceptance of the Audit from Seidel, Schroeder, & Company for Fiscal Year 2011		
<p>SUMMARY STATEMENT: State law requires that all general-purpose local governments publish, within six months of the close of the fiscal year, a complete set of financial statements presented in conformity with generally accepted accounting principles (GAAP) and audited in accordance with generally accepted auditing standards by a firm of licensed certified public accountants.</p> <p>Pursuant to that requirement, and on behalf of the Finance Department, I am proud to issue the comprehensive annual financial report (CAFR) of the City of Brenham for the fiscal year ended September 30, 2011. At Thursday's council meeting, Michele Kwiatkowski, audit partner with Seidel, Schroeder & Company, will present the annual audit.</p> <p>A bound copy of the CAFR was distributed to Mayor and City Council Members. This report will be on file for review in the City Secretary's Office. A copy can also be downloaded from the City of Brenham's website at www.cityofbrenham.org</p>		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference): N/A		
ATTACHMENTS: N/A		
FUNDING SOURCE (Where Applicable): N/A		
RECOMMENDED ACTION: Accept the Audit from Seidel, Schroeder, & Company for Fiscal Year 2011		
APPROVALS: Carolyn D. Miller		



AGENDA ITEM 7

DATE OF MEETING: March 8, 2012	DATE SUBMITTED: March 1, 2012	
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 checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon a Contract with O'Malley Engineers, LLP for Engineering Services for the Realignment of Stringer Street Associated with the Improvements Related to the U.S. Highway 290 Project and Authorize the Mayor to Execute Any Necessary Documentation		
<p>SUMMARY STATEMENT: The overpass at the intersection of Stringer Street and Hwy 290 is under construction. It was designed with the assumption that Stringer Street would be a major collector street in the future. North of Hwy 290, Stringer Street is planned to connect to Chappell Hill Street at Market Street and Stringer street will be extended southward from Hwy 290 as commercial development occurs in that direction. TxDot designed the overpass for Stringer's ultimate width, that is, two through lanes plus a left turn lane in both directions. Additionally, there will be a turn around on both sides of the overpass. Only the turn arounds and a single lane in each direction are being constructed under the existing contract. The additional lanes will be constructed in the future.</p> <p>Because additional lanes have been planned for, even though they are not being constructed now, the extra pavement width made it necessary to construct the center of the overpass approximately eighty feet west of the existing centerline of Stringer Street. Approximately five hundred feet of pavement will have to be realigned to line up with the center of the overpass. Based on the unit prices Webber bid for the construction of Handley Street, the cost to realign Stringer street will be approximately \$254,000.</p> <p>This engineering agreement provides for basic engineering services at a cost not to exceed \$27,500.00 and additional services estimated at \$9,000.</p>		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference): N/A		

ATTACHMENTS: (1) Agreement for Engineering Services

FUNDING SOURCE (Where Applicable): N/A

RECOMMENDED ACTION: Approve a contract with O'Malley Engineers, LLP for engineering services for the realignment of Stringer Street associated with the improvements related to the U.S. Highway 290 Project and authorize the Mayor to execute any necessary documentation

APPROVALS: Terry K. Roberts

AGREEMENT FOR ENGINEERING SERVICES

THIS AGREEMENT made as of the ____ day of _____, 2012 by and between THE CITY OF BRENHAM, hereinafter called the OWNER, and O'MALLEY ENGINEERS, L.L.P., 203 South Jackson Street, Brenham, Texas 77833, hereinafter called ENGINEER, WITNESSETH that whereas the OWNER intends to construct improvements to Stringer Street at its intersection with the westbound U.S. Hwy 290 Feeder Road, hereinafter called the PROJECT.

NOW, THEREFORE, the OWNER and ENGINEER for the considerations hereinafter set forth, agree as follows:

1. THE ENGINEER AGREES to perform the following Engineering services for the PROJECT:

a. General: The Engineer shall serve as the Owner's professional representative in the planning and observation of construction of the Project, and shall give consultation and advice to the Owner during the performance of his services.

(1) Copyright or Patent Infringement: The Engineer shall defend actions or claims charging infringement of any copyright or patent by reason of the use or adoption of any designs, drawings or specifications supplied by him, and he shall hold harmless the Owner from loss or damage resulting therefrom, providing however, that the Owner within five (5) days after receipt of any notice of infringement or of summons in any action therefor shall have forwarded the same to the Engineer in writing.

(2) Insurance and Indemnification: The Engineer shall secure and maintain such insurance as will protect him from claims under the Workmen's Compensation Acts and from claims for bodily injury, death, or property damage which may arise from the performance of his services under this Agreement. The Engineer shall defend, indemnify, and hold the City, its officers, employees, volunteers and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees and any other costs or fees arising out of or resulting from any negligence or willful misconduct of the Engineer in the performance of this Agreement.

b. Basic Services of the Engineer:

(1) Design Phase:

After written authorization to proceed with the Design Phase, Engineer shall:

(a) On the basis of the accepted preliminary design documents prepare for incorporation in the Contract Documents, final drawings to show the character and scope of the work to be performed by the contractors on the Project (hereinafter called "Drawings"), and Specifications.

(b) Furnish to the Owner such documents and design data as may be required for, and assist in the preparation of, the required documents so that Owner may obtain approvals of such governmental authorities as have jurisdiction over design criteria applicable to the Project, and assist in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities.

(c) Advise the Owner of any adjustments to his latest opinion of probable Project Cost caused by changes in scope, design requirements or Construction Costs and furnish a revised opinion of probable Project Cost based on the Drawings and Specifications.

(d) Prepare bid forms, notice to bidders, instructions to bidders, general conditions and supplementary conditions and other related documents.

(e) Furnish eight (8) copies of the above documents and present and review them in person with the Owner.

(2) Construction Phase:

After written authorization to proceed with the Construction Phase, the Engineer shall:

(a) Assist the Owner in obtaining bids or negotiating proposals for each separate prime contract for construction or equipment.

(b) Consult with and advise Owner as to the acceptability of subcontractors and other persons and organizations proposed by the prime contractor(s) (hereinafter called "Contractor(s)") for those portions of the work as to which such acceptability is required by the Contract Documents.

(c) Consult with and advise Owner as to the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution is permitted by the Contract Documents.

(d) Assist Owner in evaluating bids or proposals and in assembling and awarding contracts.

(e) Consult with and advise Owner and act as his representative as provided in the Standard General Conditions of the Construction Contract. The extent and limitations of the duties, responsibilities and authority of the Engineer as assigned in said Standard General Conditions shall not be modified without the Engineer's written consent. All of the Owner's instructions to Contractor(s) will be issued through the Engineer who will have authority to act on behalf of the Owner to the extent provided in said Standard General Conditions except as otherwise provided in writing.

(f) Make periodic visits to the site to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the Contract Documents; he shall not be required to make exhaustive or continuous on site inspections

to check the quality or quantity of work; he shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s) or the safety precautions and programs incident to the work of Contractor(s). His efforts will be directed toward providing assurance for Owner that the completed Project will conform to the Contract Documents, but he shall not be responsible for the failure of the Contractor(s) to perform the construction work in accordance with the Contract Documents. During such visits and on the basis of his on site observations he shall keep the Owner informed of the progress of the work, shall endeavor to guard the Owner against defects and deficiencies in the work of Contractor(s) and may disapprove or reject work as failing to conform to the Contract Documents.

(g) Review and approve Shop Drawings (as that term is defined in the aforesaid Standard General Conditions) and samples, the results of tests and inspections and other data which any Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents; determine the acceptability of substitute materials and equipment proposed by Contractor(s); and receive and review (for general content as required by the Specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by the Contractor(s) in accordance with the Contract Documents.

(h) Issue all instructions of Owner to Contractor(s); prepare routine change orders as required; he may, as Owner's representative, require special inspection or testing of the work; he shall act as interpreter of the requirements of the Contract Documents and judge of the performance thereunder by the parties thereto and shall make decisions on all claims of Owner and Contractor(s) relating to the execution and progress of the work and all other matters and questions related thereto; but the Engineer shall not be liable for the results of any such interpretations or decisions rendered by him in good faith.

(i) Based on his on site observations and on his review of Contractor(s)' applications for payment and the accompanying data and schedules, determine the amounts owed to Contractor(s) and approve in writing payments to Contractor(s) in such amounts. Such approvals of payment will constitute a representation to Owner, based on such observations and review, that the work has progressed to the point indicated and that, to the best of his knowledge, information and belief, the work is in accordance with the Contract Documents (subject to an evaluation of the work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any qualifications stated in his approval), but by approving an application for payment the Engineer will not be deemed to have represented that he has made any examination to determine how or for what purpose any Contractor has used the moneys paid on account of the Contract Price, or that title to any of the Contractor(s)' work, materials or equipment has passed to the Owner free and clear of any lien, claims, security interests or encumbrances, or that he has made a thorough and comprehensive examination to determine the extent to which the Contractor has performed in accordance with the Contract Documents.

(j) Conduct a review to determine if the Project is substantially complete and a final review to determine if the Project appears to have been completed in accordance with the Contract Documents and if each Contractor has fulfilled all of his obligations thereunder so that the Engineer may approve, in writing, final payment to each Contractor.

(k) The Engineer shall not be responsible for the acts or omissions of any Contractor, any subcontractor or any of the Contractor(s)' or subcontractors' agents or employees or any other persons (except his own employees and agents) at the Project site or otherwise performing any of the work of the Project.

(l) Prepare for the Owner, within sixty (60) days after completion of the construction, a set of record prints marked "Record Drawings" showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by Contractor(s) to Engineer and which Engineer considers significant.

(m) Provide assistance in the utilization of any equipment or system (such as initial start-up, testing, adjusting and balancing); and training personnel for operation and maintenance. Owner will be furnished copies of all shop drawings, equipment literature, wiring diagrams, etc., submitted to the Engineer for approval by the Vendor.

c. Additional Services of Engineer:

(1) General:

If authorized in writing by the Owner, the Engineer shall furnish or obtain from others Additional Services of the following types which are not considered normal or customary Basic Service; these will be paid for by the Owner.

(a) Preparation of applications and supporting documents for governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

(b) Services to perform geotechnical investigations, materials testing, engineering surveys or topographic surveys for design, to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by the Owner.

(c) Services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, Owner's schedule, or character of construction; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond the Engineer's control.

(d) Providing renderings or models for the Owner's use.

(e) Preparing documents for alternate bids requested by Owner for work which is not executed or documents for out of sequence work.

(f) Investigations involving detailed consideration of operations, maintenance and overhead expenses; and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed

by the Owner.

(g) Furnishing the services of special consultants for other than the normal civil, structural, mechanical and electrical engineering and normal architectural design incidental thereto, such as consultants for interior design, selection of furniture and furnishings, communications, acoustics, kitchens and landscaping.

(h) Services in connection with change orders to reflect changes requested by Owner if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered, and services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

(i) Services during out of town travel required of the Engineer other than visits to the Project site as required by paragraph 1.b.

(j) Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of any Contractor, (3) prolongation of the contract time of any prime contract by more than sixty (60) days, (4) acceleration of the work schedule involving services beyond normal working hours, and (5) default by any Contractor.

(k) Construction staking for the project.

(l) Land surveys and office computations required to develop plats and metes and bounds descriptions for easement or property acquisition.

(m) Preparation of operating and maintenance manuals.

(n) Services after completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any contract for the Project.

(o) Preparing to serve or serving as a consultant or witness for Owner in any litigation, public hearing or other legal or administrative proceeding involving the Project.

(p) Additional services in connection with the Project, including services normally furnished by the Owner and services not otherwise provided for in this Agreement.

(q) If requested by the Owner or recommended by the Engineer and agreed to in writing by the Owner, a Resident Project Representative and assistants will be furnished and will act as directed by the Engineer in order to provide more extensive representation at the Project site during the Construction Phase. Such services will be paid for by Owner as indicated in paragraph 3.c.

(r) Through more extensive on site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative (if furnished) and assistants, the Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the work, but the furnishing of such resident Project representation will not make the Engineer responsible for construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or for Contractor(s)' failure to perform the construction work in accordance with the Contract Documents.

d. Reimbursable Services of the Engineer: Reimbursable services shall include the following items when authorized in writing by the Owner: transportation and subsistence of principals and employees on special trips to the Project or to other locations; long distance telephone and telegraph calls as required to expedite the work of the Contractor; reproduction of drawings and specifications in addition to those specified in paragraphs 1.b.(1)(e) of this Agreement.

2. THE OWNER AGREES to provide the Engineer with complete information concerning the requirements of the Project and to perform the following services:

a. Access to the Work: The Owner shall guarantee access to and make all provisions for the Engineer to enter upon public and private lands as required for the Engineer to perform such work as surveys and inspections in the development of the Project.

b. Consideration of the Engineer's Work: The Owner shall give thorough considerations to all reports, sketches, estimates, drawings, specifications, proposals, and other documents presented by the Engineer, and shall inform the Engineer of all decisions within a reasonable time so as not to delay the work of the Engineer.

c. Legal Requirements: The Owner shall hold promptly all required special meetings, serve all required public and private notices, receive and act upon all protests and fulfill all requirements necessary in the development of the Project, and pay all costs incidental thereto.

d. Proposals: The Owner shall advertise for Proposals from Bidders, open the Proposals at the appointed time and place and pay all costs incidental thereto.

e. Protection of Markers: The Owner shall protect to the best of his ability, all stakes and other markers set by the Engineer prior to the assumption of such responsibility by the Contractor. Replacement of markers or stakes which have been damaged, moved or removed shall be paid for by the Owner as extra services of the Engineer.

f. Standards: The Owner shall furnish the Engineer with a copy of any design and construction standards he shall require the Engineer to follow in the preparation of Contract Documents for the Project.

g. Owner's Representative: The Owner shall designate in writing, by appendix to this Agreement, a single person to act as the Owner's Representative with respect to the work to be performed under this Agreement. The person designated as Owner's Representative shall have complete authority to transmit instructions, receive information, interpret and define Owner's policy and decisions, with respect to the materials, equipment, elements and systems pertinent to the work

covered by this Agreement.

3. THE OWNER'S PAYMENTS TO THE ENGINEER:

a. General:

(1) Definitions of Construction Cost of the Project, as herein referred to, means the total cost of all work designed or specified by the Engineer but does not include any payments to the Engineer or other consultants.

(2) Payments Withheld from Contractors: No deduction shall be made from the Engineer's compensation on account of penalty, liquidated damages, or other amounts withheld from payments to Contractors.

(3) Abandoned or Suspended Work: If any work performed by the Engineer is abandoned or suspended in whole or in part, the Engineer shall be paid for services performed on account of it prior to receipt of written notice from the Owner of such abandonment or suspension, together with any terminal expense resulting therefrom, and including a profit commensurate to the profit margin provided for in Additional Services.

(4) Progress Payments: Once each month, the Owner shall pay the Engineer for professional services performed under paragraphs 1.b., 1.c. and 1.d. of this Agreement in proportion to services performed during the period.

b. Payments for Basic Services of the Engineer: The Owner shall pay the Engineer for the basic services described in Paragraph 1.b. of this Agreement, a lump sum basic fee of \$27,500.00 with progress payments as herein provided. At the completion of each phase of the work, progress payments shall total the following percentages of the basic services fee:

(1) Final Plans and Contract Documents: 75%

(2) During Construction: 100%

c. Payments for Additional Services of the Engineer: The Engineer shall be reimbursed according to Attachment "A" Schedule of Charges for the additional services outlined under paragraph 1.c. The additional services anticipated on this project along with the estimated costs are presented in Attachment "B" Schedule of Additional and Reimbursable Services.

d. Payment for Reimbursable Services of the Engineer: The Engineer shall be reimbursed at cost plus fifteen percent (15%) for the reimbursable services outlined under paragraph 1.d. At the Owner's option, he may elect to pay directly those persons, companies, corporations, etc., providing reimbursable services, thus avoiding the fifteen percent (15%) surcharge the Engineer would be entitled to if the Engineer is responsible for making payment to subcontractors.

4. THE OWNER AND ENGINEER FURTHER AGREE to the following conditions:

a. Termination: This Agreement may be terminated by either party by seven (7) days written notice in the event of substantial failure to perform in accordance with the terms hereof by the one party through no fault of the party. Further, either party may terminate this Agreement at any time, without cause, by providing thirty (30) days written notice of termination to the other party. If terminated due to the fault of others than the Engineer, the Engineer shall be paid for services performed to the date of termination, including reimbursements then due, plus terminal expense.

b. Disputes: Should a dispute arise during the course of this project, both parties hereby agree to attempt in good faith to resolve the dispute through mediation prior to seeking relief from any court or through any other legal proceeding.

c. Ownership of Documents: The completed tracings and master specifications sheets shall remain the property of the Engineer, and reproduction of them in whole or in part shall not be used on additions to the Project or on any other project except upon written Agreement with the Engineer.

5. SUCCESSORS AND ASSIGNS: This Agreement and all of the covenants hereof shall inure to the benefit of and be binding upon the Owner and the Engineer respectively and his partners, successors, assigns and legal representatives. Neither the Owner nor the Engineer shall have the right to assign, transfer or sublet his interest or obligations hereunder without written consent of the other party.

6. SPECIAL PROVISIONS: The Owner and the Engineer mutually agree that this Agreement shall be subject to the following Special Provisions which shall supersede other provisions of this Agreement.

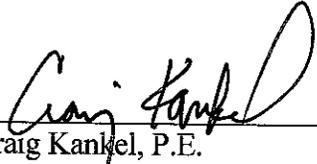
None

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement on the day and year first above written:

OWNER:
CITY OF BRENHAM

ENGINEER:
O'MALLEY ENGINEERS, L.L.P.

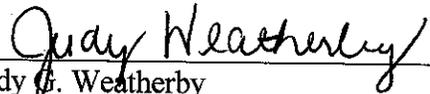
Milton Y. Tate
Mayor


Craig Kankel, P.E.
President

ATTEST:

ATTEST:

Jeana Bellinger
City Secretary


Judy Weatherby
Secretary

(SEAL)

SCHEDULE OF CHARGES

Compensation for engineering services shall be on an hourly basis at the rates below which include employment taxes, fringe benefits, overhead, transportation, supplies, materials, taxes and profit.

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
Project Manager	\$140.00
Senior Engineer	125.00
Engineer	95.00
Engineering Graduate	80.00
Engineering Technician	70.00
Project Representative	60.00
CADD Operator	55.00
Secretary.....	55.00

Compensation for surveying services shall be on an hourly basis at the rates set forth below which include employment taxes, fringe benefits, overhead, transportation, supplies, materials, taxes and profit.

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
Registered Professional Land Surveyor	\$115.00
Surveying Technician.....	65.00
CADD Operator	55.00
Secretary.....	55.00
4-Man Field Party	160.00
3-Man Field Party	135.00
2-Man Field Party	95.00
Global Positioning System (GPS) Equipment	35.00

Subcontract costs shall be billed at invoice cost plus fifteen percent (15%) for handling.

ATTACHMENT B

SCHEDULE OF ADDITIONAL AND REIMBURSABLE SERVICES

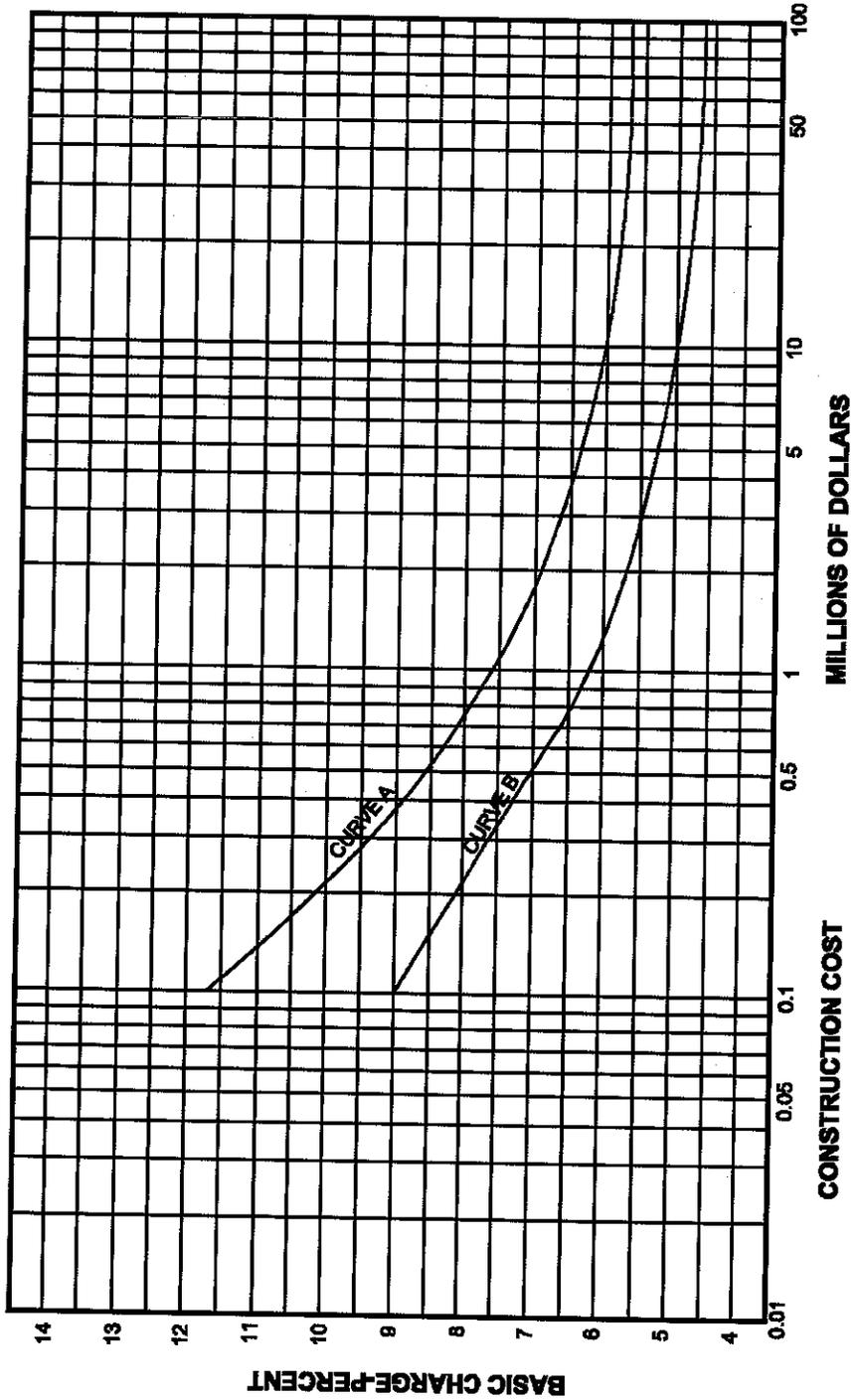
ADDITIONAL SERVICES

<u>TASK</u>	<u>ESTIMATED COST</u>
1. Field surveys for preparation of background drawings required for design	\$2,000.00
2. Construction staking and preparation of cut sheets, when required for Contractor to perform the work.....	\$2,000.00
3. Part-time Project Representative to observe construction work and testing in addition to periodic site visits by Engineer	\$5,000.00

REIMBURSABLE SERVICES

If other Additional or Reimbursable Services are required to complete this project, the estimated costs for these tasks will be presented to the Owner for approval once their need and magnitude are determined.

ATTACHMENT "C"
Curves of Median Compensation
CURVES A AND B





AGENDA ITEM 8

DATE OF MEETING: March 8, 2012	DATE SUBMITTED: February 28, 2012	
DEPT. OF ORIGIN: Public Utilities	SUBMITTED BY: Dane Rau	
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 checked="" 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 the City of Brenham Water Rate Tariff Schedule for Temporary Construction Service (W-D) and Adding a Water Rate Tariff Schedule for Reclaimed Wholesale Water (W-R)		
<p>SUMMARY STATEMENT: During the 2011-2012 budget process staff presented council with a plan to reuse effluent (reclaimed) water from its Wastewater Treatment Plant for non-essential purposes in order to conserve potable water that is intended for essential needs. Staff presented a plan which would include adding equipment such as pumps, pipe and a reclaimed water station to the effluent chamber at the Wastewater Treatment Plant. This water will be used in the future for industrial and manufacturing processing, residential irrigation, irrigation for urban or rural uses, food crops, municipality-owned right-of-way, fire protection, maintenance of off-channel impoundments, toilet flush water, dust control, road construction, construction activities and process water. Staff has since obtained a 210 Reuse Authorization from TCEQ allowing these activities. We have also been actively modifying the existing facility by adding an additional driveway and relocating the existing fence in order to allow 24 hr. access without entering our treatment plant premises. This project is a huge step for water conservation in our town. One of the first benefits of this system is that it will dramatically reduce the number of fire hydrant meters that are used for obtaining water from temporary construction activities. On average the City of Brenham has 15-20 fire hydrant meters throughout our system with a combined usage of 250,000 gallons per month used. This type of setup has been allowed for many years and is charged according to Water Rate Schedule W-D (Temporary Construction Service). By adding the station and adopting the new tariffs it will mandate that all water used for non-essential needs, specifically road construction, dust control, fracking, and hydro-mulching will be sold at the reclaimed water station. On instances that are inconvenient or proven otherwise an applicant requesting potable water will have to be granted permission by the Director of Public Utilities and pay the fees associated with the revised rate schedule of W-D.</p> <p>With this system we have the capability to provide effluent water to adjacent property owners used for irrigation purposes, in which a contract will be signed soon with one property owner. In the future we plan to expand the reuse program. Other minor uses for this water which can happen now include filling of fire trucks, street sweeper, sewer jet truck, and used to enhance the decomposition of the mulch pile.</p>		

Attached you will find the recommended rate tariffs for both W-D and W-R. On rate tariff W-D you will see recommended changes in yellow with the existing language crossed out. The W-R rate tariff is new and is specifically for reclaimed water from the Wastewater Treatment Plant. The major change in the W-D rate tariff is the meter set fee which was increased from \$30.00 to \$200.00. This was set at a higher rate specifically to promote reclaimed water and make users think if they really need convenient potable water. The equipment is also valued at \$900.00 which has risen over the last 20 years. Also attached is a Brenham Water Use Agreement contract that all users will sign prior to opening up an account and receiving reclaimed water. These contracts are required by TCEQ and all documents were reviewed and approved by the City Attorney. All accounts and billing for these services will still be done by Utility Billing.

Rates in W-D will stay the same for water that is pulled from a fire hydrant meter. Rates for reclaimed water are recommended at \$4.00/1000 gallons. This is roughly three quarters of the cost of potable water, which is the norm among cities who sell reclaimed water. By setting a rate lower than the potable rate it will make reclaimed water attractive to use for non-essential purposes.

STAFF ANALYSIS (For Ordinances or Regular Agenda Items):

A. PROS: Reuse of effluent water which we currently do not receive any revenue from and it will also lessen the demand on the potable system during high demand times. Also lower costs to companies.

B. CONS: Modifying the plant, infrastructure expenses, and additional reporting, testing, and paperwork.

ALTERNATIVES (In Suggested Order of Staff Preference):

ATTACHMENTS: (1) W-D Rate Tariff; (2) W-R Rate Tariff; (3) Reclaimed Water Use Agreement; and (4) Ordinance

FUNDING SOURCE (Where Applicable): 105-5-166-806.00

RECOMMENDED ACTION. Approve an ordinance on its first reading amending the City of Brenham water rate tariff schedule for temporary construction service (W-D) and adding a water rate tariff schedule for reclaimed wholesale water (W-R)

APPROVALS: Lowell Ogle Jr.

ALL SERVICES

600

630

TARIFF

SECTION NO.

SHEET NO.

WATER RATE SCHEDULE

SECTION TITLE

EFFECTIVE DATE

(Supersedes Rate Change effective 10/01/08)

TEMPORARY CONSTRUCTION SERVICE

RATE SCHEDULE W-D

APPLICABILITY

This rate is applicable to all customers that receive water delivered into a tank truck, tank trailer, portable sprayer, portable mixer, or other similar container **from a temporary meter set on a fire hydrant.**

AVAILABILITY

This rate ~~is available to all customers who received water at the Fire Station or from a temporary meter set on a fire hydrant~~ and service is only applicable to those who pay the required deposit and the fee for meter placement, and who are approved by the Director of Public Utilities prior to usage.

RATES

First 3,000 gallons	\$17.23
3,001 – 10,000 gallons	\$5.01 per 1,000 gallons
10,001 – 25,000 gallons	\$6.26 per 1,000 gallons
25,001 and above	\$7.83 per 1,000 gallons

MINIMUM CHARGES

The minimum monthly bill shall be \$17.23

TERMS OF PAYMENT

All rates specified herein are net, and the gross rates for delinquent payments are ten percent (10%) higher. Each bill for service is due within fifteen (15) days after issuance unless such day falls on a holiday or weekend, in which case payment is due on the next work day. If full payment is not received at the City's offices or other approved payment location on or before the due date, ~~all of the customer's utility services will be considered delinquent and subject to disconnection~~ the customer will forfeit the entire deposit and the City may, at its sole option, remove the **fire hydrant meter and terminate service to the customer.**

CHARACTER OF SERVICE

Water supplied under this rate schedule is normally treated surface water approved for public water supply by the Texas Commission on Environmental Quality.

ALL SERVICES

600

631

TARIFF

SECTION NO.

SHEET NO.

WATER RATE SCHEDULES

SECTION TITLE

EFFECTIVE DATE

(Supersedes Rate Change effective 10/01/08)

SPECIAL CONDITIONS OF SERVICE

1. ~~Where service is rendered from a fire hydrant, the customer will be required to pay an additional fee of thirty dollars (\$30.00) to cover the City's cost of setting and removing a temporary meter on a fire hydrant. The superintendent of the Water Distribution Department has the authority to refuse service from any fire hydrant where, in his opinion, the rendering of such service would have an adverse effect on the pressure or flow to other customers in the surrounding area.~~ The customer will pay an initial deposit of three hundred dollars (\$300.00) in cash or check to the City of Brenham.
2. In addition, where service is rendered from a fire hydrant, the customer will be required to pay an a non-refundable fee of two hundred dollars (\$200.00) to cover the City's cost of setting up and removing a temporary meter on a fire hydrant. The superintendent of the Water Distribution Department has the authority to refuse service from any fire hydrant where, in his opinion, the rendering of such service would have an adverse effect on the pressure or flow to other customers in the surrounding area.
3. Service rendered under this schedule is subject to the City's Rules and Regulations in effect from time to time.
4. Bills will be adjusted by the proportionate part of any tax or charge levied or assessed against the City or upon its water business as a result of any new or amended laws becoming effective after the effective date of this rate schedule.

ALL SERVICES	600	693
TARIFF	SECTION NO.	SHEET NO.
WATER RATE SCHEDULE	XXXXXXXXXX	
SECTION TITLE	EFFECTIVE DATE	

RECLAIMED WHOLESALE WATER

RATE SCHEDULE W-R

APPLICABILITY

This rate is applicable to all customers that receive Type 1 Reclaimed Water to be used for industrial and manufacturing processing, residential irrigation, irrigation for urban or rural uses, food crops, municipality-owned right-of-way, fire protection, maintenance of off-channel impoundments, toilet flush water, dust control, road construction, construction activities and process water.

AVAILABILITY

This rate is available to all customers who enter into a Reclaimed Water Use Agreement, pay the applicable deposit, and receive Type 1 Reclaimed Water at the Reclaimed Water Station located at 2005 Old Chappell Hill Rd.

RATES

\$4.00 per 1,000 gallons

MINIMUM CHARGES

No minimum charge.

TERMS OF PAYMENT

All rates specified herein are net, and the gross rates for delinquent payments are ten percent (10%) higher. Each bill for service is due within fifteen (15) days after issuance unless such day falls on a holiday or weekend, in which case payment is due on the next work day. If full payment is not received at the City's offices or other approved payment location on or before the due date, the customer's deposit will be forfeited and the City may, at its sole option, terminate services and the Reclaimed Water Use Agreement, according to its terms.

CHARACTER OF SERVICE

Reclaimed water supplied under this rate schedule is Type 1 Reclaimed Water produced at the Brenham Wastewater Treatment Plant that is authorized and approved for re-sale by the Texas Commission on Environmental Quality. (Authorization # R10388001)

ALL SERVICES	600	694
TARIFF	SECTION NO.	SHEET NO.
WATER RATE SCHEDULES	XXXXXXXXXXXX	
SECTION TITLE	EFFECTIVE DATE	

SPECIAL CONDITIONS OF SERVICE

1. Where service is rendered from the Reclaimed Bulk Water Station, the customer will be required to pay an initial deposit of three hundred dollars (\$300.00). The customer will also be required to sign a Reclaimed Water Use Agreement prior to usage of the station. The station will have 24 hr. access and will be controlled through individual pin codes per account that are distributed upon compliance with the above requirements.
2. Service rendered under this schedule is subject to the City's Rules and Regulations in effect from time to time.
3. Bills will be adjusted by the proportionate part of any tax or charge levied or assessed against the City or upon its water business as a result of any new or amended laws becoming effective after the effective date of this rate schedule.

RECLAIMED WATER USE AGREEMENT

This Agreement is entered into by and between the **CITY OF BRENHAM**, a Texas home rule municipality, and **USER**, _____, a person or entity that is authorized to conduct business in this state (the “Purchaser”). Unless otherwise provided in this Agreement, the term “Parties” shall mean the City and Purchaser.

W I T N E S S E T H:

WHEREAS, Purchaser desires to purchase Reclaimed Water from the City of Brenham (the “City”), upon the terms and conditions set forth herein; and

WHEREAS, the City is authorized to provide Reclaimed Water pursuant to the Texas Commission on Environmental Quality (“TCEQ”) Authorization No. R10388001, a copy of which is on file with the City Secretary; and

WHEREAS, the City has set forth rates for Reclaimed Water provided by the City, as well as certain terms and conditions governing such provision, in the most recently adopted version of the Utility Rate Tariff known as “_____ - W-___,” on file with the City Secretary;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the adequacy and sufficiency of which is hereby acknowledged, from and after the Effective Date until this Agreement is terminated, the City agrees to sell Reclaimed Water to Purchaser, and Purchaser agrees to pay the City for such delivery of Reclaimed Water, in the amounts and upon the terms and conditions hereinafter set forth:

1. DELIVERY, USE, AND RESALE OF RECLAIMED WASTEWATER

1.1 Delivery. The City shall treat and maintain Reclaimed Wastewater at the City’s Wastewater Treatment Plant (WWTP), and deliver Reclaimed Water to the Receiving Station, where Reclaimed Wastewater will be metered and distributed to Purchaser and other customers.

1.2 Use of Water. Reclaimed Water provided by this Agreement shall only be used by the Purchaser for purposes authorized in Authorization No. R10388001, on file with the City Secretary. Purchaser agrees to comply with all conditions of said Authorization, as well as 30 Tex. Admin. Code Chapter 210 regarding the transfer, storage, and use of Type I Reclaimed Water.

1.3 Resale by Purchaser. Purchaser may not resell Reclaimed Water purchased from the City to any agency, individual, corporation, or other party without prior written consent of the City.

2. QUANTITY, TEMPORARY SUSPENSION, AND MEASUREMENT OF WATER

2.1 Quantity. Reclaimed Water will be distributed on a first-come, first-served basis. In no event, however, shall the City be required under this Agreement to deliver any minimum amount of Reclaimed Water to Purchaser, nor shall the City be obligated by any terms or

provisions herein to provide a daily delivery of any amounts of Reclaimed Water. The Purchaser agrees that the City is under no obligation to provide Reclaimed Water when, in the opinion of the City and in the interest of operating the WWTP, there is insufficient Reclaimed Water available for supply, or when doing so may violate federal or state regulations or permits, or may violate the direction of any regulatory agency with jurisdiction over the use of Reclaimed Water. Purchaser agrees that the quantity of Reclaimed Water available for delivery and use by Purchaser shall be solely dependent on the actual operations and production of the City's WWTP.

2.2 Temporary Suspension of Service. The City may temporarily suspend delivery of Reclaimed Water to Purchaser for the purpose of performing maintenance and repairs to the Reclaimed Water Receiving Station or the WWTP. The City shall endeavor to provide Purchaser with verbal notice prior to a temporary suspension of service.

2.3 Metering and Unit of Measurement. The City shall install, operate, maintain, calibrate, read, and when necessary, adjust a meter that records the Reclaimed Water delivered to Purchaser at the Receiving Station. The cost for all metering activities shall be borne by the City. The City shall keep accurate records of all measurement of Reclaimed Water required under this Agreement, and the measuring devices and such records shall be open to inspection by Purchaser during reasonable business hours. Should Purchaser have reason to believe that a meter is recording water usage inaccurately, Purchaser may request in writing that the City investigate the meter operations. The City shall investigate the meter operations and take appropriate measures to cure any defects within a reasonable time. The unit of measurement for Reclaimed Water delivered hereunder shall be 1,000 gallons of water, U.S. Standard Liquid Measure.

3. WATER QUALITY

3.1 General. Reclaimed Water to be delivered by the City shall be treated effluent in compliance with applicable state and federal law. Reclaimed Water is not intended for human consumption or domestic purposes and is to be used only for purposes specified in the TCEQ Authorization No. R10388001, a copy of which is on file with the City Secretary. Purchaser has satisfied itself that such Reclaimed Water will be suitable for its use. **THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BEYOND THE DESCRIPTION CONTAINED IN THIS AGREEMENT RELATIVE TO THE QUALITY OF THE RECLAIMED WATER OR ITS SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.**

4. DEPOSIT, MONTHLY RATES, AND BILLING

4.1 Initial Deposit: The Purchaser will pay an initial deposit of three hundred dollars (\$300.00) in cash or check to the City of Brenham. This required deposit shall be refunded to Purchaser at the termination of this Agreement if all of the following conditions are met:

- (a) The deposit has been held by the City for at least twelve (12) months; and
- (b) The Purchaser has not had any collection activity occurrence (including not honored and returned checks or more than two late penalties) in the prior twelve (12) months; and
- (c) There is no "Past Due" bill currently owed for the applicable service account.

Notwithstanding the foregoing provisions, upon termination of service, deposits will be applied to the final bill, and the excess, if any, shall be refunded to the Purchaser.

4.2 Monthly Rates: The Purchaser will pay a monthly rate of \$_____ per 1,000 gallons of Reclaimed Water from the City's WWTP, as set forth in the Utility Rate Tariff "_____-W-____," and shall comply with the terms and conditions included in said Rate Tariff. Rates are subject to change.

4.3 Billing. The City shall bill Purchaser and Purchaser will pay for Reclaimed Water taken by Purchaser each month in compliance with the billing procedures provided for in Utility Rate Tariff "_____-W-____."

5. FORCE MAJEURE

5.1 Force Majeure. If the City is unable to deliver Reclaimed Water under the terms of this Agreement due to circumstances beyond the City's control and without its fault, whether such occurrence or circumstance be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person(s) not party or privy hereto, then the City shall not be liable for the breach of this Agreement.

6. GENERAL PROVISIONS

6.1 Conditions. It is expressly understood and agreed that any obligations on the part of the City to provide Reclaimed Water to Purchaser are (a) conditioned upon the City's ability to maintain all necessary permits, agreements, material, labor, and equipment; (b) subject to all present and future valid laws, order, rules, and regulations of the United States of America, the State of Texas, and any government or regulatory body having jurisdiction over the City or its activities; and (c) subject to the right of the City to terminate Reclaimed Water deliveries under this Agreement when the City finds that the management, storage, distribution, or use of such Reclaimed Water is noncompliant with the provisions of the TCEQ Authorization No. R10388001, or Title 30 of the Texas Administrative Code, Chapter 210, as may be amended from time to time.

6.2 Title. Title to and liability for all Reclaimed Water supplied hereunder shall be in the City up to the point of delivery at the Receiving Station, at which point same shall pass to Purchaser.

6.3 Hold Harmless and Indemnification. THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES SHALL NOT BE HELD LIABLE OR RESPONSIBLE FOR, AND SHALL BE SAVED AND HELD HARMLESS BY PURCHASER FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, ACTIONS, ENFORCEMENT ACTIONS, LOSSES, DAMAGES, OR LIABILITY, INCLUDING ALL LITIGATION, COSTS, AND ATTORNEYS' FEES BROUGHT BY ANY PERSON, ENTITY OR REGULATORY AUTHORITY ARISING OUT OF, OR OCCASIONED BY THE ACTS OF PURCHASER OR PURCHASER'S AGENTS OR EMPLOYEES IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT, PURCHASER'S USE OF RECLAIMED WATER, AND PURCHASER'S OPERATION OF THE FACILITIES ASSOCIATED WITH ITS MANAGEMENT, STORAGE, DISTRIBUTION, OR USE OF RECLAIMED WATER.

6.4 No Vested Right to Reclaimed Water. Purchaser hereby expressly acknowledges that Purchaser shall have no right or entitlement to any Reclaimed Water following the termination of this Agreement, and that any rights Purchaser may have to Reclaimed Water during the effectiveness of this Agreement derives solely and exclusively from the provisions set forth herein, and not by any other legal or equitable source.

7. TERM OF AGREEMENT; NOTICE; APPLICABLE LAWS

7.1 Effective Date, Commencement of Service, and Term of Agreement. This Agreement shall be in force and effect from the Effective Date and may be terminated for any reason after thirty (30) days' written notice. The Effective Date means the later date of the parties' signatures on this Agreement. Purchaser may begin to access Reclaimed Water within 24 hours of executing this Agreement, or on the next business day, whichever is later.

7.2 Address and Notice. Unless otherwise provided in this Agreement, any notice or communication must be in writing and must be sent by certified or registered mail, postage prepaid, return receipt requested. For the purpose of Notice, the addresses of the Parties shall be as follows:

Purchaser: USER

Fax No.:

City: City of Brenham
Attn: Public Utilities Director
P.O. Box 1059
Brenham, TX 77834-1059
 (979) 337-7400
Fax: (979) 337-7406

Any changes to the address or contact information listed above must be submitted to the other party in writing at least fourteen (14) business days before the change becomes effective.

7.3 Applicable Laws, Rules, Orders or Regulations. This Agreement is subject to all applicable federal and state laws and applicable permits, ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having or asserting jurisdiction.

8. ASSIGNMENT

8.1 General. This Agreement shall not be assignable by Purchaser, in whole or in part, without the prior written consent of the City. The City and Purchaser each binds itself and its successors and assigns to the other party with respect to all covenants of this Agreement.

9. REMEDIES UPON DEFAULT

9.1 General. If either party defaults in the performance of any obligation or covenant herein, the non-defaulting party shall give written notice of the default to the defaulting party. However, no party shall be deemed to be in default hereunder until the passage of ten (10) business days after receipt by such party of notice of default from the other party. Upon the passage of ten (10) working days without cure of the default, such party shall be deemed to have defaulted and breached this Agreement. The non-breaching party may then declare the Agreement terminated, and/or exercise any other remedy available at law or in equity.

10. SEVERABILITY

10.1 General. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional, the remainder of this Agreement and the application of such provision or part of this Agreement shall not be affected thereby.

11. PRIOR AGREEMENTS SUPERSEDED

11.1 General. This Agreement constitutes the sole and only Agreement of the Parties with respect to the sale, delivery, and purchase of Reclaimed Water and cancels and supersedes any prior understandings, oral or written, between the Parties respecting the subject matter.

IN WITNESS WHEREOF, the Parties hereto acting under the proper authority, hereby warranting that they have authority to enter into this Agreement, have caused this Agreement to be duly executed in several counterparts, each of which shall constitute an original.

PURCHASER

CITY OF BRENHAM

Name

Terry K. Roberts, City Manager

Title

Date

Date

Attest:

Attest:

Name

Jeana Bellinger, City Secretary

Title

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE WATER RATE TARIFF SCHEDULE FOR TEMPORARY CONSTRUCTION SERVICE W-D AND ADDING WATER RATE TARIFF W-R RECLAIMED WHOLESAL WATER FOR WATER SERVICES FOR THE CITY OF BRENHAM, TEXAS; AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, the City Council of the City of Brenham, Texas deems it necessary to change the rates charged for Temporary Construction rate tariff W-D meter set fee and establish a new rate tariff W-R Reclaimed Water for water services to its customers in order to provide for conditions of utility service which promote the health, safety and welfare of the citizens of Brenham, Texas.

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

SECTION I.

The City Council of the City of Brenham, Texas, does hereby adopt the Water Rate Schedules for water services as set forth in the attached Exhibit "A", which is made a part hereof for all purposes pertinent, to be effective April 1, 2012.

SECTION II.

This Ordinance shall take effect as provided by the Charter of the City of Brenham, Texas. The implementation of rates as set forth herein and on the attached Exhibit "A" shall be effective from and after April 1, 2012.

PASSED AND APPROVED on its first reading this the 8 day of March, 2012.

PASSED AND APPROVED on its second reading this the 22 day of March, 2012.

Milton Y. Tate Jr., Mayor

ATTEST:

Jeana Bellinger, Deputy City Secretary



AGENDA ITEM 9

DATE OF MEETING: March 8, 2012	DATE SUBMITTED: February 24, 2012	
DEPT. OF ORIGIN: Administration	SUBMITTED BY: Jeana Bellinger	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input checked="" 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 Ordinance on Its First Reading Amending Chapter 17, Noise Nuisances, of the Code of Ordinances of the City of Brenham		
SUMMARY STATEMENT: While working on various items related to the Dr. Bobbie M. Dietrich Memorial Amphitheater, staff discovered that the noise ordinance would need to be amended to allow for an exemption for events being held at the amphitheater so that a noise variance would not have to be granted by Council for every event. There are several other parts of this ordinance that need to be updated also; however, due to Spring and Summer being just around the corner, I wanted to get the exemption added to allow for activities at the Amphitheater. I will bring some other much needed changes to this ordinance in the next few months.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: (1) An ordinance amending Chapter 17, Noise Nuisances, of the Code of Ordinances; and (2) Redlined copy of Sec. 17-8, Noise Nuisances		
FUNDING SOURCE (Where Applicable): N/A		
RECOMMENDED ACTION: Approve an Ordinance on its first reading amending Chapter 17, Noise Nuisances, of the Code of Ordinances of the City of Brenham		
APPROVALS: Terry K. Roberts		

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING CHAPTER 17 OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS; ALLOWING FOR THE USE OF SOUND AMPLIFYING DEVICES AT AUTHORIZED EVENTS HELD AT THE DR. BOBBIE M. DIETRICH MEMORIAL AMPHITHEATER LOCATED IN HOHLT PARK; PROVIDING FOR A REPEALER AND SAVINGS CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PROPER NOTICE AND OPEN MEETINGS.

WHEREAS, Section 17-8 of the City of Brenham Code of Ordinances prohibits the use of sound amplifying devices in public parks and public playgrounds when the sound is plainly audible at a distance of fifty feet (50') or more from the source, unless a permit is obtained from the City Council; and

WHEREAS, the City Council desires to allow the use of sound amplifying devices at the Dr. Bobbie M. Dietrich Memorial Amphitheater located in Hohlt Park without requiring authorized users to obtain a permit from the City Council;

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

SECTION 1.

Section 17-8(c), Noise nuisances, of the Code of Ordinances of the City of Brenham, Texas is hereby amended to read as follows:

- (4) This section shall not apply to any person acting on behalf of a government authority or acting pursuant to a valid permit issued by the city. Additionally, this section shall not apply to events authorized by the city which are held at the Dr. Bobbie M. Dietrich Memorial Amphitheater located in Hohlt Park.

SECTION 2.

REPEALER AND SAVINGS CLAUSE

All provisions of any ordinance, resolution or other action of the City in conflict with this Ordinance are hereby repealed to the extent they are in conflict. Any remaining portions of said ordinances, resolutions or other actions 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. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentences, clauses and phrases remaining should any provision be declared unconstitutional or invalid.

SECTION 4.
EFFECTIVE DATE

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

SECTION 5.
PROPER NOTICE AND MEETINGS

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

PASSED AND APPROVED, on its first reading at the meeting of the City Council held on this the 8th day of March, 2012.

PASSED AND APPROVED, on its second reading at the meeting of the City Council held on this the 22nd day of March, 2012.

Milton Y. Tate, Jr., Mayor

ATTEST:

Jeana Bellinger, TRMC, City Secretary

CHAPTER 17

OFFENSES AND MISCELLANEOUS PROVISIONS

Sec. 17-8. Noise nuisances.

(a) *Definitions.* As used in this section, the following terms shall have the respective meanings ascribed in them:

Plainly audible in this section means any sound produced by artificial means, which clearly can be heard at a distance of fifty (50) feet or more when measured by the auditory senses, based on the direct line of sight. Determination of whether a sound is plainly audible shall be made without regard to the discernibility of words or phrases. Bass reverberations may be considered plainly audible.

Sound amplifying device in this section means any radio, tape player, compact disk player, loudspeaker, or other electronic device used for the amplification of sound.

(b) *Declaration of nuisance, prohibitions.* Any noise of a non-natural or artificial source, of such intensity that is plainly audible from a distance of fifty (50) feet or more from the source is declared a nuisance and is hereafter prohibited.

(c) *Enumerated acts.* The following acts, among others, are declared to be nuisances in violation of this section, but said enumerations shall not be deemed to be exclusive, to wit:

- (1) The playing of any radio, phonograph or other musical instrument in such a manner or with such volume as to be plainly audible at a distance of fifty (50) feet or more from the source.
- (2) The operation of a sound amplifying device in a public park or public playground so that the sound is plainly audible at a distance of fifty (50) feet or more from the sound amplifying device.
- (3) The keeping of any animal or bird which is causing frequent or long-continued noise that disturbs the comfort and repose of any person of ordinary sensibilities within fifty (50) feet of the property line on which the animal or bird resides.
- (4) This section shall not apply to any person acting on behalf of a government authority or acting pursuant to a valid permit issued by the city. **Additionally, this section shall not apply to events authorized by the city which are held at the Dr. Bobbie M. Dietrich Memorial Amphitheater located in Hohlt Park.**

(d) *Test for standards and noises.* Factors to consider: The standards which shall be considered in determining whether a violation of this section exists shall include but shall not be limited to the following:

- (1) The volume of the noise.
- (2) The intensity of the noise.
- (3) Whether the nature of the noise is usual or unusual.
- (4) Whether the origin of the noise is natural or unnatural.
- (5) The volume and intensity of the background noise, if any.
- (6) The proximity of the noise to residential sleeping facilities.
- (7) The nature of the area within which the noise emanates.
- (8) The density of inhabitation of the area within which the noise emanates.
- (9) The time of the day or night the noise occurs.
- (10) The duration of the noise.
- (11) Whether the noise is recurrent, intermittent or constant.
- (12) Whether the noise is produced by a commercial or noncommercial activity.

(e) *Violations; penalties.* Any person, firm, or corporation violating subsection (a) or (b) hereof, shall be a violation of a class C misdemeanor and upon conviction shall be fined in an amount not less than one dollar (\$1.00) and not more than five hundred dollars (\$500.00), plus costs.

(Ord. of 8-21-03, §§ I--III)



AGENDA ITEM 10

DATE OF MEETING: March 8, 2012	DATE SUBMITTED: March 2, 2012	
DEPT. OF ORIGIN: Public Works	SUBMITTED BY: Doug Baker	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
<input 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 checked="" type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Texas Government Code Section 551.071 – Consultation with the City Attorney Regarding Legal Issues Involved with a Building Set Back Encroachment to the Saeger Street Right Of Way		
SUMMARY STATEMENT: N/A		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: N/A		
FUNDING SOURCE (Where Applicable): N/A		
RECOMMENDED ACTION: Discussion only		
APPROVALS: Terry K. Roberts		



AGENDA ITEM 11

DATE OF MEETING: March 8, 2012	DATE SUBMITTED: March 2, 2012	
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 checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Take Action Regarding a Building Set Back Encroachment to the Saeger Street Right Of Way		
SUMMARY STATEMENT: To be discussed in Executive Session.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference): N/A		
ATTACHMENTS: N/A		
FUNDING SOURCE (Where Applicable): N/A		
RECOMMENDED ACTION: As discussed during executive session		
APPROVALS: Terry K. Roberts		



AGENDA ITEM 12

DATE OF MEETING: March 8, 2012	DATE SUBMITTED: February 9, 2012	
DEPT. OF ORIGIN: Administration	SUBMITTED BY: Kyle Dannhaus	
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 of the 2011 Annual Report by the Administration Department		
SUMMARY STATEMENT: In order to be more cost efficient, a copy of the annual report is not included in the agenda packet. However, a bound copy of each report will be distributed to Mayor and City Council Members. A bound copy of the 2011 Administration Department Annual Report is on file for review in the City Secretary's Office. A copy can also be downloaded from the City of Brenham's website at www.cityofbrenham.org . If you are interested in obtaining a hard copy, please call the City Secretary at 979-337-7567		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference): N/A		
ATTACHMENTS: N/A		
FUNDING SOURCE (Where Applicable): N/A		
RECOMMENDED ACTION: N/A		
APPROVALS: Terry K. Roberts		



AGENDA ITEM 13

DATE OF MEETING: March 8, 2012	DATE SUBMITTED: February 9, 2012	
DEPT. OF ORIGIN: Public Utilities Department	SUBMITTED BY: Lowell Ogle	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1 ST READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2 ND READING
<input type="checkbox"/> EXECUTIVE SESSION	<input type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input checked="" type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Presentation of the 2011 Annual Report by the Public Utilities Department		
SUMMARY STATEMENT: In order to be more cost efficient, a copy of the annual report is not included in the agenda packet. However, a bound copy of each report will be distributed to Mayor and City Council Members. A bound copy of the 2011 Public Utilities Department Annual Report is on file for review in the City Secretary's Office. A copy can also be downloaded from the City of Brenham's website at www.cityofbrenham.org . If you are interested in obtaining a hard copy, please call the City Secretary at 979-337-7567		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference): N/A		
ATTACHMENTS: N/A		
FUNDING SOURCE (Where Applicable): N/A		
RECOMMENDED ACTION: N/A		
APPROVALS: Terry K. Roberts		



AGENDA ITEM 14

DATE OF MEETING: March 8, 2012	DATE SUBMITTED: February 9, 2012	
DEPT. OF ORIGIN: Finance	SUBMITTED BY: Carolyn 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 type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input checked="" type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Presentation of the 2011 Annual Report by the Finance Department		
SUMMARY STATEMENT: In order to be more cost efficient, a copy of the annual report is not included in the agenda packet. However, a bound copy of each report will be distributed to Mayor and City Council Members. A bound copy of the 2011 Finance Department Annual Report is on file for review in the City Secretary's Office. A copy can also be downloaded from the City of Brenham's website at www.cityofbrenham.org . If you are interested in obtaining a hard copy, please call the City Secretary at 979-337-7567		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference): N/A		
ATTACHMENTS: N/A		
FUNDING SOURCE (Where Applicable): N/A		
RECOMMENDED ACTION: N/A		
APPROVALS: Terry K. Roberts		